



Department for  
Communities and  
Local Government

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Our Ref: APP/B1605/W/14/3001717

Your Ref: JBB7795

5 May 2016

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BOVIS HOMES LIMITED AND MILLER HOMES LIMITED  
LAND AT KIDNAPPERS LANE, LECKHAMPTON, CHELTENHAM**

Dear Sir

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, P W Clark MA MRTPI MCMI, who held a public local inquiry on 22 - 25 September and 29 September - 2 October 2015, into your client's appeal against the decision of Cheltenham Borough Council (the Council) to refuse planning permission for residential development of up to 650 dwellings; mixed use local centre of up to 1.94 ha comprising a local convenience retail unit Class A1 Use (400 sq m), additional retail unit Class A1 Use for a potential pharmacy (100 sq m), Class D1 Use GP surgery (1,200 sq m) and up to 4,500 sq m of additional floorspace to comprise one or more of the following uses, namely Class A Uses, Class B1 offices, Class C2 care home and Class D1 Uses including a potential dentist practice, children's nursery and/or cottage hospital; a primary school of up to 1.721 ha; strategic open space including allotments; access roads, cycleways, footpaths, open space/landscaping and associated works; details of the principal means of access; with all other matters to be reserved; in accordance with application reference 13/01605/OUT dated 13 September 2013.
2. The appeal was recovered on 18 February 2015, for determination by the Secretary of State, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, on the grounds that it involves proposals for residential development of over 150 units or on a site of over 5ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

## **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Events following the close of the Inquiry**

4. Following the close of the Inquiry the Secretary of State is in receipt of correspondence from the appellant dated 22 January 2016 enclosing documents Exam 146 and Exam 146A from the Examination into the emerging Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury (JCS, see paragraph 10 below) and from Mr K Pollock dated 1 February and 4 April 2016 outlining progress of the JCS examination. As these representations do not raise new matters that would affect his decision, the Secretary of State has not considered it necessary to circulate them to all parties for comments.

## **Procedural matters**

5. An application for an award of costs was made by Bovis Homes Ltd and Miller Homes Ltd against the Council (IR1). The outcome of this application is the subject of a separate decision letter.
6. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (IR4). The Secretary of State considers that the ES and the further environmental information provided complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.
7. The Secretary of State agrees with the Inspector that nobody would be prejudiced by basing the decision on the amended drawings referred to at IR6-8.

## **Policy considerations**

8. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the adopted development plan for the area comprises the Cheltenham Borough Local Plan Second Review 1991-2011 Adopted July 2006 (the LP) and the Secretary of State agrees with the Inspector that the most relevant policies are those detailed at IR20-25.
10. The Council, along with Gloucester City Council and Tewkesbury Borough Council, supported by Gloucestershire County Council submitted the emerging JCS for examination on 20 November 2014. The Secretary of State agrees with the appeal Inspector that the most relevant policies from the strategy as submitted are those described at IR27-31, but given that examination is still on-going and the considerable amount of unresolved objection to relevant policies, the Secretary of State gives limited weight to the emerging JCS and associated documents including those referred to at IR32, IR35 and paragraph 4 above. The Secretary of State has also had regard to the Issues and Options consultation of the preparation of the Cheltenham Plan (part one) (IR33-34), but as this emerging Plan is at an early stage he gives it little weight.

11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) and the associated planning practice guidance (the guidance); and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.
12. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess.

### **Main issues**

13. The Secretary of State agrees with the Inspector that the main disputed issues in this case are those set out at IR219-220.

#### *The highway network*

14. The Secretary of State agrees with the Inspector's analysis of highway issues at IR221-238. Overall, he agrees with the Inspector that, taking account of the measures which are included in the s106 agreement, the residual cumulative effects of development proposed would increase demand for use of sections of the highway network which are already operating at over-capacity levels, contributing to a severe impact on a wider area of Cheltenham as traffic is displaced, contrary to both adopted and emerging policies (IR238). Paragraph 32 of the Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

#### *Air pollution*

15. The Secretary of State has carefully considered the Inspector's reasoning at IR239-240 and like him, concludes that the development would have an acceptable effect on air pollution (IR240).

#### *Density*

16. For the reasons given at IR241-245 the Secretary of State is satisfied that a high density in terms of dwellings would not necessarily translate into an appearance of an intense development (IR243) and that the illustrations in the Design and Access Statement represent a plausible and realistic depiction of the character and appearance of development which would result if this appeal were allowed. Like the Inspector, even if the site were not sufficiently large and separated from surrounding development to allow it to develop its own character, the Secretary of State would not expect the likely outcome of detailed design at reserved matters stage to harm the character and appearance of the surrounding area. Similarly, he agrees with the Inspector that if the eventual outcome of detailed applications on the various sites which make up the JCS proposed Strategic Allocation were to result in delivery of housing in excess of the expected figure, that would not necessarily be harmful in the context of the government's desire to boost significantly the supply of housing (IR245).

#### *Impact on the Cotswolds Area of Outstanding Natural Beauty (AONB)*

17. For the reasons given at IR246-252 the Secretary of State agrees with the Inspector that both the view from and character of the Cotswolds AONB would be unharmed (IR252).
18. With regard to the view toward the AONB from the western corner of the site, for the reasons at IR253-256 the Secretary of State agrees with the Inspector that the

effects of the development on the view of Leckhampton Hill from this viewpoint are unlikely to compromise or harm the setting or character of Cheltenham (IR256).

#### *Landscape of the site itself and conclusion on landscape character and appearance*

19. Turning to the site itself, the Secretary of State has considered the Inspector's assessment at IR257-263 and agrees that, whilst not designated, the site has its own intrinsic charm which gives it value (IR260), is a locally valued landscape, and that its value derives from its own characteristics, of which views towards the AONB are only one of a number of charming features (IR263).
20. In conclusion, the Secretary of State agrees that development on this site at the present time would harm the character and appearance of the local area through the loss of a valued landscape (IR264). Although development of the site would not harm more structural elements of the wider contextual landscape character, such as the nearby AONB or the setting of Cheltenham as a whole, its development would cause a local loss and would conflict with LP policies identified at IR265.

#### *Local Green Space*

21. The Secretary of State agrees with the Inspector's assessment at IR266-269 regarding the proposed Local Green Space Designation which covers some of the appeal site. For the reasons given he agrees that the appeal proposal is premature in terms of Framework paragraph 76 and the guidance (IR269).

#### *Obligations and Local Infrastructure*

22. The Secretary of State agrees with the Inspector's assessment of the proposed planning obligations in relation to local infrastructure at IR270-275. For the reasons given he finds that the provision for walking, cycling, highway safety, public transport, playspace, primary and secondary school facilities, library facilities, healthcare, open space and affordable housing all meet the tests of paragraph 204 of the Framework and comply with the guidance. However, he does not consider that these obligations would overcome his reasons for dismissing the appeal. Furthermore, for the reasons given by the Inspector at IR221-238 and IR272 the Secretary of State finds that the contributions to the South West Sustainable Transport Strategy would fail to comply with CIL regulation 122, and he gives this contribution no weight in his decision.

#### *Gypsies, travellers and travelling showpeople*

23. For the reasons given at IR276-281, the Secretary of State agrees with the Inspector that the element of the s106 agreement that makes a contribution to the provision of pitches for gypsies, travellers and travelling showpeople would also fail the test of CIL regulation 122 and should be disregarded (IR276-281). In finding this, he also agrees with the Inspector that the proposal would fail to comply with draft JCS policies SD14 and SA1, and that though this is not fatal it is a factor to be weighed against the proposal (IR282).

#### *Housing supply*

24. For the reasons given at IR283-292 the Secretary of State agrees with the Inspector that, without this appeal, Cheltenham is about two years' short of an identified five-year housing land supply. He also agrees that the appeal itself represents the equivalent of about one-year's supply (although it would be likely to be delivered over a period of many years) and that this is an indication of one of the benefits it would bring (IR293).

### *Other matters*

25. The proposal would involve loss of an area of best and most versatile agricultural land. However for the reasons given the Secretary of State agrees with the Inspector that, though weighing against the proposal, this is not a matter of great significance in this case (IR294).
26. The Secretary of State agrees with the Inspector that as the application is in outline it would be possible to design the scheme in a way which reduced the risk of downstream flooding, which counts in a small way as a benefit in favour of the scheme (IR295).
27. The Secretary of State agrees with the Inspector that there would be no harmful effect on other local centres (IR296) and no effects on the significance of heritage assets (IR297). He also agrees that the proposed development would not result in an adverse effect on the integrity of the Cotswold Beechwoods Special Area of Conservation, either alone or in combination with other plans or projects (IR298).

### **Planning conditions**

28. The Secretary of State agrees with the Inspector's reasoning and conclusions on planning conditions at IR311-316 and he is satisfied that the conditions proposed by the Inspector at pages 79-81 of the IR are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that the conditions would overcome his reasons for dismissing the appeal.

### **Overall conclusions and planning balance**

29. The Secretary of State agrees with the Inspector's overall conclusions at IR299-310.
30. The Secretary of State concludes that granting permission for the appeal scheme would be contrary to the development plan overall due to the severe residual cumulative transport impacts and through the loss of a locally valued landscape (IR300-301). He has therefore gone on to consider whether there are any material considerations that indicate the proposal should be determined other than in accordance with the development plan.
31. Due to the lack of a five year supply of deliverable housing sites the relevant development plan policies for the supply of housing are out of date. Therefore, in line with the presumption in favour of sustainable development at paragraph 14 of the Framework, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.
32. The residual cumulative transport impacts of development would be severe, in conflict with Framework paragraph 32. The development would prejudice the possible designation of Local Green Space, in conflict with Framework paragraph 76, and the guidance indicates that allowing the appeal would be premature in such circumstances. Though not designated, the site is clearly a locally valued landscaped which paragraph 109 of the Framework states should be protected. The Secretary of State agrees with the Inspector that all three paragraphs in the Framework indicate that development should be restricted and, in the circumstances of this case, that the appeal should be dismissed (IR305).
33. Finally, in considering the balance of planning considerations in this case, the Secretary of State agrees with the Inspector's assessment at IR306-309.

Substantial though some of the benefits are, notably in terms of boosting housing supply, the Secretary of State considers that the sum of adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole.

34. For the above reasons the Secretary of State finds no reason to determine the appeal other than in accordance with the development plan.

### **Formal decision**

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations and he hereby dismisses your client's appeals and refuses planning permission for a residential development of up to 650 dwellings; mixed use local centre of up to 1.94 ha comprising a local convenience retail unit Class A1 Use (400 sq m), additional retail unit Class A1 Use for a potential pharmacy (100 sq m), Class D1 Use GP surgery (1,200 sq m) and up to 4,500 sq m of additional floorspace to comprise one or more of the following uses, namely Class A Uses, Class B1 offices, Class C2 care home and Class D1 Uses including a potential dentist practice, children's nursery and/or cottage hospital; a primary school of up to 1.721 ha; strategic open space including allotments; access roads, cycleways, footpaths, open space/landscaping and associated works; details of the principal means of access; with all other matters to be reserved; in accordance with application reference 13/01605/OUT dated 13 September 2013

### **Right to challenge the decision**

36. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

37. Copies of this letter have been sent to Cheltenham Borough Council, Leckhampton with Warden Hill Parish Council and the Leckhampton Green Land Action Group. Notification has been sent to all other parties who asked to be informed.

Yours faithfully

*Julian Pitt*

**Authorised by the Secretary of State to sign in that behalf**

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# Report to the Secretary of State for Communities and Local Government

by P W Clark MA MRTPI MCMI

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

Date: 11 January 2016

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TOWN AND COUNTRY PLANNING ACT 1990  
APPEAL BY  
BOVIS HOMES LIMITED AND MILLER HOMES LIMITED  
AGAINST  
CHELTENHAM BOROUGH COUNCIL

Inquiry held on 22 - 25 September and 29 September – 2 October 2015

Land at Kidnappers Lane Leckhampton, Cheltenham

File Ref: APP/B1605/W/14/3001717

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**File Ref: APP/B1605/W/14/3001717**

**Land at Kidnappers Lane, Leckhampton, Cheltenham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Bovis Homes Limited & Miller Homes Limited against the decision of Cheltenham Borough Council.
- The application Ref 13/01605/OUT, dated 13 September 2013, was refused by notice dated 31 July 2014.
- The development proposed is residential development of up to 650 dwellings; mixed use local centre of up to 1.94 ha comprising a local convenience retail unit Class A1 Use (400 sq m), additional retail unit Class A1 Use for a potential pharmacy (100 sq m), Class D1 Use GP surgery (1,200 sq m) and up to 4,500 sq m of additional floorspace to comprise one or more of the following uses, namely Class A Uses, Class B1 offices, Class C2 care home and Class D1 Uses including a potential dentist practice, children's nursery and/or cottage hospital; a primary school of up to 1.721 ha; strategic open space including allotments; access roads, cycleways, footpaths, open space/landscaping and associated works; details of the principal means of access; with all other matters to be reserved.

**Summary of Recommendation: The appeal be dismissed.**

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**Application for costs**

1. At the Inquiry an application for costs was made by Bovis Homes Limited & Miller Homes Limited against Cheltenham Borough Council. This application is the subject of a separate Report.

**Procedural Matters**

2. The Inquiry sat for eight days (22 - 25 September and 29 September – 2 October 2015). I made an accompanied site visit on the morning of the eighth day (2 October 2015). The Inquiry was held open but did not sit; whilst consultation was carried out on an amended proposal for one of the site accesses; for the completion of two planning obligations and; to receive outstanding information. Participants took the opportunity whilst the Inquiry remained open of providing information about related contemporary events. The appellant made final comments in writing on these additional matters. The Inquiry was closed in writing on 6 November 2015.
3. The application is made in outline with details only of the principal means of access submitted for approval at this stage. Details of appearance, landscaping, layout and scale are reserved for later consideration in the event of the appeal being allowed.
4. A request for an Environmental Impact Assessment Screening Opinion for this and other associated sites in the vicinity was submitted on 2 July 2010.<sup>1</sup> The local planning authority issued a Screening Opinion dated 22 July 2010<sup>2</sup> to the effect that an Environmental Assessment was required. A Scoping Opinion was issued on 1 March 2012.<sup>3</sup> The application was accompanied by an Environmental

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<sup>1</sup> Environmental Statement Volume 3, Appendix 3.1 (CD/APP12)

<sup>2</sup> Environmental Statement Volume 3, Appendix 3.2 (CD/APP12) and Appendix 2 of Supporting Planning Statement (CD/APP21)

<sup>3</sup> Environmental Statement Volume 3, Appendix 3.3 (CD/APP12) and Appendix 2 of Supporting Planning Statement (CD/APP21)



- Statement. There is no suggestion that this fails to meet the minimum requirements of Schedule 4 Part 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011.
5. The application was refused on 31 July 2014. The subsequent appeal was recovered for determination by the Secretary of State by Direction made on 18 February 2015. The stated reason for this Direction is that the appeal involves proposals for residential development of over 150 units or on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
  6. The appeal was submitted with an Appeal Site Boundary Plan, drawing RPS1, revision 01, which differed from the site boundary shown on the originally submitted location plan drawing 500-009 revision A by omitting an area of land. The Council originally challenged this change<sup>4</sup>. The appellant then clarified the intention to ask that the appeal be considered on the basis of this reduced site area.<sup>5</sup> This proposed amendment was the subject of consultation and advertisement by the appellant as extensive as that of the Council on the original application<sup>6</sup>. It led to a number of objections. The principal objection concerned the implied increase in density of the development. All the objections are considered in this report. The Council now confirms that it has no objection to the appeal being considered on the basis of the reduced red line site area.<sup>7</sup> Consequently, I conclude that nobody would be prejudiced by basing the decision on the proposed amended drawing RPS1 revision 01.
  7. By e-mail dated 15.6.15 a consequentially amended plan 2186.43 was submitted in substitution for drawing 2186.33. Although this was not the subject of any widespread publicity or consultation, its only practical effect is to confirm the retention of an existing access to the land intended to be excluded from the appeal proposal; there is no new element which could affect any party. The developer has provided correspondence from the County Highways Development Manager who has confirmed that the amendment would not affect the proposed fixed access to the appeal site while maintaining the existing access to the nursery<sup>8</sup>. Accordingly, I conclude that nobody would be prejudiced by basing the decision on the proposed amended drawing 2186.43.
  8. During the Inquiry the appellant proposed to respond to a representation by Mr Humphries and others objecting to the provision of a bus stop and layby outside number 104 Sherdington Road by amending plan number 2186.17C to omit that element of the proposal.<sup>9</sup> Although the amendment is minor and would be supported by Mr Humphries and others, a major plank of the appellant's case in support of the development is its contribution to modal shift by the provision of

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<sup>4</sup> By e-mail dated 15 January 2015 from Helen Thomas, Planning Services Manager

<sup>5</sup> By e-mail from Tim Partridge 23 January 2015, attaching Counsel's Opinion that the amendment complied with the *Wheatcroft* principles and with the considerations set out in Appendix M of the Inspectorate's Procedural Guidance on Planning Appeals (April 2014).

<sup>6</sup> See Leckhampton Revised Site Boundary Consultation Summary Report (CD/ADD2)

<sup>7</sup> In paragraph 6.8.9 of the Statement of Common Ground (Document INQ1)

<sup>8</sup> See e-mail from Mark Power dated 10 February 2015 in Appendix 4 to Mr Partridge's Proof of Evidence (CD/APP68)

<sup>9</sup> Documents INQ20 and INQ21

improvements to public transport. The omission of a bus stop runs counter to that argument and might be objected to by those who might wish to rely on it so the Inquiry was held open while the appellant advertised the proposed change. Representations received have been considered in the writing of this report and so I conclude that nobody would be prejudiced by basing the decision on the proposed amended drawing 2186.17D.

9. In addition to the two main parties to the appeal, two other parties were recognised in accordance with rule 6(6) of the Town and Country Planning (Inquiries Procedure)(England) Rules 2000. They are the Leckhampton with Warden Hill Parish Council (the Parish Council) and the Leckhampton Green Land Action Group (LEGLAG). At the Inquiry, three other individual members of the public participated to a significant degree. They are Mary Nelson, Gerry Potter and Ken Pollock.
10. Nine reasons for refusal were given in the Council's decision letter<sup>10</sup>. By letter dated 29 May 2015, the Council advised that it did not wish to pursue refusal reasons 1, 2, 3, 6, 7 and 8 but would continue to submit evidence in support of reasons 4, 5 and 9. The Parish Council, in an e-mail of 16 June 2015, confirmed that it resolved to contest the appeal on grounds of transport, landscape and Local Green Space. Those grounds correspond to reasons for refusal 3, 4 and 5. LEGLAG did not give advance notice of any intention not to pursue any matter. Some third parties, including Mr Pollock, specifically asserted their intention not only to pursue all refusal reasons but also additional matters.
11. At the start of the Inquiry, I identified four main issues; the effect of the proposal on; (i) the highway network including its safety and, in consequence, on air quality, (ii) on the character and appearance of the area, including the nearby Area of Outstanding Natural Beauty (AONB), (iii) on local infrastructure and (iv) the relationship of the proposal to a proposal for a designation of an area of Local Green Space. In the event, time at the Inquiry was spent mostly on these four matters but also touched upon the effects of the proposal on housing land need and supply, on agricultural land supply and on flooding.

### **The Site and Surroundings**

12. The documentation contains multiple descriptions of the site and its surroundings; in the Baseline Tree Survey Report – Area A (included within the Arboricultural Impact Assessment)<sup>11</sup>, in the Design and Access Statement<sup>12</sup>, in the Environmental Statement<sup>13</sup>, in the Green Infrastructure Strategy<sup>14</sup>, in both the Residential and Non-Residential Travel Plan Frameworks<sup>15</sup>, in the report on Ground Investigation<sup>16</sup>, in the Supporting Planning Statement<sup>17</sup>, in the Sustainability Statement,<sup>18</sup> in the Transport Assessment<sup>19</sup>, in the Council officer's

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<sup>10</sup> Document CD/LPA3

<sup>11</sup> Document CD/APP10, section 3

<sup>12</sup> Document CD/APP11, section 2

<sup>13</sup> Document CD/APP12, sections 1.2, 1.3, 6.5, 8.1, 8.5.17-40 and section 3 of Appendix 7.1

<sup>14</sup> Document CD/APP 15, section 3

<sup>15</sup> Document CD/APP16, section 3 and Document CD/APP19, section 3

<sup>16</sup> Document CD/APP18, section 2

<sup>17</sup> Document CD/APP21, section 2

<sup>18</sup> Document CD/APP22, section 1.2

report<sup>20</sup> and in the evidence of Brian Duckett<sup>21</sup>, Julia Tindale<sup>22</sup>, Tim Partridge<sup>23</sup>, Hilary Vaughan<sup>24</sup> and Stuart Ryder<sup>25</sup>. Some of these descriptions are of the larger site allocation proposed in the emerging Joint Core Strategy (JCS) for Gloucester, Cheltenham and Tewkesbury of which the appeal site is a part. Others focus on the appeal site alone which forms part of this wider proposed allocation.

13. Cheltenham sits in the Vale of Gloucester but the Cotswold scarp curves closely around its east and south. The A40 trunk road passes through Cheltenham on an alignment broadly running east-west. South of the town, just three main roads radiate; the A435, the B4070 Leckhampton Road and the A46 Shurdington Road. In the angle between the latter two, about 3km due south of the town centre, just at the point where the scarp begins to rise steeply from the valley floor, lies the formerly separate village of Leckhampton, now contiguous with Cheltenham's spread.
14. Between Leckhampton village and the A46 Shurdington Road which runs about a kilometre away to its north-west, is an area of largely undeveloped land, known locally as Leckhampton Fields. It is surrounded by existing, mostly residential, development (including a public sports field) on all sides except to part of its west (where Tewkesbury Borough Council has resolved to grant permission for housing development) and to part of its south (which abuts the Cotswolds Area of Outstanding Natural Beauty (AONB)). Kidnappers Lane runs on an irregular alignment through this area, dividing it approximately into half. The appeal site comprises most of the land to the north and east of Kidnappers Lane.
15. The appeal site is 31.73 hectares in extent.<sup>26</sup> It has a long frontage to Kidnappers Lane itself and a shorter, but still lengthy, frontage to the A46 Shurdington Road, where there are bus routes. Although there is, in fact, a slight gradient across it from south to north<sup>27</sup> and there are falls into the Hatherley Brook which passes through the site and to Moored Stream which borders its east side, both running south-north, it appears flat<sup>28</sup>.
16. The site is divided by tracks, public footpaths, field drains and other boundaries into a number of small fields and one larger one, Lotts Meadow, which is itself crossed by a number of public footpaths. The field boundaries are generally formed of substantial hedgerows and mature trees but that to Shurdington Road in the north-west corner of the site is a post and rail fence. There are also mature tree belts along the watercourses and parts of Shurdington Road. Six

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<sup>19</sup> Document CD/APP23, section 2

<sup>20</sup> Document CD/LPA1, section 1.2

<sup>21</sup> Document CD/APP53, section 4

<sup>22</sup> Document CD/APP62, section 3

<sup>23</sup> Document CD/APP67, section 3

<sup>24</sup> Document CD/APP70, section 2

<sup>25</sup> Document CD/LPA8, section 5

<sup>26</sup> Tim Partridge's Proof of Evidence (Document CD/APP67) paragraph 3.2

<sup>27</sup> Paragraph 3.3.1 of Baseline Tree survey report within Document CD/APP10, paragraph 3.8 of Green Infrastructure Strategy (Document CD/APP15), paragraph 1.2.3 of Sustainability Statement (Document CD/APP22) and paragraph 5.15 of Stuart Ryder's evidence (Document CD/LPA8)

<sup>28</sup> Environmental Statement paragraph 1.3.19 (Document CD/APP12)

trees alongside the Hatherley Brook and three freestanding parkland trees in Lotts Meadow are the subject of Tree Preservation Orders. Some Hedgerows qualify as "Important" in accordance with the Hedgerow Regulations.

17. Some of the small fields are, or were last, used as smallholdings for market gardening, for pig or poultry keeping or as pasture. Some have remnants of orchard. Others were used as plant nurseries, where there are extensive glasshouses, polytunnels and the like, now derelict. There are views of Leckhampton Hill, part of the Cotswold scarp, from some of these fields, from Lotts Meadow and from Shurdington Road, across the site.

### **Planning Policy**

18. The documentation contains extensive lists and summaries of planning policy, of greater or lesser degrees of relevance. These may be found in the Affordable Housing Delivery Plan<sup>29</sup>, the Agricultural Resources Assessment<sup>30</sup>, the Design and Access Statement<sup>31</sup>, the Environmental Statement<sup>32</sup>, the Green Infrastructure Strategy<sup>33</sup>, the Supporting Planning Statement<sup>34</sup>, the Transport Assessment<sup>35</sup>, the Council officer's report<sup>36</sup>, the parties' Statements of Case, the Statement of Common Ground<sup>37</sup> and in the evidence of Brian Duckett<sup>38</sup>, Tim Watton<sup>39</sup>, Paul Hill<sup>40</sup>, Julia Tindale<sup>41</sup>, Fiona Prismall<sup>42</sup>, Tim Partridge<sup>43</sup>, Hilary Vaughan<sup>44</sup>, Paul Tinley<sup>45</sup>, David Nock<sup>46</sup> and Dr Mears<sup>47</sup>.
19. Regular reference was made to the National Planning Policy Framework (NPPF) throughout the Inquiry. Of particular relevance to this appeal are paragraphs 32, 76, 109 and 49 and, in consequence, paragraphs 7 and 14. Amongst other matters, these respectively advise that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe; that local communities should be able to designate land as Local Green Space and so rule out new development other than in very special circumstances; that the planning system should protect valued landscapes; that where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites there should be a presumption in favour of sustainable development, which means granting permission unless specific NPPF policies

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<sup>29</sup> Document CD/APP8, sections 2 and 3

<sup>30</sup> Document CD/APP9, section 6

<sup>31</sup> Document CD/APP11, section 1.3

<sup>32</sup> Document CD/APP12, section 4

<sup>33</sup> Document CD/APP15, section 2

<sup>34</sup> Document CD/APP21, sections 4, 5 and 6

<sup>35</sup> Document CD/APP23, section 3

<sup>36</sup> Document CD/LPA1, section 2

<sup>37</sup> Document INQ/1, section 3

<sup>38</sup> Document CD/AP53, section 2

<sup>39</sup> Document CD/APP56, section 3

<sup>40</sup> Document CD/APP59, section 3

<sup>41</sup> Document CD/APP62, section 2

<sup>42</sup> Document CD/APP65, paragraphs 3.19 to 3.23

<sup>43</sup> Document CD/APP67, sections 4, 5 and 6

<sup>44</sup> Document CD/APP70, section 3

<sup>45</sup> Document CD/APP74, sections 11, 12, 13, 14, 15 and 16

<sup>46</sup> Document CD/LPA7, section 4

<sup>47</sup> Document CD/LH8, paragraphs 2.3 to 2.12

indicate that development should be restricted or unless any adverse impacts of permission would significantly and demonstrably outweigh the benefits, when taken against NPPF policies as a whole.

*Adopted policy*

20. The statutory Development Plan is the Cheltenham Borough Local Plan Second Review 1991-2011 Adopted July 2006<sup>48</sup> (the Local Plan). Saved policies most relevant to the main issues raised by this appeal are CP1 (a), CP3 (a), (b), (e) and (f), CP4 (b), CP7 (c), CP8, CO1, RT7, UI1 and TP1 (a).
21. Local Plan policy CP1 would permit development only where it takes adequate account of the principles of sustainable development, defined by reference to a table of 29 bullet points, one of which includes safeguarding attractive landscape. Subsection (a) specifically requires development to conserve or enhance natural resources and environmental assets.
22. The relevant parts of Local Plan policy CP3 would permit development only where it would not harm the setting of Cheltenham (defined as including the Cotswold escarpment) including views into or out of areas of acknowledged importance (defined as including the AONB), not harm landscape character, not give rise to harmful levels of pollution and minimise the risk of flooding. Policy UI1 sets more specific requirements for development in zones at risk of flooding.
23. Local Plan policy CP4 (b) would permit development only where it would not result in traffic levels to and from the site attaining an environmentally unacceptable level. Policy TP1 (a) would not permit development which would endanger highway safety by creating a new access unless a satisfactory improvement has been carried out.
24. Local Plan policy CP7 (c) would only permit development where it would complement and respect neighbouring development and the character of the locality and/or landscape. Similarly, policy CO1 would only permit development where it would not harm the visual amenity of the landscape and attributes and features which make a significant contribution to its character, distinctiveness, quality and amenity value.
25. Local Plan policy CP8 would permit development only where adequate provision has been made for the infrastructure, public services and facilities necessary to serve the development, including affordable housing. Local Plan policy RT7 would only permit retail development outside defined shopping areas where the need is demonstrated and where the proposals would not harm the vitality and viability of a district or neighbourhood centre.

*Emerging policy*

26. Gloucester City Council, Cheltenham Borough Council and Tewkesbury Borough Council are together preparing a Joint Core Strategy (JCS)<sup>49</sup>. It is at an advanced stage of preparation; submission to the Secretary of State was reached on 20 November 2014. The examination is currently in progress. There is a considerable extent of unresolved objection to relevant policies.

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<sup>48</sup> Document CD/POL4

<sup>49</sup> Document CD/POL10

27. As submitted, policy SP1 sets a housing requirement for Cheltenham of 9,100 new homes but, in order to provide a level of flexibility, land has been allocated in policy SP2 to provide for a slightly higher number of dwellings, with additional safeguarded sites. Cheltenham and its urban extensions are to accommodate about 10,655 new homes. Table SP2B allocates 1,124 dwellings to the A6 Strategic Allocation at South Cheltenham/Leckhampton. Of the total allocation, 764 dwellings are to be provided within Cheltenham Borough, the remainder within Tewkesbury Borough. The appeal site forms only a part both of the allocation site and of the allocation site within Cheltenham. Policy SD3(5)(iv) would permit the provision of new local centres of an appropriate scale to provide for the everyday needs of new communities within the identified Strategic Allocations. Policy SD11 (2) would permit housing development at Strategic Allocations.
28. The Strategic Allocations Policy SA1 includes a table SA1, listing the Strategic Allocations, and a series of plans which delineate them. Plan A6 for South Cheltenham - Leckhampton includes the appeal site, amongst others. In addition to procedural requirements, the policy's substantive requirements include showing how provision for Gypsy, Traveller and Travelling Showpeople sites are to be incorporated. It also requires that proposals should seek to retain and enhance areas which meet the NPPF criteria for designation as Local Green Space (LGS), whilst still delivering the scale and distribution of development required, including green infrastructure in accordance with policy INF4.
29. As submitted, policy SD7 would seek to protect landscape character, both for its own intrinsic beauty and for its benefits to economic, environmental and social well-being. Proposals would be required to have regard to local distinctiveness and character by reference to existing Landscape Character Assessments. Proposals adjacent to the Cotswolds AONB would be required by policy SD8 to conserve its special qualities and be consistent with the Cotswolds AONB Management Plan. Policy INF4 would, amongst other matters, require development proposals to consider and contribute positively towards green infrastructure, including the wider landscape context.
30. As submitted, policy INF1 would seek to ensure, amongst other matters, that any increased level of car use derived from development proposals would not result in severe impact and that any severe impacts that can be attributable to a development must be mitigated. Policy INF2 would allow for planning permission to be granted only where the impact of development is not considered to be severe or, where it can be mitigated satisfactorily.
31. Policy INF7 sets out a range of infrastructure requirements by which new development will need to be served. Policy INF8 provides for developers to contribute to their provision.
32. In response to the examining Inspector's questions, the three Councils have made a number of joint responses. Some of those, which are relevant to this appeal, have been submitted as evidence<sup>50</sup>. In some cases they provide updated information which, inevitably, provides argument for adjustments and refinements to the plan (particularly in relation to housing numbers). Where relevant to this appeal, these are discussed further in the sections of this report

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<sup>50</sup> Documents CD/POL34, CD/POL36a, CD/OTH17, CD/OTH18, CD/OTH30 and INQ4

dealing with individual issues. Their general thrust appears intended to support the soundness of the plan as submitted.

33. Overlapping the preparation of the JCS, Cheltenham Borough Council has commenced the preparation of the Cheltenham Plan (part one) which is intended to go further than the JCS towards superseding the Local Plan. An Issues and Options Consultation document was published in June 2015<sup>51</sup>. Section 4 of this document deals with Local Green Space. It reports on work commissioned from Gloucestershire Rural Community Council (GRCC) to identify potential LGS for consideration. Twenty-nine sites are identified, including site CP106 "Leckhampton Fields" which corresponds with the revised submission<sup>52</sup> made by Leckhampton with Warden Hill Parish Council and which covers part of the appeal site.
34. Although Q22 on page 32 of the document invites public comment on the question of which areas should be designated Local Green Space, section 4.5 on page 28 notes that a number of LGS sites have been submitted within the boundaries of emerging JCS strategic allocations. Leckhampton is mentioned as one such. The document goes on to say that where this occurs, the JCS public examination will consider these submissions and that the GRCC report has been sent to the examining Inspector. It concludes that it is through the Joint Core Strategy examination process that these submissions will be tested.
35. A discussion of the JCS Strategic Allocation A6 Leckhampton took place during the JCS examination on 15 July 2015, during which representations were made as to the vehicle through which the LGS boundaries should be determined.<sup>53</sup> A further discussion took place on 23 July 2015<sup>54</sup>.

