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Item No 10:-

14/02783/FUL (CT.4203/2/L)

**Le Spa
42 Gloucester Road
Stratton
Cirencester
Gloucestershire
GL7 2LA**

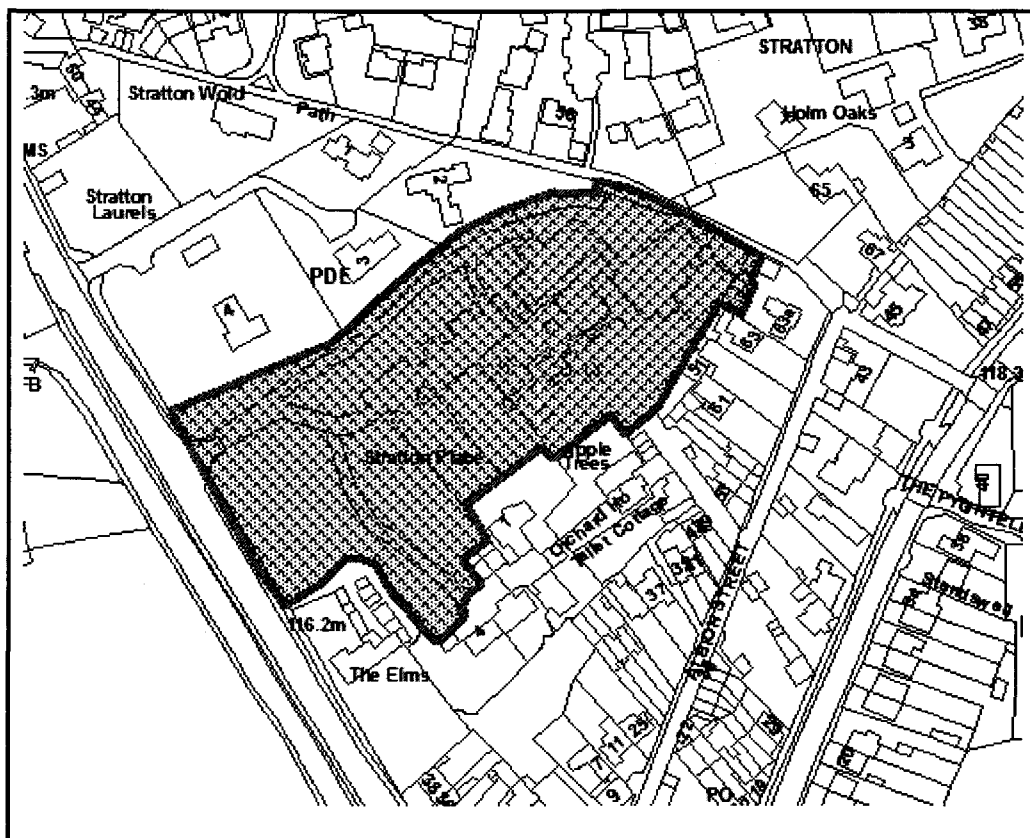
Item No 10:-

Variation of conditions 3 (scheme of landscaping), 9 (design and details), and 11 (drainage works) in respect of application 10/03705/FUL (Change of use and extension of existing leisure facility to provide a care home with 60 bedrooms and ancillary accommodation)

**at Le Spa
42 Gloucester Road Stratton**

Full Application 14/02783/FUL (CT.4203/2/L)	
Applicant:	LKL Trading Ltd
Agent:	Avoca Pld
Case Officer:	Mike Napper
Ward Member(s):	Councillor Patrick Coleman
Committee Date:	10th June 2015

Site Plan



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RECOMMENDATION: DELEGATED PERMISSION SUBJECT TO THE SATISFACTION OF THE ENVIRONMENT AGENCY AND DRAINAGE ENGINEER

Main Issues:

- (a) The legal status of the application
- (b) The material impact of the proposed variations

Reasons for Referral:

Prior to the May 2015 local elections, both then Ward Members (Cllrs Coleman and Lichnowski) required the application to be determined by Planning Committee for the following reasons:-

