

STATEMENT OF COMMON GROUND

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

LPA REF:	20/01069/OUT
APPELLANT REF:	P21-0623PL
DATE:	3RD SEPTEMBER 2021

Signed:	Signed:
Name: MIKE HOLMES	Name: DAVID HUTCHISON
On behalf of: Cheltenham Borough Council (the Local Planning Authority)	On behalf of: Pegasus Group (acting on behalf of the Appellants)
Date: 3 rd September 2021	Date: 03-09-2021

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1. INTRODUCTION

- 1.1 This Statement of Common Ground (SoCG) has been prepared in conjunction with Cheltenham Borough Council (the Local Planning Authority).
- 1.2 It relates to a planning appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of Land at Oakley Farm, Cheltenham (the Appeal Site).
- 1.3 The purpose of the SoCG is to identify the areas where the principal parties (the Appellants and the LPA) are in agreement and to narrow down the issues that remain in dispute. This will allow the Public Inquiry to focus on the most pertinent issues. The following separate SoCGs have been agreed.
 - Housing Land Supply with Cheltenham Borough Council
 - Landscape with Cheltenham Borough Council
 - Heritage with Cheltenham Borough Council
 - Education with Gloucestershire County Council
 - Highways with Gloucestershire County Council

2. SITE LOCATION AND DESCRIPTION

- 2.1 The site is located approximately 1.8km to the east of Cheltenham town centre. It is situated on the lower slopes of the Cotswold Scarp at Oakley and lies within the Cotswolds Area of Outstanding Natural Beauty.
- 2.2 The appeal site itself comprises 15.15 hectares of predominantly greenfield land comprising a series of six fields that are bounded by hedgerows and mature trees. The site also includes the buildings associated with Oakley Farm and a number of trees and hedgerows. The former farmstead is located towards the northern boundary of the site and is accessed by a single track from the west which also falls within the appeal site.
- 2.3 The site is surrounded on three sides by existing residential development (to the north, west and south) and to the east by the listed structures of Hewlett's Reservoir and other recent residential development. The listed brick boundary wall of Hewlett's Reservoir forms part of the eastern site boundary.
- 2.4 The site is bounded to the south by Harp Hill Road and to the west by Wessex Drive, both of which form part of established residential areas. The site is bounded to the north by the former GCHQ Oakley site which has recently been redeveloped for residential purposes with Pillowell Close, Brockweir Close and Fairford Road situated adjacent to the northern boundary of the site and Bream Court and Birdlip Road to the north east of the site.
- 2.5 The site is adjacent to, but outside of, the Principal Urban Area of Cheltenham with the existing residential suburbs of Battledown to the south, Whaddon to the west and Prestbury to the north. Public access to the land is limited to a public right of way along the western boundary of the site and along the track to the B4075, but no other public footpaths cross the site and there is no public access to the fields/farm.
- 2.6 The site is located within Flood Zone 1, the zone with the least probability of flooding. The Local Lead Flood Authority raise no objection to proposal provided any subsequent drainage designs adhere to the principles of the submitted drainage strategy. There are no significant flooding or drainage issues that would prevent the development of the site, subject to the imposition of appropriate planning conditions

- 2.7 There are no World Heritage Sites, Scheduled Monuments or Listed Buildings within the appeal site, nor does the site lie within a Conservation Area.
- 2.8 Battledown Camp Scheduled Monument is located approximately 160m south of the site. To the east is Hewlett's Reservoir, which includes four Grade II Listed elements, comprising:
- No. 1 Reservoir;
 - No. 2 Reservoir;
 - Pavilion at Hewlett's Reservoir; and
 - Gates, gate piers and boundary walls at Hewlett's Reservoir.

3. THE APPEAL PROPOSAL

- 3.1 The planning application that is now the subject of this appeal was submitted to Cheltenham Borough Council on 25th June 2020 [LPA ref. 20/01069/OUT].
- 3.2 The description of development as set out on the application forms reads as follows:-

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

- 3.3 The application was submitted in outline with all matters of detail reserved for subsequent determination. The appellant has submitted further details to seek to demonstrate that access to the scheme is deliverable but the precise details would be agreed at the RM stage.