### **Planning History**

36. The planning history of the site is set out at length in the Statement of Common Ground<sup>55</sup>, in appendices 2 and 3B to the Parish Council's Statement of Case<sup>56</sup>, in the Council officer's report<sup>57</sup> and in the evidence of Tim Partridge<sup>58</sup>.
37. Relevant to this appeal, the planning history of the site begins with the Cheltenham Environs Local Plan of 1985. It was originally proposed that this plan would designate Green Belt land to include the site. Subsequent documents record that following a Public Local Inquiry into objections to the Local Plan, the

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<sup>51</sup> Document CD/POL20

<sup>52</sup> Map on page 1 of document INQ7 (duplicate of document CD/LEG3) and on page 49 of document CD/LH2. Further copies are at page 6 of document CD/LH1 and at page 13 of Appendix 3B of the Parish Council's Statement of Case, document SoC3.

<sup>53</sup> Document INQ22 is the appellant's unofficial transcript of the proceedings on 15 July. The yellow highlighting is that of the appellant. The debate appears inconclusive, leaving it uncertain whether the detailed boundaries of any LGS would be defined in a modified JCS itself or, as the submitted JCS policy SA1 suggests, through the current appeal proposal, or through the Cheltenham Plan (though the timescale for producing the latter would seem to make that an impractical option).

<sup>54</sup> Evidence of Dr Mears, document CD/LH8 paragraphs 5.18 and 5.20-5.22

<sup>55</sup> Document INQ1, section 2

<sup>56</sup> Document SoC 3; appendix 2, section 3.4.4 and appendix 3B section 1

<sup>57</sup> Document CD/LPA1, section 1.4 and paragraph 2.1.3

<sup>58</sup> Document CD/APP67, section 4

Inspector concluded that the land should remain unallocated, apparently confirming a conclusion reached originally in 1968<sup>59</sup>. The documents explain that the Borough Council sought to minimise changes to the Green Belt boundary consistent with the need to provide adequate areas of land for anticipated future housing and employment growth. Nevertheless, policy ENV5 of that 1985 Plan, applying to the area of unallocated land at Leckhampton, restricted development to that essential to meet the needs of agriculture, forestry, open air recreation, cemeteries, institutions standing in other large grounds or other appropriate to a rural area. In effect it applied the Green Belt policy of the time to land consciously not designated as such.<sup>60</sup>

38. The Cheltenham Borough Local Plan – 1997 continued that ambivalent approach in its policy CO52 (originally submitted as CO7); “The Borough Council will not permit the development of unallocated open land at Leckhampton, except for those classes of development that would be acceptable in the Green Belt”<sup>61</sup>. The Inspector who reported on objections to this plan accepted that it should not be designated Green Belt but, in terms of landscape character, made contrasting comparisons with land which had been so designated, commenting that it would be sad if Leckhampton Fields were to be developed in preference to some Green Belt land. He recommended firstly, that Leckhampton should be kept undeveloped, not as a strategic reserve for housing development but because of the inherent interest of its varied topography, landscape history, dense network of footpaths and pedestrian access from several residential districts and secondly that future consideration of further peripheral growth of Cheltenham should be done on a comprehensive and comparative basis.<sup>62</sup>
39. This advice was carried forward into the Cheltenham Borough Local Plan Second Review, adopted July 2006. Paragraph 7.40 of this document refers to the conclusions of the Inspector considering objections to the Second Review itself, that development of the objection site would materially harm the rural character and appearance of the area and the important contribution that this makes to the landscape within the site and when seen from the AONB<sup>63</sup>. Paragraph 7.41 also echoes the advice of the 1997 Inspector in its reference to the intrinsic value of the land as a resource for recreational, landscape, wildlife and archaeological interest and in its promise of a comprehensive reassessment in the consideration of growth.<sup>64</sup>

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<sup>59</sup> Statement of Common Ground (Document INQ1), paragraphs 2.3.8 and 2.3.9 and Tim Partridge’s evidence (Document CD/APP67), paragraphs 4.9 and 4.10

<sup>60</sup> Statement of Common Ground (document INQ1), paragraphs 2.3.5 to 2.3.7 and Tim Partridge’s evidence (document CD/APP67), paragraphs 4.6 to 4.8

<sup>61</sup> Quoted in statement of Common Ground (document INQ1), paragraph 2.3.11 and in Tim Partridge’s evidence (document CD/APP67), paragraph 4.12

<sup>62</sup> Extracts from Inspector’s report quoted in the Statement of Common Ground (document INQ1) paragraphs 2.3.8 to 2.3.10 and in Tim Partridge’s evidence (document CD/APP67), paragraphs 4.9 to 4.11. A lesser extract is provided at document CD/LAN11.

<sup>63</sup> Conclusion reached in paragraph 10.147 of Inspector’s report (Document CD/LAN12). His reasoning starts at paragraph 10.140

<sup>64</sup> Document CD/POL4, quoted in the Statement of Common Ground (document INQ1) at paragraph 2.3.15 and in Tim Partridge’s evidence (document CD/APP67) paragraph 4.12.



40. Green Belt Reviews of March 2007<sup>65</sup> and September 2011<sup>66</sup> both confirm previous conclusions that the appeal site does not merit inclusion within the Green Belt.<sup>67</sup>
41. The Panel examining the Draft Regional Spatial Strategy for the South West reported in December 2007. It accepted the recommendation of the first of these reviews and identified the area of Leckhampton/Shurdington in broad terms as an area of search to accommodate about 1,300 dwellings<sup>68</sup>. The subsequent Draft Revised Regional Spatial Strategy for the South West Incorporating the Secretary of State's Proposed Changes – For Public Consultation July 2008<sup>69</sup> put forward proposed policy HMA3 which included provision of sustainable housing growth of 1,300 new homes at Area of Search 3E to the south of Cheltenham (600 in Cheltenham and 700 in Tewkesbury). The Draft was not progressed further before abolition of the system of Regional Spatial Strategies. Subsequent emerging policy is described earlier.
42. Also relevant to this appeal is the planning history of land forming part of the Strategic Allocation within Tewkesbury Borough Council.
43. Notwithstanding advice from the Inspector who considered objections to the Plan,<sup>70</sup> that development would form an incongruous promontory in this open area, the Tewkesbury Borough Local Plan to 2011, adopted in March 2006 allocated land at Farm Lane/Leckhampton Lane Shurdington as Housing Site SD2 for 360 dwellings<sup>71</sup>. Development was to be phased between 2007 and 2011, but the proposal is accompanied by a note to the effect that planning permission would not be granted prior to its identification as an appropriate location for Strategic Development through the RSS process. Justificatory text explained that if the SD2 site is identified as part of a sustainable urban extension through the Green Belt Review process, then a process of joint working with Cheltenham Borough Council would be entered into in order to develop an appropriate comprehensive mixed development for the area.
44. In 2007 a planning application was made in outline for the development of up to 365 dwellings on land adjacent to Farm Lane. A failure to determine led to an appeal which was dismissed for two principal reasons; (i) allowing the appeal would be likely to prejudice the development of the urban extension and especially the delivery of infrastructure necessary to achieve a high quality deployment and (ii) insufficient open space was proposed.<sup>72</sup>
45. In 2008 an outline application was made for a mixed-use scheme comprising residential development up to a maximum of 350 dwellings on land around Brizen

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<sup>65</sup> Document CD/POL25

<sup>66</sup> Document CD/POL26

<sup>67</sup> Relevant passages are quoted in the Statement of Common Ground (Document INQ1) at paragraphs 2.3.16, 2.3.17, 2.3.22 and 2.3.23 and in Mr Partridge's evidence (Document CD/APP67) at paragraphs 4.17, 4.18, 4.23 and 4.24.

<sup>68</sup> Document CD/POL17, paragraphs 4.3.31 to 4.3.35

<sup>69</sup> Document CD/POL16 paragraph 4.1.33 and policy HMA3

<sup>70</sup> Quoted in table 2 (section 3.4.4 of appendix 2 of the Parish Council's Statement of Case (Document SoC3)

<sup>71</sup> Document CD/POL42

<sup>72</sup> Reported in Council officer's report (document CD/LPA1), paragraph 1.4.2

Farm and part of the Farm Lane site. A failure to determine led to an appeal which was subsequently withdrawn.<sup>73</sup>

46. In 2013 an application was made in outline for development of up to 175 dwellings at Brizen Farm. The application was refused, principally as inappropriate development in the Green Belt and also for its impact on the rural landscape.<sup>74</sup>
47. On 10 October 2014 a full application was made for development of land to the west of Farm Lane falling within the JCS Strategic Allocation A6 (the SD2 site) for 377 dwellings, access and associated infrastructure<sup>75</sup>. On 29 September 2015 Tewkesbury Council authorised permission to be granted subject to formal comments from the County Council as Highways Authority, required highways conditions and subject to a section 106 agreement to secure a number of planning obligations. Cheltenham Borough Council subsequently requested the Secretary of State to call in this intended decision.<sup>76</sup>

## The Proposals

### *The application*

48. The application forms contain the description of development reproduced in the Headers to this Report. The application is in outline with some details of access submitted for immediate approval. All other details are reserved for later approval.
49. As noted earlier, the scheme has been amended, both in terms of its extent and in terms of some details of access since it was first submitted. The drawings now submitted for approval include an Appeal Site Boundary Plan and drawing RPS1, revision 01.<sup>77</sup>
50. Article 2(1) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 defines access, in relation to reserved matters, as the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network. The submitted details of access are drawings 2186.09B<sup>78</sup>, 2186.17D<sup>79</sup>, 2186.30A<sup>80</sup>, 2186.31<sup>81</sup>, 2186.32<sup>82</sup>, and 2186.43<sup>83</sup>. These show accesses from Shurdington Road and Kidnappers Lane to, and a short distance into, the site. Beyond that, no details are submitted for approval of other pedestrian or cycle accesses to the site, nor of the access arrangements within the site; they remain reserved matters.

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<sup>73</sup> Reported in Council officer's report (document CD/LPA1), paragraph 1.4.3

<sup>74</sup> Reported in statement of Common Ground (document INQ1) paragraph 2.2.1

<sup>75</sup> Reported in statement of Common Ground (document INQ1) paragraph 2.2.1

<sup>76</sup> Reported in document INQ38 and INQ50

<sup>77</sup> Included as Appendix 1 of document CD/ADD2

<sup>78</sup> Document CD/APP47

<sup>79</sup> Document INQ21

<sup>80</sup> Document CD/APP40

<sup>81</sup> Document CD/APP33

<sup>82</sup> Document CD/APP34

<sup>83</sup> Drawing attached to e-mail from Tim Partridge dated 15 June 2015 (flagged in blue folder on The Planning Inspectorate's (PINS's) file)

### *Illustrative drawings*

51. The proposal is supported by a number of illustrative drawings. These are not submitted for approval now. If their provisions are thought to be necessary to make the development acceptable, they would have to be secured by condition, although some elements are secured by provisions in the s106 agreements, reported below. All of the illustrative drawings show the site area as originally submitted, not as amended.
52. There is an Illustrative Masterplan, drawing number 500-001 for the entire JCS site allocation. Revision F is the version included (as plan 5 and Schedule 5 respectively) in the two submitted planning obligations<sup>84</sup> and commended to the JCS examining Inspector<sup>85</sup>. There is a subsequent version, revision J,<sup>86</sup> but this only differs in amendments to parcels of land outside the appeal site. The Illustrative Masterplan has notations for areas of lower, medium and higher density, a local centre, a school site, informal and formal open space, allotments, frontage lines, focal buildings, bus route and bus stops, squares or special surface treatment, primary, secondary and local streets, public rights of way, footways and cycleways, vehicular access and emergency access points, road closures, a new pedestrian crossing of Shurdington Road, retained hedgerows and trees, new planting, a bund, ditches, swales, balancing ponds, existing watercourses and children's play areas.
53. There is an Access and Movement Parameter Plan, drawing number 500-003 revision A.<sup>87</sup> This shows primary streets/bus route and stops, secondary streets, a new pedestrian crossing of Shurdington Road, public rights of way, strategic pedestrian routes, strategic cycle routes, vehicular access and emergency access points and proposed road closures.
54. A Green Infrastructure Parameter Plan, drawing number 500-004 revision B<sup>88</sup> is included within the s106 agreement with the Council<sup>89</sup>. This has annotations for a school site, strategic public open space, informal and formal open space, allotments, balancing ponds, existing watercourses, primary and secondary streets, proposed road closures, squares, retained hedgerows and trees, new planting and children's play areas (three Local Equipped Areas of Play (LEAPs), one Neighbourhood Equipped Area of Play (NEAP) and one Multi-Use Games Area (MUGA)).
55. There is a Maximum Building Heights Parameter Plan drawing number 500-005 revision B.<sup>90</sup> This has notations showing areas of development up to 2 storey (maximum 10m), up to 2.5 storey (maximum 11.5m) limited to no more than 20% of dwellings and up to 3 storey (maximum 15m), (all measured from finished floor levels (which may be up to 1.5m above existing ground levels) to ridge lines), primary and secondary streets, proposed road closures and key frontages.

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<sup>84</sup> Documents INQ47 (a) and (b)

<sup>85</sup> In the statement from Ove Arup & Partners Ltd appended to document INQ4

<sup>86</sup> Document CD/OTH20

<sup>87</sup> Document CD/APP3

<sup>88</sup> Document CD/APP4

<sup>89</sup> Document INQ47(a), plan 3

<sup>90</sup> Document CD/APP45

56. A Residential Density Parameter Plan,<sup>91</sup> drawing number 500-006 revision B, shows areas of lower (25-33 dph), medium (34-40dph) and higher (41-55dph) residential density, squares, primary and secondary streets and road closures. It notes that the local centre may also include residential units. A Character Areas Plan,<sup>92</sup> drawing number 500-015 revision A shows three character areas; a local centre and neighbourhood hub; a higher and medium density urban core and a medium and lower density edge. There is an Illustrative Design for Local Centre on Shurdington Road,<sup>93</sup> drawing number 2122.8/13.
57. There is a Land Use Parameter Plan,<sup>94</sup> drawing number 500-007 revision A, allocating areas for residential, local centre, school, informal and formal open space and balancing ponds. It also shows primary and secondary streets, squares and road closures. An Indicative Phasing Plan,<sup>95</sup> drawing number 500-008 revision A has notations showing a local centre in phases 1-3, phase 1 approximately 260 units and open space/landscape planting, phase 2 approximately 200 units and open space/landscape planting and phase 3 approximately 190 units.
58. Several drawings illustrate suggested off-site highway works. Drawing number 2186.25 shows proposed traffic management measures on Church Road.<sup>96</sup> There is provision within the County's s106 agreement for a financial contribution to works on Church Road but they are not defined by reference to this plan. Drawing number 2186.39 suggests traffic calming measures for Leckhampton Lane,<sup>97</sup> although subsequent evidence suggests that these have been found to be without advantage<sup>98</sup> and they are not encompassed within the s106 agreement with the County Council. Drawing number 2186.40 shows a proposed visibility splay improvement to the junction of Farm Lane and Leckhampton Lane.<sup>99</sup> Provision for a financial contribution to these works is encompassed within the s106 agreement but, as it was reported that the proposed development on an adjoining site<sup>100</sup> encompasses the proposed closure of Farm Lane, the visibility splay improvements may turn out to be unnecessary in the event of that development proceeding.

### *Supporting Documents*

59. A number of supporting documents also contain illustrative plans. Their provisions are not submitted for approval so would have to be secured by condition or by s106 agreement if found to be necessary for the development to be acceptable. An Arboricultural Impact Assessment<sup>101</sup> includes a Tree Retention

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<sup>91</sup> Document CD/APP5

<sup>92</sup> Document CD/APP46

<sup>93</sup> Document CD/APP41

<sup>94</sup> Document CD/APP6

<sup>95</sup> Document CD/APP7

<sup>96</sup> Document CD/APP36

<sup>97</sup> Document CD/APP37

<sup>98</sup> In paragraphs 5.2.1 to 5.2.5 and sections 5.3 and 5.4 of the Supplementary Traffic Note (Document CD/APP26) and in section 3.9 of the Supplementary Environmental Statement Movement Section (Document CD/APP27)

<sup>99</sup> Document CD/APP38

<sup>100</sup> Site SD2 within Tewkesbury Borough, referred to earlier under Planning History.

<sup>101</sup> Document CD/APP10

and Removal Plan drawing number 2122.10/04, a Tree Constraints Plan – Area A (two sheets, drawing numbers 2122.10/02-01 and 02-02) and a Tree Protection Plan (six sheets, drawing numbers 2122.10/03-01, 02, 03, 04, 05 and 06). A Flood Risk Assessment and Drainage Strategy<sup>102</sup> includes a Drainage Strategy, drawing 10-0498 100 revision I.

60. Other supporting documents, mostly dated September 2013 include; an Affordable Housing Delivery Plan<sup>103</sup>, an Agricultural Resources Assessment<sup>104</sup>, a Design and Access Statement<sup>105</sup> with an Addendum<sup>106</sup>, an Environmental Statement in three volumes<sup>107</sup> plus a Supplement<sup>108</sup> and an Addendum<sup>109</sup>, a Green Infrastructure Strategy<sup>110</sup> and a further letter from the appellant's agent RPS to the Council dated 14 April 2014<sup>111</sup>, Residential and Non-residential Travel Plan Frameworks<sup>112</sup>, an Outline Management Plan for Natural Habitats<sup>113</sup>, a report on Ground Investigation<sup>114</sup> with a follow-up letter<sup>115</sup>, a Statement of Community Involvement<sup>116</sup>, a Supporting Planning Statement<sup>117</sup>, a Sustainability Statement<sup>118</sup>, a Transport Assessment<sup>119</sup> with a Supplementary Traffic Note<sup>120</sup> an Addendum<sup>121</sup> and two Transport Notes<sup>122</sup>, a Utilities Infrastructure Report<sup>123</sup>, and a Utilities Statement.<sup>124</sup>
61. Some of these make recommendations for the proposal, relevant to their subject matter<sup>125</sup>. If the recommendations of these reports are thought to be necessary

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<sup>102</sup> Document CD/APP14

<sup>103</sup> Document CD/APP8

<sup>104</sup> Document CD/APP9

<sup>105</sup> Document CD/APP11

<sup>106</sup> Document CD/APP42

<sup>107</sup> Documents CD/APP 12 and 13

<sup>108</sup> Document CD/APP27

<sup>109</sup> Document CD/APP29

<sup>110</sup> Document CD/APP15

<sup>111</sup> Document CD/APP44

<sup>112</sup> Documents CD/APP16 and CD/APP19

<sup>113</sup> Document CD/APP17

<sup>114</sup> Document CD/APP18

<sup>115</sup> Document CD/APP30

<sup>116</sup> Document CD/APP20

<sup>117</sup> Document CD/APP21

<sup>118</sup> Document CD/APP22

<sup>119</sup> Document CD/APP23

<sup>120</sup> Document CD/APP26

<sup>121</sup> Document CD/APP28

<sup>122</sup> Documents CD/APP31 and CD/APP43

<sup>123</sup> Document CD/APP24

<sup>124</sup> Document CD/APP25

<sup>125</sup> The Affordable Housing Delivery Plan states an expectation that its provisions will be incorporated into a s106 agreement. The Arboricultural Impact Assessment makes recommendations at paragraphs 2.2.1, 2.2.5, sections 2.3 and 2.4, paragraphs 2.5.2, 2.5.3, 2.8.2, 2.8.3, 2.9.1, 2.11, 2.12.1, 2.12.2, 2.13.2, 2.15.1. Its accompanying Baseline Tree Survey report – Area A makes recommendations for arboricultural work to each surveyed tree on site and includes a suggested Tree Protection Plan defining root protection areas, tree protection fencing and construction exclusion zones. The Design and Access Statement (as amended by its Addendum) suggests an archaeological investigation programme in section 2. It describes a number of features proposed which would need to be secured by conditions

to make the development acceptable at this outline stage, they would need to be secured by condition, if not already secured by planning obligation.

### *Planning obligations*

62. The two submitted planning obligations both contain conditionality clauses to the effect that if this report recommends and the Secretary of State agrees that any one or more of the obligations does not satisfy the requirements of Regulations 122 or 123 of the Community Infrastructure (CIL) Regulations 2010 then such obligation or obligations shall not have any effect. To that extent, the provisions of the obligations are not secured. There is discussion of compliance with the CIL regulations later in this report.
63. The Planning Obligation Agreement with the Borough Council, dated 30 October 2015 would provide for 40% of the number of dwellings to be provided as affordable housing in each phase of development, of which 30% would be Intermediate Housing (half for shared ownership, half for discounted sale). It
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such as the retention of key elements of the existing hedgerow network and high quality trees (section 2.6), habitats of nature conservation interest (section 2.7), noise mitigation (section 2.9) electricity supply network reinforcements (section 2.12), community infrastructure (section 2.13), all summarised at section 3.1, height limitations (section 4) and a Green Infrastructure Strategy (section 4.6). The Environmental Statement makes statements and recommendations about new and retained landscape planting at paragraphs 1.3.8, 1.3.10, 6.6.2.2, 6.6.2.3 and 6.6.5.1 to 6.6.5.7; about bus route diversion, bus stop provision and traffic mitigation at paragraphs 1.3.11, 2.1.21, 9.6.1 to 9.6.13, 9.8.1 to 9.8.6, 9.11.1.1 and 9.11.2.1 to 9.11.2.3; about community infrastructure provision at paragraph 1.3.14; about affordable housing provision at paragraphs 2.1.8, 5.4.11, 5.4.12, 5.6.1, 5.6.23 and 5.6.27; about education provision at paragraphs 2.1.9, 2.1.10, 5.5.4, 5.6.1, 5.6.10 to 5.6.14 and 5.6.27; about the local centre and health provision at paragraphs 2.1.11 to 2.1.13, 5.5.5, 5.6.1, 5.6.15 to 5.6.17, 5.6.25 and 5.6.27 (At paragraph 10.17 of his evidence (document CD/APP67) Tim Partridge endorses the recommendation for a condition made in paragraph 7.9 of the Retail and Office Assessment); about open space provision in paragraphs 2.1.14 to 2.1.19, 5.6.1, 5.6.18 to 5.6.22 and 5.6.27; about archaeology at paragraphs 7.5.2 and 7.6.2; about ecology at paragraphs 8.6.2, 8.6.7, 8.7.12, 8.7.16, 8.7.22, 8.7.23, 8.7.28, 8.7.33, 8.7.38, 8.7.42, 8.7.50, 8.7.53, 8.7.58, 8.7.63, 8.7.67, 8.7.73 to 8.7.76, 8.7.80, 8.7.87 to 8.7.89, 8.7.94, 8.7.95, 8.7.98, 8.7.105, 8.7.112, 8.7.113, 8.7.117, 8.7.128, 8.8.9, 8.8.10, 8.8.15, 8.8.16, 8.8.20, 8.8.21, 8.8.25, 8.9.3, 8.10.2 and 8.10.3; about noise at paragraphs 10.5.1, 10.5.2, 10.5.18 and 10.5.21 and about air pollution at paragraph 11.5.33 (reaffirmed by Fiona Prisma in paragraph 3.5 of her evidence (document CD/APP65)). The Flood Risk Assessment and Drainage Strategy makes recommendations at section 16. The Green Infrastructure Plan and the Outline Management Plan for Natural Habitats and Informal Open Space comprise recommendations in their entirety. The Report on Ground Investigations makes recommendations in sections 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8 which are mostly of relevance for Building Control purposes. Recommendations for additional investigation of potential soil contamination are made in section 9.9, table 15, in section 10 and in a follow-up letter of 20 November 2013. The Sustainability Statement is a compendium of suggested features for inclusion in the development. The Transport Statement also describes features for inclusion within the development in sections 4.9, 5.3, 5.8, and paragraphs 5.5.5, 5.6.4, 5.9.1, 6.8.3, 7.4.8. The Supplementary Traffic Note canvasses adjustments to the Moored Park Road Signals in paragraph 4.2.20. A package of Transport Mitigation measures is identified in paragraphs 3.11.5 and 3.11.6 of the Supplementary Environmental Statement Movement Section and in paragraphs 6.2.3 to 6.2.6, 7.5.8 to 7.5.12, 7.6.1 and section 10 of the Addendum to the Transport Assessment. The Utilities Infrastructure Report identifies the need for off-site water and electricity supply reinforcements in sections 7.1 and 7.2

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would also provide for 14.9 hectares of land to be used for attenuation and balancing ponds and for on-site open space, generally in accordance with the Green Infrastructure Parameters Plan<sup>126</sup> including 1.2 hectares fenced, serviced and prepared for allotments, three Local Equipped Areas of Play (LEAPs), a Neighbourhood Equipped Area of Play (NEAP), a Multi Use Games Area (MUGA), 6.2 hectares of land at Lotts Meadow (including a kick-about area of at least 0.33 hectares and the facility for occasional temporary use of a football pitch) and a Management Company to maintain the Open Space.

64. The agreement also provides for 0.29 hectares of serviced land for a doctor's surgery and an index-linked Gypsy and Traveller contribution of either £5,700 or of £171,000, whichever is found by the Secretary of State to comply with the CIL regulations.
65. The Planning Obligation Agreement with the County Council, also dated 30 October 2015 provides for an area of 1.1 hectares for a primary school to be conveyed to the county council at no cost, residential and non-residential travel plans and for index-linked financial contributions (payable in phases) as follows;

*The Highways Contribution*

- £383,390 towards the provision or diversion of existing bus services serving Leckhampton, Warden Hill, the centre of Cheltenham and the railway station.
- £32,386.78 to be used towards works to mitigate development traffic and improve highway safety on Church Road (the Church Road/Hall Road highway works).
- £6,540.78 towards facilitating the southern closure of Kidnappers Lane.
- £23,390.20 towards facilitating the western closure of Kidnappers Lane.
- £4,143.78 to be used towards the Farm Lane/Leckhampton Lane visibility splay.
- £10,000 Traffic regulation fee to implement the Kidnappers Lane closures.

*The Transportation Contribution*

- £400,000 to be spent on the South West Sustainable Transport Strategy (to target modal shift on peak hour travel to and from employment in Cheltenham).
- £32,918.98 to be used towards providing public transport infrastructure and bus service enhancements on the A46 bus corridor.
- £118,500 to develop and implement the Residential Travel Plan.
- £18,000 as a Business Travel Plan deposit (repayable upon achievement of targets).

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<sup>126</sup> Document CD/APP4

*Other contributions*

- £196 per dwelling (total £127,400) to improve the local library at Up Hatherley.
- Up to a maximum of £3,640,000 towards the construction of a primary school (as an alternative to its construction by the developer).
- £2674 per dwelling (total £1,738,620) towards capital works of extension, remodelling, upgrading and improving capacity of Bourneside, Balcarras or Chosen Hill Secondary Schools.
- £10,500 for monitoring compliance with the obligation.

**Other Agreed Facts**

66. A Statement of Common Ground (SOCG) between the Council and the developer, dated 21 September 2015 was submitted on the first day of the Inquiry.<sup>127</sup> No other party signed up to it. In summary, it confirms agreement on;

- The dates of submission and validation of the application.
- The requirement for and validity of the Environmental Statement, the dates of pre-application meetings and the absence of any formal requests for additional information during consideration of the application.
- The description of the development, the lists of relevant drawings and supporting documentation.
- The reasons for refusal and those still being pursued.
- The appellant's case and the Council's lack of case in respect of reasons 1, 2, 3, 6, 7 and 8.
- Parts of the appellant's case relating to reasons 4 and 5.
- An expectation that reason 9 will be resolved by agreed planning obligations.
- The Heads of Terms for planning obligations and the reasons for them.
- The reduced extent of the site and its location outside both Green Belt and AONB.
- The planning history of the site and of adjacent land in Tewkesbury Borough.
- Relevant planning policy, emerging planning policy and evidence base.
- A significant and serious shortfall in the supply of housing land and the provision of housing as a major benefit of the scheme.
- Conditions to be applied in the event of permission being granted.
- Matters in dispute;
  - The nature and severity of any impact from vehicle movement.

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<sup>127</sup> Document INQ1



- The nature and severity of any impact on the landscape and the AONB.
- The weight to be given to the benefits of the scheme.
- The planning balance.

67. A Statement of Common Ground between the Council and the developer, relating to transport matters was submitted on 21 September 2015, the day before the Inquiry opened<sup>128</sup>. No other party signed up to it. In summary, it confirms agreement on;

- The description of the proposal.
- Relevant documents.
- Descriptions of the location, local area, approach road network, accessibility and local facilities.
- Traffic survey data, safety records.
- Planning policy and history.
- The description of the Gloucestershire Local Transport Plan 2011-2015.
- Land use presumptions in the JCS area used in the traffic model.
- The approach to comparative site selection from the TRICS database.
- The principle of the use of a strategic traffic model such as Saturn.
- Matters in dispute;
  - The suitability of average and 85th%ile trip generation rates used for analysis.
  - The generation of trip rates from the new school.
  - The suitability of the Central Severn Vale model.
  - The base calibration of existing junctions.
  - The traffic forecasts used.
  - The results of junction testing with future flows.
  - The road safety assessment.
  - The conclusions of the Transport Assessment.

68. LEGLAG sought to reach agreement on seven points of Common Ground by e-mail dated 14 September 2015. Within fifteen minutes on the same day, the appellant by e-mail declined to agree to any of the points<sup>129</sup>. The Parish Council responded on 1<sup>st</sup> November 2015 with comment largely agreeing with six of the

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<sup>128</sup> Document in blue folder on PINS file

<sup>129</sup> Exchange of e-mails in blue folder on PINS file

points.<sup>130</sup> As there was no agreement between opposing parties on any of these points, I report no further.

## **The Case for Bovis Homes Limited and Miller Homes Limited (the appellants)**

### *Plan – led development*

69. The first paragraph of the appellant's opening remarks points out the government's commitment to nationwide coverage of up to date Development Plans to provide a basis for a system of plan-led development.<sup>131</sup> The Joint Core Strategy is at an advanced stage of the plan making process.<sup>132</sup> The appeal proposals are part of Strategic Allocation A6. The allocation as represented in the JCS is not just a red line; it includes, on page 154, an indicative site layout to which the appeal proposal conforms.<sup>133</sup>
70. As one of the Joint Core Strategy Authorities, the Council supports the Strategic Allocation in documents published in June and July 2015<sup>134</sup>. Moreover, an even more recently prepared document submitted to the JCS examination by the three Councils, contains, without qualification, the masterplan for the allocation submitted by the appellant, indicating the Councils' support for the way in which the masterplan proposes that development south of Cheltenham should come forward.<sup>135</sup>

### *A landscape-led approach*

71. The process leading to the selection of the site within the JCS has been an iterative process.<sup>136</sup> A Landscape Characterisation Assessment and Sensitivity Analysis of April 2012<sup>137</sup> considered the sensitivity of land on a very broad scale. It identified the whole of the Strategic Allocation A6 as a single entity, ascribing to it a High-Medium Sensitivity<sup>138</sup>. A refinement of this assessment in the

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<sup>130</sup> Documents INQ 40 and 41

<sup>131</sup> Mr Cahill's opening remarks, paragraph 1 (document INQ52)

<sup>132</sup> Mr Cahill's closing remarks, paragraph 34 (document INQ59)

<sup>133</sup> Document CD/POL10, quoted in paragraph 38 of Mr Cahill's closing remarks (document INQ59)

<sup>134</sup> Paragraph 1.61 of the Statement of Common Ground between Gloucester, Cheltenham and Tewkesbury Councils and RPS on behalf of Bovis and Miller Homes Concerning Land at Strategic Allocation A6 south Cheltenham-Leckhampton dated July 2015, presented to the Joint Core Strategy Examination (Document CD/OTH18) quoted by Mr Cahill in paragraph 36 of his Closing remarks (document INQ59) and response to Examining Inspector's questions 138 and 142 in the three Councils' statement on Matter 8: Strategic Allocations (Document CD/OTH17) quoted by Mr Cahill in paragraphs 40 and 41 of his Closing remarks.

