PLANNING PROOF OF EVIDENCE

David Hutchison BSc (Hons) DipTP MRTPI

SECTION 78 APPEAL BY ROBERT HITCHINS LIMITED

LAND OFF KIDNAPPERS LANE, CHELTENHAM, GLOUCESTERSHIRE

PROPOSAL:

RESIDENTIAL DEVELOPMENT OF UP TO 45 DWELLINGS, ASSOCIATED INFRASTRUCTURE, OPEN SPACE AND LANDSCAPING, WITH CREATION OF NEW VEHICULAR ACCESS FROM KIDNAPPERS LANE, DEMOLITION OF EXISTING BUILDINGS.

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)
PLANNING AND COMPULSORY PURCHASE ACT 2004
CONTENTS:

1. PERSONAL BACKGROUND 1
2. INTRODUCTION 2
3. THE APPEAL SITE AND ITS SURROUNDINGS 6
4. THE APPEAL PROPOSALS 7
5. PLANNING HISTORY 8
6. PLANNING POLICY FRAMEWORK 9
7. CASE OF THE APPELLANT 10
8. THE OVERALL PLANNING BALANCE 30
9. PLANNING OBLIGATIONS 44
10. SUMMARY AND CONCLUSIONS 45

APPENDICES:

APPENDIX 1 - DECISION NOTICE DATED 20TH APRIL 2017
APPENDIX 2 – OFFICER REPORT TO COMMITTEE
APPENDIX 3 – PLAN SHOWING THE PARISH COUNCIL’S PROPOSED AREA OF LGS
APPENDIX 4 – APPEAL DECISION – LAND NORTH OF AYLESBURY ROAD, WENDOVER
APPENDIX 5 – APPEAL DECISION, WATERY LANE, LICHFIELD
APPENDIX 6 - ECONOMIC BENEFITS SPREADSHEET
APPENDIX 7 - SITE CONTEXT PLAN
1. PERSONAL BACKGROUND

1.1 My name is David Hutchison. I hold a Bachelor of Science Degree and Diploma in Town Planning from Cardiff University.

1.2 I am a Chartered Town Planner and I am employed as a Planning Consultant at the firm of Pegasus Group. I currently hold the position of Executive Director.

1.3 I have worked in the private sector as a Planning Consultant since 1999 (18 years). Prior to my appointment at Pegasus (when the company was first established in 2003), I worked for Chapman Warren and RPS Group.

1.4 I have a wide range of experience in all aspects of Town Planning, dealing with both Development Control and Planning Policy. I work primarily for residential developers and I am responsible for all aspects of their work ranging from site promotion through the Development Plan process to preparing and submitting planning applications and appeals for developments of various scales, including large scale strategic urban extensions.

1.5 The evidence that I have prepared and provide for this appeal (PINS Ref APP/B1605/W/17/3178952) is true and has been prepared and is given in accordance with the guidance of my professional institution. I can confirm that the opinions expressed are my true and professional opinions.
2. INTRODUCTION

2.1 This Proof of Evidence has been prepared on behalf of Robert Hitchins Ltd (the Appellant). It relates to a planning appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of land off Kidnappers Lane, Cheltenham, Gloucestershire (the Appeal Site).

2.2 The appeal follows the decision of Cheltenham Borough Council (the Local Planning Authority) to refuse an application for outline planning permission (LPA Ref: 16/00202/OUT) for a proposed development comprising:-

“Residential development of up to 45 dwellings, associated infrastructure, open space and landscaping, with creation of new vehicular access from Kidnappers Lane, demolition of existing buildings.”

2.3 The planning application was validated by Cheltenham Borough Council on 6th February 2016. Following the normal consultation procedures, the application was reported to Committee with a recommendation for refusal.

2.4 Having considered the Officer’s Report and its recommendations, Members resolved that the planning application should be refused. The decision notice sets out 3no. Reasons for Refusal and these read as follows:-

1. The principle of granting planning permission for the proposed development as submitted is unacceptable. The site is located adjacent to an emerging Cheltenham Local Plan site which means it cannot be considered in isolation in terms of its cumulative impact. The granting of planning permission for the proposed development in advance of the finalisation of the emerging Cheltenham Local Plan could prejudice decisions to be made about the size, scale or suitability of new housing development along with highway impact and the designation of Local Green Space, within this or the wider area. Therefore it is unclear at this time whether the proposed development would be in line with planning for housing objectives, and reflecting the need and demand for housing in this area or whether the proposals would undermine wider policy objectives including Local Green Space. It is therefore important that any development in this area is part of a plan-led process. The application is therefore contrary to guidance set out in paragraph 150 and 156 of the NPPF and policy INF 4 and INF7
of the Proposed Modifications of the Joint Core Strategy.

2. The proposed development would fundamentally change the character of the former nursery to a residential area of urban character given its density and arrangement. The residential settlement given the nature of the mass, density and layout of the development would appear out of keeping within the surrounding landscape setting that is predominantly open and rural. The development would therefore appear as an isolated urban area in the otherwise rural area with no connectivity to other housing located outside the identified Principal Urban Area. The proposal would degrade the visual amenity and harm the character and appearance of the sensitive valued landscape in this area, and would reduce the quality of views to the Cotswold Area of Outstanding Natural Beauty from the footpath to the south of the site. Furthermore, the illustrative layout in this location does not follow the objectives of good urban design as it does not respond to the need to achieve place making with a view to helping create a pleasant and suitable place to live, or provide for a place which links well with and respects its immediate neighbours and wider setting, or provide for a place that makes a positive contribution to the quality and character of the area.

The application therefore fails to comply with policies CO1, CO2 and CP7 of the Local Plan and Policy SD8 of the Proposed Modifications to the Joint Core Strategy along with the objective set in sections 7 and 11 of the NPPF.

3. Policy CP8 of the Cheltenham Borough Local Plan states that development will be permitted only where adequate provision has been made for the infrastructure necessary for the development to proceed and for other public services and facilities, the need for which arises directly from the development. This requirement is reflected in policy INF7 of the Proposed Modification to the Joint Core Strategy. The development proposed will lead to:

1). An increase in use of the surrounding highway networks and the development should therefore mitigate its impact in terms of providing commuted payments towards the provision of walking, cycling and the use of public transport for journeys to and from the
application site. (Local Plan Policy TP1, Joint Core Strategy Proposed Modifications Policy INF1, Supplementary Planning Guidance, 'Planning Obligations: Transport', NPPF Section 2).

2). An increase in demand for playspace provision in the Borough and therefore the development should mitigate its impact in terms of adequate provision for outdoor playing space. (Supplementary Planning Guidance, 'Playspace in Residential Development', and Local Plan Policy RC6, Joint Core Strategy Proposed Modifications Policy INF4, section 8 of the NPPF)

3). An increase in demand for education and library facilities in the Borough and therefore the development should mitigate its impact in terms of providing on-site or off-site provision or commuted payments towards the provision of new or improved primary and secondary school facilities and new or improved library facilities within the Borough. (Joint Core Strategy Proposed Modifications Policy INF5, Section 8 of the NPPF)

4). A need to provide for the future management (and maintenance) of the common land within the development and therefore the development should make provision to mitigate its impact by providing for the provision a land management plan covering such common areas of land. (Joint Core Strategy Proposed Modifications Policy INF4, Supplementary Planning Guidance, Landscaping in New Development).

5). A need to provide for an element of affordable housing (Local Plan Policy HS4, Joint Core Strategy Proposed Modifications Policy SD13).

No agreement has been completed to secure payment of the necessary commuted sums, identified above and in the Committee report, along with the provision of affordable housing and a land management plan. The proposal therefore fails to meet the expectations of Local Plan Policy CP8 and Local Plan Policies, Supplementary Planning Guidance, Joint Core Strategy Proposed Modifications Policy INF7 and the NPPF Guidance referred to.

2.5 A copy of the Decision Notice which is dated 20th April 2017 is provided at Appendix 1.

APPENDIX 1 - DECISION NOTICE DATED 20TH APRIL 2017
2.6 A copy of the Officer Report to Committee is provided at Appendix 2.

APPENDIX 2 – OFFICER REPORT TO COMMITTEE

2.7 This Proof of Evidence deals with the Planning Policy matters raised in the reasons for refusal. It also addresses the issues identified by other interested parties, including Leckhampton With Warden Hill Parish Council (the Parish Council), who have been granted Rule 6 status for the purposes of the appeal.

Other Proofs of Evidence on behalf of the Appellant

2.8 My evidence should be read alongside the other Proofs of Evidence that have been prepared on behalf of the Appellant by Mr Harris on Landscape and Visual Impact and by Mr Finlayson on Highways and Transportation.

Statement of Common Ground

2.9 My evidence should also be read in conjunction with the Statement of Common Ground (SoCG) which identifies the issues where the principal parties are in agreement and narrows down the issues that remain in dispute.

2.10 I should highlight that it is agreed that Reason for Refusal (RfR) no.3 is capable of being resolved through Planning Obligations and/or conditions. I do not therefore present any evidence on that matter.

