Tewkesbury Borough Plan

Examination stage:

Hearing sessions commencing 16 February 2021

MATTER 6

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 decision[1] 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ii.ii A number of library documents appear to be out of date, and require updating with the latest versions: e.g., MN004 & MN005.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 6

6.1 **RES3**- The policy needs to be worded to ensure consistency with The Framework Paragraphs 78 & 79 (and with planning law[2]). For locations that are not isolated, the wording of the policy is too strict. I also argue the case elsewhere for additional settlements to be provided with defined settlement boundaries (where RES2 will apply), thus deducing reliance on RES3.

6.2 **RES4**- The 5% or 10 dwelling growth rate within the plan period (for all small settlements falling below Service Village level) is too prescriptive, and too restrictive. It is a crude mechanism for limiting supply in rural settlement that does not take account of the range of settlements, or of their communities and their existing services and facilities. I would also question how you measure the physical extent of the settlement, (to ascertain the growth figure allowable), when the settlement has not been defined?

6.3 **RES5**- Bullet points 1 & 2 will satisfactorily guide development proposals. The guidance is clear and succinct. Bullet points 3 & 4 provide an element of duplication, with the potential for confusion. Bullet points 3 & 4 are too prescriptive, and are an unnecessary addition.

6.5 **RES6**- The policy appears to be based on an old definition of "affordable" and does not cater for the full range of affordable housing in the current definition (e.g., to Include Discounted Market Sales dwellings). The deficit in affordable homes is so acute in the Borough, that it is necessary to remove as many of the obstacles to provision as possible. That aim will not be achieved by the policy, as it is worded.

6.6 **RES7**- The reasoned justification to the policy does not make reference to Part Q Rights, or acknowledge the Government's intentions, in providing such rights. As there is a relationship between the policy and such rights it ought to be explained. Part Q does not require buildings to be redundant or disused. The policy ought to allow for buildings that are "underused", as well as those that are disused or redundant. It should not be necessary to demonstrate redundancy.

[2] [2018] EWCA Civ 610- the *Braintree* case

6.7 **RES8**- The policy should not conflict with, or be more restrictive than, The Framework Paragraph 79 (d).

6.8 **RES12**- The type of affordable housing and mix (e.g., between rented and various forms of home ownership) is hidden away elsewhere rather than being explicit in the policy. If TBC do not require a specific mix, then it is ok not to be in the policy, but if it does require a specific mix it must be clear. The policy has not been updated to have regard to the full range of "affordable "homes as defined in the Glossary to The Framework. The need for, and "value" of, Discounted Market Sales Homes to local communities and young people should not be underestimated, or devalued.

6.9 **RES13**- Self-build had been catered for in Policy RES16 of the Preferred Options version of the plan. Self-build policy is now contained within RES13-Housing Mix. The policy does little to encourage self-build and only sees self-build in the context of housing mix. There is concern that TBC's published self-build figures paint an overoptimistic view of self-build delivery, counting dwellings as self-build when that position is not justified. By way of example, I refer to a recent appeal decision[3] in neighbouring Wychavon District, and an appeal at Twyning[4]. MN004 Dated November 2019 is for the base period ending 30th October 2019. As we have now passed the next base period (ending 30th October 2020). A new Summery Report should be available. TBC needs to be in a position to demonstrate that it is meeting its Section 2A Duty[5]. I do not believe that it is. In the circumstances a more positive policy approach to self-build housing is called for.

6.10 RES13 should not be applied too prescriptively, particularly to small scale development (of less than 10 dwellings). It is surprising that JCS policy SD11 does not set a threshold. There is no good reason why RES13 should not.

6.11 **DES1**- TBC has not produced evidence for the application of the Nationally Described Space Standards, which can only be implemented through the Development Plan system. The application across the Borough needs to properly explained and justified.

[3] APP/H1840/W/19/3241879 Corner Mead, Newland Lane, Droitwich Spa, Worcestershire WR9 7JH
[4] APP/G1630/W/20/3250825 Tree Tops, Church End Lane, Twyning, Tewkesbury, GL20 6DA
[5] Section 2A of the Self-build and Custom Housebuilding Act 2015 (as amended)

The Planning Inspectorate

Appeal Decision

Site visit made on 29 June 2020

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 28 July 2020

Appeal Ref: APP/G1630/W/20/3250825
Tree Tops, Church End Lane, Twyning, Tewkesbury, GL20 6DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr David Webb against the decision of Tewkesbury Borough Council.
- The application Ref 19/00689/FUL, dated 2 July 2019, was refused by notice dated 15 October 2019.
- The development proposed is the erection of two self-build dwellings.

Decision

1. The appeal is allowed. Planning permission is granted for the development of two self-build dwellings at Tree Tops, Church End Lane, Twyning, Tewkesbury, GL20 6DA in accordance with the terms of the application, Ref: 19/00689/FUL, dated 2 July 2019, subject to the conditions set out in the attached schedule.

Main issues

2. The main issues are:

   - Whether or not the appeal site is a suitable location for residential development, having regard to local and national policies for housing in the countryside;
   - The effect of the proposal on the character and appearance of the area.

Reasons

3. The site is in a rural area between the small villages of Church End and Shuthonger, in proximity to a junction with the A38. It has been occupied by a mobile home for nearly 50 years, in addition to more recent outbuildings and a detached double garage to the front of the property. Large, modern detached houses can be seen to either side and opposite, and there is another mobile home on the adjacent plot. Together with the large caravan park opposite, and through virtue of the houses being arranged around a bend in the road with a wide grassy verge, the area has the feel of a small hamlet.

4. The wider area comprises flat, tree lined agricultural fields and a Public Right of Way runs adjacent to the site along the side of the field behind. The field is associated with a 2017 planning permission[1] for construction of 4 houses, the ground works of which appeared to have started by the time of the site visit.

[1] 17/00452/OUT

Location

5. The site is not in a rural service village as defined by Policy SD2 of the Joint Core Strategy 2011 to 2031 (adopted December 2017)(JCS). There is provision for infilling on the basis that SD10(4ii), as written, includes all villages, not just those identified as service villages. However, Policy G2 of the Twyning Parish Neighbourhood Development Plan (2011-2031, made January 2018[2])(NDP) is clear that infill is only appropriate within a defined development boundary, which this site is not.

6. Policy GD1 of the NDP states that housing in the open countryside will be supported if it is a replacement dwelling. Addition of the second house would constitute an additional dwelling and would therefore not be consistent with this aspect of the policy.

7. However, Policy GD1 of the NDP allows for housing in the open countryside if a future local plan identifies a need for additional residential development. In May 2020, the Council submitted the draft Tewkesbury Borough Plan (the PSTBP) for examination, which in part responds to an additional need for housing land supply. In line with paragraph 48 of the National Planning Policy Framework (2019), I give some moderate to the emerging plan given that it is at an advanced stage. Objections to relevant policies are yet to be resolved, but as all appear to argue for more flexibility to build in the countryside, they are not contrary to this proposal. Emerging Policies RES3, RES4 and RES5 together allow very small-scale housing in the open countryside.

8. I consider that 2 additional houses would be proportionate to the size of this hamlet, and in being central and on an already developed plot they would relate well to existing buildings and not cause coalescence of settlements, which is discouraged by emerging Policy RES4. I do not have a definition of 'rural settlement' in the context of this policy before me, but as the site is closely surrounded by a small community of other houses in a rural area, it could reasonably be interpreted as such. In addition, the permission granted in 2017 for 4 houses in the field immediately behind would intensify the pattern of development, making the proposal appear more in keeping with the prevailing pattern of development. The proposal would therefore meet the requirements of the emerging policies of the PSTBP, which are likely to become part of the development plan via Policy GD1 of the NDP.

9. The access towards Church End is single lane, but I observed cyclists comfortably using it during the site visit. The road is not served by pavements or street lighting, but verges are wide for much of the short walk to the main road, on which there is a bus stop with a regular, if not frequent, bus service. In addition, the adjacent Public Right of Way allows people to access the wider footpath network. I am therefore satisfied that there is credible choice of transport and that the proposal meets the requirements of INF1 of the JCS.

10. Although the proposal does not meet the requirements of Policies SD10 or Policy G2, there is potential support for small-scale development in the countryside in emerging policies RES3, RES4 and RES5.

[2] The NDP was brought into legal force on 17 April 2018

Character and appearance

11. Nearby detached buildings are in large plots, whereas the proposed houses would be close together in narrow plots, and the front elevation of the house in Plot 2 would be untypically close to the road. The housing would therefore appear cramped when compared to the prevailing character of development.

12. Policy GD5 states that car parking should be to the side of dwellings and behind the building line, where possible. In both cases the garages are in front of the house and, at least on Plot 2, it may have been possible to reconfigure the design to enable the garage to stand to the side of the dwelling.

13. A second house and two-storey development may reduce the sense of openness along this stretch of road. However, as there are existing structures on the site, houses either side and permission for houses behind, I do not consider any loss of openness to be to the detriment of local character or to constitute loss of an important public view, which would be protected by NDP Policy GD4. The garden would be visible from public vantage points, including the road and the path. However, as the development is surrounded by dwellings and the plot is already used for residential purposes, I do not consider continuation of this to be harmful to the rural character of the area.

14. Overall, the proposal is therefore in conflict with Policies SD4 of the LP, and GD3 and GD5 of the NDP, which together require that development responds positively to the character of the site and its surroundings.

Planning balance

15. Tewkesbury BC is not able to demonstrate a five-year supply of deliverable housing sites. I have noted the discussion regarding the extent of this deficit, but for the purposes of my decision it is sufficient to conclude that there is at best only 4.3 years' supply. This means that the presumption in paragraph 11d of the Framework applies and the adverse impacts therefore need to significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.