<sup>135</sup> On page 4 of the Infrastructure Delivery Position statements prepared by Ove Arup and Partners Ltd on behalf of Cheltenham Gloucester and Tewkesbury Councils (second part of Document INQ4) dated 16 September 2015 referred to in paragraph 42 of Mr Cahill's closing remarks (document INQ59)

<sup>136</sup> Paragraph 7.2.1 of Brian Duckett's Proof of Evidence (Document CD/APP53) and paragraph 46 of Mr Cahill's closing remarks (document INQ59) and as stated in the first paragraph of page (iii) of Document CD/LAN16

<sup>137</sup> Document CD/LAN16. Paragraph 7.2.1 of Brian Duckett's Proof of Evidence (Document CD/APP53) dates it as 2013 but in cross-examination, the Council's witness Mr Ryder agreed that CD/LAN9 was a refinement of CD/LAN16, the latter dating from April 2012, the former dating from October 2012

<sup>138</sup> On page 5 of Appendix 2

Landscape and Visual Sensitivity and Urban Design Report of October 2012<sup>139</sup> defined the northernmost part of the appeal site as having low landscape sensitivity and low visual sensitivity, the central part of the site as having medium landscape sensitivity and a mixture of medium and high visual sensitivity. Only Lotts Meadow was recorded as both high landscape sensitivity and high visual sensitivity. The Design and Access Statement of September 2013 has a similar analysis.<sup>140</sup>

72. The Council's witness failed to take account of this more refined analysis<sup>141</sup>, yet it is this which underpins both the JCS Strategic Allocations Report<sup>142</sup> and the detail of the indicative site layout which appears in the JCS<sup>143</sup> and which the appeal proposal follows. In a Statement of Common Ground to the JCS examination, the Council has agreed that consideration of the landscape evidence has directly informed the patterns of developable areas within each of the strategic allocations in order that areas of high landscape value and sensitivity are avoided.<sup>144</sup>

*Value of the site itself*

73. The appellant argues that a view of a valued landscape (e.g the AONB) does not make the location of the viewpoint itself a valued landscape.<sup>145</sup> The appellant also points out that paragraphs 115 and 116 of the NPPF refer to development, and landscape and scenic beauty, "in" AONBs and so do not apply to this appeal proposal.<sup>146</sup>
74. The appellant's landscape consultant has been involved with the site since 2006, carrying out town-wide and local landscape assessments of the appeal site and Cheltenham town and its environs in order to make representations to the Local Plan and other Council documents.<sup>147</sup> His firm carried out the Landscape and Visual Impact Assessment included within the Environmental Statement.
75. By reference to Natural England's profile of National Character Area 106, Severn and Avon Vales<sup>148</sup>, the Gloucestershire County Council Landscape Assessment 2006<sup>149</sup>, the Cotswolds AONB Landscape Character Assessment<sup>150</sup> and by

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<sup>139</sup> On page 15 of Document CD/LAN9

<sup>140</sup> Paragraph 6.5.9.3 and section 6.5.10 of Design and Access Statement (document CD/APP12)

<sup>141</sup> As agreed in cross-examination and noted in paragraph 47 of Mr Cahill's closing remarks (Document INQ59)

<sup>142</sup> As noted in paragraphs 7.2.8, 7.2.9 and 7.2.10 of Mr Duckett's evidence (CD/APP53), quoting paragraphs 1.25 and 1.26 of document CD/LAN10 (CD/POL19)

<sup>143</sup> On page 154 of Document CD/POL10

<sup>144</sup> Paragraph 1.28 of Document CD/OTH18 quoted in paragraph 50 of Mr Cahill's closing remarks (Document INQ59)

<sup>145</sup> Paragraph 59 of Mr Cahill's closing remarks (document INQ59)

<sup>146</sup> Paragraph 56 of Mr Cahill's closing remarks (document INQ59). The Parish Council makes a contrary argument, reported below

<sup>147</sup> Paragraph 1.1.3 of Brian Duckett's Proof of Evidence (Document CD/APP53) and paragraph 32 of Mr Cahill's closing remarks (document INQ59)

<sup>148</sup> Documents CD/LAN5 and CD/LAN6

<sup>149</sup> Document CD/LAN 7

<sup>150</sup> Document CD/LAN8

carrying out more localised character assessments<sup>151</sup>, landscape features are identified<sup>152</sup> and visibility analysed.<sup>153</sup> The JCS allocation site can be divided into four sub-character areas, two forming the appeal site<sup>154</sup>, moving from an urban fringe in its northern part, to a more rural agricultural landscape at Lotts Meadow.<sup>155</sup>

76. The Urban Fringe has a low landscape value, a low/medium susceptibility to development and consequently an overall low sensitivity to development.<sup>156</sup> The southern fields have a medium to high susceptibility to development, a medium/high landscape value and consequently medium overall sensitivity.<sup>157</sup>
77. Mr Duckett's evidence<sup>158</sup> explains the mitigation measures that have been incorporated into the scheme<sup>159</sup>, including;
- Retaining important landscape features,<sup>160</sup>
  - Restricting development to less sensitive parts of the site,<sup>161</sup>
  - Avoiding built development on Lotts Meadow<sup>162</sup> and
  - Maintaining views of the AONB from the A46 Shurdington Road.<sup>163</sup>
78. The Council's officer report to committee<sup>164</sup> notes that its Landscape Officer concluded that the landscape mitigation measures proposed in the Masterplan and Green Infrastructure Parameter Plan will help to integrate the proposed development into the surrounding landscape and reduce its impact on the setting of the Cotswold AONB.<sup>165</sup> The Council's officer report<sup>166</sup> continues that the proposal will therefore ensure that the development will have an acceptable impact on the AONB and therefore complies with the NPPF, pre-submission JCS and Local Plan policies.

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<sup>151</sup> Section 4.8 of Mr Duckett's evidence (document CD/APP53)

<sup>152</sup> Section 4 and Appendix 5 of Mr Duckett's evidence (documents CD/APP53 and CD/APP54)

<sup>153</sup> Section 5, paragraphs 6.1.5 to 6.1.11 and Appendix 5 of Mr Duckett's evidence (documents CD/APP53 and CD/APP54)

<sup>154</sup> Section 4.8 of Mr Duckett's evidence (document CD/APP53) and paragraph 6.5.9.3 of Design and Access Statement (document CD/APP12)

<sup>155</sup> Paragraph 4.8.4 of Mr Duckett's evidence (Document CD/APP53)

<sup>156</sup> Paragraph 4.8.6 of Mr Duckett's evidence (document CD/APP53)

<sup>157</sup> Paragraphs 4.8.8 and 4.8.9 of Mr Duckett's evidence (document CD/APP53)

<sup>158</sup> Sections 8 to 14 of Mr Duckett's evidence (document CD/APP53)

<sup>159</sup> Paragraph 8 of Mr Cahill's opening remarks (document INQ52) and section 6.6.5 of Design and Access Statement (document CD/APP12)

<sup>160</sup> Section 9.2 of Mr Duckett's evidence (document CD/APP53), section 2.2 of Arboricultural Impact Assessment (document CD/APP10) appendices 6.2, 6.3, 6.4 and table 1 and appendix C of appendix 8.4 of the Environmental Statement (document CD/APP12) and sections 6.6.2, 6.6.8, 6.7.1, 6.7.2 and 6.7.3 of the Design and Access Statement (document CD/APP12)

<sup>161</sup> Section 9.3 of Mr Duckett's evidence (document CD/APP53)

<sup>162</sup> Paragraph 9.3.4 of Mr Duckett's evidence (document CD/APP53)

<sup>163</sup> Section 9.4 of Mr Duckett's evidence (document CD/APP53)

<sup>164</sup> Paragraph 3.3.3 of Document CD/LPA1, quoted in paragraphs 6 and 7 of Mr Cahill's opening remarks (document INQ52)

<sup>165</sup> Final paragraph of document INQ15

<sup>166</sup> But not its Landscape Officer's advice

79. The Statement of Common Ground confirms the Council's acceptance of its Landscape Officer's opinion.<sup>167</sup> It also confirms the Council's agreement that the sense of open space as experienced from the existing Public Rights of Way is primarily in Lotts Meadow. The proposals as presented would not significantly alter this sense of open space.<sup>168</sup> It also confirms the Council's view that public views out from the site are largely limited to the Lotts Meadow area. As the proposal's Green Infrastructure Strategy is to retain Lotts Meadow as open space then the views out from the site, particularly to the key focal point of Leckhampton Hill would not be compromised.<sup>169</sup>

#### *Views to the AONB*

80. The nub of the Council's AONB complaint is that development of the site will unacceptably harm the views to the AONB by virtue of there being built development fronting on to the A46 Shurdington Road that will obscure existing views south to the AONB escarpment.<sup>170</sup> Yet the Parish Council accepts development alongside the A46, having done a comparative study of the sensitivity of individual fields and having canvassed people's opinions of which they value most highly.<sup>171</sup>

81. Views of the AONB from Shurdington Road are localised, sporadic and include a number of visual detractors<sup>172</sup>. There are no seating areas or public facilities from which to appreciate the view.<sup>173</sup> When travelling towards Cheltenham along the A46 Shurdington Road one first passes built development at the Lanes and so has an appreciation of having entered an urban area before reaching the appeal site and its view. The appeal site does not therefore act as a gateway to Cheltenham.<sup>174</sup> Furthermore, the view sideways towards Leckhampton Hill from a car passing along Shurdington Road is not only transient<sup>175</sup>, in contrast both to the view forward to Coombe Hill rising up behind Cheltenham and with views enjoyed by those walking across Lotts Meadow but also would be largely retained by the development.<sup>176</sup>

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<sup>167</sup> Paragraph 5.5.15 of document INQ1, quoted in paragraph 30 of Mr Cahill's closing remarks (document INQ59)

<sup>168</sup> Paragraph 5.5.16 of document INQ1, quoted in paragraph 30 of Mr Cahill's closing remarks (document INQ59)

<sup>169</sup> Paragraph 5.5.17 of document INQ1, quoted in paragraph 30 of Mr Cahill's closing remarks (document INQ59)

<sup>170</sup> Paragraph 57 of Mr Cahill's closing remarks (document INQ59), reflecting paragraph 5.5.18 of the Statement of Common Ground (document INQ1)

<sup>171</sup> Paragraphs 57 and 58 of Mr Cahill's closing remarks (document INQ59), making reference to document CD/LH2

<sup>172</sup> Paragraphs 6.1.7 to 6.1.11 and 10.4.4 of Mr Duckett's evidence (document CD/APP53)

<sup>173</sup> Paragraph 6.1.10 of Mr Duckett's evidence (document CD/APP53)

<sup>174</sup> Paragraph 60 of Mr Cahill's closing remarks (document INQ59)

<sup>175</sup> Paragraph 6.1.10 of Mr Duckett's evidence (document CD/APP53)

<sup>176</sup> Paragraph 61 of Mr Cahill's closing remarks (document INQ59) making reference to

Appendix 2, photomontages A and B of Mr Duckett's evidence (document CD/APP54).

Paragraphs 9.4.7 to 9.4.15 and section 10.4 of Mr Duckett's evidence (document CD/APP53) also refer.

### *Views from the AONB*

82. On Ordnance Survey maps, the Devil's Chimney is an "other tourist feature" rather than a "viewpoint", in contrast to locations such as Crickley Hill or Barrow Wake, which offer 360° or 180° views<sup>177</sup>. Lotts Meadow is prominent in the views from Devil's Chimney and other vantage points on the escarpment. In combination with Burrows Field and the land around Church Farm (outside the site), it provides a broad swathe of open and more prominent land which contributes significantly to the setting of the AONB. The central and northern parts of the appeal site are much less conspicuous.<sup>178</sup>
83. As the photographs submitted in evidence show, built development is already a strong feature of the view from the AONB<sup>179</sup>. It dominates the mid-ground<sup>180</sup>. That is confirmed by references in the Cotswold Landscape and Character Assessment to fine views of Cheltenham obtainable from key viewpoints on the escarpment<sup>181</sup>. In places it runs up to the foot of the scarp slope.<sup>182</sup>
84. The magnitude of change that would arise from the appeal scheme is small, as the Council's witness, Mr Ryder, accepts<sup>183</sup>. He claims that the sensitivity of the site is such that a major impact would result. If he were right, then it would not appear in the JCS indicative layout as an area where built development could be accommodated.<sup>184</sup>
85. Mr Duckett's evidence is that from many points on the lower slopes of the footpaths rising up the escarpment views of the appeal site are blocked.<sup>185</sup> There are intermittent and partial views from the higher slopes but the proposed development would be difficult to distinguish from the existing settlement edge of Cheltenham, so the significance of the effect would be negligible.<sup>186</sup> Even when clearly in view from the top of the scarp, the development's relationship with the existing edge of Cheltenham would mean its significance would be low<sup>187</sup> or minor;<sup>188</sup> reducing after ten years as landscaping matures.<sup>189</sup>
86. Natural England did not object to the effect on views to and from the AONB resulting from the proposed Redrow development on the allocated SD2 site

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<sup>177</sup> Mr Duckett's oral evidence in chief, referring to document INQ13.

<sup>178</sup> Paragraphs 6.1.3 and 6.1.4 of Mr Duckett's evidence (document CD/APP53)

<sup>179</sup> Paragraph 62 of Mr Cahill's closing remarks (document INQ59) referring to Mr Duckett's appendix 2, photographs (i) to (iv) and photomontages C, D and E and Mr Duckett's Appendix 3 views 11, 13 and 14 and Appendix 4, VPs10 11, 12, 13 and 14 (document CD/APP54)

<sup>180</sup> Paragraphs 5.2.21, 5.2.27 and 5.2.29 of Mr Duckett's evidence (document CD/APP53)

<sup>181</sup> Paragraph 63 of Mr Cahill's closing remarks (document INQ59), quoting from the first paragraph on page 49 of document CD/LAN8

<sup>182</sup> Paragraphs 5.2.22 and 11.5.1 of Brian Duckett's evidence (document CD/APP53)

<sup>183</sup> Paragraph 62 of Mr Cahill's closing remarks (document INQ59), referring to paragraph 7.16 of Mr Ryder's evidence (document CD/LPA8)

<sup>184</sup> Paragraph 67 of Mr Cahill's closing remarks (document INQ59)

<sup>185</sup> Paragraphs 5.2.20 and 9.4.17 of Mr Duckett's evidence (document CD/APP53)

<sup>186</sup> Paragraphs 5.2.23 to 5.2.29 and 9.4.19 of Mr Duckett's evidence (document CD/APP53)

<sup>187</sup> Paragraph 9.4.21 of Mr Duckett's evidence (document CD/APP53)

<sup>188</sup> Paragraphs 9.4.28 and 9.4.29 of Mr Duckett's evidence (document CD/APP53)

<sup>189</sup> Paragraphs 9.10.5 and 9.10.6 of Mr Duckett's evidence (document CD/APP53) and paragraph 6.7.3.2 of the Design and Access statement (document CD/APP12)

within the Tewkesbury Local Plan<sup>190</sup>, in contrast to its objection to the appeal scheme. Yet, the appeal site would be less prominent in views from the AONB<sup>191</sup>. If the effect of the appeal proposal on the AONB is properly quantified, it is evident that it is not significant in the broader context of the development of Cheltenham which is currently visible and will remain visible from the AONB. The proposal will not interrupt the views in any way but would add to the existing pattern of development without bringing it any closer to the AONB.<sup>192</sup>

#### *Loss of greenfield and agricultural land*

87. The loss of greenfield land and of agricultural land classed as best and most versatile is recognised as a disbenefit; the latter to be taken into account and weighed in the balance in accordance with NPPF paragraph 112.<sup>193</sup> But;

- That consideration was given in the initial sustainability appraisal of options for the JCS in 2011 but the allocation for development is proposed.<sup>194</sup>
- The best and most versatile agricultural land comprises 11.3ha of the site.<sup>195</sup>
- A higher proportion of the site is graded 3b or non-agricultural.<sup>196</sup>
- The land is not associated with any farm buildings<sup>197</sup>. It is fragmented by public footpaths and compromised by heavy recreational use<sup>198</sup> so its productive agricultural use is limited<sup>199</sup> and has few prospects.<sup>200</sup>
- The provision of allotments would provide an opportunity for food production at a local scale.
- The Council does not pursue this reason for refusal.<sup>201</sup>

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<sup>190</sup> Paragraph 68 of Mr Cahill's closing remarks, referring to document INQ14

<sup>191</sup> Paragraph 9.4.24 of Mr Duckett's evidence (document CD/APP53)

<sup>192</sup> Paragraph 69 of Mr Cahill's closing remarks (document INQ59)

<sup>193</sup> Paragraph 70 of Mr Cahill's closing remarks (document INQ59)

<sup>194</sup> Paragraph 70(i) of Mr Cahill's closing remarks (document INQ59). Objective 5 of document CD/POL7 is "Conserve and Improve the natural environment". In the appraisal of the four scenarios, it is noted that Scenario A would only develop land within the existing urban areas, not greenfield sites. For Scenarios B, C and D, some loss of high grade agricultural land is noted against objective 5.

<sup>195</sup> The significance of this is that it is below the threshold above which Natural England would comment; see paragraph 62 of appellant's Statement of Case (in green folder on PINS file) and paragraph 4.14 of Julia Tindale's evidence (document CD/APP62)

<sup>196</sup> Paragraph 64 of appellant's Statement of Case (in green folder on PINS file), Tables 2 and 3 and paragraph 6.8 of Agricultural Resources Assessment (document CD/APP9) and Table 1 of Julia Tindale's evidence (document CD/APP62)

<sup>197</sup> Paragraph 5.1 of Agricultural Resources Assessment (document CD/APP9) and paragraph 3.7 of Julia Tindale's evidence (document CD/APP62)

<sup>198</sup> Paragraph 5.2 of Agricultural Resources Assessment (document CD/APP9)

<sup>199</sup> See paragraphs 65 to 68 of appellant's statement of case (in green folder on PINS file), paragraph 6.9 of the Agricultural Resources Assessment (document CD/APP9) and 3.17, 4.7 and 5.2 of Julia Tindale's evidence (document CD/APP62) and the addendum to Julia Tindale's evidence (document INQ16)

<sup>200</sup> Paragraph 6.12 of Agricultural Resources Assessment (document CD/APP9) and paragraph 4.7 of Julia Tindale's evidence (document CD/APP62)

<sup>201</sup> Paragraph 25 of Mr Cahill's opening remarks (document INQ52) and paragraph 70 of his closing remarks (document INQ59)

### *Local Green Space (LGS)*

88. The Council's response to the Parish Council's representations to the JCS process for a designation of LGS was to approach the designation of LGS through the Cheltenham Plan (part one) process rather than the JCS.<sup>202</sup> That is some way off. The appellant agrees with the Council that there is consequently no current vehicle for the designation of LGS.<sup>203</sup>
89. That must be the right approach; the consequences of designation as LGS are akin to designation as Green Belt. By designating land as LGS, local communities will be able to rule out new development other than in very special circumstances.<sup>204</sup> For that reason, designation has to be consistent with the development of sufficient homes, jobs and other services and so should only be designated through a neighbourhood or local plan<sup>205</sup> and be capable of enduring beyond the lifetime of the plan. Until those parameters are understood, it would be inappropriate to allocate LGS.<sup>206</sup>
90. At the public examination of the JCS, the Council took the position that while the JCS could have designated LGS, it would be better dealt with through the Cheltenham Plan (part one).<sup>207</sup> It argued that it is for local residents to persuade the Examination Inspector that the site allocation for development is inappropriate because it would preclude the LGS designation, that the LGS matter should be dealt with at the JCS examination and that the LGS submission meets the tests in the NPPF<sup>208</sup>.
91. Those tests are set out at paragraph 77 of the NPPF. They exclude extensive tracts of land.<sup>209</sup> The area falling within the LGS submission represents an extensive tract of land.<sup>210</sup> Nevertheless, 44% of the site would be retained as green space in the appeal proposals<sup>211</sup>. Local residents' evidence indicates that Lotts Meadow could meet the NPPF tests for designation as LGS and the scheme

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<sup>202</sup> Paragraph 75 of Mr Cahill's closing remarks, referencing paragraph 4.2.13 of the Council's Committee report (document CD/LPA1). Paragraph 9.5 of Tim Partridge's evidence (document CD/APP67)

<sup>203</sup> Paragraph 20 of Mr Cahill's opening remarks and Paragraph 75 of his closing remarks, quoting paragraph 5.3.4 of the Statement of Common Ground (document INQ1). Tim Partridge's evidence paragraph 9.2 (document CD/APP67)

<sup>204</sup> NPPF paragraph 76, quoted in paragraph 73 of Mr Cahill's closing remarks (document INQ59)

<sup>205</sup> Paragraphs 9.2, 9.4 9.6 and 9.10 of Tim Partridge's evidence (document CD/APP67), quoting NPPF paragraph 76

<sup>206</sup> Paragraphs 72, 74 and 78 of Mr Cahill's closing remarks, quoting paragraphs 73 and 76 of NPPF

<sup>207</sup> Paragraph 76 of Mr Cahill's closing remarks, referencing paragraphs 4.10 and 4.11 of the appellant's transcript of the relevant JCS hearing session (document INQ22)

<sup>208</sup> Paragraphs 76 and 77 of Mr Cahill's closing remarks and Paragraphs 4.11, 4.26, 4.28, 4.47 and 4.71 of the appellant's transcript of the JCS hearing session (document INQ22)

<sup>209</sup> Paragraph 79 of Mr Cahill's closing remarks, quoting paragraph 77 of NPPF

<sup>210</sup> Paragraph 80 of Mr Cahill's closing remarks, referencing legal opinion at appendix 7 to Mr Partridge's evidence (document CD/APP67)

<sup>211</sup> Paragraph 9.1 of Tim Partridge's evidence (document CD/APP67)



would not prevent that, as is recognised in a joint position statement presented to the JCS examination.<sup>212</sup>

### *Transport*

92. The appellant's case may be summarised as follows;

- NPPF paragraphs 32 and 34 remind us that development should only be refused on transport grounds where the residual cumulative effects of development would be severe<sup>213</sup>. Decisions should ensure that developments are located where the need to travel will be minimised<sup>214</sup> and should take account of whether
  - Opportunities for sustainable transport modes have been taken up to reduce the need for major transport infrastructure,
  - Safe and suitable access can be achieved for all people,
  - Cost effective improvements to the transport network can be undertaken to limit significant impacts.<sup>215</sup>
- Studies undertaken previous to the JCS, by the JCS team and by the appellant show the sustainable transport merits of the site<sup>216</sup>. It would be beneficial in reducing the need to travel, capitalising on existing sustainable transport infrastructure and its location close to Cheltenham town centre.<sup>217</sup> Contrary to its own policy,<sup>218</sup> the Council has ignored the benefits of mitigation by avoidance which would capitalise on the site's proximity to Cheltenham and existing public transport services so as to offer access to employment and services without the need to rely on the private car.<sup>219</sup>
- Detailed transport studies, independent traffic forecasts, modelling and capacity testing include consideration of the wider Strategic Allocation.<sup>220</sup> They show that there would be limited practical difference in terms of traffic impact on the local road network whether or not the appeal proposal proceeds, which would be about a 23% growth in any event.<sup>221</sup> This is because the

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<sup>212</sup> Paragraph 81 of Mr Cahill's closing remarks, quoting paragraph 2.4 of the Local Green Space Position Statement submitted on behalf of Redrow Homes, Bovis Homes, Miller Homes and David Wilson Homes to the JCS examination (document CD/OTH16)

<sup>213</sup> Paragraph 32 of Statement of Case (in green folder on PINS file)

<sup>214</sup> Paragraph 33 of Statement of Case (in green folder on PINS file)

<sup>215</sup> Paragraph 32 of Statement of Case (in green folder on PINS file) Paragraph 12.26 of Tim Partridge's evidence (document CD/APP67)

<sup>216</sup> Paragraphs 34 and 41 of Statement of Case (in green folder on PINS file). Paragraph 5.2.3 of Hilary Vaughan's evidence (document CD/APP70)

<sup>217</sup> Paragraph 41 of Statement of Case (in green folder on PINS file). Paragraph 5.3.2 of Hilary Vaughan's evidence (document CD/APP70)

<sup>218</sup> Paragraph 3.2.4 of the Transport Assessment (document CD/APP23), referencing paragraph 14.14 of the Local Plan (document CD/POL4)

<sup>219</sup> Paragraph 14 of Mr Cahill's opening remarks (document INQ52). Paragraphs 5.3.6 and 7.3.5 of Hilary Vaughan's evidence (document CD/APP70)

<sup>220</sup> Paragraphs 35, 36 and 41 of Statement of Case (in green folder on PINS file)

<sup>221</sup> Paragraphs 37 and 41 of Statement of Case (in green folder on PINS file), tables 9.3, 9.4 and 9.5 of Environmental statement (document CD/APP12) and paragraph 3.10.19 of supplementary Environmental Statement Movement Section (document CD/APP27),

development would be a small proportion of both Cheltenham's population and overall future development in the JCS area.<sup>222</sup> The Council has ignored Cheltenham's inevitable growth and its impact on the road network.<sup>223</sup> The highways network around the site suffers some congestion but the NPPF test is whether the additional impact of a scheme would be severe.<sup>224</sup>

- The proposal will add traffic but, as part of the broader development context in 2023, the traffic from the appeal proposals would have no practical effect on the cumulative traffic impact in the area.<sup>225</sup> Shurdington Road is already overloaded<sup>226</sup>. Existing traffic on Shurdington Road would be displaced onto other routes by traffic from the development.<sup>227</sup> In the wider area, none of the increases would be material compared to the forecast volume of traffic on the roads without the development. The greatest increase of just more than one vehicle per minute is predicted to occur on Caernarvon Road west of Alma Road. The daily change on Caernarvon Road is unlikely to reach the threshold of 10% recommended by the Institution of Highways and Transportation (IHT) for consideration of environmental assessment.<sup>228</sup>
- The Parish Council's transport study is unsatisfactory and does not follow recognised methods.<sup>229</sup>
- The transport section of the Local Plan recognises that there is existing congestion but that the character of Cheltenham means that this needs to be addressed by demand management.<sup>230</sup> A number of measures are proposed to alleviate the impact of the development<sup>231</sup>;
  - Contributions are agreed towards infrastructure measures and off-site travel planning (the South West Cheltenham Sustainable Transport Fund) to reduce existing traffic flows.<sup>232</sup>

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paragraphs 6.10.10 and 7.4.3 of Transport Assessment (document CD/APP23) and paragraphs 4.5.21 and 5.6.8 to 5.6.15 of Hilary Vaughan's evidence (document CD/APP70)<sup>222</sup> Paragraph 37 of Statement of Case (in green folder on PINS file). Paragraphs 4.5.21, 5.6.6, 5.6.7 and 7.3.4 of Hilary Vaughan's evidence (document CD/APP70) and oral evidence in chief.

<sup>223</sup> Paragraph 14 of Mr Cahill's opening remarks (document INQ52)

<sup>224</sup> Paragraph 13 of Mr Cahill's opening remarks (document INQ52)

<sup>225</sup> Paragraphs 14 and 15 of Mr Cahill's opening remarks (document INQ52). Paragraph 5.6.21 of Hilary Vaughan's evidence (document CD/APP70). Sections 4.2 and 4.3 of the appellant's Supplementary Traffic Note, January 2014 (document CD/APP26) also refers.

<sup>226</sup> Paragraph 3.10.19 of Supplementary Environmental Statement Movement Section (document CD/APP26)

<sup>227</sup> Paragraphs 6.10.14 and 7.45 of the Transport Assessment (document CD/APP23)

<sup>228</sup> Paragraphs 4.3.1, 4.3.2 and 4.3.3 of the appellant's Supplementary Traffic Note, January 2014 (document CD/APP26) and paragraph 9.3.4 of the Environmental Statement (document)

<sup>229</sup> Paragraph 41 of Statement of Case (in green folder on PINS file). Paragraph 8.2.2 of Hilary Vaughan's evidence (document CD/APP70)

<sup>230</sup> Paragraph 3.2.4 of Transport Assessment, referencing paragraph 14.12 of the Local Plan (document CD/POL4). Hilary Vaughan's evidence paragraph 5.6.2 (document CD/APP70)

<sup>231</sup> Paragraph 14 of Mr Cahill's opening remarks (document INQ52). Section 4.6 and paragraphs 5.6.16 and 7.6.7 of Hilary Vaughan's evidence (document CD/APP70)

<sup>232</sup> Paragraph 38 of Statement of Case (in green folder on PINS file) and paragraph 2.1.21 of Design and Access Statement (document CD/APP12). But in the section headed *Leckhampton*

- Travel Plans are proposed. These are recognised as an important element in mitigating traffic impact.<sup>233</sup> An effective Travel Plan can create a modal shift away from private vehicle to other means of transport of about 10%.<sup>234</sup>
  - Agreement has been reached to divert local bus services through the site and to provide Real Time Passenger Information (RTPI) priority measures along Shurdington Road.<sup>235</sup>
  - The illustrative masterplan encompasses the comprehensive development of the wider Strategic Allocation. It makes provision for a high standard of pedestrian and cycle movement and for connectivity to the surrounding area.<sup>236</sup>
  - Existing rat runs along Kidnappers Lane and Farm Lane would be made more indirect, limiting through movement.<sup>237</sup>
  - Proposed new junctions have been subject to a safety audit.<sup>238</sup> The local safety record identifies no roads or locations in the local area with an adverse safety record meriting attention.<sup>239</sup> Growth in traffic volumes does not cause a growth in accidents.<sup>240</sup>
  - The transport impact of the proposal have been thoroughly assessed and examined by the appellant, the County Council as Highways Authority and Highways England.<sup>241</sup> No objection is made by either the Highway Authority or the Highway Agency.<sup>242</sup> Gloucester County Council, as the Highways Authority
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*(650 Dwelling) Contribution of Appendix E of Gloucestershire County Council's Highway Contributions Technical Note (document INQ3), the fourth and fifth paragraphs make it clear that the development will not now contribute to off site travel planning; "Instead of specifically targeting employers, this sum is now considered more appropriate... to provide missing infrastructure which is a current barrier to making journeys by non-car means...."* Five specific pieces of infrastructure are listed. Up to fifteen per cent of the contribution would be spent to undertake a study to ascertain the most appropriate use of the funding to achieve modal shift of existing commuters.

<sup>233</sup> Paragraphs 38 and 41 of Statement of Case (in green folder on PINS file). Section 4.4 of Hilary Vaughan's evidence (document CD/APP70)

<sup>234</sup> Paragraph 2.4.2 of appellant's Supplementary Traffic Note, January 2014 (document CD/APP26). Paragraph 4.3.3 of Hilary Vaughan's evidence (document CD/APP70)

<sup>235</sup> Paragraphs 38 and 41 of Statement of Case (in green folder on PINS file), sections 3.1, 4.1 and 4.8 of Design and Access Statement (document CD/APP11), paragraphs 1.3.11, 2.1.21 and 9.6.11 of Environmental Statement (document CD/APP12), paragraph 2.14 of Supporting Planning statement (document CD/APP21). But Hilary Vaughan giving evidence in chief stated that the current proposal is not to divert the number 10 bus route but to provide the infrastructure to make such a diversion possible.

<sup>236</sup> Paragraph 39 of Statement of Case (in green folder on PINS file)

<sup>237</sup> Paragraph 41 of Statement of Case (in green folder on PINS file). Section 7.5 of Hilary Vaughan's evidence (document CD/APP70)

<sup>238</sup> Paragraphs 39 and 41 of Statement of Case (in green folder on PINS file). Section 7.4 of Hilary Vaughan's evidence (document CD/APP70)

<sup>239</sup> Paragraph 5.7.7 of Hilary Vaughan's evidence (document CD/APP70) and her rebuttal proof (document CD/APP72)

<sup>240</sup> Paragraph 5.7.3 of Hilary Vaughan's evidence (document CD/APP70)

<sup>241</sup> Paragraph 12 of Mr Cahill's opening remarks (document INQ52)

<sup>242</sup> Paragraphs 40 and 45 of Statement of Case (in green folder on PINS file)

has reached a clear view of the acceptability of the proposal. Its response when consulted on the application is very comprehensive. Its advice is that there is no highway justification for refusal of planning permission. It maintains that view in subsequent statements.<sup>243</sup>

- The Council disregarded technical advice and based its refusal on no technical assessment.<sup>244</sup> The Council's case is divorced from reality and from the position it has taken at the JCS examination where it continues to support the site allocation.<sup>245</sup>

93. The Council's reason for refusal makes five points;

- Congestion.
- Adequacy of mitigation.
- Adequacy of access points.
- Rat running.
- Pollution.

There is no suggestion in the reasons for refusal or in the Council's Statement of Case that the Central Severn Vale (CSV) Saturn model relied upon by the appellants is unreliable.<sup>246</sup>

94. The Council's evidence can be summarised<sup>247</sup> as;

- Complaints about the reliability of the Central Severn Vale model.
- Related complaints about the reliability of trip generation.
- Calibration of junctions.
- Mitigation measures.

It is immediately apparent that there is little or no correlation between the Council's evidence and its reasons for refusal.<sup>248</sup>

95. The complaints about the reliability of the CSV model and the calibration of junctions are rebutted<sup>249</sup> without contradiction.<sup>250</sup> In any event, the Council's evidence does not attempt to quantify the consequences of the alleged flaws in

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<sup>243</sup> Paragraph 5 of Mr Cahill's closing remarks (document INQ59) inferring reference to Hilary Vaughan's comment that the consultation response from the County Council was one of the most detailed such documents she had seen (paragraph 1.2.6 of her evidence (document CD/APP70) and making reference to the introduction to document INQ3 and point 1 of document INQ28

<sup>244</sup> Paragraph 42 and 43 and 46 of Statement of Case (in green folder on PINS file) and paragraphs 1.2.7 to 1.2.9 of Hilary Vaughan's evidence (document CD/APP70)

<sup>245</sup> Paragraph 12 of Mr Cahill's opening remarks (document INQ52) and paragraph 10 of his closing remarks (document INQ59)

<sup>246</sup> Paragraph 9 of Mr Cahill's closing remarks (document INQ59)

<sup>247</sup> By Mr Cahill in paragraph 12 of his closing remarks (document INQ59)

<sup>248</sup> Paragraph 13 of Mr Cahill's closing remarks (document INQ59)

<sup>249</sup> Hilary Vaughan's rebuttal proof (document CD/APP72)

<sup>250</sup> Paragraph 16 of Mr Cahill's closing remarks (document INQ59)

the CSV model or in the junction calibration, provides no information of the extent to which traffic conditions are expected to worsen as the result of the development proposed and so could not be the basis of a conclusion that the effects would be severe in the terms of paragraph 32 of NPPF.<sup>251</sup>

96. The Council's witness was fulsome in his appreciation of the mitigation measures.<sup>252</sup> He expected the A46 Shurdington Road, properly managed and conducted, to be able to manage with a development at this favourable location.<sup>253</sup> He was strongly confident that it could be made to work.<sup>254</sup> The Whitford Road appeal decision (APP/P1805/A/14/2225584)<sup>255</sup>, which the Council prayed in aid of its case, is dissimilar.<sup>256</sup>

#### *Pollution*

97. The appellant's original Environmental Statement, section 11 confirms that there is a risk of dust during construction which needs to be ameliorated and a condition is recommended.<sup>257</sup> For air pollution arising from traffic, although Cheltenham as a whole is designated an Air Quality Management Area (AQMA), the area in the vicinity of the appeal site has not been found to have harmful levels of pollution when calculated properly on an annual basis.<sup>258</sup> The Environmental Statement Addendum relating to Air Quality, July 2014<sup>259</sup> supersedes the relevant parts of chapter 11 of the original Environmental Statement. This concludes that the air quality effects of the proposed development would be of negligible significance.<sup>260</sup> The Council agrees.<sup>261</sup>

98. Paragraph 2.9 of the Design and Access Statement<sup>262</sup> records that a noise survey shows unacceptable conditions for gardens and balconies on the northern perimeter of the site. An appropriate scheme of mitigation would produce acceptable living conditions.