2.11 The LPA have also informed me that they no longer intend to contest RfR no.1. I still deal with this matter in my evidence for the benefit of the Inspector and because the Parish Council has not informed me of any change to their position in this regard.
3. **THE APPEAL SITE AND ITS SURROUNDINGS**

3.1 A detailed description of the appeal site and its surroundings is set out in the Statement of Common Ground (SocG). To avoid any unnecessary duplication, I do not intend to repeat it again in full here.

3.2 In summary, the site is located on the south-eastern edge of Cheltenham. The town is identified along with the City of Gloucester as a Key Urban Area in the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) [CD.D13 Table SP2c].

3.3 The appeal site itself extends to approximately 1.3 hectares and comprises an irregular shaped area of land formerly used as a commercial plant nursery with some structures and areas of hardstandings still evident within the site. Access to the site is gained directly from Kidnappers Lane.

3.4 The site lies beyond the Principal Urban Area of Cheltenham (PUA) but is not directly affected by any landscape, heritage, ecology or other designations. Indeed, the appeal site lies in one of the only areas within Cheltenham that is outside the PUA but not designated as Green Belt or AONB.

3.5 The emerging Cheltenham Local Plan currently proposes to allocate circa 200 dwellings on the land to the land to the north which also lies beyond the PUA.
4. THE APPEAL PROPOSALS

4.1 The Planning Application that is now the subject of this appeal sought Outline Planning Permission for a development comprising:-

"Residential development for up to 45 dwellings, associated infrastructure, open space and landscaping, with creation of new vehicular access from Kidnappers Lane, demolition of existing buildings."

4.2 The Planning Application (LPA Ref: 16/00202/OUT) was submitted in Outline with all matters of detail reserved for subsequent determination at the Reserved Matters stage.

4.3 A more detailed description of the Appeal Proposals is set out in the SoCG and the Design and Access Statement which supported the original Planning Application.

4.4 The application was also supported by an Indicative Master Plan to illustrate how the site could deliver the scale of development that has been proposed and how the proposal could relate to its built and natural surroundings.
5. PLANNING HISTORY

5.1 The planning history that is of most relevance to this appeal is identified in the SoCG.

5.2 To assist the Public Inquiry I provide a Site Context Plan at Appendix 7 which shows the location of the appeal site relative to the following, which will no doubt be referred to during the course of the proceeding:-

- The Bovis/Miller appeal site (650 dwellings).
- The Redrow Site at Farm Lane (377 dwellings)
- The boundary of the former JCS Leckhampton Strategic Allocation
- The extent of the (indicative) Leckhampton residential and LGS allocations in the emerging Cheltenham Local Plan (Preferred Options).

APPENDIX 7 – SITE CONTEXT PLAN
6. **PLANNING POLICY FRAMEWORK**

6.1 The Planning Policies and National Guidance that are of most relevance to this appeal are identified in the SoCG.
7. **CASE OF THE APPELLANT**

7.1 In this section of my evidence, I will explain why I consider that the Appeal Proposals represent sustainable development and I will show that there are compelling reasons that justify the grant of planning permission in this case.

**Background Context**

7.2 At the time that the LPA refused the original planning application and also when it provided its Statement of Case for this appeal, it was agreed that the LPA could not demonstrate a five year supply of housing (5YR HLS), as required by the NPPF.

7.3 However as agreed in the SoCG, there has been a material change in circumstances following the publication of the JCS Inspectors Final Report which confirms that the LPA can demonstrate a 5YR HLS, assuming a stepped housing trajectory and using the “Liverpool” methodology [CD.D11 paragraph 97].

7.4 Notwithstanding this, I consider that this appeal must still be determined in the context of the “tilted balance” in NPPF paragraph 14. I will explain my reasoning in more detail in Section 8 of my evidence where I deal with the overall Planning Balance.

**The Main Planning Policy Issues**

7.5 I have identified the main planning policy issues to be as follows:-

- **Issue 1** Whether the principle of development is acceptable in this location.
- **Issue 2** Whether the proposals are premature and prejudicial to the emerging Local Plan or Neighbourhood Plan
- **Issue 3** Density, Layout and Design

7.6 Issues 1 and 2 directly relate to Reason for Refusal no.1. The LPA does not intend to contest this reason for refusal. I have therefore taken that these issues are no longer in dispute between the principal parties.

7.7 I have however kept these sections within my Proof of Evidence for the benefit of the Inspector and because the Parish Council’s Statement of Case states that it fully supports the reasons for refusal, but it did not intend to duplicate evidence that was expected to be presented by the LPA [CD.J3 para 1.3].
Issue 1 Whether the principle of development is acceptable in this location.

7.8 Reason for Refusal no.1 asserts that the principle of the proposed development is unacceptable. I do not agree.

7.9 Whilst the LPA’s stated reasons relate primarily to matters of prematurity (which I deal with under Issue 2) it is important to deal with the principle of development in more general terms first. The purpose of this exercise is to demonstrate that the site is in a suitable and sustainable location where residential development should be encouraged and to establish this as a background context to the other issues that are in dispute.

The Development Plan

7.10 The starting point for the determination of any planning application or appeal is the Development Plan. The planning system is “plan led” and Planning Law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.¹

7.11 The Development Plan in this case comprises:


The JCS Housing Requirement and Spatial Strategy

7.12 As recognised by the Inspector in the Bovis/Miller appeal [CD.H3 IR.218] the policies relating to the supply of housing in the adopted Cheltenham Local Plan (CLP) are out of date regardless of the 5YRHLS position, because the plan only covers the period up to 2011.

7.13 This was also recognised in the Officer report for the current appeal scheme [CD.A21 para 6.2.10] which states:-

"6.2.10 Whilst some of the policies in the adopted Cheltenham Local Plan remain relevant, given the end date of the plan as 2011, it is acknowledged that the housing needs evidence base underpinning the Local

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004
Plan is out of date. The evidence base for the JCS now takes precedence and addresses the Objectively Assessed Need (OAN) for growth, a requirement of paragraph 14 of the NPPF.”

7.14 It is not therefore necessary to explore the housing requirements of the adopted CLP in any detail.

7.15 In any event, by the time the Public Inquiry opens, it is highly likely that the Joint Core Strategy (JCS) will have been adopted and will form part of the Development Plan for the area, setting more up to date housing requirements for the area and a new overarching spatial strategy. It is anticipated that the JCS will be adopted on 11th December 2017.

7.16 JCS Policy SP1 establishes a minimum housing requirement across the JCS Authorities of 35,175 dwellings for the plan period 2011 to 2031.

7.17 The JCS Spatial Strategy focuses new growth mainly on Cheltenham and Gloucester to support their economic roles as the principal providers of jobs, services and housing, and in the interests of promoting sustainable transport. It is also to retain their economic and social positions as strategically significant settlements in the sub region.

7.18 The JCS Examination concluded that the most sustainable option for the spatial strategy was urban extensions to Cheltenham and Gloucester, which in some cases necessitated the release of significant areas of land from the Green Belt. The guiding principle of Policy SP2 (Distribution of New Development) is to ensure that need is met where it arises [CD.D13 paragraph 3.2.5] and so Cheltenham and Gloucester remain the primary focus for growth.

7.19 To meet the needs of Cheltenham, Policy SP2(3) states that the JCS will make provision for 10,917 new homes². These will be provided within the Cheltenham administrative boundary and through the cross boundary urban extensions identified in Policy SA1.

7.20 It can therefore be seen that in strategic terms, being located at Cheltenham, the appeal site is in a general location that is planned to be a primary focus for growth and in that regard, the principle of housing development would accord with the overarching spatial strategy of the JCS.

² The Adoption Version Plan refers to 10,966 dwellings in Policy SP2 but this should read 10,917
7.21 Whilst I recognise that the appeal site itself is not allocated for development by the JCS, once the strategic allocations, past completions, other commitments and windfall allowances are accounted for, it is recognised that the emerging Cheltenham Local Plan (CLP) will still need to allocate additional sites for housing to meet the requirements of the JCS. As stated at paragraph 3.1.17 – 3.1.18:

“3.1.17 ..... However, whilst the JCS provides the strategic-level part of the development plan, there is a significant role for delivery at the non-strategic level through both the district and neighbourhood plans.

3.1.18 Each authority will also be covered by a district-level plan, namely the Gloucester City Plan, Cheltenham Borough Plan and Tewkesbury Borough Plan. These plans will provide more detailed and locally specific planning policies as well as local site allocations. The district plans will deliver the individual district capacities identified through the JCS in accordance with the spatial strategy.” (my emphasis)

7.22 JCS Table SP2a indicates that the Cheltenham Local Plan will need to allocate land for circa 1,011 dwellings in addition to the windfall allowance of 748 dwellings.

7.23 JCS Policy SD10 (Residential Development) outlines the circumstances in which residential development will be permitted. I accept that the appeal proposals would conflict with JCS Policy SD10. The site is not allocated, it is located outside the PUA and it does not accord with any of the other criteria that would normally allow for housing on this site. However, even once adopted, this policy cannot be afforded full weight because the JCS is still reliant upon the emerging CLP to identify the additional sites (including sites outside the PUA) that are required to meet the full housing requirement for the Borough.

