



**TOWN AND COUNTRY PLANNING ACT 1990**

**SECTION 78 APPEAL BY**

**AGAINST THE DECISION OF CHELTENHAM BOROUGH  
COUNCIL TO REFUSE PLANNING PERMISSION FOR**

**AN OUTLINE APPLICATION FOR 43 DWELLINGS INCLUDING ACCESS, LAYOUT AND  
SCALE, WITH ALL OTHER MATTERS RESERVED FOR FUTURE CONSIDERATION**

**AT LAND AT OAKHURST RISE, CHARLTON KINGS, CHELTENHAM**

**ON BEHALF OF WILLIAM MORRISON (CHELTENHAM LTD)  
AND THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST**

**LPA REF: 20/00683/OUT**

**PINS REF: APP/B1605/W/20/3261154**

**APPENDICES TO  
PROOF OF EVIDENCE OF P J FRAMPTON BSC (HONS), TP, MRICS, MRTPI**

**PF/10093**

**FEBRUARY 2021**

## APPENDIX 1

### Technical Note on Drainage and Flood Risk Matters

Our ref: C21505/AdC/TN

25<sup>th</sup> January 2021



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**RE: Land adjacent to Oakhurst Rise, Cheltenham**  
**Appeal Reference: APP/B1065/B1605/W/20/3261154– Technical Note**

**1. Introduction**

1.1 My name is Andrew de Croos, I have a Bachelor of Engineering in Civil and Environmental Engineering and have over 15 years' experience working in civil engineering and in particular drainage and flood risk.

1.2 I am currently employed as an Associate by Simpson Associates Consulting Engineers LLP, who have offices across the United Kingdom.

1.3 Simpson Associates have been employed to provide drainage, flood risk and structural advice relating to the proposed development, which involved the production of a Flood Risk Assessment and Drainage Strategy in support of the planning application.

1.4 The Flood Risk Assessment for the site has been developed in accordance with current guidelines and best practice. Surface water runoff generated by the development will be managed sustainably and in accordance with current guides, including the *Non-Statutory Technical Standards for Sustainable Drainage*, which is published by the Local Authority SuDS Officer Organisation (LASOO).

1.5 The Lead Local Flood Authority (LLFA) and Severn Trent Water (STW) have both been consulted as part of this planning application, with the LLFA confirming that the proposals demonstrate a feasible strategy and STW confirming that they have no objection to the proposals, subject to the inclusion of a pre-commencement drainage condition.

1.6 This technical note has been produced to provide the Inspector with a summary of the 3<sup>rd</sup> party objections against the development, that relate to drainage and flood risk, which have been listed below.

**2. Summary of objection: Overland flows not properly considered**

Response:

2.1 To ensure no increase in flood risk to the site and surrounding areas, the overland flows discharged from the site, when developed, are restricted to the current greenfield run-

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off rate. The greenfield run-off rate has been determined using the IH124 method of calculation and therefore, is compliant with the section 3.4 and section S2 of the *Non-Statutory Technical Standards for Sustainable Drainage*, which is published by the Local Authority SuDS Officer Organisation (LASOO).

- 2.2 As such, the contention that over land flows have not been properly considered is erroneous. The run-off rate, with the site developed, will be a betterment to the existing situation because the attenuation of storm water flows makes a substantial provision for additional rates of rainfall as a consequence of climate change. The Lead Local Flood Authority is the Council's expert consultee, and they are clearly satisfied with the robustness of the Flood Risk Assessment and Storm Water Drainage Strategy.

### **3. Summary of objection: Storage capacity is inadequate**

Response:

- 3.1 Surface water flows generated by the proposed impermeable areas are to be attenuated within a below ground storage tank, for all storm events up to and including the 1 in 100-year storm event, plus a 40% allowance for climate change and therefore, compliant with section S2 of the *Non-Statutory Technical Standards for Sustainable Drainage*.
- 3.2 Supporting design calculations are included within the FRA and have been undertaken with the industry standard Micro Drainage design software.
- 3.3 The contention is mere assertion and is not substantiated by any cogent technical evidence.

### **4. Summary of objection: Climate change factor**

Response:

- 4.1 The surface water attenuation tank size is based on the 1 in 100-year storm event, with an allowance for a 40% increase in peak rainfall intensity over the lifetime of the development. The 40% allowance is derived from climate changes values on *Table 2: peak rainfall intensity allowance in small (less than 5km<sup>2</sup>) and urban catchments* on the [gov.uk](http://gov.uk) website. The 40% allowance represents the upper end of the potential climate change anticipated.
- 4.2 The Local Lead Flood Authority has clearly accepted that a 40% climate change allowance is appropriate.

### **5. Summary of objection: Exceedance management**

Response:

- 5.1 In the event that the capacity of the surface water drainage network was exceeded, site levels would allow surface water to generally flow towards the site's southern boundary, as indicated on drawings C21505 – SK01C and C210505 – SK02C, included within Appendix E of the FRA and replicate the conveyance routes in the pre-developed greenfield situation.
- 5.2 This approach ensures flood risk on and off the site is not increased and thus complying with section 3.3 of the *Non-Statutory Technical Standards for Sustainable Drainage*.

**6. Summary of objection: Potential risk to neighbours and the school**

Response:

- 6.1 As mentioned within the above section, the proposed exceedance routes replicate the existing conveyance routes pre-development and therefore there is no increase in flood risk on or off site, thus complying with section 3.3 of the *Non-Statutory Technical Standards for Sustainable Drainage*.
- 6.2 The purpose of the proposed pond is to provide enhancements to the surface water quality and biodiversity. All surface water storage is provided within the below ground attenuation tanks. Supporting calculations are included within Appendix D of the FRA.

**7. Summary of objection: No details of SuDS maintenance plans**

Response:

- 7.1 The proposed drainage network and associated SuDS features will either be adopted by Severn Trent Water and maintained by them for the life of the development, remain privately owned and maintained by an appointed management company in perpetuity or a combination of both.
- 7.2 Full detail of the proposed management and maintenance arrangements will be submitted to discharge the associated pre-commencement drainage condition, which is in line with the requirements of the LLFA (GCC LLFA Consultee comment 6<sup>th</sup> May 2020).

**8. Summary of objection: Faulty drainage plan specifications**

Response:

- 8.1 The topography of the site and the location of proposed drainage outfalls necessitates that a portion of the proposed drainage flows via gravity in the opposite direction to that of the proposed road and the existing site levels, resulting in deeper drainage. The proposals are technically proven, common place on steep sites or those with significant level differences, adoptable by Severn Trent Water and therefore of no concern.
- 8.2 STW, the competent Authority for adoption of drainage, has no objections to the scheme as submitted.

**9. Summary of objection: Severn Trent Water Sewer Connection and Capacity**

Response:

- 9.1 The proposed surface water outfall is to the existing Severn Trent Water (STW) sewer within Charlton Court Road. A sewer capacity check has been previously undertaken with STW, who advised that, providing the surface water disposal hierarchy is satisfied, STW would accept a new connection to the sewer in Charlton Court Road, with the exact discharge rate to be agreed with the LLFA.
- 9.2 Section 8 of the FRA explains that surface water disposal via infiltration or to a watercourse are not achievable on this site and therefore satisfying the surface water disposal hierarchy.
- 9.3 The proposed surface water flow rates are set at the sites equivalent greenfield runoff rate and therefore compliant with the *Non-Statutory Technical Standards for Sustainable Drainage*.

- 9.4 The LLFA and STW have both been consulted as part of this planning application, with the LLFA confirming that the proposals demonstrate a feasible strategy and STW confirming that they have no objection to the proposals, subject to the inclusion of a pre-commencement drainage condition. The LLFA and STW are both, as competent and informed consultees, satisfied with the proposed surface water connection to the public sewer and the proposed discharge rates.
- 9.5 Please refer to GCC LLFA Consultee comment dated 6<sup>th</sup> May 2020 and STW Consultee comment dated 5<sup>th</sup> May 2020.

## **10. Conclusion**

- 10.1 The objections made are unsubstantiated assertion and provide no basis from which to depart from the clear and considered responses from the two informed consultees who provide advice to the Planning Authority on matters relating to flood risk and drainage. The FRA submitted in support of this planning application is compliant with all legislation and standards in determining that the proposed development would not adversely affect flood risk on and off the site.

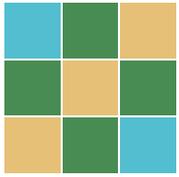
## **11. Statement of truth**

- 11.1 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Andrew de Croos  
**Simpson Associates Consulting Engineers LLP**

## APPENDIX 2

### Technical Note on Highways Matters



COTSWOLD  
TRANSPORT  
PLANNING

# William Morrison (Cheltenham) Limited

Land Adjacent to Oakhurst Rise, Cheltenham

Technical Note: Highway Matters relating to Planning  
Appeal (Ref. APP/B1605/W/20/3261154)

January 2021





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## DOCUMENT REGISTER

<b>CLIENT:</b>	<b>WILLIAM MORRISON (CHELTENHAM) LTD</b>
<b>PROJECT:</b>	<b>LAND ADJACENT TO OAKHURST RISE, CHELTENHAM</b>
<b>PROJECT CODE:</b>	<b>CTP-16-176</b>

<b>REPORT TITLE:</b>	<b>TECHNICAL NOTE</b>		
<b>PREPARED BY:</b>	<b>ADAM PADMORE</b>	<b>DATE:</b>	<b>JANUARY 2021</b>
<b>CHECKED BY:</b>	<b>ADAM PADMORE</b>	<b>DATE:</b>	<b>JANUARY 2021</b>

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# 1 Qualifications and Statement of Truth

## Qualifications and Experience

- 1.1 My name is Adam Charles Padmore and I am the Managing Director of Cotswold Transport Planning Ltd.
- 1.2 I hold a 1<sup>st</sup> Class Honours Bachelor of Science (BSc) degree in Environmental Geography and two separate Master of Science (MSc) degrees in Environmental Management (elective in Sustainable Travel), and Transport Planning. I have been a member of the Chartered Institute of Highways and Transportation since 2007.
- 1.3 I have worked in the field of transport planning since 2006 and have a wide range of experience relating to private sector development planning, particularly residential development. Specialisms included within my role at Cotswold Transport Planning include land acquisition and site feasibility appraisals, the production of transport impact assessments to consider and mitigate the impact of major and minor development proposals, and sustainable transport planning. I have also assisted with a variety of planning appeals.
- 1.4 I have visited the appeal site and am familiar with the local area and highway network conditions.

## Statement of Truth

- 1.5 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

## Declaration

- 1.6 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
  - 1.7 I confirm that I understand and have complied with my duty to the Planning Inspectorate as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
  - 1.8 I confirm that I am not instructed under any conditional or other success-based fee arrangement.
-



- 1.9 I confirm that I have no conflicts of interest.
- 1.10 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Planning Inquiry.

Signed by.....

Adam Padmore

*Managing Director* on behalf of **Cotswold** Transport Planning Ltd

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## 2 Introduction

- 2.1 Cotswold Transport Planning Ltd (CTP) is retained by William Morrison (Cheltenham) Ltd to provide transport planning services in support of an Outline Planning Application for a residential development on of a parcel of land adjacent to Oakhurst Rise, in south-east of Cheltenham.
- 2.2 A Planning Application for 43 dwellings was submitted to Cheltenham Borough Council (CBC) under reference 20/00683/OUT, but subsequently refused by CBC's planning committee in September 2020. An appeal is registered with PINS and has been subsequently allocated the reference **APP/B1605/W/20/3261154**.
- 2.3 This Technical Note (TN) has been produced to provide the Inspector with a summary of the pertinent highways and transportation issues raised via third-party objections (herein referred to as objections) against the development, specific to the forthcoming planning appeal, and to aid with the Appellants's appointed Expert Witness concerning general Planning matters and justification for the overall suitability of the proposal.
- 2.4 Where relevant, reference has been made to Gloucestershire County Council's (GCC) design guidance documents Manual for Gloucestershire Streets (MfGS) (July 2020), Technical Specification for New Streets (TSfNS), and GCC's consultation response to the planning application.



## 3 Summary of Issues

### Introduction

- 3.1 **Section 2** provides a summary of the headline issues raised throughout the correspondence, submitted in objection to the appeal.

### Criticism of the Development having a Single Access Point

#### Summary of Objection

- 3.2 Objections have been raised in connection with the site having only one point of access, from Oakhurst Rise, which is a cul-de-sac.

#### CTP Response

- 3.3 MfGS specifies on page 38 (attached at **Appendix A** of this TN) that there is no limit to the number of dwellings that can be served via an informal street (subject to modelling), and therefore there is no substance to this objection. For the Inspector's benefit, no modelling was necessary for the site access from Oakhurst Rise, due to the number of dwellings proposed (43) being low in real terms. This was agreed with GCC.

### Width and Gradient of Oakhurst Rise

#### Summary of Objection

- 3.4 Objections have been raised in regard to whether or not Oakhurst Rise is wide enough to accommodate additional development traffic, and also whether the gradient is acceptable to serve the development.

#### CTP Response

- 3.5 MfGS specifies on page 38 that a typical width of 4.5m to 5.5m is required for an informal street. On-site and topographical survey measurements confirm Oakhurst Rise is 5.5m, and is therefore an acceptable width.
- 3.6 Having undertaken numerous site visits along Oakhurst Rise without difficulty, witnessed other travellers using this section of highway, and seeing no evidence before me in the form of personal injury collision data that demonstrates there to be any pattern of highway safety concerns, I conclude that Oakhurst Rise is acceptable to serve the additional traffic that will be placed on it in the event the Appeal is allowed. The difference between 'at least 25 dwellings' (as per Local Plan Policy HD4) and the proposal (43 dwellings) has no material consequence.
-



## **Oakhurst Rise as an Access Road**

### Summary of Objection

- 3.7 In the Statement of Case prepared by 'Friends', Oakhurst Rise is challenged as being suitable to accommodate additional development.

### CTP Response

- 3.8 CTP observe Oakhurst Rise to be of a very typical residential layout, where the presence of driveways, junctions, changes in gradient and changes in inter-visibility all contribute cumulatively to having a calming effect on speeds, and a heightening of driver awareness, making it safer.

## **Concern over Increases of Traffic on Oakhurst Rise and Local Roads**

### Summary of Objection

- 3.9 Concerns are raised over the level, and impact, of increased traffic on Oakhurst Rise and local roads including Ewens Road and Beaufort Road.
- 3.10 Related to objections regarding the increase of local traffic flows, are concerns that this will endanger pedestrians.

### CTP Response

- 3.11 As set out in the Transport Assessment, the predicted level of traffic generation arising from this development in real terms is very low, and will have no discernible impact on the operation of the local highway network.
- 3.12 Furthermore, there is no evidence or reason to consider that this traffic will endanger local pedestrian travel. Indeed, analysis of local personal injury collision statistics demonstrates there is no issue or pattern of any highway safety concerns in close proximity of the site.
- 3.13 GCC have accepted that the development will not result in a material level of traffic that will have any impact on the safe operation of Oakhurst Rise or roads local to the site.



### **Concern over Existing Problems with ‘Rat-running’ on Local Roads**

#### Summary of Objection

- 3.14 Objections have been made in connection with the existing situation regarding alleged - rat-running that takes place between London Road and Hales Road, as drivers attempt to avoid queuing on the A40.

#### CTP Response

- 3.15 CTP acknowledge that this may be occurring. However, this is not an issue that will be either effected or exacerbated by the development proposals, and therefore should not form the basis of any objection or refusal of this planning appeal.

### **Concern over Traffic Capacity / Congestion of the A40**

#### Summary of Objection

- 3.16 Objections are made concerning traffic congestion on the A40, primarily at the junctions of A40 / Hales Road and Sixways, and the impact that this development will have in connection with this.

#### CTP Response

- 3.17 The predicted levels of traffic forecast to be generated by this development, as set out in the Transport Assessment, are very low in real terms, and will not have a material or severe impact on the safe operation of the A40. This conclusion was established in the transport evidence prepared to support the planning application, and subsequently agreed by GCC.

### **Concerns over Impact of Construction Traffic**

#### Summary of Objection

- 3.18 General concerns over the impact of construction traffic on local roads.

#### CTP Response

- 3.19 Construction traffic and associated impacts are a by-product of development. The appropriate mechanism for ensuring the impacts from construction traffic are managed and mitigated as far as possible, is to provide a Construction Traffic Management Plan (CTMP). It is accepted that a CTMP will be conditioned in the event the Appeal is allowed and planning permission granted.



## **Impact of Inclement Weather Conditions on Highway Safety**

### Summary of Objection

- 3.20 Objections have been raised in connection to the impact that inclement weather conditions could have over access, in particular as a result of snow and ice.

### CTP Response

- 3.21 The impact of snow and ice on the highway network is outside of the control of the Appellants, and effects, in theory, all development throughout England, admittedly to different extents. Periods of snow and ice in England are rarely extensive, and it would be inappropriate to stop or restrict development, to safeguard the use of the highway network for the often very-short periods where inclement weather conditions occur. It is the responsibility of highway users to make an appropriate decision on their need to travel, and their method of doing so, in the event that weather effects the conditions of the highway.

## **Distances to Services and Amenities accessible by Walking or Cycling**

### Summary of Objection

- 3.22 Criticisms have been made over the precise calculation of the travel distances between the site and the services and amenities reference in the Transport Assessment, and the subsequent journey times.

### CTP Response

- 3.23 Distances between the Appeal site and services and amenities have been estimated using measurement tools in the GoogleEarth software programme and are therefore approximate, but within an acceptable margin for error. This is a common approach across all transport assessment studies and is widely accepted by highway authorities across England including GCC.
- 3.24 The underlying point is that the Charlton Kings local centre is within an 800m walking distance of the Appeal site, and provides a suitable range of services and amenities, including bus stops, which contributes to making the location of the site sustainable.



## **Propensity for Walking or Cycling due to Gradient between London Road and Application Site**

### Summary of Objection

- 3.25 General objections are made on the basis that the gradient of Oakhurst Rise and connecting roads to London Road will discourage residents from walking and cycling, thus rendering the development over reliant on car travel.

### CTP Response

- 3.26 The gradient of Oakhurst Rise and Beaufort Road is likely to have some impact on the choice of travel by residents of the development, but it is not a substantial deterrent, and the fact remains that the site does provide opportunities to walk and cycle, in addition to providing access to bus stops on London Road, all within distances prescribed within prevailing design guidance.
- 3.27 Would-be travellers cannot be forced to walk or cycle. However, opportunities to travel by a range of means are present, and the development would be far from car dependant.

## **Whether access to the site by modes of Walking or Cycling are safe**

### Summary of Objection

- 3.28 It is noted in the Friends' Statement of Case that a reference is made from Councillor Baker as to '*how safe pedestrian and cycle access would be achieved, but no response was provided.*'

### CTP Response

- 3.29 As set out in the Transport Assessment, the local highway network provides access to the site (and existing local residential development) for both pedestrians and cyclists, with no record of local highway safety concerns involving pedestrians or cyclists. There is therefore no reason to consider that this will not continue in the event this development off Oakhurst Rise proceeds to go ahead.



## 4 Conclusion

- 4.1 Cotswold Transport Planning Ltd has been instructed by William Morrison (Cheltenham) Ltd to prepare this Technical Note in order to provide a summary of the issues raised by third-party objectors to the proposed development off Oakhurst Rise, in connection with the forthcoming Planning Appeal.
- 4.2 The issues in this note have been catalogued into key headline areas, examined, and responded to.
- 4.3 Cotswold Transport Planning maintains a strong conclusion that this development provides safe and suitable access, is sustainable, and will not result in any discernible or severe impact on the safe operation of the local highway network. As such, the conclusion remains that the development in highways and transportation terms is acceptable, and that this Appeal should be allowed.

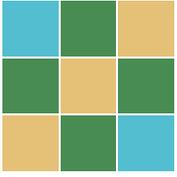
**APPENDIX A – EXTRACT (page 38) from MfS**

## Informal Street

Streets where formal traffic controls (signs, markings and signals) are absent or reduced. There is a footway and carriageway, but the differentiation between them is typically less than in a conventional street.



Maximum Design Speed	20mph achieved through measures such as Junction Treatment, surface changes, visual narrowing, central reservations, sensitive parking provision and green infrastructure.
Maximum No. Of Dwellings	No limit but subject to modelling
Frontage Access	Restricted 20m from Junctions
Carriageway Width	4.5m to 5.5m (6.2m if a bus route)
Footways	2m wide both sides. Where necessary street furniture are accommodated in the footway (such as street lighting columns, cycle parking stands, planters, bins and benches) then a wider footway should be specified.
Cycleways	On Street
On street parking	Visitor Provision on Street
Landscaping	Optional 2m verge separating carriageway Landscaping Permitted.
Verge	Can be used instead of footway where no Pedestrian desire line is identified. Can be reduced to 1m where no services or



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## APPENDIX 3

### Technical Note on Landscape & Visual Impact Matters

# LANDSCAPE AND VISUAL TECHNICAL NOTE

Refusal of Planning permission: Application reference 20/00683/OUT  
Cheltenham Borough Council (Decision Dated: 17.09.2020)

Land Adjacent to Oakhurst Rise Cheltenham. Outline  
application for 43 dwellings including access, layout  
and scale, with all other matters  
reserved for future consideration

PINS ref: APP/B1065/B1605/W/20/3261154

## **1 QUALIFICATIONS AND STATEMENT OF TRUTH**

### Qualifications and Experience

- 1.1.1 My name is Ben Davies, and I am an Associate Director of MHP Design Ltd, a Chartered practice of the Landscape Institute. I hold a bachelor's degree with Honours in Geography (BA) and a post graduate diploma in Landscape Architecture (PGDip). I have been a member of the Landscape Institute since 2010.
- 1.1.2 I have worked in the field of Landscape and Visual Impact Assessment (LVIA) since 2012 and have a wide range of experience relating to private sector development planning, including residential and commercial development.
- 1.1.3 I have visited the appeal site and am familiar with the local landscape.

### Statement of Truth

- 1.1.4 I confirm that the statement I have prepared and provide for this appeal (reference APP/B1065/B1605/W/20/3261154) is true and that the opinions expressed are my true and professional opinions irrespective of by whom I am instructed.

## **2 BACKGROUND AND SCOPE OF TECHNICAL NOTE**

- 2.1.1 This technical note provides a summary of Landscape and Visual matters pertinent to the development of 43 dwellings (reference: 20/00683/OUT) on the land off Oakhurst Rise, Cheltenham. The note makes reference to statutory consultee comments and comments made by interested third parties to the application in relation to landscape and visual matters.
- 2.1.2 MHP Design (Chartered Landscape Architects) provided a Landscape and Visual Statement (CD A13) supported by a Landscape Strategy Drawing ref: MHP 19216.101 (CD A34) for the planning application.

### **3 LANDSCAPE AND MITIGATION SUMMARY**

3.1.1 The Landscape strategy drawing provides an overview of the approach to landscape design and site layout and comprises the following.

- Residential development is situated towards the centre and north western portions of the sloping site with areas of open space to the south west and northern boundaries. The land to the east beyond the proposed belt of trees is to be retained for the use of the school.
- The scheme incorporates existing boundary vegetation, trees and existing individual trees, protected within areas of open space. Areas of open space are situated to the north west and south west and along the southern boundary with the school. A substantial landscape buffer of native tree belt planting is situated within the eastern portion of the site running north to south. At its widest point the proposed tree belt is approximately 30m in width which will create an effective and dense buffer to the new site proposals to the west and form a soft edge to the new development.

### **4 LANDSCAPE AND VISUAL IMPACT**

4.1.1 Proposals for development have been assessed in accordance with a professional methodology undertaken by a Chartered Landscape Architect which confirms that no significant landscape and visual harm will occur through development of the site including the Cotswolds AONB which is within proximity. The site is not located within a designated landscape and the Landscape Statement did not identify the site to be a valued landscape.

4.1.2 The previous appeal decision on the site for a larger 68 dwelling scheme makes reference to potential visual impacts on the Cotswolds AONB and states,

*... "The elevated site is widely visible in distant views within the attractive, undulating landscape and its development would have significant visual impact on its immediate surroundings, close to the listed buildings and residential properties, considered above. However, any built development on the site would be relatively well vegetated and enclosed from the wider area. I do not therefore consider that it would cause harm to the appearance and character of the nearby Cotswolds AONB."*<sup>1</sup>.

- 4.1.3 The Cheltenham Borough Council Officer Report for Committee makes reference to landscape of the site in the context of valued landscapes with reference to paragraph 170 of NPPF and states,

*... "In this instance, officers do not consider that the site should be considered 'valued landscape' for the purposes of paragraph 170. Whilst the landscape clearly has a value attached to it, particularly by local residents, it is not considered to have any intrinsic features that specifically set it aside from other areas of non-designated landscape"*<sup>2</sup>.

- 4.1.4 The officer report concludes that,

*"The current proposal results in the retention of a large area of open grassland, additional landscaping and increased landscaping. A such officers are confident that the proposal has an acceptable visual impact within the landscape"*<sup>3</sup>.

## **5 THIRD PARTY COMMENTS AND RESPONSES**

- 5.1.1 A small number of third party public comments pertaining to landscape and visual harm have been received as part of the application process, including harm to the nearby Cotswolds AONB. These have been reviewed against the baseline landscape assessment work undertaken by the appellants and the Council's own landscape evidence base.

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<sup>1</sup> Appeal Ref: APP/B1605/W/19/3227293 (20/9/2020) Para 114

<sup>2</sup> CBC Officer Report for Committee dated para 6.7.3

<sup>3</sup> CBC Officer Report for Committee dated para 6.7.6

- 5.1.2 I am confident that the Landscape Statement and Landscape Strategy drawing ref: MHP 19216.101 (CD A34) sufficiently addresses and answers the issues raised by the public comments. It is important to note that the issue here is not whether development is 'seen' from the AONB but is whether the development would cause 'harm' to the landscape and scenic beauty of the AONB. These public concerns are unfounded and unsubstantiated when considered against professional assessment provided by both the Appellants' and within the Council's own landscape evidence base.
- 5.1.3 The consultation response received from Friends of Charlton Kings (FoCK) dated 3rd June 2020 includes detailed commentary relating to landscape and visual harm. As part of the application process MHP Design have provided a concise written rebuttal response which is not repeated here and is appended to this Technical note (Refer to Appendix A).

## **6 SUMMARY**

- 6.1.1 In the context of landscape impact, including any impact upon the Cotswold AONB, the Appellants' and the Council's own landscape assessment have identified 'no harm'.

## APPENDIX A

Our ref: 19216

15<sup>th</sup> June 2020

Peter Frampton  
Frampton Town Planning  
Oriol House  
42 North Bar  
Banbury  
Oxfordshire  
OX16 0TH

**REF: VISUAL IMPACT: LAND OFF OAKHURST RISE, CHELTENHAM PLANNING APPLICATION**  
**REFERENCE: 20/00683/OUT**

Dear Peter,

Thank you for forwarding the consultation response received from Friends of Charlton Kings (FoCK) dated 3rd June 2020 regarding outline planning application 20/00683/OUT. I note that the comments include references relating to visual impact and that photographs have been provided which I have reviewed and consider in my response.

The comments in the FoCK response relate to potentially longer distance views of the site from both within the Cotswolds AONB and Charlton Kings Conservation Area situated to the south, these are discussed below.

**Views and visual assessment methodology**

The importance of correctly representing views in landscape impact assessment in order that photographs are not misleading to both the reader and decision makers has culminated in the recently published guidance provided by the Landscape Institutes Technical Guidance Note TGN 06/19<sup>1</sup> Visual Representation of Development. The guidance states that, 'photography should provide a fair representation of what would likely to be seen [by the human eye] if the proposed development is implemented and should portray the proposal in scale with its surroundings'.

The application for residential development of the Oakhurst Rise site has been assessed in accordance with a professional landscape and visual methodology, please refer to Landscape and Visual Statement Final V4 24<sup>th</sup> April 2020. Where views of the site have been identified photographs from these locations have been reproduced within the report in accordance with the guidance contained in TGN 06/19.

In all instances where potential views and accompanying photographs are identified in the FoCK consultation response these are not presented in such a way, or in accordance with a stated methodology or professional guidance, where an objective assessment of visual harm can be reached.

**Views from the Cotswolds AONB**

Reference is made in the FoCK response to the site being visible from within the Cotswolds AONB. Photographs of views are provided from within the AONB at Charlton Kings Common.

The landscape assessment work undertaken in March 2020 considers views from these locations which are numerous, given Cheltenham's proximity to the western edge of the Cotswolds AONB. It is important to note that the issue here is not whether development is 'seen' from the AONB but is whether the development would cause 'harm' to the landscape and scenic beauty of the AONB. The concerns raised in

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<sup>1</sup> [https://landscapewpstorage01.blob.core.windows.net/www-landscapeinstitute-org/2019/09/LI\\_TGN-06-19\\_Visual\\_Representation.pdf](https://landscapewpstorage01.blob.core.windows.net/www-landscapeinstitute-org/2019/09/LI_TGN-06-19_Visual_Representation.pdf)

the FoCK response are therefore unsubstantiated when considered against professional landscape and visual assessment that accompanies the application.

### **Views from the Charlton Kings Conservation Area**

Reference is made in the FoCK response to the site being above the build line of Cheltenham and visible from a range of entry points in Charlton Kings. Photographs are presented from the A435, Old Bath Road and adjacent to St Marys Church within the Conservation Area. The FoCK response makes reference to a framed view from the Charlton Kings Conservation Area and that the view would be dominated by the high rooflines of new development above the existing tree line and proposed screening.

In response to these comments I would note that the elevated nature of the site makes it potentially visible from a number of locations within the town, its context is predominantly residential, with existing dwellings immediately to the north, west and east of the site. Proposed built form is not raised above that of the adjoining land to the north which comprises existing residential dwellings and is on elevated land above that of the site. Due to the settled nature of both the immediate context of the site and the viewpoint locations within the town, the potential visual impact and resulting harm to views will be substantially lessened. Whilst residential development of the site would result in a degree of change to the existing glimpsed views from within the town and the Conservation Area, due to the location and context of the site this change is assessed to not cause significant harm to existing views from these locations.

I trust the response provided is clear in assuring Cheltenham Borough Council that the potential visual impacts resulting from the proposed development of the site has been fully considered and assessed, in accordance with professional guidance and relevant provisions of national and local planning policy.

Yours Sincerely,



Ben Davies  
CMLI

Associate Director

## APPENDIX 4

Verified Views Technical Note by MHP Design

# VERIFIED VIEWS TECHNICAL NOTE

Refusal of Planning permission: Application reference 20/00683/OUT  
Cheltenham Borough Council (Decision Dated: 17.09.2020)

Land Adjacent to Oakhurst Rise Cheltenham. Outline  
application for 43 dwellings including access, layout  
and scale, with all other matters  
reserved for future consideration

PINS ref: APP/B1065/B1605/W/20/3261154

## **1 QUALIFICATIONS AND STATEMENT OF TRUTH**

### Qualifications and Experience

- 1.1.1 My name is Ben Davies, and I am an Associate Director of MHP Design Ltd, a Chartered practice of the Landscape Institute. I hold a bachelor's degree with Honours in Geography (BA) and a post graduate diploma in Landscape Architecture (PGDip). I have been a member of the Landscape Institute since 2010.
- 1.1.2 I have worked in the field of Landscape and Visual Impact Assessment (LVIA) since 2012 and have a wide range of experience relating to private sector development planning, including residential and commercial development.
- 1.1.3 I have visited the appeal site and am familiar with the local landscape.

### Statement of Truth

- 1.1.4 I confirm that the statement I have prepared and provide for this appeal is true and that the opinions expressed are my true and professional opinions irrespective of by whom I am instructed.

## **2 BACKGROUND AND SCOPE OF TECHNICAL NOTE**

- 2.1.1 This technical note provides a summary of matters pertinent to the methodology and production of verifiable images, which include the establishment of a woodland belt, to assist with this planning appeal, reference (APP/B1065/B1605/W/20/3261154).
- 2.1.2 MHP Design (Chartered Landscape Architects) have produced a woodland planting proposals drawing ref: MHP 19216.301 Rev A (refer to Appendix A below), which provides a detailed specification and planting matrix for the establishment of a woodland belt on the eastern boundary of the built form associated with the appeal site.

2.1.3 Andy Maw Design has produced a series of verifiable photographic images which include modelling of the proposed woodland belt at year 1 and year 8. (Document reference, Verified Views and Methodology, Land off Oakhurst Rise, Cheltenham 15th February 2021). A detailed methodology for the production of the images is included in the introductory paragraphs of the document. The visualisations are included in Appendix B below.

### **3 METHODOLOGY AND PRODUCTION OF VERIFIABLE IMAGES**

3.1.1 The work undertaken by Andy Maw Design to produce verifiable images follows a clear and transparent methodology which is stated in full and accompanies the supplied images. Technical details which include descriptions of baseline photography and digital computer processing are referenced in detail as part of the methodology presented. Adherence with good practice guidance is acknowledged in the methodology which confirms that the verified images have been produced in accordance with the Landscape Institutes TGN 06/19 Visual Representation of Development Proposals.

### **4 WOODLAND PLANTING PROPOSALS AND PLANTING MATRIX**

4.1.1 Detailed woodland planting proposals (MHP 19216.301 Rev A) have been produced to provide a robust scheme of native planting which can be accurately modelled into existing photographs of the appeal site. The methodology provided with the verifiable images confirms that the stated planted matrix on the drawing has been used in order to determine the anticipated locations and planting centres (spaces between), the proposed tree and shrub planting.

### **5 WOODLAND GROWTH RATES AT YEAR 1 AND YEAR 8**

5.1.1 The verifiable images include year 1 and year 8 growth of the proposed woodland planting. A table of growth rates is provided in the detailed methodology which is within the parameters of expected growth rates for the proposed native shrubs and trees in favourable growing conditions, with appropriate aftercare and management. I am content that the height parameters stated in the table and subsequently modelled in the images are accurate representations of the expected growth of the proposed vegetation and trees in this location.

## **6 SUMMARY**

6.1.1 The methodology used for the production of the verifiable images including stated rates of potential growth of planting have been produced in accordance with best practice guidance and therefore provide an accurate representation of the proposals and a sound basis for assistance with this appeal.

**APPENDIX A – 19216.301 REV A WOODLAND PLANTING PLAN**

# Woodland Planting Schedule

The woodland planting area includes areas of tree and shrub planting, all are native species. Within the woodland planting mix 30% of plant stock is to be planted as Extra heavy standards (4-4.5m high, 14-16cm girth) in order to provide screening value from the outset. The remaining plantings are supplied as cell-grown plants, these are fast to establish as they are supplied with a protected root network.

Extra heavy standard trees will be double staked (See tree pit detail). All other plants will be protected with a biodegradable shrub shelter/guard 60cm in height and a cane. The whole woodland is to be surrounded with deer-proof fencing to prevent damage by deer. All new woodland planting requires regular maintenance and shall follow the guidance for post-planting management and maintenance outlined in BS 8545:2014 and detailed 10 year Landscape and Biodiversity management plan.

## WOODLAND: PLANTING MIX 1

Code	Species	Specification	Percentage of mix	Quantity	
				Area A	Area B
AC	Acer campestre	1+0 100cc Cell grown	10	71	25
BPU*	Betula pubescens*	EX HVY STD 14-16cm girth 400-450cm high, rootballed	10	71	25
BP	Betula pendula	1+0 100cc Cell grown	15	106	37
CB	Carpinus betulus	1+0 100cc Cell grown	5	35	13
Ca	Corylus avellana	1+0 100cc Cell grown	10	71	25
Cm	Crataegus monogyna	1+0 100cc Cell grown	5	35	13
FS*	Fagus sylvatica*	EX HVY STD 14-16cm girth 400-450cm high, rootballed	10	71	25
Ia	Ilex aquifolium	30-40-60cm 3L	5	35	12
Ms	Malus sylvestris	1+0 100cc Cell grown	5	35	12
PA	Prunus avium	1+0 100cc Cell grown	5	36	13
Ps	Prunus spinosa	1+0 100cc Cell grown	5	36	13
QR*	Quercus robur*	EX HVY STD 14-16cm girth 400-450cm high, rootballed	10	71	25
QR	Quercus robur	1+0 100cc Cell grown	5	35	12
			Totals: 100%	708	250

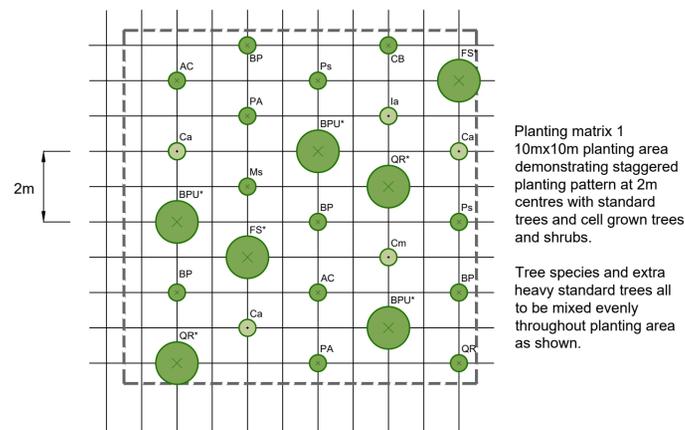
\* Larger trees to make up 30% of the overall mix.  
Mix 1 is to be planted at 2m centres with the larger trees spread out evenly throughout the area.

## WOODLAND EDGE AND EASEMENT: PLANTING MIX 2

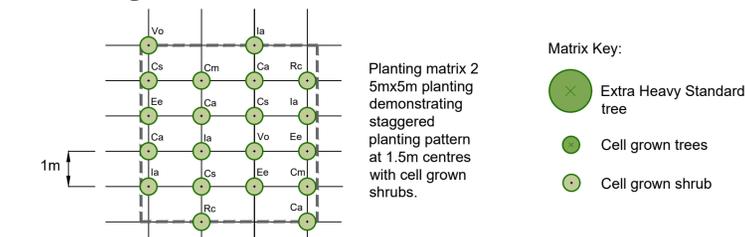
Code	Species	Specification	Percentage of mix	Quantity
				Area C
Cs	Cornus sanguinea	1+0 100cc Cell grown	15	80
Ca	Corylus avellana	1+0 100cc Cell grown	20	107
Cm	Crataegus monogyna	1+0 100cc Cell grown	10	53
Ee	Euonymus europaeus	1+0 100cc Cell grown	15	80
Ia	Ilex aquifolium	30-40-60cm 3L	20	107
Rc	Rosa canina	1+0 100cc Cell grown	10	53
Vo	Viburnum opulus	1+0 100cc Cell grown	10	53
			Total: 100%	533

Mix 2 is to be planted at 1.5m centres with species spread out evenly throughout the area.

## Planting Matrix: Mix 1



## Planting Matrix: Mix 2



# Land off Oakhurst Rise Woodland Planting Plan



## Key

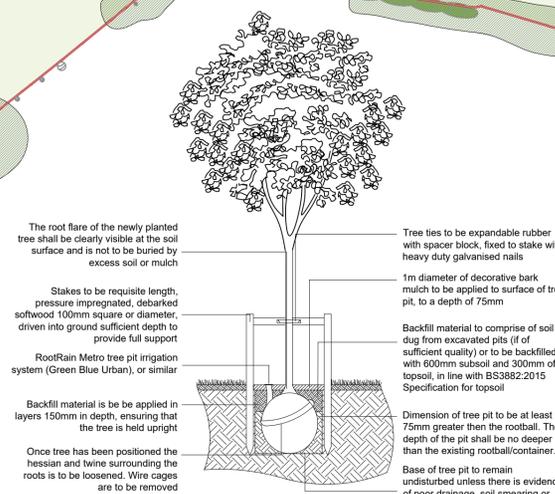
- Proposed native woodland planting
- Proposed woodland edge planting
- Deer-proof fence
- Existing tree to be retained
- Proposed trees to development (indicative locations)
- Existing hedges
- Proposed grass areas
- Proposed attenuation basin with wetland grass mix



## Notes

- 1) Do not scale directly from this drawing.
- 2) This drawing is to be read in conjunction with all other relevant drawings and information supplied by other consultants.
- 3) All tree planting in proximity to buildings to be checked by engineers to ensure foundation detailing is appropriate.
- 4) Please refer to the arboriculture drawing for further details of the existing vegetation on site.
- 5) Refer to the location plan for red and blue line boundaries.

