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LAND AT OAKLEY FARM, CHELTENHAM

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

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1. Introduction

1.1. At the outset of the inquiry, the Inspector identified five main issues for the determination of the appeal:

1.1.1. whether the Site is an appropriate location for development with regard to development plan policy in relation to unallocated sites outside the Principal Urban Area and housing land supply;

1.1.2. the effect on the character and appearance of area including landscape effects, the Site as AONB and whether exceptional circumstances exist and whether the proposals are in the public interest;

1.1.3. the effect of the proposals on heritage assets;

1.1.4. the effect of the proposals on highway safety and whether any residual impacts would be severe;

1.1.5. whether the proposals adequately provide for education and libraries for future residents and whether requests for additional contributions are lawful.

1.2. The Appellant's submission is that consideration of all the above issues tells in favour of the grant of permission. Overall, there is a chronic need for additional market and affordable dwellings in this area. The existing plan proposes that new dwellings should be in Cheltenham Borough and cross-boundary urban extensions, but the Council has failed to identify enough sites and accepts through policy SP2 that one must look beyond the existing PUA. The

proposals are plainly in conformity with the broad spatial strategy in this regard. Cheltenham is right at the top of the settlement hierarchy along with Gloucester City and is intended to be a focal point for sustainable development[1] yet it is substantially constrained by Green Belt and AONB designations and suitable sites on the outskirts are rare. Rarer still, are sites which are already substantially surrounded by built form such as the appeal site. The appeal site is therefore an obvious and logical extension to Cheltenham and its release would assist with meeting an identified need at a time when the plan-led process has failed and there is no evidence that the need will be met in full within the current plan period.

2. Landscape

2.1. The site visit will reveal a number of comparatively straightforward and obvious things about the appeal site and its relationship with the town of Cheltenham and the wider countryside which lies to its east. Firstly, the site is within a comparatively short distance of services and facilities, such as bus routes and obviously the local Sainsburys – it is locationally an obvious site for the sort of development proposed; secondly, it is heavily influenced by existing development which wraps around it – indeed if one includes the wall and the reservoir it is literally surrounded by development; thirdly it is sloped which means that there are views of it, over it and from it to the wider town and countryside which includes significant tracts of the wider AONB. This has led to a careful assessment of the capacity of the site for built development and has led to the overall parameters of where such development is proposed. A sensible planner's eye, it is firmly submitted should lead to the obvious conclusion that the site plainly has capacity for residential development upon its lower slopes provided that it delivers appropriate linkages to the existing town and that its upper slopes are kept free from built development but become available for public access.

2.2. The existing site is heavily influenced by the built form which surrounds it on 3 ½ sides.[2] This has the effect of rendering the site as a whole, and particularly the lower northern portion, much less sensitive to the proposed development. It also makes the site highly unusual in the AONB[3]. Even Mr Ryder (SR) and Mr Mills agreed it was a highly unusual set of circumstances

[1] JCS Policy SP2(1)

[2] Resulting in relative tranquillity and dark skies not being as strong in this location as they would be in more remote locations within the AONB. This point reflects Mills statement in 2.3.1 of his closing.

[3] If one ever wanted evidence of a daft point being run at an inquiry which evidences the paucity of real-world impacts and the overstating of a case then it is to be found in para 73 of the Council's closing, supported by Mr Mills which appears to seriously allege that there will be an adverse effect on tourism in the Cotswold AONB if this appeal is allowed. Such an argument is untenable and wholly unevidenced. Little wonder that the Friends put the point more gently by alleging that the scheme wont further tourism – testing the scheme against an objective which has never been professed.

on the edge of the AONB to be quite so surrounded by development and he could not name another site in the same situation[4].

2.3. Mr Harris's (PH) evidence is that the site is plainly "not an exemplar" of the landscape character, a point which SR also agreed in cross examination was the case. Nor does the site form part of a quality transition between the town and the wilder and more tranquil landscape of the upper scarp slopes. PH described the site as "quite unusually different" from much of the escarpment slopes, which do provide this transition[5]. The wider escarpment is a sparsely settled, highly tranquil landscape that forms a transition from the agricultural landscape of the vale to the open grassland of the upper escarpment. The appeal site adds little to this transition and is not greatly representative of the Escarpment or Oakley Sloping Pasture landscape character types in that regard. Indeed, in a literal sense the nearest upper slopes beyond the site itself are developed by the residential development along and in depth behind Harp Hill.

2.4. The LCA describes the Pasture Slopes landscape character type as being 'sparsely settled' and that "roads are not common"[6]. Plainly the appeal site does not sit well with such a description, being adjacent to a settlement edge and bounded by Harp Hill which on any view has an influence upon the Site. The LCSCA's assessment[7] of the site as highly visually sensitive in its entirety is therefore deeply questionable.

2.5. Whilst it is within the AONB, in reality the site sits at the boundary of the AONB between the escarpment and the settlement edge of Cheltenham and displays few of the special qualities of the AONB. PH's evidence, and agreed by SR in cross examination, is that the site contributes to only two of the identified special qualities of the AONB[8] - (1) it forms part of the escarpment and (2) it contains ridge and furrow. Even this second quality is open to question as the 'special quality' is defined as "*significant archaeological, prehistoric and historic associations dating back 6000 years*"[9] whereas the Site provides only a remnant of ridge and furrow divorced from the historic settlement with which it was presumably once associated and cannot sensibly be described as a "significant association". On the evidence ridge and furrow is ubiquitous at the edge of Cheltenham and this element has absolutely no characteristic of note that would warrant its preservation.

[4] DH noted one example in XX. That was the site at Bourton on the Water where Inspector Felgate granted permission for 100 dwellings in the AONB. That the site was surrounded by housing on 3 sides and a road on its other side [K37 paras 69-71]
[5] PH XIC day 3
[6] J10 p.1
[7] J3
[8] PH POE para 6.9 and Table 1
[9] CD H5 p.18

2.6. Despite the effort that has been put into the exercise especially by Mr Mills, the inquiry has precious little evidence as to why the Site, and field 1 in particular, was included within the AONB. However, the references we do have are not supportive of SR's assertion that it must have been included in 1990 because it "*remained unimpaired by its proximity to urban development*"[10]. The historic mapping shows a potential re-draw of the AONB boundary to include all of field 1 to correspond with the realignment of footpath PROW 86 from the centre of field 1 to the western edge[11]. This suggests that at least the western part of field 1 was included in order to realign the boundary along a sensible linear feature on the ground rather than based upon any assessment of this part of the site's particular intrinsic value. It will of course be remembered that at that time GCHQ had a significant part of the operation adjacent to the site, rather than it being bounded, as now by suburban development.

2.7. Regardless of the reason for inclusion within the AONB at that time, therefore, since its inclusion and the 1990 review, there has been very significant change to the Site's surroundings. The surrounding land has been increasingly densely developed with a correspondingly greater urbanising effect on the experience of the site:

2.7.1. The GCHQ development was plainly at a much lower density and extent than the housing site which currently sits to the north and east of the Site. When used by GCHQ the site was occupied by fewer buildings at a lower density and many at a lower height.

2.7.2. Significantly, the land to the east of the site was occupied by a car park and is now occupied by two storey housing, which plainly influences the eastern part of the appeal site.

2.7.3. The housing to the south of Harp Hill has also proliferated over the last several decades and is now much more than just ribbon development and instead, is a consolidated part of the conurbation which has a significant influence on the way in which the Site is experienced.

2.8. The existence of the reservoir complex to the east has been a constant as Cheltenham has inexorably crept towards it over its operational life; however, this is an industrial land use and has always represented a break between the site and the wider agricultural, rural character of the remainder of the escarpment. It is telling that within the site itself this break is evident as

[10] Per para 58 of core doc J22
[11] CCB POE Appx 4

a result of a substantial brick wall and the obviously engineered structure of the reservoir itself (with a pavilion on the top). It is only from elevated land to the SE where such obviously engineered and manmade features are less evident that any sort of case of there being any sort of link could be made in cross examination – and then only from photographs showing the site at a distance. At better resolution from the human eye and viewed in 3 dimensions, even from such viewpoints the break with the wider countryside is still more than evident.

2.9. The result is a site which is all but surrounded by development and which has a very much weaker connection to the AONB than it did at the point of inclusion within the designation. The attempts to argue the contrary, with respect, are deeply unconvincing.

2.10. This is particularly the case for the lower slopes of the site, which is where the built development is proposed, which are weakly connected to the wider AONB as views to the wider escarpment are reduced or lost in places[12] and the site is very heavily influenced by adjoining development. The upper slopes do retain more visual connectivity to the AONB and for this reason, the Appellant's indicative masterplan responds to this sensitivity by focussing development on the lower part of the Site and facilitating access to it.

2.11. The LPA consistently failed to engage with this finer grained assessment and Mr Ryder persisted in arguing the unconvincing point that the site "read as a single unit". Albeit that during cross examination, he agreed that "the fields within the site are different" and that the different sections of the site have different characters. That being so, it makes no sense to continue to assert that the site should be read as one unit; the upper and lower portions of the site not only have different characters, they have different susceptibility and sensitivity to built development. In the end, SR did agree that if the proposed development did come forward, it would be better on lower slopes than upper slopes which has to be correct and demonstrates the fallacy of his earlier argument as to the site being all one and the same.

2.12. SR also agreed that the yardstick by which to judge any harm arising from the proposals was harm to the escarpment and harm to views to and from the AONB. In this regard, SR agreed that the change brought about by the proposals could be described as introducing more development into an already developed view and that the additional development would be seen in context of other development including Oakley Grange. PH described the change in views from the AONB as a slight loss of pasture and replacement with a "well treed extension

[12] PH oral evidence

to the settlement"[13] and that between Y1 and Y10 this amounted to a minor change as the landscape is already characterised by well treed settlement. This conclusion is compelling.

2.13. In terms of views to the AONB, the Friends and CCB focussed on views from Harp Hill and argued that views of the higher scarp would be blocked by the development or by planting. PH's professional view was that the screening belt would be unlikely to screen higher views, this can be tested by considering PH's Figure 18 at Y10 where the existing oak trees plainly do not screen views. In any event, the landscaping scheme can control the height of vegetation to ensure views will remain possible over the trees planted in the screening belt. In terms of views from Harp Hill, much depends upon the management of the hedge on Harp Hill which can be subject to a landscape management plan and kept short if that is the desire. Indeed, there is the very real opportunity to open up views along a much wider length of Harp Hill, as well as from within the site itself. The paradox of the objector's case is that the loss of views down the slope of fields significantly influenced by existing development will enable much more extensive views of the wider escarpment from within the site and along Harp Hill[14].

2.13.1. There is nothing about the development which will of necessity block views from this location., to the contrary it has the potential to significantly expand the opportunity for views. Consideration of Fig 8 within the Friends' landscape evidence[15] amply demonstrates that existing trees on the site do not block views and the Inspector will appreciate on Site that views can be maintained. Further, SR agreed that if the appeal is allowed there will still be significant views of the escarpment from Cheltenham and around the site and the proposals would not remove all views.

2.14. Mr Mills accepted that his case was not significantly different to the case advanced by the LPA, and he didn't take exception to the points agreed between the Appellant and LPA within the SOCG on landscape. After being at pains to argue that the surrounding land uses had no real influence on the site in his written evidence[16], he eventually agreed in cross

[13] PH XIC day 3 AM

[14] It is an odd submission on the part of the Council to say at para 56 of their closing that within an AONB that creating an area within which extensive views of one of its key attributes (the high escarpment) will be opened up to public view is not a landscape benefit. Contrast paragraph 2 of the Council's closing which accepts the benefits of views from within the higher part of the site to the higher escarpment – with how those views are presently experienced – i.e., as an incident for motorists on Harp Hill, or for the brave pedestrian walking the same road without the benefit of a pavement. It is, with respect nonsense. And as to the Friends point that these are not 'new' (§100) that is correct – but in future the availability of views to the escarpment along Harp Hill will no longer depend upon a given tenants management of hedges but will be available to all in generous well managed open space. The comparison is an obvious betterment of the experience of those views from an area of POS within the AONB

[15] C19-A

[16] CCB POE para 9.3.2.7

examination that the site was influenced by adjacent land uses i.e., residential development and that this was not a positive influence on the site.