7.24 In the absence of any non-strategic allocations, I will now explain why housing at Leckhampton and the site itself can be considered acceptable in principle.

The approach to housing development at Leckhampton

7.25 On 31st March 2016, the Secretary of State dismissed an appeal (The Bovis/Miller appeal) for a residential-led mixed use development on land at Leckhampton, adjoining the appeal site [CD.H2 and H3]. The scheme included up to 650 dwellings across a site of 31.73ha. At the time of that Inquiry that site formed part of a wider draft strategic allocation in the emerging JCS. The appeal was dismissed principally on traffic, landscape and Local Green Space/prematurity grounds.
7.26 Notwithstanding the fact that the appeal was dismissed, the JCS Examining Inspector later indicated in her Interim Report dated 26th May 2016 [CD.D8 para 123] that a non-strategic allocation could still be acceptable at Leckhampton:-

“123. Overall, in my judgement, a limited amount of development could be supported towards the north of the site where public transport is more accessible, subject to the avoidance of land of high landscape and visual sensitivity. Therefore, for reasons of landscape/visual amenity and highway impacts, I recommend that the Cheltenham part of the site be allocated for a modest level of built development in the order of 200 dwellings.” (my emphasis)

7.27 Given that a development of circa 200 dwellings would not classify as a strategic urban extension for the purposes of the JCS, the Inspector’s recommendation was that the Leckhampton Strategic Allocation be removed in its entirety from the JCS. It would then be left as a matter for the emerging CLP to bring the site forward as a non-strategic allocation.

7.28 Whilst some of the emerging CLP allocations can be provided for within the PUA, the Preferred Options Draft CLP still proposes to allocate sites for 400 dwellings beyond the PUA, including 200 dwellings at Leckhampton [CD.C3 Policy PR1(h)]. This demonstrates that the LPA still accepts that it necessary to allocate land outside the PUA. Furthermore, Leckhampton remains a location that is considered suitable for housing in principle.

7.29 Whilst there is a clear direction of travel with regard to additional housing at Leckhampton, I accept that only limited weight can be afforded to the draft allocation. That also means that only limited weight can be attached to the size and geographical extent of the allocation. I say this firstly because the Policies Map only shows the boundaries to the allocation in indicative terms and secondly, because the JCS Inspector has more recently clarified in her Final Report that her earlier reference to 200 dwellings should not be seen as being definitive [CD.D11 para 185]. She states:-

“185. The strategic allocations at North Churchdown (A4) and Leckhampton (A6) are unsound. However, a reduced local allocation could be made at Leckhampton in the forthcoming Cheltenham Local Plan, which should also designate Local Green Space within this area. Whilst I previously commented that an allocation in the order of 200 dwellings at Leckhampton might be reasonable, this was only an approximation and intended to indicate a scale below the strategic threshold for the JCS. The final
7.30 I should highlight that the threshold for strategic allocations set by the JCS authorities was circa 450/500 dwellings and therefore there is the potential for the number of dwellings to increase well beyond the 200 dwelling figure if considered necessary and appropriate.

7.31 Such matters will no doubt be debated at Local Plan Examination along with all other unresolved objections including those put forward by the Appellant [CD.C5]. Until such time as the plan has reached an advanced stage, the emerging CLP can only be afforded limited weight in the context of NPPF paragraph 216.

7.32 It will nonetheless be a material consideration for this appeal that the principle of additional housing at Leckhampton beyond the current limits of the PUA accords (rather than conflicts) with the current direction of travel in the emerging CLP spatial strategy.

Site specific considerations

7.33 Clearly the Appellant and the LPA have contrasting views regarding the landscape and visual impact of development at the appeal site and these will be debated in the context of RfR no.2. The Parish Council also raise objections on these grounds.

7.34 I will defer to Mr Harris who will present technical evidence on this issue. I note that his conclusions are that the site is suitable for the development as proposed, and I will rely upon his evidence in this regard.

7.35 All other site-specific matters are dealt with in the SoCG and it is not necessary to rehearse them all again in my evidence, other than to say that there are no insurmountable constraints that affect the site which cannot be overcome through Reserved Matter applications, conditions and/or planning obligations.

7.36 To summarise on the principle of development:-

1. RfR no.1 states that the principle of development is unacceptable. The LPA now accept that RfR no.1 cannot be substantiated. I support that concession.
2. Policies relating to the supply of housing in the adopted Cheltenham Local Plan are “time expired,” and are to be replaced following the imminent adoption of the JCS. As such they should be afforded little if any weight.

3. I consider that the appeal proposals accord with the overarching spatial strategy of the JCS and the emerging CLP which focus major development at Cheltenham as a highly sustainable location.

4. JCS Policy SP1 establishes a housing requirement across the JCS Authorities of approximately 35,175 dwellings for the plan period 2011 to 2031, of which at least 10,917 dwellings are to be provided at Cheltenham.

5. I accept that the appeal proposals would not accord with JCS Policy SD10 (Residential Development) as the site is not allocated and would not accord with other criteria.

6. However, Policy SD10 cannot be afforded full weight because the Development Plan is still reliant upon non-strategic sites which have yet to be allocated through the emerging CLP (1,011 homes plus windfalls).

7. The JCS and the emerging CLP rely upon strategic and non-strategic allocations on greenfield land beyond the PUA. The appeal site is located in one of the few areas beyond the PUA that is not affected by Green Belt, AONB or other restrictive policies and is therefore a good candidate location.

8. The JCS Inspectors Final Report gives support to a non-strategic allocation at Leckhampton in the order of (but not limited to) 200 dwellings indicating that Leckhampton is a suitable and sustainable location for additional housing.

9. Similarly, the emerging CLP proposes to allocate land for 200 dwellings at Leckhampton, albeit the size and extent of the allocation have yet to be determined.

10. There are no site-specific issues affecting the appeal site which cannot be overcome through Reserved Matter applications, conditions or planning obligations. The site itself is therefore suitable for development.

**Issue 2  Whether the proposals are premature and prejudicial to the emerging Local Plan or Neighbourhood Plan**

7.37 I would repeat that the LPA no longer intends to contest RfR no.1 and prematurity is not therefore a matter that remains in dispute between the principal parties.

7.38 Reason for Refusal no.1 states inter alia, that the site is located adjacent to an emerging Cheltenham Local Plan site which means it cannot be considered in isolation in terms of its cumulative impact.
7.39 It goes on to state that the granting of planning permission for the proposed
development in advance of the finalisation of the emerging Cheltenham Local Plan
could prejudice decisions to be made about the size, scale or suitability of new
housing development along with highway impact and the designation of Local
Green Space, within this or the wider area.

7.40 The LPA considered that it was therefore unclear at this time, whether the
proposed development would be in line with planning for housing objectives and
reflecting the need and demand for housing in this area or whether the proposals
would undermine wider policy objectives including Local Green Space. They went
on to comment that it is therefore important that any development in this area is
part of a plan-led process.

7.41 The LPA Statement of Case [CD.J2] did not expand on this in any way. It simply
cross-referenced the Officer Report to Committee [CD.A21].

7.42 I will now explain why this appeal proposal cannot and should not be considered
to be premature and prejudicial, having regard to both national guidance on such
matters and the facts of this case.

Relevant Guidance

7.43 The NPPG sets out guidance relating to prematurity and it identifies
circumstances where it might be justifiable to refuse planning permission on
these grounds. It can be demonstrated that it does not support a refusal on
prematurity grounds in this case. For ease of reference I set out below the
relevant guidance from the NPPG.

“In what circumstances might it be justifiable to refuse planning permission on the grounds of prematurity?”

Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in
emerging plans. However in the context of the Framework and in particular the presumption in favour
of sustainable development – arguments that an application is premature are unlikely to justify a refusal
of planning permission other than where it is clear that the adverse impacts of granting permission would
significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other
material considerations into account. Such
circumstances are likely, but not exclusively, to be limited to situations where both:

(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood planning; and

(b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.

Paragraph: 014 Reference ID: 21b-014-20140306
Revision date: 06 03 2014

7.44 It can be seen that the guidance identifies two main tests and both tests must be met for refusal to be justified on the grounds of prematurity. I will start with the second test because it is not dependent on site specific issues.

The second test - Whether the emerging plan is at an advanced stage

7.45 At the time of writing my evidence, the LPA has consulted upon its Preferred Options Draft CLP but it has yet to produce a Submission Draft Plan (expected January 2018). The emerging Plan therefore remains at an early stage in the plan making process and has clearly not been submitted for examination. The guidance in the NPPG states that refusal on grounds of prematurity will seldom be justified if the plan has yet to be submitted for examination. The test has not been met.

7.46 There is no draft Neighbourhood Plan and therefore I don’t need to consider this any further.

7.47 I anticipate that others will refer to the Bovis/Miller appeal decision [CD.H2 and H3] where the Secretary of State did raise prematurity as one of the reasons for dismissing that appeal in the context of the Local Green Space issue [SoS paragraph 21]. However, the circumstances are different. In that case:-
• The assertion was that the proposal would be premature and prejudicial to the JCS because the Leckhampton site was a proposed Strategic allocation at that time.

