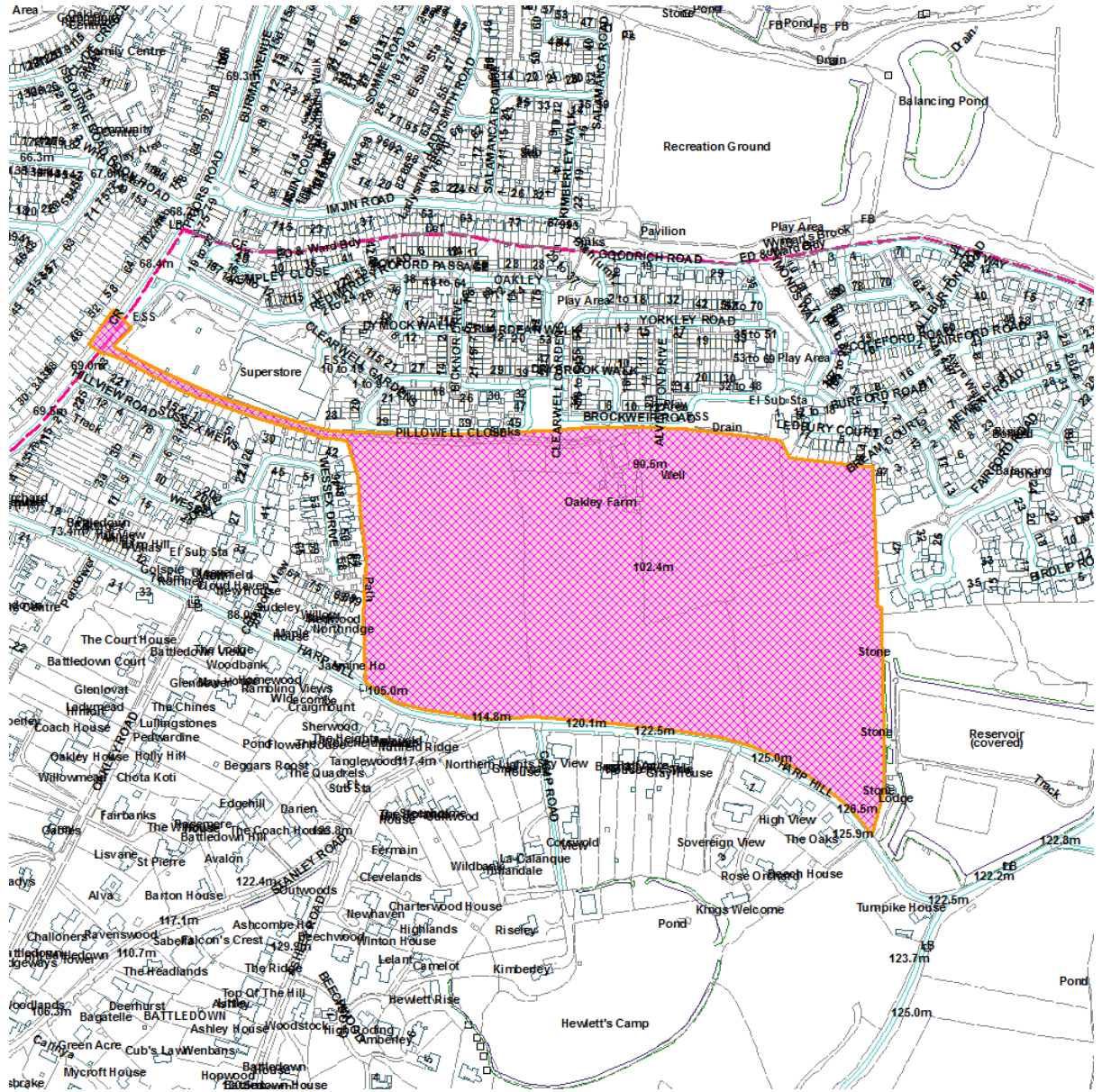


APPLICATION NO: 24/00251/CONDIT	OFFICER: Mrs Lucy White
DATE REGISTERED: 16th February 2024	DATE OF EXPIRY: 7th June 2024
DATE VALIDATED: 16th February 2024	DATE OF SITE VISIT:
WARD: Battledown	PARISH: Charlton Kings
APPLICANT:	Vistry Homes Limited And Stonewater Limited
AGENT:	Nexus Planning
LOCATION:	Oakley Farm Priors Road Cheltenham
PROPOSAL:	Variation of condition 13 (access arrangements onto Harp Hill and road gradients) of outline planning permission 20/01069/OUT - revised wording of condition 13 in respect of road gradient lengths.

RECOMMENDATION: Permit subject to a 106 Obligation



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 is submitted under section 73 of the Town and Country Planning Act 1990 and proposes the variation of Condition 13 (Harp Hill main access and estate road gradients) of outline planning permission 20/01689/OUT. The variation proposed (from the applicant's perspective) is a re-wording of the condition to clarify the purpose of the condition and to remove any ambiguity in its wording in respect of road gradients between 1/20 and 1/12.
- 1.2 The original outline planning permission was granted on appeal in 2022 for development comprising of up to 250 residential dwellings, to include provision of affordable housing, associated infrastructure, ancillary facilities, open space and landscaping, demolition of all existing buildings and the formation of a new vehicular access from Harp Hill, under reference APP/B1605/W/21/3273053 (20/01069/OUT). All matters were reserved for future consideration.
- 1.3 An application seeking approval of the reserved matters details (design, appearance, layout, scale, landscaping and access arrangements) (REM) pursuant to the above outline planning permission was submitted to the Council on 3rd October 2023 (reference 23/01691/REM). Members will recall that in a report to the December 14th 2023 meeting of the Planning Committee officers recommended approval of the reserved matters details, plus approval of details to discharge other conditions attached to the outline permission. However, following the subsequent publication of an Update Officer Report, Members resolved to defer the application at the December 2023 Planning Committee meeting. In summary, issues became apparent late in the application process as to whether the reserved matters proposals were in conformity with the requirements of Condition 13, specifically in relation to road gradients between 1:20 and 1:12.
- 1.4 Officers sought clarification on conformity with Condition 13 from the County Council Highways Development Management team (HA), acting in its role as Local Highway Authority. The HA reviewed the proposals and determined that the road gradients within the site, although not exceeding 1:12, include sections of the estate roads between 1:20 and 1:12 that exceed 30 metres in length. As such, the HA conclude that the REM proposals, as currently submitted, do not comply with the terms of Condition 13.
- 1.5 This report should therefore be read in conjunction with the Officer Update report presented to the December 2023 Planning Committee for application 23/01691/REM (attached to the end of this report). The update report sets the HA's full response on REM conformity with original Condition 13.
- 1.6 Condition 13 reads currently as follows, with the proposed amended element underlined/bold text:

*Notwithstanding the illustrative proposed access arrangements on to Harp Hill, as shown on Access and Movement Parameter Plan ref: P18-0847_02 Sheet No.3 rev F and the Alternative Illustrative Masterplan ref. 18017.202 Rev B, full details of the proposed access junction on to Harp Hill shall be submitted to and approved in writing by the local planning authority as part of the first reserved matters submission. The access shall be installed in accordance with the approved details and made available for use prior to the first occupation of any dwelling. The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients **up to** 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.*

- 1.7 The applicant has suggested the re-wording (bold text) of Condition 13 as follows:

Notwithstanding the illustrative proposed access arrangements on to Harp Hill, as shown on Access and Movement Parameter Plan ref: P18-0847_02 Sheet No.3 rev F and the Alternative Illustrative Masterplan ref. 18017.202 Rev B, full details of the proposed access junction on to Harp Hill shall be submitted to and approved in writing by the local planning authority as part of the first reserved matters submission. The access shall be installed in accordance with the approved details and made available for use prior to the first occupation of any dwelling. The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients of 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.

1.8 At the request of officers, the applicant has provided additional supporting information during the course of the application. This includes the following plans and a summary of the explanatory text provided by the applicant:

- Vertical General Arrangement Plan - an estate road layout which provides coloured differentiation between the various sections of the roads within the site and their gradients. It differentiates between sections of uniform gradient where a conventional measurement can be provided (linear sections) and interceding sections that combine hog and sag curves – these are vertical curves that transition between the linear sections (i.e. mild undulating sections that are interspersed and necessary to achieve the transition and break the slope). At no point within any of the vertical curve sections does the gradient exceed 1:12. There is nothing in MfGS that would require calculation of an average linear gradient across these sections of the estate roads.
- Longitudinal Sections drawing - this shows the road sections through the site which are colour coded to the corresponding sections of the coloured General Arrangement Plan above. The existing profile of the site topography is also shown.
- Roads Vertical Design Extent – this plan shows the extent of the road arrangement that conforms to the standards set by MfGS and illustrates that the proposals accord with MfGS standards.
- Alternative Master Plan Road Levels & Interfacing (feasibility drawing) – the applicant's transport consultant (PJS) carried out assessment/appraisal work in early 2023 when Vistry (the applicant) acquired the site to assess the feasibility of following the Alternative Illustrative Masterplan (AIM) and the main access routes through the site.

PJS established that the layout shown on the AIM was not deliverable without significant engineering interventions to raise the level of the site in parts, the result of which would have been removal of a large number of the TPO trees and much greater prominence of a number of the dwellings. In comparison with the REM proposals, this would have resulted in greater overlooking into neighbouring properties, particularly along the eastern road, which runs towards the boundary with the listed reservoir and the adjoining dwellings. The edge of carriageway at this point is some 5m higher than the ground level of the TPO trees to the west at the end of the cul de sac. To achieve an acceptable MfGS gradient (no greater than 1:12) from the carriageway edge to the end of the cul de sac and the garages shown would mean that the end of the cul de sac would be c.3m above the bole of the tree. This would require a large retaining structure within the root protection zone of this and the adjoining trees that would cause their failure/removal.

Similarly, the significant TPO oak tree located to the west (within the REM proposed oak tree neighbourhood), would sit around 3-4m below the end of the carriageway shown on the AIM drawing. To achieve the level change to comply

with MfGS would require a retaining structure to be built within the RPZ of this oak, causing this tree to also fail. The northern spur of the eastern access road on the AIM would need to be constructed at a level approximately 4.5 – 5.0m above the prevailing ground level to ensure that the gradients required by MfGS could be achieved.

- The applicant was also asked to consider whether a reduction in the number of dwellings would allow for a different and shallower profile for the access roads. Their advice is that the proposed configuration of the roads is not affected particularly by dwelling numbers, it is a product of the topography. Therefore cutting the number of dwellings, within the parameters of the outline planning permission, would not make a material difference to the road gradients.

1.9 The application is also accompanied by a Deed of Variation of one of the original s106 Unilateral Undertakings. This UU covers education and libraries provision/contributions. The s106 variation is necessary to ensure that the obligations contained therein apply to the current s73 application proposals, if approved (i.e. any new outline planning permission issued).

1.10 A Screening Opinion under Part 2, Regulations 8 & 9 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) was issued by the Council on 6th March 2024. The LPA considers that the scope and information set out with the ES accompanying the original outline application is sufficient for the consideration of this current s73 (proposed variation of Condition 13) application. The LPA concludes that there is no requirement for an Environmental Impact Assessment (EIA) to accompany the application.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

Cotswolds National Landscape (AONB)

Relevant Planning History:

19/00526/SCREEN 2nd April 2019 ISSUE

Request for a screening opinion under Part 2, Regulation 6 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended)

19/00916/SCOPE 12th July 2019 SCOPE

Request for EIA Scoping Opinion for Land at Oakley Farm

19/01610/DEMCON 10th September 2019 NPRIOR

Application to determine whether prior approval is required for the demolition of a detached dwelling (The Farmhouse, Oakley Farm) (method of demolition and restoration of the site)

20/01069/OUT 7th October 2022 UNDET

APPEAL ALLOWED 5th October 2022

Outline application for development comprising of up to 250 residential dwellings including provision of associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and formation of new vehicular access from Harp Hill. All matters reserved except for means of access to site from Harp Hill.

23/01677/DISCON PCO

Discharge of condition 7 (housing mix statement) of planning permission 20/01069/OUT

23/01691/REM PCO

Application for approval of Reserved Matters (access, appearance, landscaping, layout and scale) following outline planning permission for residential development of up to 250 dwellings and associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and creation of a new vehicular access from Harp Hill (in accordance with the terms of outline planning permission 20/01069/OUT). Details are also submitted in relation to conditions 6 (phasing), 9 (Energy and Sustainability Statement), 13 (Harp Hill access junction details) and 25 (hard and soft landscaping and boundary treatment) of 20/01069/OUT.

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 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

L1 Landscape and Setting

BG1 Cotswold Beechwoods Special Area Of Conservation Recreation Pressure

SL1 Safe and Sustainable Living

GI2 Protection and replacement of trees

GI3 Trees and Development

CI1 Securing community infrastructure benefits

CI2 Sports and open space provision in new residential development

CI3 Statutory and Non-Statutory Allotments

Adopted Joint Core Strategy Policies

SD3 Sustainable Design and Construction

SD4 Design Requirements

SD6 Landscape

SD7 The Cotswolds Area of Outstanding Natural Beauty

SD8 Historic Environment

SD9 Biodiversity and Geodiversity

SD10 Residential Development

SD11 Housing Mix and Standards

SD12 Affordable Housing

SD14 Health and Environmental Quality

INF1 Transport Network

INF2 Flood Risk Management

INF3 Green Infrastructure

INF4 Social and Community Infrastructure

INF5 Renewable Energy/Low Carbon Energy Development

INF6 Infrastructure Delivery

INF7 Developer Contributions

Supplementary Planning Guidance/Documents
Cheltenham Climate Change (2022)

4. CONSULTATIONS

See appendix at end of report

5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	581
Total comments received	43
Number of objections	27
Number of supporting	0
General comment	0

- 5.1** Letters of notification were sent to 581 neighbouring residential properties. In addition a site notices were displayed at various points around the periphery of the application site and an advert was placed in the Gloucestershire Echo. At the time of writing, a total of 43 representations were received in response to the publicity.
- 5.2** All representations received during the course of the application have been made available to Members separately.
- 5.3** It should be noted that many of the representations are concerned with matters considered at the outline planning permission stage (e.g. the principle of the development within the AONB, housing numbers and density, traffic impact and highway safety on Harp Hill, community services provision, biodiversity, air quality, heritage, flooding and drainage, noise and disturbance). As such, these matters are of little to no material relevance when determining the current application.
- 5.4** The concerns raised which relate specifically to the current proposals to vary Condition 13 are summarised as follows:-
- Developer cost implications in meeting the current condition wording
 - The current 'up to' wording is not ambiguous or a drafting error and was imposed by the appeal Inspector for a reason
 - By using the word 'of' in the condition, gradients up to 1:13 could be of any length. The 30m length restriction should apply to all gradients between 1:20 and 1:12.
 - Manual for Gloucestershire Streets sets out that gradients for cyclists and pedestrians should ideally be no more than 1:20
 - Steeper gradients would impact pedestrians, cyclists, wheelchair users and families with push chairs
 - Steep roads increase the risk of accidents and collisions, particularly for vehicles and pedestrians navigating sharp inclines.
 - Water runoff and drainage issues and dangerous road conditions in snow and ice are associated with steeper gradients
 - Now evident that the site is not suitable for residential development

- The spirit of condition 13 was to ensure safety for all. Whether the Manual for Streets is legally enforceable or not, the guidance is there to protect all road users.
- A reduction in the number of dwellings could satisfy the condition requirements
- Longer-term risk of slippage and settlement issues, to both roads and properties.

5.5 The Friends of Oakley Farm Pasture Slopes ('Friends') have also made representations and oppose any variation to the wording of Condition 13. The 'Friends' were a Rule 6 Party at the planning appeal Inquiry to determine the outline planning application. Their comments are set out in full within the Consultee Appendix. In summary the 'Friends' consider that there is no ambiguity in the current condition wording and set out the various Inquiry discussions over road gradients and the drafting of Condition 13, as they have documented/recall.

5.6 The representations of the Parish Council are also included in the Appendix.

5.7 Any representation made by the Cotswold National Landscape Conservation Board (AONB) will follow as an Update to Members.

6. OFFICER COMMENTS

6.1 Determining Issues

6.2 Guidance set out within the National Planning Practice guidance (nPPG) acknowledges that issues may arise after planning permission has been granted, which require a modification of the approved proposals and that where less substantial changes are proposed, an application seeking a minor material amendment can be made under section 73 of the Town and Country Planning Act 1990, where there is a relevant condition that can be varied (Paragraph: 013 Reference ID: 17a-013-20140306).

6.3 If granted, the application results in the issuing of a new planning permission which sits alongside the original permission which remains intact and un-amended (Paragraph: 015 Reference ID: 17a-015-20140306).

6.4 As such, the only consideration in the determination of this application is the acceptability of the proposed re-wording of Condition 13, i.e. the acceptability of allowing longer than 30 metre lengths of roads where gradients are between 1:20 and 1:12. The remainder of Condition 13 is unaltered by the proposed condition variation. The development must still be generally designed so that the internal estate road gradients are between 1:100 and 1:20.

6.5 The principle of the redevelopment of this site for up to 250 dwellings and other matters including the proposal's overall impact upon the character and landscape qualities of the Cotswold National Landscape (AONB), neighbour amenity, highway impact, biodiversity and ecology, drainage, heritage and community infrastructure and services have been established through the original grant of outline planning permission which is subject to the obligations of 6no. s106 Agreements.

6.6 In light of the above, the matters for Members to consider and focus on are as follows:

- The consultation response of the Highway Authority
- The purpose of the condition and whether there is any ambiguity in the current wording of the second part of Condition 13, as the applicant maintains.

- The intentions and reasoning of the appeal Inspector behind the inclusion of ‘up to’ within the condition wording. This necessitates a review of the relevant sections of the appeal decision letter (DL); gradients and conditions.
- Overview of the applicant and LPA legal opinions on the purpose and meaning of the current condition wording and whether there is any ambiguity arising.
- The potential impacts on the environment and amenities of adjoining land users and road user accessibility should the current REM scheme be revised to comply with the terms of the original Condition 13.
- Would the proposed variation of Condition 13, to allow road gradients between 1:20 and 1:12 to exceed 30 metres in length, produce a better overall development than one which complies with the terms of the original Condition 13.
- Whether the suggested re-worded condition is sufficiently robust and appropriate, should any revised scheme be submitted following the first grant of reserved matters details (and discharge of Condition 13) in respect of the estate road layout and design.

6.7 Officer Comments

6.8 Each of the above points will be discussed in turn below.

6.9 Highway Authority Response

6.10 The Highway Authority was consulted on the proposed variation Condition 13. No objection is raised and their full response is set out below.

6.11 In summary, the HA considers that the applicant suggested wording for Condition 13 complies with the Manual for Gloucestershire Streets (MfGS). The HA has already accepted the principle of a proposed road vertical alignment for adoption purposes in respect of the REM proposals. The HA also comments that the original wording of Condition 13 is likely to have been drafted by the appeal Inspector to limit the length of gradients between 1/20 and 1/12 to 30 metres but accepts that not all sites will lend themselves to 1:20 gradients throughout and in the MfGS an allowance is made for an absolute maximum of 1:12 which should be restricted to no greater than 30m lengths.