#### *Flooding and Drainage*

99. The Environment Agency has accepted the findings of the JBA report<sup>263</sup> on the extent of flooding from the principal watercourses, so the Sequential Test is not an issue and Local Plan policy UI1 does not apply.<sup>264</sup> Table 11 of the submitted Flood Risk Assessment (FRA)<sup>265</sup> sets out the need for land raising in a small part

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<sup>251</sup> Paragraph 18 of Mr Cahill's closing remarks (document INQ59)

<sup>252</sup> Paragraph 22 of Mr Cahill's closing remarks (document INQ59)

<sup>253</sup> Paragraph 1 of Mr Cahill's closing remarks (document INQ59)

<sup>254</sup> Paragraph 2 of Mr Cahill's closing remarks (document INQ59)

<sup>255</sup> Document CD/AD30

<sup>256</sup> Paragraphs 28 and 29 of Mr Cahill's closing submissions (document INQ59)

<sup>257</sup> Environmental statement paragraphs 11.5.8 and 11.5.33, (document CD/APP12) , endorsed by Fiona Prismall in paragraph 5.3 of her evidence (document CD/APP65)

<sup>258</sup> Paragraph 92 of Mr Cahill's closing remarks (document INQ59)

<sup>259</sup> Document CD/APP29

<sup>260</sup> Fiona Prismall's evidence (document CD/APP65), paragraphs 3.40, 3.59 and 3.62

<sup>261</sup> Paragraph 5.4.2 of the Statement of Common Ground (document INQ1)

<sup>262</sup> Document CD/APP11. Paragraph 10.5.1 of the Environmental statement (document CD/APP12) conveys the same information

<sup>263</sup> Section 4 and Appendix 4 of Flood Risk Assessment (document CD/APP14)

<sup>264</sup> Paragraph 70 of the appellant's Statement of Case (in green folder on PINS file)

<sup>265</sup> Document CD/APP14

of the site to avoid overland flooding. Its table 12 concludes that in practice the balancing ponds it proposes would reduce the rate of run-off from the development in extreme rainfall compared to the existing situation, so the effect of development would be to reduce the likelihood of downstream flooding.

100. The FRA is necessarily hypothetical in the absence of a detailed scheme but has established in principle the feasibility of an acceptable drainage scheme<sup>266</sup>. Sufficient measures are proposed to be put in place to mitigate the effects of the development so that flood risk off-site, to the site itself and to existing properties is not increased. No conclusive evidence to demonstrate unequivocally to the contrary has been provided.<sup>267</sup> The Council agrees.<sup>268</sup>

101. A drainage study undertaken by Severn Trent Water concludes that capacity is available at four locations on the foul sewerage system for the development to be connected, subject to sewage from the development being distributed in a particular way.<sup>269</sup>

#### *Retail impact*

102. A retail and office assessment has been carried out<sup>270</sup> which makes it clear that the proposed development will not result in harm to the long term viability and vitality of existing District Centres at Hatherley and Bath Road. There would be no loss of local facilities and services for the local community as a result of the proposed development.<sup>271</sup> The Council agrees.<sup>272</sup>

#### *Reduced site area*

103. The same description of development can be accommodated within the revised site boundary.<sup>273</sup> The application documents indicate the density at which various parts of the site would be developed. These descriptions of density would all be tied into any subsequent application for approval of reserved matters. The LPA has control over the approval of reserved matters and so would have control to prevent the development of the site at an unacceptable density.<sup>274</sup>

#### *Housing Land Supply (HLS)*

104. The officer's report to Committee acknowledges that the saved Local Plan policies are out of date so that it does not address the objectively assessed need

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<sup>266</sup> Paragraphs 69 to 79 of appellant's Statement of Case (in green folder on PINS file)

<sup>267</sup> Paragraph 26 of Mr Cahill's opening comments (document INQ52) and paragraph 90 of his closing submission (document INQ59)

<sup>268</sup> Paragraph 5.7.11 of the Statement of Common Ground (document INQ1)

<sup>269</sup> Section 13 of the Flood Risk assessment (document CD/APP14)

<sup>270</sup> Document CD/ADD1

<sup>271</sup> Paragraph 27 of Mr Cahill's opening remarks (document INQ52) and paragraph 91 of his closing remarks (document INQ59). Paragraphs 10.15 and 10.16 of Tim Partridge's evidence (document CD/APP67)

<sup>272</sup> Paragraph 5.7.25 of the Statement of Common Ground (document INQ1)

<sup>273</sup> Paragraph 3.12 of Tim Partridge's evidence (document CD/APP67)

<sup>274</sup> Paragraphs 93 and 94 of Mr Cahill's closing remarks (document INQ59)

for housing growth.<sup>275</sup> Mr Hemphill, on behalf of the Council confirms that it does not have a five-year HLS.<sup>276</sup>

105. LEGLAG's assertion that the Council does have a five-year HLS is based on a misunderstanding of NPPF footnote 11 (defining what sites should be considered deliverable) in the light of the Wainhomes decision.<sup>277</sup> There are eight Strategic allocations for housing proposed in the JCS. Two of these would be on the edges of, and partly within, Cheltenham. One includes the current appeal site which cannot contribute to the five year housing land supply unless the appeal is allowed. The other is the A5 North-West Cheltenham site. Given its Green Belt status and the objections which exist to its allocation, the site should not be considered deliverable in the context of a five-year land supply.<sup>278</sup> As Mr Lufton accepted, once JCS sites were ruled out, LEGLAG's case alleging a five-year supply evaporates.<sup>279</sup>
106. The Housing Land Supply Position Statement<sup>280</sup> puts beyond sensible argument the fact that the Council does not have a five-year HLS.<sup>281</sup> There is a significant and serious shortfall in the supply of housing land.<sup>282</sup> The appeal site would deliver the equivalent of 0.2 years' supply.<sup>283</sup>
107. The dispute between the Council and the appellant is over the size of the shortfall. This is a somewhat academic argument.<sup>284</sup>
108. The Hunston Case<sup>285</sup> establishes the need to define an Objectively Assessed Need (OAN), free of policy constraints, across the Housing Market Area (HMA). The JCS established an OAN for the Cheltenham Borough of 9,100 but that has been twice updated as part of the JCS process; to 10,000 in November 2014 and to 10,400 in 2015.<sup>286</sup>
109. The figure needs to be increased by an economic uplift, consistent with advice from the Planning Advisory Service (PAS).<sup>287</sup> This would produce a figure of 13,840.<sup>288</sup>

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<sup>275</sup> Paragraph 23 of Mr Cahill's opening remarks, referencing paragraph 2.2.4 of document CD/LPA1

<sup>276</sup> Paragraph 2.3 of document CD/LPA6

<sup>277</sup> Mr Cahill's closing remarks paragraphs 99 to 102 (document INQ59), referencing Wainhomes (South West Holdings Limited v SSCLG [2013] EWHC 597 (Admin)) (document CD/CJ2)

<sup>278</sup> Paragraphs 8.11, 8.130 and 8.137 to 8.147 of Paul Hill's evidence (document CD/APP59)

<sup>279</sup> Mr Cahill's closing remarks paragraph 104 (document INQ59)

<sup>280</sup> Documents INQ2, 2A and 2B

<sup>281</sup> Mr Cahill's closing remarks paragraph 95 (document INQ59)

<sup>282</sup> Paragraph 4.2 of the Statement of Common Ground (document INQ1)

<sup>283</sup> Paragraph 3.10 of Paul Hill's evidence (document CD/APP59)

<sup>284</sup> Paragraphs 95 and 97 of Mr Cahill's closing remarks (document INQ59)

<sup>285</sup> Hunston Properties Ltd v SSCLG and St Albans C&DC, [2013] EWHC 2678 (Admin) (document CD/CJ10)

<sup>286</sup> Paragraphs 107 and 108 of Mr Cahill's closing remarks (document INQ59), referencing paragraphs 4.2 to 4.5 of Tim Watton's evidence (document CD/APP56), in turn referencing documents CD/POL35 and CD/POL36a

<sup>287</sup> Paragraph 110 of Mr Cahill's closing remarks (document INQ59), referencing paragraphs 4.25 to 4.30 and 5.14 to 5.22 of Tim Watton's evidence (document CD/APP56) and PAS advice at document CD/OTH21

110. The Council has failed to deliver its development plan housing targets for the past 7 years<sup>289</sup> although it is accepted that permissions have exceeded targets for the past two years<sup>290</sup>. Its Annual Monitoring Reports have consistently exaggerated the prospects of delivery.<sup>291</sup> It therefore has a persistent record of underdelivery,<sup>292</sup> triggering a requirement for a 20% buffer which should be applied to its housing requirement including its shortfall.<sup>293</sup>

111. The Council's housing supply pipeline has also been exaggerated through optimistic windfall rates, lead-in times and lapse rates, the inclusion of care home housing and of sites unlikely to be delivered at all, or delivered within five years.<sup>294</sup> As a result, the Council's housing supply lies between 1.23 and 2.37 years.<sup>295</sup>

### *Infrastructure*

112. Two section 106 Agreements provide the mitigation to address the impacts of the scheme. The following measures are provided for;

- A comprehensive package of transport mitigation to include;
  - Business and residential travel plans,
  - Bus contribution,
  - Highways improvements,
  - £400,000 towards the South West Cheltenham Sustainable Transport Strategy.
- Secondary School contribution of £1,738,620.
- Provision of land for a school and funding equivalent to a one form of entry primary school.
- Affordable housing.
- Allotment land.
- Doctor's surgery land.

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<sup>288</sup> Paragraph 111 of Mr Cahill's closing remarks (document INQ59) and paragraph 5.26 of Mr Watton's evidence (document CD/APP56)

<sup>289</sup> Paragraph 113 of Mr Cahill's closing remarks (document INQ59), referencing paragraph 6.12 and table 5.1 of Paul Hill's evidence (document CD/APP59)

<sup>290</sup> Agreed in cross-examination with reference to document INQ17

<sup>291</sup> Paragraph 113 of Mr Cahill's closing remarks (document INQ59), referencing paragraphs 3.16 to 3.21 of Paul Hill's evidence (document CD/APP59)

<sup>292</sup> Paragraph 113 of Mr Cahill's closing remarks (document INQ59), paragraph 6.12 of Paul Hill's evidence (document CD/APP59) and paragraph 7.30 of the Supporting Planning statement (document CD/APP21) referring to appeal decision APP/B1605/A/11/2164597

<sup>293</sup> Paragraphs 114 and 115 of Mr Cahill's closing remarks (document INQ59) and paragraphs 6.14 to 6.19 of Paul Hill's evidence (document CD/APP59)

<sup>294</sup> Paragraphs 116 to 121 of Mr Cahill's closing remarks (document INQ59) and section 8 of Paul Hill's evidence (document CD/APP59)

<sup>295</sup> Paul Hill's evidence paragraph 9.4 (document CD/APP59)



- Proportionate contribution towards offsite provision for Gypsy and Traveller site.
  - Equipped children's play area.
  - Twice the required quantity<sup>296</sup> of on site open space and its future maintenance.<sup>297</sup>
113. Of these, the Gypsy and Traveller site contribution does not meet the CIL regulation 122 requirements<sup>298</sup> because;
- The development itself does not generate such need; it derives from the provisions of the JCS Site Allocation.
  - There is no adopted policy which justifies the requirement.
  - The proposed policy which would justify the requirement is subject to objection. The appellant's masterplan is submitted by the Council to the JCS examination in support of the policy but makes no provision for a gypsy or traveller site.
  - The rate of commuted payment is not justified or proportionate; it should be proportionate to the need in Cheltenham, not the need for the JCS area as a whole.<sup>299</sup>

In addition, the appellant considers that the monitoring fee sought by the County Council in its agreement also does not confirm to the CIL regulations<sup>300</sup>.

#### *Heritage assets*

114. There are heritage assets in the vicinity of the site. The Environmental Statement has identified minor adverse effects on two types of fairly common, low value historic landscape character and two historic buildings. The effects on the two landscape types are an inevitable result of the change to a built development and cannot be mitigated. The historic buildings are listed Grade II. Effects on these can be mitigated through detailed design of the scheme and its landscaping. Adverse effects on archaeological remains would be offset through investigation, recovery and dissemination of information.<sup>301</sup>

#### *Habitats Assessment*

115. At its closest point, the Cotswold Beechwoods Special Area of Conservation (SAC) is 4.5km to the south-west of the site.<sup>302</sup> No others are within 10km or likely to be affected<sup>303</sup>. An assessment has been made of the potential for the

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<sup>296</sup> Paragraphs 3.26 and 7.50 and section 10 of Supporting Planning Statement (document CD/APP21)

<sup>297</sup> Paragraph 87 of Mr Cahill's closing remarks (document INQ59) and section 11 of Tim Partridge's evidence (document CD/APP67)

<sup>298</sup> Paragraphs 82 to 85 of Mr Cahill's closing remarks (document INQ59)

<sup>299</sup> Document INQ34

<sup>300</sup> Paragraph 86 of Mr Cahill's closing remarks (document INQ59)

<sup>301</sup> Chapter 7 of Environmental Statement (document CD/APP12)

<sup>302</sup> Paragraph 1.1.4 of appendix 8.14 of the Environmental Statement (document CD/APP12)

<sup>303</sup> Paragraph 7.2 of appendix 8.14 of the Environmental Statement (document CD/APP12)

development to affect the features for which the SAC is designated.<sup>304</sup> This identified both the enhanced Lotts Meadow and thirty-one other areas of open space within 3km of the appeal site which, between them would provide assurance that adverse effects on the more distant SAC would not occur.<sup>305</sup> In relation to the size of the SAC, recreational pressures from the development are unlikely to have any measureable effect in any event.<sup>306</sup> Consequently, the conclusion is reached that the proposed development would not result in an adverse effect on the integrity of the Cotswolds Beechwoods SAC, either alone or in combination with other plans or projects.<sup>307</sup>

### *Planning balance*

116. The appellant contends, supported by the Council's officer report, that there is no conflict with the development plan when read as a whole and so, that the development should have been approved without delay.<sup>308</sup> Even if that is not accepted, development plan policies for the supply of housing are agreed not to be up to date. It follows that there is a separate presumption in favour of planning permission stated in NPPF paragraph 14. The only question is whether that presumption is rebutted.<sup>309</sup> It requires a balancing exercise.<sup>310</sup>

117. The advantages are;

- Economic;
  - Direct benefits of construction.<sup>311</sup>
  - Indirect benefits of employment.<sup>312</sup>
  - New Homes Bonus.
  - Permanent jobs at new local centre.<sup>313</sup>
- Social;
  - Open-market housing.<sup>314</sup>
  - Affordable housing.<sup>315</sup>
  - Public open space.<sup>316</sup>

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<sup>304</sup> Paragraph 1.1.5 of appendix 8.14 of the Environmental statement (document CD/APP12)

<sup>305</sup> Paragraph 6.7 of appendix 8.14 of the Environmental statement (document CD/APP12)

<sup>306</sup> Paragraph 7.3 of appendix 8.14 of the Environmental statement (document CD/APP12)

<sup>307</sup> Paragraph 7.9 of appendix 8.14 of the Environmental statement (document CD/APP12)

<sup>308</sup> Paragraphs 125 to 129 of Mr Cahill's closing remarks (document INQ59)

<sup>309</sup> Paragraph 130 of Mr Cahill's closing remarks (document INQ59) and paragraphs 12.1 and 12.2 of Tim Partridge's evidence (document CD/APP67)

<sup>310</sup> Paragraph 131 to 133 of Mr Cahill's closing remarks (document INQ59) and paragraph 12.3 of Tim Partridge's evidence (document CD/APP67)

<sup>311</sup> Paragraph 12.8 of Tim Partridge's evidence (document CD/APP67)

<sup>312</sup> Paragraph 12.9 of Tim Partridge's evidence (document CD/APP67)

<sup>313</sup> Paragraph 12.10 of Tim Partridge's evidence (document CD/APP67)

<sup>314</sup> Paragraphs 12.4 to 12.7 of Tim Partridge's proof (document CD/APP67)

<sup>315</sup> Paragraphs 12.12 to 12.17 of Tim Partridge's evidence (document CD/APP67)

<sup>316</sup> Paragraph 12.18 of Tim Partridge's evidence (document CD/APP67)

- Environmental;
    - Open space managed in perpetuity.
118. The disadvantages are;
- Increases in journey times.
  - Loss of Best and Most Versatile agricultural land.
  - Loss of greenfield land and effects on landscape.<sup>317</sup>
119. It is very obvious that this balance falls heavily in favour of granting permission.<sup>318</sup>

### *Prematurity*

120. There remain unresolved objections to the allocation of the site within the JCS for development. But the following cannot be denied<sup>319</sup>;
- The lengthy evidence base which led to the selection of the appeal site.
  - The clear need for additional housing in Cheltenham.
  - The Council's steadfast defence of the site allocation at the JCS examination.
121. The Council no longer pursues a prematurity argument. Others do but have failed to show what harm would result from a grant of planning permission now. The LGS argument is simply a device to defeat the appeal proposal; the proposal complies with the layout plan on page 154 of the JCS. That allows for a very substantial area of land to be designated as LGS, which is a decision for another day.<sup>320</sup>

## **The Case for Cheltenham Borough Council (the local planning authority)**

### *The basis for decision*

122. Planning decisions must be taken in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan is the Cheltenham Borough Local Plan 2006. It does not allocate the appeal site for development.<sup>321</sup>
123. The emerging plan may well be a material consideration but the allocation of the site for development in the JCS is not a knockout blow to consideration of the merits of a planning application<sup>322</sup>. The ongoing examination of the JCS does not fetter the discretion of the Secretary of State, Inspector or Council. Key points of the allocation proposal confirm that detailed consideration should be given to how

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<sup>317</sup> Paragraph 12.27 of Tim Partridge's evidence (document CD/APP67)

<sup>318</sup> Paragraph 134 of Mr Cahill's closing remarks (document INQ59) and paragraphs 12.22 to 12.25 of Tim Partridge's evidence (document CD/APP67)

<sup>319</sup> Paragraphs 136 and 137 of Mr Cahill's closing remarks (document INQ59)

<sup>320</sup> Paragraphs 138 to 142 of Mr Cahill's closing remarks (document INQ59)

<sup>321</sup> Paragraph 4 of Miss Clover's opening (document INQ53)

<sup>322</sup> Second paragraph of Miss Clover's closing statement (document INQ56). (I have imputed paragraph numbers to this document).

a comprehensive scheme can be delivered.<sup>323</sup> It is accepted that the transport evaluation of the development application should be in line with, and provide for, the necessary development needs and provision for the strategic allocation as a whole, not just the application site.<sup>324</sup> Transportation evidence yet to be submitted to the JCS examination will not be available to this appeal Inquiry.<sup>325</sup>

124. It is accepted that this appeal will proceed on the basis that the Council does not have a five-year HLS, with the consequences which flow from that.<sup>326</sup> Although aspects of the Wainhomes case are highlighted<sup>327</sup>, there is no need to prove the exact figures for OAN or for housing land supply, or to set the former at the highest possible level and the latter at the lowest<sup>328</sup>; it is accepted that paragraph 14 of the NPPF applies.<sup>329</sup>

125. In terms of the planning balance, the Council has identified two areas of harm significant enough to tip the balance away from the development.<sup>330</sup> There has never been any resistance to the appellant's view of the economic and social benefits of the proposal as described by Tim Partridge. The dispute around the environmental benefit equates to the Council's landscape case.<sup>331</sup> NPPF places no greater weight on landscape considerations than on others but they do tend to be irreversible. By contrast, severe transport impacts are seen by NPPF to be a knockout blow.<sup>332</sup> The fact that subsequent evidence was produced which supports a decision based on members' local knowledge does not invalidate their original decision.<sup>333</sup>

#### *Transport*

126. The three levels of analysis which a development must go through for transport purposes are<sup>334</sup>;

- Assessment of baseline conditions (what the conditions would be without the development).
- The impact of development.
- The effects of mitigation.

In this case, the appellant argues that there is no need for mitigation because the transport package offered is part of the proposal, not required as a result of the proposal<sup>335</sup>.

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<sup>323</sup> Paragraph 8 of Miss Clover's opening (document INQ53)

<sup>324</sup> Paragraph 9 of Miss Clover's opening (document INQ53)

<sup>325</sup> Paragraph 10 of Miss Clover's opening (document INQ53) and paragraphs 4.1.4 and 4.1.5 of David Nock's evidence (document CD/LPA7)

<sup>326</sup> Paragraph 7 of Miss Clover's opening (document INQ53) and third paragraph of her closing (document INQ56)

<sup>327</sup> Sixth and seventh paragraphs of Miss Clover's closing (document INQ56)

<sup>328</sup> Eighth paragraph of Miss Clover's closing (document INQ56)

<sup>329</sup> Third paragraph of Miss Clover's closing (document INQ56) and paragraph 2.3 of Craig Hemphill's evidence (document CD/LPA5)

<sup>330</sup> Ninth paragraph of Miss Clover's closing (document INQ56)

<sup>331</sup> Fourth and fifth paragraphs of Miss Clover's closing (document INQ56)

<sup>332</sup> Tenth paragraph of Miss Clover's closing (document INQ56)

<sup>333</sup> Eleventh paragraph of Miss Clover's closing (document INQ56)

<sup>334</sup> Fifteenth paragraph of Miss Clover's closing (document INQ56)

127. The Council has employed consultants, Pell Frischmann (PF), to check the transportation work carried out on the planning application by the appellant's consultant, the Peter Evans Partnership (PEP) and by Gloucestershire County Council (GCC). That review, in limited time, has identified faults in the transport analysis<sup>336</sup>. More time would have uncovered more faults.<sup>337</sup> A defensive response to criticism and a lack of transparency engenders suspicion that there is something to hide.<sup>338</sup> A county highway authority is not infallible.<sup>339</sup> The Whitford Road decision<sup>340</sup> shows that, to be relied upon as a basis for decision making, whatever model is used must be used accurately.<sup>341</sup>

*The model*

128. Traffic forecasting and modelling was undertaken using the County Council's Central Severn Vale (CSV) SATURN based model.<sup>342</sup> It is not inherently unreliable<sup>343</sup> but it is a strategic model, outputs from which need to be adjusted to obtain the detail relevant to consideration of this development. There are concerns about its accuracy for this purpose.<sup>344</sup>

129. PF's approach is to model local conditions, feed that back into the strategic model and re-run the results until they reflect reality. That approach is endorsed by the Transport for London Highway Assignment Model.<sup>345</sup> By contrast, the appellant made adaptation by manual analysis, of which no details are provided.<sup>346</sup>

130. The A46 Shurdington Road is the key highway involved. It currently experiences peak hour congestion.<sup>347</sup> All parties accept that the highway network will suffer from substantial and increasing congestion.<sup>348</sup>

131. In 2023, three junctions would be operating at or above capacity without the development<sup>349</sup>;

- The A46 Shurdington Road/Leckhampton Lane priority junction.

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<sup>335</sup> Twelfth and sixteenth paragraphs of Miss Clover's closing (document INQ56) reflecting response given by Hilary Vaughan in cross-examination

<sup>336</sup> Paragraph 12 of Miss Clover's opening (document INQ53) and paragraph 1.1.2 of David Nock's evidence (document CD/LPA7)

<sup>337</sup> Fourteenth paragraph of Miss Clover's closing (document INQ56)

<sup>338</sup> Eighteenth, nineteenth and twentieth paragraphs of Miss Clover's closing (document INQ56)

<sup>339</sup> Twenty-first paragraph of Miss Clover's closing (document INQ56)

<sup>340</sup> APP/P1805/A/14/2225584 (Document CD/AD30)

<sup>341</sup> Fifty-third to fifty-seventh paragraph of Miss Clover's closing (document INQ56)

<sup>342</sup> Paragraph 16 of Miss Clover's opening (document INQ53)

<sup>343</sup> Twenty-fourth paragraph of Miss Clover's closing (document INQ56)

<sup>344</sup> Twenty-fifth paragraph of Miss Clover's closing (document INQ56) and paragraphs 5.2.31, 5.2.32, 5.3.2 and 5.3.7 of David Nock's evidence (document CD/LPA7)

<sup>345</sup> Twenty-sixth paragraph of Miss Clover's closing (document INQ56)

<sup>346</sup> Twenty-eighth, twenty-ninth and thirty-third paragraphs of Miss Clover's closing (document INQ56), quoting paragraph 5.3.6 of David Nock's evidence (document CD/LPA7). Paragraphs 5.3.7, 5.3.8 and 5.3.9 also apply.

<sup>347</sup> Paragraph 14 of Miss Clover's opening (document INQ53)

<sup>348</sup> Paragraph 13 of Miss Clover's opening (document INQ53) reflecting question and answer given by Hilary Vaughan in cross-examination

<sup>349</sup> Paragraph 5.3.10 of David Nock's evidence (document CD/LPA7)

- The A46 Shurdington Road/Moorend Park Road signalised junction.
- The Leckhampton Road/Church Road/Charlton Lane double mini roundabout.

The only route to avoid them would be Up Hatherley Road. Its junction with the A46 Shurdington Road is forecast to have capacity so it would form an attractive alternative route. Yet, with the development in place, it is forecast to experience only a marginal increase in peak hour traffic.<sup>350</sup> The appellant's analysis is inherently contradictory. At the end of the Inquiry, there is still no answer as to where the traffic will have gone.<sup>351</sup>

132. PF note discrepancies and unexplained disappearances of traffic flows in the appellant's Transport Note 13<sup>352</sup>. PF note unexplained reductions in traffic flows between the appellant's Transport Notes 10 and 13<sup>353</sup>. PF were particularly concerned with the work displayed in Transport Note 23<sup>354</sup> and its two attachments<sup>355</sup>. This showed paired results which did not correspond logically with one another and flow results that appeared to suggest that flows would improve with development traffic, without being able to show where the extra traffic had gone.<sup>356</sup>

#### *Trip rates*

133. Trip rates for the development were generated by the appellant's consultants from the TRICS database. PF tested these by comparison with census data and found that the TRICS rates were significantly lower.<sup>357</sup> The appellant was concerned that census data risked over-estimation. Similarly, the appellant's use of the figure for the 50%ile of trips rather than the 85%ile results in substantial under-estimation. Yet the greater risk of error in assessing the development is under-estimation.<sup>358</sup>
134. School trips have been wrongly estimated. The error is of some significance. PEP has underestimated two-way trips by some 55% in the morning peak; a total of 240 vehicles. The estimates of trip generation for the doctors' surgery and for the local centre are all counterintuitive. When taken into account they show a worsening of the situation.<sup>359</sup>

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<sup>350</sup> Twenty-second paragraph of Miss Clover's closing (document INQ56) quoting paragraphs 5.3.10 and 5.3.11 of David Nock's evidence (document CD/LPA7)

<sup>351</sup> Twenty-third paragraph of Miss Clover's closing (document INQ56)

<sup>352</sup> Paragraphs 5.3.44 to 5.3.46 and appendix 5 of David Nock's evidence (document CD/LPA7)

<sup>353</sup> Paragraph 5.3.47 and appendices 2 and 5 of David Nock's evidence (document CD/LPA7)

<sup>354</sup> Document CD/APP43

<sup>355</sup> Atkins Technical Notes TN05 and TN06

<sup>356</sup> Twenty-seventh paragraph of Miss Clover's closing (document INQ56) and paragraphs 5.5.17 to 5.5.48 of David Nock's evidence (document CD/LPA7)

<sup>357</sup> Thirty-fifth paragraph of Miss Clover's closing (document INQ56), referencing paragraph 5.3.22 of David Nock's evidence (document CD/LPA7)

<sup>358</sup> Thirty-seventh paragraph of Miss Clover's closing (document INQ56)

<sup>359</sup> Thirty-eighth paragraph of Miss Clover's closing (document INQ56) and paragraphs 1.1.3 5.2.11 and 5.3.27 to 5.3.41 of David Nock's evidence (document CD/LPA7)

### *Junction calibration*

135. The appellant modelled eight junctions using Picady, Arcady and Linsig models. Each model failed to calibrate against reality.<sup>360</sup> Most were moderate failures but one (Shurdington Road/Leckhampton Lane) was a serious failure<sup>361</sup>. The appellant concluded that the junction models did not replicate driver behaviour and it was left there. Manual adjustments were made, without explanation<sup>362</sup>. By contrast, PF adjusted the model, in accordance with the user guide<sup>363</sup>, to reflect reality. When run to predict the future it showed considerable queues to form, greater than those which could be dealt with by a 10% modal shift.<sup>364</sup>
136. The Council's consultants have not had time to re-model all junctions<sup>365</sup> but the work on the one tested can be taken as representative.<sup>366</sup> The road system is all on such a knife edge that even a small change can represent severe impact.<sup>367</sup>

### *Safety*

137. Geographical patterns of traffic accidents are not the only thing that should trigger a response. Their severity is of equal importance. There is a pattern of involvement of schoolchildren and pensioners.<sup>368</sup> Three fatal accidents should have triggered a response that has not happened.<sup>369</sup>

### *Landscape*

138. The appellant's main point is that the indicative plan on page 154 of the submitted JCS shows housing development up to the edge of the A46 Shurdington Road and that the Council's opposition to this extent of development implies schizophrenia. But there is a difference in purpose between a JCS and its examination on the one hand and a planning application and appeal on the other.<sup>370</sup>
139. Information about Strategic Allocations on page 129 of the submitted JCS makes it clear that their boundaries are drawn to include areas of land and buildings which may not be suitable for development. The plan on page 154 is

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<sup>360</sup> Thirty-ninth and fortieth paragraph of Miss Clover's closing (document INQ56) referencing paragraph 6.1.4 of David Nock's evidence (document CD/LPA7)

<sup>361</sup> Paragraph 6.3.2 of David Nock's evidence (document CD/LPA7)

<sup>362</sup> Forty-second and forty-third paragraph of Miss Clover's closing (document INQ56)

<sup>363</sup> Forty-fifth paragraph of Miss Clover's closing (document INQ56)

<sup>364</sup> Forty-third and forty-fourth paragraphs of Miss Clover's closing (document INQ56) and section 7 of David Nock's evidence (document CD/LPA7)

<sup>365</sup> Forty-sixth paragraph of Miss Clover's closing (document INQ56)

<sup>366</sup> Fiftieth paragraph of Miss Clover's closing (document INQ56)

<sup>367</sup> Forty-eighth and forty-ninth paragraphs of Miss Clover's closing (document INQ56) and paragraph 6.4.1 of David Nock's evidence (document CD/LPA7)

<sup>368</sup> Paragraph 8.3.5 of David Nock's evidence (document CD/LPA7)

<sup>369</sup> Fifty-second paragraph of Miss Clover's closing (document INQ56)

<sup>370</sup> Sixtieth and sixty-first paragraphs of Miss Clover's closing (document INQ 56)

described in terms as “indicative”.<sup>371</sup> Background documents to the JCS make it clear that the identification of potential sites is an incremental process.<sup>372</sup>

140. Paragraph 1.5 of the submitted JCS makes it clear that whilst the JCS provides the higher level or strategic part of the development plan, more detailed, locally-specific policies will be set out in three district plans. These will include local allocations of land for development and local policies to guide decisions on planning applications. Thus detailed planning applications will come forward and be scrutinised in their detail.<sup>373</sup>

141. If detailed scrutiny finds concerns which are material in planning terms, then the law requires them to be taken into account and be weighed in the balance. It is not right to argue that this Inquiry is debarred from looking at them on the ground that the site is a proposed strategic allocation in the JCS.<sup>374</sup> There are draft policies in the JCS which, taking a finer grained approach, throw up negatives as well as positives.<sup>375</sup>

142. There are six main landscape visual areas of concern encompassed in the Council’s fifth reason for refusal.<sup>376</sup> For two of these (erosion of the sense of open space experienced from public rights of way and the compromising of views out from the site) there is no significant difference between the parties.<sup>377</sup> The second of these does not include public views from the A46 road corridor across the site to the Cotswolds AONB. This remains a point of disagreement.<sup>378</sup>

143. The four remaining points of disagreement are<sup>379</sup>:

- Adverse impact on the character of the site itself.
- Adverse impact on the character of the Cotswolds AONB.
- Adverse impact on public views from the A46 road corridor across the site to the Cotswolds AONB.
- Views back into the site.