• The Inspector also states at paragraph 269 that the JCS was "at an advanced stage" and the question was currently under examination.

7.48 The Leckhampton strategic allocation has been deleted from the JCS. It is now the emerging CLP rather than the JCS that is to be considered and these plans are very different stages in the plan making process. The findings of the Secretary of State in the Bovis/Miller appeal decision on prematurity do not therefore apply to this appeal.

The first test - Whether the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood planning

7.49 Before I deal with the substantive issues under this test, I would highlight some significant differences in the language used by the LPA in its RfR compared to that which is found in the NPPG.

7.50 The LPA asserted that the appeal proposals “could” prejudice decisions to be made about the size, scale or suitability of new housing within this or the wider area. The guidance on the other hand is more definitive, in that there is a need to demonstrate that it “would” undermine the plan-making process and predetermine decisions on such matters.

7.51 I also would highlight that there is no reference in the RfR to the appeal proposals predetermining decisions that would be “central to an emerging Local Plan.” There was also no reference to this in the LPA’s Statement of Case or the Officer Report to Committee. The closest reference that I can find is in the Officer Report at paragraph 6.2.19, where it is stated that:-

“It is therefore important that any development in this area is part of the plan led process. This will ensure that the most sustainable use of land is achieved and the impacts on landscape and the surrounding area are minimised. It would be preferable for the site to be considered as part of an area wide masterplan which
would form part of the emerging Cheltenham Plan.” (my emphasis)

7.52 Ensuring sustainable use of land and minimising impacts of development could be applicable to any site allocation or indeed any planning application. These are not decisions that are central to the Local Plan. Also, whilst the LPA considered that it would be “preferable” for there to be an area wide masterplan (as do the Parish Council), there is no policy requirement for this.

7.53 In view of the above, I am not convinced that the LPA had properly understood the relevant guidance relating to prematurity when the planning application was refused. The fact that they no longer contest this RfR supports my contention.

7.54 Notwithstanding the above, I will now go on to consider the site specific matters identified in the RfR for completeness and to respond to the Parish Council: -

- Size
- Cumulative highway impact
- Local Green Space
- Scale
- Suitability

**Size**

7.55 I have taken size to mean the amount of development that is proposed. In this case the appeal proposals are for a modest development of up to 45 dwellings. The scale of development must be viewed in the context of a borough wide housing requirement of 10,917 dwellings (0.4%).

7.56 Even if I was to focus solely on the amount of housing that is expected to come forward through the CLP (1,011 dwellings according to JCS Table SP2a) the appeal proposals still only equate to less than 5% of the number that needs to be allocated in the plan. This size of development cannot be considered to be so substantial that it could be prejudicial to decisions that are central to the emerging CLP.
7.57 In my opinion, it is a redevelopment of a relatively small partially developed site which is perfectly capable of being considered outside of the plan-making process.

_Cumulative Highway impact_

7.58 An assessment of cumulative traffic impact was undertaken before the application was determined. The findings of the Highways Authority were summarised in the Officer Report to Committee as follows:-

"The National Planning Policy Framework states at paragraph 32 that "Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe". The Highways Authority considers that this development will not have a severe impact on the local highway network. The NPPF states that "safe and suitable access to the site can be achieved for all people", and that "opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure." It is considered that the development proposals will meet these criteria. It is recommended that no highway objection be raised to this application, subject to the following conditions being attached to any permission granted:-

.....” (my emphasis)

7.59 The Highways Authority recommended that no highway objection be raised against the application. Their response deals with traffic generation, the safety and suitability of access to the site and the opportunities for taking up public transport and it found that the proposals would meet the relevant criteria in NPPF paragraph 32 and that they would not have a residual “severe” impact.

7.60 The advice was very clear and the Planning Officer accepted that advice in his report to Committee [CD.A21 paragraph 6.5.8]. Notwithstanding this, a reference to highway impact appears within RfR no.1 without any further explanation and without any reference to any conflict with the most relevant transport policy, JCS Policy INF1 (Transport Network) or the guidance provided in NPPF paragraph 32.

7.61 The LPA made no further comment on this issue in its Statement of Case and it is my understanding that they do not intend to call a highways witness on this
matter. It is therefore an unsubstantiated assertion that should be given no weight.

7.62 I note that the Parish Council has referred at length to traffic congestion in its Statement of Case. However at the end of this section, at paragraph 4.9 it states that:

“The Parish Council is not advancing severe cumulative traffic congestion as an additional ground for rejection of the current appeal.”

7.63 In circumstances where NPPF paragraph 32 states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe, this should be the end of the matter.

7.64 Mr Finlayson has however provided further technical evidence on the matter, should this be pursued as an issue at the Inquiry.

**Local Green Space (LGS).**

7.65 Whilst the issue of LGS was discussed during the JCS examination, the Inspector made it clear in her Final Report that it will be the forthcoming Cheltenham Local Plan that will designate any LGS [CD.D11 paragraph 185].

7.66 As noted above, I accept that the Secretary of State found the Bovis/Miller scheme to be premature in terms of LGS but the circumstances in that case were very different.

7.67 At the time of the Bovis/Miller appeal, LGS at Leckhampton was being considered as part of the JCS and the wider Leckhampton strategic allocation. The JCS was at an advanced stage and the matter was already the subject of the JCS Examination discussions.

7.68 The Bovis/Miller appeal site also extended across a much wider area (31.73ha) and the proposed Master Plan was not consistent with the areas that the Parish Council was applying to designate as LGS. That appeal therefore had wide ranging consequences for LGS options in the area.

7.69 It is now clear that any LGS that is to be designated at Leckhampton will be designated through the CLP. The CLP is not at an advanced stage. The appeal site also covers a much smaller area (only 1.3ha). Whilst the Policies Map that
forms part of the emerging CLP identifies the appeal site as falling within an area of potential LGS, the key to the map indicates that the LGS annotation is only indicative.

7.70 The Parish Council’s latest proposals for LGS are detailed in the LGS Toolkit [CD.C11] and the JCS examination document EXAM 121A [CD.C12]. These include maps showing the extent of the proposed LGS. It is important to note that these exclude the appeal site from the proposed LGS. I attach a relevant extract at Appendix 3 of my evidence.

APPENDIX 3 – PLAN SHOWING THE PARISH COUNCIL’S PROPOSED AREA OF LGS

7.71 It is therefore difficult to see how allowing an appeal on such a small area of land that the Parish Council does not even propose as LGS, would be a decision that is central and prejudicial to an emerging plan.

7.72 Indeed, it is openly acknowledged in the Parish Council’s Statement of Case [CD.J3], that the appeal site was purposefully deleted from the original LGS area [2.4] and that it could be suitable for development [2.3]. It notes that local residents were not strongly opposed to development on the site [2.4]. It would seem that the only differences of opinion are about the scale and form of that development [3.1 to 3.4].

7.73 It is evident that the Parish Council were open to development on the appeal site, which would clearly have been at odds with the purposes of designating that land as LGS. The Parish Council now suggest that they would not have omitted the land from the LGS area had it been aware of the ownership of the land [2.5]. I cannot accept this argument. Ownership does not dictate whether or not land is suitable for LGS.

7.74 In any event, the evidence of Mr Harris explains that the site would not normally meet the tests of the NPPF for it to be designated as LGS (see NPPF paragraph 77). It is a contained area of land which is partially developed and degraded and which holds little if any value in terms of beauty, historic significance, recreational value, tranquillity or richness of wildlife. Instead it is land which would ordinarily be considered suitable for redevelopment, as the Parish Council has recognised in the past.
7.75 Therefore, even if the CLP was more progressed I am not persuaded that the site would qualify as LGS.

**Scale**

7.76 The appeal proposals are submitted in outline with all matters of detail reserved for determination at the Reserved Matters stage, including scale. There is no reason why this needs to be considered in combination with other developments in the wider area.

7.77 The height parameters referred to in the Design and Access Statement [CD.A8] indicate that the development would be predominantly 2 storeys in height with some taller buildings to provide visual interest. This would be consistent with the scales of development in the surrounding area.

7.78 This aspect of the development is perfectly capable of being dealt with at the Reserved Matters stage.

**Suitability**

7.79 I have already explained earlier in my evidence why I consider the site to be suitable for residential development. To avoid unnecessary duplication, I will not repeat that again here.

7.80 To summarise on the issue of prematurity:-

1. The LPA now accept that the proposals would be neither premature nor prejudicial to the emerging CLP or any emerging Neighbourhood Plan.

2. The emerging CLP remains at an early stage in the plan making process and has not been submitted for examination. Relevant guidance in the NPPG states that refusal on grounds of prematurity will seldom be justified if the plan has yet to be submitted for examination.

3. There is no draft Neighbourhood Plan and there can therefore be no argument that the proposals are premature and prejudicial to the Neighbourhood Plan.

