



Department for  
Communities and  
Local Government

Mark Chadwick  
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18 High Street  
Cheltenham  
Gloucestershire  
GL50 1DZ

Our Ref: APP/G1630/V/14/2229497

31 March 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION BY ERLP AND THE MERCHANT VENTURERS  
LAND AT ‘PERRYBROOK’ TO THE NORTH OF BROCKWORTH AND SOUTH OF  
THE A417, BROCKWORTH, GLOUCESTERSHIRE  
APPLICATION REF: 12/01256/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs KA Ellison BA, MPhil, MRTPI, who held a inquiry from 28-30 July 2015 into your client’s application to Tewkesbury Borough Council (‘the Council’) for outline planning permission for the mixed use development of up to 1,500 dwellings including extra care housing, community facilities including A1, A2, A3, A4 and A5 local retail shops, B1 /B8 employment uses, D1 health facilities and formal/informal public open space, in accordance with application ref 12/01256/OUT, dated 5 December 2012.
2. On 24 November 2014, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client’s application be referred to him instead of being dealt with by the local planning authority, Tewkesbury Borough Council, after consideration of policy on calling-in applications.

**Inspector’s recommendation and summary of the decision**

3. The Inspector recommended that the application be approved and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector’s recommendation. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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## **Procedural matters**

4. The proposal constitutes Environmental Impact Assessment (EIA) development under the provisions of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended). The Secretary of State has taken into account the Environmental Statement (ES), the Addendum to the ES and all other updates and related documents. He is satisfied that the ES and the additional information referred to at IR12.1-12.2 comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.
5. The Secretary of State is in receipt of a post inquiry representation from Janet Thomas, dated 8 November 2015, which was received too late to be considered by the Inspector. He also received a letter from the applicant dated 20 January 2016, attached to which was a document dated 15 December 2015 issued by the Examiner of the emerging Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury (JCS) entitled '*Inspector's Preliminary Findings on Green Belt Release, Spatial Strategy and Strategic Allocations (Exam 146)*', together with further representations from the appellant dated 23 February also in connection with the JCS, and an email from the appellant dated 17 March drawing attention to a recent Court judgment. The Secretary of State has given careful consideration to these representations, but as they do not raise new matters that would affect his decision he has not considered it necessary to circulate them to other parties. Copies of the representations can be made available on written request to the address at the foot of the first page of this letter.

## **Policy considerations**

6. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies contained in the Tewkesbury Borough Local Plan (LP) to 2011, which was adopted in March 2006. The Secretary of State considers that the most relevant policies to this application are those listed at IR3.1-3.3. The proposal represents large scale inappropriate development in the Green Belt (IR6.1 and 15.2) and for this reason the Secretary of State considers that the proposal conflicts with the development plan.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 ('the Framework'), the associated planning practice guidance published in March 2014 and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
8. The Secretary of State has also had regard to the emerging JCS which was submitted for examination in November 2014. He agrees with the Inspector that the most relevant policies are those concerned with strategic development and listed at IR3.5. The distribution of development is outlined in policy SP2 and includes land to the north of Brockworth. Policy SA1 designates the various Strategic Allocations and requires a comprehensive scheme for each area. Plan A4 to that policy identifies land north of Brockworth for housing, with an indicative capacity of 1500. This allocation is substantively the same land as that within the red line area of the called-in planning application. The Secretary of State has

taken into account the JCS examining Inspector's document 'Exam 146' referred to at paragraph 5 above and later at paragraph 19 of this letter.

9. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess.

### **Main issues**

10. The Secretary of State agrees with the Inspector that the main issues are those listed at IR15.1. He also agrees with the Inspector's introductory points at IR15.2-15.4.

#### *The openness, permanence and purposes of the Green Belt*

11. For the reasons given at IR15.5-15.14, the Secretary of State agrees with the Inspector's conclusion that the proposal would be harmful to the Green Belt mainly in relation to the loss of the essential characteristic of openness and being contrary to the purposes of checking sprawl and safeguarding the countryside. There would also be lesser adverse effects in relation to some weakening of permanence, which is the second essential characteristic of the Green Belt, and to the purpose of preventing neighbouring towns from merging. The Secretary of State is in agreement with the Inspector that the harm to the Green Belt should carry substantial weight (IR15.15).

#### *Landscape character and visual impact*

12. For the reasons given at IR15.16-15.23, the Secretary of State agrees with the Inspector's conclusion that a development of this scale would inevitably have some adverse effect on this rural landscape. He agrees that the effects will be particularly marked at the local scale, in terms both of landscape character and visual impact. Whilst the proposed landscape strategy would go a long way towards addressing this, like the Inspector he considers the overall landscape effect should be regarded as moderate adverse (IR15.24) and he places moderate weight on this harm.

