

Tewkesbury Borough Plan

Examination stage:

Hearing sessions commencing 16 February 2021

MATTER 3

Submissions by Peter H Tufnell DipTP MRTPI Tufnell Town and Country Planning

i. INTRODUCTION

- i.i Peter H Tufnell is instructed by a range of clients, principally by small builders/developers/landowners and private individuals. The evidence which I have prepared and provide for this Statement is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.
- i.ii This statement responds to the Inspector's list of Matters, Issues and Questions, and seeks to assist the process of examination. The submission will be read in conjunction with Regulation 19 submissions made by me (and on behalf of clients), which in turn are related to unresolved submissions from the Preferred Options stage.

ii PREAMBLE/HOUSING SUPPLY CONTEXT

- ii.i It is disappointing that during the preparation stages of the TBP the Council had initially taken the view that it had a 5-year supply of housing land, a view largely based on counting past housing that had already been delivered. More recently, October 2020 it claimed a 4.37 years supply, but this had been contradicted by the JCS Monitoring Report for TBC which recorded a supply of 2.9 years. TBC's position has however been more recently demonstrated to be overoptimistic with a recent appeal decision¹ confirming a 1.82 years supply, with the appeal Inspector commenting, *"...Additionally, the lack of supply beyond year 3 is deeply concerning..."*
- ii.ii A number of library documents appear to be out of date, and require updating with the latest versions: e.g., MN004 & MN005.

¹ APP/G1630/W/20/3256319 Land off Ashmead Drive, Gotherington dated 12 January 2021

RESPONSE BY MATTER

MATTER 3 (inc RES1 & RES2)

- 3.1 There is a need for greater flexibility and choice. Many of the settlement boundaries have been drawn too tightly, and greatly limit the opportunities for small scale development that is otherwise well related to (and not “isolated” from) the built form of settlements. Greater opportunity should be afforded to enable infill development (as defined in the JCS) and rounding off.
- 3.2 Greater opportunity needs to be provided for self-build and other forms of specialist housing.
- 3.3 The “deeply concerning” limited supply of land for housing identified by an inspector in a recent appeal is a material consideration capable of constituting (or contributing towards) “exceptional circumstances”. Without specific comment on the merits of the 2 Shurdington sites allocated by TBC in the eTBP, I refer to the promoted omission site at Brickhampton Court, Churchdown (X ref 2.5, 3B.4).
- 3.4 There is a very good case for defining settlement boundaries below the level of Service Villages. For example, should Ashleworth not be promoted to the ranks of a Service Village, it is argued that it is a settlement that is able to appropriately accommodate further development, and would benefit from a settlement boundary. In addition, little, or no, regard has been paid to the importance of the inter-relationship between villages and their services and facilities. Insufficient regard has been paid to The Framework paragraph 78:

To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

MATTER 3A

- 3A.1 Whilst not raising objection to the Coombe Hill allocations or to the allocation at Forthampton, these do need to be compared, and contrasted, with other allocations and potentially more suitable candidate omission sites.
- 3A.2 The Maisemore allocation (MAI1), already has planning permission and is being built out. There is a current application² for 33 dwellings on an adjoining site. A further site that I have been promoting as an omission site (Swinley Church Road) has recently

² 19/00676/OUT

been dismissed on appeal³. The appeal was dismissed on the basis of the Inspector's planning balance exercise relative to the proposals which were before her, and her view of their relationship with the built form of the village. She placed "very limited weight" on the eTBP, as it was "yet to be examined". In her decision she identified heritage and landscape harm on the basis of the scheme before her, but did not give evidence of consideration of a lesser scheme. TBC had presented the case that it had a 4.37 years supply of housing, but did not avail the inspector of the Autumn 2020 JCS Monitoring Report and its assessment of a 2.9 years supply. The decision predated the subsequent appeal decision⁴ (referred to earlier in this statement) identifying a 1.8 years supply. The omission site should be considered afresh and balanced through the examination process, along with other sites. (X ref with 2.3,3B.3). I also supply a note⁵ on the inspector's decision prepared for feedback purposes, but which has relevance to my clients continued promotion of the site as an omission site.

MATTER 3B

- 3B.1 Ashleworth should be a Service Village, as previously set out.
- 3B.2 There are sound arguments for other smaller settlements to be recognised and allocated defined boundaries. Conformity with The Framework, inclusive of paragraphs 78 and 79 is necessary.
- 3B.3 The criteria for defining settlement boundaries must be made public and examined. On the information currently available (i.e., the resultant boundaries) there is inconsistency. Compare and contrast e.g., Ashleworth with Coombe Hill, and Maisemore and Minsterworth. (X ref with 2.3, 3A.2)
- 3B.4 I have presented a case for a minor revision to the Green Belt boundary at Brickhampton Court, Churchdown (X ref 2.5,3.3). The criteria for urban fringe boundary definition also needs to be made public and examined.

MATTER 3C

- 3C.1 It is correct to examine the allocated sites as Shurdington as per the Inspector's paragraphs 3.10-3.15. A similar exercise in relation to other GB/Urban Fringe omission sites, including the small site at Brickhampton Court, would be appropriate.

³ APP/G1630/W/20/3246937

⁴ APP/G1630/W/20/3256319

⁵ Notes on Inspectors decision and request for feedback



Appeal Decision

Inquiry held on 30 November – 4 December 2020

Site visit made on 9 December 2020

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2021

Appeal Ref: APP/G1630/W/20/3256319 Land off Ashmead Drive, Gotherington

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by J J Gallagher Limited and Mr Richard Cook against the decision of Tewkesbury Borough Council.
 - The application Ref 19/01071/OUT, dated 25 October 2019, was refused by notice dated 16 June 2020.
 - The development proposed is an outline planning application with means of access from Ashmead Drive (all other matters reserved for subsequent approval), for the erection of up to 50 dwellings (Class C3); earthworks; drainage works; structural landscaping; formal and informal open space; car parking; site remediation; and all other ancillary and enabling works.
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application with means of access from Ashmead Drive (all other matters reserved for subsequent approval), for the erection of up to 50 dwellings (Class C3); earthworks; drainage works; structural landscaping; formal and informal open space; car parking; site remediation; and all other ancillary and enabling works at Land off Ashmead Drive, Gotherington in accordance with the terms of the application, Ref 19/01071/OUT, dated 25 October 2019, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. This appeal is an outline planning application for up to 50 dwellings with all matters except for access reserved. Indicative plans have been provided detailing the layout and landscaping. I have had regard to these so far as relevant to the appeal.
3. The Tewkesbury Borough Local Plan 2011-2031 - Pre-Submission version 2019 (eLP) is due to be examined in early 2021. However, the Hearing dates have not yet been confirmed and no examination has taken place. There are also unresolved objections. Therefore, I attach little weight to the emerging policies.
4. The joint authorities in the area are in the early stages of preparing a Joint Core Strategy Review. Given its stage in the examination process, I give it very little weight.
5. The Cotswolds Conservation Board received Rule 6 Party status and presented evidence on the second main issue at the Inquiry.

6. Several planning obligations were submitted in draft form, discussed at the Inquiry and subsequently finalised. I have taken them all into account.
7. Reasons for refusal 4 and 5 were not pursued at the Inquiry owing to the drafting of the planning obligations. I have proceeded to determine the appeal accordingly.

Main Issues

8. The main issues are:
 - (a) Whether the proposal would accord with the Council's plan led strategy for housing and growth;
 - (b) The effect of the proposal on the landscape character and appearance of the area; including the setting of, and the effect in, the Cotswolds Area of Outstanding Natural Beauty; and,
 - (c) The effect of the proposal on the social well-being and vitality of Gotherington.

Reasons

9. Located to the south of Gotherington's settlement boundary, the site is an open and relatively flat field. Existing residential development influences the northern and eastern boundaries of the site. To the western boundary, houses on Shutter Lane are evident to the north western part, but to the south of the public right of way (PRoW) that transects the site, the park home caravan site is not overly prominent from the site itself. Agricultural fields extend to the south, separating Gotherington from Bishops Cleeve, a larger village over 500m away.
10. To the north and east of Gotherington is the Cotswolds Area of Outstanding Natural Beauty (the AONB) and the site falls within a locally designated Special Landscape Area (SLA). Policy justification sets out that the SLAs play a role in providing the foreground setting for the adjacent AONB.
11. The proposal is for outline planning permission, developing the site for up to 50 dwellings. Based on the land use plan, these dwellings would be located to the south side of the site with large areas of formal and informal open space proposed on the northern and western parts of the site.

Strategy for housing and growth

12. Gotherington is identified as a Service Village in the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (December 2017) (JCS). Policy SP2 of the JCS details that Service Villages will accommodate in the order of 880 dwellings, yet this number is not a maximum.
13. Policies SP2 and SD10 of the JCS broadly encourage residential development to be located in Gloucester, Cheltenham and Tewkesbury, along with rural service centres and service villages. The site is not allocated for development in the JCS and does not meet any of the exception criteria in Policy SD10, sitting outside the settlement boundary of Gotherington.
14. Policy GNDP02 of the Gotherington Neighbourhood Development Plan 2011-2031 (September 2017) (NDP) identifies 3 sites for residential development. The site is not identified. The latter part of the policy refers to the future

development plan identifying the possibility of additional strategic housing need in Gotherington, with criteria if this occurs.