4. The circumstances that led to the Secretary of State’s concerns on prematurity in the Bovis Miller appeal were very different because it was in the context of the emerging JCS which was at a more advanced stage and the much larger (but now deleted) Leckhampton strategic allocation.

5. In this case even the RfR did not assert that the proposals “would” undermine the plan-making process and predetermine decisions that would be “central to an emerging Local Plan.”
6. The appeal proposals are not substantial. They comprise a modest development of up to 45 dwellings compared with a 10,917 dwelling requirement (0.4%) and a draft CLP which is still looking to allocate land for 1,011 dwellings (less than 5%).

7. The Highways Authority raise no objection. They considered cumulative impact and concluded that proposals still would not have a residual “severe” impact in the context of NPPF paragraph 32. The Parish Council do not dispute this.

8. Whilst LGS is likely to be designated in the wider area the appeal site does not meet the qualifying criteria in NPPF 77. I am not persuaded that it would be included as part of any wider LGS designation in any event.

9. The Parish Council specifically excluded the appeal site from their LGS proposals and this supports my assertion. They even accept that the site is suitable for some form of development, which is at odds with the purposes of LGS.

10. There is no reason why the redevelopment of this relatively small site cannot be considered on its individual merits and separately from the plan-making process.

**Issue 3– Density, layout and design**

7.81 Reason for refusal no.2 is concerned mainly with the potential landscape and visual impacts of the development and its effects upon the character and appearance of the area. These matters are dealt with separately and comprehensively in the evidence of Mr Harris.

7.82 The RfR does however refer to matters of density, layout and design and I will briefly deal with these matters insofar as they relate to planning policy and procedural matters.

**Density**

7.83 The appeal proposals are for a development of up to 45 dwellings with a net density of up to 34dph.

7.84 The “saved” CLP Policy HS2 states that housing development will be required to demonstrate the efficient use of land of between 30 and 50dph unless it would compromise the Principles of Urban Design, the creation of safe and sustainable neighbourhoods, or it would harm an interest of acknowledged importance.
7.85 At 34dph, the appeal proposals would sit comfortably within the range of densities that is required by Policy HS2, and indeed would sit at the lower end of the scale (reflecting the location of the site and the character and appearance of the surrounding area).

7.86 By the time this Public Inquiry opens, I anticipate that Policy HS2 will have been superseded by the adoption of the JCS (as the policy is not proposed to be saved post adoption [see CD.D13 page I45]).

7.87 Neither the JCS nor the NPPF set minimum density standards as such, but making efficient and effective use of land remains a national and local planning objective. Indeed, JCS Policy SD10 requires residential development to achieve the "maximum density" compatible with good design, the protection of heritage assets, local amenity, the character and quality of the local environment, and the safety and convenience of the local and strategic road network.

7.88 In any event, I would highlight that the effect of a given density of development cannot be determined until a detailed scheme is agreed at the RM stage. It is simply a number at this stage. A block of six 1no. bedroom flats might for example be the same size as a large detached house and have a similar impact on its surroundings, but on paper, each of these will represent very different densities of development.

7.89 Inspector Clark made similar observations in the Bovis/Miller appeal decision [at IR.243] and they were accepted by the SoS [SoS.16]. The Inspector noted that:-

“A high density in terms of dwellings per acre would not necessarily translate into an appearance of intense development.”

7.90 At IR.242 the Inspector considered the density of the Bovis/Miller scheme against policy and stated:-

“At 650 dwellings, the density would be 42 dwellings per hectare (dph)….. that would place it approximately in the middle of the range of densities (30-50 dph) envisaged by the Local Plan policy HS2 and so would not be unacceptable.” (my emphasis)

7.91 He went on to conclude at paragraph 245 that:-

“I would not expect the likely outcome of detailed design to harm the character and appearance of the area.” (my emphasis)
7.92 It can therefore be seen that both Inspector Clark and the Secretary of State were satisfied that a much larger development on the adjoining land, with a greater density of development (42dph compared with 34dph) was acceptable and would not cause harm to the character and appearance of the area. I would also draw attention to the Redrow development that is being built out on land at Farm Lane to the west, which has a net density of 32dph.

7.93 It must therefore follow that as a matter of principle, the density of the appeal proposals would also leave the character and appearance of the area unharmed.

7.94 It also should not be forgotten that the emerging CLP proposes to allocate additional housing at Leckhampton and I would expect that to be at a density of development which is similar (if not greater) than the appeal proposals. I say this in circumstances where the Cheltenham Strategic Assessment of Land Availability report for 2016 applies density assumptions of 30-40dph outside the Urban Area [CD.C13].

Layout and Design

7.95 The LPA’s objections insofar as they relate to layout and design fail to recognise the critical point that this is an outline planning application with all matters of detail reserved for subsequent determination at the Reserved Matters stage.

7.96 If the LPA had felt that it was essential that the application should include any of those reserved matter details at the outline stage, then they were entitled to ask for them to be included.3 The LPA made no such request.

7.97 I fully acknowledge that the Government attaches great importance to the design of the built environment and how it is a key aspect of sustainable development. However, I see nothing in the LPA’s objections that suggests to me that there is a need for a fundamental rethink about how this site could or should be laid out, which justifies refusal at this outline stage.

7.98 The RfR states inter alia that:—

“….. the illustrative layout does not follow the objectives of good design as it does not respond to the need to achieve place making with a view to helping create a pleasant and suitable place to live ....”

7.99 The Appellant does not seek approval at this stage for the detailed design and layout of the development. It is these considerations along with external appearance, access and landscaping that will create a sense of place and dictate whether it is a pleasant and suitable place to live. However, these are obviously issues for the RM stage.

7.100 Similar issues relating to design and density were raised in a recent appeal concerning an outline proposal on Land West of Shilton Road, Burford [CD.H13]. The Inspector commented as follows:

“50. It seems to me that what ultimately matters is how the development appears and is experienced on the ground in the established context, so as not to be alien, intrusive or incongruous. Bearing in mind the existing buildings in the area within the framework of landscaping and substantial tree planting, and the fact that the residential densities implied by the proposal are within what would be considered the lower band of density compatible with reasonably efficient land use and would allow for significant softening of appearance through landscape design, I am confident that appropriately skilled overall design could achieve that objective. The details of how it would be achieved in practice are properly the substance of reserved matters submissions.” (My emphasis)

7.101 I consider that the Appellant has submitted sufficient information at this outline stage to demonstrate that the site can accommodate the scale of development that has been proposed and to show how the proposed development could be laid out in a sustainable and environmentally acceptable way.

7.102 To summarise on density, layout and design:

1. It remains a sound planning objective to make efficient and effective use of land, particularly on land which has been developed in the past.

2. The density of the proposed development (34dph) is at the lower end of the range advocated by adopted CLP Policy HS2 (30 to 50dph), albeit the effect of density is dependent on other factors that will be fleshed out at the RM stage.

3. It is however notable that the proposed density is lower than the 42dph that was found to be acceptable by the Secretary of State as part of the Bovis/Miller Appeal on adjoining land [CD.H2 SoS.16] and similar to the Farm Lane development to the west (32dph).

4. I would also anticipate that if land is allocated at Leckhampton it will be expected to achieve a similar density of development given that the Cheltenham SALA applies density assumptions of 30-40dph outside the Urban Area.
5. The LPA’s objections insofar as they relate to layout and design fail to recognize that this is an outline planning application with all matters of detail reserved.

6. The LPA made no formal request during the application process to require any of those reserved matter details to be considered at the outline stage.

7. Concerns relating to good design and place making are perfectly capable of being addressed at the RM stage.
8. **THE OVERALL PLANNING BALANCE**

8.1 In this section of my evidence I explain how I believe the decision maker should approach the determination of this appeal, before going on to identify the issues that need to be weighed in the overall planning balance.

**The Decision Making Framework**

8.2 I consider that this appeal should be determined in the context of the “tilted balance” in paragraph 14 of the NPPF (The Presumption in Favour of Sustainable Development).

8.3 It is agreed and accepted that the LPA can demonstrate a 5YR HLS and I make no argument based on NPPF paragraph 49.

8.4 However, the “tilted balance” in paragraph 14 is still engaged because the housing policies of the adopted Cheltenham Local Plan are “time expired” and out of date. It is the adopted CLP that defines the extent of the PUA for the purposes JCS Policy SD10, yet it is recognised that additional housing development will be required outside of the PUA to meet the requirements of the JCS.

8.5 The Development Plan is also “silent” with regards to the allocation of non-strategic sites. The mechanism for allocating those sites is the emerging CLP. However, it is at an early stage in the plan making process and does not yet form part of the Development Plan for the area. Relevant case law on such matters can be found in the *Cemex Properties*[^4] High Court judgement.

