



## Appeal Decision

Inquiry Held on 23-26 March, 29 March & 31 March 2021

Site visit made on 1 April 2021

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 11 May 2021

---

**Appeal Ref: APP/B1605/W/20/3261154**

**Land adjacent to Oakhurst Rise, Cheltenham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by William Morrison (Cheltenham) Limited and The Trustees of the Carmelite Charitable Trust against the decision of Cheltenham Borough Council.
  - The application Ref 20/00683/OUT, dated 24 April 2020, was refused by notice dated 17 September 2020.
  - The development proposed is described as "*Outline application for residential development of 43 dwellings – access, layout and scale not reserved for subsequent approval.*"
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application was made in outline which included access, layout and scale. Appearance and landscaping are reserved for future consideration. A broad Landscape Strategy Plan<sup>1</sup> does, however form part of the application plans, due to the ecological and arboricultural considerations at the site. Other plans, including methods of enclosure, boundary treatments, and potential house types have been treated as indicative only.
3. Charlton Kings Friends were granted 'Rule 6' status at the Inquiry (CKFR6). They presented arguments in terms of the main issue relating to heritage along with other matters including ecology, arboriculture, and sustainable transport.
4. A ruling was given in respect of amended plans following the Case Management Conference on 5 January 2021. This related to the inclusion of 4 no self-build dwellings as part of the 43 dwellings proposed. It was ruled that the amended scheme would be appropriately considered at the Inquiry as there would be no prejudice to any interested parties. This was subject to a formal consultation on the proposed amendments which I have had regard to.
5. Many appeal decisions and court judgements were put before me in evidence by the main parties. Each case turned on its own evidence, as does my decision. I have had regard to these, drawing specifically on them where necessary.

---

<sup>1</sup> Drawing No 19216.101 Rev G

6. Three separate unilateral undertakings (UU) were submitted in draft form, discussed at the Inquiry and subsequently finalised. I come to these below.
7. Despite my indicative main issues given prior to the start of the Inquiry at the Case Management Conference, the subsequent evidence related to the natural environment was significant. Based upon the way the discussions evolved, I have dealt with it as a main issue.

### **Main Issues**

8. Accordingly, the main issues are:
  - (a) the effect of the proposed development upon the setting of Ashley Manor and icehouse (Grade II\* Listed) and Charlton Manor (Grade II Listed) including whether the harm is outweighed by the public benefits; and,
  - (b) the effect of the proposed development upon the natural environment.

### **Site and area description**

9. The appeal site comprises a broadly rectangular area of grassland of around 4.29 hectares. It is divided by a mature hedgerow and trees running north-south through the site. A number of other mature trees are located in and around the site and many are subject to a Tree Preservation Order (TPO). This includes ancient and veteran trees. The site also contains protected species such as badgers (and setts), bats and slow-worms, along with natural springs and is designated as a Local Wildlife Site (LWS)
10. Located in an elevated position, to the east of the dividing hedgerow, the site slopes down towards the southern boundary and the western part slopes towards the south and west with a steeper gradient.
11. The site is currently used as part of the grounds of St Edward's Preparatory School, which is located to the south. An area of the site is currently fenced off and used to house animals as part of the school farm and the eastern part of the site includes a distinctive mound with trees atop, identified as a former icehouse to Ashley Manor. The school occupies a large area and includes the Grade II\* listed Ashley Manor and other more modern school blocks, as well as sports and tennis pitches. The site boundary also includes narrow strips of land within the school grounds which relates to the connection of drainage runs.
12. To the north and east, the site is bounded by the rear gardens of properties along Ashley Road and Birchley Road, including the Grade II listed Charlton Manor, which all form part of the Battledown Estate. To the west, the site is bounded by rear gardens of dwellings along Charlton Court Road and Oakhurst Rise which is accessed from the Ewens Farm estate.
13. The site forms part of the Principal Urban Area (PUA) of Cheltenham. It is located around 2km from the Town Centre, although some local shops and facilities are located along London Road. The site is also within 20km of Cotswold Beechwoods Special Area of Conservation (SAC), Dixton Wood SAC, and Bredon Hill SAC.

### **Proposal**

14. The residential development would comprise 21 market homes, 18 affordable homes and 4 self-build/custom build plots. The units would take access from

Oakhurst Rise, a cul-de-sac of detached and semi-detached bungalows. The access road within the site would curve in an easterly direction with 2 culs-de-sac leading off to the south, terminating at an extended turning head to the north. Dwellings would comprise a mix of detached, semi-detached and terraced properties with designated parking.

15. The site would cut through part of the existing N-S hedgerow and would involve the loss of around 49 trees, including some 20 protected trees. Under separate licence, the development would remove the main badger sett within the site, and temporarily close other setts during construction.
16. Around 70% of the site would be retained as open space, the majority of which is the eastern part (including the icehouse) along with land to the south-west. A large new tree belt would separate the development from the open areas and the open land to the east would be retained as a LWS for use by St Edwards School. This area would also include an attenuation pond and an artificial relocated replacement badger sett. Ongoing management of the open space and LWS would be secured by condition and by the UU.

### **Background**

17. There is a significant background history to the appeal site which is relevant. An outline application for 90 dwellings was refused by the Planning Committee in 2018 against the recommendation of the Planning Officers. The reasons for refusal related to effects on trees, heritage assets, highways, biodiversity and the AONB.
18. A further outline application was submitted for 69 dwellings and again while this was recommended for approval, this was refused by Members in 2019. This scheme was appealed (and included a revision down to 68 units) and that appeal was dismissed in September 2019<sup>2</sup> on the basis of less than substantial harm to heritage assets which was not outweighed by the public benefits. Other harms in respect of trees and biodiversity, and highway safety were also found to support the case for the dismissal of the appeal.
19. The current appeal application for 43 units was also a Member overturn, with a single reason for refusal relating to heritage impacts which were not outweighed by public benefits.

### **Planning Policy Context**

20. The development plan includes the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS) which was adopted in 2017 and the Cheltenham Plan (CP) which was adopted in July 2020. The JCS sets out the strategic policies for the area, while the CP sets out the local development management policies.
21. Policy SD8 of the JCS is an overarching historic environment policy which seeks to conserve and enhance heritage assets as appropriate to their significance and for their important contribution to local character, distinctiveness and sense of place.
22. Other policies referenced within the various statements of case include JCS Policies SD10 which seeks to locate residential development in the principal

---

<sup>2</sup> APP/B1605/W/19/3227293

urban area of Cheltenham, SD9 (Biodiversity and geodiversity), SD12 (Affordable Housing). Similarly, CP Policies GI2 and GI3 relate to the protection of trees.

