

## **PLANNING PROOF OF EVIDENCE**

**Prepared by: David Hutchison BSc (Hons) DipTP MRTPI**

## **LAND OFF KIDNAPPERS LANE, CHELTENHAM, GLOUCESTERSHIRE**

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

### **PROPOSAL:**

**RESIDENTIAL DEVELOPMENT OF UP TO 25 DWELLING, ASSOCIATED INFRASTRUCTURE,  
OPEN SPACE & LANDSCAPING, WITH THE CREATION OF NEW VEHICULAR ACCESS FROM  
KIDNAPPERS LANE. DEMOLITION OF EXISTING BUILDINGS.**

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## 1. PERSONAL BACKGROUND

- 1.1 My name is David Hutchison. I hold a Bachelor of Science Degree and Diploma in Town Planning from Cardiff University.
- 1.2 I am a Chartered Town Planner and I am employed as a Planning Consultant at the firm of Pegasus Group. I currently hold the position of Executive Director.
- 1.3 I have worked in the private sector as a Planning Consultant since 1999 (20 years). Prior to my appointment at Pegasus (when the company was first established in 2003), I worked for Chapman Warren and the RPS Group.
- 1.4 I have a wide range of experience in all aspects of Town Planning, dealing with both Development Control and Planning Policy. I work primarily for residential developers and I am responsible for all aspects of their work ranging from site promotion through the Development Plan process to preparing and submitting planning applications for various scales, including large scale strategic urban extensions.
- 1.5 I also represent clients at appeals and have presented evidence on their behalf at numerous Public Inquiries. I can confirm that I was the Planning Policy witness for the Appellant at the previous inquiry relating to this site.
- 1.6 The evidence that I have prepared and provide for this appeal (PINS Ref APP/B1605/W/19/3238462) is true and has been prepared and is given in accordance with the guidance of my professional institution. I can confirm that the opinions expressed are my true and professional opinions.

## 2. INTRODUCTION

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

2.2 The appeal follows the failure of Cheltenham Borough Council (The LPA) to determine an application for outline planning permission within the statutory 13 week period, for a proposed development comprising:-

**“Residential development of up to 25 dwellings, associated infrastructure, open space and landscaping, with the creation of new vehicular access from Kidnappers Lane. Demolition of existing buildings.”**

2.3 The planning application was validated by the LPA on 20th February 2019. Following the normal consultation procedures, the Appellant sought to engage in constructive negotiations with Officers at the LPA, as well as those representing the statutory consultees, as encouraged by the NPPF.

2.4 Notwithstanding this, Officers indicated to the Appellant that the application was unlikely to be recommended for approval and the Appellant therefore took the decision to lodge an appeal on the grounds of “non-determination.” The appeal was lodged on 3<sup>rd</sup> October 2019. The application had been with the LPA for almost 8 months before the appeal was lodged. It cannot therefore be said that the LPA was not given sufficient time to consider the application and to negotiate with the Appellant.

2.5 Given that no decision was ever issued on the planning application, Officers prepared a Delegated Report which was provided alongside the appeal questionnaire. The Delegated Report sets out the Officer’s assessment of the application proposals and explains at Section 7 that Officers would have recommended that the application be refused, had the LPA still been the determining authority.

2.6 Two putative reasons for refusal were identified. They read as follows:-

**1. This site is not located within the Principal Urban Area (PUA) of Cheltenham, it is located beyond the built up area and therefore the site is not allocated for development purposes. The proposal for 25 dwellings at this site would lead to the following landscape effects: Appear as a separate enclave of development with no**

links to nearby residential development; visually separated from the edge of Cheltenham; To be out of keeping with the semi-rural settlement form, density and pattern of the locality; The new highway entrance would remain an incongruous suburban type feature in the semi-rural area even with the reduction of scale of the remaining estate road. Reduce the landscape quality of the surrounding Lotts Meadow, a key component of the valued landscape at Leckhampton, through the ability to see upper storeys and roofscapes

The proposal therefore conflict with Policies SD4; SD6 and SD10 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 and Policies CO1 and CP7 of the Saved Cheltenham Local Plan.

2. Policy INF4, INF6 and INF7 set out that development will be permitted only where adequate provision has been made for the infrastructure necessary for the development to proceed and for other public services and facilities, the need for which arises from the development. The development proposed will lead to a need to provide for an element of affordable housing (Joint Core Strategy Proposed Modifications Policy SD12. NO agreement has been completed to secure the provision of affordable housing.

- 2.7 For ease of reference a copy of the Delegated Report is provided at Appendix 1.

#### **APPENDIX 1 – LPA DELEGATED REPORT (AND PUTATIVE REASONS FOR REFUSAL)**

- 2.8 My Proof of Evidence deals with the planning policy matters raised in the putative reasons for refusal. It also addresses the planning policy issues identified by other interested parties.
- 2.9 I reserve the right to add to or amend my evidence on receipt of the evidence submitted by the other parties.

#### **Other Proofs of Evidence submitted on behalf of the Appellant**

- 2.10 My evidence should be read alongside the other Proofs of Evidence that have been prepared on behalf of the Appellant. These include:-
- Mr Tiley – Housing Land Supply
  - Mr Harris – Landscape & Visual Impact

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### **Statements of Common Ground**

2.11 My evidence should also be read in conjunction with the following Statements of Common Ground (SoCG) that are expected to be agreed shortly:-

- Planning
- Landscape and Visual Impact

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### **3. THE APPEAL SITE AND ITS SURROUNDINGS**

- 3.1 A detailed description of the appeal site and its surroundings is set out in the SoCG. To avoid unnecessary duplication, I do not intend to repeat it again in full here.
- 3.2 In summary, the site is located on the south eastern edge of Cheltenham which is defined in the Joint Core Strategy as a Key Urban Area along with Gloucester.
- 3.3 The site itself extends to approximately 1.3 hectares and comprises of an irregular shaped area of land formally used a commercial plant nursery. Access to the site is gained directly from Kidnappers Lane.
- 3.4 The appeal site lies beyond the Principal Urban Area of Cheltenham (PUA) as defined by the Cheltenham Borough Local Plan Second Review (2006). It is not directly affected by any landscape, heritage, ecology or other designations. Indeed, the appeal site lies in one of the only areas of Cheltenham that is outside of the PUA, but not designated as Greenbelt or AONB.
- 3.5 The emerging Cheltenham Local Plan proposes to allocate land beyond the PUA in the vicinity of the appeal site, for a mixed-use development including circa 350 dwellings and a new secondary school.

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#### 4. THE APPEAL PROPOSALS

4.1 The planning application that is now the subject of this appeal (LPA ref:19/00334/OUT) sought outline planning permission for a development comprising:-

**“Residential development of up to 25 dwellings, associated infrastructure, open space and landscaping, with the creation of new vehicular access from Kidnappers Lane, demolition of existing buildings.”**

4.2 The application was submitted in outline, with all matters of detail reserved for subsequent determination at the Reserved Matters stage.

4.3 A more detailed description of the appeal proposals is set out in the SoCG and the Design & access Statement that supported the original planning application.



## **5. PLANNING HISTORY**

- 5.1 The planning history that is most relevance to this appeal will be set out in the SoCG.

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**6. PLANNING POLICY FRAMEWORK**

- 6.1 The planning policies and national guidance that are of most relevance to this appeal are identified in the SoCG.
- 6.2 I refer to relevant policies and guidance and the weight that ought to be afforded to them in the Case for the Appellant (Section 7) and in the Overall Planning Balance (Section 8).

## 7. CASE FOR THE APPELLANT

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

### **Background Context**

7.2 It is agreed that the LPA cannot demonstrate a five year supply of housing land (5YRHLS), as required by the NPPF.

7.3 This was known to the LPA at the time that the Delegated Report was prepared, but since that time, the LPA have conceded that the supply position is in fact much worse than previously thought. It has deteriorated from 4.6 years as set out in the Delegated report [para 6.2.7] to a supply of only **3.7 years** using the LPA's figures.

