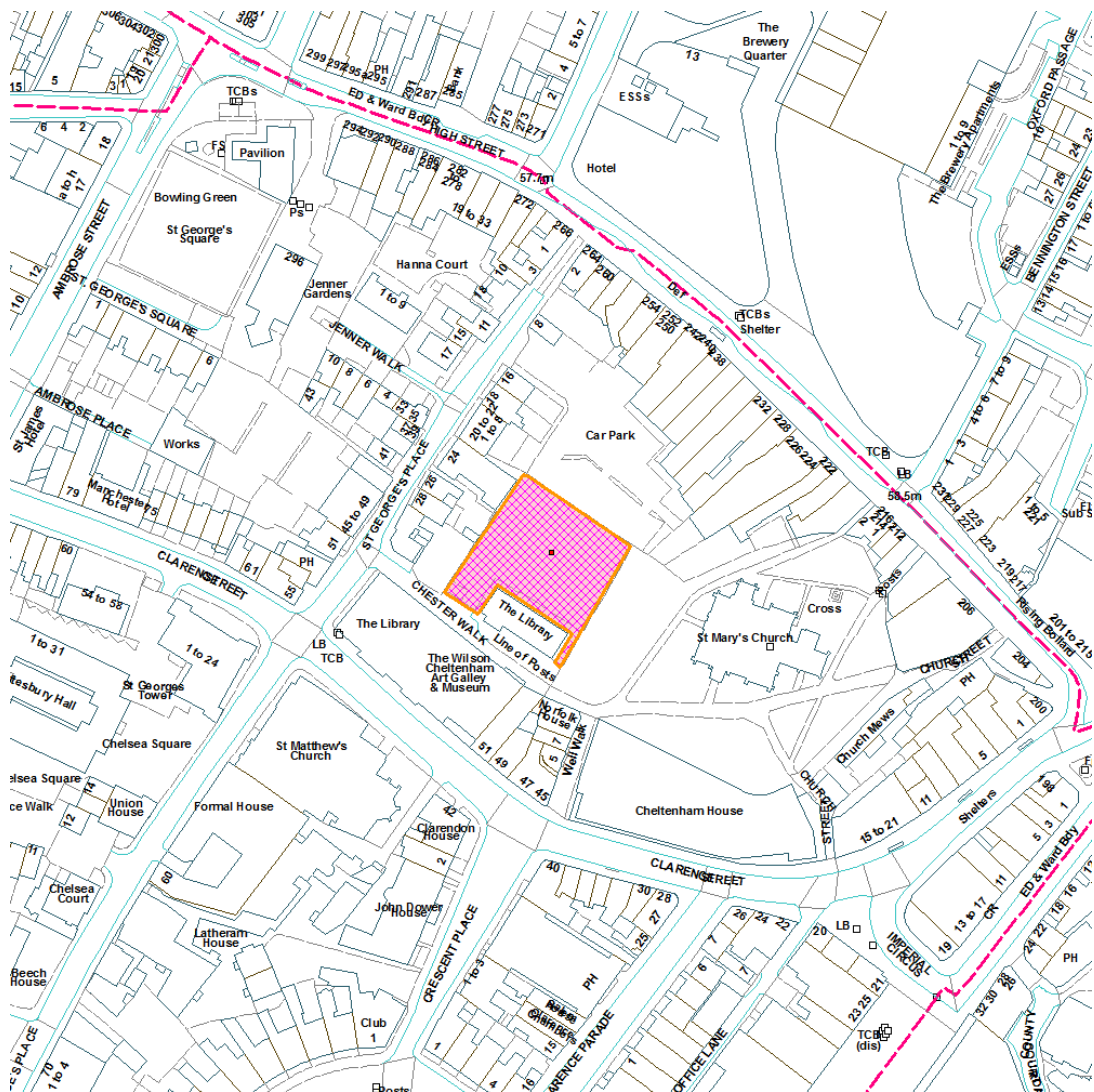


<b>APPLICATION NO:</b> 23/01226/CONDIT	<b>OFFICER:</b> Michelle Payne
<b>DATE REGISTERED:</b> 18th July 2023	<b>DATE OF EXPIRY:</b> 12th September 2023 (extension of time agreed until 25th September 2023)
<b>DATE VALIDATED:</b> 18th July 2023	<b>DATE OF SITE VISIT:</b>
<b>WARD:</b> Lansdown	<b>PARISH:</b>
<b>APPLICANT:</b> Mr Bruce Gregory	
<b>AGENT:</b> Agent	
<b>LOCATION:</b> Car Park Chester Walk Cheltenham	
<b>PROPOSAL:</b>	Variation of condition 1 (approved plans) on planning permission ref. 22/02004/CONDIT, under Section 73 of the Town and Country Planning Act 1990, to reflect as built changes on site; and provision of additional detail in relation to other conditions