23. The CP allocates 9 sites for housing, as set out in Policy H1. It is recognised within the plan that the existing built-up area of Cheltenham is tightly constrained by Green Belt and the Chilterns Area of Outstanding Natural Beauty (AONB) with very little undesignated land in which to expand. The purpose of the allocations in H1 is to make the most of previously developed and under-used sites within the existing urban area.
24. Crucially, the appeal site forms one such allocation. Policy HD4 is the specific policy for this site. This is a detailed policy which sets out the site description, constraints and a number of comprehensive site specific requirements are also listed. For ease of reference, a copy of that policy is set out below:

<b>POLICY HD4: LAND OFF OAKHURST RISE</b>	
Site description	This site is a greenfield site within the existing urban area. However, the site is subject to a number of constraints and therefore the allocation of dwellings on the site has been adjusted to accommodate these.
Site area	4ha
Constraints	<ul style="list-style-type: none"> <li>• Steep gradients across the site</li> <li>• Mature trees and hedges</li> <li>• Adjacent listed buildings</li> <li>• Biodiversity</li> <li>• Heritage assets</li> <li>• Icehouse</li> </ul>
Site specific requirements	<ul style="list-style-type: none"> <li>• A minimum of 25 dwellings, subject to masterplanning (in accordance with Policy SD4 of the JCS) which demonstrates that the development can be achieved whilst accommodating:</li> <li>• Safe, easy and convenient pedestrian and cycle links within the site and to key centres</li> <li>• A layout and form that respects the existing urban characteristics of the vicinity</li> <li>• A layout and form of development that respects the character, significance and setting of heritage assets that may be affected by the development</li> <li>• Protection to key biodiversity assets and mature trees</li> <li>• New housing should be located away from the setting of the west elevation of Ashley Manor. There should be no development south of a straight line westwards from the rear of the northernmost school building. In addition, to provide an undeveloped buffer between the rear garden boundary of Charlton Manor and the new development a landscaping buffer should be provided for 30 metres west of the rear boundary with Charlton Manor.</li> <li>• Long term protection of mature trees and hedges</li> <li>• Any development on the site should secure improvements to the Icehouse</li> </ul>

25. There is significant local objection to the current appeal, and concerns from Historic England as a statutory consultee. The site was also subject to

significant objection and scrutiny as part of the local plan process, including during the examination of the CP by the examining Inspector who was aware of the 2019 appeal decision at the site. Two reports were produced for the CP evidence in terms of the heritage effects 'the ECUS Reports.'<sup>3</sup>

26. The policy was subject to a number of main modifications amendments including detailed site specific requirements relating to heritage, biodiversity and tree protection. The allocation of the site for some 25 dwellings and the detailed criteria were deemed by the examining Inspector in their report<sup>4</sup> to *"considerably reduce the potential for the harmful impacts which were identified in the appeal scheme. A more modest development would enable the interrelationships between the listed buildings, the site and the Icehouse to be better addressed and to avoid any harmful impact on the setting of the listed buildings."*
27. The Local Plan Inspector concluded: *"In view of the location of the site within the built-up area and the need for residential development within Cheltenham, I find that with an appropriate layout and form of development the issues raised as part of the appeal scheme could be satisfactorily addressed and the allocation is sound."*<sup>5</sup>
28. The principal of residential development of this site has therefore been robustly examined and is accepted. This policy forms a clearly defined and detailed baseline against which the appeal must be assessed.

## **Reasons**

### ***Heritage Assets***

#### *Significance*

29. Incorporating an earlier house, the Grade II\* listed Ashley Manor dates from around 1832 and comprises ashlar stone and hipped slate roofs. The western elevation to which the historic carriage sweep aligns, forms the main entrance to the property with Tuscan pilasters, a Corinthian portico and glazing bar sash windows. To the south elevation is a projecting bow window with Corinthian columns. Internally it has ornate plasterwork. It also has historic significance due to its connection with Nathaniel Hartland, a local banker. The listing description describes it as one of the finest villas in the Cheltenham area.
30. The setting of Ashley Manor has been eroded over time; modern and utilitarian school buildings and sports pitches have been built within its grounds, particularly to its south and eastern sides and including on the former pleasure grounds. The tree-lined carriage is still intact and there is a grouping with the listed summerhouse and drive piers, which are also individually Grade II listed.
31. The appeal site historically was never part of the designed landscape; however, it forms an unspoilt green backdrop to the Manor which has an increased presence due to the rising topography. The mature trees on the site boundary with the school, and those within the site, also give a sense of the site's historical associations with Ashley Manor. Views are taken towards the appeal site from within the Manor itself, although not from the ornate principal rooms.

---

<sup>3</sup> ECUS Tabulated Historic Environment Appraisal Report Dated December 2017 (CD L6) and a more detailed site specific ECUS Heritage Assessment dated January 2019 (CD L7)

<sup>4</sup> Report on the Examination of the Cheltenham Plan 2011-2031 dated 17 March 2020

<sup>5</sup> Paragraph 59 of the above report.

- The land to the west of the mature hedgerow dissecting the site plays a more limited role in providing the green backdrop, due to its falling topography to the west.
32. The Icehouse is located within the appeal site and is around 100m north of Ashley Manor. It is visible as a mound with mature trees atop. There is some debate as to its provenance – an estate map dating from 1846 and a 1901 OS map label it as a reservoir but other OS maps including an 1886 OS map denote it as an Icehouse. Regardless of this, it is a discernible feature in the landscape of the site and is visible from the immediate grounds of Ashley Manor. I consider the appeal site and Icehouse represent an important remaining vestige of Ashley Manor’s historic pastoral landscape setting.
  33. Charlton Manor is a Grade II listed large mid-19<sup>th</sup> Century Gothic Revival mansion designed by Henry Dangerfield with part stone rubble, part rendered and mock timber framed facades and mullioned and transomed windows. There is an ornate tiled gabled roof with numerous decorative bargeboards. It is historically significant as the first of the large mansions to be built on the Battledown Estate. The appeal site forms part of an immediate and open backdrop to Charlton Manor, and is part of its setting.
  34. The grounds of the house which form part of its setting are located predominantly to the south and west. Historically these were more substantial to the south, having been subdivided and developed for housing during the 20<sup>th</sup> Century. Its western elevation faces directly out across the appeal site and principal rooms, including the billiards room, living room and upper floor bedrooms take in views of the site as well as much longer distance views of the wider landscape beyond the built up area of Cheltenham. As with Ashley Manor, the land to the west of the mature hedgerow is much less visible from Charlton Manor, again due to falling topography sloping to the west.
  35. The property benefits from an elevated position and Ashley Manor is visible to the south, down the sloping terrain and across part of the appeal site. There is also a strong interrelationship between Ashley Manor, the Icehouse and Charlton Manor in visual and historic terms.
  36. Overall, the appeal site contributes to the setting of these heritage assets, making a positive contribution to their significance, in addition to their architectural and historic interest. There was broad agreement on this point between the parties.