16. The benefits of the scheme are that it would provide an additional house, which would support the vitality of the rural community and local services in line with paragraph 79 of the Framework, although the benefit of this is limited by the small scale of the development.

17. I give limited weight to the conflict with housing location policies in the LP, given that they are out of date. I give significant weight to the NDP, with which the proposal conflicts. However, the advanced emerging policies provide support for small-scale development, and as the NDP is committed to incorporating these, I give this factor moderate weight.

18. Twyning has at least a technical shortfall in self-build housing of between 1 and 4 houses. I have noted the Council's selection of additional criteria to define self-build, but the fact remains that these are not recorded as such and I must therefore treat this as speculative. The proposal meets the definition of 'self-build' as described in the Framework and, given the shortfall of these schemes locally, I give significant weight to the benefit from this.

19. However, the development would be cramped when compared with the prevailing pattern and parking would not be in the ideal configuration, and

therefore inconsistent with paragraph 127 of the Framework, which recommends that developments are appropriately laid out and add to the overall quality of the area. I give significant weight to the harm from this.

20. When the tilted balance is taken into account as an important material consideration, I find that the adverse impact of the proposal does not significantly and demonstrably outweigh the benefits described above, and on this basis, I consider it appropriate that permission is granted.

Other matters

21. Policy H5 of the NDP states that applications for the replacement of mobile homes by permanent dwellings on sites where residential development is inappropriate will not be supported. However, for the reasons above I have concluded that, on balance, the development is not inappropriate for residential development and there is therefore no conflict with this policy.

22. Given the proximity of the site to other houses in the settlement, I do not consider that the development would meet the definition of 'isolated' as defined by the Braintree case[3], and I have therefore not applied the requirements of paragraph 79 of the Framework.

Conditions and obligation

23. The Council requests that 15 conditions be imposed, most of which I have included in the Schedule, with amendments to wording and structure for the purposes of clarity and avoidance of repetition.

24. In addition to the statutory time limit (1), Condition (2) specifies the relevant drawings to provide certainty.

25. I have combined the Council's proposed conditions 3, 4 and 5 into two conditions (3) and (4). The purpose of these conditions is to ensure that long term drainage of both foul and surface water is satisfactory. I do not consider that this needs to be a pre-commencement condition because of the small size of the development.

26. Conditions (5), (6) and (7) secure appropriate materials, to protect the appearance of the area.

27. Conditions (8) and (9) are to avoid an unacceptable impact on highway safety by ensuring that adequate visibility is provided and maintained through provision of a safe, suitable and secure means of access. I do not consider it necessary to include a condition to secure loading area, storage and wheel washing facilities, given the small size of the development.

28. Condition (10) is to safeguard trees and to preserve the visual amenity of the area.

29. Conditions (11) and (12) are necessary to safeguard neighbours from overlooking and loss of privacy. I have removed reference to 'roof lights' from the original condition because I do not consider that insertion of these would lead to harm.

[3] Braintree District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 2743 (Admin) (November 2017)

30. A Section 106 obligation is an appropriate method to secure the important self-build element of the development and matters associated with this. In being necessary, proportionate and reasonable I am satisfied that the obligation before me, signed by both parties, meets all 3 tests.

Conclusion

31. For the reasons above, and having regard to all other matters raised, the appeal should be allowed.

B Davies

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.

2. The development hereby permitted shall be carried out in accordance with the application form and following approved plans: 651/01, 651/03 F, 651/04 A, 651_05, 651_06, 651_200 D, 651_400 D.

3. None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.

4. No building hereby permitted shall be occupied until surface 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. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, 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.

5. No construction of the external walls shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.

6. No construction of the roof shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.

7. No construction of the vehicular driveway, parking and turning areas shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.

8. The new vehicular access hereby permitted shall not be brought into use until the splays illustrated on Drawing 651/03 F have been provided. The area between those splays and the carriageway shall be reduced in level and thereafter maintained so as to provide clear visibility between 1.05m and 2.0m

at the X point and between 0.26m and 2.0m at the Y point above the adjacent carriageway level.

9. The buildings hereby permitted shall not be occupied until the vehicular parking and turning facilities have been provided in accordance with drawing 651/03 F and those facilities shall be maintained for those purposes thereafter.

10. If, within a period of 5 years from the date of planting, the trees (or any tree planted in replacement) are removed, uprooted, destroyed or die or become, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the local planning authority gives its written consent to any variation.

11. The buildings hereby permitted shall not be occupied until the windows at eastern and western elevations have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the eastern or western elevation.

Neutral Citation Number: [2018] EWCA Civ 610

Case No: C1/2017/3292

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MRS JUSTICE LANG DBE
[2017] EWHC 2743 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 March 2018

Before:

Lord Justice McCombe
and
Lord Justice Lindblom

- -

Between:

Braintree District Council	**Appellant**
- and -	
(1) Secretary of State for Communities and Local Government **(2) Greyread Ltd.** **(3) Granville Developments**	**Respondents**

Dr Ashley Bowes (instructed by **Sharpe Pritchard LLP**) for the **Appellant**
Mr Stephen Whale (instructed by **the Government Legal Department**) for the **First Respondent**
Mr Paul Shadarevian Q.C. and Mr John Dagg (instructed by **Ellisons Solicitors**) for the **Second and Third Respondents**

- -

Hearing date: 14 March 2018

Judgment Approved by the court for handing down (subject to editorial corrections)

Lord Justice Lindblom:

Introduction

1. Did an inspector determining a planning appeal misinterpret and misapply government policy in paragraph 55 of the National Planning Policy Framework ("the NPPF") that local planning authorities "should avoid new isolated homes in the countryside unless there are special circumstances …"? That is the central question in this appeal. It involves no controversial issue of law.

2. With permission granted by Lewison L.J. on 8 January 2018, the appellant, Braintree District Council, appeals against the order of Lang J., dated 15 November 2017, dismissing its application under section 288 of the Town and Country Planning Act 1990 challenging the decision of an inspector appointed by the first respondent, the Secretary of State for Communities and Local Government, allowing appeals by the second and third respondents, Greyread Ltd. and Granville Developments, respectively under section 174 and section 78 of the 1990 Act. Granville's section 78 appeal was against the council's refusal, on 13 April 2016, of an application for planning permission for the erection of two detached single-storey dwellings on the sites of two agricultural buildings with landscaping on land to the east of Lower Green Road, Blackmore End, Wethersfield in Essex.

3. The site is in the village of Blackmore End, but was outside the settlement boundary defined in the emerging development plan. It lies between Wright's Farmhouse to the north and Lealands Farmhouse to the south. Two pre-fabricated agricultural buildings that had once stood on the site were demolished in 2015. Greyread's section 174 appeal was against an enforcement notice issued by the council on 25 April 2016 against an alleged breach of planning control on the same site, involving, on one part of the site, the demolition of a cattle shed and the partial erection of a single-storey building, the laying of footings and a concrete base, and on the other, the demolition of a cattle shed and the laying of footings and a concrete base.

4. The two appeals were dealt with together, on the parties' written representations. The inspector undertook a site visit on 17 January 2017. His decision letter allowing the appeals, and granting planning permission for the development, is dated 3 February 2017.

The issue in the appeal

5. The council's challenge to the decision was on a single ground, which was that the inspector had misunderstood and therefore misapplied the policy in paragraph 55 of the NPPF. That argument, rejected by Lang J., is now pursued in this court. The crucial issue is the meaning of the word "isolated" in the expression "new isolated homes in the countryside".

Paragraph 55 of the NPPF

6. Paragraph 55 of the NPPF is in section 6, "Delivering a wide choice of high quality homes". It states:

> "55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
>
> - the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
> - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
> - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
> - the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
>
> – be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
> – reflect the highest standards in architecture;
> – significantly enhance its immediate setting; and
> – be sensitive to the defining characteristics of the local area."

7. The corresponding guidance in paragraph 50-001-20160519 of the Planning Practice Guidance ("the PPG") states:

> "How should local authorities support sustainable rural communities?
>
> - It is important to recognise the particular issues facing rural areas in terms of housing supply and affordability, and the role of housing in supporting the broader sustainability of villages and smaller settlements. This is clearly set out in [the NPPF], in the core planning principles, the section on supporting a prosperous rural economy and the section on housing.
> - A thriving rural community in a living, working countryside depends, in part, on retaining local services and community facilities such as schools, local shops, cultural venues, public houses and places of worship. Rural housing is essential to ensure viable use of these local facilities.
> - Assessing housing need and allocating sites should be considered at a strategic level and through the Local Plan and/or neighbourhood plan process. However, all settlements can play a role in delivering sustainable development in rural areas – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence … .
> - [The NPPF] also recognises that different sustainable transport policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas [NPPF Part 4 "Promoting sustainable transport" para 34]."

The council's refusal of planning permission and statement of case

8. The council refused planning permission for three reasons. The relevant part of the decision notice, in the first reason for refusal, states:

> "1. … Guidance on new development within rural areas is also set out in [the NPPF]. … Para.55 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. …
>
> The site is located in the countryside beyond any defined settlement boundaries and in a location where there are limited facilities, amenities, public transport links and employment opportunities. … The proposal would introduce new housing development beyond the defined settlement limits and would be contrary to the objectives of securing sustainable patterns of development and the protection of the character of the countryside. Development at this location would undoubtedly place reliance on travel by car. … ."

