



## Appeal Decision

Inquiry opened on 7 September 2021

Accompanied site visit made on 4 March 2022

**by Matthew Nunn BA BPI LLB LLM BCL MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> October 2022**

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### **Appeal Ref: APP/B1605/W/21/3273053**

#### **Land at Oakley Farm, Cheltenham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an outline application for planning permission.
  - The appeal is made by Robert Hitchens Ltd against Cheltenham Borough Council.
  - The application Ref 20/01069/OUT is dated 25 June 2020.
  - The development proposed is described as 'development comprising up to 250 residential dwellings, associated infrastructure, ancillary facilities, open space and landscaping; demolition of existing buildings; creation of new vehicular access from Harp Hill'.
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### **Decision**

1. The appeal is allowed and outline planning permission granted for a development comprising up to 250 residential dwellings, associated infrastructure, ancillary facilities, open space and landscaping; demolition of existing buildings; creation of new vehicular access from Harp Hill on Land at Oakley Farm, Cheltenham, in accordance with the terms of the application Ref 20/01069/OUT, dated 25 June 2020, subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. The Inquiry opened on 7 September 2020, and sat on the following days: 7-10, 14-16, 21-24 September 2021; 5, 25-26 November 2021; 13-14 December 2021; 10, 13-14 January 2022; and 21-23 February 2022. It was conducted 'virtually'. In addition to my accompanied site visit on 4 March 2022, I made a series of unaccompanied visits on other occasions, at different times of the day, before and after the Inquiry.
3. There were three parties with 'Rule 6' status at the Inquiry. First, Gloucestershire County Council ('the County Council') appeared in its capacity as Highway Authority and Education Authority. Second, the Cotswolds Conservation Board (CBC) appeared as an independent statutory body whose purposes include conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty (AONB), as well as increasing the understanding and enjoyment of the special qualities of the AONB. Third, the Friends of Oakley Farm Pasture Slopes ('the Friends') appeared as a group representing local people who oppose the development.

4. The application is made in outline with all matters reserved for subsequent determination. An Illustrative Masterplan (309.P.3.9 Rev E) was provided showing how the development might be accommodated on site. However, during the Inquiry, and in response to various matters arising, especially in relation to highway gradients, the appellant produced an 'Alternative Illustrative Masterplan' (18017.202 Rev B). The appellant requested this be used to indicate how development could be laid out. The other main parties at the Inquiry confirmed that they had no objection to the appellant's request, and have made detailed observations on the Alternative Illustrative Masterplan. I am satisfied that, having regard to the *Wheatcroft Principles*, no-one would be prejudiced by substituting the Alternative Illustrative Masterplan for the original, and I have proceeded accordingly.
5. An Environmental Impact Assessment (EIA) of the proposal has been undertaken as it was considered to be EIA development<sup>1</sup>. The resulting Environmental Statement (ES) has been found to meet the requirements of the EIA Regulations, following supplementary information provided as part of the appeal process<sup>2</sup>. This additional material related to an updated assessment of traffic impacts up to 2031 to coincide with the end of the plan period. The ES concluded overall that, on the basis the required mitigation strategy is complied with, all the potential impacts were insignificant, and there were no overriding environmental constraints precluding development on the appeal site<sup>3</sup>.
6. The Council failed to determine the application within the prescribed period. The Council's Committee considered the matter on 20 May 2021 and resolved that, had it determined the application, it would have refused permission for seven putative reasons as set out in the Planning Statement of Common Ground (PSCG)<sup>4</sup>. Putative reasons 5 and 7 related to delivery of affordable housing; play space provision, and site management / maintenance; highway improvement works and a Residential Travel Plan. These matters have now been addressed by a series of planning obligations, and so reasons 5 and 7 are no longer at issue.
7. There are a total of five planning obligations before the Inquiry, some in the form of agreements, others as unilateral undertakings. I deal with these in the body of my decision.

### **Main Issues**

8. The main issues are:
  - (i) whether the proposal would comply with the spatial strategy within the development plan;
  - (ii) the effect on the character and appearance of the area, including the landscape and Area of Outstanding Natural Beauty (AONB);
  - (iii) the effect on heritage assets;

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<sup>1</sup> Falling within the category of 'Urban Development Projects' under Schedule 2, Paragraph 10(b) of the EIA Regulations

<sup>2</sup> Requested under Regulation 25, Supplementary Environmental Information to the Environmental Statement, dated August 2021, CD A39

<sup>3</sup> Environmental Statement, Paragraph 14.11.2, CD A36-A

<sup>4</sup> Planning Statement of Common Ground, Paragraph 5.3, CD C9

- (iv) the effect on highway conditions and capacity;
- (v) whether the proposals adequately provide for education for future residents;
- (vi) the planning balance, including whether exceptional circumstances exist to justify development within the AONB.

## Reasons

### *Planning Policy Context*

9. The relevant legislation<sup>5</sup> requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the Gloucester, Cheltenham and Tewksbury Joint Core Strategy ('the JCS'), adopted in December 2017; and the Cheltenham Plan, adopted in July 2020. Policies relied on in the Council's putative reasons for refusal comprise the following JSC Policies: SP2 (Distribution of Development); SD10 (Residential Development); SD4 (Design Requirements); SD6 (Landscape); SD7 (the Cotswolds AONB); SD8 (Historic Environment); Policies INF1 (Transport Network); INF4 (Social & Community Infrastructure) INF6 (Infrastructure Delivery); INF7 (Developer Contributions).
10. In terms of the Cheltenham Plan, Policies cited in the putative reasons for refusal comprise: L1 (Landscape and Setting) D1 (Design), Policy CI1 (Securing Community Infrastructure). The Cotswolds AONB Management Plan (2018-23) is also relied upon in the putative reasons, including Policies CE1, CE3, CE6, CE10, CE12. However, although referenced in Policy SD7, this latter document does not form part of the statutory development plan.
11. The JCS Authorities have started the preparation of the JCS Review but this is still at a very early stage. Having regard to the advice in the Framework<sup>6</sup>, it is agreed that no weight can be placed on the policy contents of the JCS review at this time<sup>7</sup>.
12. Of critical importance is that the appeal site falls within the Cotswolds AONB. AONBs benefit from the highest status of protection in relation to conserving and enhancing landscape and scenic beauty<sup>8</sup>. Section 85 of the Countryside and Rights of Way Act 2000 places a duty on relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of the area of the AONB. The National Planning Policy Framework ('the Framework') also requires that 'great weight' be given to those matters in decision making<sup>9</sup>. It also makes clear that permission should be refused for major development, other than in exceptional circumstances, and where it can be demonstrated the development is in the public interest. There is no dispute here that the appeal proposal is 'major development'<sup>10</sup>.
13. Similarly, it is agreed that designated heritage assets may also be affected by the proposal, given the site is within their setting. These include four Grade II

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<sup>5</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004

<sup>6</sup> Paragraph 48

<sup>7</sup> Planning Statement of Common Ground, Paragraph 7.15

<sup>8</sup> Paragraph 176

<sup>9</sup> Paragraph 176

<sup>10</sup> Planning Statement of Common Ground, Paragraph 8.10

listed structures, comprising No 1 Reservoir, No 2 Reservoir, the Pavilion, and gates, piers and boundary walls, all at Hewlett's reservoir complex. I return to these matters later in my decision.

14. The updated Statement of Common Ground on Housing Need<sup>11</sup> records that the Council accepts it can only demonstrate a 2.9 year land supply of deliverable sites, whereas the appellant says the figure should be 1.6 years. On either basis, the shortfall is very substantial. The Framework states that where there is an absence of a five year supply of housing, permission be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole<sup>12</sup>. However, this so called 'tilted balance' in favour of granting permission may be 'disengaged' where specific policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development. The Framework identifies policies relating to AONBs and designated heritage assets as two such categories. Both are relevant in this appeal, and I return to this matter later.
15. The Framework is also clear that where a Council cannot demonstrate a five year supply of deliverable sites, policies which are the 'most important for determining the application' are rendered out of date.<sup>13</sup> The policies relied on in the Council's putative reasons for refusal must self-evidently fall within that category and so must be considered out of date. That said, the Framework does not change the statutory basis of the development plan for decision making, and the fact that policies are deemed 'out-of-date' does not mean they should carry no weight or be ignored. I consider this matter in due course.

### *Spatial Strategy*

16. Policy SP1 (Need for Development) establishes a housing requirement across the JCS area comprising three authorities of 35,175 dwellings, with at least 10,917 dwellings to be provided in Cheltenham between 2011 and 2031. It states that this is to be delivered by development in existing urban areas, existing commitments, urban extensions to Cheltenham and Gloucester, and strategic allocations. SP2 deals with the distribution of development and states that to meet the needs of Cheltenham, new homes will be provided within the Cheltenham Borough administrative boundary and cross boundary urban extensions at North West Cheltenham and West Cheltenham (both of which are partly in Tewkesbury). Table SP2a identifies the sources of supply, which for Cheltenham is 11,092 exceeding the 10,917 figure required by Policy SP1. In addition, further sites were identified in the Cheltenham Plan increasing the overall supply to 11,632. Policy SP2 also makes clear that the identification of any additional urban extensions to help meet the needs of a local planning authority must be undertaken through a review of the Plan<sup>14</sup>.
17. Policy SD10 provides further detail in terms of appropriate locations for residential development and sets out an approach to assisting in delivering the scale and distribution of development within SP1 and SP2. It states that housing will be permitted on sites allocated for development, including Strategic Allocations. On sites that are not allocated, a range of specific

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<sup>11</sup> ID 15, dated 20 September 2022

<sup>12</sup> Paragraph 11(d)(ii)

<sup>13</sup> Footnote 8 of the Framework

<sup>14</sup> SP2(8)

circumstances are identified where development will be permitted, including on previously developed land in the Principal Urban Area (PUA) of Cheltenham.

18. The appellant argues that there is no conflict with SP2, on the basis that the site is located within the administrative boundary of Cheltenham and would comply with the overarching strategy of the JCS<sup>15</sup>, although the appellant accepts there would be a conflict with Policy SD10. However, it seems to me that when Policies SP1, SP2 and SD10 are read together, and having regard to the site's location outside the PUA and within the countryside and AONB, the appeal proposals would clearly conflict with these policies. That said, as the appellant notes, the site is close to the built-up area of Cheltenham, and the guiding principle of Policy SP2 is that need is met where it arises, so that Gloucester and Cheltenham, together with their immediate wider areas, remain the primary focus for growth<sup>16</sup>.
19. The Council acknowledges that the housing shortfall is substantial and accepts the need for additional housing to address it<sup>17</sup>. A key reason for the shortfall is delays to the delivery of the Strategic Allocation Sites identified within Policy SP2, rather than a failure to allocate land for housing. The Council also accepts that there has been a substantial shortfall in affordable housing delivery and that there is an acute need to address this issue<sup>18</sup>.
20. The Council agrees that, as things stand, it has 'insufficient scope' to meet additional housing needs<sup>19</sup>. Furthermore, the Council accepts it is likely to be necessary to build on land outside the principal urban area in order to restore five year supply. This is because the current urban footprint covers a significant part of the administrative area and virtually all the remaining undeveloped land is either in the AONB or Green Belt<sup>20</sup>. Indeed, the Council acknowledges that further development may be required on Green Belt, or possibly the AONB, but it argues because of the sensitive nature of both these designations, a 'plan-led' approach is the most sensible and sustainable method allowing for detailed consideration of the alternatives.
21. Policy REV 1 of the JCS required that a partial review of the housing supply for Gloucester and Tewksbury be commenced immediately on adoption. The policy explains that the review will cover the allocation of sites to help meet a shortfall in housing supply against the JCS housing requirements for the respective authorities. Importantly, the JCS was found sound subject to this partial review. The Council has subsequently opted not to progress a partial review, but rather a full review of the JCS. The Council's written evidence was that the JCS Review should be adopted in 'winter 2023'<sup>21</sup>. However, the timetable has already slipped and latest estimates of the adoption of the adoption of the JCS review are 'winter 2024/Spring 2025'<sup>22</sup>.
22. It seems to me that even this timetable may be optimistic. Any review of the JCS is likely to be controversial because of the potential need for releases of land from the Green Belt and AONB. There are significant hurdles to overcome before it is adopted. The current JCS took an extended period of time from

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<sup>15</sup> Mr Hutchison's Proof, Paragraph 7.26

<sup>16</sup> JCS, Paragraph 3.2.5 CD E1

<sup>17</sup> Council's Closing Submissions, Paragraph 17, ID 38

<sup>18</sup> Updated Housing Statement of Common Ground, Paragraphs 2.14 & 2.15

<sup>19</sup> Updated Housing Statement of Common Ground, Paragraph 2.29

<sup>20</sup> ID 38, Paragraph 21

<sup>21</sup> Mr Instone's Proof, Paragraph 3.27

<sup>22</sup> Tewkesbury Borough Local Development Scheme [ID 50]

'Preferred Options' stage to adoption<sup>23</sup>. A plan-led approach to development is certainly desirable, but in this instance, there seems little prospect of a timely plan-led remedy. For now, the housing land supply situation remains most unsatisfactory, and housing supply from individual planning applications therefore become all the more valuable.