### *Effects*

37. In terms of effects, it was agreed by the main parties that the development would cause less than substantial harm to designated heritage assets.<sup>6</sup> The effects would be through development within the setting of assets, rather than any direct effects to the listed buildings themselves. In dispute was the precise level of harm within that category. Latterly, there was also a difference of opinion as to whether the Icehouse is curtilage listed. I shall take each issue in turn, below.
38. Any harm to heritage assets should be given great weight, but within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated, as set out

---

<sup>6</sup> As heard in evidence and contained within the Heritage Statement of Common Ground

within Planning Practice Guidance (PPG)<sup>7</sup>. This is important to define here, so as to assist in the heritage balance.

39. The development would maintain the open land to the north of Ashley Manor and to the east of Charlton Manor because the layout would incorporate a substantial open area to the east of the site. The Icehouse would remain open and a substantial tree belt would also help to provide a visual buffer between the open land and the new development. The closest development would be around 75m away from Ashley Manor and around 80m from Charlton Manor. As evidenced by the verified views, the relationship between Ashley Manor, the Icehouse and Charlton Manor would be preserved by the area of retained grassland. In this regard, the 6<sup>th</sup> bullet point in the Policy HD4 would be fully met.
40. The harm would arise from the introduction of built form into the currently open setting and backdrop of Ashley Manor. In particular, plots 11-32 would be located to the east of the mature hedgerow.
41. Similarly, for Charlton Manor, the development would be visible beyond the Icehouse and proposed tree belt, impeding views and urbanising the currently open aspect and setting. Plots 17-21 and 22-21 would be located closest to the Icehouse and would have greatest visibility from this heritage asset.
42. The proposed tree belt would assist in mitigating the effect through clear separation of development and the retained grassland, as well as filtering views from the heritage assets. Details of this are reserved for future consideration. However, the tree belt's meandering form would have a somewhat artificial appearance in the landscape, reinforced by the presence of a 1.8m high deer proof fence along the perimeter with the open grassland.
43. Taking the above together, there is some conflict with the 4<sup>th</sup> bullet point of the site requirements in Policy HD4 insofar as the layout and form would not respect the significance and setting of heritage assets.
44. I am mindful that Grade II\* listed buildings represent the top 7% of England's most significant designated heritage assets. In combination with the Grade II listed building and Icehouse, the development would be firmly within the realms of 'less than substantial harm.'
45. I recognise the changes from the previous appeal scheme have reduced the level of harm from very significant adverse impact to Ashley Manor and Charlton Manor. Nonetheless, I am of the view that there would be moderate harm when applying the scale put to me at the Inquiry, as opposed to the minor harm attested by the appellants.
46. It should also be noted that the non-designated heritage asset of Glen Whittan, a large Edwardian house which also forms part of the Battledown Estate, is considered to be adversely affected by the appellants. The degree of harm is said to be slight/negligible, which I find no reason to disagree with. This also adds to my findings of harm to heritage assets.

---

<sup>7</sup> Paragraph: 018 Reference ID: 18a-018-20190723

*Icehouse*

47. The status of the Icehouse as a curtilage listed structure was questioned by the planning witness for the appellant and submissions were made in closing on this matter.
48. Section 1(5) (b) of the Planning (Listed Building and Conservation Areas) Act 1990 (PLBCAA) states that any object or structure within the curtilage of the listed building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948 shall be treated as part of the listed building. Whether the building is 'curtilage listed' as per Section 1(5)(b) of the PLBCAA should be based on evidence relating to the physical layout of the listed building and the building in question, their ownership past and present, and their use or function past and present specifically whether the building was ancillary (i.e. subordinate to and dependent on) the purposes of the listed building at the date of listing.
49. While no explicit finding in relation to the Icehouse has been made before, the Council has always treated it as a curtilage listed structure and it is implicit in the previous Inspector's decision that it was of importance. It is also noted that the heritage witness for the appellant has treated it as a curtilage listed structure. Moreover, Policy HD4 has a specific requirement for securing improvements to it.
50. The appellants have sought to use recent case law at Blackbushe Airport<sup>8</sup> whereby it was held that curtilage cannot be seen as an expansive area. This case was examined in respect of Paragraph 6 of Schedule 2 to the Commons Act 2006 relating to whether an airfield was within the curtilage of a terminal building. However, I note the judges involved examined other case law, including that relating to listed buildings and considered that the general concepts were the same.
51. The matter of defining curtilage is never a straightforward exercise and there is a good deal of listed building case law on this matter. In general, it is a matter of fact and degree for the decision maker.
52. Mr Grover, for the appellant, noted in his proof that it is clearly located within land historically in the ownership of Ashley Manor, and will have been built to serve it, in a location away from the formal landscaped pleasure grounds.
53. It is around 110m to the north of the listed building, and as established above, there is a strong visual relationship between the two, not least due to the topography of the site. The distance in itself is not a decisive factor but I consider that 110m is not so great in this context as to reasonably raise significant concerns in that regard.
54. Overall, there was once a functional relationship with Ashley Manor (be it reservoir or icehouse) and it is clearly ancillary to it as a substantial Regency villa. Therefore, I consider the Icehouse to be a curtilage listed structure.
55. Even if my findings on this issue were deemed to be incorrect, the Council did not make a case in terms of harm to this structure and thus it would not make any significant difference in respect of my conclusions as to the effects upon significance of Ashley Manor.

---

<sup>8</sup> INQ30

### *Heritage Assets - Conclusions*

56. Overall, the development would cause harm to the significance of the Grade II\* Ashley Manor and Grade II listed Charlton Manor and Glen Whittan and a non-designated heritage asset. In this regard, the development would conflict with CP Policy HD4, as well as JCS Policy SD8. That harm is categorised as less than substantial, and I have found this to be to a moderate degree. In accordance with the Framework and the statutory obligations imposed, I give great weight to that harm. I shall weigh this against the public benefits later in my decision.

### **Natural Environment**

57. The appeal site represents a multi-faceted ecosystem which includes mature and veteran trees, hedgerows and grassland. Fauna includes badgers, a bat roost and reptiles. It is designated as a LWS. I deal with each element, below.

#### *Arboriculture*

58. The TPO covers around 45% of the trees on the site and includes a number of individually protected oak, ash and pine trees. It also includes two group designations including trees on top of the icehouse (Area A2) and to the northern boundary of the site (Area A3). Within the site, 5 veteran (reference 3007, 3026, 3028, 3030 and 3031) and 3 ancient trees (reference 3018, 3021 & 3037) have been identified by the appellant.

59. The glossary in the Framework defines ancient and veteran trees as *'a tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.'*

60. PPG<sup>9</sup> sets out further guidance, stating that trees become ancient or veteran because of their age, size or condition. It also provides advice on how to identify ancient and veteran trees and states that surveys and site assessments may be needed to identify such trees and inform planning decisions. Natural England and Forestry Commission standing advice also provides guidance on veteran and ancient trees.

