

# **PRE INQUIRY STATEMENT OF CASE**

## **SECTION 78 APPEAL BY ROBERT HITCHINS LTD. AND ITS SUCCESSORS IN TITLE TO THE LAND**

### **LAND AT OAKLEY FARM, CHELTENHAM**

#### **PROPOSAL:**

**DEVELOPMENT COMPRISING UP TO 250 RESIDENTIAL DWELLINGS, ASSOCIATED INFRASTRUCTURE, ANCILLARY FACILITIES, OPEN SPACE AND LANDSCAPING. DEMOLITION OF EXISTING BUILDINGS. CREATION OF NEW VEHICULAR ACCESS FROM HARP HILL.**

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## 1. INTRODUCTION

1.1 This Statement of Case has been prepared on behalf of Robert Hitchins Limited and its successors in title to the land (the Appellant). It relates to a Planning Appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of land at Oakley Farm, Cheltenham (the Appeal Site).

1.2 The Appeal has been lodged on the grounds of “non-determination.” It follows the failure of Cheltenham Borough Council (the Local Planning Authority) to determine an Outline Planning Application (LPA ref.20/01069/OUT) within the statutory 16 week period, for:-

**“Development comprising up to 250 residential dwellings, associated infrastructure, ancillary facilities, open space and landscaping. Demolition of existing buildings. Creation of new vehicular access from Harp Hill.”**

1.3 Given that no decision notice has been issued on the Planning Application, it is anticipated that the LPA will take a report to its Planning Committee to request that Members consider whether or not they would have granted planning permission, had the LPA still been the determining Authority.

1.4 In the event that Members conclude that they would have refused the planning application, then they will be asked to confirm what the Reasons for Refusal would have been. These “putative reasons for refusal” can then be used to identify the main issues that would need to be debated at the Public Inquiry.

1.5 In view of the above, this Statement of Case seeks to address the main issues that the Appellant anticipates will remain in dispute between the principal parties. However, the Appellant reserves the right to add to and/or amend their case, once the LPA’s position has been clarified and confirmed.

1.6 The Appellant will seek to engage with the LPA and other interested parties to narrow down the issues that remain in dispute through Statements of Common Ground (SoCG).

## 2. THE APPEAL SITE LOCATION AND DESCRIPTION

- 2.1 The site is located approximately 1.8km to the east of Cheltenham town centre. It is situated on the lower slopes of the Cotswold Scarp at Oakley and lies within the Cotswolds Area of Outstanding Natural Beauty.
- 2.2 The appeal site itself comprises 15.29 hectares of predominantly greenfield land comprising a series of six fields that are bounded by hedgerows and mature trees. The site also includes the buildings associated with Oakley Farm and a number of trees and hedgerows. The former farmstead is located towards the northern boundary of the site and is accessed by a single track from the west which also falls within the appeal site.
- 2.3 The site is surrounded on three sides by existing residential development (to the north, west and south) and to the east by the listed structures of Hewlett's Reservoir.
- 2.4 The site is bounded to the south by Harp Hill Road and to the west by Wessex Drive, both of which form part of established residential areas. The site is bounded to the north by the former GCHQ Oakley site which has recently been redeveloped for residential purposes with Pillowell Close, Brockweir Close and Fairford Road situated adjacent to the northern boundary of the site and Bream Court and Birdlip Road to the north east of the site.
- 2.5 The site is well connected to the existing residential suburbs of Cheltenham with Battledown to the south, Whaddon to the west and Prestbury to the north. Public access to the land is limited to a public right of way along the western boundary of the site and along the track to the B4075, but no other public footpaths cross the site.
- 2.6 The site is located within Flood Zone 1, the zone with the least probability of flooding. There are no significant flooding or drainage issues that would prevent the development of the site.
- 2.7 There are no World Heritage Sites, Scheduled Monuments or Listed Buildings within the appeal site, nor does the site lie within a Conservation Area.
- 2.8 Battledown Camp Scheduled Monument is located approximately 160m south of the site. To the east is Hewlett's Reservoir, which includes four Grade II Listed elements, comprising:

- No. 1 Reservoir;
- No. 2 Reservoir;
- Pavilion at Hewlett's Reservoir; and
- Gates, gate piers and boundary walls at Hewlett's Reservoir.

