

# Planning Committee

23<sup>rd</sup> May 2013

**Present:**

**Members (13)**

Councillors McCloskey, Chair (HM); Hall, Vice-Chair (PH); Coleman (CC); Driver (BD); Fisher (BF); Garnham (RG); Fletcher (JF); Jeffries (PJ); McKinlay (AM); Stennett (MS); Thornton (PT); Walklett (JW); Wheeler (SW).

**Observer:** Councillor Klara Sudbury

**Officers**

Mike Redman, Director Built Environment (MR)  
Martin Chandler, Team Leader, Development Management (MC)  
Chloe Smart, Assistant Planning Officer (CS)  
Karen Radford, Heritage and Conservation Manager (KR)  
Philip Stephenson, Senior Planning Officer (PS)  
Cheryl Lester, Legal Officer (CL)

**1. Apologies**

Godwin (LG) Barnes (GB);

**2. Declarations of interest**

None.

**3. Public Questions**

None.

**4. Minutes of last meeting**

Resolved, that the minutes of the meeting held on 24<sup>th</sup> April 2013 be approved and signed as a correct record *without* corrections

## 5. Planning applications

Application Number:	<b>13/00301/AMEND and 13/00302/LBC</b>		
Location:	<b>Imperial Gardens, Promenade, Cheltenham</b>		
Proposal:	<b>Reinstatement of railings to the perimeter of Imperial Gardens, including refurbishment of the remaining original railings adjacent to the front of the Town Hall and the repair and retention of existing original plinth stones wherever possible (Revised scheme for 12/00099/LBC - to reduce height of railings)</b>		
View:	<b>Yes</b>		
Officer Recommendation:	<b>Grant</b>		
Committee Decision:	<b>Grant</b>		
Letters of Rep:	<b>1</b>	Update Report:	<b>None</b>

### **Public Speaking:**

#### **Cllr Whyborn, in support**

Began by explaining why this application had come back to committee, and apologised for the poor communication which gave Members no other choice than to defer their decision and request further background information. Said the Council as landowner had to form a view on what it can or can't support in the Gardens, and as cabinet member responsible for parks and gardens, it fell to him to articulate its views, to give maximum benefit to the largest number of people. Said Imperial Gardens were well-used and loved by townspeople and visitors alike, and had evolved over the years to their current form, as floral gardens with sitting areas, and usage by various events – the 'Festival in a Garden' concept. Had sought to ensure the re-introduction of the railings was done in a way which would be supported by the public as beneficial, and/or be an asset to the iconic gardens.

Said the original proposed railing height of 1.8+m excluding the plinth had caused serious concern to some colleagues, particularly as the overall height could exceed 2m in places due to the different plinth height inside and outside the gardens. Had spoken to the Conservation Officer at the outset, who considered a modest height reduction would be acceptable, as long as the design remained the same. Made the point that the railings are substantially designed and could be regarded as dominant and overbearing by some, and therefore proposed a public consultation exercise, asking for people's thoughts on a reduction of 0.35m in height, and also about dividing the project into three phases, with the attendant risk that the later phases could remain incomplete.

The survey questions, text and results, together with illustrations of the original and reduced height railings, had been circulated to Members. The survey showed that a 60/40 majority backed the height reduction, and the majority of people were happy with the phased project. Told Members that the applicants – Friends of Imperial Square Heritage and Culture – were happy to have this opinion survey conducted in parallel with the planning application consultation.

Conceded that the Victorian Society and Conservation Officer would prefer full height railings, but the Conservation Officer could see no harm in planning terms with the proposed reduction. Reminded Members that the gardens are used every day, and nobody under 70 can remember there being railings, adding that it was not in his remit to restore every detail of the past – the reduced height proposal seemed to be a workable way forward. Said the survey results made it clear that the Council, as landowner, could do nothing else but back the 1.5m height proposal, and for the sake of FISHAC, wanted to give clear and public support to the proposal.

### **Member debate:**

**JF:** asked why the survey had been carried out in March 2013, after the original decision to restore the railings in December 2012. Said public opinion should have been gauged before the first application, suggesting it was too late to take it into account now.

**BF:** agreed with JF, noting that the other improvements and changes to Imperial Gardens (including Skillicorne Gardens, festival use, trees etc) were subject to much wider consultation, with Members of Planning Committee and officers manning the stands and talking to the public. Said that consultation had shown the railings at 1.8m, and no-one had objected to them then, but that the more recent consultation had been an unmanned display in the Municipal Offices reception area, with drawings on view but no-one to answer questions or discuss the issues. Said the original re-vamp of Imperial Gardens had set out to restore it to its former state, as set out in policy BE5. Had learnt this week that planning used to be done by the landowner, but this had changed with Asquith's Liberal government which stopped landowners from dictating what/where/how anything should be built - this was why the Planning Committee and public was involved. Did not want to see any reduction in the height of the proposed railings. Noted that the officer did not think a refusal would be upheld at appeal, but also that the committee, Conservation Officer and planning officer were unanimous in their belief in best practice for heritage and culture of the town. Considered an Inspector's decision would be a fallback position, and better than what Members were currently looking at from a conservation and standard of work point of view. Said the railings would not enclose the gardens – this was 2013 not 1813; the Gardens are well used, and Skillicorne Gardens looks good and is nearly finished. Looking at the illustration, thought the higher railings would be better from a safety angle, but said he was looking at the application from a planning point of view – Members were told they needed good planning reasons to refuse a proposal, but they also needed good planning reasons to permit one. Thought the application was good as it was, and that it complied with policy.