6.12 However, the HA draws officers’ attention to the lack of reference to gradients between 1:20 and 1:12 in the proposed re-worded Condition 13. Condition 13 could therefore be interpreted as no gradients between 1:20 and 1:12 are permissible. By contrast, officers consider that the proposed re-wording could allow too much flexibility in respect of gradient lengths between 1/20 and 1/12. This matter is discussed in the report conclusions, where alternative Condition 13 wording is suggested.

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.

This application is only to alter the wording of Condition 13 to read ..” The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that

gradients of 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 meters.”

As this is in accordance with the current revision of Manual for Gloucestershire Streets (MfGS), the Highway Authority cannot reasonably refuse this wording and have already accepted the principle of a proposed road vertical alignment for adoption purposes. However, this revision in wording does not appear to clarify the interpretation, as the wording now does not implicitly include any reference to gradients between 1:20 and 1:12. So it does appear a bit ambiguous and could therefore be interpreted as no gradients between 1:20 and 1:12 would be permissible. This is an issue for the planning officer consider whether the condition is precise enough.

We note the submission of the expert opinions on the interpretation of the original wording of Condition 13 and the extensive investigations these opinions have relied upon. We also note that the subject of the gradients across this site was considered in depth throughout the planning appeal process, and the original wording of Condition 13 is likely to have been drafted to limit the length of gradients between 1/20 and 1/12 to 30 metres.

Most accepted National Guidance and Best Practice indicate that gradients for highways, in particular footways, should be 1:20 or flatter. This maximum gradient has been established to provide a highway suitable for all users, including wheelchairs, pushchairs, pedestrians with limited mobility, visual impairments or other constraints. It is accepted that not all sites will lend themselves to 1:20 gradients throughout and in the Manual for Gloucester Streets an allowance is made for an absolute maximum of 1:12 which should be restricted to no greater than 30m lengths. The Manual for Gloucestershire Streets makes many references to good design including the Local Transport Plan’s objective of creating a safer, securer transport system, that applications should give priority to pedestrian and cycle movements and should address the needs of people with disabilities and reduced mobility. The Manual states that pedestrians should be considered first and that developments should meet the needs of people with protected characteristics with age, disability, pregnancy and maternity being listed among those characteristics.

While the proposed wording does not specifically consider gradients between 1:20 and 1:12, we can clearly see from the submitted supporting drawings that the applicant has interpreted this to mean any length of highway with any gradient less than 1:12 would be accepted. This is clearly not what the MfGS and National Guidance is seeking to achieve, which promotes designs which do not disadvantage users with restricted mobility.

We also note the submitted drawings do not appear to include any provision for Active Travel and highlight the section in MfGS which states Active Travel Corridors will be a maximum gradient of 1:20.

We accept that the gradients throughout the site are restricted by existing topography and advise that, in the Highway Authority’s opinion, it is not reasonably practical to improve those gradients without either lowering the level of the proposed top of the site through the ridge and furrow pasture and relocating the water main or raising levels at the bottom of the site and affecting retained trees. Those are issues which need to be considered in the planning balance concerning impact on the landscape, trees and infrastructure costs.

The County Council will be updating their guidance to explicitly deal with the gradients between 1/12 and 1/20 in order to avoid these issues in the future.

6.13 Ambiguity/Appeal Decision

- 6.14** Firstly, there are no issues associated with the first part of Condition 13, which relates to the provision of the main site access from Harp Hill. The requirements of the condition in this respect are clear and details for Harp Hill have been submitted as part of the reserved

matters application (23/01691/REM). The HA has raised no objection to this element of the REM proposals.

- 6.15** However, interpretations of the second part of the condition differ between the HA and applicant, specifically in relation to the meaning of the words 'up to'. The second part of the condition deals with road gradients within the site which '*are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres*'.
- 6.16** The applicant points to the fact that MfGS imposes "a general requirement for maximum and minimum gradients of 1/100 and 1/20, but consideration is given to 1/12. Where a gradient of 1/12 is proposed no length shall exceed 30 metres in length". Given the appeal Inspector's reasoning and intention behind Condition 13 (DL paragraphs 72-6), the applicant maintains that the condition relating to gradients should therefore be worded and interpreted to meet the MfGS standards as set out.
- 6.17** The HA are of the view that 'gradients up to 1/12', means that the sections of the estate roads where gradients fall between 1/20 and 1/12 shall not exceed 30 metres in length. The HA does not consider there to be any ambiguity in the current wording, which does not require that only gradients of 1/12 shall not exceed 30 metres in length. In summary, the HA considers that, whilst the proposed estate roads would be of adoptable standard and MfGS compliant, the current REM proposals are not in accordance with the second part of Condition 13 (road gradients).
- 6.18** In support of their application, the applicant refers to the relevant sections of the appeal decision letter (DL), where gradients are discussed under a separate heading. The site's topography and whether a road layout/scheme could be designed that conformed with the requirements of MfGS were determining factors of the appeal decision. An Alternative Illustrative Masterplan (AIM) was produced during the appeal Inquiry with the specific purpose to demonstrate that a MfGS compliant scheme could be achieved.
- 6.19** The Inspectors conclusions on road gradients, at DL paragraph 76, comment on the need for flexibility when taking account of site topography. This is caveated by the need for development to offer attractive and accessible pedestrian and cycle routes for all users. The Inspector was satisfied that the AIM demonstrated that a road layout in compliance with the MfGS could be achieved. On this basis, no objection with respect to road gradients could be sustained. For ease of reference, the relevant paragraphs of the DL are reproduced as follows:

Gradients

(72). The second highway issue raised by the County Council on which there was much discussion relates to gradients across the appeal site. Policy SD4(vii) of the JCS requires, amongst other things, that new development should be fully consistent with guidance set out in the Manual for Gloucestershire Streets (MfGS) and other relevant guidance in force at the time. The MfGS, published in July 2020 [70], states that generally the maximum gradients allowable in new developments should not exceed 1:20, but consideration can be given to 1:12. Where the latter is proposed, no stretch should exceed 30 metres.

(73). The Council argues that any failure to comply with these standards would represent a clear breach of development plan policy. Conversely, the appellant says that the current draft of the MfGS postdates the adoption of the JCS (December 2017) and therefore cannot logically require compliance with it in any event. However, it seems to me that the clear intention of the JCS Policy is that the relevant applicable guidance is that in force when a planning application is determined, and not some earlier superseded iteration of it. The appellant's approach would run counter to a common-sense application of the policy.

(74). To complicate matters, in addition to the local standards within the MfGS, there are a range of standards in national guidance documents. For example, Manual for Streets does not impose a requirement of 1:12 but says in respect of cyclists and pedestrians that gradients should ideally be no more than 5% (1:20), although it is acknowledged topography may make this difficult to achieve [71]. Manual for Streets 2 (MfS2), in respect of carriageway gradients, allows for a practical maximum of 8% (1:12) but allows for steeper gradients where there are 'particular local difficulties' [72]. In relation to pedestrian routes, MfS2 states the gradient should ideally be no more than 5% (1:20), although topography make this difficult to achieve; and that as a general rule 8% (1:12) should be considered a maximum, which is the limit for most wheelchair users, as advised in Inclusive Mobility [73].

(75). As the appellant notes, the MfGS has not been consulted upon publicly and has not been through the same statutory processes that govern development plans. The MfGS is ultimately technical guidance. This means it cannot have statutory force, but it should not be ignored. During the Inquiry, to address the Council's concerns, the appellant produced an Alternative Illustrative Masterplan which demonstrated that a road layout could technically be achieved to comply with the more stringent local MfGS requirements. A condition has also been suggested requiring full compliance with the MfGS standards, although the appellant does not consider it to be necessary.

(76). In my judgement, there must be some degree of flexibility to take account of natural topography, but developments should be as permeable as possible and offer attractive pedestrian and cycle routes which are accessible for all users[74]. Given it has been demonstrated that it is possible to design a scheme that would adhere to the MfGS, I see no good reason why a suitably worded condition cannot be imposed in this instance. In these circumstances, no objections with respect to gradients can be sustained, nor can it be a reason for the appeal to fail.

[Footnotes: 70 CD I4; 71 CD I2, Paragraph 6.3.27; 72 CD I3, Paragraph 8.4.2; 73 Department of Transport, 2005; 74 Paragraph 112 of the Framework]

- 6.20** Although Condition 13 does not reference MfGS, officers consider that there is little doubt that compliance with MfGS was a determining factor for the Inspector when considering the topography of the site, access road gradients and the need for a condition restricting road gradients accordingly across the site.
- 6.21** It is important to note here that the AIM was produced for illustrative purposes only. It was not accompanied by detailed technical engineering drawings, and the illustrative road layout was produced in the absence of a thorough consideration of the various potential house types, cul de sac spurs, drainage features and retaining structures within the scheme layout and the resultant impacts on significant TPO's trees and other landscape features, designated heritage assets and the amenities of neighbouring properties. Nonetheless, at that time, it did provide the Inspector with sufficient comfort that a MfGS compliant development could be achieved for this site.
- 6.22** Legal Advice on Interpretation of Condition 13
- 6.23** In light of the conflicting views on the matter, both the applicant and local planning authority (LPA) sought Counsel legal opinion on the interpretation of Condition 13, as currently worded; specifically whether the County Council is correct to conclude that Condition 13 requires that all road sections between 1:20 and 1:12 in gradient cannot be longer than 30 metres in length.

6.24 The advice received from the respective Counsel differs. The legal opinions produced for both parties are set out in full at the end of the report.

6.25 The legal advice to the applicant concludes that the County Council has adopted an incorrect approach to the natural and ordinary language of the condition, in summary as follows:-

- a. All gradients are to be “generally designed” to fall between 1:100 and 1:20, with gradients up to 1:12 “permissible”. The County Council’s reading would render the word “generally” redundant;*
- b. The final references to “they” relates only to gradients which are actually at the absolute maximum permissible of 1:12.*
- 2. The County Council’s reading does not correctly take into account the Inspector’s reasons given at DL72 through to DL76, notably the DL72 and DL76 both of which expressly refer to MfGS (pages 30 and 36), which identifies 1:12 as the only gradient where a 30m limit will be imposed;*
- 3. It is not a correct reflection of the various technical guidance documents noted at DL72-76, including Inclusive Mobility (2005), MfS, MfS2 and MfGS.*
- 4. Put another way (not applying strict principles of interpretation, but a reasonable sense check), the County Council’s reading suggests that the Inspector invented his own test. That is inherently implausible. On the contrary, the Inspector stated that he wished to apply the MfGS limit only. That is what Condition 13 now requires.*

6.26 The legal advice to the LPA focuses on the key words ‘up to’ within Condition 13, as follows:-

This makes it clear in plain wording that gradients up to 1:12 are permissible, provided that where those gradients of up to 1:12 are proposed, they shall be limited to maximum lengths of 30m. I do not consider that there is room for much confusion here.

Nor do I consider that the applicant’s interpretation properly takes into account the effect of the words ‘up to’; the condition would have had to have included a further qualification to refer to 1:12 gradients within the clause: “...provided that where they [1:12 gradients] are proposed...”.

I do not take the same assistance from the word ‘generally’ as does the applicant. In my view, the better interpretation is that the word ‘generally’ means that the following parameters refer to the whole scheme. I do not think that it means instead that the restrictions are effectively aspirational in some way

6.27 However, the Council’s legal advice does “take into account that the MfGS is silent on lengths between 1:20 and 1:12 and I acknowledge that that could be persuasive in favour of the applicant’s interpretation. I also wish to stress that I do not consider that the applicant’s interpretation is unreasonable or outside the range of possible interpretations. However, in my view GCC’s interpretation is the least strained of the two competing interpretations”. Given that the Council and HA are minded to support the REM scheme under consideration, Counsel advises that the best way forward is for the applicant to submit a s73 application “so that the wording of Condition 13 can be reconsidered along with the effect (if any) of the silence within the MfGS in relation to lengths of highway between 1:20 and 1:12”.

6.28 The applicant also points to the Technical Note accompanying the REM application and comments on the result of pre-application discussions with the HA. Both confirm that the access arrangements were designed generally to achieve the maximum and minimum gradients of 1:20 and 1:100, and that where gradients exceeded 1:20 these would be limited in occurrence and length. Gradients of 1:12 would be confined to a distance not exceeding 30m. The vertical design and the proposed road levels of the REM proposals

are in accordance with these requirements and previous agreement/discussions with the HA. In this respect, both the applicant and HA had applied the requirements of MfGS without proper consideration of the terms of Condition 13 which, in accordance with the LPA's legal advice above, requires section of roads where gradients fall between 1/20 and 1/12 not to exceed 30 metres in length.

6.29 It is unfortunate that the HA, having raised no objection to the proposed REM proposals on 9th November 2023, subsequently provided amended comments to the Council in December 2023 which concluded that the REM scheme did not comply fully with the terms of Condition 13. These comments are set out in full in the Update report attached to the end of this report.

6.30 Concluding Comments/Compliance with Condition 13

6.31 Having reviewed the Inspector's decision letter, considered the legal advice offered to both parties and the standards set by MfGS, officers conclude that there is no obvious ambiguity in the current wording of Condition 13. The terms of the condition are sufficiently clear in that sections of roads where gradients fall between 1/20 and 1/12 should not exceed 30 metres in length. Albeit, it is noted that the MfGS is silent on gradient lengths between 1/20 and 1/12.

6.32 The representations made by the 'Friends' has also been carefully considered in reaching the above conclusion.

6.33 Notwithstanding the above, officers are concerned that the delivery of a scheme for 250 dwellings that adheres to the full terms of original Condition 13 (and the parameters set by the AIM) would likely result in adverse effects on the environment and local amenity; caused specifically by the need to significantly raise and lower ground levels and introduce high retaining walls above those of the current REM scheme. These potential adverse effects have been brought to officers' attention by both the applicant and Highway Authority.

6.34 The HA consider it not reasonably practical to improve the gradients currently proposed for the REM scheme without either lowering the level of the southern field parcels through the ridge and furrow pasture and relocating the water main or raising existing ground levels at the bottom of the site and affecting retained trees. The applicant equally sets out the impacts of significant required engineering works to achieve a scheme that corresponds with the AIM road layout.

6.35 Officers are in little doubt that the above presented scenarios would increase the potential for harmful visual impact on the environment, greater overlooking into neighbouring residential properties, the removal of a larger number of trees/vegetation and impact on the long term health and survival of retained TPO'd trees. As such, these are important considerations in the planning balance.

6.36 **Other Considerations**

6.37 Cotswold Beechwoods Special Area of Conservation (SAC)

6.38 Policy BG1 of the Cheltenham Plan states that development will not be permitted where it would be likely to lead directly or indirectly to an adverse effect upon the integrity of the European Site network (alone or in combination), and the effects cannot be mitigated.

6.39 Therefore, in order to retain the integrity of the Cotswold Beechwoods Special Area of Conservation (SAC) all development within the borough that leads to a net increase in dwellings will be required to mitigate any adverse effects.

- 6.40** This application would result in the issuing of a new planning permission, therefore the above effects of the proposals on the SAC must be considered.
- 6.41** The original outline application was accompanied by an EIA Environmental Statement, including a shadow Habitats Regulations Assessment which recognised the application site's location relative to the SAC and considered whether the outline proposal, in combination with other new residential development in the authority area, would have potential significant effects on the SAC. Natural England and the Council's ecology advisor were also consulted on the original outline application. The effects on the SAC and other related ecology/biodiversity matters were material considerations when determining the appeal.
- 6.42** The sHRA concluded that no risk of adverse effects on the integrity of the Cotswold Beechwoods SAC is expected to arise as a result of the proposed development of the site in isolation. However, the risk of a potential cumulative effect as a result of increased recreational pressure was identified and it was recommended that further mitigation is secured. The Council's Ecology advisor considered that suitable mitigation could be secured in the form of a homeowner pack/information leaflet issued to all first occupiers of the dwellings. NE did not offer any further comment.
- 6.43** Members will recall that the outline planning permission is subject to a number of planning conditions which secure appropriate biodiversity net gain, landscaping and protection of important ecological species and a Homeowner Information Pack (HIP) to be issued to every new household. The HIP will be produced in accordance with the advice from Natural England (letter dated 13 April 2021) and include reference to alternative local recreation opportunities (off site), and website information for the Cotswolds AONB. The application proposals also include on-site recreation facilities in the form of the retained southern field parcels and open/amenity spaces within the built up areas of the development. The appeal Inspector considered these measures appropriate to mitigate any adverse effects on the SAC.
- 6.44** The original outline planning application was validated on 16th July 2020 and the appeal allowed on 5th October 2022. As such, officers are also mindful that Natural England has stated in its letter to Councils of 9 September 2022 that the Cotswolds Beechwoods SAC Mitigation Strategy of May 2022 should apply to relevant applications (constituting habitat development) submitted on or after the 1st November 2022. Although a s73 application (if granted) results in the issuing of a new planning permission, in this instance and given the nature of the proposals, Members should note that SAC mitigation in the form of a financial contribution is not being sought for the proposed development at outline/s73 or REM stage.
- 6.45** Public Sector Equalities Duty (PSED)
- 6.46** 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.
- 6.47** 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.

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

CONCLUSION

6.49 The relevant policies of the development plan currently in force are out of date due to a shortfall in the Council's five-year supply of housing land. The proposal has therefore been assessed against the guidance contained within the NPPF (2023). Paragraph 11(d) of the NPPF applies a presumption in favour of sustainable development unless:-

i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole.

6.50 In this case, the 'areas and assets of particular importance' referred to in paragraph 11d(i) are the Cotswolds National Landscape and the grade II listed structures at Hewlett's Reservoir.

6.51 In carrying out an objective assessment of the proposals (in line with NPPF paragraph 11d), officers have had to balance any potential adverse impacts of the proposals on the environment, road users, amenities of neighbouring land users and any other highway safety implications, against the positive contribution the proposal would make towards the Council's housing land supply and any wider economic or social benefits that the scheme might bring. In this regard, the contribution of 250 houses (including 100 affordable dwellings) towards meeting the Council's identified housing needs weighs heavily in favour of the proposals.

6.52 Whilst officers conclude that the current wording of Condition 13 is clear in respect of gradient lengths between 1/20 and 1/12, the considerations of this application are not limited to the reasoning and intentions of the appeal Inspector when imposing the condition and whether the current REM scheme complies with the original condition.

6.53 Nor does the outline planning permission require the reserved matters details to adhere to the internal estate road layout/gradients shown on the AIM. It was produced for illustrative purposes only. It is not uncommon, particularly in respect of larger outline development proposals, that more is known about a site and the required technical engineering aspects of a development at the detailed design and layout stage of reserved matters applications. This is particularly the case for significantly sloping sites.

6.54 It is equally acknowledged that given the unique characteristics of the site's topography and landscape features and its location within the AONB, the implications of allowing greater roads lengths at steeper than 1/20 gradients has the potential to impact on the environment, local amenity and the accessibility of all road users. With this in mind, officers have considered very carefully the underlying purpose of the condition, the appeal decision, the comments of the Highway Authority, the legal advice provided and the concerns raised by local residents, the Parish Council and the 'Friends'.

