

APPLICATION NO: 21/02409/FUL		OFFICER: Mrs Emma Pickernell
DATE REGISTERED: 30th October 2021		DATE OF EXPIRY: 25th December 2021
DATE VALIDATED: 30th October 2021		DATE OF SITE VISIT:
WARD: Up Hatherley		PARISH: Up Hatherley
APPLICANT:	Mr & Mrs Limbrick	
AGENT:		
LOCATION:	Avenue Lodge Chargrove Lane Up Hatherley	
PROPOSAL:	Construction of 1 no. new self-build dwelling in rear garden (Revised scheme of planning application ref. 21/00540/FUL)	

RECOMMENDATION: Permit



This site map is for reference purposes only. OS Crown Copyright. All rights reserved Cheltenham Borough Council 100024384 2007

1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site comprises a detached dwelling, Avenue Lodge, and its curtilage. It is located at the northern end of Chargrove Lane, at the junction with Greatfield Lane.
- 1.2 Avenue Lodge is an attractive detached dwelling with white painted brick walls and tiled roof. It is not listed however it is included on the index of buildings of local interest and therefore constitutes a non-designated heritage asset. It is understood that the building dates from 1858. The property benefits from two parking spaces to the front and also an existing access and driveway to the side of the house.
- 1.3 The application site is a large plot which is roughly rectangular. There is a pond within the rear garden which has been reduced significantly in size in recent years.
- 1.4 Planning permission is sought for a detached dwelling located approximately mid-way into the plot. Access would be provided via the existing drive which would become the access for the proposed dwelling with Avenue Lodge utilising the existing parking spaces at the front. This would lead to a parking and turning area between the retained garden of Avenue Lodge and the proposed garden of the new dwelling.
- 1.5 There is a significant amount of planning history at this site with applications for new dwellings at the site being made in 2005, 2006, 2008, 2009 and 2021, all of which were refused. An appeal was submitted against the 2009 application and subsequently dismissed. There have also been several applications to reduce the size of the pond. In 2014 an application was refused for landscaping works which included the reduction in size of the pond. This appeal was subsequently allowed.
- 1.6 The most recent application for a detached dwelling on the plot was refused in July 2021 for the following reasons:
 - (1) The proposed dwelling by reason of its size, height, scale, form and massing fails to respond positively to the context or character of the site. Furthermore the building would be harmful to the setting of the host building, Avenue Lodge, which is a locally indexed building and a non-designated heritage asset, by reason of its size and scale and through the loss of the existing garden setting. Therefore the proposal is considered to be harmful to the character and appearance of both the site itself and the surrounding area, and also the setting of Avenue Lodge. As such the proposal fails to comply with Advice contained in chapter 12 of the NPPF, policy SD4 of the JCS, policy D1 of the Cheltenham Plan and the Development on garden land and infill sites in Cheltenham SPD.
 - (2) The site is the subject of a Tree Preservation Order and contains a number of trees. The proposed dwelling by reason of its siting and detailed design would result in the loss of a TPO'd tree and the potential future loss or harm to other trees, including two TPO'd trees due to pressure to fell/prune due to the proximity of the dwelling to the trees and the provision of underground services. This would result in the unacceptable loss of trees on the site and an unacceptable impact upon the character of the site and the surrounding area. As such the proposal is considered to be contrary to section 15 of the NPPF and policies GI2 and GI3 of the Cheltenham Plan.
 - (3) The proposal involves the further reduction of the pond and the dwelling would be located in the position of a swale which forms part of compensatory surface water storage associated with an earlier application to reduce the size of the pond. The proposal does not include a viable solution for providing alternative compensatory surface water storage and as such would result in an increased risk of flooding in the vicinity of the site. As such the proposal is contrary to section 14 of the NPPF and policy INF12 of the JCS.
- 1.7 The proposal is before committee due to an objection from the Parish Council.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

Airport safeguarding over 10m
Local Listing
Parish Boundary
Principal Urban Area

Relevant Planning History:

05/00725/FUL 24th October 2005 WDN

Erection of 2 no. dwellings

06/01291/FUL 18th October 2006 WDN

Erection of 2 no. dwellings

07/00040/CLPUD 30th March 2007 REF

Filling in of pond within domestic curtilage

08/00037/FUL 6th May 2009 REF

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

08/01167/FUL 9th October 2008 PER

Single storey extension with lean-to roof (retrospective)