The Illustrative Site layout

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

Housing

- 3.5 The proposals would deliver up to 250 dwellings. Subject to appropriate planning obligations, there would be a mix of house types, sizes and tenures including policy compliant levels of affordable housing (40%) in accordance with adopted Joint Core Strategy Policy SD12.
- 3.6 The height and massing of the proposed development could vary across the scheme. The Building Heights Parameters Plan shows lower height dwellings being situated particularly on the southern and eastern parts of the site and also where new development adjoins existing urban area. It is agreed that the Building Heights Parameters Plan is only plan which shows building heights.

Access

- 3.7 Although access is reserved for subsequent determination, the Illustrative Master Plan shows that a new vehicular access to the proposed development will

take the form of a priority junction from Harp Hill located centrally at the southern boundary of the site.

- 3.8 The main pedestrian and cycle access to the appeal site is proposed via a new shared pedestrian/cycle link along the route of the existing farm access track from Priors Road, a key desire line to/from local facilities and the town centre. Pedestrian and cycle access will also be provided to the appeal site from Harp Hill to the south, including proposed pedestrian linkages at the eastern and western extents of the appeal site's Harp Hill frontage and cycle linkages to Harp Hill via the new site access junction.

Green Infrastructure

- 3.9 The proposed Green Infrastructure would include a quantum of public open space in excess of the LPA's normal requirements for residential development. This would include an area of open space on the upper slopes in a part of the AONB that is not currently accessible to the public. The LPA do not consider that this is a benefit of the proposal.
- 3.10 The most important mature trees have been retained and there will be opportunities for new planting and other biodiversity enhancements.
- 3.11 Provision will also be made for on-site sustainable urban drainage.
- 3.12 A more detailed description of the development and the appellant's justification for the design concept that has been followed is set out in the Design and Access Statement which was submitted as part of the original planning application.

4. APPLICATION PLANS AND DOCUMENTS

- 4.1 The application plans and supporting documents that comprised the planning application at the time that the appeal was lodged, were as follows:-

Application Documents – At the Time of Lodging the Application

Drawing Title	Drawing Reference	Revision
1. Location Plan	333.P.1	D
2. Illustrative Masterplan	309.P.3.9	E
3. Preliminary Access Arrangements	H628/02	B
4. Land Use Parameter Plan	P18-0847_02 Sheet No. 2	D
5. Access and Movement Parameter Plan	P18-0847_02 Sheet No.3	F
6. Building Heights Parameter Plan	P18-0847_02 Sheet No.4	C
7. Green infrastructure Parameter Plan	P18-0847_02 Sheet No.5	D

Application Forms and Supporting Documents

8. Application forms, together with the relevant Certificates of Ownership and Agricultural Holdings Declaration, duly completed, signed and dated 25th June 2020;
9. Covering Letter (Robert Hitchins Ltd, dated 25th June 2020);
10. Planning Statement (including Draft Heads of Terms and Affordable Housing Statement) (Pegasus Group, Reference P18-0847, dated May 2020);
11. Design and Access Statement (MHP, dated June 2020);
12. Report of Community Engagement (Pegasus Group, Reference: P18-0847, dated November 2019);
13. Transport Assessment (PFA Consulting, Reference H628, dated March 2020);
14. Travel Plan (PFA Consulting, Reference H628, dated March 2020);
15. Cheltenham Sustainability Checklist;
16. Utility Statement (RHL, Reference: 333.US.01, dated March 2020);
17. Waste Minimisation Statement (Pegasus Group, Reference P18-0847, dated March 2020);
18. Topographic Survey (Nigel Ruxton Land Surveys, References 18169/01, 18169/02A and 18169/03A, dated November 2018);
19. Landscape Strategy (MHP, Drawing Number 18017.201, dated 28.04.2020);

20. GCER Report for Planning Application (created July 2020); and
21. Appendix 3 – Habitats Regulation Assessment – Cotswold Beechwoods SPA. Briefing Note: Additional Information for Habitats Regulation Assessment – Cotswold Beechwoods Special Area of Conservation (prepared by Ecology Solutions, dated December 2019).

Environmental Statement

22. Volume 1 Main Text (January 2020);
23. Volume 2 Technical Appendices (January 2020); and
24. Non-Technical Summary (March 2020).