2.15. The tree planting proposed by the scheme part way down the slope and close to the residential development will be a great benefit in terms of screening views of the development from Harp Hill and softening the settlement edge in this location. The retention of the majority of the mature site trees within the scheme will similarly assist with filtering views of new development in longer distance views from the Cotswold escarpment.

2.16. Overall, the presence of substantial existing development, the loss of connection between the Site and its surrounds and the lack of representativeness of the Site itself mean that the Site can accommodate development without giving rise to significant harm, and especially not to the wider AONB. These elements, coupled with the proposed masterplan which responds to the more sensitive nature of the southern part of the Site together mean that the Site can be brought forward for development without undue harm to the AONB. Indeed, PH's professional view is that the landscape harm taken overall to relevant receptors is minor.

3. Heritage

3.1. The Council's fourth reason for refusal refers to an "*unacceptable [sic] harmful impact on the setting of the heritage assets within Hewlett's Reservoir*". It is axiomatic that impact on the setting of a heritage asset is a matter of indifference unless that effect impacts on the significance of the asset itself – however it has been understood throughout by the Appellant that this was what was intended by the RfR. Nonetheless there can be no doubt that the resolved position of the LPA is that it is the impact on the significance of the assets within the reservoir complex which were at issue, and yet by the time of the inquiry, this had expanded to encompass WH's view that the ridge and furrow, as a non-designated asset, would also be lost. This mission creep has also then affected the response to the revisions to the masterplan[17] but should not mask the fact that the resolved concern of the LPA relates to the reservoir and not the otherwise locally ubiquitous, undesignated and unremarkable ridge and furrow.

[17] Paragraph 49 of the Council's closing alleges that the amended masterplan gives rise to greater harm than the original. This is patently wrong and can only have been written without properly considering the montages which accompanied the revised masterplan, which show that the proposed development, especially after mitigation has matured will be readily accommodated within the landscape.

3.2. Turning then to the reservoir complex, the listed assets include the pavilion, two listed reservoirs and listed boundary wall.

3.3. The inquiry understandably focussed, rightly, on the Victorian pavilion structure which can be clearly seen from the appeal site. It sits on top of the heavily engineered landform comprising the largest surviving reservoir and from off-site it is an interesting feature in the landscape whose function and association with an underground reservoir may not be readily apparent to those who glimpse it across a field gate or through distant views from footpaths.

3.4. However, were the appeal to be allowed the most obvious consequence would be that it would be exposed to far greater opportunities to be seen and to be seen in context. Whether from the new access road from the south, the network of paths or the public open space – the pavilion will become obviously and publicly visible in its context -i.e., sitting atop the underground reservoir beyond the listed boundary walls and alongside the surviving elements of the complex. The walls will be cleared of vegetation and if appropriate made good, but would further emphasise that the pavilion is an obvious aesthetic marker for an almost forgotten past which facilitated the growth of Cheltenham in the second half of the nineteenth century. Better revealing the wall, the reservoir complex and views of the pavilion are a seriously important benefit of the proposals.

3.5. Viewed in that context, the difference between the parties was somewhat odd. Rather than focusing upon the fact that the proposed housing has been carefully designed to ensure that views to and from the pavilion were largely unaltered and that views across to the town over a largely undeveloped foreground are preserved; instead, undue focus was directed as to what the pavilion actually was. As to that GS's firm view is that the pavilion was designed to be looked at rather than looked out from and accordingly, the benefits of opening up views to the pavilion are weightier than any harm caused to views gained from standing inside it.

3.6. GS's view in this regard has to be right:

3.6.1. The architectural treatment of the building is all on the outside rather than the inside including fish scale tiling, finials and colonettes;

3.6.2. Whilst there are 7 windows, they are not large picture windows and there is no particular framing of views which are reasonably restricted inside[18];

3.6.3. The views gained from it are not designed views. Indeed, the views aren't especially clear unless one is almost pressed up against the windows;

3.6.4. Its location fits with the likelihood of it being used as a valve house; Mr Harvey gave evidence that a pipe ran underneath the pavilion, the building is strikingly similar to another Victorian octagonal valve house at Northfields Reservoir, Frankley[19] and Mr Harvey also gave evidence of later use as an office.

3.6.5. The listing description refers to it as "probably a valve house"[20].

3.6.6. The logic of the first edition plan is that it was associated with valves as part of a walk from the caretakers house around the reservoirs – presumably to regularly check that all was technically well.

3.7. The available evidence therefore overwhelmingly points towards a functional use of the pavilion, possibly as a valve house, but certainly not as a decorative summer house primarily intended to be enjoyed from within. As such, its significance does not primarily lie with views out from it, but rather with views to it. The benefit of opening up such views to it is therefore a greater contribution to significance than any harm caused by encroachment of development within views out from the pavilion.

3.8. The contrary stance --- of a small house for a handful of Victorians to shelter from the rain whilst promenading around the reservoir is a romanticised construct based upon little more than a couple of newspaper articles that don't actually say that. Presumably those advocating for such a purpose are motivated by being able to point to the prospect of seeing some houses from one of the windows which on their thesis would be a designed view.

3.9. With respect, very little turns on the purpose of the pavilion since even if it was used as a summer house, then so what? This conclusion doesn't significantly increase the supposed harm. Even as a summer house its primary purpose would still have been that it was one designed to be seen rather than one designed to see things from. The point therefore remains that there is greater benefit in opening up views to it than there is harm in impinging in views from it.

[18] GS plate 11 POE p.23
[19] GS Plate 10
[20] H13

3.10. Nor does the site's current agricultural character add particularly to the significance of the asset and the change in character from agricultural to part open space and part residential is change within the setting but not harmful change. The reservoir's location was chosen based on geology and landform and its position between the springs serving the reservoir and the users of the water in Cheltenham; the adjacent field is not part of the reservoir's function or design. Accordingly, change within this part of the setting cannot properly be equated with harm.

3.11. In terms of the scale of effect on views from the pavilion, the development will retain views to Cheltenham, and the retention of such a visual link is conceded to be part of the building's significance – but is in fact retained.[21] The view will change to a degree (albeit at the edge of the view) but the context for the view is a view out from an industrial complex. The notional viewer can gain views of the escarpment which aligns with the purpose of locating the reservoir in this position[22]. As GS stated, the views that remain will enable the viewer to appreciate the link to Cheltenham, this will remain. The views being impinged upon do not undermine the link or the appreciation of this but instead the only loss is to glimpses between the trees. In short, legibility will be retained but small glimpses will be lost[23]. Further, the LPA can keep tight control over retaining views to Cheltenham at RM stage and the proposed planting scheme can be designed to preserve views, as confirmed by GS in her oral evidence, and confirmed by subsequent visualisations of the road.

3.12. Overall, GS's assessment of less than substantial harm at the lowermost end of the scale is patently to be preferred. Assertions by WH and the Friends of any greater degree of harm are largely based on an overstatement of the significance of views out from the pavilion, and an overplaying of effects. WH also failed to take into account the heritage benefits of the

[21] In their closings (para 11), FOFPS state that the views presented in the photomontages will be further constrained by the trees continuing to grow. This matter will be managed by the selection of appropriate tree species, and will be subject to management. It is of course right that there will be a change in the view of and from the Pavilion – but a brief perusal of the maps for the last 150 years shows that the context of the reservoir complex has changed every decade since it was built. Change of itself isn't to be equated to harm to the significance of the asset. To the contrary change within its setting is just that change. GS properly identified the extent to which the setting contributed to assets significance and preserves that (i.e., views over the site to Cheltenham).

[22] In Para 62 of the LPA's closings, they state "*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*." As the appeal site lies between the town and the reservoirs, this does not make sense. Insofar as it is saying it is part of the foreground then that relationship is maintained.

[23] GS re-ex day 6 PM

scheme which, like any harm, should be afforded considerable importance and weight[24]. Little wonder that all of the principal parties opposed to the scheme sought to strengthen their otherwise weak heritage case by focusing upon the ridge and furrow – much of which can be retained anyway.

3.13. The pavilion will be very visible from the appeal site and the views gained will enhance the appreciation of the pavilion and the complex as a whole. GS's evidence was that the new views available will "greatly assist in group value" and "bring it all together" as a legible complex[25].

3.14. As for the listed boundary wall, the development will not cause any harm to the significance of wall and instead only benefits result. The walls are listed alongside the gate piers and gates, the asset is therefore all three elements together and the architectural treatment of the gate piers show that the gate piers and "the asset" was designed to be viewed and appreciated from primarily Harp Hill. The agricultural nature of the site does not materially contribute to the significance of the walls and its loss would not equate to harm. Instead, the undeveloped southern portion does contribute to the setting in that it allows for the walls to be appreciated. As such, the site makes only a small contribution to the setting and given that the southern part of the site will remain undeveloped and will allow for increased public access, the scheme better reveals the significance of this part of the listed wall and has no effect on the gate piers and gates.

3.15. In a Kafkaesque moment the inquiry was treated to much time being spent on the meaning of the term "belie", used within the listing description. Treated, because of the obtuse interpretation being placed by CCB upon ordinary, albeit somewhat antique phraseology. In short, GS's evidence is compelling on this point. If the term is intended to mean an architectural deception, then it is not a very good one; the crest of the waterworks is very visible on the gate piers[26] and it is easy to see the industrial nature of the complex from external viewpoints.

[24] The LPA's Closings appear to present Mr Holborow's assessment as one of an 'overall effect' (para 66), taking into account the benefits of the scheme. It was, however, clear from Mr Holborow's XX that he had not taken heritage benefits into account when making his assessment.
[25] GS re-ex Day 6 PM
[26] GS POE p.35, plates 19 and 20

3.16. WH also brought into consideration the ridge and furrow on the appeal site as a non-designated asset despite this not being part of the LPA's reason for refusal, nor listed in the statement of common ground as an issue between the parties.

3.17. First, it is agreed that the ridge and furrow under the developable area would be lost. However, it is not necessary to lose most of the ridge and furrow to the south of the site where the public open space will be located. It is entirely possible to design a low impact open space layout which would preserve the ridge and furrow and allow this to remain legible to existing and future residents. Accordingly, the extent of ridge and furrow will be reduced but the legibility of the non-designated asset would remain[27].

3.18. Second, in terms of the significance, WH agreed in cross examination that ridge and furrow was a common feature in this part of Cheltenham and particularly on the escarpment and that the significance lay "close to the bottom" of the scale. This has to be right – it is agreed that the remnant of ridge and furrow within the site is divorced from the historic settlement from which it was presumably once associated. Further, it should be noted that merely because the site sits within the AONB does not affect the significance of the ridge and furrow as a non-designated asset. As GS explained, Turning the Plough sets out a methodology for assessing the significance of ridge and furrow and does not advocate for a higher score based on landscape designations.

3.19. In overall terms much time was spent in the early part of the inquiry on picking apart the minutiae of the heritage evidence – but in reality, the effects upon designated assets that arise include substantial benefits as well as some minor impacts – which are outweighed by a country mile by the benefits of the proposals. And the effects of the non-designated assets oughtn't to have detained the inquiry beyond a footnote.

4. Housing Land Supply

4.1. The starting point in relation to housing land supply is that the LPA rightly acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites, and that there is an acute shortage of affordable housing. The issue between the parties is therefore one of extent of shortfall in both instances.