7.4 The evidence of Mr Tiley shows that the supply position is in fact much worse than that claimed by the LPA. Mr Tiley considers the position to be **2.11 years** (at best).

7.5 Even against the LPA's best case, the housing land supply position is dire. It is also important to highlight that the LPA's supply position does not reflect the extent to which housing needs are currently being met. That is because the housing requirement is artificially reduced in the early years of the plan by policy mechanisms that allow for:-

- A stepped trajectory, and
- The "Liverpool" approach to dealing with backlog

7.6 The housing land supply position is of importance because it has a direct effect on the way this appeal should be determined. It means that the "tilted balance" in paragraph 11d of the NPPF 2 is engaged, as confirmed in the Delegated Report.

7.7 The onus therefore rests upon the LPA (or other interested parties) to demonstrate that any residual adverse impacts would significantly and demonstrably outweigh the benefits of granting planning permission.

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### **The Main Planning Policy Issues**

7.8 The main issues were agreed during the Inspector's Case Conference telephone call. My evidence now focuses on planning policy related matters which I have broken down as follows.

**Issue 1      Whether the site is an appropriate location for housing development having regard to the National Planning Policy Framework and relevant adopted development plan policy**

**Issue 2      Emerging Development Plan Policy**

**Issue 3      Other matters raised in third party objections**

7.9 My issues 1 and 2 deal the first limb of the LPA's first putative reason for refusal. Mr Harris deals with the second limb, which relates to the effect of the proposals on the character and appearance of the area.

7.10 As requested by the Inspector, I have dealt with the other matters raised by third parties under my issue 3.

7.11 I do not intend to present evidence in relation to the LPA's second Putative Reason for Refusal (affordable housing). That is because there is agreement that this can be addressed through planning obligations.

7.12 I will identify the benefits and adverse impacts of the development in the overall planning balance in Section 8 of my evidence. As requested, I also consider the consequences of not granting planning permission.

### **Issue 1      Whether the site is an appropriate location for housing development having regard to the National Planning Policy Framework and relevant adopted development plan policy**

7.13 In order to set the context for the Case for the Appellant, I start by explaining how the proposed development would accord with the overarching strategy of the Development Plan.

7.14 I then take this further by explaining that the site itself is in a sustainable and accessible location for additional housing, in the context of what has been agreed in the SoCG.

### The Development Plan

7.15 The starting point for the determination of any planning application or appeal is the Development Plan. The planning system is 'plan led' and planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise<sup>1</sup>

7.16 The Development Plan in this case comprises:-

- The Gloucester, Cheltenham & Tewkesbury Joint Core Strategy (JCS) [CD.D8]
- Cheltenham Borough Local Plan Second Review 1991-2011 (2006) [CD.C1]

7.17 The policies that will be of most importance to this appeal will be set out in the SoCG. The most important strategic policies are those that set out in the adopted JCS.

7.18 The strategic policies of the adopted Local Plan have been superseded by the JCS. The Local Plan policies for the supply of housing are also now "time expired" because they only covered the plan period up to 2011. This is of particular relevance when considering the out-of-datedness of the settlement boundaries (or the extent of the Principal Urban Area or PUA, as it is referred to in Cheltenham) as these have simply been carried forward from the 2006 Local Plan.

### Strategic Objective 8 – Housing Delivery

7.19 The JCS identifies 9no. Strategic Objectives [CD.D8 pages 13-15]. These include Strategic Objective 8 which relates to housing delivery. It states inter alia that:-

**"Strategic Objective 8 – Delivering a wide choice of quality homes**

**Deliver good quality new housing to meet the needs of the current and future population and ensure greater affordability for all sectors of the community by:-**

- **Delivering, at least, a sufficient number of market and affordable houses"**

....." (my emphasis)

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<sup>1</sup> Section 38(6) of the Planning & Compulsory Purchase Act 2004

- 7.20 It is agreed that the LPA is currently failing to deliver the required number of homes that are needed. Furthermore, similar problems exist elsewhere in the neighbouring JCS authorities. The JCS authorities acknowledged this in the emerging JCS Issues & Options consultation in October 2018.
- 7.21 The Issues & Options document confirms that annual monitoring of housing since the adoption of the JCS has demonstrated that some of the Strategic Allocations have not come forward as quickly as anticipated in the plan and that this has impacted on the housing delivery for both Cheltenham and Gloucester. A recent Secretary of State decision involving Land at Oakridge, Highnam has also found the supply position to be failing in Tewkesbury [CD.H8].
- 7.22 The JCS authorities now intend to look at housing land supply for all three LPA areas through a comprehensive JCS review [CD D12 paragraph 2.3].
- 7.23 This acknowledgement that the JCS is not working (insofar as meeting housing needs is concerned) came less than a year after its adoption. The JCS is broken in this regard and the LPAs know this to be the case. This sets an important background context for the following analysis of JCS policies.

The Need for Development and its Spatial Distribution (Policies SP1 and SP2)

- 7.24 JCS Policy SP1 establishes a minimum housing requirement across the JCS authorities of 35,175 dwellings for the plan period 2011-2031. The final limb of the policy states that this will contribute towards achieving Objective 8 (which I have already referred to above).
- 7.25 Part 3 of Policy SP1 distributes the overall minimum housing requirement amongst the three JCS authorities. It requires at least 10,917 new homes to be provided across the Cheltenham policy area.<sup>2</sup>
- 7.26 To support their economic roles as the principal providers of jobs, services and housing, and in the interests of promoting sustainable transport, Policy SP2(1) goes on to state that development will be focused at Gloucester and Cheltenham and will include urban extensions to these areas.
- 7.27 Therefore, in broad strategic terms, the proposals accord with the overarching strategy of the JCS which focuses housing development at Cheltenham. Policies

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<sup>2</sup> Mr Tiley explains the differences between the administrative area and policy area and what this means for the housing requirement and calculation of housing land supply.

SP1 and SP2 also clearly anticipate that there will be a need for development beyond the PUA to meet the housing requirement of Cheltenham (as does the emerging Local Plan as I will explain later). The LPA's objection to the appeal proposals on the basis that they would involve housing beyond the built-up area of the PUA must be viewed in this context.

#### Policy SD10 – Residential Development

- 7.28 JCS Policy SD10 outlines the circumstances in which new housing development will be permitted.
- 7.29 The LPA identifies conflict with Policy SD10 in its putative reasons for refusal. The Delegated Report also states that the LPA sees no justification for reducing the weight that should be given to JCS policies, which must include SD10 [see para 7.4].
- 7.30 I accept that the appeal proposals do not accord with the Policy SD10. That is because the site is not allocated, it is not located within the PUA of Cheltenham and it does not accord with any of the other criteria that would normally allow for housing on this site.
- 7.31 However, Policy SD10 is out of date because of the housing land supply position and it should therefore be afforded reduced weight.
- 7.32 Also, for Policy SD10 to operate properly, it needs the site allocations referred to in part 2 of the policy to be in place so that the housing requirement of the JCS can be met. If the LPA cannot demonstrate a 5YRHLS and it has not provided the site allocations that would be needed to restore its supply, then Policy SD10 must be afforded reduced weight.
- 7.33 The LPA's suggestion that Policy SD10 should be afforded full weight is just irrational.
- 7.34 The LPA's Delegated Report and Statement of Case (SoC) seem to still rely upon the findings of the previous Inspector from two years ago. However, the situation is materially different now. I would draw attention to paragraphs 28 and 41 of the previous appeal decision and what Inspector Bridgwater concluded. Paragraph 28 reads as follows:-

**"28 However, based on the evidence before me I am satisfied that the adoption of the JCS provides a robust evidential basis that a five year supply of deliverable**

**housing land for this area has been demonstrated. As a result concerns about any policy vacuum resulting from the lack of the eCLP are unfounded since the qualified need for the Borough can be met. Consequently, there is no adequate justification for reducing the weight that should be given to Policy SD 10 of the JCS.**" (my emphasis)

7.35 At paragraph 41 the Inspector went on to again say why there was no justification for reducing the weight that should be given to Policy SD10 and the LPA still appear to be mirroring these findings. His reasoning was as follows:-

**"41.... To do so would allow residential development without regard to the quantified need for it and would be in direct conflict with the core planning principle of the Framework that planning should genuinely be plan-led (paragraph 17)."** (my emphasis)

7.36 Circumstances have clearly changed. The LPA cannot demonstrate a 5YRHLS, the shortfalls are substantial, and the plan-led system continues to stutter and fail.

