

## Appeal Decision

Hearing held on 5 October 2016

Site visit made on 5 October 2016

**by Nick Fagan BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 2 November 2016**

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**Appeal Ref: APP/B1605/W/16/3142517**

**Pate Court, St Margaret's Road, Cheltenham, Gloucestershire GL50 4DY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Churchill Retirement Living against the decision of Cheltenham Borough Council.
  - The application Ref 15/01448/FUL, dated 14 August 2015, was refused by notice dated 28 October 2015.
  - The development proposed is the demolition of the existing building and redevelopment to form 65 sheltered apartments for the elderly, including lodge manager's accommodation, communal facilities, access, car parking and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing building and redevelopment to form 65 sheltered apartments for the elderly, including lodge manager's accommodation, communal facilities, access, car parking and landscaping at Pate Court, St Margaret's Road, Cheltenham, Gloucestershire GL50 4DY in accordance with the terms of the application, Ref 15/01448/FUL, dated 14 August 2015, subject to the conditions in the Schedule below.

### Procedural Matter

2. I was given a copy of a S106 agreement signed by the appellant, owner of the site and the Council dated 5 October 2016 at the Hearing. I address this in Other Matters below.

### Main Issues

3. The main issues are the effect of the proposed development on the character and appearance of the area including on the setting of nearby listed buildings and the Central Cheltenham Conservation Area, and on the living conditions of neighbours.

### Reasons

#### *Character and Appearance*

4. The site lies on the corner of two main roads on the edge of the town centre, North Place which runs north from the High Street and St Margaret's Road which forms part of the town's busy inner ring road. The 0.34 hectare site currently houses a three storey L-shaped office building (Pate Court) erected in
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- 1987, which has been partly converted into residential units following an office-to-residential prior determination application in 2014 by the current owners.
5. It is situated in the Old Town character area of the Central Conservation Area. Opposite the site to the north is St Margaret's Terrace, a substantial four storey late Georgian terrace of six Grade II\* listed buildings. A number of Grade II listed buildings are also located in close proximity to the site, namely Edmonstone House, Herriot House and Nashcott to the south west; Nos 1, 2, 4, 5 and 6 North Place on the opposite eastern side of the road; No 11 North Place (occupied by the Storyteller Restaurant) on the diagonally opposite corner to the north east and next to it Portland Chapel (occupied by the Chapel Spa).
  6. S72(1) of the Act<sup>1</sup> requires that, in the exercise of planning powers in conservation areas, "*special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area*". S66(1) of the Act states: "*In considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*".
  7. The Council acknowledges that Pate Court makes no positive contribution to the character and appearance of the conservation area or locality, although it generally sits comfortably within its surroundings. There is no objection to its demolition and replacement in principle with residential development.
  8. The Council considers the proposed development to be a missed opportunity to enhance the character of the conservation area; that its bland, fortress-like design would appear as monotonous and impenetrable and that its height, mass and bulk would fail to respect its context including the settings of the above listed buildings.
  9. Particular criticisms of the North Place block are that it would be the same height as the St Margaret's Road block and as such would fail to respect the lower scale of the listed buildings on the opposite side of the street; that this block would project further forward than Pate Court, be higher than it and would therefore restrict the important view of St Margaret's Terrace from the south, which is a key view in the conservation area; and that the building would be much deeper and bulkier, which would also detract from this key view as shown in the appellant's photomontage<sup>2</sup>.
  10. I agree that this view would be changed by the new building, particularly by its greater plan depth compared to Pate Court. But I cannot see why such a change is objectionable. Albion House on this side of the street to the south extends far back into its site and its historic rear wall would be approximately parallel with the rear wall of the proposed North Place block. The southern elevation of the new building would also help to strengthen what is at present a weak edge to North Place in urban design terms: Albion House's car park and the sunken electricity sub-station.
  11. Its forward projection would obscure a small part of St Margaret's Terrace but from the junction of Albion Street it would still be possible to see it. Approaching the corner of the site views of the Grade II listed Terrace would

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<sup>1</sup> Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>2</sup> Lisa Sumner's Statement - Appendix 12