- "1. The long and complex planning history of the site.*
- 2. The importance of the site as open space and heritage asset.*
- 3. The unacceptable impact of the delays so far in implementing any of the permissions, particularly in terms of the adverse impact on neighbouring properties, the Stratton community, and the risk to the future of the existing building.*
- 4. The landscaping plans are not just important for the future of the 4 trees.*
- 5. The sensitivity and prominence of the site strongly indicate that the applicant should have the opportunity to explain in public why they wish to proceed in this way, and the local residents should have the opportunity to present their views in public."*

1. Site Description:

The application site is currently dominated by the unlisted Stratton Place, which is a modestly sized Country House and considered a non-designated heritage asset. The building sits within a landscape setting that includes treed parkland, formal gardens and car parking relating to the former use of the building and grounds as a health club. The building has now been vacant for some considerable time.

The site is otherwise surrounded by residential development on the remaining three sides, including a relatively recent development of 4 dwellings to the south-east that were the subject of an Appeal decision in 2005 (please see reference CT.4203/1/G of the Relevant Planning History) to which further reference will be made later in this report.

The application site is within a Development Boundary and is specifically indicated, under Policy 18 (Development within the Development Boundaries of Cirencester and the Principal Settlements) of the current Cotswold District Local Plan 2001- 2011, as an open space. The extent of the open space is shown on the attached Location Plan. The application site is the subject of three Tree Preservation Orders (TPOs) due to the public amenity value of many of the mature trees within the site.

Of most relevance to the current application, the site was the subject of a 2011 Appeal decision (please see reference 11/01272/FUL of the Relevant Planning History), which at that time included the adjoining land occupied by Stratton Place, under which permission was allowed for the change of use and extension of the building to a care home (Use Class C2), although the Appeal was dismissed in respect of the erection of 23 dwellings on the current application site.

2. Relevant Planning History:

- 10/03705/FUL Change of use and extension of existing leisure facility to provide a care home with 60 bedrooms and ancillary accommodation. Part permitted on appeal 12.07.2011;
- 11/05444/FUL. Change of use to single dwelling. Permitted 13.01.2012;
- 11/05830/FUL. Erection of seven detached dwellings. Permitted 17.08.2012.

3. Planning Policies:

NPPF National Planning Policy Framework
 LPR18 Development within Development Boundaries
 LPR10 Trees, Woodlands and Hedgerows
 LPR45 Landscaping in New Development
 LPR05 Pollution and Safety

4. Observations of Consultees:

Landscape Officer: No objection.

Tree Officer: No objection.

Environment Agency: Final comments not yet received.

Drainage Engineer: Final comments not yet received.

5. View of Town/Parish Council:

Cirencester Town Council: General Observation - "this is deemed to be a technical issue for CDC to determine".

6. Other Representations:

2 letters of Objection, including one from Local Residents' Group (please see attached email in full dated 28.07.14): i) the conditions were imposed by the Planning Inspector, which gives them strong validity and should not be varied; ii) Condition 3 - tree issues and replacement planting are crucial to the amenity impact of the development and information previously provided is now out of date; Condition 11 - it is crucial that details of drainage works are submitted at the pre-commencement stage as assumptions made at the application stage need to be clarified.

7. Applicant's Supporting Information:

Legal Opinion

8. Officer's Assessment:**(a) The legal status of the application**

Paragraph 031 of the National Planning Policy Guidance (NPPG) states that "In deciding an application under section 73 (i.e. for a variation of condition), the local planning authority must only consider the disputed condition/s that are the subject of the application - it is not a complete re-consideration of the application...In granting permission under section 73 the local planning authority may also impose new conditions - provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission".

The current application relates to the care home conversion scheme approved under ref. 10/03705/FUL and seeks to vary the wording of conditions 3 (landscaping), 9 (design details) and 11 (drainage works). The applicant's reason for seeking the revised wording is that the current 'prior to commencement' wording is unnecessary in terms of the intent of the conditions, and is unreasonably early in terms of the work involved in providing the information.