**SW:** agreed with JF, adding that hindsight was a wonderful thing. Said there should have been proper consultation before the original application, to allow people to look at just one design – the drawings appear to show the same railings from a different perspective. Said that he personally would prefer there to be no railings at all, suggesting that the higher railings were like prison bars, very close together and making it difficult to see through them. Realised that no railings wasn't an option, and was therefore in favour of lower railings, which give a more open feel.

**RG:** said the Council was in a bit of a pickle, as applicant and landowner. Noted that permission for 1.8m railings had been granted, but the landowner (the Council) wouldn't allow it. Said he would vote for the 1.5m railings, as this proposal needed to be progressed without any further obstacles, recognising the need to support the people who had been raising the money and doing the work. Considered the situation to be a mess at the moment.

**CC:** took a contrary view, was not prepared to be bounced into accepting this proposal by a thinly-veiled threat from the Council, and also wanted to support the applicant. Reviewed the history of the last few weeks and the consultation – this was unmanned, didn't include any questions, and was responded to by just 150 people. Pointed out that there were thousands of people in Cheltenham, and that 150 shouldn't be allowed to dictate what happened, adding that councillors are very aware of the town and its well-being. Imperial Gardens is an important site – was concerned that the report referred to the 'Council forming a view' on what was acceptable, referring back to PH's question at the April committee as to where the minutes of that decision are. Was unhappy that Members were being told to ignore CBC's own policy, and had sympathy for the Conservation Officer who, he felt, had been backed into a corner. Said HM had expressed the same concern over policy at the last meeting, and was therefore happy to move to refuse, looking to officers to help him with reasons.

**AM:** looked at this from a different angle. Said there was no doubt that if the railings were still in place and the application was to take them down, this would be a disgrace from a heritage and historical point of view and the Committee would support that view. However, the railings hadn't been in place for 70 years – the Gardens are an open space with no railings, and the Council wasn't asking to replace something in the reasonably remembered past but how best to recreate the ambience of the original past. Said the height of the proposed railings was dictated by evidence of the original

railings at the front of the Town Hall. Considered there to be a difficulty here, in deciding whether railings at that height were continued all round Imperial Gardens – any railings will materially alter the visual impact of the Gardens and could be oppressive, and the question is whether 1.8m is too much, 1.5m acceptable, or no railings at all the best option. Said we live in a modern world and shouldn't assume that everything put up 150 years ago and subsequently removed is best put back now. Said the railings in Montpellier Gardens are 1.5m high, and it is a matter of opinion as to whether these are too high, too low, and would be better removed altogether. From a planning point of view, said there were many examples of an applicant getting planning permission then coming back for a variation, which is sometimes permitted and sometimes not – this application is no different. The question is, is what is being proposed acceptable on its own merits? Members should forget what has gone before. On planning grounds, could see no reason why the proposal should be refused.

**BF:** reminded Members that there had been extensive consultation prior to the start of the improvements at Imperial Gardens, with a large number of people responding. Regarding the railings in Montpellier Gardens, said these were as historically correct as they could be, and that they were never as high as those in Imperial Gardens, and that the railings at Montpellier had been installed in the correct way according to the heritage process at the Council. Said Policy BE5 was there to be observed and had been observed with the first application and design. The current design doesn't observe heritage instructions and guidance, which states that the railings should be as near as possible to the original. Said Members have all seen examples of where people have tried to alter listed buildings - in this case, that meant the Town Hall and everything within its curtilage – and while there was no good planning reason to refuse the first application, there was a good planning reason to refuse this one. As landowners, the Council had a duty to the people of Cheltenham to care for the town for generations to come, and should make sure that what they leave behind is correct.

**BD:** was not present at the previous meeting but had heard about the hoo-ha. Said Members were making themselves look ridiculous and needed to sort things out. Would like to see the railings installed as originally proposed following research by the Friends group, saying a consultation with 100 people wasn't enough.

**MS:** like BD, wasn't at the last meeting. Had stood by the Montpellier Gardens railings, been on Planning View, and considered the difference between 1.5m and 1.8m, which was quite significant. Thought Members should be adhering to the advice of the Conservation Officer, though if the original permission was for 1.8m railings, this should be supported. Was not privy to the reasons why 1.5m was now proposed, but felt Members should stand by the previous decision. Asked to hear the views of the Conservation Officer on reducing the height of the railings to 1.5m.

**PH:** said CC had referred to her request at the previous meeting to see the minutes of the meeting at which the decision to reduce the height of the railings was taken, yet this had not been provided. Said Cllr Whyborn had referred to a consultation and skirted round the issue, but the consultation had been unmanned and she struggled with anything decided by Councillors without a permanent record of the reasoning behind the decision. Said the borough council was the landowner, but the Friends of Imperial Square had gone to hell and back over the railings, and thought it extraordinary that they should now be placed in this situation. Was concerned that, as the applicant and the landowner, the Council must be above suspicion like Caesar's wife, and nothing less than perfection will do here. Considered the application to be flawed, and said the Cllr Whyborn had still not provided enough information or consultation.

**MJC, in response:**

- said there had been a lot of debate about how the application had been arrived at, but said that this shouldn't influence any decision - Members needed to consider the application on its own merits;

- reminded Members that it wasn't uncommon to give permission for a scheme and for the applicant to then come back later with the same application in a slightly different form;
- said Members needed to articulate exactly why they considered 1.5m railings to be harmful.

