

PLANNING PROOF OF EVIDENCE

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SECTION 78 APPEAL BY ROBERT HITCHINS LIMITED

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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APPENDIX 1 – ALTERNATIVE ILLUSTRATIVE MASTERPLAN

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 and I am based in the Cirencester Office.
- 1.3 I have worked in the private sector as a Planning Consultant since 1999 (22 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 now 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 As well as dealing with outline applications for larger developments I am also involved in negotiations on a day to day basis in relation to reserved matter applications on behalf of residential developers.
- 1.6 I represent clients at appeals and I have presented evidence on their behalf at numerous Public Inquires and Informal Hearings. It is relevant to note that I have presented evidence on behalf of Robert Hitchins Ltd at recent Public Inquiries in Gloucestershire including land at Innsworth, Twigworth, Fiddington, Kidnappers Lane in Cheltenham and Coombe Hill. I am therefore familiar with the longstanding difficulties in delivering housing in this area.
- 1.7 With regards to the current appeal site, I was not involved in the project at the application stage. My first involvement in the project was when I was asked to lodge the appeal.
- 1.8 The evidence that I have prepared and provide for this appeal (PINS Ref APP/B1605/W/21/3273053) is true and has been prepared and is given in accordance with the guidance of my professional institution, irrespective of by whom I am instructed. 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 Limited (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).
- 2.2 The Appeal was lodged on the grounds of "non-determination." It followed 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."**
- 2.3 As no decision notice was issued on the Planning Application, the LPA reported the application to its Planning Committee on 20th May 2021 to request that Members consider whether or not they would have granted planning permission, had the LPA still been the determining Authority.
- 2.4 Members concluded that they would have refused the planning application. They endorsed their Officer recommendation to inform the Planning Inspectorate that they would have refused the application for the following reasons:-

- 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.

- 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.

- 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).**
- 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.

- 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.

- 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.

- 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."

The Updated Position on the Putative Reasons for Refusal

- 2.5 To assist the Inspector, I set out below a brief update on the PRfR to explain how the issues in dispute have now narrowed on some matters.

Affordable housing and Public Open Space [PRfR 5]

- 2.6 It is not necessary for me to present evidence on matters relating to affordable housing as this will be addressed through s.106 Planning Obligations. The proposals would provide for policy compliant levels of affordable housing (40%). The evidence of Mr Stacey explains why this ought to be afforded substantial weight in the determination of this appeal given the chronic under-delivery of affordable housing locally.

- 2.7 Similarly, play space requirements and the management and maintenance of public open space will also be dealt with through Planning Obligations. The LPA has yet to identify what it requires (and the justification for) off-site improvements but this should be capable of being resolved through planning obligations prior to the start of the inquiry.

Highway Improvements and Travel Plan [PRfR 7]

- 2.8 Any necessary off site highway improvements and the implementation of a Travel Plan will be dealt with through planning conditions or planning obligations. The LPA accepts that this matter could be addressed in this way [LPA SoC 1.3].

My Evidence

- 2.9 My Proof of Evidence deals principally with the planning policy matters raised in the PRfR. It focuses in particular on the issues set out in PRfR 1 and PRfR 2 as well providing the overall planning balance.
- 2.10 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

- 2.11 My evidence should be read alongside the other Proofs of Evidence that have been prepared on behalf of the Appellants, as follows:-
- Neil Tiley - Housing Need
 - James Stacey – Affordable Housing

- Paul Harris – Landscape and Visual Impact
- Gail Stoten – Built Heritage
- Graham Eves – Traffic and Transportation
- Neil Tiley - Education

Statements of Common Ground

2.12 My evidence should also be read in conjunction with the following Statements of Common Ground (SoCG) which are expected to be signed and agreed shortly. They include:-

- Planning – with Cheltenham BC
- Education – with Gloucestershire County Council
- Built Heritage – with Cheltenham BC
- Housing Land Supply – with Cheltenham BC
- Traffic and Transportation - with Gloucestershire County Council

3. THE APPEAL SITE LOCATION AND DESCRIPTION

- 3.1 A 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 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 (AONB).
- 3.3 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.
- 3.4 The site is surrounded on three of its sides by existing residential development (to the north, west and south) and to the east in part by other recent residential development and the listed structures of Hewlett's Reservoir.
- 3.5 The site is well related to the existing residential suburbs of Cheltenham with Battledown to the south, Whaddon to the west and Prestbury to the north.
- 3.6 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.

4. THE APPEAL PROPOSALS

- 4.1 The planning application that is now the subject of this appeal was submitted to Cheltenham Borough Council on 25th June 2020 and was validated on 16th July 2020 (LPA ref. 20/01069/OUT).
- 4.2 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.”

- 4.3 The application was submitted in outline with all matters of detail reserved for subsequent determination. Details have nonetheless been submitted to demonstrate how access would be achieved with the intention that this would be refined at the Reserved Matters stage.
- 4.4 The main components of the scheme are set out in the SoCG and the Design and Access Statement which was submitted as part of the original planning application.

The Illustrative Masterplan

- 4.5 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 just one way in which the development could be laid out to respond to the constraints and opportunities of the site and work continues to take place in this regard.
- 4.6 The Alternative Illustrative Masterplan at Appendix 1 of my evidence provides another example of how development could be laid out. It is very much a work in progress, but it shows how the development areas could inter-relate with the on-site and off-site green infrastructure and be sympathetic to the settings of nearby heritage assets.
- 4.7 This will no doubt be refined further at the Reserved Matters (RM) stage if the appeal is allowed.

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Plans for Approval

- 4.8 For the avoidance of doubt, the plans that would be approved if the appeal is allowed would be as follows:-

	<u>Drawing Title</u>	<u>Drawing Reference</u>	<u>Revision</u>
1.	Location Plan	333.P.1	D
2.	Land Use Parameter Plan	P18-0847_02 Sheet No. 2	D
3.	Access and Movement Parameter Plan	P18-0847_02 Sheet No.3	F
4.	Building Heights Parameter Plan	P18-0847_02 Sheet No.4	C
5.	Green infrastructure Parameter Plan	P18-0847_02 Sheet No.5	D

- 4.9 All other plans and documents should be treated as being illustrative or providing supporting information and would not need to be listed as being approved.

- 4.10 Mr Eves is in discussion with the County Council regarding potential off site mitigation and it may be that Grampian conditions will need to refer to other drawings to secure those works. Further details will be provided through the list of draft conditions.

5. PLANNING HISTORY

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

6. PLANNING POLICY

- 6.1 The planning policies and national guidance that are of most relevance to this appeal are identified in the Planning 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 demonstrate that there are compelling reasons that justify the grant of planning permission.

Background Context

7.2 The housing land supply position is of importance in this case because it has a direct effect on the way that this appeal should be determined. It means that the “tilted balance” in paragraph 11d of the NPPF is capable of being engaged by virtue of NPPF Footnote 8.

7.3 The LPA already accepts that it cannot demonstrate a five year supply of housing land (5YRHLS), as required by the NPPF¹. The parties do not agree on the extent of the shortfall and the supply position varies from **3.9 years** according to the LPA, and **2.2 years** according to Mr Tiley for the Appellant. Notwithstanding the differences of opinion, I consider that the extent of the shortfall (even on the LPA’s best case) is still substantial. That is in part because such a shortfall is likely to persist into the future for reasons explained by Mr Tiley.

7.4 It is not necessary to identify multiple routes into the tilted balance, but it is also relevant to note that it could be engaged regardless of the 5YRHLS position because the adopted Development Plan does not provide the framework or scope to meet its own housing requirement, contrary to the NPPF [paragraphs 11b, 15, 23 and 68b].

7.5 The onus therefore rests with the LPA (or other interested parties) to demonstrate that there are either policies in the NPPF which provide a clear reason for refusal or that any residual adverse impacts would significantly and demonstrably outweigh the benefits of granting planning permission.²

7.6 The LPA says that the tilted balance is dis-applied in this case because it alleges conflict with NPPF policies that seek to protect areas or assets of particular importance (ie. AONB and designated heritage assets). I will refer to the evidence of Mr Harris (Landscape) and Mrs Stoten (Heritage) to demonstrate that these do not provide clear reasons for refusal and to explain why the tilted balance is not dis-applied in this case.

¹ LPA SoC paragraph 5.5

² NPPF Paragraph 11d

The Main Planning Policy Issues

7.7 My evidence will concentrate on the planning policy issues raised in PRfR 1 and PRfR 2. The main planks of the LPA's case on these matters can be summarised as follows:-

- a. The site is not allocated for development
- b. It is a greenfield site outside the defined PUA, whereas Policy SD10 seeks to direct housing to previously developed land within the PUA.
- c. The site also lies within the AONB.
- d. The proposals therefore conflict with JCS Policies SP2 and SD10 and do not meet the strategy for the distribution of new development within Cheltenham and the site is not an appropriate location for new residential development.
- e. Major development in the AONB should be refused unless there are exceptional circumstances and it would be in the public interest [NPPF paragraph 177]
- f. The proposed development would fail to conserve or enhance the landscape and scenic beauty of the AONB and would result in significant harm.
- g. The proposed indicative mitigation measures are considered inadequate and result in harm to the AONB in themselves.
- h. The Appellant has failed to demonstrate any exceptional circumstances (or public interest) that would justify major development within the AONB and thereby outweigh the identified harm to the AONB.
- i. Consequent on such matters, the proposal does not accord with the stated policies of the JCS (2017), the Local Plan (2020), the Cotswolds Management Plan 2018-23 and the NPPF.

7.8 In view of the above I would identify the main issues as follows:-

Issue 1 Whether the proposed development would be in an appropriate location that accords with the strategy for the distribution of development in Cheltenham Borough [PRfR 1]

Issue 2 Whether there are exceptional circumstances which justify major development in the AONB and whether it would be in the public interest [PRfR 2]

7.9 I deal with these issues separately below whilst also cross referring to the evidence that will be presented by other witnesses on behalf of the Appellant.

Issue 1 Whether the proposed development would be in an appropriate location that accords with the strategy for the distribution of development in Cheltenham Borough [PRfR 1]

7.10 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.³

The Development Plan

7.11 The relevant parts of the Development Plan are set out below. The policies that will be of most importance for this appeal are set out in the Planning SoCG.

- a. The Gloucester, Cheltenham & Tewkesbury Joint Core Strategy (2017) [CD.E1]
- b. Cheltenham Local Plan (2020) [CD.E2a]
- c. Saved policies of the Cheltenham Local Plan Second Review (2006)

7.12 This is not a case where I seek to argue that the proposals accord with the Development Plan when it is read as a whole, such that the appeal should be determined in the context of NPPF paragraph 11c.⁴

³ Section 38(6) of the Planning & Compulsory Purchase Act 2004

⁴ Approving development proposals that accord with an up-to-date development plan without delay

7.13 Instead, this is a case where the most important policies are out of date and NPPF paragraph 11d applies.⁵

7.14 I will nonetheless demonstrate that appeal proposals are still in general accordance with the spatial strategy of the Development Plan insofar as the distribution of development is concerned and other relevant development management policies.

The Gloucester, Cheltenham & Tewkesbury Joint Core Strategy (JCS)

Strategic Objective 8 – Housing Delivery

7.15 The JCS identifies 9no. Strategic Objectives [CD.E1 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)

7.16 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 back in October 2018 [CD.E5].

7.17 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 housing delivery.

7.18 The evidence of Mr Tiley shows that even without scrutiny of the latest supply positions, none of the three JCS authorities can currently demonstrate a 5YRHLS. Such is the severity of the issue, that the JCS authorities now intend to look at housing land supply for all three LPA areas through a comprehensive JCS review [CD.E5 paragraph 2.3].

⁵ The “tilted balance”

- 7.19 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 has failed to deliver in this regard and the LPAs recognise this to be the case.
- 7.20 This establishes a very important background context for the following analysis of JCS policies. It also has particular significance for the application of NPPF paragraph 177 as I will explain later, because it is an indicator that there is a need for the development and that there is insufficient scope to meet the need beyond the AONB.