23. To sum up, I consider there would be a conflict with spatial policies within the development plan. However, given the absence of a five-year supply of housing, these policies must be considered out of date in terms of the Framework, and it is necessary to consider what weight should be attached to any conflict with them. It is clear that strict application of these policies is not leading to sufficient housing being provided in accordance with the Framework, which runs counter to the Government's objective of significantly boosting the supply of housing<sup>24</sup>. This diminishes the weight that can be attached to any conflict with Policies SP1, SP2 and SD10.

#### *Character and Appearance – Landscape and AONB*

24. The appeal site is located around 1.8 km to the east of Cheltenham town centre on the Cotswolds lower scarp at Oakley and falls within the Cotswolds AONB. It comprises a group of sloping pasture fields, defined by hedgerows and trees, which slope generally downwards, from south to north to the base of the valley. Within the lower northern part of the site are the now disused and derelict Oakley Farm buildings, of varying ages, construction and appearance. There is an access track which runs to the west at the northern end linking to Priors Road. A public right of way ('footpath 86') runs along the western side of the site, although there is no public access to the site itself – either to the fields or remaining farm buildings.
25. The site is bounded by residential development on three and a half sides. Immediately to the west is Wessex Drive, an established residential area, and rising to the south is Harp Hill with housing along one side of the road facing the site, originally constructed in a generally linear form, but now increasingly with some intermittent 'backland' development. Immediately to the north and east of the site are more recent residential areas, built between around 2014 and 2019, that occupy the former GCHQ Oakley site. These include the 'Battledown Park Residential Area', with Pillowell Close and Brockweir Road running adjacent to the northern boundary; to the north but wrapping around the east of site, the 'Oakley Grange' and 'Eden Villas' residential areas, including Bream Court, Fairford Road and Birdlip Road. Also, to the east lies the Hewlett's Reservoir complex, which includes various statutorily listed structures, including two of the reservoirs (covered), the Pavilion building and the brick wall along the eastern boundary.
26. The site falls within the National Character Area (NCA) 106: 'Severn and Avon Vales'<sup>25</sup>. Within Cotswolds AONB Landscape Character Assessment<sup>26</sup> it is identified as falling broadly within the Landscape Character Type 2 'Escarpment' and specifically within: '2D Coopers Hill to Winchcombe' area. The site was also assessed within the Landscape Character, Sensitivity and Capacity Assessment (LCSCA) (2015) as part of a review of the AONB when the

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<sup>23</sup> The Consultation Draft in 2013, Pre-Submission Draft in 2014, with the adoption in December 2017

<sup>24</sup> Paragraph 60

<sup>25</sup> Paragraph 4.1. Landscape Statement of Common Ground, CD C11

<sup>26</sup> CD J5



Cheltenham Plan was being prepared<sup>27</sup>. The site was identified as falling with Local Character 7.1 Oakley Farm Pasture Slopes<sup>28</sup>. This appraised the site as a 'sloping landscape with open and expansive views' and comprising principally 'pastoral land use with small to medium fields'. The assessment concluded that the quality of the landscape elements were 'moderate', but given the site's inclusion within the AONB and its visibility, the overall landscape sensitivity was considered to be 'high' and resulting landscape constraint was 'major' and its capacity for development was 'low'. However, the assessment was undertaken before the completion of the residential redevelopment on the GCHQ site<sup>29</sup>, as the appraisal notes that GCHQ offices were at that time in the process of being demolished.

27. There was debate during the Inquiry as to the extent the site exhibits the special qualities of the AONB set out in the *Cotswolds AONB Management Plan*, the appellant arguing it possesses only two<sup>30</sup> and is not an exemplar of the landscape of the AONB<sup>31</sup>. The CBC strongly disputed this view, arguing it is an essential component of the Cotswold escarpment. In my judgement, the site undoubtedly has some notable characteristics. It lies on a distinctive part of the AONB, namely the escarpment, which is identified as one of the special qualities of the Cotswolds AONB, and, to limited extent, provides a setting for the town of Cheltenham. Some of the larger fields display well-formed remnants of medieval 'ridge and furrow' patterning, typical of the lower and middle escarpment slopes. There is a network of mature hedgerows and trees that contribute to its agricultural appearance, and which provide a strong landscape pattern in longer range views. It is an attractive area of sloping pastureland which remains intact and unspoilt, and its elements are in good condition.
28. The site is visible in a number of views in the locality: for example, at close range, there are local views of the site from properties and routes adjacent to the site, including from along Harp Hill on the southern boundary, although, at the time of my site visits, the hedgerow in its untrimmed state impeded views from the road. Historic maps indicate there were some seats along Harp Hill, and it was argued these were placed to take advantage of the view. However, these have long since disappeared. Furthermore, there is no formal footpath immediately adjacent to the site on this part of Harp Hill, which makes it very difficult for pedestrians to view the site safely. Even on the opposite side of the road adjacent the houses, the pathway is not continuous. From the public right of way along the western boundary (footpath 86) continuous boundary vegetation obscures views of the site for much of this route, although there are limited gaps that allow glimpses in. This footpath cannot really be said to offer open or panoramic views of the site. There are also views into the site from the northern and north-eastern boundaries from roads and residential properties within the former GCHQ site (Pillowell Close, Brockweir Road, Fairford Road, and Birdlip Road, amongst others).
29. The site is also visible in mid-range views from Priors Road, and from Sainsbury's car park and petrol station, rising up towards Harp Hill. From Priors Road, the principal impression is that of the Sainsbury's petrol station,

<sup>27</sup> CD J3

<sup>28</sup> CD J10

<sup>29</sup> It was confirmed that the site assessment was undertaken during the demolition of the GCHQ complex

<sup>30</sup> Proof of Paul Harris, Paragraph 6.9 & Table 2

<sup>31</sup> Cotswold AONB Management Plan, Page 18, CD J1

together with car park and supermarket dominant in the foreground with the open appeal site visible behind as a backdrop. It is also viewed in the context of residential properties, including those in Harp Hill. It can also be seen from the Imjin Road playing fields (Priors Farm Recreation Ground) where it forms a backdrop to the recently developed former GCQH site. From here the site appears as an open, sloping area of ground with hedgerows and mature trees. Overall, it must be said that in these closer range and mid-range views, the site is perceived very much in the context of the urban development in the vicinity that surrounds it.

30. There are longer distant views, from the escarpment to the north-east, from the Cotwolds Way National Trail, including from Cleeve Common. These views are from an elevated position and provide panoramic and uninterrupted views to Cheltenham itself as well as the appeal site. From here, some of the best views of the site are available, where the site can be appreciated in its entirety, especially from Cleeve Common. The site is reasonably prominent, rising up from the base of the escarpment, and appearing as a recognisable block of open ground, comprising a series of open pasture fields. From this distance, the grass covered adjacent reservoirs appear to almost blend into the appeal site creating the impression of a larger entity of green open land, rather than two distinct areas. All that said, although from Cleeve Common, the site is clearly seen as an element of green pastoral land in the wider AONB landscape, it is a small part of a much wider panorama that includes extensive areas of built-up development. Similarly, from Northfields Farm fields to the east, the site is perceived in the context of the extensive urbanised development beyond.
31. The illustrative plan shows the upper part of the site would remain free of housing, whereas the mid and lower parts would be developed. The rationale is that the upper part of the site is more sensitive to development than the lower portion. I agree that to be the case. According to the illustrative plans, there would be a thick belt of tree planting (around 12 metres in depth) separating the upper and lower parts of the site, the purpose of which would be to screen the residential development. An access road would link the proposed development from Harp Hill. Although the details are for subsequent determination, the access road is very likely to require embankments and cuttings into the slopes in the upper part of the site to achieve appropriate gradients. Whilst vegetative screening and landscaping could mitigate the effect, such engineering would undoubtedly have an adverse visual impact on the upper slopes.
32. The Council has concluded that there would be a 'major / moderate, adverse and permanent effect' on the landscape character of the site. In terms of the overall landscape effect in the contextual area, the effect is considered to be moderate / minor, adverse and permanent<sup>32</sup>. In respect terms of visual effects, the Council find that short-range visual effects would be 'moderate, adverse and permanent'; mid-range visual effects would be 'moderate to moderate/minor, adverse and permanent'; long-range views would be 'moderate, adverse and permanent'<sup>33</sup>. The CBC conclude 'moderate / major adverse' landscape effects and multiple 'major adverse' and 'moderate adverse'

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<sup>32</sup> Mr Ryder's Proof, Page 31

<sup>33</sup> Mr Ryder's Proof, Page 41



visual effects<sup>34</sup>. On the other hand, the appellant finds that the development would have 'moderate adverse' landscape effect for the appeal site itself, with a minor adverse effect to the wider sloping landscape<sup>35</sup>.

33. In my judgement, it is obvious that the appeal proposals would fundamentally and permanently alter the character of the site itself, in that there would be a loss of rural character and a much more suburban character created. Although extensive structural tree planting and landscaping is proposed, a significant part of the existing field pattern would be lost, as well as the visible open ground especially appreciable in longer distant views from the Cotswold escarpment. The access road, whatever its final precise route, would adversely affect the character of the upper escarpment, creating an engineered landform somewhat at odds with the current gently sloping pastures, and a rather incongruous change to the immediate landscape.
34. On the other hand, and very importantly, the site is highly unusual within the AONB in that it is surrounded on three and a half sides by residential development. Even the fourth side is an 'engineered' landscape comprising covered reservoirs, enclosed by a brick wall. Indeed, on the fourth side, the site is topographically separated from the appeal site, elevated at a higher level as a consequence of the covered underground reservoirs. Furthermore, the presence of recent extensive residential development around the site has inevitably influenced its character within the AONB, notwithstanding that the site itself remains undeveloped, apart from some derelict farm buildings on the lower part of the site. In most of the closer and mid-range views, the site is very much perceived in the context of built development that surrounds it.
35. It is questionable, therefore, whether the site can really be said to form part of a gradual transition from the dense built-up urban area to a more sparse and tranquil rural landscape that is found on the wider escarpment. Indeed, the immediate upper slopes beyond the site are occupied by residential development along Harp Hill, and behind it there has been further residential development and consolidation, meaning that this road can no longer be regarded as a narrow projection of ribbon development into the countryside. The Cheltenham Plan notes that Cheltenham owes much to its setting at the foot of the Cotswold escarpment<sup>36</sup>. I accept that the appeal proposal would advance built form up this part of the slope, but in terms of the wider setting of Cheltenham, the effect would be insignificant.
36. Furthermore, the site's context has changed since the last review of the boundary of the AONB in 1990, as well as the LCSCA assessment in 2015. Photographs<sup>37</sup> of the former GCHQ complex show a range of building types, including some larger ones – notably, the so-called 'Green Monster', but also many lower rise and single storey buildings over much of the site. There were also open areas of green space, as well as large areas of car parking and hardstanding. The former GCHQ complex could be described as more 'campus style' in form, whereas the new residential housing creates a more continuous form of development over the entire site to the boundaries, of relatively high density, of between two and four storeys, with limited open green spaces. It is always difficult, of course, to assess visual impacts from photographs alone,

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<sup>34</sup> CBC Closing Submissions, Page 4

<sup>35</sup> Mr Harris's Proof, Paragraph 6.2

<sup>36</sup> Paragraph 7.1, Cheltenham Plan CD E2

<sup>37</sup> ID16 & also Friends' Proof, Pages 4-6

and in any event, the current 'baseline' for assessment is situation as it exists today. That said, I consider that the sense of consolidated and continuous urbanised residential development around the appeal site has increased in recent years, with a likely commensurately greater impact. These changes mean that any new residential development on the mid and lower slopes of the site would be more easily assimilated.