**KR, in response:**

- said Cllr Whyborn had asked her about reducing the height of the railings before the application was made, discussed whether they should be 1.5m or 1.8m and whether it was better to have reduced height railings or none at all, but the main question for Members to consider was whether the reduced height railings will *harm* the conservation area;
- considered the answer to this question to be no – they will not enhance it, but neither will they harm it – and from a conservation point of view, 1.5m railings are better than no railings at all;
- to AM's comments about whether it was an assumption to say the railings continued all round the Gardens at the same height as was evidenced at the front of the Town Hall, said the Friends of Imperial Square have some fantastic photos which confirm that the railings were a consistent height all the way round;
- regarding the height of the railings round Montpellier Gardens, said she had been involved with their restoration, and in that case there was no evidence of the original railings, just a historical photo showing a small boy of seven or eight years old, which was used to work out how big the original railings were – this was clearly not scientific; at Imperial Gardens, it was known exactly how high the original railings were;
- said this was a difficult application: there is a Local Plan policy relating to this, and if the Council approve it, it won't have been dealt with in accordance with the Local Plan, although the NPPF is more lenient in this respect. From a conservation and heritage aspect, the issue was character and appearance – the lower railings won't enhance the Gardens but won't harm them either and could therefore be said to conserve, though this could be seen as sitting on the fence;
- said best practice and the Victorian Society said that the proposal should be considered in terms of historic precedence, but this was not the case here;
- told Members it was difficult to say whether or not this case would be successful at Appeal, and it was up to them to make the judgement.

**PT:** had listened with great concentration to KR, but had to look at it from a different angle. Told Members that the railings weren't originally installed as decoration but to discourage the common person from using Imperial Gardens; there may have been gates to keep them out too. Said that years ago, poor people were not even allowed to walk up the Prom, and if Members really wanted to preserve Cheltenham in aspic, maybe we should go back to that arrangement too. If they wanted to move with the times, however, they should use their common sense. KR had said it would not be harmful to have 1.5m railings, and looking at the illustration, thought 1.5m looked OK for the gardens – more friendly and approachable. 1.8m railings looked very heavy and substantial, were not friendly, and had been meant to keep people out of the Gardens, other than the privileged and moneyed.

Felt that the Committee wasn't looking at the proposal in the correct way. Said they all represent the people of the town, and can talk to them. Suggested a lot of people don't appreciate the difference between 1.5m and 1.8m, though this was very obvious when illustrated. Said Montpellier Gardens railings had been phenomenally successful – they look good, are attractive, and the Gardens still appear open and welcoming. With regard to the consultation on Imperial Gardens, asked whether the height of the railings was mentioned. Thought it probably wasn't – just the hope that the railings would be put back at some time. Said the restoration of Skillicorne Gardens and refurbishment of the area was discussed, but very little time was spent talking about the railings. Said people from all over Gloucestershire came to look at the plans, not just Cheltenham people, and there was a lot of positive feedback. Said the higher railings were off-putting and not friendly. Will vote for 1.5m.

**BF:** agreed that the original railings may have been intended to keep people out when the Gardens were privately owned, but that wasn't the case right up to the 1940s, when they were finally removed,

adding that the Festivals in 2013 were doing a very good job at keeping people out of the Gardens. There had been no gates for years, and the Gardens were used for dances and other functions for all the people of Cheltenham, not just the rich. The railings may be a bit foreboding, but to say they kept people out was nonsense.

**SW:** thought PT was right. Said there was great merit in hearing what Cheltenham's architecture is all about, but at the end of the day, are we trying to restore an antique or put something in Cheltenham to make it look nice and give people what they want? Said 1.8m might be exactly the right height to restore a museum piece but he would like to see either nothing at all or lower railings. BF had said higher railings may be foreboding, but the lower height was more inviting, as demonstrated at Montpellier Gardens. Had not heard anything to convince him to vote for anything but the 1.5m railings.

**PT:** asked if there was a better chance of getting the railings installed if Members voted for 1.5m – would these be cheaper?

**HM:** referred back to CC's request for advice from officers on refusal reasons.

**MJC, in response:**

- said two policies in the Local Plan are relevant to this application: BE5, which states that boundary enclosures should be preserved in their original form and that new enclosures should be in a historically accurate form; and BE10, which states that new boundary enclosure to a listed building should be of the same or similar design and material to the historically original enclosure;
- said both the Conservation Officer and the Victorian Society had spoken about best practice, but said the policies didn't require like for like, just historically accurate replacements. This is what would be considered at an appeal;
- said the officer report had turned to the NPPF for a clear steer: 1.5m railings would not be harmful to the conservation area, and the NPPF talks about local authorities taking a positive approach and looking for reasons to permit. Officers don't think a refusal would stand up at appeal, if looked at in the light of the NPPF.

**BF:** said this would be the fall-back position. If the committee made a decision to refuse and the applicant goes to appeal, the committee's decision could be defended correctly, with the fall-back that the application is in line with the NPPF – the Inspector could say that this was sufficient.

