



## Appeal Decision

Inquiry Held on 2-4 July 2019

Site visit made on 4 July 2019

**by Elizabeth Hill BSc(Hons) BPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13<sup>th</sup> August 2019**

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**Appeal Ref: APP/F1610/W/18/3217581**

**Land to the east of Chapel Close and the west of John of Gaunt Road, Kempford.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by J A Pye (Oxford) Ltd against the decision of Cotswold District Council.
  - The application Ref 17/02224/FUL, dated 26 May 2017, was refused by notice dated 1 June 2018.
  - The development proposed is the erection of 62 dwellings (50% affordable), formation of emergency access, associated landscaping and ancillary works.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

### Preliminary matters

3. The Council's Decision Notice refers to policies of the adopted Local Plan, which at the time of the determination of the planning application was the Cotswold District Local Plan, and the emerging Local Plan, the Cotswold District Local Plan 2011-2031 (LP). The latter plan has now been adopted and I have determined the appeal on the policies of the adopted Local Plan. In addition, the Decision Notice made references to paragraphs in the former version of the National Planning Policy Framework (NPPF), which has now been updated. Likewise, I have determined the appeal on the basis of the revised NPPF.
4. A S106 agreement was submitted in respect of affordable housing, self/custom build housing, public open space and contributions to education provision. On this basis the Council has withdrawn its second reason for refusal. However, the County Council have not required a planning obligation for the 3-year contribution towards an enhanced bus service for the village and therefore the appellant has submitted a unilateral undertaking for this element. I discuss this further, below.
5. An accompanied site visit was carried out on 4 July 2019, although I also visited the village unaccompanied on another occasion.

## **Procedural matters**

### *Decision Notice*

6. In the Statement of Common Ground (SoCG) the Council invited me to replace original Reason for Refusal 1 of the Decision Notice with the amended one in paragraph 1.5 of the SoCG. This gave Policies DS3 and DS4 as being relevant to the refusal, whereas the original reason for refusal had cited only Policy DS3. At the inquiry I explained that, as far as I was aware, the Decision Notice issued by the Council had not been revoked and still stood and could not be replaced as such. Therefore, I regarded the new Reason for Refusal as a statement of the Council's revised position on the application, which is discussed further below.

### *The Statement of Case and the Statement of Common Ground*

7. The appellant has also asked for rulings on whether the Council should be allowed to expand their case, over that set out in the Statement of Case (SoC), as retrospectively authorised by the Council, and that set out in the SoCG, in terms of the case on settlement policy. In the SoC, dated February 2019, the Council said that their case on settlement policy would be developed using Policy DS3 (Small-scale Residential Development in Non-Principal Settlements) of the Local Plan, having regard to the overall Development Strategy for the District set out in Policy DS1. In an email dated 12 April 2019, this was revised to show Policies DS1, DS2, DS3 and DS4. However, in their email of 22 May 2019, the Council specifically stated that they also wished to consider the proposal against Policy DS4 (Open market housing outside Principal and Non-Principal Settlements).
8. The appellant objected to this change by the Council. In view of the short period of time before the proofs were due to be submitted, I allowed the Council to submit their proof on the due date (4 June 2019) and gave a further two weeks for the appellant to submit their proof, allowing them time to consider the additional material in respect of Policy DS4 included by the Council. This has been dealt with briefly in the relevant proof, since the appellant disagrees that this is the appropriate policy to use and continues to rely on Policy DS3. In terms of the other new matters that the Council is said to have introduced, the relationship to other higher order settlements has been highlighted by the appellant in terms of the benefits claimed for the proposed enhanced bus service to Fairford and Cirencester. The Council is entitled to respond to this issue.
9. The appellant also takes issue with the Council examining the compliance of the proposal with the criteria set in Policy DS3, which they say mirror what would be small-scale. However, the Council had already given notice in its Rule 6 statement in February 2019 that it would be looking at the small-scale as defined "housing which is proportionate to, and complementary with, the size and character of the settlement and its surroundings". I do not consider that the Council went beyond these matters in setting out their case and examining the proposal in terms of the criteria included in the policy.
10. Similarly, the appellant has agreed that privacy is a main issue but then says that the Council has gone beyond its original case in examining the harm caused by any mitigation to protect privacy. Generally, the main

matters in planning appeals are drawn quite widely and I consider that if mitigation is required to counter the harm to privacy then its impacts should be taken into account. In my view this does not go beyond the statement on privacy in the SoCG. I have already advised that the comments made about noise and disturbance from vehicles would be discussed under other matters, since it does not fall to be a main matter and does not go to the heart of the decision.