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<sup>371</sup> Sixty-fifth, sixty-sixth and sixty-seventh paragraphs of Miss Clover’s closing (document INQ56)

<sup>372</sup> Sixty-eighth and sixty-ninth paragraphs of Miss Clovers closing, referencing the Introduction to the JCS Landscape Characterisation assessment and Sensitivity Analysis (document CD/LAN16) and paragraph 1.1.2 of the JCS Landscape & Visual Sensitivity and Urban Design report (document CD/LAN9)

<sup>373</sup> Sixty-second and sixty-third paragraphs of Miss Clover’s closing (document INQ56)

<sup>374</sup> Seventieth, seventy-first and seventy-second paragraph of Miss Clover’s closing (document INQ56)

<sup>375</sup> Eighty-fourth, fifth and sixth paragraphs of Miss Clover’s closing (document INQ56). Stuart Ryder refers to JCS policies SD7 and SD8 in paragraphs 4.67, 4.74 and 4.89 of his evidence (document CD/LPA8) and quotes JCS paragraph 4.7.2 in his paragraph 4.65

<sup>376</sup> Paragraph 19 of Miss Clover’s opening (document INQ53), referencing paragraph 6.1 of Stuart Ryder’s evidence (document CD/LPA8)

<sup>377</sup> Paragraph 19 of Miss Clover’s opening (document INQ53), referencing paragraphs 5.5.16 and 5.5.17 of the Statement of Common Ground (document INQ1)

<sup>378</sup> Paragraph 20 of Miss Clover’s opening, referencing paragraph 5.5.18 of the Statement of Common Ground (document INQ1)

<sup>379</sup> Paragraph 21 of Miss Clover’s opening (document INQ53) and Paragraphs 2.4 and 6.1 of Stuart Ryder’s evidence (document CD/LPA8)



144. The development of the northern fields represents a very large magnitude of change. Applied to the varying sensitivity of the landscape, this results in an assessment of the significance of the change to the character of the site itself as major in the case of the fields adjacent to the A46 Shurdington Road, major/moderate in the case of the former nurseries and moderate or moderate/minor to Lotts Meadow. The principal cause of this finding is that the replacement of open fields by development would lose the view of the AONB.<sup>380</sup>
145. For the same reason the reduced opportunity to view the striking escarpment of the AONB represents an adverse effect on its setting.<sup>381</sup>
146. The view from the A46 Shurdington Road is attractive primarily because of the ability to see to the enclosing high ground of the AONB. Trees screening nearby development make it appear that the view is across open countryside. This is one of the primary views on the approach into Cheltenham allowing the setting to the town to be appreciated.<sup>382</sup> There would appear to be no ready mitigation either to protect or to enhance the view to the AONB that would be lost should these fields be developed.<sup>383</sup>
147. The key view back in to the site is from the west face of Leckhampton Hill. The scale of view is such that the development would represent a small magnitude of change. But the sensitivity is very high, so the significance of the impact would be major/moderate, reducing to moderate over time as landscaping matures.<sup>384</sup>

#### *The Gypsy and Traveller requirement*

148. Following the advice in an earlier version of Planning Policy for Traveller Sites, the JCS authorities identified the need for 151 Gypsy, Traveller and Travelling Showpeople pitches and, as a result, included in the JCS policies SD14 and SA1(4), the latter requiring proposals within Strategic Allocations to show how the identified requirement would be incorporated into the development. The JCS examiner has identified issues with these policies and has requested that further work be done.<sup>385</sup>
149. The JCS authorities prepared a revised draft of JCS policy SA1, allocating the total needs identified for the JCS area to the Strategic sites in proportion to their size. For Leckhampton (the Strategic Allocation, not the appeal site) the number was 12.<sup>386</sup> Subsequent agreements in relation to another Strategic Allocation have calculated the provision to be made as proportionate to the percentage of new homes required for the JCS area to be provided on site rather than as

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<sup>380</sup> Paragraphs 6.9 to 6.13 of Stuart Ryder's evidence (document CD/LPA8)

<sup>381</sup> Paragraph 6.14 of Stuart Ryder's evidence (document CD/LPA8), referencing paragraph 12 of the Cotswolds Conservation Board's Position Statement on development in the Setting of the Cotswolds AONB (document not submitted to the Inquiry but extract quoted at paragraphs 4.100 to 4.105 of Stuart Ryder's evidence).

<sup>382</sup> Paragraphs 5.30 and 5.31 of Stuart Ryder's evidence (document CD/LPA8) and seventy-ninth and eightieth paragraphs of Miss Clover's closing, referencing paragraph 6.1.11 of Brian Duckett's evidence (document CD/APP53)

<sup>383</sup> Paragraph 6.12 of Stuart Ryder's evidence (document CD/LPA8)

<sup>384</sup> Paragraphs 6.29 to 6.32 of Stuart Ryder's evidence (document CD/LPA8)

<sup>385</sup> Document INQ31

<sup>386</sup> Ibid

proportionate to site area. On that basis, the current appeal site (not the site allocation) is expected to provide a contribution for three pitches, off-site.<sup>387</sup>

150. More recently (on 3 November 2015), the JCS authorities presented a paper to the JCS examination confirming the intention of pursuing the latter approach. Five sites have been identified with a potential to deliver fifty pitches within the next five years.<sup>388</sup>

## **The Case for Leckhampton with Warden Hill Parish Council**

### *The matter of weight*

151. The appellants appear to ascribe significant weight to the housing proposals in the draft JCS.<sup>389</sup> Yet page 148 of the JCS warns that the indicative layout on page 154 should not be regarded as policy.<sup>390</sup> Two recent appeal decisions have afforded the draft JCS policies little or no weight.<sup>391</sup> Applying the advice of NPPF paragraph 216 and noting that the base data of objectively assessed housing need is being revisited and is likely to take some time considering arguments for a 30% uplift and that there are many objections to the plan, the appellants are chasing an allocation which does not exist.<sup>392</sup> Furthermore, the Council has resolved to seek the removal of Site Allocation SA6 from the JCS.<sup>393</sup>

### *Transport*

152. A SATURN transport model is not needed to demonstrate that Leckhampton Lane and Church Road are already heavily congested. The Parish Council has already provided unchallenged information of trip times which show that this congestion is already unacceptable and occasionally results in gridlock.<sup>394</sup>
153. Existing pedestrian facilities in locations of high demand such as in Church Road near the primary school are inadequate with footway widths as low as 0.8m and suffering from vehicles parking on the pavement.<sup>395</sup> There are few dedicated

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<sup>387</sup> Ibid and document INQ32

<sup>388</sup> Document INQ45

<sup>389</sup> First and fourth paragraphs of Mr Graham's closing statement (document INQ57) (I have imputed paragraph numbers to this document)

<sup>390</sup> Second paragraph of Mr Graham's closing statement, referencing the statement at page 148 of the submitted plan (document CD/POL10)

<sup>391</sup> Third paragraph of Mr Graham's closing statement (document INQ57), referencing paragraph 11 of appeal decision APP/G1630/W/15/3003302 (document INQ24) and paragraph 18 of appeal decision APP/G1630/W/15/3002522 (document INQ25)

<sup>392</sup> Fifth to eighth paragraphs of Mr Graham's closing statement (document INQ57)

<sup>393</sup> Parish Council's response to LEGLAG's suggested points of common ground (documents INQ 40 and INQ41)

<sup>394</sup> Sixteenth paragraph of Mr Graham's opening statement (document INQ54) (I have imputed paragraph numbers to this document) and tenth, eleventh and twelfth paragraphs of Mr Graham's closing statement and paragraphs 3.32, 3.33 and 5.4 of Dr Mears's evidence (document CD/LH8) referencing section 3.4.1 and Annexes 2 and 3 of the Parish Council's NPPF Concept Plan & Local Green Space Application July 2013 (document CD/LEG2) (duplicate copies at CD/HIG2 and found in red folder of third party submissions to PINS in response to notice of appeal)

<sup>395</sup> Paragraph 3.10 of Dr Mears's evidence (document CD/LH8)

cycle facilities yet it is seen as too dangerous to use the roads.<sup>396</sup> The diversions of Kidnappers Lane will cause a rat run, dangerous to pedestrians.<sup>397</sup>

154. A simple traffic model (not reassigning traffic to different routes consequent on the behavioural responses of drivers to predicted increases in traffic<sup>398</sup>) shows the severe results of adding additional traffic to already congested roads.<sup>399</sup> The appellant's SATURN modelling shows, whether or not the Leckhampton development is built, that overall growth in demand would be about 23% and there would be a substantial increase in over-capacity queues, indicating a considerable increase in congestion. The deterioration in the performance of the network would greatly exceed the 23% increase in demand.<sup>400</sup> Additional new development should not be introduced into this unacceptable situation. Mitigation measures are proposed but their effects are not quantified.<sup>401</sup>

#### *Landscape and visual impact*

155. Open countryside to which the public has access contributes to both the social and environmental roles of sustainable development as defined in paragraph 7 of the NPPF. Finding ways to enhance and improve the places in which people live and recognising the intrinsic character and beauty of the countryside are two of the objectives set out in paragraph 17 of the NPPF. Protecting and enhancing valued landscapes is a policy set out in paragraph 109 of the NPPF. There is therefore ample support in NPPF for any soundly based objection on landscape grounds.<sup>402</sup>

#### *The site itself*

156. The landscape value of Leckhampton Fields was comprehensively assessed for the Borough Council in 2003 by Landscape Design Associates (the LDA report).<sup>403</sup> The landscape, and its value, have hardly changed since.<sup>404</sup>
157. Previous Inspectors have recognised that the appeal site should be protected because of its varied topography, landscape history, dense network of footpaths

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<sup>396</sup> Paragraph 3.11 of Dr Mears's evidence (document CD/LH8)

<sup>397</sup> Paragraph 8.5 of Parish Council's Statement of Case (in green folder on PINS file)

<sup>398</sup> Twelfth paragraph of Mr Graham's closing statement (document INQ57), recognising point made in cross-examination of Dr Mears

<sup>399</sup> Sixteenth paragraph of Mr Graham's opening statement (document INQ54) and thirteenth and fourteenth paragraphs of his closing statement (document INQ57) referencing the traffic queue model and analysis found at section 6 (Annex 3) on page 57 of the Parish Council's Neighbourhood Planning NPPF Concept Plan and Local Green Space Application report July 2013 (appendix 2 to its Statement of Case in green folder on PINS file; further copies found at document CD/LEG2 and CD/HIG2)

<sup>400</sup> Paragraphs 3.15 to 3.20 of Dr Mears evidence (document CD/LH8), quoting the appellant's Transport Note 23 (document CD/APP43)

<sup>401</sup> Paragraphs 3.23 to 3.25 of Dr Mears's evidence (document CD/LH8). Paragraph 4.5.15 of Hilary Vaughan's evidence (document CD/APP70) refers, confirmed in cross-examination by her response to a question from Miss Clover

<sup>402</sup> Fifteenth paragraph of Mr Graham's closing statement (document INQ57)

<sup>403</sup> Document CD/LH3. A duplicate copy was sent with the Parish Council's representation to PINS found in red folder of third party submissions to PINS in response to notice of appeal.

<sup>404</sup> Sixteenth paragraph of Mr Graham's closing statement (document INQ57)

- and pedestrian access from several residential districts.<sup>405</sup> The walks are described in Appendix 3F of the Parish Council's Statement of Case<sup>406</sup> and in *Country Walks in and around Leckhampton* published by LEGLAG.<sup>407</sup> They include the Cheltenham circular footpath, an important recreational resource forming the basis of an annual charity event. The footpaths are well used.<sup>408</sup>
158. Section 3.4 of the LDA report defines the character of the study area as a mosaic of land uses, vegetation and historical features which combine to create a varied landscape which has a distinctive rural character and a strong sense of place. It goes on to note a network of small to medium sized fields, mature vegetation and established hedgerows, isolated specimen trees, orchard remnants and streams flanked by belts of native trees and shrubs.<sup>409</sup>
159. The proximity of, and interrelationship with, the AONB is also noted.<sup>410</sup> This is something to take into account as a characteristic of the site.<sup>411</sup> The views to the AONB from footpaths across the study area are as important as the access and recreational opportunities that the paths provide.<sup>412</sup>
160. The JCS sustainability appraisal of the Strategic Allocation notes its unusual land use pattern with many smallholdings, orchards and allotment/market gardens.<sup>413</sup> Many hedgerows would be defined as "Important" under the Hedgerows Regulations<sup>414</sup>. One needs only to drive along the A46 or to walk the footpaths which cross the site to appreciate the contribution which the Leckhampton fields and the escarpment make to local distinctiveness and sense of place.<sup>415</sup> These demonstrable physical attributes are what makes this a valued landscape.<sup>416</sup>
161. The report<sup>417</sup> of the Parish Council's public consultation in January 2015 on its LGS proposal contains many hundreds of comments from local people on the

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<sup>405</sup> Paragraph 4.4 of Dr Mears's evidence, referencing extracts from Cheltenham Local Plan Inspector's report 1993, quoted in the Statement of Common Ground (document INQ1) paragraphs 2.3.8 to 2.3.10 and in Tim Partridge's evidence (document CD/APP67), paragraphs 4.9 to 4.11. An extract is attached to Ken Pollock's additional representation to the Council at application stage (included in Appendix 1 of the Council's Appeal Questionnaire response) A lesser extract is at document CD/LAN11.

<sup>406</sup> In green folder on PINS file

<sup>407</sup> Document INQ8

<sup>408</sup> Paragraph 6.7 of the Landscape Design Associates' report (document CD/LH3)

<sup>409</sup> Paragraph 4.9 of Dr Mears's evidence (document CD/LH8) quoting section 3.4 of Landscape Design Associates report (document CD/LH3)

<sup>410</sup> Paragraph 4.10 of Dr Mears's evidence (document CD/LH8), quoting section 3.4 of Landscape Design Associates report (document CD/LH3). Paragraph 6.2 of LDA report also applies.

<sup>411</sup> Twenty-eighth paragraph of Mr Graham's closing statement (document INQ57)

<sup>412</sup> Paragraph 6.3 of LDA report (document CD/LH3)

<sup>413</sup> Section 3.2 of the Parish Council's Neighbourhood Planning NPPF Concept Plan and Local Green Space Application report July 2013 (appendix 2 to its Statement of Case in green folder on PINS file; further copies found at document CD/LEG2 and CD/HIG2)

<sup>414</sup> Ibid

<sup>415</sup> Eighth paragraph of Mr Graham's opening statement (document INQ54)

<sup>416</sup> Twenty-sixth paragraph of Mr Graham's closing statement (document INQ57) referencing paragraphs 14 to 18 of the Stroud decision [2015] EWHC 488 (admin) (document CD/CJ11)

<sup>417</sup> Document CD/LH2

reasons why the Leckhampton fields are so highly valued.<sup>418</sup> These have been analysed and ranked in a document presented to the JCS examination.<sup>419</sup> For all groups, what people value most are the views of Leckhampton Hill, the rural atmosphere, the views across the fields, the network of footpaths, the tranquillity, the opportunity for exercise, the trees, hedgerows and nature. The former nurseries are valued by the least number of people. The smallholdings are also fairly low on the list.<sup>420</sup> Central Fields in the triangle bounded by Kidnappers Lane, Farm Lane and Church Road<sup>421</sup> came out from the consultation as the area that people use most. Lotts Meadow came a close second.<sup>422</sup>

*Views from the site*

162. The view from the junction of Shurdington Road and Leckhampton Lane is the most important because it is a gateway view on entering Cheltenham and because it is across smallholdings, former nurseries and trees which give it a special rural character in contrast to views elsewhere which cross large grazed fields of no special character<sup>423</sup>. The proposal to build a commercial centre here, allegedly framing a view, would destroy this viewpoint.<sup>424</sup>
163. There are views across Lotts Meadow, which would be retained. Views from Robinswood Field and views from the path through the smallholdings, including a particularly scenic one from a gateway across the holding in the field north of Lotts Meadow would be lost.<sup>425</sup>
164. Despite the Parish Council's concession in relation to the LGS submission, it is not promoting any form of hard development on the A46 frontage.<sup>426</sup> What is proposed pays no regard to local distinctiveness or sense of place.<sup>427</sup> It is self-evident that this development would be a substantial encroachment into the open countryside and would have an unacceptably adverse impact on views to and from the AONB escarpment. The best that can be promised is the retention of a few visual corridors such as that along the Hatherley Brook<sup>428</sup>

*Views from the AONB*

165. The views from the Devil's Chimney and from the Observation Table on Leckhampton Hill are of national importance. Leckhampton Hill is the only point on the Cotswold Way National Trail marked as a tourist attraction. Many people

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<sup>418</sup> Paragraph 4.11 of Dr Mears's evidence (document CD/LH8)

<sup>419</sup> Document INQ26A

<sup>420</sup> Commentary following table 13 of Parish Council's report on Public Consultation on the Protection of Local Green Space in South Cheltenham (document CD/LH2)

<sup>421</sup> Outside the appeal site

<sup>422</sup> Part 8 of Parish Council's report on Public Consultation on the Protection of Local Green Space in South Cheltenham (document CD/LH2)

<sup>423</sup> Paragraphs 4.13 to 4.15 of Dr Mears's evidence (document CD/LH8)

<sup>424</sup> Paragraph 4.13 of Dr Mears's evidence (document CD/LH8) and eighteenth paragraph of Mr Graham's closing statement (document INQ57)

<sup>425</sup> Paragraphs 4.17 to 4.22 of Dr Mears's evidence (document CD/LH8)

<sup>426</sup> Seventeenth paragraph of Mr Graham's closing statement (document INQ57)

<sup>427</sup> Eighteenth paragraph of Mr Graham's closing statement (document INQ57)

<sup>428</sup> Ninth paragraph of Mr Graham's opening statement (document INQ54) and paragraph 4.16 of Dr Mears's evidence (document CD/LH8)

from the UK and abroad come to see the view.<sup>429</sup> Within all of England it is one of only twenty-nine viewpoints listed in the AA four-inch to the mile Road Atlas of Great Britain<sup>430</sup>.

166. Notwithstanding NPPF terminology referring to the protection of landscape “in” AONBs, the Oxford English Dictionary defines landscape so as to encompass the view from a point. Consequently, although the Leckhampton Fields are not within the designated AONB, they are within its landscape.<sup>431</sup>
167. Development on the Leckhampton Fields would turn what is predominantly a rural view across the Severn Vale into a view across urban Cheltenham<sup>432</sup>. The impact of the potential development on the views from Leckhampton Hill has been studied in detail by the Parish Council.<sup>433</sup> It is the southerly parts of the Leckhampton Fields that make the largest contribution because of their proximity. It is the beauty of the foreground as well as the distant panorama that makes the view so special.<sup>434</sup> The land along the A46 has less impact because it is further away and so viewed at a shallower angle. Some development, confined to the northern fields close to the A46, and on the former nurseries, if well screened, might not cause undue harm to the view from the AONB.<sup>435</sup>

### *Ecology*

168. Bat surveys have noted the presence of Noctule and Soprano Pipistrelle bats (both Priority Species in the UK Biodiversity Action Plan). Surveys have found two badger setts, a medium population of slowworms and the presence of birds on the RSPB Red List: skylark, song thrush, house sparrow and linnet.<sup>436</sup>

### *Loss of agricultural land*

169. The Leckhampton Green Field Land is substantially grade 2 agricultural land.<sup>437</sup> Its use as market gardens, orchards, small holdings and small farms has declined

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<sup>429</sup> Paragraph 4.24 of Dr Mears’s evidence (document CD/LH8)

<sup>430</sup> Dr Mears in answer to my question, corrected by subsequent letter (document INQ41)

<sup>431</sup> Dr Mears’s elaboration of paragraphs 4.23, 4.26 and 6.1 of his evidence (document CD/LH8) contained in his letter of 2 November 2015 (document INQ41)

<sup>432</sup> Paragraph 4.26 of Dr Mears’s evidence (document CD/LH8)

<sup>433</sup> Paragraph 4.24 of Dr Mears’ evidence (document CD/LH8) referencing section 2 of Appendix 1 to the Parish Council’s report on Public Consultation on the Protection of Local Green Space (document CD/LH2) (duplicate copies with different page numbers attached to material submitted in response to notice of appeal (in red folder on PINS file) and attached as Appendix 3B to Parish Council’s Statement of Case (in Green folder on PINS file)) and photographic study attached as Appendix 3E to Parish Council’s Statement of Case (in green folder on PINS file) and duplicated as Appendix 4 to material submitted to PINS in response to notice of appeal (in red folder on PINS file). The same material is also appended (as appendices 1 and 4) to the LGS submission by Gloucester Rural Community Council in January 2015 (document INQ7)

<sup>434</sup> Paragraph 4.27 of Dr Mears’s evidence (document CD/LH8)

<sup>435</sup> Paragraph 4.28 of Dr Mears’s evidence (document CD/LH8)

<sup>436</sup> Section 3.2 of the Parish Council’s Neighbourhood Planning NPPF Concept Plan and Local Green Space Application report July 2013 (appendix 2 to its Statement of Case in green folder on PINS file; further copies found at document CD/LEG2 and CD/HIG2)

<sup>437</sup> Final paragraph of section 2 of the Parish Council’s Neighbourhood Planning NPPF Concept Plan and Local Green Space Application report July 2013 (appendix 2 to its Statement of Case

as a result of modern intensive horticulture,<sup>438</sup> the closure of the Cheltenham market<sup>439</sup> and short term leases<sup>440</sup>. But there are real economic growth opportunities in local fruit and vegetable production and a high demand in Cheltenham for more allotments.<sup>441</sup>

### *Local Green Space*

170. Notwithstanding the agreement between the Council and the appellant,<sup>442</sup> this appeal is the only forum in which to deal with the Local Green Space submission, albeit limited to ensuring that open space is protected from development rather than actually designated as LGS. Local residents are trying to carry forward the Localism agenda<sup>443</sup>. If planning permission is granted for this development, it will pre-empt the local residents' initiative. The JCS examination has taken on board the consideration of the submission but that exercise will be frustrated if planning permission is granted.<sup>444</sup>
171. The Parish Council considers that the Council's decision<sup>445</sup> to approach the designation of LGS through the Cheltenham Local Plan process rather than the JCS<sup>446</sup> is tantamount to a rejection of its proposals because the latter would have to be consistent with the JCS and the indicative development area proposed in the JCS precludes the full extent of the Parish Council's originally proposed LGS.<sup>447</sup> The Parish Council considers that the Council was wrongly advised in taking this decision.<sup>448</sup>
172. The Parish Council has since reviewed the extent of its original submission<sup>449</sup>, preparing a reduced submission, for which it obtained public support.<sup>450</sup> The
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in green folder on PINS file; further copies found at document CD/LEG2 and CD/HIG2). DEFRA and MAFF Agricultural Land Classification maps are attached to Appendix 3A of the statement of case

<sup>438</sup> Final paragraph of section 2 of the Parish Council's Neighbourhood Planning NPPF Concept Plan and Local Green Space Application report July 2013 (appendix 2 to its Statement of Case in green folder on PINS file; further copies found at document CD/LEG2 and CD/HIG2).

<sup>439</sup> Note on page 3 of Appendix 3G to the Parish Council's Statement of Case in green folder on PINS file

<sup>440</sup> Section 2.1 of Appendix 3b to Parish Council's Statement of Case (in green folder on PINS file)

<sup>441</sup> Section 2 of the Parish Council's Neighbourhood Planning NPPF Concept Plan and Local Green Space Application report July 2013 (appendix 2 to its Statement of Case in green folder on PINS file; further copies found at document CD/LEG2 and CD/HIG2).

<sup>442</sup> Paragraphs 20 to 22 of Mr Cahill's opening statement (document INQ52) and section 5.3 of the Statement of Common Ground (document INQ1)

<sup>443</sup> Paragraphs 5.24 to 5.30 of Dr Mears's evidence (document CD/LH8)

<sup>444</sup> Eighteenth paragraph of Mr Graham's opening, as delivered (document INQ54), modified by thirtieth and thirty-first paragraphs of his closing (document INQ57) and paragraphs 5.23 and 5.32 of Dr Mears's evidence (document CD/LH8)

<sup>445</sup> Apparently not originally communicated to the Parish Council according to paragraph 5.10 of Dr Mears's evidence (document CD/LH8)

<sup>446</sup> Paragraph 75 of Mr Cahill's closing remarks, referencing paragraph 4.2.13 of the Council's Committee report (document CD/LPA1). Paragraph 9.5 of Tim Partridge's evidence (document CD/APP67)

<sup>447</sup> Paragraph 5.9 of Dr Mears's evidence (document CD/LH8)

<sup>448</sup> Paragraphs 5.10 to 5.14 of Dr Mears's evidence (document CD/LH8)

<sup>449</sup> Paragraph 5.15 of Dr Mears's evidence (document CD/LH8)

<sup>450</sup> Paragraph 5.16 of Dr Mears's evidence (document CD/LH8)

Council declined to come to a view on this.<sup>451</sup> The whole matter has been placed before the JCS examination.<sup>452</sup> The report on the JCS examination is expected in 2016.<sup>453</sup>

#### *Other matters*

173. The Parish Council's Statement of Case<sup>454</sup> states its concern that the proposed development would result in an increased risk of flooding<sup>455</sup> and that the impact of new retail units in the new District centre proposed would impact on existing District centres. These concerns were not elaborated in detail at the Inquiry.

### **The Case for the Leckhampton Green Land Action Group (LEGLAG)**

#### *Housing Land supply*

174. In calculating the OAN component of the Housing Land Supply analysis, it is right to use an OAN of 9,100 rather than the higher figures suggested by the appellant, in accordance with the principles established in the "Hunston" case<sup>456</sup> because the methodology which led to that figure is consistent with the NPPF, as the appellant's witness states<sup>457</sup> and is an allocation to Cheltenham of an unconstrained figure for a housing market area which stretches across three authorities. The distribution of that unconstrained allocation is a matter for the JCS examination, not for the current appeal.<sup>458</sup>

175. The "Bloor Homes" case<sup>459</sup> shows that a decision maker has discretion over the level of buffer to be applied in the Housing Land Supply calculation. A buffer of 5% is appropriate, taking a long view outside the current 6-7 year depression, because 4,815 dwellings have been delivered since 2003 against an adopted requirement of 4,954.<sup>460</sup>

176. The key difference between LEGLAG and the appellants in terms of housing land supply relates to the delivery of JCS Strategic Allocation sites. In accordance with the principles of the Wainhomes case,<sup>461</sup> this is a matter of planning judgement.<sup>462</sup>

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<sup>451</sup> Paragraph 5.17 of Dr Mears's evidence (document CD/LH8)

<sup>452</sup> Paragraphs 5.17 to 5.20 of Dr Mears's evidence (document CD/LH8)

<sup>453</sup> Paragraph 5.22 of Dr Mears's evidence (document CD/LH8)

<sup>454</sup> Paragraphs 8.7 and 8.8 of document in green folder on PINS file

<sup>455</sup> Section 3.4.2 of the Parish Council's Neighbourhood Planning NPPF Concept Plan and Local Green Space Application report July 2013 (appendix 2 to its Statement of Case in green folder on PINS file; further copies found at document CD/LEG2 and CD/HIG2)

<sup>456</sup> Hunston Properties Ltd v SSCLG [2013]EWHC Civ 1610 and [2013]EWHC 2678 (admin) (document CD/CJ10)

<sup>457</sup> Tim Watton's evidence paragraph 4.7 (document CD/APP56)

<sup>458</sup> Paragraphs 3 to 10 of Dr Bowes's closing submissions (document INQ58)

<sup>459</sup> Bloor Homes East Midlands Limited v SSCLG [2014] EWHC 754 (Admin) (document CD/CJ14)

<sup>460</sup> Paragraphs 22 to 25 of Dr Bowes's closing submissions (document INQ58) and Hugh Lufton's oral evidence in chief

<sup>461</sup> Wainhomes (South West) Holdings Limited v. Secretary of State for Communities and Local Government [2013] EWHC 597 (Admin) (document CD/CJ2)

<sup>462</sup> Paragraphs 11 to 21 of Dr Bowes's closing submissions (document INQ58)



177. Cheltenham Borough Council's Annual Monitoring Report (AMR) December 2014 claims an identified 5.2 year Housing Land Supply,<sup>463</sup> 5.0 years with a 5% buffer<sup>464</sup>. It is based on an OAN of 9,100 derived from the submitted JCS<sup>465</sup> but the components of supply are not documented.<sup>466</sup>
178. A housing land supply calculation as at April 2014 suggests a supply of 6.06 years.<sup>467</sup> This includes the expectation of 1,975 homes from seven of the eight draft JCS Strategic Allocation sites (excluding only the appeal site).<sup>468</sup>
179. Rolling forward the calculation to 2015 shows 9.12 years housing land supply, including the expectation of 2,900 homes from seven out of eight draft JCS Strategic Allocation sites (excluding only the appeal site)<sup>469</sup>. Reducing this delivery to a reasonable expectation of 1,000 still produces a 5.2 year housing land supply<sup>470</sup> and so, paragraphs 49 and 14 of the NPPF are not engaged.<sup>471</sup>
180. Even if no five-year housing land supply can be demonstrated, the "Barwood" case<sup>472</sup> means that policies designed to protect specific areas or features are not out of date. Saved Local Plan policies CO1 and CP3 which, read with paragraphs 7.40 to 7.42, plainly provide a presumption against granting permission for the appeal proposal,<sup>473</sup> fall within this description.<sup>474</sup> So, the statutory framework against which to judge the appeal remains the policies of the development plan unless material considerations indicate otherwise.<sup>475</sup>
181. In such cases, other planning considerations can be overriding.<sup>476</sup> They may include the existence of planning constraints,<sup>477</sup> which is the case in Cheltenham.<sup>478</sup>

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<sup>463</sup> Paragraph 3.3 of Hugh Lufton's evidence (document CD/LEG10), quoting paragraphs 5.1 to 5.7 of the Council's AMR December 2014

<sup>464</sup> Paragraph 3.5 of Hugh Lufton's evidence (document CD/LEG10)

<sup>465</sup> Paragraph 3.4 of Hugh Lufton's evidence (document CD/LEG10)

<sup>466</sup> Paragraph 3.9 of Hugh Lufton's evidence (document CD/LEG10)

<sup>467</sup> Paragraph 3.15 and Table 1 of Hugh Lufton's evidence (document CD/LEG10)

<sup>468</sup> Paragraph 3.13 of Hugh Lufton's evidence (document CD/LEG10) with explanation given in oral evidence in chief

<sup>469</sup> Table 2 of Hugh Lufton's supplementary evidence (document CD/LEG11) with explanation given in oral evidence in chief

<sup>470</sup> Table 3 of Hugh Lufton's supplementary evidence (document CD/LEG11) with explanation given in oral evidence in chief

<sup>471</sup> Paragraph 27 of Dr Bowes's closing submissions (document INQ58)

<sup>472</sup> *South Northamptonshire v SSCLG* [2014] EWHC 573 (Admin) (document CD/CJ6)

<sup>473</sup> Paragraphs 30 to 33 and 38 of Dr Bowes's closing submission (document INQ58) and paragraph 8.2 of Hugh Lufton's evidence (document CD/LEG10), quoting Local Plan paragraphs 7.40 to 7.42 (document CD/POL4)

<sup>474</sup> Paragraphs 34 and 35 of Dr Bowes's concluding submission (document INQ58)

<sup>475</sup> Paragraphs 29 and 38 of Dr Bowes's closing submission (document INQ58), referencing s38(6) of the Planning and Compulsory Purchase Act 2004

<sup>476</sup> Paragraphs 4.1 and 4.2 of Hugh Lufton's evidence (document CD/LEG10), referencing appeal decisions APP/C1570/A/13/2201844, APP/H3510/A/13/2197077, APP/M1520/A/12/2177157, APP/R0660/A/13/2209335 and APP/R0660/A/13/2197532 and 2197529 with extracts quoted in his Appendix 2

<sup>477</sup> Paragraph 39 of Dr Bowes's closing submission (document INQ58)

<sup>478</sup> Paragraph 40 of Dr Bowes's closing submission (document INQ58) referencing his cross examination of Mr Watton

### *Unsustainable development*

182. Even if paragraph 14 of the NPPF is engaged, it only applies if the scheme is sustainable.<sup>479</sup> But, it is not<sup>480</sup>, because;

- The appellant's illustrative masterplan<sup>481</sup> is unilateral, has not been followed by other applicants (whose proposals sum to a total larger than that of the masterplan<sup>482</sup>) but is adjusted in response to their proposals<sup>483</sup>. It is not followed by agreed implementation arrangements for schools and open space provision and does not make proposals for land within the allocation not owned by the four major landowners, so there is no jointly prepared masterplan to coordinate the various sites (increased in number by the deletion of Berry's Nursery from the current proposal) within the JCS Strategic Allocation.<sup>484</sup>
- The omission of Berry's Nursery from the appeal site condenses 650 dwellings onto a smaller site.<sup>485</sup>
- It prejudices the outcome of the JCS examination, which is considering both alternative sites for housing development and alternative (LGS) proposals for the appeal site and so, would not be plan led. It would be premature.<sup>486</sup>
- It would cause demonstrable landscape harm.<sup>487</sup>
- It would cause the loss of high quality agricultural land.<sup>488</sup>
- It would present significant adverse traffic impact, causing residents to plan their journeys differently, change journey times, re-route or choose not to travel and adversely affecting the local economy.<sup>489</sup>

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<sup>479</sup> Paragraph 42 of Dr Bowes's closing submission (document INQ58) quoting paragraph 54 of *Dartford BC v SSCLG* [2014] EWHC 2636 (Admin)(document CD/CJ15)

<sup>480</sup> Paragraph 43 of Dr Bowes's closing submission (document INQ58)

<sup>481</sup> Document CD/APP48

<sup>482</sup> Point made in cross-examination of Mr Partridge by Mr Lufton

<sup>483</sup> Document CD/OTH20

<sup>484</sup> LEGLAG's original objection to the Council on the application, Section 5 and Appendix 3 of Hugh Lufton's proof of evidence (document CD/LEG10) and oral evidence in chief

<sup>485</sup> Hugh Lufton's oral evidence in chief

<sup>486</sup> Section 6 of Hugh Lufton's evidence (document CD/LEG10) quoting NPPF paragraph 17 and advice in the now cancelled publication *Planning System: General Principles* but which was similar to advice now given in National Planning Practice Guidance

<sup>487</sup> Sections 7, 8, 9 and Appendix 1 of Hugh Lufton's evidence (document CD/LEG10), referencing Landscape Design Associates' 2003 report (document CD/LEG4), previous Inspectors' reports and decisions reported earlier under *Planning History* heading, Local Plan policies and policies contained in Cotswold AONB Conservation Board documents

<sup>488</sup> LEGLAG's original objection to the application

<sup>489</sup> Section 10 of Hugh Lufton's evidence (document CD/LEG10) quoting comments on the application from the Cheltenham Chamber of Commerce (Appendix 4 to Hugh Lufton's proof) and comments on submitted JCS from Stagecoach West bus company (a transcript may be found at Appendix A to Mary Nelson's submission to PINS in response to the notification of the appeal, in red folder on PINS file) and referencing previous appeals dismissed on highway grounds; APP/1990/A/73/12783/4; APP/5228/A/75/9506; APP/5228/A/75/9506; APP/B1605/A/98/289920

- There are already instances of European Union air pollution limits being exceeded. The development would cause increased air pollution, with adverse effects on health.<sup>490</sup>