09/01740/FUL 2nd February 2010 REF

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

10/01941/FUL 5th May 2011 PER

Erection of a single storey rear extension to replace conservatory

12/01486/FUL 4th February 2013 WDN

Safety works around pond incorporating limited infilling along one side and re-landscaping

14/00505/FUL 19th September 2014 REF

Garden landscaping

15/00684/DISCON 10th June 2015 DISCHA

Discharge of conditions 3,4,6,7 _ 8 on planning permission 14/00505/FUL (granted at appeal)

21/00540/FUL 2nd July 2021 REF

Construction of 1 no. self-build dwelling and garage/workshop in rear garden

3. POLICIES AND GUIDANCE

National Planning Policy Framework

Section 2 Achieving sustainable development

Section 4 Decision-making

Section 5 Delivering a sufficient supply of homes

Section 8 Promoting healthy and safe communities

Section 9 Promoting sustainable transport

Section 11 Making effective use of land

Section 12 Achieving well-designed places

Section 14 Meeting the challenge of climate change, flooding and coastal change

Section 15 Conserving and enhancing the natural environment

Section 16 Conserving and enhancing the historic environment

Adopted Cheltenham Plan Policies

D1 Design

HE1 Buildings of Local Importance and Non-Designated Heritage Assets

SL1 Safe and Sustainable Living
GI2 Protection and replacement of trees
GI3 Trees and Development

Adopted Joint Core Strategy Policies

SD3 Sustainable Design and Construction
SD4 Design Requirements
SD8 Historic Environment
SD9 Biodiversity and Geodiversity
SD10 Residential Development
SD11 Housing Mix and Standards
SD14 Health and Environmental Quality
INF1 Transport Network
INF2 Flood Risk Management

Supplementary Planning Guidance/Documents

Development on garden land and infill sites in Cheltenham (2009)
Index of buildings of Local Interest SPD (2007)

4. CONSULTATIONS

Gloucestershire Centre For Environmental Records

8th November 2021

Report in documents tab

Building Control

16th November 2021

The application will require Building Regulations approval. Please contact Cheltenham and Tewkesbury borough council on 01242 264321 for further information.

Parish Council

23rd November 2021

I am submitting this as the lead for planning on Up Hatherley Parish Council and would be grateful if it could be considered accordingly.

Avenue Lodge is an important feature of Up Hatherley's Heritage.

It was one of only six buildings and grounds to feature on the principal list of Buildings of Local Interest drawn up in the 1990s.

It was built in 1857, is an example of mid-Victorian Architecture, and the Avenue Lodge Lake had been there as far back as any records go and almost certainly for hundreds of years.

After a number of rejected applications for various ways of reducing the size of the lake in their back garden and carrying out back land development of various types, the applicant in 2015 was finally successful (on appeal) in obtaining permission to roughly halve the size of the lake whilst carrying out extensive landscaping work to the newly created area. What has in fact happened is that the lake has been reduced to a pond no more than one tenth the size by surface area and a tiny fraction by water volume of the original. Additionally, very few if any of the proposed landscaping work appear to have been enacted.

UHPC understood that additionally a large tank was required to be sunk to help reduce the flooding issues that would inevitably impact on their near neighbours following the lake infilling. Has this actually happened? If not, what is the status of the alternative referred to in the applicant's documentation?

Unsurprisingly since the infilling many of the applicant's neighbours have experienced flooding problems and 328a Hatherley Lane has been forced to carry out expensive works to raise the height of much of their patio area to stop the flooding coming right up to their back door (and potentially beyond).

It is unclear to us what if any enforcement action has been attempted in this matter.

Surely, we cannot now ignore the unapproved erosion of this important environmental and ecological asset and reward the applicant by giving them permission to do what they have sought to do for many years and profit substantially from a back land development, whilst their near neighbours instead of having an attractive lake to look out on, which also prevented their land from flooding in winter, will now find a large dwelling squeezed right up against their fences.

UHPC notes that modifications to the application made earlier this year have been made in an attempt to lessen the impact on neighbours in Witley Lodge Close, Aylton Close and Sedgewick Gardens and to some extent this has been achieved. However, UHPC has been in receipt of adverse comments from almost all the original complainants and most of their original concerns are equally valid even with these modifications.