15. Similarly, policies GNDP03 and GNDP11 of the NDP set out criteria for development outside of the defined settlement boundary and not on allocated sites. One of the criteria in both policies is where evidenced need for additional housing in Gotherington has been established through the development plan and cannot be met within the defined settlement boundary.
16. The NDP identifies that Gotherington should provide around 86 homes between 2011-2031. This is based upon evidence in the Council's "Approach to Rural Sites" (February 2015) document, which has also formed the evidence base for the eLP. The allocated sites proposed a minimum of 66 new dwellings, with the 3 ensuing planning permissions granting 69 dwellings. Paragraph 5.11 of the NDP sets out that with the 3 allocated sites, and including 26 dwellings completed prior to the NDP being made, there would be a minimum of 92 dwellings delivered.
17. The appellant argued that the 3 allocated sites would not deliver the 92 dwellings and there was a shortfall of 23 units. I disagree. When 5.11 is read as a whole, 26 units were delivered after 2011 while the NDP was being prepared/examined. These form part of the housing supply in the plan period. Therefore, based upon the NDP, there is no identified shortfall of housing in Gotherington itself. That said, the Council acknowledge there is a shortage of housing in the Borough, with there being less than a 5 year housing land supply. I shall return to this matter later.
18. To conclude on this main issue, the location of development would not accord with the Council's plan-led strategy for housing and growth. This would be contrary to policies SP2 and SD10 of the JCS and policies GNDP02, GNDP03 and GNDP11 of the NDP. There would be conflict with Policy RES3 of the eLP, as the location of development would also not meet the strategy for the distribution of new development in the area, given the settlement boundary of Gotherington is not proposed to change in the eLP.

Landscape character and appearance

19. There are several topic areas in relation to this main issue referred to in the reason for refusal and the evidence before me. Therefore, I have split this section into subheadings dealing with each issue before concluding overall.
20. Although the site is within the SLA, its contribution to the setting of the AONB is limited. It has few special qualities aside from being a pleasant undeveloped field and given its proximity to the village and sense of enclosure on most sides, even its landscape and visual quality is low.
21. The importance of the AONB is enshrined by statute, and paragraph 172 of the National Planning Policy Framework (the Framework) gives great weight to conserving and enhancing landscape and scenic beauty in AONBs. Additionally, Policy SD7 of the JCS requires proposals within the setting of the Cotswolds AONB to conserve and, where appropriate, enhance its landscape, scenic beauty, wildlife, cultural heritage and other special qualities. Proposals will be required to be consistent with the policies set out in the Cotswolds AONB Management Plan 2018-2023 (MP). Various policies in the NDP also seek to

protect the AONB and views into and out of it, particularly those from Nottingham Hill and Cleeve Hill.

22. Policy CE1 of the MP sets out that proposals that are likely to impact on, or create change in, the landscape of the Cotswolds AONB, should have regard to the scenic quality of the location and its setting and ensure that views – including those into and out of the AONB – and visual amenity are conserved and enhanced.

Views towards the AONB

23. From the PRow that runs east west and the PRow that runs south to Bishops Cleeve, views of the AONB can be appreciated, especially towards Nottingham Hill and Cleeve Hill.
24. The proposal would introduce built development onto the southern parcel of the site. By its very existence, views from the PRowS towards the AONB, in particular Nottingham Hill, would be changed by the introduction of housing. Whilst these views are of a high quality, given they take place from the PRowS, the views are transient, appreciated by people travelling along the routes for a relatively short amount of time.
25. A large area of open space on the northern part of the site, along with footpath linkages is proposed. Unlike the existing transient views, the open space would provide people with the opportunity to spend time viewing the AONB, which would still be visible above or between the new houses depending upon where one was situated on the open space. Furthermore, the appellant has submitted a unilateral undertaking (UU) that makes provision for a multi-purpose community area (MPCA). The purposes of this space would be for meeting, play or holding events and the UU describes its form would be either a seating area (such as a mini amphitheatre) or covered space (such as a band stand).
26. Providing the MPCA is sensitively sited, the space, particularly that of a mini amphitheatre, would provide a formal area in which the public could view the AONB, including Nottingham Hill for as long as they desired. Owing to the formal and informal space becoming publicly available space, existing views from this currently private part of the site towards the escarpment and AONB would become publicly available. Whilst these views would include the new housing development in the foreground, I do not consider that this would significantly reduce the quality of the view. This is because existing housing development is visible from the existing PRowS and the 'new' views could be appreciated for a longer and more leisurely period. Additionally, views from the PRowS would also remain above or between the dwellings, such that at different points along the PRowS, some views could still be gained.

Views from the AONB

27. The effect of the proposal on views from Nottingham Hill and Cleeve Hill was the subject of much discussion during the Inquiry, and I viewed the site from both viewpoints on my visit.
28. Evidence at the Inquiry focussed on whether paragraph 172 of the Framework was relevant to this appeal. Having regard to case law¹ presented, along with the Planning Practice Guidance, in my view, although the proposal is outside

¹ Stroud District Council v SSCLG v Gladman Developments Limited [2015] EWHC 488 (Admin)

the AONB, the effect on views out of the AONB, gained from within the AONB would result in paragraph 172 being relevant.

29. *Nottingham Hill* – the appellants conclude the effect from this viewpoint would be moderate adverse. The Council state major/moderate adverse. The Rule 6 Party state significant adverse.
30. The viewpoint takes in a panoramic view from the Cotswold escarpment towards the Vale of Gloucester/Severn Vale with the Malvern Hills beyond. Gotherington is prominent in the foreground and the proposal would be visible. That said, the view is extensive and long ranging, and the development would be located between 2 ‘fingers’ of development that run along Cleeve Road and the park home caravan site. Whilst it would introduce permanent built development onto an undeveloped site, it would be an edge of settlement site, enclosed from this view point on 3 sides by other built development, such that in the context of the wide ranging view, the proposal would not lead to a major or significant adverse effect. Indeed, I agree with the previous Inspector, who assessed a similar appeal² at this site, that it would recede into the existing settlement pattern.
31. However, I acknowledge that views from the escarpment are one of the special qualities of the AONB, and the effect would be moderately adverse owing purely to the introduction of built development and the change to the view. This would lead to a moderate harm to the AONB from this viewpoint.
32. *Cleeve Hill* – the view from Cleeve Hill is more extensive than that from Nottingham Hill and takes in Cheltenham, Bishops Cleeve, Gotherington, other villages and open countryside. Views of the site are available and it is seen as part of the gap between Gotherington and Bishops Cleeve, yet, the site is clearly enclosed on 3 sides by development from this viewpoint. Additionally, in the context of the wide panoramic views taken from this point, the development of the site would have a neutral effect.

Coalescence of Gotherington and Bishops Cleeve

33. Spatially, the gap between Gotherington and Bishops Cleeve would not be reduced by the proposal given the existing development to 3 sides of the site. Indeed, the narrower gap that exists between dwellings on Cleeve Road and the Homelands site would remain the same, and there would be a substantial gap of over 500m remaining between the site and Bishops Cleeve.
34. When viewed from Nottingham Hill, even with the new residential development that has taken place in Bishops Cleeve, because much of Bishops Cleeve is not readily visible, and the site is enclosed on 3 sides, it would also not result in encroachment or perceived coalescence of the villages.
35. From Cleeve Hill, similarly, the site is visibly enclosed by existing development and the proposal would not contribute towards further coalescence of Gotherington and Bishops Cleeve. From other viewpoints around the site, there would not be a noticeable reduction in the gap.
36. Nonetheless, perceptually, residents and the Council take the PRoW running east west across the site to be the natural line of where development stops in the village. Development to the south of this, where the housing is proposed,

² APP/G1630/W/17/3175559

would, in their view, perceptually bring Gotherington closer to Bishops Cleeve. When travelling on the PRow than runs north south between the villages, I agree there would be a sense of development advancing towards Bishops Cleeve.

37. However, the indicative plans show a landscaping buffer to the southern edge of the site. This would continue the existing well-established landscaping strip to the south east corner of the site along the southern boundary, to the extent that any perceptual effect of encroachment from this PRow would be satisfactorily ameliorated over time. Therefore, a strong sense of separation would be maintained.
38. The site's allocation in the eLP strategic gap policy was also the subject of much discussion. However, this is a matter for the Local Plan Inspector in examining the eLP.
39. Nevertheless, it is my view that the site does not function as an essential part of the gap between villages and development of the site would appear as an infill. Additionally, a clear gap would remain which is likely to be subject to protection in the eLP, and development of the site would not result in coalescence of Gotherington and Bishops Cleeve.

Linear form of Gotherington

40. The proposal would not project into the open countryside beyond existing development southwards. When viewed from Nottingham Hill, although the depth of Gotherington would become greater and the proposal would not follow the linear shape of the settlement; to my mind, it would be read as infill development. Even so, Malleson Road and Gretton Road would remain as the most prominently developed roads in the village, and the linear form would not be adversely affected.

Conclusion on landscape character and appearance

41. Given its location adjacent to the settlement boundary, the relatively enclosed nature of the site and its limited contribution to the SLA; development of the site would not appear as a significant encroachment into the surrounding rural landscape that could be considered as harmful or disproportionate. The gap between villages would be maintained and the linear nature of Gotherington would not be adversely affected. Views towards the AONB from the site would change, but with the views that would become available from the open space, the effect would be acceptable.
42. It is, however, inevitable that there would be a permanent change to the landscape character of the area by the development of a greenfield site with housing. Whilst the site is not a valued landscape for the purposes of paragraph 170 (a) of the Framework, the site is locally valued, and the proposal would not enhance the landscape character of the area. For this reason, there would be some limited harm. There would also be a moderately adverse effect from the viewpoint at Nottingham Hill. Furthermore, whilst the effect on the view from Cleeve Hill would be neutral, it would not enhance landscape and scenic beauty.
43. Therefore, when looking at the overall effect and drawing this together, it is my view that the proposal would lead to some limited harm to landscape character and appearance of the area and the setting of the AONB. There would be

overall moderate harm to views from the AONB. Thus, the proposal would conflict with Policy LND2 of the LP, Policies SD6 and SD7 of the JCS, Policies GNDP02 and GNDP09 of the NDP, and Framework paragraphs 170 and 172. However, given my finding on the views towards the AONB, there would be no conflict with GNDP10 of the NDP, which seeks to give special attention to locally significant views.

44. Like the previous Inspector, I agree that LND2 of the LP is not entirely consistent with the Framework, and this reduces the weight which I afford it.
45. Whilst I do not find the site to be of high quality in landscape terms, based on the current eLP, there would be conflict with Policy LAN1, which seeks to maintain the quality of the natural environment and its visual attractiveness. However, given my findings on the gap, there would be no conflict with Policy LAN3 of the eLP, which seeks to protect the strategic gaps.
46. My conclusion on this main issue is different to that of the previous Appeal Decision on this site. However, I do not know what evidence was presented to this Inspector; and the evidence presented to me, particularly the effects from the AONB, have led me to a different opinion.