6.55 Notwithstanding the above, officers have sought to adopt a pragmatic approach to the difficult situation in which both parties find themselves and have needed to balance the many competing elements in reaching their recommendation to Planning Committee.

6.56 The topography and characteristics of the site are, without doubt, challenging and this has required an entirely bespoke and carefully considered approach to the design and layout of the REM scheme, including that of the estate road gradients. Although the overall

merits of the REM scheme do not form part of the considerations of this application, it is worth adding that the current REM proposals (which include gradients lengths between 1/20 and 1/12 greater than 30 metres) have sought to retain and protect as much of the distinctive landscape features as possible and integrate these positively into the scheme, whilst protecting the amenities of neighbouring land users.

- 6.57** The potential implications of delivering a scheme for c250 dwellings in compliance with the terms of the original condition would likely result in adverse impacts on the environment and local amenity, over and above any impact caused by the current REM proposals. Although this has not been demonstrated explicitly by the applicant, any meaningful reduction in the number of dwellings proposed is unlikely to materially alter those potentially harmful effects. The significant and altered engineering works necessary to make the current REM scheme accord fully with the terms of original Condition 13 are highlighted by both the applicant and Highway Authority. Regardless of any reduction in house numbers and alterations to layout, the challenges presented by the topography of the site would still exist within the built up areas and highway flexibility zone set by the approved Parameter Plans of the outline planning permission.
- 6.58** In light of the above and put simply, Members must determine whether the above suggested revised condition may produce a better overall development for this site than one which would need to comply with the terms of the original Condition 13.
- 6.59** The Highway Authority has raised no objection to the proposed condition variation and, at the time of writing, their agreement is being sought to the terms of the alternative suggested re-worded condition set out below. Importantly, the HA has also confirmed that the proposed road design of the REM scheme (which includes road gradients between 1/20 and 1/12 greater than 30 metres in length) would be of adoptable standard and would adhere to MfGS.
- 6.60** Taking all of the above factors into consideration and on balance, officers consider the variation of Condition 13 to allow greater flexibility in the design of the estate roads in instances where gradients between 1/20 and 1/12 are proposed is acceptable. Although silent on gradients lengths between 1/20 and 1/12, the MfGS does not offer guidance preventing or limiting this flexibility. Officers are therefore satisfied that Condition 13 can be amended accordingly and as set out below.
- 6.61** The proposals have been assessed in accordance with NPPF paragraph 11(d). The 'tilted balance' in favour of sustainable development is engaged in this case and there are no other adverse impacts arising from the proposals that would significantly outweigh the benefits of the scheme and substantiate a refusal.
- 6.62** The suggested wording varies from that proposed by the applicant. This is to add the necessary clarity and preciseness to the condition in relation to gradients permissible between 1/20 and 1/12 and conformity with the requirements of MfGS.

Revised Condition 13

Notwithstanding the illustrative proposed access arrangements on to Harp Hill, as shown on Access and Movement Parameter Plan ref: P18-0847_02 Sheet No.3 rev F and the Alternative Illustrative Masterplan ref. 18017.202 Rev B, full details of the proposed access junction on to Harp Hill shall be submitted to and approved in writing by the local planning authority as part of the first reserved matters submission. The access shall be installed in accordance with the approved details and made available for use prior to the first occupation of any dwelling. The reserved matters submissions relating to access are required to be generally

designed in accordance with the Manual for Gloucestershire Streets so that maximum and minimum gradients allowable will be between 1/20 and 1/100 respectively, save that gradients between 1/20 and 1/12 are permissible, provided that where they are proposed gradients of 1/12 shall be limited to maximum lengths of 30 metres. Where gradients between 1/20 and 1/12 are proposed, and where their respective lengths exceed 30 metres, the reserved matters submissions relating to access shall include evidence, to the satisfaction of the local planning authority, that site typography and the need to retain important existing landscape features and protect both the environment and amenities of neighbouring land users, necessitate gradients between 1/20 and 1/12.

Reason: To ensure that safe and suitable access is provided for all users in the interests of highway safety and to ensure an appropriate design in the interests of the character and appearance of the AONB and locality in general and the amenities of neighbouring land users having regard to adopted policies D1 and SL1 of the Cheltenham Plan (2020) and adopted policies INF1, SD4, SD7 and SD14 of the Joint Core Strategy (2017) and sections 9, 12 and 15 of the NPPF (2023).

7. RECOMMENDATION

- 7.1 The recommendation is to allow the variation and re-wording of Condition 13 as suggested by officers. All other conditions attached to the original outline planning permission are reproduced below and amended where necessary (reasons for each condition have been added). The applicant has agreed to the terms of all pre-commencement conditions.

8. CONDITIONS / INFORMATIVES

- 1 Details of the access, appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved by the local planning authority before any development takes place and the development shall be carried out as approved.

Reason: To accord with s92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Application for the approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this decision.

Reason: To accord with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is later.

Reason: To accord with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 4 The development hereby permitted shall provide no more than 250 dwellings.

Reason: To limit the terms of the permission in the interests of landscape and visual amenity and the protection and conservation of heritage assets, having regard to

adopted policies D1 and L2 of the Cheltenham Plan (2020), adopted policies SD4, SD7 and SD8 of the Joint Core Strategy (2017) and sections 15 and 16 of the NPPF (2023).

- 5 The details to be submitted as part of the reserved matters for access, layout and landscaping shall be in general accordance with the design and layout principles of the Alternative Illustrative Masterplan Ref 18017.202 Rev B in respect of the following:
- a. the proposed and retained structural landscaping (trees, shrubs and hedgerows) and public open space within the green infrastructure areas shown on drawing P18-0847-02 sheet 02 Rev D;
 - b. the design and alignment of the main vehicular access road and vehicular junction within Harp Hill within the Highway Corridor Flexibility Zone shown on drawing P18-0847-02 sheet 03 Rev F (excluding other internal estate roads).

For the avoidance of doubt, applications for approval of reserved matters shall be in substantial accordance with the submitted Land Use Parameter Plan (drawing P18-0847_02 sheet 02 Rev D), Access and Movement Parameter Plan (drawing P18-0847_02 sheet 3 Rev F), Building Heights Parameter Plan (drawing P18-847_02 sheet 04 Rev C) and Green Infrastructure Parameter Plan (drawing P18-0847_02 sheet 05 Rev D).

Reason: In the interests of landscape and visual amenity, protection and conservation of heritage assets and to ensure the development accords with the required principles and standards of urban design; having regard to adopted policies D1 and L2 of the Cheltenham Plan (2020), adopted policies SD4, SD7 and SD8 of the Joint Core Strategy (2017) and sections 12, 15 and 16 of the NPPF (2023).

- 6 The first reserved matters applications required by Condition 1 shall be accompanied by a Phasing Plan, giving details of the phasing of the development. The development shall be carried out in accordance with the approved Phasing Plan unless any variations have first been approved in writing by the local planning authority.

Reason: To ensure the development is delivered in an appropriate manner.

- 7 Prior to the submission of the first reserved matters, a Housing Mix Statement for the open market housing shall be submitted to the local planning authority for approval. The Statement shall set out an appropriate mix of dwelling sizes, types and tenures to be provided on site that will contribute to a mixed and balanced housing market. The Statement will address the needs of the local area having regard to the Council's current local housing evidence base. The development shall be implemented in accordance with the approved Statement.

Reason: To ensure the development meets the identified housing needs of the area, having regard to adopted policies SD11 and SD12 of the Joint Core Strategy (2017) and section 5 of the NPPF (2023).

- 8 The reserved matters required to be submitted and approved under Condition 1 shall include:
- a. details of the design, form and architectural features of the dwellings, including materials to be used on the external walls and roofs;
 - b. details of the position, design, materials and type of boundary walls within the development;
 - c. details of cycle storage facilities for each dwelling;
 - d. details of refuse and recycling storage to allow for the separate storage of recyclable waste materials;
 - e. details of electrical vehicle charging points (including appearance, location and type) to accord with the relevant Council standards;

The development shall be carried out in complete accordance with approved details.

Reason: To ensure a high quality design and appearance in the interests of the character and appearance of the area, having regard to adopted policy D1 of the Cheltenham Plan (2020), adopted policies SD4, SD7 and SD8 of the Joint Core Strategy (2017) and sections 12, 15 and 16 of the NPPF (2023).

- 9 The details to be submitted for approval as part of the reserved matters application(s) for appearance, scale and layout pursuant to Condition 1 shall include an Energy and Sustainability Statement. The statement shall demonstrate an improvement on the energy efficiency of the scheme over and above the Building Regulations in place at the time of this decision and shall include, but not be limited to, the following information:

- a. details of the methods used to calculate predicted annual energy demand and associated carbon emissions;
- b. measures to reduce impact on climate change (including consideration of heat proofing, construction techniques, building fabric, solar gain, natural lighting, shading, orientation, water retention, flood mitigation and landscaping).

Reason: In the interests of reducing carbon emissions, having regard to adopted policies adopted policy SD3 of the Joint Core Strategy (2017) and guidance set out in Cheltenham Climate Change SPD (2022).

- 10 No development shall take place until details of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with the principles set out in the Flood Risk Assessment and Drainage Strategy prepared by Phoenix Design dated March 2020. An assessment shall be made regarding the potential for disposing of surface water by means of a sustainable drainage system (SuDS) in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results provided to the local planning authority.

Where a sustainable drainage scheme is to be provided, the submitted details shall provide:

- a. an assessment of the hydrological and hydro-geological context of the development;
- b. information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- c. a timetable for its implementation;
- d. a management and maintenance plan for the SuDS. The plan shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The surface water drainage scheme, including its management and maintenance, shall be implemented strictly in accordance with approved details and thereafter retained as such for the lifetime of the development.

Reason: To ensure sustainable drainage of the development and to avoid increased flood risk to neighbouring properties., 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.

- 11 No development shall take place until full details for the treatment and disposal of foul water (including pollution control and monitoring measures) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure suitable foul 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.

- 12 No development shall take place until plans showing the existing and proposed ground levels of the site and existing ground levels of adjacent land have been submitted to and approved in writing by the local planning authority. The submitted details shall include existing and proposed cross section drawings of the site indicating the extent of ground works required to achieve finished site levels. The reserved matters application(s) submitted pursuant to Condition 1 shall include details of the proposed slab levels of the proposed buildings and ridge heights of proposed and adjacent buildings. The development shall be implemented strictly in accordance with the agreed details.

Reason: In the interests of a high quality design and the character and appearance of the landscape and visual amenity and to ensure a satisfactory relationship between the proposed development and adjacent buildings and land, having regard to adopted policies D1, L2 and SL1 of the Cheltenham Plan (2020) and adopted policies SD4, SD7 and SD14 of the Joint Core Strategy (2017). Approval is required upfront to allow the impact of the development to be accurately assessed.

- 13 Notwithstanding the illustrative proposed access arrangements on to Harp Hill, as shown on Access and Movement Parameter Plan ref: P18-0847_02 Sheet No.3 rev F and the Alternative Illustrative Masterplan ref. 18017.202 Rev B, full details of the proposed access junction on to Harp Hill shall be submitted to and approved in writing by the local planning authority as part of the first reserved matters submission. The access shall be installed in accordance with the approved details and made available for use prior to the first occupation of any dwelling. The reserved matters submissions relating to access are required to be generally designed in accordance with the Manual for Gloucestershire Streets so that maximum and minimum gradients allowable will be between 1/20 and 1/100 respectively, save that gradients between 1/20 and 1/12 are permissible, provided that where they are proposed gradients of 1/12 shall be limited to maximum lengths of 30 metres. Where gradients between 1/20 and 1/12 are proposed, and where their respective lengths exceed 30 metres, the reserved matters submissions relating to access shall include evidence, to the satisfaction of the local planning authority, that site typography and the need to retain important existing landscape features and protect both the environment and amenities of neighbouring land users, necessitate gradients between 1/20 and 1/12.

Reason: To ensure that safe and suitable access is provided for all users in the interests of highway safety and to ensure an appropriate design in the interests of the character and appearance of the AONB and locality in general and the amenities of neighbouring land users having regard to adopted policies D1 and SL1 of the Cheltenham Plan (2020) and adopted policies INF1, SD4, SD7 and SD14 of the Joint Core Strategy (2017) and sections 9, 12 and 15 of the NPPF (2023).

- 14 No dwelling hereby permitted shall be occupied until the Footpath and Cycleway link between Priors Road and the development area (as shown on Drawing No 333.E.33) has been fully implemented in accordance with a detailed design previously submitted to and agreed in writing by the local planning authority.

Reason: To ensure appropriate and timely delivery of highway works and that opportunities for sustainable transport modes have been taken up; in the interests of highway safety and to minimise impact on the local highway network, having regard to

adopted policy INF1 of the Joint Core Strategy (2017) and section 9 of the NPPF (2023).

- 15 No more than 50 dwellings shall be occupied until the following highway works have been implemented in full:
- a. Alterations to the junction of Priors Road / Hales Road / Harp Hill / Hewlett Road (shown on Drawing No H628/04 Rev C);
 - b. Harp Hill pavement extension and pedestrian linkages (shown on Drawing No H628/05 Rev A)

Reason: To ensure appropriate and timely delivery of highway works and that opportunities for sustainable transport modes have been taken up; in the interests of highway safety and to minimise impact on the local highway network, having regard to adopted policy INF1 of the Joint Core Strategy (2017) and section 9 of the NPPF (2023).

- 16 No dwelling shall be occupied until: (i) the carriageways providing access from the public highway to that dwelling have been completed to at least binder course level, and the footways to surface course level and in accordance with the approved plans; and (ii) the car/vehicle parking area, visitor parking and turning space associated with that dwelling (including garages and car ports where proposed) have been completed in accordance with the approved plans.

Reason: To ensure that safe and suitable access is provided and maintained in the interests of highway safety, having regard to adopted policy INF1 of the Joint Core Strategy (2017), and Section 9 of the National Planning Policy Framework (2023).

- 17 Prior to first occupation of the development, details of the arrangements for future management and maintenance of the roads/streets within the development shall be submitted to and approved in writing by the local planning authority. The roads/streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

Reason: To ensure that safe and suitable access is provided and maintained in the interests of highway safety, having regard to adopted policy INF1 of the Joint Core Strategy (2017).

- 18 No development shall take place until a Construction Traffic Environmental Management Plan (CTEMP) has been submitted to and approved in writing by the local planning authority. The CTEMP shall include: details of parking or vehicles of site operatives and visitors (including measures to ensure satisfactory access and movement for existing occupiers during construction); details of any temporary access into the site; details of loading and unloading of plant and materials; arrangements for turning vehicles; details of storage of plant and materials; measures for traffic management (including routing) so as to minimise the impacts of construction traffic on the highway; details of types, size and numbers of construction related vehicles anticipated daily, including arrangements to receive abnormal loads or unusually large vehicles; means to prevent deposition of mud or other substances on the highway; details of wheel washing facilities; measures for the control of site lighting (required for safe working or for security); means to control dust and emissions to air; means to control noise and vibration; methods of communicating the CTEMP to staff, visitors and neighbouring residents and businesses. The approved CTEMP shall be adhered to throughout the demolition and construction period.

Reason: In the interests of highway safety and to safeguard the amenity of occupiers of neighbouring properties, having regard to adopted policy SL1 of the Cheltenham Plan

and adopted policies SD14 and INF1 of the Joint Core Strategy (2017). Approval is required upfront because without proper mitigation the works could have an unacceptable highway impact during construction.

- 19 No development shall take place until a Site Waste Management Plan (SWMP) has been submitted to and approved in writing by the Local Planning Authority. The SWMP shall include: information on the type and amount of waste likely to be generated prior to and during the construction phase; details of the practical arrangements for managing waste generated during construction in accordance with the principles of waste minimisation. The approved SWMP shall be adhered to throughout the demolition and construction period.

Reason: To ensure the effective implementation of waste minimisation in accordance with the Gloucestershire Waste Core Strategy. Approval is required upfront because without proper mitigation the works could have an unacceptable highway impact during construction.

- 20 Demolition, construction works or other operations that generate noise beyond the site boundary shall be only carried out between the hours of 0800 hrs and 1800 hrs Mondays to Fridays, and between 0800 hrs and 1300 hrs on Saturdays and at no time on Sundays and Bank Holidays. Deliveries to, and removal of plant, equipment, machinery and waste from the site shall only take place within the permitted hours detailed above.

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

- 21 No piling activities shall be carried out until a full piling method statement has been submitted to and approved in writing by the local planning authority. The method statement must assess and include full details of the noise and vibration impact from the piling operations on the nearest residential properties; dates and times of piling; and details of monitoring measures. All piling activities shall be carried out in accordance with the approved details.

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

- 22 In the event contamination is found at any time when carrying out the approved development that was not previously identified, it must be immediately reported in writing to the local planning authority, and development shall be halted on that part of the site affected by the unexpected contamination. An investigation and risk assessment must then be undertaken in accordance with the Environment Agency's relevant guidance and, where necessary, a remediation scheme also submitted. Following completion of measures identified in the approved remediation scheme, a verification report shall be submitted to and approved in writing by the local planning authority before development can recommence on the part of the site identified as having unexpected contamination.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with adopted policy SD14 of the Joint Core Strategy (2017).

- 23 The development hereby approved shall be carried out at all times (including during all ground and vegetation clearance works) and thereafter maintained in accordance with the recommendations and measures within the Construction Environmental Management Plan (CEMP) (Ecology Solutions March 2021 7807.CEMP.vf); and the Landscape and Ecology Management Plan (LEMP) (Ecology Solutions dated March 2021 7807.LEMP.vf). In addition to the approved LEMP, hedgehog tunnels shall be installed in accordance with details which shall have been previously submitted to and approved in writing by the local planning authority. Any modifications to the approved details within the CEMP and LEMP (for example as a result of requirements of a protected species license) must be submitted to and agreed in writing by the local planning authority prior to the implementation of any modifications.

Reason: To safeguard important ecological species and to ensure the development contributes to the conservation and enhancement of biodiversity within the site and the wider area during the construction and operational phases of the development, having regard to adopted policy SD9 of the Joint Core Strategy (2017) and section 15 of the NPPF (2023).

- 24 Full details of the external lighting scheme, following the principles and recommendations of the approved lighting strategy (Illume Design Lighting Strategy 03.03.2021 No. 4218 rev 0.2), shall be submitted to and approved in writing by the local planning authority. The details shall include but shall not be limited to the following:
- a. the position, height and type of all external lighting (including any security lighting);
 - b. the intensity of lighting and spread of light as a lux contour plan (including horizontal and vertical components);
 - c. lighting calculations and assessment;
 - d. measures to minimise light spill/pollution, having regard to the sensitive location of the site within an AONB;
 - e. measures to minimise the effects of lighting on protected wildlife species;
 - f. the periods of day and night (throughout the year) when such lighting will be used and controlled for construction and operational needs.

The development shall be carried out in accordance with the approved scheme, maintained thereafter for the lifetime of the development and in accordance with the manufacturer's recommendations.

Reason: In the interests of the character and appearance of the locality, including the Cotswolds National Landscape and to safeguard the amenity of adjacent properties and the general locality, to safeguard important ecological species and to ensure the development contributes to the conservation and enhancement of biodiversity within the site and the wider area during the construction and operational phases of the development; having regard to adopted policy SL1 of the Cheltenham Plan (2020), adopted policies SD9 and SD14 of the Joint Core Strategy (2017) and section 15 of the NPPF (2023).

