

Judicial Review of grant of planning permission by Gloucestershire County Council (GCC) for a Secondary School and ancillary development at Kidnappers Lane, Leckhampton, Cheltenham

Application No: 19/0058/CHR3MJ,

Claimant Mrs Margaret White, 11 Arden Road, Cheltenham, GL53 0HG

31st August 2020

Statement of Facts

1. On the 2nd August 2019 GCC made an application to itself for:

“The construction of a new 6FE Secondary School building, with a new all-weather pitch, sports playing fields, a multi-use games area, onsite car parking and other associated works” on land off Kidnappers Lane and Farm Lane in Leckhampton (Application No: 19/0058/CHR3MJ).

2. On the 14th May 2020 an Officer’s Report recommending approval of the Application (“the OR”) was presented to GCC’s Planning Committee.

3. The OR contained the following, relevant to this proposed claim.

Views to and from the AONB

4. The description of the Site given in the OR includes this:

1.4 The site is not within a protected landscape; however the Green Belt (GB) and Area of Outstanding Natural Beauty (AONB) share a boundary, on the southern side of Church Road which lies approximately 300m from the site. A prominent feature of the AONB and the surrounding landscape, is Leckhampton Hill which incorporates a large footpath network that affords views across the site towards Cheltenham.

5. The conclusion of the section relating to the description of the development includes this:

“2.18 In conclusion

• The site is not subject to any restrictive statutory or non-statutory land use designation which could restrict development. As the site is not within the statutory Green Belt, Cotswold Area of Outstanding Natural Beauty (AONB) or Conservation Area, legislation that could challenge the use of the site for a school building does not apply.”

6. The Landscape and Visual Impact section of the OR includes the following:

2.37 The application site is not subject to any landscape designation. However, the Cotswold AONB follows Church Road, to the south.

7. As observed by various consultees and in various parts of the OR, however, the nature and location of the Proposal will have obvious effect on views into and out of the neighbouring AONB (see e.g. reference to the views of GCC’s County Landscape Advisor at paragraph 8.75 of the OR and

the observation at paragraph 8.79 that *“The proposal lies outside of the AONB, but would be visible from significant viewpoints within the AONB”*).

Valued Landscape

8. Following examinations into the Joint Core Strategy and the Cheltenham Local Plan both Inspectors Ord and Burden recognise the Valued Landscape of the Leckhampton Central Fields and the merits of Local Green Space, reference document [1]. An updated and independent Landscape Appraisal was completed for the Parish Neighbourhood Plan in October 2017, this is provided in full with reference document [5] and is recommended reading together with the Parish Council post decision letter of reference document [3] which discusses the landscape value and makes important requests.

Reference documents [4] and [6] provide useful background to the area which support the Neighbourhood Plan and NPPF Local Green Space designation. Previous Inspector’s judgement is provided in reference document [4], section 3.4.4, although the whole of section 3 is useful reading in this review. Reference document [6] provides detail on the JCS common ground work requested by Inspector Ord, the map of figure 1 is useful to indication the position of the school site within the as then Local Green Space, area marked CF1 and CF2. The map of reference document [2], page 14 provides the detailed Landscape and Visual Sensitivity of Leckhampton (south Cheltenham C6a), this is one of the core JCS evidence documents and is considered to be important evidence.

9. In paragraph 247 of the Bovis/Miller Homes Inquiry, Inspector Clarke’s made an important observation on the Leckhampton Central Fields area which is in full agreement with reference documents [2 & 5], under his subheading,

‘Views from the AONB’ provides as follows:

“247 For this reason I concur with the appellant’s opinion [73] that NPPF paragraphs 115 and 116 do not bind this site because it is not “in” the AONB. Nevertheless, in so far as the view “from” the AONB is part of its landscape as defined by the Oxford English Dictionary [166], it is clearly a matter of great significance in any event and part of a valued landscape which NPPF paragraph 109 advises us to protect.”

10. Inspector Ord's final Joint Core Strategy (JCS) Report, reference document [1], provides a judgement on Landscape and the Impact of Traffic provides at Leckhampton, and is as follows:

"117. From my site visit observations, the adjacent land, East of Farm Lane, is also highly sensitive to development mainly due to its proximity to the AONB and stunning views into and out of the AONB. The various significant heritage assets in the south of the site add further interest and sensitivity, rendering this area unsuitable for built development on environmental sustainability grounds. Therefore, the area to the south of the allocation, coloured red for high landscape and visual sensitivity on the Landscape and Visual Sensitivity plan 113, should remain as green infrastructure."

...

121. Of further concern is the impact of traffic generation from the proposed allocation. The limited highway capacity on the surrounding roads has been highlighted in the evidence before me, and the issue has recently been examined in detail at the Bovis/Miller Homes inquiry. I have considered the Inspector's report on this appeal¹¹⁸ and particularly the sections on transport. Taking account of the Inspector's finding that the cumulative impact of the proposed development would be severe¹¹⁹ this strengthens my view that the extent of residential development at this location should be significantly reduced."