Social well-being of Gotherington

47. Gotherington village is identified as a Service Village in the JCS and would be expected to take a reasonable amount of new housing development. That said, the village has seen housing developments built out over the last few years on sites at Malleson Road and Shutter Lane.
48. The previous Appeal Decision at the site, for a very similar development, found there would be harm to the social well-being of the village at the time of the decision. This was owing to the scale and extent of development that had taken place in the village at the time, and the Inspector was not provided with persuasive evidence that the facilities were capable of expansion.
49. However, since this decision was made in April 2018, these housing developments have been substantially completed such that it would be reasonable to conclude that their effect upon the village has been largely absorbed or would be by the end of this year. Indeed, the appellant's evidence indicates that the last property within the Shutter Lane development was purchased in September 2017, and development of Malleson Road is projected to be completed by the end of March 2021. Development of this site would not commence until around 2023/24, and at that point, would result in around a 9% increase in the village, which is not exceptionally large, nor disproportionate to the size of the village at that time. I also note there is no anticipated delivery of homes in Gotherington between 2021/22 to 2022/23, nor anytime beyond this except for this site. Thus, when dwellings would start to be delivered, no new homes would have been delivered in the village for 2 years, so any new development could be assimilated differently to when the previous Inspector was considering the proposal.
50. Moreover, as part of the proposal, a Multi-Use Games Area (MUGA), Locally Equipped Area of Play (LEAP) and MPCA would be provided on-site within the area of Public Open Space. This MUGA and MPCA are new to the proposal before me. Together with the LEAP, these facilities are likely to act as a focal point for the development which would benefit both new residents and the

existing community. The public open space and MUGA would also accord with aspirations from the NDP by providing more activities for young people. The MUGA could be used for football of which residents assert a shortage, and any potential noise issues would be addressed at a later stage. The MPCA would deliver a social benefit for people of all ages being able to meet in a formalised area, and the LEAP would provide an area of play for children and parents or carers to meet. These on site facilities would be of a social benefit and contribute towards supporting strong, vibrant and healthy communities. The current space is valued by the community and formalised use of it would be of benefit to the existing residents.

51. Furthermore, the monetary contributions towards the provision of school places, which is agreed by the County Council, indicates that the increase in demand can be accommodated, even if this is in Bishops Cleeve. However, as the catchment area for the primary school includes this site, I see no reason why occupiers of the new dwellings would not be able to access school places over time. Other planning obligations will provide monies toward libraries to ensure any effect upon their capacity is suitably mitigated. The Community Infrastructure Levy (CIL) would also provide monies in the village.
52. The range of services in the village is satisfactory and although the Council considered them to be generally low quality, I disagree. The evidence I have been presented with demonstrates that the facilities are well used, and new residents could access them if they wished to do so. This would have a positive effect upon local services and facilities. Furthermore, whilst there may be waiting lists for some groups, this is not uncommon for popular children's activities. The residents assert that the village hall has a restricted layout and size. Whilst this may be the case, there are other facilities in the village, such as the Old Chapel, and it is also not uncommon for older community buildings to have some form of size restriction.
53. Whilst the proposal is not anticipated by the NDP, the cumulative development of the village would not be overly disproportionate, and there is no tangible evidence before me that the village has reached capacity. Furthermore, I gauged a strong sense of community from the interested parties such that I see no reason why new residents would find it difficult to assimilate into the village.
54. Therefore, the proposal would not be harmful to the social well-being and vitality of the village. Moreover, given the onsite facilities and the many benefits new housing can bring by enabling local people to stay local, providing family homes and contributing to the local economy, it could lead to an enhancement of the vitality and well-being in the village.
55. This would be compliant with Policy SP2 of the JCS, which seeks to accommodate lower levels of development proportional to their size and function. There would also be compliance with the Framework, which seeks to support strong, vibrant and healthy communities.

Other Matters

Housing Land Supply

56. The Council cannot demonstrate a 5 year housing land supply. At this appeal, the Council claim that it has 4.37 years supply, based on the October 2020 Five

Year Housing Land Supply Statement (HLSS). The appellants assert 1.82 years. The significant difference in numbers is largely attributed to the Council's reduction in its 5 year annual requirement owing to a significant oversupply in previous years.

57. On the first day of the Inquiry, the appellants brought to my attention the Council's response to the eLP Examining Inspector's preliminary questions. Within this document, the JCS Monitoring Report (Autumn 2020) is appended and sets out that Tewkesbury Borough has 2.9 years of housing supply. To explain this clear anomaly in evidence, the Council referred me to paragraph 3.2 of the response, which sets out that "*the Council's Housing Monitoring Report 2019/20 and Five Year Supply Position Statement will provide the most up to date information specific to Tewkesbury Borough*". However, whilst this may be the Council's position, the JCS Monitoring Report is dated a few months prior to the publication of the HLSS and the very different figures in each document weakens the Council's position on this matter.

Additional supply

58. The Council indicate that their approach to incorporating additional supply is consistent with Planning Practice Guidance (PPG) paragraph 32³. This states that "*where areas deliver more completions than required, the additional supply can be used to offset any shortfalls against requirements from previous years*". However, paragraph 73 of the Framework states "*LPAs should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies*".
59. The policy in the Framework makes no allowance for subtracting additional supply from the annual requirement. Moreover, whilst the guidance in the PPG enables LPAs to take additional supply into account, there is no requirement to do so. It is not a symmetrical approach to dealing with undersupply as advocated by the Council.
60. PPG paragraph 32 details that the additional supply can be used to offset shortfalls against requirements from previous years. Therefore, shortfalls against requirements from previous years would be necessary, in order to take account of any additional supply. The requirement from previous years, being those since the development plan was adopted, is 495 dwellings per annum (dpa). In the 3 years since adoption, there has been an overall surplus of 797 dwellings, and since the base date there has been an overall surplus of 1,115 dwellings. Therefore, there is no shortfall against requirements from previous years which could conceivably be offset.
61. Furthermore, for a site to be considered deliverable, it should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Housing already delivered cannot possibly meet this definition.
62. The Council's argument that the loss of additional housing delivery would have significant implications for plan making, potentially resulting in Council's holding back sites and restricting sites, is unfounded. This is because it would be unreasonable to refuse planning permission for housing if there had been

³ Reference ID: 68-032-20190722

additional supply, bearing in mind the Government's objective of significantly boosting the supply of homes. Additionally, Policy SP1 of the JCS requires at least 9,899 new homes. There is no maximum number.

63. Whilst it is clear that housing above the annual requirements has been delivered in the area and housing supply has been boosted in line with the Framework; it is my view that additional supply is not a tool that can be used to discount the Council's housing requirement set out in its adopted strategic policies. Consequently, the annual requirement should be 495 dpa as set out in the adopted strategic policies, and the future supply should reflect this. Therefore, the past additional supply should be removed from the 5 year housing requirement. As detailed by the appellant, this would reduce the housing land supply to 2.4 years.

Disputed sites

64. *Land at Fiddington, Ashchurch* – the site has outline planning permission and is subject to several planning conditions. One of these is the submission of a site wide master plan prior to reserved matters, which is currently being considered by the Council. As it stands, there are outstanding concerns from Sport England and a re-consultation was taking place.
65. There have been no pre-application discussions or the submission of reserved matters application, nor does it appear any site assessment work has taken place. There is also no known developer. Notably however, the email I have from the site promoter, which agrees with the Council's trajectory in the HLSS, postdates the publication of the HLSS. This raises significant concerns over the validity of the trajectory used. I appreciate the site promoter may have a good track record for delivering sites and the Council believe there is no reason to prevent development within a 5 year period, yet, the site promoter is not the developer. The test in the Framework is that there should be clear evidence that housing completions will begin on site within five years. In this case, I do not believe I have clear evidence.
66. *Land at Stoke Road, Bishop's Cleeve* – similar to the above site, the site has outline planning permission. The Council is in pre-application discussions with a major housebuilder, but these details are confidential. However, no reserved matters, site assessment work or conditions have been submitted for discharge. The site remains in the ownership of the promoter, and again, the email from the site promoter, which considers the Council's trajectory to "*remain broadly accurate*" also postdates the publication of the HLSS.
67. Therefore, it would be unrealistic to expect housing to be delivered on site in 2022/23, and I have no clear evidence to suggest this. Yet, the pre-application discussions indicate that there is developer interest and it would be reasonable to assume some delivery in 2023 and beyond.

Future supply

68. Aside from the 2 disputed sites and windfall developments, there is only one other site beyond years 1 and 2 in the trajectory which is predicted to deliver 5 dwellings. Notwithstanding my findings on the above sites, this is a grave situation.
69. The Council asserts that the eLP contains numerous housing allocations, which will feed into the supply following adoption. However, at the current time, the

plan is of limited weight and these allocations should not be included in the trajectory. Furthermore, the eLP details that it is not the role of the Plan to meet the shortfall identified by the JCS, but it could contribute towards meeting some of this housing need.

70. The JCS was adopted with a shortfall, which was to be remedied by an immediate review on the plan. It is now 3 years later and there is little progress towards this.
71. The trajectory does not include sites which have a resolution to permit awaiting planning obligations. I also have very little evidence to indicate if any of these would come forward in the next 5 years. There are also, it is asserted, numerous major applications for housing being considered. Nonetheless, as these sites are not been included in the trajectory, I have little evidence whether these would be deliverable.
72. Therefore, despite the Council's arguments, the future supply in the borough, at the current time is deeply concerning.

Conclusion on housing land supply

73. Considering my conclusions on the additional supply and the disputed sites, the housing land supply would reduce to 1.82 years. This reflects the appellant's conclusions. Additionally, the lack of supply beyond year 3 is deeply concerning; and, even if I had taken account of the additional supply, the Council would still not have a 5 year housing land supply and the past trend of additional supply is not projected to continue.