[27] GS oral evidence

4.2. The Council's case changed considerably in examination in chief from any of the written documents before the inquiry, from concessions that ought to have been made before the LPAs HLS proof was written but were welcome, nonetheless. Helpfully, an updated SOCG on housing now sets out the new position of the Council after having departed substantially from their own written evidence and recently published housing supply statement. The SOCG shows that the LPA concedes that there is a much greater shortfall against the minimum requirement of Government and its updated position is that it can only demonstrate a 2.9-year supply of deliverable housing. And that based upon making somewhat heroic assumptions based upon NT's approach – much of which was conceded as realistic.

4.3. The Council's case appears to be that, notwithstanding the agreement within the statement of common ground that no weight can be afforded to the JCS review, that the Inspector can nevertheless have some comfort that the JCS review will help at some point and in the meantime the large allocations may deliver something. The logic of such a stance is difficult to follow:

- there is no 5YHLS;
- there is a substantial shortfall in the 5YHLS;
- the emerging JCS hasn't actually emerged;
- no allegation of prematurity is being made as the JCS is nowhere near a stage where it attracts weight;
- there is a plan period shortfall which is huge;
- the borough is one that is substantially constrained by highly restrictive land use policies;
- the only way to address the shortfall in the short to medium term is to grant PP on sites which aren't presently allocated (since the allocations aren't delivering at anything like the speed that they were expected to).
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Thus, the LPA's case is that the plan led system isn't working but somehow PP should be withheld for development which is patently needed because one day the plan led system will rescue the situation. In opening this was described as Micawberesque planning – on reflection it is the land use planning equivalent not from the pen of Charles Dickens but Hans Christian Anderson.

4.4. It is a stark and sad fact that, at the time of writing, the strategic allocations in the 2017 adopted JCS and the more recent allocations in the Cheltenham LP haven't yet contributed anything to the needs of the Borough. Not a house, let alone an affordable house, not even a tent – nothing to address the acute accommodation needs of the population of Cheltenham[28]. And whilst those opposed to this scheme have been vocal in their opposition – the Inspector should be mindful that those who are actually in need of housing, especially affordable housing are rarely given a voice at inquiries of this nature. No doubt they are too busy dealing with their daily lives and can't afford the time to oppose change for its own sake.

4.5. In relation to shortfall and failure to deliver Mr Rowley (JR) agreed that:

4.5.1. Both the previous SOCG and Core Document F8 show incorrect numbers for housing supply and shortfall;

4.5.2. that the position in relation to the deficit in supply is "serious";

4.5.3. the previous JCS review took three years from preferred options to submission and six years between preferred options and adoption;

4.5.4. the JCS review evidence currently has not looked at AONB land for strategic allocations;

4.5.5. Green Belt releases are "inevitable" as part of the JCS review;

4.5.6. Mr Instone is right to consider that AONB release (for strategic sites) could also be needed to be considered as part of the JCS review[29].

4.6. The position is therefore that there is a serious, substantial shortfall and the authority is a very considerable way off a plan-led response. Even when the LPA does reach the adoption of a new plan, this will "inevitably" include significant Green Belt release and potentially AONB land, noting the requirement for the LPA to demonstrate exceptional circumstances for doing so in both instances.

4.7. Notwithstanding the LPA's acknowledgement of a substantial shortfall, the Appellant's evidence is that this shortfall is even more severe:

4.7.1. Even the woeful delivery agreed by JR was actually based upon an assertion that the large sites (West Cheltenham, NW Cheltenham and Leckhampton) will deliver in line with Mr

[28] At para 2 of its closing the Friends contend that the reason for the delay is works of improvement to J10 of the M5 have now been overcome. With respect that is inconsistent with the Appellants and the LPA's evidence – there is no planning/DCO application let alone an implementable consent. The works will need the acquisition of third-party land for which there is not a CPO in place and the scheme remains essentially stalled. One admires the Friend's optimism but on the evidence before this inquiry it is no more than that – land W and NW of Cheltenham remains a long way off delivering housing to meet an immediate and substantial need.

[29] Indeed, the Friends now accept that non-strategic sites may need to be released in the AONB through the JCS Review [para 93].

Tiley's (NT) "optimistic trajectory". That trajectory is based upon the seminal Lichfields evidence and assumes delivery in line with the fastest strategic sites to deliver across the country. In encouraging an acceptance of this trajectory, JR asks the Inspector to believe that the three Cheltenham sites will come forward faster than the average but has no "clear evidence" for demonstrating any delivery let alone why it would be faster than average delivery.

4.7.2. In relation to West Cheltenham, no planning application has yet been submitted and the Inspector therefore requires "clear evidence" that units can be expected to be constructed within five years. No such evidence exists.

4.7.3. In relation to Leckhampton, whilst an application has been submitted it has not been determined and as NT sets out in his written evidence, there is an outstanding objection from Natural England and season-specific survey work needs to be re-done[30]. Even if one assumes an immediate grant of planning, based upon the Start to Finish Report, first completions wouldn't be expected until summer 2023.

4.7.4. There is no extant outline consent for North West Cheltenham. An application has been submitted but has not been determined and there is no date for when the application is due to be considered by the planning committee. Again, there is no clear evidence of delivery on the NW Cheltenham site as a whole. The LPA rely on the full partial application in for North West Cheltenham but that has a significant objection from Bloor.

4.8. Overall, the parties agree that there has been an under-delivery of either 1,355 or 1,358 homes against the objectively assessed need and an under-delivery of either 492 or 495 homes against the minimum stepped housing requirement. The Appellant considers that there is a shortfall of between 3,493 and 3,576 homes against the minimum housing requirement and objectively assessed need over the plan period whereas even on the LPA's case, there is a shortfall of between 2,022 and 2,102 homes against the minimum housing requirement and objectively assessed need over the plan period[31]. The parties are agreed that on any basis this represents a substantial shortfall[32]. The Appellant considers that there is a 1.6-year land supply with a shortfall of 2,224 homes against the minimum housing requirement whereas on the LPA's case

[30] NT POE para 4.38
[31] See revised housing SOCG para 3.5-3.6
[32] See revised housing SOCG para 2.20

there is a 2.9-year land supply with a shortfall of 1,360 homes[33][34]. The parties are agreed that on any basis this too represents a substantial shortfall[35].

5. Affordable Housing

5.1. The starting position is that the LPA acknowledge that there is a substantial shortfall in the borough and an "acute need" for affordable units was agreed in the SOCG[36].

5.2. The issue between the main parties[37] was whether the future need should be seen as 194dpa as assessed in the LHNA or 231 as assessed in the SHMA. The LPA's past delivery of affordable dwellings is an average of a pitiful 46dpa and Mr Wright (EW) agreed that this was a "very substantial" shortfall, whichever figure is used for the requirement.

5.3. If the LHNA is used, a shortfall of 938 units has already arisen and if the SHMA figure is used, a shortfall of 1386 exists. This need is accruing year on year as the delivery rate of affordable is still woefully below what is required. Indeed, in the Battledown Ward itself, delivery over the past 10 years has been at a paltry 4dpa.

5.4. The SHMA (2015) identifies a need for 231 net affordable units per year between 2015/16 and 2031/32.

5.5. The LHNA (2020) is a more recent document and finds a need for 194 dpa between 2021 and 2041. However, the LHNA exercise and the exercise undertaken to reach the SHMA figure are not the same. It should be noted that the SHMA figure was used to underpin the JCS requirement for 40% provision from qualifying sites.

5.6. The LHNA figure is understandably lower as it does not take into account households currently in the private rented sector nor does it deal at all with past under-delivery. Mr Wright appeared to be incapable of accepting that the rebasing approach of the LHNA didn't mean that the need which had gone unmet was for real households. With respect he is quite wrong – not meeting

[33] See revised housing SOCG para 3.7-3.8
[34] For clarity, both of these positions are calculated on the same basis, namely against the adopted housing requirement, contrary to paragraphs 18 and 19 of the LPA's closing submissions.
[35] See revised housing SOCG para 2.35
[36] CD C10 para 2.15
[37] The FOFPS in their closing statement (despite not cross-examining JS) at paragraph 85 are wrong to imply that "the major proportion of movements into the proposed affordable housing will result in relocations from other areas within Cheltenham". A lack of local AH combined with annual newly arising need means the houses will plain and simply be occupied by new households in need. These so implied "lower income" households will also in their own way contribute to the local economy.

such needs means exactly that – a real effect on real people, even if they are not people who habitually turn up to public inquiries to profess their need. As Mr Stacey (JS) explained, if the need from within the PRS was taken into account, the annual need would increase by 52% to 295 dpa. In relation to past under-delivery, the LHNA figure uses 2021 as the base date and does not identify the need for 2015-2020 but instead identifies only a prospective figure. The need that has already arisen during the part of the plan period between 2015-2020/21 is in SHMA. This needs to be added to any prospective figure as delivery has not kept up with requirement by some margin.

5.7. The LPA considered that policy SD11 and SD12 and a reference to the "most up to date evidence on housing need" results in a need to judge affordable requirement based on the LHNA. However, even if the LHNA is more up to date than the SHMA, it does not capture the same evidence and is not a full assessment of needs given its failure to address the PRS and its failure to properly take into account the existing backlog. Whilst it is more recent, it is less than full "evidence on housing need".

5.8. Overall, the LHNA figure is not a sound basis for calculating overall need at today's date as against the JCS requirements and the SHMA figure should therefore be preferred. Or at the very least the LHNA should not be relied upon in isolation from the extended period of a failure to meet needs for the most vulnerable society. Especially when those needs have been all but ignored in the Battledown ward local to this site.

5.9. In terms of future supply, in order to come close to meeting needs, the LPA would, on EW's evidence need a "massive uptick in delivery."[38] The pipeline supply is also wanting, and EW agreed that the LPA is "unlikely to meet those numbers" and was "a fair amount short". Overall, delivery has not met existing needs accrued to date and is unlikely to do so in the future. As JS explained, the need is truly acute and there is an affordable housing crisis in Cheltenham. The acute need is the manifestation of repeated under delivery and a worsening trend in a number of affordable housing indicators[39]. Simply, the LPA has a poor delivery record, acknowledged in E7. It places reliance on market housing to provide affordable housing but given the poor delivery of market housing, the numbers of affordable units being delivered has "fallen off a cliff" in recent years[40].

[38] JW in cross exam
[39] One such indicator is the housing register. Which stood at 2,514 households on 1st April 2021 (JS paragraph 6.2 page 28). This is a 16% increase in a year where in April 2020 the register stood at 2,161. Contrary to Mr Mills insinuation in his closing paragraph 5.1.6 all of the households are the Councils own register comply with the council's own qualification criteria and are therefore appropriately deemed to be in need of assistance with meeting their housing needs. Precisely why there is an affordable housing policy in every Local Plan to capture an important benefit of the proposal.
[40] JS XIC

5.10. In line with the decision at the Aviation Lane appeal (CD K11 at [8]) the aim should be to meet accrued needs as soon as possible. By providing a policy compliant number of affordable units, the scheme delivers a very significant benefit into an authority area and a ward with chronic issues in the delivery of affordable dwellings. The 100 units that this scheme will deliver will indeed be a step change in local delivery of affordable housing and is a contributes to the exceptional circumstances that arise in this instance.

6. Transport

"severe impact"

6.1. The County Council (GCC) allege a severe[41] residual impact on the highway network based upon an increase in queue lengths and additional driver delay and worsening an existing situation on the nearby network. GCC does not assert any case based on highway safety, nor is it claimed that the location is unsustainable in principle. Further, GCC do not suggest any mitigation which the appellant could have offered in order to improve the impact.

6.2. It was agreed by Mr Hawley (SH) in cross examination that the test in the NPPF of a "severe" impact was "a high bar". It was also agreed that just making the situation slightly worse for drivers cannot be severe, it should be a "severe worsening" of effect.

