

IN THE MATTER OF

**GLOUCESTER CITY, CHELTENHAM BOROUGH AND
TEWKESBURY BOROUGH COUNCILS'
JOINT CORE STRATEGY
EXAMINATION IN PUBLIC**

NOTE

No5
CHAMBERS

BIRMINGHAM • LONDON • BRISTOL

Introduction And Background

1. We are jointly instructed by RPS on behalf of Bovis Homes and Miller Homes and Origin3 on behalf of Redrow Homes (hereinafter “the clients”). The clients have interests in the land identified for a sustainable urban extension to the south of Cheltenham (hereinafter “the site”). The site is allocated for the development of 1,124 dwellings in the Joint Core Strategy (hereinafter “the JCS”) under draft strategic allocations policy SAI (764 dwellings within Cheltenham and 360 within Tewkesbury).
2. The site has already been allocated for residential development (approximately 360 dwellings) in the Tewkesbury Local Plan (2006-2011) under policy SD2 (Farm Lane/ Leckhampton Lane, Shurdington).
3. Leckhampton with Warden Hill and Shurdington Parish Council collectively submitted an “application” for the site to be designated as a local green space (hereinafter “LGS”) in August 2013. A revised application amending the boundary of the proposed area was submitted in January 2015.
4. The proposal to designate part of the site as LGS has become a key issue during the course of the examination in public. The purpose of this advice is to provide a brief note regarding the legal position in order to assist the Inspector reach a determination on the soundness or otherwise of the JCS.
5. A LGS designation derives from the NPPF, specifically paragraphs 76 and 77. The courts have not yet considered the issue, so the starting point is the text of the NPPF itself (subject, of course, to the principle established by *Tesco v Dundee City Council* 2012 UKSC 13 that the courts may inquire into whether policies have been read objectively in their proper context by decision-makers). Paragraphs 76 and 77 say:

“76. Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances.

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. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.

77. The Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:

- *where the green space is in reasonably close proximity to the community it serves;*
- *where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- *where the green area concerned is local in character and is not an extensive tract of land.”*

6. Paragraph 78 is also relevant. It reads:

“Local policy for managing development within a Local Green Space should be consistent with policy for Green Belts.”

Effect of Designation

7. It can be seen from the paragraphs of the NPPF quoted above that despite the informality of the designation process, the effect of a site’s designation as LGS is significant. Essentially, the same restriction on development as in the Green Belt applies (paragraph 78 of the NPPF and paragraph 020 of the PPG, chapter 37 (all references to the PPG hereinafter refer to paragraphs within chapter 37)). Thus, even if development is necessary and sustainable, it may still only take place within an area designated as LGS if very special circumstances apply. What would constitute very special circumstances so as to allow development in a LGS is not defined in the NPPF but as with development in the Green Belt this is to be a matter entirely for the discretion of the local planning authority, subject to the legal principles of Administrative Law (Wednesbury Unreasonable etc). Designation of an area as LGS thus imputes great

uncertainty as to how (and whether) development will be permitted to proceed in an area.

Status of LGS During the Development Plan Process

8. Perhaps because the effect of designating an area as LGS has such a significant effect after such an informal process, the designation of an area as LGS is subservient to the requirement that a development plan must meet the identified needs of the area for homes, jobs and other essential infrastructure (paragraph 76 of the NPPF). This is reemphasised in paragraph 007 of the PPG (reference ID: 37-007-20140306), which states:

“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.” (emphasis added)

9. Thus, the argument that the proposed site allocation in the JCS prejudices the LGS application is wrong. Policy must be taken to mean what it says, and national policy, supported by national guidance, is 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.

Role of LGS Designation in Three-Tier Development Plan

10. The councils’ procedural approach to the LGS issue was lawful and does not have implications regarding the soundness of the JCS. LGS’ are to be locally designated through either local or neighbourhood plans (see paragraph 006 of the PPG). But it must be done once plans have identified sufficient land in suitable locations to meet identified needs. The site in question has been identified as being necessary to meet local needs. Here the advice provided by

John Hunter of Kings Chambers to Cheltenham Borough Council on 8th April 2014 is relevant (Examination Document 61)

11. An issue which has continuously raised is Cheltenham Borough Council's consideration of the proposed LGS at its 9th April 2014 meeting. The minutes are available as Examination Document 89. They demonstrate that proper consideration was given to the issue of the LGS. Having sought legal advice, and with the benefit of the application for designation before it, Cheltenham Borough Council nonetheless went on to allocate the site for development in the JCS with a view to thereafter determining the LGS application by way of the non-strategic process rather than at the strategic cross-boundary stage (see, in particular, resolution 3). The identified of suitable locations should, as with this site, come first. This is precisely how the government intends the LGS designation process to work (paragraph 007 of the PPG). It is also important to note that a LGS study was undertaken by Cheltenham Borough Council following on from Gloucestershire Rural Community Council's study (Examination Documents 17 and 18). This will be used to determine the LGS application during the progress of the Cheltenham Borough local plan process.