- not be significantly constrained because the new block would not be much further forward than Pate Court at this point.
12. Nos 4,5 and 6 North Place and the club on the corner next to No 6 would be lower than the new block but these buildings are set back from the line of the footway. Nos 1 and 2 are higher, with an additional fourth floor, and this building, which dominates the corner of North Place and Albion Street, is nearer to the street frontage. As such the listed Georgian buildings on the opposite side of North Place are sufficiently inset from the street such that the height and siting of the new block would not visually overpower their settings, such height being broadly comparable to that of Nos 1 and 2.
  13. St Margaret's Road is a wide busy main road. The new building would be taller than Pate Court but it would still be considerably lower than St Margaret's Terrace and would be inset slightly further back than Pate Court's gables on this frontage. As such it would not harm the setting of the Grade II\* listed terrace opposite.
  14. It would also be better designed. The rusticated ground floor plinth, central two floors and top floor separated by a projecting stone plinth would successfully copy the hierarchical form of much of the Regency architecture of the town including St Margaret's Terrace. Whilst that also has a lower ground floor it is hidden by frontage planting and so the Council's criticism that there are patio doors on the new building is not significant because it too would have frontage landscaping onto the road.
  15. I consider that the simple form of the building, with its symmetrical slightly projecting elements, hierarchy of window design, sparing use of balconies with railings, and treatment of the corner, would fit in well with its context and respect the scale of the buildings around it and the width of North Place and St Margaret's Road. The Council considers that the balconies at first floor level are insensitively designed because they do not follow the insets of the building's elevation. However, I do not consider that would be particularly apparent from the general street scene and this is a relatively minor design fault.
  16. The landscaping along the frontages, with railings and planting, would also be appropriate for the immediate environs dominated by the Georgian listed buildings. The Council argue that buff bricks, which would be used on the upper floors of the building, would be inappropriate because stone or stucco was used on Regency buildings such as St Margaret's Terrace. However the design of the proposed building is not seeking to exactly replicate the design of a Regency terrace such as the one opposite, and there is no reason why it should given the present context of the site and the building occupying it now. The new development would be a considerable improvement on Pate Court, albeit that its scale would be greater.
  17. The Council's desire that the site be kept open on the corner and revert to the original plan of German Cottage/Livorno Lodge in the 1880s is in my view both unreasonable and illogical. Unreasonable because of the current siting of Pate Court, a building which has been on the site for nearly 30 years; it is unrealistic to suppose that a building with a much smaller footprint would be economically viable to construct. Illogical because any attempt to re-establish what was originally a sort of garden square could never succeed in urban design terms. This is because of the road 'improvement' scheme in 1980 which punched a

- hole through the terrace on the east side of North Place by demolishing Nos 8-10 and removed the carriage drive fronting St Margaret's Terrace.
18. The 1980 road 'improvements' had a considerable impact on this part of the town. The junction of North Place and St Margaret's Road is wide and dominated by highway infrastructure and I consider the proposed building would help to redefine and mend in urban design terms this fractured edge of the town centre, at present also dominated by under-used open land. In saying this I am conscious of the Council's recent permission for the development of the car parks to the north of St Margaret's Terrace and the proposed linear blocks along the northern part of North Place and Portland Street, which would be of a similar height and bulk to the building proposed here.
  19. The proposed St Margaret's Road block would be deeper than that of this wing of Pate Court but the building as a whole would be further away from Edmonstone House because the rear wing of the North Place block of Pate Court would not be replicated on the new building. Although the proposed development would be higher than Pate Court its overall impact on the setting of Edmonstone House would therefore be no greater than the existing building. The settings of Herriot House and Nashcott would be unaffected.
  20. For these reasons the design of the new sheltered housing building would not harm the character and appearance of the area. It would, on the contrary, at least preserve if not enhance the character and appearance of the Central Cheltenham Conservation Area, and it would preserve the settings of the above listed buildings.
  21. As such it would comply with 'saved' Policy CP7 of the Cheltenham Borough Local Plan (LP), which requires development to be of a high standard of design and to complement and respect neighbouring development and the character of the locality. It would also comply with the above statutory duties in that it follows national policy set out in Section 12 of the National Planning Policy Framework (NPPF).

### *Living Conditions*

22. The Council argues that the rear windows in Edmonstone House and those in the nearest dwellings on Bennington Street would be significantly overlooked by the proposed building and that its increased mass compared to Pate Court would be overbearing and oppressive to these neighbours.
23. The St Margaret's Road block of the proposed building would extend further back into the site than this part of Pate Court. Its rear windows would therefore be closer to the rear windows in Edmonstone House, which is currently used as a hostel for adults with learning disabilities. The nearest distance between overlooking windows would be 18.8m<sup>3</sup> and there would be distances of under 21m between other facing windows, 21m being the minimum distance considered to be necessary to prevent unacceptable overlooking as set out in LP Policy CP4.
24. However, such distances between facing windows in town centre locations is not uncommon and I consider the distances achieved would be acceptable in this situation, especially considering that some of Edmonstone House's

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<sup>3</sup> As shown on Lisa Sumner's Appendix 2

windows face habitable room windows in the flats on the opposite side of Rose and Crown Lane at a distance of about 6m. Such overlooking would not be significant. The distance between the windows in the new building and those in the rear of the Bennington Road houses would be a minimum of 21m and these windows do not in any case directly face each other. Any such incidental overlooking would be acceptable.

25. Whilst closer to Edmonstone House and the Bennington Road houses the proposed building would still be sufficiently far away to ensure that it was not overbearing or oppressive to neighbouring residents, even though it is higher than Pate Court. I also consider that replacing the car parking against the north east wall of Edmonstone House with a landscaped garden area for residents of the sheltered housing development would also be beneficial to its occupiers' living conditions.
26. For these reasons the proposed development would not significantly harm the living conditions of neighbouring residents. It would therefore comply with LP Policy CP4, which states that development should not cause unacceptable harm in this respect. It would also accord with paragraph 17 of the NPPF.