- 25 The submission of details required by Condition 1 shall include full details of a hard and soft landscaping and boundary treatment scheme for both the residential and open space elements of the proposed development. The scheme shall include the following:
- a. a written specification describing the species, sizes, spacing, densities and planting numbers;
 - b. details of all retained trees, hedgerow and other ecological features;
 - c. details of the phasing of implementation of all proposed hard and soft landscaping;
 - d. details of proposed aquatic planting for the indicative SuDS feature shown in the north-west corner of the site;
 - e. details of meadow grassland planting within the areas of public open space;

- f. details of hard and soft boundary treatment (including details of materials and elevation drawings where relevant);
- g. details of ridge and furrow retention, planting and maintenance;
- h. buffer/protection and deterrent planting measures (from deer and other predators) around retained mature, veteran and ancient trees;
- i. details of biodiversity net gain (BNG), in accordance with Natural England's Biodiversity Metric 2.0;
- j. a detailed Landscape and Tree Management and Maintenance Scheme (LTMMS) (for the short, medium and long term - 5, 10 and 30 years) for areas of proposed open space and children's play areas based on the principles set out in the approved LEMP.

All hard and soft landscaping and boundary treatments (as well as the LTMMS) shall be implemented and maintained in accordance with the approved details, and in accordance with a timetable agreed with the local planning authority. Any trees, hedgerows or other plants which, within a period of 5 years from the date that they were planted, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season (October to March) with others of the same size or species unless otherwise first agreed in writing by the local planning authority. Any pruning works shall be carried out in accordance with BS 3998:2010 (or any standard that reproduces or replaces this standard).

Reason: In the interests of biodiversity and the character and appearance of the area, having regard to adopted policies D1, GI2 and GI3 of the Cheltenham Plan (2020), and adopted policies SD4, SD7, SD8 and INF3 of the Joint Core Strategy (2017).

- 26 All works including roads, paths, parking areas, drainage runs and other areas of hard landscaping that fall within Root Protection Areas of retained trees shall be constructed using a no-dig method. All trenches and service runs shall fall outside the Root Protection Area(s) of any retained trees shown on the approved drawings, unless otherwise first agreed in writing by the local planning authority. Any such works shall be carried out in accordance with the National Joint Utilities Group; Volume 4 (2007) (or any standard that reproduces or replaces this standard). No fires shall be lit within 5m of the Root Protection Areas and materials that will contaminate the soil such as cement or diesel must not be discharged within 10m of any tree stem. Existing ground levels shall remain the same within the Root Protection Areas and no building materials or surplus soil shall be stored therein.

Reason: To safeguard the existing tree(s) in the interests of visual amenity, having regard to adopted policies D1, GI2 and GI3 of the Cheltenham Plan (2020) and adopted policies SD3, SD4, SD7 and SD9 of the Joint Core Strategy (2017).

- 27 Prior to the commencement of development (including site and vegetation clearance works), the following shall be submitted and approved in writing by the local planning authority:
- a. a Tree, Shrub and Hedgerow Retention and Removal Plan, identifying all trees, shrubs and hedgerow to be removed and retained (including tree BS 5837:2012 categorisation);
 - b. details of tree protective fencing to comply with BS 5837:2012;
 - c. an Arboricultural Monitoring scheme for the construction phase which shall include details of (a) persons to conduct the monitoring; (b) the methodology and programme for reporting; and (c) a timetable for inspections;
 - d. an Arboricultural Method Statement (AMS) to comply with BS 5837:2012 which shall include (a) any no-dig construction method details for parking areas, footpaths, roads, drainage runs and other forms of hard landscaping; (b) foundation details for properties near to retained trees on or adjacent to the site; (c) the storage of materials and siting of

temporary structures for contractors; and (d) any access facilitation pruning in accordance with BS 3998 (2010).

No trees, shrubs or hedges within the site which are shown to be retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed, without the prior written consent of the local planning authority. Any retained trees, shrubs or hedgerow indicated on the approved drawings which, within a period of 5 years following the completion of the construction phase die, become seriously damaged or diseased shall be replaced during the next available planting season (October to March inclusive) with other trees or plants of a location, species and size to be first approved in writing by the local planning authority. Any pruning works shall be carried out in accordance with BS 3998:2010 (or any standard that reproduces or replaces this standard).

No tree and/or hedge clearance shall be carried out during bird nesting season (1st March to 31st August inclusive) unless the site has been surveyed in advance for breeding birds and a scheme to protect breeding birds has first been submitted to and approved in writing by the local planning authority.

The development shall be carried out at all times in accordance with the details approved and the tree protective fencing shall be installed and inspected prior to the commencement of development and shall thereafter remain in place until the completion of the relevant construction phase.

Reason: To safeguard important existing trees and hedgerow in the interests of visual amenity and to safeguard important ecological species and their habitat, having regard to adopted policies D1, GI2 and GI3 of the Cheltenham Plan (2020) and adopted policies SD3, SD4, SD7 and SD9 of the Joint Core Strategy (2017).

- 28 Details of a scheme for Public Art within the area(s) of public open space shall be submitted to and approved in writing by the local planning authority. The approved scheme be installed within six months following the completion of the development or in accordance with a timetable previously agreed in writing by the local planning authority.

Reason: To allow provision of public art in accordance with the public realm objectives of adopted Policy SD4 of the Joint Core Strategy (2017) and having regard to the Cheltenham Public Art Strategy (2017).

- 29 Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and/or re-enacting that order with or without modification), no extensions, garages and outbuildings (other than sheds and greenhouses, and those forming part of the development hereby permitted) shall be erected without the permission of the local planning authority.

Reason: Any further extension or alteration requires further consideration to safeguard the character and appearance and amenities of the area and those of future occupiers of the development, having regard to adopted policies D1 and SL1 of the Cheltenham Plan (2020) and adopted policies SD4, SD7 and SD14 of the Joint Core Strategy (2017).

- 30 Prior to first occupation of the development, details of a Homeowner's Information Pack providing information on recreation resources in the locality shall be submitted to and approved in writing by the local planning authority. The pack shall be in accordance with the advice from Natural England (letter dated 13 April 2021) and include reference to: Alternative local recreation opportunities (off site), and website information for the

Cotswolds AONB. Each household shall be provided with an approved Homeowner Information Pack on occupation.

Reason: To assist in mitigating any impacts the proposed development may cause to designated landscape areas having regard to Policy BG1 of the Cheltenham Plan, Policy SD9 of the Joint Core Strategy (2017) and guidance set out at section 15 of the NPPF (2023).

- 31 Details of a scheme of interpretation for the adjacent heritage assets at Hewlett's Reservoir (which shall include details of the location, content and design of interpretation boards to provide the public with a better understanding of the heritage assets adjoining the site) shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented prior to the completion of the development.

Reason: In the interests of heritage and conservation, having regard to Section 16 of the NPPF (2023).

Consultations Appendix

Parish Council

8th March 2024 - Objection:

The wording of the relevant section of the Manual for Gloucestershire Streets (MfGS) is a little clumsy, but its intention is very clear: Generally maximum gradients of 1 in 20, save for sections no longer than 30m of up to 1 in 12.

The appellant's chosen interpretation means that there is no length limit for gradients between 1 in 20 and 1 in 12, which is clearly nonsensical, as it would in effect remove the maximum gradient of 1 in 20 and replace it with a maximum gradient of 1 in 12.1.

The Planning Inspector has correctly understood the requirements of the MfGS with the use of the word 'up to' in their condition:

'maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.'

Replacing the word 'up to' with 'of' allows for the creation of gradients slightly shallower than 1 in 12 for unlimited lengths, as detailed on drawing PJS22-068. Increasing the length of gradients in excess of 1 in 20 beyond 30m will result in a lower quality development, that will be harder for all non-motorised road users, and in particular for the infirm or wheelchair users, to use / live with.

The Parish Council can see no benefit in such a reduction in quality, with its resulting loss of amenity both to residents of, and visitors to, the proposed development. As such it strongly objects to the proposed variation and requests that, if the Case Officer is minded to recommend permit, the application is considered by CBC's Planning Committee rather than being determined under delegated powers.

Cheltenham Borough Council
P.O. Box 12
Municipal Offices
Promenade
Cheltenham Glos
GL50 1PP

Highways Development
Management
Economy Environment and
Infrastructure
Shire Hall
Westgate Street
Gloucester
GL1 2TG

7 March 2024
Your ref: 24/00251/CONDIT
Ask for: Nathan Drover

Dear Lucy White

**TOWN AND COUNTRY PLANNING ACT 1990
(DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015
ARTICLE 18 CONSULTATION WITH HIGHWAY AUTHORITY**

PROPOSAL: Variation of condition 13 (access arrangements onto Harp Hill and road gradients) of outline planning permission 20/01069/OUT - revised wording of condition 13 in respect of road gradient lengths

LOCATION: Oakley Farm Priors Road Cheltenham Gloucestershire GL52 5AQ

APPLICANT: Vistry Homes Limited And Stonewater Limited

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**.

This application is only to alter the wording of Condition 13 to read .." The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients of 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 meters."

As this is in accordance with the current revision of Manual for Gloucestershire Streets (MfGS), the Highway Authority cannot reasonably refuse this wording and have already accepted the principle of a proposed road vertical alignment for adoption purposes. However, this revision in wording does not appear to clarify the

Tel:
Email: @gloucestershire.gov.uk

interpretation, as the wording now does not implicitly include any reference to gradients between 1:20 and 1:12. So it does appear a bit ambiguous and could therefore be interpreted as no gradients between 1:20 and 1:12 would be permissible. This is an issue for the planning officer to consider whether the condition is precise enough.

We note the submission of the expert opinions on the interpretation of the original wording of Condition 13 and the extensive investigations these opinions have relied upon. We also note that the subject of the gradients across this site was considered in depth throughout the planning appeal process, and the original wording of Condition 13 is likely to have been drafted to limit the length of gradients between 1/20 and 1/12 to 30 metres.

Most accepted National Guidance and Best Practice indicate that gradients for highways, in particular footways, should be 1:20 or flatter. This maximum gradient has been established to provide a highway suitable for all users, including wheelchairs, pushchairs, pedestrians with limited mobility, visual impairments or other constraints. It is accepted that not all sites will lend themselves to 1:20 gradients throughout and in the Manual for Gloucester Streets an allowance is made for an absolute maximum of 1:12 which should be restricted to no greater than 30m lengths.

The Manual for Gloucestershire Streets makes many references to good design including the Local Transport Plan's objective of creating a safer, securer transport system, that applications should give priority to pedestrian and cycle movements and should address the needs of people with disabilities and reduced mobility. The Manual states that pedestrians should be considered first and that developments should meet the needs of people with protected characteristics with age, disability, pregnancy and maternity being listed among those characteristics.

While the proposed wording does not specifically consider gradients between 1:20 and 1:12, we can clearly see from the submitted supporting drawings that the applicant has interpreted this to mean any length of highway with any gradient less than 1:12 would be accepted. This is clearly not what the MfGS and National Guidance is seeking to achieve, which promotes designs which do not disadvantage users with restricted mobility.

We also note the submitted drawings do not appear to include any provision for Active Travel and highlight the section in MfGS which states Active Travel Corridors will be a maximum gradient of 1:20.

We accept that the gradients throughout the site are restricted by existing topography and advise that, in the Highway Authority's opinion, it is not reasonably practical to improve those gradients without either lowering the level of the proposed top of the site through the ridge and furrow pasture and relocating the water main or raising levels at the bottom of the site and affecting retained trees. Those are issues which need to be considered in the planning balance concerning impact on the landscape, trees and infrastructure costs.

The County Council will be updating their guidance to explicitly deal with the gradients between 1/12 and 1/20 in order to avoid these issues in the future.

Tel:

Email: @gloucestershire.gov.uk

Yours Sincerely

Nathan Drover
Highway Development Management Team Manager

Tel:
Email: [@gloucestershire.gov.uk](mailto: @gloucestershire.gov.uk)

Application Response

Land at Oakley Farm, Cheltenham 24/00251/CONDIT



Friends of Oakley Farm
Pasture Slopes



www.oakleyfarmpastures.wixsite.com/oakley

The Friends of Oakley Farm Pasture Slopes - Response to Planning Application 24/00251/CONDIT.

Thank you for the opportunity to comment on this application.

From our detailed review below, Points for Consideration:

1. When read by a reasonable reader the gradients condition is clear and unambiguous as to its requirements.
2. The Inspector's aim in imposing the gradient conditions as written, was to guarantee the provision of safe, suitable, permeable, and sustainable access for all users.
3. During the appeal condition's meetings, GCC were concerned that any gradients between 1:20 and 1:12 could potentially be unrestricted in length and wanted tighter constraint on section lengths between these gradients. The appellants agreed and introduced the "up to" preposition to address GCC's concerns.
4. The appellant understood the reason why "up to" was required by GCC.
5. The appellant intentionally and precisely formulated the draft proposed condition utilizing the term "up to".
6. The appellant was conscious of the requirement that any gradients between 1:20 and 1:12 would be conditioned to a length no greater than 30m.
7. There was no objection to the use of "up to" for any reason in the formulation of the gradients condition by any main party to the appeal.
8. The Inspector was fully aware of the use of "up to" in the draft condition and had been made aware why the phrase was deemed to be necessary.
9. The Inspector had no objection to the use of "up to" in the draft condition.
10. The Inspector didn't find the proposed draft condition ambiguous, and neither did Gloucestershire County Council, Robert Hitchins (the Appellant), The Cotswold Conservation Board, Cheltenham Borough Council or The Friends of Oakley Farm Pasture Slopes.
11. The Inspector was considering all potential road and footpath users when establishing the gradients condition.
12. The appellant at the appeal submitted an Alternative Illustrative Masterplan (AIM) to the Inspector during the inquiry. This AIM demonstrated that a development scheme could be successfully implemented within the parameters of the gradients as per the gradients condition.
13. The Inspector could have explicitly limited road and footpath gradients according to the MfGS but chose instead to provide clear and unambiguous specific limits, without the need to reference the MfGS when forming the gradient's condition.

14. The Inspector's choice of an unambiguously written gradients condition, distinct from the MfGS, was deliberate and appropriate for the appeal at hand.
15. Conditions are imposed to make a development acceptable in planning terms; therefore, failure to comply with conditions can make them unacceptable, as the Inspector implied in this case. DL76¹
16. The applicant has not provided any credible evidence to explain why the use of the words “up to”, in any context, is ambiguous. Their legal advisors seem to offer questionable clarity.
17. Replacing the words “up to” with “of”, to our minds, introduces ambiguity.
18. A significant portion of the applicant's argument aims to persuade the reader that the Inspector intended to formulate his condition solely in accordance with the MfGS. However, it is evident that this was not the Inspector's intention.
19. The Council’s legal opinion is clear that the courts would favour GCC’s view that the condition restricts lengths between gradients of 1:20 and 1:12.
20. Our evidence below would add weight to the Council’s legal advice in supporting GCC’s view.
21. Crucially, the evidence in this document clarifies precisely why the words 'up to' were included in condition 13, dispelling any perceived ambiguity about the intended purpose of the condition. Consequently, it rebuts the sole reason² for the applicant's proposal to modify the condition, and, as a result, the application should be recommended for refusal.
22. The Town and Country Planning Act empowers planning inspectors to impose "such conditions as they think fit".
23. The Inspector determined, at DL125, that his gradients condition 13 was necessary to provide safe access to and across the site.
24. We can all engage in speculation and conjecture about the Inspector's reasoning behind deeming the specified condition on gradients as the most suitable and necessary, as well as his intentions concerning the MfGS. Nevertheless, the undeniable reality is that the condition was imposed as written, substantiated by evidence that validates both its wording and the rationale for its inclusion. No compelling arguments have been made to warrant its modification.

The Detail:

PART 1 – The Question of Ambiguity.

The Friends have accepted the inevitability of development at Oakley Farm. Outline approval is in place for up to 250 houses on the site, and there is no doubt that Cheltenham needs homes of all types. However, it is crucial that any new homes are appropriately situated in sustainable and accessible places, ensuring suitable locations for all future occupants.

¹ See endnote i

² Application covering letter. ...to address ambiguity inherent in the original wording of the condition...

The Friends of Oakley Farm Pasture Slopes actively participated as a Rule 6 party in the appeal inquiry 3273053, which was subsequently allowed. This extensive appeal covered various topics over several days, with a particular focus on highway-related issues, especially those concerning gradients. Throughout the discussions, concerns were raised about the appropriateness of establishing access on a significantly sloping site. Despite addressing the potential traffic impact on Harp Hill, a persistent question lingered: Could any developer create access that is compliant, safe, sustainable, and suitable for all users? According to “The Friends”, it was never convincingly demonstrated that such a feat could be achieved.

The original applicant has now moved on, and the new developer has discovered the subtleties of the access arrangements as conditioned. Compliance will be challenging when aiming to accommodate 250 properties on this steeply sloping and TPO-restricted site, within an Area of Outstanding Natural Beauty (AONB).

Planning Application 24/00251/CONDIT:

The proposal from the applicant’s covering letter:

“The application seeks consent to vary condition 13 of the outline permission ... to address ambiguity inherent in the original wording of the condition that has become apparent during the latter stages of the reserved matters determination process (23/01691/REM)”.

Applicant’s reasoning from the covering letter:

“It is proposed to vary the wording of the final sentence of condition 13, removing the words ‘up to’ and replacing them with ‘of’ to avoid any ambiguity as to the intended purpose of the condition having regard to the provisions of The Manual for Gloucestershire Streets (MfGS) which is the quoted authority relied upon by the Inspector in reaching his decision for determining the acceptability of gradients within the site.”

Planning conditions general:

Conditions are intended to ensure that proposed developments align with specific criteria or mitigate potential negative impacts.

NPPF 56 states:

“Planning conditions should only ... be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”

Planning Practice Guidance states:

“... conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission...”

The Town and Country Planning Act enables planning Inspectors in granting planning permission to impose “such conditions as they think fit”.

Our Understanding:

The Inspector deemed it necessary to impose the gradients condition as written, to make the development acceptable. Therefore, without the condition as imposed, and having regard to DL 76,ⁱ the appeal would have failed.

The applicant is requesting a variation to the wording of the final sentence of condition 13. Specifically, they propose removing the words ‘up to’, and replacing them with the word ‘of’. Their reasoning is to avoid any ambiguity in the intended purpose of the condition, having regard to the MfGS.

Our Intentions:

The Friends will demonstrate that there is no ambiguity in the offending sentence of condition 13, as claimed. We will evidence this by explaining the evolution of the condition, which will also clarify why “up to” is incorporated into the condition as it is. Furthermore, we will consider the Inspector’s reasoning behind his including the condition as written. Additionally, in Part 2 we will demonstrate that the MfGS was not the only authority relied upon by the Inspector when he imposed condition 13.

In turn, we will explain why condition 13 should remain unmodified and why it remains relevant.

