

Cheltenham Local Plan (2011-2031) Examination

Matter 4 Hearing Statement Green Belt and Green Infrastructure

Land north of Church Road, Leckhampton

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on behalf of Redrow Homes



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Matter 4: Green Belt and Green Infrastructure

Main Issue: Green Belt

1. Does the CP accord with Policy SD5 of the JCS in relation to the Green Belt?

1.1 Annex 1 of NPPF July 2018 is clear at paragraph 214, that the CP should be examined in accordance with NPPF March 2012. However, the spatial strategy and strategic policies of the CP are informed by the adopted JCS, a review of which has now commenced¹ in accordance with the requirements of paragraph 212 of NPPF July 2018.

1.2 In considering green belt matters for the development plan as a whole, it is prudent to note a significant change in the NPPF approach. Paragraph 88 of NPPF March 2012 set the exceptional circumstances test as follows;

‘Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other consideration’

1.3 NPPF July 2018 significantly alters the test for exceptional circumstances at paragraph 137;

¹ Issues and Options Consultation (Regulation 18) concluded 11th January 2019.

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'Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:

- a) Makes as much use as possible of suitable brownfield sites and underutilised land;*
- b) Optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and*
- c) Has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground'*

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1.4 Therefore, it is critical that the policies of the CP with regard to green belt, and also LGS designations which are tantamount to green belt policy in terms of protection (paragraph 78, NPPF March 2012 and paragraph 101, NPPF July 2018), do not, in any way prejudice the JCS review of strategic policies. To put this critical issue into context, of the 10,900 dwellings allocated by the JCS strategic sites, 10,280 dwellings (94% of the total homes allocated under the JCS) are from sites released from the green belt under adopted JCS. Such high levels of green belt release are unlikely to be permitted under the JCS review having regard to the requirement to examine fully all reasonable options in NPPF July 2018. The issue of green belt policy is extremely pertinent for the Cheltenham development plan comprising the adopted JCS and the CP, and thus any rational approach to policy making in the CP must have one eye on the JCS review.

2. Are there any exceptional circumstances which would justify a limited review of the Green Belt boundaries through the CP?

2.1 No. Should it be determined that additional allocations are required, there is a substantial amount of land outside of the green belt and being promoted by developers, which should be examined fully on the sequential basis ahead of green belt release.

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3. **Are policies GB1 and GB2 clearly worded and in accordance with national policy in paragraphs 79-92 of NPPF?**

- 3.1 To clearly accord with the paragraphs 79-92 of NPPF, the policies as worded rely on the development plan to be read as a whole (i.e. to be read in conjunction with JCS Policy SD5). There is a logical and reasonable interdependency between the JCS and CP, but this presents a challenging context having regard to green belt policy and the change in NPPF as highlighted above. In this regard, it is proposed that the CP should have regard to green belt policy in NPPF July 2018 in order to ensure development in a sustainable manner and which is consistent in approach with the JCS review.

Main Issue: Green Infrastructure

1. **Policy INF3 of the JCS deals with Green Infrastructure and seeks to deliver a “series of multifunctional, linked green corridors across the JCS area”. Does the approach adopted in the CP through Policies G11, G12 and G13 deliver that requirement in a manner consistent with national policy as set out in the NPPF paragraphs 76 and 77 and accompanying guidance in Planning Practice Guidance (PPG)?**

- 4.1 No. The CP has clearly misinterpreted NPPF with regard to Local Green Space (LGS) designations. Paragraph 77 is clear that *‘The Local Green Space designation will not be appropriate for most green areas or open space’*.
- 4.2 Furthermore, with regard to policy making, paragraph 76 states;

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“Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services”.

4.3 National Planning Guidance provides additional pertinent guidance for considering LGS designations;

‘How does Local Green Space designation relate to development?’

Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making.’

Paragraph: 007 Reference ID: 37-007-20140306

4.4 It is clear therefore, that any LGS designation should not undermine policy making to deliver sufficient land in suitable locations to meet identified development needs. The policy and guidance are explicit in saying that the decision-maker must first ensure the development plan document meets the identified needs of the area. Once this task is completed, and only then, does the issue of whether land would be suitable for designation as an LGS fall to be considered. In this regard, the larger areas of land proposed for LGS in the CP should be carefully examined with due regard to whether the development plan meets the identified development needs of the area, or whether the proposed LGS designations would injure the Council’s ability to meet the identified needs of the area, including through the JCS review in light of the change in national green belt policy as highlighted above.

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- 4.5 Redrow Homes consider policy G11 to be unsound as the proposed LGS designation at Leckhampton Fields fails the pertinent tests of national policy and guidance.