61. A total of 49 trees would be removed to facilitate the proposed development, including around 20 protected trees in Area A3. The loss of these was not in contention, instead the focus of the dispute relates to whether the veteran trees on the site have been properly identified, and whether trees (including the ancient and veteran trees) would be protected effectively. The loss of trees 3016 and 3017 as unprotected but mature trees was also raised.

62. I recognise concern from the Woodland Trust (WT) and the Ancient Tree Forum (ATF) relating to the identification of veteran trees on the site. In combination, they considered that an additional 5 trees would also meet the definition (3010, 3014, 3015, 3022 and 3027). There was also a concern raised at the Inquiry from CKFR6 regarding trees 3032 and 3033 located outside the site being omitted from identification as veteran trees and that these would be harmed by proposed drainage works.

---

<sup>9</sup> Reference ID: 8-032-20190721

63. The appellant has assessed the trees using their own in-house methodological approach called RAVEN<sup>10</sup> which has been adopted for use by a number of arboriculturists and local authorities.
64. I acknowledge there is a difference in the definitions of ancient or veteran trees with age, size and condition cited in the Framework but with age, size or condition cited by the PPG, the latter of which the WT and ATF have based their assessments. Notable are the differences of opinion between various experts in themselves on this; written expert submission on behalf of CKFR6 were content with their identification, whereas the ATF identified an additional 2 and WT an additional 5 trees (including the 2 by ATF). This highlights the complexity and somewhat subjective nature of identifying veteran trees.
65. The use of the RAVEN methodology was examined by the previous Inspector and was found to be generally sound in the identification of ancient and veteran trees. Having viewed the trees on site and reviewed all of the evidence before me, the disputed trees are all mature specimens and have value but would not meet the definition of veteran trees at this current time. I caveat this slightly as I have some reservations about tree 3014, a mature oak tree. As I saw at my visit it displays some veteran characteristics such as decay holes and cavities, deadwood, and exposed heartwood from a lightning strike.
66. Nonetheless, in general I find that RAVEN accords with the Framework definition and has provided a detailed assessment for identifying veteran trees on age, size, and condition in respect of their values. I note that the method also allows for flexibility and judgement. Tree 3014 would also be retained in any case.
67. In identifying veteran trees the appellant has introduced the concept of 'relic' trees for trees 3007 and 3021. Standing advice recommends that a buffer zone around a veteran tree should be at least 15x larger than the diameter of the tree, which is designed to protect individual trees and mitigate against development effects. However, for trees that have lost >75% of their original crown, a smaller buffer zone aligned with a root protection area (RPA) is proposed. The basis for this is that many trees with a large diameter stem have lost much of their crown or where stem circumference includes tissue which is no longer living. Linked to both, this is said to result in a more a compact root system for the tree.
68. While I accept there is clear science behind root to shoot ratios, veteran trees are identified as such because of crown retrenchment and signs of decay in the trunk branches or roots. To therefore use these parameters as a reason to reduce its buffer zone to the RPA, which is standard means of protection for any tree, would undermine the very purpose as to why a particular tree is identified as being veteran in the first place. There can also be no dispute that veteran trees have less vigour and as such are more likely to be adversely affected by environmental disturbance than younger more vigorous trees.
69. Applying a smaller buffer zone, the result is that the development of plots 9, 10, 22 and 23 along with allocated parking spaces and access roads would be within the buffer zone area as advocated by the standing advice for trees 3007 and 3021.

---

<sup>10</sup> Recognition of Ancient Veteran and Notable Trees

70. Veteran trees are irreplaceable habitats. Even with a detailed veteran tree management plan (secured by condition) and wider tree protection measures, I cannot be sure, given encroachment into the standing advice buffer zone, that the development would not result in deterioration of these highly important trees.
71. It was said that the previous Inspector accepted the concept of a relic tree. However, from my reading of the decision, there is no detailed analysis in respect of this. Paragraph 59 of the appeal decision states that there was no substantive dispute concerning the veteran tree buffers of the trees to be retained. Incursions from raised walkways, parking bays and drains, as well as increased public access into veteran tree buffers and RPA were noted and the Inspector considered there would be some degree of risk to the longevity of the trees, finding conflict in that regard.
72. In respect of broader matters relating to protected trees, a detailed arboricultural management plan has been submitted. Measures to protect the trees during the construction phases and in terms of the ongoing and long-term management of the site would be secured.
73. However, some of the RPAs of protected but non-veteran trees would also be affected by the development. Tree 3014 would have its RPA breached by a small part of a garden and fence of plot 30. A parking bay to serve plot 29 would traverse this for oak tree 3015. Oak trees 3032 and 3033 would also have the drainage running in between them.
74. Trenchless provision for drainage is proposed and no-dig surfaces for the parking is proposed. Safeguards would also be in place due to the TPO. However, there would be a degree of risk to protected trees given the amount and layout of development, particular trees 3014 and 3015. Moreover, even if tree 3014 is not considered to be veteran now, the proximity of development would render it unlikely to achieve that status in the future.
75. By way of mitigation and compensation, I accept that a woodland belt would be created and I deal with overall biodiversity effects, including net gains further below.
76. Overall, in terms of arboricultural effects, I consider that the development would cause unacceptable harm to retained protected and veteran trees. This would conflict with the criteria in HD4, as well as CP policies GI12 and GI13 which seek to protect trees, through retention, new planting, appropriate pruning and protection during construction. The Framework also recognises the importance of ancient and veteran trees in paragraph 175 and states that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused unless there are exceptional reasons and a suitable compensation strategy exists. Footnote 58 indicate types of exceptional examples and requires that public benefits should clearly outweigh the loss or deterioration of habitat.

#### *Badgers*

77. Badgers are a protected species, not for their rarity, but for their welfare and against illegal and cruel persecution. The CP recognises badgers and they are well known in the Borough.

78. A total of 6 badger setts are present within the site and I was able to view these at my visit, along with the well-worn badger paths extant across the site. The main sett BS1 has over 40 entrances, is a key breeding site and is located centrally within the site. It is proposed to remove this sett under licence. Other setts to be removed would be BS2, BS5 and BS6. BS4 would be temporarily closed during construction.
79. By way of compensation, the setts would be replaced by an artificial sett which would be located within the grassland near to the Icehouse, although detailed design would be for future approval. An outline mitigation strategy has been provided.
80. As a species, badgers are clearly thriving at the site, with an increase in their population being recorded as part of the assessments made for the previous and current planning appeal.
81. Concern was raised by CKFR6 that the proposed artificial set would be on the site of a spring. Thus, it would be uninhabitable and would not provide adequate compensation for the loss of the setts. However, the location of the new sett is not yet fixed and the submitted mitigation strategy is detailed. There is also protection through the licencing regime and Natural England would not issue a licence if it was not satisfied that the replacement sett was suitable. In that event, the existing setts could not be removed and given its central location, the development could not proceed.
82. Nevertheless, if the license were granted and the development were to go ahead, the badger population would undoubtedly be subject to more human pressure and interference. While around 70% of the site would remain undeveloped and the open land to the east would be accessible only to St Edwards School and not the new residents, retained sett BS4 would be in an area accessible to the residents of the development and the overall foraging areas would be reduced. Therefore, there would be a harmful effect upon badgers residing at the site, in conflict with CP Policy HD4 and JCS Policy SD9 which seeks to conserve and enhance biodiversity and geodiversity.
83. This is consistent with the conclusions of the previous Inspector for the 68 unit scheme. The number of units has been reduced, but I am mindful that the badger population has increased since that time meaning that the overall effects would be similar.