Alongside this application, an application for compliance with conditions 5, 6, 7, 8 and 12 has also been submitted.

The starting point for the consideration of the current application is whether the Appeal decision is deemed to be 'live'. In the normal course of events, a permission can be said to have been implemented in perpetuity if works have commenced on site and pre-commencement conditions have been met. In this case, officers are content that sufficient works have been undertaken on site (setting out of 2 parking spaces, a drainage trench and some demolition works to outbuildings) to constitute a physical start. In parallel, Officers have taken detailed legal advice on this matter and it is clear that caselaw has established that the delayed submission of information required by a 'pre-commencement' condition does not result in the permission becoming null and void unless the specific condition goes to the heart of the material considerations of that permission (i.e. unless the pre-commencement wording is so critical to the impacts of the development that it would make the permission unsupportable otherwise).

(b) The material impact of the proposed variations

It is also an important consideration to ensure that the wording of the conditions meets the tests laid out in paragraphs 203 and 206 of the National Planning Policy Framework (NPPF). Paragraph 206 states that "Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects". The consideration of the proposed variation to each condition is therefore addressed as follows:-

Condition 3 currently states "No demolition or construction works shall begin until a scheme of landscaping, including replacement tree planting along the boundary with Nos. 51 and 63 Albion Street and a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall show the location and size of all existing trees and hedgerows on and adjoining the site and identify those to be retained, including the four 'Category A' trees identified in the Tree Constraints Survey Schedule prepared by Landmark Trees Ltd and dated September 2010, together with measures for their protection during demolition and construction works. The scheme of landscaping shall also show details of all new planting areas, including plant species, numbers and sizes. All means of enclosure and screening shall be included, together with details of all mounding, walls and fences and hard surface materials to be used as part of the development. The development shall be undertaken in accordance with the approved details/timetable."

The applicant proposes to acknowledge the (minor) works already undertaken to establish implementation within the revised wording by the following:- "No further works, other than those listed in the submitted details, until....". This would regularise the existing situation and would still ensure that, in accordance with the central intent of the condition, appropriate control is retained to protect the existing trees. The protection of the TPO'd trees is central to the permission granted, having regard to Local Plan Policies 10 and 18, but officers are content that the original intent of the condition and the permission itself would not be prejudiced by the proposed variation as it would be the future phases of development works that would have the potential to harm the trees at which point the necessary details would be required to be submitted.

Condition 9 currently states "No development shall begin until the design and details of the eaves, verges, external joinery, windows and doors, including any dormers, rooflights, chimneys, balconies and railings to be incorporated within the proposed extensions have been submitted to and approved in writing by the Local Planning Authority. The design and details shall be accompanied by drawings to a minimum scale of 1:5 with full size moulding cross section profiles, elevations and sections. The development shall only be carried out in accordance with the approved details and retained thereafter."

The applicant proposes the wording to state that "No development above slab level of the new-build element(s) of the project shall begin until....". Officers are again content that there is no requirement that goes to the heart of the permission that would reasonably require pre-commencement submission of the details as they all relate to above slab level works. Consequently, officers raise no objection to the proposed variation, having regard to Local Plan Policy 42 and the provisions of the NPPF.

Condition 11 currently states "No development shall begin until drainage works, including any sustainable drainage system (SUDS), have been carried out in accordance with details to be submitted and approved in writing by the Local Planning Authority."

The applicant has obtained legal advice, with which our own legal section concurs, that the existing wording is challengeable in planning law as it requires drainage works to be undertaken before "development begins". As the drainage works are in themselves development, the condition is therefore unreasonable and incapable of being complied with. Consequently, the applicant suggests that the 'pre-commencement' reference is removed. Officers are content that the intent of the condition would be retained by replacing "No development shall begin..." with "Prior to the first occupation of the development..." and that this suggested revision would appropriately address the provisions of the NPPF. The confirmation of the Environment Agency to the revised wording is currently awaited, but is expected to support officers' conclusions.