The proposed dwelling would in our view still have an unacceptable impact on the living conditions of neighbouring residents in the three roads mentioned above, in terms of noise, disturbance and outlook. The creation of a new drive 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.

The lake provided a valuable oasis in this suburban area. It was evidently an historical feature which was left alone when the area was developed to provide a natural, relatively undisturbed environment for a variety of wildlife. Although it was not accessible or visible to the general public, it was clearly valued by the local residents for its tranquillity and wildlife and made an important contribution to their quality of life. The planning Inspector when considering a previous application for a second house on this site in 2010 gave significant weight to the importance of the lake and its setting in terms of its environmental benefits both for the surrounding neighbourhood and for the wildlife.

The Hydrology report commissioned by CBC for the application in 2014 indicated the need to actively manage any reduction in lake size. Surely this need still exists and it should be incumbent on the occupant of Avenue Lodge to carry out such works before any further applications to potentially further worsen the position are granted.

UHPC would also like the Council to note that the current proposal before you to develop this site, is an example of tandem or back land development.

In the Council's SPD it states that, "On a rear garden site, single 'tandem' development will not normally be accepted". It lists exceptions that would satisfy being 'not normal'. None of these apply to Avenue Lodge.

We clearly therefore wish to object to this application and would urge the committee not just to consider the adverse implications of the proposal for an additional dwelling but also to consider the history of this site, the hydrological implications of the failure to meet condition of the 2014 application and the precedent that would be set should the applicant be successful in the slow erosion of such a significant community asset for their own personal gain.

Architects Panel

14th December 2021

Design Concept This is a revised design for a new dwelling in the garden of Avenue Lodge. The panel had reviewed an earlier design for this site and concluded that the site was big enough to accommodate a new dwelling of some kind but felt the design would "lend itself to a more contemporary design approach, a more low-key built form that relates more to the garden setting".

This proposal locates the new house further away from the protected trees in the middle of the plot which is probably the best location for the dwelling. However, despite its reduced height, the revised design appears incongruous and out of scale and character with buildings of the area. The panel felt a more comprehensive analysis of the site, levels and neighbouring properties is required to inform the proposals and demonstrate they respond to the rear garden setting and have addressed and mitigated any adverse impact of a new dwelling in this location

Design Detail The form of the proposed building, its proportions and details look wrong for this site.

Recommendation Not supported.

Tree Officer

15th November 2021

In that the proposed build is overwhelmingly outside the Root Protection Area of trees, there appears to be a minimal impact on existing trees and as such, subject to the following being submitted and agreed, the CBC Tree Section does not object to this proposal:

- 1) Tree protection (in the form of ground protection-eg 1" thick steel boards) must extend to the full extent of the root protection of T12. Whilst the track may have been previously strengthened, this is a TPO'd tree and in theory no development should take place within the RPA unless there is suitable ground protection during the course of such development (even if this is only a temporary roadway).
- 2) A phase 2 tree protection plan should be submitted so as to take account of the proposed driveway design. The current Tree Protection Plan also covers a part of the proposed driveway. Obviously the proposed fencing will need to be moved during the construction of the drive and a Phase II Tree Protection Plan should be submitted.
- 3) A decision should be made as to the future of T17. If it is intended to be removed, this should be made clear and mitigating tree planting should reflect this.
- 4) The proposed landscape plan appears to extend/change the existing pond area as well as introduce a hard landscape design element. Full details of existing tree protection need to be submitted to reflect this (taking account TPO protected trees). There are significant concerns regarding the practical feasibility of proposed extension of the pond within the RPA of TPO protected trees. A full method statement should be submitted and agreed demonstrating how the pond is to be extended (to include excavation and extraction methods of soil) and how adjacent hard landscaping is to be created without damaging existing TPO protected trees.

All procedures described within the Arb Method Statement of the tree report must be complied with.

Please use the "gutter cover informative" in any permission to be issued.

Severn Trent Water

9th November 2021

Thank you for the opportunity to comment on this planning application. Please find our response noted below:

With Reference to the above planning application the company's observations regarding sewerage are as follows.

As the proposal has minimal impact on the public sewerage system I can advise we have no objections to the proposals and do not require a drainage condition to be applied.

Severn Trent Water advise that there may be a public sewer located within the application site. Although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under the Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and contact must be made with Severn Trent Water to discuss the proposals. Severn Trent will seek to assist in obtaining a solution which protects both the public sewer and the building.