8.6 As discussed by Gilbart J there was no distinction to be drawn between an argument that the policies in the development plan were silent because there was no DPD and the argument that the plan was out of date because there was no DPD. As held in the *Bloor* case, ‘silent’ within paragraph 14 meant an absence of relevant policy. Consequently, it is a matter of planning judgment for the decision-maker to determine whether there is a body of policy sufficient to determine whether the scheme is acceptable or unacceptable in principle. In the South Oxfordshire case, the LPA had no Site Allocations Plan which would allocate the housing required by the Core Strategy at the Larger Villages. Gilbart J observed:

[^4]: South Oxfordshire DC v (1) SSCLG & (2) Cemex Properties Ltd [2016] EWHC 1173 (Admin), at paragraphs 93-95 [CD.H12]
“...The question “how much housing does the Development Plan intend should be allocated in the period x to y” is not the same question as “where does the Plan say that housing could or should be built?” In some cases, it can be the second question that matters. Whether it does so depends on the circumstances and is a matter for the planning judgment of the decision maker.”

8.7 This does not change the statutory presumption in favour of the Development Plan as set out in s.38(6) of the Planning and Compulsory Purchase 2004 Act, but it does mean that some policies may need to be afforded reduced weight in accordance with the Suffolk Coastal Supreme Court Judgement5 [CD.H7]

8.8 There are no restrictive policies for the purposes of Footnote 9 which would cause paragraph 14 to be dis-applied in this case.

8.9 It is not clear whether the LPA intends to argue that the site itself forms part of a valued landscape or not for the purposes of paragraph 109 of the NPPF, but the evidence of Mr Harris refutes that argument in any event, based on the facts of this case. The LPA’s Landscape Witness, Mr Ryder has also previously accepted that it was not a valued landscape in his consultation response [CD.A27], which states:-

“The site is not a Valued Landscape in terms of §109 of the NPPF”

8.10 Even if the Inspector reaches a different conclusion on whether the site is a valued landscape or not, I do not consider paragraph 109 to be a restrictive policy for the purposes of NPPF Footnote 9. This issue was considered in detail in a recent appeal decision relating to land North of Aylesbury Road, Wendover, where the Inspector reached the following conclusions:-

“74. ...... After careful consideration I am more persuaded that the exhortation to ‘contribute to and enhance the natural and local environment by....protecting and enhancing valued landscapes’ comprises an aspiration rather than a restriction.”

8.11 Whilst the Inspector in that case did find that the development would result in the loss of an important part of a valued landscape, she went on to state:-

5 Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and anor (Respondents) Richborough Estates Partnership LLP and anor (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37
“75..... In this instance I conclude that the first bullet point of paragraph 109 of the Framework is not a specific policy that indicates that development should be restricted. Given my findings it follows that the tilted balance should still be applied.”

APPENDIX 4 – APPEAL DECISION – LAND NORTH OF AYLESBURY ROAD, WENDOVER

8.12 Once NPPF paragraph 14 is engaged, the decision maker must consider whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits. The Suffolk Coastal Judgement indicates that the decision maker must then consider whether in the context of Section 38(6) of the Planning and Compulsory Purchase Act 2004, these considerations amount to “other material considerations” that justify a departure from the policies of the adopted Development Plan.

8.13 Again, even if the Inspector disagrees with me on the matter of NPPF 14 and concludes that the “tilted balance” is not engaged, it is still necessary to consider whether a development is sustainable. A positive finding of sustainability measured against the NPPF can still be a sufficiently weighty material consideration to outweigh any conflict with the Development Plan in the context of s.38(6) of the 2004 Act. That will be a matter of judgement for the decision maker and would be consistent with the findings of Barwood6 and Mansell7 in the Court of Appeal [CD.H8 and CD.H9].

8.14 To illustrate the principle, I attach at Appendix 5 of my evidence a copy of a recent appeal decision from the Secretary of State (SoS) concerning Land off Watery Lane, Lichfield. The same approach to sustainable development was applied by the SoS, notwithstanding a recommendation from the Inspector that the appeal should be dismissed.

APPENDIX 5 – APPEAL DECISION, WATERY LANE, LICHFIELD

8.15 In that case (a residential-led mixed use development including 750 dwellings) the SoS concluded that the LPA could demonstrate a 5YR HLS [SoS.44] and that the proposals did not accord with the Development Plan overall [SoS.52].

6 Mansell v Tonbridge and Malting BC [2017] EWCA 1314.
7 Barwood Strategic Land LLP v East Staffordshire Borough Council and SSCLG [2017] EWCA Civ 893
8.16 He then went on to consider whether there were material considerations which indicate that the proposal should be determined other than in accordance with the Development Plan. At paragraph SoS.53, the decision letter states:-

53. He attaches very substantial weight to the benefits of the provision of affordable and market housing. In doing so he considers that the appeal proposal advances the social and economic roles identified in paragraphs 7 and 8 of the Framework (IR302) which are not diminished owing to the Council now being able to demonstrate a five year supply. (my emphasis)

8.17 He then went on to consider the adverse impacts. He afforded modest weight to the landscape and visual harm from development and considerable weight to the harm that would be caused to the setting of Curborough Grange and Lichfield Cathedral. He also gave considerable weight to the loss of veteran trees and ancient hedgerows [paragraph 54].

8.18 Notwithstanding the conflict with the Development Plan and the adverse impacts that had been identified, the decision letter concluded at paragraph 55:-

“55. However, the Secretary of State concludes that the social and economic benefits of providing affordable and market housing are of such importance that they outweigh the environmental harm, and that the proposal would thus represent sustainable development. Overall, therefore, he concludes that the material considerations indicate that the appeal should be allowed.” (my emphasis)

8.19 The decision was challenged in the High Court, but the challenge was dismissed. The SoS decision was upheld by Singh J (as he then was) [CD.H11].

8.20 Having set out the framework for decision making, I will now go on to identify the positive benefits and adverse effects which I have taken into account in reaching my own conclusions.

**The benefits associated with the appeal proposals**

8.21 In this case I consider that the appeal proposals if allowed, would secure important benefits that would respond to all three dimensions of sustainable development (social, economic and environmental). I have outlined the benefits of the appeal proposals below.

---

8 Lichfield District Council v Secretary of State for Communities and Local Government [2017] EWHC 2242 (Admin)
The social benefits

8.22 I consider that significant weight should be afforded to the provision of open market homes. Appeal Inspectors have consistently attached significant weight to this in other appeal decisions recognising the inadequate levels of house building in recent years, which is affecting the availability and affordability of housing across the country.

8.23 I recognise and accept that the LPA can demonstrate a 5YRHLS following the publication of the JCS Inspector’s Final Report [CD.D11 paragraph 97]\(^9\). However, one must read that document as a whole. At paragraph 279 the Inspector acknowledges the shortcomings of the JCS but recognises (on balance) the desirability of having an adopted plan in place sooner rather than later. She states:

“279. Whilst there are issues with the Plan, which cannot be immediately resolved, it is in the public interest to have an adopted Plan in place as soon as possible to reduce continuing ad-hoc, unplanned development. Rather than delaying matters further, the balance is in favour of finding the Plan sound now subject to an immediate partial review.”

8.24 The issue with Cheltenham is that it was only possible to conclude that the LPA can demonstrate a 5YRHLS if all of the following assumptions are applied:-

- The “Liverpool” approach is used where previous housing shortfalls are spread across the remainder of the plan period rather than being addressed in the first five years under the normally preferred “Sedgefield” approach,

- The housing requirement is based on a “stepped trajectory” with 450 dwellings per annum from 2011/12 to 2021/22 then stepping up to 663 dwellings from 2022/23 to 2030/31, and

- The yet to be untested, emerging allocations in the CLP will be found sound.

8.25 The main reason for applying these assumptions is that Cheltenham is reliant upon strategic sites which will take longer to start delivering. In the absence of

\(^9\) Note that there is an acknowledged typo in the Inspector’s Report. The housing supply figure should be 5.6 years and not 6 years as stated. This is agreed in the SoCG.
any alternative strategic sites that had been put to her, the Inspector had little choice but to proceed on this basis if she was to find the plan sound.

8.26 Therefore, we must not forget the background context that Cheltenham has a recognised history of persistent under delivery [CD.D11 para 91]. So, whilst the LPA can claim to have a 5YRHLs, the assumptions outlined above mean that Cheltenham will still not be meeting its OAN in the early years of the JCS plan period and that the detrimental social and economic consequences of an inadequate supply of housing will continue to be felt in the real world.

8.27 Cumulatively, since 2011 only 1,724 net dwellings have been completed compared to the OAN of 3,275. This represents a shortfall of 47% of the number of homes needed in Cheltenham Borough over the previous 6 years. This will have had significant adverse effects on the accessibility of housing, the ability of new households to form (rather than remaining in parental accommodation for example), and the already limited options available to those in desperate need (including the homeless).

8.28 As a result of the constrained supply in Cheltenham Borough, the average house price has risen faster than elsewhere across Gloucestershire or the South West since 2009, as outlined in the Chart below.

**Change in median house prices since 2009 (source: ONS Ratio of house price to residence-based earnings (lower quartile and median), 2002 to 2016)**

![Graph showing change in median house prices](image)
8.29 This has reduced the ability of households to access housing within Cheltenham Borough, as demonstrated by the fact that the median house price to income ratio has deteriorated faster in Cheltenham than across Gloucestershire or the South West.