Documentation Submitted after the Application was Lodged

Drawing Title	Drawing Reference	Revision
25. Preliminary Access Arrangements	H628/02,	D
26. Layout Sections B-B	333.P.4.	B
27. Layout Sections C-C	333.P.4.	C
28. Layout Section A-A	333.P.4.	A

Additional Supporting Documents

29. File Note Dealing with Further Highway Response from GCC Dated 10th February 2021 (prepared by PFA Consulting dated, 5th March 2021);
30. Landscape and Visual Consultation Response (prepared by MHP, undated, received by the LPA on 4th February 2021);
31. Arboricultural Impact Assessment – Further Information (prepared by MHP, dated September 2020);
32. Construction Environmental Management Plan (prepared by Ecology Solutions, dated March 2021);
33. Briefing Note: DEFRA Biodiversity Metrics (prepared by Ecology Solutions, dated March 2021);
34. Indicative Access Long Sections, drawing number: 333.E.7.1;
35. Landscape and Ecology Management Plan (prepared by Ecology Solutions, dated March 2021);
36. Verified Views and Methodology (prepared by Andy Maw Design, dated January 2021);
37. Renewable Energy and Sustainable Construction Statement (prepared by Pegasus Group, dated July 2020);

38. Transport Assessment Addendum (prepared by PFA Consulting, dated November 2020);
39. Residential Travel Plan – Updated (prepared by PFA Consulting, dated October 2020);
40. Educational Needs Assessment (prepared by Pegasus Group, dated February 2021);
41. Response to GCC comments (23rd December 2020) and Headline Findings of the Pupil Product Ratio Survey (Pegasus December 2020) which was referred to in the response.
42. Renewable Energy and Sustainable Construction Statement (prepared by Pegasus Group, dated July 2020).

Documentation submitted after the appeal was lodged

43. Supplementary Environmental Information (SEI) To the Environmental Statement (including updated Non Technical Summary) dated August 2021

Plans for Approval

- 4.2 The appellant considers that 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

- 4.3 The Local Planning Authority consider that insufficient information is included in these plans to provide a framework for an outline planning permission, in light of the nature of the planning application which was submitted with all matters reserved.
- 4.4 The Appellant does not agree and considers that the level of detail is normal for this type of application and has been found acceptable on appeal in other cases in the JCS area including Innsworth, Twigworth, Fiddington and Coombe Hill.

4.5 Other plans that may be the subject of Grampian conditions¹ to secure off site works include:-

- | | | |
|----|--|---------------|
| 1. | Potential widening to Harp Hill approach to B4075 Priors Road/Harp Hill Roundabout | H628/04 Rev C |
| 2. | Harp Hill Pedestrian Linkages | H628/05 Rev A |
| 3. | B4075 Priors Road Pedestrian/Cycle Linkages | H628/08 Rev A |
| 4. | Masterplan with Cycleway Overlay | 333.E.33 |

4.6 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.

¹ See Appendices to the Highways SoCG

5. THE PUTATIVE REASONS FOR REFUSAL

- 5.1 Following submission of the appeal, Officers reported the application to the LPA's Planning Committee on 20th May 2021. This was to ask Members to consider whether or not they would have granted planning permission, had the LPA still been the determining authority.
- 5.2 The Officer Report recommended that Members should indicate to the Planning Inspectorate that they would have been minded to refuse planning permission.
- 5.3 Following consideration of the Officer Report, Members agreed with the Officer recommendation and confirmed that the putative reasons for refusal should be as follows:-

Reason for Refusal 1

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

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

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

Reason for Refusal 2

2) The proposals constitute major development within the Cotswolds Area of Outstanding Natural Beauty (AONB). In accordance with national planning policy, the AONB is afforded the highest status of protection in relation to conserving and enhancing landscape and scenic beauty and in which major development is prohibited unless in exceptional circumstances and when in the public interest.

