

# **STATEMENT OF CASE OF THE LOCAL PLANNING AUTHORITY**

**Town and County Planning Act 1990**

**Section 78 Appeal**

**Planning appeal by:** Robert Hitchins Ltd

**Location:** Land at Oakley Farm, Cheltenham, GL52 6PW

**Development:** Outline application for development comprising of up to 250 residential dwellings including provision of associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and formation of new vehicular access from Harp Hill. All matters reserved except for means of access to site from Harp Hill

**Cheltenham Borough Council Reference:** 20/01069/OUT

**Inspectorate Reference:** APP/B1605/W/21/3273053

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## 1.0 INTRODUCTION

- 1.1 This appeal has been lodged by Robert Hitchins Ltd ('the Appellants') on the basis that Cheltenham Borough Council ('the Council') did not determine the outline application Ref: 20/01069/OUT for development comprising of up to 250 residential dwellings including provision of associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and formation of new vehicular access from Harp Hill. All matters reserved except for means of access to site from Harp Hill, at Oakley Farm Priors Road Cheltenham Gloucestershire GL52 5AQ, within the prescribed period
- 1.2 The planning application was validated on 16th July 2020 and was reported to the Council's Planning Committee on 20<sup>th</sup> May 2021 in order to seek a resolution from the committee as to how it would have determined the proposals if the Council had remained the determining authority. The officer report considered the proposals and the committee accepted the recommendation that the Council be minded to refuse the application proposals for the following reasons:

### Reason for Refusal 1

- 1) The application proposes the erection of 250 houses on greenfield/agricultural land within the Cotswolds Area of Outstanding Natural Beauty (AONB) and on land outside of the Principal Urban Area of Cheltenham (PUA).

Policy SD10 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (December 2017) stipulates that on sites that are not allocated for residential development, new housing development within the Cheltenham Borough administrative area will normally only be permitted on previously developed land within the PUA except where otherwise restricted by policies within District Plans. The proposed development does not satisfy any of the exception criteria of SD10 that would support housing development on this site.

The proposed development conflicts therefore with Policies SP2 and SD10 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (December 2017) in that the proposed development does not meet the strategy for the distribution of new development within Cheltenham Borough and the application site is not an appropriate location for new residential development.

### Reason for Refusal 2

- 2) The proposals constitute major development within the Cotswolds Area of Outstanding Natural Beauty (AONB). In accordance with national planning policy, the AONB is afforded the highest status of protection in relation to conserving and enhancing landscape and

scenic beauty and in which major development is prohibited unless in exceptional circumstances and when in the public interest.

The proposed construction of 250 houses would, by virtue of the location and size of the application site, the scale and extent of development and the numbers of dwellings proposed plus associated infrastructure would fail to conserve or enhance the landscape and scenic beauty of the AONB and would result in significant harm to and permanent loss of the landscape quality and beauty of this part of the AONB. The proposed indicative mitigation measures intended to minimise harm to the AONB are considered inadequate, do not address the concerns and would alter the character of the site as a whole and result in harm to the AONB in themselves.

The applicant has failed to demonstrate any exceptional circumstances (or public interest) that would justify the proposed development within the AONB and thereby outweigh the identified harm to the AONB.

The proposed development is therefore contrary to Policies L1 and D1 of the Cheltenham Plan (2020), Policies SD4, SD6 and SD7 of the Joint Core Strategy (2017), Policies CE1, CE3, CE10 and CE12 of the Cotswolds AONB Management Plan 2018-23 and paragraphs 170 and 172 of the NPPF.

#### Reason for Refusal 3

- 3) The proposed development would, by virtue of design, layout and traffic generation result in a severe impact on the highway network and would fail to provide a safe and suitable access for all users, contrary to paragraphs 108, 109 and 110 of the National Planning Policy Framework, Policies INF1 and INF6 of the Joint Core Strategy (adopted December 2017), Policies LTP PD 0.3 and 0.4 of the Local Transport Plan (adopted March 2021), Policy CE10 of the Cotswolds AONB Management Plan 2018-23 and Manual for Gloucestershire Streets (adopted July 2020).