11. It is clear therefore that the Site is located within an area of Valued Landscape. Whilst there are some references to this in the OR it is notable that these are only to objectors to the Proposal (see paragraph 4.9 and pages 63 and 66 of the OR) and there is no reference within the body of the OR, let alone direction as to the fact of the Proposal's location within a Valued Landscape.

Relevant Provisions of Law and Policy

Heritage

12. Given the proximity of the Application site to a designated heritage asset (a Scheduled Ancient Monument) GCC consulted the County Archaeologist in relation to the Application and the response received included the following:

"The wider locality is known to contain extensive archaeological remains relating to settlement and activity of the prehistoric, Roman and medieval periods. These include the earthwork remains of a medieval moated settlement designated a Scheduled Monument, which is located c. 245m to the south-east of the application site. This development proposal may therefore have an adverse impact on the setting of that Scheduled Monument, and for that reason I recommend that you should consult Historic England for their views on this scheme." (emphasis added)

13. GCC duly consulted Historic England on the Application and received (inter alia) the following response:

"The proposed new secondary school and associated playing fields has the potential to impact on the significance of highly designated heritage asset [sic] known as Moated site and fishponds at Church Farm

(National Heritage List for England No.1016994), also known as Leckhampton Moat. Leckhampton Moat is a small moated site that contained a manor house dating from between the 12th and 16th centuries. It formed, alongside the Church of St Peter (Grade II listed building NHLE 1340121), the secular (Lord of the Manor) power alongside the Ecclesiastical (church) power over a former small village to the north of the moat from the 12th to the 16th centuries. The village now consists mainly of buried remains, although two Grade II listed buildings (Moat Cottage, NHLE 1340125, and Olde England NHLE 1152960) are likely to be the last remaining properties of that former village as they lie alongside a hollow way (track way) leading from the Church past the moat northwest towards the development site. This formed the main street through the village. The fields surrounding these properties and the hollow way have evidence of ridge and furrow. This is an indicator of medieval farming practice and landholding associated*

with villages of this date. The association of the hollow way, Grade II houses and open fields with the moated site forms its setting, as they contribute to its significance.

The proposed new school is located at the far end of the red line development area, close to existing properties and proposed residential development as part of the wider Cheltenham developments. The school will serve those new developments. The school playing fields will be closer to the moated site. They will help retain more open views across the landscape, although floodlighting and fencing will urbanise that space. In our view this will cause some harm to the significance of the moated site through a change in its setting, reducing the amount of open fields associated with the village and moated site. We note that the proposal includes ecological mitigation in two fields to the north of the moated site. This is welcome as it retains the open fields close to the village. This will preserve some of the moats setting and will be an enhancement to the historic environment as well as the natural environment. Any development in those fields would cause harm to the significance of the heritage asset. Although there is some harm to the significance of the heritage asset which is contrary to National Planning Policy Framework (NPPF) paragraphs 193 and 194 that harm is at the lower end of less than substantial and it is for you to decide if that harm is outweighed by the public benefits of the scheme and the proposed mitigation, as per NPPF Paragraph 196. Recommendation: Historic England has no objection to the application on heritage grounds. However we consider that the issues outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 193, 194 and 196 of the NPPF. Your authority should take these representations into account in determining the application. If there are any material changes to the proposals, or you would like further advice, please contact us.

(emphasis added)

14. In relation to heritage the OR provided (so far as presently material) as follows:

“Heritage Assets

8.102 Paragraph 190 of NPPF3 states that “Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.”

8.103 The proposed school site is located approximately 245 m North West of the remains of a medieval settlement known as ‘Moated site and fishponds at Church Farm’, also known and [sic] ‘Leckhampton Moat’ and designated as a Scheduled Monument. As advised by the County Archaeologist, Historic England (HE) was consulted because this development may therefore have the potential to impact on the setting of that Scheduled Monument. The monument is located to the north of Church Farm Leckhampton. The proposed biodiversity offset land lies immediately to the north of the monument.

8.104 In this area the land is rising slowly towards the escarpment, although still remains relatively flat. The majority of the built development for the school lies to the north of the

application site, close to existing properties and proposed residential development as apart [sic] of the wider Cheltenham developments. The playing fields lie to the south closer to the moated site, and these will help to retain open views across the landscape. There are several mature intervening hedges between the monument and the School site. It is also proposed to enhance the landscaping around the School. It is unlikely that the School site would be visible from the Scheduled Monument.

8.105 HE state that “in our view this will cause some harm to the significance of the moated site through a change in its setting, reducing the amount of open fields associated with the village and moated site. We note that the proposal includes ecological mitigation in two fields to the north of the moated site. This is welcome as it retains the open fields close to the village. This will preserve some of the moats setting and will be an enhancement to the historic environment as well as the natural environment. Any development in those fields would cause harm to the significance of the heritage asset.”

8.106 HE state that “although there is some harm to the significance of the heritage asset which is contrary to National Planning Policy Framework (NPPF) paragraphs 193 and 194 that harm is at the lower end of less than substantial and it is for you to decide if that harm is outweighed by the public benefits of the scheme and the proposed mitigation, as per NPPF Paragraph 196”.