Please note that there is no guarantee that you will be able to build over or close to any Severn Trent sewers, and where diversion is required there is no guarantee that you will be able to undertake those works on a self-lay basis. Every approach to build near to or divert our assets has to be assessed on its own merit and the decision of what is or isn't permissible is taken based on the risk to the asset and the wider catchment it serves. It is vital therefore that you contact us at the earliest opportunity to discuss the implications of our assets crossing your site. Failure to do so could significantly affect the costs and timescales of your project if it transpires diversionary works need to be carried out by Severn Trent.

Please note if you wish to respond to this email please send it to Planning.apwest@severntrent.co.uk where we will look to respond within 10 working days.

GCC Highways Planning Liaison Officer

18th November 2021

Gloucestershire County Council, the Highway Authority acting in its role as Statutory Consultee has undertaken a full assessment of this planning application. Based on the appraisal of the development proposals the Highways Development Management Manager on behalf of the County Council, under Article 18 of the Town and Country Planning (Development Management Procedure)(England) Order, 2015 has no objection subject to conditions.

The justification for this decision is provided below.

The proposal is not perceived to arise a detrimental impact on the operation and safety of the adjacent network. On this basis, the Highway Authority would not wish to object to the application subject to a condition for electric vehicle charging point and bicycle storage in order to promote sustainable modes of transport.

The Highway Authority has undertaken a robust assessment of the planning application. Based on the analysis of the information submitted the Highway Authority concludes that there would not be an unacceptable impact on Highway Safety or a severe impact on congestion. There are no justifiable grounds on which an objection could be maintained.

Conditions

The development hereby permitted shall not be first occupied until the

proposed dwelling has been fitted with an electric vehicle charging point. The charging point shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and Manual for Gloucestershire Streets. The electric vehicle charging point shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point shall be of the same specification or a higher specification in terms of charging performance.

Reason: To promote sustainable travel and healthy communities.

The Development hereby approved shall not be occupied until sheltered, secure and accessible bicycle parking has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.

Reason: To promote sustainable travel and healthy communities

Publica Drainage Engineer

17th November 2021

Surface Water Drainage

The geology of the area indicates that soakaways are unlikely to be viable on site so infiltration tests must be undertaken in the location of the proposed soakaway and in accordance with BRE365.

If there is good infiltration and acceptable groundwater levels, soakaways must be designed in accordance with the guidance notes shown below.

Please note, soakaways are not recommended on steep slopes (>1 in 10) as they might reduce slope stability and pose an increased risk of flooding to buildings at a lower elevation, in an exceedance event. Caution is advised.

Notes regarding soakaway location and design

- Soakaways should be designed with a minimum clearance of 1m from base to water table at all times of year.
- Soakaways must be >5m from any structure and >2m from the boundary.
- If soakaways are viable, it is important that they are positioned at a lower elevation to the property or neighbouring property, in case of exceedance. If it is not possible due to site restrictions, it is vital that they are located at a depth whereby the invert level of the inlet pipe is lower than the threshold level of the property. Landscaping must then be considered to route water away from any vulnerable property in an exceedance event.
- Individual geocellular soakaways are recommended for ease of maintenance and reduced footprint, and are particularly effective if the groundwater level is found to be within 1m of the soakaway inlet pipe.
- Silt traps are also recommended for ease of maintenance.
- If soakaways are located beneath a car parking/turning area, they will need to have adequate clearance and the design will need to be suitable for the additional loading.
- During the construction phase it is important not to compact ground where soakaways are proposed.

If infiltration is not viable, there is a public surface water sewer in Chargrove Lane or Coombe Glen Lane. Attenuation will be required prior to controlled discharge in line with the Qbar Greenfield Runoff Rate. Evidence of permission from Severn Trent Water will be required.

The onsite surface water drainage system must be designed to accommodate up to and including, either:

- 1 in 100 year storm event plus 40% climate change (CC); or
- 1 in 30 year event plus 40% CC but any volume above this must be kept on site for all return periods up to and including the 1 in 100 year event plus 40% CC and must not cause a risk to any existing property or land beyond the site.