9. In its statement of case, under the heading "Environmental Considerations (Reason 1)", the council amplified that reason for refusal. Having noted that Greyread and Granville had in their statement of case referred to paragraph 55 of the NPPF, it acknowledged that "the NPPF encourages LPAs to be responsive to rural circumstances and to plan housing developments to reflect the local need". It went on to say:

> "As highlighted by the appellant [the NPPF] also requires the intrinsic character and beauty of the countryside to be recognised, seeks to support the transition to a low carbon future in a changing climate, conserving and enhancing the natural environment and reducing pollution. This is in addition to actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
>
> Quite clearly, as with many planning decisions, there is a need to balance all material considerations and it is highly likely that future occupants of the two dwellings proposed would be heavily reliant upon the private motor car to access everyday services, community facilities and sources of employment.
>
> … ."

The inspector's decision letter

10. The inspector identified four main issues in the section 78 appeal: first, "[the] effect of the development on the character and appearance of the area"; second, "[the] effect on the setting of neighbouring listed buildings"; third, "[accessibility] to services and facilities"; and fourth, "[the] overall balance and whether the appeal proposal constitutes sustainable development in the countryside" (paragraph 2).

11. Before dealing with those four issues, the inspector considered relevant planning policy in the development plan and in the NPPF. He said that Policy CS5 of the Braintree District Council Local Development Framework Core Strategy (adopted in September 2011) "strictly controls development outside town development boundaries and village envelopes to uses appropriate to the countryside", and that Policy RLP2 of the Braintree District Local Plan Review (adopted in July 2005) "has a similar effect" (paragraph 3). He referred to the policies in paragraphs 49 and 14 of the NPPF (paragraph 4), noted that the council "now acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites"

(paragraph 5), concluded that "[on] the most favourable analysis, deliverable housing sites fall significantly below the 5-year supply required by the Framework", and that "Policies CS5 and RLP2 … must be considered out-of-date so that Framework paragraph 14 is also engaged" (paragraph 6).

12. On the first main issue, the effect of the development on the character and appearance of the area, the inspector said (in paragraphs 8 and 9 of his decision letter):

> "8. Blackmore End is a recognisable village and is characterised by linear development extending along several roads. There is a dispersed pattern of development along Lower Green Road. The Council refers to the change to village character and to the suburbanising effect it considers would result from the development. However, the site has previously been occupied by two agricultural buildings and the two dwellings would reflect the footprint of those buildings. The proposed dwellings would be single storey and would be of a simple form. The site is well screened in views from the road by hedging, although the provision of visibility splays would reduce that to some extent. Much of the appeal site would remain undeveloped and further planting could be required by condition. A condition could also control extensions and further buildings, so that the site could retain much of its open character. The fenestration and doors shown on the submitted drawing would give the dwellings an inappropriate suburban character. However, there is scope to require revised details of those matters, allowing a more appropriate design to be achieved. Details of materials could also be controlled by condition to reflect local character.
>
> 9. I conclude that subject to appropriate conditions the development would not result in material harm to the character and appearance of the surrounding area. The site is not within a settlement boundary and the development would therefore conflict with policies CS5 and RLP2. It would not accord with the development plan's approach of concentrating development in towns and in village envelopes. On the other hand there are a number of dwellings nearby and the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers."

13. On the second main issue, the inspector concluded that there would not be material harm to the settings of the grade II* listed Wright's Farmhouse to the north of the site or to the setting of the grade II listed Lealands Farmhouse to the south (paragraph 13).

14. On the third main issue, the accessibility of services and facilities, he concluded (in paragraph 14):

> "14. Blackmore End has a very limited range of services and facilities. There is, for example, no local shop, the nearest being about 2 miles away. In its emerging Local Plan the Council identifies 5 Service Villages. They do not include Blackmore End, the nearest being Sible Hedingham which is about 4 miles away. It is likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment. While this weighs against the development, it is consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas."

15. Under the heading "The Overall Balance and Sustainable Development", the fourth main issue, the inspector stated his main conclusions (in paragraph 16):

> "16. Accessibility to services, facilities and employment from the site other than by car would be poor. On the other hand, the development would make a modest contribution to meeting housing need. In addition, subject to appropriate conditions, there would not be material harm to the character and appearance of the surrounding area or to the setting of listed buildings. A minor economic benefit would arise from developing the site and the economic activity of those occupying the dwellings. There would be conflict with policies CS5 and RLP2 but those policies are out-of-date and are worthy of limited weight. Applying the test set out in Framework paragraph 14, I find that there are not adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole. Nor are there specific policies in the Framework which indicate that the development should be restricted. The proposal would amount to sustainable development. Permission should be granted in accordance with the Framework's presumption in favour of sustainable development."

Did the inspector misinterpret and misapply the policy in paragraph 55 of the NPPF?

16. The relevant legal principles are clear and uncontentious. They need not be set out at length. The interpretation of planning policy, whether in the development plan or in statements of national policy, is ultimately a matter for the court. When the meaning and effect of a planning policy are contested, the court must avoid the mistake of treating the policy in question as if it had the force or linguistic precision of a statute – which it does not – and must bear in mind that broad statements of policy do not lend themselves to elaborate exegesis. The court's task is to discern the objective meaning of the policy as it is written, having regard to the context in which the policy sits (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, at paragraphs 19 to 22, Sullivan L.J.'s judgment in *Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2015] P.T.S.R. 274, at paragraph 18, and the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraph 24, and the judgment of Lord Gill at paragraphs 72 to 74). The application of policy, however, is for the decision-maker, on a true understanding of what the policy means, but with freedom to exercise planning judgment as the policy allows or requires – subject to review by the court on *Wednesbury* principles alone (see my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraphs 41 and 42).

17. The court will not lightly accept an argument that an inspector has proceeded on a false interpretation of national planning policy or guidance (see Lord Carnwath's judgment in *Suffolk Coastal District Council*, at paragraph 25). Nor will it engage in – or encourage – the dissection of an inspector's planning assessment in the quest for such errors of law (see my judgment in *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraph 7). Excessive legalism in the planning system is always to be deprecated (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraphs 22 and 50).

18. The policy with which we are concerned – the policy in paragraph 55 of the NPPF – has already received some attention in this court – though only slight. In *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141, Lewison L.J., in paragraph 15 of his judgment, said the relevant definition of previously developed land took as its starting point that the proposed development would be within the curtilage of an existing permanent structure, and it followed, therefore, that "a new dwelling within that curtilage will not be an 'isolated' home" for the purposes of the policy in paragraph 55.

19. In the court below, Lang J. recorded the council's argument, in the light of the policies in paragraphs 28 and 55 of the NPPF and the corresponding guidance in the PPG, that "in applying [paragraph 55 of the NPPF], and considering whether proposed development amounted to "new isolated homes in the countryside", it was irrelevant that the development was located proximate to other residential dwellings", and that "[the] key question was whether it was proximate to services and facilities so as to maintain or enhance the vitality of the rural community" (paragraph 22 of the judgment).

20. The judge noted that the word "isolated" in paragraph 55 is not defined in the NPPF. In her view, however, it was to be given its "ordinary objective meaning of "far away from other places, buildings or people; remote" …" (paragraph 24 of the judgment). As for the "immediate context" of the policy, she said "[this] suggests that "isolated homes in the countryside" are not in communities and settlements and so the distinction between the two is primarily spatial/physical" (paragraph 25). In its "broader context" the policy was, in her view, seeking to "promote the economic, social and environmental dimensions of sustainable development, and to strike a balance between the core planning principles [in paragraph 17 of the NPPF] of "recognising the intrinsic character and beauty of the countryside" and "supporting thriving rural communities within it" …". Thus the council's "analysis of the policy context [was] far too narrow in scope" (paragraph 26). The policy in favour of locating housing "where it will "enhance or maintain the vitality of rural communities"" was "not limited to economic benefits". The word "vitality" was "broad in scope and includes the social role of sustainable development …". The council's restriction of "isolated" homes to those that were "isolated from services and facilities" would "deny policy support to a rural home that could contribute to social sustainability because of its proximity to other homes" (paragraph 27). Paragraph 55 of the NPPF "cannot be read as a policy against development in settlements without facilities and services since it expressly recognises that development in a small village may enhance and maintain services in a neighbouring village, as people travel to use them" (paragraph 28). She concluded that the council was "seeking to add an impermissible gloss to [paragraph 55 of the NPPF] in order to give it a meaning not found in its wording and not justified by its context" (paragraph 29). She saw support for her interpretation of the policy in what Lewison L.J. had said about it in his judgment in *Dartford Borough Council* (paragraphs 30 and 31).

21. It followed, in the judge's view, that the inspector's understanding of the policy, in paragraph 9 of his decision letter, was correct (paragraph 32). She saw nothing unlawful in the remainder of his assessment of the proposal on its planning merits (paragraphs 33 to 37). She was satisfied, therefore, that the inspector had "correctly interpreted [paragraph 55 of the NPPF], and applied it properly to the facts and matters which arose in this appeal" (paragraph 38).

22. For the council, Dr Ashley Bowes submitted that the policy in paragraph 55 of the NPPF establishes a presumption against "new isolated homes in the countryside", which competes with the "presumption in favour of sustainable development" in paragraph 14. It is capable of disengaging the so-called "tilted balance" in that paragraph, because it is one of the "specific policies" in the NPPF that "[indicates] development should be restricted" (see my judgment in *Barwood v East Staffordshire Borough Council*, at paragraph 22). If a proposal offends the policy in paragraph 55, its prospects of gaining planning permission may therefore be much reduced. Dr Bowes submitted that the inspector, having failed to grasp the true meaning of the policy in paragraph 55, also failed to apply the policy for the "presumption in favour of sustainable development" in paragraph 14 of the NPPF, and that his decision was therefore unlawful.