37. The illustrative plans show the upper area would comprise public open space with a series of footpaths linking footpath 86 at the western end with the housing development and running across the upper part of the site, roughly parallel to Harp Hill, with an access out at the top south-eastern corner of the site. These footpaths would allow public views from an area which is currently private. The proposed footpath route through public open space would also be safer than existing arrangements along Harp Hill. Concerns have been raised, including from the CBC and the Friends that new planting screening the proposed dwellings would block views from Harp Hill across to the higher scarp. It seems to me that this would rather depend on various factors: the species planted and how they are managed; if deciduous varieties were to be planted, visibility would vary according to the time of year. It would also depend on the viewing position within the site: clearly the closer to any tree belt, the more imposing and restrictive of longer range views it would be. However, there is no intrinsic reason why a tree belt should necessarily screen views of the scarp.
38. Concerns were raised, especially from the CBC, regarding the light spillage from any housing development, in that it would erode the ability to appreciate dark skies in the locality. I appreciate that dark skies are a factor that contribute to the natural beauty and special qualities of the AONB. One of my unaccompanied site visits took place during the hours of darkness, and my perception was that dark skies were not as strong in the vicinity of the site as in more remote locations within the AONB. This is largely the result of existing housing development in around the site. Harp Hill itself has streetlighting abutting the southern boundary of the site which diminishes the impression of darkness.
39. Drawing the above together, I consider the appeal proposal would have some adverse impacts on the AONB in terms of the special qualities that define its scenic beauty. It would not conserve or enhance the beauty of the AONB and would therefore conflict with Policies SD6 and SD7 of the JCS. Policy SD6 seeks to protect landscape character for its own intrinsic beauty, and for proposal to have regard to local distinctiveness and historic character of different landscapes. Policy SD7, specifically relating to the AONB, requires proposals to conserve, and where appropriate, enhance its landscape, scenic beauty, wildlife, cultural heritage and other special qualities. This policy also requires proposals to be consistent with policies set out in the Cotswolds AONB Management Plan. On the other hand, the adverse effects of the development would be seen within the context of the existing and recent residential development that now surrounds the site. In longer range views, it would be perceived in the context of a much wider panorama. These factors would diminish the overall impact of any development.

#### *Heritage Assets*

40. The appeal site lies within the setting of a number of designated heritage assets. These are found to the east within Hewlett's Reservoir complex which

includes four Grade II listed structures comprising<sup>38</sup>: No 1 Reservoir; No 2 Reservoir; the Pavilion; and the gates, gate piers and boundary walls of the complex<sup>39</sup>. The Hewletts Reservoir complex was first constructed by the Cheltenham Water Works Company in 1824. The site was chosen as it was on sufficiently high ground to allow the water to be provided to the town by gravity rather than through pumping. Water could be collected from springs on the surrounding hillsides.

41. No 1 Reservoir was constructed in 1824 of limestone with brick roofing and has a stone portal constructed in rubblestone with ashlar dressings, with wrought-iron railings. This is the only external manifestation of the structure. The listing description notes that the reservoir is the earliest surviving example of an underground reservoir. No 2 Reservoir was built in 1839, and again is one of the earliest surviving examples of an underground reservoir. It is constructed in red brick, with a brick-built access chamber. Both reservoirs were designed by James Walker, one the most distinguished civil engineers of the 19<sup>th</sup> century. Both remain largely unaltered since their completion.
42. The key significance of these reservoirs derives primarily from their physical, architectural and engineering form as early examples of underground reservoirs, as well as their historical, and technological interest. They also have significance in terms of their intactness, and their group value with other listed structures within the complex. The reason for the siting of the reservoirs at this location was not to achieve wide-ranging views in an elevated position above the town; rather, as noted above, it was practical and functional, to allow water to be collected from springs on higher ground and provided to the town by gravity. The appeal site, with its agricultural use, did not relate to any aspect of the historic functioning of the reservoirs, with water being collected from other areas. Therefore, in that regard, the setting of the reservoirs, whilst of some import, contributes much less to their significance. Furthermore, because both reservoir structures are essentially underground and covered with earth and turf, and not readily visible above ground, I consider that the contribution of the appeal site to the assets' intrinsic significance is low. This accords with the Council's assessment<sup>40</sup>.
43. The Pavilion is described within the listing description as a probable former valve house, constructed around the 1870s. However, there is no valve equipment present, and it seems it was later used as an office. It is described within the listing description as an ornamental pavilion which 'belies its functional purpose and instead gives the appearance of a country house building'. It is octagonal in plan, constructed of red brick with clinker impressed in cement to give the impression of vermiculated stonework quoins, a fishscale slate roof and with a weathervane, and a wrap-around iron verandah. There is a door on one face, with arched windows (uPVC replacements) on the other seven faces. Internally, there are timber floorboards, the walls are plastered and the ceiling timber clad roof. Again, the listing description notes that the pavilion forms part of a good group of buildings.

<sup>38</sup> There are heritage assets at a greater distance, but the Heritage SoCG notes these will not be affected.

<sup>39</sup> Stone Lodge is also curtilage listed but has been altered and extended. Within the complex are also No 3 & 4 Reservoirs, neither listed in their own right – and the latter has been demolished

<sup>40</sup> See Mr Holborow's evidence, Page 28

44. During the Inquiry, there was much debate as to the original use of the Pavilion – with an argument that it was only ever used as a summer house, gazebo or shelter for visitors, with no valve equipment ever being present. The Friends argued that, when the complex was historically open to members of the public, the Pavilion would have functioned as a summer house for visitors allowing appreciation not only of the engineering of the complex but also the setting. From the evidence, I am not convinced any firm conclusions can be drawn on its original use, nor that anything much turns on this in any event.
45. From my site visit, it would seem that the building itself was not designed primarily as a building from which the surrounding landscape could be viewed. This is because, although there are seven individual windows, they are not especially large, and from inside they break up the panoramic views rather than enhancing them. Internally the building is plain and utilitarian, whereas externally it is ornate and decorated. As such I consider its significance does not primarily lie with the views out from it, but rather with the views to it. In other words, its main interest is its external visual appearance. Whatever its original use, its significance derives primarily from its external ornate architectural detailing and octagonal form.
46. The gates and piers were built in 1824, and the boundary walls in 1824 and 1850s. The gates and piers are described as elaborate, constructed in 'Tudor Revival' style, the piers of ashlar with pyramidal capping, with heavy cast-iron gates. The brick walls are well made and neatly bonded. Part of the wall fronting Harp Hill to the east and south east continues as a low wall with railings above. The description once again says the structures belie their functional purpose and helps give the complex the appearance of a country house garden. Once again, the listing description notes that these assets form part of a good group of structures within the complex.
47. There would be no harm to the physical form of any of these listed structures. However, their setting would undoubtedly change. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced, and notes its extent is not fixed, and may change as the asset and its surroundings evolve<sup>41</sup>. The Planning Practice Guidance also makes clear that the contribution that setting makes to the significance of a heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting<sup>42</sup>. In this case, the pastoral appearance of the appeal site makes some contribution to the setting of the listed structures within the Hewletts Reservoir complex. It forms part of the rural backdrop, particularly in terms of the Pavilion, which sits in an elevated position atop an engineered landform that contains the underground reservoirs. The reservoirs being essentially below ground means the contribution of the appeal site to their significance is considerably less, and any resulting harm low<sup>43</sup>.
48. Importantly, there is already existing housing development in close proximity to the reservoir complex, including the Pavilion, both directly to north within Birdlip Road and to the south-west in Harp Hill. The complex is therefore already perceived in that partly urbanised context, rather than an entirely rural setting. Whilst it has been argued that there is currently a degree of separation between the reservoir complex and the town of Cheltenham, the

<sup>41</sup> Glossary to the Framework

<sup>42</sup> PPG Paragraph 013 Ref ID 18a-013-20190723

<sup>43</sup> This accords with the Council's assessment, Mr Holborow's Proof, Page 28

complex is not in an isolated position, given the close proximity of residential development. It has been argued that rural surroundings are important to the reservoir complex because the listing descriptions for the gates and piers and pavilion refer to architectural styling reminiscent of country house garden or estate. However, it is not unusual for buildings of that era, whatever their surroundings, to be designed in an ornate architectural style that belied their utilitarian function, often aping country houses, or using an elaborate gothic church-like appearance.

49. As already mentioned, the illustrative plans show the upper part of the site would remain free of housing development, with proposed new residential development on the mid and lower slopes, constructed on a similar alignment to the houses in Birdlip Road. Significant planting is also proposed to screen the housing, and this too would change the character of the locality. As discussed, an access road would traverse the upper slope and impinge on the rural character, creating a more urbanised appearance. That said, the area closest to the reservoir complex and pavilion would remain undeveloped. Shorter and medium range views out from the complex would change because of the presence of development, although longer range views to the wider landscape including Cheltenham itself would be largely preserved.
50. The proposal development would clearly alter the setting of the reservoir complex including the pavilion, and views to and from it. A significant proportion of the appeal site would be built on, and the upper part would take on different 'parkland' type character. On the other hand, new footpaths across the upper part of the site would open up public views of the pavilion which can be clearly seen from the appeal site. At present there is no public access. This increased public visibility would allow greater appreciation of the pavilion and can be seen as a benefit of the scheme. A financial contribution is also proposed to enable renovation of the listed boundary wall, including removal of the vegetation. I deal with this matter later in my decision.
51. The entrance gates and a significant length of the boundary wall running along the south-eastern and south-western boundary fronting the existing highway would not be affected by the development. In any event, the gates were designed to be primarily viewed and appreciated from Harp Hill rather than the appeal site. No housing is proposed adjacent to the wall abutting the appeal site on the western side of the complex, with the southern upper slopes of the appeal site kept free of housing. Therefore, any impacts from the development on the gates and boundary wall would be negligible.
52. Ridge and Furrow: Although the Council's fourth putative reason for refusal relating to heritage assets does not refer to the 'ridge and furrow' features within the fields, concerns were raised at the Inquiry about the development's effects on this non-designated heritage asset. It is clearly an asset of some significance, being characteristic of medieval farming practices, and is identified as one of the special qualities of the AONB in the Cotswolds AONB Management Plan<sup>44</sup>. On the other hand, it is fairly common in this part of the Cotswolds, and it was not deemed sufficiently important to have been included in the Council's putative reasons for refusal. Consequently, for these reasons, I assign a relatively low significance to this asset<sup>45</sup>. Nonetheless, its partial loss would be

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<sup>44</sup> Special Qualities of the Cotswolds AONB -Statement of Significance, AONB Management Plan, CD J1

<sup>45</sup> The Council accords it a 'low to medium' significance – Mr Holborow's Proof, Page 19



a disbenefit of the scheme, and this harm needs to be considered in the overall assessment of the appeal proposal.

53. Conclusion on heritage assets. The relevant legislation requires that when considering whether to grant permission that affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting<sup>46</sup>. In my judgement, the proposed residential development including the access road would have an urbanising effect on the setting of listed structures, including the Pavilion. To that extent it would not preserve their setting, contrary to the relevant legislation. That said, there is already residential development in the vicinity which affects the setting of these assets, and the proposed illustrative layout and landscaping would mitigate the effects of new development.
54. It is agreed between the appellant and Council that the development would result in 'less than substantial harm' at most in terms of the Framework<sup>47</sup>. Although there are no formal 'sub-categories' within the less than substantial category, it is not uncommon to place the harm as falling at a lower, mid-point, or upper point within that range. Whilst these 'sub-categories' are not defined in policy or law, the Planning Practice Guidance (PPG) stipulates that the extent of the harm within this category should be clearly articulated<sup>48</sup>, and it can be helpful to make a planning judgement as there may be a number of types of harm that fall within the 'less than substantial' category. Overall, in terms of the designated assets, the listed structures – the pavilion, the reservoirs, the gates, piers and boundary walls, I find the harm would be at the lower end of the 'less than substantial' spectrum.
55. It follows that there would be some conflict with Policy SD8 of the JCS. This requires, amongst other things, designated and undesignated heritage assets and their settings to be conserved and enhanced as appropriate to their significance. In accordance with the Framework<sup>49</sup>, the 'less than substantial harm' must be weighed against the public benefits of the proposal.

#### *Effect on Highway Conditions*

56. Paragraph 111 of the Framework states that development should only be prevented or refused on highway grounds if the residual cumulative impacts on the road network would be severe. Policy INF1 of the JCS states that planning permission will be granted only where the impact of the development is not considered to be severe. It notes that where severe impacts that are attributable to the development are considered likely, they must be mitigated to the satisfaction of the local planning authority. Although Policy INF1 is expressed slightly differently to the Framework, it is generally consistent with its provisions and can be given full weight.
57. The County Council has alleged a severe residual impact on the highway network based on an increase in queue lengths, and additional driver delays. However, no specific case on highway safety has been advanced, nor has it been suggested that the site is locationally inaccessible or unsustainable. In addition, whilst the application is in outline with all matters including access reserved for subsequent approval, the Council is satisfied that safe access

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<sup>46</sup> S66(1) Planning (Listed Building and Conservation Areas) Act 1990

<sup>47</sup> Heritage Statement of Common Ground, Paragraph 2.3, CD C12

<sup>48</sup> PPG – Historic Environment – Paragraph 018 Ref ID 18a-018-20190723

<sup>49</sup> Paragraph 201



arrangements from Harp Hill can be secured by a suitably worded planning condition<sup>50</sup>.