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

- 7.21 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).
- 7.22 Part 3 of Policy SP1 distributes that overall minimum housing requirement amongst the JCS authorities. It requires at least **10,917 dwellings** to be provided within Cheltenham Borough between 2011 and 2031. At least 14,359 dwellings are to be provided at Gloucester and at least 9,899 dwellings are to be provided at Tewkesbury.
- 7.23 The appeal proposals, if allowed, would clearly contribute towards the identified housing requirements for the JCS area and for Cheltenham Borough. There can therefore be no conflict with Policy SP1 in this regard.
- 7.24 It is important that I highlight the role that Cheltenham plays in the spatial strategy because this has also implications for the application of AONB policy later in my evidence. The JCS places Cheltenham (and Gloucester) at the leading edge of the spatial strategy and explains that they are to be the focus of development to reinforce their economic roles and to promote sustainable transport. Policy SP2(1) states:-

"Policy SP2: Distribution of Development

1) To support their economic roles as the principal providers of jobs, services and housing, and in the interests of promoting sustainable transport, development will be focused at Gloucester and Cheltenham, including urban extensions to these areas.

....." (my emphasis)

- 7.25 Part 3 of Policy SP2 explains how needs will be met at Cheltenham and it states that:-

"3) 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.

....." (my emphasis)

- 7.26 The appeal site is located within the administrative boundary of Cheltenham and so the appeal proposals would accord with the overarching strategy of the JCS and in particular Policies SP1 and SP2. The proposals would deliver additional housing that can contribute towards the minimum housing requirement identified in Policy SP1 and this would be delivered within the administrative boundary of Cheltenham where Policy SP2 expressly states that development is to be focused.

- 7.27 When read on its face, there is no conflict with Policy SP2 at all.

Policy SD10 – Residential Development

- 7.28 The LPA identifies conflict with JCS Policy SD10 in its putative reasons for refusal. Policy SD10 outlines the circumstances in which new housing development will be permitted.
- 7.29 I accept that the appeal proposals do not accord with the Policy SD10. That is because the site is not allocated in an adopted Development Plan document, it is not located within the PUA and it does not accord with any of the other criteria that would normally allow for housing on this site.
- 7.30 It would seem that the LPA has afforded full weight to the policy (there is certainly no suggestion in the Officer Report that Officers attached reduced weight to the policy). However, Policy SD10 is clearly out of date and it should be afforded much reduced weight for a number of reasons.
- 7.31 Firstly, the **LPA cannot currently demonstrate a 5YRHLS**. If an LPA cannot demonstrate a 5YRHLS, NPPF Footnote 8 is engaged and the most important policies (which will include Policy SD10) will thereby be deemed out of date.
- 7.32 The evidence of Mr Tiley indicates that the supply position is 2.2 years and that it is unlikely that the LPA will be able to demonstrate a 5YRHLS against the adopted

requirement of the JCS for the remainder of the plan period. This deficit can only realistically be reduced if additional, currently unallocated sites beyond the PUA are brought forward for development, contrary to Policy SD10.

- 7.33 Secondly, the **LPA cannot demonstrate a plan period supply up to 2031**. The shortfall is substantial (in the region of 3,500 homes) and again, this can only realistically be reduced if sites which currently conflict with Policy SD10 are released for development.
- 7.34 Thirdly, the **Development Plan for Cheltenham is now effectively “complete” and so there is no imminent plan led mechanism that will address the plan period shortfall**. There will be a JCS Review but that is years away from adoption. Moreover, it will be a new plan with a new housing requirement that will cover a different plan period.
- 7.35 Fourthly, **no other LPA in the JCS area can demonstrate a 5YRHLS** and so Policy SD10 is out of date across the entire JCS area.
- 7.36 Fifthly, there is also a **plan period shortfall in both Gloucester and Tewkesbury** and the immediate partial review required by JCS Policy REV 1 which was intended to rectify that shortfall, has been abandoned.⁶
- 7.37 Sixthly, there is **insufficient scope to the meet the housing requirements using land within the existing PUA boundary**. Greenfield development beyond built up areas is necessary as recognised in the JCS at paragraph 4.10.2 and both the JCS and the CLP needed to allocate greenfield land beyond the PUA.
- 7.38 It follows that the housing policies including Policy SD10 have been wholly ineffective at delivering a sufficient amount of housing at Cheltenham and indeed across the whole JCS area. This being both in terms of 5YRHLS and plan period supply.
- 7.39 Rather than facilitating much needed housing development, Policy SD10 represents an out-of-date policy which is currently frustrating housing delivery

⁶ Policy REV1 was included in the JCS because it was known that there would be shortfalls in housing provision in Gloucester and Tewkesbury by the end of the plan period. Policy REV1 was intended to force an immediate partial review of the JCS to address this. However, housing delivery problems have also arisen in Cheltenham and the JCS Authorities have abandoned the partial review in favour of a comprehensive review of the JCS.

locally and the national imperative to significantly boost the supply of housing⁷. In doing so it is undermining the wider objectives of the JCS to deliver a sufficient number of homes and ensuring greater affordability⁸.

- 7.40 In all the circumstances, any conflict with Policy SD10 should be afforded no more than limited weight in the determination of this appeal.

The Cheltenham Plan (CLP)

- 7.41 The LPA does not identify any conflict with the Cheltenham Local Plan in PRfR1. I agree.

AONB Policy

- 7.42 The site is located within the Cotswolds AONB and this obviously requires special attention. However, it is important to note that neither national nor Local Policy (JCS Policy SD7) place an embargo on housing development in such areas.
- 7.43 The AONB Management Plan is not part of the Development Plan but it is noteworthy that Policy CE11 of the plan (Major Development in the AONB) defers to national policy and therefore does not alter the foregoing.
- 7.44 Policy CE12 seeks to limit development in the AONB as does the NPPF but it does not preclude it and national policy allows for major development in exceptional circumstances.

Site Specific Considerations

- 7.45 The site is located immediately adjacent to the Cheltenham PUA and it can be regarded as sustainable in terms of its accessibility to local shops, facilities, employment opportunities and public transport services. There is no objection from the LPA or County Council as Highways Authority in this regard.
- 7.46 The site is also well related to the pattern of development in the area in that it is surrounded by housing on three sides and a reservoir and other recent residential development on its fourth side. The site reads as a logical infill site largely cut off from the wider countryside.

⁷ NPPF Paragraph 60

⁸ JCS Strategic Objective 8 [CD.E1 p.15]

- 7.47 Obviously, I recognise that the site is located within the AONB, but it is otherwise relatively unconstrained. It is not located within the Green Belt and does not form part of any strategic gap or designated Local Green Space Area. It is also not designated for any reason related to ecology, flood risk, heritage or public open space.
- 7.48 All other site-specific matters are addressed in the SoCG or in other evidence and it is not necessary to rehearse them all again here, 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.
- 7.49 It is therefore an appropriate location for development (in principle). The proposals accord with the overarching strategy of the JCS which focuses housing development at Cheltenham. Policies SP1 and SP2 clearly anticipate that there will be a need for development beyond the PUA to meet the housing requirement of Cheltenham. Indeed, the adopted Local Plan allocated land beyond the PUA. 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.
- 7.50 To summarise:-
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 at Cheltenham. 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 failing to deliver the required number of new homes. Mr Tiley points to substantial under delivery.
 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 for the other reasons I have identified). Any conflict with the policy should therefore be afforded only limited weight at most.

6. There are no adopted policies or designations that directly affect the site that would preclude its development for housing as a matter of principle (including AONB policy).
7. The site is in a sustainable location insofar as accessibility to shops services and employment is concerned.
8. The site is also well related to the pattern of development in the area in that it is surrounded by development on three sides and a reservoir on its fourth side. It reads as a logical infill site largely cut off from the wider countryside.

Issue 2 Whether there are exceptional circumstances which justify major development in the AONB and whether it would be in the public interest [PRfR 2]

- 7.51 I will now explain that exceptional circumstances do exist in this case and why it is clearly in the public interest to allow this scale and form of development in the AONB. In doing so I will explain that the appeal proposals accord with national policy, including NPPF paragraphs 176-177.

Background context

- 7.52 The context for this appeal is that Cheltenham is a highly constrained location. Even from a cursory look at the Policies Map for Cheltenham it can be seen that the town is almost entirely surrounded by land that is either designated as Green Belt, AONB or Local Green Space. There are also areas at risk of flooding and taken together, these represent very significant constraints for development in the area.
- 7.53 The preparation of the current JCS was a long drawn out affair given the constraints affecting Cheltenham, Gloucester and Tewkesbury and the difficulties in identifying sufficient land for housing. The end result was that large areas of the Green Belt have already been released to meet (some of) the need for development.
- 7.54 The Cheltenham Local Plan is also now an adopted part of the Development Plan. This explored the opportunities that were available within the PUA, but there is still a substantial plan period shortfall to 2031⁹ but no plan led mechanism in place to rectify it.

⁹ 32% shortfall against the housing requirement (3,500/10,917 x 100)

Major Development in the AONB

- 7.55 It is agreed that the appeal proposals represent “major development” in the AONB for the purposes of NPPF.
- 7.56 It follows that it is necessary to demonstrate that “exceptional circumstances” exist for major development to be acceptable and to show that the development would be in the public interest.¹⁰

The JCS Policy on development in the AONB (Policy SD7)

- 7.57 Policy SD7 is the JCS policy that deals with development in the AONB. However, I consider that the policy to be inconsistent with the NPPF. It reads as follows:-

“Policy SD7: The Cotswolds Area of Outstanding Natural Beauty (AONB)

All development proposals in or within the setting of the Cotswolds AONB will be required to conserve and, where appropriate, enhance its landscape, scenic beauty, wildlife, cultural heritage and other special qualities. Proposals will be required to be consistent with the policies set out in the Cotswolds AONB Management Plan.

This policy contributes towards achieving Objectives 4 and 9.”

- 7.58 NPPF paragraph 176 on the other hand states that:-

“176

Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues.

.....”

- 7.59 The requirement in Policy SD7 to “conserve and where appropriate enhance” implies that there shall be no harm. This is materially different in my opinion to the policy in the NPPF at paragraphs 176-177. National policy does not preclude harm. Instead it requires the decision maker to consider the extent to which it can be moderated and for it to then be balanced against other considerations (albeit great weight is to be given to the aim or objective of conserving and enhancing landscape and scenic beauty in that balance).

¹⁰ NPPF paragraph 177

- 7.60 I also note that Policy SD7 does not include the exceptional circumstances test for major development in the AONB. The JCS refers to major development at paragraph 4.7.4 but there is nothing in the policy text itself which explains how individual planning applications for major development will be considered.
- 7.61 In view of the above I consider that little to no weight should be given to any breach of Policy SD7 and the inquiry should instead focus on compliance with NPPF paragraphs 176-177 to ensure that the correct test is applied.

National Policy on major development in the AONB

- 7.62 The NPPF at paragraphs 176 and 177 states that planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. This will be a central issue for this appeal and so I set out the full paragraphs below:-

“176. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

177. When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- 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 in 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.” (my emphasis).**

7.63 I will now explain how the appeal proposals would accord with the NPPF having regard to the considerations identified above.

NPPF 177a) 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

7.64 The evidence of Mr Tiley and Mr Stacey provide much of the substantive evidence on housing need for the Appellant. I agree with that evidence and rely upon it.

7.65 It is not necessary for me to repeat it again in full here, but some of the key points that I wish to draw out are summarised below. These have national, County (JCS) wide and borough wide dimensions. Mr Stacey also considers the more localised effects at ward level:-

- National
 - a. It is widely acknowledged that we are in the middle of a national housing crisis.
 - b. The previous Prime Minister stated in the Housing White Paper¹¹ that she wanted to take steps to fix the broken housing market so that housing is more affordable. The starting point is to build more homes.
 - c. There is a national objective of delivering 300,000 homes per annum by the mid 2020s. Not once in the last 50 years has the country built more than 300,000 homes.
 - d. Between 125,000 and 318,000 fewer new dwellings will be delivered in the five years 2020-2025, because of Covid-19, equating to a 9-23% drop in delivery. Of these, between 25,000 and 66,000 fewer affordable homes will be delivered (an 8-21% drop in delivery).
 - e. The latest NPPF (July 2021) reaffirms the national policy imperative to significantly boost the supply of housing [paragraph 60].
 - f. NPPF paragraph 81 specifies that significant weight should be placed on the need to support economic growth and productivity. The construction

¹¹ Fixing our Broken Housing Market (2017)

industry, including housebuilding clearly has a very important role to play in this regard.