23. Dr Bowes' main submission was that Lang J.'s construction of the policy in paragraph 55 was incorrect, that the word "isolated" in the third sentence of paragraph 55 can mean either physical or functional isolation, and that, in the application of the policy, both of these two concepts are relevant and significant. The judge's focus on physical isolation, as opposed to functional, was in error. A decision-maker must always consider two questions: first, "whether the site is physically isolated relative to settlements and other development", and secondly, of equal importance, "whether the site is functionally isolated relative to services and facilities". Only if both of those questions are answered in the negative will the proposal comply with the policy – unless "special circumstances" are demonstrated. To consider only the first question would be to ignore, and fail to give effect to, the basic purpose of the policy, which is to sustain the rural economy by supporting local services and facilities. The Government's intention here, Dr Bowes submitted, was that new housing in rural areas should be located so as to support those services and facilities, and thus maintain and enhance the vitality of rural communities. As the guidance in paragraph 50-001-20160519 of the PPG makes plain, housing has an "essential" role to play in ensuring the viability of those services and facilities. Therefore, Dr Bowes contended, under the policy in paragraph 55 of the NPPF, housing that would be "isolated" from services and facilities should be avoided unless there are "special circumstances".

24. This argument seems somewhat different from that presented to the judge. The contention before her, as I understand it, was that the fact of a site's presence within a rural settlement, close to other dwellings, was irrelevant under the policy in paragraph 55, at least if the settlement lacked services and facilities of its own.

25. Lang J.'s analysis was supported by Mr Stephen Whale for the Secretary of State and Mr Paul Shadarevian Q.C. for Greyread and Granville.

26. In my view the judge's conclusions were sound, and her understanding of the policy in paragraph 55 correct.

27. Our task, as Mr Whale and Mr Shadarevian submitted, is to construe the words of the policy itself, reading them sensibly in their context. This is not a sophisticated exercise, and it need not be difficult. It is, in fact, quite straightforward. Planning policies, whether in the development plan or in the NPPF, ought never to be over-interpreted. As this case shows, over-interpretation of a policy can distort its true meaning – which is misinterpretation.

28. The first thing to be said about the policy in paragraph 55 is that it is expressed in general and unprescriptive terms. It does not dictate a particular outcome for an application for

planning permission. It identifies broad principles and indicates a broad approach. Local planning authorities are advised what "should" be done. The policy is not expressed as containing a "presumption", and I would not read it as creating one. Rather, it indicates to authorities, in very broad terms, how they ought to go about achieving the aim stated at the beginning of paragraph 55: "[to] promote sustainable development in rural areas". It does not set specific tests or criteria by which to judge the acceptability of particular proposals. It does not identify particular questions for a local planning authority to ask itself when determining an application for planning permission. Its tenor is quite different, for example, from the policies governing the protection of the Green Belt, in paragraphs 87 to 92 of the NPPF. The use of the verb "avoid" in the third sentence of paragraph 55 indicates a general principle, not a hard-edged presumption.

29. Secondly, the policy explicitly concerns the location of new housing development. The first sentence of paragraph 55 tells authorities where housing should be "located". The location is "where it will enhance or maintain the vitality of rural communities". The concept of the "vitality" of such a community is wide, and undefined. The example given in the second sentence of paragraph 55 – "development in one village" that "may support services in a village nearby" – does not limit the notion of "vitality" to a consideration of "services" alone. But it does show that the policy sees a possible benefit of developing housing in a rural settlement with no, or relatively few, services of its own. The third sentence of the paragraph enjoins authorities to avoid "new isolated homes in the countryside". This is a distinction between places. The contrast is explicitly and simply a geographical one. Taken in the context of the preceding two sentences, it simply differentiates between the development of housing within a settlement – or "village" – and new dwellings that would be "isolated" in the sense of being separate or remote from a settlement. Under the policy, as a general principle, the aim of promoting "sustainable development in rural areas" will be achieved by locating new dwellings within settlements and by avoiding "new isolated homes in the countryside". The examples of "special circumstances" given in the policy illustrate particular circumstances in which granting planning permission for an isolated dwelling in the countryside may be desirable or acceptable. But what is perfectly plain is that, under this policy, the concept of concentrating additional housing within settlements is seen as generally more likely to be consistent with the promotion of "sustainable development in rural areas" than building isolated dwellings elsewhere in the countryside. In short, settlements are the preferred location for new housing development in rural areas. That, in effect, is what the policy says.

30. Thirdly, the adjective "isolated", which was the focus of argument before us, is itself generally used to describe a location. It is not an unfamiliar word. It is commonly used in everyday English. Derived originally from the Latin word "insula", meaning an "island", it carries the ordinary sense of something that is "… [placed] or standing apart or alone; detached or separate from other things or persons; unconnected with anything else; solitary" (The Oxford English Dictionary, second edition). This was the meaning favoured by the judge (in paragraph 24 of her judgment), and there is no dispute that in this respect she was right.

31. In my view, in its particular context in paragraph 55 of the NPPF, the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, "isolated" in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.

32. What constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definitions of a "community", a "settlement", or a "village". There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach. Whether, in a particular case, a group of dwellings constitutes a settlement, or a "village", for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker. In the second sentence of paragraph 55 the policy acknowledges that development in one village may "support services" in another. It does not stipulate that, to be a "village", a settlement must have any "services" of its own, let alone "services" of any specified kind.

33. Does this reading of the policy in paragraph 55 fit the broader context of the policies for sustainable development in the NPPF and guidance in the PPG? I think it does.

34. Paragraph 7 of the NPPF refers to the "three dimensions to sustainable development: economic, social and environmental", in which the "social role" involves "supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being …". Of the 12 "core land-use planning principles" in paragraph 17, the fifth is to "take account of the different roles and character of different areas … recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it". The eleventh is "actively [to] manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable". And the twelfth is to "take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs". Paragraph 28 states that local and neighbourhood plans should "promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship". The policy in paragraph 29 recognizes that "different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas". And the policy in paragraph 34 says that "[plans] and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised", but that "this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas".

35. None of those policies suggests a different understanding of the policy in paragraph 55 from mine. Indeed, if anything, I think they tend to confirm it.

36. In my opinion the language of paragraph 55 is entirely unambiguous, and there is therefore no need to resort to other statements of policy, either in the NPPF itself or elsewhere, that might shed light on its meaning. Mr Whale suggested that the use of the PPG to assist in construing policies in the NPPF would be inappropriate in principle. This is not something we have to decide, because the meaning of the policy we are dealing with here is plain on its

face and requires no illumination from the PPG or any other statement of national policy or guidance. But I doubt that it would be right to exclude the guidance in the PPG as a possible aid to understanding the policy or policies to which it corresponds in the NPPF. There may be occasions when that is necessary. But this, in my view, is not such a case.

37. In any event, the interpretation of the policy that I consider to be right seems entirely consistent with the guidance on plan-making in paragraph 50-001-20160519 of the PPG, including the proposition that "settlements can play a role in delivering sustainable development in rural areas – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence".

38. This all seems at one with Lewison L.J.'s observation about the policy – brief as it was – in paragraph 15 of his judgment in *Dartford Borough Council*.

39. I do not accept Dr Bowes' argument that the word "isolated" in paragraph 55 must be understood as meaning either (a) "physically isolated" or (b) "functionally isolated" or "isolated from services and facilities"; that the decision-maker must therefore address two questions – first, whether the proposed new dwelling would be physically separate or remote from any other dwelling, and secondly, whether it would be isolated from services and facilities; and that if the proposed development would be either separate or remote from other dwellings or separate or remote from services and facilities, it offends the policy. This would be a strained and unnatural reading of the policy. In my view it is neither necessary nor appropriate to gloss the word "isolated" by reading an additional phrase into paragraph 55 whose effect would be to make the policy more onerous than the plain meaning of the words it actually contains. No such restriction is apparent in the policy, or, in my view, implicit in it.

40. On the interpretation suggested by Dr Bowes, the question of whether a proposed new dwelling on a site within a rural settlement would be an "isolated" new home under the policy would depend, or at least potentially depend, on the presence or absence of services in that particular settlement, rather than, say, in a neighbouring village. This could have the surprising consequence that a proposed dwelling on a site within a settlement, perhaps with several existing dwellings either side of it or surrounding it, would have to be regarded as a "new isolated [home] in the countryside", simply because that settlement did not have any "services" of its own, whereas a similarly located dwelling in a smaller settlement that happened to have "services" of some kind within it – perhaps a shop or a public house – would not be "isolated". Dr Bowes did not seek to deny this. And it would also follow that each and all of the existing dwellings in a settlement without "services" of its own would then have to be regarded as "isolated" too. It seems to me that this would be not merely an artificial construction of the policy, but also wholly unrealistic. I cannot accept that the Government intended the policy to have such an effect, or, if it did, that it would have failed to spell this out in paragraph 55.

41. Reading the policy as I would read it, as we were urged to do by the Secretary of State through Mr Whale, and as I think the Government plainly did intend, reflects common sense – as well as being the literal and natural construction. As the judge acknowledged (in paragraph 27 of her judgment), a policy directed to enhancing and maintaining the "vitality" of rural communities is a policy that embraces the "social" dimension of sustainable development. And as she said, to restrict the concept of an "isolated home" to one that is

"isolated from services and facilities" would be to deny the policy's support – indeed, would turn it against – proposed dwellings that "could contribute to social sustainability because of [their] proximity to other homes". This would seem contrary to the aim of the policy to maintain and enhance "the vitality of rural communities", and would diminish the acknowledged benefit of development in one settlement supporting "services" in another.