58. The Transport Assessment initially submitted assessed the impact on junctions in the vicinity of the appeal site, but only up to 2024<sup>51</sup>. This meant that the development's effect on highways, together with other plan allocations identified within the JCS in the plan period up to 2031, were not assessed. However, following requests from the County Council and a letter pursuant to the EIA Regulations from the Secretary of State<sup>52</sup>, an assessment of the cumulative traffic impact up to 2031 was subsequently provided. The updated Transport Assessment has employed the 'TEMPRO' model to predict what traffic growth might occur over the plan period, based on new housing allocations originally planned to come forward within the Plan period. This approach was agreed between the appellant and the County Council.
59. The outcome of the appraisal up to 2031 shows that 4 of the 7 junctions assessed would be adversely affected in both the AM and PM peaks, with Ratios of Flow to Capacity (RFC) exceeding the upper limit of satisfactory junction performance. The County Council especially draws attention to the increases in queue lengths and queue times at the following junctions: (i) B4632 Prestbury Road / B4075 Tatchley Lane / Deep Street / Blacksmiths Lane / Bouncers Lane – east mini roundabout Bouncers Lane – during AM peak, nearly 90 metre additional queue, and over 2 minutes additional delay (124 seconds) (Junction 5)<sup>53</sup>; (ii) A40 London Road / A40 Old Bath Road / B4075 Hales Road Traffic Signals – all arms during AM and PM peaks would be worsened – with additional queues of up to 87 metres and 75 Seconds (Junction 6); (iii) B4075 Priors Road / Harp Hill Mini Roundabout (east roundabout) – an additional 70 metre queue and 42 seconds additional delay on B4075 Priors Road in the AM peak, with a potential to impact on the Redmarley Road signal controlled junction, and the capacity of the surrounding junctions too (Junction 1).
60. The County Council alleges that the adverse effects on these junctions identified in the assessment up to 2031 would amount to a severe impact. This is on the basis that the additional delays and queues would have an adverse impact on junction performance, with increased driver frustration and potential 'rat-running'. It is also argued there would be implications for public transport in terms of delays for buses, as well as air quality impacts. However, there is no formal putative reason for refusal relating to air quality, and no substantive evidence has been adduced to support any unacceptable pollution effects. The Council's Committee Report recorded that the effects of additional road traffic on air quality were not considered to be significant<sup>54</sup>. Nor is there an objection from public transport bus providers to the proposal.
61. The appellant has subsequently cast serious doubts on the updated Transport Assessment's findings, especially in respect of the TEMPRO growth factor, arguing that it significantly overestimates traffic growth. A central aspect of the appellant's challenge is based on the delays associated with housing allocations that were expected to come forward in the plan period. Hence it is argued that the 'TEMPRO' growth factor should be adjusted and reduced by a

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<sup>50</sup> Highways Statement of Common Ground, Paragraph 3.7, CD C14

<sup>51</sup> This was the timeframe initially agreed with the Highway Authority, but was subsequently changed to 2031

<sup>52</sup> Letter dated 8 July 2021 from the Planning Inspectorate

<sup>53</sup> Junction numbers as shown on agreed plan submitted at the Inquiry, ID21

<sup>54</sup> Paragraph 6.174, CD A38

third<sup>55</sup> to reflect this shortfall. It is also argued that predicted traffic levels are inflated for other reasons. For example, the Local Plan Implementation Report 2019/20<sup>56</sup> suggests flat traffic growth in the first 2 years of the assessment period, which would affect the accuracy of the TEMPRO growth prediction. The Appellant also cites the Local Transport Plan<sup>57</sup> which appears to show that people are adjusting their journey times to avoid peak congestion.

62. In addition, the appellant highlights that TEMPRO is a 'static' rather than 'dynamic' model and does not adjust for driver behaviour<sup>58</sup>. For example, once the network experiences delays, drivers may choose another route, and traffic is redistributed geographically around the network. Drivers may also start their journeys at a different time to avoid delays, thereby temporally redistributing traffic. The TEMPRO model, it is said, does not capture these different forms of redistribution, so has the effect of potentially over-estimating traffic. The Appellant also suggested that the Covid Pandemic will alter the traffic environment on a permanent basis, resulting in less traffic, especially with greater working from home. It is argued that alternative transport means have not been sufficiently taken account of – for example the recent trialling of an 'e-scooter' scheme in Cheltenham<sup>59</sup>.
63. The appellant also mentions the Arup Study<sup>60</sup> which formed part of the Cheltenham Local Plan evidence base and assessed the effect of the proposed allocations within that plan. The conclusions of that Study were that many of the assessed junctions were already over-capacity, and would not be significantly affected by the development traffic from the proposed plan allocations. However, the County Council argue that this the Arup Study is high level and, by definition, only deals with allocated sites and cannot be used as a basis for contradicting the results of the updated Transport Assessment.
64. Looking at the highway evidence as a whole, it is unfortunate that the appellant's concerns in respect of the TEMPRO growth model, and the other disputed matters above, were not talked through with the County Council when agreeing the Transport Assessment methodology, and have only been raised later in the appeal process. As a result, there is there is a wealth of evidence, some of it apparently contradictory, and few agreed outcomes. This makes drawing firm conclusions regarding traffic impact more difficult. Ultimately, it seems to me that any forecasts over an extended period can only be 'best guess' predictions of what may happen. Where there are variables, it is unrealistic to expect consistently accurate forecasts. Traffic growth may be affected by a variety of factors, and there is an inherent unreliability in predicting traffic flows over a longer timeframe.
65. The evidence before the Inquiry suggests it is very unlikely that the Council's housing allocations will come forward in the way as originally planned. Indeed, no party considers that the JCS will deliver the full amount of housing proposed by 2031. The shortfall will be significant based on the agreed revised Housing Statement of Common Ground<sup>61</sup> produced during the Inquiry. And although the County Council argues that the TEMPRO program is a proprietary model

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<sup>55</sup> Proof of Mr Eves, Paragraph 6.11

<sup>56</sup> Local Transport Implementation Report, CD I6

<sup>57</sup> Gloucestershire's Local Transport Plan 2020-2041, Page 94, Paragraph 3.5.4, CD I5

<sup>58</sup> The appellant did, however, agree to its use for the Transport Assessment

<sup>59</sup> Proof of Mr Eves, Paragraph 6.13

<sup>60</sup> CD I7 & I8

<sup>61</sup> ID 15

that does not allow for adjustments or discounts<sup>62</sup>, the County Council's own highway witness accepted at the Inquiry that some form of TEMPPO reduction would be appropriate<sup>63</sup>. I see no reason to disagree with this approach.

66. As pointed out by the appellant, I am mindful that the Planning Practice Guidance states that committed developments should only be included in a transport assessment where there is a reasonable degree of certainty that the development would proceed within the next three years<sup>64</sup>. I note the County Council's point that although development may not come forward in the plan period, it will nevertheless eventually come forward at some point and it is better to make an allowance for it. On the other hand, it seems to me that an approach that attempts to factor in all future housing development that may or may not come forward over a longer-term timeframe would potentially prevent any future housing sites, not specifically identified in the development plan, from ever coming forward. Such an approach is unsatisfactory, especially given the urgent need for housing in the area, and it would stifle future provision contrary to government's aim to boost the supply of housing<sup>65</sup>.
67. In addition, the TEMPPO growth figures also assume that the growth from housing allocations will essentially have a uniform effect across the whole highway network. The County Council acknowledges that, in reality, the larger allocations to the north-west and west of Cheltenham are unlikely to have any significant impact on the local road network in the vicinity of the appeal site, including the Battledown area. This lends weight to the argument that 'severe impact' of the appeal proposal on the highway network has been over-estimated.
68. I acknowledge that individuals may adjust the timing of their trips to avoid congestion<sup>66</sup>, although this is not always possible. Although it is still early to predict what the longer-term effects of the pandemic will be on traffic flows, there seems to be some emerging evidence that individuals are working from home to a greater extent than previously, utilising video technology, and working more flexibly. Whilst this may not be possible in certain jobs, the pandemic and technology has undoubtedly resulted in changes to work practices and commuting patterns which are likely to have a lasting impact, potentially reducing commuter traffic. Little detailed evidence has been provided in respect of the e-scooter scheme to draw any firm conclusions. There is uncertainty about the extent to which existing traffic trends will carry on into the future, as well as uncertainty around the possible impact of transport technology on road traffic demand. It is unclear how far the existing understanding of traffic growth will continue to apply, and some uncertainty around future travel behaviour.
69. Certain works are proposed as part of the scheme: an internal footpath within the upper part of site adjacent to Harp Hill, which would be safer than existing arrangements, as there is currently no formal provision for pedestrians along the majority of the appeal site frontage along Harp Hill, much of it comprising a narrow grass verge. Other works include: improvements to pedestrian connectivity through a new footway to the west of the appeal site on the

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<sup>62</sup> Closing Submissions of the County Council

<sup>63</sup> Mr Hawley Cross examination

<sup>64</sup> Paragraphs 14 & 15 of the Travel Plans, Transport Assessments and Statements Section (ID 42-014-20140306 & ID 42-015-20140306)

<sup>65</sup> Framework Paragraph 60

<sup>66</sup> Local Transport Plan, CD I5

northern side of Harp Hill connecting to Footpath 86<sup>67</sup>; improvements for pedestrian and cyclists along Priors Road, including widening of a shared footway and cycleway, and a 'toucan' crossing<sup>68</sup>. Highway works are also proposed comprising widening to the Harp Hill approach at the Priors Road / Harp Hill roundabout to increase its operational capacity; and £64,500 to implement a Travel Plan.

70. To sum up on this issue, there is no national or formal definition of 'severe' in the framework, or what constitutes a severe residual traffic impact. It is therefore a matter of judgement rather than an application of strict scientific criteria. It is accepted by the County Council that the test in the Framework for a 'severe' impact is a high bar<sup>69</sup>. Importantly, the JSC will not deliver housing in the numbers originally proposed up to 2031, which will affect traffic growth overall. There appears to be some evidence of flat traffic growth in the initial years of the assessment period from the base date of 2019 and of individuals adjusting travel times to avoid congestion. The County Council accepts that traffic growth may not be uniform across the network.
71. In my judgement, the Transport Assessment adopting a number of very robust assumptions, is likely to have over-estimated the likely traffic impacts in the period up to 2031. Whether the appellant's discount of a third is completely accurate or not, I nonetheless consider that a significant discount is justified. I have no doubt that some additional observable delays may materialise at various junctions up to 2031, but many are already over capacity, and the network is already congested at certain times. In this context, I am not persuaded they any additional delays arising as a result of the appeal development would realistically constitute a residual cumulative severe impact on the road network. Consequently, this is not a reason for the appeal to fail, and I find no conflict with Paragraph 111 of the Framework or Policy INF1.

### *Gradients*

72. The second highway issue raised by the County Council on which there was much discussion relates to gradients across the appeal site. Policy SD4(vii) of the JCS requires, amongst other things, that new development should be fully consistent with guidance set out in the Manual for Gloucestershire Streets (MfGS) and other relevant guidance in force at the time. The MfGS, published in July 2020<sup>70</sup>, states that generally the maximum gradients allowable in new developments should not exceed 1:20, but consideration can be given to 1:12. Where the latter is proposed, no stretch should exceed 30 metres.
73. The Council argues that any failure to comply with these standards would represent a clear breach of development plan policy. Conversely, the appellant says that the current draft of the MfGS postdates the adoption of the JCS (December 2017) and therefore cannot logically require compliance with it in any event. However, it seems to me that the clear intention of the JCS Policy is that the relevant applicable guidance is that in force when a planning application is determined, and not some earlier superseded iteration of it. The appellant's approach would run counter to a common sense application of the policy.

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<sup>67</sup> PFA drawing H628/04 Rev C

<sup>68</sup> PFA drawing H628/08 Rev A

<sup>69</sup> Proof of Mr Hawley, Paragraph 5.37 and in Cross Examination

<sup>70</sup> CD 14

74. To complicate matters, in addition to the local standards within the MfGS, there are a range of standards in national guidance documents. For example, Manual for Streets does not impose a requirement of 1:12 but says in respect of cyclists and pedestrians that gradients should ideally be no more than 5% (1:20), although it is acknowledged topography may make this difficult to achieve<sup>71</sup>. Manual for Streets 2 (MfS2), in respect of carriageway gradients, allows for a practical maximum of 8% (1:12) but allows for steeper gradients where there are 'particular local difficulties'<sup>72</sup>. In relation to pedestrian routes, MfS2 states the gradient should ideally be no more than 5% (1:20), although topography make this difficult to achieve; and that as a general rule 8% (1:12) should be considered a maximum, which is the limit for most wheelchair users, as advised in Inclusive Mobility<sup>73</sup>.
75. As the appellant notes, the MfGS has not been consulted upon publicly and has not been through the same statutory processes that govern development plans. The MfGS is ultimately technical guidance. This means it cannot have statutory force, but it should not be ignored. During the Inquiry, to address the Council's concerns, the appellant produced an Alternative Illustrative Masterplan which demonstrated that a road layout could technically be achieved to comply with the more stringent local MfGS requirements. A condition has also been suggested requiring full compliance with the MfGS standards, although the appellant does not consider it to be necessary.
76. In my judgement, there must be some degree of flexibility to take account of natural topography, but developments should be as permeable as possible and offer attractive pedestrian and cycle routes which are accessible for all users<sup>74</sup>. Given it has been demonstrated that it is possible to design a scheme that would adhere to the MfGS, I see no good reason why a suitably worded condition cannot be imposed in this instance. In these circumstances, no objections with respect to gradients can be sustained, nor can it be a reason for the appeal to fail.