A	Amendments to plan following comments	12/02/21	HS
Revisions:		Date	Drawn
Project:	Land Off Oakhurst Rise		
Client:	William Morrison (Cheltenham) Ltd.		
Title:	Woodland Planting Plan		
Drawing number:	19216.301	Rev:	A
Status:	FOR PLANNING		
Drawn By:	Checked By:	Date:	Scale @ A1:
HS	BD	10-02-21	1:500



Tree pit detail (Not to scale)

Scale 1:500



## APPENDIX B – ANDY MAW DESIGN VISUALISATIONS

# Verified Views and Methodology

**Land off Oakhurst Rise, Cheltenham**

15th February 2021



## Overview

A verified photomontage is a visual representation of a proposed development that is as accurate as it is possible to be within the limits of the technology used and the available data. Although it is not possible to achieve 100% accuracy, with the careful implementation of a best practice method, as has been undertaken for this assignment, this will significantly reduce the margin for error.

The photomontage images represent how the proposed development would be perceived from a number of locations on the site.

The methods described in this document are based on current best practise and follow recommendations from 'Guidelines for Landscape and Visual Impact Assessment 3rd edition' (GLVIA3), Landscape Institute and IEMA (2013), alongside the Landscape Institute technical guidance note, 'Visual Representation of Development Proposals, (LI 06/19)

The entities responsible for the preparation of the views that are set out in the following pages comprise:

### Photography, production and checking of photomontages & Surveying

Andy Maw Design  
Rose Cottage  
Mill Lane  
Wolverley  
DY11 5TR

## Methodology

### Photography

During the field study, a photographic record was made to represent the full range of potential views towards the site from available viewpoints within the study area. These locations are mapped, the visual receptor types recorded and viewpoint context described. All photographs have been taken from within the site itself to which access was granted. The methodology ensures that the combination of camera and lens recreates as close as possible what can be seen by the human eye.

### Equipment:

The aim of a verified photomontage is to illustrate what a proposed development may look like to a person standing at a specified photographic viewpoint. In order to create this effect, all photographs are taken with a camera and lens combination, resulting in a 'standard' focal length (equivalent to the cone of human vision). A standard focal length is usually considered to be in the range 45mm to 55mm on a traditional 35mm film camera. On digital cameras, where the image sensor is often smaller than the recorded image on traditional film cameras, the focal length of the lens used must compensate for the effective magnification resulting from the smaller sensor.

A Canon 5D Mark IV full frame sensor camera was used for all viewpoints in conjunction with a Canon 50mm prime lens (35mm format equivalent), which is within the 'standard' focal length range. The full frame sensor in the Canon 5D therefore, results in no magnification. To eliminate the parallax error that occurs when taking panoramic images, a sliding plate on the tripod head was employed allowing the camera to be moved back along the line of sight so that the nodal point of the lens was positioned directly over the axis of rotation.

Image capture: The camera was mounted on a tripod using a Nodal Ninja Panoramic tripod head at 1.6m above ground level to simulate the view at eye level and adjusted to suit views to mirror ground and first floor windows of Charlton Manor.

The orientation of the camera was adjusted so that the optical axis and the horizontal axis were aligned with the horizon. This is the 'astronomical' horizon as set by a gravity governed bubble level.

Images were captured in the camera's maximum quality jpeg mode, with a RAW image processed as a backup. Camera settings were chosen carefully for each viewpoint; the camera was set to aperture priority mode, a small aperture of f/11 was used and the focus distance selected specifically to render all parts of the scene in focus whilst retaining image quality.

Panoramas were deemed essential to show the maximum extent of the proposed development and so frames were taken at 20-degree intervals to allow for overlap (discussed below).

Post Production: The panoramas were stitched together using PT Gui Pro specialist panorama creation software, with each photograph being cropped to take only the central portion of each image. These precautions minimise the small amount of optical distortion effect caused by the camera lens. Images were imported as jpeg files and minor tonal and colour adjustments were made which aim to replicate the scene as honestly as possible as it was perceived by the photographer at the time of capture. The stitched cylindrical panorama was then cropped to 90° for use as a baseline 'existing' view.

### Survey

Precise surveying was essential to gain accurate information of the camera and control point positions. GPS readings were taken from the central tripod position that the camera was placed using a Spectra Precision SP60 GNSS Receiver, which achieved a 25mm degree of tolerance.

### Control Points:

Control points are surveyed points/objects that can clearly be identified on the photograph. Since they are included in the 3D model, they can be visually matched with the corresponding points on the photograph.

Control points were identified within each photograph and marked for the survey team to take measurements. A minimum of three control points were chosen, and five where possible of fixed

Client William Morrison (Cheltenham) Ltd  
Project **Land off Oakhurst Rise,  
Cheltenham**  
Drawing Title Methodology



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features such as lamp-posts, fences and sign posts. Occasionally if available, control points taken from another viewpoint were also used for even more accurate positioning of the 3D model within the photograph. Due to the rural nature of the viewpoint locations, survey poles were used as temporary control points. These control points were then created within the 3D program in the precise positions.

Control points were taken using the aforementioned Spectra Precision GPS device. All survey measurements were supplied in CAD format for use in the 3D model.

### 3D Model

3D models were created and supplied which were then aligned within 3DS Max using the site masterplan to determine the X and Y position. Finished floor levels were then used to accurately position the 3D model vertically AOD (above ordnance datum).

### Camera Matching and Rendering

The process of camera matching (i.e. correctly assembling the perspective views within the 3D program to match those photographs taken on site) needs meticulous attention to detail. The details of the Ordnance Survey co-ordinates for each viewpoint, and the angle of each view were also checked as part of the verification process.

The survey information was added into the 3D model and aligned precisely with the OS coordinate system. '3D' Cameras (or perspective views) were then created within 3DS Max at each of the viewpoint locations and raised to match the position at eye-level that was achieved during photography.

3D control points were created to match those visible in each of the panoramas and positioned according to the survey data. Any atmospheric conditions experienced at the time of taking the photograph were added to the model. For example, haze or reflected sunlight.

Using the '3D' camera each 90° cylindrical panorama was used as a backdrop and rendered using a VRay camera option that mirrors the distortion exhibited in a cylindrical panorama. Adjustments were then made to the camera angle to align the 3D control points with the real-life equivalents shown in each panorama, thus creating a 'photo-matched' viewpoint with the model aligned at the correct scale and angle.

A daylight system was then created within 3DS Max using the geographic location and time zone, then setting the correct time that the viewpoint was captured. This allows for the accurate creation of shadows as at the time of taking the photograph. For viewpoints taken in full cloud, a High Dynamic Range Image (HDRI) was mapped as a 'dome light' within 3DS Max and used as the main light source. An HDRI is an image format that contains a large amount of shadow and highlight information and can be used to illuminate a 3D scene, providing a good representation

of conditions on a cloudy day.

### Vegetation

3D vegetation was used to control the vegetation height at years 1 and 8 and used the following table of information as a guide. Whilst it is not possible to accurately predict vegetation height at a given age due to site conditions/weather, the table below helps to give an 'average' growth amount. To provide a level of realism to the images 3D vegetation models were used to correlate with the percentages in the planting schedule on the landscape strategy drawing produced by mhp design Ltd (19216.301 RevA) and the scale allowed to fluctuate between 95 and 105%. Positionally the vegetation model followed the aforementioned plan using a planting matrix with 2m centres for the woodland mix and 1.5m centres for the woodland edge mix.

Planting Type	Year 1	Year 8	Year 15
Feathered Standard Trees	2.5-3m	5.5-6m	8.5m
Selected Heavy Standard Trees	3.5m	5.5-6m	8.5m
Selected Extra Heavy Standard Trees	4-4.5m	6-6.5m	8.5m
Semi-mature Trees	4.5m	7.5m	8.5m
Native Shrub/Scrub	60-90cm	3.5m	5m

### Post production

Care was taken in Adobe Photoshop to mask out elements of the 3D model that may be obscured by foreground objects to produce the final visualisations.

### Caveats

- i. A photomontage can never be considered as a 100% accurate representation of what would be seen due to the large number of variables affecting the images from the photography to the limitations of the 3D programs. They should be used as an aid to the decision making process.
- ii. Due to the proximity to the site it was decided that the viewpoints would not be magnified to 150% at A1 page width as a significant proportion of the context would be cropped. These have been presented at 90° at A1 as cylindrical panoramas to avoid the distortion that a planar projection at this angle of view would give. To correctly view these photomontages they should be printed at 100% at the given paper size and curved around the viewer at the given 'principal distance' shown in the viewpoint information.
- iii. Viewpoint B attempts to recreate the outlook from the ground and first floor windows of Charlton Manor. Access was not possible to take photographs inside or immediately outside the window positions so the photographs were taken as close to the boundary as possible at ground level and, using a scaffolding, at first floor level. Given that the photograph position is approximately 40m from the windows of Charlton Manor, the actual view within the building would naturally differ from that presented but can be considered indicative of the visual impact and the outlook from Charlton Manor within the wider context.

Client William Morrison (Cheltenham) Ltd  
 Project **Land off Oakhurst Rise, Cheltenham**  
 Drawing Title Methodology



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## References

All photomontages were created in accordance with recommendations given in the following publications:

Landscape Institute and IEMA (2013) Guidelines for Landscape and Visual Impact Assessment 3rd edition (GLVIA3).

Landscape Institute:

Note 06/19 - Visual Representation of Development Proposals

Note 07/19 - Visual Representation of Development Proposals: Glossary and Abbreviations

Note 08/19 - Visual Representation of Development Proposals: Camera Auto Settings

Scottish Natural Heritage (2017) Visual representation of windfarms: good practice guidance. ('SNH 2017')

Client William Morrison (Cheltenham) Ltd  
Project **Land off Oakhurst Rise,  
Cheltenham**  
Drawing Title Methodology

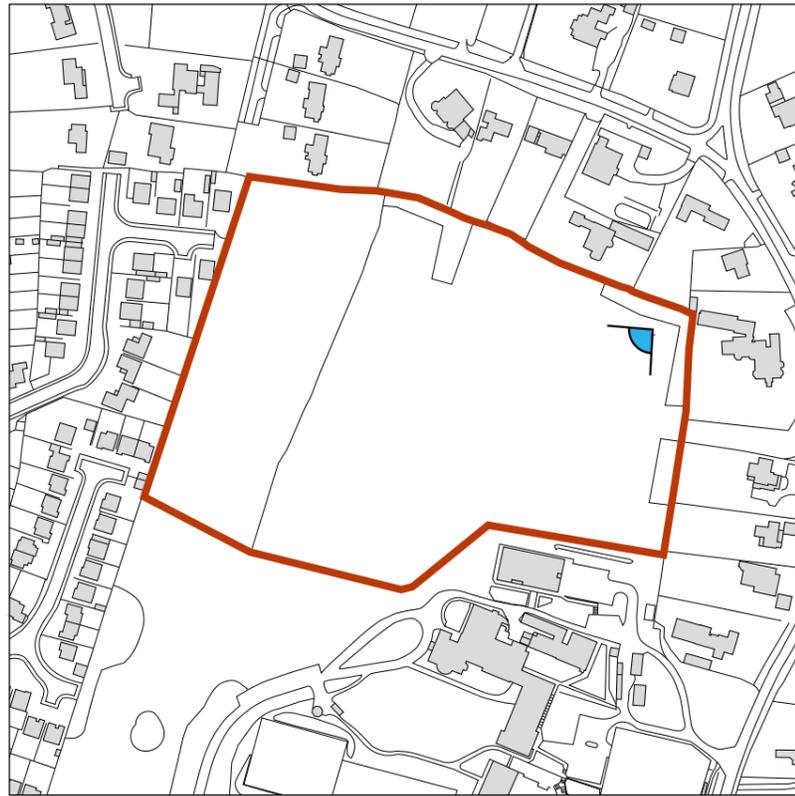


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Existing Contextual Photograph



Viewpoint Location

Distance to nearest building: 63m  
 Bearing to site centre: 256°  
 Viewpoint grid reference: 396629.434 E 221624.174 N  
 Viewpoint ground height: 123.97m  
 Camera Height (AGL): 1.6m  
 Horizontal Field of View: 90° (Cylindrical Projection)  
 Principal Distance: 255mm

Date & time of photo(s): 05/02/2021 08:21  
 Camera: Canon 5D MkIV  
 Lens, FL, max aperture: Canon, 50mm, f/1.2L  
 LI Image Type: Type 1

Rev: -  
 Scale: -  
 Drawn: AM

Sheet Size: A3 Landscape

Client: William Morrison (Cheltenham) Ltd  
 Project: **Land off Oakhurst Rise, Cheltenham**  
 Drawing Title: Viewpoint A - Existing

Fig  
 1



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Existing Baseline Photograph



Photomontage - Proposed Development at Year 1

Distance to nearest building: 63m  
 Bearing to site centre: 256°  
 Viewpoint grid reference: 396629.434 E 221624.174 N  
 Viewpoint ground height: 123.97m  
 Camera Height (AGL): 1.6m  
 Horizontal Field of View: 90° (Cylindrical Projection)  
 Principal Distance: 255mm

Date & time of photo(s): 05/02/2021 08:21  
 Camera: Canon 5D MkIV  
 Lens, FL, max aperture: Canon, 50mm, f/1.2L  
 LI Image Type: Type 4

Rev: -  
 Scale: -  
 Drawn: AM

Sheet Size: A3 Landscape

Client: William Morrison (Cheltenham) Ltd  
 Project: **Land off Oakhurst Rise, Cheltenham**  
 Drawing Title: Viewpoint A - Existing baseline photograph - Proposed development at Year 1  
 Fig 2



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Existing Baseline Photograph



Photomontage - Proposed Development at Year 8

Distance to nearest building: 63m  
 Bearing to site centre: 256°  
 Viewpoint grid reference: 396629.434 E 221624.174 N  
 Viewpoint ground height: 123.97m  
 Camera Height (AGL): 1.6m  
 Horizontal Field of View: 90° (Cylindrical Projection)  
 Principal Distance: 255mm

Date & time of photo(s): 05/02/2021 08:21  
 Camera: Canon 5D MkIV  
 Lens, FL, max aperture: Canon, 50mm, f/1.2L  
 LI Image Type: Type 4

Rev: -  
 Scale: -  
 Drawn: AM

Sheet Size: A3 Landscape

Client: William Morrison (Cheltenham) Ltd  
 Project: **Land off Oakhurst Rise, Cheltenham**  
 Drawing Title: Viewpoint A - Existing baseline photograph - Proposed development at Year 8  
 Fig 3



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Photomontage - Proposed Development at Year 1

Rev: -  
Scale: -  
Drawn: AM  
  
Sheet Size: 841 x 297mm

Fig  
**4**

Distance to nearest building: 63m  
Bearing to site centre: 256°  
Viewpoint grid reference: 396629.434 E 221624.174 N  
Viewpoint ground height: 123.97m

Camera Height (AGL): 1.6m  
Horizontal Field of View: 90° (Cylindrical Projection)  
Principal Distance: 522mm

Date & time of photo(s): 05/02/2021 08:21  
Camera: Canon 5D MkIV  
Lens, FL, max aperture: Canon, 50mm, f/1.2L



Photomontage - Proposed Development at Year 8

Rev: -  
Scale: -  
Drawn: AM  
  
Sheet Size: 841 x 297mm

Fig  
**5**

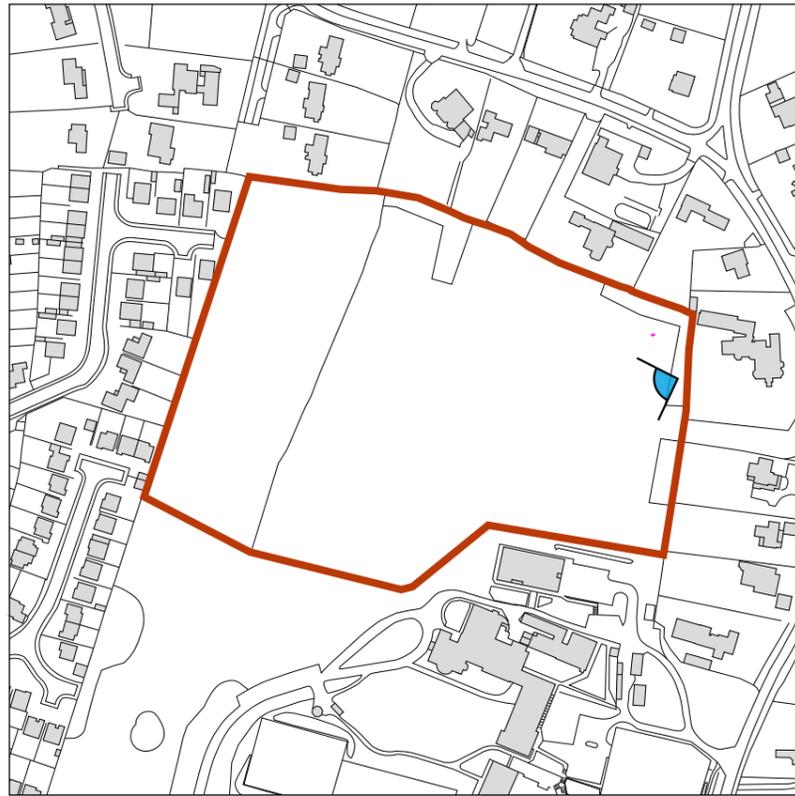
Distance to nearest building: 63m  
Bearing to site centre: 256°  
Viewpoint grid reference: 396629.434 E 221624.174 N  
Viewpoint ground height: 123.97m

Camera Height (AGL): 1.6m  
Horizontal Field of View: 90° (Cylindrical Projection)  
Principal Distance: 522mm

Date & time of photo(s): 05/02/2021 08:21  
Camera: Canon 5D MkIV  
Lens, FL, max aperture: Canon, 50mm, f/1.2L



Existing Contextual Photograph



Viewpoint Location

Distance to nearest building: 81m  
 Bearing to site centre: 266°  
 Viewpoint grid reference: 396639.460 E 221602.547 N  
 Viewpoint ground height: 122.53m  
 Camera Height (AGL): 1.95m  
 Horizontal Field of View: 90° (Cylindrical Projection)  
 Principal Distance: 255mm

Date & time of photo(s): 05/02/2021 08:44  
 Camera: Canon 5D MkIV  
 Lens, FL, max aperture: Canon, 50mm, f/1.2L  
 LI Image Type: Type 1

Rev: -  
 Scale: -  
 Drawn: AM

Sheet Size: A3 Landscape

Client: William Morrison (Cheltenham) Ltd  
 Project: **Land off Oakhurst Rise, Cheltenham**  
 Drawing Title: Viewpoint B Ground Floor View - Existing

Fig 6



Rose Cottage,  
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Existing Baseline Photograph



Photomontage - Proposed Development at Year 1

Distance to nearest building: 81m  
 Bearing to site centre: 266°  
 Viewpoint grid reference: 396639.460 E 221602.547 N  
 Viewpoint ground height: 122.53m  
 Camera Height (AGL): 1.95m  
 Horizontal Field of View: 90° (Cylindrical Projection)  
 Principal Distance: 255mm

Date & time of photo(s): 05/02/2021 08:44  
 Camera: Canon 5D MkIV  
 Lens, FL, max aperture: Canon, 50mm, f/1.2L  
 LI Image Type: Type 4

Rev: -  
 Scale: -  
 Drawn: AM

Sheet Size: A3 Landscape

Client: William Morrison (Cheltenham) Ltd  
 Project: **Land off Oakhurst Rise, Cheltenham**

Drawing Title: Viewpoint B Ground Floor - Existing baseline photograph - Proposed development at Year 1 Fig 7



Rose Cottage,  
 Mill Lane, Wolverley,  
 DY11 5TR

T: 01562 632417  
 M: 07747 816055



Existing Baseline Photograph



Photomontage - Proposed Development at Year 8

Distance to nearest building: 81m  
 Bearing to site centre: 266°  
 Viewpoint grid reference: 396639.460 E 221602.547 N  
 Viewpoint ground height: 122.53m  
 Camera Height (AGL): 1.95m  
 Horizontal Field of View: 90° (Cylindrical Projection)  
 Principal Distance: 255mm

Date & time of photo(s): 05/02/2021 08:44  
 Camera: Canon 5D MkIV  
 Lens, FL, max aperture: Canon, 50mm, f/1.2L  
 LI Image Type: Type 4

Rev: -  
 Scale: -  
 Drawn: AM

Sheet Size: A3 Landscape

Client: William Morrison (Cheltenham) Ltd  
 Project: **Land off Oakhurst Rise, Cheltenham**

Drawing Title: Viewpoint B Ground Floor - Existing baseline photograph - Proposed development at Year 8

Fig 8



Rose Cottage,  
 Mill Lane, Wolverley,  
 DY11 5TR

T: 01562 632417  
 M: 07747 816055



Photomontage - Proposed Development at Year 1

Rev:	-	Fig	Distance to nearest building:	81m	Camera Height (AGL):	1.95m	Date & time of photo(s):	05/02/2021 08:44
Scale:	-	9	Bearing to site centre:	264°	Horizontal Field of View:	90° (Cylindrical Projection)	Camera:	Canon 5D MkIV
Drawn:	AM		Viewpoint grid reference:	396639.460 E 221602.547 N	Principal Distance:	522mm	Lens, FL, max aperture:	Canon, 50mm, f/1.2L
Sheet Size:	841 x 297mm		Viewpoint ground height:	122.53m				



Photomontage - Proposed Development at Year 8

Rev: -  
Scale: -  
Drawn: AM  
  
Sheet Size: 841 x 297mm

Fig  
**10**

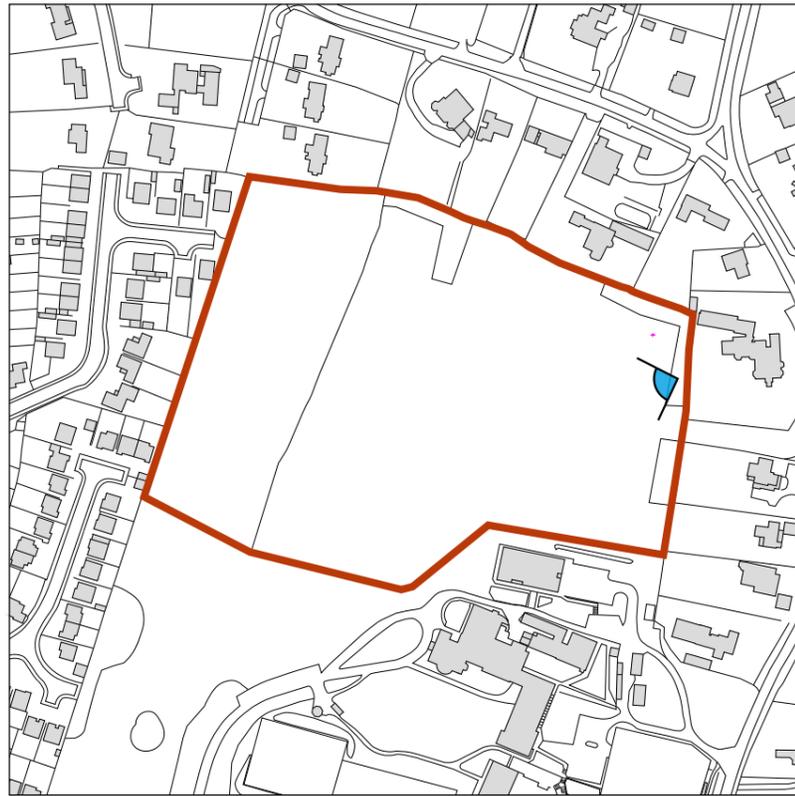
Distance to nearest building: 81m  
Bearing to site centre: 264°  
Viewpoint grid reference: 396639.460 E 221602.547 N  
Viewpoint ground height: 122.53m

Camera Height (AGL): 1.95m  
Horizontal Field of View: 90° (Cylindrical Projection)  
Principal Distance: 522mm

Date & time of photo(s): 05/02/2021 08:44  
Camera: Canon 5D MkIV  
Lens, FL, max aperture: Canon, 50mm, f/1.2L



Existing Contextual Photograph



Viewpoint Location

Distance to nearest building: 81m  
 Bearing to site centre: 266°  
 Viewpoint grid reference: 396638.983 E 221602.317 N  
 Viewpoint ground height: 127.26m  
 Camera Height (AGL): 1.9m  
 Horizontal Field of View: 90° (Cylindrical Projection)  
 Principal Distance: 255mm

Date & time of photo(s): 05/02/2021 10:36  
 Camera: Canon 5D MkIV  
 Lens, FL, max aperture: Canon, 50mm, f/1.2L  
 LI Image Type: Type 1

Rev: -  
 Scale: -  
 Drawn: AM

Sheet Size: A3 Landscape

Client: William Morrison (Cheltenham) Ltd  
 Project: **Land off Oakhurst Rise, Cheltenham**  
 Drawing Title: Viewpoint B First Floor View - Existing

Fig 11



Rose Cottage,  
 Mill Lane, Wolverley,  
 DY11 5TR

T: 01562 632417  
 M: 07747 816055



Existing Baseline Photograph



Photomontage - Proposed Development at Year 1

Distance to nearest building: 81m  
 Bearing to site centre: 266°  
 Viewpoint grid reference: 396638.983 E 221602.317 N  
 Viewpoint ground height: 127.26m  
 Camera Height (AGL): 1.9m  
 Horizontal Field of View: 90° (Cylindrical Projection)  
 Principal Distance: 255mm

Date & time of photo(s): 05/02/2021 10:36  
 Camera: Canon 5D MkIV  
 Lens, FL, max aperture: Canon, 50mm, f/1.2L  
 LI Image Type: Type 4

Rev: -  
 Scale: -  
 Drawn: AM

Sheet Size: A3 Landscape

Client: William Morrison (Cheltenham) Ltd  
 Project: Land off Oakhurst Rise, Cheltenham

Drawing Title: Viewpoint B First Floor View - Existing baseline photograph - Proposed development at Year 1

Fig 12



Rose Cottage,  
 Mill Lane, Wolverley,  
 DY11 5TR

T: 01562 632417  
 M: 07747 816055



Existing Baseline Photograph



Photomontage - Proposed Development at Year 8

Distance to nearest building: 81m  
 Bearing to site centre: 266°  
 Viewpoint grid reference: 396638.983 E 221602.317 N  
 Viewpoint ground height: 127.26m  
 Camera Height (AGL): 1.9m  
 Horizontal Field of View: 90° (Cylindrical Projection)  
 Principal Distance: 255mm

Date & time of photo(s): 05/02/2021 10:36  
 Camera: Canon 5D MkIV  
 Lens, FL, max aperture: Canon, 50mm, f/1.2L  
 LI Image Type: Type 4

Rev: -  
 Scale: -  
 Drawn: AM

Sheet Size: A3 Landscape

Client: William Morrison (Cheltenham) Ltd  
 Project: Land off Oakhurst Rise, Cheltenham

Drawing Title: Viewpoint B First Floor View - Existing baseline photograph - Proposed development at Year 8

Fig 13



Rose Cottage,  
 Mill Lane, Wolverley,  
 DY11 5TR

T: 01562 632417  
 M: 07747 816055



Photomontage - Proposed Development at Year 1

Rev:	-	Fig	Distance to nearest building:	81m	Camera Height (AGL):	1.9m	Date & time of photo(s):	05/02/2021 10:36
Scale:	-	<b>14</b>	Bearing to site centre:	264°	Horizontal Field of View:	90° (Cylindrical Projection)	Camera:	Canon 5D MkIV
Drawn:	AM		Viewpoint grid reference:	396638.983 E 221602.317 N	Principal Distance:	522mm	Lens, FL, max aperture:	Canon, 50mm, f/1.2L
Sheet Size:	841 x 297mm		Viewpoint ground height:	127.26m				



Photomontage - Proposed Development at Year 8

Rev:	-	Fig	Distance to nearest building:	81m	Camera Height (AGL):	1.9m	Date & time of photo(s):	05/02/2021 10:36
Scale:	-	<b>15</b>	Bearing to site centre:	266°	Horizontal Field of View:	90° (Cylindrical Projection)	Camera:	Canon 5D MkIV
Drawn:	AM		Viewpoint grid reference:	396638.983 E 221602.317 N	Principal Distance:	522mm	Lens, FL, max aperture:	Canon, 50mm, f/1.2L
Sheet Size:	841 x 297mm		Viewpoint ground height:	127.26m				

## APPENDIX 5

Hydrology Technical Note prepared by Simpson Engineering

Our ref: C21505/AdC/TN

22<sup>nd</sup> February 2021



CONSULTING ENGINEERS

Unit B10  
Elmbridge Court Business Park  
Gloucester  
GL3 1JZ

Tel: +44 (0)1452 309 727  
Email: admin@simpsoneng.com  
www.simpsoneng.com

**RE: Land adjacent to Oakhurst Rise, Cheltenham  
Appeal Reference: APP/B1065/B1605/W/20/3261154– Technical Note**

**1. Introduction**

- 1.1 My name is Andrew de Croos, I have a Bachelor of Engineering in Civil and Environmental Engineering and have over 15 years' experience working in civil engineering and in particular drainage and flood risk.
- 1.2 I am currently employed as an Associate by Simpson Associates Consulting Engineers LLP, who have offices across the United Kingdom.
- 1.3 Simpson Associates have been employed to provide drainage, flood risk and structural advice relating to the proposed development, which involved the production of a Flood Risk Assessment and Drainage Strategy in support of the planning application.
- 1.4 This technical note has been produced to provide the Inspector with a summary of the 3<sup>rd</sup> party objections against the development, that relate to drainage and flood risk, which have been listed below.

**2. Summary of objection: The proposed location of the artificial badger sett will have an adverse impact upon drains and spring water supply to Charlton Manor.**

Response:

- 2.1 The construction of the artificial badger sett will not have any adverse impact upon any drains and springs or interrupt the supply of spring water to Charlton Manor.
- 2.2 Should shallow ground water or springs be encountered during the construction of the artificial badger sett, the sett will simply be moved to another location on the site that is not affected by ground water, as set out within the ecological statement of common grounds.
- 2.3 Furthermore, we have sought an independent opinion from Enzygo Geoenvironmental Ltd. who are experts in geotechnics and hydrology and they're are of the same opinion, concluding that "*the proposed artificial badger set is on higher ground and in my view unlikely to significantly alter the local shallow drainage to the point where it affects any alleged springs*".

2.4 A copy of Enzygo Geoenvironmental's full opinion has been appended to this technical note.

### **3. Conclusion**

3.1 It is our opinion and that of an independent expert in geotechnics and hydrology, that the proposed location of the artificial badger sett will not have an adverse impact upon the drains and springs on the site.

3.2 The construction of the artificial badger sett will not interrupt the supply of spring water to Charlton Manor.

### **4. Statement of truth**

4.1 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Andrew de Croos

**Simpson Associates Consulting Engineers LLP**

**Appendix A**  
**Independent opinion from Enzygo Geoenvironmental Ltd.**

## Andrew de Croos

---

**From:** Paul Hardwick <paul.hardwick@enzygo.com>  
**Sent:** 22 February 2021 12:32  
**To:** Andrew Uncles  
**Cc:** Andrew de Croos  
**Subject:** RE: 21505 - London Road, Charlton Kings, Cheltenham (Oakhurst Rise)

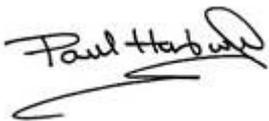
Andrew,

I agree with the geological interpretation in the Phase 1 report i.e., no mapped superficial deposits but weathered Charmouth Mudstone (clays) grading to un-weathered Charmouth Mudstone at depth which I would expect to be around 2.5 to 3m. The trial pit logs indicate clay mottling of the weathered subsoils typical of variable drainage. Any springs would be downslope and probably arise from accumulations of perched groundwater at the base of the weathered zone via infiltration through the free draining soil cover (Soilscape 5) ( or from sand and gravel inclusions within the Lower Lias) and are probably ephemeral i.e. dry up in summer or extended dry periods. There is no geomorphological evidence of springbrooks- watercourses arising from springs. The falling head test data (TP9, TP11, WS1, WS2, WS3) indicates low permeability for the weathered subsoils. The pond shown in photo P5 The local pond may be spring fed but has no surface outfall and so is probably rainfall fed by drainage from higher ground off-site to the north.

The proposed artificial badger set is on higher ground and in my view unlikely to significantly alter the local shallow drainage to the point where it affects any alleged springs, which in any event are not designated, are draining local ground and so are largely unimportant.

Hope this helps,

Kind regards  
Paul



Dr Paul Hardwick BSc (Hons), PhD FGS FRSA  
Technical Director



### COVID-19 STATEMENT

Please be advised that Enzygo is continuing to operate and provide services to our clients whilst following Government and WHO guidelines. All staff can homework with access to our IT and phone systems which will provide minimal disruption to our service, but we appreciate your understanding if some communications are delayed.

Enzygo Ltd,  
Samuel House, 5 Fox Valley Way, Stocksbridge, Sheffield, S36 2AA

Offices in Bristol, Sheffield & Manchester

**APPENDIX 6**

Dwg No. PL020 Comparison of Built Area between 18/02171/OUT and current proposal

Land off Oakhurst Rise,  
Charlton Kings,  
Cheltenham



**coombes : everitt architects limited**  
 Unit No.1, The Old Dairy  
 Rushley Lane  
 Winchcombe  
 Gloucestershire  
 GL54 5JE  
 t: 01242 807727 f: 0845 5575833  
 e: info@ce-architects.co.uk  
 www.ce-architects.co.uk

- Preliminary
- Feasibility
- Planning
- Building Regulations
- Tender
- Construction issue
- As Built

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 2. Do not scale drawing. all dimensions to be checked on site prior to construction and any discrepancies reported to contract administrator.  
 3. Do not use this drawing for setting out unless drawing specifically indicates setting out points.  
 4. Engineering information is indicative only and should be taken from structural engineers design.



Drawing title: Previous Scheme Overlay

Client: William Morrison (Cheltenham) Ltd & The Trustees of the Carmelite Charitable Trust

Drawn by: AH Checked: JE

Project No: 16.20.034

Project: Land off Oakhurst Rise,  
Charlton Kings,  
Cheltenham

Scale: 1:500 @ A1

Date: February 2021

Project / Drawing No: PL020

**APPENDIX 7**

Email from J Rowley, dated 2<sup>nd</sup> February 2021

**Gina Parle**

---

**Subject:** FW: Oakhurst Rise

Begin forwarded message:

**From:** [John.Rowley@cheltenham.gov.uk](mailto:John.Rowley@cheltenham.gov.uk)  
**Date:** 2 February 2021 at 12:27:44 GMT  
**To:** [james@smithbuildingco.co.uk](mailto:james@smithbuildingco.co.uk)  
**Subject:** RE: Oakhurst Rise

Hi James,

Yes, the figure of 25 units was determined by using the original 100 unit scheme site plan to estimate how many units could be achieved to the west of the tree belt. Officers also looked at the relative density of existing development in the Oakhurst Rise area and applied that to the area to the west of the tree belt. This also gave a figure of 25. It should be noted that this was still an approximate figure to be used as a starting point for the design of any future scheme.

Kind regards  
John

-----Original Message-----

From: James Smith <[james@smithbuildingco.co.uk](mailto:james@smithbuildingco.co.uk)>  
Sent: 02 February 2021 12:20  
To: John Rowley <[John.Rowley@cheltenham.gov.uk](mailto:John.Rowley@cheltenham.gov.uk)>  
Subject: Oakhurst Rise

Hi John,

Following on from our previous conversations, please can you confirm the figure of 25 units was arrived at, from the number of units to the west of the tree belt, from the site plan in the 100 unit scheme. I'd be grateful if you'd be kind enough to come back to me as soon as possible.

Kind Regards

James Smith  
[j@messmith.net](mailto:j@messmith.net)  
07884076645

Sent from my iPhone

**APPENDIX 8**

Dwg No. PL005 Proposed Site Layout v1 – 100 dwellings



**coombes : everitt architects limited**  
 Unit No.1, The Old Dairy  
 Rushley Lane  
 Winchcombe  
 Gloucestershire  
 GL54 5JE  
 t: 01242 807727 f: 0845 5575833  
 e: info@ce-architects.co.uk  
 www.ce-architects.co.uk

- Preliminary
- Feasibility
- Planning
- Building Regulations
- Tender
- Construction issue
- As Built

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 4. Engineering information is indicative only and should be taken from structural engineers design.

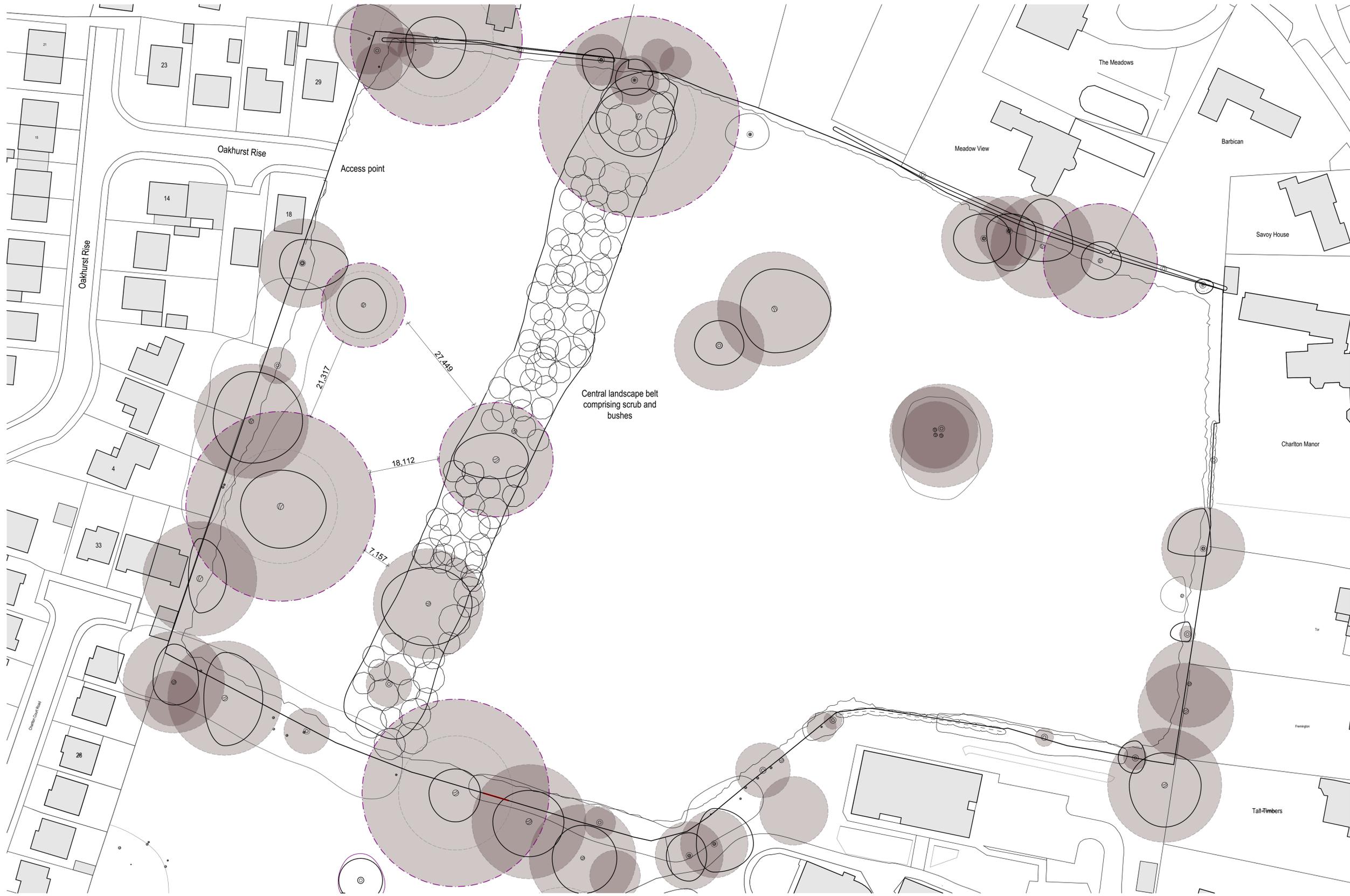
**RIBA**  
 Chartered Practice

Drawing title: Site Layout  
 Client: William Morrison Ltd  
 Drawn by: AL Checked: JE  
 Project No: 16.20.034

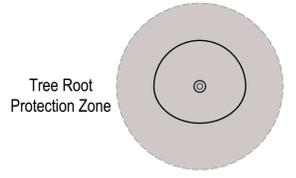
Project: Oakhurst Rise, Cheltenham  
 Scale: 1 : 500 @ A1  
 Date: June 2017  
 Project / Drawing No: PL005

**APPENDIX 9**

Dwg No. PL018 Constraints Plan



**KEY**



**coombes : everitt architects limited**  
 Unit No.1, The Old Dairy  
 Rushley Lane  
 Winchcombe  
 Gloucestershire  
 GL54 5JE  
 t: 01242 807727 f: 0845 5575833  
 e: info@ce-architects.co.uk  
 www.ce-architects.co.uk

- Preliminary
- Feasibility
- Planning
- Building Regulations
- Tender
- Construction issue
- As Built

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2. Do not scale drawing: all dimensions to be checked on site prior to construction and any discrepancies reported to contract administrator.
3. Do not use this drawing for setting out unless drawing specifically indicates setting out points.
4. Engineering information is indicative only and should be taken from structural engineers design.



