

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

Closing submissions on behalf of the Local Planning Authority

Introduction

1. Although throughout this appeal many issues have been and remain contested, I think most parties will agree with me, when I say, the appeal has been a marathon rather than a sprint; and at times, the evidence has, necessarily, had to descend into fine detail. I say necessarily, because, I consider, such consideration is befitting of such a sensitive site proposed for residential development.
2. Due to not only the length of the appeal but also the period of time that has elapsed since the commencement of the appeal I think in closing, it is worthwhile to step back, reappraise ourselves of what we find at the appeal site. We find a number of pasture fields, known as Oakley Farm, which are located on the eastern edge of the town of Cheltenham outside of the Principal Urban Area. The fields are situated on the rising slope of the Cotswold escarpment and are wholly within the Cotswolds Area of Outstanding Natural Beauty. The higher parts of the fields provide fine views to the west over Cheltenham to the Severn vale and are visible from the town and form part of the town's 'setting' as defined within the Cheltenham Borough Plan. The fields also form part of the setting of the designated heritage assets found at the Hewlett's Reservoir complex and additionally, contain visible remains of ridge and furrow fields which are non-designated heritage assets. Upon this site it is proposed to construct up to 250 houses.
3. This inquiry has been necessary as the applicant lodged a non-determination appeal in respect of its outline application to construct up to 250 houses at Oakley Farm. As a result of such notification the local planning authority (LPA) considered the application at the meeting of its planning committee on 20th May 2021 and identified seven putative reasons for refusal. Of these seven reasons (PRfRs) the LPA has brought evidence which it believes substantiates PRfRs 1, 3 and 4. PRfRs 5 and 6 have been addressed by suitably worded planning obligations pursuant to section 106 of the Town and Country Planning Act 1990 (TCPA).
4. The issues for this appeal, in so far as the LPA are concerned, were set out at the pre-inquiry case management conference held on 28th June 2021 and have remained largely unchanged; they are:
 - Whether the site should be developed, having regard to development plan policy regarding development on unallocated sites outside the Principal

Urban Area of Cheltenham (this will involve a discussion of housing land supply) (PRfR 1).

- The effect on the landscape and visual effects, including the AONB (PRfR 2).
 - The effect on heritage assets (PRfR 4).
5. The appeal was heard by means of a topic-based approach; however, these submissions will follow the order of the issues as identified within the case management conference note rather than following the order of evidence given to the inquiry. They will be a summary of the key points in so far as the LPA are concerned. These submissions will not rehearse all of the evidence, address every point in dispute nor, you may be pleased to hear, descend to the level of detail which at times the evidence did.
6. However, before I turn to the evidence and the issues, I think it is important to keep in mind the following points in terms of the LPAs overall case and in reaching a conclusion and a decision on this appeal.
- As a starting point the proposed development is contrary to the spatial strategy of the development plan.
 - The LPA cannot currently demonstrate a 5-year housing land supply nor a plan period supply.
 - The tilted balance is applicable and consequently the most important policies for determining this application will be considered to be out of date, but the LPA submit, should still carry weight.
 - It is agreed by the parties that because the appeal site is situated wholly within the AONB and is also within the setting of designated heritage assets at Hewlett's' Reservoir, footnote 7 of paragraph 11 of the NPPF is in play.
 - The LPA contend that the evidence supports the conclusion that the policies within the framework and development plan that protect such areas and assets provide a clear reason for refusal in this case.
 - If you are with the LPA on this point the tilted balance will not apply and the appeal should be dismissed because of clear conflict with the policies of the development plan and the NPPF.
 - If you are not with the LPA on this point, and the tilted balance applies, the LPA contend that the evidence still demonstrates that the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF when taken as a whole.

Putative Reason for Refusal 1 - Whether the site should be developed, having regard to development plan policy regarding development on unallocated sites outside the principal urban area of Cheltenham

The Development Plan

7. It is the LPA's case that the proposals amount to a clear breach of policies SP2 and SD10 of the Development Plan. The appellant's do not seek to argue that their proposals accord with the Development Plan when it is read as a whole¹. Although Mr Hutchison then goes on to claim that because the appeal site is located within the administrative boundary of Cheltenham the appeal proposals accord with the overarching strategy of policies SP1 and SP2 of the Development Plan² and when read on its face, there is no conflict with policy SP2 at all³.
8. In closing, it is helpful to step back and look at the spatial policies of the Development Plan and the inter-relationship between policies SP1, SP2, SD10 and the Cheltenham Plan 'as a whole' to see that the conclusions reached by Mr Hutchison referenced in paragraph 7 above are erroneous and the proposals are in direct conflict with policy SP2 as asserted by Mr Instone.
9. It can be seen from Mr Instone's evidence that Policy SP1 identifies the housing requirement for the plan area and disaggregates that amongst the three authorities. The housing requirement for Cheltenham is at least 10, 917 homes over the plan period. This figure is agreed by the parties. It is then the turn of policy SP2 to set out how the homes will be delivered for Cheltenham.
10. The updated Housing Need SoCG at paragraph 2.18 confirms that table SP2a at page 25 of the JCS identifies the sources of supply, which on adoption amounted to 11,092 homes thus exceeding the minimum figure set by policy SP1. In addition to the strategic sites further allocations for the administrative area of Cheltenham were to be identified by the local plan. This task was duly completed and on adoption the Cheltenham Borough Plan (CBP) had increased the identified supply for the JCS plan period to 11,632 homes. The CBP allocations are shown on the proposals map⁴ and the appeal site is not one of them.
11. Mr Instone's evidence also makes clear that policy SP2 recognised that further proposals for development may have to come forward post adoption. With relevance to the appeal proposals Mr Instone referred to policy SP2(8):

