



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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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).

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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

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