2. Have all the landowners of sites proposed for LGS been consulted?

- 4.6 Redrow Homes have not been directly contacted with specific regard to the proposed LGS on land north of Church Road, Leckhampton and are not aware that their land owner has been contacted directly either. A site location plan is attached at **Appendix 1**.

3. To what extent does the Council's Local Green Spaces Study Report parts 1 and 2 provide the justification for the designation of the sites listed in Table 8 of the CP as LGS in accordance with National policy and advise?

- 4.7 With regard to the proposed LGS at Leckhampton Fields, the LGS Study is wholly inadequate to provide justification for the designation and moreover, it is entirely contrary to NPPF policy and advise.
- 4.8 Furthermore, the study simply infers the case put forward by the Parish Council and LEGLAG without any subjective assessment of the area proposed for LGS against national policy or guidance. With respect to the Parish Council and LEGLAG, their position throughout the JCS examination was to prevent any development at Leckhampton fields and the LGS proposal remains a trojan horse to do so.
- It is helpful to recall national guidance in considering LGS proposals on land adjacent to settlements.

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'There are no hard and fast rules about how big a Local Green Space can be because places are different and a degree of judgment will inevitably be needed. However, paragraph 100 of the National Planning Policy Framework is clear that Local Green Space designation should only be used where the green area concerned is not an extensive tract of land. Consequently, blanket designation of open countryside adjacent to settlements will not be appropriate. In particular, designation should not be proposed as a 'back door' way to try to achieve what would amount to a new area of Green Belt by another name.'

Paragraph: 015 Reference ID: 37-015-20140306

4.9 Perhaps the Council is unable to present any meaningful assessment of the LGS, given that Leckhampton Fields was a strategic allocation proposed by the Borough Council and their partner authorities in the submission draft JCS. Whilst the JCS Inspector ultimately omitted the Leckhampton strategic allocation due to her 'reservations' on landscape impact², it is fundamental to recall that she did so having regard to the now archived green belt policy in NPPF March 2012, whereby she released further land from the green belt in substitute for the removed allocation at Leckhampton. The JCS review, which is now underway with Issues and Options Consultation concluding in early January 2019, will duly need to consider the stronger emphasis of a sequential approach to exceptional circumstances in NPPF July 2018.

² JCS Exam 146, Inspector's Preliminary Findings, paragraphs 7, 52 and 57

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4. **Are there any sites identified as LGS apart from the sites at Leckhampton Fields and Swindon Village which do not meet the criteria in National Policy and advice?**

4.10 N/A to Redrow Homes.

5. **Table 8 of the CP proposed significant areas of LGS to be identified at Leckhampton Fields, the North West Cheltenham Strategic Allocation at Swindon Village, and at the West Cheltenham Strategic Allocation. Is there any evidence that areas of 39.91, 24.5 or 18.25 ha could be considered not to be ‘an extensive tract of land’?**

4.11 No, on the contrary, there is clear evidence that the said areas are extensive tracts of land and therefore fail the qualifying criteria for LGS.

4.12 With specific regard to Leckhampton Fields, the Parish Council and LEGLAG originally sought the JCS to make the LGS designation at Leckhampton Fields. At the time the JCS authorities sought legal opinion from John Hunter (Kings Chambers) on whether the LGS should be considered by the JCS or be deferred as a matter for the CP to consider. A copy of Mr Hunter's opinion obtained by the Council is attached at **Appendix 2**. The legal opinion confirms that two important matters. First, the Council must seek to identify sufficient allocations to meet its development needs before making LGS designations. Second, the area proposed for LGS at Leckhampton Fields constituted an extensive tract of land and would therefore fail at examination in any event.

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4.13 Subsequently, Redrow Homes sought their own legal opinion on the same matter from Christopher Young QC and Nina Pindham (No.5 Chambers), a copy of which is attached at **Appendix 3**. Mr Young's opinion draws parallels with the findings of Mr King, but provides additional helpful advice to addressing the test for LGS with reference to two cases at neighbourhood plan examinations, Backwell and Rolleston on Dove. The examiner's report to the Backwell Neighbourhood Plan (**attached at Appendix 4**) is particularly relevant to the question of what is considered an extensive tract of land. The examiner concluded that two proposed LGS sites, one of 32 hectares and the other of 19 hectares, were both unquestionably extensive tracts of land and therefore failed national policy and guidance for LGS designation. Mr Young's advice also highlights NPPG as follows where it provides helpful indicators regarding the appropriate size of LGS designations, where the emphasis is on smaller areas of land.