**RECOMMENDATION:** Permit



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site is relatively tucked away, located to the rear (north) of Cheltenham's Children's Library, with flatted residential properties to west, and a car park to the north with commercial properties on the High Street beyond. Vehicular access to the site is provided via Chester Walk, with pedestrian access more widely available via a number of footpaths.
- 1.2 To the east, the site adjoins the churchyard of Cheltenham Minster (St. Mary's). The Minster is a grade I listed building of mid-C12 origins, with later alterations and additions; it is Cheltenham's only surviving medieval building and is set approximately 30m from the application site. Other prominent listed buildings within the immediate vicinity include the grade II listed Library, Art Gallery and Museum, and Norfolk House; additionally there are some grade II listed lamp posts and tombs within the churchyard, whilst the standing cross is a scheduled monument. The site falls wholly within the Old Town Character Area of the Central Conservation Area.
- 1.3 Planning permission (20/00552/FUL) was granted in August 2020 for the construction of a 'Mixed Use Innovation Hub for the town centre'; and works have now been underway on site for some time.
- 1.4 Subsequently, in May 2022, a new planning permission (21/02567/CONDIT) was granted, under Section 73 of the Town and Country Planning Act 1990, to allow for minor material amendments to the approved scheme, to accommodate a new substation in the north-western corner of the site (required by Western Power Distribution); and to allow for a number of internal and external alterations to the building, including additional/altered windows and doors. The application also sought to provide additional design detail to address conditions of the original permission.
- 1.5 More recently, retrospective planning permission was issued in December 2022 (22/02004/CONDIT) for an additional amendment to relocate the previously approved substation; the substation having already been built in the revised location.
- 1.6 This application is now seeking a further variation of the most recently approved plans (condition 1 of planning permission ref. 22/02004/CONDIT), under Section 73 of the Town and Country Planning Act 1990, to reflect as built changes on site; and to provide additional detail in relation to other conditions. The application is therefore, in part, retrospective.
- 1.7 A Planning Statement submitted during the course of the application sets out that:
  - The overall height of the building has increased
  - The area of photovoltaics (PV) to the second floor roof has increased
  - The external works layout has been amended to comply with Part M requirements
  - Minor changes to the external works finishes have been made
  - A fire suppression misting system has been included

Additional detail, and justification for the changes, is discussed in the report below.

- 1.8 As before, the application is at committee for reasons of transparency given the Council's interest in the land/development.



### **Adopted Cheltenham Plan 2020 (CP) Policies**

D1 Design

HE2 National and Local Archaeological Remains of Importance

SL1 Safe and Sustainable Living

GI2 Protection and replacement of trees

GI3 Trees and Development

### **Adopted Joint Core Strategy 2017 (JCS) Policies**

SD1 Employment - Except Retail Development

SD3 Sustainable Design and Construction

SD4 Design Requirements

SD8 Historic Environment

SD14 Health and Environmental Quality

INF1 Transport Network

### **Supplementary Planning Guidance/Documents**

Old Town Character Area Appraisal and Management Plan (2007)

Cheltenham Climate Change SPD (2022)

## **4. CONSULTATIONS**

### **Environmental Health**

*15th August 2023*

In relation to application 23/01226/CONDIT for the development at Chester Walk, Cheltenham, please can I add the following comments from Environmental Health:

Lighting:

The overall isolux diagram as submitted, (the document from the applicant is not titled on the diagram and doesn't have a diagram reference), please can the developer confirm that this is the vertical illuminance in lux?