#### Reason for Refusal 4

- 4) The application site lies adjacent to designated heritage assets (grade II listed Hewlett's Reservoir and Pavilion). The proposals would have an unacceptable harmful impact on the setting of the heritage assets within Hewlett's Reservoir. As such, the proposed works are considered not to sustain or enhance the designated heritage assets and would cause harm to the significance of the affected designated heritage assets. In weighing this harm against the public benefits of the proposal, through the provision of housing, the public benefits of the proposals are not considered to outweigh the harm caused to the significance of the affected heritage assets. The proposed development is therefore contrary to Section 66(1) of the Planning (Listed Building and Conservation Area) Act 1990,

Policy SD8 of the Joint Core Strategy 2017, Policy CE6 of the Cotswolds AONB Management Plan 2018-23 and Chapter 16 of the National Planning Policy Framework.

#### Reason for Refusal 5

- 5) Policies INF4, INF6 and INF7 of the Joint Core Strategy (JCS) (adopted 2017) (and Policy CI1 and CI2 of the Cheltenham Plan) state that where infrastructure requirements are generated as a result of site proposals, new development will be served by appropriate on and/or off site infrastructure (including maintenance requirements) and community services. Financial contributions towards the provision of necessary infrastructure and services will be sought through the s106 or CIL mechanisms, as appropriate.

Policy SD12 of the JCS seeks the provision of 40% affordable housing in developments of 11 or more dwellings within the Cheltenham Borough administrative area. Affordable housing requirements will be delivered by way of on and/or off site provision and secured through the s106 mechanism.

The proposed development will lead to:

1. An increase in demand for playspace provision in the Borough and therefore the development should mitigate its impact in terms of adequate provision for on and/or offsite outdoor playing space. (Supplementary Planning Guidance - Playspace in Residential Development, Policy INF4, INF6 of the JCS, Policy CI1 and CI2 of the Cheltenham Plan and Section 8 of the NPPF).
2. Management and maintenance of hard and soft landscaped areas and any private streets
3. A need to provide for an element of affordable housing (Policy SD12 of the JCS and Policy CI1 of the Cheltenham Plan) which would be expected to be provided in full on site.

No agreement has been completed to secure the delivery of affordable housing requirements, and schemes/strategies for play space provision and site management and maintenance. The proposal therefore does not adequately provide for affordable housing requirements, schemes/strategies for play space provision and site management maintenance and conflicts with Policies SD11, SD12, INF3, INF4, INF6 and INF7 of the JCS, Policies CI1 and CI2 of the Cheltenham Plan (adopted 2020), Supplementary Planning Guidance – Playspace in Residential Development and the NPPF as referred to above.

#### Reason for Refusal 6

- 6) Policy INF4, INF6 and INF7 of the Joint Core Strategy (JCS) (adopted 2017) (and Policy CI1 of the Cheltenham Plan) states that where infrastructure requirements are generated as a result of site proposals, new development will be served by appropriate on and/or off site infrastructure and community services. Financial contributions towards the provision of necessary infrastructure and services will be sought through the s106 or CIL mechanisms, as appropriate. The proposed development will lead to a need to provide for education and libraries provision for the future residents (Policy INF6 of the JCS).

There is no agreement from the applicant to pay the requested financial contributions towards education (school places) and libraries provision that would be generated by the proposed development to make the application acceptable in planning terms. The proposal therefore does not adequately provide for education and library provision and conflicts with Policy INF4, INF6 and INF7 of the JCS (adopted 2017), Policy CI1 of the Cheltenham Plan (adopted 2020) and guidance on developer contributions set out in the NPPF, CIL Regulations (as amended) and DfE Guidance on Securing Developer Contributions for Education.

#### Reason for Refusal 7

- 7) Policies INF4, INF6 and INF7 of the Joint Core Strategy (JCS) (adopted 2017) (and Policy CI1 of the Cheltenham Plan) state that where infrastructure and services requirements are generated as a result of site proposals, new development will be served by appropriate on and/or off site infrastructure, services and other remedial measures. Financial contributions towards the provision of necessary infrastructure, services and other remedial measures will be sought through the s106, s278 or CIL mechanisms, as appropriate. The proposed development would lead to a requirement for necessary off-site highway improvement works (JCS Policies INF1 and INF6) and the implementation of the Residential Travel Plan.