The proposed construction of 250 houses would, by virtue of the location and size of the application site, the

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

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

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

Reason for Refusal 3

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

Reason for Refusal 4

4) The application site lies adjacent to designated heritage assets (grade II listed Hewlett's Reservoir and Pavilion). The proposals would have an unacceptable harmful impact on the setting of the heritage assets within Hewlett's Reservoir. As such, the proposed works are considered not to sustain or enhance the designated heritage assets and would cause harm to the significance of the affected designated heritage assets. In weighing this harm against the public benefits of the proposal, through the provision of housing, the public benefits of the proposals are not considered to outweigh the harm caused to the significance of the affected heritage assets. The proposed development is therefore contrary to Section 66(1) of the Planning (Listed Building and Conservation Area) Act 1990, Policy SD8 of the Joint Core Strategy 2017, Policy CE6 of the Cotswolds AONB Management Plan 2018-23 and Chapter 16 of the National Planning Policy Framework.

Reason for Refusal 5

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

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

The proposed development will lead to:

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

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

Reason for Refusal 6

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

development will lead to a need to provide for education and libraries provision for the future residents (Policy INF6 of the JCS).

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

Reason for Refusal 7

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

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

- 5.4 It is agreed that putative reasons for refusal 5 and 7 can be addressed by suitably worded s.106 planning obligations and don't need to be addressed in evidence.
- 5.5 It is agreed that the appeal should focus on the remaining putative reasons for refusal.

6. PLANNING HISTORY

- 6.1 There is no relevant planning history for the site, apart from an application that was submitted to determine whether prior approval is required for the demolition of a detached dwelling (The Farmhouse, Oakley Farm), (method of demolition and restoration of the site) at Oakley Farm, Priors Road, Cheltenham.
- 6.2 The Borough Council determined that no prior approval was needed.

Reference	Description	Decision
19/00526/SCREEN	Request for a screening opinion under Part 2, Regulation 6 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended)	Issue 2 nd April 2019
19/00916/SCOPE	Request for EIA Scoping Opinion for Land at Oakley Farm	Scoping Opinion Provided 12 th July 12 th July 2019
19/01610/DEMCON	Application to determine whether prior approval is required for the demolition of a detached dwelling (The Farmhouse, Oakley Farm) (method of demolition and restoration of the site).	Prior approval was not required. 10 th September 2019

7. PLANNING POLICY

- 7.1 This section identifies the planning policies and guidance that will be of most relevance to this appeal. All the documents referred to will be included in the list of Core Documents.

National Guidance

National Planning Policy Framework

- 7.2 The revised NPPF (2021) will be a material consideration in the determination of the appeal. Both parties will make reference to the NPPF in support of their case.

National Planning Practice Guidance

- 7.3 The NPPG will be a material consideration in the determination of this appeal. Both parties will make reference to relevant sections of the NPPG.

The Development Plan

- 7.4 Both parties agree and accept that under the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 7.5 At the time of preparing this SoCG, the Statutory Development Plan covering the appeal site comprised:-

- Gloucester, Cheltenham and Tewkesbury Joint Core Strategy;
- The Cheltenham Plan; and
- Saved policies of the Local Plan Second Review 2006

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS)

- 7.6 Cheltenham Borough Council worked in conjunction with Gloucester City Council and Tewkesbury Borough Council to prepare a Joint Core Strategy (JCS) for their combined areas. The JCS was adopted in December 2017 and covers the period up to 2031.
- 7.7 The JCS represents part of the most up to date part of the Development Plan for the purposes of this appeal, alongside the Cheltenham Plan (adopted July 2020).

7.8 It is agreed that the following JCS policies are relevant to the determination of this appeal:-

- **Policy SP1: The Need for New Development**
- **Policy SP2: Distribution of New Development**
- **Policy SD4: Design Requirements**
- **Policy SD6: Landscape**
- **Policy SD7: The Cotswolds Area of Outstanding Natural Beauty (AONB)**
- **Policy SD8: Historic Environment**
- **Policy SD9: Biodiversity and Geodiversity**
- **Policy SD10: Residential Development**
- **Policy SD11: Housing Mix and Standards**
- **Policy SD12: Affordable Housing**
- **Policy INF1: Transport Network**
- **Policy INF2: Flood Risk Management**
- **Policy INF3: Green Infrastructure**
- **Policy INF4: Social and Community Infrastructure**
- **Policy INF6: Infrastructure Delivery**
- **Policy INF7: Developer Contributions**

7.9 Other relevant policies include:-

- **Policy SD3: Sustainable Design and Construction**
- **Policy SD14: Health and Environmental Quality**