6.3. In that context, SH's reliance upon a mere 30s increase in delay on an already congested network cannot sensibly be seen as a "severe" impact[42]. The HA run no safety case, no air quality case[43] and there are no objections from bus operators[44], caught up in a marginally altered network. The test is, with all due respect to Mr Hawley, not nil detriment to drivers, in a world where the planning system is aiming to discourage private car use, making journeys 30s longer cannot be a sufficient basis for refusing permission.

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[41] GCC's closing is correct that NPPF is not development plan policy. However it is the yardstick against which 'up to datedness of policy' is assessed – and INF1 is plainly out of step with NPPF which says "SHOULD ONLY" be refused if there is a residual severe impact. The test to apply is that of NPPF with respect.

[42] Use of language can be telling – when making good the supposed 'severe' impacts alleged by the LHA – in closing at §19 the language used for additional flows is "small change" for one junction (19b) and the effect is said to be no more than "very noticeable" for another (19c).

[43] Despite a brief flirtation with this issue by Mr Hawley which was disavowed in XX. It is therefore somewhat disappointing that this issue appears to have been given an afterlife in GCC's closing at §14. There is no such pRfR, there is no objection of the EHO on that basis and indeed the officer report CD A38 at §6.172 concluded that there was no AQ concern.

[44] A point not made by GCC in para 14 of its closing

6.4. Further, the figures used to calculate the 30s delay are robust[45], or to put it another way, somewhat pessimistic, and thereby overstate the effects of the proposed development. The agreed model used between transport consultants on this site was a static model rather than the more flexible (dynamic) Saturn model. The static model does not adjust for driver behaviour. In the real world, once one part of the network begins to experience delays, drivers choose another route and traffic is re-distributed around the network (geographic redistribution). Also, in reality if people observe a traffic queue at a particular time, people choose to start their journeys at different times in order to avoid the delay (temporal redistribution) The static model does not capture either means of re-distribution so has an effect of potentially over-estimating queue lengths which would in reality be avoided by drivers seeking to avoid delays.

6.5. The figures at the 2031 assessment year, required by GCC, are additionally robust as the growth rate applied has already been shown to be an overestimate due to the "lost growth" years as a result of the pandemic. The baseflows from 2019 are used, together with a growth rate based on Tempro which increases the traffic year on year based on development assumed to be delivered in the plan area between the base date and the assessment date (agreed at 2031). However, in this area, the growth rate applied has not, to date, materialised. The basedate was 2019 and already it can be seen that the growth rate to 2031 will be an over-estimate. For instance, 2019- late 2020 saw negative growth rather than additional traffic on the network. Accordingly, the model is likely to generate an overestimate in traffic at 2031 as it assumes an even growth over 10 years when, even if growth now returns to assumed levels, there can only be around 8 years of growth rather than the 10 assumed.

6.6. A yet further reason to treat SH's "severe impact" with caution[46] is that the traffic flows predicted as at 2031 include trips generated from future housing which in reality is unlikely to materialise. Tempro should also have been adjusted to take account of the lack of delivery of housing in the area and also to take account of SH's acceptance in oral evidence that the large SUE sites relied on for the majority of growth in the area are unlikely to have any real effect on the local network surrounding the site. The Tempro figures assume that the large SUE sites (to the NW & W of Cheltenham) will have an even effect on the whole network, but in reality, as SH accepted, the effect simply will not be likely to be felt as far away as the local roads around the Site (in the East). SH stated, when pressed, in oral evidence that the sites were "*unlikely to have meaningful effect*

[45] It is telling, but disappointing that in closing GCC at §25 invite the Inspector to give no weight to the robust and sensible reasons as to why the assessment is overly-robust at 2031 – against which Mr Hawley had not real answer.

[46] Impact on travel patterns as a result of Covid is likely to be permanent. Also no point in trialling e-scooters if they are not anticipated to result in traffic reduction. Also whilst GE accepted that a 1/3 reduction in housing may not translate directly into 1/3 reduction in traffic growth it is a matter of common sense that there will be a reduction in traffic growth.

on Battledown area so we should not be including W and NW Cheltenham as part of our assessment of traffic generation".

6.7. The figures also assume that the JCS will deliver 100% of the housing proposed by 2031. For the reasons set out above, no party to the appeal now expects this to happen and the growth included within the transport assessment simply will not materialise in the numbers previously assumed[47]. The deficit will be considerable based on the revised Housing SOCG, and the shortfall identified by the LPA of between 2,022 and 2,102 homes against the objectively assessed need and against the minimum housing requirement.[48].

6.8. Even if the JCS sites all come forward, this scenario was assessed by Arup on behalf of the LPA in its preparation of the Cheltenham LP who assumed a greater amount of development than the likely scenario with the appeal site by 2031 and concluded that there was no severe impact which would warrant any changes being made to this part of the network. Indeed, Arup's conclusions are worth noting:

> *"The results show that whilst the majority of the junctions operate significantly over capacity in both the AM and PM peaks, the development traffic would actually have very little impact on the results. The change in capacity is less than 5%".*[49]

6.9. This strongly supports GE's position that the addition of a small amount of modelled extra delay into an already congested network based on an array of overly robust assumptions cannot sensibly amount to a severe impact, nor does it warrant any intervention[50]; junctions operating over capacity does not equate to a severe impact.

6.10. Even on the (likely overestimate) relied upon by SH the results show delays of less than a minute on every arm of the relevant junctions even at peak periods.

6.11. GCC's assertion that this equates to a severe impact is therefore (1) based upon a significant overestimate of the likely traffic using the roads in 2031, (2) out of step with the findings of the consultants employed by the Council (Arup) to assess the impacts of the JCS delivering in full

[47] GCC in its closing appears to now be suggesting that the Inspector shoudl simply set aside the advice that one should not assess sites which are not likely to come forward in the plan period
[48] Updated Housing SOCG para 2.20
[49] GE XIC & CD I8 p. 45, 47, 48
[50] Noting that none is planned in the Cheltenham LP!

(which it will not) and (3) simply not credible given the small additional delays on an already congested network[51].

CCB

6.12. Much inquiry time was taken up debating whether and to what extent additional traffic from the scheme would enter the AONB. However, it emerged that this line of questioning from the CCB was based on a wholly false premise; the true map of the AONB provided only *after* the questions had been put to GE, demonstrates that the relevant section of Harp Hill lies outside the AONB. There is therefore no credible argument that the scheme would affect tranquillity of the AONB through traffic movements. Even if Mr Mills' suggestion is correct (which it is not) that traffic along Harp Hill as a whole would be increased to 512 (389 + 123), that does not assist CCB's argument given that this stretch of Harp Hill lies outside the AONB.

6.13. For the avoidance of doubt, the correct position as to the number of vehicles on Harp Hill at any point is to be found in GE's helpful handwritten "flows" document[52]. The premise of CCB's questioning is simply incorrect as from the junction on to Harp Hill, the traffic divides and there is no stretch of road that one could point to where the flow would be 512.

6.14. CCB's questioning was based on two significant errors and their position should be roundly rejected[53].

Gradients

6.15. The second issue raised by GCC relates to internal gradients within the Site access roads. GCC's objection in this regard relates to a very strict application of their own guidance, Manual for

[51] It is odd in a planning inquiry to hear submissions about a witnesses demeanour when providing an answer, given that most witnesses are not giving evidence as to fact. GE's pause in answering highlighted at paragraph 21 of GCC's closing is no reflection on uncertainty – more a reflection on certainty in providing a proper coherent and considered reply when being cross examined by a skilled advocate.

[52] Mr Mills correctly reports the percentage increases at para 6.1.8 of his closing but argues (at 6.1.5) that, because the western section of Harp Hill is adjacent to the ANOB, the 10% rule of thumb should apply. However at 6.1.11 he reverts back to his bizarre reasoning that you should add together the flows on each section of Harp Hill to calculate the % impact (using that reasoning because the flows north of the site are 507 and south of the site are also 507 he would presumably calculate the existing flows to be 1014!! – bizarre indeed!!)

[53] It is therefore disappointing that it finds its way into Mr Mill's closing submission with yet more back of the envelope calculations based a misapplication of the guidance – see his section 6

Gloucestershire Streets (MfGS)[54]. MfGS is not an SPD, has not been consulted upon publicly and is merely technical guidance applied (somewhat inconsistently) by GCC[55], which should inform judgments but not determine applications.

6.16. GCC suggested that policy SD4(7) requires compliance with MfGS, however, this cannot be right. The current draft of MfGS post-dates the JCS and plainly cannot have been before the local plan inspector. The wording of SD4(7) therefore does not contemplate compliance with restrictions in iterations of a document which emerged only after the JCS was adopted.

6.17. MfGS states that gradients of 1:12 should not exceed stretches of 30m. It should be noted that the particularly comprehensive guidance in the national MfS does not include any such restriction, nor does the national guidance within Inclusive Mobility. Therefore, this is a Gloucestershire-specific reference which is oddly out of step with national guidance covering the same ground. Another good reason not to apply it uncritically as GCC seek to do.

6.18. MfS2 allows for a practical maximum of 8% in hilly areas[56] but even that is expressed as allowing for steeper gradients where there are particular local difficulties. In national guidance, 8% is generally seen as the maximum limit for most wheelchair users but national guidance is silent as to the length of stretch which should be constructed to this practical maximum. In national guidance, 5% is stated as being merely "desirable" where there is a significant number of pedestrians. MfS therefore allows for gradients even steeper than 1:12 for short distances.

6.19. As such, the proposed indicative masterplan in its original iteration would comply with MfS2 and national guidance, there being no national restriction on the use of gradients of 1:12.

6.20. In any event, the Appellant proposes a condition which would address the concerns of GCC. Condition 11[57], as proposed by the Appellant would secure an internal road layout which would require design to avoid 1:12 gradients for stretches of longer than 30m. Such a condition is not necessary – but if the Inspector disagreed then the revised illustrative masterplan shows that it can be achieved on this site.

[54] CD I4
[55] Given gradients on the adjacent GCHQ site appear to exceed those proposed on the current site and GCC did not object on that basis.
[56] CD I3 (MfS2) 8.4.2
[57] Formerly condition 13

6.21. Overall, the Appellant's position is that it is not remotely necessary to comply with the restriction in MfGS being a product of local, internal guidance which is out of step with relevant national policy. However, should the Inspector determine that the scheme ought to comply, it can do so through the imposition of Condition 11[58].

6.22. Overall, the scheme provides benefits to pedestrian and cycle movements. The SOCG records[59] that the scheme's internal provision of footpaths and cycleways will improve pedestrian permeability. Self-evidently, safety will be improved by the provision of an internal route which allows pedestrians to enter the site and walk along a dedicated, safe route rather than walking along Harp Hill in the verge.

7. Education Contributions[60]

7.1. GCC and the Appellant disagree over the required contributions towards pupil places in the area. In particular, disagreements arise in relation to the calculation of need for primary school places, secondary school places and the capacity at nearby sixth form colleges. It should be noted that this is not a determinative issue as the draft obligation caters, by way of a "blue pencil" clause for the Inspector's potential conclusions on each point of division.

7.2. In relation to primary places, it is agreed between the parties that there are a minimum of 104 places across the relevant planning area and the development will give rise to between 38.2 and 87 new students, depending on which Pupil Product Ratio (PPR) is used[61] (a matter we return to below). Therefore, if the Appellant's PPR is correct, there is sufficient capacity, and no sum is due. If the Inspector prefers GCC's PPR then the question becomes whether the correct interpretation of "capacity" is 100% rather than 95%. If it is 100%, then there is capacity for the existing schools to accommodate all of the pupils which may be generated by the scheme, on either party's figures and no primary contribution is due.

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[58] Ultimately it is important to note where this point goes. It doesn't go to an invitation to dismiss the appeal but rather to impose a condition to ensure that stringent compliance is had to MfGS when RM applications are submitted. With respect that is a misplaced request – firstly, MfGS will remain a material consideration at the determination of RM which GCC will presumably draw to the attention of CBC when determining a RM application; and secondly it elevates compliance to an absolute thereby removing the ability of the Borough Council to treat this non-policy document as exactly what it is – ie JUST GUIDANCE.