Provision of market and affordable housing

74. The state of housing land supply is such that very significant weight should be given to the delivery of housing generally. Additionally, the Council could provide me with no 'better' sites for development. The site has good accessibility to facilities and services using a genuine choice of transport modes.
75. Furthermore, the proposal would deliver 40% affordable housing. This would be policy compliant (with JCS SD12) and there is an accepted need for 126 affordable houses per annum in Tewkesbury. The appellant asserts there will be a shortfall of 333 affordable dwellings in the next 5 years. The Council does not dispute this, and the delivery of this site would double the affordable housing stock in the village.
76. Although I heard comments from interested parties that there is little need for affordable housing in the village itself, on the substantive evidence before me, there is little affordable housing stock in the village and there is a clear need in the Borough. This proposal would deliver a considerable amount of affordable housing, which is a benefit of significant weight.

Ecology and biodiversity

77. The proposal would produce net gains in biodiversity from the creation of attenuation features, with permanent water elements, tree planting and wildflower grassland within areas of open space. It would create around 17% net gain for habitat areas and about 83% net gain for linear features. This is a significant benefit in favour, providing more net gains than would be necessary.

Habitats Regulations Assessment

78. The proposal is near to Cleeve Common Site of Special Scientific Interest (SSSI), Dixton Wood Special Area of Conservation (SAC) and Bredon Hill SAC, such that development of the site could have a significant effect upon the important interest features of the sites. These effects would be the increase in people who may visit the SSSI and SACs for recreational purposes, and this could adversely affect the integrity of the sites.
79. The Shadow Habitats Regulation Assessment (SHRA) carried out by the appellant details that fewer than 1 additional visitor (0.79) would be likely to visit either the Dixton Wood SAC or Bredon Hill SAC annually. Therefore, recreational pressure would not be likely and there would be no adverse effects either alone or in-combination on the integrity of the SACs.
80. However, future residents may use Cleeve Common more frequently and the SHRA advises that new homeowners should be made aware that, in order to maintain the conservation value of the SSSI, livestock may be grazing on the common. As such, dogs should be kept under control and walkers should be vigilant. Homeowner information packs (HIPs) should be provided to all new residents, outlining informal recreational assets in the area and key 'Countryside Code' messages.
81. With the HIPs, the potential adverse effect would be avoided, and the integrity of the site would not be adversely affected. The aim of this would be to direct new residents to other sites, avoiding the SSSI. Natural England have no objections to the proposal on this basis.
82. I am satisfied that the HIP could be effectively secured by condition, and having undertaken the appropriate assessment, I am satisfied that the scheme would not adversely affect the integrity of the nearby habitats sites.

Public Open Space

83. The amount of public open space on site would exceed the standards set out in Policy RCN1 of the LP, and this would be of a moderate benefit to the scheme.

Economy

84. The development would have an economic benefit through the provision of jobs over the construction period as well as the contribution the local economy throughout the lifetime of the development. The appellant purports £3.4M gross value added per annum and £1.1M per annum on retail expenditure. However, all residential development of this scale is likely to deliver similar benefits, and this weighs moderately in favour.

Highways

85. Despite assertions from local residents, the substantive evidence presented on highway matters indicates that the surrounding highway network has sufficient capacity to accommodate the additional traffic resulting from the proposed development. Therefore, there would be no harm caused to the safety of users of the highway, nor any adverse effect upon capacity.

Planning obligations

86. There are several planning obligations. An agreement with Gloucester County Council obliges the payment of education contributions, a libraries contribution and a travel plan monitoring fee. It also obliges the developer to provide for bus stop upgrade works. The CIL Compliance Statement adequately sets out sufficient justification for the education and libraries contribution and monitoring fees, along with the requirement for bus stop upgrades. All these obligations would be necessary to make the development acceptable, directly related and fairly and reasonably related in scale and kind.
87. The travel plan monitoring fee would pay for monitoring associated with the submitted Travel Plan. During the Inquiry, I raised questions over whether the Travel Plan was necessary, given the consultation response from the Council's Highways team. Based on the evidence I heard, the Travel Plan would encourage a modal shift towards sustainable travel, which would be in accordance with the Framework, and thus the obligation would be necessary. Furthermore, access to Bishops Cleeve on the PRoW would be difficult in inclement weather and the Travel Plan could encourage means of transportation other than a private car. Therefore, the monitoring fee would be necessary to make the development acceptable, directly related and fairly and reasonably related in scale and kind.
88. A second obligation is with the Council. This would deliver at least 40% affordable housing, the onsite MUGA and LEAP (and their transfer to a management company), along with a refuse and recycling contribution and a monitoring fee. The CIL Compliance Statement submitted with the appeal sets out how each obligation would meet the tests in the CIL Regulations and the Framework. Based on this evidence, I am satisfied that each obligation contained in the second agreement would meet the tests, in that they are all necessary to make the development acceptable, directly related and fairly and reasonably related in scale and kind.
89. The last obligation is in a unilateral undertaking, which provides for the MPCA. The Council contests that this would not be compliant with the tests in the Framework. I disagree. Following on from my conclusions on the main issues, the MPCA would deliver a social benefit for the community, providing a meeting place and social focal point for residents of all ages. It would also enable an area where views of the AONB could be appreciated over a longer period than on the existing PRoWs. I consider it would be necessary to make the development acceptable. It is directly related to the development and fairly and reasonably related in scale and kind to the development.

Planning Balance

90. The proposal would conflict with the spatial strategy of the area and the NDP. It is clearly not plan-led development. However, given my conclusions on the housing land supply, the policies which govern the spatial strategy and housing development in the area are deemed out of date by Framework paragraph 11 d). Because of the very poor housing land supply position, this indicates that the spatial strategy is not effective and therefore these policies are of limited weight.
91. There would be limited harm to landscape character and appearance of the area and the setting of the AONB, and moderate harm to views from the AONB.

This would conflict with the JCS, NDP, LP, Framework 172 and the MP in this regard. However, the harm is limited for the purposes of the character and appearance of the area and this attracts limited weight against the proposal. Nevertheless, I give great weight to the moderate harm to the AONB as required by the Framework.

92. In favour of the development is the provision of housing in general, affordable housing, net gains in biodiversity and the delivery of on site facilities that would contribute towards the village's social wellbeing. The delivery of affordable and market housing would be a very significant benefit, of overriding importance when considering the chronic housing land supply position. The net gains in biodiversity are of considerable weight and the on site public open space would be of moderate weight. Additionally, there would be economic benefits during construction and from the additional residents that would contribute towards spending in the area. This is of moderate weight.
93. Framework paragraph 11 d) requires permission to be granted unless [i.] the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Even giving great weight to the moderate harm to the AONB, it is my view that this does not provide a clear reason for refusing the development.
94. Taking account of all the above, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As such, the material considerations indicate a decision other than in accordance with the development plan.

Conditions

95. In addition to the conditions I have already detailed above, the plans are listed for certainty. Furthermore, a condition requiring general compliance with the illustrative details ensures the reserved matters presented are those envisaged by the Council. Despite the Council's suggestion, reserved matters would include layout, and this would comprise internal access roads such that a separate reserved matter for access would be unnecessary.
96. A Construction Ecological Management Plan and a Landscape and Ecological Management Plan are necessary to ensure proper provision is made to safeguard protected species and their habitats. A Construction Method Statement is necessary to reduce the potential impact on the public highway, accommodate the efficient delivery of goods and supplies and ensure the effect upon residential living conditions during construction is not adverse. Archaeological investigations are necessary to ensure any archaeological remains are recorded and investigated.
97. To ensure safe access to the site for construction works, a condition requiring the access to be provided is necessary. Foul and surface water details are required to ensure the development is provided with a satisfactory means of drainage. A footpath from the site to nearby roads would need to be installed prior to occupation to ensure safe and suitable access on foot. A lighting scheme is required to safeguard protected species and their habitats, along with ensuring the village remains a low light pollution area.

98. To ensure that an appropriate housing mix is delivered to contribute to the creation of mixed and balanced communities compliant with the NDP, a housing mix statement would be necessary. A Tree Protection Plan and Arboricultural Method Statement to ensures protection of trees. A condition restricting the reserved matters to 50 dwellings is necessary for certainty.
99. I have not included conditions relating to proposed ground levels, landscaping and electric vehicle charging, as these details would be proposed at reserved matters, thus they are not necessary. The condition for site waste management has been included in the Construction Method Statement.

Conclusion

100. For the reasons set out above, I conclude that the appeal should be allowed.

Katie McDonald

INSPECTOR

APPEARANCES

For the Local Planning Authority:	
Jeremy Patterson	Solicitor and Principal Planning Lawyer, Tewkesbury Borough Council
He called	
Phil Williams BA Hons MSC MBA MRTPI	Council's planning witness
Stuart Ryder BA (Hons) CMLI	Director, Ryder Landscape Consultants Ltd
Gary Spencer LLB (Hons)	Planning solicitor, One Legal
Keith Warren BA (Hons) Dip TP MRTPI	Associate Director, Astbury Planning Consultants
Stephen Hawley IENG FIHE MCIHT MTPS	Highways Development Management Team Leader, Gloucestershire County Council
Adam White MRTPI	Senior Planner, Tewkesbury Borough Council
Bryn Howells	Housing Strategy and Affordable Housing Officer, Tewkesbury Borough Council
Bridgette Boucher	Solicitor, Gloucestershire County Council
For the appellant:	
Killian Garvey of Counsel	Instructed by J J Gallagher Limited and Mr Richard Cook
He called	
Mark Sitch BSc (Hons) Dip TP MRTPI	Senior Partner, Barton Willmore LLP
Ben Connolley BSc (Hons) PG DipLA CMLI	Associate Landscape Architect, The Environmental Dimension Partnership Ltd
Matthew Grist BSc Dip UD MCIHT MCILT	Director, Jubb
For the Cotswolds Conservation Board Rule 6 Party:	
John Mills BEng (Hons) MSc MRTPI	Planning and Landscape Lead, Cotswolds Conservation Board
Interested parties:	
Eddie McLarnon	CPRE
Simon Tarling	Gotherington Parish Council
Caroline Ryman	Local resident
Philip Cule	Local resident
Michael Stevens	Local resident