Drawing title: Site Constraints Plan  
 Client: William Morrison (Cheltenham) Ltd & The Trustees of the Carmelite Charitable Trust  
 Drawn by: AH Checked: JE  
 Project No: 16.20.034

Project: Land off Oakhurst Rise, Charlton Kings, Cheltenham  
 Scale: 1:500 @ A1  
 Date: February 2021  
 Project / Drawing No: PL018

**APPENDIX 10**

Dwg No. 19216.301 Rev A Woodland Planting Plan

# Woodland Planting Schedule

The woodland planting area includes areas of tree and shrub planting, all are native species. Within the woodland planting mix 30% of plant stock is to be planted as Extra heavy standards (4-4.5m high, 14-16cm girth) in order to provide screening value from the outset. The remaining plantings are supplied as cell-grown plants, these are fast to establish as they are supplied with a protected root network.

Extra heavy standard trees will be double staked (See tree pit detail). All other plants will be protected with a biodegradable shrub shelter/guard 60cm in height and a cane. The whole woodland is to be surrounded with deer-proof fencing to prevent damage by deer. All new woodland planting requires regular maintenance and shall follow the guidance for post-planting management and maintenance outlined in BS 8545:2014 and detailed 10 year Landscape and Biodiversity management plan.

## WOODLAND: PLANTING MIX 1

Code	Species	Specification	Percentage of mix	Quantity	
				Area A	Area B
AC	Acer campestre	1+0 100cc Cell grown	10	71	25
BPU*	Betula pubescens*	EX HVY STD 14-16cm girth 400-450cm high, rootballed	10	71	25
BP	Betula pendula	1+0 100cc Cell grown	15	106	37
CB	Carpinus betulus	1+0 100cc Cell grown	5	35	13
Ca	Corylus avellana	1+0 100cc Cell grown	10	71	25
Cm	Crataegus monogyna	1+0 100cc Cell grown	5	35	13
FS*	Fagus sylvatica*	EX HVY STD 14-16cm girth 400-450cm high, rootballed	10	71	25
la	Ilex aquifolium	30-40-60cm 3L	5	35	12
Ms	Malus sylvestris	1+0 100cc Cell grown	5	35	12
PA	Prunus avium	1+0 100cc Cell grown	5	36	13
Ps	Prunus spinosa	1+0 100cc Cell grown	5	36	13
QR*	Quercus robur*	EX HVY STD 14-16cm girth 400-450cm high, rootballed	10	71	25
QR	Quercus robur	1+0 100cc Cell grown	5	35	12
			Totals: 100%	708	250

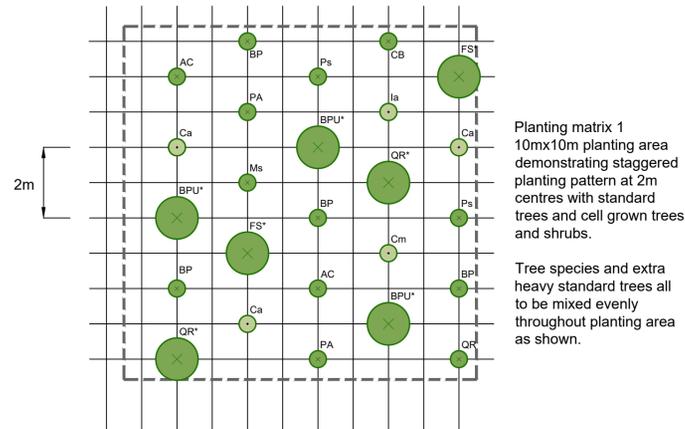
\* Larger trees to make up 30% of the overall mix.  
Mix 1 is to be planted at 2m centres with the larger trees spread out evenly throughout the area.

## WOODLAND EDGE AND EASMENT: PLANTING MIX 2

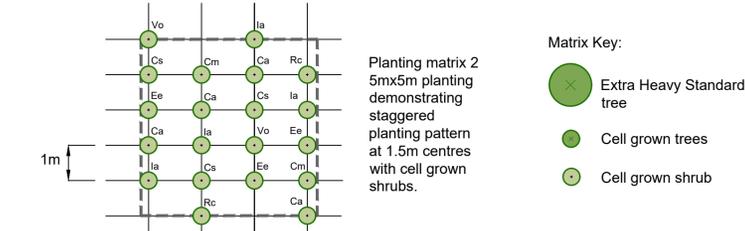
Code	Species	Specification	Percentage of mix	Quantity
				Area C
Cs	Cornus sanguinea	1+0 100cc Cell grown	15	80
Ca	Corylus avellana	1+0 100cc Cell grown	20	107
Cm	Crataegus monogyna	1+0 100cc Cell grown	10	53
Ee	Euonymus europaeus	1+0 100cc Cell grown	15	80
la	Ilex aquifolium	30-40-60cm 3L	20	107
Rc	Rosa canina	1+0 100cc Cell grown	10	53
Vo	Viburnum opulus	1+0 100cc Cell grown	10	53
			Total: 100%	533

Mix 2 is to be planted at 1.5m centres with species spread out evenly throughout the area.

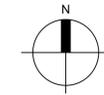
## Planting Matrix: Mix 1



## Planting Matrix: Mix 2



# Land off Oakhurst Rise Woodland Planting Plan



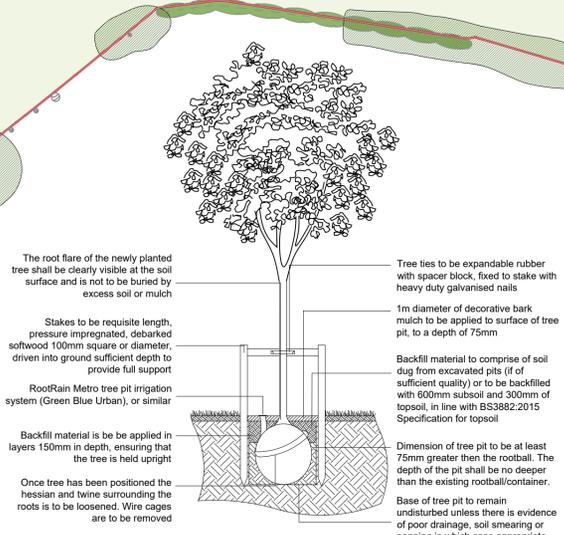
### Key

- Proposed native woodland planting
- Proposed woodland edge planting
- Deer-proof fence
- Existing tree to be retained
- Proposed trees to development (indicative locations)
- Existing hedges
- Proposed grass areas
- Proposed attenuation basin with wetland grass mix

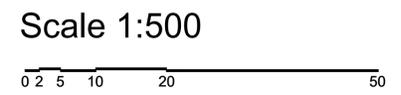


- ### Notes
- Do not scale directly from this drawing.
  - This drawing is to be read in conjunction with all other relevant drawings and information supplied by other consultants.
  - All tree planting in proximity to buildings to be checked by engineers to ensure foundation detailing is appropriate.
  - Please refer to the arboriculture drawing for further details of the existing vegetation on site.
  - Refer to the location plan for red and blue line boundaries.

A	Amendments to plan following comments	12/02/21	HS
Revisions:		Date	Drawn / Checked
Project:	Land Off Oakhurst Rise		
Client:	William Morrison (Cheltenham) Ltd.		
Title:	Woodland Planting Plan		
Drawing number:	19216.301	Rev:	A
Status:	FOR PLANNING		
Drawn By:	Checked By:	Date:	Scale @ A1:
HS	BD	10-02-21	1:500



Tree pit detail (Not to scale)



**APPENDIX 11**

Email to CK Friends, dated 13<sup>th</sup> January 2021

## Gina Parle

---

**From:** Gina Parle on behalf of Peter Frampton  
**Sent:** 13 January 2021 11:07  
**To:** SF Walker  
**Subject:** Oakhurst Rise, Cheltenham - Draft Statement of Common Ground with CK Friends

Our ref: PJF/gp/PF/10093

Dear Sally

**Town and Country Planning Act 1990**  
**Section 78 Appeal Ref: APP/B1605/W/20/3261154**  
**Land adjacent to Oakhurst Rise, Cheltenham**  
**Draft Statement of Common Ground with CK Friends**

Thank you for your email dated 12<sup>th</sup> January 2021 [15.35]. I will respond on the ecological matters you have raised shortly. My response to your point 3) is as follows:

It is accepted that the laying of drainage comprises development within the meaning of the Act as an engineering operation. Statements of planning policy (i.e. Policy HD4) should, however, be interpreted objectively in accordance with the language used – read, as always, in the proper context. In my view, the proper context of the policy as introduced by the Examining Inspector is to maintain open an area of land free from built development which would have an impact upon the setting of designated heritage assets. The installation of an underground drain and a balancing pond have no impact upon the setting of these assets in a form which may be considered to harm the significance of the assets. That would be an overly legalistic interpretation of the policy wording, which is inappropriate.

I trust that this response is helpful in explaining the Appellants' position.

Kind regards

Peter J Frampton  
BSc (Hons), TP, MRICS, MRTPI



Oriel House  
42 North Bar  
Banbury  
Oxfordshire  
OX16 0TH

**Tel: 01295 672310 Fax: 01295 275606**  
**Email: [peter.frampton@framptons-planning.com](mailto:peter.frampton@framptons-planning.com)**

**Our Office Manager, Natalie Dunkley, can be reached on 07803 452 910.**

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## APPENDIX 12

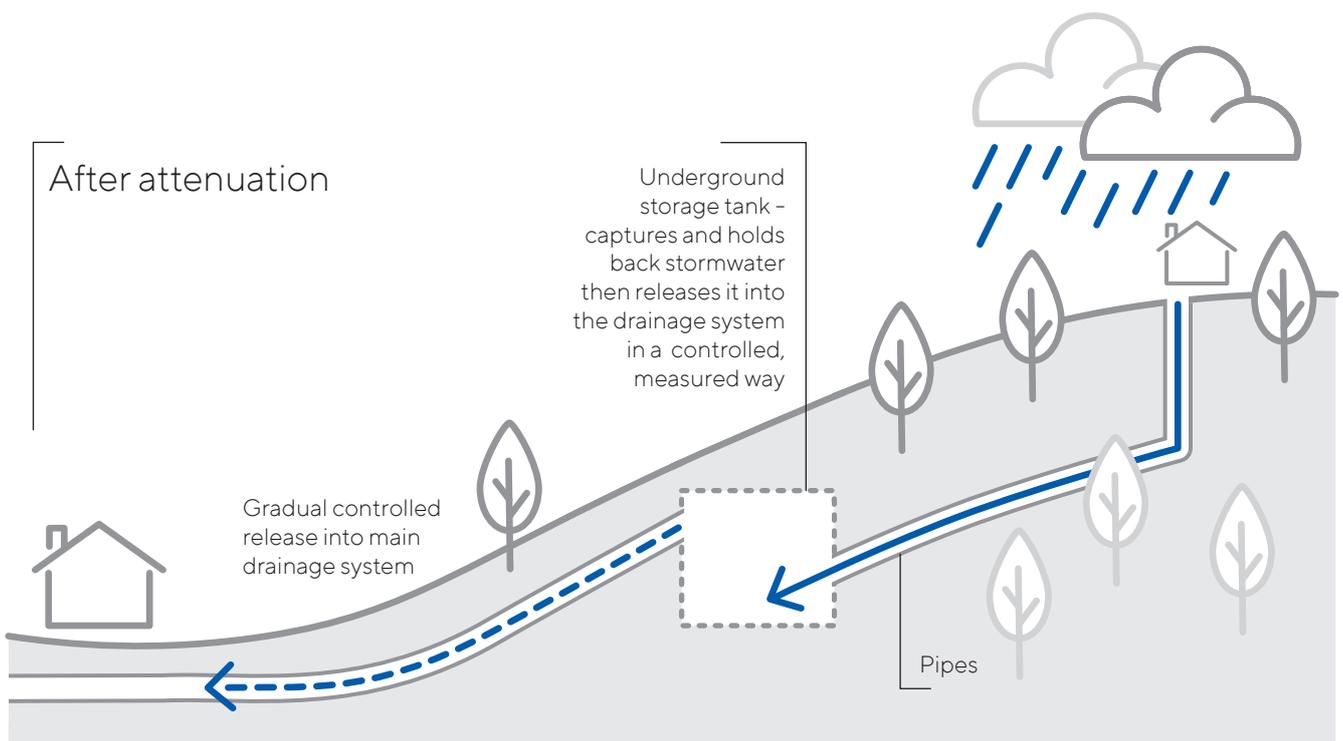
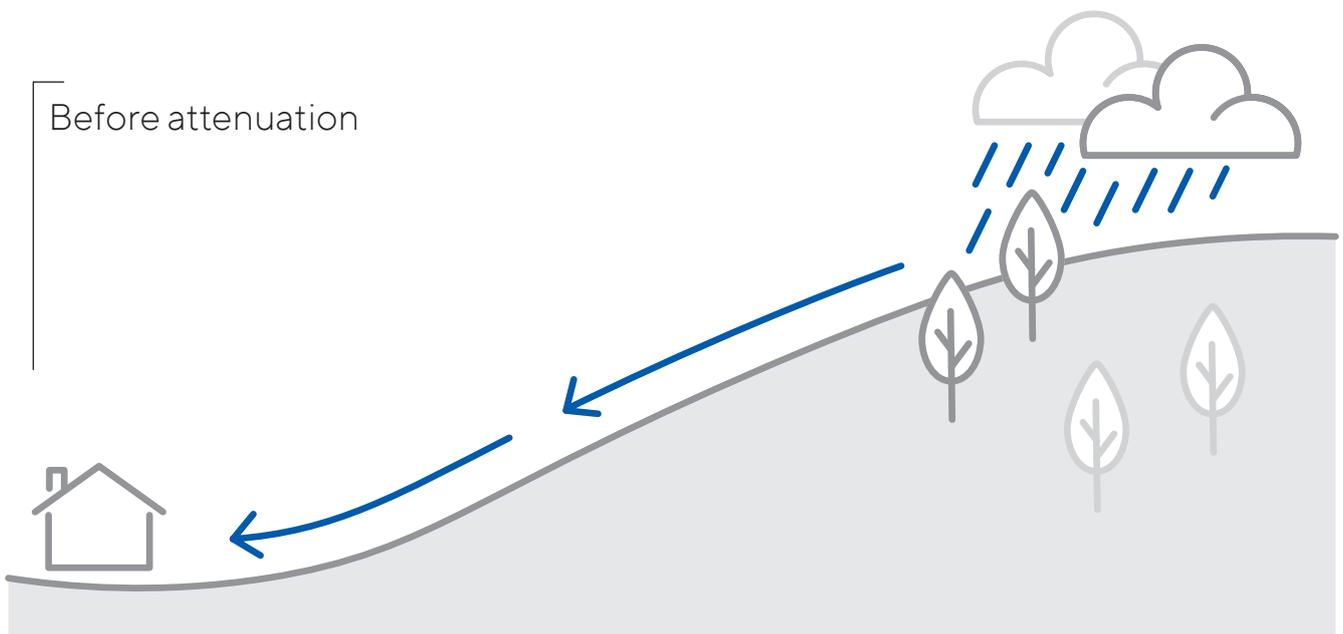
### Flood Management Betterment Infographic

# Oakhurst Rise – Flood risk betterment

## Helping to manage flood risk in Cheltenham

- The Oakhurst Rise development will lower the risk of flooding in vulnerable areas of the town
- At the moment water runs freely off this site into the Cheltenham drainage system
- This runoff is set to increase by up to 40 per cent over the coming years as a result of climate change
- Our attenuation system will reduce flood risk to lower lying areas of Cheltenham by:
  - The holding back of runoff water from the hill
  - Its storage in attenuation tanks
  - Its gradual controlled release

In simple terms, Oakhurst Rise is a positive step in managing flood risk in Cheltenham.



**APPENDIX 13**

Appeal Decision APP/D3830/W/19/3241644 Albourne, West Sussex, 11<sup>th</sup> September 2020



---

## Appeal Decision

Inquiry Held on 20-22, 24, 27, 28, 30, 31 July and 6 August 2020

Site visits made on 16 July, 7 and 16 August 2020

**by Christina Downes BSc DipTP MRTPI**

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

**Decision date: 11 September 2020**

---

**Appeal Ref: APP/D3830/W/19/3241644**

**Site of the former Hazeldens Nursery, London Road, Albourne, West Sussex BN6 9BL**

- 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 RV Developments Ltd and Notcutts Ltd against the decision of Mid Sussex District Council.
  - The application Ref DM/19/1001, dated 8 March 2019, was refused by notice dated 26 July 2019.
  - The development proposed is an extra care development of up to 84 units (comprising of apartments and cottages) all within Use Class C2, associated communal facilities. 2 workshops, provision of vehicular and cycle parking together with all necessary internal roads and footpaths, provision of open space and associated landscape works, and ancillary works and structures. Works to include the demolition of the existing bungalow on the site.
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### DECISION

1. The appeal is allowed and outline planning permission is granted for an extra care development of up to 84 units (comprising of apartments and cottages) all within Use Class C2, associated communal facilities. 2 workshops, provision of vehicular and cycle parking together with all necessary internal roads and footpaths, provision of open space and associated landscape works, and ancillary works and structures. Works to include the demolition of the existing bungalow on the site on the site of the former Hazeldens Nursery, London Road, Albourne, in accordance with the terms of the application, Ref DM/19/1001, dated 8 March 2019, subject to the conditions in Annex C to this decision.

### PROCEDURAL MATTERS

2. A costs application was made by RV Developments Ltd and Notcutts Ltd against Mid Sussex District Council. This is the subject of a separate Decision.
3. The application was made in outline form with access as the only matter to be considered at this stage. It was accompanied by a Parameter Plan (drawing no: RETI150215 PP-01 rev G) along with a detailed plan of the access and traffic calming measures proposed along London Road (drawing no: 1701-56 SK08 rev B). Following discussion at the inquiry it was agreed that the Sketch Layout (drawing no: RETI150215 SKL-04 rev J) should also be treated as an application drawing.

4. At the request of the Appellants, I undertook an accompanied visit to Charters Village, one of Retirement Villages' extra care developments in East Grinstead, West Sussex.
5. The proposal is supported by a Planning Obligation by Agreement (S106 Agreement) and a Planning Obligation by Unilateral Undertaking (UU). Just before the close of the inquiry the Council and the Appellants were involved in further discussions about the definition of Personal Care in the UU, amongst other things. As a result, changes were made whereby the Council reviewed its position and agreed that the proposed development would fall with Use Class Use C2 rather than Class C3 in the *Town and Country Planning (Use Classes) Order 1987 (as amended)*. As a consequence, there was no longer a policy requirement for affordable housing and the reason for refusal relating to that matter was no longer pursued. In order to allow the completion and engrossment of the legal documents, I agreed to a short extension of time following the close of the inquiry.
6. The planning application was made with reference to Use Class C2 in the description of the proposal. I was told that the Council would not validate it unless this reference was removed, which the Appellants agreed to do although by accounts not altogether willingly. In any event, as indicated in the preceding paragraph there is now no dispute that the proposal would fall within Class C2 and so it remains in the description as originally submitted.

## **REASONS**

### **PLANNING POLICY CONTEXT AND THE APPROACH TO DECISION MAKING**

7. For the purposes of this appeal the relevant part of the development plan comprises the *Mid Sussex District Plan 2014-2031* adopted in March 2018 (the MSDP) and the *Albourne Parish Council Neighbourhood Plan* made in September 2016 (the ANP). I do not consider that there are any pertinent saved policies or allocations in the *Mid Sussex Local Plan (2004)* or the *Small Scale Housing Allocations Development Plan Document (2008)* in this case. I return to this briefly below. The *West Sussex Joint Minerals Local Plan (2018)* is agreed by all parties not to be relevant.
8. It is the Appellants' case that the presumption in favour of sustainable development applies as set out in paragraph 11 of the *National Planning Policy Framework (the Framework)*. This is on two counts each of which is considered below. The first is that the development plan itself is not up-to-date. If that is the case, then the Appellants agree that paragraph 11c) could not apply. The second is that the basket of most important policies for determining the application are out-of-date because they are inconsistent with Framework policies. It is agreed between the main parties that the Council is able to demonstrate a five-year supply of deliverable sites to meet its housing requirement.

### **Whether the development plan as a whole is up-to-date**

9. The Council has chosen to adopt a two-stage approach whereby the MSDP only includes strategic allocations, with the smaller housing sites to be identified through a *Site Allocations Development Plan Document (SA DPD)* and neighbourhood plans. Policy DP4 in the MSDP anticipates the former document

being adopted in 2020, but the 2019 Local Development Scheme envisages this to be the summer of 2021. I was told at the inquiry that the Regulation 19 consultation had only just commenced and so there appears to have been further slippage and a more realistic assessment would be adoption later next year or even early in 2022.

10. The 2004 *Planning & Compulsory Purchase Act (as amended)* requires local planning authorities to identify strategic priorities for the development and use of land in their area. Policies in the development plan document must address these priorities. This is reflected in paragraph 17 of the Framework and similarly in the 2012 version of the Framework. The MSDP sets strategic priorities (termed objectives) in Chapter 2 and the policies to address them in Chapter 4. These include policy DP4. As mentioned above, policy DP4 specifically refers to the subsequent preparation of the SA DPD. If this had been required to have been produced at the same time it is difficult to see how the Examining Inspector could have been found it legally compliant in terms of consistency with national policy or legislation. However, it was found to be sound and as far as I am aware, no legal challenge was made to its adoption.
11. It is the case that the Examining Inspector indicated an expectation that the SA DPD would follow "*soon after this plan*" and recorded that the Council had committed to bringing it forward "*at an early date*". However, there was no clear indication as to the anticipated timeframe, apart from what is indicated in policy DP4. There has clearly been slippage but, the complaint that the MSDP does not adequately address small sites coming forward is as true now as it was when the plan was found sound. The Framework does not require a plan to necessarily allocate all of the housing land supply for the whole plan period. That is why it distinguishes between deliverable and developable sites during different stages of the lifetime of the plan.
12. In any event, the MSDP includes other means for bringing small sites forwards including neighbourhood plans. Mid Sussex District has a good coverage of such plans, albeit that most were made under the auspices of the 2004 Local Plan. Nevertheless, there is insufficient evidence to support the Appellants' assertion that this therefore means that the contribution of small sites from this source is "nominal" on a district-wide basis. Whilst the Albourne Neighbourhood Plan includes few allocations, it is one of around 20 such plans. Policy DP6 is permissive of settlement expansion and allows small sites of less than 10 dwellings to come forwards under certain conditions. The Examining Inspector considered that it provided the MSDP with extra robustness and flexibility in maintaining a rolling 5-year supply of housing land.
13. For all of the above reasons I do not consider that the development plan is out-of-date at the present time.

### **The most important policies for determining this application**

14. The Council and the Appellants consider that the following policies, which are included in the reasons for refusal, should be considered most important:

- MSDP: DP6, DP12, DP15, DP21, DP31, DP34, DP35
- ANP: ALC1, ALH1

All of these seem to me to fall within this category, save for policy DP31

relating to affordable housing. This rested on the dispute about whether the proposal fell within Use Class C2 or Use Class C3 and this in turn was resolved by the tightening of the definition of "Personal Care" in the UU. This document was not finalised at the time that the planning application was being considered by the Council and there was thus scope for change, as indeed happened during the inquiry. There was no dispute that the policy does not apply to Use Class C2 housing proposals and so, whilst it is relevant, I do not consider policy DP31 is of key importance to the determination of the application.

15. There are a number of disputed policies, which are as follows:

- Policy DP4 relates to housing delivery and sets out the District's housing requirement and how it will be addressed. It also commits to the preparation of a SA DPD as referred to above. It is clearly relevant to the consideration of a housing proposal, but it is not a development management policy that plays a significant role in determining planning applications. It is thus not a most important policy in this case.
- Policy DP20 is included in the reasons for refusal and relates to securing infrastructure and mitigation through planning obligations or the Community Infrastructure Levy. This will be addressed through the legal Deeds and, whilst clearly relevant is not to my mind of most importance.
- Policy DP25 concerns community facilities and local services and the supporting text makes clear that specialist accommodation and care homes are included. This supports the type of development being proposed and is therefore a most important policy in this case.
- Policy DP30 relates to housing mix and the need to meet the current needs of different groups in the community, including older people. It is a most important policy to the consideration of this proposal.
- Policy ALH2 in the ANP is an allocation for 2 houses in Albourne. This is not of particular relevance to the proposal and is not a most important policy.

16. The Appellants consider the saved policies in the 2004 Local Plan and policies SSH/7 to SSH/18 in the 2008 Small Scale Housing Allocations Development Plan Document to be most important. These relate mainly to site specific matters and allocations. Both are based on an out-of-date housing requirement established in the West Sussex Structure Plan. They also do not address the need for elderly persons accommodation. However, their relevance to the current proposal is tenuous and they are not of pertinence to this application.

17. Drawing together the above points, the most important policies to the determination of this application are:

- MSDP: DP6, DP12, DP15, DP21, DP25, DP30, DP34, DP35
- ANP: ALC1, ALH1

### **Whether the most important policies are out-of-date**

18. Whether the aforementioned policies are considered out-of-date in terms of paragraph 11d) of the Framework will depend on their degree of consistency with its policies. This was not a matter that the Council specifically addressed in its evidence, but I agree with the Appellants' assessment that policies DP21,

- DP34 and DP35 are consistent and can be considered up-to-date.
19. The Appellants' complaint regarding policies DP6, DP15, DP25 and DP30 is that they fail to address the way that extra care housing will be provided to meet identified needs as required by the Framework and Planning Practice Guidance.
  20. The assessment of need, including for older person's housing, was undertaken through the Housing and Economic Needs Assessment (HEDNA) and its Addendum and formed part of the evidence base for the MSDP. Whilst this has been strongly criticised by the Appellants on many counts it nevertheless does provide an assessment of the type and tenure of housing needed for older people. Furthermore, it is clear that the Examining Inspector considered the matter of older person's housing. Policy DP30 was found sound, subject to modifications that were subsequently incorporated.
  21. The matter of need is considered in detail later. However, policies DP25 and DP30 flow from the assessment of need in the HEDNA Addendum. Policy DP30 indicates that current and future needs of different community groups, including older people, will be met and that if there is found to be a shortfall in Class C2 housing, allocations through the SA DPD will be considered. There is an allocated site (SA 20) within that draft document for a care community. The Appellants are critical of this for various reasons, but the plan is still at an early stage and these will be considered at the examination in due course.
  22. Policy DP6 supports settlement growth, including to meet identified community needs. Bearing in mind the terms of policy DP25, this could include extra care housing. Policy DP15 addresses housing in the countryside and refers to policy DP6 as a criterion. The Planning Practice Guidance is not prescriptive as to how the housing needs of older people are addressed in planning policies. Overall, the aforementioned policies are, in my opinion, consistent with the guidance and Framework policy, including paragraph 61.
  23. Policy DP12 indicates that the countryside will be protected in recognition of its intrinsic character and beauty. It also refers to various landscape documents and evidence to be used in the assessment of the impact of development proposals. Whilst the wording could be improved, it does not seem to me to imply uncritical protection but rather a more nuanced approach that takes account of the effect on the quality and character of the landscape in question. To my mind this is consistent with the policy in both the 2012 Framework, under which the MSDP was considered, and the current version (2019). In that respect I do not agree with the Inspector in the Bolney appeal that the approach to protection has materially changed between the two documents.
  24. Policy ALC1 seeks to maintain and where possible enhance the quality of the rural and landscape character of the Parish. Overall, its terms seem to me to be similar to policy DP12.
  25. Policy ALH1 generally supports development on land immediately adjoining the built-up boundary, whereas policy DP6 permits such development if it is contiguous with an existing built-up area. Policy ALH1 also has the added requirement that other than a brownfield site the development must be infill and surrounded by existing development. These provisions are more restrictive than policy DP6 in the MSDP, which as the more recent policy in the development plan therefore takes precedence.

### **Whether the basket of most important policies is out-of-date**

26. From the above, I have found that other than policy ALH1 in the ANP, the most important policies are not out-of-date and in the circumstances I do not consider that the basket overall is out-of-date either.

### **Conclusions**

27. Paragraph 11 of the Framework sets out the approach to decision making within the context of the presumption in favour of sustainable development. In this case there are development plan policies relevant to the determination of this application and overall, I conclude that they are not out-of-date. Paragraph 11d)ii) is therefore not engaged.

28. In such circumstances it will be necessary to consider whether the proposal would accord with an up-to-date development plan and whether paragraph 11c) is engaged. This is a matter to which I will return in my final conclusions.

### **THE EFFECT OF THE PROPOSAL ON THE CHARACTER AND APPEARANCE OF THE AREA AND THE SURROUNDING LANDSCAPE, INCLUDING THE NEARBY SOUTH DOWNS NATIONAL PARK**

29. The appeal site comprises about 4.4 hectares of land on the western side of London Road. Its previous longstanding use as a nursery ceased several years ago. The large glasshouses that once stood on the northern area have been demolished and all that now exists are remnant hardstandings. A small bungalow occupies the north-eastern part of the site. This building would be demolished, and the site would be redeveloped with 84 extra care dwellings within a mix of apartment buildings and bungalows. The site is outside the defined built-up boundary of Albourne and is therefore in the countryside for policy purposes.

### **Effect on the landscape**

30. The appeal site is within the Hurstpierpoint Scarp Footslopes Landscape Character Area (the LCA) in the *Mid Sussex Landscape Character Assessment* (2005). Key characteristics include undulating sandstone ridges and clay vales; an agricultural and pastoral rural landscape; a mosaic of small and large fields; woodlands, shaws and hedgerows with woodland trees; expanded ridge line villages; traditional rural buildings and dispersed farmsteads; and a criss-cross of busy roads. In addition, views are dominated by the steep downward scarp of the South Downs.

31. The site boundaries are bordered by boundary tree and hedge lines, but in places these are patchy and their quality is diminished in places by the incursion of non-indigenous conifers. There is a small ridge running east to west across the northern part, which includes the roadways, hardstandings and bungalow along with conifer tree lines and groups. There is a narrow view of the South Downs framed by vegetation. The southern section is on the shallow valley side running down to Cutlers Brook and comprises rough grassland. From here there are open views southwards to the escarpment. Two lines of non-native hybrid black poplars cross the western section, which were grown as shelter belts for the nursery stock.

32. Unlike Albourne and the surrounding countryside, I do not consider that the

- appeal site is typical of the LCA of which it forms a part. Although it includes some characteristics such as the shallow ridge and some outward views to the escarpment, its tree and hedge lines are not particularly strong and its use as a nursery over many years has changed its character substantially. In my opinion, it is not well integrated with the wider landscape.
33. The appeal proposal is in outline, with the layout and external appearance to be considered at a later stage. However, the Parameters Plan and Sketch Layout help to establish some basic principles. The *Arboricultural Impact Assessment* indicates that a number of trees and tree groups within the site would be removed. These include the non-indigenous conifers and all those to be felled are judged by the Tree Survey to be of low quality and value. The better trees are mainly along the site boundaries and would be retained. Some of the hybrid black poplars would be removed but most would be assessed and, if necessary, there would be a phased programme of replacement with native tree stock. There would also be additional indigenous tree planting in the south-western corner in front of the incongruous conifer hedge along the boundary with Spurk Barn.
34. The built development would be within the western and eastern parts of the site with groups of cottages and apartment buildings set within landscaped gardens and interspersed with intervening belts of trees. The cottages would be one and a half storeys in height whilst the apartment buildings would be two-storeys with some higher elements incorporating accommodation in the roof. A 10m landscaped swathe between the trees along the London Road boundary and the adjacent apartment buildings is proposed. The largest building would be the two-storey clubhouse, which would be at the northern end of the site. There would be views maintained through to the South Downs escarpment, although these would be within the context of a built environment.
35. Undoubtedly the character of the site would change. The proposal would replace open and largely undeveloped land with buildings and hard surfacing within a green framework. However, as the site shares few of the features that provide this LCA with its identity and taking account of the large area that it covers, the overall impact would be small-scale and localised. In terms of the tree cover, the replacement of the non-indigenous species, especially the conifer stands, with native trees would be a landscape benefit that would increase as the new planting matures. For the reasons given below, I do not consider that the appeal scheme would be seen as an expansion of the ridgeline village. However, for the aforementioned reasons, the harm that would arise to landscape character would be relatively small and would reduce over time.

### **Visual effects**

36. There are public footpaths close to the northern and western boundaries of the site and these run west and south into the open countryside. They appear to be well used and provide attractive routes that link up with a wider network of paths for informal recreation. Walkers are likely to particularly value the rural nature of these paths and the attractive views of the South Downs escarpment and Wolstonbury Hill. These people will be attuned to the environment through which they pass and thus highly sensitive to change. However, it is important to remember that this will be a kinetic experience, which will continually

- change as the receptor moves through the countryside.
37. During my visits to the area, I walked along the adjoining footpaths and to my mind the place where the impact of the new development would be greatest would be from the stretch of Footpath 19/1AI that runs adjacent to the northern boundary. From the direction of London Road, the site is on the left. At present there are intermittent inward views between trees and vegetation, with a framed view of the escarpment about half-way along. However, this corridor is not altogether rural in character and the inward view includes the hard standings, roadway and bungalow as well as tall stands of conifer trees. In addition, on the other side of the footpath is the large, hard surfaced car park of the Brethren's Meeting Hall. Whilst this is relatively well screened by the mixed indigenous hedge along the boundary, there are glimpses through the green wire fence and a full view through the metal gate. In addition, the managed appearance of the hedge and tall lighting columns that project above it further detract from the rural ambience. Further along the path, the large barrel roofed building itself comes into view.
38. Nevertheless, the appeal development would result in a considerable change on the southern side of the footpath. Whilst the Sketch Layout shows some tree retention and a belt of new planting, the new buildings would be evident to the observer and most particularly the long rear elevation of the clubhouse. Whilst a view of the South Downs would be maintained this would be framed by built development rather than vegetation. The existing user experience would therefore be considerably diminished although the adverse effects would be reduced over time as the new planting matures. Furthermore, these effects would be experienced over a relatively small section of the walk. Once past the site the footpath emerges into open farmland.
39. Approaching the site along Footpath 19/1AI from the other direction, there is a wide panorama. At various points this includes the Brethren's Meeting Hall building, the houses in the village amongst trees, the vineyard and the roof of Spurk Barn with Wolstonbury Hill behind. There are glimpses through the trees along the western site boundary of the bungalow and the conifers along the London Road frontage. The understorey is variable, and following development I have little doubt that filtered views of the new buildings would be seen, especially during the winter months. Whilst reinforcement planting with species such as holly would provide more screening, I am doubtful that it would be wholly effective in the longer term. Although there would be large gaps between the clusters of new buildings, the context of Spurk Barn as a lone rural outlier would also be compromised.
40. Footpath 18AI runs close to the western site boundary but when moving southwards the walker's attention is likely to be particularly drawn to the open panoramic view of attractive countryside and the dramatic form of the South Downs escarpment in the background. Views into the site would be to one side and secondary in the overall experience. In the other direction, Spurk Barn is the first building to come into view on the right-hand side. With its relatively open frontage and domesticised curtilage, the effect of the new development behind the trees would not be particularly pronounced.
41. Along the eastern site boundary, the bank with trees and understorey vegetation provides a relatively good screen to London Road. However, in

- places the cover is patchier and there are filtered views into the site, which will be more pronounced in winter. Motorists would be concentrating on the road ahead and so would have a lower awareness of changes to the peripheral view. There is a footway along the eastern side of the road, and I was told that this is relatively well used by dog walkers and those working in the businesses further to the south. For these people there would be a change, but it would be on one side and within the context of a relatively busy road and the existing built development along the eastern side of London Road.
42. The north-eastern corner of the site would be opened up with a new section of footway along the frontage and a new engineered access. This would entail some frontage tree removal, although the higher value oak tree is shown to be retained. From this point there would be a considerable change with views of the new clubhouse, cottages and apartments. New landscaping would provide some mitigation and the change would be experienced within the context of other urbanising influences. These include the wide green metal gates and entrance to the Brethren's Meeting Hall adjacent and the relatively prominent historic stuccoed houses opposite.
43. I observed the site from more distant footpaths, approaching along London Road in both directions and from various points in Church Lane. However, taking account of the undulating topography and the benefit of distance, I judged that the visual impact would be largely benign. I walked up Wolstonbury Hill and to the Devil's Dyke but was unable to identify the site from these more distant locations due to the vegetation cover. It may be that there would more visibility following development and in winter. However, this would be within the context of a wide panorama that includes built development.
44. In the circumstances, even if it were to be seen, I do not consider that the appeal scheme would materially detract from the enjoyment of these panoramic views. The site is not within the Dark Skies zone of the South Downs National Park and whilst the development would introduce new lighting this could be controlled. In addition, it would be seen within the context of lights in other villages, towns and roadways. In the circumstances there would be no conflict with policy ALC2 or the dark skies initiative in the ANP.
45. For all of these reasons I consider that there would be some adverse visual impacts, particularly for footpath users and at the site entrance on London Road. However, these would be limited and localised. The adverse effects would be reduced but not eliminated as new landscaping and tree planting matures.

### **Effect on the character of the settlement of Albourne**

46. Albourne is a ridgeline village and its main historic core is around The Street and Church Lane with a smaller historic group of houses to the north at Albourne Green. By the mid-20<sup>th</sup> century the space between these two areas had been infilled and later still the village expanded eastwards. The village therefore has a mixed character with the older parts in particular being defined by their wooded setting. The village boundary is quite tightly defined for policy purposes. However, as often happens, there is a more dispersed settlement pattern with linear development radiating outwards along the road frontages,

- including along the eastern side of London Road as far as Cutlers Brook. The built-up area is therefore more extensive than the policy boundary.
47. The agrarian landscape provides the setting for this Downland village, but for the reasons I have given above the appeal site is not representative of its rural surroundings. Whilst it is largely undeveloped, in my opinion it contributes little to the context of the village. On the other hand, the proposed development would not appear as a natural expansion of the built-up area either. I appreciate that it would not extend it further to the west or south, but this is a factor of little consequence. The dispersed nature of the settlement is mainly due to frontage development, which the appeal proposal could not claim to be.
48. The Brethren's Meeting Hall is a development that physically, functionally and visually stands outside the village. The appeal scheme would be further to the south and appear as an outlier that would not conform to the prevailing pattern of development described above. On the other hand, it would share some of the features of the village. For example, the site benefits from a local ridgeline and over time the new buildings would stand within a well treed environment. Furthermore, the *Design Commitment Statement* indicates that the design approach is to create a development that reflects the surrounding architecture and landscape. The appearance of the new buildings is a matter that can be controlled by the Council at reserved matters stage.
49. There has been a great deal of local concern about the size of the development relative to the existing village. The Parish Council indicate that Albourne has about 250 households and some 650 residents. It therefore points to an increase in size of over 30%. For the reasons I have already given, I do not consider that this development would appear as a natural extension to the village. However, the proposed shop, lockers, electric charging points and workshops, which I discuss later, would allow a degree of community integration. The village itself has grown incrementally and cannot be viewed as a set piece that has not changed over time. There may be harmful impacts from an increasing population in terms of highway safety and insufficient infrastructure, for example and I consider these later. However, the size of the development in itself would cause little harm to the character of the village, in my judgement.