- g. The Secretary of state in his foreword to the White Paper, Planning for the Future, highlights that millions of jobs depend on the construction sector and in every economic recovery, it has played a crucial role.
- County/JCS level (Cheltenham, Gloucester and Tewkesbury)
 - h. The JCS identifies a housing requirement for a minimum 35,175 additional homes by 2031 to meet the objectively assessed need for housing.
 - i. The need is not currently being met. None of the JCS authorities can demonstrate a 5YRHLS. They cannot even demonstrate the minimum level of housing required by national policy when assessed against the minimum housing requirement of the JCS.
 - j. Furthermore, none of the JCS authorities can demonstrate a plan period supply to 2031 to achieve the minimum housing requirement of the JCS contrary to national policy.
- Borough Level (Cheltenham)
 - k. Cheltenham has a minimum housing requirement to provide 10,996 homes by 2031.
 - l. Cheltenham Borough Council cannot currently demonstrate a 5YRHLS.
 - m. It can only demonstrate a 2.2 year supply. There is a clear and obvious need for housing at the Borough level that is not being met now (a **shortfall of -1,856 homes**).
 - n. The LPA is unable to demonstrate a plan period supply against its minimum housing requirement (a **shortfall in the region of -3,500 homes**). The unmet need for housing is therefore set to continue into the future.
 - o. The need for housing in Cheltenham is masked by the fact that the JCS allows for a stepped housing trajectory and it applies the Liverpool approach to addressing the existing backlog (both of which defer meeting needs to a later date)

- p. Such is the need for affordable housing, that the appeal scheme is required to deliver 40% affordable housing.
- q. When comparison is drawn between affordable housing delivery and the needs identified in the SHMA Update since its 2015 base date, there has been **a shortfall in the delivery of affordable housing of -1,160 affordable homes** against an identified need for 1,386 between 2015/16 and 2020/21.
- r. The Gloucestershire Local Housing Needs Assessment (LHNA) published in September 2020 finds a minimum net annual need of 194¹² affordable homes per annum over the 20-year period between 2021 and 2041 for the Cheltenham Borough Council area. This equates to a minimum of 3,874 net affordable dwellings over the period.
- s. The housing register data has been updated and shows that at 1 April 2021 **there were 2,514 households on the register**, qualifying for assistance with their housing needs. This figure has **risen by 16%** in just one year, from 2,161 households at 1 April 2020.
- t. The average house price to average income ratio in Cheltenham now stands at **10:1**. This is simply not affordable for the vast proportion of the local population.
- u. The National Housing Federation report that the average house price in Cheltenham in 2018/19 was £332,953 which exceeds the national average. By comparison, data taken from Zoopla shows that over the past 12 months the average house price paid in Battledown Ward was £378,000.
- Impact on local economy
 - v. I don't seek to argue that if this appeal is dismissed then it will (alone) have a substantial adverse impact on the local economy.
 - w. The cumulative effect of substantial under-delivery is however significant.
 - x. It is a fundamental pillar of the JCS that development should be focused at Cheltenham to support its economic role [Policy SP2(1)]. If insufficient

¹² Figures do not sum due to rounding – 3,874 / 20 = 193.7

housing is delivered at Cheltenham then this key objective of the JCS will be undermined.

- y. There was an uplift to the OAN when the JCS was prepared to support the aspiration of economic growth which amounted to 495 additional homes at Cheltenham.¹³ These homes have not been planned for.
- z. The economic impact of the appeal proposals is not insignificant and is quantified later in my evidence in Section 8. This positive economic impact will be lost if the appeal is dismissed.
- aa. Additional housing will support construction jobs during the construction phase;
- bb. The proposals would provide the homes that economically active people require so that they can live and work in Cheltenham and add to the local supply of labour.
- cc. Residents will bring additional disposable income that can be spent in the town in local shops and services;
- dd. Additional supply will also assist in regulating house prices which are being inflated by the lack of supply;

7.66 My summary is obviously not exhaustive, and the reader should refer to the evidence of Mr Tiley and Mr Stacey for the full picture.

7.67 It can nevertheless be seen that there is a clear and undeniable need for additional housing at all levels (national down to local) and the evidence points to a desperate situation in Cheltenham.

7.68 This includes a need for affordable housing which is worsening year on year. I note that Mr Stacey describes the LPA's record of affordable housing delivery as "woeful" and how the failure to plan for a significant boost in the supply of affordable homes is serving to further fuel the acute affordability crisis in Cheltenham. I agree with him.

7.69 It can also be seen that there are many national considerations at play in terms of boosting housing delivery, addressing affordability and aiding economic

¹³ See JCS pages 18 and 19 and Tables SP1b

recovery. The proposals are also of importance to the local economy and supporting the economic role of Cheltenham.

7.70 These are all considerations that are very much in the public interest.

How other appeal decisions have approached need, national considerations and the impact on the local economy

7.71 In other similar cases that I have reviewed, the Secretary of State and appeal Inspectors have been satisfied that the proposals would meet the 177a test¹⁴ on the basis of the national imperative to boost significantly the supply of housing, supporting economic growth and by helping to address district wide housing shortfalls (ie. an absence of a 5YRHLS) as well as identified needs for affordable housing.

7.72 In the case of **Highfield Farm, Tetbury** [CD.K36] Inspector Graham dealt with the issue of need as follows:-

"The need for the development

14.48 The Council pointed out that one measure of need would be whether or not there was already a sufficient supply of housing land to meet its requirements for the next five years [8.8]. As I have discussed above, there is not; on that basis, there is clearly a need, and a pressing one at that, for the houses now proposed. This is reinforced by the Framework objective "to boost significantly the supply of housing", and the government's focus on the importance of getting the economy growing through the delivery of housing [9.6]."
(my emphasis)

7.73 The SoS endorsed the Inspector's recommendation and commented as follows:-

"24. He also agrees that there is a clear and pressing need for more housing both in terms of the shortfall locally within Cotswold District and nationally...." (my emphasis)

7.74 In the **case of Station Road, Bourton-on-the-Water** [CD.K37], Inspector Felgate reached the following conclusion on the matter of need and the economic effects:-

"138. The lack of a 5-year supply of housing land is an exceptional circumstance, and the urgent need to rectify that situation is very much a matter of public interest. Given also the development's positive economic effect,

¹⁴ Or the equivalent paragraphs 116 or 172 in earlier versions of the NPPF

the lack of alternatives, and the lack of environmental harm, the conditions for major development in the AONB are therefore met.” (my emphasis)

- 7.75 In the case of **land south of the High Street, Milton-under-Wychwood**, [CD.K38], Inspector Braithwaite commented that:-

“40. Given the severe shortfall in the supply of housing land in the District there is an unarguable need for the proposed development of up to 62 dwellings. Furthermore, there is a significant need for affordable housing units in Milton-under Wychwood which would not be met unless windfall developments of more than six dwellings, such as that proposed in this case, come forward.” (my emphasis)

- 7.76 In The case of the **Former Molins Sports And Social Club, Mill Lane, Monks Risborough [CD.K18]**, the SoS was satisfied that the need test had been met:-

“In terms of Paragraph 116 analysis and the question of need, the Secretary of State is in agreement with the Inspector that there is a need for the development (IR215).”

- 7.77 Inspector Downes had concluded that:-

214 On the question of need, the identification of more land for housing is a national priority. In order to boost significantly the supply of housing the council is required to identify and annually update a five year supply of deliverable sites. There is no dispute that the council is unable to do this at the present time. Although it is working towards resolving this situation, the emerging WDLP is still at an early stage and has many hurdles to overcome before it is adopted.

215. Even though the size of the deficit is relatively small and less than the development proposed in this appeal, the provision of market homes would be a benefit. Furthermore, there is a significant shortfall of affordable housing and this is getting worse year on year. The policy compliant level of affordable housing that the appeal proposal would deliver would make an important contribution towards meeting this need. The additional population would result in both direct and indirect benefits to the local economy, through expenditure and job creation. Taking all these factors into account, I consider that there is a need for the development in accordance with the first requirement of paragraph 116 of the Framework.” (my emphasis)

- 7.78 Finally Inspector Downes who also dealt with the case of **CABI International, Wallingford [CD.K39]** reached the following conclusion:-

"The need for the development

16. The provision of 91 houses would make a significant contribution to addressing the short term housing deficit in South Oxfordshire. Furthermore, there is a substantial need for affordable housing and the evidence from the SHMA indicates that the shortfall will get worse year-on-year. The importance of these matters is made clear in paragraph 47 of the Framework and deliverable housing schemes are clearly in the public interest." (my emphasis)

7.79 The need situation in Gloucestershire is even more acute than the cases that I have referred to above, because none of the JCS authorities are able to demonstrate a 5YRHLS or even a plan period supply against the minimum housing requirement either.

7.80 The evidence of Mr Tiley and Mr Stacey is compelling and when I see the way in which similar evidence has been relied upon by the SoS and Inspectors in other cases, I am left in no doubt that the Appellant has emphatically addressed NPPF paragraph 177a.

NPPF 172b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and

7.81 There is no evidence to suggest that there is sufficient scope to meet the identified need for development outside the AONB. Indeed, the evidence would suggest that precisely the contrary is the case.

7.82 It is important to stress that when considering the scope to provide for development beyond the AONB, the scale of development to be tested is not just that of the appeal proposal (ie up to 250 dwellings). Even if the LPA was to identify a suitable alternative site(s) for 250 homes that would not be the end of the matter because there would still be a substantial housing shortfall to address.

7.83 The evidence of Mr Tiley demonstrates that the unmet housing need figure for Cheltenham is in the region of 3,500 dwellings up to 2031. That is the scale of the overwhelming problem facing the LPA when searching for alternatives.

The Development Plan

7.84 It is the role of the Development Plan to provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed

needs over the plan period, in line with the presumption in favour of sustainable development [see NPPF paragraph 23 and also paragraphs 11b, 15 and 68b].

7.85 The JCS and the Part 2 Local Plan are both adopted but they still do not provide allocations that sum to the minimum housing requirement. There is no other emerging Part 2 type plan in preparation that is going to allocate any more houses for Cheltenham. The Development Plan is effectively “complete” and so there is no plan-led mechanism that can or will address the current unmet need for housing in Cheltenham in a policy compliant way.

7.86 Simply put, the Development Plan (and the plan led approach that the LPA seeks to rely upon) has failed to identify enough land to meet its own identified needs, and there is no prospect of it doing so in the near future.

Five Year Housing Land Supply

7.87 In the absence of an up to date Development Plan, the normal way of assessing whether there is scope to meet the need for housing is to consider the five year housing land supply position of the Borough.

7.88 The fact that an LPA cannot demonstrate a 5YRHLS tells us that the LPA is unable to meet the current minimum need for housing regardless of where sites are located. By definition, the absence of a 5YRHLS demonstrates that there are no alternative sites where the need can be met now. If there were alternative sites, then the LPA would not have a 5YRHLS shortfall.

Future housing supply up to 2031

7.89 None of the appeal decisions that I have referred to suggest that the decision maker must look beyond the normal five-year horizon. However, in this case it appears that the LPA intends to run an argument that a longer term approach needs to be considered [SoC 5.17-5.19].

7.90 Even if the Inspector was to entertain the LPA’s approach it does not change anything. That is because we know that there is an insufficient supply of housing land in Cheltenham to meet the minimum housing requirement for the plan period (a ten year horizon at the time of writing). This illustrates that this is not just an immediate 5YRHLS issue, but instead it is a longer term issue too.

