

**Town & Country Planning Act 1990 s.78**

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

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

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

## **Opening Statement**

*On Behalf of the Local Planning Authority*

1. This is an appeal against non-determination by the local planning authority (LPA), Cheltenham Borough Council in respect of the appellant's outline planning application for development comprising of up to 250 residential dwellings including provision of associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and formation of new vehicular access from Harp Hill. All matters reserved. The application site is at Harp Hill Oakley Farm Priors Road Cheltenham Gloucestershire GL52 5AQ.
2. Although this is an appeal against non-determination the application was considered by the LPA's planning committee on 20<sup>th</sup> May 2021 in order to seek a resolution from the committee as to how it would have determined the proposals if the Council had remained the determining authority. Following debate, the committee resolved that it was minded to refuse the application and gave seven putative reasons for refusal (RfRs).
3. Those reasons are not repeated in detail herein and this opening statement is structured to reflect the Inspector's main issues as set out in the CMC note insofar as they relate to issues for the LPA as opposed to the other Rule 6 parties. These relate to RfR 1, 2 and 4. It is anticipated that RfRs 5 and 7 will be dealt with by the completion of suitable CIL compliant agreements prior to the close of the inquiry.

4. Whether the site should be developed, having regard to development plan policy regarding development on unallocated sites outside the principal urban area of Cheltenham

4.1 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). The site is not allocated within the JCS or the Cheltenham Plan (CP) as a site for development and nor does it meet any of the exception criteria within the JCS or CP; contrary to the settlement strategies contained within the JCS. Having regard to the policies SD10 and SP2 of the JCS this is clearly not a site that is suitable for the construction of 250 houses. The proposal stands in direct conflict with the adopted plan policies, and this is not a case of partial compliance as submitted by the appellant. In terms of the planning balance the starting point is that the proposals are in conflict with the development plan.

4.2 The appellant and LPA agree that the tilted balance is a potential material issue in this case as a result of the absence of a five-year housing land supply. Although the initial applicability of the tilted balance is agreed the extent of the shortfall is not. The appellant has produced a wholly disproportionate amount of evidence on the housing land supply in an attempt to dispute the LPA's calculation of a 3.9 year housing land supply to simply conclude that the current shortfall is substantial but, it is not necessary to conclude on the precise extent of that shortfall. The LPA consider the shortfall to be significant.

4.3 It is important to note that this is not a shortfall scenario caused by a failure of the development plan to identify or allocate sites. Sites with sufficient dwellings to meet the OAN have been identified. The problem here is one of delay. It is also not a case of plan failure as alleged by the appellant. The development plan spatial strategy is working because the review mechanisms designed to address problems of shortfall and delay have been activated. The review to address the shortfall has been commenced. The LPA's case is that the development plan remains robust.

4.4 This is a case where footnote 7 policies bite in respect of the AONB and heritage assets. The LPA contend that these present clear reasons to refuse the application to the extent that the tilted balance should not be applied. If, the Inspector finds this not to be the case the LPA contend that the development plan policies still carry

weight despite being 'out of date' and support refusal pursuant to Paragraph 11d (ii) of the NPPF.

## 5 The effect on the landscape, including the AONB

5.1 The case for the LPA is that the landscape of this site is important both in terms of its landscape value and its scenic quality. The site is also nationally important due to its AONB designation. The site lies on one of the most distinctive parts of the Cotswolds AONB, the escarpment, and it is an important component of the attractive escarpment setting to the eastern edge of Cheltenham and thus contributes to the setting of the town as a whole. As such it provides a vital link between the town and the AONB rising beyond. Its landform of pasture fields, hedgerows and ridge and furrow patterning provides a rural setting in contrast to neighbouring developed areas. Consequently, the site also provides an attractive rural setting to the adjacent listed structures of the Hewlett's Reservoir complex which adds to its landscape and visual appeal and contributes to the significance of the heritage assets.

5.2 The LPA consider the importance of the site provides it with high landscape and visual sensitivity. The proposed development of 250 houses would lead to a total loss of rural character over two-thirds of the site and an almost total reduction in the rural landscape character within the residual open space due to the changed character of this area. The residual open space will not be atypical of the escarpment landscape as it is now. Consequently, the quality of the landscape setting in this part of Cheltenham will be reduced with an overall landscape effect of major/moderate, adverse and permanent. Similarly, the visual impacts of the proposals would be moderate, adverse and permanent when viewed from short, medium and long range.