11. To summarise, the Council expanded its case, using DS4 in addition to DS3, from that which had been advised in their Rule 6 Statement, which referred only to Policy DS3. However, the Council gave notice as early as 12 April 2019, that it intended to look at all the Development Strategy policies in its evidence and therefore this did not come as a surprise to the appellant. The staggered exchange of proofs ensured that the appellant had adequate opportunity to respond to all the points raised. This complies with the requirement in Rule 15(10) of the Inquiry Rules 2000 which allows for persons to add to their SoC provided that everyone who has a right to appear has had the opportunity to consider any fresh matter or document.
12. In terms of the SoCG, I do not consider that the points made about the potential impacts of the mitigation for the loss of privacy go beyond the main issue of privacy which was the third reason for refusal or that they went beyond a reasonable consideration of the tests in Policy DS3 for housing in non-principal settlements. The only issue which did go beyond this was that of noise and disturbance, on which there was only a single sentence in the proof, and which I have treated as an "other matter".

#### *Outline application*

13. The appellant also requested that the application should be amended to reduce the number of dwellings from 62 to 58 (still 50% affordable) and the appeal be determined as an outline application, with all matters reserved apart from access.
14. In terms of the procedural fairness of this issue the relevant caselaw is *Holborn Studios Ltd v London Borough of Hackney and others 2017, EWHC 2823*, in which the judge considered an application made to the Council in 2015 which had been the subject of a number of amendments, culminating in the issue of a planning permission at the end of 2016. The judgment sets out the legal framework for the case, including the form and manner in which an application for planning permission must be made, in paragraphs 8-20. These steps have not been carried out in respect of the appellant's proposal. It goes on to conclude, in paragraph 21, that there is no provision in the statutory scheme for making amendments to any application for planning permission. Although the judgment then considers a number of limited exceptions, none of these are relevant to this case.
15. Therefore, because procedural fairness would be compromised there is no power to convert the original application to something different from that which has already been considered by the Council as a settled application, having gone through the steps set out in *Holborn*.
16. In addition, although an Inspector can deal with an application which is the subject of a s78 appeal ".as if it had been made to him in the first instance" under s79(1) of the Town and Country Planning Act 1990, as amended, this

only applies to the same application describing the development for which permission is sought and which was made to the Council in the prescribed form and manner, as set out in *Holborn*. Otherwise this could result in a grant of planning permission for a development which is different in substance from that which was made initially. This point is also made in paragraph 65 of *Holborn*.

17. Finally, published government guidance in the form of The Planning Procedural Guide (March 2019) says at Annexe M that an appeal should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially the same as that considered by the local planning authority and settled through the Development Management Procedure Order 2010 (DMPO). Although the proposal would reduce the amount of development on the site, there is no certainty about the type of scheme which would evolve in this case and on which local people have had no opportunity to comment. It would be possible for even minor changes to materially alter the nature of an application and lead to possible prejudice of interested people. In addition, even if this application had been registered and validated as an outline application the Council has powers to require further detail to be produced under Article 5 of the DMPO, detail which would need to be publicised to provide for public participation and involvement, and such actions have not been possible in this case.
18. Therefore, I consider that the inquiry should not consider the planning application in outline form.

#### *Conditions*

19. Additionally, the appellant requested that I consider the potential use of conditions to make development acceptable that would otherwise be unacceptable, in accordance with paragraph 54 of the NPPF. This is covered in the main matter on living conditions.

#### **Main Issues**

20. I set out the draft main issues in the pre-inquiry note. The appellant queried whether the main issues should have included an issue which would have weighed the claimed benefits of the scheme against any harm from conflict with the development plan (s38(6) of the Planning and Compulsory Purchase Act 2004, as amended). Any benefits claimed will be taken into account in the planning balance at the end of this decision.
21. Since the second reason for refusal has been withdrawn, I consider the main issues to be:
  - a) Whether the proposal would be in an appropriate location for development, having regard to local planning policy which seeks to manage the location of new development; and,
  - b) The impact of the proposal on the living conditions of neighbouring occupiers, in terms of privacy.