### **Effect on agricultural land**

50. Paragraph 170 of the Framework seeks to recognise the benefits of protecting the best and most versatile agricultural land, which is classified as Grades 1, 2, and 3a. The appeal site is shown on the *Provisional Agricultural Land Classification Maps* as being within an area of Grade 2, which denotes very good quality farmland. However, these maps were not based on physical surveys. They were intended to provide strategic guidance for planners on a small-scale map base. Natural England in its *Technical Information Note TIN049*, advises that they are outdated and should not be relied on for individual site assessments.
51. The Appellants commissioned an *Agricultural Land Classification Report*, which was based on a site survey carried out in February 2020, including examination of 5 auger samples and a trial pit. This concluded that the land was grade 3b with shallow soils over a depth of dense clay subsoil. This is the best available

evidence and I am satisfied that the development would not result in the unacceptable loss of high value agricultural land.

### **Overall conclusions**

52. The appeal site is located within the open countryside, outside the built-up area and not contiguous with its boundaries. There would be some residual adverse landscape and visual impact, although this would be localised and limited in nature. There would also be a small adverse effect on the character of the village of Albourne because the development would not be seen as an expansion to the main built-up area of the village nor reflect the frontage development along the peripheral roads. There would be no adverse impact on the South Downs National Park or views from within it. Nevertheless, there would be conflict with policy DP6, DP12 and DP15 in the MSDP and policies ALC1 and ALH1 in the ANP.

### **THE EFFECT OF THE PROPOSAL ON HERITAGE ASSETS**

53. There is no dispute that the designated heritage assets affected would be the four Grade II listed houses on the eastern side of London Road. The effect would derive from changes to their setting and it is agreed that any harm would be less than substantial in nature and that paragraph 196 of the Framework would be engaged whereby harm is to be weighed against public benefits. Unlike the setting of the listed buildings, the setting of the Albourne Conservation Area is not protected by statute. Nevertheless, the same considerations will apply as a matter of policy in terms of weighing harm to significance against benefits. Spurk Barn is adjacent to the south-western corner of the appeal site and is a non-designated heritage asset. Paragraph 197 of the Framework makes clear that a balanced judgement should be made, having regard to the scale of any harm and the significance of the asset.

### **The listed buildings**

54. There was much discussion at the inquiry about the contribution of the appeal site to the significance of the listed buildings. Elm House, Tipnoaks and Hillbrook House are two-storey stuccoed villas built in the early 19<sup>th</sup> century. These were modest country houses, which demonstrated their owners' aspirations for elegant country living with their classical, well-proportioned facades and convenient roadside location outside the main village. The immediate setting is provided by the gardens in which they stood but the wider rural environment, including the fields to the front and rear would have contributed to the pastoral context and significance of these houses. It can be seen on the 1874 Ordnance Survey Map that there are 4 subdivisions on the appeal site. This suggests that by this time the land was being used as a market garden or commercial nursery.

55. Mole Manor was of earlier construction and the 1839 Tithe Map shows it standing in an isolated position on the eastern side of London Road. It is a rare example of a modest Sussex cottage with a red brick and clay tile construction and an isolated countryside setting and these factors contributed to its significance. In my opinion its setting was significantly compromised by the building of Elm House and Tipnoaks. These more substantial houses overpower the cottage as they not only join it on either side but also stand well forward of its front elevation.

56. There is also significance derived from the listed buildings as a group. In this respect, Mole Manor makes a contribution through its style and character, which is in contrast to the classical form and proportions of the stuccoed villas.
57. The appeal site was clearly part of the countryside setting when these buildings were built and thus contributed to their significance. There is no indication on the 1874 map that there was tree planting at this stage and it is reasonable to surmise that originally the dwellings faced a relatively open landscape, which would have allowed the owners attractive views from the front of their houses. In any event, by 1910 the Ordnance Survey map shows a tree belt along the eastern boundary and some tree planting within the site itself. Whilst the context is therefore likely to have changed somewhat, the westerly outlook would still have been essentially green and rural with likely views through the trees into the site.
58. More substantial changes occurred in the mid-20<sup>th</sup> century as Albourne expanded and the London Road was re-engineered and widened. More recently still there has been further development along London Road, including to the south of Hillbrook House and the Brethren's Meeting Hall. The latter appears to have been on land formerly used as part of Hazeldens Nursery. The wider pastoral environment has thus been considerably eroded over time, which has diminished the historical understanding provided by the wider setting of these listed buildings. Their individual and group significance is now mainly derived from their fabric and the immediate setting of their garden plots.
59. Following development, the views towards the appeal site would change through the introduction of a new access, a footway along the London Road frontage and views towards a built environment. The effect would be greatest in respect of Tipnoaks, due to its position opposite the site entrance. Hillbrook House stands further back from the road in an elevated position and there would be filtered views of the new buildings from within its site through and above the roadside vegetation. There would therefore be some further change to the context in which the listed buildings would be appreciated but, for the reasons I have given, I consider that the effect on significance would be relatively small.
60. With respect of Elm House and Mole Manor the harm would be at the lower end of the scale of less than substantial harm. With respect of Tipnoaks and Hillbrook House it would be slightly higher but still lower than moderate, with a similar effect on the significance of these houses as a group. Whilst the choice of materials, design and landscaping of the new development would be controlled through reserved matters, the impacts I have identified are unlikely to be materially reduced over time.

### **Spurk Barn**

61. This agricultural building is a non-designated heritage asset probably dating back to the 19<sup>th</sup> century. Its primary interest is in its form and fabric with flint and brick construction and the retention of many original features. The boundary lines on historic maps suggest that Spurk Barn was not functionally connected to the appeal site. Indeed, with no obvious connection to any local farms it was probably an isolated field barn associated with the agricultural land to the west.

62. Spurk Barn has been converted to residential use and windows have been added along with an extension. Its immediate setting is now a domestic garden and parking area. Along its boundaries with the appeal site is a thick conifer hedge. Although this could be removed it would seem unlikely due to the privacy it affords. The significance derived from the wider setting is mainly across the open agricultural land to the west. Nevertheless, the largely undeveloped nature of the appeal site does contribute to the sense of isolation of the building, particularly in views from Church Lane and sequentially when walking east along Footpath 19/1AI and south along Footpath 18AI.
63. As I have already concluded above, the proposed buildings would be seen, especially in the winter months, through gaps in the trees and understorey along the western site boundary. Whilst the effect would be to have an adverse effect on the appreciation of the barn as an isolated entity, its value as a field barn is now diminished on account of its residential conversion and the domestication of its grounds. To my mind this undesignated heritage asset has a relatively low level of significance. The small degree of harm that would arise from the appeal proposal would also be further reduced over time as reinforcement planting matures, including the band of new trees between the conifer hedge and built development.

### **Albourne Conservation Area**

64. This comprises the original historic core of the village at the southern end of The Street and along a section of Church Lane. The only appraisal is found in *The Conservation Areas in Mid Sussex* (August 2018), which notes five features that contribute to its character. These include the trees and hedges; the sunken road relative to many of the houses with attractive retaining walls; the cottage style houses with small windows; the lack of a set building line or footway with varying road widths and a meandering rural character; and the attractive countryside views to the west and south. The latter is the only one relevant to setting.
65. At one time no doubt the appeal site, because of its relatively open and undeveloped character, would have played some part in this respect. However, modern housing on the south side of Church Lane and the construction of the Brethren's Meeting Hall building and car park has provided a visual intervention that has meant that it no longer contributes in this way. The main southerly aspect is provided by the fields beyond its western boundary. Even if there were glimpses of the new development through the trees from the southern part of the conservation area, which is doubtful, they would be peripheral and oblique.
66. It is also the case that the Council did not consider that the proposed development of the Brethren's Hall site would have any adverse impact on the conservation area, notwithstanding that the large building with its incongruous design would be in close proximity to the southern edge. I appreciate that this development was built on exceptional grounds of need but that does not negate the requirement to consider the effects on the setting of the heritage asset. Furthermore, the Council's *Strategic and Economic Land Availability Assessment* (2018) did not consider that a potential yield of 132 houses on the appeal site would negatively impact on the heritage asset. The Council's objection now in terms of harm to setting therefore seems to me to be

inconsistent.

67. It is likely that Albourne depended on farming and market gardening for its growth. However, in the absence of a detailed appraisal the only evidence of the features that contribute to its character are those in the aforementioned 2018 document. There is nothing to say that the tree nursery financed buildings in the village and even if it did this use has long ceased. This was certainly not a matter referred to in respect of the development of the land to the north, which was also part of the nursery at one time.
68. For all of the above reasons I do not consider that the appeal site provides part of the setting of the Albourne Conservation Area. It follows that the appeal development would have no effect on the significance of the designated heritage asset.

### **Overall conclusion**

69. Drawing together all of the above points it is concluded that the appeal proposal would cause less than substantial harm to the significance of the Grade II listed buildings, Elm House, Mole Manor, Tipnoaks and Hillbrook House. This would be at the low end of the scale but nevertheless is a matter to which considerable weight and importance should be ascribed. There would be a small degree of harm to Spurk Barn, but this will need to be considered against the relatively low significance of the building. The relevant balancing exercise will be undertaken later in the decision and a conclusion reached as to whether the appeal proposal would conflict with policy DP34 in the MSDP. The Albourne Conservation Area and its setting would remain unaffected by the appeal scheme. The appeal proposal would therefore comply with policy DP35 in the MSDP.

### **WHETHER THE SITE IS WITHIN AN ACCESSIBLE LOCATION, GIVING NEW OCCUPIERS THE OPPORTUNITY TO TRAVEL BY MODES OTHER THAN THE PRIVATE CAR**

70. There is an age restriction of 65 years for primary occupiers of the proposed development, although younger partners would not be excluded. Nevertheless, I was told that the average age of Retirement Villages' occupants is 82 years and that only about 25% are couples. Bearing in mind the nature of the scheme with its care component, it is reasonable to surmise that most people living there would be in the older cohort. That does not mean to say that some residents would not still drive but it is unsurprising that the evidence indicates a lower level of car ownership than general purpose housing and that car sharing is popular on other Retirement Villages' developments.
71. Residents living in the proposed development would occupy a self-contained cottage or apartment. The purpose, unlike a care home, is to maintain independence although the degree will vary depending on the care needs of the individual. Nevertheless, each dwelling is fitted with a kitchen and although there is also a restaurant within the communal building on the site, it is anticipated that many will also wish to cook for themselves. Albourne is a Category 3 village and has no shops or facilities apart from a village hall and primary school. There is a volunteer run community shop in Sayers Green, but other than that, the nearest shops are in Hurstpierpoint, where there is also a health centre, post office and pharmacy.

72. It seems unlikely that residents, even those with good mobility, would walk to Sayers Common or Hurstpierpoint. although a few may undertake the relatively short cycle ride. The nearest bus stops are some 85m from the site travelling north and 250m from the site travelling south. These serve the 100 bus to Burgess Hill, which is a Category 1 settlement with higher order shops, services and facilities. A bus journey would take about 11 minutes, although the bus only runs hourly and not on Sundays. Nevertheless, residents would not be making regular work journeys and it seems to me that the bus may be a viable choice for some trips such as visits to the supermarket or bank, for example.
73. The bus stops for the 273 service are some 560m away, north of the Albourne Road traffic lights. This service runs through Hurstpierpoint, which is a bus journey of about 5 minutes. However, the bus runs only every 120-160 minutes and, again, not on a Sunday. The journey would therefore need to be carefully planned and would be most likely to take the form of an outing rather than a trip for a dedicated purpose.
74. The proposal is that there would be a shift pattern for staff, with about 15 being on site at any time. The information from the Retirement Villages' other sites is that staff are in general drawn from the local area, with over half living within 5 miles and 82% living within 10 miles. The analysis indicates that most staff living within 5 miles are likely to come from Burgess Hill. This would be within cycling distance and the 100 service would also be an option for some shifts. However, the bus only runs until the early evening and not at all on a Sunday. There may well be some flexibility in terms of shift patterns, but the bus would not be an option for late evening, early morning or Sunday travel.
75. The Framework indicates that the opportunities to maximise transport solutions will vary between rural and urban areas and this should be taken into account in decision-making. It also says that significant development should be focused on locations which are or *can be made* sustainable. In this case the Appellants have included a number of provisions to improve the accessibility credentials of the proposed development.
76. A dedicated non-profit making minibus would be provided for use by residents and staff. The S106 Agreement includes a covenant for its provision and the evidence indicated that it could be used for shopping trips, GP and health related appointments and day outings. It would also be available for staff travel, subject to the payment of subsidised charges. I was told that this could be used for late evening shifts when the bus has stopped running or for pick-ups from bus stops or the railway station in Hassocks. Whilst some staff, especially those on a late shift or working on a Sunday may prefer the convenience of a car, the existence of this option would extend the available modal choice for staff, provided the subsidised charges are reasonably priced.
77. The proposed development would be subject to a Final Travel Plan before the development is first occupied. This would be based on the *Travel Plan* submitted with the planning application, which includes various targets to increase public transport, cycle and pedestrian trips. Measures include the provision of a length of new footway along the western side of London Road to link the site to the northbound bus stop; cycle parking facilities with changing and washing facilities for staff and discounts on bicycles and cycle equipment; and the minibus. In addition, the traffic calming measures would include an

uncontrolled crossing and pedestrian refuge. Along with the introduction of a 30mph speed limit, this measure would provide those residents wishing to cross London Road, for example on the way back from the bus stop, with a safe means of doing so.

78. The on-site facilities in the communal building are also a relevant factor. This includes a small shop to provide fresh products and basic groceries. I saw the shop at Charters, which had quite a good range of everyday goods including fresh fruit and vegetables, dairy products, tinned items and toiletries. The clubhouse would also have a small library, hair salon, therapy room, bar and restaurant. Clearly providing these facilities on the site would have the potential to reduce the number of external journeys that residents would have to make. I was told that the various facilities are not intended to be profit making and the UU includes a covenant that they would be operated and managed by the Owner or the Management Company. That they could not be leased to a commercial operator gives some comfort that they would continue to operate effectively in the longer term in accommodate daily needs of residents.
79. It seems to me that the appeal proposal has done what it can to enhance accessibility. Residents and staff would have genuine choices available to undertake journeys by modes other than the private car. This is a rural area where it is to be expected that travel options are more limited than in a town and the car would undoubtedly be used for some trips. Every decision turns on its own circumstances but, insofar as there are similarities, I have not reached the same conclusion as the Bolney Inspector for the reasons I have given. I consider that the appeal scheme would be relatively sustainable in terms of location to minimise the need to travel. Overall it would not conflict with policy DP21 in the MSDP.

## **THE BENEFITS OF THE PROPOSAL**

80. For the avoidance of doubt, in ascribing weight to the benefits I have used the following scale: limited, significant and substantial.

### **The need for extra care housing**

81. Paragraph 61 of the Framework requires that the size, type and tenure of housing needs for different groups in the community, including older people, should be assessed and reflected in planning policies. The glossary indicates that these are people over or approaching retirement age. They will include the active elderly at one end of the scale and the very frail elderly at the other. There will be a range of housing needs from adapted and accessible general needs housing to specialised accommodation with support or care.
82. The June 2019 version of the *Planning Practice Guidance* includes its own expanded section on housing for older and disabled people. It makes the point that the need to provide housing for this group is critical in view of the rising numbers in the overall population. Furthermore, it considers that older people should be offered a better choice of accommodation to suit their changing needs in order that they can live independently for longer and feel connected to their communities. Extra care housing is recognised by the Government as providing such benefits.

83. The Council's consideration of the housing needs of elderly people can be found in the *Housing and Economic Development Assessment Addendum* (the HEDNA Addendum) published in August 2016. This provided part of the evidence base to the MSDP and uses the 2014-based population and household projections (released in 2016). Amongst other things the HEDNA Addendum considers the need for specialist housing for older people, including extra care housing, using the *Strategic Housing for Older People Analysis Tool* (SHOP@), This is given as an example of an online toolkit for assessment in the *Planning Practice Guidance* but the document neither endorses its use nor precludes the use of other methodologies. It is important to bear in mind that whichever model is used, its output will be determined by the assumptions on which it relies.
84. The SHOP@ toolkit is preset with the number of units required per 1,000 of the population over 75 years old at 25 or 2.5%. This I shall refer to as the "provision rate" and it has been derived from *More Choice Greater Voice* (2008), which is a document that seeks to provide a strategy for housing with care for older people. It is important to have in mind that the provision rate is an assumption and is not evidence based. The Council pointed out that a provision rate of 25 is roughly double that for extra care housing nationally. However, that reflects the critical need across the country and is not particularly helpful in the consideration of how need should be met in Mid Sussex.
85. In December 2012 *Housing in later life: planning ahead for specialist housing for older people* sought to update *More Choice Greater Voice*. It recognises that extra care housing was becoming better known as an alternative choice for older people who do not necessarily want or need to move to a residential care home. Furthermore, it recognises a prevalence for home ownership in the elderly population and predicts that demand for extra care housing for sale will be twice that of extra care housing for rent<sup>1</sup>. It provides a toolkit for use by local authorities in their planning for and delivery of specialist housing for older people. It seeks to improve housing choice for a growing ageing population and increases the provision rate to 45 or 4.5% per 1,000 of the population over 75 years old. Whilst a worked example is given for Bury Metropolitan Council, it seems apparent from the information provided that this provision rate is one that is more generally applicable. That said, it is important to understand that this is an aspirational figure and is also not evidence based.
86. The assessment in the HEDNA Addendum relies on population data that is now out-of-date. Its conclusions on elderly care needs justify reconsideration using the 2016-based population data. The only such assessment has been provided by the Appellants and, on the basis of a provision rate of 2.5%, this indicates a demand for extra care units of 386 in 2020. On the basis of a 4.5% provision rate the equivalent figure is 694 units.
87. In the Council's assessment the tenure split of extra care housing has been set at 73% rent and 27% purchase. In Mid Sussex private leasehold extra care provision is limited to a single development at Corbett Court in Burgess Hill. In terms of extra care units for rent, the database is out-of-date because since 2014, 68 units have been demolished. The Council conceded at the inquiry that the figures in the HEDNA Addendum for extra care provision are thus out-of-

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<sup>1</sup> Extra care housing for sale is generally on the basis of a leasehold tenure.

- date. The current (2020) supply is lower, the need is higher, and the tenure split, based on existing provision and the corrected supply, would therefore be about 60% rent and 40% purchase.
88. In Mid Sussex the evidence indicates that the vast majority of older people are owner occupiers. Many of these people will be able to continue to live in their own homes through old age with the necessary adaptations and care support. However, not all homes are suitable. In such cases a homeowner may be attracted to an extra care facility where they can continue to own their own home and maintain a degree of independence whilst enjoying support and care within a secure environment. Within Mid Sussex such choice is largely unavailable.
89. The Appellants have used a tenure split of 33% rent and 67% purchase in their modelling. Whilst this is recognised as favouring an owner-occupied solution it nonetheless reflects the local housing market in Mid Sussex. Furthermore, it aligns with national policy insofar as it redresses the balance towards greater flexibility and choice in how older people are able to live. It is to be noted that the SHOP@ toolkit itself recognises that the percentage of leasehold tenures will increase in the future and that areas of affluence will see a higher percentage increase by 2035. In such areas, which includes Mid Sussex, it suggests a tenure split more redolent of the Appellants' modelling.
90. The Council argued that the tenure split is of less importance than the headline figure. However, the evidence indicates that the extra care properties for rent in this District are managed by Housing Associations and therefore an existing homeowner would be unlikely to qualify for occupation. It also appears that the pipeline supply of extra care housing is all social rented tenure. It is therefore reasonable to assume that maintaining a tenure split that favours rental units would be unlikely to allow realistic alternative options to the majority of older people who are currently homeowners. In the circumstances and based on the specific evidence I have been given, I consider that the Appellants' assessment of demand in terms of tenure is more credible and thus to be preferred.
91. The existing supply, taking account of the aforementioned demolitions, is 142 extra care units. If need is defined as the difference between supply and demand, then even on the Council's favoured provision rate it currently stands at 244 extra care units. The information indicates that there are planning permissions for some 132 additional extra care units in the pipeline, including 60 on the Burgess Hill strategic site. Whilst there is no national policy imperative to maintain a 5 year supply of older person's housing as is the case with housing generally, this nonetheless signals a significant residual unmet need regardless of tenure. On the basis of the Appellants' higher provision rate it would be even greater at 552 units. Either way it would rely on the permitted units being built expeditiously. Using the tenure split favouring leasehold provision, the Council's assessment would be of a current need for 163 leasehold units whilst the Appellants' assessment would be for 368 leasehold units. The evidence indicates none in the pipeline supply.
92. Whilst there is no requirement in national policy or guidance to specifically allocate sites for specialist housing for older people, the *Planning Practice Guidance* does indicate that this may be appropriate where there is an unmet need. The response in Mid Sussex is to apply a flexible approach through policy

DP30 and the Council pointed out that the strategic allocations include provision for a range of housing, including for older people. Policy DP30 also indicates that further allocations may be made in the SA DPD if a shortfall is identified. Policy DP25 has a similar provision to meet local needs for community facilities, which include care homes and specialist housing. In the SA DPD there is a single residential allocation in East Grinstead that includes a "care community". There is though no detail as to the number or type of units and, in any event, the emerging status of the document means that very little weight can be given to it at the present time.

93. In the circumstances I consider that the evidence indicates a significant level of current unmet need, in particular for extra care leasehold housing, whichever provision rate is adopted. Furthermore, this will significantly increase over the local plan period. This situation has not been helped by the slow progress on the SA DPD and the failure to recognise an unmet need that is clearly evident. The Council's riposte that it is not being inundated by enquiries or applications for this type of development does not seem to me to be a very robust or objective yardstick on which to rely. For all of these reasons I consider that the provision of extra care units by the appeal development to be a matter of substantial weight.

#### **Freeing up family sized homes**

94. As has already been said, in Mid Sussex a large proportion of those people 65 years of age and above are owner occupiers. Furthermore, the evidence indicates that a considerable number of older householders under occupy their homes. Indeed, the MSDP indicates in the supporting text to policy DP30 that providing suitable and alternative housing for this cohort can free up houses that are under occupied. It also records that a significant proportion of future household growth will generate a need for family sized homes, including those with over 3 bedrooms. This is reflective of the national picture.
95. There is though insufficient evidence to determine the proportion of new occupiers that would necessarily derive from the local area. Whilst Retirement Villages' analysis indicates that a third of moves to its developments have been from a 5 miles radius it also indicates that about 40% come from further than 20 miles. There is therefore likely to be some benefit to the local housing market as well as a contribution made in terms of the national housing crisis. Overall, I give this benefit significant weight.

#### **On site facilities for use by the public**

96. The appeal development would include some facilities that would be available for use by those living outside the development. Albourne has no village shop and whilst the proposed unit would be relatively small with a limited range of goods it would stock day-to-day staples as I have already indicated. Residents in the village could walk or cycle to the shop and it would, in my opinion, provide a useful facility for those living nearby. I give this benefit significant weight.
97. The lockers would allow those living nearby a point from which to collect online deliveries. This would provide a convenient option if the person who ordered the goods was not going to be at home. However, many delivery companies offer specific time slots or the opportunity to nominate a safe place at home

where the package could be left. These options would clearly be more convenient and, although the availability of the lockers could be useful in some circumstances, I give the benefit limited weight.

98. The two workshops would be available for local artisans as well as residents. However, I am not convinced that there is evidence of a demand for such facilities. In the circumstances, I give this benefit limited weight.
99. Three rapid electric charging points would be available for use by the general public as well as by residents. I am not aware of any similar facilities for public use in the vicinity. This would therefore provide an opportunity to those who wish to take advantage of a fast charge, perhaps combining it with a visit to the shop. I therefore give this benefit significant weight.

### **Highway safety and traffic calming**

100. There was local concern that the appeal proposal would be harmful to highway safety. I am satisfied from my observations that lines of sight and the geometry of the new access would be satisfactory to allow for safe entry and exit. West Sussex County Council has a statutory responsibility to ensure the safety of the local highway network. It has not raised objections to the scheme on these grounds and this is a matter of considerable importance. The forecast trip generation would be relatively small and there is no evidence that London Road would have insufficient capacity to accommodate the additional vehicles safely. The proposed parking provision would exceed the Council's minimum standards. There is therefore no reason why there should be any overspill parking onto London Road.
101. The application drawing no: 1701-56 SK08 Rev B shows a number of measures to improve road safety within the vicinity of the appeal site. These include gateway features with kerb build outs and pinch points and a new 30 mph speed restriction between a point south of the limit of the built development on the eastern side of London Road and a point between the junction with Church Lane and the junction with Albourne Road. In the vicinity of the site entrance the road width would be narrowed and to the south of this would be an uncontrolled crossing with a refuge island and dropped kerbs.
102. These measures would be controlled by a planning condition. For the reasons I have given I consider them necessary to encourage reduced traffic speeds and allow residents to cross safely from the bus stop on the eastern side of London Road. However, it also seems to me that there would be some wider benefit due to decreased traffic speeds in the vicinity of the Church Lane junction, which is one of the main entrances into the village. I note that the ANP includes an aim to develop a scheme to improve the safety of road users utilising the local stretches of London Road and Albourne Road. It seems to me that this proposal would play some part towards achieving this objective. This benefit is attributed significant weight.

### **Economic and social benefits**

103. There would be employment benefits in terms of the provision of jobs during the construction phase and also longer term in connection with the operation of the site. There would also be some further spending within local shops and facilities by the new population.

104. There is evidence to indicate that elderly people who live in an extra care environment, with all that it offers, benefit in terms of health and wellbeing. The secure community environment and sense of independence can reduce social isolation and encourage greater fitness and healthy lifestyles. It is reasonable to surmise that these factors are likely to result in a lower number of visits to the GP, reduced hospital admissions and overall savings to the National Health Service. The social and economic benefits are matters to which I give significant weight.

## **OTHER MATTERS**

### **Ashdown Forest**

105. The appeal site is outside the 7km zone of influence of Ashdown Forest Special Protection Area and therefore the issue of potential recreational disturbance would not be of concern. It is though necessary to consider whether there would be any effect on the Ashdown Forest Special Area of Conservation as a result of increased nitrogen deposition from vehicle emissions. The Council's Screening Report indicated that the in-combination transport model that supported the District Plan showed no overall traffic impact in terms of its strategy for housing and employment growth. The County Council considered that there would be about 4.6 additional daily trips that would travel to or through the Forest. I am satisfied with the conclusion of the Council that this would not result in a significant in-combination effect.

### **Ecology**

106. There have been a number of local representations relating to the ecological interest of the site. The Appellants' *Ecological Assessment* records the site as having relatively low value with much of its central area comprising managed semi-improved grassland. The most important areas for wildlife comprise the boundary trees and hedgerows, which are to be retained and protected during the construction period. The assessment includes a programme of mitigation prior to site clearance to take account of reptiles and in the unlikely event that Great Crested Newts are found to be present. These are protected species and it is an offence to undertake development that would cause them harm. Similarly, there is a requirement to protect birds during the nesting season.
107. There is no evidence that bats are using the bungalow as a roost. If that were found to be the case during demolition, work would have to cease to allow the proper licence protocols to be followed. Bats will use the site for commuting and foraging, especially along the retained hedgerow lines. A condition is therefore required to control the level and type of lighting to ensure habitats are not disturbed. Overall, I am satisfied that the development would not give rise to unacceptable harm to ecological interests.
108. There are also proposed enhancements to biodiversity including introducing species rich grassland, new hedgerows, a wild flower meadow and a new pond. Swift bricks and bat boxes would also be provided.

### **Local healthcare services**

109. There was local concern that the local healthcare facilities would be inadequate to serve the new residents. It is appreciated that existing residents often have to wait a considerable time to get a doctor's appointment

but that unfortunately is a much wider issue and applies to many places. Inevitably new residents will need medical care from time to time. However, there have been no representations from the local NHS Foundation Trust or local doctors objecting to the scheme or indicating an issue with capacity.

### **Residential amenity**

110. Objections have been raised that the proposed development would result in overlooking and loss of privacy, particularly to properties on the eastern side of London Road. However, the Parameters Plan indicates a 10m inset of new development from the boundary treeline. Furthermore, the outline form of the proposal means that matters such as window positions would be determined at a later stage. In the circumstances, I am satisfied that there would be no unacceptable harm to the living conditions of existing residential occupiers.

### **Other appeal decisions**

111. My attention was drawn to a number of appeal decisions, including some relating to other Retirement Villages' developments. A number were cited in relation to the Use Class matter, which is no longer an issue in this appeal. Most concerned other local authority areas and turned on their own evidence.
112. The appeals relating to Bolney were the subject of a recent decision in Mid Sussex District. One appeal was for a care home and the other for a care home and 40 age-restricted dwellings. The latter were classed as a C3 use. The conclusions of my colleague on need seem to relate to the care home (Class C2) element of the scheme rather than the extra care dwellings. In any event, I do not know what evidence was presented in respect of that scheme or whether tenure was a particular issue. I have commented on my colleague's conclusion on accessibility above. Overall, I do not consider that this decision is of particular assistance or relevance to the present appeal.

### **PLANNING OBLIGATIONS**

113. The S106 Agreement and UU were considered in detail at the inquiry. They were each engrossed on 20 August 2020. I have considered the various obligations with regards to the statutory requirements in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and the policy tests in paragraph 56 of the Framework. It should be noted that the Deeds contain a "blue pencil" clause in the event I do not consider a particular obligation to be justified in these terms. In reaching my conclusions I have had regard to the supplementary planning document: *Development Infrastructure and Contributions Supplementary Planning Document* (2018) (the SPD) and development plan policies, including policy DP20 in the MSDP, which relates to securing infrastructure.

### **The S106 Agreement**

114. This is made between the Council, West Sussex County Council, the Owner (Notcutts Ltd) and the Developer (Retirement Villages Developments Ltd). The library contribution is based on a formula set out in the SPD and a worked example is provided in the First Schedule. This cannot be definitive at this stage as the final housing mix is not yet determined. In addition, the cost multiplier will change annually. Although the clubhouse would include a library, no details have been provided. The one I saw at Charters was very

limited in terms of its size and breadth of reading material. I consider that residents of the development would be likely to use the public library in Hurstpierpoint. The County Council indicates that its facilities would require expanding to cope with the additional population. In the circumstances I consider that the library contribution would be justified.

115. The TRO Contribution would be used to promote and advertise a Traffic Regulation Order to reduce the speed limit from 40 mph to 30 mph in the vicinity of the site. This would be part of the traffic calming measures, which have been referred to above. I was told that £7,500 reflected the fixed cost to West Sussex County Council of consultation and review and it therefore seems reasonable and proportionate.
116. The dedicated minibus would be provided prior to the occupation of any dwelling and the covenant includes its use for residents and staff in accordance with the Travel Plan. This is necessary to enhance the accessibility of the development as I have explained above.
117. For all these reasons I am satisfied that all of the obligations are necessary, directly related to the development and fairly related in scale and kind. They comply with Regulation 122 of the CIL Regulations and paragraph 56 of the Framework. They can be taken into account in any grant of planning permission.

## **The UU**

118. A primary resident is a person who is 65 years or older and is in need of at least 2 hours of personal care a week. The basic care package, which it is obligatory to take, is defined to include a range of services that are needed by reason of old age or disablement following a health assessment. The health assessment is to be undertaken by the partner domiciliary care agency who must be registered by the Care Quality Commission. There is also provision for a periodic review of the health assessment to establish whether a greater level of care has become necessary. The domiciliary care agency would also provide a 24-hour monitored emergency call system.
119. The Communal Facilities would be provided in the clubhouse on the northern part of the site. They would include a number of facilities such as a restaurant, bar, lounge, library, therapy and exercise room, hair salon, function room, shop and collection facility. The covenants also require construction of the clubhouse prior to the occupation of any dwelling and all residents and their guests would have access to it. The shop and collection facility would also be accessible to non-residents. Restrictions on the operation of the communal facilities may be imposed by the Management Company, including in respect of the hours of opening of the shop.
120. The scheme would include 2 workshops within the clubhouse with details to be approved at reserved matters stage. These would be made available for use before more than 50% of the dwellings are occupied. They would be made available for use by residents and local businesses and subject to restrictions by the Management Company, including hours of operation and the nature of the use.
121. The Management Company would be established prior to the occupation of

any dwelling as a non-profit making legal entity. It or the Owner would manage the sustainable drainage system (SuDS). It or the Owner would also operate the workshops, shop and collection facility. Any profit received by the Management Company from operating the Communal Facilities and workshops would be used to offset against the annual service charge payable by each homeowner. There is also a restriction on the disposal of the communal facilities or workshops.

122. The Covenants by the Owner to the Council are contained within the First Schedule to the Deed. They are required to ensure that the development would operate effectively as an extra care facility within Use Class C2, which formed the basis of the planning application and on which it has been assessed. They would ensure that the communal facilities are operated and managed for the long-term benefit of the residents living on the site and that the drainage system remains effective and fit for purpose during the lifetime of the development. I consider that all of the obligations are necessary, directly related to the development and fairly related in scale and kind. They comply with Regulation 122 of the CIL Regulations and paragraph 56 of the Framework. They can be taken into account in any grant of planning permission.

### **PLANNING CONDITIONS**

123. A list of planning conditions was drawn up by the main parties and these were discussed at the inquiry. My consideration has taken account of paragraph 55 of the Framework and advice in the Planning Practice Guidance. In particular I have had regard to the Government's intention that planning conditions should be kept to a minimum and that pre-commencement conditions should be avoided unless there is clear justification. The Appellants have confirmed acceptance in writing of those pre-commencement conditions that have been imposed. I have changed the suggested wording in some cases to ensure that the conditions are precise, focused, comprehensible and enforceable.
124. The Appellants have agreed to a shorter implementation period in this case to reflect the case that it has put forward about the scale of the current unmet need. I was told that Retirement Villages will be developing the site itself and thereafter managing the development as part of its extra care portfolio. Much store was set on the high quality of the development and the way the proposed layout had been designed to respect the existing landscape and views. In order to ensure that this is carried forward into the scheme that eventually materialises it is necessary to require compliance with the Parameter Plan and Sketch Layout. For similar reasons and to ensure that the development fulfils its intended purpose, a condition limiting the number of dwellings to 84 is required.
125. A relatively recent *Ecological Impact Assessment* has already been submitted and so I consider it unnecessary to require further details to be submitted. A condition is though necessary to ensure that the mitigation and enhancement measures are implemented in order to protect ecological interests and improve biodiversity. The suggested condition on ecological management requires details that have already been submitted in the above assessment. I have therefore reworded the suggested condition accordingly. Although landscaping is a reserved matter, it is appropriate at this stage to ensure that

protective measures for retained trees and hedgerows are provided during construction in order to protect wildlife and visual amenity. I have reworded this to take account of arboricultural information that has already been submitted. For similar reasons a condition requiring the arrangements for the management and maintenance of the landscaped areas is required.

126. The landscaped grounds would be communal areas and individual dwellings would not have amenity space other than a small patio area for sitting out. The erection of individual private enclosures would not fit in with this ethos or the open character of the site. In the circumstances a condition is necessary to remove permitted development rights for the erection of such features and to retain the gardens as places for all residents to enjoy.
127. The construction period would inevitably cause some disturbance and inconvenience to those living and working in the area as well as to road users. A Demolition and Construction Management Plan is therefore required to help minimise adverse impacts. Separate conditions have been suggested to prevent the burning of waste material and restrict working hours. This is unnecessary as both of these matters would be covered by the provisions of the Plan.
128. A desk-based assessment submitted with the planning application concluded that the archaeological potential of the site was low. It recommends further investigation in the form of trial trenching. The County Archaeological Officer commented that there was nothing to indicate that remains were of a standard that would require preservation in situ. A condition is therefore appropriate to require a written scheme of investigation. There are significant gradient changes across the site. In order to ensure that the development would be visually acceptable, details of ground and floor levels are required.
129. The site has been previously used as a tree nursery with various buildings and glasshouses. The evidence suggests that contamination risks would be generally low. A precautionary but proportionate response is justified with a sequence of conditions that would require actions depending on whether contamination is found to be present.
130. Separate conditions are necessary for foul and surface water drainage. The *Flood Risk and Drainage Strategy* submitted with the application indicated that the site has a low flood risk and that surface water would be satisfactorily disposed by means of a sustainable drainage system (SuDS). In order to ensure this operates effectively in the longer terms it is necessary to require details of the management and maintenance of the system. The UU includes a covenant that the Owner or Management Company would be responsible for the SuDS, but it is not unreasonable to require that information be submitted of any adoption arrangements going forward. With these safeguards in place there is no evidence that there would be a flooding risk either on the site or elsewhere as a result of the appeal proposal.
131. A *Travel Plan* was submitted at application stage and its objectives include reducing the need for staff, residents and visitors to travel by car. It also contains targets to increase pedestrian, bus and cycle trips with milestones over a 5 year period. Various measures are included to encourage sustainable travel choices as already discussed above. A Final Travel Plan will be required

to be submitted based on the already submitted document before the site is first occupied.

132. In order to encourage sustainable solutions and comply with the Government's objective of moving towards zero emission road transport, the provision of electric charging points is necessary. These would include the three rapid active charging points in the communal parking area. Parking for residents is not assigned and it is understood that the use of the private parking spaces would be subject to a separate agreement. In such circumstances these spaces would be provided with passive provision, which can be activated by a socket as and when required.
133. Means of access is not a reserved matter and the details of this along with the new footway and traffic calming measures are shown on drawing no: 1701-56 SK08 Rev B. In order to ensure the safety of road users and pedestrians it is necessary to require the details to be implemented prior to the occupation of the development. I have reworded the condition to be comprehensive and concise. It is also important that before a dwelling is first occupied it is served by a pedestrian and vehicular access in order to ensure a safe and secure residential environment.
134. External lighting, especially along roadways and within public areas, can be intrusive and detrimental to ecological interests as well as the visual amenity of neighbouring residents. I have amended the wording to make the condition more concise bearing in mind that the approval of the relevant details is within the control of the Council. In order to meet the requirements of the Water Framework Directive and policy DP42 in the MSDP a condition is necessary to restrict water usage to that set out in the optional requirement in Part G of the Building Regulations.
135. Conditions relating to materials and landscaping are unnecessary as these will be considered at reserved matters stage.

## **PLANNING BALANCE AND OVERALL CONCLUSIONS**

136. I consider that the development plan is up-to-date and that the basket of most important policies for determining this application are not out-of-date. The development would conflict with policies DP6, DP12, DP15 and DP34 in the MSDP and ALC1 and ALH1 in the ANP and in my judgement it would be contrary to the development plan when taken as a whole. The "tilted balance" and the presumption in favour of sustainable development in paragraph 11 of the Framework would therefore not apply.
137. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations determine otherwise. The MSDP was adopted relatively recently and the Framework makes clear that the planning system should be genuinely plan-led. Nevertheless, in this case there are a number of material considerations to be taken into account. The provision of extra care leasehold housing to meet a considerable level of unmet need is of particular importance, but there would also be various other benefits. I have explained why I consider them of pertinence and the reason for the varying degree of weight that I have attributed to them. Overall, I consider that the package of

benefits delivered by this appeal development is a matter of very substantial weight in the planning balance.

138. There would be harm to the landscape and the character and appearance of the area, including the village of Albourne. For the reasons I have given this would be relatively limited and localised.
139. There would be harm to the significance of designated and undesignated heritage assets by virtue of development proposed within their setting. In terms of the listed buildings the less than substantial harm identified in each case would be relatively low on the scale but nevertheless these are irreplaceable assets and the harm should be given considerable importance and weight. Nevertheless, in my judgement the harm would be outweighed by the very substantial public benefits I have identified. Spurk Barn is an undesignated heritage asset and the scale of harm relative to its significance would be low. The balance in that case is also that the benefits would outweigh the harm.
140. Drawing all of these matters together my overall conclusion is that this particular development would result in benefits of such importance that they would outweigh the harm that I have identified and the conflict with the development plan. In such circumstances, material considerations indicate that planning permission should be granted otherwise than in accordance with the development plan.
141. I have taken account of all other matters raised in the representations and in the oral evidence to the inquiry but have found nothing to alter my conclusion that, on the particular circumstances of this case, the appeal should succeed.