This is something that needs to be taken into consideration in the planning balance. Whilst there will be alteration to the overall setting of the heritage asset, it is at some distance from the school, with intervening fields, and the biodiversity off set land will be an enhancement to the Moated site. With that in mind the CPA does not consider that the proposal would be contrary to Cheltenham Borough Local Plan Second Review saved Policy BE20 or JCS Policy SD8.”

(emphasis supplied)

15. The two policies to which reference in the OR is here made provided as follows:

POLICY BE 20 ARCHAEOLOGICAL REMAINS OF LOCAL IMPORTANCE Objective O11

Development affecting sites of local archaeological importance will be permitted where the remains are preserved: (a) in situ; or (b) only if this is not feasible, by record. Where remains are to be preserved in situ, measures adequate to ensure their protection during construction works will be required.

Policy SD8: Historic Environment (so far as presently material) provides that:

1. The built, natural and cultural heritage of Gloucester City, Cheltenham town, Tewkesbury town, smaller historic settlements and the wider countryside will continue to be valued and promoted for their important contribution to local identity, quality of life and the economy.

2. Development should make a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment. (emphasis supplied)

3. Designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance, and for their important contribution to local character, distinctiveness and sense of place. Consideration will also be given to the contribution

made by heritage assets to supporting sustainable communities and the local economy. Development should aim to sustain and enhance the significance of heritage assets and put them to viable uses consistent with their conservation whilst improving accessibility where appropriate.

4. Proposals that will secure the future conservation and maintenance of heritage assets and their settings that are at risk through neglect, decay or other threats will be encouraged. Proposals that will bring vacant or derelict heritage assets back into appropriate use will also be encouraged.

16. Summary Reasons for the OR's recommendation for a grant of planning permission start at paragraph 8.157. Paragraph 8.165 records the performance of a balancing exercise, indicates that the Proposal is contrary to the adopted development plan and recognizes that a number of material considerations falls to be balanced against that position. However, these summary reasons make no reference to heritage harm.

Officer's Report

17. Planning Committee Members are taken to have followed the reasoning in an Officer Report unless there are contrary indications (Pagham PC v Arun DC [2019] EWHC 1721 (Admin)).

18. The principles which guide the proper approach to the reading of an OR were set out by Lindblom LJ in R(Mansell) v Tonbridge and Malling BC [2017] EWCA Civ 1314 at [42]. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in R. (on the application of Morge) v Hampshire County Council [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in R. v Mendip District Council, ex parte Fabre (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in Palmer v Herefordshire Council [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made.

Heritage

19. Where there is a finding of harm to a designated heritage asset (no matter its degree) it is necessary for the decision maker to acknowledge that fact and to ascribe to it "considerable importance & weight, (Barnwell Manor Wind Energy v E Northamptonshire DC [2014] EWCA Civ 137 (see also the National Planning Policy Framework ("NPPF 2019") at Paragraphs 193, 194 and 196").

Views to and from the AONB

20. Section 85 of the Countryside and Rights of Way Act 2000 provides, so far as presently material, as follows:

“(1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty...”

21. The National Planning Policy Guidance (“NPPG”) makes it clear that the statutory duty applies when considering land outside an AONB. It states:

What are the statutory duties of local planning authorities in relation to National Parks, the Broads and Areas of Outstanding Natural Beauty?

- Section 11A(2) of the National Parks and Access to the Countryside Act 1949, and section 85 of the Countryside and Rights of Way Act 2000 require that ‘in exercising or performing any functions in relation to, or so as to affect, land’ in National Parks and Areas of Outstanding Natural Beauty, relevant authorities ‘shall have regard’ to their purposes for which these areas are designated. A list of the public bodies and persons covered under ‘relevant authorities’ is found in Defra guidance on this duty, and Natural England has published good practice guidance.

- This duty is particularly important to the delivery of the statutory purposes of protected areas. It applies to all local planning authorities, not just National Park authorities, and is relevant in considering development proposals that are situated outside National Park or Area of Outstanding Natural Beauty boundaries, but which might have an impact on their setting or protection.

Paragraph: 039 Reference ID: 8-039-20190721 Revision date: 21 07 2019

(emphasis added)

22. Paragraph 172 of the NPPF provides so far as presently material that:

“Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.”

Valued Landscape

23. NPPF 170 provides under the title, **‘Conserving and enhancing the natural environment’**, so far as presently material, is as follows:

170. Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) Protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

This important NPPF objective has not been met in the execution of this planning decision, this case pivots on the balance of judgement between successive independent planning inspectors and local

planning officers. Unfortunately the Planning Committee members were not given a site visit due to COVID19 concerns, this made it more difficult for planning members to judge the landscape value and the setting of the school in relation to important habitat.

The GCC Secondary School Project will not be greatly impacted by the remedy being sought in this review, neither timetable nor costs, and is put forward with a constructive objective.