INQUIRY DOCUMENTS

ID1	Appellant Opening Submissions
ID2	Local Planning Authority Opening Submissions
ID3	Rule 6 Opening Submissions
ID4	Inspector's Report and Secretary of State Decision Letter for APP/G1630/W/17/3184272
ID5	Mr Tarling's submissions
ID6	Local Plan Examining Inspector's Preliminary Questions
ID7	Tewkesbury Borough Council's response to Examining Inspector's Preliminary Questions
ID8	Sport England objection to the details relating to condition 8 (Site Wide Masterplan Document) of planning application re 17/00520/OUT
ID9	Suggested site visit points – Mr Tarling
ID10	Written comments from Mr Stevens
ID11	Gotherington Neighbourhood Plan – Report of Examination extract
ID12	Appellant's note on 5 year housing land supply in the Pre-Submission Tewkesbury Borough Plan 2011-2031.
ID13	Mrs Ryman's closing statement
ID14	Gotherington Primary School Admissions Policy 2021
ID15	Site visit route
ID16	Cotswolds AONB Landscape Strategy and Guidelines Introduction
ID17	CPRE statement
ID18	Rule 6 Closing Submissions
ID19	Local Planning Authority Closing Submissions
ID20	Appellant Closing Submissions

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing 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 before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Drawing No. BM-M-04 Revision B), Land Use Plan (Drawing No. BM-M-02) and Site Access (Drawing No. SK_002 Revision P1) September 2019.
- 5) No development shall take place until a Construction Ecological Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include, but not limited to the following:
 - i) Risk assessment of potentially damaging construction activities including provisions for protected species,
 - ii) Identification of 'biodiversity protection zones' including (but not exclusively) hedgerows and mature trees,
 - iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements),
 - iv) The locations and timing of sensitive works to avoid harm to biodiversity features (e.g. daylight working hours only starting one hour after sunrise and ceasing one hour after sunset),
 - v) The times during construction when ecological or environmental specialists need to be present on site to oversee works,
 - vi) Responsible persons and lines of communication,
 - vii) The role and responsibilities on site of an ecological clerk of works (ECoW) or similar person,
 - viii) Use of protective fences, exclusion barriers and warning signs; and
 - ix) Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

- 6) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall cover the first ten years of management following the commencement of construction and enabling works. Enhancement measures should be included for existing natural habitats and created habitats, as well as those for protected species. All Ecological enhancements outlined in the LEMP will be implemented as

recommended in the LEMP and the number and location of ecological features to be installed should be specified.

- 7) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 8) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall:
 - i) provide for the parking of vehicles of site operatives and visitors
 - ii) provide for the loading and unloading of plant and materials
 - iii) provide for the storage of plant and materials used in constructing the development
 - iv) provide for wheel washing facilities
 - v) specify the intended hours of delivery and construction operations
 - vi) include measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from construction works; setting out measures for dealing with such materials to minimise overall waste and to maximise re-use, recycling and recovery in line with the waste hierarchy
 - viii) construction lighting scheme

The approved CMS shall be adhered to throughout the construction period.

- 9) No development above ground level shall commence until the site access has been provided in accordance with the submitted plan SK_0002 Revision P1. The first 20m of the access road from Ashmead Drive shall be surfaced in a bound material and the access shall be retained and maintained in that form until and unless adopted as highway maintainable at public expense.
- 10) No dwelling hereby permitted shall be occupied until surface water and foul water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The information submitted shall be in accordance with the principles set out in the approved drainage strategy. The submitted details shall:
 - i) provide 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
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which 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.

- 11) Prior to first occupation of any individual dwelling, a footpath to that dwelling including connections to Aggs Close and Ashmead Drive, shall be completed to a minimum of 2m wide with bound surfacing.
- 12) Prior to first occupation, details of external lighting shall be submitted to and approved in writing by the Local Planning Authority. The details shall clearly demonstrate that lighting will not cause excessive light pollution or disturb or prevent bat species using key corridors, forage habitat features or accessing roost sites. The details shall include, but not be limited to, the following:
 - i) A drawing showing sensitive areas and/or dark corridor safeguarding areas.
 - ii) Description, design or specification of external lighting to be installed including shields, cowls or blinds where appropriate,
 - iii) A description of the luminosity of lights and their light colour including a lux contour map.
 - iv) A drawing(s) showing the location and where appropriate the elevation of the light fixings.
 - v) Methods to control lighting control (e.g. timer operation, passive infrared sensor (PIR)).

All external lighting shall be installed in accordance with the specifications and locations set out in the approved details. These shall be maintained thereafter in accordance with these details.

- 13) Prior to first occupation, a Homeowner Information Pack (HIP) setting out the location and sensitivities of the Cleeve Common Site of Special Scientific Interest shall be submitted to and approved in writing by the local planning authority. The HIP shall include reference to the sensitivities of the sites, messages to help the new occupiers and their families enjoy informal recreation at the site and how to avoid negatively affecting it, alternative locations for recreational activities and off road cycling and recommendations to dog owners for times of year dogs should be kept on lead when using the site (i.e. to avoid disturbance to livestock). Two copies of the HIP shall be provided to all future residents prior to occupation of each dwelling.
- 14) The approved Travel Plan (Reference: 15163-TA-V2) shall be implemented in accordance with the details and timetable therein, and shall be continued thereafter with the exception that the Travel Plan monitoring period shall be a minimum of 5 years.
- 15) Applications for the approval of the reserved matters shall be generally in accordance with the principles and parameters described in the Design and Access Statement (October 2019) and the Illustrative Site Layout BM-M-01 Revision A.
- 16) The reserved matters shall include a Housing Mix Statement to setting 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. It will address the needs of the local area and of older people, as set out in the local housing evidence base, including the most up-to-date Strategic Housing Market Assessment for the area at the time of the submission of the relevant reserved matters. The development shall be implemented in accordance with the approved Housing Mix Statement.

- 17) The reserved matters shall include a scheme for the protection of retained trees and hedgerows, in accordance with the most up-to-date BS 5837, including a Tree Protection Plan (TPP) and an Arboricultural Method Statement (AMS). All construction works shall be implemented in strict accordance with the approved details.
- 18) The reserved matters shall propose no more than 50 dwellings.

*****END OF CONDITIONS*****



Appeal Decision

Hearing Held on 10 and 11 November 2020

Site visit made on 13 November 2020

by H Porter BA(Hons) MSc Dip IHBC

an Inspector appointed by the Secretary of State

Decision date: 8th December 2020

Appeal Ref: APP/G1630/W/20/3246937

Land at Swinley Field, Maisemore, Gloucester GL2 8HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Chamberlayne Farms Limited against the decision of Tewkesbury Borough Council.
 - The application Ref 18/01202/OUT, dated 22 November 2018, was refused by notice dated 20 August 2019.
 - The development proposed is outline application for up to 25 dwellings (consisting of 15 self-build and 10 discounted market houses) together with access and associated works such as footpath links to village hall and play area (all matters reserved).
-

Decision

1. The appeal is dismissed.

Preliminary and procedural matters

2. The planning application was made in outline form with all matters reserved for future consideration. I have treated the appeal on this basis. Prior to the Virtual Hearing (VH), I was able to see the appeal site from public land. After the VH closed, with the landowner's consent, I undertook a site visit on an access-required basis. The main parties were made aware of these visits and raised no objection to this approach.
3. The development plan for the area comprises the saved policies from the Tewkesbury Borough Local Plan to 2011, March 2006 (saved TBLP); the Gloucestershire Waste Core Strategy, November 2012 (WCS); and the Cheltenham and Tewkesbury Joint Core Strategy, November 2017 (JCS). The emerging Tewkesbury Borough Plan (TBP) is yet to be examined and the JCS Review is at a very early stage. Owing their unresolved nature and the current stage in their preparation, the TBP and JCS Review policies carry limited and very limited weight respectively. No Neighbourhood Plan covering Maisemore has been made.
4. The main parties have submitted a signed legal agreement, dated 20 November 2020, prepared under S106 of the Town and Country Planning Act, 1990 (the S106), which includes obligations relating to the delivery of proposed affordable homes, public open space, financial contributions towards play equipment, public rights of way, and refuse and recycling, in the event that planning permission is granted. The S106 is a material consideration to which I return later in the decision. At the VH, the Council confirmed it would not be

pursuing its refusal reasons 5, 6 and 7, which related to waste and site preparation, affordable housing, the delivery of public open space, and recycling and waste bin provision.

Main Issues

5. The main issues in this appeal are:
- Whether the appeal site offers a suitable location for the proposed development having regard to the policies of the development plan;
 - the effect of the proposal on the landscape character and appearance of the area; and,
 - the effect on the significance or special interest of relevant Grade II* listed buildings.

Reasons

6. The appeal site comprises an L-shaped parcel of agricultural land just off Church Road on the northern periphery of Maisemore. Maisemore is a small village in a largely rural area some three miles from the City of Gloucester. JCS Policy SP2 identifies Maisemore as one of a number of 'Service Villages' that are envisaged to accommodate lower levels of development, to be allocated through the Tewkesbury Borough Plan and Neighbourhood Plans proportional to their size and function, reflecting their proximity and accessibility to Cheltenham and Gloucester, and taking into account the environmental, economic and social impacts including existing levels of growth. The Service Villages are envisaged as accommodating around 880 new homes; in the remainder of the rural area, Policy SD10 will apply to residential development.
7. Although being promoted for housing through the emerging TBP, the appeal site has not been allocated for development. In circumstances where sites are not allocated, Policy JCS Policy SD10 sets out that housing will be permitted, amongst other things, where it is infilling within villages.
8. There is no defined settlement boundary for Maisemore, the existing built-up area of which is most readily defined by the regular concentration of development that either fronts the principal linear route through the village, or the lanes and cul-de-sacs off it. Church Road extends northwards from the A417, where, from the village hall and beyond the Church Rise cul-de-sac, there is a noticeable absence of development. Indeed, beyond the boundaries associated with residential gardens, playing fields and the village hall, the appeal site marks the point at which the settlement has transitioned into its tangibly rural context. This leads me to the view that, although the appeal site is close to Maisemore's settlement edge, it lies beyond the built-up area of the village.
9. In light of the above, the proposal would not be within the Service Village of Maisemore for the purposes of SP2. The appeal site is not within the village and so would not be infilling within Maisemore, nor would it satisfy any of the criteria JCS Policy SD10 that would otherwise allow dwellings on sites that have not been allocated for development. Rather, the appeal site is situated in the open countryside. The appeal scheme has not been predicated on satisfying any other exceptions that might otherwise allow development in the countryside. Concluding on the first main issue, the appeal site does not offer a suitable location for the proposed development, which runs contrary to the

settlement hierarchy and strategy policies of the development plan, notably JCS Policies SP2 and SD10.