**CC:** had listened to the advice, read the policies, and accepted that there was a fine balance between the Local Plan and the NPPF and its can-do attitude, but was concerned about the Conservation Officer's comments that while the proposal is not harmful to the conservation area, it doesn't enhance it either. As a Planning Committee member, had to consider the previous application for railings which *did* enhance. Recognised the fine balance, but for an application which was so important to the town, the fact that the application doesn't enhance the conservation area tipped the balance for him. Moved to refuse on policies BE5 and BE10, and looked for support from Members.

**MJC, in response:**

- said the fall-back position was actually no railings at all – the Cabinet has indicated that, as landowner, this was the way it would go. 1.8m railings were not a fall-back but something that CBC had deemed not acceptable – an Inspector would not give much weight to this. Urged Members to move away from the idea of a fall-back position and to look at the merits of the case;
- referring to CC's point about the lower railings not enhancing the conservation area, said the test was to preserve or enhance, as set out at 1.3 in the officer report – if a proposal doesn't enhance the character or appearance of the conservation area, this doesn't make it unacceptable, as long as it preserves.

**BF:** said that whatever the outcome of this application, the previous application will stand for a number of years, and by the time the Friends of Imperial Square have raised the money to do the work, the constitution of CBC may have changed and the new landowner may look at this in a different light. The railings will not be transient, and if there are two live permissions for them, they can be looked again when the money has been raised.

**JW:** noted the comments of Peter Meehan, historic metalwork conservation consultant, on page 24 of the report, that restoring the original height railings would give an over-dominant enclosure to the Gardens. Agreed with this.

**BF:** said that whatever height the barrier is, it will enclose and prevent open access to the park. Said there were no gates.

**AM:** questioned the assumption that something that is historically accurate is automatically an enhancement, and could think of many examples of buildings not enhanced by restoration of historical features – just because something was there in the past doesn't mean its re-introduction will necessarily make it better.

**MS:** having listened to the debate, was coming back to KR's comment that the reduced height railings would not damage the setting, saying this was the only way to look at this application. Thought Members were making heavy weather of it.

**HM:** thought the issues had been thrashed out enough and no new points were being raised. Moved to the vote.

**Vote taken on CC's move to refuse on BE5 and BE10**

4 in support

8 in objection

1 abstention

**PERMIT**

Application Number: **13/00351/FUL**  
Location: **Middle Colgate Farm, Ham Road, Charlton Kings**

**WITHDRAWN**

Application Number: **13/00391/FUL**  
Location: **Wells Villa, 9 Copt Elm Road, Charlton Kings**  
Proposal: **Demolition of existing single storey extension and replace with a new single/two storey extension to the rear**  
View: **Yes**  
Officer Recommendation: **Permit**  
Committee Decision: **Permit**  
Letters of Rep: **2** Update Report: **Additional officer comments**

**Public Speaking:**

**Mr Harris, neighbour, in objection**

Did not objection in principle to the application, but together with the Parish Council and four other households, objected to three crucial aspects of it. The first of these was loss of light to his property.

Said the BRE's *Site layout planning for daylight and sunlight – a guide to good practice* states that if the vertical sky component is less than 27% and less than 0.8 times its former value when a new development is built, the occupants of the existing building will notice a reduction in light. Said his kitchen window would fail this test on both counts (25.5% and 0.79) and his already gloomy dining room would be even more dependant upon electric light – this detrimental impact on his only south-facing windows and serving two essential living/working areas was not acceptable. Secondly, regarding design in a conservation area, said CBC's own guidelines stated that suitability of design was particularly important, and the Local Plan requires new development to preserve or enhance the character of the conservation area. Said as well as the two-storey extension to this cottage-style property, a single-storey extension was also proposed which would result in a 9m brick wall, almost 2.5m high, immediately adjacent to a public footpath. The current boundary includes brickwork, fencing and hedging, and said that the proposed wall would neither preserve nor enhance the building or the area. Finally, in the interests of public safety, was concerned that the proposed floor plan showed the principal point of entry not on Copt Elm Road but set 60cm back on Church Walk. Said that callers would be directed here, with increased noise levels impacting on his privacy, and also presenting a serious risk of accident – Church Walk is a narrow lane in constant use as vehicular access to 11 properties. The addition of a gate reinforced this point, and would mean a significant safety risk to all Church Walk users.

**Flt. Lt. Thornton, applicant, in support**

Told Members that he lives at 9 Copt Elm Road with his wife and 19-month-old daughter, and as a growing family, requires additional space, particularly an extra bedroom upstairs – there is currently a double and single bedroom but no bathroom on the first floor, the family bathroom being located downstairs through the galley kitchen. Said the existing single storey extension is 3.6m high on his neighbour's boundary, and the flat-roof replacement would be more than 1m lower at 2.4m. Said this would appear as a solid garden wall on the Church Walk side, and would enhance the view of the site, compared with the higher gable and dilapidated fence currently on the boundary. Assured Members that the altered side entrance would not stop the front door from being used as the main access to the house, but would simply improve the existing side entry – could not see that this would be harmful, saying it would improve safety with an inset access and cast iron railings. Said it had not been easy to achieve the much-needed additional bedroom upstairs because of the lay-out of the house, but this had been managed with an extension which respects the character of the property and neighbouring amenity. Knew that residents at 7 Copt Elm Road were concerned about their loss of amenity, but said officers had carried out detailed light tests and visited the property several times, and consider the proposal to be acceptable. Said the scheme had been amended quite significantly under guidance of planning officers, who are now happy that it does not unduly impact neighbouring amenity. Was pleased the officers support the scheme and consider it acceptable in all respects, and in line with all the requirements of local planning policies.