'What types of green area can be identified as Local Green Space?

The green area will need to meet the criteria set out in paragraph 100 of the National Planning Policy Framework. Whether to designate land is a matter for local discretion. For example, green areas could include land where sports pavilions, boating lakes or structures such as war memorials are located, allotments, or urban spaces that provide a tranquil oasis.

Paragraph: 013 Reference ID: 37-013-20140306

4.14 For completeness, a copy of the Rolleston on Dove examiners report is attached at **Appendix 5**, where the examiner considered the matters of demonstrable special character and accessibility in assessing a proposed LGS designation.

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4.15 In addition, the application for LGS prepared by the Parish Council and LEGLAG, as presented in Part 1 of the LGS Study Part 1, seeks to deal with the matter of 'extensive tract of land' by merely comparing the designation to SSSIs. However, SSSIs are designated for a very different purpose, and unlike LGS, there is no national policy or guidance which seeks to limit their size.

6 Paragraph 5.4.13 of the JCS refers to a green buffer to be retained at NW Cheltenham near Swindon Village, and the CP will allocate the specific boundaries of the LGS in this area. Does the approach in the CP, which designates the area as LGS, comply with the JCS, and National policy and guidance?

4.16 In accordance with the evidence presented above, the proposed designation area of 24.5 hectares at North West Cheltenham constitutes an extensive tract of land and therefore fails the qualifying criteria for LGS.

7. For Leckhampton Fields, guidance was provided by the JCS Inspector in her report. She stated it would be for the CP to identify the detailed boundaries of the LGS. Can the scale and extent of the proposed LGS be fully justified in accordance with the JCS, and National policy and guidance?

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- 4.17 No, as evidenced in response to the earlier questions, the proposed LGS designation at Leckhampton totalling 39.31 hectares can be nothing but an extensive tract of land adjacent to the settlement and it is therefore unsound having regard to national policy and guidance. There may be pockets of land within the area, such as Lotts Meadow for example, which could be potentially suitable for LGS designation, but no such evidence or proposal has been presented to this examination.
- 4.18 Furthermore, the JCS Inspector's approach to the consideration of LGS and landscape sensitivity matters, came under grave criticism in the Court Judgement by Justice Holgate (Case No: CO/2872/2016) in considering the application for Judicial Review (LEGLAG vs Tewkesbury Borough Council) of the consent granted for 377 dwellings on land west of Farm Lane (application reference: 14/00838/FUL). The land subject of the JR application formed part of the submission draft JCS strategic allocation at Leckhampton and also the Parish Council's original proposed area for LGS designation, at that time totalling some 54 hectares. A copy of the judgement is attached at **Appendix 6** and it is useful to note Justice Holgate's comments in dismissing Ground 1.
- 4.19 At paragraph 64 of the judgement, Justice Holgate confirms sympathy towards the arguments presented by Martin Kingston QC that the JCS Inspector's approach in the JCS examination were legally flawed as any ruling on site allocations or LGS designations should follow determination of the objectively assessed housing need, as required by NPPF (March 2012) paragraph 76.
- 4.20 At paragraph 111 of the judgement, Justice Holgate provides additional clarity that LGS designations should only be considered when the policy allocations to deliver the established housing need have been identified.

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“By definition the designation of LGS is dependent upon the conclusions reached as to what areas of land should be allocated for sustainable development, and not the other way round (see paragraph 76 of the NPPF and paragraph 62 of EXAM 146). Plainly the Inspector’s suggestion that LGS designation be addressed was provisional, in that it was subject to (inter alia) establishing the scale of the OAHN for the area of the three planning authorities and how that need should be met, including whether the Farm Lane site should be allocated notwithstanding impact on the landscape.”

4.21 Finally, at paragraphs 114 to 116 of the judgement, Justice Holgate highlights the JCS Inspector’s clear misinterpretation of comments from statutory consultees with regard to matters of landscape sensitively having confirmed her ‘reservations’ about the strategic housing allocation at Leckhampton.

4.22 Having regard to Justice Holgate’s judgement, the CP examination must not rely upon guidance of the JCS Inspector’s final report or earlier findings. Rather the CP examination must be fully satisfied that any LGS designation is firstly, not taken until the full development needs of the Borough for the plan period have been identified, and second, that it is fully compliant with national policy and guidance concerning LGS.

8. Is the scale of LGS proposed at West Cheltenham justified?

4.23 In accordance with the evidence presented above, the proposed designation area of 18.25 hectares at West Cheltenham constitutes an extensive tract of land and therefore fails the qualifying criteria for LGS.