42. I therefore reject Dr Bowes' submission that the inspector took too narrow a view of the expression "new isolated homes in the countryside". To give effect to the policy in paragraph 55, the inspector was not obliged to ask himself whether the proposed development would be "functionally" isolated as well as "physically". He was required only to consider whether it would be physically isolated, in the sense of being isolated from a settlement. And he did that.

43. None of the descriptive parts of paragraphs 8 and 9 of the decision letter is said to be wrong in fact. There is no dispute that the inspector was right to describe Blackmore End as he did in paragraph 8 of his decision letter: "a recognisable village". As he said in paragraph 9, there were "a number of dwellings nearby". It is also undisputed that Blackmore End is not a settlement without any services and facilities. The inspector found, in paragraph 14 of the decision letter, that the settlement "has a very limited range of services and facilities". That Blackmore End is indeed a settlement, and that there are dwellings a short distance to the north of the appeal site, others a short distance to the south, and another on the other side of the road, to the west, is obvious when one looks at a map. And it is not contested, or contestable, that if the word "isolated" in paragraph 55 of the NPPF means physically isolated in the sense of being isolated from a settlement, the inspector was entitled – as a matter of fact and planning judgment, if not simply as a matter of fact – to conclude at the end of paragraph 9 that "the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers".

44. In the circumstances, there was no need for "special circumstances" to be identified to justify a development of "new isolated homes in the countryside". This was not such a development.

45. In my view therefore, the inspector did not misinterpret or misapply the policy in paragraph 55 of the NPPF. His understanding of the policy was accurate, and his application of it impeccable.

46. Nor did he fail to apply the policy for the "presumption in favour of sustainable development" in paragraph 14, given the agreed absence of a five-year supply of housing land (see paragraph 22(2) of my judgment in *Barwood v East Staffordshire Borough Council*). Even if one were to assume that the policy in paragraph 55 fell within the ambit of the exception in paragraph 14 for "specific policies" in the NPPF that "indicate development should be restricted" – which may or may not be so – the inspector, having understood the policy correctly and applied it lawfully, concluded in paragraph 9 of his decision letter that the proposal did not offend it. And he went on, in paragraph 16, to conclude not only that there were no "adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole" – the first exception, or the first limb of the exception, in paragraph 14 – but also, expressly, that there were no "specific policies in the Framework which indicate that the development should be restricted" – the second exception, or the second limb. He was satisfied that the proposal amounted to "sustainable development". And he was also satisfied that it earned the

"presumption in favour of sustainable development". This conclusion demonstrates a true understanding and proper application of the policy in paragraph 14 of the NPPF.

47. As Mr Shadarevian pointed out, when one reads the decision letter fairly as a whole, it is clear that in assessing the proposal on its planning merits the inspector considered all three dimensions of "sustainable development": the "economic" role, the "social", and the "environmental". He did not neglect the fact that Blackmore End "has a very limited range of services and facilities". He found it was "likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment". He acknowledged that "this weighs against the development". But he also recognized that it was "consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas" (paragraph 14 of the decision letter). And in drawing together his conclusions on the main issues when he came to consider "The Overall Balance and Sustainable Development", he took into account his finding that "[accessibility] to services, facilities and employment from the site other than by car would be poor" (paragraph 16). Those conclusions did not, however, lead him to the view that any policy of the NPPF was breached. This was a matter of planning judgment for him. I do not think his approach can be faulted. His conclusions are not vitiated by any misinterpretation or misapplication of NPPF policy. They are unassailable in a legal challenge.

48. In my view therefore, the inspector made no error of law, and the judge was right to uphold his decision.

Conclusion

49. For the reasons I have given, I would dismiss this appeal.

Lord Justice McCombe

50. I agree.

The Planning Inspectorate

Appeal Decision

Hearing Held on 29 June 2020

Site visit made on 1 July 2020

by David Richards BSocSci DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 July 2020

Appeal Ref: APP/H1840/W/19/3241879
Corner Mead, Newland Lane, Droitwich Spa, Worcestershire WR9 7JH

- 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 Build 1 against the decision of Wychavon District Council.
- The application Ref 19/01679/OUT, dated 22 July 2019, was refused by notice dated 25 September 2019.
- The development proposed is up to 9 self-build dwellings including new means of access off Newland Lane.

Decision

1. The appeal is allowed and planning permission is granted for up to 9 self-build dwellings at Corner Mead, Newland Lane, Droitwich Spa, Worcestershire WR9 7JH in accordance with the terms of the application, Ref 19/01679/OUT, dated 22 July 2019, subject to the conditions set out in the attached Schedule.

Application for costs

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

Main Issues

3. The main issues are the effect on the character and appearance of the surrounding area, and whether the Council has made adequate provision for the delivery of self-build dwellings in accordance with the requirements of the Self Build and Custom Housebuilding Act 2015 (The Act).

Reasons

4. The application was made in outline and included provision of a new access, with matters relating to appearance, landscaping, layout and scale reserved.

5. The development plan includes the South Worcestershire Development Plan (SWDP) which was adopted in February 2016. Policy SWDP2 is concerned with the Development Strategy and Settlement Hierarchy. The development strategy and site allocations are based on a number of principles, including provision for and facilitation of the delivery of objectively assessed needs to 2030, safeguarding of the open countryside, the effective use and reuse of brownfield land. Most development is focussed on urban areas, which include Droitwich Spa. Under criterion C, the open countryside is defined as land

beyond any development boundary, where development will be strictly controlled and limited to a number of defined categories, none of which include the construction of self-build housing. It is common ground that the appeal proposal conflicts with Policy SWDP2 C as it is located outside of the defined development boundary.

6. The SWDP is under review (SWDPR). However, as it as at an early stage of preparation, it carries very little weight.

7. Section 5 of the NPPF sets out the Government's objective of significantly boosting the supply of homes and states that it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The size, type and tenure of housing for different groups in the community should be assessed and reflected in planning policies, including people who wish to commission or build their own homes. Footnote 26 sets out the requirements of the Self Build and Custom Housebuilding Act 2015 which are also explained in Planning Practice Guidance (PPG).

8. Paragraph 023 of the PPG provides that relevant authorities must give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority's register during a base period. The first base period begins on the day on which the register is established and ends on 30 October 2016. Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period. At the end of each base period, relevant local authorities have 3 years in which to permission an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period.

Effect on character and appearance of the area

9. The appeal site lies in the countryside on the outskirts of Droitwich Spa, beyond the development boundary defined in the SWDP and detached from it by a gap of some 110 metres. It is located in the Parish of Salwarpe but is more closely related to the town of Droitwich Spa. The SWDP made provision for a large urban extension (site allocation SWDP49/2) which is currently well under construction and lies 110m from the appeal site

10. The site extends to about 0.68 hectares. It is bounded to the south by Newland Lane and to the west by Newland Road. It is currently occupied by a dwelling and part of the site is garden land, the remainder having last been in agricultural or grazing use. Development in the immediate vicinity is sporadic in nature and the area retains a rural character, albeit one that is now very close to, and influenced by, the urban edge created by the new development. Neither the Council's refusal reason nor statement of case address the impact on the character of the countryside in any detail.

11. The Council refers to the suburban appearance of the indicative layout but notes that layout, scale and appearance are reserved matters, and suggests means by which greater variety might be achieved to reflect the more organic pattern of the area. With regard to effects on the landscape, the committee report recorded no objection on landscape or visual impact grounds, subject to

the attachment of conditions addressing tree and hedgerow retention, new planting and protection during construction. There are established trees and planting which could provide effective screening, particularly on the Newland Road frontage.

12. I accept that the development would lead to an intensification of built development in an urban fringe location. I also agree that the site cannot properly be described as adjacent to the settlement, (given the normal meaning of 'adjacent' as adjoining or next to) as there are other low-density properties and small fields intervening. However, while the area currently has a pleasant semi-rural character, the countryside is very close to the urban edge, and is not covered by any relevant landscape policy designation, nor does it lie within the Green Belt, which lies to the south of Newland Lane. I conclude the actual harm to the countryside setting of the current urban area of Droitwich Spa would be very limited, and could be mitigated by careful design and landscaping.

Whether the council has made adequate provision for self-build dwellings in accordance with the provisions of the Self Build and Custom Housebuilding Act 2015.

13. The Council's position is that the development is in conflict with an up-to date development plan (the SWDP). It considers that the SWDP policies are not 'absent' or 'silent' on the appeal proposal, which in the Council's view entails open market residential development in the open countryside, beyond the development boundary.

14. The Appellant does not dispute that the Council can demonstrate a 5 year Housing Land Supply (5YHLS). Footnote 7 to Paragraph 11 of the NPPF states that policies for the provision of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5YHLS. On this basis, the Council considers that all SWDP policies concerning the provision of housing are to be afforded full weight, and the appeal should be determined in accordance with the Development Plan.

15. The Appellant accepts that the proposal conflicts with Policy SWDP2 C, but considers this is no more than a technical breach of one criterion of one policy. In the Appellant's submission the proposal accords with the strategic objectives and spirit of Policy SWDP2 and the development plan as a whole, and there are significant material planning considerations which indicate that permission should be granted. The Appellant believes that the provision of self-build and custom housebuilding in what is a location with good accessibility to shops and facilities is a fundamental material planning consideration which is clearly capable of outweighing the technical conflict with the development plan.