#### *LWS*

84. The LWS is a recent designation, and it qualified for designation for its value for learning. Concern was expressed by former pupils of the school and through a submitted petition, as well as by CKFR6.
85. Its designation post-dates the allocation of the site and the adoption of the CP and thus it is not referenced in Policy HD4. JCS Policy SD9 states that development within locally-designated sites will not be permitted where it would have an adverse impact on the registered interest features or criteria for which the site was listed, and harm cannot be avoided or satisfactorily mitigated.
86. Around 1.2ha located to the south and east of the woodland belt would be retained as a LWS for the use exclusively by the school and not for residents of

the development. In this regard, the site's value for learning will be maintained, albeit on a reduced site area than currently enjoyed by the pupils.

87. There was a debate regarding the quality of the grassland. Ongoing concern was cited with the timing of the survey work undertaken by the appellant. I am conscious that this matter was reviewed as part of the LWS designation process within input from the County Ecologist (CE) and Gloucestershire Wildlife Trust (GWT). While there may be some uncertainty as to the grassland quality, it did not prohibit the designation of the area as a LWS and to have value for learning must necessitate a degree of value in its flora.
88. I will come to proposed improvements and cited net gains further below, including whether this would form part of the learning experience.

#### *Bats*

89. A roost is documented in tree 3018 to the northern boundary of the site, currently occupied by a single bat.
90. There would be some fragmentation of its habitat by the mature hedge running through the site being split in two, south of the RPA for tree 3018, to enable the access road and 3 units.
91. Bats are a protected species, but I am mindful that this is a single roost, and trees and hedgerow to the northern boundary of the site in proximity of tree 3018 would remain. Further measures such as lighting controls and bat boxes are also proposed by the appellant and could be considered in detail by the reserved matters scheme. I thus consider that bats could be adequately protected.

#### *Reptiles*

92. The population of reptiles at the site was also disputed by CKFR6, and again the timing of the survey was criticised. Documented species includes slow worms and a grass snake.
93. While an updated survey may indicate a greater presence of such species, I am satisfied that these could be addressed through ecological survey work and management which could be secured by condition.

#### *Interrelationships*

94. CKFR6 raised concerns about ecological elements being treated by the appellant as 'Lego bricks' which are in isolation and moved around the development design.
95. While the proposal has been worked up and assessed together by the arboricultural and ecological experts, there do appear to be some outstanding matters which require a more comprehensive approach.
96. Specifically, the veteran tree management plan does not include reference to the badger setts and any implications of their closure within the buffer zones. Further detailed reptile survey work may mean that the artificial sett might affect reptile species such as the slow worm. Moreover, the creation of the new sett would involve the digging up of the grassland, although upon questioning it was indicated that this would be retained and reinstated following its construction. Future management of the LWS was also questioned given that

machine mowing would not be suitable over a badger sett and for improved grassland.

97. Having set out my broad findings above for each element of flora and fauna at the site, I am mindful that these do not live in isolation, but operate as an ecosystem, or to use the Oxford English dictionary definition a "*biological community of interacting organisms and their physical environment.*" It is therefore imperative that the development and management of the site is dealt with in a comprehensive form and I must consider the effects in the round.
98. However, the specific outstanding matters identified above could, reasonably, be dealt with by condition with management being secured in the submitted UU.

### *Net Biodiversity Gains*

99. Paragraph 170 of the Framework seeks to minimise impact on and provide net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures. Paragraph 175 also promotes net gains. Such gains are subject to a draft Environmental Bill whereby it will become mandatory for 10% net gains to be achieved. This is expected in autumn 2021.
100. This has been calculated by the appellant as around a 12% net gain, using a beta version of a Defra 2.0 metric. An updated version is imminent but was not available at the time of sitting. Using the same metric, CKFR6 has calculated that the site would generate net loss of around 17%. These are widely different calculations produced by two qualified ecologists. I note that discussion on this has been ongoing between parties for some time and calculations have been revised in both cases.
101. The differences relate to the baseline assumptions made when inputting data into the metric such as the inclusion of hard and soft areas of plots, roads and paths in the value calculation. It is also considered there is an incorrect application of the strategic multiplier along with a reliance on woodland creation via habitat succession, that would be at the expense of other habitats. Optimistic future outcomes are also believed to be assumed, which would affect the calculation further.
102. The metric is a beta version only and is subject to further update and review. Accordingly, there may be further refinement or guidance in terms of what should be considered under the 'development; sealed surface' category and the 'urban – suburban/mosaic of developed/natural surface' categories which accounts for the substantial area of divergence between the parties. The same point can be made in terms of the application of the strategic significance multipliers. However, as it stands there is nearly 30% difference between the appellant and CKFR6.
103. In terms of habitat succession, the woodland belt would be located on grassland and would result in grassland loss. However, even with the LWS allocation, based on the evidence before me the grassland quality could not be considered to be remarkable or even good and thus I do not consider that this would constitute an example of 'robbing Peter to pay Paul' as was put to me by the ecologist for CKFR6.

104. The precise amount of lost grassland is disputed between the appellant and CKFR6 due to the earthworks required for the badger sett and other infrastructure, and even if it is saved for the duration of the works and restored, I am unclear as to how this may or may not affect its value and, crucially how it might have factored into the metric.
105. While trees have clearly thrived at the site, as evidenced by their maturity and ancient and veteran status, there are uncertainties in respect of the underlying geology and hydrology, and whether the proposed belt of woodland would establish given the clay soil and springs in the site. That said, management would be secured for the lifetime of the development and as landscaping is a reserved matter, further assessment could take place.
106. I note that GWT and the CE have identified the potential for net gains to be made, with the CE noting that with the proper addressing of reserved matters, including a s106 agreement a biodiversity net gain would accrue.<sup>11</sup> In the main, I agree with that stance. I also note other appeal decisions where net gains have been given significant weight.<sup>12</sup> Even if any additional losses were incurred from the badger sett creation, the grassland quality could be significantly improved and the woodland belt would be likely to, at the very least form a minor benefit, although the precise levels are unclear. I am also mindful that GWT and CE do not appear to have reviewed or drawn on the metric calculation when reaching that view.
107. In this regard, and coming back to the LWS, I can be satisfied that its value for learning would, on balance, be likely to be maintained in spite of a reduction in the site area.
108. Nevertheless, there are significant uncertainties around the purported percentages of net gains. I simply cannot be certain as to what level of gain would result at the site and consider that they are unable to be accurately quantified at the present time.