*Christina Downes*

INSPECTOR

## **ANNEX A: APPEARANCES**

### **FOR THE APPELLANTS:**

Mr Christopher Young	Of Queen's Counsel
Ms Leanne Buckley-Thomson	Of Counsel, both instructed by Ms L Wilford, Barton Willmore
<i>They called:</i>	
Mr G Flintoft BA(Hons) DipTP DipUD MRTPI	Planning Director of Retirement Villages Ltd
Mrs L Wilford BA(Hons) DipTP MRTPI	Planning Associate of Barton Willmore
Mr J Donagh BA(Hons) MCD MIED	Development Economics Director of Barton Willmore
Mr P Clark BA MALscArch CMLI	Landscape Associate of Barton Willmore
Mr J Darrell BSc(Hons) CMILT MCIHT	Associate Director of Transport Planning Associates
Richard Garside MRICS	Director and Head of Newsteer
Mr J Smith BA(Hons) MA PGCE DGDip MCIfA IHBC	Deputy Operational Director of Heritage at RPS
Mr T Kernon BSc(Hons) MRAC MRICS FBIAC	Director of Kernon Countryside Consultants Ltd
*Ms J Burgess LLB Law(Hons)	Solicitor with Aardvark Planning Law

\*Participated in the Planning Obligations session

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Jack Parker	Of Counsel, instructed by Mr T Clark, Solicitor and Head of Regulatory Services, Mid Sussex District Council
<i>He called:</i>	
Mr D McCallum BA(Hons) MPhil MRTPI	Project Director of DPDS Ltd
Mr W Harley BSc(Hons) CMLI	Director of WH Landscape Consultancy Ltd
Mr C Tunnell BSc(Hons) MPhil FRTPI FAcSS FRSA	Director of Arup and Leader of the London Planning Group
Ms E Wade MA MSc	Conservation Officer at Mid Sussex District Council

### **FOR THE RULE 6 PARTY:**

Ms N Ernest	Councillor of Albourne Parish Council
Mr G Stafford	Chair of Albourne Parish Council
Mr J Butler	Vice Chair of Albourne Parish Council
Mr J Drew	Councillor of Albourne Parish Council

**INTERESTED PERSON:**

Mr P Holding

Local resident of Church Lane, Albourne

**ANNEX B: DOCUMENTS AND PLANS**

**DOCUMENTS**

- 1 Planning for Retirement, ARCO and CNN (June 2020), submitted by Mr Young
- 2 The health and social care cost-benefits of housing for older people, the Mears Group (June 2019), submitted by Mr Young
- 3 Inquiry Note submitted by the Appellants explaining the reason for submitting Documents 1 and 2
- 4 Specialist housing need, alternative assessments, prepared by Mr Donagh
- 5 Tables of supply of specialist housing for older people, prepared by Mr Donagh
- 6 Understanding local demand from older people for housing, care and support, submitted by Mr Young
- 7/1 Committee Report relating to development including an extra care facility at Sayers Common, submitted by Mr Parker
- 7/2 Location plan of the Sayers Common development site submitted by Mr Young
- 7/3 Policy C1 of the Mid Sussex Local Plan (2004), submitted by Mr Parker
- 8/1 Secretary of State's decision on development at Wheatley Campus, Oxford Brookes University (APP/Q3115/W/19/3230827) dated 23 April 2020, submitted by Mr Young
- 8/2 Inspector's Report on the above appeal, submitted by Mr Young
- 9 Correspondence with Housing LIN concerning the use of the SHOP@ tool, submitted by Mr Young
- 10 Planning Obligation by Agreement between Mid Sussex District Council, West Sussex County Council and Eldon Housing Association Ltd relating to redevelopment for an extra care housing scheme at Lingfield Lodge, East Grinstead
- 11 Decision by the High Court relating to a planning appeal for extra care housing at The Elms, Upper High Street, Thame (31 July 2020), submitted by Mr Young
- 12/1 Representations on behalf of the Appellants to the Council's Strategic Housing and Economic Land Availability Assessment, submitted by Mr Young
- 12/2 Correspondence between the Parish Council and the Appellants regarding when the above was submitted
- 13/1 Schedule of draft conditions
- 13/2 Agreement by the Appellants to the pre-commencement conditions
- 13/3 Appellants' suggested additional conditions regarding electric charging and water usage
- 13/4 Appellants' suggested additional condition regarding the communal gardens
- 14/1 Site visit itinerary and map

- 14/2 Suggested viewpoint and map from Wolstonbury Hill, submitted by the Parish Council
- 15 Amendments to Document 4 and the proof of evidence of Mr Donagh, submitted by Mr Young
- 16 Agreed position on the Mid Sussex extra care housing supply, submitted by Mr Young
- 17/1 Costs application by Mr Young on behalf of the Appellants
- 17/2 Costs response by Mr Parker on behalf of the Council
- 18 Correspondence by the Council and Appellants regarding the Use Class of the proposed development
- 19 Planning Obligation by Agreement
- 20 Planning Obligation by Unilateral Undertaking

## **PLANS**

- A Application plans
- B Sketch Layout Plan

## **ANNEX C: SCHEDULE OF PLANNING CONDITIONS**

1. Details of the appearance, layout, scale and landscaping of the site (hereinafter called the "reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and development shall be carried out as approved.
2. Application of the approval of reserved matters shall be made to the local planning authority before the expiration of 2 years from the date of this permission.
3. The development hereby permitted shall take place not later than one year from the date of approval of the last of the reserved matters.
4. Any reserved matter applications made pursuant to the development hereby permitted shall demonstrate compliance with the Parameter Plan (drawing no: and RETI150215 PP-01 rev G) and Sketch Layout (drawing no: RETI150215 SKL-04 rev J).
5. No more than 84 extra care dwelling units shall be built on the site.
6. No development shall take place, including any works of demolition, until a Demolition and Construction Management Plan (DCMP) has been submitted to and approved in writing by the local planning authority. The DCMP shall provide plans and details of the following:
  - a. Location of site offices
  - b. Demolition and construction traffic routeing
  - c. Location of plant and materials storage
  - d. The area within the site reserved for the loading, unloading and turning of HGVs delivering plant and materials
  - e. The area reserved within the site for parking for site staff and operatives
  - f. Wheel washing facilities

- g. A scheme to minimise dust emissions from the site
- h. Measures to control noise affecting nearby residents. This should be in accordance with *BS5228:2014 Code of practice for noise and vibration control on construction and open sites*, with particular regard to the noisiest activities such as piling, earthmoving, concreting, vibrational rollers and concrete breaking
- i. A scheme for recycling and disposal of waste resulting from the demolition and construction works
- j. Delivery, demolition and construction working hours
- k. Erection and maintenance of security hoarding, including decorative displays and facilities for public viewing where appropriate
- l. Site contact details

The approved DCMP shall be adhered to throughout the demolition and construction period for the development.

7. No development shall take place until an archaeological written scheme of investigation and programme of works has been submitted to and approved in writing by the local planning authority. The investigation and works shall be carried out as approved
8. The development shall be carried out in accordance with the mitigation and enhancement measures in the *Ecological Impact Assessment* by Lloyd Bore dated 7 March 2019.
9. No residential occupation shall take place until an Ecological Management Plan has been submitted to and approved in writing by the local planning authority. This shall include the arrangements for the maintenance and management of the biodiversity measures carried out in accordance with Condition 8. The development shall be carried out in accordance with approved Ecological Management Plan.
10. No development shall take place, including works of demolition, until an Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority. This shall detail protective measures for trees and hedgerows to be retained in accordance with the principles outlined in the *Arboricultural Impact Assessment* and *Arboricultural Report*, both by Lloyd Bore Ltd (26 February 2019 Rev P05 and 22 November 2018 Rev P02, respectively).
11. Before the development is first occupied a Landscape Management Plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the local planning authority. The Landscape Management Plan shall be carried out as approved.
12. The landscaped grounds of the development hereby permitted shall be provided and managed as communal shared spaces. Notwithstanding the *Town and Country Planning (General Permitted Development) Order 1995* (as amended) or any subsequent Order revoking or re-enacting that order, no fences, gates, walls or other means of enclosure shall be erected for the purpose of creating an enclosed garden or private space for the benefit of any extra care dwelling unit.

13. No development shall take place, other than works of demolition, until details of existing and proposed site levels and proposed ground floor slab levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
14. No development shall take place, including works of demolition, until an assessment of any risks posed by contamination has been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken to remediate the site and render it suitable for the development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and a verification report shall be submitted to and approved in writing by the local planning authority. The assessment and any necessary remediation measures and verification shall be undertaken in accordance with a timescale that has been first submitted to and approved in writing by the local planning authority.
15. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended on the site and additional measures for remediation shall be submitted to and approved in writing by the local planning authority. The remediation shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed. It shall thereafter be approved in writing by the local planning authority and carried out as approved before any further work on the site recommences.
16. Before the development is first occupied details of the foul drainage system for the site shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
17. Before the development is first occupied details of the sustainable drainage system (SuDS) for the site, which shall be in general accordance with the *Flood Risk and Drainage Strategy* by Quad Consult dated May 2017, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
18. Before the development is first occupied details of the implementation of the SuDS approved under condition 17 shall be submitted to and approved in writing by the local planning authority. These details shall include:
  - a. A timetable for implementation;
  - b. A management and maintenance plan for the lifetime of the development;
  - c. Arrangements for adoption by any public body or statutory undertaker or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime.

The sustainable drainage system shall be implemented and thereafter managed and maintained in accordance with the approved details.

19. Before the development is first occupied a Final Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Final Travel Plan shall be in accordance with the *Travel Plan* by TPA Consulting, dated March 2019. The development shall be carried out in accordance with the approved Final Travel Plan.
20. Before the development is first occupied, three rapid active electric charging points shall be provided in the communal parking area serving the shop for use by the general public and residents of the development. The electric charging points shall be retained for their intended purpose for the lifetime of the development.
21. No more than 75% of the extra care dwelling units shall be occupied until no less than 84 parking spaces have been equipped for passive vehicle charging, to allow for the integration of future charging points. Once the charging points have been provided, they shall be retained for their intended purpose for the lifetime of the development.
22. Before the development is first occupied:
  - a. The site vehicular access shall be constructed and open to traffic
  - b. The new section of footway along London Road shall be constructed and available for pedestrian use
  - c. The off-site traffic calming scheme shall be completedIn accordance with the general arrangement shown on drawing no: 1701-56 SK08 rev B.
23. Before a dwelling is first occupied the internal access roads and footways serving that dwelling shall have been laid out and constructed in accordance with details that have first been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
24. No above ground development shall take place until details of external lighting, including light intensity, spread and shielding, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
25. The extra care units shall include water efficiency measures in order to meet the optional requirement of Building Regulations part G to limit the water usage of each extra care dwelling unit to 110 litres of water per person per day.

*End of conditions 1-25.*

**APPENDIX 14**

Appeal Decision APP/P1615/W/19/3236737 Newent, Forest of Dean, 9<sup>th</sup> October 2020



## Appeal Decision

Hearing Held on 23 September 2020

Site visits made on 19 December 2019 and 28 September 2020

**by M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 9<sup>th</sup> October 2020**

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### **Appeal Ref: APP/P1615/W/19/3236737**

#### **Land off Bradfords Lane, Newent**

- 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 Kodiak Land against the decision of Forest of Dean District Council.
  - The application Ref P1990/18/OUT, dated 19 December 2018, was refused by notice dated 11 April 2019.
  - The development proposed is up to 50 dwellings, new planting and landscaping, informal open space, car parking, vehicular access point from Bradfords Lane and associated ancillary works.
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#### **Decision**

1. The appeal is allowed and planning permission is granted for up to 50 dwellings, new planting and landscaping, informal open space, car parking, vehicular access point from Bradfords Lane and associated ancillary works at Land off Bradfords Lane, Newent in accordance with the terms of the application, Ref P1990/18/OUT, dated 19 December 2018, and the plans submitted with it, subject to the conditions in the attached schedule.

#### **Procedural matter**

2. The appeal relates to an application for outline planning permission. All matters are reserved except access. Indicative drawings have been provided which give an indication as to how the site could be developed. Other than the site access plan, I have treated these as illustrative.

#### **Main Issues**

3. The main issues are:
  - (i) The effect of the development on the character and appearance of the area;
  - (ii) the effect on heritage assets, with particular regard to the setting of Mantley House Farm;
  - (iii) Whether the site is in a suitable location for the development, with regard to development plan policy;
  - (iv) Whether there are any material considerations that may indicate a decision otherwise than in accordance with the development plan, with particular regard to housing land supply.

## Reasons

### *Character and appearance*

4. The site is field at the edge of Newent. It is bordered by existing development on Bradfords Lane, which is a clear part of the existing developed area. There are other buildings close to the site which mean that it would not stand isolated from the built form. Nevertheless, on approach from outside the settlement, the field is seen as part a wider pattern of irregular interlocking fields in a rolling landscape that contribute to the area's character and appearance, and the setting of Newent.
5. From Ross Road, the rising landform of the site makes it visible, particularly in winter months. However, existing housing already breaks the ridgeline in these views and the settlement is not hidden. Whilst, the topography is such that new dwellings at the site may be more visible than existing ones, the visibility of existing development and keeping housing away from the Ross Road and countryside boundaries as suggested, significantly reduces the level of harm that would be caused by further development in this location. Over time, this visual harm would be further reduced by any additional planting.
6. There would be greater harm from the loss of mature trees, protected by Tree Preservation Orders, required to form the site access. These trees are clearly visible in views along Ross Road on leaving Newent. New planting would take time to establish and the position of the vehicular access would mean that replacement planting would not fully mitigate the tree loss. There would also be some, smaller-scale loss of vegetation around the proposed pedestrian access point. However, the views are dominated by the mature hedge-lined Ross Road and further trees beyond the site, so the most significant effects would be localised and overall, Newent would continue to be grounded in its landscape setting.
7. With regard to the above, I find that the effect on the character and appearance of the area would be to slightly extend the settlement into the countryside. As it would be seen in the context of existing development, there would be little harm to distant views or the approach to and setting of Newent. The Council's Landscape Officer has indicated that the overall effects on landscape character are unlikely to be substantive in their magnitude. For the above reasons, I share this view.
8. Nevertheless, the localised impacts, particularly surrounding the formation of the access and effect on protected trees would result in some limited conflict with Policy CSP.1 of the Forest of Dean Core Strategy 2012 (LP) and Policy AP4 of the Forest of Dean Allocations Plan 2018 (AP) that seek to ensure that new development takes into account important characteristics of the environment and contributes to environmental enhancement.

### *Heritage*

9. Mantley House Farm, a grade II listed complex with three separately listed elements of house and farm buildings is on the opposite side of Ross Road to the appeal site. They have been described by another Inspector<sup>1</sup> as a high quality group, indicative of a prosperous historic farmstead. That Inspector found that the significance of the heritage asset is derived first and foremost

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<sup>1</sup> APP/P1615/A/14/2228822

from the age and architectural interest in the individual buildings and their grouping. The surrounding fields, including the appeal, site make an important contribution to the setting by enabling the farmstead to be understood and read in the landscape. I have no reason to disagree with that assessment.

10. Following that appeal, recent housing development, partly currently under construction, at Valegro Avenue<sup>2</sup> has eroded part of the setting of Mantley House Farm. The proposed development would further erode the setting and its historical association with the surrounding countryside. Tree removal at the access would open up the site and make the development visible alongside the heritage assets as viewed from Ross Road when leaving Newent.
11. Nevertheless, in these views, Mantley House Farm is already seen alongside existing development and the rolling landscape behind the buildings would still be visible alongside the former farm buildings. I, therefore, conclude that the site has a smaller part to play in understanding the origins of the heritage asset and its significance than the land that is contiguous with it.
12. Accounting for the cumulative effect of recent development around Mantley House Farm, the proposal would result in less than substantial harm to the setting of the listed building and thereby its significance. Given the contribution of the site to the setting, the harm would be towards the lower end of the 'less than substantial' category.

#### *Location of development*

13. The site is outside the development boundary for Newent. It is high quality agricultural land and the Framework indicates that decisions should recognise the economic and other benefits of the best and most versatile agricultural land.
14. CS Policy CSP.4 sets out that most change will take place within existing settlement boundaries, with new development concentrated at the towns in a manner that relates closely to the intended role of each. The Policy indicates that in the north forest, development will be centred around Newent, but nevertheless areas outside settlement boundaries will be treated as part of the open countryside. In support of this, CS Policy CSP.15, relating to Newent, indicates that additional housing beyond the target set in CSP.5, allocated in the AP, will only be permitted on small unidentified sites and suitable previously developed land within the town. Therefore, the proposal conflicts with these policies.

#### *Housing land supply*

15. There is no dispute that, based upon the Forest of Dean Allocations Plan 2018 (AP) and accounting for an existing shortfall, the 5 year housing requirement for the years 2020-2025 is 2260 dwellings (the five year period). There is dispute over whether a 5% (translating to 2372 dwellings) or 20% (2712 dwellings) buffer should be applied to this. The appellant advocates 5% based on Housing Delivery Test results whereas the Council suggests 20% being in accordance with the approach set out in the AP.
16. Against this requirement, the Council has produced a Housing Trajectory that indicates a deliverable supply of 3135 dwellings within the five year period. The

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<sup>2</sup> Referred to by its developer as Picklenash Grove

Glossary to the Framework clarifies that sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable unless there is clear evidence that homes will not be delivered within 5 years. Where a site has outline planning permission for major development or has been allocated in a development plan it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

17. The Council's trajectory includes a number of allocated sites<sup>3</sup> that do not have planning permission. Another site<sup>4</sup> is included that has previously had outline permission, but has no extant permission. Whilst these sites may have been subject to pre-application discussions, the Council has not referred to any clear evidence, such as a written agreement to delivery intentions or site assessment work to demonstrate firm progress being made to the submission of an application or commencement of development.
18. I appreciate that the Council may have recently experienced difficulties contacting developers due to the Covid-19 pandemic, but detailed evidence was not available in the original submissions that pre-dated such restrictions. I also understand that the Council considers much content of its pre-application discussions to be confidential. However, in the absence of detailed supporting evidence, the Council's claims regarding pre-application discussions amount to unsubstantiated assertions that development may be forthcoming. That is not the clear evidence required by the Framework and, so, I cannot account for these sites in the supply.
19. In addition, there are a number of other allocated sites<sup>5</sup> that are simply said to have no application and, at the Hearing, the Council could provide no further evidence about them. Along with the allocated sites where some pre-application discussions have taken place, these sites account for 395 dwellings within the five year period that must be removed from the supply.
20. The trajectory includes a number of sites in Cinderford that have had previous planning permissions<sup>6</sup>. However, it was confirmed at the Hearing that there were no current permissions and the Council was unable to provide any clear evidence of intent to submit any.
21. Elsewhere in Cinderford is a site<sup>7</sup> with outline permission for a new college and residential development. However, while the permission is extant, there is no clear evidence of intent to develop the residential part of the site for housing and the Council indicated at the Hearing that there is currently a condition preventing access to the residential area from the existing road. Although the Council's representatives saw no reason that the condition could not be varied, there is no particular evidence of an intention to do so.
22. The Council confirmed at the Hearing that Cinderford presents a challenging market for developer-led housing. I was told that recent housing delivery at the settlement has been secured by other means, including subsidies and grants.

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<sup>3</sup> Land off Sneyd Wood Road; Land at Poolway Farm, Coleford; Coleford Milkwall Ellwood Road; Coleford Kings Meade; Drybrook High Street

<sup>4</sup> Drybrook Farm

<sup>5</sup> Mitcheldean Former Coach Depot, St Michaels Close; Cleeve Mill Lane, Newent; former Victoria Hotel, High Street, Newnham; adjacent to Miners Arms, Sling; Netherend, Ash Way, Woolaston

<sup>6</sup> Cinderford Station Street, former Cannop Foundry; Cinderford Station Street, Turley Ct and Wilce land; Cinderford Station Street, Former Listers

<sup>7</sup> Cinderford Northern Quarter

- Although discussions about similar arrangements to bring other sites forward may have occurred, there is no clear evidence before me that delivery of the above Cinderford sites is likely within the five year period.
23. A final site in Cinderford<sup>8</sup> has permission for residential development which is partially built, but the developer left the site some time ago. Despite having been marketed for 3 years, I was told that there is currently no developer interest. Given the challenging market conditions referred to above, this amounts to clear evidence that the site will not deliver more housing within the next 5 years. There is similarly no clear evidence to support additional housing at this site, beyond that in the extant permission.
  24. For the reasons given, these sites in Cinderford cannot be included in the housing trajectory for delivery within the five year period. Collectively, they amount to 205 dwellings.
  25. There are a number of outline planning applications<sup>9</sup> for major development currently under consideration by the Council. The Council has been working with the relevant applicants to resolve various issues to enable the grant of permission. However, although some are anticipated to be granted within the next few months, I could not be given any firm commitment at the Hearing as to the likely dates for their determination. Moreover, there is no clear evidence of when reserved matters may be submitted that may indicate deliverability within the five year period. In the absence of such clear evidence these sites, which together account for 133 dwellings must be removed from the 5 year supply.
  26. A reserved matters application has been submitted in relation to an outline planning permission at Lydbrook, Former Rothdean tinsplate works. It would deliver 26 dwellings. However, the reserved matters application was made in 2017 and progress to resolve outstanding issues has been slow. The Council was unable to confirm when outstanding matters might be resolved. Given the length of time since the application was made, there appears to be no urgency to move matters forward. Moreover, there is no clear evidence of a commitment to commence the development. Therefore, I find that these dwellings should also be removed from the 5 year supply.
  27. A large component of the Council's housing supply is focussed on allocated sites at Lydney. I was told that the AP47 allocation is split into various parcels and multiple developers are active on parts of the site. However, one parcel, known as Lydney East phase A, does not yet have outline planning permission. The Council confirmed that the outline application, currently under consideration, is complex and includes mixed uses. There is no clear evidence of when permission may be given or of any discussions on future reserved matters applications that may allow the site to deliver housing quickly.
  28. A similar situation exists at Holms Farm where an outline application (with one dwelling detailed in full) has been undetermined since its submission at the end of 2015. The Council confirmed that it was delayed due to the need to complete a planning obligation, but whilst this was said to be at an advanced stage, there is no clear evidence to support this, the preparation of reserved matters

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<sup>8</sup> Cinderford – St Whites Farm, Sneyd Wood Road

<sup>9</sup> Coleford North Road, Worcester Walk, Broadwell; Huntley – adjacent The Poplars, Tibberton Lane; Whitecroft Scovill Lydney Road, Whitecroft; Woolaston/Netherend Farm

(notwithstanding that much detail is already agreed), or commencement within 5 years.

29. It may well be that Lydney East Phase A is a logical extension to development activity within the AP47 allocation and that development will progress to it next. However, without clear evidence of when the outline planning permission may be granted, I can only give limited weight to this scenario.
30. I note the Council's contention that failure to deliver at the Lydney East Phase A site may be compensated by increased activity on the other parts of the allocation which are otherwise predicted to continue delivering houses beyond the five year period. However, if I were to remove this site, and the Holms Farm site from the supply, the trajectory indicates that the other sites in Lydney would deliver an average of 157 dwellings per year over the three years that those two sites were expected to make a contribution. As the Council believe that the Lydney Sites could collectively achieve an annual delivery of between 150 and 160 dwellings, there is little prospect of any failure being accommodated elsewhere.
31. Therefore, dwellings indicated for Lydney East Phase A and Holms Farm should be removed from the 5 year supply. Collectively this represents 88 dwellings.
32. Based on the foregoing, I conclude that 847 dwellings should be removed from the 5 year supply. This leaves a total of 2288 dwellings. If I were to apply a 5% buffer, which would give the lowest requirement of 2372 dwellings, the supply would be in the region 4.8 years. Applying a 20% buffer as suggested by the Council would result in a lower supply.
33. The appellant has suggested that a number of other sites may not deliver as anticipated by the Council, and also suggested further discounts should be made based upon rates of delivery or anticipated start dates, as well as for windfall sites. Detailed analysis of these factors may result in further reductions, but not an increase. Therefore, a supply of 4.8 years is a best-case scenario.

### **Other matters**

34. Access to the site would be onto a sloping section of Bradford's Lane, close to its junction with Ross Road. Whilst I understand that this section of highway can flood after heavy rainfall and be challenging to navigate in icy conditions, the Highway Authority are satisfied that the access arrangements would be safe.
35. Opposite the site, the dwelling Glenwood has a pedestrian gate, onto the carriageway which I understand is utilised when accessing the school. Although the development may place more traffic onto this stretch of road, there would be good visibility of any pedestrians on the highway from vehicles leaving the site.
36. Heading away from Ross Road, Bradford's Lane provides access to a pre-school, pedestrian access to Picklenash Junior School and other existing residential development including on West View. Beyond this the road narrows to a single vehicle width and has no footways. I understand that this route is used by some pedestrians accessing the junior school from Vauxhall. Although there could be some increase in traffic along this route, traffic speeds are low due to the restricted width and forward visibility and there is no substantive

evidence that any existing safety concerns would be exacerbated by the proposed development.

37. During my site visit, I witnessed parking along Bradfords Lane associated with the end of the school day. This effectively limits the road to a single lane width, and I observed some congestion whilst vehicles manoeuvred around the parked cars. However, the access is some distance from the pinch point and given the proximity of the development to the school, it is unlikely to have a significant effect on these school-related traffic flows, or short-term parking patterns. Mindful that the Highway Authority has raised no objection to the proposal in principle, I, therefore, find that there would be no adverse effect on highway safety.
38. In order to facilitate safe access to public transport, new footways are required to bus stops on Ross Road. At the Hearing, the Highway Authority confirmed that such routes would be achievable within highway limits and could be secured by planning conditions. The Highway Authority recommended a further condition to secure upgrades to a public footpath to West View. This footpath would provide a more direct route on foot to town-centre facilities than walking via the road network. There is dispute between the parties as to whether a planning condition or planning obligation would be the most appropriate way to secure the upgrade.
39. Nevertheless, planning obligations and conditions should only be used where they are necessary to make the development acceptable in planning terms or where it would otherwise have been necessary to refuse planning permission. In this case, use of the footpath would make the walk to town centre facilities slightly shorter, but the route via the highway network is not significantly longer as a proportion of the whole journey. Although Framework Paragraph 108 indicates that appropriate opportunities to promote sustainable transport modes should be taken up, I therefore find that improvements to the footpath are not necessary to make the development acceptable or promote walking.
40. That said, the route would be a desire line representing the shortest available route and would be available in any case to those choosing to use it. Given the existing condition, it may not be suitable for all users, particularly those with reduced mobility. I have, therefore, given due regard to the Public Sector Equality Duty contained in the Equality Act 2010 that requires, amongst other things, decisions to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. However, given that the acceptability of the proposal is not reliant upon upgrading the route, I conclude that no inequality of opportunity would arise in connection with my decision.
41. Vehicles exiting the site would face towards the existing dwelling, Glenwood. After dark, headlights would shine towards the dwelling and could affect bedroom windows. However, Glenwood is raised up from Bradfords Lane, so vehicles approaching the junction would be at a lower level than the windows. As such, any disturbance would not be so great as to result in a significant harm to living conditions. I, therefore, attribute limited weight to this matter.
42. There is some concern amongst local residents about the amount of development that has occurred in Newent and the effect on local services and facilities. However, there is no substantive evidence that the planning

obligations that I discuss below would not adequately address any shortcomings in infrastructure.

43. Whilst noting local concerns about potential increases in flood risk, the Council is satisfied that the development would adequately deal with surface water drainage so as to avoid increasing flood risk elsewhere. I note that additional information provided to the Council during consideration of the application resulted in the Lead Local Flood Authority confirming that it had no objection. There is no substantive evidence to lead me away from that conclusion.

### **Planning obligations**

44. A unilateral undertaking would provide a number of planning obligations. Those relating to the provision of affordable housing are required by planning policy and represent a benefit that would arise from the development. There are other obligations intended to secure maintenance of on-site features such as open space and surface water drainage facilities, or as mitigation for the effect of the development on infrastructure. These are neutral in the planning balance.
45. The Council has indicated that some of the contributions, including those relating to the Newent Initiative Trust, Scout hut and upgrades to the Watery Lane recreation ground, are not necessary to make the development acceptable in planning terms. I heard nothing at the Hearing to lead me away from that position.
46. With regard to this and my earlier reasons, I, therefore, conclude that the obligations defined as the Footpath Contribution, the Initiative Trust Contribution, the Open Space Contribution, and the Scout Hut Contribution, can be given no weight in determining the appeal. The other obligations are justified and proportionate to the development proposed.

### **Appropriate assessment**

47. The site is close to the Wye Valley & Forest of Deane Bat Special Area of Conservation (the Bat SAC). Development of the site could result in loss of foraging habitat and connectivity for bats, loss of vegetated commuting/connectivity corridors via increased public activity, or external lighting from the development negatively affecting foraging and commuting behaviours. Therefore, Appropriate Assessment (AA) under the Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations), is required. This I have undertaken on a proportionate basis.
48. The Council carried out an AA in respect of the development. It notes that there is a low level use of the site by horseshoe bats, mainly on the south-western site boundary. The Council's AA also concluded that the provision of a bat foraging buffer zone, Landscaping and Ecological Management Plans including during construction, and an external lighting strategy would be sufficient to avoid adverse effects on the integrity of the Bat SAC.
49. Natural England, as Statutory Nature Conservation Body under the Habitats Regulations has reviewed the Council's AA and proposed mitigation and advises that it concurs with the conclusions. There is no particular evidence to lead me away from these findings. Therefore, following AA, I also conclude that there would be no adverse effects on the integrity of the Bat SAC.

## Planning balance

50. I have found that harm would arise in respect of the effect on the character and appearance of the area, location of the development outside the defined settlement boundary and effect on the setting of Mantley House Farm and its significance.
51. Framework Paragraph 196 indicates that the less than substantial harm to the heritage assets should be weighed against the public benefits of the proposal. In accordance with Framework Paragraph 193, I give great weight to the assets' conservation. Public benefits would arise in terms of the delivery of market and affordable housing. Given that there is less than 5 years supply of housing within the Forest of Dean District, I give these benefits very substantial weight. Whilst giving great weight to the harm to the significance of the heritage assets, given the low level of harm that would result and the substantial public benefit, I conclude that the public benefits would outweigh the harm.
52. Although there would be harm to the character and appearance of the area, this would be localised and limited. Therefore, whilst recognising the intrinsic character and beauty of the countryside and the benefits of the best and most versatile agricultural land as required by Framework Paragraph 170, I give only moderate weight to the harm and consequential conflict with CS Policy CSP.1 and AP Policy AP4 that would result.
53. CS Policy CSP.5 indicates that new greenfield sites will not be released unless it can be proven that land is not available from other sources and is needed to meet the plan's requirements. The shortfall in housing supply means that sufficient land is not available to meet the plan's requirements and, therefore, there is no particular conflict with Policy CSP.5.
54. The site's location outside the settlement boundary means that there is conflict with CS Policy CSP.4. However, given the shortfall in supply, close relationship of the site to the existing settlement and that Policy CSP.4 indicates that new development in the north forest will be centred around Newent, I find little harm would arise to the overall strategy set out in the development plan.
55. Other Inspectors have previously accepted that a 5 year housing land supply exists and found the development plan to be consistent with the Framework. However, under Framework Paragraph 11(d), the shortfall in housing land supply now indicates that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
56. Policies that protect heritage assets are policies that protect assets of particular importance. However, I have already found that the public benefits of the proposal outweigh the harm to the significance of the heritage assets and, therefore, Framework Paragraph 196 does not provide a clear reason for refusing the development.
57. A key objective of the Framework is to boost significantly the supply of homes. In light of the weight that I have attached to the various identified harms, and

as the public benefits would outweigh the harm to heritage assets, I find that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the proposal benefits from the presumption in favour of sustainable development, outlined at Framework Paragraph 11.

58. Conflict with the development plan, read as a whole, remains. However, I have ascribed only little to moderate weight to the conflict with the aims of its various policies. The benefits associated with the delivery of housing, compliance with the Framework and the presumption in favour of sustainable development are material considerations to which I attach very substantial weight.
59. While I understand that the site was not supported as an allocation by an Inspector in 2003, with other sites being preferred, I must determine this appeal on the basis of prevailing planning policy and material considerations now. I, therefore, conclude that material considerations indicate a decision otherwise than in accordance with the development plan.

### **Conditions**

60. To ensure that adequate facilities are available for the traffic likely to be attracted to the site, full details of vehicle parking facilities and their subsequent maintenance are required, and the access and visibility splays and estate roads should be provided. To ensure no harm to the operation of the public highway a construction method statement should be prepared.
61. To ensure that there is no increase in off-site flood risk, conditions are necessary to secure details of surface and foul drainage proposals and their future maintenance. To promote non-car and low-carbon transport opportunities, details are required to secure electric vehicle charging points, cycle parking facilities, pedestrian links to the Ross Road bus stops and implementation of the submitted travel plan. To minimise waste, a waste minimisation statement should be submitted.
62. To ensure that ecological interests and biodiversity are safeguarded and enhanced, a Construction and Ecological Management Plan, Landscape and Ecological Management Plan, and biodiversity enhancement scheme must be secured. As the schemes would be assessed in accordance with current guidelines, a separate condition requiring adherence to the Council's methods of working for reptiles is not necessary. Although covered by the reserved matters, a specific condition requiring a buffer zone where peak bat foraging activity occurs is necessary to give certainty as I have relied upon it in conducting my appropriate assessment. For the same reason, a condition requiring a lighting design to safeguard bat activity is required.
63. To ensure that any archaeological interests are properly recorded and investigated, a condition is necessary to secure a programme of archaeological works. To minimise risks from contamination to future users of the land, a condition is necessary requiring investigation and remediation of any unexpected contamination found at the site.
64. The Council has recommended a condition that full details of levels are provided with a reserved matters application, but this detail relates to the

reserved matters and a condition on the outline planning permission is not necessary. Similarly, details of tree protection and site landscaping relate to the reserved matters. The provision of fire hydrants is covered by other legislation. I have made some revisions to the Council's suggested conditions in the interests of clarity and consistency and to ensure compliance with the Framework and Planning Practice Guidance.

**Conclusion**

65. For the reasons given, I conclude that the appeal should be allowed.

*M Bale*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Christien Lee MRTPI – Planning Manager  
Jason M Tait BA (Hons) Dip.TP MRTPI – Director, Planning Prospects  
Chris Dodds BA (Hons) MA MRTPI – Associate Director, Planning Prospects  
Jason Clemons BA (Hons) MA MSc MRTPI IHBC – Director, Head of Heritage &  
Townscape, Savills  
Nicola Baines – Solicitor

### FOR THE LOCAL PLANNING AUTHORITY:

Stephen Colegate BA (Hons) MPlan MRTPI – Principal Planning Officer  
Nigel Gibbons BSc MRTPI – Forward Plan Manager  
David Haigh BA MA AA Grad. Dip.Cons. FSA Scot. IHBC – Conservation Advisor  
Stephen Hawley BSc (hons) IEng MCIHT FIHE MTPS Cert(mgmt)open  
– Highway Development Management Team Leader  
Alastair Chapman – Sustainability Representative

### INTERESTED PERSONS:

Margaret Highton  
Peter Tufnell Dip.TP MRTPI

## Schedule

- 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 approval of the reserved matters shall be made to the Local Planning Authority not later than 3 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 details submitted under Condition (1) shall include full surface and foul water drainage proposals, including connection to any existing facility. Thereafter the approved drainage details shall be fully implemented before the dwelling it serves is occupied and shall thereafter be maintained as such.
- 5) Prior to the occupation of any dwellings hereby permitted, a SUDS management and maintenance plan for the lifetime of the development, including 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, shall be submitted to and approved in writing by the Local Planning Authority. The plan shall fully detail the access that is required to reach surface water management components for maintenance purposes. It shall also include details for safe and sustainable removal and disposal of waste periodically arising from the system, detailing the materials to be used and standard of work required including method statement. The approved SUDS management and maintenance plan shall be implemented in full in accordance with the agreed details.
- 6) The details submitted under Condition (1) shall provide a minimum of one electric vehicle rapid recharge point per dwelling and one electric vehicle charge point for every 3 visitor parking spaces within the site. The approved details shall be implemented prior to the occupation of the dwellings to which they relate and shall be thereafter be maintained as such.
- 7) The details submitted under Condition (1) shall include provision of secure and covered cycle storage facilities for a minimum of 1no. bicycle per dwelling. The approved details shall be fully implemented prior to the occupation of the dwelling to which they relate and shall thereafter be maintained as such.
- 8) The details to be submitted under Condition (1) shall include vehicular parking and turning facilities within the site. The approved details shall be fully implemented prior to the occupation of the dwelling to which they relate and shall thereafter be maintained as such and available for those purposes.
- 9) Notwithstanding the approved plans, the details to be submitted under Condition (1) shall include details of pedestrian links to the Ross Road bus stop. The approved details shall be fully implemented prior to the occupation of the first dwelling at the site and shall thereafter be maintained as such.
- 10) No works shall commence on site until the proposed vehicular access off Bradfords Lane has been provided in accordance with plan no 523.0001.003 Rev D, with the first 20m of the access road surfaced in a bound material and the existing roadside frontage boundaries have been set back to provide visibility splays extending from a point 2.4m back along the centre of the

access measured from the public road carriageway edge (the X point) to a point on the nearer carriageway edge of the public road 32.4m to the right and 29.8m to the left of the access (the Y points). The area between those splays and the carriageway shall be reduced in level and thereafter maintained so as to provide clear visibility above 1 metre in height.

- 11) The Travel Plan, PB Associates Document No. 523.0001/TP/4 shall be fully implemented as set out therein.
- 12) No dwelling on the development shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the footway(s) to surface course level.
- 13) The details submitted under Condition (1) shall include a Waste Minimisation Statement. It shall include:
  - i. Details of the types and volumes of construction and demolition waste likely to be generated including measures to minimise, re-use and recycle that waste and minimise the use of raw materials.
  - ii. All construction and demolition waste to be re-used on site unless it can be demonstrated that this is not the most sustainable option.
  - iii. Where waste is generated that cannot be re-used/recycled either on or off site, proposed measures for the disposal of this waste in an environmentally acceptable manner.
  - iv. Provision within the residential development of 'on-site' storage receptacles for recycling a range of materials such as may be required by the development.
  - v. Suitable accessing arrangements for recycle/waste collection vehicles.The provisions shall be implemented in accordance with the agreed Waste Minimisation Statement and thereafter maintained as such.
- 14) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by, the Local Planning Authority. The Statement shall:
  - i. Specify the type and number of vehicles;
  - ii. Provide for the parking of vehicles of site operatives and visitors;
  - iii. Provide for the loading and unloading of plant and materials;
  - iv. Provide for the storage of plant and materials used in constructing the development;
  - v. Provide for wheel washing facilities;
  - vi. Specify the intended hours of construction operations;
  - vii. Specify measures to control the emission of dust and dirt during construction.The approved details shall be fully implemented throughout the construction period of the development.
- 15) No works shall take place (including demolition, ground works, vegetation clearance) until a Construction Ecological Management Plan (CEcMP) has

been submitted to and approved in writing by the Local Planning Authority. The CEcMP shall include, but not be limited to the following:

- i. Risk assessment of potentially damaging construction activities;
- ii. Identification of "biodiversity protection zones";
- 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 an ecological or environmental specialist needs 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 or similar person;
- viii. The use of protective fences, exclusion barriers and warning signs;
- ix. Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEcMP shall be strictly adhered to and implemented throughout the construction period.

- 16) Notwithstanding the approved details, prior to above ground works a Landscape and Ecological Management Plan (LEcMP) shall be submitted to and be approved in writing by the Local Planning Authority. The content of the LEcMP shall include the following:

- i. Description and evaluation of features to be managed;
- ii. Ecological trends and constraints on site that might influence management;
- iii. Aims and objectives of management including those in relation to dormice and bats;
- iv. Appropriate management options for achieving aims and objectives including appropriate enhancement measures;
- v. Prescriptions for management actions;
- vi. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- vii. Details of the body or organization responsible for implementation of the plan;
- viii. Legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer;
- ix. Ongoing monitoring and remedial measures.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEcMP are not being met) how contingencies and/or remedial action will be identified, agreed and

implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented and thereafter maintained in accordance with the approved details.

- 17) Notwithstanding the submitted details, prior to above ground works, a scheme for biodiversity enhancement, such as incorporation of permanent bat roosting feature(s) and or nesting opportunities for birds, shall be submitted to and be agreed in writing by the Local Planning Authority. The scheme shall include, but not be limited to, the following details:
- i. Description, design or specification of the type of feature(s) or measure(s) to be undertaken;
  - ii. Materials and construction to ensure long lifespan of the feature/measure;
  - iii. A drawing(s) showing the location and where appropriate the elevation of the features or measures to be installed or undertaken;
  - iv. When the features or measures will be installed within the construction, occupation, or use phases of the development permitted;
  - v. Timeframe for delivery.