- 7.10 It is agreed that the JCS at the time of its adoption met and exceeded the minimum housing requirement for Cheltenham Borough. Policy SP1 states that the housing requirement for Cheltenham Borough during the plan period is at least 10,917 new homes. JCS Table SP2a identifies the sources of housing supply for Cheltenham Brough which would provide some 11,092 dwellings exceeding the housing requirement for at least 10,917 new homes as required by Policy SP1 and the objectively assessed need. It is agreed that Cheltenham Plan identifies a total housing supply between 2011 and 2031 (as of June 2019) of 11,632 dwellings exceeding the requirements of Policy SP1 of the JCS.
- 7.11 Notwithstanding the above, it is agreed that the LPA is currently not able to demonstrate a plan period supply against the JCS minimum housing requirement and there is now a shortfall. The parties have varying views on the extent of that shortfall and this will be addressed in evidence.
- 7.12 It is agreed that, at the time of JCS being adopted, there was a shortfall of homes to meet the housing requirement for Tewkesbury Borough and Gloucester City and JCS Policy REV1 was included to deal with both this shortfall by way of an immediate partial review. This has now been abandoned in favour of a comprehensive review because some of the strategic allocations have not come forward as quickly as anticipated and following policy changes in the NPPF (2019) The JCS Review will consider the housing supply position of all three JCS authorities rather than just the shortfalls of Gloucester and Tewkesbury.
- 7.13 It is agreed that the JCS Authorities have started the preparation of the JCS Review and this is still in the early stages. The Local Development Schemes published by the JCS Authorities aims for adoption of the JCS Review in Winter 2023.
- 7.14 The JCS Authorities stated position on the JCS Review timescale is that the JCS timetable is currently being reviewed and a revised LDS will be agreed by all JCS Authorities by Autumn 2021. Work is continuing to progress on the evidence base, together with the commissioning of consultants to support drawing this together and informing the preparation of the draft plan. It is most likely to be Spring 2022 for the key stage of the Regulation 18 consultation. The Appellant has no reason to dispute this timeline but does not agree that the Regulation 18 consultation is a key stage.

- 7.15 It is agreed that no weight can be placed on the policy contents of the JCS review at this time.

The Cheltenham Plan (July 2020)

- 7.16 The Cheltenham Plan was adopted in July 2020, and forms part of the adopted Development Plan, alongside the JCS and any made Neighbourhood Plans.

- 7.17 It is agreed that most important policies in the Cheltenham Plan policies are as follows:-

- **Policy D1: Design**
- **Policy D3: Private Green Space**
- **Policy L1: Landscape and Setting**
- **Policy HE1: Buildings of Local Importance and Non-Designated Heritage Assets**
- **Policy H1: Land Allocated for Housing Development**
- **Policy CI1: Securing Community Infrastructure Benefits**
- **Policy CI2: Sports and Open Space Provision in New Residential Development**

- 7.18 Other relevant policies include:-

- **Policy HE2: National and Local Archaeological Remains of Importance**
- **Policy BG1: Cotswold Beechwoods Special Area of Conservation Area**
- **Policy BG2: Cotswold Beechwoods Special Area of Conservation Air Quality**
- **Policy SL1: Safe and Sustainable Living**
- **Policy G12: Protection and Replacement of Trees**
- **Policy G13: Trees and Development**

- **Policy CI4: Broadband Provision**

Neighbourhood Planning

7.19 It is agreed that there is currently no “made” Neighbourhood Plan which covers the appeal site.

Supplementary Planning Guidance/Documents/Advice

7.20 The parties will refer to the following guidance:-

- Adopted Local Developer Guide (March 2021)
- Cotswolds AONB Management Plan 2018-2023
- Supplementary Planning Guidance – Amenity Space in Residential Development (Adopted 22nd April 2003 and Updated 9th February 2004)
- Manual for Gloucestershire Streets (adopted July 2020).
- Gloucestershire’s Local Transport Plan 2020 – 2041
- DfE Guidance on Securing Developer Contributions for Education
- Landscape Character, Sensitivity and Capacity Assessment of the Cotswold AONB within Cheltenham Borough (April 2015/updated May 2016) (2015 Ryder report)

8. MATTERS NOT IN DISPUTE

- 8.1 This section sets out the matters that are not in dispute between the Appellants and the Local Planning Authority.