Looking beyond Cheltenham Borough

- 7.91 National policy does not require a decision maker to look beyond the administrative boundaries of the LPA. However, even if the Inspector was to look beyond Cheltenham, it simply serves to demonstrate that the neighbouring JCS authorities are unable to assist because they themselves have significant housing land supply problems of their own.
- 7.92 As neither Gloucester nor Tewkesbury can demonstrate (i) a 5YRHLS or (ii) a plan period supply against their own minimum housing requirements, then they are self-evidently not in a position to provide sites to address the unmet the needs of Cheltenham.

The JCS Review and the LPA's preference for a plan led approach

- 7.93 The LPA's answer would appear to be to wait for the JCS Review and to follow a plan led approach [SoC 5.18-5.19], notwithstanding it realistically does not seek to promote a case based upon prematurity.
- 7.94 However, there would be little to no point in having NPPF paragraph 177 if the default answer on "scope" is that LPAs can defer to the next plan review which might be prepared and adopted at some undefined time in the future. Every LPA would say the same.
- 7.95 The plan led system comes with the responsibility to ensure that plans are kept up to date and to provide for the development that is needed. This LPA has done neither. There is nothing in local or national planning policy that says that where an LPA is failing to meet its housing requirements, we should wait for a review of the plan. The opposite is true. The main reason for Government introducing the tilted balance is so that if a Development Plan fails to deliver, the Development Management system is allowed to intervene, and to intervene immediately to ensure that much needed development is delivered now and not delayed.
- 7.96 The JCS Review will not "fix" the current JCS. It will replace it with a new plan with its own housing requirement (which has yet to be identified) and a plan period that would need to extend well beyond 2031 (again we don't even know what the plan period will be yet).

- 7.97 It is agreed that no weight can be placed on the policy content of the JCS Review for the purposes of this appeal, and yet it is seemingly intended to be relied upon by the LPA as a central part of its case. I find this contradictory.
- 7.98 The JCS Review remains at a very early stage in the plan making process. The JCS authorities tell us that the JCS will be adopted by winter 2023 but this is very optimistic in my opinion considering that the last JCS took over six years to reach adoption. The constraints affecting the area will mean that the next plan will be similarly controversial.
- 7.99 I consider that the LPA's approach starts to introduce a prematurity argument, suggesting that a decision cannot be made on this site in isolation. However, the tests for prematurity are simply not met in this case [NPPF paragraphs 49-50] and it was not one of the PRfR.
- 7.100 If the figures from the Local Housing need Assessment 2020 are applied for the period 2021-2041 then there would be a minimum need for circa 35,560 across the JCS area and a need for circa 10,720 homes at Cheltenham. 250 homes at Oakley would represent just 0.7% of the JCS need or 2% of the Cheltenham need. This is not a scale of development that is going to prejudge the spatial strategy.
- 7.101 These figures also serve to illustrate the scale of the task facing the JCS Review in finding enough land to meet the longer term housing needs of the area.
- 7.102 I am mindful that the JCS authorities intend to work together to find solutions and that is obviously to be encouraged. However, this gives me little comfort. The same arrangement was in place with the current adopted JCS and this has clearly failed to provide an effective strategy for housing delivery in Cheltenham, Gloucester or Tewkesbury.
- 7.103 There is also a clear track record of the JCS authorities "kicking the can down the road" and putting problems off to a future time. This happened when:-
- a. The JCS was adopted after a lengthy examination with significant housing shortfalls in Gloucester and Tewkesbury.
 - b. We have since seen the abandonment of the immediate partial review for Tewkesbury and Gloucester which was supposed to address these unmet needs.

- c. Cheltenham was allowed to adopt a stepped housing trajectory and apply the Liverpool approach to meeting the existing backlog, both of which serve to defer meeting needs to a future date.
- d. Now we find ourselves in a similar position with the LPA saying it will all be resolved at some point in the future (but with no evidence about precisely where and when).

7.104 Too often the human dimension is forgotten in these abstract planning debates. These are real people that are in desperate need for housing now. The suggestion that they should be forced to wait yet again whilst there is a JCS Review, is not at all satisfactory or consistent with national policy.

7.105 Through discussions on the SoCGs the LPA appears to be relying upon JCS paragraph 7.1.11 to say that it is for a JCS Review to consider how housing shortfalls that arise from the delay in delivery from strategic sites must be met. I would respond as follows:-

- a. It is supporting text. It is not policy, and it was written in the context of a review taking place immediately in relation to 2 out of the 3 JCS authorities, which has not happened.
- b. Moreover, paragraph 7.1.11 simply identifies the trigger for the “consideration of a partial or full review.”
- c. It does not say how and when housing shortfalls must be met.
- d. It does not prescribe how planning applications should be determined in the interim whilst we wait for the JCS Review.
- e. It does not and cannot displace or dis-apply NPPF paragraph 11d.

7.106 Tewkesbury BC sought to run a similar argument at the recent Fiddington inquiry [see CD.K14] where it was initially said¹⁵ that strategic scale sites¹⁶ to meet the unmet needs of an LPA must be identified through a review of the plan. Inspector Ware rightly rejected that argument and the SoS agreed with him.

7.107 At paragraph 17 of his decision letter the SoS comments that:-

¹⁵ TBC later withdrew this objection just before the inquiry opened

¹⁶ The JCS treats sites of 450+ dwellings as strategic sites

"17.....Given the lack of progress on the JCS review and the limited weight to be attached to the emerging Local Plan, and the lack of any objection from the Council, the Secretary of State agrees with the Inspector that it cannot be concluded that the development would undermine the plan making process (IR55), and that the appeal would not prejudice the plan led approach to the delivery of housing, but would in fact make a major contribution towards addressing the deficit (IR58)." (my emphasis)

7.108 He went on to conclude in the overall planning balance that:-

"27 The Secretary of State considers that the harm to the plan led approach, the loss of an area of countryside and the very limited harm to heritage assets all attract limited weight against the proposal." (my emphasis)

7.109 I also refer to other appeal decisions later in my evidence where the SoS and appeal Inspectors have not been prepared to rely upon emerging plans when considering the scope for meeting needs outside the AONB.

Alternative sites

7.110 NPPF paragraph 177 does not refer specifically to alternative sites but I accept that the requirement to consider the "cost" and "scope" for development "elsewhere outside the designated area", and to the possibility of meeting of the need for the development "in some other way" may involve the consideration of alternative sites.

7.111 The Judgement of the Court of Appeal in the case of *Secretary of State for Communities and Local Government and Knight Developments Ltd v Wealden District Council* [2017] EWCA Civ 39 [CD.K40] explains how alternatives sites can be considered.

7.112 In that case the Lord Justice Lindblom made the following observations about how the Inspector had (correctly) approached the issue of alternative sites:-

"65..... He was not satisfied that such other sites as were available for housing development in the district would be sufficient to meet the need, or that the shortfall would be made up by development elsewhere. This was a matter of planning judgment for him. He also found that those other sites would "collectively still fall short of the full [objectively assessed need]", so they "[did] not amount to an alternative". This too was a matter of planning judgment." (my emphasis)

7.113 He goes on to state that:-

"68 I do not think the policy in paragraph 116 of the NPPF obliged the inspector to deal in his decision letter with every potential site for housing in the district, one by one..... The decisive consideration was, clearly, the remaining need for market and affordable housing both in Crowborough and in the district as a whole." (my emphasis)

7.114 In this case I have similarly shown that the housing land supply position (5yr supply and plan period supply) points to a lack of alternatives, both at Cheltenham and when looking at Gloucester and Tewkesbury.

LPA evidence of alternative sites

7.115 To date, neither the LPA nor any other party has provided any evidence to demonstrate that there is scope to meet the identified need outside the AONB.

7.116 The NPPF does not place the onus solely on the Appellant to demonstrate that there is insufficient scope to meet the need for the development outside the AONB. If the LPA considers that there is scope, then they should be required to demonstrate how this can be achieved.

7.117 The plan-led approach has not identified sufficient land to meet housing needs and so most alternative sites are likely to be in locations which conflict with the current Development Plan (particularly Policy SD10 and other policies such as those relating to Green Belt).

7.118 The LPA has thus far not published any list of alternative sites that are suitable and available and which they would be prepared to release for development now either through an interim housing policy statement or indeed any other document for use as part of this appeal.

7.119 The JCS Review does not represent an alternative. No draft allocations have been identified as part of the JCS review yet. Any sites that are identified as part of the Review will need to be tested and consulted upon. It has a very long way to go before any reliance can be placed on the JCS in this context.

The cost of developing outside the AONB or meeting the need in some other way.

7.120 It is important to recognise that paragraph 177 was not drafted with just residential development in mind and so the way that it is applied will vary from one type of development to another.

- 7.121 With housing, the need can only realistically be met by building more homes. This is different from an energy project for example where it might be said that a hydroelectric station is an alternative to a large coal powered power station.
- 7.122 With regards to “cost” there may be costs considerations with an oil refinery for example which suggest that it would be cheaper to build it at a port in the AONB, rather than transporting or piping the oil many miles so that the refinery could be sited outside the AONB. With housing, the costs of building in the AONB would not be much different from other sites (save for perhaps higher grade materials but I don’t consider this to be of any real significance).
- 7.123 However, the NPPF does not define cost as being just financial expenditure. There may be other costs associated with either not meeting the need or doing so in some other way. Examples of such costs that may be felt could include:-
- a. Undermining the spatial strategy of the JCS by not providing the housing where it is needed and not supporting the economic role of Cheltenham. This might include limiting population growth and the supply of labour available to support local businesses, services and facilities at one of the two principal urban areas.
 - b. Delivering housing in locations more distant from where the need actually arises and increasing the need to travel for work and social purposes and the consequent cost to the environment.
 - c. The social cohesion cost of breaking up family and friendship bonds by forcing people to live further afield because of the lack of housing locally.
 - d. Delaying delivery to a future time means that needs that exist now will not be met now. Some families will be forced to live in unsatisfactory conditions or spend disproportionate amounts of their income (that they cannot afford) on housing because there is no alternative.
 - e. Affordability problems are likely to continue to worsen in Cheltenham where demand already outstrips supply.

How other appeal decisions have dealt with “scope” and “cost”

- 7.124 In the case of the **Former Molins Sports And Social Club, Mill Lane, Monks Risborough** [CD.K18] the SoS commented at paragraph 27 that:-

"27..... As for the cost and scope for delivering elsewhere, he shares the view that there is no evidence that at the present time the need could be met in any other way (IR216)." (my emphasis)

7.125 Inspector Downes had reached the following conclusion:-

"216 Considering the cost of and scope for developing elsewhere, Wycombe District is highly constrained with a substantial part of its area within the Chilterns AONB and also a considerable part in the GB. The land supply that the council relies on is insufficient to meet its housing needs over the next five years and there is no evidence that there are other deliverable sites outside the AONB to address the shortfall. There is therefore no evidence that at the present time the need could be met in any other way. There is of course the large urban expansion planned for Princes Risborough, which is only a short distance from the appeal site. However, that is a proposed allocation within the emerging WDLP. It is a large and controversial site and is not being relied on at the present time [74.2; 102; 114]." (my emphasis)

7.126 Here we see that the SoS is looking to see if the need could be met now, not some point in the future. It can be seen that the Inspector is also referring to the ability to meet needs now and she is judging scope against the LPA's housing land supply position.

7.127 The Inspector also considers the possibility of a future allocation at Princes Risborough but notes at paragraph 214 that the emerging WDLP is still at an early stage and has many hurdles to overcome before it is adopted. The same would apply to the JCS Review, but with the additional point that we don't even have any draft allocations to consider yet at Cheltenham.