## **The cases for unrepresented third parties**

### ***Mary Nelson***

183. The appeal proposal needs to be seen in the context of transport issues for the entire Leckhampton Strategic Allocation.<sup>491</sup> At the time the Council was considering this proposal, a four-page JCS Transport Report, dated March 2014 advised that in all scenarios for the year 2031, vehicle delay would be prevalent with vehicles travelling increased distances to avoid congested junctions and that unless this delay were mitigated, the viability of proposed development identified in the JCS would be prejudiced. A highway infrastructure scenario would significantly reduce vehicle delay but its deliverability and affordability meant that more work was needed before a preferred transport package could be identified.<sup>492</sup> The local bus company, Stagecoach, objected that work to assess housing need objectively had not been matched by strategic modelling and that, in consequence, the JCS was unsound.<sup>493</sup>
184. As things stand, there is currently no agreed preferred transport strategy to mitigate the impact of the JCS allocations. The County Council as local highways authority is not in a position to agree a transport strategy for the JCS.<sup>494</sup>
185. The Strategic Allocation which includes the appeal site was originally predicated on the provision of a number of items of infrastructure including a £6million Park and Ride site on the A46 together with £3 million high frequency bus service and £10 million bus priority measures. The park and ride proposal has now disappeared and bus priority measures on the A46 Shurdington Road are physically unachievable.<sup>495</sup>
186. Following the refusal of permission (and also too late for the public consultation on the presubmission JCS) a number of transport modelling studies have been published.<sup>496</sup> This has culminated in the Gloucester, Cheltenham and Tewkesbury JCS Transport Mitigation Summary Report dated 10 July 2015 by consultants Atkins.<sup>497</sup> The mitigation it proposes in respect of the appeal site includes the diversion of bus services through the site, yet the Stagecoach bus company advises that it is not appropriate to divert service 10 through the appeal site. Diversion of other bus routes would require large detours and a crossing of the congested Shurdington Road.<sup>498</sup>

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<sup>490</sup> Section 10 of Hugh Lufton's evidence (document CD/LEG10)

<sup>491</sup> Ninth paragraph of Mary Nelson's Inquiry Statement (document INQ12) (I have imputed paragraph numbers to this document)

<sup>492</sup> Part 1 of Mary Nelson's submission to PINS in response to notice of appeal

<sup>493</sup> Eighth paragraph of Mary Nelson's Inquiry Statement (document INQ12) and Part 4 and Appendix A of Mary Nelson's submission to PINS in response to notice of appeal

<sup>494</sup> Sixteenth to eighteenth paragraphs of Mary Nelson's Inquiry statement (document INQ12)

<sup>495</sup> Part 7 of Mary Nelson's submission to PINS in response to notice of appeal

<sup>496</sup> Sixth paragraph of Mary Nelson's Inquiry statement (document INQ12) and Part 1 of Mary Nelson's submission to PINS in response to notice of appeal

<sup>497</sup> Part 2 of Mary Nelson's submission to PINS in response to notice of appeal

<sup>498</sup> Part 3 of Mary Nelson's submission to PINS in response to notice of appeal

187. Traffic calming works in Leckhampton Lane and Church Road are proposed but much greater congestion would result from the development for which no mitigation is possible.<sup>499</sup>
188. The Atkins report redressed the balance between local roads and the Strategic Road Network which in earlier studies would have resulted in 15mph speeds on side roads to deter traffic from rat running. This would have had a significant impact on people's ability to travel efficiently and effectively to and from their employment and on other required journeys during peak and busy times. It would have been inappropriate to the function of some of the more major side roads. Traffic management measures would limit the growth of traffic on local roads to 25%. The resulting displacement of traffic to circuitous alternative routes would be unacceptable.<sup>500</sup>
189. An increase in cycling is being relied upon as mitigation. Yet added accesses and an increase in traffic on Shurdington Road will not encourage cycling.<sup>501</sup>
190. For all the above reasons, a thorough examination of JCS transport issues within the Examination in Public should be allowed to happen before a decision is made on the current appeal.<sup>502</sup>

### **Gerry Potter**

#### *Flooding*

191. Video evidence<sup>503</sup> shows flooding that has taken place in 2012 on some of the appeal site. In times of heavy and prolonged rain water emanating from Leckhampton Hill creates the Hatherley Brook and the Moorend Stream. They cause surface water flooding on Church Road, across Lotts Meadow, on Kidnappers Lane and downstream in Warden Hill and Merestones Drive.<sup>504</sup>
192. The areas affected are shown on the Environment Agency's flood map as flood zone 3b.<sup>505</sup> The appeal proposal includes a substantial amount of development within these affected areas.<sup>506</sup> There is concern that the measures proposed by the developer would be ineffective or would increase downstream flooding.<sup>507</sup>

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<sup>499</sup> Part 5 of Mary Nelson's submission to PINS in response to notice of appeal

<sup>500</sup> Paragraphs 12 and 13 of Mary Nelson's Inquiry statement (document INQ12) and Part 6 of Mary Nelson's submission to PINS in response to notice of appeal modified by her responses to cross-examination and by her response (document INQ28B) to Gloucestershire County Council's position statement (document INQ28A)

<sup>501</sup> Part 6 of Mary Nelson's submission to PINS in response to notice of appeal

<sup>502</sup> Final paragraph of Mary Nelson's Inquiry statement (document INQ12)

<sup>503</sup> Document INQ11

<sup>504</sup> Mr Potter's Inquiry Statement and closing written submissions (documents INQ10 and 26B)

<sup>505</sup> Attached to document INQ26B

<sup>506</sup> Fourth paragraph of Mr Potter's closing written submission (document INQ26B)

<sup>507</sup> Sixth paragraph of Mr Potter's closing written submission (document INQ26B) and subsequent quotations from comments made by Leckhampton with Warden Hill Parish Council and by Shurdington Parish Council

### *Traffic*

193. There is existing congestion on Shurdington Road. The proposed development of the appeal site and of other sites within the Strategic Allocation would make this worse. The closures of Farm Road and Kidnappers Lane would force existing residential traffic through the new estate. Its narrow roads and sharp bends would make this unsafe for potential future residents.<sup>508</sup>

### *Density*

194. The high density proposed, with buildings 2.5 and 3 storeys high and no green space proposed, would be out of character.<sup>509</sup>

### **Ken Pollock**

195. Mr Pollock's arguments were given both orally and set out in thirteen documents.<sup>510</sup> They may be summarised as follows;

- The land is a rare survival, so close to a large town, of an intricate, historical landscape<sup>511</sup>, fortuitously endowed with a dense network of footpaths. It is the best example in Cheltenham of an historic village surviving on the edge of the town. Its value was recognised at the Cheltenham Local Plan Inquiry of 1992. It deserves recognition by the designation of LGS.
- No other hill view contribution to the setting of Cheltenham can match that of the view of Leckhampton Hill from Shurdington Road because of its proximity and varied appearance.
- Views internal to the site have value, from footpaths other than Lotts Meadow<sup>512</sup>.
- Cheltenham's constraints should be accepted. It is dealing with its housing land supply in partnership with Gloucester and Tewkesbury. The three authorities jointly have an adequate five-year supply.
- There are alternatives available to replace Leckhampton as a JCS Strategic Allocation. Two thirds of all objections to the JCS concern the south Cheltenham allocation.

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<sup>508</sup> Document INQ37

<sup>509</sup> Document INQ37

<sup>510</sup> Numbers KP1-10 were submitted to PINS in response to the notification of appeal and are found in a red folder on PINS file. They are; (1) Script for JCS Matter 8; Leckhampton Allocation A6; (2) Leckhampton Greenfield – Recommended Inspection Route; (3) Detailed flaws giving grounds for refusal; (4) Maladministration of the Leckhampton JCS Allocation (A6); (5) Extract from Cheltenham Local Plan Inquiry (1993) Inspector's Report; (6) Final Summary to prevent this very avoidable sacrifice of Cheltenham's Leckhampton landscape; (7) Matter 8: Strategic Allocation A6 – Leckhampton; (8) Essential illogic of the advice dated 8-4-14 by Junior Counsel John Hunter for CBC; (9) Leckhampton Green Link, A Landscape and Historical Appraisal by Ken Pollock for Cheltenham Civic Society 1992; (10) Outstanding flaws in the Miller-Bovis proposals. KP11 is Mr Pollock's opening statement to the Inquiry (document INQ9). His closing Final Note is document INQ36A. He provided information about events after the last sitting day in document INQ50.

<sup>511</sup> Continuity of field boundaries is demonstrated from 1746 maps onwards

<sup>512</sup> See Country walks in and Around Leckhampton (document INQ8)

- The appeal proposal is premature and prejudicial to the JCS examination not just in terms of housing allocations and consideration of LGS but also in terms of transport issues awaiting studies due to report in Spring 2016.
- Shurdington Road, even with environmentally unattractive enlarged junctions, would fail to have sufficient capacity to serve the development.
- Displacement of traffic would be onto unsuitable roads, themselves lacking capacity.
- Mitigation of traffic effects would be impractical or ineffective; it is not speed which needs to be moderated on Church Road/Leckhampton Lane but congestion; the length of the queuing lanes at Moorend Park Road would not be increased but the hazard to pedestrians would be by removal of a refuge; the diversion of bus route 10 is not wanted by the operator; other routes canvassed for diversion to the site are infrequent; the South West Cheltenham Modal Shift Strategy will have negligible effect.
- Closures and re-routeings of Kidnappers Lane would be inappropriate, inconvenience existing residents which it serves and fail to achieve comprehensive access for the whole JCS Strategic Allocation.
- The environmental dimension of sustainable development cannot be replaced once lost, so should have a veto over the other dimensions.
- Traffic impacts would cause harm to the economic dimension of sustainable development.
- The prominence of the commercial centre would give it disproportionate attraction, drawing trade from, and so harming, other local centres.
- The density proposed would be too great for a rural edge location in proximity to the AONB.
- The illustrative masterplan does not demonstrate the feasibility or viability of the scheme.
- There would be a loss of "Best and Most Versatile" agricultural land.
- No viability assessment demonstrates that promised 40% affordable housing can be delivered.

### ***Other speakers***

196. Vivian Matthews, Ann Davies, Gillian Goulet and Ann McIntosh did not present a case orally but put questions to Hilary Vaughan concerning the efficacy of modal shift to buses and to cycles, the alleviation of problems on Church Road, the effects of other development and the needs of emergency vehicles.

### **Written Representations**

#### *Gloucester County Council*

197. Gloucester County Council (GCC) provided a lengthy (56 page) commentary on the planning application with a five-page non-technical summary as well as a

Technical Note on the contributions expected from the s106 agreement<sup>513</sup> and a justification for including monitoring costs within the agreement.<sup>514</sup> In brief, these confirm that the site is located within a range of destinations that can be accessed by walking, cycling and public transport. This location means that through area wide travel planning and modal shift, patterns of growth can be actively managed to make the fullest use of these modes.

198. It notes that the A46 Shurdington Road experiences recurrent congestion on a regular basis, that two junctions (at Leckhampton Lane and at Moorend Park Road) have capacity issues and that the development proposed will impose on the performance of those junctions. However, GCC takes the view that the development is only required to mitigate its own impact, not any existing capacity issues.
199. GCC confirms that the development is likely to generate 434 (am) and 460 (pm) additional trips. It notes that the applicant and the highway authority have prepared a package of mitigation that will deliver modal shift and improvements to capacity along key transport networks. These should not include restrictions on Leckhampton Lane but should include improvements to the signals at Moorend Park Road and a contribution to the South West Cheltenham Modal Shift Strategy. This will build upon work already carried out through the Local Sustainable Transport Fund to develop a real modal shift towards alternative modes, helping to reduce the impact of car-borne trips.<sup>515</sup>
200. It concludes that, with mitigation measures coupled with area wide modal shift and trip banking, the residual cumulative impact of the development compared with what would happen anyway by 2023 will not be severe.<sup>516</sup> Situations of congestion would be relatively short-lived. This is not to say that there would be no queuing but delays should be of relatively short duration and confined to the peak hours.<sup>517</sup> It confirms that the matters raised by Mary Nelson do not affect GCC's position.<sup>518</sup>

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<sup>513</sup> Document INQ3

<sup>514</sup> Document INQ47(e)

<sup>515</sup> The section headed *Leckhampton (650 dwelling) Contribution* of Appendix E of Gloucestershire County Council's Highway Contributions Technical Note (document INQ3) explains that the £400,000 contribution from the development would not be spent, as had been initially proposed, on continuing funding for Personalised Travel Planning for existing residents or for Work Place Travel Planning for existing employers. Instead, the money would be spent on providing infrastructure, the lack of which is currently a barrier to making journeys by non-car means. These include; increasing public transport provision to the Strategic Site Allocation SA6; creating and extending combined pedestrian/cycle provision to major employment, education and transport destinations in Cheltenham; ten cycle and walking signs providing route and journey-time information; a monolith in the local centre; and the Up Hatherley Cycle Way.

<sup>516</sup> Second paragraph of "Local transport Modelling" section of Non-Technical summary of Document CD/HIG14 and concluding paragraph of chapter six of document CD/HIG14

<sup>517</sup> Final four paragraphs of chapter nine of document CD/HIG14

<sup>518</sup> Document INQ28A

*Martin Horwood, former MP*

201. As MP (2005-2015), Mr Horwood commented on the application in an eighteen-page letter to the Council<sup>519</sup> and in addresses to the Council and its committees which are referred to in material submitted by other participants to this Inquiry.<sup>520</sup> He also made a final written submission to the Inquiry.<sup>521</sup>
202. He points to conflict with the existing, valid Cheltenham Local Plan, quoting paragraphs 7.1, 7.2 and 7.40 to 7.42 and policies CP1, CP3, CP4, CP7, GE2, GE6 and CO1. He contrasts the unique network of public rights of way giving access to an area of rural and agricultural character on reasonably flat and accessible land close to an urban population with poorer accessibility to the AONB or to farmland in the Green Belt.
203. Although the site is part of an allocation in the submitted JCS, this is hugely contentious and the subject of many significant unresolved objections from a wide range of substantial objectors. A decision on this appeal would pre-empt that process and proposals for designation of LGS.
204. The extent of land sought for designation as LGS would be at the larger end of the range but much more comparable to the size of a Site of Special Scientific Interest than to a Green Belt designation and so would not be at all extensive in the local context.
205. The AMEC review of JCS Site Assessment/Capacity Testing Final Report is quoted, waxing lyrical about the landscape quality of the site, its unusual land use patterns and key views. Planning Inspectors have repeatedly rejected development proposals, citing the rural character of the land. Its development would contradict four of the core planning principles set out at paragraph 17 of the NPPF as well as detailed requirements set out in paragraphs 74 and 109 to 125 of the NPPF.

*Corporate responses*

206. Appendix 1 to the Council's Appeal Questionnaire Response details comments on the application from 21 consultees, both internal and external to the Council. One of the external consultees is the Leckhampton with Warden Hill Parish Council whose views are reported separately. Shurdington Parish Council considered the application to prejudge the JCS and had specific concerns about the setting of Cheltenham, the view from the AONB, traffic impact, agricultural land loss and flooding.
207. Of the other external consultees, Tewkesbury Borough Council and Cheltenham Civic Society both support the proposal, the latter with some reservations concerning congestion, the former with some concerns about development coming forward without a wider development strategy. The Highways Agency originally issued a Holding Direction while it evaluated the

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<sup>519</sup> Flagged amongst the file of 603 representations forming Appendix 2 to the Council's appeal questionnaire response. A further copy is found at Document CD/LEG7a.

<sup>520</sup> Statement by Martin Horwood MP to Cheltenham Borough Council Planning Committee (document CD/LEG7b); Freedom of Information Request to the Council 6 April 2014 (document CD/LH6)

<sup>521</sup> Document INQ49



proposal. This was subsequently withdrawn with the comment that the proposal was unlikely to affect the Strategic Road Network. Gloucestershire County Council Education and Community Services detailed the need for school and library provision; its Archaeological Service identified the need for further investigative work; its Highways Service response is reported separately. Gloucestershire Constabulary offered detailed advice on crime prevention in the design of the proposal. Both Severn Trent Water and the Environment Agency had no objections subject to conditions concerning drainage. English Heritage offered no comments, neither did the Gloucestershire Bat Group.

208. Natural England, the Campaign to Protect Rural England and the Cotswold Conservation Board all object to the proposal. Natural England points out that views to and from the escarpment are a recognised Special Quality of the AONB; that views well beyond the AONB itself are an integral part of its character and special qualities widely enjoyed by people outside the AONB and that the area including the application site is part of the setting of the AONB and contributes to its special qualities.
209. Natural England advises that the view from the Devil's Chimney would be interrupted by the proposed development. The scale of development would significantly change the view from an open, rural, expansive view to a predominantly urban view on the edge of Cheltenham.
210. Natural England also advises that the development should maximise the use of Green Infrastructure to provide landscape screening and ecological mitigation. It should also retain hedgerows, streams and trees for foraging bats and to enhance biodiversity.
211. The Campaign to Protect Rural England (CPRE) is concerned at the absence of a comprehensive analysis of transport impacts, the effects on the setting of the AONB in terms of views in both directions, the average site density of 42 dph being inconsistent with the landform, location and existing adjacent housing, details of design and layout and the uncertainties of delivering affordable housing.
212. The Cotswolds Conservation Board supports Natural England's comments about the impacts on the special qualities of the AONB defined in its Management Plan, including views to and from the AONB. The Board invokes appeal decision APP/G1630/A/12/2183317 in support of its view.

#### *Individual responses*

213. Appendix 2 to the Council's response to the Appeal Questionnaire records 603 individual representations, of which 587 are recorded as objections, 10 as simply representations and 6 as submissions in support of the proposal. Paragraph 1.6.5 of the Council's officer report<sup>522</sup> analyses the key concerns and points made in each comment;
- 602 Traffic Congestion
  - 501 Loss of Green fields

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<sup>522</sup> Document CD/LPA1

- 447 Pollution
- 430 Lack of school places
- 425 Prematurity/issues with JCS
- 369 Question need for housing
- 367 Highway Danger
- 356 Impact on Wildlife
- 353 Visual and Landscape impact on AONB
- 338 Traffic – Rat running
- 333 Amenity
- 321 Conflict with the Parish Plan
- 284 Lack of infrastructure
- 108 Flooding
- 37 Lack of Medical Facilities
- 24 Not enough Jobs
- 12 Overdevelopment/density too High
- 6 Impact on tourism
- 5 Lack of Sewage
- 4 inadequate local parking facilities supermarket parking
- 3 Impact on Public Transport
- 3 impact on Sports Pitches
- 3 Issue with Landscaping scheme
- 2 Increase in Crime
- 1 no provision for gypsy traveller accommodation

It should be noted that a considerable number of these representations were under the misapprehension that the site is designated Green Belt. A further eighteen additional representations making similar points were received after this analysis was made.<sup>523</sup>

214. In response to the notification of the appeal, forty-seven parties made representations to PINS. Whilst mostly repeating the points made by individuals at the application stage, about half of the representations objected to the propriety of omitting the Berry's nursery land from the area of the site, noting a resultant increase in density and seeking the application to be "reset". An

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<sup>523</sup> Additional representations included in Appendix 1 of the Council's Response to Appeal Questionnaire

individual objector, together with a petition of fifty-five names, supported by a (then prospective) MP and a local Councillor, objects to the indications for a bus stop and shelter to be provided outside number 104 Shurdington Road, shown on the detailed drawing of one of the accesses.

215. As noted earlier, the appellant has asked for the appeal to be determined on the basis of an amended plan omitting this element of the detail. In response to the advertisement of the amendments to the detailed drawing of the access, deleting the bus stop element, four responses were received, three agreeing to the amendment, one not, as it would provide no help to the area.

### **Inspector's Conclusions**

216. In this section of my report, numbers in square parentheses thus [ ] refer to paragraphs in the preceding sections of the report from which these conclusions are drawn. During the Inquiry, extensive reference was made to numerous previous appeal decisions and court judgements. I have not made explicit reference to each and every one of these, except where it is necessary to distinguish the current case.

#### *The basis for decision*

217. Planning decisions must be taken in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan is the Cheltenham Borough Local Plan Second Review 1991-2011, adopted 10 July 2006 [20-25].

218. By its title it is out of date, without even needing to consider whether relevant policies for the supply of housing are out of date on account of a (disputed) lack of a five year supply of deliverable housing sites. Although the Development Plan remains the starting point for decision making, a relevant material consideration is therefore the second bullet point in the advice for decision taking contained in paragraph 14 of the NPPF; permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole or unless specific policies in the NPPF indicate that development should be restricted. The specific policies which parties claim indicate that development should be restricted are those in paragraphs 32 (transport effects), 76 (LGS) and 109 (valued landscape) [19]. If these do not prevail, then a balancing exercise should be carried out. A further relevant material consideration is emerging policy [26-35]. The claimed benefits of the proposal would also be a material consideration, even if not anyway weighed in the balancing exercise required by the NPPF.

219. Notwithstanding the four main issues which I identified at the start of the Inquiry [11] but having read and listened to the evidence submitted by all parties, I consider that the **main disputed considerations** in this appeal are;

- The effects of the proposal on the highway network.
- Its effects on air pollution.
- Its effects on the character and appearance of the area, including the nearby AONB.

- Whether it would prejudice the designation of LGS.
  - Its effects on local infrastructure.
  - Its effects on the supply of housing.
220. There are also less disputed considerations which need to be taken into account, such as;
- Its effects on the supply of pitches for gypsies, travellers and travelling showmen.
  - Its effects on agricultural land supply.
  - Its effects on flooding.
  - Its effects on the vitality and viability of existing local centres
  - Its effects on heritage.
  - Its effects on ecology.

*The highway network*

221. It is an often-expressed view that development should be expected to do no more than “wash its own face” and not solve all existing unrelated problems. In relation to transport, that appears to be the view of the appellant [92], the local authority [126] and the local highway authority [198]. By contrast, third parties point out that the existing situation into which the development would be placed is already not suitable in terms of highway capacity [152] and that the future situation would be far worse and even less acceptable as a location for the development of 650 dwellings [154, 182, 183, 193, 195, 213].
222. The location of the site provides opportunities for sustainable transport modes such as walking, cycling and public transport to reduce the need for major transport infrastructure [92 (2<sup>nd</sup> bullet) and 197]. The safety audits show that safe and suitable access to the site can be achieved for all people [92 (9<sup>th</sup> bullet)]. So, there is no real challenge to the appellant’s argument that the scheme would meet the requirements of the first two bullet points of NPPF paragraph 32.
223. But the third bullet of NPPF paragraph 32 refers not to the additional impact of a scheme, as the appellant asserts [92 (3<sup>rd</sup> bullet)] but to residual “cumulative” effects, implying that it is the cumulative effect of all expected development which must be taken into account, rather than the individual contribution of each development in turn, which is likely to be (as in the present case) marginal. (In cross-examination, the appellant’s witness, Hilary Vaughan confirmed that the appeal proposal would be responsible for only about 10% of the overall effect of development proposed by the JCS).
224. National Planning Practice Guidance (Guidance) also refers to the cumulative impacts of multiple developments within a particular area when determining the need for a transport assessment of a proposal.<sup>524</sup> It also advises that it is important to give appropriate consideration to the cumulative impacts arising

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<sup>524</sup> Guidance paragraph 013, reference ID 42-013-20140306

from other committed development at the decision-taking stage.<sup>525</sup> Hilary Vaughan, the appellant's expert witness appears to accept this in paragraphs 5.6.3 and 7.3.4 of her evidence.<sup>526</sup>

225. Whilst I can agree therefore, that the development should not need to solve all existing unrelated transport problems, the existing or future "in any event" situation on the highway network, is not an unrelated problem which evaluation of the proposed development should ignore. It is a related problem which is highly pertinent to the evaluation of the current appeal proposal.
226. Likewise, although DfT Circular 02/2013 deals only with the Strategic Road Network, its principles can have equal validity to the road network in general. Paragraph 9 advises that development proposals are likely to be acceptable if they can be accommodated within the existing capacity of a section (link or junction) of the strategic road network, or they do not increase demand for use of a section that is already operating at over-capacity levels, taking account of any travel plan, traffic management and/or capacity enhancement measures that may be agreed. It repeats the advice of NPPF paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
227. All parties accept that the present network is congested and that the A46 Shurdington Road and several of its junctions are already operating at over-capacity levels [92 (4<sup>th</sup> bullet), 130, 154, 182 (6<sup>th</sup> bullet), 198]. Applying the principles of DfT Circular 02/2013, this alone would suggest that the appeal should be dismissed unless mitigation resolves the problem.
228. The County highway authority predicts that the development will add 434 (am) and 460 (pm) two-way trips [199] to the Shurdington Road. The Council's argument that this effect has probably been underestimated [134] is convincing. Shurdington Road presently carries 1543 two-way flows past the site in the morning peak, 1726 in the evening<sup>527</sup>. Even on the County's figures, the already overloaded Shurdington Road would be expected to accommodate 27-28% more traffic. Yet the appellant's models predict increases in traffic on Shurdington Road past the site of 6% in the am peak, 17% in the pm.
229. The explanation given is that Shurdington Road and its junctions do not have spare capacity and that the traffic from the development would displace traffic from Shurdington Road on to other routes [92 (4<sup>th</sup> bullet)]. Those parties who are professionally advised by transport experts seem to accept the predictions of the appellant's traffic modelling that all development in and around Cheltenham will contribute to a cumulative effect of growth in traffic of about 23% by the year 2023 [92 (3<sup>rd</sup> bullet), 131, 154, 198].
230. In the end, traffic would find its own level on the network as a whole but there would be an overall increase in journey times and congestion [130] and a consequent deterioration in network performance. The Parish Council points out that, even on the appellant's own figures, the deterioration in the performance of

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<sup>525</sup> Guidance paragraph 014, reference ID 42-014-20140306

<sup>526</sup> Document CD/APP70

<sup>527</sup> Paragraph 3.10.1 of Supplementary Environmental Statement Movement Section (document CD/APP27)

the network would greatly exceed the 23% increase in demand [154]. In my view, that would constitute a severe impact.

231. The way displacement would work in practice needs to be understood. It means that traffic conditions on the A46 Shurdington Road would have to be so unacceptable to drivers that they would change their behaviour. The harmful practical effects of this displacement are graphically described in Hugh Lufton's evidence [182 (6<sup>th</sup> bullet)]. Notwithstanding the County highway authority's blithe assertion that congestion would be short-lived, of short duration and confined to the peak hours [200], those are the hours when the greatest number of people would be affected. It would cause not just displacement onto other roads but also to other times, to less preferred destinations, or to a decision not to travel and so it would affect all three dimensions of sustainable development.
232. Even allowing for the criticisms made by the Council of the appellant's modelling [128-136], the appellant's argument, that the part which the appeal development has to play in this would be small, is convincing [92 (3<sup>rd</sup> and 4<sup>th</sup> bullets)]. Nevertheless, the conclusion is inescapable that, unless effective measures are taken, the cumulative impact of development on conditions on the highway network in 2023, both for existing residents and for potential future residents of the appeal proposal, would be unacceptable.
233. The appellant claims [92 (6<sup>th</sup> bullet)], and the highway authority agrees [199], that the proposal includes a package of measures to alleviate the impact of development. I now turn to consider whether this would be sufficiently effective to overcome the identified issues and for the residual cumulative impact so to be acceptable.
234. The first observation I make is that Local Plan policy recognises that the historic distribution of development and land use in and around Cheltenham has created travel patterns which are currently characterised by substantial volumes of trips and a high proportion of car use. The transport policies of the County and Borough councils seek to modify these patterns by traffic management schemes and parking control [92 (6<sup>th</sup> bullet)]. It appears that the emerging JCS would not alter the thrust of this strategy. It also appears that the examination of the JCS has yet to demonstrate that this strategy is sound; further work has been requested and this is not likely to be reported until the spring of 2016 [123, 184].
235. The second observation I make is that even the County highway authority expects the measures proposed in this appeal to be effective only in reducing the residual cumulative impact of the development to less than severe compared with what would happen anyway by 2023 [200]. That is not the correct test, since the A46 Shurdington Road is already overloaded; applying the principles of DfT Circular 02/2013, the development should not be permitted unless effective measures are taken to relieve or counter the existing overloading of Shurdington Road. Neither appellant nor County highway authority claims that to be the case.
236. The third observation I make is that the package keeps changing; when the Strategic Allocation of site SA6 was first proposed, it was predicated on the provision of a Park and Ride site and bus priority measures. Those are not now proposed [185]. When the appeal site application was first submitted, the presumption was that physical measures would be taken to reduce congestion in Leckhampton Lane and Church Road by preventing traffic from turning into and

passing along Leckhampton Lane. Subsequent modelling showed that to be either ineffective or even counterproductive; it is not now proposed and forms no part of the measures now included in the s106 agreement [199]. Similarly, when the application was first submitted, numerous documents were adamant that bus route 10 would be diverted through the development. That is not now proposed.<sup>528</sup> At one stage modelling envisaged network management which would have resulted in speeds reduced to 15mph over a considerable proportion of the network. That is not now proposed [188]. Travel plans are known to be effective in achieving a modal shift of around 10%, more when combined with other measures. Workplace travel plans addressing commuter behaviours in Cheltenham as a whole were to have been funded through the development contributing to the South West Cheltenham Sustainable Transport Fund. Although the contribution remains, the workplace travel planning is not now proposed.<sup>529</sup> The package of measures intended to alleviate the situation is clearly a work in progress with no guarantee of any substantive or effective outcome.

237. The fourth observation I make is that the effects of the package of measures are unquantified. The South West Cheltenham Sustainable Transport Fund has no track record of outcomes. There are no indications of the possible effectiveness of any measure either alone or in combination. All the modelling carried out takes no account of the effects of the package [154]. This may be a consequence of its changing nature. Whatever the reason for the absence of quantification and without disagreeing with Mr Nock's view that a package could be devised which could be made to work [96], I share the scepticism of third parties about the effectiveness of the package of measures presently proposed.

238. I therefore conclude that, taking account of the measures which are included in the s106 agreement, the residual cumulative effects of development proposed would increase demand for use of sections of the highway network which are already operating at over-capacity levels, contributing to a severe impact on a wider area of Cheltenham as traffic is displaced. It would therefore conflict with Local Plan policy CP4 (b) which would permit development only where it would not result in traffic levels to and from the site attaining an environmentally unacceptable level. It would also conflict with emerging policies INF1 and INF2 which seek to ensure, amongst other matters, that any increased level of car use derived from development proposals would not result in a severe impact.

#### *Air pollution*

239. These arguments parallel the highways arguments. Certain locations on the highway network experience episodes when pollution levels exceed recommended maxima. But the threshold for unacceptability is properly calculated on an annual basis. That threshold is not presently exceeded.

240. Because the highway network runs at capacity at peak times, the future situation in those locations would hardly change as a result of the development. Instead, additional traffic (and consequent pollution) would be more widespread but would still not trigger annual thresholds of unacceptability [97]. I therefore conclude that the development would have an acceptable effect on air pollution.

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<sup>528</sup> See footnote 235

<sup>529</sup> See footnote 232

## *Character and appearance*

### *Density*

241. A number of parties make representations to the effect that the density of the scheme would make it out of character with the surrounding area [194, 195 (14<sup>th</sup> bullet), 213 (17<sup>th</sup> bullet)]. The reduction in the extent of the proposal's site area on appeal led to renewed concerns [6, 182 (bullet 2), 214].
242. The appeal site is 31.73 hectares in extent [15], reduced from 33.44<sup>530</sup>. Of this, the planning obligation requires 14.9 hectares to be kept free of development and used for open space and green infrastructure [63], 0.29 hectares for a doctor's surgery [64] and 1.1 hectares for a primary school [65]. So, the developable area of the site would be 15.44 hectares, reduced from 17.15. At 650 dwellings, the density would be 42 dwellings per hectare (dph), increased from 37.9. That would place it approximately in the middle of the range of densities (30-50 dph) envisaged by Local Plan policy HS2 and so would not be unacceptable.
243. In any event, density measured in terms of dwellings per hectare tells us nothing about its effect on character and appearance because "dwelling" as a unit of measurement is not a regular, unvarying quantity. A dwelling can vary between a bedsitter studio flat and a multi-bedroom mansion, with widely differing effects on character and appearance. To judge from the dwelling mix of the affordable units (which is specified in the s106 agreement) and policies on housing mix in the Local Plan (policy HS5) and in the emerging JCS (policy SD12), both of which emphasise provision addressing local needs identified in the most recent Strategic Housing Market Assessment (SHMA), it is likely that the majority of the housing proposed will be at the smaller end of the range. The consequence is that a "high" density in terms of dwellings per acre would not necessarily translate into an appearance of an intense development.
244. In response to my questions, Mr Partridge, the appellant's witness confirmed that the site could clearly not accommodate 650 x 6-bedroomed dwellings. He also confirmed that my calculation of site coverage, based on the likely footprints of two and three-bedroomed dwellings, combined with presumptions about garden sizes and the application of typical standards of car parking provision, privacy and daylighting corresponded with the approach that his clients would take in designing the scheme in detail. This is illustrated on page 78 of the Design and Access Statement.<sup>531</sup>
245. On this basis, I am satisfied that the illustrations in the Design and Access Statement represent a plausible and realistic depiction of the character and appearance of development which would result if this appeal were allowed. Even if the site were not sufficiently large and separated from surrounding development to allow it to develop its own character, I would not expect the likely outcome of detailed design to harm the character and appearance of the surrounding area. Similarly, if the eventual outcome of detailed applications on the various sites which make up the Strategic Allocation were to result in the delivery of a number of dwellings in excess of the expected figure, that would not

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<sup>530</sup> Figure given in paragraph 1.2 of Design and Access Statement (document CD/APP11)

<sup>531</sup> Document CD/APP11



necessarily be harmful in the context of the government's desire to boost significantly the supply of housing.