Landscape character and appearance

10. Maisemore village is characterised by a traditional linear pattern of development that, like many historic villages, thins out towards its edges into the surrounding countryside. Moving northwards along the tree-lined route of Church Road, the built envelope of the village transitions into the bucolic rolling landscape. Beyond the watercourse that runs east/west along the northern boundary of the appeal site are a public footpath, open, cultivated fields, and a cluster of historic development at Maisemore Court and the Church of St Giles, which are within the designated Landscape Protection Zone (LPZ)¹. Owing to the physical and visual break that separates these features from the core of the village, they are afforded a sense of rurality that is an important characteristic that defines Maisemore's countryside setting and this part of the LPZ.
11. The appeal site is a sloping arable field bound to the immediate south and west by the village hall, recreational areas and the rear or side boundaries of residential garden plots. As the appeal site descends northwards, it becomes increasingly distinguished by its open and verdant nature, giving views over the wider, characteristically rural landscape. Therefore, notwithstanding the relative proximity of land and buildings that are part of Maisemore's settlement edge, the appeal site assimilates with the character and appearance of the countryside. Furthermore, forming part of a substantial physical and visual break that separates the core of the village from an enclave of historic development at the top of Church Road, the appeal site contributes to a sense of openness and rural isolation that is of value to this grouping of heritage assets, the setting of the village and the LPZ.
12. For the purposes of the Landscape and Visual Sensitivity Study (LVSS²), appeal site falls within Land Assessment Parcel Mai-04; the land on the northern side of the stream is within Land Assessment Parcel Mai-03. My observations of the appeal site and its surroundings correspond with the local landscape assessment of the LVSS, wherein the stream, the line of trees along Church Road, and undulating arable landscape are identified as notable features, that, amongst other things, influence a sense of remoteness from the village. I agree.
13. The application documents include various iterations of a draft site layout plan. While the proposed layout plan is illustrative only, it does show how up to 25 dwellings could be accommodated and an access provided off Church Road. To some degree, the proposed development would be seen against the backdrop of the settlement. Through the reserved matters, it could be ensured that the detailed design of dwellings would fit with the local area, that the views from the village hall towards the north were not wholly obstructed, and that supplementary landscaping would assist in softening or assimilating the development to some degree. Even so, the scheme would unquestionably form an urban intrusion onto the site, resulting in a harmful extension of the physical built envelope of the settlement into open countryside.
14. Indeed, the indicative layout shows that the proposal would involve the total loss of the agricultural land. In combination with the extent of housing,

¹ As defined in the Tewkesbury Local Plan, 2006

² Rural Service Centres and Service Villages Landscape and Visual Sensitivity Study, 2014

- associated driveways and parking, the rural character of the site would be radically altered and become more like a suburban cul-de-sac. Even with supplementary planting, biodiversity enhancements, and the provision of open space on part of the site, the scheme would advance development that would be at odds with the informal, open, agricultural nature of the existing use.
15. The appellant proposes a landscaped 'buffer' along the stream; however, the proposal would still severely diminish the openness and sense of space along the stream corridor. Currently, vehicular access is shown using a break in the line of lime trees, rounding into the field opposite the appeal site and crossing the stream. The details of the access could be modified, although it seems inevitable that a vehicular access would introduce a route through the avenue of limes, introduce hard urban forms and activity to the detriment of the sensitive visually prominent part of the local landscape.
 16. It may be possible to lessen the impact on open views from the north of the village hall. However, even if planting and tree canopy cover did obscure visibility of the development to some extent, there would nevertheless be a substantial erosion of the physical and visual break that distinguishes the settlement edge from its open countryside setting. In turn, the sense of openness and rural isolation that is of value to the grouping of heritage assets would be weakened. All of this would be to the detriment of the character and appearance of the local landscape, the rural setting of the village and the LPZ.
 17. I therefore find the proposed development would result in significant harm to the landscape character and appearance of the area. Conflict therefore arises with JCS Policies SD4, SD6, SD8 and SD10 as well as TBLP Policy LND3 insofar as they require that all residential development achieves the maximum density compatible with, amongst other things, the character and quality of the local environment; responds positively to and respects the character of the site and its surroundings; makes a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment; protects landscape character for its own intrinsic beauty; avoids detrimental effects on types, patterns and features that make a significant contribution to the character, history and setting of a settlement; and seeks to protect or enhance the environment where possible, retaining and where appropriate enhancing, important landscape features within the LPZ.

Designated Heritage Assets

18. The Church of St Giles and Maisemore Court are both Grade II* listed buildings in recognition of their special architectural or historic interest. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act, 1990 (the Act), I have paid special regard to the desirability of preserving these listed buildings, their settings, or any features of special architectural or historic interest they may possess.
19. The Church of St Giles (list entry number: 1171533) (the Church) is situated on higher ground at the top of Church Road a little to the northeast of the appeal site. The statutory list description identifies the building as being first listed in 1955, of 15th century origin, with later alterations, constructed of coursed, square lias with ashlar dressings.
20. In addition to its historic fabric, architectural execution and historic associations, the special interest and significance of the Church are informed in part by its role and function as a visual and social landmark, manifest in the

dominance of its square tower. To this day, the Church is experienced as detached and separated from the main body of the settlement by undeveloped agricultural land, which contributes to a sense of rural remoteness. Whether or not a deliberate design choice, and irrespective of what other structures may have existed closer to it, the physical separation of the Church from the main part of Maisemore is, in my judgement, of importance in understanding its origins as a rural parish place of worship.

21. The Grade II* listed building known as Maisemore Court, Old Court, New Court (Maisemore Court) (list entry number: 1091377) was first listed in 1986 and is identified as a former manor house, now farmhouse and two attached houses; of early 17th century origin, enlarged and altered in the late 18th century for W. Pitt. Based on what I have read, Maisemore Court is of considerable architectural and historic interest, not least owing to its surviving historic architectural features and alterations that reveal the building's evolution. In addition, the building's significance and special interest are informed by the relationship with the group of former agricultural buildings, now functioning as a business centre, that were historically part of its farmstead complex.
22. As with the Church, Maisemore Court and its associated former farmstead buildings are experienced as being separate from the village and having a predominantly rural setting. Indeed, owing to its elevated position and the verdant, undeveloped lands around it, the high status and former function of Maisemore Court as a manor, and later farmhouse, can still be readily discerned. Furthermore, as I saw from within its garden, Maisemore Court to this day commands views across agricultural land to towards the village, which distinguish it as being distinctly separate from the main area of Maisemore and within a rural setting.
23. The appeal site is an important component of the undeveloped rural landscape context surrounding both the Church and Maisemore Court. Whilst the village has inevitably changed over time, the appeal site has enduringly contributed to the physical and visual detachment that informs the rural surroundings of the Church and Maisemore Court. Thus, the appeal site certainly comprises a part of the setting of both and is of value to their individual significance and special interest.
24. There would be some intervening vegetal screening; the channelled view along Church Road would remain; as would some degree of physical separation and detachment from the village core. Nevertheless, the proposal would give rise to a suburban form of development on the appeal site and an associated encroachment of built form within the rural setting of the Grade II* listed Church and Maisemore Court. The permanent change within the setting of the listed buildings would irreversibly dilute the sense of rural isolation that underpins the significance and special interest of both. It follows that the proposed development would fail to preserve the setting of the listed buildings, causing harm to their significance and special interest.
25. Failing to preserve the setting of the Grade II* listed buildings runs counter to the statutory provisions of Section 66(1) of the Act. Conflict also arises with JCS Policies SD8, SD10, insofar as they seek to ensure that designated heritage assets and their settings will be conserved and enhanced. In both instances, the degree of harm to the setting and significance of designated heritage assets would be less than substantial. Paragraph 196 of the Framework advises that where a development proposal will lead to less than

substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

Other considerations, public benefits and planning balance

26. I consider the S106 Agreement and planning obligations promoted by the appellant would be directly related to the development, be reasonably related in scale and kind, and necessary to make the development acceptable in planning terms. As such, I consider that it would satisfy the relevant tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010.
27. Even if Schedule 2B of the S106 were the primary source of Affordable Housing, the proposal would contribute to the provision of 10 units at 25% of the open market sales value. Although the mix and tenure proposed under Schedule 2B would not offer the range of social rent to affordable home ownership that is the Council's preference, the development would nevertheless offer 40% affordable housing, while the remainder of the dwellings would be secured as self-build housing.
28. Although the precise extent of the shortfall is not agreed, it is not in dispute that there is currently a deficit in the supply of housing land in the Borough, as well as a proven and unmet need for affordable homes. Furthermore, the Government is actively seeking to increase the supply of self-build housing, whilst the evidence put to me casts doubt over whether the demand for self-build housing in the authority's area is being met. In light of the shortfall in housing land, irrespective of the degree of that shortfall, the delivery of new housing the proposal would provide attracts more weight in its favour. Therefore, I consider the delivery of affordable and open market homes, which would contribute to creating mixed and balanced communities in the Borough, to be social, and public, benefits that carry significant weight in favour of the proposed development.
29. The identification of Maisemore as a Service Village indicates there are some, albeit limited, services and facilities therein, which would be in reasonably convenient walking or cycling distance from the appeal site. There would be social and economic benefits associated with supporting local services, residents feeding into the local economy and economic benefits associated with the construction phase. However, given the limited range of services in Maisemore is limited and the lack of compelling evidence that any would be under threat in the absence of the proposal, I attribute limited weight to this being a public benefit of the scheme. There would be upgrades to the footway along Church Road, albeit only up to the village hall land, this also carries limited weight as a public benefits of the scheme. The provision of open space, contributions to play equipment, bins and public rights of way would largely be as mitigation. However, there would be benefits to ecology along the stream corridor, which carries moderate weight. In my judgement no harm would arise in relation to living conditions, flood risk, drainage or highway safety. However, these are not public benefits and neutral in the overall planning balance.
30. Paragraph 193 of the Framework states that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to less than substantial harm to its significance. Although the degree of harm to the significance of the Church and Maisemore Court, would, in each case, be less than substantial, this should not be equated