**Member debate:**

**MS:** after studying the proposal and looking at the site from No. 7 on Planning View, had difficulty in seeing the problem here – said the design was suitable and would enhance the building and make it more usable. Noted that the view from No. 7 towards No. 9 took in some massive buildings behind, and did not think that the proposed scheme would make a significant difference to the amenity of No. 7. Thought it was a good scheme and that Members should follow Officer advice.

**BF:** said the report refers to a light test but doesn't say if the proposal passed or failed.

**RG:** noted that the objector had mentioned the impact of the scheme on the conservation area, and would welcome the view of the Conservation Officer on this.

**CS, in response:**

- said the result of the light test was acceptable – officers would not have recommended approval if it had failed;
- told Members the guidance was that for loss of light to be noticeable, the amount of light received post-development has to be less than 0.8 times the amount it was before the development took place. Said the dining room window had passed the test at 0.83 times its former value; the kitchen window came in at 0.79 times, which was rounded up to 0.8;
- asked Members to note that the alterations to No. 7 had compromised the amount of light reaching those windows at present, with the kitchen window close to the boundary and the dining room window, which would have been on the rear elevation, now relocated to the side;

**BF:** said Members had recently dealt with an example of this situation in the past, where the light test had been compromised.

**HM:** reminded Members to consider each application on its own merits.

**KR, in response:**

- to RG, said that there had been no conservation consultation on this application, due to the very significant workload of the conservation team and the agreement that straightforward applications can be dealt with by planning officers;
- however, when the point was raised, had looked at the proposed scheme with the planning officer and looked at aerial photographs, and was quite comfortable with the proposal – the building, footprint and urban grain were all respected;
- noted that the gable end and wooden fence were to be replaced with a brick wall, which would be a benefit;
- said the question was always whether a proposal preserved or enhanced the conservation area. As it couldn't be said that this proposal did any harm, it could therefore be said to preserve, and although it couldn't be said to enhance the area, this argument would not stand up at an appeal;
- overall, was comfortable with the proposal and happy to support it.

**Vote taken on officer recommendation to permit**

13 in support – unanimous

**PERMIT**

Application Number:	<b>13/00631/COU</b>
Location:	<b>Unit 4, King Alfred Way, Cheltenham</b>
Proposal:	<b>Change of use from B1/B8 (light industry and storage) to D2 (gym) (first floor only) - resubmission of application 12/01575/COU</b>
View:	<b>Yes</b>
Officer Recommendation:	<b>Refuse</b>
Committee Decision:	<b>Refuse</b>
Letters of Rep:	<b>61</b>
Update Report:	<b>None</b>

**Public Speaking:**

**Mr Simon Firkins, agent, in support**

Said officers were concerned about the loss of employment land and the lack of marketing, but said the site had been vacant for eight years and was marketed in 2005 and 2006 following refurbishment, to no avail – the agents felt there was no prospect of it being let and were uncomfortable taking money from the owner to market it. Said numerous similar applications had been approved, and as recently as December 2012, 292 High Street was actually in office use at the time of an application for a gym. That report stated the Policy EM2 is quite prescriptive and the evidence base for the adopted local plan is out of date. The property had not been marketed, and the report acknowledged that the

proposal wouldn't lead to any loss of employment opportunities. Said the current proposal would employ 10-15 people, and also that there are 12 vacant units on this estate alone.

Said a non-B use was approved at Mead Park Industrial Estate last month, with no marketing, and officer comments that the change of use was acceptable and would add to the local community. Suggested that the same could be said of this application – there were no objections and over 60 letters of support. Quoted the NPPF Para 21 that policies should be flexible and allow rapid response to changes in economic circumstances, and Para 4.7 of the emerging JCS statement that non-B class employment, including leisure opportunities, should be recognised. In addition, the Council's latest employment land review states that job growth in non-B class categories will be particularly important in Cheltenham over the next 20 years. Said this is an existing gym requiring better and larger premises – it will employ more people, and the applicant is happy to accept the frequently-used conditions to ensure the use would be for a gym only, reverting to B use should the gym ever cease. Was struggling to see officers' concerns, saying the proposal created only benefits.

**Member debate:**

**RG:** would like to hear any rebuttal of these comments, as his view is that as much as we support gym applications, the unit will lose its classification of employment use and we should stick to our policies. Had heard Mr Firkins comment that Members are being inconsistent and haven't asked for a marketing report on vacant buildings, and would welcome professional opinion here.

**MJC, in response:**

- regarding the Mead Road site, could not recall the detail of every application that had been dealt with, but reminded Members that every case should be judged on its own merits, and there may have been specific merits to take into account there;
- in this instance, said the site has been empty for a long time but there was no marketing history provided. Officers had determined the previous application a few months ago and refused it for the same reasons as put forward this evening. This decision had gone to appeal – a formal hearing will take place in early June – and the applicant had decided to submit an identical application and request a committee decision;
- was keen to let the appeal pan out and see what the planning inspector made of it;
- to RG's request for rebuttal, said PS was better placed to respond to this.