16. This is so because the Appellant believes that the Council have not complied with their duty under the 2015 Act to permit sufficient self-build and custom housebuilding plots to meet the need as stipulated on the register.

17. The Council publishes an annual progress report for self-build and custom housebuilding. The first base period for the local planning authority is 1 April 2016 – 31 Oct 2016. Data from the council's Annual Progress Reports[1] gives the number of entries for each base period as follows:

[1] Wychavon District Council Self Build and Custom Housebuilding Progress Reports December 2017, December 2018 and December 2019

Base Period	Part 1 Entries	Part 2 Entries	Total Entries
1 April 2016 – 31 Oct 2016			51
31 Oct 2016 – 31 Oct 2017	35	13	48
31 Oct 2017 – 31 Oct 2018	41	26	67
31 Oct 2018 – 31 Oct 2019	50	37	87

18. The Council's position is that they have granted sufficient permissions to meet the demand on the self-build register and that there are no exceptional circumstances to justify determining the appeal other than in accordance with the development plan.

19. In support of its position the Council referred to the SWDP Examination, where the Inspector took the view that self-build and custom build should not be specifically identified in housing allocations as they were considered to represent another form of market housing which could come forward on the numerous small sites allocated in villages for under 10 dwellings, or smaller policy compliant sites that were ruled out as too small to meet the allocation threshold of +5 dwellings. The Council cited a number of appeal decisions which supported this approach[2].

20. In the committee report and at the hearing, the Council referred to an alternative requirement for the first base period of 11 dwellings. This is not taken from the progress reports, which appear to be the only relevant publicly available documents. It was explained at the hearing that the Council had applied eligibility criteria to the gross figure. People who were on the register were contacted and asked to provide details of local eligibility, to avoid a situation where people interested in self-build could put themselves on a number of different registers, thus potentially inflating overall demand for self-build sites. Those who didn't respond were not taken off the register but retained in Part 2.

21. The Self-build and Custom Housebuilding Act 2015 was amended by the Housing and Planning Act 2016 to enable local authorities to include up to two optional local eligibility tests, only to be applied by local authorities where there is strong justification for doing so. A local connection test should only be applied in response to a recognised local issue. If a local authority chooses to set a local eligibility test it is required to have two parts to the Register. Individuals or Associations of individuals who apply for eligibility criteria must be entered on Part 1. Those who meet all eligibility criteria except for a local connection test must be entered on Part 2 of the Register. Only Part 1 entries count towards the number of suitable serviced plots that they must grant development permission for.

22. The Council's states that the Register was established on 1 April 2016, but went through an update period during May and June 2017 when the local connection test was introduced. During this period, individuals already on the Register were asked to provide an update to remain on the Register, and were

[2] APP/H1840/W/17/3185471; APP/H1840/W/16/3151822;

automatically placed on Part 1 if such an update was provided irrespective of whether or not they could meet the local connection test. During the update period, a number of entries were removed from the Register if an update was not provided. There were originally 51 entries on the Register during the first base period, however, this figure dropped to 11 as only 11 of these provided an update.

23. The Appellant says there is no justification for applying the local eligibility criteria retrospectively to the first base period. Authority to split the register into two parts was only introduced in 2016 through the Housing and Planning Act and brought into force through the Self-build and Custom Housebuilding Regulations 2016. The commencement date for these provisions was 31 October 2016 and the relevant Planning Practice Guidance was not updated in 2017 in this respect.

24. In view of the need for transparency in such matters I share the Appellant's concern that the reduction of the numbers on the register from 51 to 11 is lacking in clear justification. There has been no opportunity to scrutinise the further consultation undertaken by the Council, or whether people on the register were aware of the implications of not establishing local eligibility in relation to the Council's duties in respect of granting planning permissions relating to the first base period. No explanation of the need for eligibility criteria to be applied in Wychavon was given or any indication of a recognised local issue to justify it. A further 23 entrants were included in Part 1 of the register in the second base period (01/11/16 – 31/10/17) according to the table in the Council's statement. It seems at least possible that some of these were people included in the first base period who failed initially to respond to the Council's call for further information and so were excluded.

25. With regard to the supply of sites for self-build, the Council provides evidence of planning permissions granted for 11 serviced plots in the period 1 April 2016 to 31 October 2019. All refer to self-build dwellings as part of the description of development and supported by additional evidence in the form of references to self-build in Design and Access or Planning Statements or self-build exemption CIL claim forms. The Council considers that this provides clear evidence for enough serviced plots to meet the demand in the District for the first base period.

26. The Appellant disagrees and submits that a legal mechanism is required to ensure that the permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding, as set out in the 2015 Act. The Appellant refers to the 'I'm Your Man' case to support the proposition that the Council cannot rely on the description of development to secure self-build homes. On this basis, it would be necessary for an express condition or a s106 legal obligation to ensure that a permission is restricted to self-build. I agree with the Council that this would be too restrictive and would include situations such as infill plots where there would be no reason to insist on an s106 obligation, for example policy compliant infill plots or developments on small housing allocations which could be considered to satisfy a demand for self-build if developed accordingly. The duties do not require a level of completions to be achieved in a particular time frame.

27. In response to the Appellant's claim that the Councils approach is 'overly optimistic' the Council refers to an additional 27 planning permission which

have been granted in the period between 1 April 2016 to 31 October 2019 for a total of 35 new dwellings where the planning application has been submitted with a signed Community Infrastructure Levy Form Self Build Exemption Claim Form (CIL Exemption Form), as detailed in latest Progress Report (December 2019). The Council contend that each of these can also be counted towards meeting the requirement as the CIL Exemption Form is a legally binding agreement whereby the applicant is required to declare that the project meets the definition of self-build and will occupy the dwelling for at least three years after its completion.

28. The Appellant cites a relevant recent Appeal Decision, dated 25 June 2019 concerning land off Hepworth Road, Woodville DE11 7DW[3]. The application was for self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure. The site was outside the defined limits to development as defined in the relevant Local Plan. As regards the Council's duties under the 2015 Act the Inspector had this to say:

22. The Council confirms that as at April 2019, there are 54 individuals on the Council's Self-Build and Custom Housebuilding Register and that as of April 2019, it has permitted 4 plots in the period since 31 October 2016. Since 31 October 2016 the Council has permitted an additional 133 single plot dwellings which have been distributed across the District. However, the Council has not provided any information to suggest that there are provisions in place to ensure that any of the 133 single dwelling permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended).

23. To my mind this raises considerable doubts as to whether any of the single dwelling permissions would count towards the number of planning permissions the Council has granted for serviced plots and thus whether these consents would actually contribute towards the delivery of self-build and custom housebuilding in the District. Importantly, the S.106 Agreement submitted with the appeal proposal contains provisions to ensure that the proposed dwellings on the appeal site would meet the definition of self-build and custom housebuilding. There is no evidence before me of a similar mechanism which would secure the delivery of self-build and custom housebuilding on the plots referred to in Appendix 3 of the Council's Statement. I consider it would be unreasonable to include any of the single dwelling permissions within the calculation of self-build and custom housebuilding permissions granted in the District.

29. The Inspector found in that case that only 4 plots identified by the Council appeared to comply with the definition of self-build and custom build housing in the 2015 Act. He discounted sites that were not subject to a planning condition or a planning obligation requiring a self-build or custom build house to be built on the site that accords with the statutory definition. He concluded on the evidence available that there was a shortfall of permissions for at least 5 serviced plots to meet the demand identified from the first base period and found that the ability of the appeal proposal to address the unmet demand for serviced plots that arose in base period 1, base period 2 and part of base period 3 in a comprehensively planned manner is a material consideration that weighs strongly in favour of the appeal proposal, and that the appeal proposal

[3] APP/G2435/W/18/3214451

was necessary to enable the Council to meet its statutory obligations with respect to the duty under Section 2A of the 2015 Act (as amended), given that there appeared to be an inadequate supply of serviced plots coming forward for development in the District.

30. Notwithstanding the conclusions of this Inspector, I do not consider that only those permissions subject to an express condition or s.106 obligation should be counted towards meeting the Section 2A requirement, for reasons set out above. To my mind his would be too onerous a requirement, and could lead to the exclusion of self-build sites within development boundaries ever being counted towards meeting Section 2A, which appears to me to conflict with the objective of promoting self-build as a means of meeting identified housing need, and in a wide range of circumstances. Both the Woodville site and the site under consideration in this appeal were promoted as exceptions sites, where such an arrangement would be necessary to justify making the exception to the policies in an otherwise up-to-date development plan.

31. Nevertheless I do not consider that the evidence provided by the Council is sufficiently reliable for me to conclude that the Council has met its duty under Section 2A. To my mind, some further analysis of the raw data is necessary, which as a minimum relates permissions granted to meeting the needs of named individuals or groups identified in part 1 of the Register. It is not sufficient to rely on CIL exemption forms without this type of further analysis, which is lacking in the Council's evidence. I conclude that the Council has not satisfactorily demonstrated that it has granted enough permissions for serviced plots to meet the demand for self-build and custom build plots in the first base period.

Other matters

32. The parties agree that the site has a reasonable degree of accessibility to the facilities and services available in the wider area of Droitwich Spa, and that the site is locationally sustainable in this respect.

33. Local residents raised a number of issues in their representations, and at the hearing. There was concern regarding the traffic impact of the proposal, and the effect of the new access arrangements on road safety. The Appellant argued that there would be a clear safety benefit, as the existing sub-standard access would be replaced by a designed access that met all the relevant visibility standards. A resident considered that this would be outweighed by the significant increase in vehicle movements arising from 9 dwellings as opposed to one. It was also stated that Newland Drive carried a lot of heavy traffic, though it was acknowledged that some of this was temporary, being attributable to the construction of the urban extension.