Condition 13, “up to” evolution:

As is common practice at appeals, planning conditions can be negotiated and agreed by interested parties connected to, but operating on the edge of the public inquiry, subsequently the conditions are presented to the Inspector for approval. Records show that condition 13 was arrived at in this way.

A detailed email trail should be available in the CBC planning system for inspection, which shows how the relevant sentence of condition 13 evolved. However, it is summarised in endnote ⁱⁱ at the end of this document, and précised below:

1. The Council initially proposed a condition for site access requiring an average gradient of 1:20 on footpaths and cycleways, with steeper gradients no greater than 1:12 limited to 30m lengths.
2. The appellant suggested an amendment to this, requiring access to be generally designed with gradients between 1:12 and 1:100, with gradients of 1:12 limited to 30m.
3. The Council rejected this, emphasizing adherence to the 1:20 average, because the wording proposed by the appellant would allow a gradient of, for example, 1:12.5 to be acceptable at any length. (*“The Friends” understand that this was included to remove any ambiguity in the suggested condition. A similar clarifying note was made to the Inspector in “The Friends” response to the AIM*)ⁱⁱⁱ
4. The appellant responded and finalised with: The reserved matters submissions relating to access are required to be generally designed so that maximum and

minimum gradients allowable will be 1:20 and 1:100 respectively, save that gradients **up to** 1:12 are permissible provided where they are proposed these shall be limited to maximum lengths of 30m.

5. This was accepted by GCC and subsequently forwarded to the Inspector.

The key takeaway from the evolution of the agreed condition, is that it was the appellant who introduced the words 'up to', to limit lengths to 30m where gradients steeper than 1:20 are proposed. This change was made at the specific request of GCC. The planning inspector was fully aware of this detail.

If there is ambiguity in the use of “up to” as the current applicant proposes, which is contrary to our view, then the above evidence clears that assertion.

Overview:

Throughout the process, the Planning Inspectorate was regularly updated with the latest amendments to the conditions. As noted in endnote i, the Appellant’s Counsel informed both the Inspector and the inquiry, specifically, about the modified gradients condition. Attention was repeatedly drawn to gradients during the inquiry, casting doubt on their achievability within the then-current masterplan. The Inspector sought assurance on this matter and requested the appellant provide an Alternative Illustrative Masterplan (AIM) to demonstrate, among other things, that the proposed gradients, as per the suggested condition, could be achieved. The appellant agreed, and an AIM was produced, claiming to meet the required gradients, thereby satisfying the Inspector. To eliminate any uncertainty regarding the appellant’s motivation for providing the AIM, they informed the inquiry of several points for clarity. For completeness, we have included these as an endnote.^{iv}

Part 2 - The intention of the Inspector.

The applicant’s proposal:

“It is proposed to vary the wording of the final sentence of condition 13, removing the words ‘up to’ and replacing them with ‘of’ to avoid any ambiguity as to the intended purpose of the condition having regard to the provisions of The Manual for Gloucestershire Streets (MfGS) which is the quoted authority relied upon by the Inspector in reaching his decision for determining the acceptability of gradients within the site.”

Our Understanding:

We understand that from the applicant’s perspective the inspector primarily relied on the MfGS when assessing the acceptability of the site's road gradients, and as such, this influence should be reflected in the condition's wording.

Our response:

We argue that had the Inspector intended to specifically limit gradients solely according to the MfGS guidelines as written, he could have easily made that choice. However, he decided to use clear, fresh, and unambiguous language, establishing precise limits for

expected gradients without referencing the MfGS in the condition. This approach avoids any conflict and potential ambiguity with the condition's wording. While it's likely that the chosen condition drew inspiration from the MfGS, the Inspector had total insight into its development and a thorough understanding of the reasons behind its wording.³

We perceive the applicant's position as overly simplified, offering a limited assessment of the factors considered by the inspector in addressing the gradient issue. In our view, the Inspector considered the MfGS as just one factor in shaping the gradients condition, accepting compliance with its standards perhaps as a starting point. However, he also considered alternative sources of guidance, including MfS, MfS2, IM,⁴ and their gradient related content, such as permeability, accessible routes for all, including cyclists and pedestrians, and considerations for those with protected characteristics. Importantly, he also had in mind the scheme proposed by the appellant, the Alternative Illustrative Masterplan (AIM).

The Inspector was satisfied the AIM adhered entirely to the widely supported, cross-party agreed draft gradients condition, and also the MfGS. The Inspector had requested that the appellants provide the AIM to ascertain that a scheme was possible that could align with the proposed draft condition. The AIM did just that, and so the Inspector chose to use the draft gradients condition. A condition that was not only AIM compliant, but satisfied the requirements of the MfGS, had been proposed and agreed by the appellant, was precise and unambiguous, and was satisfactory to GCC Highways. The Inspector clearly deemed it the most suitable gradients condition for the appeal that he was determining and had no inclination to reference the MfGS.

After considering the above, had the Inspector been minded to formulate a condition strictly and exclusively in accordance with, and referencing the MfGS' gradient factors, it is remarkable that he refrained from doing so, despite having the option to draft one straightforwardly. Evidently, he required more than this, determining that an overarching unambiguous condition was needed.

In the future, when reviewing the reserved matters application, the decision maker's sole focus in assessing gradient compliance is to determine whether the gradients adhere to the specified limits outlined in condition 13. There is no requirement to consider MfGS, as it does not constitute a component of the condition.

Summary:

The inspector meticulously reviewed various guidance documents, with the MfGS being just one among them. Already familiar with the draft gradients condition, he acknowledges its alignment with the MfGS and is content with the AIM's compliance. Deeming the draft gradients condition the most effective solution, he integrates it into his decision.

Our findings indicate that the Inspector thoroughly took into account a diverse range of gradient-related factors, affirming that the gradient condition was not

³ Email evidence is available to show that the Planning Inspectorate were informed of the progress of the draft gradient condition's development.

⁴ Manual for Streets, Manual for Streets 2, Inclusive Mobility.

exclusively derived from the MfGS. The primary objective behind imposing the gradient condition as written, was to guarantee the establishment of safe, suitable, permeable, and sustainable access for all users. There is no ambiguity in this respect. We argue that the inclusion of the gradients condition, as expressed, was crucial to facilitating the outline proposal, and its absence would have inevitably led to the rejection of the appeal.

Overall conclusion:

Based on the presented evidence, succinctly summarized at the beginning of this document, the evolution of the words “up to” in condition 13 has been established, including the rationale for their inclusion, intended interpretation, and the overall purpose of conditioning the gradients as published. Additionally, we have shown that the Inspector, was well-informed when determining the gradient’s condition, balancing multiple gradient factors. In summary, there is no ambiguity in the use of the words “up to” in condition 13, which limits any proposed gradients between 1:20 and 1:12 to lengths of no more than 30m. This aligns with the opinions of GCC Highways and CBC’s legal advice. The Inspector was fully aware of the condition that he was applying and the gradient restrictions that it imposed.

If, as suggested by the applicant, the words "up to" are substituted with "of," we contend that such a change would introduce imprecision, uncertainty, and ambiguity within the condition. This deviation from clarity would not align with the policy outlined in NPPF 56 and would, in this instance, contravene good planning practice. Allowing the planning proposal to influence the planning condition, in this way, runs counter to sound planning principles.

Considerations:

In determining this application to amend the planning condition, we believe it should not be considered by the decision maker as yet another planning balance exercise. The Inspector has already performed this, determining the necessity of the condition in its current form to allow the appeal, and to make the outline plan acceptable. Consequently, such assessment stands as a specific prerequisite for any forthcoming detailed planning proposal.

The application to change the wording of condition 13 as proposed should be refused.

Endnotes:

ⁱ Appeal Decision Letter. DL 72-76

72. The second highway issue raised by the County Council on which there was much discussion relates to gradients across the appeal site. Policy SD4(vii) of the JCS requires, amongst other things, that new development should be fully consistent with guidance set out in the Manual for Gloucestershire Streets (MfGS) and other relevant guidance in force at the time. The MfGS, published in July 2020, states that generally the maximum gradients allowable in new developments should not exceed 1:20, but consideration can be given to 1:12. Where the latter is proposed, no stretch should exceed 30 metres.

73. The Council argues that any failure to comply with these standards would represent a clear breach of development plan policy. Conversely, the appellant says that the current draft of the MfGS postdates the adoption of the JCS (December 2017) and therefore cannot logically require compliance with it in any event. However, it seems to me that the clear intention of the JCS Policy is that the relevant applicable guidance is that in force when a planning application is determined, and not some earlier superseded iteration of it. The appellant's approach would run counter to a common sense application of the policy.

74. To complicate matters, in addition to the local standards within the MfGS, there are a range of standards in national guidance documents. For example, Manual for Streets does not impose a requirement of 1:12 but says in respect of cyclists and pedestrians that gradients should ideally be no more than 5% (1:20), although it is acknowledged topography may make this difficult to achieve. Manual for Streets 2 (MfS2), in respect of carriageway gradients, allows for a practical maximum of 8% (1:12) but allows for steeper gradients where there are 'particular local difficulties'. In relation to pedestrian routes, MfS2 states the gradient should ideally be no more than 5% (1:20), although topography make this difficult to achieve; and that as a general rule 8% (1:12) should be considered a maximum, which is the limit for most wheelchair users, as advised in Inclusive Mobility.

75. As the appellant notes, the MfGS has not been consulted upon publicly and has not been through the same statutory processes that govern development plans. The MfGS is ultimately technical guidance. This means it cannot have statutory force, but it should not be ignored. During the Inquiry, to address the Council's concerns, the appellant produced an Alternative Illustrative Masterplan which demonstrated that a road layout could technically be achieved to comply with the more stringent local MfGS requirements. A condition has also been suggested requiring full compliance with the MfGS standards, although the appellant does not consider it to be necessary.

76. In my judgement, there must be some degree of flexibility to take account of natural topography, but developments should be as permeable as possible and offer attractive pedestrian and cycle routes which are accessible for all users. Given it has been demonstrated that it is possible to design a scheme that would adhere to the MfGS, I see no good reason why a suitably worded condition cannot be imposed in this instance. In these circumstances, no objections with respect to gradients can be sustained, nor can it be a reason for the appeal to fail.

ⁱⁱ Content from emails of the appeal condition's negotiations.

The Council's initially suggested Condition relating to site access:

"The reserved matters submissions relating to highways and access are required to demonstrate how an average gradient of 1:20 on all internal footpaths and cycleways can be achieved across the site, with steeper gradients of no greater than 1:12 being limited to 30m lengths of pathways.

Reason: To ensure that safe and suitable access is provided for all users and is maintained in the interests of highway safety."

The appellant's team reviewed the above and suggested the following amendment:

“The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/12 and 1/100 respectfully, where 1/12 gradients are proposed these shall be limited to maximum lengths of 30m.”

The council’s response: (This iteration is released by way of information to the Planning Inspectorate)

“GCC cannot agree this amendment, guidance is clear, an average of 1:20 across a site should be achieved with stretches of 1:12 being no longer than 30m. This wording would permit 1:12.5 to be acceptable across the site, which does not comply with the spirit of the guidance nor proactively encourage active travel or inclusivity for people with protected characteristics.”

The appellant’s responded with:

“The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients **up to** 1/12 are permissible provided where they are proposed these shall be limited to maximum lengths of 30m.

The above text was included in a covering email, info to the inspectorate, which specifically highlighted the use of the words “up to”.

On the previous day there was an email sent from the Appellants Counsel to the Planning Inspectorate reiterating the inclusion of “up to”: “...The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients up to 1/12 are permissible provided where they are proposed these shall be limited to maximum lengths of 30m.”

ⁱⁱⁱ Extract from “The Friends” response to the AIM: We would consider it a not unreasonable assumption to read gradients of 1:12 (8.33%) as “gradients up to 1:12” otherwise a gradient of 1:12.1 (8.26%) could be deemed completely acceptable at any length. The appellant appears to concur with this assumption should it be the case that the inspector is in agreement with the GCC gradients detail. This is reflected in the proposed/modified condition 11.

^{iv} “The Appellant has always maintained that the original masterplan is deliverable and remains appropriate for an outline application.

The alternative masterplan was only produced because we were asked to produce it. That is because questions that were being raised by the other parties about whether it would be deliverable with the GCC preferred gradients.

The Appellant’s primary position is that the GCC preferred gradients are not a requirement of the scheme – see the Highways evidence and cross examination.

Even if the Inspector was to impose the GCC preferred gradients, the Appellant has simply demonstrated that they could still be achieved within the same development footprint but with an altered internal layout (which will be addressed at RM stage anyway).

The additional detail that was provided to GCC in terms of sections etc. was simply for information purposes for GCC so that they could understand how the levels would work.

The alternative Masterplan is simply a second iteration of the original plan based on the same principles and in accordance with the tested parameter plans.

The scheme has not changed. The submitted information is simply to assist the inquiry and to provide the Inspector with comfort that the scheme is deliverable.

We don't consider it necessary to recall witnesses as the information should already answer the queries that have been raised by the LPA, GCC and the R.6 parties.”

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990

AND LAND AT OAKLEY FARM, CHELTENHAM

AND PLANNING APPLICATIONS 20/01069/OUT AND 23/01691/REM

OPINION (2)

Introduction

1. I am instructed to advise Vistry Homes Limited (“Vistry”) through their consultants, Nexus Planning, in respect of the development of Land at Oakley Farm (“the Site”), within Cheltenham Borough Council (“the Borough Council”).
2. I am specifically asked to advise as to the correct interpretation of Condition 13 attached to Planning Permission 20/01069/OUT (“the Outline Permission”), which was granted permission on appeal (APP/B1605/W/21/3273053) on 5 October 2022, in the context of:
 - (1) Planning Application 23/01691/REM seeking to discharge reserved matters (“the Reserved Matters Application”);
 - (2) Gloucestershire County Council, the Highway Authority (“the County Council”) change of position in respect of the interpretation of Condition 13 between July 2023 and December 2023 in the course of considering the Reserved Matters Application.
3. In summary, my advice is that the current Application does comply with Condition 13 as it is presently worded. There is no requirement for variation.
4. My instructing consultants met with the Borough Council and County Council on Thursday 11 January 2024. This advice supplements an earlier Opinion discussed at that meeting, providing a more extensive reference to the key sections of the Inspector’s Report and the consequent explanation for the interpretation of the Condition.

Factual Background

5. The factual background will be well-known to those instructing and to the Borough Council and County Council and I shall therefore only summarise the core facts.
6. On 5 October 2022, Inspector Nunn granted the Outline Permission, with the following description, following an inquiry heard during 2021 and 2022:

“development comprising up to 250 residential dwellings, associated infrastructure, ancillary facilities, open space and landscaping; demolition of existing buildings; creation of new vehicular access from Harp Hill’.”

7. The Inspector considered the disputed issue of gradients of access across the Site as follows, with footnotes 70-74 in square brackets:

Gradients

72. *The second highway issue raised by the County Council on which there was much discussion relates to gradients across the appeal site. Policy SD4(vii) of the JCS requires, amongst other things, that new development should be fully consistent with guidance set out in the Manual for Gloucestershire Streets (MfGS) and other relevant guidance in force at the time. The MfGS, published in July 2020 [70], states that generally the maximum gradients allowable in new developments should not exceed 1:20, but consideration can be given to 1:12. Where the latter is proposed, no stretch should exceed 30 metres.*

73. *The Council argues that any failure to comply with these standards would represent a clear breach of development plan policy. Conversely, the appellant says that the current draft of the MfGS postdates the adoption of the JCS (December 2017) and therefore cannot logically require compliance with it in any event. However, it seems to me that the clear intention of the JCS Policy is that the relevant applicable guidance is that in force when a planning application is determined, and not some earlier superseded iteration of it. The appellant’s approach would run counter to a common sense application of the policy.*

74. *To complicate matters, in addition to the local standards within the MfGS, there are a range of standards in national guidance documents. For example, Manual for Streets does not impose a requirement of 1:12 but says in respect of cyclists and pedestrians that gradients should ideally be no more than 5% (1:20), although it is acknowledged topography may make this difficult to achieve [71]. Manual for Streets 2 (MfS2), in respect of carriageway gradients, allows for a practical maximum of 8% (1:12) but allows for steeper gradients where there are ‘particular local difficulties’ [72]. In relation to pedestrian routes, MfS2 states the gradient should ideally be no more than 5% (1:20), although topography make this difficult to achieve; and that as a general rule 8% (1:12)*

should be considered a maximum, which is the limit for most wheelchair users, as advised in Inclusive Mobility [73].

75. As the appellant notes, the MfGS has not been consulted upon publicly and has not been through the same statutory processes that govern development plans. The MfGS is ultimately technical guidance. This means it cannot have statutory force, but it should not be ignored. During the Inquiry, to address the Council's concerns, the appellant produced an Alternative Illustrative Masterplan which demonstrated that a road layout could technically be achieved to comply with the more stringent local MfGS requirements. A condition has also been suggested requiring full compliance with the MfGS standards, although the appellant does not consider it to be necessary.

76. In my judgement, there must be some degree of flexibility to take account of natural topography, but developments should be as permeable as possible and offer attractive pedestrian and cycle routes which are accessible for all users [74]. Given it has been demonstrated that it is possible to design a scheme that would adhere to the MfGS, I see no good reason why a suitably worded condition cannot be imposed in this instance. In these circumstances, no objections with respect to gradients can be sustained, nor can it be a reason for the appeal to fail.

[Footnotes:

70 CD I4

71 CD I2, Paragraph 6.3.27

72 CD I3, Paragraph 8.4.2

73 Department of Transport, 2005

74 Paragraph 112 of the Framework]

8. Those reasons were briefly supplemented at DL125:

“Conditions relating to highway works, their implementation and future management, including cycle ways and footways are necessary to provide safe access to and across the site (13, 14, 15, 16, 17).”

9. Condition 13 of the Outline Permission provided (NB with all underling and bold emphasis added both in this excerpt and below):

*13) Notwithstanding the illustrative proposed access arrangements on to Harp Hill, as shown on Access and Movement Parameter Plan ref: P18-0847_02 Sheet No.3 rev F and the Alternative Illustrative Masterplan ref. 18017.202 Rev B, full details of the proposed access junction on to Harp Hill shall be submitted to and approved in writing by the local planning authority as part of the first reserved matters submission. The access shall be installed in accordance with the approved details and made available for use prior to the first occupation of any dwelling. **The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.***

10. During 2023, Nexus and Vistry's other instructed consultants (including PJS in respect of highways and transport matters) engaged in considerable detailed work and discussions with the Borough Council, the Gloucestershire County Council (as Highways Authority) and other parties, including work under a Planning Performance Agreement.
11. On 19 July 2023, PJS wrote to the County Council to confirm that in applying Condition 13 the intended approach was as follows: *"we can go up to 1:12 for 30m and then enter a vertical (i.e. value 2) to transition into 1:20 and then vertical curve into 1:12 (i.e. 1:12 for a maximum of 30m between tangent points)."*¹
12. PJS then excerpted the Manual for Gloucestershire Streets (July 2020) ("MfGS"), which the Appeal Inspector had referred to a number of times (throughout DL72-76 recorded above). The key section provides as follows (page 30):

Vertical Alignment

*The Developer must consider the following when designing vertical curves on new developments. **Generally, the maximum and minimum gradients allowable on new developments will be as detailed within the table below:***

<i>Category</i>	<i>Maximum Gradient</i>	<i>Minimum Gradient</i>
<i>All Streets</i>	<i>1:20 (5%), but consideration give to 1:12</i>	<i>1:100</i>
<i>Active Travel Corridors</i>	<i>1:20 (5%)</i>	<i>1:100</i>

Where a 1 in 12 gradient is proposed no length shall exceed 30m.