General Comments

It is important to note that the development must not increase flood risk to any existing property or land beyond the site boundary and the landscaping of the site should route water away from any vulnerable property and avoid creating hazards to access and egress routes. As such, an exceedance flow route plan for flows above the 1 in 100 year plus 40% CC must be submitted with the proposal, identifying the surface water flow routes through the site should the capacity of the drainage system be exceeded.

We highly recommend the use of permeable or granular construction on access routes and hardstandings.

We would like to see waterbutts/rainwater harvesting being incorporated into the proposed surface water drainage system if possible.

Publica Drainage Engineer (additional comments)

19th November 2021

This application doesn't mention the pond being reduced in size and the existing/proposed site layouts show it staying the same size. Also, the dwelling in this application has been repositioned and the proposed layout plan shows it is now outside of the swale. Further surface water compensation will therefore not be required. Based on the information provided, and subject to a detailed surface water management strategy that can be obtained through a condition, the application shouldn't increase the risk of flooding to the area.

5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	20
Total comments received	10
Number of objections	9
Number of supporting	0
General comment	1

5.1 The application was publicised by way of letters to 20 neighbouring properties. 10 representations were received which to briefly summarise, raise the following issues:

- Loss of area for wildlife
- Impact on trees and impact on proposed dwelling by trees.
- Proposed dwelling and grounds not accessible/practical for elderly or disabled

- Insufficient parking spaces
- Loss of garage/storage
- Provision of one house negligible compared to proposed developments in and near to Cheltenham
- Lack of local workforce
- Close relationship between Avenue Lodge and proposed dwelling
- Impact on setting of Avenue Lodge
- Impact on sewerage infrastructure
- Disruption from building work
- Previous reduction in size of pond resulting in flooding. Query whether conditions have been complied with.
- Queries on accuracy of information
- Design of dwelling out of keeping with surrounding properties.
- Impact on privacy

6. OFFICER COMMENTS

6.1 Determining Issues

6.2 The key issues in determining this application are considered to be (i) principle, (ii) design and layout including heritage impact, (iii) impact on neighbour amenity, (iv) access and highways, (v) trees and landscaping, (vi) Flooding and Drainage, (vii) ecology.

6.3 Principle

6.4 The site is within the Principle Urban Area (PUA) of Cheltenham. Policy SD10 of the Joint Core Strategy (JCS) relates to residential development. The site is not allocated for housing, neither is it previously-developed. SD10 (4) allows for infilling within the PUA, except where restricted by policies within District Plans. As a backland site it is debateable whether it would fall within the definition of infill. However it is considered that the principle could be supported, provide the scheme is considered to be in accordance with other relevant policies.

6.5 Design, layout and heritage impacts

6.6 Policy SD4 of the JCS and policy D1 of the Cheltenham Plan set out design requirements of new development which reflect the general principles set out in Chapter 12 of the NPPF. Also if relevance is the Council's SPD relating to building on infill sites and on garden land.

6.7 These documents and policies require that schemes demonstrate a clear understanding of, and respond positively to; the urban structure and grain of an area in terms of street pattern, layout, mass and form.

6.8 The parent building – Avenue Lodge, is a locally indexed building. The National Planning Policy Framework (NPPF) states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, as balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. Policy HE1 of the Cheltenham Plan also states that “Development proposals that would affect a locally important or non-designated heritage asset including its setting, will be required to have regard to the scale of any harm or loss to the significance of the heritage asset.”

6.9 As mentioned above an application for a dwelling on this site was refused for the following reason:

The proposed dwelling by reason of its size, height, scale, form and massing fails to respond positively to the context or character of the site. Furthermore the building would be harmful to the setting of the host building, Avenue Lodge, which is a locally indexed building and a non-designated heritage asset, by reason of its size and scale and through the loss of the existing garden setting. Therefore the proposal is considered to be harmful to the character and appearance of both the site itself and the surrounding area, and also the setting of Avenue Lodge. As such the proposal fails to comply with Advice contained in chapter 12 of the NPPF, policy SD4 of the JCS, policy D1 of the Cheltenham Plan and the Development on garden land and infill sites in Cheltenham SPD.

As such a key consideration is whether the current proposal overcomes the concerns raised by the previous proposal.