### 3. THE APPEAL PROPOSALS

3.1 The planning application that is now the subject of this appeal was submitted to Cheltenham Borough Council on 25th June 2020 [LPA ref. 20/01069/OUT].

3.2 The description of development as set out on the application forms reads as follows:-

**“Development comprising up to 250 residential dwellings, associated infrastructure, ancillary facilities, open space and landscaping. Demolition of existing buildings. Creation of new vehicular access from Harp Hill.”**

3.3 The application was submitted in outline with all matters of detail reserved for subsequent determination. Approval was however sought by way of a condition for the site access arrangements as explained below.

#### **The Illustrative Site layout**

3.4 Although the application was submitted in outline, an Illustrative Master Plan was submitted to demonstrate how the appeal site could deliver the scale and nature of the development that has been proposed. It demonstrates how the development could be laid out to respond to the constraints and opportunities of the site.

#### **Housing**

3.5 The proposals would deliver up to 250 dwellings. There would be a mix of house types, sizes and tenures including policy compliant levels of affordable housing (40%) in accordance with adopted Joint Core Strategy Policy SD12.

3.6 The height and massing of the proposed development would vary across the scheme with lower height dwellings being situated particularly on the southern and eastern parts of the site and also where new development adjoins existing urban area to minimise the impact of proposed development.

3.7 At key locations taller built form will be located to improve legibility and distinctiveness of the street scene. This will assist in creating a hierarchy of streets within the development and demarcating landmark buildings to act as focal points alongside variations in style and materials of built form. This will also facilitate a range of sizes of units to accommodate a diverse variety of households and accommodation needs.

### **Access**

- 3.8 Although access is reserved for subsequent determination, the Illustrative Master Plan shows that a new vehicular access to the proposed development will take the form of a priority junction from Harp Hill located centrally at the southern boundary of the site. The preliminary access arrangements are shown on Drawing Number H628/02 Rev D.
- 3.9 Pedestrian access to Harp Hill is not proposed via the main vehicular access junction; instead a network of footpaths are proposed within the appeal site with linkages to the existing network at more beneficial and appropriate locations elsewhere.
- 3.10 The main pedestrian and cycle access to the appeal site is proposed via a new shared pedestrian/cycle link along the route of the existing farm access track from Priors Road, a key desire line to/from local facilities and the town centre. Pedestrian and cycle access will also be provided to the appeal site from Harp Hill to the south, including proposed pedestrian linkages at the eastern and western extents of the appeal site's Harp Hill frontage" and cycle linkages to Harp Hill via the new site access junction.

### **Green Infrastructure**

- 3.11 The development proposals take a landscape-led approach based on the following principles:-
- Public access facilitated into a currently publicly inaccessible part of the AONB.
  - Views opened up and retained towards the Cotswold Escarpment.
  - Green buffer to soften the proposed development, improve the urban edge, strengthen the green infrastructure network and provide biodiversity and amenity enhancements.
  - Wildflora meadows provide biodiversity and amenity enhancements.
  - Building line to be set back from the southern edge reduce the visibility of built and allow views towards the Cotswold Escarpment.
  - Mature trees to be meaningfully retained within the green corridors and public open space of the development.

3.12 Provision will also be made for on-site sustainable urban drainage.

3.13 A more detailed description of the development and justification for the design concept that has been followed is set out in the Design and Access Statement which was submitted as part of the original planning application.



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#### **4. PLANNING HISTORY**

- 4.1 The planning history that is of most relevance to this appeal will be set out in the Statement of Common Ground (SoCG).