- with a less than substantial planning objection, particularly when the statutory requirements to preserve listed buildings and their settings have not been met.
31. Taking into consideration the importance of the highly graded heritage assets, very great negative weight is given to the less than substantial harm the proposal would cause to each. The benefits already outlined above are all public benefits, the collective weight of which would be significant. Even so, in the overall balance, the public benefits do not outweigh the considerable importance and weight ascribed to the desirability of preserving listed buildings or their settings. This indicates conflict with paragraph 196 of the Framework.
 32. Framework paragraph 11d) applies where there are no relevant policies in the development plan, or the policies which are most important for determining the application area out-of-date. In such circumstances, the tilted balance should apply, unless the application of policies in the Framework that protect assets of particular importance provides a clear reason for refusing the development proposed³. Bearing in mind the harm I have found in relation to the setting of two Grade II* listed buildings, applying the policies in the Framework that seek to conserve and enhance the historic environment provides a clear reason for refusing the proposed development. Therefore, even if I were to conclude there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the tilted balance does not apply.
 33. The proposed development would cause serious harm to the landscape character and appearance of the area, would fail to preserve the setting of listed buildings causing harm to their significance, and would not be in a suitable location in respect of development plan policies. I have found there would be conflict with JCS Policies SP2, SD4, SD6, SD8, SD10 and TBLP Policy LND3. Although I note there is some local support for the proposal and the appellant's long-standing connection to Maisemore, I do not find there to be other material considerations to justify making a decision other than in accordance with the development plan read as a whole.
 34. For the reasons set out above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

H Porter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jack Smyth (Counsel)
Peter Tuffnell DipTP MRTPI (Agent)
Luke Chamberlayne (Appellant)
Ian Smith BSc DipTP MRTPI IHBC (Heritage Consultant)
Alan Steele (AGS Consultants)
David Ferraby (DF Legal)

³ National Planning Policy Framework paragraphs 11 d) i.

FOR THE LOCAL PLANNING AUTHORITY:

Paul Smith BA(Hons) MRTPI
Julian Bagg BSc(Hons) PGCert(Urban Design) IHBC (Conservation Officer)
John Bryant
Gary Spencer

INTERESTED PERSONS:

David Jones (Maisemore Parish Council)
Anna Macey-Michael
Mark Wardle
Mike Cogger
Jeanette Phillips

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

- 1 TBC Maisemore CIL Compliance Statement
- 2 TBC Waste Bins Compliance Statement amended
- 3 TBC Maisemore Commuted sum schedule of rates
- 2 Signed S106 Agreement, dated 20 November 2020

NOTES ON INSPECTOR'S DECISION & REQUEST FOR FEEDBACK

12 January 2021

APP/G1630/W/20/3246937

Land at Swinley Field, Maisemore, Gloucester GL2 8HD

Dear Feedback Team,

The appellant received the Inspector's decision on this appeal on 8th December 2020.

i. It is appreciated that the decision could only have been challenged through the Courts, but there are some matters of clarification that I would appreciate assistance with. Whilst this statement has been prepared primarily for feedback purposes, it may also be of value in future pre-application discussion relating to a revised development, and in relation to emerging planning policy. Please note a decision issued earlier today on another site¹ in TBC, which has determined that the Council only has a **1.8-years supply** of housing land. A supply which is very significantly less than that presented by TBC. It is a fact that TBC's evidence to the Maisemore appeal was that it had a 4.37-years supply. TBC did not disclose the JCS Monitoring Report (Autumn 2020), which had set out the position that Tewkesbury Borough had 2.9 years of housing supply. The Inspector was thus misled by the Council.

ii. The title banner/description of development confirms that the proposal is an outline application with all matters reserved and for "up to" 25 dwellings. I can find no references in the decision to consideration of the "up to" element of the proposals. In other words, there is no evidence that the Inspector consider the lesser harms of a reduced number of dwellings.

The appellants' feedback request hereafter, follows the Inspectors paragraph numbers:

3. Whilst it is agreed that weight to be attributed to the emerging plans will be limited, the emerging TBP is important to the extent that JCS policy SP2 is partly reliant on the TBP. (e.g., for determining village boundaries and allocations). For this reason, the appellant would argue that reduced weight should have been afforded to JCS policies including e.g., policy SP2. Notwithstanding this point, and the agreed lack of a 5-year supply of housing land, The Inspector did not clarify the amount of weight which she afforded to the DP.

5. The Inspector does not include in her list of main issues Housing need, or its component special needs: affordable housing; and self-build. The fact that the Inspector doesn't recognise housing as a main issue, suggests to the appellants that she attributed less than main issue weighting to housing need.

¹ APP/G1630/W/20/3256319 Land off Ashmead Drive, Gotherington

WHETHER A SUITABLE LOCATION (6-9)

6. The reference to “*lower levels*” in Service Villages is relative to the “*high levels*” in JCS allocations. It is a matter of fact that Maisemore is a Service Village. The Inspector’s inference here, and in her following paragraphs, is that Maisemore is less of a Service Village than other Service Villages. Whilst that could be the case, such an argument can only be presented relative to the evidence (to which she doesn’t refer). The evidence presented at the VH (by the appellant) relating to Maisemore’s status and standing, was not challenged or countered

7. No sites have been “*allocated*”, and there are no settlement boundaries, as the TBC is a draft and is yet to be examined. Whether a site is within a village is subjective in the absence of development boundaries. The supplementary text to JCS policy SD10 (4.11.5) defines what is meant by the term “*infilling*” (in the context of SD10) and includes the words “...well related to existing built development...”. The appellant’s position is that the site is “*well related*”.

8. The site cannot be “*outside*” a boundary that does not exist (i.e., is yet to be defined in the DP). The definition of “*open countryside*” is not defined in the JCS but in planning terms it is generally used for all land outside a defined development boundary. The Inspector’s view that the site:

“...lies beyond the built-up area of the village” does not adequately deal with the question whether the site (or part of the site) is (are) “*well related to existing built development*”.

The built-up area of the village is to be defined as part of the emerging TBP.

9. The counter argument is that the site is not outwith a boundary, there is no boundary, and JCS policy SP2 is not complete (awaiting examination and adoption of the TBP). The appellant’s position is that both the definitions of village boundary or DP boundary; and open countryside, are dependent upon and awaiting examination/adoption of TBP. Taking the first main issue (as identified by the Inspector) in isolation she has afforded what appears to be full (but unspecified) weight to the out-of-date housing policy. That cannot be correct. In addition, no regard whatsoever has been paid to the “up to” part of the proposals.

LANDSCAPE CHARACTER AND APPEARANCE (10-17)

10. The Inspector’s reference to “*Beyond the watercourse*”, describes land within the LPZ, i.e., land beyond the main part of the appeal site (except for a potential access). The appellants argued that it is the land beyond the watercourse (the northern parcel) that has the most value. We believe the Inspector’s position, (like the LVSS) has been skewed by viewing the land to the north as if it had the same landscape value as the appeal site, whereas on the other side of Church Road (to the east), a different approach has been taken. The appellants had made this point forcefully in evidence. The Inspector refers to setting of the village. Whilst the appellants accept that the site is in the setting of the village, there was no evidence that the development would harm the village. Setting of the LPZ is something else. The appellants’ evidence was that the Zone is itself the setting of the river, and that it could not therefore have a further setting beyond its boundaries. That evidence was not countered.

11. The Inspector's first sentence assists in describing a site that is "well related", (in contradiction to her findings in paragraphs 7 and 8). Any well related site (like this one) would be viewed as open and rural when looking away from the village, but not when looking back at the site e.g., from the footpath across the watercourse, where it is seen filtered through vegetation, and against the backcloth of built development. The decision made is based on viewing one way only, i.e., the way that leads to a negative conclusion. Reference in this paragraph to concerns about separation from "historic development" gives concern that the heritage harm perceived by the Inspector has been double counted-applying the negative twice. Also, the same point raised earlier, that the LPZ cannot have a further setting beyond its boundaries.

12. The Inspector makes a factual error in relation to the LVSS. The fact that she has made this error is an indication of her not having fully understood the appellants' case. It was a major part of the appellants' case that the LVSS different approach either side of Church Road was illogical (as referred to in 10 above). The LVSS identifies the appeal site and the land to its immediate north as Mai-04. The Inspector's decision says land to the north is Mai-03 (i.e., a High Sensitivity area), which is factually incorrect. The appellants' evidence was that the land to the immediate north should have been in/or equal to Mai-03, due to its higher sensitivity, and it was that higher sensitivity that was distorting the medium sensitivity value afforded to that part of Mai-04 which is the appeal site. The Inspector advises that she agrees with the LVSS, but how can she agree with a position that has not been factually recorded in the decision?

13. The Inspector says that the draft/illustrative layout shows how up to 25 dwellings could be accommodated, but nowhere in her decision does she demonstrate that she has actually considered any lesser number. In this paragraph she does concede that the proposed development would be seen against the backcloth of the village which contradicts paragraph 11 above, but does not explain how the different views (in and out) are to be reconciled. She simply concludes that

"...the scheme would unquestionably form an urban intrusion onto the site, resulting in a harmful extension of the physical built envelope of the settlement into open countryside" (my emphasis).