7.128 In the case of **CABI International, Wallingford** [CD.K39] Inspector Downes again refers to the current housing shortfalls and the absence of policy compliant alternatives. As before, we see that the Inspector was not prepared to rely upon an emerging plan that was still at an early stage in the plan making process as providing scope for providing development elsewhere:-

"The cost and scope of developing elsewhere or meeting the need in another way

20. In terms of the housing development, this would essentially depend on whether there are other sites outside the AONB to meet the need. Clearly at present with a shortfall of deliverable sites, there is no policy compliant solution that would point to a more favourable location. As already noted the Site Allocations DPD, which may have helped resolve this matter has never

been produced. The emerging South Oxfordshire Local Plan is at an early stage and has not yet been submitted for examination. It cannot be relied on at the present time to provide alternative sites because it has not been subject to scrutiny through the examination process." (my emphasis)

7.129 Similarly in the case of **Highfield Farm, Tetbury** [CD.K36] the SoS was not prepared to give any more than limited weight to an emerging plan, and noted that there was very limited scope to meet the remaining shortfall outside the AONB:-

"The cost of, and scope for, developing elsewhere

20. The Secretary of State agrees that it is preferable for development to be accommodated on previously-developed land (IR14.51); but there is no evidence to indicate that the remaining shortfall could be addressed solely through the use of previously developed sites. He notes that the Inspector found no evidence of anything other than very limited scope to provide housing on sites outside the AONB (IR14.52). Although preliminary work on the Core Strategy Second Issues and Options Paper identifies a potential strategic site at Cirencester, outside the AONB (IR8.33), he attributes limited weight to this due to the early stage of plan preparation." (my emphasis)

7.130 In the case of **Land to the west of Highgate Hill, Hawkhurst, Kent** [CD.K42], Inspector Fieldhouse was satisfied that the lack of a 5YRHLS in itself means there is limited scope for meeting need in another way. At paragraph 73 he states:-

"73. The lack of a five year housing land supply means that there is a clear need for the development, and limited scope for meeting it in some other way." (my emphasis)

7.131 Overall there is no evidence in this case that there is scope to meet the identified need outside the AONB. Furthermore, the evidence illustrates that meeting needs in another way (or more likely, failing to meet the needs at all) would have real social, economic and environmental costs that should be taken into account. Accordingly, I conclude that appeal proposals satisfy NPPF paragraph 177b.

c) Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

7.132 The LPA's primary concerns with regards to environmental effects relate to the impact of the development in landscape and visual terms and the impact of the development on the settings of nearby heritage assets.

7.133 I expect (consistent with the LPA's PRfR) that it will be common ground that there would be no other detrimental effects to consider in terms of the following:-

- a. Wildlife/biodiversity. In fact, there would be enhancements.
- b. Recreation. Again, there would be enhancements.
- c. Retention of the most important trees

7.134 Mr Harris presents evidence on behalf of the Appellant which considers the potential landscape and visual effects of the proposed development. He explains that the appeal proposals have been "landscape led" from the outset as required by the AONB Management Plan. This is also in recognition of the great weight should be given to conserving and enhancing the landscape and scenic beauty in Areas of Outstanding Natural Beauty.

7.135 He describes the key contextual features immediately adjacent to the site which comprise settlement areas, roads and the Hewlett Reservoir. These are distinctive in that they all contribute to the character of the wider Cheltenham settlement area rather than the rural landscape of the Cotswolds escarpment.

7.136 He also explains that the appeal site provides a good example of how landscape and visual sensitivity can vary widely across a study parcel and why it is necessary to take a more fine-grained approach than that which has been taken by the LPA.

7.137 In summary, he finds that not all areas of the appeal site have the same potential visual sensitivity and there is a strong correlation between elevation of the sloping site and potential for greater visual sensitivity.

7.138 Landscape harm is limited by the inherent mitigation provided by contextual settlement features and site trees and hedges which is proposed to be strengthened and supplemented. It is also limited by the retention of a broad swathe of upper slope that conserves a semi rural and open character to the

landscape that will retain its visual connectivity to the escarpment and wider settlement area. Proposed mitigation will create a new settlement edge approximately mid slope that will contain the development to the mid and lower slopes which are already notably influenced by the Oakley settlement area.

7.139 Mr Harris explains that when considered in the context of the special qualities of the AONB, the appeal site does not reflect the majority of the special qualities other than a limited historic association through ridge and furrow and views to and from the Cotswold escarpment. The contextual area to the AONB in this location contains a significant amount of built development which contrasts with significantly with the deep, rural area of the countryside within the AONB. As such the landscape character of the appeal site is less sensitive than other parts of the AONB.

7.140 Landscape harm has been moderated because it is predominately contained to the site and immediate adjoining areas with limited harm assessed to the wider landscape character beyond the settlement. Similarly visual harm is generally localised and results from the immediate loss of openness to the lower and mid slope pasture which cannot be fully mitigated.

7.141 Mr Harris also identifies potential enhancements to the appeal site arising from new public access and landscape enhancement of the upper slope areas which are significant and should be considered in the context of the assessed landscape and visual harm arising from the loss of openness and semi-rural character of the lower and mid slope areas.

7.142 Overall the appeal proposals would have localised landscape and visual effects but these would not exceed a minor or moderate adverse impact, even having ascribed high landscape value to the site since it is within the AONB.

7.143 Mrs Stoten deals with heritage related issues and concludes that the proposed development would result in less than substantial harm at the lowermost end of the spectrum to the two Listed Reservoirs and the Pavilion. However, she explains how the harm has been moderated and she also identifies a number of heritage benefits which result in a broadly neutral effect overall. The evidence indicates that the LPA has overstated the level of harm that would arise from the development proposals.

7.144 I should also draw attention to the loss of a small area of Ridge and Furrow (small in the context of the wider systems). This is not raised as a PRfR but I recognise

that the proposals will result in the partial loss of a non designated heritage asset. The Archaeological Evaluation prepared by Worcester Archaeology deals with the significance of the Ridge and Furrow [CD.A37.J page 9] and states:

"The furrows and other drainage features are of negligible significance, all being products of medieval to modern agricultural activity." (my emphasis)

7.145 There is nothing in the Officer Report to suggest that the LPA disagree with this assessment.

7.146 Mrs Stoten also identifies very minor harm to the setting of the unlisted Reservoir #3 (a non designated asset of low value). Again, some benefit would also arise from new public access to the area where this can be seen from.

7.147 I deal with the weighting that I afford to heritage matters later in my evidence, but to the extent that there may be any residual harm, this should be weighed against the other considerations in NPPF paragraph 177.

7.148 I agree with the evidence of Mr Harris and Mrs Stoten and rely upon it when balancing the considerations identified in NPPF paragraph 177.

Whether the conditions for major development in the AONB have been met in accordance with paragraph 172 of the framework

7.149 For the reasons set out above, I consider that exceptional circumstances have been demonstrated in this case having regard to all of the considerations outlined in NPPF paragraph 177. The development would be emphatically in the public interest.

7.150 Whilst the proposals represent "major development" in NPPF terms, the detrimental effects on the AONB would not be significant. The combination of social, economic and environmental benefits would on the other hand be substantial and would clearly outweigh the identified harms.

7.151 Great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB. That is clear from NPPF paragraph 176. However, that is not to say that any harm, must attract overriding weight in the planning balance. Instead it is necessary to strike an appropriate balance as explained and applied

by Inspector Stephens in the case of **Sonning Common, Oxfordshire** [CD.K17]¹⁷ where he reached the following conclusion:

"Conclusion

122 Section 85 of the CROW Act 2000 seeks to conserve and enhance the natural beauty of an AONB and paragraph 172 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty of the AONB. This is not the same as requiring that every development proposal engenders enhancement. Indeed, if that were the case it is difficult to see how major development in an AONB could ever be permitted. It is clearly a matter of balance, but in undertaking that exercise the NPPF makes clear that conserving and enhancing the designated resource is a matter of great weight. In this case I have given great weight to conserving and enhancing landscape and natural beauty of the AONB. The need for the development and the conclusion that there are presently no alternatives outside the designated area are also matters of substantial importance in the public interest. The social and economic benefits attract significant weight. Overall, the benefits would outweigh the localised landscape and visual effects to the AONB. For these reasons I conclude on this issue that exceptional circumstances are demonstrated and that the development would be in the public interest."

7.152 Inspector Downes in the appeal decision relating to **CABI in Wallingford** [CD.K39 paragraph 15] explains with reference to the Wealden judgement that the considerations in the NPPF (now 177) are not exclusive and can include the wider benefits of the scheme. It does not however suggest that harms other than those related to the AONB should be included:-

"Paragraph 116 sets out three considerations in determining whether there are exceptional circumstances. The Wealden Court of Appeal decision made it clear that these are a matter of planning judgement but are not necessarily exclusive. A fair reading of the judgement in its context indicates that further considerations could comprise the benefits of the scheme. It did not suggest that harm, other than to the AONB, should be included in the assessment." (my emphasis)

7.153 In the case of **land west of Leamington Road, Broadway** [CD.K41], Inspector Manning comments that a lack of substantial visual harm is:-

¹⁷ I should note that I understand that the decision is to be the subject of a legal challenge. However the presumption of regularity applies such that the decision stands unless or until it is quashed.

"70..... capable of contributing to exceptional circumstances."

7.154 Inspector Manning also noted how those proposals not only moderated the environmental impact but would also positively improve recreational opportunities [paragraph 68]. The same could be said of the current appeal scheme at Oakley Farm with the proposed new footpath links and publicly accessible areas on the upper slopes of the site that are not currently open to the public.

7.155 In the case of Station Road, **Bourton-on-the-Water** [CD.K37], Inspector Felgate allowed a scheme of 100 dwellings in an AONB noting that:-

"77..... I conclude that the development would not cause any significant harm to the aim of conserving and enhancing the AONB's landscape or natural beauty."

7.156 Inspector Felgate went on to state:-

"138.....Although protection of the AONB's beauty is a matter to which I give great weight, in the present case the proposed scheme could be carried out without significant harm. The development would not therefore conflict with the relevant NPPF policies relating to AONBs." (my emphasis)

7.157 In the case of **Land South of High Street, Milton-under-Wychwood** [CD.K38], Inspector Braithwaite made the following comments in relation to a scheme of 62 dwellings in the AONB:-

"45. With regard to the environmental role of sustainable development the proposed housing scheme would not have any significant adverse effect on the character or visual amenity of the area, other than of the site itself which is to be expected." (my emphasis)

7.158 He went on to state that:-

"43..... the proposed development would have a less than significant effect on the character and visual amenity of the CAONB and this effect would be moderated by proposed landscaping." (my emphasis).

7.159 Obviously, every scheme must be considered on a case by case basis as each site and surrounding environment will have its own defining characteristics. However, what can be seen from these appeal decisions is that "major development" can take place in the AONB without causing significant harm. All of these sites would have given rise to a loss of countryside and localised harm by replacing open land with housing, but this harm could be moderated and a finding of residual harm was not automatically determinative in the overall planning balance.

7.160 I am also mindful that the environmental effects include heritage considerations (impact on the settings of listed buildings) which should be given considerable weight and importance. Whilst the evidence in this case indicates that the effects would be broadly neutral, it can be seen that in other cases¹⁸ even where there has been landscape/visual harms as well as heritage harms the balance of considerations can still fall in favour of the grant of planning permission.

7.161 Again, each case must be considered on its own merits but there are some similarities between this case and the case of **Highfield Farm, Tetbury** where the Secretary of State allowed a scheme of 250 dwellings in the AONB. The SoS weighed up the various considerations (including heritage harm) as follows:-

24. In concluding on these three considerations, the Secretary of State agrees that the proposed development would not harm the setting of Tetbury; it would detract from the significance of Highfield Farmhouse; and harm the AONB through the loss of open fields. He agrees that there is no evidence that there is anything other than very limited scope to provide housing within the district on sites that are not in the AONB. He also agrees that there is a clear and pressing need for more housing both in terms of the shortfall locally within Cotswold District and nationally. He agrees with the Inspector that these amount to exceptional circumstances, where permitting the proposed development can reasonably be considered to meet the wider public interest in terms of the Framework (IR14.69).