No agreement has been completed to secure the provision of necessary highway improvements works and the funding and implementation of the Residential Travel Plan. The proposal fails therefore to meet the expectations of Policy INF1 and INF6 of the JCS (adopted 2017), Policy CI1 of the Cheltenham Plan (adopted 2020) and guidance on developer contributions set out in the NPPF.

- 1.3 The Council expect that reasons 5 and 7 will be addressed by appropriate s106 obligations, however if this is not the case, the Council will demonstrate the harm arising from the absence of obligations to address those matters.

## **2.0 THE SITE AND ITS LOCATION**

2.1 Descriptions of the site and its location are contained in the report to Committee and the Appellants' Statement of Case.

## **3.0 PLANNING HISTORY**

3.1 The planning history which is most relevant to this appeal site is set out in Section 4 of the report to Committee.

## **4.0 PLANNING POLICY CONTEXT**

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.

4.2 The Development Plan currently comprises of the Cheltenham Plan (CP) (adopted 2020) (**Appendix A**) and the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS) (adopted 2017) (**Appendix B**) and the saved policies of the Local Plan Second Review 2006.

4.3 Other material policy considerations include:

- The National Planning Policy Framework and its associated Planning Practice Guidance
- The Cotswolds AONB Management Plan 2018-23 (CMP) (**Appendix C**)
- Supplementary Planning Guidance – Amenity Space in Residential Development (Adopted 22nd April 2003 and Updated 9th February 2004) (**Appendix D**)
- Manual for Gloucestershire Streets (adopted July 2020). **Appendix E**
- Gloucestershire's Local Transport Plan 2020 – 2041 (**Appendix F**)
- Section 66(1) of the Planning (Listed Building and Conservation Area) Act 1990
- DfE Guidance on Securing Developer Contributions for Education (**Appendix G**)
- The Gloucestershire County Council Local Development Guide Update March 2021 (**Appendix H**)

4.4 The Development Plan policies relevant to this appeal are as follows:

***Cheltenham Plan (CP)***

- D1 Design
- L1 Landscape and Setting
- BG1 Cotswold Beechwoods Special Area of Conservation Recreation Pressure
- BG2 Cotswold Beechwoods Special Area of Conservation Air Quality
- SL1 Safe and Sustainable Living
- GI2 Protection and replacement of trees
- GI3 Trees and Development
- CI1 Securing community infrastructure benefits
- CI2 Sports and open space provision in new residential development

***Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS)***

- SP1 The Need for New Development
- SP2 Distribution of New Development
- SD3 Sustainable Design and Construction
- SD4 Design Requirements
- SD6 Landscape
- SD7 The Cotswolds Area of Outstanding Natural Beauty
- SD8 Historic Environment
- SD9 Biodiversity and Geodiversity
- SD10 Residential Development
- SD11 Housing Mix and Standards
- SD12 Affordable Housing
- SD14 Health and Environmental Quality
- INF1 Transport Network
- INF2 Flood Risk Management
- INF3 Green Infrastructure
- INF4 Social and Community Infrastructure
- INF5 Renewable Energy/Low Carbon Energy Development
- INF6 Infrastructure Delivery
- INF7 Developer Contributions

## ***Saved Policies of Cheltenham Borough Local Plan Second Review 2006***

There are no Saved Policies of the Cheltenham Borough Local Plan Second Review 2006 which are relevant to this appeal.