9. Conclusion:

In conclusion, officers have had regard to the Third Party representations received, but have established through legal advice that the Council is able to determine the application as submitted and are satisfied that an equal measure of control would be retained by the variation of the wording of the conditions as recommended herein without prejudice to the policy intent of the conditions or to the heart of the permission itself. Consequently, officers recommend that the variations are permitted.

10. Proposed conditions:

The development shall be started by 3 years from the date of the original decision notice (12th July 2011).

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

The development hereby approved shall be undertaken in accordance with the details shown on the following drawings/plans:

- i) 729/SP/PL01 Rev A - site location plan;
- ii) 729/SP/PL02 Rev T - proposed site plan (care home only);
- iii) 729/CH/PL01 Rev A - care home basement plan;
- iv) 729/CH/PL02 Rev B - care home ground floor plan;
- v) 729/CH/PL03 Rev B - care home first floor plan;
- vi) 729/CH/PL04 Rev A - care home roof plan;
- vii) 729/CH/PL05 Rev B - care home elevations 1 & 2;
- viii) 729/CH/PL06 Rev B - care home elevations 3 & 4;
- ix) 729/CH/PL07 Rev B - site sections AA and BB (care home only);
- x) 729/CH/PL08 Rev B - site section CC (care home only);
- xi) 729/CH/PL09 Rev B - site section EE (care home only).

Reason: For purposes of clarity and for the avoidance of doubt, in accordance with paragraphs 203 and 206 of the National Planning Policy Framework.

No additional demolition or construction works, other than those listed within the current application details (as attached to agent's email dated 14.08.14), shall begin until a scheme of landscaping, including replacement tree planting along the boundary with Nos. 51 and 63 Albion street and a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall show the location and size of all existing trees and hedgerows on and adjoining the site and identify those to be retained, including the four 'Category A' trees identified in the Tree Constraints Survey Schedule prepared by Landmark Trees Ltd and dated September 2010, together with measures for their protection during demolition and

construction works. The scheme of landscaping shall also show details of all new planting areas, including plant species, numbers and sizes. All means of enclosure and screening shall be included, together with details of all mounding, walls and fences and hard surface materials to be used as part of the development. The development shall be undertaken in accordance with the approved details/timetable.

Reason: To safeguard the character and appearance of the area, in accordance with Cotswold District Local Plan policies 18 and 10 and the provisions of the NPPF.

Any trees or plants shown on the approved landscaping scheme to be planted or retained which die, are removed, are damaged or become diseased within 5 years of the completion of the approved landscaping scheme, shall be replaced by the end of the next planting season. Replacement trees and plants shall be of the same size and species as those lost.

Reason: To ensure that the planting becomes established and thereby achieves the objective of Cotswold District Local Plan Policy 45.

No development shall begin until a landscape management plan for the site, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, both during and after the implementation of the approved development, shall be approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved.

Reason: To ensure proper management of the landscape at the site which is important to the appearance and character of the site and surrounding area in accordance with Cotswold District Local Plan Policy 45.

No development shall begin until an Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. This shall be based on the 2011 Arboricultural Method Statement by Landmark Trees, insofar as it relates to the care home element of the scheme. The development shall be undertaken in accordance with the approved statement.

Reason: To safeguard the retained/protected tree/s in accordance with Cotswold District Local Plan Policies 10 and 45.

No development shall take place within the application site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved programme/scheme.

Reason: To make provision for a programme of archaeological mitigation, so as to record and advance understanding of any heritage assets which will be lost, in accordance with paragraph 141 of the National Planning Policy Framework.

The development shall not start until samples of the materials to be used on the external walls and roofs of the existing building and extensions thereto have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

Reason: To ensure that, in accordance with Cotswold District Local Plan Policy 42, the development will be constructed of materials of a type, colour, texture and quality that will be appropriate to the site and its surroundings.