*Do nothing scenario*

109. The appellant asserts that current management of the site is detrimental and that the ecological value of the site would further decline if a 'do nothing' scenario is continued. Effects such as mechanical mowing, the keeping of pigs and other livestock and hygiene works to remove deadwood from veteran trees (as an important biological component) are cited.
110. I was able to view evidence of this at my site visit, however now it is a known issue, it is a somewhat remarkable claim given that the appellant acts for the landowners and is best placed to advise on such matters for the future. In any case, the site is allocated and it is likely that development would occur and necessary appropriate management will take place in the future.

*Habitats Regulations Assessment (HRA)*

111. The proposal is near Cotswold Beechwoods Special Area of Conservation (SAC), Dixton Wood SAC, and Bredon Hill SAC. The effects from the proposal on the SACs would be the increase in people who may visit the SAC for recreational purposes, and this could adversely affect the integrity of the sites.

---

<sup>11</sup> CD F23

<sup>12</sup> INQ21

112. Due to their distance away and the scale of development, the latter two SACs have been screened out as they are not likely to be significantly affected.
113. However, for the Cotswolds Beechwood SAC, the development might give rise to an increase in people who may visit the SAC for recreational purposes. The SAC is also sensitive in terms of air quality.
114. The Shadow Habitats Regulation Assessment (SHRA) carried out by the appellant for the previous scheme of 69 units details that fewer than 1 additional visitor (0.632) would be likely to visit either the Cotswolds Beechwoods SAC annually and this would be reduced further by the development of 43 units. Therefore, any recreational pressure and a reduction in air quality would be marginal or negligible.
115. Homeowner information packs (HIPs) would be provided to all new residents, outlining informal recreational assets in the area and key 'Countryside Code' messages. The aim of this would be to direct new residents to other sites, avoiding the SAC.
116. With the HIPs, the potential adverse effect would be avoided, and the integrity of the site would not be adversely affected. Natural England also have no objections to the proposal.
117. I thus am satisfied that the HIP could be effectively secured by condition, and having undertaken the Appropriate Assessment, I am satisfied that the scheme would not adversely affect the integrity of the nearby habitat sites.

#### *Natural Environment - Conclusions*

118. At present, the site contains a wealth of ecological assets including its trees and hedgerows, ancient and veteran trees, badgers and other flora and fauna as identified above.
119. Paragraph 175 of the Framework advocates an avoid-mitigate-compensate hierarchy but given the allocation of the site, avoidance of all effects is unrealistic and there have been significant efforts made in terms of mitigation and compensation. I have found that bats and reptiles would be protected and subject to condition, there would be no effects upon the integrity of the SAC having carried out an Appropriate Assessment.
120. That said, I have identified harm to veteran trees which are afforded a significant level of weight and protection in the Framework. Badgers, as a protected species, are also likely to be adversely affected. Provision of management plans for existing trees and retained grassland are cited as a benefit of the scheme. However, while net gains and the protection of the LWS may likely be achieved in the long term, at this stage these cannot be quantified with any accuracy.
121. In considering the effects in the round, and mindful of the weight to be given to irreplaceable habitats, I consider it appropriate to adopt a precautionary approach in terms of the natural environmental resources at the site.
122. Overall, I thus consider that overall the development would conflict with CP HD4 in terms of trees and biodiversity, along with CP policies GI12 and GI13 and JCS Policy SD9 (in terms of its overarching protections of biodiversity and geodiversity) and paragraphs 170 and 175 of the Framework. As an allocated

site where avoidance of effects is unrealistic, I consider that this may form a wholly exceptional reason under paragraph 175(c). Accordingly, I shall weigh this against the public benefits later in my decision, similarly for heritage effects.

## **Other Matters**

### *Access and Traffic*

123. Maximising sustainable transport options is one of the main objectives of the Framework and this includes providing for high quality walking and cycling networks. Oakhurst Rise, as its name suggests, has a relatively steep gradient leading east to the appeal site which then continues to rise to the existing mature hedgerow running through the site.
124. I accept that the gradients involved are slightly below cycle design guidance<sup>13</sup> but the site is an allocation in a residential area where many developments are located at a gradient. CKFR6 consider a design approach could be adopted and attest that it isn't beyond modern technology, however no such examples were given as to what this might be or how it might address this issue.
125. The topographies involved will require a degree of physical fitness from both pedestrians and cyclists, but it would not be insurmountable. Having visited the road, I saw several cyclists and pedestrians, including with pushchairs. which demonstrates that the local topography does not overly limit such activities. I also note the offer of an e-bike voucher as part of the travel pack by way of mitigation.
126. Significant local objection has also been generated in terms of highway safety concerns from local residents, including those who live on Oakhurst Rise, and the surrounding network which will be utilised by the new residents of the development. This included a mock coroner's report written following the fictional death of a family from a traffic collision. This was a highly unusual form of evidence, but it does demonstrate the level of concern locally.
127. While I would not go as far as the previous Inspector who described the access route as 'tortuous,' it is certainly an indirect access owing to the one way system in place around Oak Avenue/Churchill Drive/Beaufort Road, and the presence of on street parking.
128. Oakhurst Rose would be changed to a new through-route and there would be additional flows but having reviewed the evidence, I consider that would not be harmful in terms of highways effects. The highways authority cites no objections to the scheme on technical highway grounds in terms of flows, junctions, visibility, capacity or other which is a matter of considerable importance. The methodological approach taken is an industry standard commonly used to assess housing applications. Highways issues would have also been considered as part of the local plan process which led to the allocation of the site.
129. Records do not indicate incidences of conflict between pedestrians, cyclists and motorised vehicles in the vicinity. That is not to say that such incidences have not occurred, but there is little evidence to support such claims. The one-

---

<sup>13</sup> As set out in local Transport Note 1/20 Cycle infrastructure Design

way system and local conditions also act as traffic calming measures. Construction traffic would also be dealt with by condition in order to minimise those time-limited effects.