#### **Reasons**

##### *Settlement policy*

22. The proposed development would take place in Kempford, which is not listed as one of the 17 Principal Settlements in Policy DS1 of the LP, in which the majority of housing development will take place, with Cirencester as the main focus. These settlements have development boundaries which are the subject of Policy DS2. Together with commitments, the LP has allocated sufficient deliverable sites to meet the District's housing requirement and it is agreed between the main parties that the District has a 5-year housing land supply. However, that is taken to be a minimum and the Plan allows small-scale residential development in Non-Principal Settlements in criteria-based policy DS3, which would form part of the windfall contribution to housing land supply. In my view, the scheme is not of such a size that it would undermine housing delivery on allocated sites elsewhere. Policy DS4 does not allow new-build open market housing to be built on land outside Principal and Non-Principal Settlements unless it is in accordance with other policies that deal with residential development in such locations. Policy H2 deals with affordable housing and Policies H3 to H7 deal with special housing types, including rural exception sites.
23. In drawing up the settlement hierarchy in the LP, the Council assessed a range of material in compiling the evidence base on the settlements within their area for the examination of the LP. Policy DS3 recognised that some settlements which are Non-Principal Settlements have better sustainability credentials than others and allows the consideration of access to facilities within the settlement itself, in a Principal Settlement or in a neighbouring rural settlement. The nearest settlement to Kempford of any size is Fairford, which is a Principal Settlement in the LP hierarchy and has a District Centre, medical facilities and some employment opportunities. Further away is Cirencester with a wider range of services and facilities as well as employment.
24. The only recent change to the employment situation is an announcement that more troops could be stationed at RAF Fairford in the next few years. Evidence from a newspaper article reports a decision to transfer about 800 troops, plus their families, from Suffolk by 2024, with potentially other employment on the base as a result. However, such movements can be the subject of change, if military priorities or funding change, and it is understood that any moves are still at the planning stage and there are no details on likely housing demand or employment opportunities as a result of this potential change.
25. In terms of sustainability, local residents can reach the main facilities in the village – primary school, church, public house/ restaurant, village hall and post office (2 hours a week) by walking or cycling. However, other everyday facilities like shops and the medical centre are in Fairford, which are too far away to walk and the distance and lack of dedicated lanes for cycles is a deterrent to their use. The existing bus service to Cirencester, which is the main centre in the District for employment and services, operates one service to and from Kempford on Mondays, Tuesdays and Thursdays, at off-peak hours, with a similar Saturday service. The timings of the services do not allow someone working a standard 9-5 job to make use of the service. There is also a "shopper" service to Fairford on a Thursday, which is on demand and needs to be pre-booked. Car ownership in Kempford is high and local residents confirm that cars are used for most journeys,

although the need for better public transport scored well on the Parish Questionnaire 2012.

26. The appellant is offering an enhancement to the existing bus service, which they say would improve sustainable transport for Kempston. This would be done through a financial contribution, by way of a unilateral undertaking, to the bus service provider which would allow an enhanced bus service to operate via the village for 3 years. The current operator is Stagecoach and, although they stand to gain financially from the proposed agreement, they have a good understanding of bus service operation locally and presented evidence for the appellant.
27. The proposed enhancement would introduce about 5 more services via Kempston on Mondays to Saturdays based on loops through Fairford and Lechlade, both of which are Principal Settlements. The service provided would give more services during the day but only one service that would arrive in Cirencester before 09:00 and one service back in the evening at 18:30 from Cirencester, which might involve a considerable wait for those working 9-5. It might, however, be attractive to retired people and others who could travel off-peak. The subsidy would last for 3 years, which the company say would be sufficient to develop awareness and demand, and it might also fund a 4<sup>th</sup> year of the service. After that, its future would depend on usage and probably shared with an unknown number of schoolchildren on contracted services, whose boisterous behaviour can be a deterrent to other passengers. It was acknowledged by the appellant that any changes at RAF Fairford would be unlikely to influence the use of the proposed enhanced bus service.
28. The County Council's response to this offer has been summarised in the Officer Report, which indicates that it would not deliver a sustainable, viable commercial service, for which there would be no money for a subsidy after the 3-year period. They have not requested a contribution since the enhanced bus service would not be necessary in highway terms. Moreover, the service would be likely to have more patronage from the Principal Settlements of Fairford and Lechlade to Cirencester and the "branch" route to Kempston and other smaller settlements would be less likely to be commercially viable and more likely to be cut. There is a lack of certainty around the level of demand from Kempston after the 3-year period and without any viability study or business case for the proposal during this time and there is nothing to counter the views of the County Council. Therefore, I consider that the planning obligation offered on this matter would be unlikely to give any real choice for sustainable transport for new occupiers and existing residents, in terms of frequency and timings of services, as required by paragraph 102-103 of the NPPF, even taking into account the rural location of the service. Therefore, I give the planning obligation for the enhanced bus service little weight.
29. I turn now to which of the development strategy policies in the LP is applicable in this case. There is no settlement boundary for Kempston and Policy DS2, which covers development within settlement boundaries would not apply. It was agreed at the inquiry that it was a matter of planning judgement as to whether the site lies inside or outside the village. The site is currently in agricultural use with an arable crop. It lies to the rear of the High Street behind existing housing, which for the most part, fronts High

Street. However, there is more modern development in depth in the areas to both the NW and SE sides of the site. The other boundary abuts further agricultural land, also in arable use, with a native hedgerow and gate.