### **5.0 THE COUNCIL'S CASE**

#### ***Reason for refusal 1***

- 5.1 The Council's first reason for refusal essentially relates to the principle and scale of housing development in this location. The appeal site is located outside of the Principal Urban Area (PUA) of Cheltenham and the proposal constitutes major development on land which lies wholly within the Cotswolds Area of Outstanding Natural Beauty (AONB).
- 5.2 Policy SP2 of the JCS sets out the strategy for the distribution of new housing development across Cheltenham, Gloucester and Tewkesbury administrative areas. Policy SP2(3) states that to meet the needs of Cheltenham Borough the JCS will make provision for at least 10,996 new homes. This will be provided within the Cheltenham Borough administrative boundary and cross-boundary urban extensions at North West Cheltenham and West Cheltenham (both of which are partly within Tewkesbury Borough) defined in Policy SA1, and commitments covered by any Memoranda of Agreement. Policy SP2(6) states that in the remainder of the rural area, Policy SD10 will apply to proposals for residential development.
- 5.3 Policy SD10 of the JCS advises that in Cheltenham on sites that are not allocated, housing development will be permitted on previously-developed land within the PUA. Housing development on other sites will only be permitted where it is infilling within the PUA or affordable housing on a rural exception site or there are other specific exceptions/circumstances defined in district or neighbourhood plans.
- 5.4 The proposed development does not meet any of these requirements and does not accord with the strategy for the distribution of new development in Cheltenham Borough and therefore conflicts with policies SP2 and SD10 of the JCS.
- 5.5 Whilst the proposal is clearly contrary to the development plan it is also the case that the Council cannot currently demonstrate a 5-year supply of deliverable housing sites. The Council's current position is that it can demonstrate a 3.7 year supply at December 2019 (Appendix L – Cheltenham Borough Council Five Year Housing Land Supply Position Statement December 2019).
- 5.6 Paragraph 11d of the NPPF sets out that in circumstances where the most important policies for determining an application are out of date (and this includes circumstances where the local

planning authority cannot demonstrate a five year supply of deliverable housing sites, as is the case here) there is a presumption that planning permission be granted unless:

*'(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*

5.7 The protected areas or assets of particular importance referred to at (i) above are defined in footnote 6 of the NPPF. The protected areas or assets of particular importance as defined by footnote 6 which are of relevance to this case are:

- Cotswolds Area of Outstanding Natural Beauty,
- Grade II listed structures at Hewlett's Reservoir including No. 1 Reservoir; No.2 Reservoir; Pavilion at Hewlett's Reservoir; Gates, gatepiers and boundary walls at Hewlett's Reservoir; and curtilage listed Stone Lodge.

5.8 The Council will demonstrate that the appeal proposals conflict with paragraph 172 of the NPPF which conserves and enhances Areas of Outstanding Natural Beauty and that the application of this policy that protects areas and assets of particular importance provides a clear reason for refusing the development proposed.

5.9 Concurrently the Council will demonstrate that the appeal proposal would have an unacceptable impact on the setting of Grade II listed No.1 Reservoir; No.2 Reservoir; Pavilion at Hewlett's Reservoir; Gates, gatepiers and boundary walls at Hewlett's Reservoir; and curtilage listed Stone Lodge. It will be demonstrated that the proposed works do not put great weight on conservation of the affected heritage assets and do not sustain and enhance the significance of heritage assets, therefore leading to less than substantial harm to the significance of the heritage assets. In weighing this harm against the public benefits of the proposal, through the provision of housing, it will also be demonstrated that the public benefits of the proposals do not outweigh the harm caused to the significance of the affected heritage assets. The Council will therefore demonstrate that the appeal proposal is in conflict with Chapter 16 of the NPPF and that the application of these NPPF policies that protect assets of particular importance provides a clear reason for refusing the development proposed.

5.10 The Council will thus demonstrate that the 'tilted balance' is not applied in this case.

5.11 In respect of the principle of development therefore, the proposed development conflicts with policies SP2 and SD10 of the JCS in that the proposed development does not meet the strategy for the distribution of new development in Cheltenham Borough and the appeal site is not an appropriate location for new residential development.

## ***Reasons for Refusal 2***

- 5.12 The Appellant acknowledges and accepts that the appeal proposals represent major development within the AONB for the purposes of applying AONB planning policy, it is hoped that this matter can be agreed in the Statement of Common Ground.
- 5.13 Paragraph 172 of the NPPF states that the AONB is afforded the highest status of protection in relation to conserving and enhancing landscape and scenic beauty and that the scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development in the AONB except in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Paragraph 172 goes on to advise that consideration of such applications should include an assessment of the following factors:
- 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;
  - b) The cost of, and scope for, developing outside the designated area, or meeting the need for it some other way; and
  - c) Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
- 5.14 The Appellant's case is summarised that this Council cannot currently demonstrate a five year housing supply and that when this is combined with a shortfall against the minimum housing requirement across the plan period in both Cheltenham and in the neighbouring JCS authorities, that there is a 'pressing need' for housing in the area. The appellant also considers that failure to meet housing needs for Cheltenham would have a 'detrimental effect' on the economy and undermine the economic objectives of the JCS. Concurrently the appellant makes the case that Cheltenham is 'highly constrained' and that if development does not take place in the AONB adjacent to the built-up area housing development would need to take place in the Green Belt or in locations more distant from Cheltenham and that in these circumstances housing needs would not be met where they arise. Finally, in terms of detrimental effect on the environment, the landscape and recreational opportunities, the appellant makes the case that 'the development proposals retain the features which makes the greatest contribution and have the highest sensitivity, limiting potential adverse impacts [on the AONB]'.
- 5.15 The Council's case is that exceptional circumstances do not exist and that the proposal is not in the public interest. Without prejudice, it is considered that if potential exceptional circumstances are identified and that there is considered to be a public interest, then the Council will make the case that these factors would not outweigh the adverse impact on the landscape and scenic beauty of the AONB and the great weight which should be given to conserving and enhancing the landscape and scenic beauty of the AONB, which has the highest status of protection in relation to these issues.