7.162 My overall conclusions can be summarised as follows:-

1. The Appellant has demonstrated that there are exceptional circumstances which justify major development in the AONB, consistent with NPPF paragraph 177. Development would be emphatically in the public interest.
2. There is an undeniable need for the development at the National, JCS, Borough wide and local levels. The proposals would also have a positive impact on the local economy, would support the economic role of Cheltenham consistent with JCS Policy SP2(1) and would align with a number of national considerations.
3. The 5YRHLS position (2.2 years/a shortfall of -1856 homes) and the plan period shortfall (circa -3,500 homes) clearly illustrate the extent of the need and the lack of alternatives. There is no pipeline of development to redress that deficit and no imminent Local Plan in preparation.
4. There is also compelling evidence of a substantial unmet need for affordable housing (a shortfall of -1,160 affordable homes against an identified need for

¹⁸ Eg Hawkhurst, Tetbury and CABI

1,386 between 2015/16 and 2020/21) and other alarming affordability indicators.

5. There is no evidence that there is sufficient scope to meet the identified need beyond the AONB or any other way. The LPA has not presented any evidence to suggest otherwise, which is unsurprising given the scale of the deficit. The available evidence all points to an absence of alternatives.
6. The neighbouring JCS authorities are also facing their own housing problems in terms of 5YRHLS and plan period shortfalls and are not therefore in a position to assist in any meaningful way.
7. Even if there was some scope beyond the AONB, this would come at a real cost in social, economic and environmental terms and would run counter to the JCS spatial strategy which seeks to focus development at Cheltenham to support its economic role and in the interests of sustainable transport.
8. It is not at all satisfactory and nor would it be a proper application of national policy to suggest that the need for development should be put off until there has been a review of the JCS. National guidance on when a refusal on grounds of prematurity are plainly not met. No weight can be given to the JCS Review at this stage. Other appeal decisions support my approach.
9. Whilst the proposals are "major development" in NPPF terms, Mr Harris demonstrates that the harm to the AONB would not exceed a minor or moderate adverse impact and the impact on heritage assets would be broadly neutral.
10. Whilst great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB that is not to say that any such harm, must always attract overriding weight in the planning balance.
11. Other appeal decisions and case law demonstrate that "major development" can take place in the AONB without causing significant harm to the AONB. It is a matter of judgement for the decision maker when weighing up the various considerations.
12. I consider that the need for the development in light of national considerations, lack of scope to meet the need elsewhere, the substantial benefits and the fact that the proposals would not cause any significant harm to the aim of conserving and enhancing the AONB's landscape or natural beauty all contribute to the exceptional circumstances and development that is clearly in the public interest.

8. THE OVERALL PLANNING BALANCE

- 8.1 The planning balance is ultimately a matter of judgement for the decision maker. The Inspector will obviously need to reach his own conclusions, but I will now explain how I believe that the Inspector should approach the determination of this appeal.

The Decision Making Framework

- 8.2 I do not seek to argue that the appeal proposals accord with the Development Plan when read as a whole such that this appeal should be determined in the context of NPPF paragraph 11c.¹⁹ Instead, this is a case where NPPF paragraph 11d applies.²⁰
- 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 8 of the NPPF is engaged and the most important policies for determining the application are deemed out-of-date.
- 8.4 There are two NPPF footnote 7 policies that are potentially engaged in this case are these relate to:-
- AONB, and
 - Designated Heritage Assets
- 8.5 However, these policies do not provide a clear reason for refusal in this case for the purposes of NPPF paragraph 11d(i).
- 8.6 If the Inspector disagrees with me and concludes that the appeal proposals would fail either of these policy tests then I recognise and accept that the appeal will be dismissed.²¹
- 8.7 If however, the Inspector agrees with me and concludes that both of these policy tests have been met or complied with, then the tilted balance will not be dis-applied and he can proceed to consider the proposals in the normal way, applying NPPF paragraph 11d(ii).

¹⁹ Approving development proposals that accord with an up-to-date development plan without delay

²⁰ The “tilted balance”

- 8.8 I accept that the tilted balance 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. Otherwise, those policies will continue to block and frustrate the national imperative to significantly boost the supply of housing.
- 8.9 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 amount to “other material considerations” that justify the grant of planning permission.
- 8.10 Having set out the framework for decision making, I will now go on to identify the positive benefits and the adverse effects that I have taken into account to reach my own conclusions.²²

The Benefits Associated with the Appeal Proposals

- 8.11 I consider that the appeal proposals if allowed, would secure a range of important benefits that would respond to all three of the Government’s overarching objectives for sustainable development (social, economic and environmental).²³ I have outlined the benefits of the appeal proposals below.

The Social Benefits

- 8.12 I consider that Substantial weight should be afforded to the provision of **additional open market homes**.
- 8.13 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.
- 8.14 Indeed, in a very recent appeal decision involving land at Oakhurst Rise, Cheltenham Inspector Searson, recognising constraints affecting Cheltenham

²² For the avoidance of doubt, the weightings that I will apply are as follows:- Very Limited, Limited, Moderate, Significant and Substantial.

²³ NPPF paragraph 8

afforded substantial weight to the provision of market housing [CD.K6 paragraphs 139-140]

- 8.15 The Government openly recognises that the country is in the middle of a housing crisis²⁴ and it is a national policy imperative to significantly boost the supply of housing.
- 8.16 I rely upon the evidence of Mr Tiley which demonstrates that the housing land supply position in Cheltenham is desperate. The LPA is unable to demonstrate a 5YRHLS (2.2 years) and the shortfall is substantial. The LPA is also unable to demonstrate a plan period supply and there is no plan led mechanism in place to address this. Gloucester and Tewksbury are in similar positions which illustrates that the housing delivery problems extend well beyond Cheltenham.
- 8.17 An additional supply of open market housing provides the opportunity to tackle the problem of rising housing prices and that to make market housing more affordable to those looking to get on the housing ladder. The evidence of Mr Stacey highlights acute affordability issues in Cheltenham with the average house price to average income ratio being 10:1. That is simply not affordable for a large proportion of society.
- 8.18 As well as increasing the availability of open market housing, the proposals would also make provision for a meaningful number of **new affordable homes**. The provision of additional affordable housing should also be afforded substantial weight in my opinion. The recent appeal decision at Oakhurst, Cheltenham afforded the same substantial weighting to a scheme which provided only 18 affordable homes. It also noted that the level of need is “acute” [CD.K6 paragraph 141].
- 8.19 Mr Stacey was the affordable housing witness in that case and he presents similar evidence to this inquiry which uses various indices to highlight the LPA’s “woeful” record of delivery and the desperate situation facing families and individuals in Cheltenham.
- 8.20 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. This is

²⁴ Housing White Paper, Fixing our Broken Housing Market (February 2017)

particularly true when considering the real problems facing real people in need of affordable housing. His evidence brings the seriousness of this issue into sharp focus. It is not just any other material consideration and he explains why it warrants substantial weight in the overall planning balance. The appeal proposals would deliver a meaningful number of affordable homes for real people that are in need of those homes now (100 homes at 40% provision).

- 8.21 It has surprised me to see that the LPA has been unwilling to agree that substantial weight should be afforded to both market and affordable housing as part of discussions on the Housing SoCG. That being when we look at the scale of the problem, the recent findings of the Oakhurst Inspector and the fact that the LPA's Planning witness recently agreed to this weighting at the Coombe Hill inquiry where the LPA's claimed supply position that was better than Cheltenham's [see CD.F6 paras 2.7 and 3.6].

Economic benefits

- 8.22 The NPPF at paragraph 81 specifies that "significant weight" should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Consistent with national policy I attach Significant weight to **expenditure on construction and investment**.
- 8.23 A summary of the likely economic benefits of the scheme was provided as an Appendix to the original Planning Statement [CD.A3 Appendix 6] and I continue to rely upon this. The headline figures can be summarised as follows.
- Development costs - £29.8m
 - Direct and indirect job creation during construction – 191 jobs
 - GVA – £49m during the construction phase
 - Annual Household expenditure £7.8m pa
 - Estimated first occupation expenditure - £1.3m
- 8.24 Housing development has a significant role to play in supporting economic growth. 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 policy initiatives including

the NPPF which was intended to stimulate growth in the economy. More recently we have been faced with the severe economic impact of the Covid 19 pandemic.

8.25 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.

8.26 The construction industry also stimulates lending in financial markets, another important sector in the UK economy. The Secretary of State in his foreword to the White Paper, Planning for the Future emphasises the importance of the construction sector. He states that:-

"Millions of jobs depend on the construction sector and in every economic recovery, it has played a crucial role"
(my emphasis)

8.27 The construction sector is a major part of the UK economy, supporting almost 2.2 million jobs in September 2020, of which just over 225,968 were in the South West²⁵. The sector has not been immune to the downturn caused by Covid-19, with construction output falling by 23.5% on a monthly basis in June 2020. More positively, monthly output grew by 17.6% in July 2020 and continued to rise up to September 2020.

8.28 The White Paper talks about increasing housing delivery nationally to 300,000pa. This is likely to lead to increased output and employment in the construction sector over the coming years. New job opportunities in construction could help to offset losses in other sectors impacted by the Covid-19 pandemic.

8.29 The Prime Minister also unveiled his 'Build, Build, Build' strategy at the end of June 2020, with the aim of making it easier to build better homes where people want to live²⁶ and to aid economic recovery.

8.30 The proposals will deliver **homes for economically active people to support the economic role of Cheltenham**, ensuring that local businesses and service providers have the supply of labour that they need to sustain themselves and to grow (estimated at 297 employed residents). New residents can also help to sustain local facilities and services including public transport, by bringing

²⁵ Data sourced from NOMIS.

²⁶ <https://www.gov.uk/government/news/pm-build-build-build>

additional expenditure to the area on a day to day basis. I would afford this Moderate weight.

8.31 The appeal proposals will also provide **financial contributions towards off-site community infrastructure (including 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 can also be used by existing residents living in the surrounding area. I would therefore only attach Limited weight to this as a benefit.

8.32 Overall, it can be seen that the proposal derives significant weight in support of the economic role of sustainable development.

Environmental Benefits

8.33 The scheme would deliver **new footpath links and publicly accessible land within the AONB** that is currently private and inaccessible. Whilst public open space is normally that which is required to serve the new resident population, in this case the publicly accessible land exceeds normal POS requirements and it would open up new opportunities for people to enjoy this part of the AONB (circa 9ha). Given that recreation is an important consideration in the AONB I would afford this moderate weight.

8.34 The appeal proposals would also deliver **other green infrastructure and biodiversity enhancements**. I would afford this limited/moderate weight given the emphasis that is also placed on landscape and wildlife enhancement within AONBs [NPPF paragraph 176].

8.1 The evidence of Mrs Stoten explains that the proposals would deliver **heritage benefits**. With regards to the Pavilion, she explains that the scheme will create new close-range publicly accessible views. The scheme will provide new publicly accessible views which provide for a better appreciation of the listed enclosing works around Hewlett's Reservoir, the (non designated) Custodians Lodge, and the (non designated) Reservoir #3, as encouraged by NPPF paragraph 206. The listed walls would in addition benefit from the removal of the masking vegetation to better reveal the significance of the asset. Provision is also made in the s.106 for repairs/repointing of the wall (if required) and interpretation boards to provide a better understanding of the heritage assets.

8.2 The weightings that I have afforded to these heritage benefits are as follows, recognising that the weight to be given to heritage benefits can attract similar weight as potential harms:-

- The Listed Pavilion – Moderate/Significant
- The listed enclosing works – Moderate/Significant
- The Custodians Lodge (non designated) – Limited/Moderate
- Reservoir #3 (non designated) – Very Limited

The Adverse Effects to be Weighed in the Planning Balance

8.3 I accept that there would be a **partial conflict with the Development Plan** as proposals would not accord with Policy SD10 insofar as the site is located beyond the PUA and it is not allocated for housing.

8.4 However, Policy SD10 is out of date it and should be afforded much reduced weight for the reasons summarised below:-

- a. The LPA cannot demonstrate a 5YRHLS.
- b. The current housing shortfalls are substantial.
- c. The Part 2 Local Plan is already in place and yet the LPA still cannot demonstrate a plan period supply.
- d. There is no other plan led mechanism currently in place that can resolve the current housing shortfalls.
- e. The LPA cannot restore a 5YRHLS or a plan period supply without releasing greenfield sites beyond the PUA which do not currently accord with Policy SD10.
- f. Policy SD10 must give way. If it is rigidly applied, it will continue to frustrate housing delivery, contrary to the national imperative to significantly boost housing supply and Objective 8 of the JCS.