30. The site is relatively large (about 2.5ha in the appellant's estimate). However, on the site visit I observed that its character is heavily influenced by the suburban style of the modern development, especially on Chapel Close, Swynford Close and John of Gaunt Road. In many places adjoining properties have relatively short gardens with post and rail fences, which allows these dwellings a more intimate relationship with the edges of the open field. The landscape assessment describes it as contained. Only where there is the boundary wall of the former walled garden to The Pentre or where occupiers have erected other boundary treatments or denser planting is there a more defined boundary to the three sides of the site bounded by development. Although the intrinsic character of the site is agricultural and rural, it has a strong relationship with the surrounding development in the village and therefore I consider that it should be examined under Policy DS3.
31. A number of Council officers and others have also made comments about the site being within the village and being largely contained. Some also regard the site as "infilling". The appellant has submitted appeals Ref: APP/Q3115/W/ 17/3187058 and 3187059 in support of their view that the site should be regarded as infilling. However, that appeal decision was taken within a different policy context and in a different location to the site in this appeal, where the explanatory text in the LP at 6.3.5 to Policy DS3 envisages that development could include "minor infilling". Infilling is defined in the glossary to the LP as "small-scale development in an otherwise built-up frontage". The site could not be described as being on an otherwise built-up frontage, since it represents development in depth. I consider its scale below but I do not consider that the proposal represents infilling.
32. I turn now to whether the development could be said to be small-scale. Policy DS3 includes criteria on what is to be considered in respect of defining what is small-scale. Although the appellant says that this is the only element of the policy on which the Council turned down the application, I consider that the policy should be read as a whole including the criteria and paragraph 6.3.7 of the LP requires that the relevant tests in the policy have been satisfied. The first criterion is that the proposal would demonstrably support or enhance the vitality of the local community and the continued availability of the services locally. The village has limited services and facilities at present and those that are available have been agreed in the SoCG. One of the main deficiencies is the lack of a shop in the village, although local residents said that there had been an attempt to start one up which had failed. A little further growth in the village might help to support a shop and create more vitality but there is no certainty that this would happen as a result of the development. Anecdotal evidence from the Council and local residents does not suggest that local services like the village school need further growth, since they are already well-subscribed. Whilst it might be the case that a few new dwellings might assist the village to grow and thrive, in accordance with paragraph 78 of the NPPF, this could be accomplished through rural exception sites or minor infill sites, as defined in the LP.

33. The second criterion of Policy DS3 is that the development should be of a proportionate scale and maintain and enhance sustainable patterns of development. I agree with the LP Inspector that it was not appropriate to set a number of houses to be provided in each non-principal settlement, since they all differ but rely on a criteria-based approach. So, while up to 50 houses were considered to be limited in scale in the Hailey decision (APP/D3125/W/18/3202562) that was on a site in another District with another policy background. The explanatory text to Policy DS3 explains that development should be proportionate to and complement the size and character of the settlement and its surroundings. The Council set out calculations in their evidence that the proposal would increase both the population and number of households by about 14% (13% in the appellant's estimate). Although some settlements might assimilate such change without difficulty, I observed on my visits to the village that it has already experienced quite a number of modern developments around the historic core. Further change on this scale would represent a significant amount of new development. The previous growth has taken place without any commensurate change in facilities and services, with people having to travel for everyday services. Therefore, I consider that the proposal would not be of a proportionate scale in comparison with the size of the existing settlement and would continue the need to travel to larger centres for everyday needs.
34. The third criterion concerns the impact on the form and character of the settlement. The site is an open area on the edge of the settlement, which I have already said is influenced by the nature of the development around it. However, it still retains its current agricultural use and provides visual continuity with the agricultural uses beyond it, which is appreciated by local people. This would be replaced by a relatively high-density development, which would be suburban in design and which would join together existing modern groups of development. It is acknowledged that the site does not have formal designation in terms of landscape or protected open space and the Council has no objections in terms of the overall urban design or its impact of the scheme on the heritage assets of the village, including the Conservation Area. However, the amount of new development proposed would have an adverse impact on the overall character of the village, changing it from being a rural settlement with an historic core to a more suburban style of settlement. There would be some open space provided within the development which might be used by the new residents and existing community, this would be within the built form of the development and not readily seen from outside. Therefore, it would fail to give any relief to the bulk and mass of the development in, albeit limited, views from the rest of the village.
35. The fourth criterion concerns adverse impact from cumulative development over the LP period, which is 2011 to 2031. The Council have recorded 33 dwellings completed in Kempsford since 2011, plus 2 commitments. The majority of this housing was in a scheme at Top Road, a scheme of 29 dwellings, 11 of which were affordable, granted planning permission in 2014. At that time the Council did not have a 5-year housing land supply and the scale of that development was in keeping with the existing scale of the village. The details of the reasoning behind the approval are not before the inquiry but great weight would have needed to have been given to the

general supply of housing. The Council estimates that the combination of the Top Road scheme and the appeal scheme would lead to an increase of about 20% in the size of the village. I consider that is a great deal of development for the village to assimilate in a relatively short period of time, and this degree of change, in only the first part of the LP period, would have a cumulative adverse impact on the village.