7.37 With the ongoing delays to the emerging Local Plan we are likely to be in a position where we will be half way into the plan period before any residential allocations at Cheltenham can be delivered under the terms of Policy SD10, once lead in times are taken into account. It is therefore unreasonable to object to the current appeal scheme on the basis that it is not allocated when there are no allocations (or indeed any other sites) that are capable of delivering housing now.

7.38 The scope for development within the PUA boundary is constrained by the fact that the PUA was defined by the Local Plan that was adopted in 2006. That was almost 14 years ago and in the context of now time expired housing policies that only provided for development needs up to 2011.

7.39 Rather than facilitating much needed housing development, Policy SD10 represents an out-of-date policy which is currently frustrating housing delivery. In doing so it is undermining the wider objectives of the JCS to deliver a sufficient number of homes and ensuring greater affordability. In all the circumstances, Policy SD10 must give way. In my opinion, it should only be afforded limited weight.

7.40 I would draw attention to a recent appeal decision involving Land at Stoke Road, Bishops Cleeve where Inspector Stephens reached a similar conclusion [CD.H10]. Whilst that site was in Tewkesbury Borough, it was considered against the same JCS Policy SD10. It was also the case that the LPA could not demonstrate a



5YRHLS, the settlement boundaries were out of date and the emerging Local Plan has yet to produce a single site allocation.

7.41 The most relevant paragraphs are 25-26 and these read as follows:-

**“25. I accept that the proposed development may be in breach of Policy SD10 of the JCS, because the site is located outside the settlement limits. However, those settlement limits were plainly intended to operate in the context of adopted allocations which meet the housing need set out in the JCS. Policy SD10 has no full role to play as a development management tool in advance of the proposed allocations being made.**

**26. Further, as there is an agreed lack of a five year housing land supply, the Council accepts that Policy SD10 is out of date and deserves only limited weight. Mr Muston explained that is why it is not cited in any putative RfR. In my view that concession must be correct, because adherence to the settlement limits in Policy SD10 would not allow a five year supply to be achieved. Those settlement limits restrain housing delivery.”** (my emphasis)

7.42 I agree with the approach and overall conclusion set out above. The position of Cheltenham Borough Council to seek to afford full weight to Policy SD10 is wholly inconsistent with this appeal decision and indeed the stated position of Tewkesbury Borough Council.

#### The Principle of Further Housing at Leckhampton

7.43 There is no dispute between the principal parties that the Leckhampton area is a suitable and appropriate location for further housing.

7.44 There are no Development Plan policies that would preclude further housing at Leckhampton as a matter of principle. It is one of the few undeveloped areas remaining within the Borough which is not washed over by Greenbelt or AONB designations. Indeed, the JCS Inspector indicated in her Final report that a housing allocation could be made at Leckhampton [CD.D9 para 185].

7.45 In that context it is highly relevant that the emerging Local Plan proposes to allocate land for up to 350 dwellings and a new secondary school at Leckhampton on land that is within a stone throw of the appeal site.

7.46 It can therefore be concluded that further housing in this general location is acceptable, as a matter of principle in Development Plan and NPPF terms.

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Site Specific Considerations

- 7.47 With regards to the site itself, it is agreed that it is land that is not designated for landscape, ecology, flood risk, heritage, open space or any other purpose and that it can be considered sustainable in terms of its accessibility to local facilities and public transport services.
- 7.48 There are no adopted policies or designations that directly affect the site that would preclude its redevelopment for housing.
- 7.49 Clearly the Appellant and the LPA have contrasting views regarding the landscape and visual impact of development at the appeal site and these will be debated at the Public Inquiry. The Parish Council also raise objections on these grounds. I defer to Mr Harris who will present expert evidence on this issue. I note that his conclusions are that the site is suitable for the development as proposed.
- 7.50 All other site-specific matters are addressed in the SoCG and it is not necessary to rehearse them all again in my evidence, other than to say that there are no other insurmountable constraints that affect the site which cannot be overcome through Reserved Matter applications, conditions and/or planning obligations.
- 7.51 To summarise on the suitability of the site having regard to the Development Plan and the NPPF:-
1. The appeal proposals are in general accordance with the spatial strategy of the JCS which seeks to focus development at Cheltenham (Policies SP1 and SP2)
  2. JCS Policy SP1 sets a minimum overall housing requirement of 35,175 dwellings (2011-2031), of which at least 10,917 are to be provided across the Cheltenham policy area. The appeal proposals would contribute towards meeting these requirements.
  3. JCS Strategic Objective 8 seeks to deliver at least, a sufficient number of market and affordable houses. Annual monitoring and the evidence of Mr Tiley demonstrates that the LPAs are already failing to deliver the required number of new homes.
  4. Whilst the LPA objects to the appeal proposals on the grounds that it is development beyond the PUA, Policy SP2 anticipates that there will be a need for housing beyond the Cheltenham PUA.
  5. I accept that the site is not allocated for housing and that there would be a partial conflict with the Development Plan (Policy SD10). However, Policy SD10 is out of date because of the housing land supply position and it should therefore be afforded only limited weight.

6. It is agreed that the site is in a sustainable accessible location and that Leckhampton is a suitable place for further housing as illustrated by the draft Local Plan allocation.
7. It is also one of the few undeveloped areas in the borough not designated as Greenbelt or AONB
8. There are no adopted policies or designations that directly affect the site that would preclude its redevelopment for housing as a matter of principle.

## **Issue 2      Emerging Development Plan Policy**

- 7.52 I have also considered whether the principle of housing in this location is appropriate having regard to the emerging Development Plan documents.
- 7.53 My overall conclusion is that there is nothing that persuades me that the principle of development should be resisted on the basis of these documents, particularly given the limited weight that can be afforded to them at this time.
- 7.54 As set out in the SoCG, the emerging Development Plan documents in this case are as follows:-
- The Cheltenham Plan
  - Leckhampton with Warden Hill Parish Council Neighbourhood Plan

### The Emerging Cheltenham Local Plan

- 7.55 The Cheltenham Plan is effectively a Part 2 plan which once adopted, will sit beneath the JCS and provide the non-strategic site allocations and development management policies for the Cheltenham area. It has been prepared to be consistent with the spatial strategy of the JCS.
- 7.56 The LPA did not rely upon the emerging Local Plan policies in its putative reasons for refusal, but has sought to re-introduce them through its SoC by reworking putative reason for refusal 1 [see the unnumbered paragraphs dealing with the principle of development following para 4.2]. The LPA also makes the following statements about the emerging Local Plan at paragraphs 3.6-3.9 of its SoC:-
- **“It is at a very advanced stage”** [3.6]
  - **“The LPA will attribute considerable weight to its policies”** [3.8]

- **“In particular the Council will refer to the appeal site not being allocated for development” [3.9]**