8.5 This combination of factors leads me to conclude that the weight to be afforded to the conflict with Policy SD10 should only be Limited at most.

- 8.6 I have also identified possible inconsistencies between the NPPF and JCS policies relating to the AONB (Policy SD7) and the historic environment (Policy SD8). If the appeal proposals are found to be consistent with national policy in these regards (NPPF paragraph 176-177 and 202) but in conflict with these policies because they are inconsistent with the NPPF then this should not weigh negatively against the appeal proposals.
- 8.7 The proposals would give rise to a **loss of countryside** (as would any housing scheme on a greenfield site whether it was in the AONB or not). However, the LPA is highly dependent upon greenfield sites and such losses are inevitable if housing needs are to be met across the Borough.
- 8.8 The evidence of Mr Harris considers the **impact on the landscape and scenic beauty of the AONB** which includes the loss of countryside. As already explained he concludes that the appeal proposals would have localised landscape and visual effects but these would not exceed a minor or moderate adverse impact.
- 8.9 Mr Harris also identifies landscape, visual, recreation and wildlife benefits that would arise from the development which I have considered separately on the benefit side of the scales to avoid double counting.
- 8.10 As required I attach great weight to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty but in the present case the proposed scheme could be carried out without significant harm. The development would not therefore conflict with the relevant NPPF policies relating to the AONB.
- 8.11 Even though Mr Harris concludes that the harm to the AONB would not exceed a minor or moderate adverse impact (and his assessment already takes into account the fact that the site is in the AONB), I have adopted a precautionary approach and would be prepared to afford up to significant weight to the identified harms (including loss of countryside).
- 8.12 The evidence of Mrs Stoten deals with the **impact of the development on the heritage significance of nearby designated heritage assets**. It concludes that the proposed development would result in less than substantial harm at the lowermost end of the spectrum to the two Listed Reservoirs and the Pavilion.

8.13 I recognise the imperative to give considerable weight and importance to harm to the significance of designated heritage assets, but as was held in Palmer [CD.K35] and reiterated and quoted in Bramshill [CD.K34 paragraph 75]:-

"75that the imperative of giving "considerable weight" to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it or its setting is "uniform". That will depend on the "extent of the assessed harm and the heritage value of the asset in question". These are questions for the decision-maker, heeding the basic principles in the case law." (my emphasis)

8.14 Even though the "less than substantial harm" that has been identified is at the lowermost end of the spectrum, I have again adopted a precautionary approach (recognising that the courts have made it clear that heritage assets are not to be treated as just another material consideration) and I have applied the following weightings:-

- The Listed Reservoir #1 - Moderate
- The Listed Reservoir #2 - Moderate
- The Listed Pavilion – Moderate

8.15 The proposals would also impact on the heritage significance of some non-designated heritage assets. The NPPF states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

8.16 There would be a **loss of a small area of Ridge and Furrow** of "negligible significance." I would afford this very limited weight.

8.17 There would also be a very minor **impact on the setting of the non listed Reservoir #3** which is considered to be a non designated heritage asset with low value in terms of significance according to Mrs Stoten. I would afford this very limited weight.

8.18 Mrs Stoten explains that there would also be heritage benefits associated with the appeal scheme which largely neutralise the heritage harms overall. To avoid

double counting I have dealt with these separately alongside the other public benefits of the scheme.

- 8.19 The evidence of Mr Eves considers matters relating to **traffic and transportation**. Mr Eves observes that the evidence of Mr Tiley identifies that there will be a significant shortfall in housing delivery over the Plan period (circa - 3,500 dwellings) which means that the Temprow growth used in the additional analysis overestimates future traffic flows (by around 1/3rd).
- 8.20 The appeal site is in effect, a replacement site and not an “additional” site within the Temprow projections. Accordingly, adding development traffic to unadjusted Temprow growth will significantly over-estimate future traffic conditions. His evidence considers a “more probable” estimate of future traffic flow which is within the expected levels of growth.
- 8.21 This in combination with the effects of Covid on travel behaviour and the other measures that Mr Eves refers to enables him to conclude that the marginal impact of a development of up to an additional 250 dwellings on the wider highway network, and the identified junctions in particular, is “not severe” in the context of paragraph 111 of the NPPF.
- 8.22 I agree with and rely upon the evidence of Mr Eves and would therefore only afford limited weight to the marginal increase in traffic as an adverse impact.
- 8.23 I also agree with him (without prejudice to the foregoing) that even if a judgement is made that a trigger for ‘severe’ is reached, paragraph 111 of the NPPF does not require that permission must be refused but rather it is simply a test for whether the development could be refused on highways grounds. In such circumstances the degree of harm is a matter for the overall planning balance.
- 8.24 It is an acknowledged fact that roads in and around Cheltenham can be busy but that is not to say that any increase in traffic is unacceptable or must attract significant weight in the planning balance. In the case of Grange Farm, Hartford [CD.K48] Inspector Roscoe noted that there may be some additional queuing and delays but he made the important comment that:-

“14.45 it is not the aim of policy to protect the convenience of commuting car drivers.” (my emphasis)

- 8.25 This finding was endorsed by the Secretary of State [SoS paragraph 24].

- 8.26 In a later appeal decision on the same site in 2019 [CD.K49] Inspector Dawe made a similar observation about congestion at paragraph 13:-

"13.....Like my colleague in respect of the previous outline appeal scheme for up to 350 dwellings referred to previously, I acknowledge that this is a matter of driver convenience, where relevant local and national policy concerns the impacts on the highway network....."
(my emphasis)

- 8.27 Inspector Dawe commented that even where the existing situation is severe in terms of traffic congestion this is not to say that no more development can happen. He states at paragraph 22 that:-

"22 An objective of the HNP is to prevent the traffic congestion on the highway network becoming significantly more severe where it is currently already identified as severe. That does not mean that no other traffic generating development can be built. Furthermore, policy STRAT 10 of the Cheshire West & Chester Council Local Plan (Part One) Strategic Policies (Local Plan Part One) requires, amongst other things, new development to demonstrate that additional traffic can be accommodated safely and satisfactorily within the existing highway network." (my emphasis)

- 8.28 Finally, on this matter I would return to the appeal decision relating at Hawkhurst Kent [CD.K42], where the Inspector was provided with evidence on a busy junction with a significant number of HGVs and queues that can extend to around 500 metres in length [paragraph 54]. The Inspector in that case concluded that a combination of factors including the fact that the appeal site would lead to only a marginal increase in the amount of traffic meant that it would be unreasonable to prevent the proposals from going ahead on transport grounds or to require improvements [paragraph 55].
- 8.29 As always, each case must be treated on its own merits but the principles outlined above are transferable.
- 8.30 With regards to the **internal access roads**, whilst these are for future consideration Mr Eves explains that a gradient of 1 in 12.5 for residential roads (with adjacent footways) is acceptable within national guidance such as Manual for Streets 2 and Local guidance should not be more onerous than national guidance. The footway routes through the POS areas also offer multiple opportunities to grade these paths at shallower gradients to offer alternative routes to those alongside the site access road. This is not therefore a harm to be

weighed in the overall balance and is reflective of the general topography of this part of Cheltenham.

Compliance with the Development Plan

- 8.31 I accept that the appeal proposals do not accord with the Development Plan when it is read as a whole . However, given the housing land supply position all of the most important policies are out of date in any event and it will be necessary to afford reduced weight to some policies.
- 8.32 It is also important to recognise that the proposals would assist in meeting the minimum housing requirement for Cheltenham [**Policy SP1**]. They would also be in general accordance with the JCS spatial strategy which expressly focuses growth within the administrative boundary of Cheltenham to support its economic role and in the interests of promoting sustainable transport [**Policy SP2(1) and (3)**].
- 8.33 The site involves greenfield land beyond the PUA which is not allocated for housing and so it does not accord with **Policy SD10**. However, the conflict with this policy should be afforded much reduced weight for the reasons that I have already identified.
- 8.34 This is an outline planning application and I do not consider that the proposals would offend design **Policy SD4** of the JCS or **Policy D1** of the CLP. Matters of detailed design and layout should be considered at the RM stage and nothing at this outline stage would prejudice policy compliance when that happens.
- 8.35 Mr Harris explains that the proposals would accord with JCS **Policy SD6** in relation to landscape matters. This is not a nil detriment policy and when read as part of the JCS it must accommodate 35,175 dwellings. Mr Harris considers that the proposals would avoid detrimental effects on types, patterns and features which make a significant contribution to the character, history and setting of the area.
- 8.36 Mr Harris also explains that the proposals do not give rise to significant impacts that would cause harm to the wider setting of the town. As such he considers that the appeal proposals would not be contrary to the policy intentions of **CLP Policy L1**.

- 8.37 As already explained JCS **Policy SD7** appears to be inconsistent with the NPPF in that it reads as a nil detriment policy. It also does not provide a policy framework for considering major development in the AONB. I don't seek to gain any advantage by raising these concerns because it will always be necessary for the Appellant to pass the exceptional circumstances test in NPPF paragraphs 176-177 in any event and I maintain the view that the test is met in this case.
- 8.38 If the Inspector finds that Policy SD7 is broadly consistent with the policy objectives of the NPPF then the proposals would meet the terms of the policy if they accord with NPPF paragraph 177.
- 8.39 If however the Inspector finds that the policy when given its ordinary meaning precludes any harm, then I would say that the policy is inconsistent with the NPPF and this should not weigh against the proposals.
- 8.40 **Policy SD8** (Historic Environment) is also inconsistent with the NPPF in that it requires designated and undesignated heritage assets and their settings to be "conserved and enhanced." Again this reads as a nil detriment policy and it does not reflect NPPF paragraph 202 which allows for a balance of harm against public benefits. It is also more onerous than s.66 of the Planning (Listed Building and Conservation Area) Act 1990. Again, I seek no advantage here as I accept that the test in NPPF paragraph 202 must be met.
- 8.41 If the Inspector finds that Policy SD8 is broadly consistent with the policy objectives of the NPPF then the proposals would meet the terms of the policy if they accord with NPPF paragraph 202.
- 8.42 Again, if the Inspector finds that the policy when given its ordinary meaning precludes any harm, then I would say that the policy is inconsistent with the NPPF and this should not weigh against the proposals
- 8.43 The evidence of Mr Eves on matters relating to traffic and transportation demonstrates that the proposals are consistent with the requirements of **JCS Policy INF1, INF6 and CLP Policy CI1**.
- 8.44 The Appellant has made provision for policy compliant levels of affordable housing through s.106 planning obligations and so there will be no conflict JCS **Policy SD12**.

- 8.45 Mr Tiley deals with matters relating to education and explains how the proposals would be consistent with JCS Policy **INF6**.
- 8.46 Planning obligations will also cover off any other necessary financial contributions that are required for community infrastructure consistent with JCS Policy **INF6** and **INF7** and CLP Policy **CI2**.
- 8.47 Appropriate provision is also made for public open space on-site to address normal requirements of residential development. Accordingly, the proposals would accord with JCS policies **INF4**, **INF6**, and **INF7** and CLP Policy **CI2**.
- 8.48 On other matters, the proposals would be acceptable from an ecology perspective and there would be no conflict with **Policies SD9 and INF3**.
- 8.49 The proposals are also acceptable in terms of flood risk and there would be no conflict with JCS **Policy INF2**.
- 8.50 Following this analysis, my conclusion is that whilst the proposals would (unavoidably) conflict with some parts of the Development Plan, they would otherwise be in general accordance with the spatial strategy and the relevant development management policies.

Other considerations including the AONB Management Plan

- 8.51 Policy SD7 requires proposals to be consistent with the policies set out in the Cotswolds AONB Management Plan. However, the management plan is not Development Plan policy and the plan that existed at the time that JCS was adopted was the 2013-18 plan²⁷. This has since been superseded by the 2018-2023 plan. Notwithstanding this I accept that the latest AONB management plan will be a material consideration in the determination of this appeal.
- 8.52 Mr Harris deals with the Management Plan landscape policies in his evidence and explains how the proposals have been landscape led (see Policy CE11(2)) and they have been prepared mindful of the requirements set out in the other policies of the plan.
- 8.53 I have also addressed the approach to be taken in relation to major development in the AONB (Policies CE11 and CE12) through my assessment against NPPF paragraphs 177.