## 5. PLANNING POLICY

5.1 The planning policies and guidance that are of most relevance to this appeal are set out in the SoCG. It is anticipated that the main planning policy issues will be agreed with the LPA prior to the opening of the Public Inquiry.

### National Guidance

5.2 The Appellant will refer to relevant national guidance set out in the revised National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).

### The Development Plan

5.3 The Appellant will explain that the Development Plan for the area currently comprises the following:-

- Gloucester, Cheltenham and Tewkesbury Joint Core Strategy
- Cheltenham Borough Council Local Plan 2011-2031

### Emerging Development Plan Policies

5.4 The Appellant will also refer to the following emerging Development Plan:-

- Gloucester, Cheltenham and Tewkesbury Joint Core Strategy Review

### Neighbourhood Planning

5.5 There is currently no "made" Neighbourhood Plan which covers the appeal site and this is unlikely to change before the appeal is heard.

### Supplementary Planning Guidance

5.6 Where relevant, reference will be made to supplementary planning guidance, documents and advice.

## 6. APPEAL PROCEDURE AND PRESENTATION OF EVIDENCE

- 6.1 The Appellant considers that a **Public Inquiry** would be the most appropriate appeal procedure in this case.
- 6.2 It is hoped that the issues in dispute can be narrowed down in Statements of Common Ground (SoCG). However, given the scale and nature of the development proposals there could be a number of complex issues that remain in dispute.
- 6.3 This is an appeal that will need to address the policy tests set out in NPPF paragraph 172 for major development in AONB. This will require the decision maker to consider whether there are exceptional circumstances which justify such development in this case. To inform that decision it will be necessary to present evidence on the range of matters identified in paragraph 172 and for this evidence to be properly tested through cross examination.
- 6.4 The technical evidence is likely to include, amongst other things, assessments relating to landscape and visual impact, housing land supply as well as traffic and transportation.
- 6.5 It will also be necessary to consider the lawfulness of the financial contributions that are being sought in relation to education in addition to CIL and this will also involve an in-depth analysis of the need for additional education places. Some of the headline points are identified later in this statement. The decision on this appeal will have wide ranging implications for the deliverability of sites throughout Gloucestershire and it is important that all of the evidence is properly scrutinised. Similar arguments were heard at a recent appeal concerning land at Coombe Hill.<sup>1</sup> Although each case will need to be considered on its merits the County Council took up Rule 6 status and the education evidence alone took more than 2 days to be heard. The same can be expected in this case.
- 6.6 The LPA's putative reasons for refusal may raise more issues which further justify an inquiry. Even if they don't, and even if the LPA concede that they can't demonstrate a five year housing land supply, the evidence relating to development in the AONB, education and the other matters identified above will be detailed, complex and will require cross examination.

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<sup>1</sup> APP/G1630/W/20/3257625

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- 6.7 The issues can only be properly tested through formal questioning of Expert Witnesses by an Advocate, which would not be permissible under the Informal Hearing procedure.
- 6.8 It is also anticipated that there will be a need to make legal submissions which again are best dealt with through the Inquiry procedure.
- 6.9 The level of public interest is a further reason for requesting a public inquiry.
- 6.10 It is highly likely that this appeal will take more than 2 days to be heard (which exceeds normal practice for an informal Hearing).
- 6.11 The Appellant considers that up to **8 days** would be required, depending upon the number of putative Reasons for Refusal that are advanced by the LPA.

## 7. PROOFS OF EVIDENCE

7.1 On the basis that The Planning Inspectorate agrees to the appeal being dealt with under the Public Inquiry procedure, the Appellant will prepare written evidence in advance of the Inquiry to address any Putative Reasons for Refusal.