Whether the development can be categorised as "unquestionably urban" I would have thought was down to design detail which is reserved for approval. The statement further begs the question whether she considered a lesser scale. As the SALA considered the site to be suitable for 35 dwellings, a scheme for 25 is by fact and degree less urban (and I would say capable of not being urban, subject to design approval). Any further reduction from 25, (noting there is no evidence that the Inspector considered this), could ensure that the development was rural in character, and not unquestionably urban.

14. The Inspector continues with her reference to what the illustrative layout (of 25 dwellings) shows. She refers to total loss of agricultural land (my emphasis). Loss of agricultural land is generally to be expected when any greenfield site is developed. Whilst most of the site is illustratively shown "developed", that is not part of the proposals. In addition, parts of the site

e.g., the stream corridor, and the whole of the site frontage (+ another parcel of land) are shown as not residential curtilage. Those parts of the site may be described as Green Infrastructure (“GI”), or amenity land, and may be retained in the base use of land (agricultural), even where not in active agricultural use. There is nothing unusual about that. Even at the same density there could, by design be much greater GI, but with a lower density (less than 25) there would a potential for even more GI. I believe the reference to total loss of agricultural land is factually incorrect. Further, it would be wrong to afford weight to the loss of agricultural land when its loss was not part of the Council’s case, or indeed any justified stance. On page 4 the inspector’s wording shifts from “*unquestionably urban*” to “*Suburban*”. Our position remains that the site is capable of retaining a rural character, when developed Urban/suburban features to be excluded by design (reserved for approval), and controlled by condition.

15. If the Inspector is suggesting that it is inevitable that the development will introduce “hard urban forms and activity” to the detriment of the “sensitive visually prominent part of the local landscape” then I would disagree. There was no evidence of hard urban form and activity. Even when considered with the more prominent (and I say more sensitive northern parcel of land) the land is characterised as of “*Medium Sensitivity*”, not “*High sensitivity*”. No evidence was provided of prominence. That had not been the Council’s case, and nor was it the case of any third party. The LVSS refers to Mai-04 being “*part enclosed by settlement*” and “*enclosed and influenced by settlement*”. The relevant part of Mai-04 that is well related to the settlement, is the appeal site. The LVSS continues:

“This land assessment parcel has a landscape sensitivity to development that might encroach into this stream corridor or crowd it, however, the containment and visual influence from the existing settlement edge does offer local mitigation opportunities.”
(my emphasis)

Under the Heading “*Visual context and prominence*”, the LVSS continues:

“The land assessment parcel is overlooked from a number of local roads, footpaths and by neighbouring residents. It is visible in local views but is not prominent”.

(my emphasis).

I would add that the appeal land is also far less prominent than the northern parcel of Mai-04, as given in evidence. The site is less sensitive than the Inspector has determined, and the only evidence she was provided with, was that it was not prominent.

16. The Inspector expresses “*heritage asset*” concern in the section still addressing the landscape impact issue. It points to double counting and/or exaggerated perception of harm. Same point as earlier (paragraphs 10 & 11) about setting of the LPZ.

17. Although the Inspector considers there to be Landscape Character harm, she does not mention the LCA anywhere in her decision. This is most surprising as landscape character is part of her main issues (identified in paragraph 5), and addressed in detail in paragraphs 10-17. She says that the harm is “*significant*”, but no specific harm to the landscape character sub-area has been identified. Policy LND3 relied on by the Inspector, does not relate to land

beyond the LPZ² boundary. Whilst it could relate to the very small part of the site beyond the stream corridor, it does not relate to the majority of the site. Whilst there is a policy reference to maximum density in this paragraph there is no indication that the Inspector has considered a lesser density to take account of the character and quality of the local environment. She includes in her list of policy conflicts harm to SD8, which is a heritage policy and should not be relied on in the landscape issue. Not sure either that SD10 should have been relied on under this issue. In any event it is not delivering! Has the Inspector given too much weight to these perceived conflicts?

DESIGNATED HERITAGE ASSETS (18-25)

20. The Church will still be experienced in essentially the same manner post-development. It will still be detached from, and separated from, the main body of the settlement. It is interesting that the Inspector makes reference to the “*main body of the settlement*”. It is an acceptance that the settlement is in two parts. The fact that the settlement is in two parts is another reason not to conclude that land beyond what the Inspector has described as built-up, is open countryside.

21. The appeal site does not have any impact on the significance of the relationship between the heritage assets, including the former agricultural buildings (now industrial buildings).

22. The development will not affect the Church’s elevated position; it will still be elevated. The site is lower, and also lower than its backcloth (what the Inspector describes as the main part of Maisemore). The Inspector refers to views from Maisemore Court’s garden across agricultural land to the village. If this is a view across land other than the appeal site (which I believe it must be) then surely this is a positive rather than a negative [Note: The appellants’ evidence of the original access to Maisemore Court from The Rudge, and the Council’s evidence of views from the FP across the man-made lake to the Court]

23. The appellants are concerned that the Inspector’s view of the impact of the setting on significance has been exaggerated.

24. The “*channelling*” effect of the Lime Avenue and Church Road (as the Inspector refers to it) can also be described as a “connection” between the two parts of the village. A logical and real connection. A social, economic and environmental connection. The inspector identifies that there will be a degree of physical separation. In fact, the degree of physical separation will still be significant, and even greater with a less than 25 dwelling scheme (not considered by the Inspector. We argue that “*suburban form*” will be avoided by design with the Inspector pre-judging the ability to “design away” negative impact.

25. There is agreement that if there is harm it is “*less than substantial*”, and that it will need to be balanced with the public benefits (i.e., the NPPF3 paragraph 196 balance).

² The LPZ is not part of any Landscape Character Assessment and does not follow the boundaries of the LCAs, as defined.

OTHER CONSIDERATIONS, PUBLIC BENEFITS & PLANNING BALANCE (26-34)

27. Self-build is identified here as a matter-of-fact reference, but with no analysis of the issue.

28. Here the Inspector does advise that she gives weight to: general housing need and affordable housing need. She attributes the unmet need Significant weight, but does not provide any further clarification. She again mentions self-build, but does not appear to attribute additional weight, or significance to the need. The way the Inspector deals with self-build, infers a reluctance to accept the evidence of self-build need.

29. Here the Inspector seems to devalue Maisemore's Service Village status, and its very good RASA scoring, as given (unchallenged) in evidence. The Inspector devalues what the appellants consider should have been significant positive socio-economic weight, (or at the very least moderate weight), to limited weight. This devaluing will have had serious impact on, not only the Para 196 balance, but also the final balance. The Inspector does afford moderate weight to ecology benefits along the stream corridor, but nothing to other biodiversity benefits within the site.

30. It is agreed that great weight needs to be given to the significance of heritage assets, but the appellants consider that the Inspector has exaggerated the likely impact of the development on significance. [again, there is no reference to having considered a lesser scheme with, by fact and degree, lesser impacts]. We agree that if harm is identified it must be less than substantial. The Inspector says that this should not be equated with a less than substantial planning objection, but the appellant questions whether such a position is correct? The Inspector does not say where in the less than substantial spectrum of harm, the degree of harm lies. The appellants are not convinced that the Inspector has satisfactorily explained where her separate determinations on significance, and setting, have been made.

31. The appellants are of the opinion that the Inspector has not demonstrated that she has given realistic weight to the positives, with the result that the balance is skewed. Given that there is (in the Inspector's reasoning) significant weight pulling in opposite directions, the application of additional weight to the socio-economic benefits (which the Inspector had judged as limited) should assist in tipping the balance positively. Looking back to paragraph 28, we know that the Inspector had afforded housing shortfall significant weight, but it is unclear as to whether she added further weight for self-build shortfall. Had she undertaken an exercise addressing the "up to" element of the proposals then there is further opportunity to reduce the negative weight, and also to tip the balance favourably. Within paragraph 31 the Inspector makes reference to the "overall balance", leading to her concluding sentence "This indicates conflict with paragraph 196 of the framework". To the appellants this is clear evidence that the Inspector was undertaking an overall planning balance with all of the negatives weighed against all of the positives. The appellants' understanding is that she should have undertaken the Paragraph 196 balance first, weighing only heritage negatives against all of the positives. Not undertaking that separate balance first will have skewed the balance, and led the Inspector to: the wrong paragraph 11 conclusion; and to her finding (in her paragraph 32) that the "tilted balance" should not be applied. The evidence demonstrates that she did not undertake the correct balance exercises.

32. The Inspector confirms her reasoning that the tilted balance does not apply due to the heritage harm that she has identified i.e., harm to setting (note: no reference to significance in this paragraph). The appellants' position is that such a conclusion can only be reached if the correct paragraph 196 balance was undertaken. We say her wording in paragraph 31 above demonstrates that it wasn't.

33. Whilst the Inspector makes general references to landscape and appearance harm, the conclusion of serious harm to "*landscape character*" (and appearance) does not follow any specific identification to landscape character harm. The Inspector did not even make any reference to the LCA within which the site is located. She does not identify specific harm to the LCA. Her objection seems to the appellants to fall simply in the "appearance" box. The inspector refers to failure to preserve the setting of the listed buildings, and harm to their significance, but this result from an exaggerated view of harm to significance. The Inspector finds conflict with JCS Policies: SP2 SD4 SD6 SD8 SD10; and TBLP policy LND3. There is nothing in her decision to suggest that she has given anything other than full weight to these DP policies. Her reasoning is that the development does not constitute "*sustainable development*" because of the heritage harm that she identifies (NPPF p11d I - with NPPG footnote 6 applying). However, NPPFp11 d)-with footnote 7 is also relevant, and it is the case (in the appellants view) that the DP policies quoted are "*out-of-date*" and should be afforded less weight. If the Inspector is right the force of the presumption to grant permission would not be engaged, but that does not mean that the out-of-date policies should be restored to full weight. The appellants position is that the Inspector has given too much weight to the out-of-date policies. On the other hand, she has not given appropriate positive weight to housing need, including affordable need and self-build need.