Format of Planning Application and Supporting Material

- 8.2 It is agreed that the format of the outline planning application forms, plans and the supporting documents fulfilled the requirements of the various regulations and validation checklists, applicable at the time of submission.
- 8.3 It is agreed that the LPA agreed to register the application as an outline application with all matters of detail reserved for subsequent determination.
- 8.4 It is agreed that the LPA did not exercise its powers to request any of the Reserved Matters to be unreserved.

Environmental Impact Assessment

- 8.5 It is agreed that the proposals are supported by an Environmental Statement (ES).
- 8.6 It is agreed that the LPA did not request any further environmental information to supplement/amend the ES during the application process.
- 8.7 It is agreed that following examination of the ES, the Secretary of State notified the appellant, pursuant to Regulation 25 of the EIA Regulations, that, to comply with Schedule 4 of those regulations (Information for inclusion in environmental statements) the appellant is required to supply the additional further information.

The Principle of Development

- 8.8 It is agreed that the appeal proposals would make a meaningful contribution to meeting the Council's acknowledged shortfall in housing land supply, if the site gains planning permission and is progressed in a timely manner. This is without prejudice to the Council's objections to the current proposals.
- 8.9 It is agreed that the appeal site is capable of being sustainable in terms of accessibility to local facilities and public transport services.
- 8.10 It is agreed that the appeal proposal is 'major development' for the purposes of paragraphs 176 and 177 of the NPPF

- 8.11 It is agreed that neither national policy nor local planning policies preclude major development in the AONB.
- 8.12 It is agreed that NPPF states permission should be refused for major development in the AONB other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.

Housing Land Supply

- 8.13 It is agreed that the LPA cannot currently demonstrate a Five Year Housing Land Supply (5YRHLS).
- 8.14 It is agreed that the absence of a 5YRHLS would normally engage the 'tilted' planning balance under paragraph 11d of the NPPF and Footnote 8.
- 8.15 The parties disagree on the extent of the five-year land supply shortfall. The Council considers that it is able to demonstrate a **3.9 year** land supply and the Appellant considers that the Council is only able to demonstrate a **1.6 years** land supply.
- 8.16 It is agreed that the LPA currently cannot identify a sufficient supply of developable sites to meet the minimum housing requirement of the Development Plan across the plan period.
- 8.17 It is agreed that the housing supply shortfall has arisen mainly as a result of the JCS Strategic Allocations not progressing as originally envisaged.
- 8.18 It is agreed that in order to restore a 5YRHLS and to meet the minimum housing requirement for Cheltenham Borough it will be necessary to supplement the existing supply.
- 8.19 It is agreed that the principal urban area of Cheltenham Borough is almost entirely surrounded by the Green Belt and the AONB.
- 8.20 It is agreed that to meet the minimum housing requirement for Cheltenham Borough in accordance with the spatial strategy of the Joint Core Strategy it will be necessary to bring forward sites either within Cheltenham Town or on sites that do not accord with the policies of the Development Plan (in particular Policy SD10).

- 8.21 It is agreed that the LPA has already explored opportunities for development within Cheltenham Town through the allocations in the Cheltenham Plan and that the supply identified by the LPA already makes an appropriate allowance for windfall development within Cheltenham Town.

The Presumption in favour of Sustainable Development NPPF Paragraph 11 and Footnote 7 policies

- 8.22 It is agreed that the only NPPF Footnote 7 restrictive policies that are in play for this appeal are those which relate to the AONB and more particularly NPPF paragraph 176 and 177, and those which relate to designated heritage assets, more particularly being paragraph 199, 200 and 202 the NPPF.
- 8.23 It is agreed that if the exceptional circumstances test in NPPF paragraph 177 is not met then the tilted balance will be disapplied by virtue of paragraph 11(d)(i) NPPF.
- 8.24 It is agreed that if less than substantial harm to significance of the affected heritage assets is not outweighed by the public benefits of the proposal then the tilted balance will be disapplied by virtue of paragraph 11(d)(i) NPPF.
- 8.25 For the avoidance of doubt, the Appellant considers that paragraphs 177 and 202 of the NPPF are satisfied.
- 8.26 The Council considers that the application of policies in NPPF which protect areas or assets of particular importance; namely paragraphs 176 and 177 of the NPPF which conserve and enhance the AONB, and paragraphs 199, 200 and 202 of the NPPF which conserve and enhance designated heritage assets both provide clear reasons for refusing the proposed development.