"The identification of any additional urban extensions to help meet the unmet needs of a Local Planning Authority must be undertaken through a review of the plan. Any additional site allocations made through a local plan, or any neighbourhood plans must be in conformity with the JCS spatial strategy. Consideration will also be given

¹ David Hutchison POE Para 7.12

² CD E1

³ David Hutchison POE Para 7.27

⁴ CD E2b

to meeting needs in another local authority area where it is clearly established that they cannot be met within the JCS area, or provide a more sustainable and appropriate option”

12. The appeal proposals seek to build up to 250 houses on a green field site adjacent to but beyond the boundary of the Principal Urban Area of Cheltenham. They amount to an urban extension and as such should conform to SP2 (8), but they clearly do not. There is a clear justification for this plan led approach which these submissions will come to later.
13. Mr Hutchison in his evidence attempted to claim that policy SP2(8) is only applicable to sites which were to be identified as part of the partial review under policy REV1 for Gloucester and Tewkesbury and had no applicability to Cheltenham. Unfortunately for Mr Hutchison the policy does not say this, and he could not explain why the policy refers to ‘a local planning authority’ rather than naming the local planning authorities as is clearly the case with policy REV1.
14. Even if Mr Hutchison’s argument were to stack up, which it doesn’t, it is of no help to Mr Hutchison as the only option is then to rely on policy SD10 which he accepts the appeal proposals conflict with.
15. By taking an overview of the relationship between the JCS policies, the LPA submits, it is unclear as to how Mr Hutchison believes that the appeal proposals accord with the overarching strategy of policies SP1 and SP2 and perhaps this is why he ultimately concedes that they do comply with the Development Plan.

The Housing Land Supply, JCS Review and Affordable Housing

16. There is no dispute that the LPA cannot demonstrate a five-year housing land supply. There is also no dispute in respect of the main reason for the shortfall; delay to the progression and delivery of the strategic allocation sites identified within policy SP2. The delivery of other sites is progressing and are currently ahead of their trajectory, however, because the strategic allocations amount to nearly one half of the overall supply the impact of their delay is all the greater. What is not agreed, however, is the amount and duration of the shortfall.
17. You will be pleased to hear that I am not proposing within these submissions to undertake a lengthy analysis of the extensive evidence that was given by the LPA and appellant in respect of the shortfall; the respective position of the parties can be found within the updated housing SoCG. The LPA acknowledge that the shortfall is substantial, and it is agreed that there is a need for housing to address the shortfall.
18. The parties cannot however agree the extent and duration of the shortfall. The LPA has taken a straightforward approach to calculating the shortfall by following the method used in calculating the supply trajectory for the JCS. It is important to recognise that the JCS is adopted policy which was found to be sound. Based on this

approach the current five-year housing land supply is 2.9 years, which does bear some consistency with the so called 'optimistic' trajectory produced by Mr Tiley.

19. Mr Tiley for the appellant's has chosen to produce various calculations based on either the adopted JCS method or just using objectively assessed need. The LPA submit that it is more appropriate to use the approach approved by the plan examiner. That being the case, the issue between the parties is a matter of the timing and number of houses which will be forthcoming from the strategic allocation sites; and in terms of the housing supply, affordable housing, and the weight to be attached to the Development Plan policies. These are the big issues.
20. The housing land supply issue here is not the usual scenario of a lack of sites or potential sites that have yet to withstand the plan making process. The sites exist, have been identified and are allocated and outline and full planning applications have already been submitted within the strategic allocations. The homes will be built it is a matter of when rather than if. Mr Rowley explained that the strategic allocations cross administrative boundaries, are partly on land that had to be removed from the Green Belt and require infrastructure works which has led to delays. However, the delays are being overcome and Mr Rowley advised that the M5 junction improvements were now progressing, and an SPD had been produced for the West Cheltenham Strategic Allocation⁵.
21. The LPA agrees that although there is currently a plan period shortfall due to the delays with the strategic allocations it is important that the plan led approach provided for within the JCS and advocated by Mr Instone is followed. The Cheltenham administrative area is severely constrained in respect of new development. The current urban footprint covers a significant part of the administrative area and virtually all of the remaining undeveloped land is either in the AONB or Green Belt.
22. This tension is acknowledged by Mr Hutchison for the appellants; however, he unfortunately considers the only solution is to develop land within the AONB immediately. Mr Instone on the other hand takes a far more balanced approach and provides that further housing allocations may be on Green Belt land or in fact in the AONB, but, because of the sensitive nature of both these designations a plan led approach is the sensible and sustainable approach. One must not lose sight of the need for development to be sustainable as per the NPPF, as indeed, Mr Hutchison has done by referencing the appeal proposals fit with Objective 8 of the JCS, but failing to reference Objective 4, conserving, and enhancing the environment. Achieving sustainable development is a balancing act which the appellants fail to grasp.
23. In seeking to push the need to develop the appeal site the appellants have sought to portray the "abandonment" of the partial review required by JCS policy REV 1 and their view that the development plan is now 'complete' as their justification.