**PS, in response:**

- said there was a range of different things to point out here;
- regarding planning policy and the marketing history of the site, said the NPPF makes it clear that the Local Plan is the starting point for applications, adding that Policy EM2 is consistent with the NPPF in many ways, in its aim of safeguarding employment land;
- said CBC's Employment Land Review (2007) made a clear case for retaining B class employment land unless it can be shown to be unviable;
- said no up-to-date evidence had been provided to show that no-one wants to take up the site on a permanent basis for its use as granted, and this is the basis of the argument here;
- said this land had been identified as suitable for mixed use, and that there are tests in place to assess its viability. Policy EM2 safeguards all B class employment land unless use for these purposes has been fully explored without success. The NPPF supports alternative use of the land if there is evidence of no reasonable prospect of the land being used for that purpose – this had not been demonstrated here;
- said this was an employment unit, built in the 1980s, of reasonable quality and with its own integrity, situated in a busy industrial estate.

**PT:** had looked at this site in depth on planning view and thought the proposal would be a good use of the space. Understood where Officers were coming from but had noticed other empty units on the

site - if someone was minded to look for business premises here, they would have approached the owner to sell. Accepted that unit hadn't been marketed for possible occupiers, but thought the proposal was a good use, and at least it would be used for something. If it is permitted, would like to add a condition – was concerned about the 'junk' in the building and would hope that at least some of it is recovered and/or recycled. Said that employment today isn't like it was when the rules about employment land were made, adding that the gym would provide employment for 15 people, giving them a living and providing a service to the community.

**BF:** said there were examples across the town of permission being granted for conversion of industrial units to other uses, including in his own ward. Said people who use gyms tend to be young, and it is the young who are feeling the pinch regarding employment and need work. Noted the Officer advice to wait for the outcome of the appeal, but said that Officers were always saying that no two applications were the same – if the outcome of the appeal was to permit, and the application tonight was refused by Members, where would they then be?

**JF:** noted that it is seven years since the unit was last marketed, during which time the recession has hit. Said employment land is sacrosanct, and would like to defer a decision and wait for the outcome of the appeal. Referred to the ASDA site, where employment land was converted to retail - though pointed out this did provide a certain amount of employment. Asked what was the difference here?

**BD:** did not want a deferral or another horrendous discussion about a mess-up. Said she will vote in support of the application – it will provide employment, bring an empty unit into use and allow people to enjoy it.

**PJ:** moved to approve, saying that an employer could run a business at the unit with just one employee. Thought this proposal called for an element of common sense. Noted the Local Plan was being re-written, and added that some employment was better than none.

**MJC, in response:**

- said there were several points to come back on here;
- to BF's comment that Officers always say no two application are the same, said that in this case this proposal is *identical* to the one refused by delegated powers in March and now going to appeal in June; it had been resubmitted, and Cllr Regan has requested a committee decision, in the hope that the appeal might be avoided;
- to JF, said that the ASDA site is quite different – ASDA is the principle user, but a business park was also included in that scheme, with a lot of B1 floorspace;
- said that deferral would not achieve a great deal, and that although the date for the appeal hearing was set for early June, the Inspector may take a lot longer than that to issue a decision; if it was allowed, the applicant would have his permission; if it was dismissed, the applicant could reapply;
- to PJ's move to approve, said PS had given clear guidance as to why Local Plan policy should be supported, and that this was broadly in line with the NPPF. Planners were required to listen to the market signals, but no marketing history had been submitted with this application. Said it was right that the committee should remain consistent. With the JCS and Local Plan gathering momentum, this could be a test case, and even if the Inspector allowed it, it would give the Council useful information and guidance as policies are developed. For this reason, urged Members to endorse the Officer's recommendation.

**MS:** asked Officers what additional use B2 allowed – would this site be limited to a gym? Had noticed a lot of 'For Sale' and 'To Let' signs nearby on Planning View, and felt it would be sensible to go with the officer recommendation and ask for six months' history of active marketing in the present climate.

**JW:** seconded PJ's move to approve.

**AM:** recognised the reasons to maintain this site as employment land, but said there were other examples of applications where this view had not been taken, such as Kier and Kraft. Asked what was special about this site that made it so important. Said if Officers want it to appeal to get information about how the Inspector is thinking, this isn't a planning reason but a strategic reason. Was struggling to see what was so wrong with this application that it couldn't be approved.

**PJ:** referring to the refusal of the previous identical application, asked if this was a delegated decision? Thought Members were making heavy weather of this application and should get on with it.

**MJC, in response:**

- said para 1.3 of the officer report stated that this was an identical application to 12/01575/COU which was refused under delegated powers in February 2013;
- to MS, said that B2 referred to leisure-based activities, and this COU application was specifically to allow for a gym. If Members were minded to approve, they should attach a condition that the change of use was for a gym only – if a different leisure-based use was wanted, it would require a further planning application;
- to AM's question about what was different about this site and the Kier and Kraft sites, said this was dictated by policy: both of those developments facilitated business moves to different sites (Kier to Hatherley Lane, Kraft to Bouncers Lane) and EM2 allowed for this – an change of use allowing relocation of the user was policy-compliant;
- in this case, the applicant had not demonstrated that there was no demand for the unit. If it had been actively marketed for six months, Officers may have made a different recommendation, but policy makes it quite clear and sets out a number of criteria – this one being Clause B of Policy EM2 – which cannot be set aside without any evidence;
- would like to see this tested at Appeal to see how to develop this policy.