36. Therefore, I conclude that the proposal would not be in an appropriate location for development, having regard to the Policy DS3 of the LP, which aims to allow only small-scale development in Non-Principal Settlements, subject to criteria.

#### *Living conditions*

37. Although the general layout of the proposal is not the subject of objection by the Council in urban design terms, parts of the development are close to existing development, with many of these dwellings having short rear gardens. Policy EN2 of the LP allows development that accords with the Cotswold Design Code, which is appended to the LP. Together with Policy EN2 it forms a framework for design considerations in respect of planning applications. The appellant has analysed the distances to the boundaries in terms of privacy, using the distance between dwellings of 22m set in D.67(j) of the Design Code for one and two storey dwellings. Whilst other Councils might allow shorter separation distances between dwellings, this distance has been incorporated into the Cotswold Design Code, as an appendix to the adopted LP and referenced in Policy EN2. In the decision at Fairford, (18/02389/FUL), the back to back distances between dwellings are between 20.5 and 21.4m, with any impact between houses within the new development. In such cases, potential occupiers have a choice as to whether to rent/ purchase that property, whereas in this development the impact would be upon existing occupiers who would not have that choice.
38. In addition, D.67(s) of the Design Code requires that the sitting out area of the garden is private and reasonably screened from view from neighbouring properties. The appellant has sought to argue that, provided the gardens of the new dwellings conform to half the 22m distance (11m), this would be acceptable in terms of privacy. However, this does not take into account the relatively short gardens of some of the houses surrounding the site and, in my view, does not form an appropriate methodology for examining the impacts of the development on the privacy of existing dwellings. The existing housing and their boundaries cannot be moved, so it is for the developers of the proposal to create a satisfactory design, with sufficient separation between the existing and proposed dwellings to ensure privacy. Moreover, the appellant has not taken into account the impacts of any mitigation which would be required on the boundary in order to protect privacy. Mitigation and its impacts are normally considered alongside any adverse effects of the impacts of the development proposed.
39. There are a number of places around the site where privacy is an issue. Firstly, there is the relationship between Plots 11 and 12 and numbers 9, 11 and 19 John of Gaunt Road. The appellant calculates that there would be about 14m to the shared boundary on both Plots 11 and 12. However, when examined against the overall 22m in the Design Code, there would only be about 20m between windows to principal rooms on the first floor

- between Plot 11 and 9 John of Gaunt Road, which would not be acceptable, despite it being a slightly angled relationship. The distance between main windows on Plot 11 and 11 John of Gaunt Road would meet the minimum distance of about 22m. The existing post and rail fence to this property would be made good as shown on the illustrative boundary treatment plan but would not protect privacy at ground floor level. Planting along the boundary to these properties would be necessary and would need to be dense and at least 1.8m to protect privacy. This would have an adverse effect on the outlook of the kitchen to 11 John of Gaunt Road which is only about 5m from the boundary. There would be an acceptable distance between Plot 12 and the main windows of numbers 11 and 19 John of Gaunt Road, given the relationship of the dwellings. However, the main living room window to number 19 John of Gaunt Road is at the rear of the dwelling and the proposed planting close to the rear elevation of the house would be likely to have an adverse impact on outlook, and potentially daylight, given the orientation of the building, to the living room window.
40. The second area is the relationship between plots 15-18 on the site and 14 and 18 John of Gaunt Road and 8 Swynford Close. The windows to the first-floor bedroom on the house at Plot 15 would be about 13m from the garden at 18 John of Gaunt Road which would be unacceptably close and for which adequate mitigation could not be made. Plot 16 is slightly off-set to 18 John of Gaunt Road but even taking account of the angle the distance between first floor windows on Plot 16 and 18 John of Gaunt Road would be only about 19m and this would be unacceptable. There would be a longer distance between Plot 16 and 14 John of Gaunt Road, of about 26m between first floor windows, which would be acceptable. This distance is less when measured to the conservatory, but this is not listed as a principal room in the Design Code, despite the Council's point on the perception of overlooking. The first floor windows in principal rooms to the houses on Plot 17 and 8 Swynford Close would be only about 18m apart, which would be unacceptable in terms of privacy. The angle of the house on Plot 18 would be more oblique and, despite being a similar distance away from number 8, would be acceptable in my view, in terms of privacy. However, the garden, and patio area to number 8 is small and close to its rear boundary. The proposed planting on the boundary, which would be likely to be at least 1.8m tall, would have an adverse impact on this sitting out area which currently has an open aspect.
41. In the third area, Plots 26 and 27 would face the houses at 4 and 5 The Grove. These latter dwellings have short rear gardens of only about 3.5m separated from the site by a low wall. The first floor windows of 4 and 5 The Grove and at Plots 26 and 27 would be only about 21m apart, which would not be acceptable in terms of privacy. In addition, the short gardens of these houses would be overlooked from the first floor windows of the houses on the site and any new planting, which would not be in the control of the occupiers of the existing housing, would be close and have an adverse effect on the outlook from both properties. In addition, the indicative plan showing boundary treatment shows a 1.8m fence with 0.3m trellis on top at the back of the planting, still close to the boundary of these properties, which would protect privacy but would also have a further adverse effect on their outlook. The issue of access to the planted area was