For clarity the gradient tolerances apply to private driveways and proposed streets.

Additionally, the Developer must consider the curvature of the new highway. The design curve length will be a function of the algebraic change of gradient, expressed as a percentage, multiplied by the 'K' value. 'K' values are provided in the table below:

<i>Category</i>	<i>Minimum "K" Value</i>
<i>Enhanced Streets</i>	<i>6</i>
<i>Informal Streets / Pedestrian</i>	<i>2</i>
<i>Prioritised Streets</i>	<i>2</i>
<i>Active Travel Corridors</i>	<i>2</i>

¹ Excerpts of these e-mails are provided in the Technical Note Access Strategy Compliance Statement (December 2023)

The Developer should note that side road gradients into junctions should be set at a maximum of 1:20 (5%) for the first 10m. Additionally, the minimum vertical curve length of any section of road should be not less than 20m.

Example

The 'K' Value is given by:

Design curve length / Algebraic change of gradient

= 20m /10

= 2

Therefore the above example falls within the design criteria and would be acceptable. The developer should note that where gradients exceed 5% there may be a requirement for a grit bin. In such instances, the developer will need to ensure the design provides an adequate location and that a suitable grit bin is provided.

13. MfGS page 36 records the same text:

Common Design Requirements

The below table details features that apply to all proposed new streets. Where innovative designs are promoted it may be appropriate to deviate from the below give the unique character of the design.

Gradient:

1 in 20

1 in 12 can be permitted, 30m (max)

14. The County Council's Principal Development Coordinator confirmed that the stated approach was a "reasonable interpretation". Additional drawings were requested to illustrate the intended approach. By reply on 20 July 2023, PJS then confirmed that they would proceed "on that basis (1:12 for a maximum of 30m between tangent points) and then supply a contour drawing off the back of the model update".
15. On 29 September 2023, Vistry and Stonewater Ltd submitted the Reserved Matters Application, and this was validated on 4 October 2023.
16. On 4 December 2023, a Technical Note (Access Strategy Compliance Statement) was provided by PJS which recorded the earlier discussion and then summarised the position reached.

17. The Officer's Report summarised the position reached as at early December 2023, including the submission of (a) a Technical Transport Note; (b) Highways drawings; (c) a Revised Technical Transport Note and (d) an additional Longitudinal Section Plan of access arrangements:

6.89 The application is accompanied by a Transport Technical Note and various highway related technical drawings. The Transport Technical Note was revised to add commentary on the proposed road gradients and their conformity with the terms of Condition 13. In summary, the horizontal alignment of the roads has been established to achieve the most effective alignment overall, whilst respecting the constraints of the existing TPO trees and their associated root protection areas across the site. The GCC MfGS Highways Design Guidance prescribes maximum and minimum grades of 1:20 and 1:100 respectively, with 1:12 sections permitted for max 30m lengths, as per the requirements of Condition 13. These requirements have been discussed and agreed with the HA; the vertical design and the proposed road levels are in accordance with these requirements. Similarly, vehicular swept path analysis across the site (including the requirements for refuse vehicles) has also been discussed and agreed with the HA.

6.90 Irrespective of the above, the HA has been re-consulted in respect of the additional Longitudinal Section Plan of access arrangements submitted on 4th December 2023. Members will be notified of their response and whether this alters the HA's recommendation, in an Update report or at Committee.

18. The Update to the Officer Report then recorded a change of position by the County Council, following the departure of the Principal Development Coordinator and the appointment of a new Officer:

1.7. The second issue relates to road gradients and whether the proposed development is in conformity with the requirements of Condition 13 of the outline planning permission. In summary, Condition 13 requires reserved matters submissions relating to access to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.

1.8. The Highway Authority's formal consultee response was received on 9th November 2023 and no objection to the proposals was raised. In response to officers seeking clarification from the applicant that the proposed road gradients comply with the requirements of Condition 13, the Highway Authority has since reviewed the proposed access arrangements and now reached the conclusion that the road gradients within the site, although not exceeding 1:12, include lengths between 1:20 and 1:12 longer than the 30 metre length permissible.

1.9. Accordingly, the Highway Authority has provided the following update to their previous consultee response:

We have received information from Vistry concerning the impact of potential changes to the gradients to fully comply with Condition 13.

By way of background, the County Council accepted the currently proposed road gradients for highways adoption purposes and had agreed that Vistry had complied with the planning condition on the basis that none of their 1/12 gradients were longer than 30 metres. The condition requires the access to be generally designed so that maximum gradients allowable will be 1/20, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.

However, upon reviewing the wording of the planning condition, it is GGC's opinion that the correct interpretation of the condition is that all gradients that are steeper than 1/20 should be restricted to 30m in length.

There are a number of vertical curve transitions between the proposed 1/12 gradients that exceed 30 metres in length and where the average gradient is steeper than 1/20 and therefore it is GCC's opinion that this aspect would not comply with the condition.

Nevertheless, the objective of the condition is to ensure that gradients have been optimised to provide the best circumstances for wheel-chair users etc. So GCC have been working with Vistry to see whether everything that is reasonably practicable has been done to achieve the gradients and whether the proposal can be modified to comply with the exact wording of the condition, i.e. the gradients between 1/12 and 1/20 are shorter than 30m in length.

As mentioned above had accepted the proposed gradients, however if the levels were modified so that they were fully compliant with the wording of the condition, that would have to be done by either raising the lower end of the road or lowering the upper section of the road.

Lowering the upper section of road has some implications that would need to be considered in the planning balance:

- Reduces the currently proposed levels through the open space by a further c.2.2m and widens the earthworks embankments affecting the adjacent public open space;
- Reduces the level of the connecting road and would require additional removal of some hedge / trees where the road crosses the retain north/south hedge.
- Would require further diversion of a 12inch and 18inch water main.
- Would require the exportation of significant higher level of surplus soil.

Raising the lower end of the road has some implications that would need to be considered in the planning balance:

- Raises the existing low spot at least 3m above currently proposes levels.
- Adversely impacts the veteran protected Oak tree by raising levels in the vicinity of the tree.
- Would require additional retaining structures to accommodate the increase in levels.
- Would require the exportation of significant higher level of surplus soil.

1.10. The Highway Authority and planning officers are still in discussion with the applicant on how to resolve this issue. However, at this stage officers are generally not

supportive of the design solutions set out above, which would also need very careful consideration and consultation with the Council's specialist advisors, to minimise harmful impacts on the landscape. It is more likely that the applicant will be advised to submit an application to vary Condition 13 (under s73 of the Town and Country Planning Act). The current scheme (or an amended scheme) could then subsequently be considered alongside an approved varied wording of Condition 13.

1.11. Officers and the Highway Authority will provide a verbal update and explanation of the highway related matters concerning the proposed development's conformity with Condition 13 at Planning Committee on Thursday 14th December 2023.

1.12. In light of the above and to allow for further discussion with the applicant, the officer recommendation is therefore changed to DEFERRAL of the application.

19. I am instructed that, subsequent to the deferral, Nexus have held further telephone discussions with the Borough Council.
20. I understand that the Borough Council's Officers agree that engineering interventions of the nature described in order to achieve compliance with the County Council's interpretation of Condition 13 would not be acceptable for other material reasons.
21. The fundamental question now is therefore whether the County Council's current interpretation of Condition 13 is correct.

Analysis

22. There is a considerable body of case law in recent years on the interpretation of planning conditions, from *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85, [33] through to *Lambeth LBC v SSCLG & Aberdeen Asset Management* [2019] UKSC 3315, *DB Symmetry Limited v Swindon Borough Council* [2021] PTSR 432 ; *R v Ashford Borough Council ex parte Shepway District Council* [1999] PLCR 12 ; *Patel v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 2115 (Admin) ; *Norfolk Homes Limited v North Norfolk District Council* [2021] PTSR 863. As the Planning Court summarised in *Swire v Canterbury City Council* [2022] EWHC 390, [32]

“32. In general, the same principles apply to the interpretation of a planning permission as apply to other legal documents. The question is what would a reasonable reader understand the words used in a permission to mean, read in

the context of the conditions and the consent as a whole. The court has regard to the natural and ordinary meaning of the words used, and the purpose of the consent and other conditions casting light on those words. The context in which a planning permission or a condition must be interpreted includes the legal framework within which permissions are granted. Accordingly, the reasonable reader must be treated as being equipped with some knowledge of planning law and practice.”

23. In my view, it is important to take matters in three stages:

- (1) The wording of the final sentence itself (read in the immediate context of Condition 13;
- (2) The reasons for the condition (recorded at DL72-76 and DL125);
- (3) The external documents referred to in that section of the Report.

(1) *Condition 13's Text*

24. Condition 13's final sentence is commenced with a "generally designed" introduction. I agree with my instructing consultant that this is an important provision which is expressly intended to promote flexibility in the implementation of the condition. In particular, I agree that if maximum was to apply to all distances between 1:20 and 1:12, then "generally" would be redundant.
25. The sentence is then divided by two different conjunctions or dividing terms, which must be read separately: "save that" and "provided that".
26. The second/middle clause follows on from the "generally designed" element in observing that gradients may be "up to 1/12" are permissible, i.e. there must be flexibility beyond 1:20.
27. The final clause is then clearly sub-divided by "provided that". Both of the "they" references to gradients which are at the absolute limit of 1:12.
28. This is illustrated by the bolded text below, with additional square brackets, to denote the split at "provided that":

13) Notwithstanding the illustrative proposed access arrangements on to Harp Hill, as shown on Access and Movement Parameter Plan ref: P18-0847_02 Sheet No.3 rev F and the Alternative Illustrative Masterplan ref. 18017.202 Rev B, full details of the proposed access junction on to Harp Hill shall be submitted to and approved in writing by the local planning authority as part of the first reserved matters submission. The access shall be installed in accordance with the approved details and made available for use prior to the first occupation of any dwelling. [The reserved matters submissions relating to access are required to be **generally designed** so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, **save that** gradients up to **1/12** are **permissible**.] [provided that where **they** are proposed, **they** shall be limited to **maximum** lengths of 30 metres.]

29. In my view, put simply, the County Council have taken the wrong approach in treating the term “they” as covering a wider range of distances (1:20 to 1:12).
30. The use of the word “they” in the plural simply denotes that there will be different locations or areas across the site which will have their own gradient.
31. It does not refer to gradients with individual gradations between 1:20 and 1:12. Equally, there is no requirement to average out distances above 1:20, the maximum only applies to the absolute maximum of 30m.
32. This is a straightforward and natural/ordinary language reading of the final clause and the sentence as a whole. It does not require any strained reading of the condition as a whole. It is also entirely consistent with the Inspector’s reasons and the external guidance, notably MfGS (see below).

(2) *Inspector’s Reasons*

33. The Inspector plainly considered that the MfGS guidance was the most important document, in drafting the condition. DL72 directly refers to MfGS guidance (2020) “states that generally the maximum gradients allowable in new developments should not exceed 1:20, but consideration can be given to 1:12. Where **the latter** is proposed, no stretch should exceed 30 metres.” The “latter” here refers to the fixed number: 1:12. The Inspector does not refer to a wider category of gradients between 1:20 and 1:12. This is consistent with the fixed wording of MfGS on page 30: “Where a 1 in 12 gradient is

proposed no length shall exceed 30m.” and the later page 36: “1 in 12 can be permitted, 30m (max)”.

34. The Inspector observes at DL73 that “*the clear intention of the JCS Policy is that the relevant applicable guidance is that in force when a planning application is determined, and not some earlier superseded iteration of it. The appellant’s approach would run counter to a common sense application of the policy.*” The Inspector therefore made clear considered that he was entitled to place weight on the MfGS, notwithstanding that there was a range of other guidance available.
35. The Inspector then explored the different guidance, with the key section being DL76. At no stage does the Inspector refer to a range of distances between 1:20 and 1:12. Indeed, the Inspector draws out and emphasises those provisions which refer to broader flexibility, thus explaining why the eventual condition wording refers to such gradients as “permissible”:

74. To complicate matters, in addition to the local standards within the MfGS, there are a range of standards in national guidance documents. For example, Manual for Streets does not impose a requirement of 1:12 but says in respect of cyclists and pedestrians that gradients should ideally be no more than 5% (1:20), although it is acknowledged topography may make this difficult to achieve [71]. Manual for Streets 2 (MfS2), in respect of carriageway gradients, allows for a practical maximum of 8% (1:12) but allows for steeper gradients where there are ‘particular local difficulties’ [72]. In relation to pedestrian routes, MfS2 states the gradient should ideally be no more than 5% (1:20), although topography make this difficult to achieve; and that as a general rule 8% (1:12) should be considered a maximum, which is the limit for most wheelchair users, as advised in Inclusive Mobility [73].

75. As the appellant notes, the MfGS has not been consulted upon publicly and has not been through the same statutory processes that govern development plans. The MfGS is ultimately technical guidance. This means it cannot have statutory force, but it should not be ignored. During the Inquiry, to address the Council’s concerns, the appellant produced an Alternative Illustrative Masterplan which demonstrated that a road layout could technically be achieved to comply with the more stringent local MfGS requirements. A condition has also been suggested requiring full compliance with the MfGS standards, although the appellant does not consider it to be necessary.

76. In my judgement, there must be some degree of flexibility to take account of natural topography, but developments should be as permeable as possible and offer attractive pedestrian and cycle routes which are accessible for all users [74]. Given it has been demonstrated that it is possible to design a scheme that would adhere to the MfGS, I see no good reason why a suitably worded condition cannot be imposed in this instance. In these circumstances, no objections with respect to gradients can be sustained, nor can it be a reason for the appeal to fail.

[Footnotes:

70 CD I4

71 CD I2, Paragraph 6.3.27

72 CD I3, Paragraph 8.4.2

73 Department of Transport, 2005

74 Paragraph 112 of the Framework]

36. In summary, the Inspector simply concluded that the suitably worded condition should reflect MfGS, at DL74 noting that this would balance “some degree of flexibility” with the broader objectives of permeability and NPPF 112.

(3) Other Guidance

37. The above analysis is confirmed by a detailed examination of the 4 Guidance documents above, which were all before the Inspector. At no stage has technical guidance published by the DfT or the County Council itself sought to impose a 30m limit on gradients between 1:20 and 1:12. The consistent position has been to (1) recognise the need for flexibility with (2) 1:12 as an absolute maximum. That is ultimately what MfGS provides for within the fixed 30m point.
38. The Inspector did not consider the 2022 Inclusive Mobility Guidance (as this was not before him) but this too does not take such an approach.
39. Put another way, there was no document before the Inspector which required a 30m limit on distances within the intervening category and therefore it is not a correct reading of the condition that the Inspector “invented” such a limitation. Instead the correct reading is that “up to” before “1/12” refers to gradients at the absolute limit.

Conclusion

40. For all the above reasons, I consider that the County Council were correct to agree in July 2023 that the access can be designed with no limitation as to distances, unless gradients are at the absolute limit of 1:12, where those sections may only be 30m in length.

41. The County Council's revised position on Condition 13, as summarised in the Update, does not apply the correct interpretation. Not only is it an incorrect reading of the words used in the Condition, it also has no basis in MfGS.
42. In the unlikely event that the matter were to be placed before an Inspector at s78 appeal, that Inspector would conclude that the proposed scheme is plainly compliant with Condition 13. However, given the considerable amount of work that has already gone into the Application, it would be entirely unreasonable for this case to proceed that far.
43. For all these reasons, there is no requirement for variation of the Condition, either by way of Section 96A or Section 73 TCPA.
44. For all these reasons, in my view, the correct course would be for the County Council to revert to their previous position of July 2023, and for the Borough Council to bring the application back to Planning Committee, with the same recommendation to grant permission.

JAMES CORBET BURCHER

No5 Chambers

11 January 2024

**IN THE MATTER OF LAND AT OAKLEY FARM PRIORS ROAD
CHELTENHAM**

**AND IN THE MATTER OF PLANNING APPLICATIONS 20/01069/OUT AND
23/01691/REM**

ADVICE

1. I am asked to advise Cheltenham Borough Council (“the Council”) in relation to a matter due to be considered by the Council’s planning committee on 15th February 2024.

Background

2. Outline planning permission was granted on 5th October 2022 for the construction of up to 250 dwellings on land at Oakley Farm, Cheltenham (“the Site”) by a planning inspector, following the refusal of permission by the Council.
3. I am helpfully instructed that the appeal was opposed by a number of Rule 6 parties including Gloucestershire County Council (GCC), which maintained a number of highways objections, and a local ‘Friends Group’ which pursued a number of objections including one on highways grounds. Further, that an issue in the appeal was whether the steeply sloping topography of the Site made it impossible for the access roads and pedestrian footways to comply with the

gradient restrictions contained within the GCC highway guide ‘Manual for Gloucestershire Streets’ (“MfGS”).

4. The MfGS provides (at page 30) that gradients should not be less than 1 in 100 or more than 1 in 20, although short lengths of up to 30m will be allowed at no more than 1 in 12. It is of note that the guide is silent on the length of the gradients between 1 to 20 and 1 to 12.
5. In a section of the decision entitled ‘Gradients’ the Inspector concluded (see DL76) that as it had been demonstrated that it was possible to design a scheme that complied with the MfGS, no objections in relation to gradients could be sustained and it should not be a reason for the appeal to fail. The inspector therefore dealt with the matter by way of imposing a condition.
6. Condition 13 provides as follows:

“Notwithstanding the illustrative proposed access arrangements on to Harp Hill, as shown on Access and Movement Parameter Plan ref: P18-0847_02 Sheet No.3 rev F and the Alternative Illustrative Masterplan ref. 18017.202 Rev B, full details of the proposed access junction on to Harp Hill shall be submitted to and approved in writing by the local planning authority as part of the first reserved matters submission. The access shall be installed in accordance with the approved details and made available for use prior to the first occupation of any dwelling. The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.”

7. A reserved matters application was submitted to the Council on 4th October 2023. This contains detailed proposals to comply with several conditions including access arrangements in respect of condition 13. The officer report into the application noted (para 1.10) that lengthy pre-application discussions took place

over the Summer of 2023 with the applicant and the Council and their specialist advisers, with the applicant making a separate pre-application to GCC in its capacity as Highway Authority. The Council officer expressed the view (1.12) that the process was “highly collaborative” and resulted in a “well-considered and high quality scheme, despite the challenges of site topography and retained landscape features”. The proposals are considered to offer “a wholly bespoke approach to these constraints” and to “respond well to the character of the site and its surroundings”.