[59] C14 para 3.20

[60] It is perhaps of note that the start of GCCs submissions plays the man and not the ball by criticising NT for addressing the SCAP in his evidence which was agreed not to be a proper basis of predictive assessment of school places for planning purposes in the SOCG in Coombe Hill. As NT explained, but is not recorded in GCC's closing – he did so because GCC had originally argued in Coombe Hill for the use of the SCAP and it wasn't clear exactly what case GCC would be running at this inquiry until Mr Chandler's proof was produced. Forensically it is something of a 'so what' point – but is somewhat telling that GCC leads with this in this part of its closing.

[61] para 2.21, SoCG. 38.2 is based on NEMS and 87 is based on the 2021 IPS (CD G1)(in turn based on Cognisant study). See also 2.20 if 1 beds included however, 2.21 is to be preferred as LEA's position is 1 beds should be excluded from education contribution requirements

7.3. If the Inspector concludes that "capacity" when it is used in national guidance doesn't mean 'capacity' but means something less than all of the available places so that 5% should be left unused, in line with GCC's case, then a sum is due, and this is provided for within the s.106.

7.4. In relation to secondary places, it is agreed that a contribution is due (provided that Pate's Grammar is excluded), the Inspector's conclusions on the appropriate PPR will determine the scale of this contribution. The S.106 agreement provides for this flexibility depending upon the findings of the Inspector on this point.

7.5. CD G9 sets out the relevant forecasts for capacity in secondary and sixth form schools. Secondary school capacity (age 11-16) is extracted at Table 6.4 of NT's POE (p.51). In short, there are no available (non-selective) places if one excludes Pate's Grammar. A contribution is therefore due the extent of which is entirely determined by the PPR.

7.6. In relation to sixth form places, it is agreed between the parties that there are between 94 and 59 available places[62] (depending upon the 100%/95% debate) and the development will generate a need for either 4 or 13.6 places (depending upon the PPR debate). There is therefore more than sufficient capacity for sixth form students, but the area of assessment will determine whether it is appropriate for the development to send students to schools where capacity exists.

7.7. If Pate's Grammar is included contrary to the agreed position in respect of secondary school places there would be no available places if these were considered on an aggregated basis. If Pate's is excluded, on an aggregated basis there would be sufficient places as there would be 47 available places in some of the schools which serve the development to accommodate the, at most, 13.6 pupils generated by the development. Pate's makes the difference here because it is significantly over subscribed.

7.8. Before Inspector Clark, it was agreed that Pate's Grammar should be excluded as a selective school, and the places may therefore not actually be available for new residents to take up unless they pass an entrance exam. It has been wrongly re-introduced by GCC because it skews the figures to their advantage – its reintroduction has nothing to do with the case that GCC lost before that Inspector.

[62] 2.27 SOCG

7.9. The starting point is that the issues canvassed at this appeal have all been considered in detail by Inspector Clark at the Coombe Hill inquiry[63]. Inspector Clark's conclusions were reached following thorough examination of the issues which were canvassed in detail before him. GCC's arguments in relation to all three levels of education were broadly the same at this inquiry as those considered by Inspector Clark at the Coombe Hill inquiry[64]. Inspector Clark's decision is particularly recent, being issued in June 2021. Since that date, the only change in position is recorded by GCC's Interim Position Statement (IPS). The IPS isn't policy, and hasn't been consulted upon, and is inexplicably selective in which parts of Inspector Clark's conclusions GCC wish to react to. It is therefore necessary to consider first the careful findings of Inspector Clark and then consider whether any adjustment is needed in light of GCC's attempts to correct their position by the issue of the IPS. There are three key issues under this heading:

7.9.1. Pupil product ratios (affecting primary and secondary places);
7.9.2. Capacity - do we calculate to 95% or 100%? (this affects sixth form and primary places)
7.9.3. Area of assessment.

7.10. The headline here is that GCC relies upon an *interim* position to this inquiry; even on GCC's own case, its position is in need of review and is not settled having accepted the findings of Inspector Clark but not completed the adjustments to their calculations which are now necessary. Notwithstanding this, and a round rejection of their position by Inspector Clark, GCC present their calculations as something of weight capable of being relied upon by this Inspector.

7.11. It remains the case, as set out by Inspector Clark at paragraph 99 of his decision letter (DL) that relevant guidance can be found within Securing Developer Contributions for Education[65]. Paragraph 3 of the guidance states:

> "*It is important that the impacts of development are adequately mitigated, requiring an understanding of:*
>
> *• The education needs arising from development, based on an up-to-date pupil yield factor;*
>
> *• The capacity of existing schools that will serve development, taking account of pupil migration across planning areas and local authority boundaries;*
>
> *• Available sources of funding to increase capacity where required; and*

[63] CD K2
[64] CD K2
[65] CD G2

• The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time."

7.12. As set out above, bullet points one, two and four are at issue in this appeal.

7.13. By way of context, the DfE guidance (CD G3 p.17) suggests that the base forecasts could be used but given that the rate of development is, if anything, decreasing in this area, if the base forecasts are to be used these should potentially be modified downwards. Neither party undertakes such downward adjustments with the effect that the number of pupils forecast to arise by both parties will be over-stated,

Pupil Yield Factors/Pupil Product Ratios

7.14. Pupil yield factors, referred to by both Mr Chandler (SC) and Mr Tiley (NT) as Pupil Product Ratios (PPR) are used to estimate the number of school aged children likely to arise as a result of new development who are likely to enter the state school system. The parties disagreed as to which evidence should be used as the basis for an assessment of PPRs.

7.15. Paragraph 13 of G2 states that education contributions are based on an assessment of probability and averages - not the maximum. SC's evidence was that the LEA's approach was to calculate the *maximum* pupils which could be generated. Such an approach would not be CIL compliant, not being reasonably related in scale and kind. For that reason, NT's approach is to use the average likely to be generated.

7.16. Policy INF6 should be the starting point. The policy refers expressly to the Infrastructure Delivery Plan (IDP) however, the figures used by the IDP are now of some vintage and GCC consider that it is essentially out of date for these purposes[66]. Inspector Clark also initially found that it would be inappropriate for the IDP to be used as a basis for estimating PPRs[67] and GCC no longer relies upon the IDP to calculate required contributions for education. However, GCC now rely upon a series of reviews, none of which have been examined or adopted as policy. In departing from the plan and the examined level of infrastructure requirements, GCC adopt an approach which also departs from national guidance and leaves GCC without any real policy basis for their approach. The PPRs relied

[66] The answers of Ms Fitzgerald on this point were confused; LF accepted that the policy was out of date for the purposes of PPRs which is essentially all that matters, but then went on to refuse to find the policy out of date overall.
[67] K2 at para 101

upon by GCC now are materially different to those which underpinned the JCS and INF6 – in the teeth of NPPF para 34.

7.17. As explained by NT, whilst neither situation is ideal, the plan should prevail unless and until reviewed formally through a plan review. To do otherwise, leaves developers somewhat at sea and allows GCC to require contributions based on a document which has not been subject to any formal examination or consultation and is likely to be at odds with the viability assessment underpinning the plan[68]. NPPF paragraph 34 is explicit that *plans* should set out policies on contributions. GCC agree[69] that the LDG (also not adopted but consulted upon) is not policy, ergo the IPS (which has not been subject to consultation and is expressly interim) seeks to amend the LDG is not policy. Together the LDG and the IPS should have at most limited weight in determining developer contributions[70].

7.18. The IDP was a core element of the JCS and, as explained by NT in his oral evidence, the JCS is clear that infrastructure requirements are to be determined in line with the IDP. Simply, contributions towards developments should be determined in line with the requirements underpinning the plan, rather than any unexamined and new formulaic approach[71].

7.19. Paragraph 23b-004 of the PPG states that "*it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination."* This is precisely what GCC have done and indeed in cross examination LF[72] conceded that the IPS amounts to a new formulaic approach[73]. It should therefore be rejected and the IDP should be preferred[74].

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[68] NT POE 4.13
[69] SOCG at para 2.6
[70] NT XIC
[71] The suggestion in paragraph 63 of the County Council's closing submissions namely that the reliance of Policy INF6 on an evidence base allows for the introduction of new formulaic approaches contrary to national guidance represent a misunderstanding of national guidance and the Development Plan and is without merit. The JCS explicitly identifies that infrastructure needs are to be assessed in accordance with the IDP (see paragraphs 5.1.5 and 5.7.2) and that these infrastructure needs are to be addressed in support of the implementation of proposals (see paragraph 5.7.2). The JCS therefore provides by reference to the IDP of 2014 a specified way of calculating infrastructure requirements as required by paragraph 34 of the NPPF. It does not allow or support the introduction of any new formulaic approach such as that advanced by the County Council.
[72] Ms Fitzgerald
[73] This concession singularly undermines the argument now advanced by the County Council in paragraph 64 of their closing submissions.
[74] In closing GCC 'plays up' the fact that the IDP relies upon data which is long in the tooth. However it is the only data which has gone through the scrutiny of a development plan assessment as expected by NPPF. And the fact that it is the only such data that has been through this process is entirely down to the choice of the public sector in how development plans have or have not been progressed in Gloucestershire – ie this is a direct consequence of the decision not to progress a partial review of the JCS. More importantly however – the NEMS study acts as a robust sense check that reliance upon a higher

7.20. If the Inspector is minded to depart from the IDP, GCC's new position based on the IPS, and the Cognisant study should in any event be rejected as significantly overestimating the number of pupils likely to be generated. NT's figures should be preferred.

7.21. Incredibly GCC's IPS still maintains that use of a report by Cognisant is appropriate in the interim. However, the Cognisant report, whilst recent, was described as "problematic" by Inspector Clark[75] and that remains the case today for a number of the same reasons identified by Inspector Clark. First, the housebuilders involved in its commission actually disagreed with its results, and the calculation of the PPR from its survey work was never signed off as it was meant to be.

7.22. A series of letters has been provided to the inquiry from housebuilders active in the local area who commissioned the Cognisant Report, all of whom criticise GCC's chosen PPRs and how they are used by GCC. See for example CD E11C (Taylor Wimpey).

7.23. Second, its results do not stand up well to a sense-check. Inspector Clark referred to its results as being "startlingly high"[76]. This remains the case as shown in NT's Figure 5.1[77]. GCC's position is out of keeping with its demographics[78] and the IDP figures better reflect the actual characteristics of GCC and provides a more realistic estimate of pupil generation than the IPS which produces an anomalously high result.

7.24. When compared to existing developments[79], the IPS grossly overestimates the number of pupils that have actually arisen, if the IPS had been used it would have generated around three times the number of places in fact required. Table 7.1 of NT's proof is in reality all one

PPR than the IDP is misguided. I.e. it's the best that we've got *on the evidence* and *on the evidence* it is likely to be a far better guide to need than the IPS which has no status at all as policy – the antithesis of NPPF's requirement.

[75] K2 para 102

[76] Paragraph 57d of the County Council's closing submissions recognise that the Inspector at Coombe Hill adopted the use of the Cognisant Study PPR's to ensure robustness, but the Inspector explicitly did so (1) having found that he was not convinced by these, (2) that they presented a worst case scenario and (3) that this accorded with the approach of NT given that the use of these didn't make any material difference for the purposes of that appeal given the Inspector's other findings on the occupancy rate and the area of assessment.