### *Education Contributions*

77. There is a dispute between the appellant and the County Council regarding the level of financial contribution necessary to accommodate increased demand for school places arising from the scheme. Importantly, this dispute does not go to whether the appeal should be allowed or dismissed, but rather the amount payable. The relevant obligation allows for different conclusions. The difference is significant: the County Council seeks the sum of £2,602,127 (or £2,352,323 if the scheme is developed with 24 one-bedroom units) whereas the appellant says it should be £528,180. It is important to note that the appellant is not making any viability argument in this case, nor seeking to argue that the scheme could not proceed on the basis of the higher financial contribution.
78. Guidance is provided in 'Securing Developer Contributions for Education (2019)'<sup>75</sup>. Paragraph 3 advises that it is important that the impacts of development are adequately mitigated, requiring an understanding of: (i) the education needs arising from development, based on an up-to-date pupil yield

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<sup>71</sup> CD I2, Paragraph 6.3.27

<sup>72</sup> CD I3, Paragraph 8.4.2

<sup>73</sup> Department of Transport, 2005

<sup>74</sup> Paragraph 112 of the Framework

<sup>75</sup> CD G2



factor - known also as a Pupil Product Ratio (PPR); (ii) the capacity of existing schools that would serve development, taking account of pupil migration across planning areas and local authority boundaries; (iii) available sources of funding to increase capacity where required; and (iv) the extent to which developer contributions are required and the degree of certainty these will be secured at the appropriate time.

79. Put simply, in this case, there are two key issues which divide the parties. The first is the number of pupils that will be generated by the proposal. The second is the capacity of local schools to provide places to accommodate those pupils. Both matters were considered in some detail at a recent appeal at Coombe Hill, Gloucestershire<sup>76</sup>, although the parties do not agree on how to interpret that Inspector's findings.
80. The evidence has comprised many statistics, complex data and somewhat labyrinthine arguments. In order to determine the correct amount payable it is necessary to: (i) determine the number of children from the existing local population already at school, and who will attend school within the next few years; (ii) assess the number of children who would be brought into the education system as a consequence of the appeal development; (iii) assess the capacity of existing schools to accommodate the current school population, as well as the new pupils who would be generated by the new development. It is necessary to carry out this exercise for primary school pupils, secondary school pupils and sixth form pupils.
81. The first stage of this process, namely forecasting the number of pupils in the existing school population at each local school produced little substantive dispute – the so-called 'base forecasts', notwithstanding the amount of evidence. Although the appellant questioned the accuracy of the Schools Capacity Survey ('SCAP') forecasting produced for long range strategic planning purposes for the Department of Education, the County Council confirmed that it does not use such forecasting for the purposes of assessing education contributions.<sup>77</sup>
82. The base forecasts can never be completely accurate given the various assumptions that have to be made about the movements in and out of a locality, the pace of individual developments, patterns of occupation and parental preferences for individual schools. However, the County Council's primary and secondary forecasts have been accurate both in absolute terms and by comparison with other authorities<sup>78</sup>.
83. **PPRs:** The PPRs are used to anticipate new demand which will be created by the children in new housing, and are an arithmetical basis for calculating how many children there will be for a given number of homes in a new development. Depending on which PPR is used will give rise to different numbers of students both for Primary and Secondary places. The Infrastructure Delivery Plan 2014 (IDP), originally produced to support the JCS, sets out PPRs for primary and secondary school places<sup>79</sup>. However, the information underpinning the PPRs within the 2014 IDP is now dated, originating from 2007.

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<sup>76</sup> APP/G1630/W/20/3257625, issued 1 June 2021, CD K2,

<sup>77</sup> According to the appellant, the County Council had originally argued in Coombe Hill for the use of SCAP

<sup>78</sup> See Local Authority Scorecard, published by the Department for Education; Mr Chandler Proof, Paragraphs 4.2-4.3

<sup>79</sup> CD E8 A



84. In 2018 the County Council commissioned a study by Cognisant, and thereafter, the PPR figures in the Cognisant study were used by the County Council to calculate education contributions. These were higher than the County Council's previous figures, as well as the national average. A number of developers were dissatisfied with Cognisant Study, believing the PPR figures to be too high, and approached the County Council requesting that further work be undertaken. Accordingly, Cognisant were commissioned to undertake further research and the methodology was agreed between the County Council and the developers.
85. The findings from this later research indicated PPRs in keeping with the 2018 study, and higher than the national average. However, the developers were unhappy with the results of the further research, notwithstanding that the methodology had been agreed. The appellant has subsequently commissioned NEMS Market Research to undertake further survey work, which was written up by the appellant's education witness<sup>80</sup> to form the NEMS Study. This produced an alternative set of PPRs which were significantly lower than in the Cognisant Study. The County Council has now embarked on a further study of PPRs, which is anticipated to take some time, and will be consulted upon in due course. In the meantime, it has produced an Interim Policy Statement (IPS)<sup>81</sup> to address the Inspector's comments in the Coombe Hill appeal and provide a basis for the assessment of education contributions prior to the ongoing work being completed. The County Council relies on the figures in the IPS in this appeal.
86. Much discussion took place at the Inquiry about the precise meaning of the reasoning in the Coombe Hill decision, and on what conclusions could be inferred from it. I have little knowledge of the exact scope of the evidence presented to that Inquiry by each party. The reasoning in that decision is not always easy to follow, and this has understandably led to ambiguity in interpretation. The Inspector found that the PPRs within the IDP (2014) dating from 2007 were no longer up to date and found it was 'no longer appropriate to use them'<sup>82</sup>. The subsequent Cognisant Study of 2018 was criticised as producing 'startlingly high' results<sup>83</sup> but was nonetheless the 'best and most recent evidence available'<sup>84</sup>. The Inspector went on to say that he was not convinced of the accuracy of the County Council's figures, finding the appellant's figures more convincing<sup>85</sup>. However, notwithstanding the Inspector's doubts, and to ensure robustness, he would use the County Council's figures.
87. In the current appeal, the appellant appears to be suggesting that the Inspector had endorsed the original IDP figures (2007) for calculating the PPRs, although the County Council says there is nothing within his decision to suggest that it the case. Rather, the County Council's view is that the Inspector endorsed the Cognisant figures of 2018. Much time could be spent attempting to decipher the precise meaning of the Coombe Hill decision, but I am not convinced this would be fruitful. I do, however, consider it inappropriate to

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<sup>80</sup> Mr Tiley

<sup>81</sup> Attached at Appendix 2 to Mr Chandler's Proof

<sup>82</sup> Paragraph 101

<sup>83</sup> Paragraph 102

<sup>84</sup> Paragraph 103

<sup>85</sup> Paragraph 109

rely on 2007 figures in 2022 as they are clearly well out of date and were found to be so by the previous Coombe Hill Inspector.

88. The question therefore is whether the IPS should be relied on, as advocated by the County Council. The appellant has argued that the IPS is selective in how it deals with the various conclusions of the Inspector in Coombe Hill. In terms of the appropriateness of the Cognisant Study, various weaknesses were identified by the Coombe Hill Inspector: a failure to account for home educated children and those independently educated; a failure to account for second or vacant homes; and failure to allow that some houses on the new development would be occupied by families already in the area, freeing up existing housing stock, and so they would not be adding to the demand for education places<sup>86</sup>. However, these issues have been considered within the IPS and various adjustments have been made. I accept the final issue relating to so-called 'backfilling' is very difficult to assess, but I am not necessarily convinced the appellant's calculations<sup>87</sup> made on this matter would produce a more accurate outcome.
89. I accept that the IPS has not been subject to formal public examination or consultation and is only an 'interim' rather than 'final' document. However, looking at PPRs within the IPS compared with other authorities, whilst Gloucestershire may be in the higher quarter of authorities, it is not substantively out of line. This is the case both for authorities that use a single PPR ratio, as well as those that use a PPR for each separate house type. The County Council's witness explained that increasing house prices have meant that there is a decreasing ability to buy 'extra space' in houses, with a consequence of higher numbers of children for a given house size. Furthermore, the increasing proportion of affordable units on housing developments can have the effect of generating greater numbers of children. These factors have the effect of raising PPRs.
90. I acknowledge that Policy INF6 of the JSC, concerned with infrastructure delivery, refers specifically to implementing the IDP where appropriate. The Appellant has drawn attention to the Planning Practice Guidance<sup>88</sup> which deprecates the use of setting out 'new formulaic approaches' in respect of planning obligations in supplementary planning documents 'as these would not be subject to examination'. Reference is also made by the appellant to the Framework which says plans should set out the contributions expected from development<sup>89</sup>. However, the approach within the JCS of setting out the need for education contributions in development plan policy and subsequently setting out the PPRs in a supporting document – in this case originally the IDP – was taken through the Examination process, and the JCS was found to be sound overall on that basis. Moreover, the IDP explicitly states that 'infrastructure delivery planning is a live process', that 'figures in this report will change over time'<sup>90</sup> and that it is an 'iterative process'<sup>91</sup>. Therefore, I am not convinced it is fair to characterise the situation as a 'new formulaic approach', since the relevant PPR has always been set out in a subsidiary document, and

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<sup>86</sup> Paragraph 108

<sup>87</sup> Mr Tiley's Proof, Table 7.2 & Paragraph 7.11 of CD G14

<sup>88</sup> Paragraph 004 Ref ID 23b-004-20190901

<sup>89</sup> Paragraph 34

<sup>90</sup> CD E8, Page 1, fifth bullet

<sup>91</sup> Ibid, Page 4

the County Council has sought to work cooperatively and agree its updated approach with interested parties.

91. Whilst it may require further refinement and additional work, I believe the IPS to be sufficiently robust for the purposes of this appeal. I accept it is still a work in progress, and of 'interim' status, but it seems to me the best and most up to date information available at the present time.
92. Capacity: the other key issue to be considered is whether existing schools in the area are capable of accommodating the likely new demand from the proposal without expansion. I heard representations from local residents on the first day of the Inquiry regarding the pressure on local services, including that there are insufficient school places in the local area, meaning school children had to travel further afield. There was considerable debate between the appellant and County Council as to the meaning of the term 'capacity'. The County Council submits that, for the purposes of planning school places, capacity should be regarded as being reached at 95% of its Permitted Admission Numbers (PAN). On the other hand, the appellant argues that capacity potentially equates to up to 105% of its PAN.
93. There is no definition in planning policy as to the meaning of 'capacity'. I was referred to various documents that point to using 95% as a capacity figure. For example, the Audit Commission publication 'Trading Places – the Supply and allocation of School Places' (1996)<sup>92</sup> states that a sensible approach is to plan for a 95% occupancy rate, and accept some variation around this target – say plus or minus 10%<sup>93</sup>. The Department of Education document 'Capital Funding for New School Places' (2013)<sup>94</sup> refers to 5% surplus to allow operational flexibility and enabling some parental choice as 'a bare minimum'<sup>95</sup>. That document also mentions it is 'reasonable for authorities to aim for between 5 and 10% primary surplus'.
94. I agree with the County Council's view that operating at, near or over 100% is not desirable. I consider that such an approach would significantly reduce operational flexibility, including for in-year transfers, unexpected influxes of children and parental choice. Parental choice is highlighted in both 'Trading Places' and 'Capital Funding'. The Framework also states that 'it is important that a sufficient choice of school places is available to meet the needs of existing and new communities'<sup>96</sup>. It seems to me, as Education Authority in exercising its statutory duty, the County Council is best placed to decide such matters. The Coombe Hill Inspector, in reference to the 'Trading Places' document, appears to find favour of the interpretation that capacity could extend up to 105% of PAN, although he acknowledged that it made no difference to that particular case, when assessing school capacity<sup>97</sup>. In my judgement, and notwithstanding the previous Inspector's views, for the reasons above, I consider that 105% capacity does not represent good planning. The County Council's witness accepted that 95% was 'not a diktat' but was something to be aimed for by Education Authorities. I see no reason to depart from that approach.