130. Overall, while I appreciate the local concern, I am satisfied that there would be no highway safety implications arising from the proposed development that could warrant finding unacceptable harm, subject to conditions. The development would accord with Policy HD4 in this regard.
131. On a slightly separate matter, an Oakhurst Rise resident has advised that their accessible transport, which is necessary to access medical care and respite facilities would no longer be able to attend the property due to the road becoming a through route. Evidence has been provided as to the frequency of the visits, nature of the vehicle and access required by the Care Centre, run by the County Council.
132. Accordingly, I must also have due regard to the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, which requires me to consider the need to eliminate unlawful discrimination, to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Protected characteristics include a person's disability or age. It does not follow from the PSED that the appeal should automatically be dismissed. However, I am required to have due regard to the duty in arriving at my decision.
133. I am mindful that this is an allocated site and Oakhurst Rise would always be the access point. The allocation itself thus would always result in an affect to this particular resident. I do not doubt that the access would be affected to the property from the changes to the road and increased flows along it. Nonetheless, the existing small turning head to Oakhurst Rise will remain, and there would also be additional turning heads within the site itself. The length of time the vehicle would need to be parked outside of the property should also be manageable with the predicted flows, particularly outside of the peak hours and would be akin to delays experienced from delivery vehicles. The construction management plan to be submitted by condition could make specific provision to the occupants for the duration of construction.
134. Moreover, as a service provided by the County Council, I would expect there to be other options and collaborative working to help address this particular issue, given that this is an allocated site by a public authority.
135. Therefore, while I acknowledge the personal circumstances of the neighbouring resident, the specific accessibility impacts would be limited to a degree.

#### *Flood Risk and Drainage*

136. I have dealt with issues in respect of springs within the site at appropriate points in my decision. In general, there was no objection to the scheme from statutory bodies on this basis.
137. Drainage has been considered in detail for surface and foul water, and these would be subject to further condition and detailed assessment which should give further comfort to local residents. There is no evidence to support the concerns relating to capacity of the main sewerage system. I therefore find no harm in this regard.

## **Planning Benefits**

138. For the avoidance of any doubt, in ascribing weight to the benefits I have used the following scale: limited, moderate, significant and substantial.

### *Housing Delivery*

139. It is common ground that the Council cannot currently demonstrate a 5-year housing supply, with the current figure being around 3.7 years. It was explained that this was due to some of the strategic sites in the JCS not coming forward to planned timescales due to site specific complexities.

140. As an allocated site, the 25 unit minimum set out in CP HD4 will factor into the supply calculations. However, Cheltenham is also a constrained area for development and 18 additional units are proposed. In light of these factors, along with the shortfall, I consider this to be a substantial benefit. My findings are broadly consistent with the previous Inspector who gave market housing significant weight, and I note that the supply position has worsened from the time that decision was made.

### *Affordable Housing*

141. Comprehensive and undisputed evidence has been provided in relation to affordable housing need across the country as well as on a Borough level and specifically for Charlton Kings. There is an accumulated shortfall of 1,015 affordable homes against the requirements of the 2015 SHMA and the need is acute. The contribution of 40% affordable housing at the site including social rented units, affordable rented units and shared ownership units of different sizes as guaranteed by the submitted UU. This is of substantial weight.

### *Self-Build Housing*

142. There is a substantial and unmet demand for self-build housing and the Council has continually failed to meet their statutory duties to meet this need.<sup>14</sup> Again this was uncontested by the Council, who also conceded that this shortfall would continue into the next base period, which ends on 30 October 2021. The inclusion of 4 self-build plots as part of the development also carries substantial weight.

### *Employment*

143. There would be employment benefits in terms of provision of jobs during the construction phase as well as further spending within the local shops and facilities by the residents of the site. I agree with the assessment made by both the main parties on this matter and I give moderate weight to those benefits.

### *Drainage*

144. The Council and appellant have agreed that proposed drainage works represent a minor benefit due to this reducing surface water run-off from the site with the installation of attenuation facilities to regulate the rate of discharge. This also takes account of future increases in rainfall from climate change.

---

<sup>14</sup> As required by the Self-Build and Custom Housebuilding Act 2015 (as amended).

145. I have found no harm in respect of drainage matters, however drainage is typically required as mitigation in order to protect residents (both existing and new) from flood risk. I therefore disagree that this would constitute a benefit. Instead, this would be neutral.

#### *Charity Finances*

146. It is submitted that as registered charities the Carmelite Order and the school would benefit from the uplift in land value which would arise from the grant of planning permission. This would thus benefit their charitable practices and statutory need to provide public benefits.

147. Financial considerations do not normally fall within the remit of planning benefits/disbenefits. The site is allocated in the CP and I don't know what uplift has already occurred because of this. It is reasonable to assume there would be further uplift from the additional houses proposed but I don't have evidence on this. I also have limited information in terms of how any monies might be utilised for charitable purposes and there is no mechanism before me to secure that. I am thus unable to give it weight in the balance.

#### *Icehouse*

148. Further investigation and interpretation of the Icehouse would be secured by condition in accordance with CP Policy HD4, and I agree with the main parties that this should be afforded limited weight.

### **Planning and Heritage Balance**

149. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

150. This is an allocated site in the recently adopted CP and the site was identified as suitable for the development of housing after a rigorous site selection process. While there was significant local objection and strength of feeling against the development of the site, as an allocation the principal of development in this location is established.

151. I am conscious that it was chosen because it was the least harmful option in a highly constrained area. As a challenging site, Policy HD4 is upfront in identifying its constraints and detailed criteria which provide protection to heritage and habitats, amongst other things.

152. In making my assessment, I have found less than substantial harm to designated heritage assets, which I have identified as being at a moderate level. I have also found harm to irreplaceable habitats and I have adopted a precautionary approach in terms of broader natural environment/biodiversity issues which also weighs against the scheme. Together, these matters result in conflict with allocated Policy HD4 as well as SD8, SD9, GI12 & GI13.

153. Due to a lack of housing land supply, the presumption in favour of sustainable development as set out in Paragraph 11 of the Framework is engaged. In such circumstances, paragraph 11d(i) of the Framework states that planning permission unless the application of policies in the Framework that protected areas or assets of particular importance provides a clear reason for refusing development. Footnote 6 sets clarifies that this includes policies

relating to designated heritage assets and irreplaceable habitats sites. In order to assess this, I am required to weigh identified harm to habitats and heritage against the public benefits.

154. Substantial benefits would arise from housing delivery, affordable housing and the self-build units. Employment benefits carry moderate weight and limited weight is attached to the Icehouse benefits.
155. Matters relating to flood risk and drainage, as well as access and highways, are neutral. There is some conflict with the PSED for the reasons cited above which is given limited weight against the development.
156. The harm has also been reduced from that identified by the previous Inspector and significant efforts have gone into developing the revised scheme through detailed masterplanning. I note that the Council Officers, including internal consultees such as the Conservation Officer, also were in support of the scheme. I am also mindful that the scheme was not refused on the basis of ecological and arboricultural effects.
157. Nevertheless, harm to heritage assets and irreplaceable habitats are afforded significant weight in statute and by the Framework. I accept that, on the face of it, finding against a housing scheme on a very recently allocated site is perhaps somewhat unusual, particularly as the housing figure contained within Policy HD4 is expressed as a minimum. However, based upon the detailed policy context set out in HD4 and my findings above, I consider that, on balance, these matters plus the other harms identified, are determinative. The harm would not be outweighed by the public benefits I have identified, even where they are deemed to be substantial.
158. Therefore, there is conflict with the development plan and the Framework provides a clear reason for refusing the development proposed.
159. Finally, alternative schemes were discussed at the Inquiry with a 20 unit scheme and a 25 unit scheme layout being presented. However, I have assessed the proposals before me based on their own merits.