- 5.16 The Council will identify that the contribution of 250 dwellings (including affordable housing) towards meeting housing land supply requirements is significant but cannot on its own be an exceptional circumstance. The applicant has not explored fully the cost or scope for developing outside of the AONB or meeting the need for housing in some other way. Therefore, it has not been demonstrated that the need for housing cannot be provided elsewhere. The Council will make reference to *R (Mevagissey Parish Council) v Cornwall Council* [2013] EHC 3684 (Appendix J) and that even an 'exceptional need' for housing does not necessarily equate to exceptional circumstances for a particular development, as there may be alternative sites that are more suitable for development which would result in less harm to the AONB landscape.
- 5.17 The Council will make the case that it is necessary to consider short, medium and longer term timeframes when considering if exceptional circumstances exist. The Council will also advise that it has long been recognised that Gloucester and Cheltenham cannot wholly meet their development requirements within their administrative boundaries, and as such collaborative working across boundaries is necessary through the duty to cooperate. The Council will identify that there is demonstrable precedent and commitment for the Gloucestershire authorities to work together on cross boundary issues in response to these constraints.
- 5.18 The Council will provide evidence on the deliverability of the objectively assessed need for housing during the plan period and recognising that the housing allocations in the JCS which were intended to help meet this need in full have been delayed, demonstrate that the mechanisms are in place, including the JCS Review, to ensure that objectively assessed housing needs are met during the plan period through the plan led approach.
- 5.19 Against this context, the Council will make the case that any requirement for additional housing sites which may arise within and beyond the plan period, should be identified as part of the plan-led approach having regard to a robust evidence base, public consultation in the public interest and the scrutiny in site selection which arises from the plan-led process. Amongst other reasons, it will also be demonstrated that the appellant's approach in merely stating that a current housing shortfall is an exceptional circumstance without consideration of alternatives cannot amount to exceptional circumstances for the purposes of the NPPF.
- 5.20 The Council will also provide landscape and visual impact evidence demonstrating that the development would result in significant harm to and permanent loss of the landscape quality and scenic beauty of this part of the AONB. The Council will also demonstrate that the proposed indicative mitigation measures intended to minimise harm to the AONB are inadequate, would alter the character of the site as a whole and would result in harm to the AONB in themselves. The Cotswolds Conservation Board has been granted Rule 6 status and their submissions will provide further evidence on the harms arising. As such the Council will demonstrate that the proposed development would fail to conserve or enhance the landscape and scenic beauty of the AONB.

5.21 In summary, the Council will demonstrate that there are no exceptional circumstances or public interest that would justify the proposed development within the AONB and the proposal would give rise to significant harm to and permanent loss of the landscape quality and scenic beauty of this part of the AONB. As such, it will be demonstrated that the proposal wholly conflicts with paragraph 172 of the NPPF. For the reasons set out above it will also be demonstrated that the proposal conflicts with Policies L1 and D1 of the CP, Policies SD4, SD6 and SD7 of the JCS, Policies CE1, CE3, CE10 and CE12 of the Cotswolds AONB Management Plan 2018-23 and the NPPF.

### ***Reason for Refusal 3***

5.22 The application is submitted in outline with all matters reserved, except for means of access to the site from Harp Hill.

5.23 The third reason for refusal identifies that the proposed development would, by virtue of design, layout and traffic generation result in a severe impact on the highway network and would fail to provide a safe and suitable access for all users.