Prematurity

- 8.27 It is agreed there are no grounds to refuse planning permission based on prematurity having regard to paragraphs 49 and 50 of the NPPF (2021).

Development Plan Designations

- 8.28 It is agreed that the appeal site is situated within the Cotswolds Area of Outstanding Natural Beauty (AONB).

- 8.29 It is agreed that there are no other landscape designations directly affecting the site.
- 8.30 It is agreed that there are no ecological designations directly affecting the site.
- 8.31 It is agreed that the site is not located within or adjacent to a Conservation Area.
- 8.32 It is agreed that the site is not designated as Local Green Space or any kind of Local Gap or Strategic Gap.
- 8.33 It is agreed that the site is not currently located within a defined settlement boundary (the PUA) and it will therefore be considered as “countryside” in planning policy terms.
- 8.34 It is agreed that the appeal site is not allocated for any development purpose in the adopted Development Plan.

JCS Policy SD10

- 8.35 It is agreed that Policy SD10 is out of date by virtue of NPPF footnote 8 and paragraph 11d. That is because the LPA cannot currently demonstrate a 5YRHLS.
- 8.36 It is further agreed that the statutory status of the development plan is not affected and nor does it mean that Policy SD10, or any other development plan policy, is to be disregarded and the development plan remains the starting point for decision making.
- 8.37 It is agreed that it will likely be necessary to allow housing development on land beyond the principal urban area on land that is currently designated as countryside if the LPA is to restore a five year housing land supply and/or a plan period supply.
- 8.38 It is agreed that Policy SD10 should be afforded reduced weight. The Appellant says it should be afforded no more than limited weight and the LPA says policy SD10 remains part of the development plan, a component of the spatial strategy and the starting point for decision making.

Master Planning

- 8.39 It is agreed that the planning application was submitted in outline with access, layout, appearance, scale and landscaping of the development reserved for future consideration.
- 8.40 It is agreed that the detailed design and layout of the scheme is capable of being addressed at the Reserved Matters stage.

Impact on Residential Amenity

- 8.41 It is agreed that the issues relating to overlooking and loss of privacy for future residents of the development or existing residents occupying neighbouring properties, can be addressed at the Reserved Matters stage.

Housing Mix

- 8.42 It is agreed that the proposals could provide for an appropriate mix of house types, sizes and tenures. This can be agreed at a later stage.

Affordable Housing

- 8.43 It is agreed that the appeal proposals are capable of providing policy compliant levels of affordable housing through a completed s.106 agreement (40%) in accordance with JCS Policy SD12.

Trees and hedgerows

- 8.44 it is agreed that there would be no unacceptable impacts upon on trees and hedgerows which cannot be overcome at Reserved Matters stage or through conditions, notwithstanding the Local Planning Authority's wider concerns regarding the impact of the loss of trees and hedgerows on the key visual characteristics of the site

Ecology

- 8.45 it is considered that the development proposals would not likely affect the integrity of the Cotswold Beechwoods SAC either alone or in combination with other development, thus meeting the test of the Habitats Regulations 2017

8.46 It is agreed that subject to securing the recommended mitigation through conditions, the proposals will not have an unacceptable impact on protected species and or habitats within the site.

8.47 It is agreed that proposals also present opportunities for biodiversity diversification that may in turn lead to an ecological enhancement compared to the rural habitats that exist at present, but this is dependent on appropriate mitigation through conditions

Contamination

8.48 It is agreed that there is no objection on contamination grounds, subject to conditions.

Archaeology

8.49 It is agreed that there is no objection on archaeological grounds.

8.50 It is agreed that the County Archaeologist recommended that no further archaeological mitigation or recording needs be undertaken in connection with this scheme.

Agricultural Land Classification

8.51 It is agreed that the LPA raises no objection on grounds related to best and most versatile agricultural land (BMV).

CIL vs s.106

8.52 It is agreed that a s78 appeal is not the appropriate forum for reviewing policies of the Development Plan or for reviewing the CIL Charging Schedule and that these should be undertaken through a Local Plan Review and Review of CIL Charging Schedule.