⁵ CD L5

Whatever adjective is chosen it is contested by the LPA that the partial review was commenced but not progressed. Mr Instone in his evidence provides that this was to allow a full review that was subsequently required by amendments to the NPPF in July 2018. It is important to recognise that the JCS was adopted in December 2017 and the regulations requiring a five-year review did not come into force until April 2018. Mr Instone considers it would have been unwise to pursue a partial review further as it could have been found to be unsound. This was disputed by Mr Hutchison and Mr Tiley; but is it really a serious proposition to undertake a partial review when you are bound to undertake a full review?

24. Despite the propositions of Mr Hutchison, the Development Plan is not complete. Chapter 7 of the JCS contains a review mechanism with supporting commentary which clearly acknowledges that delays to housing land supply are a possibility. Mr Rowley in his evidence made reference to paragraph 7.1.11 of the JCS which is a review mechanism trigger for the strategic allocation sites. Mr Rowley was of the view that had the full review not commenced this clause would have triggered a review following the publication of monitoring data in 2020/21.
25. It is acknowledged that the full review has been delayed however the evidence is that it is now progressing and will be completed. It is not possible to be precise as to when due to the vagaries of plan-making and examination processes, but it is agreed that it will be within the current plan period i.e., some 9 years hence.
26. Affordable housing. There is no dispute with the appellant in respect of the value and need for affordable housing within Cheltenham Borough. Indeed, Mr Instone considers the provision of affordable housing will be of significant benefit in respect of the planning balance.
27. Mr Stacey, for the appellant in his evidence provides⁶ that there is irrefutable evidence of an acute national housing crisis, and it is agreed between the parties that there is an acute need for affordable housing within Cheltenham⁷. However, where the LPA and the Appellant diverge is in respect of Mr Stacey's attempt to portray Cheltenham as having a worse affordable housing problem than other local planning authorities. The evidence provided by Mr Wright shows that this is simply not the case.
28. Mr Wright in his evidence went behind the opening forward of the Council's 2018-2023 Housing, Homelessness and Rough Sleeping Strategy, as referenced by Mr Stacey to explain how Cheltenham Borough Council are tackling the national housing crisis within the Borough. I will not repeat the detail herein except to submit that such a commitment to action is not indicative of an authority that has failed to plan.
29. Additionally, Mr Wright introduced a number of metrics which clearly showed a consistent upward trend in delivery of affordable housing. Mr Wright's evidence

⁶ James Stacey POE Para iv executive summary

⁷ Updated Housing SoCG

also demonstrated how Mr Stacey had significantly underrepresented the level of affordable housing delivery as against overall housing delivery by failing to apply policy SD12 of the JCS correctly. A point conceded by Mr Stacey in Cross Examination. I would suggest this evidence is hardly indicative of a council with a woeful record of delivery of affordable housing. Lastly, Mr Wright provided detail of how the Council is investing in the direct delivery of affordable housing with a potential for 747 affordable homes to be developed on council owned land with up to 372 provided by the Council's own arms-length provider, Cheltenham Borough Homes.

30. The strategic allocations and the Council's acquisition of land within the Golden Valley/West Cheltenham Strategic Allocations show a potential for many thousands of affordable homes coming forward. These are not subject to strategic planning, they are a reality, albeit delayed. However, there is a need now and the planning benefit is significant.
31. The starting point for planning decision making is the Development Plan. At the outset these appeal proposals are contrary to the Plan. The LPA cannot demonstrate a five-year housing land supply which is a material consideration rendering the development Plan policies potentially out of date⁸. This does not necessarily mean they lack weight and circumstances outlined above, it is submitted, warrant those policies still carrying weight.

Putative Reason for Refusal 2 – The effect on the landscape, including the AONB

The Importance of the appeal site

32. The entire application site is within the nationally designated area of the Cotswolds AONB; the eastern and central parts of the site have been within the AONB since its original designation in 1966 with the western part of the site (field 1) being added as a result of the 1990 review.
33. It is important when considering the evidence in respect of the impact of the proposed development upon this designated area to keep in mind the nature and the role that AONBs play in respect of society and the economy. Mr Ryder in his evidence⁹ draws attention to this:

‘An AONB is a designated exceptional landscape whose distinctive character and natural beauty are precious enough to be safeguarded in the national interest. AONB's are protected and enhanced for nature, people, business and culture.’

34. The appeal site is an important site nationally as part of the Cotswolds National Landscape (AONB), but its importance goes beyond this to be important locally in

⁸ CD D1 NPPF para 11

⁹ Stuart Ryder POE para 3.1

respect of the contribution it makes to landscape character and visual quality. Mr Ryder in his evidence explained that the site lies on one of the most distinctive parts of the Cotswolds AONB, the escarpment. The escarpment is in fact identified as one of the special qualities of the AONB in the Cotswold AONB Management Plan¹⁰The escarpment, and thus the site, form part of the attractive escarpment eastern setting to the town of Cheltenham which is recognised within policy L1 of the CBP¹¹.