34. I note that the Highways consultee asked for a deferral of the application for further information. However, a previous application, to which the consultee had no objection, proposed a similar access arrangement[4]. The previous application was for 10 dwellings, while this is for up to 9, with the existing dwelling retained. However the difference is not material.

35. I acknowledge that extra traffic would be unwelcome to existing residents. However, I do not consider that the increased number of trips would be

[4] 18/00906/OUT - Outline application for up to 10 self-build dwellings including a new means of access off Newland Lane - Refused 7 August 2018.

significant in the context of existing usage of the local road network, and I conclude that the proposed arrangement would be acceptable in terms of traffic safety and effect on the living conditions of neighbours.

36. Residents were also concerned about the effect of development on their living conditions, during the construction period and thereafter. Layout and appearance are reserved matters, so that the detailed design of the new development could ensure reasonable separation distances between the new dwellings and neighbouring properties to protect the living conditions of existing residents. With respect to the construction period, a site management plan is proposed to address such concerns and in my view would be effective in minimising potential noise and other disturbance to residents. In the event of the appeal being allowed, this could be secured by a condition. I accept that further disturbance would be unwelcome, particularly at a time when work on the urban extension may be drawing to a close. However, I do not consider these concerns would be sufficient to stand in the way of allowing the appeal in the absence of other convincing reasons.

37. Another resident raised concerns with local flood risk, particularly on Newland Road at its lowest point, which is reported to flood after heavy rain. The Council's drainage engineer commented at application stage that the site is in flood zone 1 and in an area at low risk of surface water flooding. Surface water drainage is proposed via soakaways and areas of hard standing will make use of permeable materials or, if grounds conditions are unsuitable, an alternative sustainable solution will be required. The principle of sustainable drainage is that surface water is intercepted so that flows are no greater from a site as a result of development than the current situation. Having regard to the drainage engineer's comments, there is no reason to suppose that an acceptable drainage system cannot be achieved.

Conditions

38. A schedule of agreed conditions was included in the Statement of Common Ground (SOCG). The Appellant expressly agreed to the inclusion of the suggested pre-commencement conditions at the hearing. The application was made in outline (except for the access arrangements) so reserved matters conditions are necessary to ensure the development achieves a satisfactory appearance, landscaping, layout and scale (Conditions 1, 2, 3, 5, 18, 20 and 23). Condition 4 is necessary to protect trees to be retained from damage during construction. Condition 6 is necessary to avoid any risk of surface water flooding. Conditions 7 and 11 are necessary to ensure satisfactory visibility in the interests of highway safety. Conditions 8 and 9 are necessary to ensure appropriate provision for cars and cycle parking. Conditions 10 and 12 are necessary to encourage the use of sustainable transport, including provision for the charging of electric vehicles. Condition 13 is necessary to protect the living conditions of neighbours during construction and in the interests of highway safety. Condition 14 is necessary to secure a programme of archaeological work to ensure that any archaeological interest is investigated and appropriately recorded.

39. Condition 15 sets out a requirement for a Construction Environment Management Plan for Biodiversity (CEMP: Biodiversity) and is necessary to ensure that areas of sensitive ecological importance are appropriately managed and protected from damage during construction. Condition 16 requires the

preparation and implementation of a Biodiversity Enhancement Strategy, and is necessary to ensure that biodiversity objectives for the development are met. Condition 17 requires preparation of a Landscape and Ecological Management Plan (LEMP) to identify responsibilities for on-going management of features of landscape and ecological importance. I have amended the parties' wording as it is not within the Appellants' control to secure the agreement of the local planning authority within one month of the commencement of the development. As this condition is concerned with ongoing management, I consider it acceptable that the LEMP should be approved prior to first occupation of the first dwelling. I have made other minor changes to the wording in the interests of clarity.

40. Condition 19 (slab levels) is necessary to ensure that the development sits well within the landscape and surroundings. Condition 21 is necessary to ensure appropriate provision for refuse storage. Condition 22 is necessary to secure a reduction in carbon emissions from the development.

41. Subject to the amendments I have made I consider these conditions to meet the tests set out in the NPPF and PPG.

S106 obligation

42. The Appellants submitted a final signed version of a unilateral undertaking (UU) dated 9 July 2020. The main provisions are: 1. The owners covenant that each residential unit shall be constructed as a self-build dwelling; 2. The first occupation of each unit shall be by a person or persons who had a primary input into design and layout and who intends to live in it for at least 3 years and who is included in Part 1 of the Register. 3. The Council shall be notified of the persons who intend to take up first occupation at least two months prior to first occupation.

43. Schedule 2 of the UU addresses an off-site affordable housing contribution of £143,966.25 to be paid prior to the first occupation of the first dwelling.

44. The Council does not dispute the contribution figure but expressed a preference for an on-site discount market self-build dwelling on site, in accordance with Policy SWDP15, which requires that on sites of 5 – 9 dwellings, 20% of units should be affordable and provided on site.

45. I note that in its appeal statement the Council did not take issue with the Appellant's approach of providing a commuted sum for off-site provision, but introduced the request for on-site provision at a later stage. The policy allows for the acceptance of off-site-contributions where a robust justification exists.

46. While I acknowledge the preference for on-site provision, I consider that the provision of an agreed sum as a contribution to off-site provision would satisfactorily address affordable housing provision in the circumstances of the case. I note the difficulties encountered in reaching an agreed form of wording in the context of a UU where it is not appropriate to place a requirement on the Council to exercise its powers in a particular way, for example in respect of nomination rights or marketing strategies. The site lies close to Droitwich Spa where there are opportunities to address affordable needs arising in the neighbouring parish of Salwarpe, in which the appeal site lies.

47. The 2015 Act and the NPPF/PPG guidance support provision for self-build as a means of diversifying access to the housing market and allowing for self-

builders to contribute their skills and labour to reduce the costs of entry into the market. In the circumstances, where the UU secures an appropriate off-site contribution for affordable housing, I do not consider that the failure to make on-site provision outweighs the benefits that would arise from the grant of permission.

48. With regard to the CIL regulations, I conclude that the final UU is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to the development in scale and kind.

Planning balance and conclusion

49. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. It is not disputed that the proposed development would conflict with Policy SWDP2 C as it lies outside the defined development boundary and within an area identified as open countryside.

50. I have found that the harm to the character and appearance of the area would be very limited, and capable of mitigation by careful design and landscaping. Although other matters of concern were raised by residents, these would not be of sufficient weight to stand in the way of granting permission. I consider the effects on highway safety would be broadly neutral when balancing the increase in trip generation against the improvement in visibility and geometry. The parties agreed that, but for the conflict with the development plan, the location is sustainable for the type of development proposed, having good accessibility to a range of facilities.

51. While there is no dispute that the Council can demonstrate a 5-year supply of housing land, I consider that the Development Plan is out-of-date in respect of self-build housing. There is no reference to self-build housing within Policy SWDP2. Policy SWDP14 addresses the mix and type of market housing to ensure that a range of household demand and needs continue to be accommodated, but does not say anything substantive about self-build housing. In view of the importance attached to provision for self-build housing in the NPPF and PPG, I do not accept the Council's view that it should be treated simply as a component of general market housing. The tilted balance is therefore engaged in this case. The forthcoming review of the plan does address self-build housing but is at an early stage and carries very little weight at this time.

52. With regard to meeting the Council's duty under the 2015 Act I have found that the Council has not satisfactorily demonstrated that it has granted enough permissions to meet the need identified in the first base period, for the reasons set out above. The proposed development would make a significant contribution to the supply of sites for self-build housing in Wychavon in accordance with Section 5 of the NPPF and the associated PPG. There would be an economic benefit during construction and from on-going support for local facilities, and significant social benefit in terms of the diversity of housing type which would contribute to meeting the Council's duty under the 2015 Act. I attach substantial weight to this benefit and conclude that the adverse impacts of granting planning permission in this case would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. This is a material consideration of sufficient weight to

indicate that the appeal should be determined otherwise than in accordance with the development plan.

53. I therefore conclude that planning permission should be granted subject to the conditions set out in the attached schedule.

David Richards

INSPECTOR

APPEARANCES

For the Appellant

Neal Pearce	Director, Avon Planning Services
Mark Donald	Director, H2 Land
Chris Hughes	Commercial Director, H2 Land
Jack Smyth	of Counsel

For Wychavon District Council

Emma Worley	Development Manager (North)
Denise Duggan	Senior Planning Officer (Policy)

Interested Person

Mr Chris Everton	Local resident

Appeal Ref: APP/H1840/W/19/3241879

Schedule of conditions:

1) Application for the approval of reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

2) Approval of the details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced. The development shall be carried out in accordance with approved reserved matter details.

3) The following details shall be submitted for approval as part of the landscaping reserved matters:-

   1. Survey information of all existing trees and hedges on the application site, and branches from trees on adjacent land that overhang the site. The survey shall include for each tree/hedge:

      a) the accurate position, canopy spread and species plotted on a plan;

      b) an assessment of its general health and stability;

      c) an indication of any proposals for felling or pruning;

      d) details of any proposed changes in ground level, or other works to be carried out, within the canopy spread.

   2. A landscape scheme which shall include:

      a) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;

      b) a schedule of proposed planting – indicating species, size at time of planting and numbers/densities of plants;

      c) a written specification outlining cultivation and others operations associated with plant and grass establishment;

      d) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

   The landscaping shall be provided and maintained in accordance with the approved details within the first planting season following completion of the development hereby permitted.