- 7.57 There are no emerging Local Plan policies or designations that would specifically preclude housing in this location. The principal housing policy is SD10 in the JCS (which I have already dealt with) and it is not necessary for the emerging plan to duplicate its requirements.
- 7.58 I do nonetheless accept that the appeal site does not form part of any draft housing or mixed use allocation in the emerging Local Plan. However, the plan has yet to be adopted. The Examination is still ongoing and Main Modifications were published for consultation up until 16<sup>th</sup> December 2019 and we need to wait to see what representations were received.
- 7.59 The Inspector has yet to publish her final report into the Examination. Although a Post Hearing Advice note was published in [CD.C9] and paragraph 1 makes it clear that no final conclusions have been reached and that her final conclusions quite rightly need to take representations on the Main Modifications into account.
- 7.60 The Appellant has objected to the emerging plan and those objections still need to be resolved through the plan making process. This affects the weight that can be afforded to it [see NPPF paragraph 48].
- 7.61 The LPA say that they will attribute “considerable weight” to the policies of the emerging Local Plan [SoC 3.8] but I consider the LPA’s approach to be overly simplistic and short-sighted. I accept that some policies can be afforded more weight than others in the context of the guidance set out in NPPF paragraph 48. For example, policies that are consistent with the NPPF and are not the subject of unresolved objections. I also believe that some weight can also be placed on the direction of travel with the mixed-use allocation at Leckhampton as there is no indication that this will be dropped from the plan. However, this is tempered by the fact that further development in the area may still be required.
- 7.62 The Main Modifications already assume that the Local Plan will be adopted without a 5YRHLS [see Table 8, p.162 which refers to a supply of only 4.6 year supply]. However, we now know that the 5YRHLS position has deteriorated significantly since the Proposed Modifications were published from 4.6 years to 2.11 years according to Mr Tiley (or 3.7 years according to the LPA). We simply do not know whether Inspector Burden will feel comfortable about allowing a plan to be

adopted with such a substantial housing shortfall. I would certainly have major concerns.

7.63 In my opinion, a plan that does not provide for a 5YRHLS at the point of adoption should not normally be regarded as being an effective plan, and it should fail to meet the NPPF tests of soundness. The shortfalls are not marginal under any assessment. The problems need to be addressed now and not just put off for another day.

7.64 I must confess that I do have experience of some Examining Inspectors allowing plans to proceed to adoption without a 5YRHLS at the point of adoption and I recognise that demonstrating a 5YRHLS is not in itself a test of soundness. Indeed, one of those Inspectors that I am referring to was Inspector Burden, the same Examining Inspector that is dealing with the emerging Cheltenham Plan.

7.65 Inspector Burden allowed the North Somerset Site Allocations Plan to be adopted without reaching a conclusion on 5YRHLS. However, a plan that is adopted without a 5YRHLS will be immediately out of date by virtue of NPPF Footnote 7. I would highlight that there have been numerous appeal decisions in North Somerset since the Site Allocations Plan was adopted in which the tilted balance was repeatedly engaged, including a recent appeal for 450 dwellings that was allowed at Nailsea.

7.66 There are two other important structural flaws in the emerging Local Plan that Inspector Burden will now need to grapple with:-

- The draft Local Plan does not identify enough land for plan period housing requirement to be met in full. Even on the LPA's figures there will be a shortfall of 1,190 dwellings. Mr Tiley identifies the shortfall as being much worse at 2,270 dwellings.
- The evidence of Mr Tiley shows that the LPA will also be unable to restore a 5YRHLS for the rest of the plan period up to 2031, unless additional sites are identified.

7.67 Simply put, the LPA is in a deep hole that it cannot get out of unless significant amounts of additional land (which is currently unallocated in adopted and emerging plans like the appeal site for example) is released for development. The fact that the appeal site is not allocated in the emerging Local Plan means very little when viewed in this context.

- 7.68 The early adoption of the emerging Local Plan in its current form presents no safe haven for the LPA. Even if it was to be adopted tomorrow, the “tilted balance” would still be immediately engaged by virtue of the housing land supply position and NPPF Footnote 7.
- 7.69 The only way to address this through the plan-led system would be to delay the adoption of the emerging plan whilst additional sites are identified and taken through the plan making process. This would be a significant but necessary backward step in the plan making process.
- 7.70 Either way, only limited weight can be afforded to the housing policies of the emerging Local Plan at this time.
- 7.71 When the plan-led process fails to provide for the housing that is needed, then the Development Management system must intervene. That is the intended purpose of NPPF paragraph 11d and the “tilted balance.” Adopted and emerging housing policies that frustrate supply cannot be afforded full or considerable weight as suggested by the LPA. That would be illogical. They should only be afforded limited weight (at most), and they must give way to new sources of supply.
- 7.72 I anticipate that the LPA might seek to argue that even with the housing shortfalls the appeal site would still not be selected for allocation. However, I have not seen any evidence to suggest that the LPA will be able to accommodate the shortfall of 2,270 houses identified by Mr Tiley (or even the undisputed figure of 1,190) on any more suitable sites. I will return to this later in my evidence when considering the implications of not granting planning permission.

The emerging Leckhampton with Warden Hill Parish Council Neighbourhood Plan

- 7.73 As explained in the SoCG there is no “made” Neighbourhood Plan (NP) covering the appeal site but a draft plan was published for consultation in October 2018.
- 7.74 Progress on the NP has been delayed. That is because of delays to the emerging Cheltenham Plan which would set the broader strategic framework for the NP.
- 7.75 One of the key issues for both the emerging Local Plan and the NP has been the identification of Local Green Space (LGS). This has been a matter of particular interest to the Parish Council for many years but the extent of the LGS still

remains unresolved according to the Local Plan Inspectors Post Hearing Advice note.

- 7.76 I would however highlight that even the Parish Council agrees that the appeal site should be excluded from the proposed LGS area and so this need not be regarded as a potential constraint.
- 7.77 There are no other draft NP policies which preclude the principle of housing at the appeal site.
- 7.78 The emerging NP actually includes a site specific policy for the appeal site [p.80] and this reads as follows:-

**"a) LWH10E The area ON between Kidnappers Lane and Lotts Meadow is too close to Leckhampton Hill, too visible from the Hill and too poorly screened from view for any estate type of development to be allowed. If any development is to be considered on this land at a future date, such development must be of a rural character and must be well and sustainably screened from view from Leckhampton Hill and the surrounding valued landscape of the Leckhampton Fields by having well in advance planted suitable sustainable trees and thickened hedgerows and having allowed enough years for both to mature sufficiently."**

- 7.79 I would highlight that the policy does not preclude housing development on the site. It indicates that development can be acceptable, but the Parish Council has quite prescriptive views on the character of any new development and how to mitigate its visual impact. The Appellant has made objections to the plan and these will be considered in due course.
- 7.80 Given that the NP is still in the early stages, it can only be afforded limited weight. I note that the LPA does not rely upon the emerging NP in its putative reasons for refusal or its SoC.
- 7.81 To summarise on the principle of development having regard to emerging Development Plan documents:-
1. There is nothing that persuades me that the principle of development should be resisted on the basis of the emerging Development Plan Documents, particularly given the limited weight that can be afforded to them at this time.
  2. There are no emerging Local Plan policies or designations that would specifically preclude housing in this location.

3. I accept that the appeal site does not form part of a draft allocation in the emerging Local Plan. However, the Examination is ongoing, the Inspector has not reached any conclusions and she recognises that she must take account of representations on the Main Modifications.
4. Moreover, progress on the Local Plan may well stall when the Inspector is told that the 5YRHLS position is 2.11 years, the Local Plan will have a shortfall of 2,270 dwellings by the end of the plan period and a 5YRHLS will never be restored during the plan period unless action is taken to identify more sites.
5. Even if the plan was adopted as per the Main Modifications, the 5YRHLS position will immediately engage the tilted balance. Whatever route the plan takes, the housing policies cannot be afforded more than limited weight at the present time.
6. The emerging NP is at an early stage in the plan making process and can only be afforded limited weight.
7. There are no emerging NP policies that preclude housing on the appeal site as a matter of principle and the LPA does not rely upon any conflict with the emerging NP.
8. The NP includes a policy for the potential redevelopment of the site for housing, albeit with prescriptive requirements on the character of the development and proposed mitigation.
9. Consistent with the emerging Local Plan, the NP excludes the appeal site from the proposed LGS area and so this should not be considered a potential constraint.