35. The current appearance of the site is rural in character containing mature trees and agricultural hedgerows which interweave to form the boundaries to pasture fields. The landform also includes well-formed remnants of ridge and furrow fields. All these features add to the landscape value of the site and are in fact typical of the lower and middle escarpment slopes described in the landscape character assessment. The latter point being agreed by Mr Harris in cross-examination.
36. The evidence of Mr Ryder is that these site characteristics add to the importance of the site because they ensure the site provides a visual and physical link between the town and the wider AONB, form part of the scenic views from the Cotswolds AONB out over the town of Cheltenham and add value to the surrounding areas such as Harp Hill and the setting to Hewlett's Reservoir.
37. These factors influence the landscape sensitivity of the site which the LPA consider to be high based on the high landscape value and the site's medium/high susceptibility to change from residential development.
38. The appellants have sought to portray the appeal site as being heavily influenced by built development due to it being surrounded by developed land on all sides and with three of the four sides being residential development. Although the physical bounding of the site by developed land is correct it is important to recognise that the fourth side is that of Hewlett's Reservoir with its covered green roofs, which is itself within the AONB. Therefore, firstly, the appeal site is not an isolated island of AONB it is a contiguous part of the AONB and in visual terms when visible in medium and long-range views the 'green' flow of the landscape is uninterrupted. A point accepted by Mr Harris in cross-examination.
39. In support of their case that the appeal site has lower landscape sensitivity and susceptibility to change the appellants have attempted to claim that the site has diminished landscape value and thus susceptibility due to the more recent construction of residential development at Oakley Grange on the northern boundary of the site on the former GCHQ site. The appellants also sought to diminish the weight of the Landscape Sensitivity and Character Assessment¹² as it was completed prior to the construction of Oakley Grange. However, it was confirmed that the site assessment was undertaken during demolition of GCHQ and the future use of that site was taken into account.

¹⁰ CD J1

¹¹ CD E2

¹² CD J3

40. The appellant's case is that the GCHQ buildings and operations were, somehow, a less intrusive development which was of lower density and would generate less noise and, artificial light impact at night, in comparison with the current residential development at Oakley Grange. Additionally, the appellants have claimed that the advent of Oakley Grange has severed the link between the appeal site and the remainder of the AONB. This is plainly not the case.
41. The LPA in their submission stress that it is important to recognise the following incontrovertible facts; firstly, the former GCHQ was a brown field development so was assessed against a different policy framework and a majority of the GCHQ site was not within the AONB. Secondly, the appeal site was designated in 1966 and 1990 as AONB with GCHQ in situ and it was possible for the site to be removed from the AONB in 1990 but in fact the opposite happened, the western field was included within the AONB. Thirdly, GCHQ Oakley, as it was known, was not a low-key 9 to 5 operation as is evidenced by photographs taken during its last years of operation¹³. Lastly, keeping those photographic images in mind it is obvious that the impact of the residential development of Oakley Grange in replacing GCHQ is not as stark as Mr Harris suggests.

Landscape and Visual harm

42. The evidence of Mr Ryder is that the proposals overall will have a Major/Moderate, Adverse and Permanent effect on the landscape character of the site. Importantly, the associated mitigation proposals neither conserve nor enhance the landscape.
43. In respect of the visual effects of the proposed development Mr Ryder finds that
- Short-range visual effects are considered to be Moderate, Adverse, and permanent
 - Mid-range visual effects are considered to be Moderate to Moderate/Minor, Adverse and Permanent.
 - Long-Range visual effects are considered to be Moderate, Adverse and Permanent.
44. Mr Ryder in providing his landscape evidence helpfully provided comparison tables containing both the positive and negative impacts of the proposed development in respect of landscape character and visual effects.
45. In respect of landscape character Mr Ryder found 4 positive effects and 12 negative effects. These are not repeated in detail herein, but it is clear from Mr Ryder's evidence that the negative landscape effects are not only numerically larger but also of a greater scale or affect the fundamental landscape character of the site. Mr Ryder summarises the impacts at page 31 of his evidence:

¹³ CD J2 Fig 36 & Fig 37

- The overall balancing of positive vs negative effects shows that there would be a total loss of rural character in the developed portion of the Site and a significant reduction in the rural landscape character in the remaining open space.
- There would be a reduction to the quality of the setting to this part of Cheltenham which helps to give the town its distinctive sense of place.
- There is no protection or enhancement of the Cotswolds AONB as a valued landscape as per NPPF §177 and its natural beauty is removed from the whole Site apart from the retention of mature trees in the southern boundary hedgerow.
- The proposed landscape mitigation proposals associated with the main public open space would not mitigate the landscape harm caused by the proposals or conserve or enhance the AONB's character.

46. Similarly with visual effects Mr Ryder finds two positive effects but nine negative effects relating to either short-range, mid-range or long-range views. Once again, the negatives are numerically larger than the positives and are of a greater scale across the wider area of the AONB and the edge of Cheltenham. Without downplaying the significance of visual impact upon the AONB it is important not to overlook the impact of the proposed development on views from the town of Cheltenham to the site as it is currently found on the escarpment. This can be appreciated from the verified views produced by the applicant¹⁴. When questioned about this impact in respect of the appeal site Mr Harris' only response was that there are other views.