No development above slab level of the new-build element(s) of the scheme hereby permitted shall commence until the design and details of the eaves, verges, external joinery, windows and doors, including any dormers, rooflights, chimneys, balconies and railings to be incorporated within the proposed extensions have been submitted to and approved in writing by the Local Planning Authority. The design and details shall be accompanied by drawings to a minimum scale of 1:5 with full size moulding cross section profiles, elevations and sections. The development shall only be carried out in accordance with the approved details and retained as such at all times.

Reason: To ensure the development is completed in a manner sympathetic to the site and its surroundings in accordance with Cotswold District Local Plan Policy 42 and the provisions of the NPPF.

The enlarged building shall not be occupied until details of the proposed first floor window in the south-east elevation of the extension have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the approved window details shall be retained in the extended building thereafter.

Reason: To safeguard the privacy of the neighbouring residents in Albion Street, in accordance with the provisions of the NPPF.

The development hereby permitted shall not be occupied before drainage works, including any sustainable drainage system (SUDS), have been carried out in accordance with details to be submitted and approved in writing by the Local Planning Authority.

Reason: To ensure the development is provided with a satisfactory means of drainage thereby preventing the risk of flooding and pollution in accordance with Cotswold District Local Plan Policy 5 and the provisions of the NPPF.

No development shall begin, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction/demolition period and shall provide for:-

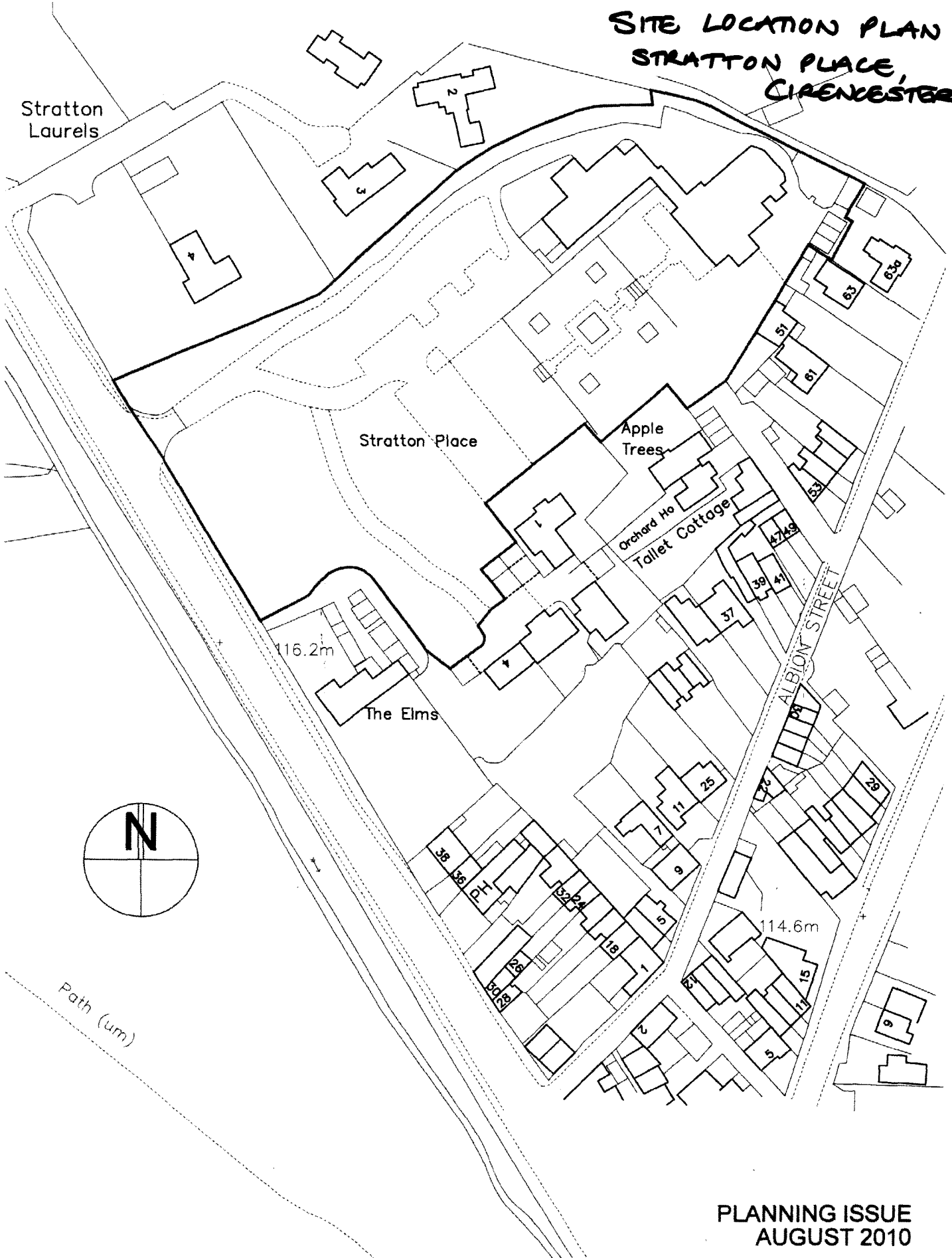
- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;
- iv) wheel washing facilities.