### **Issue 3 Other matters raised in third party objections**

7.82 I will now deal briefly with the other objections raised by third parties that the Inspector has asked me to address in her Case Management Note.

#### Traffic and Transportation

7.83 The application was supported by a comprehensive Transport Statement prepared by PFA Consulting. This addressed baseline conditions, traffic generation, access and opportunities for sustainable transport.

7.84 The submitted information was considered by the statutory consultee responsible for highways; Gloucestershire County Council. The Delegated Report confirmed that the County Council was satisfied that the proposals were acceptable and they recommended that no objection be raised, subject to conditions.



- 7.85 The LPA also accept that the proposals are acceptable in traffic and transportation terms including sustainable transport.
- 7.86 It should be noted that the previous appeal Inspector was satisfied that the proposals would be acceptable in highway terms and that was in the context of a larger scheme of 45 dwellings whereas the current proposal is for 25 dwellings [CD H7a paragraph 37].
- 7.87 I have also sought further advice from PFA to assist the Inspector in dealing with third party objections and I attach a brief note as my Appendix 2 which reiterates that there are no grounds for refusal on traffic or transportation grounds.

## **APPENDIX 2 - PFA NOTE ON TRAFFIC AND TRANSPORTATION**

### Flood Risk and Drainage

- 7.88 The application was supported by a Flood Risk Assessment and Drainage Strategy that was prepared by Phoenix Design Partnership [CD.A20].
- 7.89 It confirms that the site is located in Flood Zone 1 (the zone with the least probability of flooding) [1.2] and demonstrates that the development will not be at risk from other potential flood sources (sea, fluvial, pluvial, surface water, sewers, groundwater, artificial) [1.4].
- 7.90 A surface drainage strategy is also proposed, utilising SUDs and a 40% allowance for climate change has been incorporated [1.7].
- 7.91 The technical reports have been assessed by the relevant statutory consultees including the Lead Local Flood Authority (LLFA), Severn Trent Water Ltd and the LPA's Drainage Officer, all of which raise no objection subject to conditions.
- 7.92 The LPA also raise no objections on flood risk and drainage grounds.

### Ecology

- 7.93 The planning application was supported by an Ecological Assessment prepared by Ecology Solutions [CD.A13].
- 7.94 The assessment did not consider there would be any significant adverse effects on any statutory and non statutory sites [7.4].
- 7.95 The assessment found no evidence of badgers [7.6]

- 7.96 Retention of the majority of hedgerows and new planting and creation of open space would also provide for biodiversity enhancements for bats and birds and there would be opportunities for bat and bird boxes [7.5 and 7.7].
- 7.97 The assessment also included further recommendations to safeguard other protected and notable species present within the site.
- 7.98 The Ecological Assessment was later supplemented by an Appropriate Assessment that was undertaken by the LPA following submission of further information from Ecology Solutions [CD.A28]. This considered the proposals in the context of the Cotswold Beechwoods Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI). The Appropriate Assessment concludes that the LPA is able to ascertain that the proposal will not result in adverse effects on the integrity of the sites in question [CD.A35].
- 7.99 Natural England subsequently confirmed that they concur with the assessment conclusions, provided all mitigation measures are appropriately secured in any permission given. They confirmed that their advice in connection with the SAC similarly applies to the SSSI [CD.A30].

#### Loss of Green space

- 7.100 The site is not designated as Local Green Space (LGS) in an adopted Development Plan document.
- 7.101 The LPA is in the process of trying to define an area of LGS in the vicinity of the appeal site through the emerging Local Plan. However, the proposed LGS area does not include the appeal site [see CD.C8]. It also remains to be seen whether the full extent of the area proposed by the LPA's will be confirmed as LGS in light of the Inspector's concerns about the extent of the LGS area and the reasons why it is been proposed [see CD.C9].
- 7.102 It is noteworthy that the Parish Council agrees that the site should not be included within any defined LGS area.

#### Local Infrastructure

- 7.103 It is agreed that any other off-site infrastructure requirements for this scheme can be addressed through the Community Infrastructure Levy, conditions or planning obligations.

7.104 No statutory consultee has identified any insurmountable infrastructure capacity concerns that cannot be resolved in this way.

#### Noise

7.105 There is no reason to suggest that a development of 25 dwellings would give rise to unacceptable levels of noise or that it would be subjected to unacceptable noise levels from external sources.

7.106 The LPA raises no objection on noise grounds.

7.107 The Delegated Report records that the LPA's Environmental Health Officer confirmed that there were no adverse comments to make on the application.

#### Air Quality

7.108 There is no reason to suggest that a development of 25 dwellings would give rise to unacceptable impacts on air quality or that residents would be exposed to poor air quality.

7.109 The LPA raises no objection on air quality grounds.

7.110 Again, this would have been informed by the consultation response of the LPA's Environmental Health Officer who confirmed that there were no adverse comments to make on the application.

7.111 To summarise on the third party objections:-

1. The planning application provided the necessary information to confirm that there is no evidential basis for objection on any of these grounds.
2. The LPA raises no such objections.
3. There are no outstanding objections from statutory consultees relating to these matters.
4. The Parish Council as a Rule 6 party to this appeal does not intend to pursue these lines of objection.
5. In view of the above and in the absence of any robust technical evidence to the contrary, there is no reason why planning permission should be withheld on these grounds.

## 8. THE OVERALL PLANNING BALANCE

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

### The Decision Making Framework

8.2 It is agreed that the appeal should be determined in the context of the “tilted balance” as set out in paragraph 11d of NPPF2 (the Presumption in Favour of Sustainable Development).

8.3 It is agreed that the LPA is unable to demonstrate a 5 Year Housing Land Supply as required by the NPPF. As a consequence, footnote 7 of the NPPF is engaged. That is because the most important policies for determining the application are out-of-date (including JCS Policy SD10).

8.4 I accept that this does not change the statutory presumption in favour of the Development Plan set out in Section 38 (6) of The Planning & Compulsory Purchase Act 2004. It does however mean that some policies may need to be afforded reduced weight in accordance with the Suffolk Coastal Supreme Court judgement.

8.5 For the purposes of footnote 6 of the NPPF, it is agreed that there are no restrictive policies which need to be taken into account and which might cause the tilted balance to be dis-applied.

8.6 Once paragraph 11d is engaged, the decision maker must consider whether any adverse impacts arising from granting planning permission would significantly and demonstrably outweigh the benefits. The Suffolk Coastal judgement indicates that the decision maker must then consider in the context of Section 38 (6) of the 2004 Act whether these considerations amount to “other material considerations” that justify the grant of planning permission.

8.7 I recognise that the site has in the past been the subject of an unsuccessful appeal which was dismissed in April 2018. However, it is necessary to consider whether there has been a material change in circumstances since the previous appeal was dismissed. The changed circumstances in this case include:-

- a. The absence of a 5YRHLS in Cheltenham (with a substantial shortfall)

- b. There being a sound justification for reducing the weight to any conflict with Policy SD10
- c. The “tilted balance” being engaged whereas previously it was a flat balance.
- d. There is a draft allocation which proposes 350 dwellings nearby which will change the physical edge of the PUA and the character and appearance of the surrounding area.
- e. A secondary school is now also proposed off Kidnappers Lane with associated on-site and off-site works which will also affect the character, function and appearance of the area.
- f. The appeal scheme is reduced in scale from (up to) 45 dwellings to (up to) 25 dwellings (a 44% reduction) and offers more opportunities for landscaping and mitigating the visual impact of development.