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<sup>92</sup> December 1996 CD G27

<sup>93</sup> Ibid, Paragraph 9

<sup>94</sup> Mr Chandler Proof – Appendix 7

<sup>95</sup> Paragraph 1.16

<sup>96</sup> Paragraph 95

<sup>97</sup> Paragraph 115, CD K2

95. The relevant tables from the County Council's Education Proof clearly shows that when a capacity figure of 95% is taken, there is no capacity to accommodate pupils that would be generated by the development. In terms of primary provision, this is the case whether considered on the basis of Primary Place Planning Areas or on a school-by-school basis. The only school that has capacity is Oakwood Primary but this is because it has been recently expanded with contributions from a planning obligation from developers to accommodate future demand from other forthcoming developments. In respect of secondary school places, a similar pattern emerges, with no residual spaces to accommodate development without contributions being made. Again, this is the case whether an assessment is made based on the Cheltenham Secondary Place Planning Area, or on an individual school basis.
96. I heard much detailed technical and contradictory evidence on this topic. Ultimately, I am not necessarily convinced a s78 appeal to be the best forum to evolve the County Council's detailed and ongoing policy on developer contributions in respect of education. This is a complex, and apparently controversial process with limited common ground between the parties, requiring complicated calculations, taking account of demographic characteristics, and relevant guidance. Such matters are probably best resolved in a collaborative rather than adversarial setting through liaison and discussion with various interested stakeholders.
97. In the meantime, and having careful regard to all the evidence, I find that the full amount sought by the County Council should be payable in respect of primary, secondary and sixth form contributions.

## **Other Matters**

### *Living Conditions*

98. Concerns have been raised by certain objectors regarding the effect of the development on residential properties in terms of living conditions, especially bordering the eastern boundary. The outlook would certainly change from those properties, but the Council has not raised any 'in principle' objections on this basis. I see no reason to take a different view. As the Council notes in its officer report<sup>98</sup>, the separation distances to the boundaries appear acceptable, and any detailed assessment regarding potential impacts on neighbouring properties in terms of privacy and outlook would need to be considered at reserved matters stage.

### *Sufficiency of information*

99. The CBC has questioned whether an outline application is appropriate for major development in an AONB arguing that there is insufficient information, too much uncertainty, and lack of binding detail to properly assess the impacts on the AONB. The CBC also argue that there is no guarantee that appropriate mitigation would be put in place. However, the Council has not putatively refused the application on this basis, nor questioned that the application has been validly made.
100. There is nothing in planning law to preclude a grant of an outline permission in an AONB, and conditions can be imposed to circumscribe any permission in a more stringent way, or to mitigate effects, specifying for example, new

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<sup>98</sup> CD A38, Paragraph 6.146

structural tree planting and landscaping, retention of hedgerows and trees, and so on. Conditions can also be used to preclude housing development on the more sensitive upper slopes, as well as requiring development to be in general accordance with the Alternative Illustrative Masterplan. At reserved matters stage, the Council would be able to control the final detailed form of any development, in the light of the approved plans, including the various parameter plans and the Alternative Illustrative Masterplan. The Council has the option not to approve any subsequent reserved matters or to refuse to discharge conditions if it considers the details to be unacceptable.

### *European Sites and Sites of Special Scientific Interest*

101. The site is within the Zone of Influence of a European Site – the Cotswolds Beechwoods Special Area of Conservation. The site is also designated at a national level as the Cotswolds Commons and Beechwoods Site of Special Scientific Interest (SSSI) and a National Nature Reserve (NNR). There are also other SSSIs in the vicinity of the site. The relevant Regulations<sup>99</sup> require that if the development is likely to have a significant effect on the internationally important features of a European Site, (either alone or in combination with other plans or projects), it is necessary to conduct an Appropriate Assessment, having regard to the site's Conservation Objectives, and having regard to advice from Natural England. Development can only proceed if it can be ascertained that the proposal would not adversely affect the integrity of the European Site. In this case, a shadow Appropriate Assessment was conducted by the appellant which concluded that the proposal would not have an adverse effect on the integrity of any of the sites in question.
102. Natural England<sup>100</sup> has advised that it concurs with the Assessment's conclusions, and it raises no objections to the scheme, provided that mitigation in the form of Homeowner Information Packs on recreation is provided. This can be secured by a condition. The packs would include information regarding opportunities for visits in the area and the sensitivities of designated sites. In the light of Natural England's advice, I adopt the shadow Appropriate Assessment. I am satisfied that the evidence before me demonstrates that sufficient mitigation would be provided such that the development would not adversely affect the integrity of the SAC, nor would its conservation objectives be undermined. I am also satisfied the proposal would not adversely affect the SSSIs.

### *Planning Obligations*

103. There are five planning obligations before the Inquiry, by agreement and also by unilateral undertaking (UU) as follows: (i) a UU to the County Council relating to library and education contributions; (ii) a UU to the Council relating to a maintenance contribution for repointing and maintaining the historic wall around the reservoir complex; (iii) an agreement between the appellant and Council relating the provision of affordable housing; (iv) an agreement between the appellant and Council relating to the provision of open space, including a play area and allotments; (v) an agreement relating to transport and infrastructure, including works to the footway along Priors Way, including provision of a cycle way, Travel Plan implementation and monitoring.

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<sup>99</sup> The Habitats Regulations 2017

<sup>100</sup> Letter dated 13 April 2021, CD B13



104. In terms of (i), as explained in my decision above, I agree that the full amount of education contributions sought by the County Council should be paid. In terms of (ii), a commuted sum is proposed of up to £25,000 to be paid to the Council if called upon for future costs of repointing and maintaining the reservoir wall on the eastern boundary, and removing brambles and creeper. This is to allow the heritage asset to be 'better revealed'. However, given that the wall is not in the Council's ownership and there is no detailed survey identifying the particular works required, I give this particular obligation limited weight in my assessment.
105. In terms of (iii), the obligation would ensure that 40% of the dwellings to be constructed would be affordable units, comprising affordable rented units, social rented units and shared ownership units. In terms of (iv), the obligation would ensure provision of public open space, including a children's play area (including equipment), allotments and an off-site contribution of £48,522 for the improvement of playing pitches the Beeches or Priors Farm Playing Fields. In terms of (v), the obligation would provide for contributions for an order for the conversion of a footway to a cycleway (£5,000), and a Travel Plan and monitoring contribution (£64,500). The obligation would also facilitate a scheme of works (as shown on drawing H628/08 Rev A) along Priors Road, including the relocation of bus stops, provision of bus shelters, improvements/widening of footways and crossing to provide a cycleway.
106. I have no reason to believe that the formulas and charges used by the Council and County Council to calculate the various contributions and provisions of the obligations are other than soundly based. Other than where stated, I am satisfied that the provisions of the obligations are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework<sup>101</sup> and Community Infrastructure Levy Regulations<sup>102</sup>. I have taken the planning obligations into account in my deliberations.

## **Planning Balance and Overall Conclusions**

107. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise<sup>103</sup>. Where Councils are unable to demonstrate a five year supply of housing, Paragraph 11 of the Framework states that the most important policies for determining the application are deemed out of date, and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Alternatively, specific policies in the Framework that protect areas or assets of particular importance may provide a clear reason for refusing the development, and the so-called 'tilted balance' in favour of granting permission does not apply. Those relating to development within the AONB and heritage assets fall within that category.
108. The Framework at Paragraph 176 requires that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs, which

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<sup>101</sup> Paragraph 57

<sup>102</sup> Regulation 122

<sup>103</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 & Section 70(2) of the Town and Country Planning Act 1990



have the highest status of protection in relation to these issues. This reflects the statutory duty under s85 of the Countryside and Rights of Way Act 2000 to have regard to the purpose of conserving and enhancing the natural beauty of AONBs. The Framework states that the scale and extent of development in these areas should be limited, and planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.

109. In consideration of such applications, the Framework at Paragraph 177 requires an assessment of: (a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; (b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and (c) any detrimental effects on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
110. In terms of (a) the scheme would secure both market and affordable housing for which there is a clear and urgent need in Cheltenham. It would boost the supply of housing in accordance with the framework, thereby supporting a key national policy objective. It would address the immediate shortfall in the five-year housing supply which on the Council's case is 2.9 years or 1.6 years according to the appellant. On either basis, the deficit is very large. The scheme would deliver 250 units of which 100 would be affordable and would make an important contribution to this pressing and urgent housing need.
111. Although the Council has argued that the development has the potential to harm tourism and cause economic harm on the basis it would impact on the AONB and the setting of Cheltenham<sup>104</sup>, there is no substantive evidence to support this view. Rather, I consider it would boost the local economy, creating investment in the locality and increasing spending in local shops and services. It would create jobs and investment during the construction phase, albeit for a temporary period. A summary of the headline economic benefits was set out by the appellant which was not disputed by the Council<sup>105</sup>.
112. In terms of (b), in considering the cost of and scope for developing elsewhere, the District is severely constrained with the urban footprint covering a substantial part of its area, and with the AONB and Green Belt comprising the remainder and subject to protection<sup>106</sup>. The Council has opted to progress a full rather than partial review of the JCS. Latest estimates of the adoption of the JCS review are 'winter 2024/Spring 2025'<sup>107</sup>. However, that timetable is optimistic, especially as the emerging plan is likely to be controversial because of the potential need for releases of land from the Green Belt and AONB, and there are a significant number of hurdles to overcome before it is adopted. A plan-led approach to development is certainly desirable, but in this instance, there seems little prospect of a timely plan-led remedy to address the urgent housing shortfall.
113. I acknowledge various sites have been allocated within the development plan, so this is not a case where the Council has failed to allocate sites at all.

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<sup>104</sup> Council's Closing Submissions, Paragraph 73(a)

<sup>105</sup> Paragraph 8.23, Mr Hutchinson's Proof

<sup>106</sup> Acknowledged by the Council – Closing Submissions, Paragraph 21

<sup>107</sup> Tewkesbury Borough Local Development Scheme [ID 50]

Nonetheless, these are not delivering in a timely manner to address the urgent housing needs of the area. I do not consider it satisfactory to wait for the emerging plan process to conclude in order to deal with the current housing need. No evidence was presented to the Inquiry that there are other suitable or deliverable sites outside the AONB to address the identified housing need in a timely fashion. Thus, the evidence strongly suggests that at the present time, given the severe constraints of the District, the need could not be met in another way.

114. In terms of (c) regarding any detrimental effect of the environment, landscape, and recreational opportunities, the site is very unusual in the AONB in that it is bounded by residential development on three and a half sides, and on the remaining fourth side is an engineered landscape. Whilst there would undoubtedly be some harm arising from the development in that an area of pastureland within the AONB would be lost, the site is reasonably well contained by existing residential development. Given these factors, I consider the appeal site is an obvious and logical extension to Cheltenham.
115. In short and medium range views the site is perceived very much in context of the surrounding urban development. In longer range views from Cleeve Common and the Cotwolds Way National Trail, it forms part of the attractive sloping scarp. That said, it is seen as a small part of a much wider panorama that includes extensive built development. The upper part of the site, which is the most sensitive area, would remain free of housing, although it would be bisected by the access road. Comprehensive landscaping is proposed that would moderate many of the adverse effects. The scheme has additional environmental benefits in the form of green infrastructure and biodiversity enhancements. The scheme would also deliver recreational benefits through new footpath links and the creation of publicly accessible areas on land that is currently private.
116. There is no definition of what constitutes 'exceptional circumstances' and there is a danger of the term being judicially over-analysed. Ultimately, it must be a planning judgement. There is nothing in caselaw to suggest that a very serious shortfall of market and affordable housing, as well as the particular locational circumstances of a site, cannot amount to exceptional circumstances. Taking careful account of the various considerations in Paragraph 177 of the Framework, I consider there would be exceptional circumstances in this case to justify the development and that the proposal would be in the public interest. It would not offend restrictive policies of the Framework relating to the AONB. In reaching this conclusion, I have given great weight to the purpose of conserving and enhancing the natural beauty of the AONB as required by the Framework, as well as the Countryside and Rights of Way Act 2000.
117. Turning to heritage assets, I have found that the proposal would result in some harm to designated heritage assets. It would also result in the partial loss of 'ridge and furrow'. Paragraph 202 of the Framework requires any harm to the significance of heritage assets to be balanced against the public benefits of the scheme. In addition, Paragraph 199 requires that, when considering the impact of a proposal on the significance of designated assets, great weight should be given to their conservation. I have found harm overall should be placed at the lower end of the 'less than substantial' spectrum.