4) Temporary fencing for the protection of all retained trees/hedges on site and trees outside the site whose Root Protection Areas fall within the site shall be erected in accordance with BS 5837:2012 (Trees in Relation to Design, Demolition and Construction) before development of any type commences, including site clearance, demolition, materials delivery, vehicular movement and erection of site huts. Any alternative fencing type or position not strictly in accordance with BS 5837 (2012) must be agreed in writing by the local planning authority prior to the commencement of development.

Protective fencing shall remain in place until the completion of development unless otherwise agreed in writing with the local planning authority. Nothing should be stored or placed (including soil), nor shall any ground levels be altered, within the fenced area without the previous written consent of the local planning authority. There shall be no burning of any material within 10 metres of the extent of the canopy of any retained tree/hedge.

5) Details of any walls, fences, surface treatments to drives, cycle and footways and an implementation timetable shall be submitted for approval as part of the landscaping reserved matters.

6) Prior to the first use/occupation of each plot hereby permitted, the details set out in the submitted Water Management Statement shall be fully implemented and retained thereafter.

7) Notwithstanding the approved plans no part of the development shall be occupied until visibility splays have been provided from a point 0.6m above carriageway level at the centre of the footway / cycleway access to the application site and 2.0 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 25 metres in each direction measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.

8) No dwelling shall be occupied until an area has been laid out within the curtilage of that dwelling for the parking of cars in accordance with County standards. The parking area shall thereafter be retained for the purpose of vehicle parking only.

9) No dwelling shall be occupied until sheltered and secure cycle parking to comply with the Council's standards has been provided for that dwelling in accordance with details which shall be submitted to and approved in writing by the local planning authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.

10) Appropriate cabling and an outside electrical socket must be supplied for each property to enable ease of installation of an electric vehicle charging point (houses with dedicated parking). The charging point must comply with BS7671. The socket should comply with BS1363, and must be provided with a locking weatherproof cover if located externally to the building. As a minimum, charge points should comply with Worcestershire County Council Design Guide which requires 7kw charging points for residential developments.

11) The development hereby approved shall not commence until drawings of the site access works comprising:
- The vehicular site access to Newland Lane, and
- The footway / cycleway access to Newland Road

generally in accordance with, but not limited in detail to, the application drawings have been submitted to and approved in writing by the local planning authority and no part of the development shall be occupied until those works have been constructed in accordance with the approved details.

12) Each dwelling hereby approved shall not be occupied until the applicant has submitted in writing to and had approval in writing from the local planning authority a residential welcome pack promoting sustainable forms of access to the development. The approved pack shall be delivered to each dwelling upon its first occupation.

13) The development hereby approved shall not commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in by the Local Planning Authority. This shall include but not be limited to the following:
- Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
- Details of site operative parking areas, material storage areas and the location of site operatives facilities (offices, toilets etc);
- The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring;
- Details of any temporary construction accesses and their reinstatement; and
- Details of any site boundary hoarding / fencing set back clear of visibility splays.

The measures set out in the approved CEMP shall be carried out and complied with in full during the construction of the development hereby approved. Site operatives' parking, material storage and the positioning of operatives' facilities shall only take place on the site in locations approved by in writing by the local planning authority.

14) A) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:
1) The programme and methodology of site investigation and recording.
2) The programme for post investigation assessment.
3) Provision to be made for analysis of the site investigation and recording.
4) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
5) Provision to be made for archive deposition of the analysis and records of the site investigation.
6) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

(B) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under clause (A) of this condition and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

15) No development shall take place (including any site clearance, ground works or demolition) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall be based on

the findings of the Tree Survey, Preliminary Ecological Appraisal and Reptile Survey submitted with the outline application as well as the findings of an updated Preliminary Ecological Appraisal include the following:

a. Risk assessment of potentially damaging construction activities;
b. Identification of "biodiversity protection zones";
c. 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 and should include details of appropriate protective fencing of retained trees' root protection zone);
d. The location and timing of sensitive works to avoid harm to biodiversity features;
e. The times during construction when specialist ecologists need to be present;
f. Responsible persons and lines of communication;
g. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
h. Use of protective fences, exclusion barriers and warning signs.

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

16) No development shall take place until a Biodiversity Enhancement Strategy (BES) has been submitted to and approved in writing by the local planning authority. The strategy shall include the following:

a. Purpose and conservation objectives for the proposed works;
b. Review of site potential and constraints;
c. Detailed designs and working methods to achieve stated objectives (including, where relevant, type and source of materials to be used);
d. Extent and location of proposed works shown on appropriate scale maps and plans;
e. Timetable for implementation, demonstrating that works are aligned with the proposed phasing of development;
f. Persons responsible for implementing the works;
g. Initial aftercare;
h. Details for disposal of any wastes arising from works.

The BES shall be implemented in accordance with the approved details and all features be retained in that manner thereafter. On completion of the ecological mitigation and enhancement works, a statement of compliance shall be submitted to the local planning authority by the Ecological Clerk of Works (or similarly competent person) confirming that specified and consented measures have been implemented.

17) A Landscape and Ecological Management Plan (LEMP) shall be submitted to and be approved in writing by the local planning authority before the first occupation of the first dwelling. The content of the LEMP shall include the following:

a. Description and evaluation of the features to be managed;
b. Ecological trends and constraints on site that might influence management.
c. Aims and objectives of management;

d. Appropriate management options for achieving aims and objectives;
e. Prescriptions for management actions;
f. Preparation of a work schedule, including an annual work plan capable of being rolled forward over a five-year period and longer term thereafter;
g. Details of the body or organisation responsible for implementation of the plan;
h. Ongoing monitoring and remedial measures.

The plan shall also set out how contingencies and/or remedial action shall be identified, agreed and implemented where the results of the monitoring show that conservation aims and objectives of the LEMP are not being met, so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP shall be implemented as approved.

18) Details of any external lighting to be provided in association with the development shall be submitted with each reserved matters application. Only external lighting in accordance with approved details shall be provided on the application site. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) there shall be no other external lighting provided on the application site.

19) The construction work on the buildings hereby approved shall not be commenced until the precise floor slab levels of each new building, relative to the existing development on the boundary of the application site have been submitted to and approved in writing by the local planning authority. Thereafter the new buildings shall be constructed at the approved floor slab levels.

20) Each reserved matters application relating to appearance shall include details of the materials to be used in the construction of the external surfaces of any building. Development shall be carried out in accordance with the approved details.

21) Each reserved matters application relating to the appearance and layout of the development shall include details of the facilities for the storage of refuse for all proposed dwellings. No individual dwelling shall be occupied until refuse storage facilities to serve that dwelling have been constructed in accordance with approved details. The facilities shall thereafter be retained.

22) Prior to the first occupation of any dwelling hereby approved, the renewable energy generating facilities set out in the Energy Assessment by Reports4Planning dated July 2019 to be incorporated as part of the development shall be fully implemented. The renewable energy generating facilities shall provide at least 10% of the predicted energy requirements of the development and shall remain operational for the lifetime of the development.

23) Each reserved matters application relating to the appearance, scale and layout shall be broadly in accordance with the principles of the Design & Access Statement (dated 11 July 2019) submitted as part of the

application. All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.

The Planning Inspectorate

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.

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 statue, 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 law[1] 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 appeal[2] 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 32[3]. 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 promotor 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 promotor, 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*****

Self-build and Custom Housebuilding Act 2015 (as amended)

[F12A Duty to grant planning permission etc

(1) This section applies to an authority that is both a relevant authority and a local planning authority within the meaning of the Town and Country Planning Act 1990 ("the 1990 Act").

(2) An authority to which this section applies must give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period.

(3) Regulations must specify the time allowed for compliance with the duty under subsection (2) in relation to any base period.

(4) The first base period, in relation to an authority, is the period—

(a)beginning with the day on which the register under section 1 kept by the authority is established, and

(b)ending with **[**F230 October 2016**]**.

Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period.

(5) In this section "development permission" means planning permission or permission in principle (within the meaning of the 1990 Act).

(6) For the purposes of this section—

(a)the demand for self-build and custom housebuilding arising in an authority's area in a base period is the demand as evidenced by the number of entries added during that period to the register under section 1 kept by the authority;

(b) an authority gives development permission if such permission is granted—

(i) by the authority,

(ii) by the Secretary of State or the Mayor of London on an application made to the authority, or

(iii) (in the case of permission in principle) by a development order, under section 59A(1)(a) of the 1990 Act, in relation to land allocated for development in a document made, maintained or adopted by the authority;

(c) development permission is "suitable" if it is permission in respect of development that could include self-build and custom housebuilding.

(7) A grant of development permission in relation to a particular plot of land may not be taken into account in relation to more than one base period in determining whether the duty in this section is discharged.

(8) No account is to be taken for the purposes of this section of development permission granted before the start of the first base period.

(9) Regulations under subsection (3)—

(a) may make different provision for different authorities or descriptions of authority;

(b) may make different provision for different proportions of the demand for self-build and custom housebuilding arising in a particular base period.**]**

Textual Amendments

F1S. 2A inserted (31.10.2016) by Housing and Planning Act 2016 (c. 22), **ss. 10(1)**, 216(3) (with s. 10(3)); S.I. 2016/733, reg. 5

F2Words in s. 2A(4)(b) substituted (31.10.2016) by The Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016 (S.I. 2016/733), **reg. 11(2)**

Modifications etc. (not altering text)

C1S. 2A excluded (31.10.2016) by The Self-build and Custom Housebuilding Regulations 2016 (S.I. 2016/950), regs. 1, **9**