7.2 The evidence will also consider any other valid issues raised by Third Party objectors or by statutory consultees.

7.3 At this stage it is anticipated that evidence will be presented as follows:-

### Housing Land Supply and Education

- Neil Tiley BSc (Hons) ARTPI

### Landscape and Visual Impact

- Paul Harris CMLI

### Planning Policy

- David Hutchison BSc (Hons) Dip TP MRTPI

### Traffic and Transportation

- Graham Eves BSc CEng MICE MCIHT

7.4 The Appellant reserves the right to introduce additional witnesses as necessary to address any other issues that may be raised by the LPA and/or any other Third Parties.

## 8. CASE FOR THE APPELLANT

8.1 A draft Statement of Common Ground (SoCG) has been submitted as part of the appeal to help narrow down the issues that are likely to remain in dispute.

8.2 It is anticipated that the final SoCG will record that the Appellant and the LPA are in agreement on various issues under the following headings:-

- Format of Planning Application and Supporting Material
- Environmental Impact Assessment
- The Principle of Development
- Housing Land Supply
- The Presumption in favour of Sustainable Development NPPF Paragraph 11 and Footnote 6 policies
- Prematurity
- Development Plan Designations
- Quantum of development
- JCS Policy SD10
- Landscape and Visual Impact
- Access and Highways
- Master Planning
- Impact on Residential Amenity
- Housing Mix
- Affordable Housing
- Trees and hedgerows
- Ecology
- Contamination

- Built Heritage
- Archaeology
- Agricultural Land Classification
- Education
- Noise and Air Quality
- Flood Risk and Drainage
- Public Benefits

### **The Main Issues**

- 8.3 At this stage it is unclear whether the LPA would be minded to contest this appeal and if so, the grounds on which they would seek to rely.
- 8.4 The Appellant has therefore set out the main issues that are expected to remain in dispute. The Appellants obviously reserve the right to expand on their case to address any other issues that the LPA might identify as putative reasons for refusal.

**Issue 1      Housing Land Supply**

**Issue 2      The principle of development at Oakley**

**Issue 3      Whether there are exceptional circumstances which justify major development within the AONB and whether it would be in the public interest**

**Issue 4      Traffic and Transportation**

**Issue 5      Education Contributions**

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## **Issue 1      Housing land supply**

- 8.5 Paragraph 73 of the NPPF requires LPAs to identify and update annually a supply of specific deliverable sites sufficient to provide for five years' worth of housing against their housing requirements, plus an additional buffer of 5%, 10% or 20% moved forward from later in the plan period. This is to ensure choice and competition in the market for land, to take account of market fluctuations, or where there has been significant under delivery of housing.
- 8.6 Where there is not a five year supply of deliverable housing sites, the most important policies for determining the application or appeal should not be considered up-to-date (NPPF paragraph 11 and footnote 7).
- 8.7 It is anticipated that matters relating to housing land supply may be capable of being agreed ahead of the public inquiry as the LPA currently accepts that it cannot demonstrate a five year supply.
- 8.8 The housing supply shortfall would engage NPPF Footnote 7 which makes it clear that for housing proposals, as in this case, the lack of a five year housing land supply renders the most important policies out of date and causes the tilted balance set down by NPPF paragraph 11d(i) to be engaged.
- 8.9 The Appellant will acknowledge that the tilted balance can be disapplied if the proposals would conflict with one or more of the restrictive policies listed in NPPF footnote 6 (including AONB). However, the evidence will show that the appeal proposals do not conflict with any of those policies.
- 8.10 Even if it can be agreed that the LPA cannot demonstrate a five year supply of housing land the Appellant will present evidence on housing need and supply. That is because it will be material to the consideration of the exceptional circumstances test for major development in the AONB i.e. the need for the development and the cost of and scope of meeting the need outside the designated area or meeting the need for it in some other way (NPPF paragraph 172(a) and (b)).

## **Issue 2      The principle of development at Oakley**

- 8.11 It will be explained that the proposals respond to the housing requirement that has been set for Cheltenham and that development would be provided in a



sustainable and accessible location immediately adjacent to the Principal Urban Area (PUA).