47. The detail of those negatives is not repeated herein but Mr Ryder concludes at page 40 of his evidence

- More people will experience the adverse visual effects than the positive ones and the adverse visual effects alter the fundamental scenic quality of the Site and how it relates to its contextual area.
- There would be a reduction to the visual quality to this part of Cheltenham's setting which helps give the town its distinctive sense of place.
- There is no protection or enhancement of the scenic qualities of the Cotswolds AONB as a valued landscape as per NPPF §177 at the Site and as experienced in views from other parts of the AONB.

The Access Road

48. The highway access to the proposed development from Harp Hill is of particular concern in respect of landscape harm and harmful visual effects. The appellants

¹⁴ CD A18 Part 1

accept that the highway access is formed and cuts across the most sensitive area of the site. This can be seen from the original outline masterplan. The exact course and nature of the access road was not clear and was to be confined to a highway 'area'. However, even with this scant level of detail it was clear that the access road was highly likely to have a significant impact on landform and visual effects on land within the AONB. Indeed, Mr Ryder identified three landscape negatives and one negative visual effect within the comparison tables of his evidence.

49. The appellants subsequently produced a revised alternative outline masterplan which shows greater detail in respect of the position and engineering of the access road. The LPA have had the opportunity to comment on the alternative masterplan and consider it now confirms a greater level of harm and impact than what could be ascertained from the original masterplan.
50. The appellant's assertion that any landscape and visual harm can be contained within the site is obviously wrong. Without repeating all of the detail it is clear that the effect of the substantial civil engineering required for the access road will produce a heavily engineered and unnatural landform which will initially perch upon and then cut through the highly sensitive escarpment slopes.
51. In seeking to defend, what is an untenable position, the appellants concede that the cutting of the access road into the natural slope will result in operational phase only, landscape and visual effects, but these will be no greater than those originally assessed. The LPA disagree, there is no clear consideration of cutting or engineered slopes in Application LVIA or ES and it would lead to a permanent, adverse effect to the remnant open space, including the proposed footpaths, and AONB pasture landscape.
52. The alternative outline masterplan confirms the harms identified by Mr Ryder to the landscape and visual effects of the AONB (which were also evident from the original outline masterplan) which go far beyond the site boundary and are adverse and permanent. This fact must not be overlooked in respect of the national policy requirement to conserve and enhance the beauty of AONBs.

Landscape Mitigation Measures and Enhancements

53. The appellant is proposing a number of mitigation measures including a 12m wide native tree belt running alongside the developed area to screen the housing and provide separation between this area and the public open space. The public open space is to be found on the upper slopes to the south of the developed area and is designed to attempt to 'conserve the wider landscape character and scenic beauty of the AONB'. The ridge and furrow features would only be partly retained and so would the mature trees within the developed area and parts of the mature hedgerows across the site. These measures are supposedly designed to counter the loss of the rural character of the site and the loss of openness and loss of visual amenity.

54. Mr Ryder in his evidence explains how these measures fail to achieve this aim. Significantly, for their case, the appellant's claim that any adverse effects of the development are contained within the site boundaries. Mr Ryder's evidence at Chapter 7 explains in detail why this is not the case. Additionally, because the mitigation measures are ineffective the Environmental Statement finding for Oakley Slopes of Permanent Moderate Adverse impact should be considered in this context and not one where the harm is contained within the site and the mitigation measures are effective. At page 48 Mr Ryder summarises the position:

- These mitigations measures do not address rural character change, loss of visible open sloping ground, loss of landscape pattern and cannot be considered as protecting or enhancing the positive landscape character of the Site as part the Cotswolds AONB.
- The described measures do not successfully mitigate the reduction in quality to the setting of the Oakley part of Cheltenham.
- Nor do the mitigation proposals address the change in long range views from the Cotswold escarpment.

55. In addition to the mitigation measures the appellants also propose a number of enhancements the most important of which, in the evidence of the appellant's appears to be the use of the upper slopes of the site as public open space. The open space would have a series of footpaths which would provide improved views to the Cotswold escarpment and will allow access to gain a better view of the listed boundary wall and pavilion at Hewlett's Reservoir. The series of paths will provide a traffic free link between footpath 86 at the western end of the site to further up Harp Hill at the south-eastern corner of the site. The Appellant's consider that the proposed mitigation measures address adverse landscape and visual effects such as loss of openness, the change to the rural character of the site, the relationship of the site to neighbouring areas, the loss of hedgerows and the loss of visual amenity. The LPA submit that this is clearly not the case.

56. Although there are benefits provided by the open space these are minimal. It must be noted that a recreational enhancement is not a landscape benefit and in terms of recreational usage it is submitted that the topography of the site and retained portion of ridge and furrow patterning will limit its use and render it inaccessible to people with low mobility or other protected characteristics. The LPA consider that the enhancements in respect of the landscape are at best minimal and possibly non-existent. It is also of great importance to recognise that the cost of their formation is, too great with wider landscape and visual impacts and wholesale removal of natural beauty in this part of a nationally important landscape. This is not just the view of the LPA but also that of the Cotswolds Conservation Board.