[77] CD C31 p.12 and Appx to addendum CD 32 p.8

[78] Paragraph 73 of the County Council's closing submissions suggests that the PPR's of the IPS are within the higher sectors but in no way out of line with other LEAs. This conclusion however fails to take account of the demographic characteristics all of which suggest that the PPR's in Gloucestershire will be below the average of other LEA's rather than within the top 2 or 3 as suggested by the LEA. Additionally, for clarity, in paragraph 73c it is suggested that more recent PPR's are higher. As accepted in EiC, SC had not undertaken any analysis to support this contention, and as set out by NT in XX had this analysis been undertaken the PPR's have remained broadly consistent over time, contrary to the proposition of the County Council. Similarly, the proposition that each home tends now to accommodate a greater number of pupils is incorrect as average household sizes are falling as set out in paragraph 108 of the Coombe Hill appeal decision. Mr Inspector Clark was absolutely right that this 'sense check' too seriously undermines the LEA's case before this inquiry.

[79] NT Table 7.1

needs to look at in order to see that GCC's figures are completely out of kilter. All metrics seem to overestimate actual pupil generation but GCC's position generates, as found by Inspector Clark, "startlingly high" results which are not realistic. The IDP and NT's position should be preferred as being, although still high, at least closer to reality.

7.25. Inspector Clark found "Mr Tiley's calculations more convincing" this is a reference to the Appellant's reliance on the IDP figures, supported by the NEMS sense check[8081]. The same conclusion is promoted to this Inspector.

7.26. Third, one particular error in the Cognisant report remains uncorrected in GCC's evidence to this inquiry. Namely, the survey is likely to be self-selecting.[82] GCC's IPS does not provide a compelling reason to ignore Inspector Clark's finding on this point. A review based on whether houses have toys in the garden or not is plainly not a robust way of checking whether children do or do not reside at a particular address; grandparents may retain toys or stickers whereas parents may put items away; it should go without saying that it makes no sense at all to judge where children live based on the presence or absence of stickers in a window.

7.27. Importantly the IPS also still does not take account of backfilling. This was also a matter considered by Inspector Clark at [108] who agreed with NT that GCC's view on this point was "mistaken". As agreed by SC in cross examination a proportion of households moving into dwellings will not release a dwelling for occupation by another household, and yet GCC nevertheless assume a one-to-one relationship, namely that every household moving into a new dwelling will release a dwelling for occupation by another household. By contrast the NEMS document adjusts for backfilling[83] based on the only evidence available when assessing the number of net children likely to arise from each 100 new dwellings.

[80] The suggestion in paragraph 58 of the County Council's closing submissions that the Inspector was referring to other unspecified calculations is without merit. The Inspector clearly considered the PPR's from paragraphs 100 to 109 and then concludes in paragraph 109 that the calculations (or PPRs) of NT which are those which arise from the IDP were more convincing, supported as they were by the sense check of the NEMS Survey (which only provides PPR's).
[81] The suggestion in paragraph 58 of the County Council's closing submissions that the Inspector was referring to other unspecified calculations is without merit. The Inspector clearly considered the PPR's from paragraphs 100 to 109 and then concludes in paragraph 109 that the calculations (or PPRs) of NT which are those which arise from the IDP were more convincing, supported as they were by the sense check of the NEMS Survey (which only provides PPR's).
[82] K2 para 103
[83] At §70 of GCCs closing there is criticism of NT's approach to backfilling. It will be recalled that the IPS expressly takes issue with the approach of the Coombe Hill Inspector on backfilling (who relied upon exactly this evidence from NT), but more importantly the *only* evidence which meaningfully grapples with backfilling is still only that of NT which is based on the NEMS study and which is corroborated by the developers who made strong criticism of GCC's approach to Education in its Local Development Guide. Despite §70 of GCCs closing there is no proper evidence to set against NT's conclusions in this regard. Even if it were the case that the data gathered from the NEMS Survey was inexplicably unreliable, it is far more

7.28. As agreed by SC in cross examination, the Cognisant study is not policy and Cognisant also failed to make any adjustment for the fact that household sizes are on a downward trend nationally which would suggest that with backfilling the number of pupils moving to homes released along the chain will be progressively lower.

7.29. Overall, as found by Inspector Clark, NT's calculations of likely PPR, based as they are on the IDP, are more robust than those proposed by GCC[84]. If, however, the PPRs of the IDP are rejected, the NEMS study prepared by NT[85] is the most recent evidence and the results are a better fit both with historic pupil production rates[86] and ONS projections[87].

Capacity - 100% or 95%?

7.30. GCC's assertion that "capacity" means 95% occupancy is not supported by any planning policy or planning guidance document. It is not within the PPG. The only documents relied upon to support the view that "capacity" should be taken as something other than its natural meaning i.e., 100% are those intended to be used by the DfE for internal place planning, not for the setting of external developer contributions or for judging whether any contributions are owed at all.

7.31. At its highest, GCC's case relies upon Trading Places[88] and Capital Funding for New School Places[89]. Trading Places provides recommendations from the Audit Commission from 1996 which refers to planning for *around* 95%. Trading Places is a document which advises a close but not perfect match between places and pupils in order to secure "value for money"[90]. It suggests that a sensible approach would be to aim for 95% occupancy but that it is acceptable for individual schools to operate anywhere between 10% around this target (i.e., between 85% and 105% occupancy). Capital Funding for New School Places provides recommendations from the National Audit Office from 2013, and refers to a planning assumption that it did not expect authorities to meet of a minimum of 5% surplus across and authority or district[91]. Patently neither document is relevant to developer contributions and the CIL Regulation tests.

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reliable than relying upon the assumption of a one to one relationship assumed within the IPS which CS accepted was not realistic in XX.

[84] K2 para 109

[85] The NEMS Survey is not based on the IDP2014 as incorrectly suggested in paragraph 56d of the County Council's closing submissions as set out in paragraph 4.5 of NT Rebuttal.

[86] NT POE table 7.4

[87] NT POE table 7.4

[88] CD G27

[89] Appendix 7, SC POE

[90] See paragraph 9 of G27

[91] See paragraphs 1.16 and 1.17 of Appendix 7, SC POE

Even SC agreed that 95% was "not a diktat" but was something that LEAs aim for. That is patently not the same as the relevant capacity for the assessment of actual number of places available, the absence of which would trigger the need for developers to fund additional places.

7.32. Inspector Clark plainly did not view 95% as an appropriate cap, finding as he did at [118] that it was acceptable for individual schools to go above this threshold when finding that sufficient places existed for the pupils generated in accordance with the recommendations of the Audit Commission.

7.33. Further, in the real world, SC agreed that once 95% occupancy is reached, a school doesn't simply close its doors. It will fill up to, and in some circumstances, beyond 100%. It therefore makes no sense to hold developers to the notional 95% rate when determining whether funds should be paid to GCC to create places, when those places exist in reality.

7.34. Contrary to the implication of questions put by GCC to NT, the obligation falls on the LEA to provide for flexibility and parental choice, it is not for developers to provide for more places than are actually required by the specific development proposal. The appeals process also exists to allow over 100% occupancy. The PPG refers to "capacity" and this should be taken to mean "capacity" in its normal usage, parental choice and other matters are outside the scope of the exercise for the purposes of the PPG and the assessment of *necessary* developer contributions.

7.35. As set out above, if the Inspector agrees with the Appellant on this issue, the need for primary contributions falls away entirely and the lower sum for secondary places should be preferred.

Area of assessment

7.36. Paragraphs 110-115 of Inspector Clark's DL address this issue which is being re-run at this inquiry. In short, the Inspector agreed with NT's approach and there is no sensible basis to now take a different stance[92]. NT's approach is to assess the capacity of schools that serve the development including consideration of:

- the appropriate schools in the planning area; and
- where appropriate other schools in neighbouring planning areas.

[92] The suggestion in paragraph 83a of the County Council's closing submissions that the Coombe Hill Inspector considered the capacity across the planning areas rather than in individual schools is incorrect. The Inspector considered both the capacity across planning areas and in individual schools (see paragraphs 112, 117 and 118), as does NT.

7.37. Paragraph 3 CDG2 would not support an aggregated approach as this would disregard capacity of schools near the development which could have capacity to accommodate pupils generated. It is therefore more appropriate to consider the particular schools and the actual capacity rather than to take an aggregated approach which may not reflect the reality of the situation.

7.38. GCC depart from the approach approved by Inspector Clark but without any new evidence to justify a different conclusion.

7.39. Overall – GCC's case has been little more than a rerun of a discredited approach – which for all of its efforts ought to be robustly rejected.

8. Planning Balance

8.1. Standing back a little and assessing the proper context of the planning balance in this case there are some very big points that 'leap off the page'. Thus:

(i) Despite great effort and the best of intentions the JCS when it was adopted, which took 8 years from Issues and Options and 4 years from submission, it was still a long way from the complete article;

(ii) For a number of reasons, the Inspector concluded that the plan and its strategy was only sound if an immediate review was undertaken – which did not happen.

(iii) Instead, the JCS authorities opted for a comprehensive review and an issues and options document was published in 2018. Since then, no other formal steps have been taken in the process of that review, though the process of evidence gathering continues;

(iv) Subsequent to the adoption of the JCS, it has become apparent that there is a substantial shortfall in the supply of housing in Cheltenham over the plan period which the LPA propose will be responded to within the now non-immediate review;

(v) This is not a case of waiting for an imminent Part 2 plan. That is already in place and there is still a substantial shortfall. The Development Plan provides no plan led solution. The LPA's only solution is to replace the Development Plan that has failed.

(vi) That review will involve hard choices with the potential for the release of land in the AONB and Green Belt being 'on the table' as recognised by PI. The resolution of which sites and where therefore is likely to be a long and controversial process to resolve, especially if this inquiry is anything to go by;

(vii) The prospects of an early adoption of a new JCS are vanishingly small, and the date of such adoption is speculative;

(viii) There is an immediate and growing housing crisis in Cheltenham in terms of both the need for general and particularly affordable housing;

(ix) The circumstances for the consideration of the need to release otherwise acceptable and sustainable parcels of land to bring forward housing is an **exceptional** one, on any view;

(x) The appeal site is such a site, surrounded on all sides by development, but on 3.5 sides by housing development, well related to the urban area in a part of Cheltenham where there has been a dearth of general market housing but a negligible delivery of affordable housing.

(xi) If this site was not still located in the AONB, despite development creeping around it in the last 50 years, then it would almost certainly have been actively promoted for development by the Council long ago. Even Mr Mills accepted in XX that it will be a candidate for development as part of the JCS Review.

8.2. Whilst a range of issues have been thrown at this site in a hard-fought inquiry, the Inspector is respectfully invited to step back from the fray for a moment and look at the real-world justification for this case. Yes, the site is in the AONB, yes, it is outside the settlement boundary, yes, it is undeveloped and close to heritage assets, and yes, its upper slopes are sensitive. However, even the shortest walk around that part of the Cotswolds AONB that sit to the East of Cheltenham will tell one that Mr Harris is spot on that this is not a particularly important parcel of the AONB, but it is one that is dominated by its context. The things that matter about the AONB will palpably remain unaltered by the appeal proposals but the needs of the population that live there will start to be met by what is an obvious site with capacity to accommodate some development.

8.3. Thus, the relevant development plan policies need to be approached in that context; the Council cannot demonstrate a five-year supply of housing land or a plan period supply (by substantial margins even on its own case) and the principal urban area of Cheltenham is almost entirely surrounded by Green Belt and the AONB[93]. There are no easy sites left – and yet there is a growing need for development of this nature.

8.4. Against that background, policy SD10 lamely seeks to restrict development to allocated sites or those within the PUA. In the light of the failure of the plan making process locally to even follow what Mme Inspector Ord asked the Council's to do SD10 is out of date. That is the consistent position of numerous Inspector's looking at this issue in Gloucestershire on appeal especially in the

[93] See para 8.19 of the planning SOCG CD C9

absence of a five-year supply. Thus, the tilted balance is triggered for both reasons and it is policies such as SD10 which have to give way in order to allow the Council to make good the shortfall. SD10 continues to throttle the supply of housing sites and affording full weight to this policy will ensure that the Council continues to accrue a shortfall until it can allocate sites within a fresh plan. However, any new plan is some considerable time away from being realised and even when it does materialise, is bound to need to release controversial Green Belt sites, and/or sites in the AONB. The Council's own evidence base publicly produced just before this inquiry opened considers large scale Green Belt release, a position which Mr Instone (PI) agreed was "highly likely" to be needed, and the Council will need to explain to the next JCS Inspector why exceptional circumstances exist for such allocations. A position which has some resonance to the issue before this inquiry – especially given Mr Mills acceptance that the NPPF test of exceptional circumstances for major development in the AONB is no higher than the test for GB release – the same words, the same test in the same document.