- 8.12 It will be recognised that the site is not allocated for development and that it lies beyond the PUA boundary. As such it would not accord with Policy SD10. However, it will be explained that the policy is out of date due to the housing land supply position and if rigidly applied it will frustrate the national planning policy imperative to boost significantly the supply of housing. Reference will be made to a number of appeal decisions where the Secretary of State and Inspectors have given only limited weight to the conflict with Policy SD10 in such circumstances.
- 8.13 It will be acknowledged that the appeal site is located within the AONB but it will be explained that neither national guidance nor the adopted Development Plan policies preclude, or place an embargo on further housing in the AONB. National policy allows major development to take place where the exceptional circumstances test is met (see Issue 3 below). The evidence will amongst other things, demonstrate the pressing need for the development and a lack of more suitable alternatives beyond the AONB.
- 8.14 It will be explained that the site is well related to the built up area of Cheltenham, being largely surrounded by built development on almost all sides. It is in a sustainable and accessible location and that there are no other policies or constraints (eg. ecology, heritage, flood risk) that would suggest that the site should not come forward for development.
- 8.15 Overall it will be concluded that the principle of residential development is acceptable having regard to national guidance and the most relevant Local Plan policies.

**Issue 3 Whether there are exceptional circumstances which justify major development within the AONB and whether it would be in the public interest**

- 8.16 The Appellant will acknowledge and accept that the appeal proposals represent “major development” within the AONB for the purposes of NPPF paragraph 172 and JCS Policy SD7.

8.17 It will therefore be necessary for the Appellant to demonstrate that exceptional circumstances exist, that development in is the public interest and to provide the necessary justification for development in this case.

8.18 NPPF paragraph 172 requires consideration of such proposals to include an assessment of various matters as outlined below. Taking each of these points in turn, it will be demonstrated that there are exceptional circumstances that justify the scale and form of development in this case:-

*a. The need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*

8.19 The Appellant will draw attention to the national planning policy imperative to significantly boost the supply of new homes [NPPF paragraph 59]. The absence of a minimum five year housing land supply combined with a shortfall against the minimum housing requirement across the plan period in both Cheltenham and in the neighbouring JCS authorities will set the context by illustrating the pressing need for housing in the area.

8.20 The Appellant will explain that the LPA is unable to demonstrate a 5YRHLS or a plan period supply and that these are clear indicators that identified housing needs are not being met now or in the foreseeable future and that the provision of 250 additional homes (40% of which will be affordable) will make a significant contribution to addressing those needs.

8.21 The Appellant will explain that failing to meet housing needs at Cheltenham will also have a detrimental effect on the economy both directly and indirectly, noting that the spatial strategy identifies Cheltenham as a principal provider of jobs and homes along with Gloucester [JCS Policy SP2]. The failure to provide sufficient homes for the local workforce will in turn undermine the ability to meet the economic objectives of the JCS.

*b. the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*

8.22 The fact that the LPA (and adjoining LPAs) cannot demonstrate a 5YRHLS or plan period supply in itself demonstrates that the LPA is unable to meet its housing needs, regardless of whether sites are within the AONB or not.

- 8.23 The Appellant will demonstrate that Cheltenham is a highly constrained by its tightly drawn administrative boundaries as well as Green Belt, AONB and other designations including Local Green Space.
- 8.24 In order to meet the housing needs of Cheltenham, the JCS and has already needed to release land from the Green Belt (using land within Tewkesbury) to meet its housing needs.
- 8.25 The recently adopted Cheltenham Plan has also exhausted opportunities within the built-up area and there still remains a shortfall in the housing land supply.
- 8.26 If development does not take place within the AONB adjacent to the built up area, there will need to be further incursions in to the Green Belt, or housing would need to be delivered beyond the Green Belt in locations more distant from Cheltenham and as such needs would not be met where they arise. The Appellant will also explain and emphasise the importance of meeting needs where they arise and why development provided outside of the designated area would be less effective at achieving this.
- c. any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
- 8.27 The Appellant will present evidence on landscape and visual matters. This will explain that land at Oakley Farm is adjacent to the former GCHQ Oakley site which has recently been redeveloped for housing and a Sainsbury supermarket is adjacent to that site fronting Priors Road. The site is all but surrounded by development, the exception being the South Eastern corner, which is adjacent to the reservoir as referred to above.
- 8.28 The landscape value is acknowledged to be high due to the AONB designation. The escarpment landscape character area is predominately rural but in the location of the study site is influenced by the settled landscape of the wider Cheltenham area.
- 8.29 The layout would conserve its character and long distance views into the AONB and provide an opportunity to enhance the landscape. The layout of the site responds to the topography and will improve accessibility to the countryside whilst relieving pressure on other areas in the AONB. There are no local green spaces in the area and consequently local residents access the wider areas of the