6.10 The current proposal differs from the refused scheme in the following key ways:

- The footprint of the building has been significantly reduced
- The siting of the building has changed with the building being moved approximately 18m to the south east
- The height of the building has been reduced by 1.3m (from 7.8 to 6.3m)
- The upper storey is now accommodated partially within the roof space to create a 1.5 storey dwelling
- A change in design approach - The design comprises zinc standing seam roofs, off-white brick walls and slimline powdercoated aluminium windows and doors. The previous scheme entailed large two storey sections of glazing, tiled roofs and a mixture of oak cladding and Cotswold stone with a clay tiled roof.
- The removal of a 3 bay garage with attic space above.

6.11 Below is an extract from the previous officer report for the refused scheme (21/00540/FUL):

- 6.10** The proposed design in isolation is not considered to be poor, however it is not considered that it adequately responds to the context and character of the site. This is a back garden site which is well treed and surrounded by other properties. The advice given at pre-app stage was that any dwelling should seek to respond to this setting and a suggestion of a single or 1.5 storey dwelling was made. The submitted drawings conversely increase the height of the building over and above that which was discussed at pre-app stage.
- 6.11** Whilst the building may be commensurate in size to some of the adjacent dwellings in Witley Lodge Close and Aylton Close, it is significantly larger than Avenue Lodge.
- 6.12** The Development of Garden Land SPD states that *“development in rear gardens which is greater in height, scale and massing than development on the frontage will not normally be acceptable”*. It goes on to explain that within the normal development hierarchy rear gardens are secondary spaces. It would be inappropriate for a building in such a location to be so dominant in comparison with the host dwelling. In this instance the building in question is also a locally indexed building and is considered that the proposed dwelling would be harmful to the setting of this building.
- 6.13** Whilst it is of some age the 2008 appeal is a material consideration. The appeal related to a long low flat roofed dwelling in an approximate 'W' shape, built partially over the pond. The reason for refusal stated that the pond and the garden space made a significant contribution to the character of the area. The Inspector supported this view. The site has changed significantly in recent years with the pond being much reduced in size. Whilst it is not disputed that a dwelling could be provided on the site, it is considered that a much more nuanced approach is required which truly responds to the site and its context. The comments of the Civic Society and Architects Panel echo this view.
- 6.14** Overall it is considered that the design is unacceptable due to its size and mass and would have an unacceptable impact upon the character of the area and on the setting of Avenue Lodge.

- 6.12** It is considered that the revised scheme has gone to greater efforts to be subservient and respectful of its relationship with Avenue Lodge and has followed the Officer suggestion of a 1.5 storey dwelling. The building is now modest in scale and would not dominate the plot in the way the refused scheme would have. The removal of the garage also ensures that more of the garden setting is retained. The proposed design is considered to be an appropriate and interesting response to the challenge this sites represents. The white brick echoes the materials of Avenue Lodge, whilst the zinc roof will complement the brick and will mellow over time.
- 6.13** For these reasons the proposal is now considered to be acceptable in terms of design, layout and the impact on the locally indexed building.
- 6.14 Impact on neighbouring property**
- 6.15** Policies SD14 of the JCS and SL1 of the Cheltenham Plan require that development does not cause unacceptable harm to the amenity of adjoining land users and living conditions in the locality.
- 6.16** The refused scheme was not refused on grounds of neighbour amenity, however the location of the dwelling now proposed is different and as such this need to be looked at afresh. The dwellings nearest to the proposed dwelling are 8 Sedgewick Gardens and 8 Aylton Close.
- 6.17** 8 Sedgewick Gardens is located approx. 15m from the proposed dwelling and has a rear conservatory. The proposed dwelling is at an oblique angle to the proposed dwelling and as such there would be no significant loss of privacy to this property. The distance from the

rear elevation coupled with the relatively low height of the property mean that there would be no significant loss of light to this property.

6.18 8 Aylton Close is located 13m from the proposed dwelling and also has a rear conservatory. There are no side facing upper floor windows within the proposed dwelling which would face this property. There are roof lights on the side elevation and through negotiation with the applicant these have been reduced in size to avoid potential overlooking. IT is also recommended that a condition is attached ensuring the height of these will avoid overlooking.

6.19 The nature of the site is that it is surrounded by houses and therefore will be visible from a number of vantage points, however it is not considered that the proposed dwelling would have an unacceptable impact upon any neighbour.

6.20 Access and highway issues

6.21 Section 9 (promoting sustainable transport) of the NPPF and policy INF1 of the JCS require development to provide safe and suitable access and to avoid significant adverse impacts on the highway network.