raised at the inquiry by a local resident but this would be a legal matter outside the scope of the inquiry.

42. Finally, the proposed development on Plots 33-38 would be a terraced block of apartments, with gables to the rear, and 6 first floor windows to principal rooms which would overlook the dining room window to the bungalow at 4 Chapel Close at a distance of only 16m, which would be unacceptable in terms of privacy. In addition, the garden is short and would also be overlooked from these windows. The indicative plan shows the existing post and rail fence being made good but this would not protect privacy at ground floor level. Any mitigation in terms of planting on the boundary would have little effect and would have a dominant, adverse effect on the use of the garden, which is already impacted by the tall hedge at the adjoining house on The Knoll. Number 5 Chapel Close would be further away from the apartment block and have a more oblique relationship with it. Although this property has a relatively short garden area to the boundary with the site, the adverse effect on it would be less pronounced and therefore, it would not have an adverse effect on privacy.
43. The appellant has requested that consideration should be given to the use of conditions, which could either address landscape, including boundary treatment, or delete plots where there is an unacceptable relationship with existing housing. The suggested conditions already include a condition to control the details of boundary treatment. However, in this case there are also adverse impacts from the boundary treatment in attempting to mitigate the impact on privacy, which would be unlikely to be overcome. The Planning Practice Guidance (PPG), at paragraph 21a-012-20140306, says that where the detail in a proposed development is not acceptable, then a condition making a minor modification can be imposed. However, this should not be done if the change is substantial. The appellant says this might apply to one or two plots which could be deleted by condition but I have found adverse effects in four different areas of the site, relating to a number of plots. As such, I consider that this could not be resolved by a minor change using a condition, since it would represent significant changes to the scheme.
44. Therefore, I conclude that the proposed development would be harmful to the living conditions of neighbouring occupiers, in terms of privacy, since it would not comply with the Cotswold Design Code, as required by Policy EN2 of the LP.

### **Affordable housing**

45. The appellant has submitted a report by Shelter, dated 2006, which highlights the impact of poor housing on health, wellbeing and educational attainment in children, amongst other matters. The need for affordable housing in the District has been assessed as part of the LP. Policy H2 states that the number of homes likely to be delivered is unlikely to meet the need for additional affordable homes. Paragraph 8.2.5 goes on to say that the majority of affordable homes will be delivered in 17 Principal Settlements. Policy H3 enables delivery of some affordable housing on rural exception sites and as part of Policy H4, within specialist developments for older people. The latest PPG (July 2019) continues to emphasise the delivery of affordable housing in its section on the Housing Needs of Different Groups.