Change in median house price to income ratio since 2009 (source: ONS Ratio of house price to residence-based earnings (lower quartile and median), 2002 to 2016)

8.30 We are in the middle of a housing crisis and the NPPF includes the national policy imperative that requires LPAs to boost significantly the supply of housing (NPPF paragraph 47) and to deliver a wide choice of high quality homes and widen opportunities for home ownership (NPPF paragraph 50). The appeal proposals would deliver homes where they are needed, consistent with these objectives.

8.31 As well increasing the availability of open market housing, the proposals will make provision for a meaningful number of new affordable homes (policy compliant at 40%) and this should be afforded significant weight.

8.32 Homeseeker Plus identifies that there are 2,571 households currently looking for affordable housing in Cheltenham. Of these, 61 are in emergency need, 43 in urgent need, 512 in significant need, and 1,955 in low need.

8.33 The Strategic Housing Market Assessment Update, March 2014 (SHMA) [CD.D3] identified that there were 1,583 households in affordable need. This represents the proportion of those looking for affordable housing who would actually qualify
as being in affordable need. The SHMA then also identified that there were likely to be an additional 1,916 households falling into affordable need per year.

8.34 On this basis, and making an allowance for the return of existing affordable homes to the supply, the SHMA identified a net annual need for 1,456 affordable homes in Cheltenham Borough.

8.35 Subsequently, a further update to the SHMA was published in September 2015 [CD.D4], which amends the affordable housing need to 231 dwellings per annum. Even against this significantly reduced affordable need, the Housing Implementation Strategy [CD.D10] identifies that there will be a shortfall of 1,042 affordable homes within the Borough at the end of the plan period (to 2031).

8.36 Therefore, even if the site is not technically required to maintain a 5YRHLs at this moment in time, it can still assist in reducing the shortfall in affordable housing that is expected to still exist at the end of the plan period.

Economic Benefits

8.37 I consider that significant weight should be afforded to expenditure on construction and investment in the area.

8.38 The NPPF at paragraphs 18 and 19 explains that the Government is committed to securing economic growth in order to create jobs and prosperity and that it is committed to ensuring that the planning system does everything it can to support sustainable economic growth. It goes on to state that “significant weight” should be placed on the need to support economic growth through the planning system.

8.39 Following the recent recession, the Government placed a major emphasis on the construction industry to “kick start” the economy. There has been a clear push on planning for growth through national policy initiatives including the NPPF, which was intended to stimulate growth in the economy.

8.40 It is widely recognised that housebuilding has knock-on effects for other sectors which leads to increased demand for building materials and equipment at the construction phase as well as domestic furniture and carpets etc following completion. This generates/sustains employment in other sectors. The
construction industry also stimulates lending in financial markets, another important sector in the UK economy.

8.41 The construction industry is reliant upon a constant stream of new sites to keep people employed and to maintain delivery rates. The LPA’s strategic housing requirement will require a significant stepped increase in construction activity across the plan period, indicating that new construction jobs will be created locally. I would attach moderate weight to the newly created construction jobs.

8.42 I would attach moderate weight to the provision of homes for economically active people in circumstances where economic/employment objectives of the JCS are reliant upon the delivery of homes to accommodate the workforce required to support the projected job growth.

8.43 Appendix 6 provides a spreadsheet which seeks to quantify the likely economic benefits of the scheme. The headline figures are as follows:-

- Development costs - £4.98m
- Direct job creation – 36 to 45 jobs
- Indirect job creation – 40 to 90 jobs
- GVA – £8.7m to £14.8m
- Annual Household expenditure £1.2m

**APPENDIX 6 - ECONOMIC BENEFITS SPREADSHEET**

8.44 The proposals will also provide financial contributions towards off-site community infrastructure. I recognise that these payments are essentially required to mitigate the impact of the development, however they do still represent new investment in community infrastructure which can also be used by existing residents living in the surrounding area. I would attach limited weight to this as a benefit.

**Environmental benefits**

8.45 The scheme would deliver public open space/green infrastructure which will be accessible to new and existing residents. I would also afford this limited
weight in circumstances where it is required to mitigate the needs arising from
the new resident population.

8.46 The proposals would also deliver **improved pedestrian facilities along Kidnappers Lane** between the site access and Vineries Close which will enhance pedestrian safety along this route and encourage more people to walk. I would afford this limited/moderate weight as it will also benefit existing users.

8.47 In addition, the appeal proposals would also assist in securing other **enhancements to biodiversity**. I would afford this benefit limited weight.

8.48 Overall it can be seen that the proposals will deliver a range of benefits which taken together, weigh in its favour.

8.49 The LPA may choose to argue that similar benefits will be secured when other sites come forward for development. However, as I have explained, there has been a history of persistent under delivery in Cheltenham which has created a housing backlog. Regardless of the stepped trajectory and use of the Liverpool methodology the LPA is simply not meeting the need for housing that exists now.

8.50 The appeal site is ready to be delivered now and can assist in providing much needed housing. Consistent with Singh LJ in the *Lichfield* case [CD.H11 paragraph 43] the existence of a 5YRHLS does not mean that it cannot be said that there is a “need” for additional housing.

**The adverse effects to be weighed in the balance**

8.51 The adverse effects relate mainly to a partial conflict with the Development Plan and the environmental dimension to sustainable development.

8.52 Assuming that the JCS is adopted and becomes part of the Development Plan for the area prior to the start of the Public Inquiry, I recognise that the proposals would not accord with JCS Policy SD10 (Residential Development). This is because the site lies outside the PUA and is not allocated for housing and it does not accord with any of the other criteria of the policy that allow for housing in other specified circumstances.

8.53 However, as I have explained, the PUA was defined by the adopted CLP which is recognised as being out of date. The Development Plan is also “silent” regarding non-strategic housing allocations at Cheltenham whilst we wait for the emerging
CLP. We can expect that there will be the need to allocate land for housing outside of the PUA and I would therefore only afford limited weight to this policy conflict.

8.54 I don’t accept that the appeal proposals would conflict with adopted CLP Policies CO1, CO2 and CP7 or JCS Polices INF4, INF7 and SD8, for the reasons already given in my evidence and the evidence of Mr Harris and Mr Finlayson.

8.55 I accept that the appeal proposals would give rise to the **loss of a small area of countryside**, but I would highlight that the site is partially developed and is a degraded area of land.

8.56 Through the JCS and emerging CLP process it has been accepted that areas of countryside will need to be lost to meet the development needs of Cheltenham, including undeveloped greenfield sites and even land in the Green Belt. By contrast this site is not Green Belt and is not protected by any other designations. It is in one of the only areas of Cheltenham beyond the PUA that is not constrained by Green Belt or AONB. Indeed, it is in an area where the CLP is proposing to allocate circa 200 dwellings. I would therefore only attach limited weight to the loss of countryside.

8.57 The evidence of Mr Harris has considered the **landscape and visual impact** of the development. I accept and rely upon his conclusions.

8.58 Mr Harris explains that there are no landscape and visual reasons why this appeal should be dismissed. He notes that the development will not remove or harm attributes and features which make a significant contribution to the character, distinctiveness, quality and amenity value of the site or its adjoining landscape. He also explains that careful mitigation will conserve visual amenity so that the proposals are fully compliant with the aims of local plan and emerging policies which seek to protect landscape character.

8.59 His conclusion is that in landscape terms, the appeal site is appropriate for a development that is contained to the degraded site. In an area where green belt designation restricts land supply for new homes, he considers it desirable and logical to develop poor quality, low sensitivity land in order to protect the greater sensitivity landscape of the adjoining Cotswolds AONB. I would afford limited weight to the localised landscape and visual effects of the development.
8.60 Even if the Inspector does not fully accept the findings of Mr Harris and finds that there would be a greater level of residual harm, then that harm still needs to be weighed in the overall planning balance, whether tilted or otherwise. In the context of the *Suffolk Coastal* judgment [CD.H7] and s.38(6) of the Planning and Compulsory Purchase Act 2004, I consider that the benefits of the scheme are still capable of being over-riding considerations in this case.

8.61 Mr Finlayson presents evidence on **traffic and transportation matters** which are not contested by the LPA. The Parish Council has raised some concerns but do not intend to advance an argument based a "severe" residual impact.

8.62 His evidence demonstrates that the proposed access arrangements would be safe and suitable and the opportunities for sustainable modes of travel have been taken up. He also demonstrates that any increase in traffic flows as a result of the new development will not exacerbate conditions on the existing roadwork to an unacceptable degree and they will not have a "severe“ impact for the purposes of NPPF paragraph 32.

8.63 I accept and rely upon his conclusions. I would therefore only afford limited weight to any residual harm arising from the predicted increase in traffic on the local road network.

8.64 Finally, I don’t accept that the appeal proposals are **premature or prejudicial to the emerging CLP** for the reasons already outlined. The LPA also no longer intend to contest this issue (RfR no.1). I would afford it no weight.

**Other considerations**

8.65 There are no other grounds to resist development at the appeal site which cannot be mitigated, dealt with at Reserved Matters stage or controlled through planning conditions and obligations.