118. In this case, as noted above, the additional housing, both market and affordable, would be a very weighty benefit for the area. The site is locationally accessible and close to shops and services, including bus routes and Sainsbury's Supermarket. It is adjacent to the existing built-up area of Cheltenham. The new houses would be well related to existing development. The landscaping proposals in the upper part of the site would enable public views across the AONB and towards the heritage assets, from a location that is currently not publicly accessible. I find that the harm to heritage assets, even giving great weight to their conservation, would be outweighed by the scheme's considerable public benefits. Therefore, the adverse impacts do not provide a clear reason for refusing the development. As a consequence, I find that the so-called 'tilted balance' of Paragraph 11 is not displaced in this instance in relation to heritage assets.
119. I have considered the County Council's objections in relation to traffic generation, and have found that the likely traffic impacts would not meet the threshold of severe, and so an objection cannot be sustained on this basis. The concerns regarding gradients to ensure accessibility for all users can be dealt with by way of a condition. My conclusions on education contributions means that this matter would be adequately provided for.
120. In terms of the development plan, there would be conflict with certain policies, including Policies SP1, SP2 and SD10 of the JCS dealing with the spatial strategy for new development. There would also be conflict with Policy SD7 and SD8 of the JCS. Although not part of the statutory development plan, there would be conflicts with the Cotswolds AONB Management Plan. However, the Council cannot demonstrate a five year supply of housing, and so the most important development plan policies are deemed out of date. It is clear that strict application of these policies is not leading to sufficient housing being provided in accordance with the Framework. The lack of supply diminishes the weight that can be attached to any conflict with these policies.
121. The housing shortfall attracts substantial weight in favour of granting permission for the proposals, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. I am satisfied that none of the reasons put forward for opposing the development establishes that the harm would significantly and demonstrably outweigh the benefits. Therefore, notwithstanding any conflict with development plan policies, it follows that the appeal should succeed, subject to conditions. I deal conditions below.
122. In reaching my decision, I have taken into account the information in the ES, as well as other environmental information. I have carefully considered the serious concerns expressed by local residents and objectors, some of whom appeared at the Inquiry. Some have argued that allowing development on this site would set a precedent for further development within the AONB, and erode protection for such designated areas. To be clear, I have reached my decision based on the very specific circumstances of this case, including the site characteristics, which are unlikely to be replicated elsewhere.

## Conditions

123. I have reviewed the agreed list of suggested conditions set out in the light of the discussion at the Inquiry and advice in the Planning Practice Guidance. The Framework is clear that conditions should only imposed where they are

necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects<sup>108</sup>. Where necessary I have reworded the conditions for simplicity and have amalgamated some to avoid duplication. The numbers in brackets relate to the conditions in the schedule.

124. Commencement conditions are necessary to comply with the relevant legislation (1, 2, 3). A condition limiting the number of dwellings is necessary to ensure the terms of the permission are not exceeded (4). A condition requiring reserved matters to be in general compliance with the approved plans is necessary for certainty (5). A condition requiring a Phasing Plan is necessary to ensure the development is delivered in an appropriate manner (6). A condition requiring a Housing Mix Statement is necessary to ensure the development meets the housing needs of the area (7). A condition requiring approval of external materials, dwelling design, boundary details, cycle storage, refuse and recycling storage, and vehicle charging points is necessary to ensure a sustainable, high quality scheme and to ensure proper provision of these facilities (8). A condition is required to ensure a sustainable and energy efficient form of development (9).
125. Conditions relating to foul and surface water drainage are required to avoid flooding and ensure foul drainage infrastructure is provided (10, 11). A condition relating to existing and proposed ground levels is necessary to ensure a satisfactory relationship with the surrounding area (12). Conditions relating to highway works, their implementation and future management, including cycle ways and footways are necessary to provide safe access to and across the site (13, 14, 15, 16, 17). A condition requiring approval of a Construction Traffic Environmental Management Plan is necessary to minimise disturbance to local residents, to ensure efficient traffic flow and to mitigate air pollution during the construction phase (18). A condition requiring approval of a Site Waste Management Plan is necessary to ensure waste minimisation (19). A condition restricting on site activities to certain times of the day is necessary to protect living conditions of neighbouring occupiers (20). A condition relating to piling is necessary for similar reasons (21). A condition relating to potential site contamination is necessary to protect the health of future occupiers (22). A condition relating to a Construction Environment Management Plan and Landscape and Ecology Management Plan are necessary for biodiversity and habitat provision, including ongoing management (23).
126. Conditions relating to lighting, hard and soft landscaping, including tree planting, management and protection are necessary in the interests of biodiversity, wildlife protection and to ensure a high quality scheme (24, 25, 26, 27). A condition relating to the provision of public art is necessary to enhance the character of the scheme (28). A condition restricting permitted development is necessary to protect the character and appearance of the site, and the living conditions for future occupiers (29). A condition requiring the provision of a Homeowner's Information Pack is necessary to direct future residents to appropriate recreational facilities, and to reduce recreational pressure on the Cotswold Beechwoods Special Area of Conservation (30). A condition requiring a scheme of interpretation, including information boards, for the adjacent heritage assets is necessary to enhance the local community's understanding of them (31).

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<sup>108</sup> Paragraph 56

127. A number of these conditions relate to pre-commencement activities. In each case, the requirement of the condition is fundamental to make the scheme acceptable in planning terms. Subject to the imposition of these conditions, I conclude that the appeal should be allowed.

*Matthew Nunn*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT**

Paul Tucker	of Kings Counsel, Kings Chambers, instructed by Pegasus Group
Stephanie Hall	of Counsel, Kings Chambers
They called	
Paul Harris	Landscape
Gail Stoten	Heritage
Neil Tiley	Housing Land Supply & Education
James Stacey	Affordable Housing
Graham Eves	Highways
David Hutchison	Planning

### **FOR CHELTENHAM BOROUGH COUNCIL**

Jeremy Patterson	Principal Planning Lawyer
He called	
Stuart Ryder	Landscape
William Holborow	Heritage
John Rowley	Housing
Ewan Wright	Affordable Housing
Paul Instone	Planning

### **FOR GLOUCESTERSHIRE COUNTY COUNCIL**

Andrew Fraser-Urquhart	of Kings Counsel, Francis Taylor Building, instructed by the County Council
He Called	
Stephen Hawley	Highways
Stephen Chandler	Education
Liz Fitzgerald	Planning, Education and Library Provision



## **FOR THE COTWOLDS CONSERVATION BOARD**

John Mills

## **FOR THE FRIENDS OF OAKLEY FARM PASTURE SLOPES**

Ivan Fee

Peter Gregson

Noleen Gregson

## **OTHER PARTICIPANTS**

Gary Spencer – Planning Solicitor for Cheltenham Borough Council

Bridgette Boucher – Planning Lawyer for Gloucester County Council

Robyn Evans – Solicitor for Robert Hitchens

## **INTERESTED PERSONS**

Roger Willbourne (Statement read by Ivan Fee)

Duncan Forbes

Jo Matthews

Anthony Green

Gillian Jones

Councillor Matt Babbage

Yvonne O'Donnell

Sally Walker

Ian Harvey (gave evidence in respect of the Pavilion and reservoir complex)

## **INQUIRY DOCUMENTS**

1. Opening Submissions on behalf of the Appellant
2. Opening Submissions on behalf of Cheltenham Borough Council
3. Opening Submissions on behalf of Gloucestershire County Council
4. Opening Submissions on behalf of the Friends of Oakley Farm Pasture Slopes
5. Opening Submissions on behalf of the Cotswold Conservation Board
6. Statement of Mr Roger Willbourne – Trustees of Battledown Estate (read by Mr Ivan Fee)
7. Statement of Mr Duncan Forbes
8. Statement of Mr Anthony Green
9. Statement of Ms G Jones
10. Statement of Councillor Matt Babbage

11. Statement of Ms Sally Walker
12. Additional photographs of the site taken at the time of the Landscape Character, Sensitivity and Capacity Assessment of the Cotswolds AONB (2015)
13. Extract from the Concise Oxford English Dictionary (10<sup>th</sup> Edition)
14. Highway Note – Transport Considerations - produced by Gloucestershire County Council in relation to original Illustrative Masterplan (received 13 September 2021)
15. Updated Housing Statement of Common Ground following evidence presented at the Inquiry (dated 20 September 2021)
16. Plan showing residential areas built within former GCHQ site – Site & Contextual Features (received 20 September & updated 27 September 2021)
17. Highway Junction Plan (numbered) from Gloucester County Council
18. CIL Compliance Statement (Cheltenham Borough Council)
19. CIL Compliance Statement (Gloucestershire County Council)
20. Agreed note regarding calculation on Affordable Housing Shortfall, dated 24 September 2024
21. Updated Highway Junction Plan / Traffic Growth Calculations
22. Two Way Traffic Flows (Harp Hill) - handwritten note of Mr Eves
23. Comparison of Pupil Product Ratios (PPRs) in other Local Education Authorities
24. Appellant's Alternative Illustrative Masterplan (Ref: 18017.202 Rev B), associated documents & accompanying Landscape Note by Paul Harris (email dated 11 October 2021)
25. Email from Appellant (Mr David Hutchison) dated 10 December 2021 setting out reasons why the Alternative Illustrative Masterplan should be accepted (includes link to verified views)
26. Cheltenham Borough Council response to Alternative Illustrative Masterplan
27. Gloucestershire County Council response to Alternative Illustrative Masterplan (dated 5 January 2022)
28. Cotswold Conservation Board comments on Alternative Illustrative Masterplan (dated 5 January 2022)
29. Friends of Oakley Farm Pastures response on Alternative Illustrative Masterplan
30. Definitive AONB Boundary
31. Suggested Conditions (Rev 6/12/21)
32. Disputed conditions schedule
33. Draft obligation - affordable housing (by agreement)
34. Draft obligation – public open space (by agreement)
35. Draft obligation – maintenance contribution (UU)
36. Draft obligation – education and libraries (UU) (including 'Quick Reference Notes')
37. Draft obligation - transport and infrastructure (by agreement) (including 'Quick Reference Notes')
38. Closing submissions on behalf of Cheltenham Borough Council
39. Closing submissions on behalf of the Cotswold Conservation Board (including Errata Slip)
40. Closing submissions on behalf of the Friends of Oakley Farm Pasture Slopes
41. Closing submissions on behalf of Gloucester County Council
42. Closing submissions on behalf of the Appellant
43. Final version of conditions (with track changes)
44. Final version of conditions (without track changes) Rev 03/04/22
45. Certified Affordable Housing obligation dated 23 February 2022
46. Certified Public Open Space obligation dated 23 February 2022
47. Certified maintenance obligation dated 23 February 2022
48. Certified Education and libraries obligation dated 23 February 2022

- 49. Certified transport and Infrastructure obligations dated 23 February 2022
- 50. Tewksbury Borough Local Development Scheme (LDS) (2022-24)
- 51. Responses to updated LDS timetable from Cheltenham Borough Council, appellant and Friends of Oakley Farm Pasture Slopes.

## **Schedule of Conditions**

- 1) Details of the access, appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this decision.
- 3) The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is later.
- 4) The development hereby permitted shall provide no more than 250 dwellings.
- 5) The details to be submitted as part of the reserved matters for access, layout and landscaping shall be in general accordance with the design and layout principles of the Alternative Illustrative Masterplan Ref 18017.202 Rev B in respect of the following:
  - a. the proposed and retained structural landscaping (trees, shrubs and hedgerows) and public open space within the green infrastructure areas shown on drawing P18-0847-02 sheet 02 Rev D;
  - b. the design and alignment of the main vehicular access road and vehicular junction within Harp Hill within the Highway Corridor Flexibility Zone shown on drawing P18-0847-02 sheet 03 Rev F (excluding other internal estate roads).

For the avoidance of doubt, applications for approval of reserved matters shall be in substantial accordance with the submitted Land Use Parameter Plan (drawing P18-0847\_02 sheet 02 Rev D), Access and Movement Parameter Plan (drawing P18-0847\_02 sheet 3 Rev F), Building Heights Parameter Plan (drawing P18-847\_02 sheet 04 Rev C) and Green Infrastructure Parameter Plan (drawing P18-0847\_02 sheet 05 Rev D).

- 6) The first reserved matters applications required by Condition 1 shall be accompanied by a Phasing Plan, giving details of the phasing of the development. The development shall be carried out in accordance with the approved Phasing Plan unless any variations have first been approved in writing by the local planning authority.
- 7) Prior to the submission of the first reserved matters, a Housing Mix Statement for the open market housing shall be submitted to the local planning authority for approval. The Statement shall set out an appropriate mix of dwelling sizes, types and tenures to be provided on site that will contribute to a mixed and balanced housing market. The Statement will address the needs of the local area having regard to the Council's current local housing evidence base. The development shall be implemented in accordance with the approved Statement.

- 8) The reserved matters required to be submitted and approved under Condition 1 shall include:
- a. details of the design, form and architectural features of the dwellings, including materials to be used on the external walls and roofs;
  - b. details of the position, design, materials and type of boundary walls within the development;
  - c. details of cycle storage facilities for each dwelling;
  - d. details of refuse and recycling storage to allow for the separate storage of recyclable waste materials;
  - e. details of electrical vehicle charging points (including appearance, location and type) to accord with the relevant Council standards;

The development shall be carried out in complete accordance with approved details.