The diagram although useful to see the overall lux levels, does not have any of the nearest residential properties marked, meaning it is not possible to check the lux levels potentially impacting the nearest residential homes. (These levels will be referenced against the "Institution of Lighting Professionals - guidance note 01/21 - The reduction of obtrusive light" which is concerned with the vertical illuminance and so we would ask for this from the developers to check against this standard.)

Please can the applicant advise of the timings for the lighting, specifically the lighting which will be closest to residential homes? For example, this is particularly important in the top left corner of the development, on the overall isolux diagram whereby it shows a potential of 40lux.

*7th September 2023 – revised comments*

I've had a review over the additional documents as submitted with application reference 23/01226/CONDIT for Chester Walk, Cheltenham, I am satisfied that these answer the queries I raised by email on 15/08/23 and would ask that the applicant ensures the lighting scheme type of lighting as well as the timings etc. as detailed in all the additional plans is adhered to for the duration of the development.

## 5. PUBLICITY AND REPRESENTATIONS

5.1 Individual letters of notification were not sent on this occasion; however, a site notice was posted and an advert published in the Gloucestershire Echo. In response, one representation has been received in objection, raising the following concerns:

- The height of the building has already increased twice since the original plans were approved - we object strongly to these height increases because of the overbearing nature of the building, our loss of privacy and light.
- We objected to the windows in the east elevation overlooking our bedrooms, dining room and garden - this objection has been overlooked. The developers tell us that the windows in question will be obscured and will be fixed shut, but this has never been confirmed.

## 6. OFFICER COMMENTS

6.1 Planning Practice Guidance (PPG) acknowledges that *“New issues may arise after planning permission has been granted, which require modification of the approved proposals”* (Paragraph: 001 Reference ID: 17a-001-20140306) and that where less substantial changes are proposed, an application made under Section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing a condition associated with a planning permission (Paragraph: 013 Reference ID: 17a-013-20230726). If granted, a section 73 application results in a new, independent planning permission which sits alongside the original permission.

6.2 As such, the only consideration when determining this application is the acceptability of the proposed changes as an amendment to the previously approved scheme in terms of design, impact on the historic environment, and neighbouring amenity. The general principle of development has been firmly established through the previous grants of planning permission.

### *Design*

6.3 From a design perspective, officers are satisfied that the building now proposed is not substantially different from that previously approved. The overall design approach is unchanged and the general appearance of the building will be unaltered. The external palette of materials, in terms of colour and finish, is unchanged.

6.4 Additionally, the general scale and massing of the building, and its footprint within the site is very similar to that previously approved. It is acknowledged that the height of the building has increased by 846mm (from that most recently approved) but the overall height is no greater than an earlier iteration of the building. Furthermore, officers are satisfied that sufficient justification has been provided for the additional height. The Planning Statement setting out that *“the floor level has increased due to existing site constraints that include the finished height of the adjacent Minster gardens, which form a pedestrian route to the building”* and a warm roof build has been developed, where *“the insulation is installed over the top of the structure, rather than in between the structure”*; further design development deeming that a cold roof structure, as originally proposed, would not be suitable.

- 6.5 Externally, because of the 256mm increase in the internal ground floor level, minor updates to the ramps and stairs have been necessary to meet the requirements of Part M of the Building Regulations.
- 6.6 In addition, the Planning Statement explains that the extent of solar PV panels on the roof at second floor level has been “*expanded to increase the electricity generation on site, for use by the building and feeding back into the grid*”; and this is welcomed given the Council’s commitment to becoming a net zero carbon council and borough by 2030. The changes to the roof construction also mean that “*The building now benefits from greater levels of insulation than the original proposal.*”
- 6.7 The fire suppression misting system will provide improved protection to the building, its occupiers, and neighbouring properties.

*Impact on the historic environment*

- 6.8 Historic England and the Conservation Officer have not been consulted on this application; PPG setting out that the “*Provisions relating to statutory consultation and publicity do not apply*” in relation to applications made under Section 73, and that it is at the discretion of the local planning authority to consider whether the scale or nature of the change warrants consultation (Paragraph: 013 Reference ID: 17a-013-20230726). As such, in this case, given the relatively minor changes to the overall scheme, and the increased height not exceeding that previously approved, only limited consultation was carried out.
- 6.9 Officers are satisfied that the revised proposals will not result in any significant/additional harm to the setting of the Minster, or wider conservation area.