²⁷ See JCS paragraph 4.7.2

- 8.54 That is because Policy CE11 in essence defers to national policy. That said Policy CE11 is (like JCS Policy SD7) is inconsistent with national policy in that the policy appears to require nil detriment and enhancement. The reduces the weight that can be afforded to this policy.
- 8.55 Policy CE12 acknowledges that it may be necessary to accommodate needs arising from outside the AONB. It talks about LPAs working together to identify if the needs can be met elsewhere but it does not preclude development in the AONB coming forward as part of planning applications.
- 8.56 There are no other grounds to resist development on this site which cannot be avoided, mitigated, or controlled through planning conditions and/or obligations.

My Overall Conclusion on the Planning Balance

- 8.57 The appeal proposals do not accord with the Development Plan when it is read as a whole. However, it can be demonstrated that they are still in general accordance with the overarching strategy of the Development Plan which seeks to focus growth at Cheltenham and the policies that would be offended are out of date.
- 8.58 I have already demonstrated that there are exceptional circumstances which justify major development in the AONB and that it would be in the public interest. Accordingly, the proposals accord with the NPPF policy test in paragraph 177.
- 8.59 With regards to the impact of the development on the significance of designated heritage assets for the purposes of NPPF paragraph 202:-
- a. The extent of harm is less than substantial (at the lowermost end of the spectrum) in relation to both the settings of the Pavilion and the two Listed Reservoirs.
 - b. Mrs Stoten explains that the heritage benefits alone for the Pavilion outweigh the identified harm to that asset.
 - c. Similarly, Mrs Stoten identifies heritage benefits for the listed enclosing works and the (non designated) curtilage listed Custodians Lodge which would largely counter balance the harm to the settings of the listed reservoirs.

- d. When I then factor in all of the other public benefits of the scheme alongside these heritage benefits for the purposes of NPPF paragraph 202 I find that the benefits would outweigh the heritage harms such that the appeal proposals accord with the NPPF.
- 8.60 It therefore follows that the tilted balance is not dis-applied in this case for reasons relating to AONB or designated heritage assets.
- 8.61 When the tilted balance in NPPF Paragraph 11d(ii) is applied to the appeal proposals I find that the residual adverse impacts of granting planning permission would not significantly and demonstrably outweigh the identified benefits of the development. This represents a very important material consideration which should override the conflict with the Development Plan.
- 8.62 To summarise on the overall planning balance:-
1. Although there would be a partial conflict with the Development Plan the proposals would still be in in general accordance with the policy objectives and spatial strategy of the JCS.
 2. In this case there are exceptional circumstances which justify major development in the AONB and the proposals would be in the public interest consistent with NPPF paragraph 177.
 3. The less than substantial harm (at the lowermost end of the spectrum) to the heritage significance of two Listed Reservoirs and the Pavilion would be outweighed by the public benefits in accordance with NPPF paragraph 202.
 4. It follows that the tilted balance is not dis-applied in this case.
 5. The proposals would deliver a range of social, economic and environmental **benefits** which can be afforded varying levels of weight as identified below:-
 - a. Provision of Open Market Housing – Substantial
 - b. Provision of Affordable Housing – Substantial
 - c. Expenditure on construction/investment – Significant
 - d. Creation of construction jobs - Moderate
 - e. Providing homes for economically active people to support the economic role of Cheltenham – Moderate
 - f. Financial contributions towards off site infrastructure – Limited
 - g. New footpath links & new public access to land in the AONB – Moderate
 - h. GI and biodiversity enhancements – Limited/Moderate
 - i. Better appreciation of the heritage significance of the following assets:-

- i. The Listed Pavilion – Moderate/Significant
 - ii. The listed enclosing works – Moderate/Significant
 - iii. The Custodians Lodge (non designated) – Limited/Moderate
 - iv. Reservoir #3 (non designated) – Very Limited
6. The **adverse impacts** have been identified and these should also be afforded varying degrees of weight as follows:
 - a. Partial conflict with the Development Plan – Limited
 - b. Impact on the landscape and scenic beauty of the AONB (including loss of countryside) – Significant
 - c. Less than substantial harm (at the lowermost end of the spectrum) to the significance of the following designated heritage assets:-
 - i. Listed Reservoir #1 - Moderate
 - ii. Listed Reservoir #2 - Moderate
 - iii. The Listed Pavilion - Moderate
 - d. Effect on significance of non designated heritage assets:-
 - i. Reservoir #3 – Very Limited
 - ii. Loss of a small area of ridge and furrow Very Limited
 - e. A marginal increase in traffic on the existing network – Limited
7. All other identified impacts can be mitigated through reserved matter applications planning conditions or planning obligations.
8. Overall, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits and this is a material consideration that outweighs the conflict with the Development Plan.
9. As such the proposals represent sustainable development in the context of NPPF paragraph 11d and the appeal should be allowed.

9. PLANNING OBLIGATIONS

9.1 The Appellants will present deeds pursuant to Section 106 of the Town & County Planning Act 1990, before the close of the public inquiry to deal with amongst other things:-

- Policy compliant affordable housing (40%)
- Provision and maintenance of on-site public open space
- Travel Plan monitoring
- Libraries
- Education
- Any other infrastructure that is demonstrated to be necessary

9.2 Grampian conditions and other suitably worded conditions will also be used to as necessary and an agreed list of conditions will be provided before the start of the inquiry.

10. SUMMARY & CONCLUSIONS

10.1 This Proof of Evidence has been prepared on behalf of Robert Hitchins Limited (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).

10.2 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.”

10.3 My evidence concentrates on the following issues:-

Whether the proposed development would be in an appropriate location that accords with the strategy for the distribution of development in Cheltenham Borough [PRfR 1]

Whether there are exceptional circumstances which justify major development in the AONB and whether it would be in the public interest [PRfR 2]

The Overall Planning Balance

10.4 My main findings can be summarised as follows:-

Issue 1 Whether the proposed development would be in an appropriate location that accords with the strategy for the distribution of development in Cheltenham Borough [PRfR 1]

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 at Cheltenham. 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 failing to deliver the required number of new homes. Mr Tiley points to substantial under delivery.

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 for the other reasons I have identified). Any conflict with the policy should therefore be afforded only limited weight at most.
6. There are no adopted policies or designations that directly affect the site that would preclude its development for housing as a matter of principle (including AONB policy).
7. The site is in a sustainable location insofar as accessibility to shops services and employment is concerned.
8. The site is also well related to the pattern of development in the area in that it is surrounded by development on three sides and a reservoir on its fourth side. It reads as a logical infill site largely cut off from the wider countryside.

Issue 2 Whether there are exceptional circumstances which justify major development in the AONB and whether it would be in the public interest

9. The Appellant has demonstrated that there are exceptional circumstances which justify major development in the AONB, consistent with NPPF paragraph 177. Development would be emphatically in the public interest.
10. There is an undeniable need for the development at the National, JCS, Borough wide and local levels. The proposals would also have a positive impact on the local economy, would support the economic role of Cheltenham consistent with JCS Policy SP2(1) and would align with a number of national considerations.
11. The 5YRHLS position (2.2 years/a shortfall of -1856 homes) and the plan period shortfall (circa -3,500 homes) clearly illustrate the extent of the need and the lack of alternatives. There is no pipeline of development to redress that deficit and no imminent Local Plan in preparation.
12. There is also compelling evidence of a substantial unmet need for affordable housing (a shortfall of -1,160 affordable homes against an identified need for 1,386 between 2015/16 and 2020/21) and other alarming affordability indicators.
13. There is no evidence that there is sufficient scope to meet the identified need beyond the AONB or any other way. The LPA has not presented any evidence to suggest otherwise, which is unsurprising given the scale of the deficit. The available evidence all points to an absence of alternatives.
14. The neighbouring JCS authorities are also facing their own housing problems in terms of 5YRHLS and plan period shortfalls and are not therefore in a position to assist in any meaningful way.

15. Even if there was some scope beyond the AONB, this would come at a real cost in social, economic and environmental terms and would run counter to the JCS spatial strategy which seeks to focus development at Cheltenham to support its economic role and in the interests of sustainable transport.
16. It is not at all satisfactory and nor would it be a proper application of national policy to suggest that the need for development should be put off until there has been a review of the JCS. National guidance on when a refusal on grounds of prematurity are plainly not met. No weight can be given to the JCS Review at this stage. Other appeal decisions support my approach.
17. Whilst the proposals are “major development” in NPPF terms, Mr Harris demonstrates that the harm to the AONB would not exceed a minor or moderate adverse impact and the impact on heritage assets would be broadly neutral.
18. Whilst great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB that is not to say that any such harm, must always attract overriding weight in the planning balance.
19. Other appeal decisions and case law demonstrate that “major development” can take place in the AONB without causing significant harm to the AONB. It is a matter of judgement for the decision maker when weighing up the various considerations.
20. I consider that the need for the development in light of national considerations, lack of scope to meet the need elsewhere, the substantial benefits and the fact that the proposals would not cause any significant harm to the aim of conserving and enhancing the AONB’s landscape or natural beauty all contribute to the exceptional circumstances and development that is clearly in the public interest.

The Overall Planning Balance

21. Although there would be a partial conflict with the Development Plan the proposals would still be in in general accordance with the policy objectives and spatial strategy of the JCS.
22. In this case there are exceptional circumstances which justify major development in the AONB and the proposals would be in the public interest consistent with NPPF paragraph 177.
23. The less than substantial harm (at the lowermost end of the spectrum) to the heritage significance of two Listed Reservoirs and the Pavilion would be outweighed by the public benefits in accordance with NPPF paragraph 202.
24. It follows that the tilted balance is not dis-applied in this case.
25. The proposals would deliver a range of social, economic and environmental **benefits** which can be afforded varying levels of weight as identified below:-
 - a. Provision of Open Market Housing – Substantial
 - b. Provision of Affordable Housing – Substantial
 - c. Expenditure on construction/investment – Significant

- d. Creation of construction jobs - Moderate
- e. Providing homes for economically active people to support the economic role of Cheltenham - Moderate
- f. Financial contributions towards off site infrastructure - Limited
- g. New footpath links & new public access to land in the AONB - Moderate
- h. GI and biodiversity enhancements - Limited/Moderate
- i. Better appreciation of the heritage significance of the following assets:-
 - i. The Listed Pavilion - Moderate/Significant
 - ii. The listed enclosing works - Moderate/Significant
 - iii. The Custodians Lodge (non designated) - Limited/Moderate
 - iv. Reservoir #3 (non designated) - Very Limited

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

- a. Partial conflict with the Development Plan - Limited
- b. Impact on the landscape and scenic beauty of the AONB (including loss of countryside) - Significant
- c. Less than substantial harm (at the lowermost end of the spectrum) to the significance of the following designated heritage assets:-
 - i. Listed Reservoir #1 - Moderate
 - ii. Listed Reservoir #2 - Moderate
 - iii. The Listed Pavilion - Moderate
- d. Effect on significance of non designated heritage assets:-
 - iii. Reservoir #3 - Very Limited
 - iv. Loss of a small area of ridge and furrow Very Limited
- e. A marginal increase in traffic on the existing network - Limited

27. All other identified impacts can be mitigated through reserved matter applications planning conditions or planning obligations.

28. Overall, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits and this is a material consideration that outweighs the conflict with the Development Plan.

29. As such the proposals represent sustainable development in the context of NPPF paragraph 11d and the appeal should be allowed.

Concluding Comments

- 10.5 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 development in this location and that there are compelling reasons that justify the grant of planning permission.
- 10.6 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.

APPENDIX 1

ALTERNATIVE ILLUSTRATIVE MASTERPLAN



0 20 50 100m

LAND OFF HARP HILL, BATTLEDOWN - ILLUSTRATIVE MASTERPLAN 'B'

Pegasus
Design