Thereafter the approved details shall be fully implemented, retained and maintained for their purpose in accordance with the approved scheme and timings therein.

- 18) A 10 metre buffer, where no development shall take place and lighting must be below 0.5 lux, shall be maintained along the south-western boundary, where peak bat foraging activity occurs (Figure F3 of the Ecological Impact Assessment, report CSA/3202/05c, dated 08/2017, prepared by CSA Environmental), in addition to the illustrated open space and new tree planting along the north-western boundary.
- 19) No development shall take place within the application site 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. The approved scheme shall be fully implemented as specified.
- 20) In the event that contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11, and where remediation is necessary, a remediation scheme must be prepared to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property, and which is subject to the approval in writing of the Local Planning Authority.
- 21) Prior to above ground works taking place, 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 details:

- 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;
- 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));
- vi. Timeframe for delivery.

Thereafter all external lighting shall be installed in accordance with the specifications and locations set out in the approved details and shall be maintained in accordance with these details. Under no circumstances shall any other external lighting be installed without written prior approval of the Local Planning Authority.

**APPENDIX 15**

Appeal Decision APP/D2320/W/20/3247136 Euxton, Chorley, 11<sup>th</sup> August 2020



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## Appeal Decision

Inquiry Held on 22-26 June and 1-2 July 2020

Site visit made on 30 June 2020

**by Mike Hayden BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11<sup>th</sup> August 2020

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**Appeal Ref: APP/D2320/W/20/3247136**

**Land at Pear Tree Lane, Euxton, Chorley**

- 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 Gladman Developments Limited against the decision of Chorley Borough Council.
  - The application Ref 19/00654/OUTMAJ, dated 26 June 2019, was refused by notice dated 13 November 2019.
  - The development proposed is the erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane on land at Pear Tree Lane, Euxton, Chorley in accordance with the terms of the application, Ref 19/00654/OUTMAJ, dated 26 June 2019, subject to the conditions set out in the schedule at the end of this Decision.

### Application for costs

2. At the Inquiry an application for costs was made by Gladman Developments Limited against Chorley Borough Council, which is the subject of a separate Decision.

### Procedural Matters

3. The planning application was submitted in outline with matters relating to layout, scale, appearance and landscaping reserved for subsequent approval. Access was the only detailed matter fixed for determination as part of the appeal. I have dealt with the appeal on this basis.
4. A development framework plan<sup>1</sup> was submitted with the appeal, which the appellant confirmed was for illustrative purposes. I have taken this plan into account in so far as it indicates the broad extent of the proposed built development, public open space and landscaping and informs my assessment of the visual, landscape and heritage impacts of the appeal proposal.

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<sup>1</sup> Plan no. 5219-L-02 Rev W

5. A unilateral undertaking (UU) under Section 106 of the 1990 Act was submitted by the appellant. It comprises obligations to secure the provision of affordable housing, self-build and custom housebuilding plots, amenity greenspace and play space and a sustainable drainage system on site, plus financial contributions for playing pitches and primary education school places off-site and travel plan monitoring. The UU was discussed with the main parties at the inquiry and amended to clarify affordable housing eligibility criteria. The signed and executed Deed was submitted after the close of the inquiry. I have had regard to the UU in my determination of this appeal.

### **Development Plan Context and Main Issues**

6. The development plan for this appeal consists of the Central Lancashire Core Strategy (CLCS), a joint strategic plan covering the local authority areas of Chorley, Preston and South Ribble, which was adopted in July 2012; and the Chorley Local Plan Site Allocations and Development Management Policies Development Plan Document (CLP), adopted in July 2015.
7. The appeal site comprises 7.34 hectares of agricultural land to the east of Euxton, which is defined as an urban local service centre in Policy 1 of the CLCS. Most of the land outside of the urban areas in Chorley borough is designated as Green Belt in the CLCS and CLP, where there is a general presumption against inappropriate development. However, the appeal site is designated in Policy BNE3 of the CLP, as land between the current urban edge of Euxton along School Lane and the inner boundary of the Green Belt along Pear Tree Lane, to be safeguarded for future development needs beyond the plan period, which runs to 2026. Paragraph 139 of the National Planning Policy Framework (the Framework) states that planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development.
8. There is an emerging update to the development plan, the Central Lancashire Local Plan (CLLP), which is being prepared jointly by the Council, Preston City Council (PCC) and South Ribble Borough Council (SRBC), for the period 2021 to 2036. On adoption it will replace the CLCS and the authorities' local plans, including the CLP. The appeal site has been identified as a potential allocation for housing in the Issues and Options consultation draft of the CLLP. However, the emerging plan is at an early stage, with further consultation under Regulations 18 and 19 required before it can be submitted for examination. Furthermore, there are unresolved objections to the quantum, distribution and location of housing development, which would need to be considered as part of the examination process. Although paragraph 48 of the Framework allows weight to be given to relevant policies in emerging plans, given the early stage of preparation and the unresolved objections, the emerging CLLP can be afforded limited weight in this appeal.
9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. It is evident that the proposed development would conflict with the appeal site's designation as safeguarded land under Policy BNE3 of the CLP, a point accepted by the appellant<sup>2</sup>. However, the Framework provides other material considerations which are relevant in this case.

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<sup>2</sup> Paragraph 8.4.1 of Christien Lee's proof of evidence (PoE)

10. The presumption in favour of sustainable development in paragraph 11(d) of the Framework directs that, where the policies which are most important for determining the application are out-of-date, the 'tilted balance' applies, whereby permission should be granted unless the policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Paragraph 73 of the Framework also requires local planning authorities (LPAs) to maintain a supply of deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their housing requirement or local housing need. Where an LPA cannot demonstrate a 5 year supply of deliverable sites, Footnote 7 of the Framework establishes that the policies of the development plan which are most important for determining the application are out-of-date.
11. In this case the main parties dispute whether or not the Council can demonstrate a deliverable 5 year supply of housing land, in terms of the appropriate housing requirement for Chorley and the deliverability of the land supply. Consequently, whether the most important policies of the development plan for determining the appeal, including Policy BNE3, are out-of-date is also in dispute. These are important material considerations to be assessed in this appeal in order for me to reach a determination under Section 38(6).
12. In view of this and having regard to the Council's reason for refusal and everything else I have read, heard and seen, the main issues in this appeal are:
  - a) Whether or not the Council can demonstrate a 5 year supply of deliverable housing land in Chorley borough, having particular regard to the development plan, relevant national policy and guidance, the housing need or requirement in Chorley and the deliverability of the housing land supply;
  - b) Whether or not the most important policies of the development plan for determining the appeal are out of date, having particular regard to the 5 year housing land supply position and relevant national policy; and
  - c) Whether this, or any other material consideration, would justify the proposed development on safeguarded land at this time.
13. The potential for the proposed development to cause adverse impacts on highway safety and capacity, landscape character, heritage assets, ecology and other local issues has been raised in representations by interested parties. These are matters of common ground between the Council and the appellant and do not form part of the reasons for refusal. Nevertheless, I consider below the effects of the proposal on the above factors, along with the benefits which would arise from the proposed development, before concluding the planning balance.

## **Reasons**

### *Five Year Housing Land Supply*

14. There are two main elements to consider in this appeal in determining whether the Council can demonstrate a 5 year supply of housing land, under the terms of paragraph 73 of the Framework. Firstly, what is the housing need or requirement against which the supply should be measured; and secondly whether the sites identified in the land supply can deliver the required number of homes within the next 5 years. I deal with each element in turn below before setting out my conclusions on this main issue.

Housing Need or Requirement

15. Policy 4 of the CLCS sets out the minimum housing requirement for Chorley of 417 dwellings per annum (dpa) to 2026. However, the CLCS was adopted in 2012. Paragraph 73 and footnote 37 of the Framework make clear that where strategic policies are more than 5 years old, LPAs should identify a 5 year housing land supply (5YHLS) against their local housing need (LHN), unless those strategic policies have been reviewed and found not to require updating. The Council does not rely on such a review and the preparation of the emerging CLLP recognises that the strategic policies for Chorley require updating.
16. Footnote 37 goes on to state that where LHN is used as the basis for assessing whether a 5 year supply of deliverable sites exists, it should be calculated using the standard method set out in national guidance. The main parties agree that, as at 1 April 2020, the minimum LHN for Chorley, calculated using the standard method, is 569 dpa.<sup>3</sup>
17. However, the Council, PCC and SRBC have prepared a Memorandum of Understanding, dated April 2020 (MOU2), which aggregates the minimum annual LHN standard method figures for the three LPAs and redistributes that housing need across the Central Lancashire area. The redistribution relies on evidence in the Central Lancashire Housing Study (March 2020) (CLHS)<sup>4</sup>, produced to inform the preparation of the CLLP. But it also seeks to provide an interim set of district level housing requirements, which MOU2 states is 'to reflect the most sustainable pattern of development in the sub-region' and 'to align with City Deal growth aspirations in Preston and South Ribble.'<sup>5</sup>
18. The LHN figures have been updated in a Statement of Common Ground published by the three Councils in May 2020 (SoCG), to incorporate the most recent workplace-based affordability ratios released by the Office for National Statistics (ONS). Applying the MOU2 redistribution to the updated LHN figures results in a minimum housing requirement for Chorley of 278 dpa, against which the Council now seeks to calculate its 5YHLS position<sup>6</sup>. For ease of reference, I set out below the comparative housing need figures under the standard method calculation and the MOU2 redistribution for the Central Lancashire authorities.

<b>Area</b>	<b>Standard Method LHN</b>		<b>MOU2 redistribution</b>	
	<b>Dpa</b>	<b>% of total</b>	<b>Dpa</b>	<b>% of total</b>
Chorley	569	56.3%	278	27.5%
Preston	191	18.9%	404	40%
South Ribble	250	24.8%	328	32.5%
Central Lancashire	1,010	100%	1,010	100%

19. The main parties have presented the two alternative figures for Chorley as a binary choice in this case. Either the 5YHLS should be calculated against the LHN figure for Chorley based on the standard method, 569 dpa, or against a requirement of 278 dpa, which is predicated on a strategy that redistributes half

<sup>3</sup> Paragraph 2.7 of the Housing Requirement and 5 Year Housing Supply SoCG

<sup>4</sup> CD7.05

<sup>5</sup> Paragraph 6.11 of the Memorandum of Understanding and Statement of Co-operation: Relating to the Provision and Distribution of Housing Land, April 2020 (CD7.23)

<sup>6</sup> Paragraphs 2.5 and 2.6 of the Memorandum of Understanding and Statement of Co-operation: Relating to the Provision and Distribution of Housing Land, Statement of Common Ground, May 2020 (CD7.34)

(51%) of Chorley's standard method LHN to Preston and South Ribble to meet the LPAs' joint growth aspirations. In reaching a conclusion on this, I consider below, firstly, whether it is acceptable in principle, in this case, to assess the 5YHLS against a housing need or requirement other than the standard method figure; and secondly, the weight that should be attached to the alternative figure, in this appeal, in the light of the evidence and the stage the Councils have reached in the strategic policy making process.

20. On the point of principle, it is common ground between the main parties that the LHN for Chorley borough should be calculated using the standard method in accordance with footnote 37 and paragraph 73 of the Framework<sup>7</sup>. Paragraph 60 and the definition of LHN in Annex 2 of the Framework permit an alternative approach to the standard method to be used to calculate the LHN in the context of preparing strategic policies only, where exceptional circumstances justify this. However, the Council does not seek to argue that there are exceptional circumstances for taking an alternative approach for calculating Chorley's LHN<sup>8</sup>.
21. Instead, the Council refers to paragraph 2a-013 of the Planning Practice Guidance (PPG) on how LHN should be calculated where plans cover more than one LPA area<sup>9</sup>. In such circumstances, the PPG states that the housing need for the combined area should be at least the sum of the LHN for each LPA within the area, but that it will be for the strategic policy-making authority to distribute the total housing requirement arrived at across the plan area. This is the approach the Council has taken jointly with the Central Lancashire authorities and on which the redistribution of LHN in MOU2 and the May 2020 SoCG is based.
22. The Council maintains that it is legitimate to rely on this redistribution of LHN on an interim basis, for monitoring and calculating the 5YHLS, until the adoption of the replacement CLLP. That is clear from the agreement between the three Councils in paragraph 8.1 of the MOU2. The implication of this is that a housing requirement based on the redistribution of LHN set out in MOU2, as well as informing the emerging CLLP, is to be relied upon as a material consideration for decisions on planning applications and appeals in the meantime, where the existence of a 5YHLS is at issue. The Council has sought to argue that MOU2 is not material consideration for decision-making. However, it forms the basis for the Council's case that it can demonstrate a 5YHLS, and, therefore, is a material consideration in this appeal.
23. Whilst paragraph 2a-013 of the PPG does not prohibit LPAs in joint plan areas from relying on a redistribution of LHN figures to determine planning applications in advance of the adoption of their plans, this paragraph ostensibly applies to plan-making rather than decision-making. This is clear from the question it seeks to answer<sup>10</sup> and its repeated references to spatial development strategies and policy-making. The national guidance on how housing need should be calculated for the purposes of decision-making is found in section 68 of the PPG on Housing supply and delivery<sup>11</sup>.
24. The courts urge treating the PPG with considerable caution when there is a dispute about its interpretation, given that it is intended to be guidance not policy<sup>12</sup>. However, the guidance in the PPG on calculating housing need and the 5YHLS for

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<sup>7</sup> Paragraph 2.6 of the Housing Requirement and 5 Year Housing Supply Statement of Common Ground (SoCG)

<sup>8</sup> Confirmed by Nick Ireland (Iceni) in answers to cross examination on 23 June 2020

<sup>9</sup> Paragraph: 013 Reference ID: 2a-013-20190220 in the Housing and economic needs assessment section of PPG

<sup>10</sup> 'How should local housing need be calculated where plans cover more than one area?'

<sup>11</sup> To which the reader is directed from PPG paragraph: 016 Reference ID: 2a-016-20190220

<sup>12</sup> Solo Retail Limited v Torridge District Council [2019] EWHC 489 (Admin) (ID13) [33]

- decision-making purposes mirrors the policy in paragraph 73 and footnote 37 of the Framework, that where the adopted housing requirement is more than 5 years old and the strategic housing policies need updating, as in Chorley, the 5YHLS will be measured against the LHN using the standard method<sup>13</sup>.
25. The standard method was introduced into national policy in the 2018 Framework as the new baseline for assessing 5YHLS in the absence of an up to date plan, in order to incentivise LPAs to get plans in place<sup>14</sup>. Therefore, it is reasonable to conclude that the guidance in paragraph 2a-013 of the PPG is not intended to allow for a redistribution of LHN in joint plan areas to provide the basis for calculating 5YHLS in decision-making in advance of that distribution being properly tested at examination and found sound. For the PPG to do so would run counter to the definition of LHN in the Framework and the clearly stated policy on the application of the standard method in decision-making.
  26. Nevertheless, to date the courts have held that it is not unlawful for an LPA to rely on a housing requirement or an apportionment of housing need for decision-making purposes, even if this is not contained in an adopted plan<sup>15</sup>. I recognise that the *St Modwen* and *Oadby & Wigston* judgements predate the standard method and the *Harrogate* judgement related to a planning permission granted before the latest version of the Framework<sup>16</sup> made clear that LHN could only be calculated using an alternative approach in the context of preparing strategic policies. However, these judgements remain and establish the principle that an apportionment of housing need in an emerging joint plan can be a material consideration in decision-making. Therefore, I consider below the evidence for and against the apportioned housing need figure based on the analysis in MOU2 and the weight that should be attached to it.
  27. The CLHS considers a range of factors to inform the future distribution of the aggregated standard method LHN for the three Central Lancashire authorities. These include the distribution of population, jobs, workforce and affordable housing need across the sub-region, the relative affordability and urban capacity of each district, the existing spatial strategy for Central Lancashire and the proportion of land not subject to national policy constraints<sup>17</sup>. The distributions for Chorley range from 18% for urban capacity to 36% for affordability.
  28. The recommended distribution of the aggregate LHN to Chorley is 27.5%. Whilst this sits within the range of 18-36% and recognises that a lower proportion of Central Lancashire's jobs and affordable housing needs are concentrated in Chorley and that its development capacity is more constrained, it is less than the proportion of the sub-region's population and workforce based in Chorley (32%) and below the level of housing development required to address the relative affordability needs in the district (36%). It is also lower than the share of the sub-region's housing requirement apportioned to Chorley in the existing CLCS spatial strategy (30%). The Council's witness confirmed that the 27.5% apportionment of LHN to Chorley was a judgement based on the range of factors assessed in the CLHS<sup>18</sup>. But it is apparent that a higher or lower percentage within the 18-36% range could also be a justified judgement depending on the relative weight given to different factors.

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<sup>13</sup> Paragraph: 005 Reference ID: 68-005-20190722 of the Housing supply and delivery section of the PPG

<sup>14</sup> Paragraph 1.15 of the White Paper on Fixing our broken housing market, 2017 (CD7.06)

<sup>15</sup> *St Modwen v SSCLG and East Riding* [2016] EWHC 968 (Admin) (CD11.04); *Oadby & Wigston BC v SSCLG* [2016] EWCA Civ 1040 (CD11.17); *R (Oxton Farm) v Harrogate BC & Anr* [2020] EWCA Civ 805

<sup>16</sup> Published in February 2019

<sup>17</sup> Table 4.14 of the Central Lancashire Housing Study, 2020 (CD7.05)

<sup>18</sup> Confirmed by Nick Ireland (Iceni) in answers to Inspector's questions on 23 June 2020

29. I acknowledge that the standard method figure of 569 dpa for Chorley, amounting to 56% of the aggregate LHN across Central Lancashire, is well above the distribution for Chorley for any of the factors assessed in the CLHS. If adopted for the emerging CLLP, it would represent a significant shift away from the current spatial strategy and housing distribution for the sub-region. However, there is also evidence, presented by the appellant, which suggests that adopting a requirement based on the MOU2 redistribution would deliver less than half of the number of homes in Chorley that the standard method LHN indicates is needed, leading to an undersupply of housing and worsening affordability in the district. Although Central Lancashire functions as a single Housing Market Area (HMA), the appellant's evidence points to more localised sub-markets within it<sup>19</sup> and a level of affordable housing need in Chorley, which the proposed apportionment of 278 dpa would fail to meet applying the current affordable housing policy<sup>20</sup>.
30. I recognise the arguments for focussing a greater proportion of future growth in and around Preston as the largest urban centre in Central Lancashire and to align with the City Deal growth aspirations and infrastructure investment plans in Preston and South Ribble. I also note the evidence that the 2014-based projections on which the standard method LHN is based were influenced by a trend-based migration component for the period 2009-14, which for Chorley coincided with a higher than normal level of completions at Buckshaw village during that period. However, I am not persuaded that applying the standard method housing figure in Chorley would unduly affect the delivery of housing in Preston and South Ribble needed to support the City Deal growth and funding model, in the light of the high levels of housing completions which have been sustained in both Chorley and Preston over the last 3 years.
31. All of the above and the rebuttals submitted by both parties to these points, constitute arguments and evidence which need to be properly tested through the emerging CLLP preparation and examination process, in order to arrive at a housing requirement for the sub-region and for Chorley, which satisfies the tests of soundness in paragraph 35 of the Framework. Whilst MOU2 was the subject of consultation, it is evident<sup>21</sup> that there are significant and substantive objections to the proposed redistribution of the LHN and the evidence which supports it, which remain outstanding and will need to be resolved, ultimately through the CLLP examination. The Court of Appeal has established that *'it is not for an Inspector on a S78 appeal to seek to carry out a sort of local plan process so as to arrive at a constrained housing requirement figure'*<sup>22</sup>.
32. Paragraph 48 of the Framework allows weight to be given to policies in emerging plans, according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency to the Framework. This guides my assessment of the weight that can be given to a housing requirement based on the redistribution of LHN in MOU2, as a policy document which informs the emerging CCLP. The emerging plan is at a very early stage and carries limited weight in this appeal. Although the MOU2 redistribution is an agreed position by the LPAs, there are significant unresolved objections to the recommended figures, which may result in Chorley's apportionment being modified following examination. For these reasons and in the light of my

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<sup>19</sup> James Donagh's PoE

<sup>20</sup> James Stacey's PoE

<sup>21</sup> From the report on the consultation of the Revised Joint MOU to the Central Lancashire Strategic Planning Joint Advisory Committee in January 2020 (ID24)

<sup>22</sup> City and District of St Albans v Hunston Properties [2013] EWCA Civ 1610 [26] (CD11.12)

consideration of the evidence submitted, I attach limited weight to the housing requirement figure for Chorley of 278 dpa in this appeal.

33. However, full weight can be attached to the standard method LHN figure for Chorley, given that its value and use in this case are entirely consistent with the Framework and the PPG. Accordingly, I conclude that the figure of 569 dpa should be used for the purposes of calculating the 5YHLS in this appeal. This would also support the Government's objective, in paragraph 59 of the Framework, of significantly boosting the supply of homes.
34. In reaching this view, I have had regard to the previous decision for the appeal site in 2017<sup>23</sup>. Whilst the Inspector in that appeal applied a redistribution of the objectively assessed housing need (OAN) for Chorley based on the 2017 version of the MOU<sup>24</sup> (MOU1) in order to calculate the 5YHLS, the apportionment in MOU1 aligned with the adopted CLCS, rather than an alternative arrangement. In addition, national policy on the calculation of 5YHLS at the time of that decision was very different, in that it predated the 2018 Framework and the introduction of the standard method. However, I also note that in the Chain House Lane appeal decision<sup>25</sup>, which dealt with the draft version of MOU2 in the context of the new Framework and the standard method, the Inspector gave limited weight to the draft MOU2 and concluded that the standard method LHN figure for South Ribble should be used in that case. I have explained my reasoning for attaching limited weight to a housing requirement based on the redistribution of LHN in MOU2 in the light of the evidence before me in this case.

#### Housing Land Supply

35. The Housing SoCG sets out two alternative housing land supply calculations for Chorley of 5.5 years or 2.5 years of deliverable supply. These are respectively based on annual requirements of 278 dpa and 569 dpa, with a buffer of 5% in light of the 2019 Housing Delivery Test Measurement, and a 5 year deliverable housing supply of 1,617 or 1,505 dwellings.
36. I have concluded above that 569 dpa is the appropriate housing requirement figure for Chorley for the purposes of calculating the 5YHLS in this appeal. The main parties dispute the deliverability of an allocated site at Cowling Farm, for which the Council includes 112 dwellings in the supply to the end of March 2025. However, even if the Cowling Farm figure were included in the deliverable supply, 1,617 dwellings would only amount to a 2.7 year supply against the LHN calculated using the standard method<sup>26</sup>, still well below the 5 year requirement. Consequently, it is not necessary for me to consider the evidence for and against the inclusion of the Cowling Farm site any further here.

#### Conclusion on Five Year Housing Land Supply

37. Overall, therefore, in the light of the evidence before me at this appeal, the provisions of the development and the relevant national policy and guidance, I conclude that the Council is unable to demonstrate a 5 year supply of deliverable housing sites measured against the LHN for Chorley.

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<sup>23</sup> APP/D2320/W/17/3173275

<sup>24</sup> Joint MOU and Statement of Co-operation relating to the Provision of Housing Land, September 2017 (CD7.22)

<sup>25</sup> APP/F2360/W/19/3234070

<sup>26</sup> 1,617 dwellings/598 dpa = 2.7 years

### *Most Important Development Plan Policies*

38. Footnote 7 and paragraph 11(d) of the Framework establish that in situations where the LPA cannot demonstrate a 5 year supply of deliverable housing sites, the policies which are most important for determining the application are out-of-date and the 'tilted balance' in paragraph 11(d) is engaged for the purpose of decision-taking. However, in this case, given the evidence before me, it is also necessary to consider whether or not the 'most important' policies are otherwise to be regarded as 'out-of-date' under the terms of paragraph 11(d).
39. The courts have defined a three-step approach to be taken in making such an assessment<sup>27</sup>. First, it is necessary to identify which are the 'most important' policies for the decision. The Planning SoCG identifies a number of policies in the CLCS and CLP which are relevant to the appeal. However, I concur with the Inspector in the Nine Mile Ride appeal decision<sup>28</sup>, that 'most important' does not mean all relevant policies and that it is a matter of judgement for the decision-maker to decide which are the 'most important' policies.
40. It is common ground between the main parties that Policy BNE3 of the CLP is one of the most important policies for this application and appeal. It sets the parameters for the restrictions on the development of Safeguarded Land, for which the appeal site is designated, and it is referenced in the reason for refusal. The appellant also considers that Policy BNE2 of the CLP is one of the most important policies, as it identifies the types of development allowed in Areas of Other Open Countryside (AoOOC), which Policy BNE3 defines as permissible within Safeguarded Land. However, the appeal site is not within an AoOOC and, as such, the proposal is neither in conflict nor in accordance with Policy BNE2. It is Policy BNE3 which acts to constrain development on the appeal site. It does so by reference to the types of development identified in Policy BNE2, but it is not Policy BNE2 of itself which sets those limits for Safeguarded Land. Accordingly, whilst Policy BNE3 is one of the most important policies for the determination of this appeal, I consider that Policy BNE2 is not.
41. Policy 1 of the CLCS sets the spatial strategy for Chorley borough, guiding the location of development to suitable sites and settlements, including Euxton. It is common ground between the main parties that Policy 1 is one of the most important policies of the development plan for this decision<sup>29</sup>.
42. Policy 4 of the CLCS sets the minimum housing requirement for the district. It is common ground between the main parties that Policy 4 is out-of-date<sup>30</sup>. As such, the Council contends that it is not a most important policy. However, to exclude from the list of 'most important' policies those which are out-of-date, would undermine the purposes of paragraph 11(d) of the Framework, which seeks to ensure the 'tilted balance' is applied where the 'most important' policies of the development plan are out-of-date. The MOU confirms that Policy 4 is of particular relevance to the provision of housing land<sup>31</sup>. Given that the appeal proposal is for housing development and that there is a dispute over whether the Council can demonstrate a 5YHLS, it follows that Policy 4 of the CLCS must be one of the most important policies in this case.

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<sup>27</sup> Wavendon Properties Limited v SSHCLG and Milton Keynes Council [2019] EWHC 1524 (Admin) [55-58] (CD11.10)

<sup>28</sup> APP/X0360/W/19/3238048, paragraph 11 (CD10.11)

<sup>29</sup> Page 29 of Christien Lee's PoE and paragraph 66 of the Council's closing submissions (ID 39)

<sup>30</sup> Paragraph 2.4 of the MOU (CD7.23) and page 29 of Christien Lee's PoE

<sup>31</sup> Paragraph 2.3 of the MOU (CD7.23)

43. The appellant also regards Policy 7 of the CLCS as a 'most important' policy, because it addresses the need for affordable housing. However, whilst the extent of affordable housing need in Chorley is disputed by the parties, the contribution the appeal scheme should make to that need is not, namely 30% of the total number of dwellings. Policy 7 itself guides the proportion of affordable housing to be provided on site, which would be met through the UU. As a result there is no suggestion that the proposal fails to satisfy the terms of Policy 7. Other relevant policies act in a similar way, for example Policies 14 and 24 of the CLCS, which place requirements on the proposed development to provide for school places and recreation facilities. If the proposal failed to comply with those policies they could be determinative, but they are not regarded as amongst the most important policies. On the same basis, I do not consider Policy 7 of the CLCS is one of the most important policies for this decision.
44. Therefore, Policies 1 and 4 of the CLCS and Policy BNE3 of the CLP are the 'most important' policies in this case, defining the need and appropriate locations for housing in Chorley and the limitations on development on the appeal site as Safeguarded Land.
45. The second step is to examine each of these policies to see whether or not they are out-of-date. The courts have established that a policy may become 'out-of-date' where it is overtaken by a change in national policy<sup>32</sup>. That is clearly the situation applying to Policy 4 of the CLCS, where its housing requirements were derived from the former Regional Spatial Strategy for the North West, which in turn relied on the 2003-based household projections. This, combined with the introduction of the standard method in the 2018 Framework and the application of the 2014-based household projections, renders the housing requirements in Policy 4 out-of-date.
46. However, the fact that Policy 4 is out-of-date for this reason, does not necessarily mean the spatial strategy in Policy 1 of the CLCS for the distribution of its housing requirements is also out-of-date. Although the two alternative distributions of the standard method LHN figures put forward in this appeal would lead to a much higher (569 dpa) or lower (278 dpa) quantum of housing growth in Chorley borough than the CLCS apportionment (417 dpa), Policy 1 still provides for growth to be concentrated in Chorley town and some to be located at Euxton and other local service centres in the borough.
47. I note the conclusions of the Wheatley Campus appeal decision<sup>33</sup> on this point, but that was a different policy context, where the relevant policies in the South Oxfordshire development plan defined settlement boundaries outside of which development was not permitted. In this case, Policy 1 does not of itself define settlement boundaries or limit development only to sites within settlements in Chorley borough. The evidence before me does not show that Policy 1 would unreasonably constrain the ability of the borough to accommodate its standard method housing requirement of 569 dpa. As such, I do not consider that Policy 1 of the CLCS is out-of-date for the purposes of this appeal.
48. Turning to Policy BNE3 of the CLP, in designating the land to the east of Euxton as Safeguarded Land it effectively defines the settlement boundary on this side of Euxton to the rear of the dwellings in School Lane and The Cherries. It constrains

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<sup>32</sup> Bloor Homes Limited v SSCLG [2014] EWHC 754 (Admin) [paragraph 45]

<sup>33</sup> APP/Q3115/W/19/3230827 (paragraphs 13.8-13.10)

the development of the appeal site within the current plan period, in order to offer long term protection to the Green Belt. Whilst this approach is consistent with national policy in paragraph 139 of the Framework, the boundaries of the Safeguarded Land and thereby the adjoining settlement boundaries, as identified on the CLP Policies Map, are predicated on a housing requirement in the CLCS which is out-of-date. The Green Belt boundaries in Chorley and the associated Areas of Safeguarded Land were defined in the 1997 Chorley Borough Local Plan. They were carried forward into the 2003 Local Plan Review and then into the current CLP, but on the basis of a housing requirement in Policy 4 of the CLCS, which is now out-of-date.

49. Case law<sup>34</sup> has confirmed that settlement boundaries may be out-of-date to the extent that they derive from out-of-date housing requirements, constraining the ability to meet housing need. That is evidently the case here. My conclusions on the 5YHLS above indicate that the restriction on the development of Safeguarded Land in Policy BNE3 is preventing the Council from being able to provide an adequate housing land supply, against its standard method LHN within the current plan period to 2026.
50. This is further supported by the fact that the emerging CLLP<sup>35</sup> identifies all but one of the Areas of Safeguarded Land in Policy BNE3, including the appeal site, as site proposals to meet the borough's housing needs for the period 2021-2036. Whilst the emerging CLLP is at an early stage and the final selection of housing allocations will be determined through the local plan examination process, it clearly recognises that land currently safeguarded in Policy BNE3 for development needs beyond the end of the CLP plan period in 2026, may need to be released before then to meet a housing requirement based on the standard method LHN. Although the previous appeal decision on this site<sup>36</sup> did not consider Policy BNE3 to be out-of-date, that relied on the housing requirement in the CLCS, which at the time of the decision in 2017 was not out-of-date. However, for the above reasons, Policy BNE3 is out-of-date in the circumstances of this appeal.
51. The third step that the *Wavendon* judgement established as required by paragraph 11(d) of the Framework, is to assess the basket of 'most important' policies in the round to reach a conclusion as to whether, taken overall, they could be concluded to be out-of-date or not for the purposes of the decision. In this case the 'basket' comprises Policies 1 and 4 of the CLCS and Policy BNE3 of the CLP. Although the overall spatial strategy for Central Lancashire in Policy 1 is not itself out-of-date, the policies establishing the amount of housing needed in Chorley borough and designating the appeal site as Safeguarded Land, so preventing it from contributing to those needs, are out-of-date. On this basis therefore, taken as a whole, I conclude that the 'most important' policies for determining this appeal are out-of-date.

#### *Other Material Considerations*

##### Shortfall in Housing Supply

52. Based on the Council's housing land supply estimate, the deliverable supply of housing sites in Chorley borough would at best provide 1,617 dwellings over the next 5 years from April 2020 to March 2025. The 5 year requirement for the borough for the same period established by Chorley's standard method LHN is

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<sup>34</sup> Suffolk Coastal District Council v Hopkins Homes Ltd and anr [2017] UKSC 37 [paragraph 63]

<sup>35</sup> Annex 1 to the CLLP Issues and Options Consultation, November 2019

<sup>36</sup> APP/D2320/W/17/3173275

2,990 dwellings. On this basis, there would be a substantial shortfall in the housing supply of 1,373 dwellings over the next 5 years. The appeal proposal would provide up to 180 market and affordable dwellings, meeting 13% of the shortfall. As such it would make a significant contribution to the housing needs of the borough.

### Affordable Housing

53. Up to 54 (30%) of the proposed dwellings would be affordable housing, with a tenure mix of 70% social rented and 30% intermediate units, secured through the provisions of the UU. This would accord with the requirements of Policy 7 of the CLCS and the Central Lancashire Affordable Housing Supplementary Planning Document (SPD) and meet the expectations of paragraphs 61-64 of the Framework.
54. Although there is a pipeline of 91 affordable housing units with planning permission still to be built in Euxton, the evidence indicates a net need for further affordable housing in Euxton and the borough. The Housing Register for the borough contained 655 households in need of accommodation, as at 1 April 2020, of which 124 had selected Euxton as their preferred location and had a local connection to the borough. Therefore, purely based on current social housing needs, there is a requirement to increase the supply of affordable housing in Euxton.
55. Despite a healthy track record of both market and affordable housing delivery in the borough over the last 10 years<sup>37</sup>, there is evidence of steadily worsening housing affordability. Average house prices in Chorley increased by 15% between 2010/11 and 2017/18 and the ratio of house prices to incomes in the borough has increased by 10% to 6.88 since the start of the plan period<sup>38</sup>.
56. In terms of future affordable housing requirements, the CLHS identifies a need for 132 dpa of affordable rented housing in Chorley borough for the period up to 2036<sup>39</sup>. It is agreed between the parties that based on a 5YHLS of 1,617 dwellings, 60 dpa of affordable housing could be delivered over the next 5 years<sup>40</sup>. This would result in a shortfall of around 360 affordable housing units in the borough over the next 5 years<sup>41</sup>. The Council could offer little evidence as to how it would address this need.
57. For the above reasons, therefore, the affordable housing component of the appeal scheme would be a significant social benefit. It would provide for households on the Housing Register with a need for social housing in Euxton, reduce the shortfall in the supply of affordable housing across Chorley over the next 5 years and help to address the growing affordability problems in the borough.

### Self-Build and Custom House Building

58. The appeal scheme would also provide up to 18 (10%) of the proposed dwellings as self-build or custom house building plots, secured through the UU. Although not a requirement of the CLCS or CLP, the housing needs of people wishing to build their own homes is one of the types of housing need which paragraph 61 of the Framework seeks to address.

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<sup>37</sup> Table at paragraph 3.7 of Zoe Whiteside's Rebuttal Proof

<sup>38</sup> Paragraphs 8.30 and 8.31 of James Stacey's PoE

<sup>39</sup> Table 5.6 of the Central Lancashire Housing Study, March 2020 (CD7.05)

<sup>40</sup> Paragraph 8 of Note for Inspector on future supply of Affordable Housing in Chorley borough (ID26)

<sup>41</sup> (132 dpa x 5 = 660 units) - (60 dpa x 5 = 300 units) = 360 units

59. To that end local authorities are required to keep a register of people seeking to acquire serviced plots within the area for self-build and custom house building, and to grant enough planning permissions to meet the identified need<sup>42</sup>. Chorley's self-build register contained expressions of interest in serviced plots from 9 individuals at March 2020<sup>43</sup>. However, the CLHS acknowledges this may underestimate demand for self-build, because awareness of the Right to Build Registers in England is low<sup>44</sup>.
60. The PPG advises that data on registers can be supplemented from secondary data sources to obtain a robust assessment of demand<sup>45</sup>. The Buildstore Custom Build Register, the largest national database of demand for self and custom build properties, has 185 people registered as looking to build in Chorley, with 699 subscribers to its PlotSearch service<sup>46</sup>. Data from a national survey conducted by Ipsos Mori for the National Custom and Self-Build Association, when applied to Chorley's population, indicates that as many as 1,929 people may wish to purchase serviced plots in Chorley over the next 12 months<sup>47</sup>. Whilst the secondary data sources may reflect a level of aspiration rather than genuine need and include households registering an interest in more than one district, the CLHS concludes they provide evidence of a greater level of demand for self-build than the Council's register shows.
61. In terms of supply, the Council's 5YHLS statement contains 49 self-build and custom house building plots with planning permission, including 20 in Euxton, but only 27 of the 49 plots have been secured by legal agreements. For the remaining 22 plots permitted, the applicants have indicated the intention to exercise self-build exemption from CIL. However, evidence<sup>48</sup> for the period 2016-2019 shows that only around 30% of such developments in Chorley have ultimately qualified for self-build exemption, which indicates that CIL self-build exemption applications are not a reliable proxy for the actual level of self-build supply.
62. Even so, and treating the Buildstore demand figures with caution, the evidence clearly indicates that the 5 year supply of self-build plots in the borough is likely to fall well short of the anticipated demand. As such the provision of a further 18 self-build and custom house building plots on the appeal site would make an important contribution to the need for this type of housing in Chorley. This would be an additional benefit of the scheme to which proportionate weight should be given in the planning balance.

### Highway safety

63. Local residents have objected to the effects of the proposed development on the operation and safety of the surrounding highway network. Particular concerns which have been raised include the proposed southern access to the site from School Lane at a bend in the road where visibility is poor; the danger of an increase in traffic for pedestrians using Pear Tree Lane and School Lane, given their limited widths, the absence of footpaths in places, and the fact that School Lane is used by parents and children to access the schools on the western side of Wigan Road; the effects of an increase in traffic on the junction of Pear Tree Lane

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<sup>42</sup> Footnote 26 of the Framework

<sup>43</sup> Paragraph 4.20 of Andrew Moger's PoE and paragraph 7.21 of Zoe Whiteside's PoE

<sup>44</sup> Paragraph 9.33 of the Central Lancashire Housing Study, March 2020 (CLHS) (CD7.05)

<sup>45</sup> Paragraph: 003 Reference ID: 67-003-20190722

<sup>46</sup> Paragraph 9.41 of the CLHS

<sup>47</sup> Paragraph 9.39 of the CLHS

<sup>48</sup> From the Council's response to an FoI request in June 2020 (see Andrew Moger's Supplemental Evidence)

- and Euxton Lane where there is a history of accidents; and an increase in traffic at the junction of School Lane and Wigan Road, which is already busy.
64. The highway and traffic impacts of the proposed development have been assessed in the Transport Assessment (TA)<sup>49</sup> submitted with the application, which proposes a series of improvements intended to mitigate the effects of the proposal on the highway network<sup>50</sup>. The Highways SoCG between the appellant and Lancashire County Council, as the local Highway Authority (HA), confirms the robustness of the traffic and junction modelling in the TA and that, subject to the implementation of the proposed improvements, the cumulative impact of the appeal development on the road network would not be severe. No other highways evidence was submitted to me to counter the technical evidence contained in the TA and SoCG.
65. With regard to the main traffic and safety concerns raised by residents, the accesses to the proposed development would form two new priority-controlled T-junctions on School Lane, one on the northern frontage of the site and the other at its south-western corner. The main internal road to the development would become the principal traffic route between School Lane and Pear Tree Lane, reducing through traffic on the northern section of School Lane. The junction at the south-western corner would improve visibility at the bend in School Lane and the T-junction would significantly reduce the potential for conflict between vehicles at the existing corner. Footways would be installed along the northern frontage of the site and adjacent to the junction at its south-western corner to provide a continuous pedestrian route along the length of School Lane. This would link up with the footpath running through the Rowland Homes development to the north, providing a safe walking route to Euxton Lane, to avoid pedestrians having to use the carriageway on the northern section of Pear Tree Lane. Traffic calming measures are also proposed along the length of the through route from the junction of Pear Tree Lane with Euxton Lane to the junction of School Lane with the A49 Wigan Road, together with a 20mph speed limit and additional street lighting. I am satisfied that these measures would improve the safety of School Lane and Pear Tree Lane for pedestrians, cyclists and drivers and adequately mitigate the effects of additional traffic along these roads.
66. Traffic modelling in the TA shows that the traffic generated by the development would result in an increase in vehicles at the junctions of School Lane with Wigan Road and Pear Tree Lane with Euxton Lane of 2.9-3.6% during the morning and evening peak hours, with resultant increases in queuing times. There has been only 1 'slight' accident in the last 5 years at the Pear Tree Lane/Euxton Lane junction; therefore, the accident records of the junctions are not a cause for concern. However, improvements are proposed, to be provided by the developer, at both junctions. At the School Lane/Wigan Road junction, a MOVA<sup>51</sup> system would be installed to manage the traffic light sequencing, minimising waiting times and queue lengths. At the Pear Tree Lane/Euxton Lane junction the bell mouth would be widened, visibility improved and a pedestrian island and refuge added on Euxton Lane. The modelling indicates that both junctions would continue to operate within capacity with the development traffic included. The T-junctions at the site accesses are both predicted to operate with high levels of spare capacity and minimal queues.