8.5. SD10 is properly agreed to be out of date[94] and it cannot amount to a sensible reason to decline to grant permission on this Site.

8.6. Policy SP2 addresses the spatial distribution of development and in so far as it seeks to constrain supply, should also be seen as out of date. The Council identifies conflict with SP2(8) which requires urban extensions to be promoted through a plan review rather than come forward as individual planning applications. However, SP2 was written in concert with SP10 and based on an assumption that the urban area and allocated sites could meet the identified needs and the safety mechanism of REV1 that a review was imminent. That needs could be accommodated within the PUA and on allocated sites has been shown to be far from accurate and it is now acknowledged that further land outside the PUA is required to meet needs. Further, the timescales for a partial review envisaged by REV1 have also been jettisoned, the partial review being abandoned in favour of a full-scale review of the JCS. PI agreed that the JCS review was "not a simple plan" given the constraints present and that the time estimates "may slip". There is no updated LDS for the JCS review so all that can be said is that a new plan is some considerable way off.

8.7. It is therefore wholly wrong for the Council to adopt a position that needs which have accrued now and continue to accrue should go unmet until some unspecified time in the future.[95] That cannot

[94] Planning SOCG para 8.35

[95] The LPA closings at para 73b tells us that the answer is to wait and delay, yet at no point in its evidence does the LPA consider the "cost" of such delays (cost being one of the considerations in 177b) and we simply don't know how long households that are in need for housing will need to wait. We are told there are alternatives but nobody can tell this inquiry where they are and how they would meet the need that exists now.

have been the intention of SP2(8)and given that it is predicated on a mistaken assessment that needs could be met on allocated sites and within the PUA, it also needs to be seen as being out of date.

8.8. The supporting text to Policy SP2(8) explains that the policy was intended to address the unmet needs of Tewkesbury and Gloucester that were known to exist at the time of adoption. It was also intended operate in the context that the JCS authorities could all demonstrate a five-year housing land supply at least until such time as the immediate partial Review was undertaken[96]. As soon as the five-year supply position failed then the policy became out of date by virtue of NPPF fn.8 and the tilted balance was be engaged. The position was irretrievable once it became clear that the immediate partial review had also been abandoned.

8.9 Furthermore, as extensively explored in XX – the JCS only deals with strategic allocations.[97] The appeal site is not a strategic site. The part 2 plans deal with non-strategic sites such as the appeal site. SP2(8) was promoted in the context of the promised immediate partial review of the Joint Core **Strategy** which would only ever have looked at **strategic** urban extensions. Rightly SP2(8) properly read says that such strategic sites should be plan led – but as rightly accepted by PI in XX there is no policy preclusion on the release of any otherwise acceptable site on the edge of any urban area in Gloucestershire. With respect PI's argument in this respect is hopeless. A refusal on the basis of a conflict with SP2(8) would be the antithesis of the purpose of that part of the plan and it would be to suggest that the normal application of the tilted balance does not apply to Gloucestershire.

8.10 If there was any lingering hope left in PI's argument it is blown away by the decision of the SoS in the Fiddington appeal. That was a strategic site of up to 850 dwellings which did fall squarely within the remit of Policy SP2(8). The SoS found there to be conflict with policies SP2(8), REV 1 and SD10 of the JCS, but given that the partial review of the JCS was "at a very early stage at best", he considered that the weight to be attached to those conflicts must be reduced.[98] This led the SoS to conclude that the harm to the plan led approach should only attract limited weight.[99][100] No further progress has been made on the JCS since that decision was made in January 2020. The LPA in their closings repeatedly say that the out-of-date policies still carry weight (e.g., paras 6, 31 and 88) but at no stage are we told what weight they should be afforded. We are certainly not told why the SoS was wrong in the case of Fiddington when considering the very same policies.

[96] P.22-24
[97] Including housing sites exceeding 450 dwellings
[98] CD.K14 para 25
[99] CD.K14 para 27

8.11 A site which is not just adjacent to but has the PUA of Cheltenham wrapping around it is plainly in accordance with a strategy which directs development to the PUAs, even if it transgresses the hopelessly out of date SD10.

8.12 In relation to the landscape policies cited as part of reason for refusal 2, PI agreed that SD7[101] in particular was aligned with NPPF paragraph 177[102] so that if the scheme complies with paragraph 177, it would likely comply with SD7. In relation to the three limbs of NPPF 177:

8.13 There is plainly a chronic need for both market and affordable housing as set out above and within the evidence of NT and JS[103][104][105]. PI agreed that "need" in these circumstances included the need for housing but stated that there was no "need" given the SUEs. Such an approach is at odds with the Council's explicit acceptance that there is an acute need for housing and that the SUEs will not deliver in a reasonable timescale to meet those needs. It is particularly contrived to attempt to apply a different meaning to the word "need" for the purposes of paragraph 177. Plainly, need means exactly what it says, and the Council cannot accept an acute need for housing on the one hand but claim there is no need at all when it comes to NPPF 177. It should be unarguable that this limb can be satisfied in Cheltenham given the woeful housing land supply. Moreover, in the Battledown Ward delivery of affordable housing over the past 10 years has been at an incredibly low rate of 4dpa. This scheme can deliver 100 affordable units, this rate of delivery is genuinely exceptional in the local area.

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[101] Given the concessions in XX that SD7 should be interpreted in a manner consistent with NPPF and that it cannot import by reference the whole of the AONB Management Plan into the Development plan (see PI XX), it is disappointing that Mr Mills still seeks to argue that point CE12 of the AONB Management Plan should be treated as policy to which significant weight can attached (see his footnote 23). To be clear the AONB Management Plan is NOT part of the development plan, it isn't even a local development document under the 2004 Act. It hasn't been prepared in the same manner as even an SPD and necessarily must carry lesser weight. With respect to his enthusiasm for the plan it is a material consideration only.

[102] It is disappointing to note that at page 17 Mr Mills continues to cling to his approach to the Advearse case (CD [K56]), where he seeks to place weight upon the judge's summary of what policy says as if somehow that trumps the actual words of policy. With respect that is about as wrong as it gets – a judge's summary of guidance which s/he is not actually interpreting is binding upon no-one.

[103] There is not just a national need as suggested in paragraph 73a of the LPA's closings, but the evidence demonstrates that there is a particularly acute need in Cheltenham Borough and across the JCS area.

[104] The consideration of need is also not confined to needs within an AONB as suggested in paragraph 4.2.2 of the CCB's closings, and the PPG just does not say that – as was repeatedly pointed out to Mr Mills. This is confirmed in Policy CE12(2) of the Cotswold AONB Management Plan and numerous appeal decisions before the inquiry including for example K18, K36, K39 and K42 where Inspectors have considered the land supply at a District wide level to conclude that there are exceptional circumstances to justify development within an AONB which covers only part of the District. Indeed, as set out by NT in XX, it would be impossible to disaggregate the needs of the AONB from those of the PUA of Cheltenham given that the needs of the AONB are experienced within the PUA.

[105] The Evidence of JS is clearly portrayed in different manners by the Council and Mr Mills. Mr Mills at 5.1.4 says "During the inquiry, Mr Stacey acknowledged that his evidence doesn't provide a comparison of the shortfall in affordable housing provision in Cheltenham and the JCS area with shortfalls in other parts of the country." Whereas the Council accuse JS at paragraph 27 of their closings that, "where the LPA and the Appellant diverge is in respect of Mr Stacey's attempt to portray Cheltenham has having a worse affordable housing problem than other local planning authorities." Clearly both cannot be correct. JS does not consider seek to compare Cheltenham with other authorities, he's a vastly experienced witness and relies upon his knowledge and understanding of the affordable housing indicators to derive at his position that 100 dwellings should be given substantial weight.

8.14 There is no evidence of any scope for meeting the needs outside the AONB[106] or in some other way[107], and PIs argument that 'yes there is look at the SUEs' is an argument of breathtakingly circularity[108]. The JCS review is likely to propose meeting the needs within a different designation by releasing Green Belt land and or land in the AONB ***on the evidence before this inquiry*** much as Mr Mills wrongly seems to think that case law[109] supports a notion that general housing need does not contribute to exceptional circumstances. As noted above both AONB and GB release in a plan led system are subject to the same test of demonstrating exceptional circumstances – odd indeed then for the Council to run a case that PP should be withheld now because the Council will look to prove exceptional circumstances elsewhere. However, as already stated, it is manifestly unreasonable to wait for the plan process to conclude before attempting to meet the needs that arise now.

8.15 The Appellant's case on landscape and heritage is set out above, no other adverse environmental effects are relied upon by the Council. Yes, there are effects in relation to the latter, but they have been moderated. The NPPF 177c does not set the bar at nil detriment and they come nowhere near outweighing the benefits of this case even if the balance was a flat balance rather than a tilted

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[106] CBC's closing properly accepts just how constrained this borough is and how there are precious few means to address its housing needs without using land subject to high level policy protection – see paragraph 21. It is indicative of the disappointing approach of Mr Mills that he seeks to argue that this isn't the case (see his paragraph 7.4.2.12 *because it doesn't suit his case.* A similar point arises at paragraph 2.3 where he seeks to still argue that a site which is embedded in the urban area displays dark skies characteristics of AONB. The notion of standing next to the built area of Cheltenham as a location to put a telescope would fill any self-respecting amateur astronomer with a telescope with abject horror one suspects.

[107] In yet another misapplication of caselaw Mr Mills seeks to argue at pp18/19 that Mr Hutchison was in error in quoting Lindblom J in the case of Wealdon (CD [K40]), who made the obvious point that if there is a need which remains unfulfilled even after land has been released to meet part of that need then that tends to disprove the proposition that there are alternative sites, but that this is a matter of planning judgment. With respect Lindblom j.'s point is a matter of not merely planning judgment but of common sense – and Mr Mill's attempt to go behind it by saying (in a closing) that his planning judgment is different in this case, is not a refutation of anything. The fact that he clings to the proposition that the Appellant has failed to disprove a negative demonstrates nothing other than his failure to recognise what is obvious to anyone with a cursory understanding of this area – there are insufficient housing sites being brought forward to meet the substantial housing need. More telling has been the continued inability of Mr Mills or any other party for that matter to identify any alternative sites that could meet the need now (or even any time soon). Mr Hutchison in XX referred to SoS appeal decisions including Molins [K18] and Tetbury [K36] where the SoS was not prepared to wait for emerging plans to meet the immediate need that had been identified.

[108] Similarly, the contention in paragraph 73b of the LPA's closings that the delayed SUE's will meet the need, fails to acknowledge that even greater needs will have accrued by the time the SUE's deliver, and as such there will remain a substantial shortfall.