### **Conclusion**

160. For the reasons given above and having taken into account all other matters raised, I therefore conclude that the appeal should be dismissed.

*C Searson*

INSPECTOR

## **ANNEX A: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Jeremy Patterson	Solicitor and Principal Planning Lawyer, Tewkesbury Borough Council
He called:	
Robin Williams	Managing Director of Asbri Planning
BA BTP Dip Surv	
MRICS MRTPI	
Will Holborow	Senior Heritage Consultant, Purcell
BA BArch ARB MA	
(Conservation Studies)	
CAABC IHBC	

### FOR THE APPELLANT:

Christopher Young QC aided by Sioned Davis of Counsel	Instructed by Peter Frampton on behalf of William Morrison (Cheltenham) Limited and the Trustees of the Carmelite Charitable Trust
They called:	
Peter Frampton	Director at Frampton Town Planning Ltd
BSc(Hons) TP MRICS	
MRTPI	
Philip Grover	Director at Grover Lewis Associates Ltd
BA(Hons) BTP Dip Arch	
Cons MRTPI IHBC	
Julian Forbes-Laird	Director & Principal Consultant at FLAC
BA(Hons) Dip.GR.Stud	
MICFor MRICS	
MEWI Dip.Arb(RFS)	
Alistair Baxter	Director at Aspect Ecology
BA(Hons) MS (Oxon) MSc	
CEcol CEnv MCIEEM	
James Stacey	Senior Director Tetlow King
BA (Hons) Dip TP MRTPI	
Andrew Moger BA (Hons)	Associate Director Tetlow King
MA MRTPI	
Adam Padmore	Managing Director Cotswold Transport Planning Ltd
BSc (Hons) MSc (Env Management) MSc (Transport) CIHT	
Jan Kinsman	Associate Director at Educational Facilities Management Partnership Limited (EFM)
CEng MICE BSc(Eng) ACGI	
Jude Rodrigues	Legal Director Davies & Partners Solicitors

### **FOR THE RULE 6 PARTY:**

Sally Walker	Representative for Charlton Kings Friends
MA (Hons)	

**INTERESTED PERSONS:**

Bridgette Boucher	Senior Solicitor at Gloucestershire County Council
Jack Taylor	Woodland Trust
David Edwards	Local Resident
Chris Lythgoe	Oakhurst Rise Resident
Ben Marsden	Battledown Estate Resident
Katie Forster	Charlton Court Road Resident
Susan Hughes	Charlton Court Road Resident
Oliver Sanders	Former pupil of St Edwards Preparatory School
Cllr Matt Babbage	Cheltenham Borough Councillor, Battledown Ward (also speaking on behalf of Alex Chalk MP and Cllr Louis Savage)
Derek Long	Battledown Estate Resident
Phil Walker	Battledown Estate Infrastructure Trustee
Peter Marsden	Local Resident
Roger Willbourn	Trustee of the Battledown Estate

**ANNEX B: INQUIRY DOCUMENTS**

**DOCUMENTS SUBMITTED AT THE INQUIRY**

- INQ1: Council's Opening Statement
- INQ2: Friends of Charlton Kings Opening Statement
- INQ3: Appellant's Opening Statements
- INQ4: David Edwards Transcript
- INQ5: Chris Lythgoe Transcript plus attached comments from Andy Thurlow, The Prestbury Centre, and analysis bullet points.
- INQ6: Ben Marsden Transcript
- INQ7: Katie Forster Transcripts – Access, Traffic Safety & Drainage and Storm Water
- INQ8: Susan Hughes Transcript
- INQ9: Oliver Sanders Transcript
- INQ10: Cllr Babbage Transcript
- INQ11: Jack Taylor (Woodland Trust) Transcript
- INQ12: Combined Transcript Derek Long and Phil Walker
- INQ13: Peter Marsden Transcript
- INQ14: CIL Compliance Statement – Gloucestershire County Council
- INQ15: Roger Willbourn Transcript
- INQ16: St Edwards School Cheltenham Trust Trustees Report and Financial Statements for the year ended 31 August 2019
- INQ17: The Carmelite Charitable Trust Report and Accounts 31 December 2016
- INQ18: Email exchanges P Frampton-R Williams Jan 2021
- INQ19: Oakhurst Rise S106 Position Statement
- INQ20: Table of Affordable Housing evidence produced for S78 appeals 2014-2021 (Tetlow King Planning)
- INQ21: Secretary of State Decision and Inspectors Report Land to West of Burley-in-Wharfedale Bradford APP/W4705/V/18/3208020 dated 3 March 2021
- INQ22: Final Draft s106 Agreement (and associated plans)
- INQ23: Revised Draft s106 UU Agreement Self Build Units (and associated plans)
- INQ24: Statement of Fact – Education Contributions Stephen Chandler, Gloucester County Council and notes of s106 UU (GCC Provisions).
- INQ25: Affordability Ratios Note
- INQ26: Revised Draft Conditions (Clean and Tracked Changes versions)
- INQ27: CIL Compliance Statement (revised) version 2 at 30.03.21

- INQ28: Site Visit Itinerary
- INQ29: Email – Council’s observations on conditions 16, 21 and the planning obligation 30.03.21
- INQ30: R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs [2021] EWCA Civ 398
- INQ31: Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC [2017] UKSC 37
- INQ32: Appellants’ Response to Queries ahead of RTS on Conditions & Obligations 31.03.21
- INQ33: Appellants’ Response to B Boucher Note 31.03.21
- INQ34: Revised Public Benefits Table
- INQ35: R.(Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 Admin
- INQ36: GCC Contributions Schedule and S106 Monitoring Officer Fees Generated
- INQ37: Revised Draft S016 GCC UU (clean and tracked changes versions) and associated plans
- INQ38: Revised Draft Conditions (Clean and Tracked Changes versions)
- INQ39: Gloucestershire School Places Strategy 2021-2026
- INQ40: Council’s Closing Submissions
- INQ41: CK Friends Closing Submissions
- INQ42: Appellant’s response to Education Statement of Fact
- INQ43: Appellant’s Closing Submissions

#### **DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY**

1. Scanned Certified Copy of Completed S106 Agreement between (1) Trustees of Carmelite Charitable Trust (2) St Edwards School Cheltenham Trust (3) William Morrison (Cheltenham) Ltd (4) Cheltenham Borough Council, dated 19 April 2021.
2. Scanned Certified Copy of Completed Unilateral Undertaking in favour of Gloucestershire County Council, dated 19 April 2021.
3. Scanned Certified Copy of Completed Unilateral Undertaking in favour of Cheltenham Borough Council, dated 19 April 2021.