*Amenity*

- 6.10 Concerns have again been raised by a neighbouring resident in relation to the windows on the west elevation and these have been duly noted. Whilst the glazing in this elevation was not identified as being obscurely glazed in an earlier iteration of the scheme, it was previously conditioned that the upper floor windows in this elevation be non-opening; and a similar condition is again proposed. An additional condition was also previously requested by members that, prior to first beneficial use of the development, a privacy film be applied to the 2no. upper floor, right hand side, windows shown on Elevation A-A, and a similar condition is again suggested.
- 6.11 The Environmental Health Team have reviewed the detailed lighting proposals and, following the submission of additional information, are satisfied that the lighting should not result in any harm to the closest residential properties. A condition has been imposed which requires the lighting to be implemented strictly in accordance with the agreed details.

*Public Sector Equalities Duty (PSED)*

- 6.12 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.

6.13 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 planning application the planning authority has taken into consideration the requirements of the PSED.

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

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1 Overall, officers are satisfied that the revised scheme is not substantially different from that originally approved; and the proposed changes will not result in any significant additional harm to the historic environment, or neighbouring amenity.
- 7.2 The recommendation therefore is to grant planning permission subject to the following schedule of conditions which reflects those previously imposed, but updated where necessary.

## **8. CONDITIONS**

- 1 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.

- 2 The Operational Management Plan previously approved under application ref. 21/01609/DISCON shall be strictly adhered to at all times.

Reason: To safeguard the amenities of adjacent residential and/or other noise sensitive properties, having regard to policy SL1 of the Cheltenham Plan (2020) and policy SD14 of the Joint Core Strategy (2017).

- 3 Notwithstanding the approved plans, and the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and/or re-enacting that order), the upper floor windows to the west elevation shall at all times be non-opening.

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).

- 4 Notwithstanding the approved plans, and the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and/or re-enacting that order), prior to first beneficial use of the development, a privacy film shall be applied to the 2no. upper floor, right hand side windows shown

on Elevation A-A in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The privacy film shall thereafter be retained in accordance with the agreed details.

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).

- 5 Prior to first beneficial use of the development, refuse and recycling storage facilities shall be provided in accordance with the approved plans. Such areas shall not be used for any purpose other than the storage of refuse and recycling and shall remain free of obstruction for such use at all times. All refuse and recycling shall be stored in appropriate containers in the refuse and recycling storage facility unless awaiting collection.

Reason: In the interests of sustainable waste management and recycling, having regard to Policy W36 of the Gloucestershire Waste Local Plan.

- 6 Prior to first beneficial use of the development, vehicular parking and turning facilities shall be provided in accordance with the approved plans. Such areas shall not be used for any purpose other than the parking and turning of vehicles and shall remain free of obstruction for such use at all times. The car parking spaces shall be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

Reason: To ensure the adequate provision of car parking within the site and to promote sustainable travel, having regard to policy INF1 of the Joint Core Strategy (2017), and paragraphs 110 and 112 of the National Planning Policy Framework (2021).

- 7 Prior to first beneficial use of the development, secure and covered cycle storage facilities shall be provided in accordance with the approved plans. The cycle storage shall thereafter be retained available for such use in accordance with the approved plans at all times.

Reason: To give priority to cycle movements by ensuring the adequate provision and availability of cycle parking, to promote cycle use and to ensure that appropriate opportunities for sustainable transport modes have been taken up, having regard adopted policy INF1 of the Joint Core Strategy (2017) and paragraphs 110 and 112 of the National Planning Policy Framework (2021).

- 8 All lighting shall be implemented and maintained in strict accordance with the submitted details, as amended by additional information received 6th September 2023.

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

- 9 Prior to the installation of any advertisements on the development hereby approved, a detailed Advertisement Strategy shall be submitted to and approved in writing by the Local Planning Authority. All advertisements shall thereafter be implemented in accordance with the agreed strategy.



Reason: To ensure that the development is sensitive to its surroundings, having regard to policies D2 and HE3 of the Cheltenham Plan (2020) and policies SD4 and SD8 of the Joint Core Strategy (2017).

## **INFORMATIVE**

- 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.