8.8 This means that the appeal proposals must be considered afresh in the overall planning balance.

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

### **The Benefits Associated with the Appeal Proposals**

8.10 I consider that the appeal proposals if allowed would secure important benefits that would respond to all three of the Government’s overarching objectives for sustainable development (social, economic and environmental). I have outlined the benefits of the appeal proposals below.

#### The Social Benefits

8.11 I consider that very significant weight should be afforded to the provision of **additional open market homes**. Appeal inspectors have consistently applied similar weight to this in other appeals, recognising the inadequate levels of house building in recent years, which is affecting the availability and affordability of housing across the country.

8.12 It is an undisputed fact that this country is in the middle of a housing crisis. The Government accepts that the housing market is broken and the NPPF includes the

national policy imperative that requires LPA's to significantly boost the supply of housing [paragraph 59].

- 8.13 The evidence of Mr Tiley demonstrates that the housing land supply position is desperate. The LPA is unable to demonstrate a 5YRHLS now and will be unable to demonstrate a 5YRHLS for the rest of the plan period to 2031. The housing requirement of the JCS will not be met unless urgent action is taken and the LPA is currently planning for a substantial housing shortfall at the end of the plan period.
- 8.14 The benefits of additional market housing should be afforded very significant weight in my opinion. The fact that the LPA fails to afford these benefits similar levels of weight is in my opinion both revealing and alarming.
- 8.15 As well as increasing the availability of open market housing, the proposals would also make provision for a meaningful number of new **affordable homes (40%)**.
- 8.16 It is generally true that the planning system has a technocratic character which requires abstract policy to be applied to objective evidence usually expressed in statistical terms. Occasionally, however, a human face emerges and this is particularly true when considering the real problems facing real people in need of affordable housing.
- 8.17 Attached as an Appendix to my evidence is the academic study commissioned by the Charity, Shelter entitled Chance of a Lifetime, which considered the impact on the health and wellbeing of children arising from unsatisfactory housing. It highlights inter alia:
- Up to 25% higher risk of severe ill-health and disability during childhood and early adulthood.
  - Increased risk of meningitis, asthma, and slow growth which is linked to coronary heart disease.
  - A greater chance of suffering mental health problems and problems with behaviour.
  - Lower educational attainment, greater likelihood of unemployment and poverty.

- More than one million children suffer in bad housing in England today. Bad housing is linked to debilitating and even fatal illnesses and accidents.
- Children in overcrowded housing are up to 10 times more likely to contract meningitis than children in general. Meningitis can be life threatening. Long-term effects of the disease include deafness, blindness and behavioural problems.
- There is a direct link between childhood TB and overcrowding.
- Children living in overcrowded and unfit conditions are more likely to experience respiratory problems.
- Overcrowded conditions have been linked to slow growth in childhood.
- Almost half of all childhood accidents are associated with physical conditions in the home.
- Homeless children are three to four time more likely to have mental health problems than other children. Mental health issues such as anxiety and depression have also been linked to overcrowded and unfit housing.
- Bad education affects children's ability to learn at school and study at home.
- The lower educational attainment and health problems associated with bad housing in childhood impact on opportunities in adulthood.

8.18 This brings the seriousness of this issue into sharp focus, particularly when the evidence of Mr Tiley demonstrates that the LPA is failing to provide the required number of affordable houses in Cheltenham and there is no mechanism in place to rectify the position.

### **APPENDIX 3 – CHANCE OF A LIFETIME, SHELTER**

8.19 I would afford the provision of affordable housing very significant weight.

#### Economic Benefits

8.20 I consider that Significant weight should be afforded to **expenditure on construction and investment** in the area.

- 8.21 As is recognised in the Delegated Report [para 6.2.5] NPPF2 states that significant weight should be placed on the need to support economic growth and productivity, taking in account both local business needs and wider opportunities for development [NPPF para 80]. Housing development has a significant role to play in supporting economic growth.
- 8.22 The Delegated Report states that there would be a limited increase in economic activity in Cheltenham but fails to specify the particular weight that is given to this as a benefit. A recent Secretary of State decision at Highnam for a not dissimilar scale of development (40 dwellings) commented that the economic benefits for the proposal should carry significant weight [CD.H8 SoS paragraph 27].
- 8.23 Following the recent recession, the Government placed a major emphasis on the construction industry to kick-start the economy. There has been a clear push on planning for growth through national planning policy initiatives including the NPPF and the NPPF 2 which were intended to stimulate growth in the economy. More recently we've had the economic uncertainty surrounding Brexit which requires continued prudence.
- 8.24 It is widely recognised that house building has knock on effects on other sectors which leads to increase demand for building materials and equipment at the building phase as well as domestic furniture and carpets etc. following completion. This generates/sustains employment in other sectors. The construction industry also stimulates lending and financial markets, another important sector in the UK economy.
- 8.25 The construction industry is reliant upon a constant stream of new sites to keep people employed and to maintain delivery rates. The housing requirement for Cheltenham requires a stepped change in construction activity and for this to be maintained over the planned period. This indicates that new construction jobs could be created locally (unless delivery is frustrated by the planning system). I would attach moderate weight to the newly created **construction jobs**.
- 8.26 Moderate weight should be attributed to the provision of homes for economically active people that can support the economic role of Cheltenham as a principal provider of jobs and services [Policy SP2]. New residents can also help to sustain local facilities and services including public transport, by bringing additional expenditure to the area on a day to day basis.



8.27 The likely economic benefits of the scheme can be summarised as follows:-

- Development costs - £2.86m
- Direct job creation – 30 to 38 jobs
- Indirect and induced job creation – 33 to 75 jobs
- GVA – £13m to £24.5m pa during the construction phase
- Annual Household expenditure £750,000 pa

#### **APPENDIX 4 – ECONOMIC BENEFITS SPREADSHEET**

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

##### Environmental Benefits

8.29 The scheme would also deliver open space, green infrastructure and biodiversity enhancements. I accept that the **public open space** is essentially that which is required to serve the new resident population and so I would only afford this limited weight.

8.30 I would afford limited/moderate weight to the **additional native planting and biodiversity enhancements**.

8.31 The appeal proposals would deliver **off site footpath improvements** that would enhance connectivity for new and existing residents in the area. this would connect the appeal site to Vineries Close as explained in paragraphs 4.3 to 4.5 of the Transport Statement. This was acknowledged as a benefit of the previous appeal scheme at paragraph 40. I would afford it limited/moderate weight.

8.32 Overall it can be seen that the proposals will deliver a range of benefits which taken together come away heavily in its favour.

8.33 The LPA may seek to argue that similar benefits will be secured when other sites come forward for developments. However, the fact that the LPA is unable to demonstrate a 5 year housing land supply for the rest of the plan period is a clear

indication that there is an insufficient number of deliverable sites available at this time. The appeal site on the other hand is ready to be delivered now.

### **The Adverse Effects to be Weighed in the Planning Balance**

8.34 I accept that there would be a **partial conflict with the Development Plan**, in that the proposals would not accord with Policy SD10. However, Policy SD10 is out of date and it should be afforded reduced weight for the reasons summarised below:-

- a. The housing requirement cannot be met without releasing greenfield land beyond the defined PUA.
- b. The LPA cannot demonstrate a 5YRHLS.
- c. The current housing land supply shortfall is substantial.
- d. The LPA housing trajectory indicates that a 5YRHLS shortfall will persist for the entire plan period.
- e. Delays to the emerging Local Plan mean that there are still no Local Plan (non-strategic) allocations that are required for SD10 to operate properly.
- f. The emerging Local Plan fails to provide sufficient land to meet the housing requirement (a shortfall of 2,270 dwellings).
- g. Both of the JCS strategic allocations have failed to come forward as planned and neither have planning permission yet.
- h. There has been a significant shortfall in the provision of affordable housing.
- i. Policy SD10 if rigidly applied, will continue to frustrate housing delivery, contrary to the national imperative to boost housing supply and Objective 8 of the JCS.