5.3 The appellant's seek to downplay the importance of the site in terms of its context within the AONB by portraying it as being at the margins of the AONB and not being representative of many of the AONBs most important physical features; the evidence of Mr Ryder shows that this is clearly not the case.

5.4 Additionally, the appellants have sought to diminish the sensitivity and value of the site in landscape and visual terms by seeking to demonstrate that the lower parts of the site nearer to developed land are of a lesser landscape and visual value than the middle and upper parts of the site which are further away from neighbouring

developments. The LPA will show that this is simply not the case. The importance of the whole site to Cheltenham's sense of place can be gleaned from the Cheltenham Plan (CD E2) and the importance of the western part of the site is evidenced from its more recent inclusion within the AONB in 1990. The neighbouring land was already developed at this stage.

## 6. The effect on heritage assets

6.1 Part of the eastern side of the proposed development site neighbours the Hewlett's Reservoir complex. This complex contains a number of designated and non-designated/curtilage listed heritage assets. The proposed development will impact on the setting of these heritage assets, especially, the Grade II listed reservoirs, the boundary wall which abuts the site and the pavilion.

6.2 Currently, the site provides a degree of separation between the urban area of Cheltenham thus maintaining the historical isolation of the complex above the town which is part of the setting together with adding rural character to the setting of the heritage assets.

6.3 The rural nature which contributes to the setting of the heritage assets is enhanced by the existence of ridge and furrow landform within the appeal site which will be largely lost if the development were to proceed. The LPA also considers that the ridge and furrow landform is also of merit in its own right in terms of its heritage contribution.

6.4 The rural character is an important part of the setting of the heritage assets due to the country house garden layout and architectural style in which the site was designed. This is particularly pertinent to the pavilion which is considered to be the principal decorative element of the complex. If the development were to proceed, this setting would be largely lost. Thus, the development causes less than substantial harm to the assets which in respect of the pavilion is assessed as moderate.

6.5 It is considered that the proposed visual mitigation by means of a tree belt will also detract from the current open setting to the heritage assets.

## 7. The Planning Balance

7.1 The NPPF provides that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural beauty which have the highest status of protection in respect of these issues. The NPPF also provides that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation.

7.2 The site lies within the Cotswolds AONB which attracts the highest status of protection. NPPF guidance is clear that permission for major development should be refused, other than in exceptional circumstances and where the development can be demonstrated to be in the public interest. Additionally, the application should be assessed against specific criteria including possible alternative sites outside of the designated area. The appellants have proposed no alternatives; the LPA submits that there are alternatives which should be considered.

7.3 The appellants in support of their case submit that the current shortfall in the housing land supply for the LPA area together with, in their words "an affordable housing crisis within the Borough" and the economic harm of not allowing the development amount to exceptional circumstances.

7.4 The LPA readily agree that there are benefits if the appeal were allowed and the development proceeds. The provision of market housing is a significant benefit, and although the LPA submit there is no affordable housing crisis peculiar to Cheltenham over and above the national challenge, the provision of affordable housing is also a significant benefit. There are also some economic benefits but these and the counter veiling harm if the appeal is dismissed are overstated by the appellant. However, these benefits do not, in the circumstances of this proposal, amount to exceptional circumstances which can justify major development within the AONB. This development is demonstrably not in the public interest. Neither do the public benefits outweigh the less than substantial harm which the proposed development will cause to the designated heritage assets.

7.5 In summary, it is the LPA's case that the proposed development is contrary to the policies of the NPPF, development plan and supporting plans and documents as stated in the reasons for refusal. Although the LPA cannot currently demonstrate a five-year housing land supply it is submitted that the harm the development will cause to the AONB and designated heritage assets provide clear reasons for refusal in accordance with Paragraph 11d(i) and fn7 of the NPPF and the tilted balance should be disapplied. Even if this is found not to be the case, it is considered that the adverse impacts of permitting the development when assessed against the policies of the NPPF as a whole would demonstrably outweigh the benefits of the proposal.

#### 8. Conclusion

For the reasons above the Inspector is respectfully requested to dismiss the appellant's appeal.

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**7th September 2021**