AONB leading to pressure upon more sensitive areas such as Cleeve Common. This will also provide an opportunity to create access to new long distance views which are presently inaccessible to the public.

- 8.30 The effects of the development will be limited and would be moderated by the extent to which the area is already influenced by existing development, mitigation through retained vegetation and natural topography and the separation of the site from the wider escarpment landscape and wider Area of Outstanding Natural Beauty (AONB).
- 8.31 It will be explained that a number of measures have been incorporated into the scheme to protect and enhance the landscape and improve the public accessibility of the site to enhance enjoyment of the AONB for everyone. A substantial landscaped buffer is proposed across the more sensitive areas of the site leading to significant net biodiversity enhancements and the strengthening and revitalisation of the local green infrastructure network.
- 8.32 The evidence will show that the development proposals retain the features which make the greatest contribution and have the highest sensitivity, limiting potential adverse impacts. It will confirm that the appeal site has capacity to accommodate the development whilst conserving the wider landscape character and scenic beauty of the AONB, all in keeping with intentions of both national and local landscape policy.
- 8.33 The Appellant will explain that there are no other effects on the environment that would justify withholding planning permission.
- 8.34 The overall conclusion will be that exceptional circumstances can be demonstrated in this case and that the proposed development would be in the public interest. Accordingly, the proposals would accord with NPPF paragraph 172 and JCS Policies SD6 and SD7.

#### **Issue 4 – Traffic and Transportation**

- 8.35 The Appellant acknowledges that the proposed development will give rise to an increase in travel demand by all main modes of travel, however, it will be explained that suitable infrastructure provision can be delivered which will suitably mitigate the impact of this additional travel demand on the surrounding highway network.

- 8.36 The Appellant will explain that a Transport Assessment and Residential Travel Plan was prepared, following a scoping exercise which led to the scope of the Transport Assessment being agreed with Gloucestershire County Council, sufficient to satisfy the requirements of the NPPF and to assess the transport implications of the proposed development.
- 8.37 The Appellant will demonstrate that the proposed development is well located to existing local facilities which, together with the proposed connections to existing pedestrian and cycle infrastructure, would ensure future residents would have opportunities to travel by sustainable transport modes in accordance with NPPF paragraph 108(a). The main pedestrian and cycle access to the appeal site is proposed via a new shared pedestrian / cycle link along the route of the existing farm access track from Priors Road, a key desire line to/from local facilities and the town centre. Pedestrian linkages will also be provided at the eastern and western extents of the appeal site's Harp Hill frontage.
- 8.38 The Illustrative masterplan demonstrates how sustainable modes of transport can be encouraged by providing a well-connected network of streets and footpaths which can be further refined at the Reserved Matters stage.
- 8.39 The Appellant will demonstrate that the appeal proposals will provide safe and suitable access to the site for all users as required by paragraph 108(b) of the NPPF. The proposed new site access junction on Harp Hill will be designed in accordance with Design Manual for Roads and Bridges, Manual for Streets, and local authority design guidance, as appropriate, to ensure that it is safe and suitable.
- 8.40 The Transport Assessment included traffic modelling of key junctions on the surrounding highway network for scenarios in 2024, both with and without the proposed development, which established the potential traffic impacts of the proposed development in accordance with the planning practice guidance and the agreed scope of the assessment.
- 8.41 The Appellant will demonstrate that there are no significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, which cannot be cost effectively mitigated to an acceptable degree, as required by NPPF paragraph 108(c).