Putative Reason for Refusal 4 – Heritage Assets

Significance of Setting

57. The appeal site lies within the setting of a number of designated and non-designated heritage assets including a number that are considered to be curtilage listed. Apart from the ridge and furrow features within the site which are considered to non-designated heritage assets the remainder of the assets are within or form part of the Hewlett's Reservoir complex which abuts the appeal site to the east.
58. The parties agreed a SoCG on heritage¹⁵ and this identified three areas which remained in dispute. In terms of the evidence given to the Inquiry the focus of disagreement was the significance of the setting to the designated heritage assets and the likely impact of the proposed development on this setting and thus the assets themselves. The Pavilion which occupies a prominent position overlooking the appeal site merited particular attention.
59. The listing of the individual assets provides a brief background to their particular heritage attributes and in respect of the Reservoirs it is their architectural and engineering significance at their time of construction. But also of importance is their group value. In terms of the Pavilion, it is the structure's ornamental nature with picturesque detailing. Mr Holborow agreed that these were the primary reasons for their listing.
60. However, Mr Holborow also considered that the rural setting of the appeal site and the rural vista this provided to views from the reservoir complex towards and over the town of Cheltenham were important, particularly when considering the group of heritage assets as a whole and their role in the social development of the town of Cheltenham. In support of his position Mr Holborow referred to the PPG on Heritage Assets at paragraph 13¹⁶ which provides that setting is not just about views of or from the asset but also other environmental factors and the historical relationship between places. The PPG also provides that the contribution a setting makes to the significance of a heritage asset does not depend upon there being a public right of way or an ability to otherwise access or experience the setting.
61. The appellant's case was focussed on the assets being important due to their individual characteristics or group value as an institutional/industrial complex. However, on cross-examination Ms Stoten for the appellants acknowledged the historical links between the reservoir complex and the town and as well as the appeal site they do contribute to the significance of the heritage assets. Ms Stoten also acknowledged that when viewing the assets as a group their setting was also relevant.

¹⁵ CD C12

¹⁶ CD D2

62. The difference between the parties is the degree of that significance and also the degree of negative impact which the proposed development will have upon the heritage assets. Mr Holborow is clear in his opinion; the historical link between the Reservoirs and the town is of significance to their setting. The reservoirs are high above the town on the rural Cotswold escarpment and supplied the town below. The appeal site is an important part of the rural backdrop to the Reservoirs when viewed from the town and vice versa when viewing the town from the Reservoirs.

The Pavilion

63. The Pavilion is an ornamental structure with picturesque detailing. It stands in a prominent and elevated position overlooking the appeal site and the town. It is visible from Harp Hill. There was much debate about the original function of the structure or whether it had more than one purpose. In many respects that misses the point. It is its setting, as prominent ornamental structure that is important and, consequently, the impact the proposed development will have upon the setting.

Impact

64. Mr Holborow finds that the proposed development will intrude into views from the reservoir complex and will change the character of the appeal site from an entirely rural one to an urban extension that would cover the majority of the site. The tree belt would not overcome the encroaching effect and allied to the other proposed planting will obstruct clear views of the heritage assets from the public open space. This Mr Holborow finds is contrary to Historic England's guidance¹³.
65. In his evidence Mr Holborow outlined the negative impact the access road would have upon the setting of the heritage assets. Without repeating the detail, the impact would include detracting from the rural setting of the pavilion and boundary wall, cutting across the pasture slopes and the ridge and furrow patterning and cluttering the open space with road infrastructure. This impact will stand either with the original outline masterplan or the alternative plan.
66. The appellants claim that the benefits to the heritage assets of the proposal outweigh the heritage harm; these purported benefits as mentioned in Ms Stoten's evidence include removal of vegetation, publicly accessible sequential views and interpretive material. However, the LPA considers these benefits to be minimal and/or coincidental, and not sufficient to outweigh the harm caused by the urbanising effect on the setting of the heritage assets, especially the listed pavilion and listed boundary wall. The magnitude of impacts can be found in tabular form within Mr Holborow's evidence¹⁷. The overall effect Mr Holborow believes is a low to moderate degree of less than substantial harm to the setting of the designated heritage assets together with the erasure of a large area of medieval ridge and furrow patterning upon the appeal site. In terms of the assets individually Mr

¹⁷ CD C16 – See table pages 28-29

Holborow considers the degree of harm to the significance of the pavilion is moderate.

The Planning Balance

The Issues

67. The LPA is concerned with PRfR 1, 2 and 4 and these submissions necessarily focus on those only, however, it is important to note that the rule 6 parties are also seeking dismissal of this appeal in respect of the other PRfRs.
68. Now is the time to marry the evidence to the decision-making framework. Due to the sensitivity of the appeal site this can be a complex process, but I will attempt to keep it simple and straightforward. I set the scene within my introductions, as a starting point the appeal proposals are in conflict with the development plan. However, what weight should be given to the policies within the Development Plan given that the LPA cannot demonstrate a five-year housing land supply. Does the tilted balance apply in this appeal?
69. The LPA's case is that the tilted balance does not apply in this case because having regard to paragraphs 176 (AONB) and 199 (Heritage) provide clear reasons for refusing the proposed development. See **R. (on the application of Monkhill Ltd) v Secretary of State for Housing, Communities and Local Government & Anor**¹⁸. This is because the proposals do not enhance or conserve either the AONB landscape or the designated heritage assets and the harm/less than substantial harm caused by the potential development outweighs the benefits of allowing the proposal. In respect of the AONB landscape there are alternatives to developing the appeal site and the proposals are not in the public interest.