[109] The proper approach is to consider para 71 to 75 in full in the Compton Judgment. Mindful that what is binding on the decision maker is the determination of the legal issue upon which the legal challenge is brought and not the Judge's summary of what the policy says which is directed to an informed audience who will have the words of the policy before them. Mr Mills' evidence in this regard (and elsewhere – e.g., his reading of the PPG on when land in the AONB can be considered to meet needs) has been infected by his confirmation bias of his seeing what he wants to see and not reading documentation properly. To suggest that a general housing need can't ever amount to exceptional circumstances is wrong in law. And it is rightly conceded that this is the case by the Council at paragraph 73.

balance[110]. As for the proposition of the Friends[111] that paragraphs 176 and 177 comprise two separate tests is misguided. One has to apply both (obviously) and one has to give the great weight in §176 in order to assess the factors in 177 – which Mr Hutchison did. The argument to the contrary is a straw man argument to try and separate out one element of the overall judgment which is called for and then to say that it can't be overcome – with respect the Friends' argument is an invitation for the Inspector to fall into legal error[112].[113]

8.16 Overall, there is a crying need for housing in Cheltenham[114]. The JCS requires need to be met where it arises and to support the economic role of Cheltenham and to promote sustainable transport[115]. That need cannot be accommodated within the PUA. The surrounding land is almost all Green Belt or AONB, some of which will need to give way to development in order to meet the identified need for housing. When considering which sites can be developed with the least harm, this Site is particularly unusual for a designated Site in that it is already surrounded by development on three and a half sides. As PH explained, the landscape harm is minimised by limiting development to the lower portion of the site whilst retaining the more sensitive higher ground and bringing that

[110] It is noted that at paragraph 71 of the Council's closing that JP persists in wrongly arguing that the Monkhill case [CD 56] means that if there is an adverse effect upon the AONB then the tilted balance is disapplied even if exceptional circumstances in §177 are past. With respect the case not only doesn't say that – it wasn't about that. It didn't deal with a major development scheme at all – and the conclusion which JP draws from the case is patently wrong. If exceptional circumstances are found then the tilted balance is not disapplied by reason of footnote 7. Mr Mill's attempt to bolster this argument is even less convincing (see page 21 and 22). The case doesn't deal with the interpretation of how to approach major development in the AONB where exceptional circumstances have been demonstrated. Yes, Counsel for the SOS may have responded to counsel for the Claimant's thought argument on how to approach the matter – but, with respect not only are the comments of counsel not binding – but neither are the comments of a judge on an issue which isn't central to his/her determination (the legal term is obiter dicta – which is no more than persuasive and not binding weight).

[111] Para 69 of their closing.

[112] At paragraph 71 of the closing the Friends also place reliance upon the Horsham decision (K43) – Mr Hutchison patiently explained that that scheme – a 473-unit scheme protruded out into the AONB, and would have been surrounded by countryside on all but part of one side with little relationship to the urban area. It was a poor scheme and a long, long way from this.

[113] The Friends tell us at paragraph 71 that the Inspector in the Horsham case [K43] considered landscape and scenic beauty in isolation as though NPPF paragraph 176 was a freestanding test. When the paragraph is read in context it can be seen that the Inspector does no such thing. At IR 115 NPPF paragraphs 176 and 177 are taken together. Paragraph IR.117 lists the collection of all benefits and then IR.118 starts with the words "Set against this, I have found significant harm to the landscape and scenic beauty." With the words "set against this" it could not be clearer that the Inspector was weighing all benefits against the harms to the AONB. As always, a decision must be read in full.
The West Charlton appeal [K45] similarly does not say what The Friends suggest at their Closing para 73. All the benefits were weighed against the AONB harms at IR.38 of that decision. It is surprising that the Friends even referred to this decision when the LPA had a 9-year housing land supply [IR26], there were alternatives [IR30] and it was found to be in a wholly unsustainable location [IR31]
The Molins appeal decision [K18] sets out the correct approach where Inspector Downs explains that all benefits weigh against the AONB harms [IR.273]. This conclusion was endorsed by the SoS [SoS 38].

[114] The Friends are wrong at §30 that the housing need has to be demonstrably exceptional amongst other LPAs who lack a 5YHLS. The test is actually whether in all of the circumstances of this case are exceptional circumstances proven and will the scheme be in the public interest **in the context of this case** no other LPAs. Mr Hutchison in XX avoided reference to exceptional need only because he did not wish to confuse the inquiry into thinking that there was a requirement to demonstrate an "exceptional need" and he relied upon the Compton judgement in that regard [K.57]. However, when asked in RX whether the need could be described as exceptional in his opinion, he said "yes". That is unsurprising when you have a 1.6 to 2.9yr supply and a plan period shortfall of 2,000-3,500 houses. No appeal decision in the K series of CDs had shortfalls even approaching this magnitude.

[115] Policy SP2(1) and supporting text para 3.2.5

forward as amenity urban space which would have the added benefit of better revealing the significance of the group of heritage assets at the reservoir complex without impacting upon their significance. Indeed, the additional montages demonstrate that the views over the site from and to the pavilion, but especially from the pavilion to the town centre will be maintained. The proposals would not have more than a minor to moderate adverse landscape effect after mitigation.

8.17 Together with the sheer scale of the need and an absence of a plan-led response, this should be seen as exceptional circumstances justifying the proposals.

8.18 In relation to NPPF paragraph 202, as set out above, the balance is clear; the public benefits of the scheme far outweigh any minor effects on the significance of the pavilion or the reservoir complex generally.

8.19 Other than the obvious benefit of providing market and affordable housing, the appeal scheme will open up public views from within the site to the escarpment and as already noted to the listed Pavilion. The scheme will naturally generate economic benefits flowing from the construction of the units and longer-term economic benefits associated with additional resident spend in the area. The scheme has additional environmental benefits in the form of green infrastructure and biodiversity enhancements and the very tangible benefit of providing a safe path to remove the need to walk down the side of Harp Hill.

9. Conclusions

9.1. Given the sheer number of inquiry sitting days and witnesses at the inquiry, the Inspector could be forgiven for considering that the appeal is particularly complex. However, in reality the proposed reasons for refusal can be dealt with relatively swiftly:

9.1.1. The spatial strategy policies are out of date and entirely out of step with the reality of meeting housing needs in Cheltenham, five years after the adoption of a plan that should have been reviewed immediately. The Council accepts that land is needed outside the PUA and applying SD10 and SP2 has resulted in a chronic under supply of housing. Both therefore need to be afforded little weight and reason for refusal 1 amounts to very little in that context.

9.1.2. Exceptional circumstances exist to justify the development notwithstanding its AONB location and this is a development which is emphatically in the public interest. Harm is surprisingly localised and moderate in nature given the existing development surrounding the site and the plan to confine the housing development to the lower, less visible and less sensitive portion of the Site. Again, the sheer scale of the need for housing, including

affordable housing together with the entire absence of a plan to meet those needs is both unusual and exceptional. The Council acknowledges that Green Belt release will be sought as part of the emerging JCS review, this itself requires exceptional circumstances to be present.

9.1.3. There is nothing like a severe impact on the highway justifying a refusal on this basis. Minor additional delays on an already congested network does not approach a proper meaning of the term "severe". Indeed, the County's case in this regard was hopeless – which is why, presumably its emphasis seemed to shift to that of gradients which is palpably capable of being addressed at the reserved matters stage for what is an outline proposal.

9.1.4. The effect on the setting of the reservoir complex is minor in nature and more than outweighed by the benefits of the scheme. Moving housing slightly closer to the reservoir structures and pavilion in the context of a crying need for housing does not provide a compelling reason to refuse the scheme.

9.1.5. Whilst not a reason to refuse permission, the education contributions sought by GCC are excessive and based upon a flawed assessment of capacity and need. NT's evidence should be preferred. Nonetheless this issue goes to what contribution is triggered in the 106, and not whether or not the appeal should be dismissed.

9.2. In short, Cheltenham needs new homes, and it particularly needs affordable ones. There are very limited places in which new homes can be accommodated and the PUA cannot accommodate the needs of the town. New sites outside the PUA need to be found, unfortunately they are almost all going to require Green Belt release or to be located in the AONB. In that context, the appeal site is a natural choice for sensitive development given that it is, unusually, already all but surrounded by development. The harm caused is relatively minor where, as the appeal scheme can go a meaningful way to assisting Cheltenham to make good its shortfall and provide 100 new affordable units for families in need in the local area. This need would likely otherwise go unmet for many years given the past rate of delivery in the ward (a meagre 4 per year).

9.3. Ironically this inquiry should have revealed to the Inspector just how difficult it is to bring needed, let alone acutely needed development forwards in this part of Gloucestershire. To invite dismissal of the appeal on the suggestion that 'something will turn up' is deeply misguided. The merits of this proposal are overwhelming, and the Inspector is respectfully invited to allow this appeal as soon as possible to help to address those obvious and unaddressed needs.

Endnote

A.1 It is something of a surprise to be responding to a point of process at the end of an inquiry of this nature. Nonetheless in the light of Mr Mill's submissions at paragraph 2.2 it is necessary to do so.

A.2 In that section he seeks to argue that essentially the Inspector shouldn't be determining an outline application for planning permission in the AONB favourably unless he is able to tie down the consent in a more stringent manner than (presumably) is proposed by the proposed conditions.

A.3 With respect to Mr Mills' his arguments in this regard are internally contradictory and lead to the conclusion that an outline consent should never be granted in the AONB unless it is tied to a level of detail which is tantamount to a full planning application. Two obvious points need to be made at the outset.

A.4 Firstly the LPA has not (putatively) refused PP on the basis that there is any inadequacy of information. It would have been odd for it to do so since it had validated the application on the basis of the information provided. Moreover, neither it, nor anyone else (including Mr Mills) has asked the Inspector to make a direction under regulation 25 for further environmental information (indeed Mr Ryder expressly conceded that there was sufficient information to determine the application. Thus, a lawful application has been made which is capable of being determined – and yet JM seeks to argue that the Inspector can't grant permission.

A.5 Secondly, in other respects the SOS has singled out development within AONBs and NPs for distinct treatment. However, he has not sought to amend the GDPO to preclude the grant of an outline consent within an AONB. Mr Mills may not agree with this point but that is a matter to speak to his MP about – it is not a point which goes anywhere in the determination of this appeal.

A.6 Thus, with sufficient information before the inquiry, and a lawful application for a development consent before the decision maker what exactly is Mr Mill's point? Well,

it seems to be that there is no certainty of the proposed mitigation coming forward, firstly because the parameter plan isn't sufficient to identify where and how that will occur; and secondly that the term 'general accordance' in condition 4 is insufficiently precise to tie the developer or (presumably) to inform the LPA when it determined reserved matters applications.

A.7 Both of his points are wrong. The most obvious retort is that landscaping, layout and indeed **all** reserved matters are at large in this case and are for the LPA to determine. The LPA should be presumed to be capable of doing their job properly, and if landscaping is placed inappropriately (e.g., to block views over the site to the escarpment) or to fail to mitigate built development or infrastructure – then the LPA **will** refuse such an application and would be right to do so.

A.8 However his point about the parameter plan is misguided – because the parameters plan isn't seeking to condescend to the level of detail that Mr Mills seeks. Thus, his point comes down to no more than that he doesn't like a condition which seeks 'general accordance' with the detail on a plan (his closing §2.2.7). It will be recalled that in XX it was put to him that such conditions were habitually imposed by LPAs and by the SOS in a variety of different instances including land within the AONB[116]. None of those instances were challenged and Mr Mills doesn't explain in his closing why PINS and the SOS have got it wrong. With respect it is difficult to avoid the inference that he doesn't like the idea of an OPP in the AONB as a matter of principle – but his point in this context is nonsense on stilts.

A.9 Finally he fails to recognise the circularity of his argument. His proposition is that even with mitigation the appeal proposals if granted mean that the site is no longer worthy of AONB designation (a point he makes repeatedly in closing – e.g., §2.1.8) and yet he seeks to argue that any consent should be tied in a more stringent manner than might otherwise be the case since the site is within the AONB. And yet he fails to spot the circularity of his argument in this regard.

A.10 With respect therefore there is literally nothing in Mr Mill's procedural criticisms in this regard – which with respect take the inquiry nowhere.

[116] The cases which were put were appeal decisions in the following core documents: K36 condition 4 (same AONB), K37 condition 9, K14 condition 7 (and see condition 3), K38 condition 13. However, a much greater trawl could have revealed vastly more.