5.24 The County Highways Authority (CHA) were consulted on the application in their role as statutory consultee. Based on their appraisal of the development proposals the Highways Development Management Manager on behalf of the County Council, under Article 18 of the Town and Country Planning (Development Management Procedure) (England) Order, 2015 recommended that the proposal is refused.

5.25 The CHA raise numerous concerns about the appeal proposals including, but not limited to, the wider impact on the highways network, cycle infrastructure, the gradient of the immediate future access off Harp Hill and that the future proposal would be unable to achieve a suitable layout, the absence of a Travel Plan, inadequate public transport links and infrastructure. The CHA advise that the Appellant did not engage with them in order to address these issues prior to submitting the appeal.

5.26 It is understood that the County Council has applied for Rule 6 status and will present evidence in support of the reason for refusal 3 at the Inquiry.

### **Reason for Refusal 4**

5.27 The application site lies adjacent to designated heritage assets associated with Hewlett's Reservoir (including grade II listed No. 1 Reservoir; No.2 Reservoir; Pavilion at Hewlett's Reservoir; Gates, gatepiers and boundary walls at Hewlett's Reservoir; and curtilage listed Stone Lodge). The walls and embankment of the reservoir form part of the south east boundary of the site.

5.28 It will be argued by the Council, that Stone Lodge, Harp Hill is curtilage listed through its historic association with Hewlett's Reservoir and being mentioned in the listed description for both No.1 Reservoir and No.2 Reservoir, which state, "The custodian's house was altered and extended in the later C20."

- 5.29 Other Heritage Assets (some of which are noted in the Heritage Statement submitted with the application, including Battledown Ancient Scheduled Monument and Bouncers Lane Cemetery and associated ecclesiastical structures) are considered too distant to be meaningfully and/or adversely affected by the proposal. The agricultural buildings forming Oakley Farm located on the site and proposed to be demolished are in a poor state of repair, are of low to no significance. Their loss is not contested.
- 5.30 The Council will provide evidence on the significance of the heritage assets identified at paragraph 5.27, including contribution made by their setting. The Council will demonstrate that the appeal proposals would have a harmful impact on the setting of the designated heritage assets within Hewlett's Reservoir. The Council will demonstrate, amongst other matters, that the proposed development would intrude into important views to the north west of Hewlett's Reservoir and as a result would adversely affect how the heritage assets are experienced within their rural context, taking into account the adverse impacts of the existing housing development abutting the Reservoir's northern boundary.
- 5.31 Ultimately the Council will demonstrate that the impact of the proposal on the setting of the heritage assets within Hewlett's Reservoir is unacceptable in heritage terms. The proposed works do not sustain and enhance the designated heritage assets. The evidence will identify that the proposal would cause less than substantial harm to the significance of the affected designated heritage assets.
- 5.32 As part of the planning balance exercise, the Council will consider what public benefits may arise from the development and demonstrate that these benefits would not outweigh the harm caused to the significance of the heritage assets. Similarly, it will be identified that there is not a clear and convincing justification for the harm caused to the significance of the designated assets.
- 5.33 As such the Council's evidence will demonstrate that the appeal proposal is contrary to Section 66(1) of the Planning (Listed Building and Conservation Area) Act 1990, Policy SD8 of the JCS, Policy CE6 of the Cotswolds AONB Management Plan 2018-23 and Chapter 16 of the NPPF.

#### **Reason for Refusal 5**

- 5.34 No agreement has been completed to secure the delivery of affordable housing requirements, and schemes/strategies for play space provision and site management and maintenance. The proposal therefore does not adequately provide for affordable housing requirements, schemes/strategies for play space provision and site management and maintenance.
- 5.35 In regard to affordable housing, to achieve a policy compliant scheme and in line with the latest Local Housing Needs Assessment (LHNA) the Council would seek a provision of 100 affordable homes for this development with a 70/30 tenure split between social rented and shared ownership/intermediate properties. The Council's affordable housing requirements for the site are set out in the Council's Housing Enabling Officer's consultation response to the planning application and are provided at Appendix K.