### **Other Matters**

27. The S106 agreement obliges the owner of the site to pay a contribution of £525,000 towards the provision of off-site affordable housing in the Borough on or before the first occupation of 32 of the sheltered apartments, in accordance with LP Policy HS4.
28. The obligation fulfils the tests in Regulation 122 of the *Community Infrastructure Levy Regulations 2010*: that it is necessary to make the development acceptable in planning terms; it is directly related to the development; and it is fairly and reasonably related in scale and kind to the development.

### **Conditions**

29. A list of conditions agreed between the parties is attached to the updated Statement of Common Ground handed to me at the Hearing. I consider all these conditions to be necessary although I have amalgamated some and altered some of the wording in the interests of brevity and to better comply with Planning Practice Guidance. An additional condition listing the approved drawings (Condition 2 below) is also necessary in order to provide certainty.
30. Conditions are required to secure prior approval of external materials including windows and doors in order to ensure that the development preserves the appearance of the conservation area and the settings of nearby listed buildings. Given the site's location near the historic centre of the town a written scheme of archaeological investigation is also necessary prior to commencement of works.
31. A construction method statement should be approved prior to works starting in order to reduce any impact on the public highway and to mitigate the impact of the construction project on local residents. Conditions securing the car and cycle parking prior to occupation are necessary to ensure minimal impact on the public highway and provide for alternative modes of transport to the private car. And lastly, conditions requiring protection of the trees to be

retained and adequate landscaping are necessary in order to preserve the character and appearance of the conservation area.

### **Conclusion**

32. For the reasons given above I conclude that the appeal should be allowed, subject to the conditions below.

*Nick Fagan*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 10076CH-P-000, 10076CH-P-001, 10076CH-P-002 Revision A, 10076CH-P-003 Revision A, 10076CH-P-004, 10076CH-P-005, 10076CH-P-006 Revision A, 10076CH-P-007 Revision A, 10076CH-P-008, 10076CH-P-009 Landscape Strategy Plan 160 LS 001, and Tree Protection Plan 15060-BT2.
- 3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) The following details of the scheme shall not be installed, implemented or carried out unless in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority:
  - i) All windows and external doors (including depths of reveals)
  - ii) Soldier course
  - iii) String course
  - iv) Rustication
  - v) Balconies and railings
- 5) No demolition/development shall take place within the application site until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the Local Planning Authority.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) wheel washing facilities;
  - v) measures to control the emission of dust and dirt during construction;

- vi) specify the intended method of constructing the foundations
- vii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 7) Prior to occupation of the development secured and covered parking for a minimum of 8 cycles shall be provided within the site, and shall be maintained for that purpose thereafter.
- 8) No apartment shall be occupied until space has been laid out within the site in accordance with drawing no. 10076CH-P-001 for 20 cars to be parked.
- 9) The landscaping works shall be carried out no later than the first planting season following the date when the development is first ready for occupation. The current Landscape Planning Proposals shall be modified to also specify species, planting sizes, root type and protection so as to ensure quick successful establishment. The size of the trees shall be at least a Selected Standard as per BS3936-1:1992. The trees shall be maintained for 5 years after planting and should they be removed, die, be severely damaged or become seriously diseased within this period they shall be replaced with another tree as originally required to be planted.
- 10) Tree protection shall be installed in accordance with the specifications set out within the Arboricultural Report and the Tree Protection Plan drawing 15060-BT2 dated August 2015. The tree protection shall be erected/installed, inspected and approved in writing by the local planning authority prior to the commencement of any works on site (including demolition and site clearance) and shall remain in place until the completion of the construction process. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority. No fires shall be lit within 5m of the Root Protection Area of any tree to be retained.

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*End of Conditions*

## **APPEARANCES**

### FOR THE APPELLANT:

Andrew Burgess BA Hons MRTPI FRSA  
Chris Geddes BSc(Hons) PGDip MRTPI  
Hilary Jackson  
Richard Young  
Lisa Sumner RIBA

Planning Issues Ltd  
Planning Issues Ltd  
Planning Issues Ltd  
GHK Architects  
Williams Lester Architects

### FOR THE LOCAL PLANNING AUTHORITY:

Craig Hemphall  
Michelle Payne  
Wendy Tomlinson

Planning Officer  
Planning Case Officer  
Conservation Officer

### INTERESTED PERSONS

Katie Walker, Spender Crowder, Ben Humphries      Ashville Group (for owners)

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Amended Statement of Common Ground with Conditions signed by both parties  
3 October 2016
2. Notification of date, time & place of Hearing 30 August 2016
3. S106 Agreement 3 October 2016
4. CIL Compliance Statement by Council