*Views from the AONB*

246. All parties agree that the view from the top of the escarpment is an element of the character of the Cotswolds AONB [82, 208]. The final sentence of the first paragraph of Appendix 4 (Boundary Setting Considerations) of Natural England's *Guidance for Assessing Landscapes for Designation as National Park or Area of Outstanding Natural Beauty in England*<sup>532</sup> advises that "visual association may also be used to help define the extent of land for inclusion in these circumstances" (ie transition areas). The boundary of the AONB lies at the foot of the scarp, along Leckhampton Lane and does not encompass the appeal site or any other greater extent of the view.
247. For this reason I concur with the appellant's opinion [73] that NPPF paragraphs 115 and 116 do not bind this site because it is not "in" the AONB. Nevertheless, in so far as the view "from" the AONB is part of its landscape as defined by the Oxford English Dictionary [166], it is clearly a matter of great significance in any event and part of a valued landscape which NPPF paragraph 109 advises us to protect.
248. Three parties (appellant, Council and Parish Council) provide professional evidence which analyses this view using methods in accordance with earlier or later drafts of guidance from the Landscape Institute. Both the appellant and the Council agree that the physical extent of change would be small [84, 147] but they disagree about its significance. The Parish Council takes the stance that change to nearer fields would cause more harm than to fields further away [167].
249. All three analyses are narrative and subjective. No scientific method of analysing the view was offered. But a reticular analysis of the various photographs taken from the viewpoint would show that the site occupies a tiny proportion of the view whether measured horizontally or vertically. Although those familiar with the scene and who are seeking to identify the site can pick out and identify individual fields with ease, the site is far from prominent in such a widespreading panorama.
250. Natural England is the government's adviser for the natural environment in England and so its advice is normally telling. But, to "interrupt" the view, as Natural England's comments would have us believe [209], the development would have to be about 200m high (about sixty-five storeys) and several kilometres wide. That would clearly not be the case and so, in this instance, Natural England's advice must be regarded as exaggerated.
251. Likewise, its advice, which is adopted by the Parish Council, that the scale of development would significantly change the view from an open, rural, expansive view to a predominantly urban view [167, 209] does not withstand scrutiny. As accepted by the Council's witness in response to my question, and as seen in the photographs produced as evidence and as seen on site, the view is indeed open and expansive but the dominant character of what is seen in the view comprises

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<sup>532</sup> Appended to Cotswold Conservation Board's response to original application included in appendix 1 of Council's response to Appeal Questionnaire

the suburban spread of Cheltenham. If this development were to proceed the extent of the suburbs would be slightly greater but the essential character of the view would remain unharmed.

252. There is speculation that the field patterns in the view from Leckhampton Hill may have inspired Lewis Carroll to think of a chess board in writing his book *Through the Looking Glass and What Alice Found There*. If this development were to proceed, the form of the pieces on the board might be different but essentially the view would remain unchanged; with undeveloped fields in the foreground of an open, expansive view towards distant hills across suburban parts of Cheltenham. I therefore conclude that both the view from and the character of the AONB would be unharmed.

#### *View to the AONB*

253. This subject is concerned with one view in particular; that from the western corner of the site, at the present junction between Kidnapper's Lane and Shurdington Road. As seen on site, it is a handsome prospect, enabled by the happenstance that the roadside boundary at this point is a low post and rail fence rather than a tall hedge which is more typical of the undeveloped land alongside Shurdington Road and it is improved by the characteristics which the Parish Council and Mr Pollock describe [162 and 195 (2<sup>nd</sup> bullet)].
254. It is a memorable feature in its own right but, its value does not seem any the greater because it appears on the approaches to Cheltenham (it may once have been the gateway to Cheltenham but it is now within the built up area). It does not register in any guide to Cheltenham, nor even in the booklet *Country walks in and around Leckhampton*, published by LEGLAG (document INQ8) and has no facilities from which to enjoy the view [81], so it would be easy to over-estimate its importance. It is simply one of a number of views from within the site [163], which I consider further in the next section of my report.
255. As the appellant's photomontages demonstrate, it is not inevitable that there would be no view remaining if the development were to take place. In theory, it is possible that a view framed or glimpsed is a view enhanced; that would be a matter of detailed design to be considered at a subsequent stage. It is therefore an exaggeration to say that the view would be "lost" or "destroyed" by the development [146, 162, 163].
256. At this point, the view straight ahead along Shurdington Road is of the developed area of Cheltenham with Cleeve Hill rising up behind. This shows that it is not necessary to have an open view in order to understand that the character of Cheltenham is to be closely surrounded by hills. I therefore conclude that the effects of the development on the view of Leckhampton Hill from this viewpoint are unlikely to compromise or harm the setting or character of Cheltenham. Any adverse effects derive from the contribution of the feature to the value of the site in its own right, to which I now turn.

#### *The site itself*

257. All parties accept that the southern part of the site has value in its own right [76, 77 (3<sup>rd</sup> bullet), 79, 167]. The two main parties' experts disagree about the value of the northern parts of the site itself. Mr Duckett considered that there is a low landscape value, a low/medium susceptibility to development and

- consequently an overall low sensitivity to development [76]. Mr Ryder considered that the northern fields had varying sensitivity and that their development was a very large magnitude of change which caused major/moderate harm [144]. In contrast to both of these experts, an earlier report by LDA, referred to by the Parish Council places value on the whole of the site[156-160].
258. My site visits, both informal and unaccompanied before the event, and formal and accompanied during the event, convince me that the LDA report referred to by the Parish Council carries the most compelling analysis of the worth of this site rather than the more recent work carried out by the Council and the appellant specifically for this proposal. That earlier report accurately describes the mosaic of land uses, varied topography, landscape history, dense network of footpaths, small to medium sized fields, mature vegetation, established hedgerows, isolated specimen trees, orchard remnants, streams and frequent glimpses of or views to the AONB which combine to make the whole of this site a memorable landscape [156-160]. Those characteristics remain largely unchanged.
259. Mr Cahill, speaking for the appellant, quoted Oscar Wilde's dictum "We are all in the gutter, but some of us are looking at the stars" to suggest that because a landscape of stellar quality (the AONB) can be seen from the site does not make the site itself stellar. That may be true but this site is no gutter.
260. In my view, the landscape value of this site depends less on the fact that it can be seen from the AONB, or that from it can be seen the fact that hills surround Cheltenham; rather, it is its own intrinsic charm which gives it value. That intrinsic charm is well described in the LDA report.
261. There has been a succession of planning Inspectors who have recognised the intrinsic landscape value of this site [37-39 and 43]. I have no reason to disagree with them. I concur with the opinion that it would be sad if Leckhampton fields were to be developed in preference to some less interesting but designated Green Belt land.
262. Of course, that is a relative, not an absolute judgment. It requires comparisons to be made with alternative sites for development and priorities to be established. That is not an exercise that can be carried out in the context of this s78 appeal. For that reason I also concur with the opinion of previous Inspectors that consideration of peripheral growth in Cheltenham should be done on a comprehensive and comparative basis. It is said that the JCS has done this but the JCS has yet to be found sound and two-thirds of all representations on the submitted JCS relate to this site [195 (5<sup>th</sup> bullet)] so it is too soon to say that that exercise has been completed, or to base a decision on it.
263. The affection which is felt for this site comes across strongly in the evidence of Mr Pollock [195]. He has maintained a defence of the site through several Inquiries. The evidence that the value he places on the site is shared by others is provided by the Parish Council [161]. Although the site does not comprise a designated landscape, it is clearly a valued one. Its value is not derivative from being seen in a view. Rather its value derives from its own characteristics, of which views towards the AONB are only one of a number of charming features.

*Conclusion on character and appearance*

264. I therefore conclude that the development of this site at the present time would harm the character and appearance of the local area through the loss of a valued landscape. Although its loss would not harm more structural elements of the wider contextual landscape character, such as the nearby AONB or the setting of Cheltenham as a whole, its development would cause a local loss.
265. It would conflict with those parts of Local Plan policies CP1, CP3, CP7 and CO1 which would permit development only where it would take adequate account of safeguarding attractive landscapes, complement and respect the character of the locality and not harm the visual amenity of the landscape, attributes and features which make a significant contribution to its character, distinctiveness, quality and amenity value. Although consistent with emerging (but not universally accepted) JCS policy SA1 which allocates the site for development and with emerging policy SD8 which requires development to preserve the special qualities of the AONB, it would also conflict with emerging JCS policy SD7, seeking to protect landscape character.

*Local Green Space*

266. At the start of this appeal, third parties argued that because the Council had put off the issue into the future consideration of the incipient Cheltenham Plan (part one) [88], this Inquiry was the only currently available forum by which the question of Local Green Space designation could be determined [170]. By the close of the Inquiry, it was apparent that the Council accepted that designation could occur in the JCS and that the JCS Inspector had been persuaded at least to consider the matter. The Parish Council has prepared a number of options, which have all been placed before the JCS examination [172].
267. NPPF paragraph 76 advises that the identification of land as Local Green Space should be consistent with the local planning of sustainable development and should complement investment in sufficient homes, jobs and other essential services. For that reason, it is understandable why the NPPF also advises that Local Green Space should only be designated when a plan (Local or Neighbourhood) is prepared or reviewed.
268. All parties agree that there is scope for some designation of LGS on this site [91]. For the reasons set out, I am not in a position to undertake the comprehensive assessment necessary to identify the extent of land for designation. Yet it is quite clear that to allow this appeal would preclude some of the Parish Council's options and so prejudice a decision which ought to be made through the JCS process [171].
269. The emerging plan is at an advanced stage. This question is currently under examination. The effect of allowing this appeal would predetermine a decision about the designation of Local Green Space. Such a designation would limit or control the scale and location of new development. Because this designation should only be made through the Local or Neighbourhood planning process, it is central to the emerging Local Plan. It therefore falls within the criteria

established by Guidance<sup>533</sup> for concluding that this proposal is premature. I so conclude.

### *Local Infrastructure*

270. The ninth reason for refusal references infrastructure, public services and facilities in general. It makes specific reference to facilities for walking, cycling, public transport, playspace, primary and secondary school facilities, library facilities, healthcare, management of common areas and affordable housing.
271. The submitted planning obligations include provision for all these specific elements [63, 64 and 65] together with a package of highway mitigation works. They also make provision for a gypsy and traveller contribution [64], which is considered further in a later section of my report.
272. Although, as reported earlier, I am not convinced that the package of facilities for highway mitigation, traffic management, walking, cycling and public transport would be adequate to make the development acceptable in transport terms, there is no evidence to cast doubt on the necessity of the majority of those items included in the s106 agreements to an eventual solution. Those which would provide a specific outcome (the road closures, the highway safety measures, the bus service provision and the travel plans) appear to be well justified, directly related to and proportionate to the development [197]. As reported earlier, my principal doubt concerns the effectiveness and therefore, necessity, of the £400,000 contribution to the South West Sustainable Transport Strategy. For that reason, I am not convinced that this element would comply with CIL regulation 122.
273. The necessity and proportionality of the primary and secondary school and library facilities is well justified [197]. The relevant Council certifies compliance with CIL regulation 123 and I have no reason to disagree. The particular argument put forward for including monitoring costs within the s106 agreement is convincing in this individual case, making a clear distinction from the Oxfordshire case<sup>534</sup> in that there are staged payments requiring notices to be served and responded to.
274. The open space which would be provided through the s106 obligation would exceed the Council's requirements but it is common ground that a large extent of the site should not be built on and so it is necessary that arrangements are made for its productive use and management. Affordable housing provisions are necessary to comply with Local Plan policy CP8. Both these provisions therefore comply with the CIL regulations.
275. There are other public services and infrastructure which would need to be strengthened to serve the development [61 (and footnote 125)]. The necessary improvements could be secured by conditions. With these in place, I conclude that the development would be served by adequate infrastructure, other than the transport provisions necessary to produce an acceptable outcome on the highway

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<sup>533</sup> Paragraph 014 Reference ID 21b-014-20140306 refers to predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan where the emerging plan is at an advanced stage as a circumstance where a refusal of permission on grounds of prematurity may be justified.

<sup>534</sup> Document CD/CJ16

network. With that exception, it would therefore comply with Local Plan policy CP8 which would permit development only where adequate provision has been made for the infrastructure, public services and facilities necessary to serve the development, including affordable housing.

*Gypsies, travellers and travelling showpeople*

276. Like affordable housing, the requirement to make a contribution to the provision of pitches for gypsies, travellers and travelling showpeople derives not from the effects of the development itself but from a planning policy. But, in contrast to the requirement for affordable housing, which derives from adopted Local Plan policy CP8, the Council's requirement for a contribution to the provision of gypsies, travellers and travelling showpeople derives from draft JCS policies SD14 and SA1 [148].
277. These are not adopted policies and even though the evidence of need which lies behind them does not appear to be questioned, there remain questions about the basis of the apportionment of the need to individual sites [113 (4<sup>th</sup> bullet)]. In the submitted JCS there is no apportionment of the need; draft policy SA1 simply requires proposals to demonstrate how pitch provision would be incorporated into developments.
278. At the start of the Inquiry into the current appeal a document of indicative draft strategic allocation policies was submitted.<sup>535</sup> Under indicative policy A6, twelve gypsy and traveller pitches were to be provided within the allocation site SA6 (which is, of course, considerably more extensive than the appeal site). The basis of this allocation was the relative size of each Strategic Allocation in relation to the total need for pitches.
279. At the close of the Inquiry, a copy of a topic paper being presented to the JCS examination was submitted.<sup>536</sup> This suggests that seven gypsy and traveller pitches should be provided within the Strategic Allocation site A6. The basis of this allocation was the relative contribution of each allocation to the overall need for housing in the JCS area.
280. The appellant continues to argue for an allocation based on the relative size of the site in relation to the need for pitches within Cheltenham alone, rather than the overall JCS area.
281. This is clearly a matter which is a current live issue within the context of the JCS examination. It would not be appropriate for me, within the context of a s78 appeal, to prejudge the report of the JCS examiner by making a recommendation on what the policy should be. Because there is not yet an adopted policy which directly relates the scale of the obligation to the development, I conclude that this element of the s106 agreement would fail the test of CIL regulation 122 and should be disregarded in making a decision on this appeal.
282. However, the consequence of disregarding the obligation is that the proposal must be found to fail to comply with draft JCS policies SD14 and SA1 because it does not demonstrate how pitch provision would be incorporated into the proposals; as the appellant points out, the masterplan for the Strategic Allocation

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<sup>535</sup> Document INQ4

<sup>536</sup> Document INQ45

which is submitted in support of the application shows no provision for gypsies, travellers or travelling showpeople [113 (3<sup>rd</sup> bullet)] The failure is not fatal, because it is not yet a statutory policy, nor even particularly significant given the small numbers now sought by the Council in relation to the overall need identified in the JCS work, but it is a factor to be weighed in the overall balance.

### *Housing supply*

283. The two main parties are agreed that there is a significant and serious shortfall in the supply of housing land and that the provision of housing is a major benefit of the scheme [66 (12<sup>th</sup> bullet)]. LEGLAG contests the first part of this agreement. It should also be noted that the JCS Housing Background Paper Update of November 2014, amended April 2015, asserts that the JCS can demonstrate sufficient deliverable sites to meet the needs of the three authorities as a whole and can also demonstrate sufficient deliverable sites to maintain a rolling five-year housing land supply across the JCS area including NPPF buffer but that includes the present appeal site as well as other contested sites.<sup>537</sup>
284. There are three parts to examining whether there is a housing land supply shortfall. The first part is to establish what needs to be supplied; the "requirement". The second is to establish what is likely to be supplied. The third part is to compare the two. The requirement is normally established by a Local Plan, which is meant to ensure that the full, objectively assessed needs for market and affordable housing in the housing market area (note; not the local authority's area) are met. As a matter of policy, and through the duty to cooperate, it is perfectly legitimate for a "requirement" in a particular local plan to be greater or lesser than the objectively assessed need for that area.
285. The "Hunston" case was prayed in aid of an argument that I should define an objectively assessed need (OAN), free of policy constraints, across the Housing Market Area [108]. But there are differences between the present case and the Hunston case; firstly, the present case has an emerging development plan in its final stages of preparation, whereas Hunston had not even the beginnings of an up to date development plan in existence; secondly, Hunston was concerned with establishing "very special circumstances" in a Green Belt case whereas here, there is no Green Belt, simply a balance of advantage to be identified; thirdly, the Housing Market Area for Cheltenham is not co-terminous with local authority boundaries, as recognised by the decision of the three authorities to produce a single, joint core strategy.
286. The submitted JCS states that the OAN for the JCS area is within a range of 30,500 to 38,000,<sup>538</sup> reflecting both demographic and economic projections. It then sets a housing requirement for each authority within the JCS area. That for Cheltenham is 9,100 by the year 2031 [27]. The JCS does not expect each authority's requirement to be met within each authority's administrative boundary; working cooperatively, supply is planned across the JCS area.<sup>539</sup> There is no specific methodology or guidance relating to the derivation of annual

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<sup>537</sup> Paragraph 9.2 of document CD/POL34

<sup>538</sup> Paragraph 3.1.6 of submitted JCS (document CD/POL10)

<sup>539</sup> Paragraph 3.2.9 of submitted JCS (document CD/POL10) and paragraph 9.5 of JCS Housing Background Paper Update of November 2014, amended April 2015 (document CD/POL34)

housing requirements where the unmet needs generated by one administrative area are being met within another.<sup>540</sup>

287. An updated evidence base for the JCS is dated November 2014.<sup>541</sup> It again reflects both demographic and economic projections. This recommends that the OAN for the JCS should be 30,400, of which that for Cheltenham should be 10,000. It appears, from questions asked by the JCS examining Inspector in May 2015,<sup>542</sup> that the OAN for the JCS was then put at 31,600. The joint authorities' response<sup>543</sup> reaffirms an OAN for the JCS area as 31,600, of which, that for Cheltenham is 10,400. But, owing to the inevitable uncertainties involved in projections of this type, the results should not be expected to have an accuracy rate of less than  $\pm 5\%$  at best.<sup>544</sup> So; the most recently calculated OAN for Cheltenham at the time of writing this report is a range between 9,880 and 10,920. However, that same document then goes on to explain why the housing requirement of 30,500 homes for the JCS area (9,100 for Cheltenham) is sufficiently robust to remain unchanged.<sup>545</sup>

288. I understand that the appellant does not accept this figure [108, 109] but I fully agree with Mr Cahill that this is a somewhat academic argument. The uncertainties of calculating an OAN are laid bare in the documents submitted in evidence. The presumptions which underlie them change on an almost daily basis as new information is received about migration flows and the other components of the calculation. It is chasing a will-o'-the-wisp to seek to arrive at a precise figure that can be guaranteed to hold good beyond the arrival of the next piece of information which will undermine it. The best that can be hoped is to reach a figure which is sufficiently robust to accommodate likely variations over time and then to monitor it. That is properly the function of the local plan process and the annual monitoring report.

289. For the purposes of this appeal, I note that the JCS authorities have submitted what they believe to be a sound plan, which sets a housing requirement of 9,100. Notwithstanding the subsequent additions to the evidence base which review the OAN, they still maintain that the 9,100 requirement figure is a sound one. The appellant's expert accepts that the methodology which led to this figure is consistent with NPPF advice [174 (footnote 457)]. The analyses on which this is based include both demographic and economic factors, so, without prejudice to any conclusion which may be reached by the JCS examining inspector in due course, I am not convinced by the appellant's argument that the figure needs to be increased by an economic uplift. I therefore advise that, for the purposes of this appeal, the housing requirement for Cheltenham should be taken as 9,100 by the year 2031.

290. If one limits analysis to the period of the economic recession [110], it is possible to demonstrate a failure to deliver to target but I prefer the longer view taken by Hugh Lufton [174] and set out in table 11 of the JCS Housing

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<sup>540</sup> Paragraph 9.3 of JCS Housing Background Paper Update of November 2014, amended April 2015 (document CD/POL34)

<sup>541</sup> Document CD/POL35

<sup>542</sup> Document CD/POL36

<sup>543</sup> Document CD/POL36a

<sup>544</sup> Paragraph 16 of Exam 34: JCS Responses (document CD/POL36a)

<sup>545</sup> Paragraphs 26 to 32 of Exam 34: JCS Responses (document CD/POL36a)



Background Paper Update.<sup>546</sup> This looks beyond temporary economic vicissitudes and suggests that, over the long term, there is no failure to deliver. I therefore advise that, for the purposes of this appeal, a buffer of 5% should be applied in calculating a five-year requirement. Consequently, it follows that the Council's calculation of its five-year requirement (3,174 dwellings) is the one to follow.

291. On the other hand, it is fair to observe that the Council has a consistently optimistic record of forecasting delivery [110], so its expected figure of 2,301 for delivery over the next five years should not be relied upon. Equally, the Council's comments on each individual site suggest that the appellant's figure of 1,536 may be too pessimistic.
292. In terms of delivery from JCS Strategic allocations within five years, the Council and the appellant are not so very far apart (0 – 180). Even allowing for Mr Lufton's point that the Strategic Allocations are meant to serve all three authorities jointly and so it would be misleading to limit the delivery ascribed to Cheltenham to just two of them, the trajectories of their delivery set out in figures 3, 4 and 5 of the JCS Housing Background Paper Update<sup>547</sup> show that his figure of 1,000 would be unrealistic.
293. The inherent uncertainties of delivery mean that it is not possible to arrive at a precise and reliable forecast; the best that can be said is that without this appeal Cheltenham is about two years' short of an identified five-year supply. The appeal itself represents the equivalent of about one-year's supply (although it would be likely to be delivered over a period of many years). That is an indication of a measure of one of the benefits it would bring.

#### *Other matters*

294. The appeal would involve the loss of an area of the best and most versatile agricultural land. But this would be only a part of the site. Its configuration does not lend it to separation from the whole. Its economic benefits have been undermined by fragmentation, recreational pressures and loss of markets [87, 169]. Its prospects are speculative at best [87, 169]. Although this matter must be taken into account, it does not seem to be of great significance.
295. The history of flooding in the area gives rise to understandable concerns [191]. But the person who articulated those concerns at the Inquiry confirmed that measures had already been taken to protect properties downstream of the site. He freely accepted that he did not understand the technical evidence presented by the appellants. As this is an outline application, that evidence is necessarily hypothetical. But, it is not challenged by any contradicting technical evidence and so it must stand. It demonstrates that a scheme could be designed which would allow the areas of the site proposed for housing to be developed, would hold floodwater safely on site and would discharge it at a rate which could reduce the risk of downstream flooding [99] and so count, in a small way, as a benefit of the scheme.
296. There is no technical evidence to substantiate local concerns about the impact of the new local centre on other local centres [173, 195 (13<sup>th</sup> bullet)]. By

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<sup>546</sup> Document CD/POL34

<sup>547</sup> Document CD/POL34

contrast, the appellant has produced technical evidence to substantiate the view that there would be no harmful impact [102]. That must be the view that prevails.

297. Near to the site are heritage assets [114, 195 (bullet1)] both designated and undesignated. No evidence was submitted to undermine the relevant findings of the Environmental Statement submitted with the application and so I have no reason to disagree with them. In summary, these are that the non-designated, historic landscape character types which would be lost by development are common and of low value. The adverse effects on the setting of the listed buildings would be minor, limited to increased (but still low-level) traffic volumes and consequent noise on Kidnapper's Lane. In my view, these adverse impacts would have no effects on the significance of these assets. They would remain clearly recognisable and understandable as isolated rural cottages.

298. There is no evidence to suggest that the Habitats Assessment contained within the Environmental Statement has been carried out incorrectly or that its conclusions are incorrect [115]. In my view they may be safely adopted and the conclusion reached that the proposed development would not result in an adverse effect on the integrity of the Cotswold Beechwoods SAC, either alone or in combination with other plans or projects.

#### *Overall conclusions*

##### *The development plan*

299. The adopted development plan remains the starting point for decision making. On that basis, I would conclude that this appeal should be dismissed for two reasons, unless there are other material considerations which indicate otherwise.

300. Firstly, because, in combination with other developments in and around Cheltenham, it would lead to a decline in the performance of the road network considerably in excess of the growth in traffic. The consequent increase in the extent of congestion and its effects on journey times at peak hours would be severe and, at the present time, despite the good intentions of the County highway authority, there is no transport strategy in place which is accepted as being effective in dealing with these effects. This would be contrary to Local Plan policy CP4 (b).

301. Secondly because it would lead to the loss of a valued landscape. It would therefore conflict with parts of Local Plan policies CP1, CP3, CP7 and CO1.

302. However, the Development Plan is recognised as being out of date and, furthermore, I recognise that there is a lack of a five year supply of deliverable housing sites which, in accordance with national policy, means that policies for the supply of housing should be regarded as out of date twice over. In these circumstances, the NPPF advises that permission should be granted unless either of two circumstances apply.

##### *Specific policies in the NPPF*

303. The first circumstance is where specific policies in the NPPF indicate that development should be restricted. As I have found, in the absence of a demonstrably sound transport strategy which would address the issues, the

residual cumulative impacts of development would be severe and so, paragraph 32 of the NPPF indicates that development should be prevented or refused.

304. The development would prejudice the possible designation of Local Green Space. Designation, if it occurs at all, is likely to happen through the outcome of the current and continuing examination of the JCS. In such circumstances, paragraph 76 of the NPPF indicates that new development would be ruled out. As explained earlier, Guidance tells me that it would be premature to allow this appeal in such circumstances.

305. Finally, although not designated, the site is clearly a valued landscape. Paragraph 109 of the NPPF advises that the planning system should protect valued landscapes. Therefore, it seems to me that three specific policies in the NPPF indicate that this development should be restricted and the appeal dismissed.

*Other material considerations – the planning balance*

306. The second circumstance is where adverse impacts of the development would be outweighed by its benefits. This requires a balancing exercise, needed anyway, if the other material considerations referred to in the legislation are to be considered.

307. The adverse impacts are;

- The effects of the proposal on the highway network.
- Its effects on character and appearance, through the loss of a valued landscape.
- Prejudice to the designation of LGS.
- Loss of green field land.
- Failure to contribute to the supply of pitches for gypsies, travellers and travelling showmen.
- Loss of best and most valuable agricultural land.

308. The benefits would be;

- A significant contribution to the supply of housing in general and
- Affordable housing in particular.
- The provision of public open space in excess of the Council's standards.
- An assured future maintenance regime for retained open space.
- The provision of employment in the construction of the development.
- The provision of employment space.
- Reduced run-off at times of flood.

309. In balancing these considerations, I observe that not all these effects are equal. The effects on character and appearance and the loss of green field, agricultural land and the potential designation of LGS would be irreversible. The

effects of the proposal on the highway network would be severe. The contribution to the housing supply would be significant.

310. It should go without saying that I have only been able to consider what has been put before me. I do not have the benefit of the outcome of the examination of the JCS or of the County Highway authority's refinement of its transport strategy. On the evidence before me, whichever way the decision is to be taken; whether in accordance with the development plan, or by reference to specific NPPF policies, or by a balance of material considerations, my conclusion is that this appeal should be dismissed. I so recommend.

### *Conditions*

311. Although my recommendation is that the appeal be dismissed, it is necessary to advise the Secretary of State on the appropriate conditions to apply in the event that my main recommendation is not followed. Both main parties agreed on a set of forty conditions in the event of the appeal being allowed [66 (bullet 13)]<sup>548</sup>. The numbers in the paragraphs below refer to the numbers of the parties' suggested agreed conditions in the SOCG and to the numbers in my recommended conditions attached as an appendix to this report. I have considered the suggested agreed conditions in the light of advice contained in the National Planning Practice Guidance (Guidance) preferring, where appropriate, the wording of the model conditions set out in the Annex to the otherwise now cancelled circular 11/95, *the Use of Conditions in Planning Permissions*.

312. Many of the suggested agreed conditions are, in effect, informatives setting out the level of detail or range of information which the Council would seek to have submitted as part of the reserved matters. Useful though this information about these process requirements would be to the developer, they do not represent matters necessary to the approval of this outline application and so they are recommended to be omitted unless they specify a substantive characteristic with which the development must comply in order to be acceptable. For this reason, suggested conditions numbers (3 (in part)), (4 (in part)), (5), (6 (in part)), (7), (8) and (9) in the Statement of Common Ground are recommended not to be imposed. My recommended conditions (6), (8) and (9) pick up the recommendations of the various consultants' reports submitted with the appeal [61 (footnote 125)] and of suggested agreed conditions (4), (6), (10), (12), (13), (14), (17), (18), (19), (20), (21), (23), (24), (34), (35), (36), (37), (38), (39) and (40) requiring the submission of details which need approval but which the reserved matters would not require to be submitted.

313. Suggested agreed conditions (22) and (30) in the Statement of Common Ground would duplicate provisions in the s106 agreement and so, need not be imposed. Others duplicate the requirement for the submission of reserved matters or would only be applicable when detailed matters are approved and so, should not be imposed now. These include suggested agreed conditions (7), (8), (9), (11), (15), (25), (26), (29), (31), (32) and (33).

314. The first of the suggested agreed conditions would impose the standard conditions of an outline application, adjusted to reflect the anticipated roll-out of

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<sup>548</sup> The main parties' suggested agreed conditions are at section 7.2 of the Statement of Common Ground (document INQ1)

the scheme but not requiring even the first of the details to be submitted in less than ten years and with no limit on the timescale for the last of the reserved matters. This would not comply with the spirit of the model condition which is intended to encourage speedy implementation and may be an error with "first" intended to mean "last", which I therefore correct. In the third of the suggested agreed conditions, reference is made to a phasing plan. This would be necessary because of the size of the scheme and the logistics of submitting details. I have combined suggested agreed conditions 1 and 3 into a set of four (my recommended conditions 1 to 4) through modifying the standard conditions.

315. Suggested agreed condition number 2 would have required general compliance with the parameter plans submitted with the application. As the term general compliance is somewhat imprecise and because the various parameter plans contain a number of provisions, I have preferred to specify each requirement by an individual condition in turn. No suggested agreed condition requires compliance with the detailed drawings of the accesses which were submitted for approval but this would be necessary to provide certainty in view of the changes to the drawings which were made during the course of the application and appeal (my recommended condition (5)).

316. This would be a large site with accesses either directly on to a busy main road, or on to somewhat limited residential streets or even rural lanes. Deliveries to the site, storage of materials and operatives' cars and vans could cause safety hazards and so, would need to be controlled. For these reasons, a Construction Method Statement would be required (condition (7)).

### **Recommendation**

**File Ref:** APP/B1605/W/14/3001717

317. I recommend that the appeal be dismissed.

*P. W. Clark*

Inspector

## **RECOMMENDED CONDITIONS IN THE EVENT OF THE APPEAL BEING ALLOWED**

- 1) Details of a phasing plan for the development shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out in accordance with the approved details.
- 2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each phase of the development shall be submitted to and approved in writing by the local planning authority before any development begins within that phase and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters for the first phase shall be made to the local planning authority not later than three years from the date of this permission and for the final phase not later than ten years from the date of this permission.
- 4) Each phase of the development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved for that phase.
- 5) The vehicular accesses to the development hereby permitted shall be carried out in accordance with the following approved plans: drawing RPS1, revision 01, 2186.09B, 2186.17D, 2186.30A, 2186.31, 2186.32, and 2186.43.
- 6) The details to be submitted in accordance with condition (2) shall limit the maximum class A1 retail floorspace to 500 sq m gross and any one retail unit to 400 sq m gross and shall limit the maximum class B1(a) office floorspace to 500 sq m gross and shall include;
  - a) The measures for tree and hedgerow planting, retention and protection contained in paragraphs 2.2.1, 2.2.5, sections 2.3 and 2.4, paragraphs 2.5.2, 2.5.3, 2.8.2, 2.8.3, 2.9.1, 2.11, 2.12.1, 2.12.2, 2.13.2, 2.15.1 and the accompanying Baseline Tree Survey report – Area A of the Arboricultural Impact Assessment submitted with the application, described in section 2.6 of the Design and Access Statement submitted with the application and in paragraphs 1.3.8, 1.3.10, 6.6.2.2, 6.6.2.3 and 6.6.5.1 to 6.6.5.7 of the Environmental Statement submitted with the application,
  - b) The habitat retention and ecological measures recommended in section 2.7 and paragraphs 8.6.2, 8.6.7, 8.7.12, 8.7.16, 8.7.22, 8.7.23, 8.7.28, 8.7.33, 8.7.38, 8.7.42, 8.7.50, 8.7.53, 8.7.58, 8.7.63, 8.7.67, 8.7.73 to 8.7.76, 8.7.80, 8.7.87 to 8.7.89, 8.7.94, 8.7.95, 8.7.98, 8.7.105, 8.7.112, 8.7.113, 8.7.117, 8.7.128, 8.8.9, 8.8.10, 8.8.15, 8.8.16, 8.8.20, 8.8.21, 8.8.25, 8.9.3, 8.10.2 and 8.10.3 of the Environmental Statement submitted with the application,
  - c) For residential properties, the noise insulation measures recommended in paragraphs 10.5.1 and 10.5.2 of the Environmental Statement submitted with the application and in section 2.9 of the Design and Access Statement submitted with the application,

- d) For non-residential properties a scheme of odour control and noise abatement for any proposed kitchen extraction equipment and for any other plant to be installed a scheme of noise control to meet the recommendations of paragraph 10.5.18 of the Environmental Statement submitted with the application,
  - e) an archaeological investigation programme as described in section 2 of the Design and Access Statement submitted with the application and in paragraphs 7.5.2 and 7.6.2 of the Environmental Statement submitted with the application,
  - f) a programme of potential soil contamination investigation and remediation as recommended in table 15, section 9.9 and section 10 of the Report on Ground Investigations submitted with the application and in a follow-up letter by the authors of the report dated 20 November 2013,
  - g) The proposed land raising described in sections 5 and 17 and table 11 and shown on drawing 10-0498 100 revision I of the Flood Risk Assessment and Drainage Strategy submitted with the application,
  - h) The existing and proposed ground levels around, and proposed slab levels of, all buildings,
  - i) A scheme for the provision of surface water drainage. No building shall be occupied until its facilities have been provided in accordance with the approved details,
  - j) A scheme for the provision of foul drainage. No building shall be occupied until its facilities have been provided in accordance with the approved details,
  - k) A scheme for the provision of public lighting,
  - l) A scheme for the provision of fire hydrants,
  - m) Details of boundary treatments, screen walls and fences,
  - n) Provision for car parking and cycle parking for each dwelling and each non-residential use. No building shall be occupied until its facilities have been provided in accordance with the approved details,
  - o) Provision of external refuse and recycling facilities to serve each dwelling and non-residential use. No building shall be occupied until its facilities have been provided in accordance with the approved details.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors,
  - ii) loading and unloading of plant and materials,
  - iii) storage of plant and materials used in constructing the development,
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate,
  - v) wheel washing facilities,

- vi) measures to control the emission of dust and dirt during construction including those specified in paragraph 11.5.33 of the Environmental Statement submitted with the application,
  - vii) Measures to control noise including those specified in paragraph 10.5.21 of the Environmental Statement submitted with the application,
  - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 8) No building shall be occupied until the works of water supply enhancement prescribed in section 7.1 of the Utilities Infrastructure Report submitted with the application have been completed.
- 9) No building shall be occupied until the works of electricity supply infrastructure enhancement specified in section 7.2 of the Utilities Infrastructure Report submitted with the application have been completed.