- 9) The details to be submitted for approval as part of the reserved matters application(s) for appearance, scale and layout pursuant to Condition 1 shall include an Energy and Sustainability Statement. The statement shall demonstrate an improvement on the energy efficiency of the scheme over and above the Building Regulations in place at the time of this decision and shall include, but not be limited to, the following information:
- a. details of the methods used to calculate predicted annual energy demand and associated carbon emissions;
  - b. measures to reduce impact on climate change (including consideration of heat proofing, construction techniques, building fabric, solar gain, natural lighting, shading, orientation, water retention, flood mitigation and landscaping).
- 10) No development shall take place until details of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with the principles set out in the Flood Risk Assessment and Drainage Strategy prepared by Phoenix Design dated March 2020. An assessment shall be made regarding the potential for disposing of surface water by means of a sustainable drainage system (SuDS) in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results provided to the local planning authority.

Where a sustainable drainage scheme is to be provided, the submitted details shall provide:

- a. an assessment of the hydrological and hydro-geological context of the development;
- b. information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- c. a timetable for its implementation;
- d. a management and maintenance plan for the SuDS. The plan shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.



The surface water drainage scheme, including its management and maintenance, shall be implemented strictly in accordance with approved details and thereafter retained as such for the lifetime of the development.

- 11) No development shall take place until full details for the treatment and disposal of foul water (including pollution control and monitoring measures) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 12) No development shall take place until plans showing the existing and proposed ground levels of the site and existing ground levels of adjacent land have been submitted to and approved in writing by the local planning authority. The submitted details shall include existing and proposed cross section drawings of the site indicating the extent of ground works required to achieve finished site levels. The reserved matters application(s) submitted pursuant to Condition 1 shall include details of the proposed slab levels of the proposed buildings and ridge heights of proposed and adjacent buildings. The development shall be implemented strictly in accordance with the agreed details.
- 13) Notwithstanding the illustrative proposed access arrangements on to Harp Hill, as shown on Access and Movement Parameter Plan ref: P18-0847\_02 Sheet No.3 rev F and the Alternative Illustrative Masterplan ref. 18017.202 Rev B, full details of the proposed access junction on to Harp Hill shall be submitted to and approved in writing by the local planning authority as part of the first reserved matters submission. The access shall be installed in accordance with the approved details and made available for use prior to the first occupation of any dwelling. The reserved matters submissions relating to access are required to be generally designed so that maximum and minimum gradients allowable will be 1/20 and 1/100 respectively, save that gradients up to 1/12 are permissible, provided that where they are proposed, they shall be limited to maximum lengths of 30 metres.
- 14) No dwelling hereby permitted shall be occupied until the Footpath and Cycleway link between Priors Road and the development area (as shown on Drawing No 333.E.33) has been fully implemented in accordance with a detailed design previously submitted to and agreed in writing by the local planning authority.
- 15) No more than 50 dwellings shall be occupied until the following highway works have been implemented in full:
  - a. Alterations to the junction of Priors Road / Hales Road / Harp Hill / Hewlett Road (shown on Drawing No H628/04 Rev C);
  - b. Harp Hill pavement extension and pedestrian linkages (shown on Drawing No H628/05 Rev A).
- 16) No dwelling shall be occupied until: (i) the carriageways providing access from the public highway to that dwelling have been completed to at least binder course level, and the footways to surface course level and in accordance with the approved plans; and (ii) the car/vehicle parking area, visitor parking and turning space associated with that dwelling (including

garages and car ports where proposed) have been completed in accordance with the approved plans.

- 17) Prior to first occupation of the development, details of the arrangements for future management and maintenance of the roads/streets within the development shall be submitted to and approved in writing by the local planning authority. The roads/streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.
- 18) No development shall take place until a Construction Traffic Environmental Management Plan (CTEMP) has been submitted to and approved in writing by the local planning authority. The CTEMP shall include: details of parking or vehicles of site operatives and visitors (including measures to ensure satisfactory access and movement for existing occupiers during construction); details of any temporary access into the site; details of loading and unloading of plant and materials; arrangements for turning vehicles; details of storage of plant and materials; measures for traffic management (including routing) so as to minimise the impacts of construction traffic on the highway; details of types, size and numbers of construction related vehicles anticipated daily, including arrangements to receive abnormal loads or unusually large vehicles; means to prevent deposition of mud or other substances on the highway; details of wheel washing facilities; measures for the control of site lighting (required for safe working or for security); means to control dust and emissions to air; means to control noise and vibration; methods of communicating the CTEMP to staff, visitors and neighbouring residents and businesses. The approved CTEMP shall be adhered to throughout the demolition and construction period.
- 19) No development shall take place until a Site Waste Management Plan (SWMP) has been submitted to and approved in writing by the Local Planning Authority. The SWMP shall include: information on the type and amount of waste likely to be generated prior to and during the construction phase; details of the practical arrangements for managing waste generated during construction in accordance with the principles of waste minimisation. The approved SWMP shall be adhered to throughout the demolition and construction period.
- 20) Demolition, construction works or other operations that generate noise beyond the site boundary shall be only carried out between the hours of 0800 hrs and 1800 hrs Mondays to Fridays, and between 0800 hrs and 1300 hrs on Saturdays and at no time on Sundays and Bank Holidays. Deliveries to, and removal of plant, equipment, machinery and waste from the site shall only take place within the permitted hours detailed above.
- 21) No piling activities shall be carried out until a full piling method statement has been submitted to and approved in writing by the local planning authority. The method statement must assess and include full details of the noise and vibration impact from the piling operations on the nearest residential properties; dates and times of piling; and details of monitoring

measures. All piling activities shall be carried out in accordance with the approved details.

- 22) In the event contamination is found at any time when carrying out the approved development that was not previously identified, it must be immediately reported in writing to the local planning authority, and development shall be halted on that part of the site affected by the unexpected contamination. An investigation and risk assessment must then be undertaken in accordance with the Environment Agency's relevant guidance and, where necessary, a remediation scheme also submitted. Following completion of measures identified in the approved remediation scheme, a verification report shall be submitted to and approved in writing by the local planning authority before development can recommence on the part of the site identified as having unexpected contamination.
- 23) The development hereby approved shall be carried out at all times (including during all ground and vegetation clearance works) and thereafter maintained in accordance with the recommendations and measures within the Construction Environmental Management Plan (CEMP) (Ecology Solutions March 2021 7807.CEMP.vf); and the Landscape and Ecology Management Plan (LEMP) (Ecology Solutions dated March 2021 7807.LEMP.vf). In addition to the approved LEMP, hedgehog tunnels shall be installed in accordance with details which shall have been previously submitted to and approved in writing by the local planning authority. Any modifications to the approved details within the CEMP and LEMP (for example as a result of requirements of a protected species license) must be submitted to and agreed in writing by the local planning authority prior to the implementation of any modifications.
- 24) Full details of the external lighting scheme, following the principles and recommendations of the approved lighting strategy (Illume Design Lighting Strategy 03.03.2021 No. 4218 rev 0.2), shall be submitted to and approved in writing by the local planning authority. The details shall include but shall not be limited to the following:
- a. the position, height and type of all external lighting (including any security lighting);
  - b. the intensity of lighting and spread of light as a lux contour plan (including horizontal and vertical components);
  - c. lighting calculations and assessment;
  - d. measures to minimise light spill/pollution, having regard to the sensitive location of the site within an AONB;
  - e. measures to minimise the effects of lighting on protected wildlife species;
  - f. the periods of day and night (throughout the year) when such lighting will be used and controlled for construction and operational needs.

The approved scheme shall be maintained thereafter for the lifetime of the development and in accordance with the manufacturer's recommendations.

- 25) The submission of details required by Condition 1 shall include full details of a hard and soft landscaping and boundary treatment scheme for both

the residential and open space elements of the proposed development. The scheme shall include the following:

- a. a written specification describing the species, sizes, spacing, densities and planting numbers;
- b. details of all retained trees, hedgerow and other ecological features;
- c. details of the phasing of implementation of all proposed hard and soft landscaping;
- d. details of proposed aquatic planting for the indicative SuDS feature shown in the north-west corner of the site;
- e. details of meadow grassland planting within the areas of public open space;
- f. details of hard and soft boundary treatment (including details of materials and elevation drawings where relevant);
- g. details of ridge and furrow retention, planting and maintenance;
- h. buffer/protection and deterrent planting measures (from deer and other predators) around retained mature, veteran and ancient trees;
- i. details of biodiversity net gain (BNG), in accordance with Natural England's Biodiversity Metric 2.0;
- j. a detailed Landscape and Tree Management and Maintenance Scheme (LTMMMS) (for the short, medium and long term – 5, 10 and 30 years) for areas of proposed open space and children's play areas based on the principles set out in the approved LEMP.

All hard and soft landscaping and boundary treatments (as well as the LTMMMS) shall be implemented and maintained in accordance with the approved details, and in accordance with a timetable agreed with the local planning authority. Any trees, hedgerows or other plants which, within a period of 5 years from the date that they were planted, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season (October to March) with others of the same size or species unless otherwise first agreed in writing by the local planning authority. Any pruning works shall be carried out in accordance with BS 3998:2010 (or any standard that reproduces or replaces this standard).

- 26) All works including roads, paths, parking areas, drainage runs and other areas of hard landscaping that fall within Root Protection Areas of retained trees shall be constructed using a no-dig method. All trenches and service runs shall fall outside the Root Protection Area(s) of any retained trees shown on the approved drawings, unless otherwise first agreed in writing by the local planning authority. Any such works shall be carried out in accordance with the National Joint Utilities Group; Volume 4 (2007) (or any standard that reproduces or replaces this standard). No fires shall be lit within 5m of the Root Protection Areas and materials that will contaminate the soil such as cement or diesel must not be discharged within 10m of any tree stem. Existing ground levels shall remain the same within the Root Protection Areas and no building materials or surplus soil shall be stored therein.
- 27) Prior to the commencement of development (including site and vegetation clearance works), the following shall be submitted and approved in writing by the local planning authority:

- a. a Tree, Shrub and Hedgerow Retention and Removal Plan, identifying all trees, shrubs and hedgerow to be removed and retained (including tree BS 5837:2012 categorisation);
- b. details of tree protective fencing to comply with BS 5837:2012;
- c. an Arboricultural Monitoring scheme for the construction phase which shall include details of (a) persons to conduct the monitoring; (b) the methodology and programme for reporting; and (c) a timetable for inspections;
- d. an Arboricultural Method Statement (AMS) to comply with BS 5837:2012 which shall include (a) any no-dig construction method details for parking areas, footpaths, roads, drainage runs and other forms of hard landscaping; (b) foundation details for properties near to retained trees on or adjacent to the site; (c) the storage of materials and siting of temporary structures for contractors; and (d) any access facilitation pruning in accordance with BS 3998 (2010).

No trees, shrubs or hedges within the site which are shown to be retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed, without the prior written consent of the local planning authority. Any retained trees, shrubs or hedgerow indicated on the approved drawings which, within a period of 5 years following the completion of the construction phase die, become seriously damaged or diseased shall be replaced during the next available planting season (October to March inclusive) with other trees or plants of a location, species and size to be first approved in writing by the local planning authority. Any pruning works shall be carried out in accordance with BS 3998:2010 (or any standard that reproduces or replaces this standard).

No tree and/or hedge clearance shall be carried out during bird nesting season (1st March to 31st August inclusive) unless the site has been surveyed in advance for breeding birds and a scheme to protect breeding birds has first been submitted to and approved in writing by the local planning authority.

The development shall be carried out at all times in accordance with the details approved and the tree protective fencing shall be installed and inspected prior to the commencement of development and shall thereafter remain in place until the completion of the relevant construction phase.

- 28) Details of a scheme for Public Art within the area(s) of public open space shall be submitted to and approved in writing by the local planning authority. The approved scheme be installed within six months following the completion of the development or in accordance with a timetable previously agreed in writing by the local planning authority.
- 29) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and/or re-enacting that order with or without modification), no extensions, garages and outbuildings (other than sheds and greenhouses, and those forming part of the development hereby permitted) shall be erected without the permission of the local planning authority.



- 30) Prior to first occupation of the development, details of a Homeowner's Information Pack providing information on recreation resources in the locality shall be submitted to and approved in writing by the local planning authority. The pack shall be in accordance with the advice from Natural England (letter dated 13 April 2021) and include reference to: Alternative local recreation opportunities (off site), and website information for the Cotswolds AONB. Each household shall be provided with an approved Homeowner Information Pack on occupation.
- 31) Details of a scheme of interpretation for the adjacent heritage assets at Hewlett's Reservoir (which shall include details of the location, content and design of interpretation boards to provide the public with a better understanding of the heritage assets adjoining the site) shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented prior to the completion of the development.