8.35 This combination of factors leads me to conclude that the weight to be afforded to the conflict with Policy SD10 should only be limited.

8.36 The proposals would give rise to a **loss of countryside**. However, such losses are inevitable if the housing needs of Cheltenham are to be met. It is also

important to note that the site itself is unconstrained, in that there are no designations that directly affect this land and it falls outside of the area proposed as Local Green Space in the emerging Local Plan. I would therefore only afford limited weight to the loss of countryside.

- 8.37 The evidence of Mr Harris addresses the likely **effects of the development on the character and appearance of the area.**
- 8.38 Mr Harris has had due regard to the findings of the previous Inspector and has explained how the revised proposals positively address the points that were made. He considers the revisions to be significant and that they materially alter the basis for the assessment of landscape and visual effects.
- 8.39 He highlights that the Inspector's decision was based on the character of the area as he experienced it at that time. He observes that the Inspector makes no reference in his decision letter to the emerging residential and secondary school allocations which might have otherwise influenced his judgements on the density of development, whether it would be incongruous and its relationship with the PUA.
- 8.40 Whilst Mr Harris accepts that these will not change the semi-rural character and edge of settlement location, he considers that it would shift the balance in the mosaic of rural and settled features, which in turn further changes the baseline position. Mr Harris comments that the LPA has not properly recognised these changes.
- 8.41 Mr Harris considers that the scheme would be far from isolated and separated when considered in the wider settlement pattern, noting the residential allocation that will alter the edge of the PUA and the introduction of a secondary school on Kidnappers Lane which will become a new focal point for the community.
- 8.42 The appeal proposals would inevitably have localised effects (which cannot be mitigated) through the introduction of housing development on to land which does not currently have any buildings on it, but I have already taken that into account with the "loss of countryside" that I refer to above.
- 8.43 Mr Harris highlights that seeing development does not equate to harm. He reiterates that the proposals must be considered in the context of the evolving mosaic and that the landscape and visual harm arising from the development is

limited in this context and does not reach a threshold of unacceptable harm which would justify the refusal of planning permission.

- 8.44 I accept and rely upon his conclusions. In view of the above I would afford limited weight to the predicted residual adverse landscape and visual effects.
- 8.45 Notwithstanding this overall conclusion, I am mindful that criterion (b) of adopted Local Plan Policy CO1 imposes a rigid, binary policy requirement in that development will only be permitted where it would not harm the visual amenity of the landscape.
- 8.46 I would have to accept that if there is any visual harm arising from the proposals no matter how small then the proposals would not accord with this part of the policy.
- 8.47 However, the policy is unduly onerous. It pre-dates the NPPF and is inconsistent with the framework. That is because it does not reflect the more nuanced approach to such matters in the NPPF at paragraph 170 and the more general approach taken by the NPPF where harm should be considered alongside benefits, other objectives and mitigating factors. NPPF Footnote 6 identifies the policies where a stricter approach might be taken but none of these apply to the appeal site. This inconsistency with the NPPF means that it should be afforded reduced weight having regard to paragraph 213 of the framework.
- 8.48 As the policy is out of date it should only be afforded limited weight. I would therefore only afford limited weight to this partial conflict with the Development Plan.
- 8.49 Obviously, much will come down to the judgement of the Inspector. Even if the Inspector was to disagree with Mr Harris, I would not envisage the level of harm being such that it would need to be afforded any more than moderate weight given the changing position since the last appeal. This would still not be sufficient to change my overall conclusion on the Planning Balance.

#### Other considerations

- 8.50 There are no other grounds to resist development on this site which cannot be avoided, mitigated, or controlled through reserved matter applications, planning conditions and/or obligations.

### Compliance with the Development Plan

- 8.51 I accept that there would be a partial conflict with the Development Plan (**Policy SD10**), but for the reasons already outlined, Policy SD10 is out of date and any such conflict can only be afforded limited weight. The proposals would otherwise comply with the overarching strategy and objectives of the Development Plan when read as a whole.
- 8.52 Mr Harris concludes that the proposals would not have an unacceptable impact on the character and appearance of the area and accordingly finds that the proposals would not conflict with adopted CLP **Policies C01(a) and CP7**. He also considers that the proposals would not conflict with adopted JCS Policies **SD4 and SD6**. There would be a partial conflict with **Policy C01(b)** but for the reasons already given, this partial conflict should only be afforded limited weight at most.
- 8.53 Even if the Inspector was to disagree with Mr Harris and was to find that there would be a higher level of harm, such that there would be a conflict with some or all of these policies, I still consider that there are other material considerations that indicate that planning permission should still be granted, when all the issues are considered in the “tilted balance.”

### My comments on the LPA’s Planning Balance

- 8.54 The planning balance is ultimately a matter of judgement for the decision maker. The Inspector will obviously need to reach her own conclusions. I would however highlight the following flaws in the Planning Balance set out in the LPA’s Delegated Report [Section 7]:-
- a. From the information that is provided it is unclear how the LPA reached the conclusion that planning permission should be withheld.
  - b. The LPA identifies what it considers to be the benefits of the development but fails to attribute weightings to those individual benefits [see 7.3].
  - c. The LPA accept that the tilted balance is engaged [6.2.7] but the balancing exercise undertaken at paragraph 7.5 is a “flat” balance. The wrong balance was therefore applied.

- d. Even in the flat balance, the LPA conclude that “the adverse impact of the proposal do[es] not outweigh the benefits.” That would suggest that permission should be granted [7.5].
- e. The LPA cites the planning balance of the previous Inspector [see 7.4] but neglects to explain that he was undertaking a flat balance in a different 5YRHLS context. Inspector Bridgewater gave no indication of what his conclusion would have been had the tilted balance been engaged.
- f. The LPA now knows that the housing land supply position is materially worse than that recorded in the delegated report, the housing requirement will not be met during the plan period and the LPA will be unable to restore a 5YRHLS without additional sites, but the LPA has not sought to update its planning balance.
- g. It is simply not credible to say that full weight should be given to JCS policies (ie Policy SD10) in view of the current housing shortfalls.

### **The Consequences of not Allowing this Appeal**

- 8.55 The obvious consequence is that the opportunity to provide 25 much needed homes (of which 40% would be affordable) in a sustainable location would be lost, in an LPA area where serious housing shortfalls exist and are expected to persist for the remainder of the plan period to 2031. All of the related benefits that I have identified would also fall away.
- 8.56 As I indicated earlier in my evidence, I anticipate that the LPA might argue that even though there is a shortfall in housing provision in the emerging Local Plan, they would continue to oppose this site and it will not be selected for allocation.
- 8.57 However, this must be put into perspective. This is an LPA area which is acknowledged to be significantly constrained by Greenbelt, AONB, flood risk, extensive areas of land proposed LGS, heritage amongst other things. With 2,270 additional plots now to be found and delivered by 2031, I would be very interested to see what evidence the LPA can present to the inquiry that shows that all of these houses can be accommodated without any greater level of harm to interests of acknowledged importance.

- 8.58 A site like the appeal site, which is agreed to be in a sustainable location, is without these constraints, is not designated for any purpose and which is agreed to be acceptable in all other respects (aside from the disputed character and appearance points), must be a front running candidate.
- 8.59 I anticipate that the LPA might seek to argue that the appeal proposals are only 25 dwellings and this would just be a drop in the ocean given the problems facing the LPA's housing land supply. I would respond as follows:-
- a. The circumstances in Cheltenham are such that this is not an area where large unconstrained sites will suddenly become available. The JCS and emerging Local Plan have already exhausted the search for such sites and come up short.
  - b. NPPF2 paragraph 68 highlights that small and medium sized sites can make an "important contribution to meeting the housing requirement of an area."
  - c. The NPPF also acknowledges that they are often built out relatively quickly [para 68], unlike the strategic allocations that have thus far failed to deliver at Cheltenham.
  - d. The PPG identifies actions to help boost delivery and these include encouraging the development of small and medium-sized sites [Paragraph: 051 Reference ID: 68-051].
  - e. The appeal decision concerning land at Ridge Meadows, Linton [CD.H9] is an example of a similar sized scheme (26 units) where the additional housing would be a "weighty benefit" by introducing much needed housing for the area [paragraph 68] and the ongoing housing shortfall attracted substantial weight in favour of granting permission [72].
  - f. The Secretary of State in the Highnam appeal [CD.H8 SoS.21 IR.261] agreed with the Inspector that the delivery of 40 dwellings a scheme of appeal gave rise to social benefits that attract significant weight in the context of a housing shortfall with no plan currently in place to address it.