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<sup>49</sup> CD1.08

<sup>50</sup> Plans numbered: 1318/09 Rev G and 1318/23 Rev A

<sup>51</sup> Microprocessor Optimised Vehicle Actuation

67. The appeal site is accessible by sustainable modes of transport to shops, community facilities and employment, which should minimise the need for car journeys. It is within convenient walking distance of a number of local services in Euxton, including primary schools, a nursery, health centre, dental surgery, community centre and places of worship. An equipped play area is proposed on-site, which would be secured through the UU. There are bus stops on Wigan Road and Euxton Lane within 800 metres of the site, with frequent services to a wider range of shops, services and employment in Buckshaw Village, Leyland, Chorley and Preston. There are two railway stations near to the site at Balshaw Lane in Euxton (1.35 km away) and Buckshaw Parkway (1.6 km away), providing rail services to the major centres and services of Manchester, Liverpool and Blackpool. Bus stop improvements are proposed and a travel plan, which would encourage the use of sustainable modes of transport. The travel plan would be monitored to measure the modal shift from private car to sustainable modes of travel. The costs of monitoring would be funded by the development via the UU, which is both necessary and reasonable.
68. Therefore, given the location of the appeal site and its accessibility by sustainable transport modes, and subject to the range of improvements proposed to mitigate the effects of additional traffic on the road network, which could be secured by condition, I conclude that the proposed development would not result in an unacceptable impact on highway safety or a severe impact on the operation of the road network. Accordingly, it would comply with paragraphs 103 and 109 of the Framework and with the expectations of Policies ST1 and BNE1(d) of the CLP.

#### Landscape and Visual Impacts

69. The appeal site consists of five fields, currently used for grazing, which are bounded by tall hedgerows with trees. It sits between the existing urban edge of Euxton to the west and north and countryside to the east and south. Along its western boundary, the site is fringed by housing in School Lane and The Cherries, which forms a strongly urban context to this part of the site. In contrast, on its eastern boundary, Pear Tree Lane retains the appearance of a country lane lined by mature trees and hedgerows, with dispersed dwellings and farm buildings, lending a more rural character to this side of the site. Along the northern boundary of the site, School Lane is similarly lined by trees and hedgerows, albeit the context here is changing from rural to urban, with new housing to the north seen through the roadside hedges. The southern boundary of the site is formed by a well-established hedgerow and woodland surrounding Rushton's Brook, with countryside beyond.
70. There are no public footpaths running across the appeal site and views of it from the footpaths to the south and east and more distant viewpoints are largely screened by the intervening landscape. However, there are views into and across the site from Pear Tree Lane and School Lane, which are used by local residents for walking and exercise. There are also views across the site from the rear of properties adjoining the site on School Lane, Pear Tree Lane and The Cherries.
71. The Landscape and Visual Appraisal (LVA)<sup>52</sup> submitted with the application and the Landscape SoCG confirm that no landscape designations apply to the site and that it is not part of a 'valued landscape' referred to in paragraph 170(a) of the Framework. It is located within the Lancashire Valleys national landscape

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<sup>52</sup> CD1.05

character area and in the Cuerden-Euxton landscape character area of the Undulating Lowland Farmland landscape character type, as defined in the Landscape Strategy for Lancashire (LSL). The description of these landscapes<sup>53</sup> recognises that agricultural land within the Lancashire Valleys is fragmented by urban development and, as such, that within the Cuerden-Euxton landscape, its rural character is compromised. This is true of the appeal site, given its partially urban surroundings. Policy 21 of the CLCS, in respect of Landscape Character Areas, expects new development to be well integrated into existing settlement patterns and appropriate to the landscape type in which it is situated. The proposal would not conflict with Policy 21, which is common ground between the main parties<sup>54</sup>.

72. Nevertheless, the site's open landscape is clearly of value to local residents, as a visual amenity and as part of the wider rural setting of Euxton on this side of the settlement. The construction of up to 180 dwellings would result in a permanent change to the character of the site from agricultural land to urban development, causing harm to the landscape. However, in part this could be mitigated by the retention of the existing trees and hedgerows within and on the edge of the site, which could be secured by condition, helping to soften the visual impact of the development, particularly in views from Pear Tree Lane and School Lane. As the site is well contained by the surrounding landscape and dwellings from more distant views, the visual impact of the proposed development on the wider rural landscape would not be significant.
73. The Arboricultural Assessment<sup>55</sup> submitted with the application confirms that a number of trees would need to be removed to enable the construction of the proposed site accesses. This includes the specimen Oak tree at the southern entrance off School Lane, which is prominent in the street scene and of amenity value locally. However, its loss could be mitigated by planting replacement trees to either side of the proposed access, which could form part of the reserved matters landscaping scheme and be secured by condition.
74. The LVA provides a robust analysis of the landscape and visual impacts of the proposed development. Based on this, it is common ground between the main parties<sup>56</sup> that the proposal would have minor to moderate adverse effects on the landscape and visual amenity of the site and surroundings. In the light of my assessment above, I concur with this view. Whilst landscape harm would occur, the impacts would be localised and could be partially mitigated by retained and new landscaping. Moreover, the development would be seen in the context of existing housing on Pear Tree Land and School Lane. Accordingly, the landscape and visual harm carries no more than moderate weight in the planning balance.

#### Heritage Assets

75. Houghton House Farmhouse, a Grade II listed building, lies adjacent to the north-east corner of the appeal site. Its principal elevation benefits from open views across the northernmost field of the site, which forms part of the setting of the listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when considering development that affects a listed building or its setting, special regard shall be given to the desirability of preserving that building or its setting. Paragraph 194 of the

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<sup>53</sup> Paragraphs 3.2, 3.5 and 3.6 of the Landscape SoCG

<sup>54</sup> Paragraph 4.2 of the Landscape SoCG

<sup>55</sup> CD1.11

<sup>56</sup> Paragraph 5.8 of the Landscape SoCG

- Framework advises that the significance of a designated heritage asset can be harmed by development within its setting. Policy BNE8 of the CLP refers to the Framework for proposals affecting the setting of a heritage asset.
76. The significance of Houghton House Farmhouse is derived principally from its historical and aesthetic value. It is the primary building in a former farm complex, dating from the late 18<sup>th</sup> century, the associated barns and outbuildings of which have since been converted for residential occupation. Its historical interest relates to its place in the agricultural economy of Euxton. Its aesthetic value is seen in its symmetrical form, vernacular stone materials, original features and architectural detailing, making it a fine example of a farmhouse of its period.
77. The appeal site once formed part of the land holding of the farm. However, the surrounding farmland is now dissociated from the plot and no longer has any functional relationship with Houghton House Farmhouse. The wider historic rural setting of the Farmhouse has also been compromised by the residential expansion of Euxton to the north and west. The appeal site plays little role in affording views of the listed building, apart from distant private vistas from the rear of the houses along School Lane to the west. Public views of the main façade of Houghton House approaching east along School Lane are largely restricted by the roadside trees and vegetation, until arrival at the entrance to the property.
78. Therefore, despite forming part of the setting for Houghton House Farmhouse, it is common ground between the Council and the appellant that the appeal site only makes a minor contribution to the significance of the listed building.<sup>57</sup> For the reasons given above, I concur with this view. However, I also consider that the proposed development would reduce the remaining pastoral setting of Houghton House Farmhouse and thereby cause harm to its significance. The Heritage Statement submitted with the application proposes mitigation in the form of an area of open space in the north of the site, landscaping to the site boundary with Houghton House Farmhouse and setting back development from the north-eastern edge of the site<sup>58</sup>. These measures would reduce the harm, but not avoid it.
79. Nevertheless, given the minor contribution of the appeal site to the significance of the heritage asset, the proposals would amount to less than substantial harm to the heritage significance of Houghton House Farmhouse. With the inclusion of the mitigation measures proposed, I consider this would be towards the lower end of the spectrum of less than substantial harm. Paragraph 196 of the Framework states that where a development proposal would lead to less than substantial harm to the significance of a heritage asset, the harm should be weighed against the public benefits of the proposals. I consider this below as part of the overall planning balance.
80. The Archaeological Desk Based Assessment submitted with the application identified the potential for archaeological deposits from the Roman period along the eastern boundary of the site. However, the County Archaeological Service did not object to the proposal subject to a programme of archaeological work prior to the start of any development, which could be secured by condition. Accordingly, the potential effects on the archaeological interest of the site would not weigh against the proposal.

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<sup>57</sup> Paragraph 5.1(4) of the Heritage SoCG

<sup>58</sup> Paragraph 5.3.1 of the Heritage Statement, April 2019 (CD1.17)

## Ecology

81. An Ecological Appraisal (EA)<sup>59</sup> of the appeal site, informed by surveys of habitats and protected species, was submitted with the application. An Ecology SoCG between the main parties was also submitted with the appeal. These confirm that the site mainly comprises species-poor, improved agricultural grassland of negligible nature conservation value. The hedgerows subdividing and bounding the fields are the habitats of principal importance, but the development framework plan and EA indicate these would be retained as part of the landscaping scheme for the site, which could be secured by condition. Likewise, the evidence indicates that the trees on site, which offer both amenity value and potential habitat for roosting bats and nesting birds, would mostly be retained. That includes the strip of woodland along the northern boundary and the woodland around Rushton's Brook on the southern boundary, which would be protected by a buffer of land.
82. In terms of protected species, Rushton's Brook offers ecological value for a range of species. Although the brook is off-site, measures are recommended to prevent pollution from the construction and operation of the site, which again could be secured by condition. There is a pond in the centre of the site, which surveys showed to be of average suitability for Great Crested Newts (GCNs), albeit GCNs were found to be absent from it and from any ponds within 500m of the site at the time of the surveys. However, the development framework plan shows the pond to be retained as part of the open space and landscape provision within the development. The Greater Manchester Ecology Unit also recommended that, if the development were to proceed, an Amphibian Mitigation Strategy be secured by condition to avoid any future harm to newts.
83. The site is used by foraging bats and nesting birds. However, hedgerows and trees, which form the main habitats to support these types of wildlife, would be largely retained. A condition could be imposed to ensure any clearance or construction work would be undertaken outside of the nesting season. As part of the landscaping scheme, bird and bat boxes on existing trees or new buildings are proposed to enhance opportunities for birds and bats.
84. The Council's view is that the proposed development would be likely to result in a net gain in biodiversity, which carries moderate weight in favour of the scheme in the planning balance<sup>60</sup>. I concur with this conclusion for the following reason. Although the proposal would involve a major urban development of the site, it would also provide the opportunity to retain, manage and enhance the existing habitats of value on site and introduce new habitats for nature conservation, as part of the landscaping, open space and sustainable drainage proposals for the site. I am also satisfied that the mitigation measures proposed would avoid or compensate for any residual harm to ecology that may occur.
85. As such the proposed development would comply with the principles for protecting and enhancing habitats and biodiversity in paragraph 175 of the Framework and with the requirements of Policy BNE9 of the CLP. It would also satisfy the relevant tests under the Conservation of Habitats and Species Regulations 2017 (as amended).

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<sup>59</sup> CD1.10

<sup>60</sup> Paragraph 7.26 of Zoe Whiteside's PoE

### Flood risk

86. The application was accompanied by a Flood Risk Assessment (FRA)<sup>61</sup>, which demonstrates that the appeal site is located within Flood Zone 1 and therefore at the lowest risk of flooding. As such, the proposal would meet with the expectations of paragraph 158 of the Framework, to steer new development to areas with the lowest risk of flooding.
87. However, the FRA proposes a number of measures to ensure surface water run-off is managed and would not increase flooding elsewhere. These include a sustainable drainage system (SuDS) with an attenuation basin in the south-west corner of site, the use of culverts under School Lane on the northern part of the site, and setting development levels across the site so that flows would be contained within the existing ditch systems and pond. Implementation and management of the SuDS would be obligated through the UU. The other measures could be secured by condition.
88. On this basis, the proposed development would not result in increased flood risk. It would, therefore, accord with Policy 29(d) of the CLCS, which seeks to manage flood risk in all new development and with paragraph 163 of the Framework which seeks to ensure flood risk is not increased elsewhere.

### Local infrastructure

89. The proposed development would increase the population of Euxton, generating additional spending for local businesses, which would be an economic benefit. However, it would also increase pressure on existing community services and infrastructure. Policy 2 of the CLCS seeks to ensure that development makes an appropriate contribution to the costs of infrastructure necessary to support it.
90. I have concluded above that the proposed transport improvements would be sufficient to mitigate the effects of the proposal on the highway network. The UU provides for financial contributions to create additional primary school places at local schools and to improve playing pitches at Gillet Playing Fields in Chorley. In addition, it secures the provision of a new play area on site, which would meet the needs of the development, but also be of benefit for the wider community.
91. The playing pitch contribution is proportionate to the number of dwellings proposed and the primary education contribution is based on the anticipated number of primary school age children who would be living on the site. They have been calculated according to the relevant formulae in the Council's SPDs and are agreed by the Council and the Local Education Authority (LEA). Local residents have expressed concerns about the absence of any provision for secondary school places as part of the proposal. However, there is forecast to be a surplus of secondary school places within 3 miles of the site once the development is occupied, and, therefore, the LEA does not require a contribution to secondary education provision.
92. A contribution towards improvements to local healthcare facilities is also not proposed. Whilst, the Euxton Medical Centre has expressed concerns about the capacity of the surgery to take on further patients, a financial contribution to local healthcare facilities has not been requested by the statutory providers, NHS England and the local Clinical Commissioning Groups.

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<sup>61</sup> CD1.13

93. Therefore, I am satisfied that contributions towards secondary education and healthcare facilities would not be necessary to make the proposed development acceptable in planning terms. However, the financial contributions to primary education, recreation and travel plan monitoring would meet the tests for planning obligations in paragraph 56 of the Framework.
94. The Planning SoCG<sup>62</sup> confirms that the wider impact of the proposed development on strategic infrastructure in Chorley would be adequately mitigated through CIL payments, for which the appeal scheme would be liable. Accordingly, subject to the provision of CIL and the planning obligations in the UU, the appeal proposal would not have an unacceptably adverse impact on infrastructure, services or facilities in Euxton and the surrounding area. It would as such comply with Policy 2 of the CLCS.

#### Living conditions

95. With regard to impact of the proposed development on the privacy and outlook of the occupiers of residential properties adjacent to the site, whilst their view would change from open fields to houses, there is no evidence that this would result in harm to living conditions through overlooking or an overbearing outlook. As layout and appearance are reserved matters, the Council would be able to control the detailed design of the development to ensure adequate separation distances between the new and existing dwellings. As such the proposal would not conflict with paragraph 127(f) of the Framework, which seeks a high standard of amenity for existing and future occupiers. Accordingly, this matter does not weigh against the proposal.

#### Economic Benefits

96. It is common ground between the main parties that the appeal proposal would generate a number of economic benefits<sup>63</sup>. These are quantified by the appellant as including a £19.9 million investment in construction on the site, approximately 353 direct and indirect FTE jobs in construction and associated industries, and around 400 new residents of whom at least half would be economically active generating a combined annual household expenditure of £4.9 million, a proportion of which would be spent in the local economy. These are not insignificant economic benefits, which carry weight in favour of the proposal in the planning balance.

#### **Planning Balance**

97. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development would conflict with the appeal site's designation as Safeguarded Land under Policy BNE3 of the CLP. The policy remains broadly consistent with paragraph 139 of the Framework, in safeguarding land to meet longer-term development needs. Accordingly, paragraph 213 of the Framework establishes that due weight should be given to it. However, Policy BNE3 is also out-of-date, because it continues to safeguard land for longer-term development needs, based on a housing requirement in Policy 4 of the CLCS which is out-of-date, and when most of the safeguarded land is being promoted by the Council in the emerging CLLP for development to meet housing needs

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<sup>62</sup> Paragraph 4.19.6 of the Planning SoCG

<sup>63</sup> Paragraph 4.20.1 of the Planning SoCG

from 2021 onwards. Although limited weight can be attached to the emerging CLLP given it is at an early stage in the plan-making process, its recognition that Safeguarded Land, including the appeal site, may be released for housing development in the near future, is a material consideration which reduces the weight that can be given to the conflict with Policy BNE3 in this appeal.

98. Paragraph 11(d) of the Framework is also an important material consideration in this case. I have concluded above that the most important policies for this decision are out-of-date, both on their own merits and because the Council is unable to demonstrate a 5YHLS against the standard method LHN for Chorley. As such the 'tilted balance' in paragraph 11(d) is engaged for this decision. This means that planning permission should be granted unless: i) the policies of the Framework that protect areas or assets of particular importance, as defined in Footnote 6, provide a clear reason for refusing the development proposed; or, ii) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
99. On the first limb of paragraph 11(d), it is common ground between the main parties that there are no policies in the Framework which provide a clear reason for refusal<sup>64</sup>. Although the previous appeal decision on this site<sup>65</sup> found that Safeguarded Land was a specific policy in the Framework indicating development should be restricted, national policy has changed since then and Safeguarded Land is not listed in Footnote 6 in the current Framework.
100. The Framework's policies on designated heritage assets are Footnote 6 policies. Paragraph 193 of the Framework establishes that great weight should be given to an asset's conservation when considering the impact of a proposed development on the significance of a designated heritage asset. In this case the proposal would cause less than substantial harm to the significance of Houghton House Farmhouse and that harm would be at the lower end of the range of heritage harm, for the reasons I have explained above. Paragraph 196 of the Framework establishes that where less than substantial harm arises it should be weighed against the public benefits of the proposal. The public benefits of the appeal scheme include its contribution to reducing the shortfall in the housing supply and to meeting needs for affordable and self-build housing, a boost to the local economy from jobs and investment, a net gain in biodiversity on the site and additional local play facilities. I am satisfied that the combined effect of these benefits outweighs the less than substantial harm to the significance of the heritage asset in this case. Accordingly, I agree that the policies in the Framework for the protection of areas and assets of importance do not provide a clear reason for dismissing the appeal.
101. Turning to the second limb of paragraph 11(d), the adverse impacts of the proposal comprise a conflict with the site's status as Safeguarded Land under Policy BNE3, minor to moderate adverse effects on landscape and visual amenity, and less than substantial harm to the significance of the listed building. I attach limited weight to the conflict with Policy BNE3, because it is out-of-date and no more than moderate weight to the harm to the landscape and visual amenity. This is added to the great weight which should be attached to conserving the heritage asset.

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<sup>64</sup> Paragraph 4.21.1 of the Planning SoCG

<sup>65</sup> Paragraph 63 of APP/D2320/W/17/3173275

102. Balanced in favour of proposed development, the delivery of up to 180 new dwellings carries significant weight in addressing housing needs and reducing the shortfall in the housing land supply by 13%. The designation of up to 54 of the units as affordable homes, of which 38 (70%) would be social rented tenure, would reduce the 360 unit shortfall in the projected supply of affordable rented housing by more than 10%, which also carries significant weight in addressing housing needs in the borough. The provision of 18 of the units as self-build or custom house building plots should also attract significant weight in favour of the proposal, given the level of demand for self-build as a sector of housing need in Chorley.
103. In terms of the economic benefits of the scheme, the creation of 353 FTE jobs and almost £20million of investment during the construction phase, plus an ongoing annual injection of almost £5million of expenditure, would serve to boost the local economy. However, in the overall scale of the economy in Chorley, the contribution would be modest and in the main temporary, thereby attracting moderate weight. The net gain in biodiversity carries moderate weight in favour of the proposal. Likewise the provision of an equipped play area offers a local benefit of modest weight. The highway improvements and contributions to education and playing fields would serve to mitigate the impact of the proposal and therefore carry neutral weight in the planning balance.
104. No other adverse impacts have been identified and there are no other policies in the Framework or the development plan which weigh against the proposal. Accordingly, taking all considerations into account, I conclude that adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework taken as a whole. Under the presumption in favour of sustainable development in paragraph 11(d) of the Framework, this means permission should be granted.
105. Overall, therefore, notwithstanding the proposal's conflict with the appeal site's designation as Safeguarded Land in Policy BNE3 of the CLP, the presumption in favour of sustainable development in paragraph 11(d) of the Framework is a material consideration which, in this case, warrants a decision other than in accordance with the development plan. Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the 'flat balance' under section 38(6), I find that the significant benefits of the proposal in addressing housing needs in Chorley would outweigh the harm due to the conflict with Policy BNE3 and its effects on the landscape, visual amenity and the significance of the heritage asset. As such the material considerations would still warrant a decision other than in accordance with the development plan. Accordingly, the appeal should be allowed.

### **Conditions and Planning Obligations**

106. The Council submitted a set of suggested planning conditions which were discussed at the inquiry. I have considered which conditions are required having regard to the tests contained in paragraph 55 of the Framework and the Planning Practice Guidance. I have revised some of the wording, either as discussed at the inquiry or in the interests of clarity and enforceability.
107. A condition to specify the approved plans, including the access arrangements, is necessary in the interests of good planning and highway safety. It is also

necessary to specify the reserved matters to be submitted for approval and the time limits for their submission and the subsequent implementation of the permission in accordance with the requirements of the Act.

108. Conditions are included requiring a landscape retention, creation and management plan, lighting strategy and method statement on measures to avoid harm to amphibians, and to ensure no works to trees during the nesting season. I have amended the landscape condition to ensure it refers to the replacement of trees lost to create the site accesses. These are necessary to preserve the important habitats on site, avoid harm to protected species, enable a net gain in biodiversity and mitigate impacts on the landscape and visual amenity. However, I am satisfied it is not necessary to specify compliance with the wildlife legislation, as suggested in representations. I have assessed the proposal in terms of the tests in the 2017 Conservation of Habitats and Species Regulations, which the conditions referred to above would help to meet. The developer will be under a separate statutory duty to ensure compliance with the relevant legislation for the protection of wildlife and habitats during the construction phase.
109. A condition requiring an arboricultural method statement is necessary to ensure the appropriate measures are taken during construction to protect trees and hedgerows which form part of the retained landscape features. It is also necessary to impose a condition to ensure the implementation of the landscaping scheme as soon as possible after occupation or completion in the interests of the overall appearance of the development.
110. A separate condition to ensure the landscaping scheme incorporates measures to screen the development from Houghton House Farmhouse is necessary to meet the statutory duty to preserve the setting of the heritage asset. To preserve any archaeological heritage, a scheme of archaeological investigation and a programme of works are also required to establish the presence or absence of archaeological remains and, where necessary, to preserve or record them before construction starts.
111. A condition requiring finished floor levels to be agreed before the start of each phase is necessary to control the height of the development and safeguard the amenities and living conditions of local residents. Although the provision of public open space and an equipped play area is an obligation of the UU, a condition to ensure the position, layout, design and phasing of the open space provision is agreed as part of the reserved matters is necessary for the proper master planning of the development and the timely provision of public open space.
112. A condition requiring all dwellings on the site to achieve emission rates of 19% above the requirements of the 2013 Buildings Regulations is both necessary and reasonable to comply with Policy 27 of the CLCS. This would ensure the energy performance of the proposed dwellings would be at least equivalent to that of the former Code for Sustainable Homes (CSH) Level 4. Although the CSH has been withdrawn, continuing to require compliance with the equivalent energy efficiency standard accords with the transitional arrangements put in place by the Government until housing standards are set through revised building regulations. It is also consistent with national policy on climate change. I have amended the suggested wording of this condition to ensure it applies to all new dwellings proposed, as required by Policy 27, rather than the development as a whole.

113. A series of conditions were suggested for the approval and implementation of a surface water drainage scheme. I have condensed these into two conditions requiring an overall master strategy and details of the system for regulating the flow of surface water. This includes measures to prevent pollution of surface waters, such as Rushton's Brook. I consider these conditions are necessary to ensure the sustainable drainage of the site, prevent an increase in flooding elsewhere in line with the requirements of the Framework and protect wildlife habitat and ecology. I am satisfied that conditions to control the construction of estate roads to the required standard for adoption, their completion for each phase and details of their subsequent maintenance and management along with all parts of the public realm are also necessary to ensure highway safety and visual amenity.
114. A Full Residential Travel Plan (Full RTP) is necessary to encourage sustainable modes of travel and reduce car journeys. I have amended the suggested condition to refer to the Framework Travel Plan submitted with the application, to ensure the Full RTP remains consistent with the sustainable transport measures proposed in the Transport Assessment which address the traffic impacts of the development. A condition requiring a construction management plan to control the hours of site operation, noise, dust, emissions and waste during the construction phase is also necessary to safeguard the amenities of the occupiers of surrounding properties and ensure highway safety.
115. A condition is proposed requiring a strategy and infrastructure to support super-fast broadband on the site. Paragraph 112 of the Framework expects planning decisions to support the expansion of electronic communications networks, including full fibre broadband connections. Policies 1 and 3 of the CLCS also encourage greater use of information technology and better telecommunications to enable home working as a means of reducing the need to travel. I note the appellant's objections to this condition, but am satisfied there is a clear national and local policy basis for it and that it meets the Framework tests as necessary and reasonable to support the delivery of full fibre broadband connections for each property within the development.
116. A condition requiring an Employment and Skills Plan is a reasonable and necessary requirement to allow for local residents to benefit from the employment and training opportunities which would be available during the construction phase of the proposed development. This would also accord with Policy 15 of the CLCS.
117. A condition requiring a road link to the southern boundary of the site to enable access to the remainder of the BNE3.9 Safeguarded Land allocation to the south was discussed at the inquiry. Although the land to the south is not currently proposed for development, I am satisfied that the condition meets the Framework tests in the interests of good planning and to avoid this land being sterilised, should it be required for longer-term development.
118. A condition requiring the construction of the proposed accesses and off-site highway works before the development is occupied is necessary to ensure the effects of the proposal on the surrounding roads are adequately mitigated, in the interests of highway safety and the efficient operation of the highway network. I have amended the wording of the condition to remove the phrase which means the potential highway works would not be 'not limited to' those

listed, as this is too open ended. The intention of the condition is to ensure those works identified as necessary to mitigate the impacts of the development on the highway network are delivered. However, there may be ancillary accommodation works, such as street lighting, drainage and services diversions, which the Highway Authority is concerned may be necessary to enable the construction of the listed works to adoptable highway standards. I have therefore added these words for preciseness.

119. Finally, the Council suggested a condition requiring the location of the affordable housing to be submitted as part of the reserved matters relating to layout. However, the UU contains a legally binding obligation for an affordable housing scheme, including details of the numbers, type, tenure and location of the affordable housing units, to be approved by the LPA before the development is commenced. Therefore, a condition effectively requiring the same is not necessary.
120. The proposal is also subject to the signed UU, dated 6 July 2020, to secure the provision of 30% affordable housing, 10% self-build and custom housebuilding plots, amenity greenspace and play space and a SuDS on site, together with financial contributions for playing pitches and primary education school places off-site and travel plan monitoring. The obligations accord with the development plan and are required to mitigate the impact of the proposed development. As such they are necessary to make the development acceptable in planning terms. They are also directly related to the development and fairly and reasonably related in scale and kind to it. Accordingly, the deed meets the tests set out in paragraph 56 of the Framework and in Regulation 122 of the CIL Regulations 2010 (as amended).

### **Conclusion**

121. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be allowed, subject to the conditions in the attached schedule and the obligations in the S106 UU, dated 6 July 2020.

*M Hayden*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 5219-L-04 Rev A and Indicative Access Arrangements 1318/09 Rev G.
- 2) Prior to the commencement of development, full details of the layout, scale appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 2 years from the date of this permission.
- 4) 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.
- 5) The first reserved matters application shall be accompanied by a Landscape Retention, Creation and Management Plan for the entire site, which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. This shall include the following details:
  - a) Details of new ponds / wetland creation;
  - b) Details for the retention of hedgerows, trees and ponds / wetlands on the site and how they are to be protected during any construction period, in accordance with the recommendations of the FPCR Ecological Appraisal, dated April 2019, the FPCR Arboricultural Assessment, dated June 2019, and the Heritage Statement, April 2019;
  - c) Planting plans, including details for the replacement of trees removed to create the site accesses off School Lane, taking into account the need to mitigate impacts on landscape and visual amenity, and to contribute to landscape connectivity and the creation of a coherent local ecological network;
  - d) Details of the location of bird boxes;
  - e) Detailed measures required to support bats;
  - f) Written specifications (including cultivation and other operations associated with plant and grass establishment);
  - g) Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;
  - h) Implementation timetables.

The development shall be implemented in accordance with the approved details.

- 6) The first reserved matters application shall be accompanied by a 'lighting design strategy' that shall identify areas/features on site that are potentially sensitive to lighting for bats and any other species that may be disturbed, to show how and where the external lighting will be installed (through appropriate lighting contour plans), so that it can be demonstrated clearly that any impacts on wildlife are negligible (in particular bats), in accordance with the recommendations in the FPCR Ecological Appraisal, dated April 2019. All external lighting shall be installed in accordance with agreed specifications and locations set out in the strategy.

- 7) The first reserved matters application shall be accompanied by a comprehensive Method Statement describing Reasonable Avoidance Measures for the avoidance of harm to amphibians, and shall subsequently be implemented as approved.
- 8) No tree felling, vegetation clearance works, or other works that may affect nesting birds shall take place between 1st March and 31st August inclusive, unless surveys by a competent ecologist show that nesting birds would not be affected.
- 9) The first reserved matters application shall be accompanied by an Arboricultural Method Statement that shall include details for the protection of all trees to be retained and details of how construction works will be carried out within any Root Protection Areas of retained trees. The development shall only be carried out in accordance with the approved Arboricultural Method Statement and with British Standard BS 3998:2010 or any subsequent amendment. No construction materials, spoil, rubbish, vehicles or equipment shall be stored or tipped within the Root Protection Areas.
- 10) Any Reserved Matters submission for landscaping associated with the development hereby approved shall provide sufficient screening to the development site from the adjacent grade II listed building, Houghton House Farmhouse, in accordance with the recommendations of the Heritage Statement, dated April 2019. The development shall be carried out in conformity with the approved landscaping details.
- 11) Either with any reserved matters application or prior to the commencement of each phase full details of the existing and proposed ground levels and proposed dwelling finished floor levels (all relative to ground levels adjoining the site) shall have been submitted to and approved in writing by the Local Planning Authority, notwithstanding any such details shown on previously submitted plans(s). The development shall be carried out strictly in conformity with the approved details.
- 12) Either with the first or any subsequent reserved matters application, full details of the position, layout, phasing and equipping of the public open space and play areas shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the provision and equipping of these areas shall be carried out in strict accordance with the approved details.
- 13) Prior to the construction of the superstructure of any of the dwellings hereby permitted details shall be submitted to and approved in writing by the Local Planning Authority demonstrating that all new dwellings proposed to be constructed on the site will achieve a minimum Dwelling Emission Rate of 19% above the 2013 Building Regulations. Thereafter, the development shall be completed in accordance with the approved details.
- 14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of any dwellings on each phase or following the completion of the development within the relevant Phase, whichever is the earlier. Any trees or plants which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

- 15) A programme of archaeological work in accordance with a written scheme of investigation, which shall have been submitted to, and approved in writing by, the local planning authority, shall be undertaken and submitted to the local planning authority as part of the first reserved matters application. This programme of works shall include an initial phase of geophysical survey and trial trenching, as well as the compilation of a report on the work undertaken and the results obtained. These works should aim to establish the presence or absence of buried archaeological remains and their nature, date, extent and significance. If archaeological remains are encountered, then a subsequent phase of impact mitigation (which may include preservation in situ by the appropriate design or siting of new roads, structures and buildings, formal excavation of remains or other actions) and a phase of appropriate analysis, reporting and publication shall be developed. A written scheme of investigation for that mitigation phase along with a timetable for its implementation shall be submitted for approval to the Local Planning Authority as part of the reserved matters application. All archaeological works shall be undertaken by an appropriately qualified and experienced professional archaeological contractor and comply with the standards and guidance set out by the Chartered Institute for Archaeologists. The development shall be carried out in accordance with the agreed details.
- 16) At the same time as the submission of the first Reserved Matters application a Surface Water Drainage Master Strategy for the whole site shall be submitted to, and approved in writing by, the Local Planning Authority. The strategy shall be guided by the principles of the submitted Lees Roxborough Flood Risk Assessment - Pear Tree Lane, Euxton, Chorley, Ref. 5901/R3, dated June 2019, including the Drainage Strategy, Ref: 5901 01-02 Rev. A. The Master Strategy shall include the following details as a minimum:
- a) schedule of pass forward rates for each phase or part phase;
  - b) preliminary timetable for implementation of the SuDS system;
  - c) The development levels appropriately set to ensure flows are contained within the existing ditch systems and directed safely through the development down to the boundary watercourse system to the south.
- Thereafter development should proceed in accordance with the approved Strategy, unless the Local Planning Authority gives written consent to any variation.
- 17) Prior to the commencement of each phase of the development, full details for a surface water regulation system and means of disposal for that phase, based wholly on sustainable drainage principles, shall be submitted to, and approved in writing by, the Local Planning Authority. For the avoidance of doubt no surface water shall discharge directly or indirectly into the public foul or combined sewerage systems. The details for each part or phase must be consistent with the approved Surface Water Drainage Master Strategy for the whole site. Those details shall include:
- a) Final sustainable drainage layout plan appropriately labelled to include all pipe/structure references, dimensions, design levels, finished floor levels in AOD with adjacent ground levels;
  - b) The drainage scheme should demonstrate that the surface water run-off and volume shall not exceed the pre-development runoff rate and volume.

The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

- c) Sustainable drainage flow calculations (1 in 1, 1 in 30 and 1 in 100 + climate change) with 10% allowance for urban creep;
- d) A plan/plans identifying areas contributing to the drainage network;
- e) Measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters;
- f) A plan to show overland flow routes and flood water exceedance routes and flood extents;
- g) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltration rates;
- h) Details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development. This shall include arrangements for adoption by an appropriate public body or statutory undertaker or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable.

Thereafter development shall proceed in accordance with the approved details, unless the Local Planning Authority gives written consent to any variation.

- 18) No roads proposed for adoption shall be commenced until full engineering, drainage and constructional details for them have been submitted to, and approved in writing by, the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless the Local Planning Authority gives written consent to any variation.
- 19) Prior to the commencement of development, other than site enabling works, an Estate Street Phasing and Completion Plan shall have been first submitted to, and approved in writing by, the Local Planning Authority. The Estate Street Phasing and Completion Plan shall set out the development phases and the standards to which estate streets serving each phase of the development will be completed. No dwelling or dwellings shall be occupied until the estate street(s) affording access to those dwelling(s) has/have been completed in accordance with the Lancashire County Council Specification for Construction of Estate Roads.
- 20) No dwellings shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets and public open space and any other areas within the development not to be adopted (including details of any Management Company) have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details, until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.
- 21) No development shall commence until a Full Residential Travel Plan has been submitted to, and approved in writing by, the Local Planning Authority, together with a timetable for its implementation. The Full Residential Travel Plan shall be guided by the principles in the Ashley Helme Framework Travel Plan, Ref. 1318/4/D, dated May 2019, submitted with the application. The

- provisions of the Full Residential Travel Plan shall be implemented and operated in accordance with the timetable contained therein unless the Local Planning Authority gives written consent to any variation. All elements of the Full Residential Travel Plan shall continue to be implemented at all times thereafter for a minimum of 5 years after the completion of the development.
- 22) No development shall take place, until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The approved CMP shall be adhered to throughout the construction period. The CMP shall provide for:
- a) vehicle routing and the parking of vehicles of site operatives and visitors;
  - b) hours of operation (including deliveries) during construction;
  - c) loading and unloading of plant and materials;
  - d) storage of plant and materials used in constructing the development;
  - e) siting of cabins, site compounds and material storage area(s) (ensuring they comply with the Method Statement for the avoidance of harm to amphibians);
  - f) the erection of security hoarding where appropriate;
  - g) wheel washing facilities that shall be available on site for the cleaning of the wheels of vehicles leaving the site and such equipment shall be used as necessary to prevent mud and stones being carried onto the highway;
  - h) measures to mechanically sweep the roads adjacent to the site as required during the full construction period;
  - i) measures to control the emission of dust and dirt during construction;
  - j) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 23) Prior to the construction/provision of any utility services, a strategy to facilitate super-fast broadband for future occupants of the site shall be submitted to, and approved in writing by, the Local Planning Authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a super-fast broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works within the site boundary only.
- 24) The development shall not commence until an Employment and Skills Plan that is tailored to the development and will set out the employment and skills training opportunities for the construction phase of the development has been submitted to, and approved in writing by, the Local Planning Authority, unless the Local Planning Authority gives written consent to any variation. Thereafter, the development shall be carried out in accordance with the Employment and Skills Plan.
- 25) Any Reserved Matters application submitted in relation to layout shall include the exact location and details of an internal access road that links School Lane with the southern boundary of the application site at a point between X and Y as marked on plan ref. 2018-013/303, to ensure access to the land located to the south within the wider safeguarded allocation BNE3.9 in the Chorley Local Plan 2012-2026 Policies Map, July 2015.

- 26) No part of the development hereby approved shall commence until a scheme for the construction of the site accesses and the off-site works of highway improvement has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with the Highway Authority (as part of a section 278 agreement, under the Highways Act 1980). The scope of the works are shown on Drg. Nos. 1318/09 Rev. G and 1318/23 Rev. A and shall include;
- a) Extension of the 20mph speed limit eastward along School Lane to the junction with Pear Tree Lane and introduction of a 20mph speed limit on Pear Tree Lane between the junction with Euxton Lane and the junction with School Lane;
  - b) Introduction of a footway on the south side of School Lane along the northern Site frontage and to Pear Tree Lane;
  - c) Introduction of a footway on Pear Tree Lane;
  - d) Introduction of street lighting on School Lane and Pear Tree Lane;
  - e) Introduction of traffic calming measures on Pear Tree Lane;
  - f) Introduction of traffic calming measures on School Lane between the southern Site access and the A49 Wigan Road;
  - g) Improvement works at Euxton Lane/Pear Tree Lane junction (SJ5) as indicated on Drg No 1318/23/A;
  - h) Introduction of MOVA at A49/School Lane traffic signal junction (SJ2);
  - i) The upgrade of 2No bus stops in the vicinity of the Appeal Site to quality disability compliant standards;
  - j) Any ancillary accommodation works to street lighting, drainage and services diversions, which are necessary to enable the construction of the listed works to adoptable highway standards.