46. The affordable housing need across the District is estimated in the text to Policy H2 to be 157 net dwellings per annum over the period 2011-2031, taking into account past under delivery. The figures on delivery are gross completion rates, rather than net, but provide the best estimate on delivery. They show some improvement in delivery over the 157 total over the last 3 years but delivery averages out at about 30% of total housing delivery (gross) over the last 8 years. The LP acknowledges that there will be a shortfall in affordable housing over the plan period.
47. The affordable housing need in the District stood at 1,786 households on the Housing Register on 1 April 2019 according to the appellant's Freedom of Information (FoI) request, an increase of 109 from the previous year. The need estimated by the appellant from the Housing Register on 1 April 2019 with Kempston Parish as their preferred location is 54 households. However, the appellant's FoI request did not request information on how many of those on the register had a local connection with the Parish. The Council estimate the need to be 44 households, with 13 households having a local connection to Kempston and a preference for that location. The Parish Council estimate the need to be about 18 households, compared with 12 households on the Parish Housing Needs Survey 2017, although only about 7 of these are registered with Homeseeker Plus. The District as a whole is acknowledged to be less affordable than the national average with a ratio of over 12 for lower income earners and over 13 for those on an average salary. Kempston has higher average house prices than the District as a whole, which by comparison with England as a whole is already very high.
48. In terms of Kempston, the only recent delivery has been 11 affordable homes on the Top Road development, which was subsidised by open market dwellings and represents 40% of the development. In addition, some of the affordable housing in the village will be redeveloped to rebuild poor quality and difficult to let accommodation. A planning application for the development is still to be determined and therefore there is no certainty about this development and the contribution that it would make to affordable housing in the village. However, affordable housing still represents a low percentage (about 17%) of the village's housing stock, with a low turnover rate.
49. Policy H2 requires 40% affordable housing on this site but the appellant is offering to provide 50%, bringing a significant increase to intermediate affordable housing in the village, along with a contribution to the social rented sector. The appellant's view is that the affordable housing contributions should be given very significant weight and has produced a number of appeal decisions and reports to support this view. Those selected give significant and substantial weight to the benefits of affordable housing being produced as parts of schemes. These cases represent a variety of different schemes in different areas and with different circumstances. However, the development plan in this case expects that the majority of affordable housing will be met in the 17 Principal Settlements, although it does allow for some of this type of development in the Non-Principal Settlements. Any affordable housing would be funded by open market housing, which I have already concluded would not be in an appropriate location, having regard to Policy DS3 of the LP. Nevertheless, the need for the provision of affordable housing is still great and, although delivery of

affordable housing in the District has been improving, I give significant weight to this matter.

### **Other matters**

50. Many local residents have concerns about the increased traffic that would be generated by the additional households that would live in the new dwellings. Car ownership is reported to be already high and, given the lack of employment, facilities and services, it is likely that the new occupiers would own cars. This would lead to the increased use of roads like John of Gaunt Road, which would be the main access, and where there is on-street parking and also the High Street and roads off it. Concern has also been raised about the safety of pedestrians, especially children walking to school. However, the highways authority has no objections to the scheme, subject to conditions. These include the provision of pedestrian improvements at Swynford Close junction, High Street, Oakley Flats junction, and the Church Hall access, which would assist with walking journeys within the village. None of the highway safety impacts would be severe in terms of paragraph 109 of the NPPF.
51. The development would bring increased activity both on the roads within the development and locally within village areas and there have been comments that it would be likely to cause general noise and disturbance. In my view, this would not be likely to be excessive given the amount of further housing and people introduced into the area. Any noise and traffic/ other issues associated with construction would be dealt with by suitably-worded conditions. Matters such as electricity services, water, including clean water supply, drainage and flood risk, would also be dealt with by suitably-worded conditions.
52. There were other plots on which living conditions, other than privacy, were raised by the Council and local residents, including outlook and loss of light, not related to the mitigation for privacy. On Plot 32, there would be a dwelling with its gable end facing 6 Chapel Close, which has a relatively short rear garden. However, this would be a single storey bungalow, which would not be unduly dominant in the outlook from number 6. The small bathroom window would be likely to be obscure glazed to maintain the privacy of future occupiers. The proposed development on Plots 15 and 16 and their relationship to 18 John of Gaunt Road has already been discussed in terms of privacy. However, there are also objections in terms of impact on daylight and views from the property. There would be a change in views since this property adjoins an agricultural field which would be developed but it is an established planning principle that there are no rights to views. There would be planting along the boundary with the site, together with proposed trees, but these would be facing the gable to 18 John of Gaunt Road and therefore there should be no loss of light to the dwelling. These other matters are neutral in terms of weight.

### **Planning Obligations**

53. The appellant submitted a signed and dated S106 agreement and CIL Compliance Statements were submitted by the Council and the appellant. The S106 agreement covers the provision of affordable housing, self/custom build housing, public open space and contributions to education provision. These have all been justified by the relevant Councils and I

consider that the contributions would meet the tests in CIL Regulations 122 and 123. They are all necessary and would meet all three tests in paragraph 56 of the NPPF.

54. Since agreement could not be reached on a contribution to the enhanced bus service, the appellant submitted a unilateral undertaking. The County Council, as highways authority, is not seeking such a contribution and has said that it would not meet the 3 tests in paragraph 56 of the NPPF. I understand this is because it would not be necessary to mitigate the impact in highway terms. As already stated, I give this obligation little weight.