- g. All but three of the emerging Local Plan allocations are for less than 100 units. The LPA proposes to allocate four sites for 25 dwellings or less.
- h. Cumulatively small sites make a big difference and are typical of the type of site in Cheltenham. 95% of sites in Cheltenham Borough that have been completed, permitted, allocated or proposed for allocation are on sites of less than 25 units (689 out 729 sites), not accounting future windfalls, and
- i. Where are the alternative sites? The LPA has thus far not identified any.

8.60 Dismissing this appeal will either cause development to take place on more sensitive sites than this one or it will just delay the day that the LPA eventually realises that this site needs to be released for housing.

8.61 Choosing to not meet the adopted housing requirement cannot be an option.

### **My Overall Conclusion on the Planning Balance**

8.62 My overall conclusion is that the proposals would accord with the overarching strategy of the Development Plan. There would be a partial conflict with (out of date) JCS Policy SD10 and CLP Policy CO1(b) but there are other material considerations which outweigh that conflict.

8.63 In particular, NPPF2 Paragraph 11d is engaged and I do not consider that the residual adverse impacts of granting planning permission would significantly and demonstrably outweigh the identified benefits of the development in the application of the "tilted balance." This represents a very significant material consideration which should override the identified conflict with the Development Plan.

8.64 To summarise:-

1. The proposals will deliver a range of social, economic and environmental benefits which can be afforded varying levels of weight as identified below. These include:-
  - Provision of Open Market Housing – Very Significant
  - Provision of Affordable Housing – Very Significant



- 
- Expenditure on construction/local investment - Significant
  - Creation of construction jobs - Moderate
  - Providing homes for economically active people - Moderate
  - Financial contributions towards off site infrastructure - Limited
  - Public open space/Green Infrastructure - Limited
  - Off-site footpath/street lighting improvements - Limited/Moderate
  - Native planting and enhancement to biodiversity - Limited/Moderate
2. The potential residual adverse impacts have been identified and these should also be afforded varying degrees of weight as follows:
    - Partial conflict with the Development Plan (JCS Policy SD10 and CLP Policy CO1(b)) - Limited
    - Loss of countryside - Limited
    - Impact on character and appearance of the area - Limited
  3. All other identified impacts can be mitigated through Planning conditions, obligations or through reserved matter applications.
  4. It can be demonstrated that the proposals would otherwise be in general accordance with the Development Plan when read as a whole.
  5. Overall the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. As such the proposals represent sustainable development in the context of NPPF 2 paragraph 11d.

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## 9. PLANNING OBLIGATIONS

9.1 The Appellant will present deeds pursuant to Section 106 of the Town & County Planning Act 1990, before the close of the public inquiry. The planning obligations will secure:-

- Policy compliant affordable housing (40%)
- Provision and maintenance of public open space

## 10. SUMMARY & CONCLUSION

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

10.2 My evidence is structured as follows:-

**Issue 1      Whether the site is an appropriate location for housing development having regard to the National Planning Policy Framework and relevant adopted development plan policy**

**Issue 2      Emerging Development Plan Policy**

**Issue 3      Other matters raised in third party objections**

**The Overall Planning Balance**

10.3 My main findings can be summarised as follows:-

**Issue 1      Whether the site is an appropriate location for housing development having regard to the National Planning Policy Framework and relevant adopted development plan policy**

1. The appeal proposals are in general accordance with the spatial strategy of the JCS which seeks to focus development at Cheltenham (Policies SP1 and SP2)
2. JCS Policy SP1 sets a minimum overall housing requirement of 35,175 dwellings (2011-2031), of which at least 10,917 are to be provided across the Cheltenham policy area. The appeal proposals would contribute towards meeting these requirements.
3. JCS Strategic Objective 8 seeks to deliver at least, a sufficient number of market and affordable houses. Annual monitoring and the evidence of Mr Tiley demonstrates that the LPAs are already failing to deliver the required number of new homes.
4. Whilst the LPA objects to the appeal proposals on the grounds that it is development beyond the PUA, Policy SP2 anticipates that there will be a need for housing beyond the Cheltenham PUA.
5. I accept that the site is not allocated for housing and that there would be a partial conflict with the Development Plan (Policy SD10). However, Policy SD10 is out of date because of the housing land supply position and it should therefore be afforded only limited weight.
6. It is agreed that the site is in a sustainable accessible location and that Leckhampton is a suitable place for further housing as illustrated by the draft Local Plan allocation.

7. It is also one of the few undeveloped areas in the borough not designated as Greenbelt or AONB
8. There are no adopted policies or designations that directly affect the site that would preclude its redevelopment for housing as a matter of principle.

### **Issue 2      Emerging Development Plan Policy**

9. There is nothing that persuades me that the principle of development should be resisted on the basis of the emerging Development Plan Documents, particularly given the limited weight that can be afforded to them at this time.
10. There are no emerging Local Plan policies or designations that would specifically preclude housing in this location.
11. I accept that the appeal site does not form part of a draft allocation in the emerging Local Plan. However, the Examination is ongoing, the Inspector has not reached any conclusions and she recognises that she must take account of representations on the Main Modifications.
12. Moreover, progress on the Local Plan may well stall when the Inspector is told that the 5YRHLS position is 2.11 years, the Local Plan will have a shortfall of 2,270 dwellings by the end of the plan period and a 5YRHLS will never be restored during the plan period unless action is taken to identify more sites.
13. Even if the plan was adopted as per the Main Modifications, the 5YRHLS position will immediately engage the tilted balance. Whatever route the plan takes, the housing policies cannot be afforded more than limited weight at the present time.
14. The emerging NP is at an early stage in the plan making process and can only be afforded limited weight.
15. There are no policies that preclude housing on the appeal site as a matter of principle and the LPA does not rely upon any conflict with the emerging NP.
16. The NP includes a policy for the potential redevelopment of the site for housing, albeit with prescriptive requirements on the character of the development and proposed mitigation.
17. Consistent with the emerging Local Plan, the NP excludes the appeal site from the proposed LGS area and so this should not be considered a potential constraint.

### **Issue 3      Other matters raised in third party objections**

18. The planning application provided the necessary information to confirm that there is no evidential basis for objection on any of these grounds.
19. The LPA raises no such objections.
20. There are no outstanding objections from statutory consultees relating to these matters.

21. The Parish Council as a Rule 6 party to this appeal does not intend to pursue these lines of objection.
22. In view of the above and in the absence of any robust technical evidence to the contrary, there is no reason why planning permission should be withheld on these grounds.

### **The Overall Planning Balance**

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

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

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

- Partial conflict with the Development Plan (JCS Policy SD10 and CLP Policy CO1(b)) – Limited
- Loss of countryside – Limited
- Impact on character and appearance of the area – Limited

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

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

27. Overall the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. As such the proposals represent sustainable development in the context of NPPF 2 paragraph 11d.

### **Concluding Comments**

10.4 Having undertaken a planning balance in the way that I have outlined, I reach the conclusion that the proposals represent a suitable and sustainable form of

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development in this location and that there are compelling reasons that justify the grant of planning permission.

- 10.5 In view of the foregoing, the Inspector is respectfully requested to uphold this appeal and to grant outline planning permission, subject to any necessary conditions and planning obligations.