**PS, in response:**

- to add to this, said one of the relevant issues is that this is a purpose-built employment unit. EM2 also talks about other buildings brought into employment use, such as residential units which are changed to industrial or office use and later turned back
- said there are very few purpose-built industrial units in Cheltenham, and the Battledown Industrial Estate is well-trafficked, good quality, and with not a high vacancy rate; there are not many sites such as this, which adds to the argument to retain the business use, and it only requires one person to take it on. Said a lot of new business had been established since 2006, and it was important to take this into account;
- also made the point that the proposed gym is not a new start-up business – it is already established at the Prince of Wales stadium, and there may be other more appropriate units available in town for its relocation;
- said there had been a lot of discussion about alternative decisions in similar cases, but there were also a lot of cases not talked about – a quick review identified a good body of around 11 similar cases where we used marketing evidence as a potential reason for refusal since 2007;
- regarding town centre uses, said there was a distinction between a change of use in a town centre to another town centre use and a change of use elsewhere. Said a change of use to a gym in a town centre would mean people spending more time in and around the gym in retail units, buying drinks and sandwiches etc. Here, however, was a purpose-built industrial estate without the advantages of a town centre; said the NPPF sets out town centre uses, with some more appropriate than others;
- told Members that a substantial number of cases had been decided on the same grounds as the officer recommendation for this one, and EM2 was a solid and viable policy, designed to avoid the loss of employment units.

**PT:** said there had been no comment about the different types of employment, but as far as she could see, light industrial use was not that different from leisure use, and the gym would provide employment for 15 people who might otherwise be drawing benefits. Regarding the loss of industrial land, reminded Members about Tennyson Road which had been turned into a housing estate, with the industrial units moved to the end of the site. Said employment and industry was changing, and employment land wasn't as important as it used to be.

**PJ:** said the unit had been empty since 2004, and officers were saying the applicant should spend money on marketing it to prove it can't be sold and then apply again. Said Policy EM2 set out to protect employment land, *except where* – there were many exceptions. Said there wasn't a huge amount of leisure facilities in town, the gym may benefit the local community, and cut down people's travelling time to other gyms. Said again an industrial unit could employ just one person, while the gym would employ a number of people.

**MJC, in response:**

- said PS would respond to PT's comment about different types of employment;
- regarding the Tennyson Road site, said its development had enabled Spirax Sarco to grow to an unrecognisable level, funded by the redevelopment of the site – this is what EM2 allows;
- to PJ, said mixed use development was permissible under EM2 to enable the re-development of a site. Referring to the ASDA site, said this was a genuine mixed use development and compliant with policy; the current application is not a mixed use proposal and that aspect of the policy is therefore not relevant.

**PS, in response:**

- to PT, said she made an interesting point regarding job-generating uses, and what was the difference between 15 people employed in a gym and 15 office employees?
- from a spatial planning point of view, said location was key here. Was not opposed to the gym use – this was acceptable in many places and was looking for some analysis of where else the company might locate in areas other than those protected for B class employment use;
- said EM2 designates that sites already in light industrial use should be retained – was not opposed to gym use but not in this healthy industrial setting. If another location could be found, the town could benefit from both;
- regarding the marketing, said the NPPF looks for solutions not problems, and what was required here was six months' quality marketing at a reasonable rent – this would allay concerns and Officers would then be happier with the situation. Said this had been made clear to the applicant early in the process, and if that advice had been taken the situation may well not be as it was now;
- to PJ, said policy EM2(g) refers to mixed use development and EM2 tests f and g have to be read together – for example if an office building was of poor quality and a developer only wanted half, a mixed use might be allowed in order to improve the remaining B class floorspace, but in this case, an area of safeguarded, good quality B1/B8 floorspace would be completely lost to a different use;
- said consideration of this application was all about location, and there were lots of areas of the town where a gym would fit in well;
- said again that evidence of marketing was needed.

**BF:** in response to these comments about location, said there was a gym on an industrial estate in Leckhampton. Had been in the manufacturing industry for 30 years, and pointed out that manufacturing can now be carried out in far less space – industry is changing, employment is changing. Said the authority needs to be careful, and the government directive which enables employment land to be changed to residential recognises that things are changing and more people work from home.

**PJ:** understands what PS is saying and what policy dictates on location, but said policy can't dictate the market and can't make it do something or not. Continued to move to approve.

**MJC, in response:**

- said it was important to reiterate that Officers were working to the policy in the Local Plan where clear tests are set out. Officer advice is that this application does not meet those tests. If the Committee sets Local Plan policy aside, it leaves the Council at risk from further applications;
- said it is a routine matter to ask for marketing tests, and with these in place, approval can be justified. This has not been done in this case, and it would be wrong to set aside local policy without that justification;
- depending on whether the appeal is dismissed or allowed, Officers will know how to take this policy forward.

**PT:** thought that the vote should be taken

**JF:** noted that of the many letters of support, only seven actually came from the area, with some from as far afield as Taunton and many of the writers living much closer to the Leisure Centre where the gym is currently situated. Was very worried about setting a precedent for employment land, and thought Members should heed Officer advice – not to do so would be dangerous for the future.

**RG:** agreed that it is very important for the future. Had asked Officers to justify their position, and understood that validated policies must be adhered to – said applicants had been put through hoops in the past and that must be done here, to be fair to all applicants.

**JF:** understood that deferral was not a viable option, although considered it the best option, but was satisfied to follow Officer advice here.

**HM:** asked if Members were happy for the Chair and Vice-Chair to work on conditions with the Officers, should the application be approved.