Reason: To avoid the risk of danger or congestion on the local highway network, in accordance with Cotswold District Local Plan Policy 38 and the provisions of the NPPF.

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14/02783/FUL.

SITE LOCATION PLAN STRATTON PLACE, CIRENCESTER.



PLANNING ISSUE
AUGUST 2010

RICHARD REID AND ASSOCIATES
 Whitley Farm, Ide Hill, Sevenoaks, Kent, TN14 6BS telephone 01732 741417 Fax 01732 740589

Dwg Title **SITE LOCATION PLAN** Scale **1/1250 @ A4**
 Drawn Chkd Issue Status

Project **STRATTON PLACE, CIRENCESTER** Job **729**

Date **19.08.10** Dwg Status Dwg No **729/SP/PL01** Rev **A**

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14/02783/FUL

**OBJECTION LETTER
FROM LOCAL RESIDENT
GROUP.**

Dear Mike,

I am writing on behalf of members of the Local Residents Group (LRG) to respond to the applications (refs 1402783 and 14/02784) to vary conditions attached to planning consents at Stratton Place / Le Spa, 42 Gloucester Road, Stratton Cirencester. I hope that you will accept this single response to the two applications.

We are very aware at the lack of activity at the site over the past three years, and we understood that effective ownership / control of the land is in the hands of the Receivers to LKL Trading Ltd and Linda Kathleen Lloyd, who are named as Christopher Price and Mark Gerrard Ebo of Edward Symmons LLP in the Proprietorship Register which appears in the Title Register at the Land Registry ((title #GR171036).

As far as we are aware, no work to commence the development for which planning consent was given as a result of the Inspector's decision has been carried out, and thus the condition stipulating that development must commence before three years of the date when the consent was granted (12 July 2011) means that the consent is now expired and must be reapplied for. There is, we suggest, a strong argument that the two current applications, for variance and discharge of conditions which are a part of the planning consent that was granted in 2011, should be struck out as the original consent can no longer be acted on due to breach of the time expired condition.

We are also perplexed that, consent having been granted three years ago, as to why the applicant has only now applied for variations / discharge of conditions when they could have done so at any time in the intervening period. On that basis, the need for such applications would appear, at least to some extent, to be of the applicant's own making, and no reason why such variations or discharges should be granted.

However, on the basis that the LPA will consider the two current applications, notwithstanding the argument advanced above, turning to the individual conditions for which a variance or discharge is applied for, we would respond as follows:

Condition 3 *Scheme of landscaping to be received and approved before development commences*

The purpose of this condition was to ensure a binding commitment from the developer to an acceptable landscaping scheme and to ensure that the commitment was in place before development starts. Once development has started their reasons for agreeing to this commitment is reduced. In fact, the initial stages of development

would include removing trees, vegetation etc, and once these are removed without a landscape plan in place and capable of being enforced, it would be impossible to insist on their retrospective inclusion in such a plan, whatever the merits of such inclusion. Landscaping was a major source of comment from Albion Street residents, and our recollection is that the Planning Committee was very keen on such a condition being imposed and met. There is no reason why such a scheme could not have been produced in the 3 years since consent was given, so the argument about such a scheme being a cause of delay doesn't work. For these reasons, we **object** to the application for variance of this condition, and we suggest that the LPA should insist on this condition being met.