- 5.36 The Appellants have not confirmed that they are agreeable to the Council's requirements at this stage, and in the absence of an agreement, and a signed obligation to secure the number/type and mix of affordable units the Council must object to the proposals. Nevertheless, despite not having been approached by the Appellants' solicitors at this stage, the Council hopes that this issue will be resolved by the preparation of suitable planning obligations in advance of the Inquiry. If a suitable planning obligation is not provided in advance of the inquiry, the Council will demonstrate that the proposal conflicts with Policies SD11 and SD12 of the JCS, Policy CI1 of the CP and the NPPF.
- 5.37 Similarly, the proposal would generate infrastructure requirements for play space provision and site management and maintenance. Again, the Council hopes that this issue will be resolved by the preparation of suitable planning obligations in advance of the Inquiry. However if this does not happen, the Council will also demonstrate that the proposal conflicts with Policies INF3, INF4, INF6 and INF7 of the JCS, Policies CI1 and CI2 of the CP, Supplementary Planning Guidance – Playspace in Residential Development and the NPPF.

#### **Reason for Refusal 6**

- 5.38 The Appellants have made it very clear in their Statement of Case that they do not agree that Gloucestershire County Council's request for S106 contributions towards education infrastructure are appropriate in the context of the CIL Regulations. The Appellants also consider 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.'
- 5.39 It is understood that the County Council has applied for Rule 6 status and will present evidence in support of reason for refusal 7 at the Inquiry. Nevertheless, the Council supports the principle that infrastructure, where it is directly linked to the development proposed, and meets the tests set out in CIL Regulation 122, is capable of being paid for through s106 contributions. This matter was considered by Inspector Stephens at an appeal at Stoke Road, Bishop's Cleeve in 2019 (PINS ref: APP/G1630/W/19/3229581) within Gloucestershire County Council's administrative area which is attached at Appendix I.
- 5.40 The library contributions have also been requested by Gloucestershire County Council and will be addressed by them as a Rule 6 party. It is hoped that the library contributions will be agreed and appropriate contributions contained within a completed planning obligation with the Appellant before the opening of the Inquiry.

#### ***Reason for Refusal 7***

- 5.41 Reason for Refusal 7 has been requested by Gloucestershire County Council as County Highways Authority as no agreement has been completed to secure the provision of necessary highway improvements works and the funding and implementation of a Residential Travel Plan.

The proposal therefore fails to meet the expectations of Policy INF1 and INF6 of the JCS, Policy CI1 of the CP and guidance on developer contributions set out in the NPPF and NPPG.

- 5.42 The Appellant has advised that they are hopeful that a package of measures to accommodate travel demand can be agreed prior to the opening of the Inquiry and therefore it is hoped that appropriate contributions contained within a completed planning obligation will be provided before the opening of the Inquiry.
- 5.43 In the absence of an appropriate and agreed planning obligation this matter will be addressed by the County Council as Rule 6 party.

## **6.0 SUMMARY AND CONCLUSIONS**

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
- 6.2 The appeal proposals do not accord with the development plan strategy for the area and are therefore contrary to policies SP2 and SD10 of the JCS. Whilst the Local Council cannot currently demonstrate a five year supply of deliverable housing sites, when applying the policies of the NPPF that protect assets of particular importance, the impacts on the AONB and designated heritage assets represent clear reasons for refusal which disappplies the tilted balance.
- 6.3 In addition to the adverse harm to the AONB and heritage assets, the appeal proposals have a number of other adverse impacts. The proposed development would, by virtue of design, layout and traffic generation result in a severe impact on the highway network and would fail to provide a safe and suitable access for all users.
- 6.4 The Appellant has advised that they do not agree to Gloucestershire County Council's request for s106 contributions towards education infrastructure, and at the present time no planning obligation has been agreed for affordable housing, schemes/strategies for play space provision and site management and maintenance, libraries and the provision of necessary highway improvements works and the funding and implementation of a Residential Travel Plan. Therefore the Appellants have not agreed the necessary contributions required towards infrastructure which is essential to ensure that the development would integrate as seamlessly as possible with existing provision, and to ensure the development is truly sustainable.
- 6.5 This is a case where the tilted balance is not in play and the identified harms point clearly towards a refusal to such an extent that, even if the presumption in favour of sustainable development were engaged, the adverse impacts of granting permission would significantly

and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.

6.6 It is for these reasons that the Council will ask the Inspector to dismiss the appeal.