*(Consensus: yes)*

**Vote taken on PJ's move to approve**

5 in support  
6 in objection  
2 abstentions

**REFUSE**

Application Number:	<b>13/00309/FUL</b>
Location:	<b>Ashford Court Cottage, 4A Ashford Road, Cheltenham</b>
Proposal:	<b>Removal of existing pitched roof and construction of additional floor of accommodation with flat roof</b>
View:	<b>Yes</b>
Officer Recommendation:	<b>Permit</b>
Committee Decision:	<b>Permit</b>
Letters of Rep:	<b>14</b>
Update Report:	<b>Correction to previously published informative</b>

**Public Speaking:**

None.

**Member debate:**

**RG:** had thought long and hard since Planning View, been back to look at the site again, and re-read the Officer report. Noted the Officer's 'on balance' conclusion to permit, but came down on the other side and moved to refuse on CP3, CP4 and BE1. Realised that there was a fine balance here, and

that any one reason wouldn't stand up alone, but together thought they did. Said the site was very constrained and two storeys didn't fit well within it, making it very close to two neighbouring houses and having an adverse impact on the conservation area. Was concerned about future residents of the house, faced with frosted glass and wooden fencing to stop them from looking out. Thought BE1 would be compromised if the proposal is allowed, as from Andover Road it is currently possible to see the ridge of the bungalow, the higher ridge of buildings in Andover Walk, and on through to the roofs in Park Place. Accepted that this is an enclosed plot, but thought the proposal a step too far in the conservation area, and also contrary to the NPPF para 134 – considered the conservation area to be a conservation asset, and although the proposal wouldn't cause *significant* harm to it, it would cause some harm. The NPPF states that if the harm is less than substantial, it should be weighed against public benefits, but this proposal brought no benefits, actually harming the amenity of local houses and the conservation area – said it should therefore be refused.

**MS:** agrees with RG. Had looked carefully on Planning View and considered the proposal to be an over-development of a small site – with little room to extend around the bungalow it would be extended upwards and resemble a carbuncle. Thought other improvements could be carried out to make the bungalow into desirable accommodation for a couple. Didn't like the design – thought it wrong to put in windows and then block them out – and said the height would impact significantly on the area. Could not support the application.

**MJC, in response:**

- said the two issues raised were the impact on the conservation area and on neighbouring amenity;
- the officer view is that there is no harm. Noted the comments that views into and beyond the site to Park Place would be spoilt, and that the character of the conservation area would be changed, but said this doesn't mean that the proposal is harmful – the test is whether the proposal preserves or enhances the area;
- said the bungalow is currently unimposing and the proposal will increase its size, but it will still be subservient, in line with the Garden Land SPD;
- did not consider it would be harmful to the conservation area, and said policy BE1 was not relevant here as it relates to open space in conservation areas and this is not an open space but a developed space. This would not be a strong argument if the application went to appeal as harmful to the green and open character of the area;
- regarding the impact on neighbouring amenity, said a couple of devices had been introduced to control the elevated views from the upper windows: obscure glazing to the bathroom and stairwell (this was a reasonable option), and obscure glazing and a louvred system, as at Bethesda Street, for the third bedroom. Admitted that Bedroom 3 was constrained and that this was not ideal, but it was only for one bedroom, and quite a clever scheme. Said the affect on neighbours would be not altogether unacceptable and not enough to refuse.

**KR, in response:**

- to reiterate, said this site was never historically garden land to an adjacent building – it was vacant land, only developed as a bungalow;
- said the existing bungalow is of no architectural merit, the best thing about it being that it is not easy to see. What is proposed is a larger building and more modern accommodation in the context of housing in the borough;
- regarding the impact on the conservation area, said that remains to be seen but could not say that it would be harmful if it was well-proportioned and designed. Thought the proposal had good mass, form and was nice looking;
- conceded that the proposal was not traditional architecture, but NPPF guidance states that planners should not attempt to impose any style of architecture. This is a contemporary scheme, and there are many other examples of this coming through. English Heritage is also happy with contemporary architecture as well as good historical replicas;

- said she was comfortable with this proposal, and that it provides variety, as long as the overlooking aspects are overcome.

**BF:** regarding the windows, says these are to look in and out of, and for the egress of light. Said there was no problem with frosted glass for letting light, as long as residents didn't want to look out of their window, or be overlooked.

**AM:** thought the simple test here is: is the proposal an improvement on what it there now? Answer: Yes.

**HM:** asked RG if he still wanted to move to refuse.

**RG:** said he did, and thought that the open space referred to in Policy BE1 didn't just mean open ground – thought the view into the site would be affected. Realised that the proposal would provide more living space, but thought it would be better to keep the dwelling as a bungalow, encouraging people to downsize. Thought CP3 and CP4 were contravened, regarding design and affect on amenity, not just because the design was contemporary but also because it was trying to do too much in a small space, affecting the amenity of others in the area.

**MJC, in response:**

- said Officers had touched on design but did not think the scheme could be refused on this grounds, reminding Members that the Conservation Officer is happy with it.

**RG:** considered the design - form, mass and height – to be wrong, there would be an adverse effect on existing uses, and the proposal would not be in line with the Park Area SPD.

**MJC, in response:**

- asked RG to confirm that he wanted to include CP7 as a refusal reason.

**RG:** confirmed that he did.

**Vote taken on RG's move to refuse on CP3, CP4 and CP7**

4 in support

8 in objection

1 abstention

**PERMIT**

*The meeting ended at 8.20pm.*