8. However, an issue has arisen in respect of the interpretation of condition 13. As explained in the supplementary officer report at para 1.7, it concerns whether the road gradients are in conformity with Condition 13. The report notes (para 1.8) that when GCC’s formal consultee response was received on 9th November 2023, no objections were raised, but it had since reviewed the proposed access arrangements and now reached the conclusion that whilst the road gradients within the Site do not exceed 1:12, they do include lengths between 1:20 and 1:12 which are longer than the 30m length permissible according to Condition 13.
9. GCC’s revised opinion is that the correct interpretation of Condition 13 is that all gradients that are steeper than 1:20 should be restricted to 30m in length. It noted that there are a number of vertical curve transitions between the proposed 1:12 gradients and so where the average gradient is steeper than 1:20, in its view that aspect of the scheme would not comply with the condition.
10. For this reason the application was deferred to the meeting of 15th February 2024.
11. GCC referred to the modifications that would be necessary in order to achieve compliance with Condition 13, according to its interpretation but for various reasons, including harmful impacts on the landscape, neither the Council nor the applicant would be content with the implications of those modifications.

Advice

12. I am asked to advise as to the correct interpretation of Condition 13.
13. The applicant has produced an opinion on the matter from a respected planning barrister. I have read this carefully.
14. The issue between the parties is whether (on the applicant's view) the 30m restriction in Condition 13 relates only to sections of the highway at a gradient of 1:12, or whether (on GCC's view) it relates to any lengths of the highway which are at a gradient of between 1:20 and 1:12, ie greater than 1:20.
15. Whilst I appreciate that this is not the most convenient outcome, my fairly strong view is that the correct interpretation of Condition 13 is that the restriction applies to lengths between 1:20 and 1:12 and not simply to lengths meeting the threshold of 1:12. In other words, in my view GCC's interpretation is correct and (testing it this way) is the interpretation that would be favoured by a court.
16. The applicant's opinion correctly sets out the relevant law, which I incorporate by reference and do not need to repeat here (eg *Trump v Scottish Ministers* [2016] 1 WLR 85). The question is what the reasonable reader would understand the words to mean, read in the context of the conditions and the permission as a whole. The court will have regard to the natural and ordinary meaning of the words used and the purpose of the permission and conditions.
17. The key words in Condition 13 in my view are "up to": "...The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients **up to** 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres". This makes it clear in plain wording that gradients up to 1:12 are permissible, provided that

where *those gradients of up to 1:12 are proposed*, they shall be limited to maximum lengths of 30m. I do not consider that there is room for much confusion here.

18. Nor do I consider that the applicant's interpretation properly takes into account the effect of the words 'up to'; the condition would have had to have included a further qualification to refer to 1:12 gradients within the clause: "...provided that where **they** [1:12 gradients] are proposed...".

19. I do not take the same assistance from the word 'generally' as does the applicant. In my view, the better interpretation is that the word 'generally' means that the following parameters refer to the whole scheme. I do not think that it means instead that the restrictions are effectively aspirational in some way. Whilst I note the applicant's interpretation (para 24 et seq), in my view the condition would have to have stated instead, for example, "Generally, the reserved matters submissions are to be designed so that...".

20. I do take into account that the MfGS is silent on lengths between 1:20 and 1:12 and I acknowledge that that could be persuasive in favour of the applicant's interpretation. I also wish to stress that I do not consider that the applicant's interpretation is unreasonable or outside the range of possible interpretations. However, in my view GCC's interpretation is the least strained of the two competing interpretations.

21. Clearly, however, this has become rather a technical issue in the context of a consented scheme the delivery of which the Council is now (according to my instructions) content to support. I would therefore advise that the best solution is for the applicant to make a s73 application so that the wording of Condition 13 can be reconsidered along with the effect (if any) of the silence within the MfGS in relation to lengths of highway between 1:20 and 1:12. For the avoidance of

doubt I do not consider that a s96A application is likely to be appropriate, as I doubt that this would properly be considered only a non-material amendment.

22. I believe that this advice deals with the relevant issues. If those instructing would like to discuss any issues arising, they should not hesitate to contact me.

Kate Olley
Francis Taylor Building
30th January 2024

APPLICATION NO: 23/01691/REM	OFFICER: Mrs Lucy White
DATE REGISTERED: 4th October 2023	DATE OF EXPIRY: 24th January 2024
WARD: Battledown	PARISH: Charlton Kings
APPLICANT:	Vistry Homes Limited And Stonewater Limited
AGENT:	Mr Tony Clements
LOCATION:	Oakley Farm Priors Road Cheltenham
PROPOSAL:	Application for approval of Reserved Matters (access, appearance, landscaping, layout and scale) following outline planning permission for residential development of up to 250 dwellings and associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and creation of a new vehicular access from Harp Hill (in accordance with the terms of outline planning permission 20/01069/OUT). Details are also submitted in relation to conditions 6 (phasing), 9 (Energy and Sustainability Statement), 13 (Harp Hill access junction details) and 25 (hard and soft landscaping and boundary treatment) of 20/01069/OUT.

Update to Officer Report

1. OFFICER COMMENTS

- 1.1. A revised list of suggested conditions is set out at the end of this report and supersedes the conditions schedule within the original Officer Committee report. In summary, conditions have been added in relation to site levels and ridge heights, sustainability (no gas serving development and provision of water butts), obscure glazing to one plot, a timetable for implementation of hard and soft landscaping and details of the proposed screen wall planting to the apartment buildings.
- 1.2. For completeness, a full list of the conditions attached to the outline planning permission is also provided at the end of the report.
- 1.3. Since the publication of the Officer report, a number of unforeseen but material issues have arisen which must be brought to Members' attention. The first relates to finished ground levels and building ridge heights and their conformity with the Building Heights Parameter Plan (drawing ref: drawing P18-847_02 sheet 04 Rev C) of the outline planning permission (20/01069/OUT). For ease of reference, this drawing is also provided at the end of the report.
- 1.4. Condition 5 of the outline planning permission requires applications for approval of reserved matters to be in substantial accordance with the Building Heights Parameter Plan. The parameter plan restricts building heights above future ground level to 10.5 metres or 12 metres within defined areas of the site. This plan also includes an

annotation which states that '*future ground level allows for a maximum of 1.5 metres above the existing ground level (this establishes appropriate drainage, balance cut and fill and align street and buildings to consistent levels)*'.

- 1.5. There are some instances across the site where the 1.5 metres allowance above existing ground levels is exceeded, with some future ground levels being 3 metres above existing ground levels. However, there are no instances across the site where building heights exceed either the 10.5 or 12 metre ridge height limit (whichever is applicable to that plot) above existing ground levels plus the additional 1.5 metre allowance.
- 1.6. Officers are not overly concerned about these future ground level increases above the 1.5 metre parameter plan allowance. At outline stage, the engineering and drainage challenges and the overall feasibility of delivering a 250 dwelling scheme on a significantly sloping site had not been fully investigated or tested. Applying a 1.5 metre increase in ground levels across the whole site is considered a rather simplistic and generalised approach in the absence of any testing. As such, and on balance, officers consider the finished ground levels to be acceptable and the proposed development in substantial accordance with the Building Heights Parameter Plan. Officers are also strongly of the view that the merits of the proposed development must be considered as a whole and there are many positives associated with the proposals that outweigh the effects of any future ground levels exceeding the 1.5 metre limit set by the parameter plan.
- 1.7. The second issue relates to road gradients and whether the proposed development is in conformity with the requirements of Condition 13 of the outline planning permission. In summary, Condition 13 requires reserved matters submissions relating to access to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.
- 1.8. The Highway Authority's formal consultee response was received on 9th November 2023 and no objection to the proposals was raised. In response to officers seeking clarification from the applicant that the proposed road gradients comply with the requirements of Condition 13, the Highway Authority has since reviewed the proposed access arrangements and now reached the conclusion that the road gradients within the site, although not exceeding 1:12, include lengths between 1:20 and 1:12 longer than the 30 metre length permissible.

1.9. Accordingly, the Highway Authority has provided the following update to their previous consultee response:

We have received information from Vistry concerning the impact of potential changes to the gradients to fully comply with Condition 13.

By way of background, the County Council accepted the currently proposed road gradients for highways adoption purposes and had agreed that Vistry had complied with the planning condition on the basis that none of their 1/12 gradients were longer than 30 metres. The condition requires the access to be generally designed so that maximum gradients allowable will be 1/20, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres. However, upon reviewing the wording of the planning condition, it is GGC's opinion that the correct interpretation of the condition is that all gradients that are steeper than 1/20 should be restricted to 30m in length. There are a number of vertical curve transitions between the proposed 1/12 gradients that exceed 30 metres in length and where the average gradient is steeper than 1/20 and therefore it is GCC's opinion that this aspect would not comply with the condition.

Nevertheless, the objective of the condition is to ensure that gradients have been optimised to provide the best circumstances for wheel-chair users etc. So GCC have been working with Vistry to see whether everything that is reasonably practicable has been done to achieve the gradients and whether the proposal can be modified to comply with the exact wording of the condition, i.e. the gradients between 1/12 and 1/20 are shorter than 30m in length.

As mentioned above had accepted the proposed gradients, however if the levels were modified so that they were fully compliant with the wording of the condition, that would have to be done by either raising the lower end of the road or lowering the upper section of the road.

Lowering the upper section of road has some implications that would need to be considered in the planning balance:

- *Reduces the currently proposed levels through the open space by a further c.2.2m and widens the earthworks embankments affecting the adjacent public open space;*
- *Reduces the level of the connecting road and would require additional removal of some hedge / trees where the road crosses the retain north/south hedge.*
- *Would require further diversion of a 12inch and 18inch water main.*

- *Would require the exportation of significant higher level of surplus soil.*

Raising the lower end of the road has some implications that would need to be considered in the planning balance:

- *Raises the existing low spot at least 3m above currently proposes levels.*
- *Adversely impacts the veteran protected Oak tree by raising levels in the vicinity of the tree.*
- *Would require additional retaining structures to accommodate the increase in levels.*
- *Would require the exportation of significant higher level of surplus soil.*

1.10. The Highway Authority and planning officers are still in discussion with the applicant on how to resolve this issue. However, at this stage officers are generally not supportive of the design solutions set out above, which would also need very careful consideration and consultation with the Council's specialist advisors, to minimise harmful impacts on the landscape. It is more likely that the applicant will be advised to submit an application to vary Condition 13 (under s73 of the Town and Country Planning Act). The current scheme (or an amended scheme) could then subsequently be considered alongside an approved varied wording of Condition 13.

1.11. Officers and the Highway Authority will provide a verbal update and explanation of the highway related matters concerning the proposed development's conformity with Condition 13 at Planning Committee on Thursday 14th December 2023.

1.12. In light of the above and to allow for further discussion with the applicant, the officer recommendation is therefore changed to DEFERRAL of the application.

CONDITIONS

- 1 The development shall be begun not later than the expiration of two years from the date of this decision.

Reason: To accord with the provisions of Section 92 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 Affordable housing shall be provided on the site in accordance with the approved plans and the statement (Ref: P20-2940) dated April 2021 submitted on behalf of the applicant; and in accordance with the terms of the signed s106 agreement.

Reason: To ensure that an appropriate mix of affordable housing is provided, having regard to adopted policy SD12 of the Joint Core Strategy (2017).

- 4 Sample panels of all facing and roofing materials of at least one square metre each, shall be provided on site to illustrate the proposed palette of materials. Prior to commencement of any above ground works, the sample panels and an accompanying written specification of the proposed facing and roofing materials shall be approved in writing by the Local Planning Authority and thereafter retained on site for the duration of the construction period.

The sample panels shall demonstrate the proposed colour, texture and finish of the external facing materials to be used for all proposed dwellings/buildings and shall provide details of the proposed bond and pointing profile of all external brickwork.

All dwellings/buildings shall be constructed in accordance with the approved material details.

Reason: In the interests of the character and appearance of the area, having regard to adopted policy D1 of the Cheltenham Plan (2020) and adopted policies SD4 and SD7 of the Joint Core Strategy (2017).

- 5 Notwithstanding the submitted details, prior to the implementation of any hard surfaces within the site, including driveways, parking and turning areas, footways and patios, details of all hard surfacing materials shall be submitted to and approved in writing by the Local Planning Authority. All new hard surfacing areas shall be permeable or drain to a permeable area and shall be carried out in accordance with the approved details prior to first occupation of the dwellings (or phase of development) to which the materials relate.

Reason: In the interests of the character and appearance of the area, having regard to adopted policy D1 of the Cheltenham Plan (2020) and adopted policy SD4 of the Joint Core Strategy (2017).

- 6 Notwithstanding the submitted details, prior to the commencement of development and in accordance with the principles set out in the approved Landscape and Environmental Management Plan (LEMP) (March 2021), and the Management Measures set out at section 10 of the approved Landscape Design Statement (November 2023), a detailed landscape and tree management and maintenance scheme (LTMMS) for the short (5-year), medium (10-year), and long (30-year) term, informed by a comprehensive tree survey of the site, shall be submitted to and approved in writing by the local planning authority. The submitted details shall also include a detailed scheme for the retention and future management and maintenance of ridge and furrow landscape features within the site, including details of all footpath construction and tree planting that affects ridge and furrow.

Any risk management and maintenance work relating to retained trees, and ongoing management provisions for veteran trees that are identified to be required, shall be carried out in accordance with the approved LTMMS and undertaken in accordance with BS 3998:2010 - Tree Work Recommendations.

Reason: In the interests of the character and appearance of the area, having regard to policies D1, GI2 and GI3 of the Cheltenham Plan (2020) and adopted policies SD4 and INF3 of the Joint Core Strategy (2017).

- 7 Notwithstanding the submitted information, prior to the commencement of development, a detailed timetable for the implementation of all proposed hard and soft landscaping and tree planting works (to include those carried out in public open space and private amenity areas) shall be submitted to and approved in writing by the local planning authority. The timetable shall correspond with the approved Landscaping Phasing Plan. The approved hard and soft landscaping works shall be carried out in accordance with the approved timetable for implementation.

Reason: In the interests of the character and appearance of the area, having regard to policies D1, GI2 and GI3 of the Cheltenham Plan (2020) and adopted policies SD4 and INF3 of the Joint Core Strategy (2017).

- 8 Notwithstanding the submitted details, prior to the implementation of any new boundary treatments, details of all new boundary walls, railings, fences or other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall thereafter be implemented in accordance with the approved details and prior to first occupation of the dwellings to which the boundary treatment (or phase of development) relates.

Reason: In the interests of the character and appearance of the area and residential amenity, having regard to adopted policies D1 and SL1 of the Cheltenham Plan (2020) and adopted policies SD4, SD7 and SD14 of the Joint Core Strategy (2017).

- 9 Notwithstanding the details provided within the Landscape Design Statement, prior to the commencement of development within the site areas of Phase 3 (Oak Tree Gardens) and Phase 5 (The Glade), as shown on the approved phasing plan, a detailed scheme and specification for the Oak Tree Gardens Local Area for Play (LAP) and The Glade Local Equipped Area for Play (LEAP) shall be submitted to and approved in writing by the local planning authority. No more than 50% of the dwellings within Phases 3 and 5 shall be occupied until the schemes have been fully implemented in accordance with the approved details and made available for use.

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).

- 10 Notwithstanding the submitted details and prior to the commencement of development, a detailed scheme for railings/gates, landscaping (tree and/or shrub planting) within the curtilage of the Veteran Oak tree within Phase 3 (Oak Tree Gardens) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall specify species, density, planting size, layout, protection, aftercare and maintenance. The scheme approved shall be carried out in the first planting season following occupation of no more than 50% of the dwellings within the Phase 3, unless otherwise first agreed in writing by the local planning authority. The landscaping shall be maintained for 30 years after planting and should any landscaping be removed, die, be severely damaged or become seriously diseased within this period it shall be replaced with other tree and/or shrub planting as originally required to be planted.

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).

- 11 Notwithstanding the submitted details and prior to commencement of development, full details of all proposed street tree planting, tree species/sizes, root protection systems, a future management plan, and the proposed times of planting, shall be submitted to and

approved in writing by the local planning authority. All street tree planting shall be carried out in accordance with the details approved.

Reason: To ensure the long term health of the street trees in the interests of the amenity and environmental quality of the locality, having regard to adopted policy SD4 of the JCS (2017) and adopted policies D1 and GI3 of the Cheltenham Plan (2020).

- 12 Notwithstanding the details provided within the Landscape Design Statement, prior to the commencement of development within the site areas of Phase 3 (Oak Tree Gardens) and Phase 5 (The Glade), as shown on the approved phasing plan, a detailed scheme and specification for the Oak Tree Gardens Local Area for Play (LAP) and The Glade Local Equipped Area for Play (LEAP) shall be submitted to and approved in writing by the local planning authority. No more than 50% of the dwellings within Phases 3 and 5 shall be occupied until the schemes have been fully implemented in accordance with the approved details and made available for use.

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).

- 13 The following elements of the scheme shall not be installed, implemented or carried out unless in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority:
1. Porch canopies
 2. Rainwater goods
 3. Garage doors
 4. Electric vehicle charging points (including appearance, location and type and a site layout plan to show location of EV charging points for all proposed dwellings) to accord with the relevant Council standards
 5. External bin stores
 6. Balustrades to balconies and roof terraces

Reason: In the interests of visual amenity, having regard to policies D1 and S1 of the Cheltenham Plan (2020) and adopted policies SD4 and SD14 of the Joint Core Strategy (2017)

- 14 The design and profile of all new windows and external doors (including cills, heads and reveals, materials, finish and colour) shall be carried out in accordance with details which shall have first been submitted to and approved in writing by the Local Planning Authority prior to their installation.

Reason: In the interests of the character and appearance of the area, having regard to policy D1 of the Cheltenham Plan (2020) and policy SD4 of the Joint Core Strategy (2017).

- 15 Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and/or re-enacting that order with or without modification), no additional windows, doors and openings shall be formed in dwellings at Plots 215 and 216 (as shown on Drawing No 1002 P6) without express planning permission.

Reason: Any further openings require detailed consideration to safeguard the privacy of adjacent properties, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 16 Notwithstanding 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 first floor en-suite, dressing and landing windows of Plot 74 shall at all times

be glazed with obscure glass to at least Pilkington Level 3 (or equivalent) and shall be non-opening unless the parts of the window which can be opened are more 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).

- 17 Where not shown on the approved plans, secure and covered cycle storage shall be provided for all apartment buildings and in accordance with details which shall be submitted to and approved in writing by the Local Planning Authority. The cycle storage shall be provided prior to first occupation of the relevant dwelling(s) in accordance with the approved details and thereafter retained available for such use.

Reason: To ensure the adequate provision and availability of cycle parking, so as to ensure that opportunities for sustainable transport modes have been taken up, having regard adopted policy INF1 of the Joint Core Strategy (2017).

- 18 Prior to the first occupation of the development the sustainable practices and low carbon emission features outlined in the (AES) Energy and Sustainability Statement dated September 2023 shall be implemented in full, unless otherwise first agreed in writing by the local planning authority.

Reason: To ensure that the proposed development addresses climate change, having regard to policy INF5 of the Joint Core Strategy (2017) and the adopted Supplementary Document - Cheltenham Climate Change (2022).

- 19 No dwelling hereby permitted shall be connected to mains gas supplies for the purposes of domestic hot water or space heating.

Reason: To ensure that the development contributes towards the mitigation of climate change, having regard to Strategic Objective 6, policies SD3 and INF5 of the Joint Core Strategy (2017) and the guidance set out in Cheltenham Climate SPD (adopted 2022).