8.42 In the context of NPPF paragraph 109 it will be demonstrated that the proposals will not give rise to an unacceptable impact on highway safety, and that the residual cumulative impacts on the road network would not be severe.

8.43 The Appellant is hopeful that any differences of opinion can be resolved prior to the opening of the Public Inquiry and that a package of mitigation measures which can adequately accommodate the additional travel demand can be agreed.

## **Issue 5 Education Contributions**

8.44 The Appellants will explain that the Local Education Authority (LEA) has sought financial contributions towards education. The Appellants will demonstrate that the request is not compliant with the regulations or relevant guidance in numerous regards.

### The mechanism for funding needs

8.45 The Appellants will demonstrate that the proposed development will make appropriate contributions through CIL that have been justified on the basis that these receipts will fund the necessary off-site educational infrastructure as set out throughout the examination of the CIL Charging Schedule, the Examiners Final Report and the evidence base of neighbouring authorities in support of emerging Local Plans. The Appellants will demonstrate that as a result no additional contributions should be sought under S106 towards education as these are not necessary to make the development acceptable in planning terms or fairly and reasonably related in scale or kind.

### The new formulaic approach

8.46 The Appellants will demonstrate that the new formulaic approach which the LEA has introduced in respect of calculating educational needs is not only contrary to the PPG and DfE guidance in principle as it has not been subject to examination and it is inconsistent with the Development Plan, but that it has also not been tested alongside other policies and that as a result it is likely to undermine the deliverability of sites and in turn the Development Plan as a whole.

8.47 The Appellants will demonstrate that the new formulaic approach of the LEA is based on evidence that is contrary to the relevant guidance. The evidence will cover amongst other things:-

- The approach is contrary to the PPG, DfE guidance and reality as it assumes that every child resident in a development will attend childcare or an LEA funded school, notwithstanding that a proportion of children do not attend childcare facilities or LEA funded schools;
- The approach assumes that every dwelling is permanently occupied contrary to the Development Plan and reality;
- The request takes no account of migration contrary to national guidance and thereby seeks contributions to provide additional school places for children that are already attending local schools;
- The request takes no account of the existing surplus capacity of childcare and school places contrary to the PPG and DfE guidance;
- The request relies upon a recommended occupancy rate of the Audit Office but does not accord with that recommendation.

8.48 As a result of the above, the Appellants will demonstrate that the request of the LEA is not fairly or reasonably related in scale to the proposed development.

#### The capacity

8.49 The Appellants will demonstrate that there is currently sufficient capacity in pre-school places and that the pre-school population is expected to remain broadly stable such that there will remain sufficient capacity across Gloucestershire. The Appellants will demonstrate that there is no evidence of a shortfall of places locally and that as such there is no evidence to demonstrate that additional places are required to make the development acceptable in planning terms.

8.50 The Appellants will demonstrate that the forecast number of pupils of the LEA are not robust including because:

- Previous forecasts have repeatedly significantly over-estimated the number of pupils arising.
- They include positive manual adjustments where housing delivery is expected to be greater than that which occurred in the past without the corresponding negative adjustments where housing delivery is expected to be lower.

- They assume the new formulaic approach of the LEA which is contrary to the Development Plan and the relevant guidance in numerous regards.
- They assume that every 100 new dwellings will accommodate 98 pupils, many of whom will move from the existing dwelling stock, without taking any account of the consequent reduction in the number of pupils in the existing dwelling stock.
- They take account of unspecified committed developments, which it was discovered at a recent appeal include emerging allocations and other sites which do not benefit from planning permission, which cannot be taken into account until such time as these sites gain planning permission.