No part of the development hereby approved shall be occupied until the approved schemes have been constructed and completed in accordance the scheme details.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles, of Counsel	instructed Chorley Borough Council (CBC)
Nick Ireland BA (Hons), MRTPI	Director, Icen Projects
Katherine Greenwood MTCP, MRTPI	Planning Policy & Housing Officer, CBC
Zoe Whiteside BA(Hons), PG Dip, MSc, CIHCM	Planning Policy Manager, CBC
Alison Marland BA(Hons), MRTPI	Principal Planning Officer, CBC
Iain Crossland MPLA, MRTPI	Principal Planning Officer, CBC
Stephanie Leach LLB(Hons)	Solicitor, CBC

### FOR THE APPELLANT:

Christopher Young QC	instructed by Gladman Developments Limited (GDL)
James Donagh BA(Hons), MCD, MIED	Director, Barton Willmore
Andrew Moger BA(Hons), MA, MRTPI	Associate Director, Tetlow King Planning
James Stacey BA(Hons), Dip TP, MRTPI	Director, Tetlow King Planning
Christien Lee BSc (Hons), MCD, MRTPI	Planning Manager, GDL
Ben Jackson	Director, Ashley Helme Associates
Jason Clemens	Director, Head of Heritage Planning, Savills
Gary Holliday	Director, FPCR Environment and Design
Suzanne Mansfield	Director of Ecology, FPCR
Nicola Baines	Solicitor, GDL

### INTERESTED PARTIES:

Glenn Robinson DMS	Team Lead, Highways and Transport, Lancashire County Council
Mrs S. Shannon	Local Resident
Susan Fox	Local Resident
Debra Holroyd-Jones	Homes England

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- ID01 Appellant's opening statement
- ID02 Council opening statement
- ID03 Written statement from Mrs S. Shannon
- ID04 Joint Memorandum of Understanding and Statement of Co-Operation relating to the Provision and Distribution of Housing, Statement of Common Ground, Central Lancashire Local Plan, May 2020 (CD7.34)
- ID05 Draft suggested Planning Conditions V6 from the Council.
- ID06 Chapter 2a, PPG 2014, on Housing & Economic Development Needs Assessments.
- ID07 Extracts from chapter 61 of PPG 2019 on Plan Making
- ID08 Appeal decision APP/R1038/W/17/3192255, Land at Deerlands Road, Wingerworth, November 2018
- ID09 Summary Grounds of Resistance in Gerald Gornall v Preston City Council High Court claim CO/1962/2020, 18 June 2020
- ID10 Enclosures with Defendant's Summary Grounds of Resistance in the Gerald Gornall v Preston CC High Court claim, 18 June 2020
- ID11 Claimant's Summary Statement of Facts and Grounds, Gornall v Preston CC.
- ID12 Note for Inspector from Tetlow King Planning on Custom Build Homes (Buildstore) Demand Data, 22nd June 2020
- ID13 Solo Retail Limited v Torridge District Council [2019] EWHC 489 (Admin)
- ID14 Draft S106 Unilateral Undertaking, submitted by the Appellant
- ID15 Education Contribution Methodology, Lancashire County Council, April 2020 Revision
- ID16 Written representations from Ms. Susan Fox, dated 18th, 23rd June and 25th June 2020
- ID17 Written representation from resident of Belfry Close, Euxton
- ID18 Schedule of 66 written representations on the appeal, Chorley BC
- ID19 SHELAA Methodology Statement, Central Lancashire Local Plan, April 2019
- ID20 Chorley Borough Council Local Plan Review, Written Statement, Adopted Edition, August 2003
- ID21 South Ribble Local Plan, Policy G3 - Safeguarded Land for Future Development, adopted July 2015
- ID22 Oxtan Farm v Harrogate Borough Council [2020] EWCA Civ 805
- ID23 CIL Compliance Statement, addendum on Self-Build and Custom Housebuilding Plots, submitted by CBC

- ID24 Report to Central Lancashire Strategic Planning Joint Advisory Committee Consultation on Consultation of the Revised Joint Memorandum of Understanding, 28th January 2020
- ID25 Response from CBC to written representations from Ms Fox (ID16)
- ID26 Agreed note to the Inspector on future supply of Affordable Housing in Chorley borough
- ID27 Chorley Local Plan [Publication] Policies Map (2012), Map 1
- ID28 National Planning Policy Framework, July 2018
- ID29 Core Strategy Policy 27: Sustainable Resources and New Developments, Position Statement following Deregulation Act 2015, submitted by CBC
- ID30 CBC Note to the Inspector on Suggested Planning Condition 25
- ID31 CBC Response to the Inspector's questions on Suggested Conditions v7
- ID32 Appellant (FPCR) Response to written representations from Ms Fox (ID16) on matters relating to ecology, 25th June 2020
- ID33 Appellant (Tetlow King) Response to Issues and Options Consultation Call for Sites Part 3 Annex 7
- ID34 Appellant note on the Publication of the 2018-based Household Projections, 30 June 2020
- ID35 Letter to MPs from Robert Jenrick, Secretary of State for Housing, Communities and Local Government, about Housing and Planning Update, 30th June 2020
- ID36 Appellant (FPCR) further response to written representations from Ms Fox, dated 1st July 2020
- ID37 Costs application on behalf of the Appellant, 2 July 2020
- ID38 LPA response to the appellant note on the Publication of the 2018-based Household Projections (ID34), 2 July 2020
- ID39 Closing submissions on behalf of the Council, 2 July 2020
- ID40 Closing submissions on behalf of the Appellant, 2 July 2020

**DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY**

- ID41 Location plan (drawing no. 2018-013/303) relating to suggested condition 25
- ID42 Certified and signed copy of S106 Unilateral Undertaking from Gladman Developments Limited, dated 6 July 2020
- ID43 Email from Gladman Developments containing agreed revised wording for suggested condition 25
- ID44 Council response to appellant's costs application, dated 9 July 2020.
- ID45 Manchester City Council v Secretary of State for the Environment [1988] J.P.L. 774; [1988] 1 WLUK 266 (QBD)
- ID46 Appellant final reply to the Council's response to Costs application

**APPENDIX 16**

Appeal Decision APP/D3125/W/17/3182718 Enstone, Oxfordshire, 30<sup>th</sup> April 2018

## Appeal Decision

Inquiry held on 13-16 February 2018

Accompanied site visit made on 15 February 2018

**by M C J Nunn BA BPL LLB LLM BCL MRTPI**

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

**Decision date: 30 April 2018**

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**Ref: APP/D3125/W/17/3182718**

**Land South of Oxford Road, Enstone, Oxfordshire, OX7 4NE**

- 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 Rosconn Strategic Land Ltd against the decision of West Oxfordshire District Council.
  - The application Ref: 17/00426/OUT, dated 8 February 2017, was refused by notice dated 30 June 2017.
  - The development was originally described as "outline planning application for the erection of up to 30 no dwellings (Class C3); and a new access off Oxford Road, with all other matters reserved".
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### Decision

1. The appeal is allowed and planning permission granted for an outline application for up to 29 dwellings and a new access off Oxford Road with all other matters reserved on land south of Oxford Road, Enstone, Oxfordshire, OX7 4NE, in accordance with the terms of the application, Ref: 17/00426/OUT, dated 8 February 2017, subject to the conditions set out in the attached Schedule.

### Preliminary Matters

2. The application is made in outline with all matters except access reserved for subsequent determination. In addition to my accompanied site visit, I made a number of unaccompanied visits to the site and its surroundings before, during and after the Inquiry.
  3. Revised illustrative plans, which indicate the intended form of the development, have been put forward by the appellant for consideration to replace those originally considered by the Council. The key differences in the revised plans are that the total number of dwellings has been reduced from 30 to 29, and some have been realigned to be parallel with Oxford Road, with consequent changes to layout and landscaping. Publicity was undertaken by the appellant, which included letters to those originally notified of the application, a newspaper advert, and a notice displayed at the site. Full details are provided in the *Public Consultation Summary (January 2018)*. The Council has confirmed no objection is raised to the appeal being determined on the basis of the revised plans.
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4. I am satisfied that those with an interest in the proposal have had sufficient opportunity to comment on the revised plans, which do not alter the substance of this outline scheme. I am also satisfied that having regard to the *Wheatcroft Principles*, no-one would be prejudiced by my assessing the appeal on the basis of the revised plans. Therefore, I have proceeded on this basis.
5. The Council's third reason for refusal relates to drainage. The appellant has put forward a revised approach to site drainage as detailed in the Flood Risk Assessment and Drainage Strategy dated 9 February 2018<sup>1</sup>. The Council has confirmed that its concerns have now been addressed and has withdrawn this reason for refusal.
6. The Council's fourth reason for refusal relates to the absence of legal agreements to mitigate the impacts of the development and to provide affordable housing. Two planning obligations have now been completed with the County Council (dated 13 February 2018)<sup>2</sup> and the District Council (dated 14 February 2018)<sup>3</sup>. As a consequence, the fourth reason for refusal has been withdrawn by the Council. I deal with the planning obligations in the body of my decision.

### **Main Issues**

7. Having regard to the above, the main issues are:
  - i. the effect of the proposal on the character and appearance of the area, including the landscape;
  - ii. the effect of the proposal on the significance of nearby heritage assets; and
  - iii. in the absence of a five year supply of deliverable housing sites, whether any adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme; or whether specific policies indicate development should be restricted.

### **Reasons**

#### *Planning Policy Context*

8. The relevant legislation<sup>4</sup> requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the 'saved' policies of the West Oxfordshire Local Plan 2011, adopted in 2006 ('the Local Plan'). The Council's remaining reasons for refusal cite Policy BE2 (general development standards), Policy BE4 (open space within and adjoining settlements), Policy BE8 (development affecting the setting of a listed building), Policy NE1 (safeguarding the countryside), Policy NE3 (local landscape character) and Policy H2 (general residential development standards).
9. The National Planning Policy Framework ('the Framework') sets out the Government's planning policies and is a material consideration in planning

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<sup>1</sup> ID 1

<sup>2</sup> ID 18

<sup>3</sup> ID 16

<sup>4</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004

- decisions. Importantly, the Framework does not change the statutory status of the development plan for decision making. However, the Framework advises at Paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
10. The Local Plan is 'time expired' being designed to provide policy guidance up to 2011. That said, the mere age of a plan does not mean it loses its statutory standing as the development plan. Nonetheless, there is no dispute that the Council cannot demonstrate a deliverable five year supply of housing, as required by the Framework<sup>5</sup>. The Council is prepared accept that, in a worst case scenario, it can only demonstrate a 4.9 year supply of housing, although the appellant says it is much less than that. However, for the purposes of this appeal, the appellant has agreed to accept the Council's case. In addition, the Local Plan fails to make provision for housing beyond 2011, and so in that respect is out of date<sup>6</sup>.
  11. In these circumstances, the second bullet point of Paragraph 14 of the Framework is potentially engaged in this appeal. This is clear that where the development plan is absent, silent or out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. However, this so called 'tilted balance' in favour of granting permission may be dis-applied where specific policies in the Framework indicate development should be restricted<sup>7</sup>. I return to this matter in due course.
  12. Turning to policies cited by the Council, Policies BE2 and H2 are criteria based policies setting out general development standards. BE2 requires, amongst other things, that development should respect, and where possible improve the character and quality of its surroundings. It also states that development will only be permitted if the landscape surrounding and providing a setting for an existing village is not adversely affected, and that in the open countryside any appropriate development will be easily assimilated into the landscape, and wherever possible, be sited close to an existing group of buildings. Policy H2 requires development not to erode the character and appearance of the surrounding area, including public and private open space. The overall approach of these policies is generally consistent with the Framework and they can be given full weight in this appeal.
  13. Policy BE4 relates to open space and requires, amongst other things, that proposals for development within or adjoining the built up area should not result in the loss or erosion of an open area which makes an important contribution to the distinctiveness of a settlement, and/or the visual amenity or character of the locality. The second part of the policy requires that, when assessing any proposals which could affect existing open space, consideration will be given to the opportunity to remedy deficiencies in provision, and exchange the use of one site for another to substitute for any loss of open space.

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<sup>5</sup> Housing Land Supply Statement of Common Ground, signed 12 February 2018

<sup>6</sup> Statement of Common Ground, Paragraph 3.1

<sup>7</sup> Examples of such policies are given in Footnote 9 of the Framework

14. The appellant contends that Policy BE4 is not of direct relevance to this appeal, and states that it is inconsistent with the Framework because it is not criteria based and could be applied to any open land that adjoins an existing built-up area, thereby imposing a 'blanket' landscape protection on all such land. However, the policy specifically refers to areas that make an 'important contribution' to a settlement's distinctiveness, and so provides a criterion for judging areas of open space. I do not find the overall approach to be in conflict with the Framework, and so the Policy can be afforded full weight.
15. Policy BE8 states that development should not detract from the setting of a listed building. Whilst it is generally consistent with the underlying aims of the Framework to conserve and enhance the historic environment, this policy does not accurately reflect the wording of the relevant legislation<sup>8</sup> nor does it reflect aspects of the Framework's approach to heritage assets, for example, in terms of weighing of public benefits. This limits the weight that can be accorded to this policy.
16. Policy NE1 requires proposals for development in the countryside to maintain or enhance the value of the countryside for its own sake, including its beauty, its character and distinctiveness. The Framework does not require protection of the countryside for its own sake, although it requires the planning system to contribute to protecting and enhancing the natural environment<sup>9</sup>, as well as recognising the intrinsic character and beauty of the countryside<sup>10</sup>. Therefore, it is partially consistent with the Framework and can be afforded moderate weight.
17. Policy NE3 states that development will not be permitted if it would harm the local landscape character of the District, and that proposals should respect and, where possible, enhance the intrinsic character, quality and distinctive features of the individual landscape types. The overall aims of the policy are generally consistent with the Framework, and it can be accorded full weight.

### *Emerging Policy*

18. A new Local Plan is currently being prepared, but this has been subject to delays. The Council, in its remaining reasons for refusal, cites Policy OS2 (locating development in the right places), Policy H2 (delivery of new homes), Policy EH1 (landscape character), Policy EH3 (public realm and green infrastructure) and Policy EH7 (historic environment) from the emerging Local Plan.
19. I understand that the first sessions of the Local Plan Examination took place in November 2015. The Examination was subsequently suspended to allow further work to be undertaken to ensure a sound housing strategy. Proposed modifications were published for consultation and further Examination sessions took place in the summer of 2017. Arising from these sessions, further reports and modifications were forwarded to the Examining Inspector. The Inspector has recently issued a letter with his interim findings.

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<sup>8</sup> Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>9</sup> Paragraph 7

<sup>10</sup> Paragraph 17

20. I acknowledge that the Examination is at a relatively advanced stage, and the Inspector has indicated that, subject to further modifications, the emerging Local Plan is likely to be capable of being found legally compliant and sound. All that said, and importantly, the Examination is not concluded and the consultation process on main modifications is still in progress. Further liaison is required with the Inspector in respect of the wording of some of the further modifications. Importantly, the Inspector has yet to produce his final report. In these circumstances, and in accordance with Paragraph 216 of the Framework, I consider only limited weight can be given to the Emerging Local Plan.

### *Character and Appearance*

21. The appeal site forms a single, pastoral field that slopes southwards towards the River Glyme, forming part of its valley. The northern boundary, fronting the Oxford Road (A44), is enclosed by dry stone walling, vegetation and mature trees. 'Westbourne House', a detached residence, lies to the west. Directly to the east is Hillside, a Grade II listed residential property, separated from the site by a close-boarded fence. Also to the east is 'Bridge House', another Grade II listed residence, the garden of which abuts the southern boundary of the site. The River Glyme meanders in an east-west direction along the bottom of the valley, with dense mature trees either side. To the north of the Oxford Road lies an area of allotments, and the wider area comprises an undulating landscape of pastoral and arable fields. The site is located on the edge of the village of Enstone, which comprises Church Enstone to the north-east and Neat Enstone to the south-east.
22. The appeal site lies within the 'Cotwolds' National Character Area (NCA 107). At a more local level<sup>11</sup>, it falls within the 'Enstone Uplands (3)' Landscape Character Area (LCA). This LCA is subdivided into 'sub-character types' with the appeal site identified within the 'Open Limestone Wolds' type. However, the parties agree that the site displays more of the characteristics of the immediately adjacent 'Minor Valleys' sub-character type. The key characteristics include 'small-scale tributary valleys which dissect plateaux and valley sides and connect with major valleys', and which possess an 'enclosed, intimate character created by valley form and vegetation cover'.
23. Whatever character 'label' is attached, the character of the site and surroundings is clear from site inspection. From my own observations, I consider that the site can be regarded as reasonably attractive, comprising a sloping pastoral field, but it is nothing out of the ordinary. It is not covered by any specific landscape designations, and the Council has accepted it is not a 'valued landscape'<sup>12</sup> in terms of the Framework<sup>13</sup>. In terms of scenic quality, the site contains few landscape features of intrinsic value. The site is reasonably well contained, notwithstanding its position outside the settlement boundary of Enstone. There are trees and mature vegetation around the edges of the site, especially to the northern and southern boundaries.
24. In my judgement, the site's character is affected by adjacent development: in particular the existing properties along the eastern and western sides. On the

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<sup>11</sup> West Oxfordshire Landscape Assessment 1998

<sup>12</sup> Paragraph 4.13 Statement of Common Ground

<sup>13</sup> As per Paragraph 109

northern boundary is the Oxford Road (A44), along with the Bicester Road (B4030) junction. The site is perceived in the context of the surrounding development. Consequently, I do not regard it as an essential or intrinsic component of the wider open countryside. Nor do I find it an open area that makes an important contribution to the distinctiveness of Enstone, in terms of Policy BE4 of the Local Plan. The site itself has no public access, no public rights of way and does not perform a formal recreational function. In terms of tranquillity, it is affected by the busy Oxford Road to the north.

25. In terms of views in the wider landscape, I observed the site from various points, in longer range views, including from the opposite side of the valley. From Lidstone Road to the south, the site is relatively conspicuous because of its sloping topography. However, it is seen in the context of a much larger panorama, and forms only a small component of it. The development would certainly be seen as expanding the settlement edge of Enstone, but the proximity of existing built development reduces the site's sensitivity.
26. From the north, the site is visible from the allotments, as well as from public footpaths 202/19 and 202/18 (Shakespeare's Way). As one walks along these footpaths, views of the site are heavily filtered by the intervening vegetation, and impeded by the rolling topography. Indeed, existing established trees along the northern boundary of the site provide a strong degree of containment and additional tree planting is proposed that would provide a robust green edge to the proposal. Overall, the visual intrusion of built development would be limited when viewed from these points because of the benefit of distance, the site's sloping topography, the intervening vegetation and width of view.
27. A concern raised by the Council is the impact on the setting of the village of Enstone. It is contended, amongst other things, that the development would introduce a dense form of development into the lower elements of the Glyme Valley, and that it would push Enstone beyond its 'leading edge' into open countryside. Also, that it would subsume Westbourne House - at present an outlier - into the main fold of the village. However, as acknowledged by the Council, there is already development within the lower valley comprising the residences of Hillside and Bridge House, as well as the Artyard Cafe. I do not find the amalgamation of Westbourne House into the main part of the village to be intrinsically problematic. I see no reason why the scheme should not be adequately assimilated in the locality.
28. The Council also objects to the scheme on the basis that, historically the entrance to Enstone was marked by two public houses on either side of the road, namely 'The Plough' (now Hillside) and 'The Harrow' (now the Artyard Cafe). It is contended that developing the appeal site would mean that Hillside would be situated well within the village rather than at its extremity. However, more recent modern development has now significantly changed the experience. This includes the residential development fronting Bicester Road, the car park on rising ground associated with the Artyard Cafe, as well as the traffic paraphernalia associated with the Oxford Road - including road barriers, signage, the speed camera and so on. This has resulted in a more urbanised experience on the approach to Enstone with the consequence that these two historic properties no longer stand out as the prominent 'entrance' markers to the village as they may have in the past.

29. Whilst the proposal would result in the loss of an open field and the new housing would create a substantially more suburban appearance, I am satisfied that the proposed dwellings could be designed to be of a high quality and of an appropriate scale, and that the palette of materials of the buildings could reflect those of the existing locality. In my judgement, there is no reason to suppose that new residential development would not blend with the other existing houses in the locality.
30. Drawing all these matters together, in terms of character and appearance, I consider that the appeal scheme would have a relatively localised impact on the character of the area. The proposal would have a modest effect on the wider landscape because of the site's relatively self-contained nature and the existing development around its edge. In these circumstances, I do not find there to be any fundamental conflict with the underlying aims of Policies BE2 and H2 of the Local Plan, both concerned with general development standards. And whilst the development would result in the loss of an open area, I do not consider that it makes an important contribution to the distinctiveness of Enstone in terms of Policy BE4.
31. There would, however, be some conflict with Policies NE1 and NE3 concerned with safeguarding the countryside and local landscape character, because the scheme would result in the loss of undeveloped countryside. Thus it would not maintain or enhance the value of the countryside for its own sake. Nor could the proposal be said to respect or enhance the intrinsic character, quality and distinctive features of an individual landscape type. The conflict with these policies must be considered in the overall planning balance.

*Effect on the significance of heritage assets*

32. In terms of designated heritage assets affected by the development, the Council has identified Bridge House and Hillside, both Grade II statutorily listed buildings. The listing description identifies Hillside as a two storey house dating from the mid to late 18<sup>th</sup> century of coursed limestone rubble with ashlar dressings, and with a Welsh slate roof. As noted, it was formerly a public house known as 'The Plough' and was historically in the same ownership as the appeal site. Bridge House, of similar age and construction, is positioned adjacent to the bridge over the River Glyme, and is identified in the listing description a mid to late 18<sup>th</sup> century house, possibly incorporating earlier elements. It is also of coursed limestone rubble with ashlar dressings, and a Welsh slate roof. The significance of these buildings derives primarily from their composition and built fabric, although their setting also contributes to their significance.
33. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced and its extent is not fixed<sup>14</sup>. The appeal site makes some contribution to the setting and significance of both listed buildings in forming part of their rural and undeveloped 'backdrop'. In terms of Hillside, some change in setting would occur when viewed from the Oxford Road following the development of the site. However, according to the illustrative drawings, substantial structural planting is proposed along the eastern boundary of the site, with the new housing located beyond. Once established,

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<sup>14</sup> Glossary

this planting would reduce the visibility of the new dwellings and provide a wooded backdrop to Hillside, thereby minimising the impact on this listed building's setting. Importantly, the main facade of Hillside does not front Oxford Road. Rather, the property is set at right-angles to it, with its side elevation facing the road. Hence, the glimpsed views from the Oxford Road through to the appeal site are largely incidental, and do not provide an intrinsically important component of the setting of Hillside.

34. The Council also emphasises the historical connection between the appeal site and Hillside, in that they were once in common ownership. However, this is no longer the case, and the erection of a substantial close-boarded fence provides a strong barrier separating the two areas. This significantly reduces inter-visibility between them. Therefore, the relationship between the two areas has been to a very large extent lost.
35. With regards to Bridge House, again some change in setting would be visible from Oxford Road. However, changes would be more apparent from the property's extensive curtilage that extends westwards, running south of the appeal site, along the valley bottom. Standing within this low lying area, the appeal site reads as part of the tranquil wooded valley slope rising up from the river. This contributes to the pleasantly rural valley bottom setting of Bridge House. The illustrative layout shows development would be set some distance away from the boundary with Bridge House's curtilage, and a substantial wedge of land to the south would remain undeveloped. That said, the proposal would nonetheless result in residential development on the higher ground, and to that extent, would detract from the currently undeveloped valley setting.
36. Both the appellant and Council agree that the overall degree of harm to both these heritage assets would be less than substantial in terms of the Framework. But there is a clear difference of opinion between the parties as to how the harm should be categorised. The appellant concludes that there would be some limited harm to the significance of Hillside, but no harm to Bridge House<sup>15</sup>. The Council, by contrast, considers that the harm to Hillside would fall in the mid-range of the less than substantial harm spectrum, and for Bridge House, in the mid to lower range.
37. The relevant legislation requires that where considering whether to grant permission for a development that affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting<sup>16</sup>. In my judgement, the proposal would result in some degree of harm to the setting of both Hillside and Bridge House. To that extent, it would fail to preserve their setting, contrary to the relevant legislation. However, the scheme would not impair the ability to appreciate and understand both assets as examples of 18<sup>th</sup> century limestone buildings positioned adjacent to Oxford Road. For these reasons, I consider that the level of harm to both heritage assets would be limited and should therefore be placed at the lower end of the 'less than substantial' spectrum. In accordance with the Framework, the harm to heritage assets, although less than substantial, needs to be weighed against the public benefits of the proposal.

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<sup>15</sup> The original Heritage Assessment found the harm to Bridge House would be negligible or 'de minimis'

<sup>16</sup> S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

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### *Other Matters*

38. My attention was drawn to a recently dismissed appeal for a development of up to 10 dwellings on nearby land at 'The Drive'<sup>17</sup>. In that case, the Inspector noted that the site was an integral and important part of the wider valley landscape, and although the effects of development would be somewhat localised, concluded that irrevocable harm would result to the landscape. By contrast, I find that the scheme before me would occupy a relatively well contained and enclosed site, and be well related to the existing built-up area, representing an acceptable extension to it. The Drive site also differs in that there is a public footpath<sup>18</sup> running across it from which the surrounding landscape can be observed. This is not the case here. The circumstances are different, and so I do not consider that appeal creates a precedent for this case.
39. The 'Enstone Marvels' have also been mentioned. I understand that these were a historic system of waterworks derived from a spring and, according to the evidence, also once included a grotto with an attached banqueting house. However, the exact location of the Marvels is unclear. They subsequently fell into disrepair, and no traces are known to survive of them<sup>19</sup>. The Council has not raised any objections to the scheme on this issue, nor was any point raised in terms of a harmful effect on archaeological assets. In the absence of any cogent contrary evidence, I see no reason to take a different view.
40. Some concerns were raised regarding the light spillage from the development, in that it would erode the ability to appreciate the dark skies in the locality. One of my site visits took place during the hours of darkness, and I witnessed the absence of light pollution in the vicinity of the site. I am satisfied, however, that any new lighting could be designed so as to avoid excessive light spillage, thus ensuring that light pollution does not impair the existing dark skies. This could be secured by condition.
41. The site is largely located within Flood Zone 1 which is at the lowest risk of flooding, with small areas on the southern part of the site within Flood Zones 2 and 3. Although the Council's reason for refusal relating to drainage has been addressed, local residents still remain concerned. In response, the appellant has produced a note specifically dealing with flooding, drainage, groundwater and water supply matters<sup>20</sup> that supplements the revised Flood Risk Assessment and Drainage Strategy<sup>21</sup>. On the basis of all this evidence, I am satisfied that flood and drainage matters can be appropriately dealt with by a condition.
42. In terms of ecology, the site is not subject to any statutory designations<sup>22</sup>. I am satisfied that appropriate mitigation measures could be undertaken, secured by condition, to ensure there is no negative effect on nature conservation interests, or any protected species present within the site. There is also the opportunity for ecological enhancement and habitat creation through new planting.

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<sup>17</sup> APP/D3125/W/17/3172998 (Appendix 4, Proof of Ms Tetlow)

<sup>18</sup> 202/15

<sup>19</sup> Proof of Ms Stoten, Paragraphs 6.33 to 6.48

<sup>20</sup> ID 13

<sup>21</sup> ID 1

<sup>22</sup> Statement of Common Ground, Paragraph 2.2

43. I have carefully considered the concerns of residents in relation to highway matters. These include the safety of the proposed access, especially given its location close to the Oxford Road and Bicester Road junction, and the presence of speeding vehicles in the vicinity. However, the relevant Highways Authority has not raised objections on this issue, and I find no compelling evidence to indicate that there would be an unacceptable risk for drivers arising from the development or that additional traffic could not be satisfactorily accommodated.

#### *Planning Obligations*

44. The appellant has completed two planning obligations, dated 14 February 2018<sup>23</sup>, and 13 February 2018<sup>24</sup>. The first is signed with the Council<sup>25</sup> and secures the provision of affordable housing at a rate of 50%. It also secures financial contributions in respect of the following: play and recreation, public art, and sport and recreation, all calculated according to the Council's formulae. It also secures provision of an area of public open space, with a requirement for a management scheme and a financial sum for its upkeep. The second obligation is signed with the County Council<sup>26</sup> and secures contributions towards bus services and primary education. It also secures various highway works to ensure adequate access into the site, including the realignment of the existing boundary wall along Oxford Road.

45. I have no reason to believe that the formulae and charges used to calculate the various contributions are other than soundly based. In this regard, both the Council<sup>27</sup> and County Council<sup>28</sup> have produced compliance statements. It is confirmed that the level of provision of affordable housing would comply with the Council's policy requirement, and other aspects of the obligations are justified. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of the obligations are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework<sup>29</sup> and the Community Infrastructure Levy Regulations<sup>30</sup>.

#### **Overall Conclusions and Planning Balance**

46. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The Framework states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by economic, social, and environmental dimensions and the interrelated roles they perform. These dimensions give rise to the need for the planning system to perform a number of roles.

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<sup>23</sup> ID 16

<sup>24</sup> ID 18

<sup>25</sup> West Oxfordshire District Council

<sup>26</sup> Oxfordshire County Council

<sup>27</sup> ID 17

<sup>28</sup> ID 19

<sup>29</sup> Paragraph 204

<sup>30</sup> Regulation 122

47. Paragraph 14 of the Framework explains how the presumption in favour of sustainable development applies. Where the development plan is absent, silent or the relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Alternatively, specific policies in the Framework may indicate development should be restricted. Those relating to heritage assets are one such category. Hence the 'public benefits' test of Paragraph 134 relating to heritage assets is engaged in this case
48. In this case, the additional housing would be a weighty benefit for the area, by introducing much needed private and affordable housing for local people: 29 new units are proposed of which 50% would be affordable homes. It would boost the supply of housing in accordance with the Framework. It would create additional housing choice and competition in the housing market. It would create investment in the locality and increase spending in local shops. It would create jobs and investment during the construction phase, albeit for a temporary period.
49. The development would result in the loss of open pasture land, but the site is physically reasonably well contained, and visually well related to the built up area of the village. There is the potential for biodiversity enhancement through additional planting. I am satisfied that the planning obligations accord with the Framework and the relevant regulations and I have taken them into account in my deliberations.
50. As noted earlier, Paragraph 134 of the Framework requires the harm to the significance of heritage assets to be balanced against the public benefits of the scheme. In addition, Paragraph 132 requires that, when considering the impact of a proposed development on the significance of heritage assets, great weight should be given to their conservation. However, for the reasons explained, I consider that the level of harm to heritage assets would be limited and should be placed at the lower end of the 'less than substantial' spectrum. In this case, I find that the harm to heritage assets would be outweighed by the scheme's public benefits. As a consequence, I find that the so called 'tilted balance' of Paragraph 14 is not displaced in this instance.
51. There would be some conflict with Policies NE1 and NE3 of the Local Plan. Importantly, however, the Council cannot demonstrate a five year supply of housing. This diminishes the weight that can be attached to any conflict with these policies. The housing shortfall attracts substantial weight in favour of granting permission for the proposals, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. I am satisfied that none of the reasons put forward for opposing the development establishes that the harm would be significant or would demonstrably outweigh the benefits. Therefore, notwithstanding any conflict with Local Plan policies, it follows that the appeal should succeed, subject to conditions. I deal with conditions below.

### **Conditions**

52. I have reviewed the suggested conditions in the light of the discussion at the Inquiry and advice in the Planning Practice Guidance (PPG). Where necessary,

I have reworded them for clarity and simplicity, and have also amalgamated some of the conditions to avoid duplication.

53. Commencement conditions are necessary to comply with the relevant legislation. A condition requiring compliance with the submitted plans, unless otherwise agreed, is necessary for the avoidance of doubt. A condition specifying the scope of requirements in relation to reserved matters is necessary to ensure these are properly dealt with and to ensure a high quality scheme. These matters include details of: finished ground levels of the buildings in relation to existing ground levels; the northern boundary wall repositioning; the road layout and parking areas; the tracking details for refuse vehicles; the trees to be retained; proposed landscape features and green infrastructure; the design, form and architectural features of the dwellings including materials to be used on external surfaces; the provision of a superfast broadband service to the dwellings; details of an external lighting strategy to ensure adequate illumination of roads and paths and to avoid unnecessary light pollution.
54. Conditions ensuring the retention of landscaping, adequate site access provision, sustainable site drainage, and landscape & ecology management are required to ensure these matters are appropriately addressed. A condition dealing with measures to encourage sustainable transport use is required to minimise private car trips. A condition requiring a Construction Method Statement & Transport Plan is necessary to minimise disturbance to local residents and ensure highway safety. A condition requiring a Construction Environmental Management Plan is necessary to minimise disruption to biodiversity and the environment. A condition requiring an assessment of noise from the Oxford Road (A44) is necessary to ensure satisfactory living conditions for future residents of the scheme.
55. In reaching my decision, I have carefully considered the serious concerns voiced by local residents. In this case, I have judged the balance falls in favour of granting permission because the adverse impacts would not significantly and demonstrably outweigh the benefits. That judgement is specific to this proposal and would not necessarily be the same if applied to other cases. Subject to the conditions in the attached schedule, I conclude that the appeal should be allowed.

*Matthew C J Nunn*

INSPECTOR

### **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 not later than twelve months from the date of this permission.
- 3) The development hereby permitted shall begin not later than two 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 general accordance with the following approved plans and any variations shall be agreed in writing by the local planning authority:
  - Site Location Plan: 6105/ASP01 LP
  - Single Parameter Plan: DE296\_002 C
  - Enstone Frontage Proposal: DE296\_003
  - Vertical Visibility Review DWG-07
- 5) Details of appearance, landscaping and layout required to be submitted and approved under Condition 1 shall include:
  - i. Details of the finished levels, above ordnance datum, of the ground floor levels of the proposed dwellings in relation to existing ground levels;
  - ii. Details of the repositioned boundary wall adjacent to the highway to include traditional dry stone walling constructed in local stone;
  - iii. Details of the road layout, turning areas, driveways, car / cycle parking areas and footpaths, including their surface materials and means of drainage;
  - iv. A plan showing vehicle tracking for a refuse vehicle of not less than 11.6 metres in length, indicating that it can enter, turn and leave the site in forward gear;
  - v. Details of the trees to be retained and how they will be protected during construction (in accordance with BS 5837:2012 '*Trees in Relation to Design, Demolition and Construction*');
  - vi. Details of landscape features / green infrastructure / green buffers, including details of areas of open space;
  - vii. Details of the design, form and architectural features of the dwellings, including materials to be used on external surfaces;
  - viii. Details to demonstrate that each dwelling can connect to and receive a superfast broadband service;

- ix. Details of an external lighting strategy to ensure adequate illumination of roads and paths and to avoid unnecessary light pollution. The strategy must include measures to avoid disturbance to bat species using their territory and accessing their roosts, including in the woodland area in the southern portion of the site.
- 6) The approved landscaping works shall be carried out in accordance with a programme agreed in writing by the local planning authority; and any trees or plants which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written approval to any variation.
- 7) The dwellings shall not be occupied until the vehicular access to the site has been provided in accordance with Vertical Visibility Review DWG-07 to include the provision of visibility splays of a minimum of 2.4 metres by 90 metres in both east and west directions at the junction of the site access with Oxford Road. There shall be no obstruction above 0.9 metres within the visibility splays.
- 8) The vehicular and pedestrian accesses shall be constructed, laid out, surfaced, lit and drained in accordance with details previously submitted to and approved in writing by the local planning authority. The works shall be carried out before the dwellings are occupied. The details shall include measures (such as a gateway or chicane) to ensure safe egress from the site of pedestrians and cyclists on to the Oxford Road (A44).
- 9) The dwellings shall not be occupied until a scheme to promote and encourage the use of alternative modes of transport to the car has been submitted to and approved in writing by the local planning authority. The scheme shall include for the first owner of each dwelling, a residential travel information pack to promote sustainable transport.
- 10) No development shall take place until a surface water drainage scheme, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development has been submitted to and approved in writing by the local planning authority. The scheme shall be in general accordance with the Flood Risk Assessment and Drainage Strategy (dated 9 February 2018) and shall be implemented in accordance with the approved scheme before the dwellings are occupied. No built development shall take place in Flood Zones 2 and 3. The scheme shall include: discharge rates & discharge volumes; maintenance & management of the sustainable urban drainage system (SUDS) features; sizing of features – attenuation volume; maintenance & management of the proposed land drainage strategy; infiltration in accordance with BRE365; detailed drainage layout with pipe numbers; SUDS design to replicate existing nature and behaviour of the pre-development site; network drainage calculations; phasing; flood flow routing in exceedance. Adjoining properties must be protected from surface water flooding arising from the development and the scheme shall include mitigation measures to be used.

- 11) No development shall take place until a Construction Method Statement & Traffic Management Plan has been submitted to and approved in writing by the local planning authority. This shall provide details of: the proposed hours and days of working; proposals to minimise disruption to the adjacent local area from ground works, construction noise and site traffic; the parking of vehicles of site personnel, operatives and visitors (avoiding unnecessary parking in the vicinity of the site); loading and unloading of plant and materials; vehicle wheel washing facilities/ measures to guard against the deposit of mud or other substances on the public highway; routing of construction traffic including any road closures or traffic management required during construction; appropriate signing for pedestrians during construction including any footpath diversions; erection / maintenance of security hoarding / scaffolding if required; site manager contact details; appropriately trained/qualified banksmen for guiding / unloading construction vehicles; a before-work commencement highway condition survey and agreement with a representative of the Highways Depot; a scheme of liaison with local residents (including informing them of significant deliveries). The approved details shall be adhered to throughout the construction period.
- 12) No development shall take place until a noise assessment of road traffic from the Oxford Road (A44) has been submitted to and approved in writing by the local planning authority. The scheme shall determine the noise climate and include details of any attenuation / design measures necessary to protect the living conditions of future occupiers of the dwellings. All works that form part of the approved scheme shall be completed before the dwellings are first occupied and shall be permanently retained thereafter.
- 13) No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall be adhered to throughout the construction period in accordance with the approved details. The CEMP shall include the following: precautionary measures for site clearance to avoid or reduce impacts during construction; protection measures for small reptiles and mammals; measures to ensure no excavation of trenches, or storage of any materials, or lighting of any bonfires are carried out within any tree protection area; a risk assessment of potentially damaging construction activities; measures to avoid harm to biodiversity features; details of protective fences / barriers; details of responsible persons / lines of communication; details of monitoring during construction and immediately post completion of construction works.
- 14) No development shall take place until a Landscape & Ecology Management Plan has been submitted to and approved in writing by the local planning authority. This shall be in general accordance with the recommendations in the Preliminary Ecological Appraisal (Cotswold Wildlife Surveys, 2543-CWS-01) dated 1 December 2016, the Ecological Addendum Report (Cotswold Wildlife Surveys, 2543-CWS-02) dated May 2017 and the Biodiversity Enhancement Statement (Cotswold Wildlife Surveys, 2543-CWS-03) dated November 2017. The Plan shall be

implemented in accordance with the approved details and permanently retained thereafter. It shall include the following:

- i. Full specification of habitats to be created, including description and evaluation of features to be managed, including locations on a map;
- ii. Measures for encouraging biodiversity within the site, including details of the provision of bat roosting features and nesting opportunities for birds (House Martin, House Sparrow, Starling and Swift);
- iii. Aims and objectives of the Plan, and how these will be achieved; preparation of a work schedule; details of ongoing monitoring and remedial measures; timetable for reviewing the Plan;
- iv. Details of how the aims and objectives of the Plan will be communicated to the occupiers of the development;
- v. Details of body or organisation responsible for implementation and legal and funding mechanism for the Plan.



## DOCUMENTS SUBMITTED AT THE INQUIRY

1. Flood Risk Assessment and Drainage Strategy (Travis Baker) dated 9 February 2018
2. Appeal decision APP/F1610/W/16/3144113
3. Plan showing relationship between 'The Drive' & appeal site
4. Opening Statement on behalf of the Appellant
5. Opening Statement on behalf of the Council
6. Submissions of Carol Hicks
7. Submissions of Andrea Bates
8. Update letter from MHCLG (Steve Quartermain) dated 30 January 2018
9. MHCLG Single Departmental Plan
10. Annotated plan showing route for site visit
11. Mr Gibb's Appendices (with illustrative photomontages) at A3 scale
12. Extracts of West Oxfordshire Local Plan 2031 including further main modifications (February 2018)
13. Drainage Note prepared by Ted Wake of Travis Baker in response to submissions of Andrea Bates
14. Note by Savoy Consulting in response to A44 Enstone Speed Surveys carried out by Thames Valley Police provided by Andrea Bates
15. Enstone Frontage Proposal, with reference numbering: DE296\_003
16. Planning Obligation dated 14 February 2018 completed with West Oxfordshire District Council ('The District Planning Obligation')
17. Note dated 15 February 2017 from Catherine Tetlow of West Oxfordshire District Council setting out how provisions of the District Planning Obligation comply with the relevant regulations and policy
18. Planning Obligation dated 13 February 2018 completed with Oxfordshire County Council ('The County Planning Obligation')
19. Note dated 12 February 2018 setting out how provisions of the County Planning Obligation comply with the relevant regulations and policy
20. Extract of Planning Practice Guidance relating to 'public benefits' (Paragraph: 020 Reference ID: 18a-020-20140306)
21. Annotated extract of West Oxfordshire Local Plan 2031 showing changes
22. Closing Statement on behalf of the Council
23. Closing Statement on behalf of the Appellant