"Extensive Tract of Land"

12. There has been extensive debate at the examination in public as to what constitutes "an extensive tract of land" (by paragraph 77 of the NPPF). Size in terms of hectares was used as a reference point but we do not consider this a helpful benchmark on its own, as this is not a reference point specified in the NPPF or the PPG. The PPG provides examples consisting of small, locally distinct areas which can be easily identified on the ground (and not by reference to boundaries on a map):

"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)

13. The emphasis here is clearly on small well defined local features, which is of course entirely consistent with the policy in paragraph 77 of the NPPF which explicitly prohibits designation on any extensive tract of land. The advice in the PPG continues and reiterates the importance of this part of paragraph 77:

...

“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 77 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 15, reference ID: 37-015-20140306)

14. Further on, paragraph 017 of the PPG refers to green areas which are valued because of their wildlife, historic significance and/or beauty. Advice provided to the councils from PINS said *“it is largely intended to cover vital pieces of green space in urban areas that perform an important community function, rather than large tracts of urban fringe”*. A small and specific area such as Lotts Meadow could satisfy the criteria, whereas a wider indistinct tract of land would not.
15. There are two examples where other Neighbourhood Development Plan examiners have considered the issue of LGS which are of some assistance. These decisions are appended to this advice note.
16. Firstly, in Rolleston-on-Dove, East Staffordshire, the Examiner reviewing the draft neighbourhood plan found that it was completely inappropriate to designate an area capable of accommodating some 100 homes as LGS. The point was demonstrated with even more clarity by the examiner reviewing the draft Backwell Neighbourhood Plan on October 2014, where the parish council proposed designating two areas as LGS (Farleigh Fields and Moor Lane Fields, in addition to a strategic green gap). Here the examiner (Nigel McGurk

BSc(Hons) MCD MBA MRTPI) upon hearing oral legal submissions from Counsel considered the terminology used in the NPPF and found:

“Taking all of the above into account, it is essential that, when allocating Local Green Space, plan-makers can clearly demonstrate that the requirements for its allocation are met in full....

Whilst both included attractive countryside and contained public footpaths, I observed that the most striking thing about Farleigh Fields and Moor Lane Fields was their substantial size. In this regard, it was established at the Hearing that Farleigh Fields comprises at least 19 hectares and Moor Lane Fields, at least 32 hectares. Taking the latter of these first, there is no doubt in my mind that an area covering some 32 hectares is ‘an extensive tract of land.’

Consequently, the proposed allocation of Moor Lane Fields does not have regard to national policy, which states that the Local Green Space designation should only be used where the area concerned “is not an extensive tract of land.” (Examiner’s report, page 34)

17. He went on to consider that this was the correct approach under the NPPF despite the clear value placed on the sites by the local community:

“Notwithstanding the above and my decision below, I do recognise that an enormous amount of work has gone into considering Farleigh Fields and Moor Lane Fields. It is clear from the evidence provided that both areas include attractive, sensitive and well-loved areas of land and there is no doubt in my mind that there are parts of both areas that have been demonstrated to be special to a local community, for a variety of reasons. In seeking to designate Local Green Space, the Neighbourhood Plan was responding to local support – evidenced through a robust consultation process - for the protection of green areas and open space, regarded as special. Whilst individually, or together, these factors do not overcome the failure to meet a specific policy requirement, they are nevertheless important local considerations that have emerged through the Neighbourhood Plan process.” (Examiner’s report, page 35)

18. Whether the proposed LGS is an extensive tract of land is a matter for the decision-maker, but it can be seen from the above that large areas of urban fringe land are not appropriate sites to be designated as LGS. The designation is intended to apply to small and distinct spaces of green space within an urban area which are of particular importance to the local community.

Conclusion

19. In summary, the councils have determined that the site is a sustainable location for an urban extension and a suitable location to meet identified development needs. That really is the end of the matter. But in addition, it is clear that the areas falling within the LGS application represent an extensive tract of land.

CHRISTOPHER YOUNG
NINA PINDHAM

No5 Chambers
7th August 2015

IN THE MATTER OF

**GLOUCESTER CITY,
CHELTENHAM BOROUGH AND
TEWKESBURY BOROUGH
COUNCILS'
JOINT CORE STRATEGY
EXAMINATION IN PUBLIC**

NOTE

Origin 3 and
RPS Planning & Development