8.51 The detailed assumptions adopted by the LEA in their latest forecasts have not been published, particularly insofar as the committed developments which are included in the forecasts. The Appellants will work with the LEA to identify whether once the preceding factors have been taken into account, there is sufficient capacity to accommodate some or all of the primary and secondary (excluding sixth form) pupils arising from the proposed development.

8.52 The LEA has also not published the forecasts for individual schools as they did at a recent appeal to determine whether there are available places within local schools. The Appellants will work with the LEA to identify whether there are available places in these schools.

8.53 The Appellants will demonstrate that there is a significant surplus capacity in sixth form places currently that is more than sufficient to accommodate the pupils within the proposed development and that the LEA has not published any forecasts to demonstrate that there will be insufficient places in the future, such that there is no evidence that additional places are required to make the development acceptable in planning terms.

8.54 The Appellants intend to provide a s106 agreement that will ensure that sufficient educational infrastructure is provided in support of the proposed development in accordance with the formulaic approach of the Development Plan and taking account of the existing capacity of schools, with a blue pencil clause allowing for this to be funded either through CIL or through a s106 planning obligation.



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## **The Overall Planning Balance**

- 8.55 The Appellants will acknowledge and accept that planning law and guidance requires that planning applications and appeals should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 8.56 it is accepted that the site is not allocated for housing (and it would therefore conflict with JCS Policy SD10. However, the LPA cannot demonstrate a 5YRHLS and the most important policies are therefore out of date for the purposes of NPPF paragraph 11 and ought to be afforded reduced weight to avoid frustrating the policy imperative to significantly boost the supply of housing.
- 8.57 The Appellant will accept that NPPF paragraph 172 is a restrictive policy for the purposes of NPPF paragraph 11 and footnote 6, meaning that the “tilted balance” could be dis-applied. However, in this case it will be demonstrated that the proposals would pass the exceptional circumstances test in paragraph 172. As such the “tilted balance” is not dis-applied in this case.
- 8.58 The Appellants will identify the benefits of the proposed development and will attribute weight to each of these for the purposes of the overall planning balance. The Appellants will show that any adverse impacts of granting planning permission would not significantly and demonstrably outweigh those benefits and that overall, the planning balance rests in the favour of the appeal being allowed.
- 8.59 Having considered each of the main issues in turn, the Appellants will conclude that the proposals represent sustainable development and that planning permission should be granted subject to the imposition of any necessary conditions and planning obligations.

## 9. DOCUMENTATION

- 9.1 A set of Core Documents will be agreed with the LPA in advance of the Public Inquiry.
- 9.2 In addition to the application documents, planning history and consultation responses, it is anticipated that the following will be referred to.

### National Documents

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- CIL Regulations

### Local Documents

- The Cheltenham Plan (Adopted 2020)
- The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS)
- JCS Evidence Base
- Cheltenham Borough Council Regulation 123 List
- CIL Charging Schedule Examiners Report
- CIL Examiners Questions with JCS Team Responses (CILEXAM001)
- CIL Examiners Questions with PPE Responses on Viability (CILEXAM002(a))
- JCS CIL and Plan Viability Report Final (EXAM176)
- Securing Developer Contributions for Education, DfE
- School Capacity Survey, DfE
- Adopted Local Developer Guide
- Gloucestershire School Places Strategy
- Pupil Product Ratio Study 2019

Relevant Appeal Decisions and Legal Cases

- Various appeal decisions
- Various legal judgements

9.3 The Appellant reserves the right to refer to additional documents to those outlined above in preparation of its case and in support of the proposals.

## **10. PLANNING CONDITIONS AND OBLIGATIONS**

### Planning Conditions

- 10.2 An agreed set of Conditions will be provided to the Inspector before the start of the Public Inquiry.

### Planning Obligations

- 10.3 The Appellant will also present deeds pursuant to Section 106 of the Town and Country Planning Act which will secure any planning obligations that are deemed necessary to make the development proposals acceptable.