8.53 It is agreed that the CIL Charging Schedule was subject to examination, found to be viable and adopted with effect from 1st January 2019.

8.54 It is agreed that during the examination, the Examiner undertook the examination on the basis of a draft Regulation 123 list which indicated that CIL monies could be used to secure many forms of infrastructure including educational infrastructure not directly related to an individual development.

- 8.55 It is agreed that both s106 contributions and CIL receipts can be used to deliver the same infrastructure project.
- 8.56 It is agreed that the Appellant does not intend to present evidence on whether any contributions should be secured by way of CIL or a s106 agreement for the purposes of this inquiry and it will be for the County Council to demonstrate CIL compliance.

Noise and Air Quality

- 8.57 It is agreed that the LPA raises no objection on grounds related to noise or air quality, subject to the imposition of conditions (construction phase).

Flood Risk and Drainage

- 8.58 It is agreed that the appeal site is located within Flood Zone 1 (the zone with the least probability of flooding).
- 8.59 It is agreed that there is no objection to the proposal on grounds of flooding and surface water matters, subject to the imposition of conditions.

Public Open Space and Playspace

- 8.60 It is agreed that the proposed development may lead to an increase in demand for play space provision in the Borough and therefore the development should mitigate its impact in terms of adequate provision for on-site outdoor playing space.
- 8.61 It is agreed that the Illustrative Masterplan indicates that the proposals could make suitable provision for public open space. It is agreed that this would significantly exceed the normal requirements for a residential development of this size but the LPA considers that this is of no additional benefit.

Public Benefits

- 8.62 It is agreed that the proposed development would potentially secure benefits in economic and social and environmental terms. These would include inter alia:-
1. The provision of open market housing for which there is an identified need.
 2. The provision of affordable housing for which there is an identified need.
 3. Expenditure on construction and investment.

4. Providing homes for economically active people
 5. The construction phase would secure construction jobs in the short term and the related economic benefits for the area.
 6. Provision of public open space and new footpath links
 7. New native planting and biodiversity enhancements.
- 8.63 The Appellant considers that there would also be other benefits but the LPA does not agree. These are identified in the Proof of Evidence of Mr Hutchison.
- 8.64 The parties have differing views on the weight to be afforded to the benefits of the development and the respective positions are set out in evidence.

9. MATTERS THAT REMAIN IN DISPUTE

9.1 Subject to the completion of agreed s106 obligations, the only issues that remain in dispute between the Appellants and the LPA are:-

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|----------------|--|
| Issue 1 | Whether in principle, the appeal site offers an appropriate location for the proposal, having regard to the development plan's spatial strategy, having regard to development plan policy regarding development on unallocated sites outside the principal urban area of Cheltenham (including 5 year housing supply) (Reason for Refusal 1) |
| Issue 2 | The effect of the proposal on the landscape, including the AONB, and whether there are exceptional circumstances and whether the proposal is in the public interest (Reason for Refusal 2) |
| Issue 3 | The effect on highway safety and whether the proposal will have a severe impact on the highway network (Reason for Refusal 3) |
| Issue 4 | The effect of the proposal on the setting of heritage assets with Hewlett's Reservoir and whether the public benefits of the proposal outweigh the harm to the affected designated heritage assets (Reason for Refusal 4) |
| Issue 5 | Whether the proposals adequately provide for education and libraries for future residents in the absence of s106 obligations to meet identified needs; and whether the County Council demands for s.106 contributions towards Education are lawful and meet the tests of CIL Regulation 122, having regard to the approach taken by the JCS authorities towards CIL charging (Reason for Refusal 6) |

Other matters

- 9.2 The Appellant considers that Policy SD10 is out of date given the plan period shortfalls. The LPA does not agree.
- 9.3 The Appellant considers that Policy SD10 should be afforded no more than limited weight. The LPA does not agree.

10. PLANNING CONDITIONS AND OBLIGATIONS

- 10.1 An agreed set of conditions will be provided to the Inspector before the start of the Public Inquiry.
- 10.2 The Appellants will also present deeds pursuant to Section 106 of the Town and Country Planning Act which will secure any planning obligations that are deemed necessary to make the development acceptable.