6.22 The Highway Authority have assessed the proposals and have confirmed that they have no objection to the application, subject to conditions.

6.23 As such the proposal is considered to be acceptable in terms of access and highways issues.

6.24 Trees and Landscaping

6.25 Section 15 of the NPPF and policies GI2 and GI3 of the Cheltenham Plan seek to resist any unnecessary felling of trees and the retention, replacement or protection of trees as necessary.

6.26 The site is the subject of a Tree Preservation Order.

6.27 As mentioned above the previous application was refused for the following reason:

The site is the subject of a Tree Preservation Order and contains a number of trees. The proposed dwelling by reason of its siting and detailed design would result in the loss of a TPO'd tree and the potential future loss or harm to other trees, including two TPO'd trees due to pressure to fell/prune due to the proximity of the dwelling to the trees and the provision of underground services. This would result in the unacceptable loss of trees on the site and an unacceptable impact upon the character of the site and the surrounding area. As such the proposal is considered to be contrary to section 15 of the NPPF and policies GI2 and GI3 of the Cheltenham Plan.

6.28 The Tree Officer has confirmed that the new siting of the building has moved it largely outside of the Root Protection areas of the trees on the site and therefore there would be minimal impact upon the existing trees. There is a requirement for a more detailed tree protection plan to be submitted and this can be required by condition. The Tree Officer's comments refer to an enlargement of the pond, however this is not part of the proposals.

6.29 The applicant has confirmed that T17, referred to in the tree officer comments is not planned to be removed.

6.30 As such it is now considered that the proposal has an acceptable impact upon the trees on the site.

6.31 Flooding and Drainage

6.32 Section 14 (meeting the challenge of climate change, flooding and coastal change) of the NPPF and policy INF2 (flood risk management) of the JCS require new development to demonstrate that it will not increase the risk of flooding and include measures such as sustainable urban drainage systems (SUDS) where appropriate.

6.33 As mentioned above the previous application was refused for the following reason:

The proposal involves the further reduction of the pond and the dwelling would be located in the position of a swale which forms part of compensatory surface water storage associated with an earlier application to reduce the size of the pond. The proposal does not include a viable solution for providing alternative compensatory surface water storage and as such would result in an increased risk of flooding in the vicinity of the site. As such the proposal is contrary to section 14 of the NPPF and policy INF12 of the JCS.

6.34 The location of the previously proposed dwelling was within a swale which formed part of the approved compensatory water storage scheme which was part of the scheme submitted to discharge conditions attached to the allowed appeal for works to reduce the size of the pond (14/00505/FUL).

6.35 The dwelling now proposed is located outside of this area as indicated on the plan and as such the Drainage Engineer has confirmed that the proposal is now acceptable subject to the submission of a drainage strategy which can be required by condition.

6.36 As such it is considered that the proposal is now acceptable in terms of drainage and flooding.

6.37 A number of comments which have been submitted refer to non-compliance with the previous approval (granted on appeal). The appeal decision had a number of conditions including a requirement for a scheme for compensatory water storage and for cross sections to be provided. A site visit has recently been carried out, along with discussions with the enforcement officer. The pond, at the time of the site visit did appear to be smaller than approved, however it was clearly far from full. Given the shallow banked sides of the pond, it would appear considerably larger if full. The inspectors decision makes it clear that the exact level of the pond will be dependant on rainfall. The compensatory water storage scheme which was approved comprised the formation of a swale which is designed to flood in times of high water. This has clearly been provided and is evident on site. There was never a requirement for a below ground storage tank as suggested in the objections. The applicant has explained in his submission that the landscaping programme is still being implemented as ground levels settle and plants establish.

6.38 Given that the current proposal does not interfere with the pond or swale it is not strictly relevant to the current application, however having discussed the issue with the Enforcement Officer what has been implemented is considered to be within acceptable tolerance from the approval and it is not expedient to pursue enforcement action.

6.39 Ecology

6.40 Section 15 of the NPPF (conserving and enhancing the natural environment) and policy SD9 (biodiversity and geodiversity) of the JCS require that any harm to biodiversity should be avoided where possible and any risk of harm should be mitigated.