**Compliance with the Development Plan**

8.66 Despite the policy conflict that I have identified, I have demonstrated that the proposals would still be in general accordance with the Development Plan, when read as a whole.
Overall Conclusion

8.67 Following this analysis, my conclusion is that the residual adverse impacts of the development would not significantly and demonstrably outweigh the identified benefits of the development in the “tilted balance” of NPPF paragraph 14. Moreover, the sustainability credentials of the scheme represent material considerations to justify a departure from the limited conflict with the development plan even if the tilted balance is not applied.

8.68 To summarise on the Overall Planning Balance:-

1. The proposals will deliver a range of social, economic and environmental benefits which can be afforded varying levels of weight as identified below. These include:-

   - Provision of Open Market Housing – **Significant**
   - Provision of Affordable Housing – **Significant**
   - Expenditure on construction/local investment – **Significant**
   - Creation of construction jobs - **Moderate**
   - Providing homes for economically active people – **Moderate**
   - Financial contributions towards off site infrastructure - **Limited**
   - Public open space/Green Infrastructure – **Limited**
   - Off-site footpath/street lighting improvements – **Limited/Moderate**
   - Enhancements to biodiversity – **Limited**

2. The potential residual adverse impacts have been identified and these should also be afforded varying degrees of weight as follows:

   - Conflict with JCS Policy SD10– **Limited**
   - Loss of countryside – **Limited**
   - Landscape and visual impact of the development – **Limited**
   - Residual impact of traffic on the local road network – **Limited**
   - Prematurity/Prejudice to the emerging CLP – **No weight**

3. All other identified impacts can be mitigated through Planning conditions, obligations or through reserved matter applications.

4. It can be demonstrated that the proposals would otherwise be in general accordance with the Development Plan when read as a whole.
5. Overall the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. As such the proposals represent sustainable development in the context of NPPF paragraph 14.
9. PLANNING OBLIGATIONS

9.1 The Appellant will present deeds pursuant to Section 106 of the Town and Country Planning Act 1990 before the close of the Public Inquiry.

9.2 At the time of writing, discussions are still ongoing with the LPA regarding Planning obligations. Subject to the LPA demonstrating compliance with the CIL regulations these are likely to include:

- Affordable Housing
- Maintenance of Public Open Space
- Education
- Off Site Highway Works
10. SUMMARY AND CONCLUSIONS

10.1 My evidence explains why I consider that the appeal proposals represent sustainable development and I have demonstrated that there are compelling reasons that justify the grant of planning permission.

10.2 My evidence is structured to address the following issues:-

- Whether the principle of development is acceptable in this location.
- Whether the proposals are premature and prejudicial to the emerging Local Plan or Neighbourhood Plan
- Density, Layout and Design
- The Overall Planning Balance

10.3 My main findings can be summarised as follows:-

**Issue 1: Whether the principle of development is acceptable in this location.**

1. RfR no.1 states that the principle of development is unacceptable. The LPA now accept that RfR no.1 cannot be substantiated. I support that concession.

2. Policies relating to the supply of housing in the adopted Cheltenham Local Plan are “time expired,” and are to be replaced following the imminent adoption of the JCS. As such they should be afforded little if any weight.

3. I consider that the appeal proposals accord with the overarching spatial strategy of the JCS and the emerging CLP which focus major development at Cheltenham as a highly sustainable location.

4. JCS Policy SP1 establishes a housing requirement across the JCS Authorities of approximately 35,175 dwellings for the plan period 2011 to 2031, of which at least 10,917 dwellings are to be provided at Cheltenham.

5. I accept that the appeal proposals would not accord with JCS Policy SD10 (Residential Development) as the site is not allocated and would not accord with other criteria.

6. However, Policy SD10 cannot be afforded full weight because the Development Plan is still reliant upon non-strategic sites which have yet to be allocated through the emerging CLP (1,011 homes plus windfalls).

7. The JCS and the emerging CLP rely upon strategic and non-strategic allocations on greenfield land beyond the PUA. The appeal site is located in one of the few areas beyond the PUA that is not affected by Green Belt, AONB or other restrictive policies and is therefore a good candidate location.
8. The JCS Inspectors Final Report gives support to a non-strategic allocation at Leckhampton in the order of (but not limited to) 200 dwellings indicating that Leckhampton is a suitable and sustainable location for additional housing.

9. Similarly, the emerging CLP proposes to allocate land for 200 dwellings at Leckhampton, albeit the size and extent of the allocation have yet to be determined.

10. There are no site-specific issues affecting the appeal site which cannot be overcome through Reserved Matter applications, conditions or planning obligations. The site itself is therefore suitable for development.

**Issue 2 Whether the proposals are premature and prejudicial to the emerging Local Plan or Neighbourhood Plan**

11. The LPA now accept that the proposals would be neither premature nor prejudicial to the emerging CLP or any emerging Neighbourhood Plan.

12. The emerging CLP remains at an early stage in the plan making process and has not been submitted for examination. Relevant guidance in the NPPG states that refusal on grounds of prematurity will seldom be justified if the plan has yet to be submitted for examination.

13. There is no draft Neighbourhood Plan and there can therefore be no argument that the proposals are premature and prejudicial to the Neighbourhood Plan.

14. The circumstances that led to the Secretary of State’s concerns on prematurity in the Bovis Miller appeal were very different because it was in the context of the emerging JCS which was at a more advanced stage and the much larger (but now deleted) Leckhampton strategic allocation.

15. In this case even the RfR did not assert that the proposals “would” undermine the plan-making process and predetermine decisions that would be “central to an emerging Local Plan.”

16. The appeal proposals are not substantial. They comprise a modest development of up to 45 dwellings compared with a 10,917 dwelling requirement (0.4%) and a draft CLP which is still looking to allocate land for 1,011 dwellings (less than 5%).

17. The Highways Authority raise no objection. They considered cumulative impact and concluded that proposals still would not have a residual “severe” impact in the context of NPPF paragraph 32. The Parish Council do not dispute this.

18. Whilst LGS is likely to be designated in the wider area the appeal site does not meet the qualifying criteria in NPPF 77. I am not persuaded that it would be included as part of any wider LGS designation in any event.

19. The Parish Council specifically excluded the appeal site from their LGS proposals and this supports my assertion. They even accept that the site is suitable for some form of development, which is at odds with the purposes of LGS.
20. There is no reason why the redevelopment of this relatively small site cannot be considered on its individual merits and separately from the plan-making process.

**Issue 3  Density, Layout and Design**

21. It remains a sound planning objective to make efficient and effective use of land, particularly on land which has been developed in the past.

22. The density of the proposed development (34dph) is at the lower end of the range advocated by adopted CLP Policy HS2 (30 to 50dph), albeit the effect of density is dependent on other factors that will be fleshed out at the RM stage.

23. It is however notable that the proposed density is lower than the 42dph that was found to be acceptable by the Secretary of State as part of the Bovis/Miller Appeal on adjoining land [CD.H2 SoS.16] and similar to the Farm Lane development to the west (32dph).

24. I would also anticipate that if land is allocated at Leckhampton it will be expected to achieve a similar density of development given that the Cheltenham SALA applies density assumptions of 30-40dph outside the Urban Area.

25. The LPA’s objections insofar as they relate to layout and design fail to recognise that this is an outline planning application with all matters of detail reserved.

26. The LPA made no formal request during the application process to require any of those reserved matter details to be considered at the outline stage.

27. Concerns relating to good design and place making are perfectly capable of being addressed at the RM stage.

**The Overall Planning Balance**

28. The proposals will deliver a range of social, economic and environmental benefits which can be afforded varying levels of weight as identified below. These include:
- Provision of Open Market Housing – **Significant**
- Provision of Affordable Housing – **Significant**
- Expenditure on construction/local investment – **Significant**
- Creation of construction jobs - **Moderate**
- Providing homes for economically active people – **Moderate**
- Financial contributions towards off site infrastructure - **Limited**
• Public open space/Green Infrastructure – Limited
• Off-site footpath/street lighting improvements – Limited/Moderate
• Enhancements to biodiversity – Limited

29. The potential residual adverse impacts have been identified and these should also be afforded varying degrees of weight as follows:

• Conflict with JCS Policy SD10 – Limited
• Loss of countryside – Limited
• Landscape and visual impact of the development – Limited
• Residual impact of traffic on the local road network – Limited
• Prematurity/Prejudice to the emerging CLP – No weight

30. All other identified impacts can be mitigated through Planning conditions, obligations or through reserved matter applications.

31. It can be demonstrated that the proposals would otherwise be in general accordance with the Development Plan when read as a whole.

32. Overall the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. As such the proposals represent sustainable development in the context of NPPF paragraph 14.

Planning Obligations

33. The Appellant will present deeds pursuant to s.106 which will ensure that affordable housing and necessary infrastructure is provided to mitigate against the impacts of the development.

Overall Conclusion

10.4 In view of the forgoing, the Inspector is respectfully requested to allow this appeal and to grant Outline Planning Permission subject to any necessary conditions and planning obligations.