Condition 5 *Landscaping management plan shall be received before development starts*

This has been submitted on 8th July – *after* the date of the application to discharge the condition by virtue of the plan having been submitted and approved! – and should be considered for approval, taking into account the representations made by the LRG and others in respect of landscape management at the time of the original applications, by the LPA before discharge can be considered. Again, we **object** to the application for discharge of this condition as the condition has manifestly not been met and cannot thus be discharged.

Condition 6 *Aboriginal Method statement shall be received and approved before development starts*

As for Condition 5: this condition is particularly important by virtue of the weight attached by both the planning Committee and the Inspector in the course of the appeal proceedings. It is therefore very important that the intentions of the Inspector be met by due consideration and approval of the documentation by the LPA, and the representations of the LRG and others in the course of consideration of the original applications and the Appeal be taken into account. Again, we object to the application to discharge this condition before such consideration and approval has taken place.

Condition 7 *Archaeological programme of work*

As for condition 5: the arguments put forward by us in respect of Condition 6 should be applied to Condition 7, and on that basis, we **object** to the application to discharge this condition.

Condition 8 *Submission of sample of building materials*

Presumably these have to be physical samples and the condition is not satisfied by submission of a construction method statement (8th July). In view of the context of the site and its setting, the visual appearance, including the materials used, of the

development is a key aspect of the consent, and we can see no reason why this important aspect should effectively be disregarded. This condition should be enforced. We **object** to the application for variance of this condition.

Condition 9 *Submission of design and detail of various building elements*

This condition was imposed to ensure the developers' commitment to these elements, and should be enforced. There is no reason why it could not have been submitted in the past three years. In view of the context of the site and its setting, the visual appearance, including the detailed design of these elements of the building is a key aspect of the consent, and we can see no reason why this important aspect should effectively be disregarded. This condition should be enforced. We **object** to the application for variance of this condition.

Condition 11 *Drainage plans to be submitted and works to be completed before development commences*

This condition is in place because the state of current drainage facilities and their capacity is apparently unknown, and as the local drains are at capacity it will be essential that the new load can be carried without flooding etc. A drainage report dated 10th July has been submitted with a drawing. This could have been submitted any time in the past three years. Drainage issues were raised and established as being highly relevant in the course of consideration of the original applications, and during the course of the appeal proceedings. Provision of adequate drainage is essential to preserve the integrity of the development as well as to protect the amenity of neighbouring residents, such as those in Albion Street, who could potentially be severely affect through flooding and sewerage discharge should the drainage provision prove inadequate. It is therefore of paramount importance that the plans and drawings be submitted for detailed, technical evaluation and approval before the development commences, not least because ground works, which are the first phase of the construction process, will establish the pattern of drainage provided which will be almost impossible to alter at a later date.

We note that the proposed solution contained in the submitted report would appear to meet the requirement to implement a SUDS type solution contained within the appeal decision; but this would need to be verified and confirmed by the LPA and its consultants before the condition could be confirmed as having been met.

We suggest that this condition could be amended in a way that would meet the practical requirements of the contractors while at the same time protecting the intention of the Inspector and the interests of neighbouring residents in such a way that would allow the ground works sub-contractor to lay the drainage works and for that work to be tested and approved before work starts on the rest of the development. On that basis, we **object** to the application for variation as it stands, but would agree to a variation of the condition to meet the requirements of the LPA

and Thames Water etc. This should be a matter of negotiation between the applicant and the LPA..

I hope that you will take these representations fully into account when considering the two current applications. If you refer consideration of these applications to the LPA Planning committee, we may wish to speak at the meeting in support of these objections.

Yours sincerely,

Colin forbes