6.41 The previous application was accompanied by an Ecological Appraisal. This concluded that the habitats on the site are generally common, of low ecological value and easy to replace. The report concluded that the pond is an ecological resource and it is important to protect it from pollution. Advice is provided as to appropriate planting for ecological enhancement of the site and a recommendation regarding the provision of bird boxes.

6.42 As such subject to the imposition of conditions to this effect the impact on biodiversity is considered to be acceptable.

6.43 Other Considerations

6.44 Public Sector Equalities Duty (PSED)

As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have “due regard” to this duty. There are three main aims:

- Removing or minimising disadvantages suffered by people due to their protected characteristics;
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people; and
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this application the planning authority has taken into consideration the requirements of the PSED.

In the context of the above PSED duties, this proposal is considered to be acceptable.

6.45 Climate Emergency

6.46 Cheltenham Borough Council, in common with a number of Local Planning Authorities, has declared a climate emergency, with an aim to be a carbon zero authority by 2030.

6.47 The proposal does not include any specific green technologies and is not required to do so by any policy. However it is in a sustainable location, would maintain the trees, flood storage function and ecological value of the site. In this sense the proposal represents a sustainable form of development.

7. CONCLUSION AND RECOMMENDATION

7.1 Planning Balance

7.2 Cheltenham Borough Council cannot currently demonstrate a 5 year housing land supply. As such the ‘tilted balance’ is engaged in considering proposals for housing. This means granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole.

7.3 The proposal makes a small provision of 1 dwelling which would count against the shortfall which adds a small amount of weight to the conclusion that the proposal is acceptable. The proposal is also proposed as a self build which would help with the provision of self-build units in the Borough.

7.4 The proposal has sought to overcome and address all of the concerns which have previously been raised in relation to schemes to achieve a dwelling on this site and is now considered to be acceptable. Therefore the recommendation is to approve the application.

8. CONDITIONS / INFORMATIVES

- 1 The planning permission hereby granted shall be begun not later than the expiration of three years from the date of this decision.

Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The planning permission hereby granted shall be carried out in accordance with the approved plans listed in Schedule 1 of this decision notice.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 The development hereby permitted shall not be first occupied until the proposed dwelling has been fitted with an electric vehicle charging point. The charging point shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and Manual for Gloucestershire Streets. The electric vehicle charging point shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point shall be of the same specification or a higher specification in terms of charging performance.

Reason: To promote sustainable travel and healthy communities.

- 4 The Development hereby approved shall not be occupied until sheltered, secure and accessible bicycle parking has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.

Reason: To promote sustainable travel and healthy communities

- 5 Prior to the commencement of development (including demolition and site clearance), a Tree Protection Plan (TPP) to BS5837:2012 (or any standard that reproduces or replaces this standard) shall be submitted to and approved in writing by the Local Planning Authority. The TPP shall include the methods of tree and /or hedge protection, the position and specifications for the erection of tree protective fencing, and a programme for its implementation. The works shall not be carried out unless in accordance with the approved details, and the protective measures specified within the TPP shall remain in place until the completion of the construction process.

Reason: To safeguard the existing tree(s) in the interests of visual amenity, having regard to adopted policies GI2 and GI3 of the Cheltenham Plan (2020). Approval is required upfront to ensure that important trees are not permanently damaged or lost.

- 6 The development shall be carried out in strict accordance with the recommendations and requirements of the ecological survey report dated submitted with the planning application.

Reason: To safeguard important ecological species, having regard to adopted policy SD9 of the Joint Core Strategy (2017).

- 7 The rooflights which form part of the development hereby approved shall have their lower edge positioned no lower than 1.7 metres above floor level of the room that the window serves.

Reason: To safeguard the amenities of adjacent properties, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 8 Prior to the commencement of development, a surface water drainage scheme, which shall incorporate Sustainable Urban Drainage System (SUDS) principles, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme for implementation of the works; and proposals for maintenance and management. The development shall not be carried out unless in accordance with the approved surface water drainage scheme.

Reason: To ensure sustainable drainage of the development, having regard to adopted policy INF2 of the Joint Core Strategy (2017). Approval is required upfront because the design of the drainage is an integral part of the development and its acceptability.

INFORMATIVES

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

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

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

- 2 The applicant/developer is strongly encouraged to install leaf guards for the guttering and down pipes so as to reduce levels of tree-related inconvenience experienced by future residents during the occupancy of the development.