- 20 No dwelling or apartment building hereby approved shall be occupied until the proposed solar PV panels serving that dwelling or apartment building have been fully installed and in accordance with details (to include their building location, operation, design, appearance and positioning on the roof) which shall have been submitted to and approved in writing by the Local Planning Authority. The solar PV panels shall be retained as such thereafter unless otherwise first agreed in writing by the local planning authority.

Reason: In the interests of the character, appearance and amenities of the area and reducing carbon emissions, having regard to adopted policies D1 and SL1 of the Cheltenham Plan (2020), adopted policies SD3, SD4 and SD14 of the Joint Core Strategy (2017) and guidance set out in Cheltenham Climate Change SPD (2022).

- 21 Details of the type/model, location and predicted noise levels of the proposed air source heat pumps (ASHPs) shall be submitted to and approved in writing by the local Planning authority. An ASHP(s) shall be installed prior to first occupation of each dwelling or apartment building hereby approved and in accordance with the details approved. The ASHPs shall be retained as such thereafter unless otherwise first agreed in writing by the Local Planning Authority.

Reason: To safeguard the amenities of future occupiers and neighbouring properties and to reduce carbon emissions, having regard to adopted policies D1 and SL1 of the

Cheltenham Plan (2020), adopted policies SD3, SD4 and SD14 of the Joint Core Strategy (2017) and guidance set out in Cheltenham Climate Change SPD.

- 22 Notwithstanding the submitted details, prior to the commencement of above ground works, full details of all retaining wall structures (to include but not limited to, section drawings, elevations, materials) shall be submitted to and approved in writing by the Local Planning Authority. The retaining wall structures shall thereafter be implemented in accordance with the approved details.

Reason: In the interests of the character and appearance of the area and residential amenity, having regard to adopted policies D1 and SL1 of the Cheltenham Plan (2020) and adopted policies SD4, SD7 and SD14 of the Joint Core Strategy (2017).

- 23 Notwithstanding the submitted details, no development shall take place until plans showing the existing and proposed ground levels of the site and existing ground levels of adjacent land have been submitted to and approved in writing by the local planning authority. The submitted details shall be in substantial accordance with the Building Heights Parameter Plan (drawing P18-847_02 sheet 04 Rev C) of 20/01689/OUT and shall include:-

1. Existing and proposed cross section drawings of the site indicating the extent of ground works required to achieve finished site levels.
2. Proposed slab levels of the proposed buildings and ridge heights of proposed and adjacent buildings.

The development shall be implemented strictly in accordance with the agreed details.

Reason: To ensure a satisfactory relationship between the proposed development and adjacent buildings and land, having regard to adopted policies D1 and SL1 of the Cheltenham Plan (2020) and adopted policies SD4, SD7 and SD14 of the Joint Core Strategy (2017). Approval is required upfront to allow the impact of the development to be accurately assessed.

- 24 Prior to their first occupation all dwellings (other than apartments) shall be provided with a water butt.

Reason: To ensure that the proposed development addresses climate change, having regard to policy INF5 of the Joint Core Strategy (2017) and the adopted Supplementary Document - Cheltenham Climate Change (2022).

- 25 Prior to the commencement of development, full details of the proposed screen wall planting to the apartment buildings shall be submitted to and approved in writing by the local planning authority. The details shall include plant species, planting density, a scheme for the future management and maintenance of the planting and a timetable for its implementation. The screen wall planting shall be carried out in accordance with the approved details.

Reason: In the interests of the character and appearance of the area, having regard to policies D1 of the Cheltenham Plan (2020) and adopted policies SD4, SD7 and INF3 of the Joint Core Strategy (2017).

Schedule of Conditions attached to Outline Planning Permission

- 1) Details of the access, appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this decision.
- 3) The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is later.
- 4) The development hereby permitted shall provide no more than 250 dwellings.
- 5) The details to be submitted as part of the reserved matters for access, layout and landscaping shall be in general accordance with the design and layout principles of the Alternative Illustrative Masterplan Ref 18017.202 Rev B in respect of the following:
 - a. the proposed and retained structural landscaping (trees, shrubs and hedgerows) and public open space within the green infrastructure areas shown on drawing P18-0847-02 sheet 02 Rev D;
 - b. the design and alignment of the main vehicular access road and vehicular junction within Harp Hill within the Highway Corridor Flexibility Zone shown on drawing P18-0847-02 sheet 03 Rev F (excluding other internal estate roads).

For the avoidance of doubt, applications for approval of reserved matters shall be in substantial accordance with the submitted Land Use Parameter Plan (drawing P18-0847_02 sheet 02 Rev D), Access and Movement Parameter Plan (drawing P18-0847_02 sheet 3 Rev F), Building Heights Parameter Plan (drawing P18-847_02 sheet 04 Rev C) and Green Infrastructure Parameter Plan (drawing P18-0847_02 sheet 05 Rev D).

- 6) The first reserved matters applications required by Condition 1 shall be accompanied by a Phasing Plan, giving details of the phasing of the development. The development shall be carried out in accordance with the approved Phasing Plan unless any variations have first been approved in writing by the local planning authority.
- 7) Prior to the submission of the first reserved matters, a Housing Mix Statement for the open market housing shall be submitted to the local planning authority for approval. The Statement shall set out an appropriate mix of dwelling sizes, types and tenures to be provided on site that will contribute to a mixed and balanced housing market. The Statement will address the needs of the local area having regard to the Council’s current local housing evidence base. The development shall be implemented in accordance with the approved Statement.
- 8) The reserved matters required to be submitted and approved under Condition 1 shall include:
 - a. details of the design, form and architectural features of the dwellings, including materials to be used on the external walls and roofs;
 - b. details of the position, design, materials and type of boundary walls within the development;
 - c. details of cycle storage facilities for each dwelling;
 - d. details of refuse and recycling storage to allow for the separate storage of recyclable waste materials;
 - e. details of electrical vehicle charging points (including appearance, location and type) to accord with the relevant Council standards;The development shall be carried out in complete accordance with approved details.

- 9) The details to be submitted for approval as part of the reserved matters application(s) for appearance, scale and layout pursuant to Condition 1 shall include an Energy and Sustainability Statement. The statement shall demonstrate an improvement on the energy efficiency of the scheme over and above the Building Regulations in place at the time of this decision and shall include, but not be limited to, the following information:
 - a. details of the methods used to calculate predicted annual energy demand and associated carbon emissions;
 - b. measures to reduce impact on climate change (including consideration of heat proofing, construction techniques, building fabric, solar gain, natural lighting, shading, orientation, water retention, flood mitigation and landscaping).
- 10) No development shall take place until details of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with the principles set out in the Flood Risk Assessment and Drainage Strategy prepared by Phoenix Design dated March 2020. An assessment shall be made regarding the potential for disposing of surface water by means of a sustainable drainage system (SuDS) in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results provided to the local planning authority.

Where a sustainable drainage scheme is to be provided, the submitted details shall provide:

- a. an assessment of the hydrological and hydro-geological context of the development;
- b. information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- c. a timetable for its implementation;
- d. a management and maintenance plan for the SuDS. The plan shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The surface water drainage scheme, including its management and maintenance, shall be implemented strictly in accordance with approved details and thereafter retained as such for the lifetime of the development.

- 11) No development shall take place until full details for the treatment and disposal of foul water (including pollution control and monitoring measures) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 12) No development shall take place until plans showing the existing and proposed ground levels of the site and existing ground levels of adjacent land have been submitted to and approved in writing by the local planning authority. The submitted details shall include existing and proposed cross section drawings of the site indicating the extent of ground works required to achieve finished site levels. The reserved matters application(s) submitted pursuant to Condition 1 shall include details of the proposed slab levels of the proposed buildings and ridge heights of proposed and adjacent buildings. The development shall be implemented strictly in accordance with the agreed details.
- 13) Notwithstanding the illustrative proposed access arrangements on to Harp Hill, as shown on Access and Movement Parameter Plan ref: P18-0847_02 Sheet No.3 rev F and the Alternative Illustrative Masterplan ref. 18017.202 Rev B, full details of the proposed access junction on to Harp Hill shall be submitted to and approved in writing by the local planning authority as part of the first reserved matters submission. The access shall be installed in accordance with the approved details and made available for use prior to the first occupation of any dwelling. The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum

gradients allowable will be 1/20 and 1/100 respectively, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.

- 14) No dwelling hereby permitted shall be occupied until the Footpath and Cycleway link between Priors Road and the development area (as shown on Drawing No 333.E.33) has been fully implemented in accordance with a detailed design previously submitted to and agreed in writing by the local planning authority.
- 15) No more than 50 dwellings shall be occupied until the following highway works have been implemented in full:
 - a. Alterations to the junction of Priors Road / Hales Road / Harp Hill / Hewlett Road (shown on Drawing No H628/04 Rev C);
 - b. Harp Hill pavement extension and pedestrian linkages (shown on Drawing No H628/05 Rev A).
- 16) No dwelling shall be occupied until: (i) the carriageways providing access from the public highway to that dwelling have been completed to at least binder course level, and the footways to surface course level and in accordance with the approved plans; and (ii) the car/vehicle parking area, visitor parking and turning space associated with that dwelling (including garages and car ports where proposed) have been completed in accordance with the approved plans.
- 17) Prior to first occupation of the development, details of the arrangements for future management and maintenance of the roads/streets within the development shall be submitted to and approved in writing by the local planning authority. The roads/streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.
- 18) No development shall take place until a Construction Traffic Environmental Management Plan (CTEMP) has been submitted to and approved in writing by the local planning authority. The CTEMP shall include: details of parking or vehicles of site operatives and visitors (including measures to ensure satisfactory access and movement for existing occupiers during construction); details of any temporary access into the site; details of loading and unloading of plant and materials; arrangements for turning vehicles; details of storage of plant and materials; measures for traffic management (including routing) so as to minimise the impacts of construction traffic on the highway; details of types, size and numbers of construction related vehicles anticipated daily, including arrangements to receive abnormal loads or unusually large vehicles; means to prevent deposition of mud or other substances on the highway; details of wheel washing facilities; measures for the control of site lighting (required for safe working or for security); means to control dust and emissions to air; means to control noise and vibration; methods of communicating the CTEMP to staff, visitors and neighbouring residents and businesses. The approved CTEMP shall be adhered to throughout the demolition and construction period.
- 19) No development shall take place until a Site Waste Management Plan (SWMP) has been submitted to and approved in writing by the Local Planning Authority. The SWMP shall include: information on the type and amount of waste likely to be generated prior to and during the construction phase; details of the practical arrangements for managing waste generated during construction in accordance with the principles of waste minimisation. The approved SWMP shall be adhered to throughout the demolition and construction period.
- 20) Demolition, construction works or other operations that generate noise beyond the site boundary shall be only carried out between the hours of 0800 hrs and 1800 hrs

Mondays to Fridays, and between 0800 hrs and 1300 hrs on Saturdays and at no time on Sundays and Bank Holidays. Deliveries to, and removal of plant, equipment, machinery and waste from the site shall only take place within the permitted hours detailed above.

- 21) No piling activities shall be carried out until a full piling method statement has been submitted to and approved in writing by the local planning authority. The method statement must assess and include full details of the noise and vibration impact from the piling operations on the nearest residential properties; dates and times of piling; and details of monitoring measures. All piling activities shall be carried out in accordance with the approved details.
- 22) In the event contamination is found at any time when carrying out the approved development that was not previously identified, it must be immediately reported in writing to the local planning authority, and development shall be halted on that part of the site affected by the unexpected contamination. An investigation and risk assessment must then be undertaken in accordance with the Environment Agency's relevant guidance and, where necessary, a remediation scheme also submitted. Following completion of measures identified in the approved remediation scheme, a verification report shall be submitted to and approved in writing by the local planning authority before development can recommence on the part of the site identified as having unexpected contamination.
- 23) The development hereby approved shall be carried out at all times (including during all ground and vegetation clearance works) and thereafter maintained in accordance with the recommendations and measures within the Construction Environmental Management Plan (CEMP) (Ecology Solutions March 2021 7807.CEMP.vf); and the Landscape and Ecology Management Plan (LEMP) (Ecology Solutions dated March 2021 7807.LEMP.vf). In addition to the approved LEMP, hedgehog tunnels shall be installed in accordance with details which shall have been previously submitted to and approved in writing by the local planning authority. Any modifications to the approved details within the CEMP and LEMP (for example as a result of requirements of a protected species license) must be submitted to and agreed in writing by the local planning authority prior to the implementation of any modifications.
- 24) Full details of the external lighting scheme, following the principles and recommendations of the approved lighting strategy (Illume Design Lighting Strategy 03.03.2021 No. 4218 rev 0.2), shall be submitted to and approved in writing by the local planning authority. The details shall include but shall not be limited to the following:
 - a. the position, height and type of all external lighting (including any security lighting);
 - b. the intensity of lighting and spread of light as a lux contour plan (including horizontal and vertical components);
 - c. lighting calculations and assessment;
 - d. measures to minimise light spill/pollution, having regard to the sensitive location of the site within an AONB;
 - e. measures to minimise the effects of lighting on protected wildlife species;
 - f. the periods of day and night (throughout the year) when such lighting will be used and controlled for construction and operational needs.

The approved scheme shall be maintained thereafter for the lifetime of the development and in accordance with the manufacturer's recommendations.

- 25) The submission of details required by Condition 1 shall include full details of a hard and soft landscaping and boundary treatment scheme for both the residential and open space elements of the proposed development. The scheme shall include the following:
 - a. a written specification describing the species, sizes, spacing, densities and planting numbers;
 - b. details of all retained trees, hedgerow and other ecological features;

- c. details of the phasing of implementation of all proposed hard and soft landscaping;
- d. details of proposed aquatic planting for the indicative SuDS feature shown in the north-west corner of the site;
- e. details of meadow grassland planting within the areas of public open space;
- f. details of hard and soft boundary treatment (including details of materials and elevation drawings where relevant);
- g. details of ridge and furrow retention, planting and maintenance;
- h. buffer/protection and deterrent planting measures (from deer and other predators) around retained mature, veteran and ancient trees;
- i. details of biodiversity net gain (BNG), in accordance with Natural England's Biodiversity Metric 2.0;
- j. a detailed Landscape and Tree Management and Maintenance Scheme (LTMMS) (for the short, medium and long term – 5, 10 and 30 years) for areas of proposed open space and children's play areas based on the principles set out in the approved LEMP.

All hard and soft landscaping and boundary treatments (as well as the LTMMS) shall be implemented and maintained in accordance with the approved details, and in accordance with a timetable agreed with the local planning authority. Any trees, hedgerows or other plants which, within a period of 5 years from the date that they were planted, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season (October to March) with others of the same size or species unless otherwise first agreed in writing by the local planning authority. Any pruning works shall be carried out in accordance with BS 3998:2010 (or any standard that reproduces or replaces this standard).

- 26) All works including roads, paths, parking areas, drainage runs and other areas of hard landscaping that fall within Root Protection Areas of retained trees shall be constructed using a no-dig method. All trenches and service runs shall fall outside the Root Protection Area(s) of any retained trees shown on the approved drawings, unless otherwise first agreed in writing by the local planning authority. Any such works shall be carried out in accordance with the National Joint Utilities Group; Volume 4 (2007) (or any standard that reproduces or replaces this standard). No fires shall be lit within 5m of the Root Protection Areas and materials that will contaminate the soil such as cement or diesel must not be discharged within 10m of any tree stem. Existing ground levels shall remain the same within the Root Protection Areas and no building materials or surplus soil shall be stored therein.
- 27) Prior to the commencement of development (including site and vegetation clearance works), the following shall be submitted and approved in writing by the local planning authority:
 - a. a Tree, Shrub and Hedgerow Retention and Removal Plan, identifying all trees, shrubs and hedgerow to be removed and retained (including tree BS 5837:2012 categorisation);
 - b. details of tree protective fencing to comply with BS 5837:2012;
 - c. an Arboricultural Monitoring scheme for the construction phase which shall include details of (a) persons to conduct the monitoring; (b) the methodology and programme for reporting; and (c) a timetable for inspections;
 - d. an Arboricultural Method Statement (AMS) to comply with BS 5837:2012 which shall include (a) any no-dig construction method details for parking areas, footpaths, roads, drainage runs and other forms of hard landscaping; (b) foundation details for properties near to retained trees on or adjacent to the site; (c) the storage of materials and siting of temporary structures for contractors; and (d) any access facilitation pruning in accordance with BS 3998 (2010).

No trees, shrubs or hedges within the site which are shown to be retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed, without the prior written consent of the local planning authority. Any

retained trees, shrubs or hedgerow indicated on the approved drawings which, within a period of 5 years following the completion of the construction phase die, become seriously damaged or diseased shall be replaced during the next available planting season (October to March inclusive) with other trees or plants of a location, species and size to be first approved in writing by the local planning authority. Any pruning works shall be carried out in accordance with BS 3998:2010 (or any standard that reproduces or replaces this standard).

No tree and/or hedge clearance shall be carried out during bird nesting season (1st March to 31st August inclusive) unless the site has been surveyed in advance for breeding birds and a scheme to protect breeding birds has first been submitted to and approved in writing by the local planning authority.

The development shall be carried out at all times in accordance with the details approved and the tree protective fencing shall be installed and inspected prior to the commencement of development and shall thereafter remain in place until the completion of the relevant construction phase.

- 28) Details of a scheme for Public Art within the area(s) of public open space shall be submitted to and approved in writing by the local planning authority. The approved scheme be installed within six months following the completion of the development or in accordance with a timetable previously agreed in writing by the local planning authority.
- 29) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and/or re-enacting that order with or without modification), no extensions, garages and outbuildings (other than sheds and greenhouses, and those forming part of the development hereby permitted) shall be erected without the permission of the local planning authority.
- 30) Prior to first occupation of the development, details of a Homeowner's Information Pack providing information on recreation resources in the locality shall be submitted to and approved in writing by the local planning authority. The pack shall be in accordance with the advice from Natural England (letter dated 13 April 2021) and include reference to: Alternative local recreation opportunities (off site), and website information for the Cotswolds AONB. Each household shall be provided with an approved Homeowner Information Pack on occupation.
- 31) Details of a scheme of interpretation for the adjacent heritage assets at Hewlett's Reservoir (which shall include details of the location, content and design of interpretation boards to provide the public with a better understanding of the heritage assets adjoining the site) shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented prior to the completion of the development.



 **PLANNING APPLICATION BOUNDARY**
 (15.27 HA)

 **MAXIMUM BUILDING HEIGHT UP TO 10.5M**
ABOVE FUTURE GROUND LEVEL

 **MAXIMUM BUILDING HEIGHT UP TO 12M**
ABOVE FUTURE GROUND LEVEL

 **EXISTING CONTOURS AND SPOT HEIGHTS**
 (CONTOURS AT 1M INTERVALS)

* FUTURE GROUND LEVEL ALLOWS FOR A MAXIMUM OF 1.5M ABOVE THE EXISTING GROUND LEVEL (THIS ESTABLISHES APPROPRIATE DRAINAGE, BALANCE CUT AND FILL AND ALIGN STREET AND BUILDINGS TO CONSISTENT LEVELS).

EXTRACT AT 1:2500 SHOWING WESTERN GATEWAY