The AONB

70. Section 85 of Countryside and Rights of Way Act 2000 places a duty on decision makers to have regard to the duty to conserving and enhancing the natural beauty of the AONB. Paragraph 176 of the NPPF provides that great weight should be given to conserving enhancing and AONBs where the scale and extent of development should be limited. The appeal proposal is classified as a major development and Paragraph 177 of the NPPF provides that permission should be refused other than in exceptional circumstances and in the public interest subject to assessment against set criteria.
71. The concept of affording great weight to conserving and enhancing the scenic beauty of ANOBs means that, when undertaking the planning balance, the harm attributable to a proposed development has increased significance in relation to the benefits. Materially, at the outset, harm carries greater weight. See the case of **Monkhill**

¹⁸ CD K26 [2021] EWCA Civ 74

above. The LPA submit, that as a matter of planning judgement the benefits do not outweigh the harm; the proposed development neither conserves or enhances the scenic beauty of the AONB.

72. It is also the LPA case that pursuant to paragraph 177 of NPPF neither exceptional circumstances nor a public interest can be demonstrated and consequently the appeal proposals should be dismissed as recommended by this paragraph. In order to demonstrate that exceptional circumstances exist 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,
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

73. Whether or not exceptional circumstances exist is a matter of planning judgement. The LPA's case is that an assessment of the appeal proposals against the criteria is not beneficial to the Appellant's case for the following reasons:

- a) the LPA does not dispute that there is a national need for housing, however, the evidence of Mr Instone is clear that the impact of refusing or permitting the development upon the local economy is minimal and, importantly, the proposed development does not just bring benefits. Constructing a major development of up to 250 houses within the AONB has the potential to harm tourism and will impact on the current setting of Cheltenham. The CP stresses the importance of the Cotswold escarpment backdrop to Cheltenham and the sense of place when promoting the town for investment and visitors. The proposed development is in conflict with policy L1 and has the potential to cause economic harm.
- b) The position of the Appellant's is that there are no 'alternatives' to the proposed development on this site because the LPA cannot demonstrate a five-year housing land supply. Paragraph 177(b) was not fully addressed within the Environmental Statement and Mr Hutchison claims there is no alternative to developing within the AONB. The option for him is development or no development. Paragraph 177(b) is more widely drawn than just looking at alternatives. Mr Hutchison in cross-examination was taken to the proposals map to the CBP¹⁹. The constrained nature of Cheltenham is clearly demonstrated by this but so too is the policy approach to overcoming this containment. Mr Hutchison in his evidence has sought support from the JCS aim to focus housing and employment growth around Cheltenham and Gloucester to justify the

¹⁹ CD E2b

appeal proposal. The proposals map shows the growth is to the west on the strategic allocation sites, not the east, away from the AONB, and this is where future growth will be. As a matter of policy, the preference to removing land from the Green Belt rather than the AONB is clear and is consistent with paragraph 175 of the NPPF. Mr Rowley advised, in his evidence, that this is the starting premise for the current review. This requires a plan led approach which is what the Development Plan requires. Lastly, this is not a case of no sites in the plan but of delay. It is acknowledged by the appellant's that the strategic allocations will deliver but not in line with the original trajectory. The LPA submits it is better to wait and delay than irreparably damage the AONB. As a matter of fact, there are alternatives.

- c) There are detrimental effects on the landscape, this is clear from Mr Ryder's evidence. The harm cannot be contained within the site and is permanent not temporary. The mitigations and enhancements do not moderate this harm and this site is clearly not appropriate having regard to paragraph 175 of the NPPF.

74. The LPA do not consider the exceptional circumstances required by paragraph 177 of the NPPF have been demonstrated. The LPA also consider that it is not in the public interest to permit the construction of up to 250 houses within the AONB given the unacceptable harm this will cause to the landscape and designated heritage assets and when a plan led approach is available and has commenced.

75. Whether or not exceptional circumstances exist and whether permitting such a development is in the public interest is of course a matter of planning judgement. The appellant has produced a number of appeal decisions where either the lack of a five-year housing land supply and/or the need for affordable housing can amount to exceptional circumstances. The LPA does not contest that such need can amount to exceptional circumstances, but it is also the case that the lack of a five-year housing land supply or an acute need for affordable housing is not unusual and therefore not an exceptional circumstance, such as in the New House Farm, Horsham appeal²⁰. None of the appeal decisions produced by the appellants are consistent with the facts in this appeal, indeed one even included the provision of care facilities²¹. None of the appeals where the lack of a five-year housing land supply or lack of a plan period land supply amounted to exceptional circumstances featured significant housing allocations in an adopted plan.

Heritage

76. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that:

'In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the

²⁰ CD K43

²¹ CD K17

Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.’