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Sarah Clover, of Counsel	Instructed by Ms Cheryl Lester, Solicitor to Cheltenham Borough Council
She called	
Stuart Ryder BA(Hons) CMLI	Director, Ryder Landscape Consultants Ltd
David Nock	Consultant, Pell Frischmann
Raymond Craig Hemphill	Principal Planning Officer, Cheltenham Borough Council

Additionally, the following persons took part in the discussion on planning obligations:

Carole McDonald-Roberts	Cheltenham Borough Council
Cheryl Lester	Solicitor to Cheltenham Borough Council
Mark Power	Team Leader – Major Projects, Gloucestershire County Council
Bridgette Boucher FCILEx	Senior Lawyer, Gloucestershire County Council

### FOR THE APPELLANT:

Jeremy Cahill QC	Assisted by Thea Osmund-Smith, of Counsel and instructed by Fiona Milden, Associate Planning Director, Bovis Homes and David Birchall, Managing Director, Miller Homes Strategic Land
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He called	
Brian Duckett BSc(Hons) BPhil CMLI	Director, Hankinson Duckett Associates
Tim Watton BA(Hons) DipTP MRTPI	Technical Director, RPS Planning and Development
Paul Hill BA(Hons) MA MRTPI	Technical Director, RPS Planning and Development
Julia Tindale BSc(Hons) MIPSS	Technical Director, RPS Planning and Development
Fiona Prismall MSc CEnv MIAQM MIEnvSc	Associate, RPS Planning and Development
Tim Partridge BA(Hons) DipTP MRTPI	Operational Director, RPS Planning and Development
Hilary Vaughan BEng CEng MICE FCIHT	Director, Peter Evans Partnership

Additionally, the following persons took part in the discussion on planning obligations:

Mark Iveson	Gateley Plc
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### FOR THE LECKHAMPTON WITH WARDEN HILL PARISH COUNCIL:

Thomas Graham, of Counsel	Instructed by Dr Adrian Mears
He called	
Dr Adrian Mears CBE CPhys FInstP	Chairman of Leckhampton with Warden Hill Parish Council

FOR THE LECKHAMPTON GREEN LAND ACTION GROUP (LEGLAG):

Hugh Lufton (part time), Ian  
Bickerton (part time) and  
Dr Ashley Bowes, of Counsel (part time)      Instructed by Hugh Lufton

    He called  
    Hugh Lufton BA(Hons)      Principal, Lufton & Associates  
    DipTP MRTPI

INTERESTED PERSONS (in order of speaking):

Gerry Potter	Local resident
Mary Nelson	Local resident
Ken Pollock	Local resident
Vivian Matthews	Local resident
Anne Davies	Local resident
Gillian Goulet	Local resident
Anne McIntosh	Local resident

## DOCUMENTS

### Core documents; Application documents

CD/APP1	Application forms and certificates
CD/APP2	500-009-A Site Location Plan (1:5000)
CD/APP3	500-003-A Access and Movement Parameter Plan (1:5000)
CD/APP4	500-004-B Green Infrastructure Parameter Plan (1:5000)
CD/APP5	500-006-B Residential Density Parameter Plan (1:5000)
CD/APP6	500-007-A Land Use Parameter Plan (1:5000)
CD/APP7	500-008-A Indicative Phasing Plan (1:5000)
CD/APP8	Affordable Housing Delivery Plan
CD/APP9	Agricultural Resources Assessment
CD/APP10	Arboricultural Impact Assessment
CD/APP11	Design & Access Statement
CD/APP12	Environmental Statement
CD/APP13	Environmental Statement – Non-Technical Summary
CD/APP14	Flood Risk Assessment & Drainage Strategy
CD/APP15	Green Infrastructure Strategy
CD/APP16	Non-Residential Travel Plan Framework
CD/APP17	Outline Management Plan
CD/APP18	Report on Ground Investigation and Update Letter
CD/APP19	Residential Travel Plan Framework
CD/APP20	Statement of Community Involvement
CD/APP21	Supporting Planning Statement
CD/APP22	Sustainability Statement
CD/APP23	Transport Assessment
CD/APP24	Utilities Infrastructure Report
CD/APP25	Utilities Statement
CD/APP26	Supplementary Traffic Note
CD/APP27	Supplementary ES Movement Section
CD/APP28	Addendum to Transport Assessment
CD/APP29	Environmental Statement Addendum relating to air quality
CD/APP30	Ground Conditions Evaluations
CD/APP31	Transport Note 21 – Highways Agency Paramics Modelling
CD/APP32	2186.17C Secondary access and bus/cycle access
CD/APP33	2186.31 Western connection to Kidnappers Lane
CD/APP34	2186.32 Eastern connection to Kidnappers Lane
CD/APP35	2186.33 Southern connection to Kidnappers Lane
CD/APP36	2186.25 Church Road improvements
CD/APP37	2186.39 Leckhampton Lane traffic calming
CD/APP38	2186.40 Farm Lane junction visibility splay improvements
CD/APP39	JBR2340_500_001_F Illustrative Masterplan
CD/APP40	2186.30A Northern connection to Kidnappers Lane
CD/APP41	2122.8/13 Illustrative Design for Local Centre on Shurdington Road
CD/APP42	JBR2340_500_-2_A Design and Access Statement Addendum
CD/APP43	Transport Note 23 – GCC/Atkins Saturn Modelling
CD/APP44	JCS Update on Green Infrastructure
CD/APP45	JBR2340_500_005_B Building Heights Parameter Plan
CD/APP46	JBR2340_500_015_A Character Areas Plan
CD/APP47	2186.09B Main Access Drawing
CD/APP48	500-001-C Illustrative Masterplan (1:5000)

CD/APP49 Not used  
CD/APP50 500-005-A Maximum Building Heights Parameter Plan (1:5000)  
CD/APP51 500-015 Illustrative Character Areas Plan (1:5000)

**Core documents; Additional information submitted with the appeal**

CD/ADD1 Retail and Office Assessment  
CD/ADD2 Leckhampton revised site boundary consultation summary report  
CD/ADD3 Position statement

**Core documents; Local Planning Authority documents**

CD/LPA1 31 July 2014 Officer Report to Committee  
CD/LPA2 31 July 2014 Update to Officer Report  
CD/LPA3 31 July 2014 Decision Notice  
CD/LPA4 31 July 2014 Planning Committee Minutes  
CD/LPA5 21 May 2015 Planning Committee Minute (Reasons for Refusal for Appeal)  
CD/LPA6 9 April 2014 JCS committee minutes (NB; the Council's Proof of Evidence on Five year Housing Supply is also given the reference number CD/LPA6)

**Core Documents; Leckhampton with Warden Hill Parish Council documents**

CD/LH1 Cheltenham Borough Council's LGS consultation Initial Assessment  
CD/LH2 Parish Council's Report on Public Consultation on revised LGS, January 2015  
CD/LH3 Land at Farm Lane/Church Road Landscape and Visual Appraisal Final Report by Landscape Design Associates, July 2003  
CD/LH4 Parish Council's Consultation on revised LGS, January 2015  
CD/LH5 Minutes of Cheltenham Borough Council, February 2015  
CD/LH6 FOI Request to Cheltenham Borough Council from Martin Horwood concerning the Borough's consideration of the LGS submission.

**Core documents; LEGLAG**

CD/LEG1 LEGLAG Statement of Case 31 July 2015  
CD/LEG2 (Duplicates CD/HIG2) LHWHPC Neighbourhood Planning Concept Plan & Local Green Space Application July 2013  
CD/LEG3 LHWHPC LGS toolkit Checklist – Leckhampton Fields (See also INQ7)  
CD/LEG4 Duplicate of CD/LH3  
CD/LEG5 Not used  
CD/LEG6 Not used  
CD/LEG7a Martin Horwood Letter of objection and Statement dated 9 January 2014 to CBC planning committee  
CD/LEG7b Martin Horwood Statement to CBC planning committee 31 July 2014  
CD/LEG8 Not used  
CD/LEG9 Halcrow Strategic Environmental Assessment of Gloucestershire's Third Local Transport Plan 2011-2026: Environmental Report: Post-consultation document January 2011

## Core documents; Policy

CD/POL1	National Planning Policy Framework (NPPF)
CD/POL2	National Planning Policy Framework Technical Guidance
CD/POL3	National Planning Practice Guidance (NPPG)
CD/POL4	Cheltenham Borough Local Plan Second Review, June 2006
CD/POL5	Schedule of Saved Local Plan Policies and Direction Letter, June 2009
CD/POL6	JCS 2009 Issues and Key Questions
CD/POL7	JCS 2011 Developing the Preferred Option
CD/POL8	JCS 2013 Draft for Consultation
CD/POL9	JCS 2014 Pre Submission Document
CD/POL10	JCS Submission Document
CD/POL11	Cheltenham Assessment of Land Availability Sites 2013
CD/POL12	Cheltenham SHLAA 2012
CD/POL13	Tewkesbury SHLAA 2012
CD/POL14	Not used
CD/POL15	Residential Land Availability in Cheltenham Borough, August 2014
CD/POL16	Draft Regional Spatial Strategy for the South West
CD/POL17	Panel Report Draft RSS December 2007
CD/POL18	Joint Core Strategy Broad Locations Report – October 2011
CD/POL19	(Further copy at CD/LAN10) Joint Core Strategy Strategic Allocations Report – October 2013
CD/POL20	Cheltenham Local Plan Issues and Options
CD/POL21	The Planning System: General Planning Principles 2005
CD/POL22	Laying the Foundations – A Housing Strategy for England
CD/POL23	2014 Gloucestershire SHMA
CD/POL24	Cheltenham AMR 2013
CD/POL25	Cheltenham Green Belt Review Final Report 2007
CD/POL26	JCS Green Belt Review 2011
CD/POL27	JCS Housing Background Paper - July 2014
CD/POL28	JCS Examination Document 78
CD/POL29	Cheltenham AMR 2006
CD/POL30	Cheltenham AMR 2007
CD/POL31	Cheltenham AMR 2008
CD/POL32	Cheltenham AMR 2009
CD/POL33	Cheltenham AMR 2010
CD/POL34	JCS Housing Background Paper Update amended - April 2015
CD/POL35	Cheltenham, Gloucester and Tewkesbury Objectively Assessed Need Summary Report
CD/POL36	JCS Examination Document 34 - Inspector's note on housing issues
CD/POL36a	JCS Examination Document 34A - JCS Response to Inspector's note
CD/POL37	JCS Topic Paper ETOP112 - Local Economy, October 2013
CD/POL38	Appendix 4 to the April 2015 Housing Background Paper - CBC Housing Trajectory
CD/POL39	Cheltenham Draft Interim Residential Land Availability, November 2014
CD/POL40	Tewkesbury Local Plan Saving Letter
CD/POL41	Inspector's Interim Report - Cheshire East Local Plan
CD/POL42	Tewkesbury Local Plan 2011
CD/POL43	JCS Sustainability (Integrated) Appraisal Report 2013
CD/POL43A	Appendix VIIIb - SA of Potential Strategic Allocations for Cheltenham
CD/POL44	JCS Pre-Submission Sustainability (Integrated) Appraisal Report, May 2014.

### Core Documents; Highways

CD/HIG1	Not used
CD/HIG2	(Duplicates CD/LEG2) Leckhampton with Warden Hill Parish Council Neighbourhood Planning, NPPF Concept Plan and Local Green Space Application, July 2013
CD/HIG3	Not used
CD/HIG4	Manual for Gloucestershire Streets
CD/HIG5	Manual for Streets
CD/HIG6	Manual for Streets 2
CD/HIG7-11	Not used
CD/HIG12	Travel Plans Guide for Developers July 2011, Gloucestershire County Council
CD/HIG13	Gloucestershire County Council LTP3
CD/HIG14	Consultation Response, County Council
CD/HIG15	Consultation Response, Highways Agency
CD/HIG16	Transport Mitigation Strategy Summary Report, Atkins, July 2015
CD/HIG17	Department for Transport: Road Safety Practice Guide (undated)
CD/HIG18	JCS strategic Allocation Option Testing DM2 Results for AM and PM peak hours 26 September 2014
CD/HIG19	JCS strategic Allocation Option Testing DS1 and DS2 Results for AM and PM peak hours 15 October 2014

### Core Documents; Landscape

CD/LAN1	'Guidelines for Landscape and Visual Impact Assessments' (2013); Landscape Institute and Institute for Environmental Management and Assessment (Third Edition) - <i>on-line only</i>
CD/LAN2	'Landscape Character Assessment Guidance for England and Scotland' (2002); The Countryside Agency and Scottish Natural Heritage
CD/LAN3	'An Approach to Landscape Character Assessment' (2014); Christine Tudor, Natural England
CD/LAN4	'Statutory Instrument No 1824 - Town and Country Planning (Environmental Impact Assessment) Regulations 2011'; Town and Country Planning
CD/LAN5	'National Character Area profile: 106. Severn and Avon Vales' (2012); Natural England
CD/LAN6	'Countryside Character: Volume 8 – Southwest' (2005); The Countryside Agency (Natural England)
CD/LAN7	'Gloucestershire Landscape Character Assessment' (2006); LDA Design on behalf of Gloucestershire County Council
CD/LAN8	'Cotswold AONB Landscape Character Assessment' (2004); Cotswold AONB Partnership
CD/LAN9	JCS Landscape and Visual Sensitivity and Urban Design Report (2012)
CD/LAN10	Duplicate - See CD.POL19
CD/LAN11	Cheltenham Local Plan Inspector's Report (1993)
CD/LAN12	Cheltenham Local Plan Inspector's Report (2004)
CD/LAN13	See CD.POL17
CD/LAN14	HDA Photomontages of Development Options at Leckhampton (June 2014)
CD/LAN15	HDA Additional Photomontages of Development at Leckhampton

- CD/LAN16 JCS Landscape Characterisation Assessment & Sensitivity Analysis
- CD/LAN17 Natural England response, November 2013
- CD/LAN18 Cotswold Conservation Board response to West of Farm Lane application 14/00838/FUL

### **Core Documents; Air Quality**

- CD/P1 AEAT, 2008, Analysis of the relationship between annual-mean nitrogen dioxide concentration and exceedences of the 1-hour mean AQS Objective.
- CD/P2 EC, 2008, Council Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe.
- CD/P3 Defra, 2007, The Air Quality Strategy for England, Scotland, Wales and Northern Ireland. Volume 2.
- CD/P4 Defra, 2009, Local Air Quality Management Technical Guidance, 2009 (LAQM.TG(09))
- CD/P5 EPUK/IAQM, 2015, Land-Use Planning & Development Control: Planning For Air Quality document.
- CD/P6 IAQM, 2012, Air Quality Monitoring in the Vicinity of Demolition and Construction Sites
- CD/P7 IAQM, 2014, Guidance on the assessment of dust from demolition and construction
- CD/P8 Secretary of State, 2010, The Air Quality Standards (England) Regulations.
- CD/P9 Development Control: Planning for Air Quality (2010 update)
- CD/P10 Environment Act 1995
- CD/P11 Defra, 2011, Trends in NO<sub>x</sub> and NO<sub>2</sub> emissions & ambient measures in the UK

### **Core Documents; Other**

- CD/OTH1 Development Management Procedure Order (as amended) 2012 Schedule 5
- CD/OTH2 Natural England Response – 25 October 2013
- CD/OTH3 British Geological Survey, Sheets 216 (Tewkesbury) and 234 (Gloucester) both at 1:50,000 (1988 and 1972 respectively) and internet portal at [ww.maps.bgs.ac.uk](http://ww.maps.bgs.ac.uk), consulted September 2011
- CD/OTH4 Soil Survey of England and Wales, National Soil Map Sheet 5 (South West England), 1:250,000 and accompanying Regional Bulletin (1984)
- CD/OTH5 Soil Survey of England and Wales, Sheet SO 82 (Norton), 1:25,000 and accompanying Record No 13 (1973)
- CD/OTH6 Agricultural Land Classification, Provisional Sheets 143 (Gloucester and Malvern) and 144, (Cheltenham and Evesham), 1: 63,360, both published in 1972
- CD/OTH7 Agricultural Land Classification of England and Wales. Revised guidelines and criteria for grading the quality of agricultural land. October 1988
- CD/OTH8 The Meteorological Office Climatological data for Agricultural Land Classification. January 1989
- CD/OTH9 DEFRA Agricultural Statistics – Local Authority Breakdown of key crop areas and livestock numbers on agricultural holdings 2013 – Published October 2014 - *on-line only*
- CD/OTH10 JCS SuDS Standards (selected)

CD/OTH11	JCS Strategic Flood Risk Assessment Level 2 and accompanying maps
CD/OTH12	EA/DEFRA "Preliminary Rainfall Runoff Management for Developments" Rev E 2012
CD/OTH13	Wallingford procedure
CD/OTH14	SuDS Manual CIRIA C697
CD/OTH15	Flood Estimation Handbook
CD/OTH16	Local Green Space Position Statement - July 2015
CD/OTH17	JCS Authorities Statement on Matter 8
CD/OTH18	JCS Authorities SoCG Matter 8 with Appellant
CD/OTH18A	Appendix 1: Combined Illustrative Masterplan
CD/OTH18B	Appendix 2: Access Plan with Urban Extension Areas
CD/OTH18C	JCS LGS Position Statement re Strategic Allocation A6
CD/OTH19	Planning Inspectorate Good Practice Advice Note 09
CD/OTH20	Developers Highways SoCG
CD/OTH21	PAS Advice - Five Year Land Supply FAQ
CD/OTH22	ONS 2012-based Subnational Population Projections for England
CD/OTH23	Household Projections: England 2012-2037
CD/OTH24	NOMIS Labour Market Profile: Great Britain
CD/OTH25	Technical Paper: Activity Rate Projections to 2036, Kent County Council
CD/OTH26	Cheltenham Economic Assessment, Appendix A, January 2015
CD/OTH27	Lower Quartile Private Rent Data 2010-2014 (VOA Private Rental Market Statistics)
CD/OTH28	ONS Table 576: Ratio of lower quartile house price to lower quartile earnings by district from 1997
CD/OTH29	JCS Local Green Space Advice Correspondence
CD/OTH30	JCS Response - Matter 6 (Spatial Strategy)
CD/OTH31	Extracts from Tewkesbury Borough Council Planning Committee agenda 29 September 2015

### **Core Documents; Court Judgments**

CD/CJ1	Tewkesbury Borough Council v Secretary of State for Communities and Local Government, Comparo Ltd, Welbeck Strategic Land LLP [2013] EWHC 286 (Admin)
CD/CJ2	Wainhomes (South West) Holdings Limited v. Secretary of State for Communities and Local Government [2013] EWHC 597 (Admin)
CD/CJ3	Anita Colman v Secretary of State for Communities and Local Government, North Devon District Council, RWE NPower Renewables Ltd [2013] EWHC 1138 (Admin)
CD/CJ4	Stratford On Avon District Council v Secretary of State for Communities and Local Government [2013] EWHC 2074 (Admin)
CD/CJ5	Cotswold District Council v (1) Secretary of State for Communities and Local Government (2) Fay and Son Limited [2013] EWHC 3719
CD/CJ6	South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land and Estates Ltd [2014] EWHC 573 (Admin)
CD/CJ7	Bernard Wheatcroft Ltd. v Secretary of State for the Environment and Another (1982) 43 P&CR 233
CD/CJ8	Phides Estates (Overseas) Ltd v SSCLG & Ors, March 26, 2015, [2015] EWHC 827 (Admin)
CD/CJ9	Gallagher Estates Lioncourt Homes v Sollihull MBC [2014] EWHC 1283 (Admin)



CD/CJ10	Hunston v St Albans 2013 [2013] EWHC 2678 (Admin)
CD/CJ11	Stroud District Council 2015 v Secretary of State for Communities and Local Government and Gladman Developments Ltd 2015 [2015 EWHC 488 (Admin)
CD/CJ12	Woodcock Holdings Limited v Secretary of State for Communities and Local Government and Mid-Sussex District Council [2015] EWHC 1173 (Admin)
CD/CJ13	City and District Council of St Albans v Hunston Properties and Secretary of State for Communities and Local Government [2013] EWCA Civ 1610
CD/CJ14	Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin)
CD/CJ15	Dartford Borough Council v Secretary of State for Communities and Local Government and Landhold Capital Limited [2014] EWHC 2636 (Admin)
CD/CJ16	Oxfordshire County Council v Secretary of State for Communities and Local Government and Cala Management Ltd, William Roger Freeman, Ross William Freeman, Julian James Freeman and Cherwell District Council [2015]EWHC 186 (Admin)

### **Core Documents; Appeal Decisions**

CD/AD1	APP/G1630/A/11/2146206 & APP/G1630/A/11/2148635 Homelands Farm, Bishop's Cleeve, Gloucestershire & Land at Deans Farm, Bishop's Cleeve, Gloucestershire (16 July 2012)
CD/AD2	APP/B1605/A/11/2164597 Land at Hunting Butts Farm, Swindon Lane, Cheltenham (20 June 2012)
CD/AD3	APP/U4230/A/11/2157433 Land at Burgess Farm, Hilton Lane, Worsley, Manchester (16 July 2012)
CD/AD4	APP/J3720/A/11/2163206 Land West of Shottery, South of Alcester Road and North of Evesham Road, Stratford-upon-Avon (24 October 2012)
CD/AD5	APP/G1630/A/12/2183317 Land adj Gretton Road, Winchcombe, Gloucestershire (14 May 2013)
CD/AD6	APP/T2350/A/13/2197091 Land To The South-West Of Barrow And West Of Whalley Road, Barrow, Lancashire (22 April 2014)
CD/AD7	APP/G1630/A/13/2209001 Land to the South of Beckford Road, Alderton, Tewkesbury (22 May 2014)
CD/AD7A	COSTS DECISION - Land to the south of Beckford Road, Alderton
CD/AD8	APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426 Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa & Land North of Pulley Lane and Newland Lane, Newland, Droitwich Spa (2 July 2014)
CD/AD9	APP/H1705/A/13/2205929 Land at Razor's Farm, Chineham, Basingstoke (22 September 2014)
CD/AD10	APP/E3715/A/12/2186128 Land off School Street, Wolston (6 March 2013)
CD/AD11	APP/E3715/A/12/2186128 Land off School Street, Wolston Costs Decision (6 March 2013)
CD/AD12	APP/J3720/A/12/2185727 Former IMI Norgren Site, Campden Road, Shipston on Stour (27 June 2013)

CD/AD13	APP/J3720/A/12/2185727 Former IMI Norgren Site, Campden Road, Shipston on Stour Costs Decision (27 June 2013)
CD/AD14	APP/X3025/A/14/2222981 Park Hall Farm, Park Hall Road, Mansfield Woodhouse, Mansfield (28 May 2015)
CD/AD15	APP/X3025/A/14/2222981 Park Hall Farm, Park Hall Road, Mansfield Woodhouse, Mansfield Costs Decisions (28 May 2015)
CD/AD16	APP/H1840/A/14/2224292 Land to the west of Leamington Road, Broadway (2 July 2015)
CD/AD17	APP/G1630/A/14/2223858 Land off Banady Lane, Stoke Orchard
CD/AD18	APP/B1605/A/14/2221151 1 Manor View, Cold pool Lane, Up Hatherley, Cheltenham
CD/AD19	APP/V0510/A/14/2224671 East Cambridgeshire District Council
CD/AD20	APP/R0660/A/13/2196044, Dean Close, Sandbach, Cheshire
CD/AD21	APP/R0660/A/13/2189733 Congleton Road, Sandbach, Cheshire
CD/AD22	APP/R0660/A/13/2197532 and APP/R0660/A/13/2197529 Nantwich, East Cheshire
CD/AD23	APP/T2405/A/13/2193758 and APP/T2405/A/13/2193761 Whetstone, Leicestershire
CD/AD24	APP/C3430/A/12/2189442 Land off Elmwood Avenue, Essington
CD/AD25	APP/D0840/A/13/2209757 Land north of Upper Chapel, Launceston
CD/AD26	APP/D2320/A/12/2172693 Land to the north and west of Lucan Lane, Whittel-le-Woods, Chorley
CD/AD27	APP/L2360/A/12/2170575 Land at Townhouse Road, Costessey, Norfolk
CD/AD28	APP/J3720/A/14/2215757 Land off Stratford Road, Hampton Lucy
CD/AD29	APP/J3729.A/13/2202961 Land at Gaydon Road, Bishop's Itchington, Southam, Warks
CD/AD30	APP/P1805/A/14/2225584 Whitford Road, Bromsgrove Appeal Decision
CD/AD31	APP/P1805/A/14/2225584 Whitford Road, Bromsgrove Appeal Costs Decision
CD/AD32	APP/C1570/A/13/2201844Bentfield Green Stansted Mountfitchet
CD/AD33	APP/M1520/A/12/2177157 Land off Glebelands Thundersley
CD/AD34	APP/R0660/A/13/2209335 Land at Gresty Lane, Rope Lane, Crewe Road
CD/AD35	APP/H3510/A/13/2197077 Meddler Stud, Bury Road, Kentland
CD/AD36	APP/R0660/A/13/2197532 and APP/R0660/A/13/2197529 Land off Audlem Road.

### Statements of Case

SoC 1	Appellant's Statement 15 December 2014
SoC 2	Council's Statement of Case 26 February 2015
SoC 3	Parish Council's Statement of Case 1 April 2015
SoC 4	(Also provided as CD/LEG1) LEGLAG statement of Case 31 July 2015

### Proofs of Evidence

#### Council

CD/LPA6	Mr R C Hemphill	Five year Land Supply
CD/LPA7	David Nock	Transport and Highways (including five appendices)
CD/LPA7A	Summary Proof of Evidence of David Nock	
CD/LPA8	Stuart Ryder	Landscape (including Appendices A, B and C)

## **Leckhampton with Warden Hill Parish Council**

CD/LH7	Dr Adrian Mears	Summary Proof
CD/LH8	Dr Adrian Mears	Transport, Landscape and Green Space (including four appendices)

### **LEGLAG**

CD/LEG10	Hugh Lufton	Proof of evidence and Summary 25 August 2015 (including five appendices)
CD/LEG11	Hugh Lufton	Update Proof of Evidence 21 September 2015

### **Appellant**

CD/APP52	Brian Duckett	Summary Proof
CD/APP53	Brian Duckett	Landscape
CD/APP54	Brian Duckett	Appendices 1 – 8
CD/APP55	Tim Watton	Summary of Evidence
CD/APP56	Tim Watton	Objectively Assessed Housing Need
CD/APP57	Tim Watton	Appendices 1 – 4
CD/APP58	Paul Hill	Summary of Evidence
CD/APP59	Paul Hill	Housing Land Supply
CD/APP60	Paul Hill	Appendices 1 – 19 (in two volumes)
CD/APP61	Julia Tindale	Summary Proof of Evidence
CD/APP62	Julia Tindale	Agricultural Resources
CD/APP63	Julia Tindale	Figures and Appendices
CD/APP64	Fiona Prismall	Summary Proof of Evidence
CD/APP65	Fiona Prismall	Air Quality
CD/APP66	Tim Partridge	Summary
CD/APP67	Tim Partridge	Planning Matters
CD/APP68	Tim Partridge	Appendices 1 – 7
CD/APP69	Hilary Vaughan	Summary Proof of Evidence
CD/APP70	Hilary Vaughan	Transport
CD/APP71	Hilary Vaughan	Appendices 1 -11
CD/APP72	Hilary Vaughan	Rebuttal to Cheltenham Borough Council's Proof on Transport
CD/APP73	Paul Tinley	Summary
CD/APP74	Paul Tinley	Flood Risk, Drainage and Water Quality Volume 1
CD/APP75	Paul Tinley	Volume 2 – Appendices

### **Inquiry Documents**

INQ1	Statement of Common Ground between Council and Appellant
INQ2	Five Year Housing Land Supply Position Statement
INQ2A	Objectively Assessed Need – Revision A
INQ2B	Five Year Housing Land Supply Position Statement Revised Appendix 1 to INQ2
INQ3	Gloucestershire County Council Highway Contributions Technical Note
INQ4	Indicative Draft Strategic Allocation Policies
INQ5	Assessment of Transport Impacts: Chronology
INQ6	Housing Land Supply Methodology

INQ7	Local Greenspace submission Jan 2015 by Gloucester Community Rural Council (See also CD/LEG3)
INQ8	Country walks in and around Leckhampton, published by LEGLAG
INQ9	Statement by Ken Pollock
INQ10	Opening Statement by Gerry Potter
INQ11	Compact disc of five video clips of flooding on the Leckhampton Fields
INQ12	Statement by Mary Nelson
INQ13	Ordnance Survey Map extract centred on Leckhampton Hill
INQ14	Natural England comments dated 5 August 2015 on planning application for 369 dwellings on land to the west of Farm Lane
INQ15	Cheltenham Borough Council Internal Landscape Consultation Response to application the subject of present appeal
INQ16	Addendum to Proof of Julia Tindale; Economic Value of Best and Most Versatile Agricultural Land on site
INQ17	Rate of granting planning permissions
INQ18	Leckhampton, Cheltenham; Agricultural Land Classification
INQ19	MAFF Agricultural Land Classification, Leckhampton
INQ20	Peter Evans Partnership Proposed Amendment to Site Access Arrangement
INQ21	Drawing number 2186.17D
INQ22	Transcript of GCT JCS Examination Matter 8: Strategic Allocations – A6 Leckhampton 15 July 2015 AM
INQ23	Peter Evans Partnership Response to the evidence of Mary Nelson
INQ24	Appeal decision APP/G1630/W/15/3003302, Land to the south of B4077, New Town, Toddington, Gloucestershire
INQ25	Appeal decision APP/G1630/W/15/3002522, Land at Moat Farm, Malleson Road, Gotherington, Gloucestershire GL52 9ET
INQ26A	Leckhampton with Warden Hill Parish Council Evidence requested by JCS EiP Inspector dated 28 September 2015; Analysis of the priorities for the Leckhampton Fields Local Green Space
INQ26B	Closing Statement by Gerry Potter
INQ27	E-mail exchanges between Hilary Vaughan and Dr Goktug Tenekeci
INQ28A	Gloucestershire County Council Position Statement, responding to the evidence of Mary Nelson
INQ28B	Written response by Mary Nelson
INQ29	Ordnance Survey Map showing location of appeal referred to in INQ25
INQ30	Ordnance Survey Map showing location of appeal referred to in INQ24
INQ31	Note from Cheltenham BC on Gypsies and Travellers
INQ32	CIL compliance statement from Cheltenham BC
INQ33	CIL compliance statement from Gloucestershire County Council
INQ34	Appellant's note on Gypsy and Traveller contribution
INQ35	Suggested route for Inspector's Site visit
INQ36	Supplementary Note on behalf of Cheltenham Borough Council relating to CIL compliance of Gypsy and Traveller contribution.
INQ36A	Final note by Ken Pollock

### **Post-Inquiry sitting Documents**

INQ37	E-mail from Gerry Potter 15.10.2015
INQ38	Announcement by LEGLAG of request for call-in of SD2/Whitecross planning application
INQ39	E-mail exchange concerning reports on potential land contamination

INQ 40	Final LEGLAG submission 2 November 2015
INQ41	Clarification and amplification of Parish Council evidence
INQ42	Appellant's response to Gerry Potter's e-mail
INQ43	Bundle of three responses to amended access proposal
INQ44	Gloucestershire CC response to amended access proposal
INQ45	Cheltenham BC letter 3.11.2015 concerning Gypsy and Traveller paper
INQ46	Gypsies, Travellers and Travelling Showpeople Topic paper submitted to Joint Core Strategy examination November 2015-11-05
INQ47	Bundle of five documents comprising; (a) Certified copy of District s106 dated 30 October 2015 (b) Certified copy of County s106 dated 30 October 2015 (c) Tracked changes document comparing INQ47(a) with version discussed during Inquiry sitting (d) Tracked changes document comparing INQ47(b) with version discussed during Inquiry sitting (e) Note from Bridgette Boucher
INQ48	Appellant's response to INQ40 and 41
INQ49	E-mail and letter from Martin Horwood dated 3.11.2015
INQ50	E-mail and attachment from Ken Pollock dated 3.11.2015
INQ51	Appellant's response to INQ49 and INQ50

### **Opening and closing submissions**

INQ52	Opening statement on behalf of the appellants
INQ53	Opening on behalf of Cheltenham Borough Council
INQ54	Opening statement on behalf of Leckhampton with Warden Hill Parish Council
INQ55	(LEGLAG opening statement is contained within Document CD/LEG10)
INQ56	Closing on behalf of Cheltenham Borough Council
INQ57	Closing statement on behalf of Leckhampton Parish Council
INQ58	Outline Closing submissions for Leckhampton Green Land Action Group "LEGLAG"
INQ59	Closing submissions on behalf of the appellants



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.