### **Planning Balance**

55. I have concluded under the main issues that the proposal would fail to comply with the LP, and there would be harm in terms of settlement policy under Policy DS3 and also to living conditions, in terms of privacy, under Policy EN2.
56. The appellant has put forward a number of benefits for the scheme. Firstly, the developer gives very significant weight to the 50% provision of affordable housing. However, I have already concluded that the affordable housing provided would be part of a scheme which would not be in an appropriate location for development, having regard to Policy DS3 of the LP. Therefore, I limit this to significant weight.
57. The scheme would provide 3 self-build plots, which provide for further housing choice. However, I give very little weight to this provision since the Council is obliged to provide such plots through planning permissions and as I have already concluded the overall proposal would not meet Policy DS3 of the LP, in terms of its location.
58. The funding for the proposed enhanced bus service would last for 3 years and possibly fund a 4<sup>th</sup> year for which there might be some benefit for local residents. However, the appellant has not produced any business case or viability assessment to support their view that the service would continue beyond this date and could survive without County Council subsidy. Being a "branch" to the main service, I consider that any services to Kempford would also be more vulnerable to cuts to the local bus services. Therefore, I have given this matter little weight.
59. The construction work for the scheme would provide only temporary jobs, for about 2 years in the appellant's estimate, and therefore I give this little weight. There is no certainty as to who would occupy the proposed dwellings but most of their expenditure would be likely to be outside the village, in larger centres like Cirencester and Swindon, although there might be more support to Fairford as well. The few facilities that are in the village, including the school and public house, from the comments of local people, are already well supported. The appellant raises the case in Bourton-on-the-Water (APP /F1610/A/13/2196383) where greater weight was given to this matter but this is a much larger village with more shops, services and facilities and a Principal Settlement. Therefore, I give this element little weight.

60. There would be financial contributions towards education but these are required to mitigate the impacts of the proposed development on local infrastructure. Therefore, I give this element little weight.
61. The open space/ play area to be provided is quite small and would be required to meet the needs of the new residents of the development, with the benefit to the wider village being more limited. Therefore, I give this little weight.
62. The biodiversity value of the existing field is low, apart from the surrounding hedgerows and broadleaved trees, as set out in the ecological survey. Therefore, the mitigation required is minor, in the form of bird and bat boxes and management of the hedgerows. I give this matter very little weight.
63. The appellant raises only one issue against the development, which is also raised by local residents, that the development would be on greenfield land, which is currently in agricultural use. However, the LP allows for greenfield development and there has been no objection to the proposal from the Council on the basis of the quality of the agricultural land. The site is relatively unconstrained and has no designations like being in the Area of Outstanding Natural Beauty but such constraints have already been taken into account in the allocations in the LP, as set out in paragraph 6.1.6 of that document. Therefore, I give this very limited weight.
64. I conclude that the material considerations put forward by the appellant would not outweigh the harm arising from the conflict with the development plan, when read as a whole.

### **Conclusion**

65. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*E A Hill*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT: Mr A Crean QC, instructed by David Hutchinson, Pegasus

He called:

Mr J Stacey, BA(Hons), DipTP, MRTPI  
Mr D Hutchinson, BSc(Hons), DipTP, MRTPI  
Dr N Small, MA(Hons), PhD, PGTC

FOR THE LOCAL PLANNING AUTHORITY: Mr C Streeten, of Counsel, instructed by Susan Gargett, Solicitor, Cotswold District Council

He called:

Ms C Tetlow, BSc(Hons), MA, MRTPI

## **INTERESTED PERSONS:**

Mr A Williams	Kempsford Parish Council
Cllr S Andrews	Local Councillor
Mr T Kirby	Local resident
Ms L Wright	Local resident
Mr R James	Local resident, on behalf of Kempsford residents
Ms A Ward	Kempsford Parish Council
Mr D Browne	Local resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Bundle of documents relating to procedural matters, submitted by the appellant
- 2 Opening, Cotswold District Council
- 3 Appeal decision APP/Q3115/W/17/3187058, submitted by the appellant
- 4 Appeal decision APP/D3125/W/18/3209551, submitted by the Council
- 5 Statement by Kempsford Parish Council, submitted by them
- 6 Affordable housing statement, submitted by the appellant
- 7 Final version of Suggested Conditions, submitted by the appellant
- 8 Unilateral undertaking, submitted by the appellant
- 9 Bilateral S106 agreement, submitted by the appellant
- 10 Nomination rights deed, submitted by the Council
- 11 Statement by Mr R James, on behalf of Kempsford residents
- 12 Closings, submitted by the Council
- 13 Closings, submitted by the appellant
- 14 Costs application, submitted by the appellant
- 15 Response to costs application, submitted by the Council
- 16 Signed copy of unilateral undertaking, submitted by the appellant after the inquiry

- 17 Signed copy of S106 agreement submitted by the appellant after the inquiry

**PLAN**

- A Site visit itinerary, submitted by the Council