77. It is accepted by the Appellant’s that the proposed development causes less than substantial harm to the designated heritage assets²².
78. Paragraph 202 of the NPPF provides “Where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use” and in weighing that harm paragraph 199 of the NPPF provides “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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”.
79. A balance must also be struck here too. The LPA submits that in undertaking that exercise, at the outset the competing interests of conservation of heritage assets and public benefit are not equal. There is a strong statutory presumption against development which neither enhances nor preserves designated heritage assets. See the case of **East Northamptonshire DC v Barnwell Manor Wind Energy**²³. In the case of **R. (Forge Field Society) v Sevenoaks DC**²⁴, Lindblom J, provided the following analysis at paragraph 46 of his judgment: ‘When an authority finds that a proposed development would harm the setting of a listed building or the character or appearance of a conservation area, it must give that harm considerable importance and weight’.
80. The issue of relative weight to harm and benefits in respect of development affecting a listed building was also considered in the case of **City & Country Bramshill Limited v SoS, Hart District Council, Historic England and the National Trust**²⁵. Whether or not the benefits of a development are treated as also carrying great weight is a matter for the decision maker. It does not automatically follow that they do.
81. A finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted, it is not just a material consideration. Although, it is not irrebuttable. This is the starting point for the balancing exercise required by Paragraph 202.
82. On behalf of the LPA in his evidence Mr Instone finds that the public benefits of the proposal do not outweigh the harm to the designated heritage assets and the reasons for his conclusion appears in the following section.

²² CD C12

²³ CD K24 [2014] EWCA Civ 137

²⁴ CD K33 [2014] EWHC 1895 Admin

²⁵ CD K34 [2021] EWCA Civ 320

Benefits and Harms

83. Whether or not the tilted balance applies it is not contested that the LPA cannot demonstrate a five-year housing land supply. As such, there is also no contest that the provision of market housing and affordable housing is a benefit. The difference between the parties is the weight these benefits attract in respect of the planning balance. The appellant's claim that the benefit is substantial whereas the LPA consider it to be significant.
84. In terms of economic benefits, the differences are also not great. The LPA consider that they are moderate and the appellant, in sub-dividing the elements considers them to be moderate/significant.
85. There is, however, far greater difference between the parties in terms of the ancillary benefits or enhancements claimed by the appellants if the development were to proceed. Briefly, these benefits relate to the provision of public open space, the ability to gain closer views of the designated heritage assets/escarpment and the removal of plant growth shielding parts of the Hewlett's boundary wall from view. The LPA consider these benefits should attract only limited weight on the basis that the public open space has a steep gradient and will be severed in places by the access road and its cutting. The removal of brambles and creepers from a boundary wall so that it is 'better revealed' has little impact on the designated heritage assets and therefore should only attract limited weight. The commuted sum for maintenance is also of little significance, particularly as there is no detailed survey identifying particular needs.
86. There is also a difference in respect of the adverse impacts of the proposed development. The adverse impacts of the development upon the AONB and designated heritage assets must be given great weight; this is what national policy requires. It is the LPAs case that there is high/moderate, adverse, and permanent harm in respect of landscape and visual effects and low to moderate less than substantial harm to the designated heritage assets; these harms carry great weight.
87. There is also significance difference between the parties in terms of the conflict with the Development Plan. The Appellant believes this to be limited whereas the LPA consider the conflict to significant and not in the public interest; the basis for this position is the harm in not following the plan led approach. Mr Instone in his proof of evidence²⁶ at summarises the position thus:

'In my opinion this approach [plan led] may lead to the removal of land from the Green Belt, housing development in the AONB and/or development within and outside the Council's administrative boundary. However, the plan-led approach allows for detailed consideration of alternatives through an evidence-based approach and the Plan will demonstrate how it has addressed relevant economic,

²⁶ CD C16 see paras 4.27 and 4.33

social and environmental objectives whilst avoiding significant adverse impacts on these objectives wherever possible.’

‘it is significantly harmful to the public interest for the requirements of the JCS and the plan-making approach to be circumvented, and for major housing development to be delivered within an Area of Outstanding Natural Beauty without a consideration of alternatives through an evidence-based system taking into account the considerations of all stakeholders including the public to achieve a sustainable pattern of development.’

88. The LPA maintains that the Development Plan policies when read as a whole carry weight, even though the LPA cannot demonstrate a five-year housing land supply. Clearly, if you find that the harms to the AONB and designated heritage assets do not amount to reasons to dismiss the appeal then the tilted balance will apply, and the most relevant policies of the Development Plan will be considered to be out of date. This does not mean, however, that those policies will carry no weight. The policies can still attract weight and the weight to be attributed to them continues to be a matter of planning judgment. See **Gladman Developments Ltd v Secretary of State for Housing Communities and Local Government**²⁷.

Conclusion

89. Although there are benefits from the development, the delivery of housing and associated economic and social benefits this is a case where the tilted balance is not in play. The identified harms to both the Cotswolds AONB and designated heritage assets, both individually represent a clear reason why planning permission should be refused. There are no exceptional circumstances in this case and nor is a public interest in allowing the appeal. The opposite is the case.
90. Additionally, it is also the case that the identified harms and the conflict with the development plan point clearly towards a refusal to such an extent that, even if the presumption in favour of sustainable development were engaged, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.
91. The LPA respectfully submit that planning permission should be refused, and the appeal dismissed.

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21st February 2022

²⁷ CD K55 [2021] EWCA Civ 104