#### *Heritage assets*

13. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR15.25-15.30. He acknowledges Historic England's conclusion that the measures proposed would preserve the setting of St George's Church and the other buildings that make up the Brockworth manorial unit. However, like the Inspector he prefers the applicant's assessment that the complete separation of these buildings from their agricultural past would represent an adverse effect in associative terms on their setting, albeit the harm would be less than substantial (IR15.27). In view of Section 66(1) of the LBCA, the Secretary of State attaches considerable weight to the harm that the proposal would cause to the significance of these designated heritage assets. With regard to the wellhead and the WWII pillbox, the Secretary of State agrees with the Inspector that there will be no adverse effect on these assets, subject to the measures proposed (IR15.28-15.29).

### *Highway network*

14. For the reasons given at IR15.31-15.33, the Secretary of State concurs with the Inspector's conclusion at IR15.34 that no material harm has been identified in relation to the impact on the highway network.

### *Noise*

15. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR15.35-15.40. He agrees that the Environmental Statement provides sufficient information to demonstrate that the effect of noise from the Henley Bank Kennels could be fully addressed as part of the reserved matters and therefore it should carry slight weight in the overall balance (IR15.40).

### *Loss of agricultural land*

16. The Secretary of State agrees with the Inspector's reasoning and conclusion at IR15.41 that the loss of almost 42ha of best and most versatile agricultural land represents a moderate degree of harm, on which he places moderate weight.

### *Cotswold Beechwoods SAC*

17. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR13.1-13.4. He agrees that there would be no likely significant effect on the Cotswold Beechwoods SAC from this proposal, either alone or in combination. He agrees that it is therefore not necessary to carry out an Appropriate Assessment.

### *The supply of market and affordable housing*

18. The Secretary of State agrees with the Inspector's assessment at IR15.42-15.50. For the reasons given he agrees that the supply of housing in Tewkesbury Borough should be regarded as sitting within a range of 1.8-3.9 years (IR15.47) and notes that the undersupply has persisted over a lengthy period (IR15.48). Like the Inspector, the Secretary of State considers the delivery of some 525 units within the next five years as a substantial benefit (IR15.48). He also agrees that the provision for 40% affordable homes, equating to 600 units, makes a valuable contribution in the context of an identified need for 1600 affordable homes across the Borough (IR15.49) and that the wide range of tenure and dwelling types in this large scale proposal will make a valuable contribution to local housing (IR15.50). Overall, the Secretary of State attaches considerable weight to the housing benefits of the scheme.

### *Other considerations weighing in favour*

19. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR15.51-15.53. Like the Inspector, the Secretary of State considers that it is significant that the application site has the support of all three planning authorities involved with the JCS (IR15.51). He also agrees with the Inspector that the proposal could be described as plan-led development rather than one which would undermine the plan-making process. Since the proposal is in keeping with the emerging JCS, he agrees that the proposal should not be regarded as premature within the terms of Framework paragraph 216 (IR15.52). Overall the

Secretary of State concurs with the Inspector that, as the consistent conclusion of extensive study over the past decade has been that the area represents a logical and acceptable option for the extension of the built up area, the planning policy context should be accorded significant weight (IR15.53). In this matter the Secretary of State notes that the preliminary findings of the JCS examiner include that exceptional circumstances exist for the release of the proposed A4-Brockworth strategic development allocation from the Green Belt and that its allocation is sound (in Exam 146, see paragraph 5 of this letter).

20. The Secretary of State agrees with the Inspector that the considerable economic benefits the proposals would deliver should be accorded considerable weight (IR15.65). This includes the benefits identified at IR15.65 and also the economic benefits of the 'A' and 'B' use class development listed at IR5.1.
21. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR15.54-15.64 regarding open space, sport and recreation; education; health care; community facilities; accessibility and environmental gains. He agrees that the improved sports facilities would allow the local football team, Brockworth Albion, to grow and that this would be an additional benefit to the wider area that should attract a limited amount of weight (IR15.56). He agrees that the facilitation of an increased range of health services through the provision of a site of up to 0.4ha for a new or relocated GP doctor's surgery would represent a benefit to the wider community that should also carry a limited amount of weight (IR15.60). The restoration of the orchard at Henley Bank would also represent a modest net benefit to the wider community (IR15.63).

### **Conditions and Obligations**

22. The Secretary of State agrees with the Inspector's assessment of the proposed planning conditions at IR14.1-14.11. He is satisfied that the conditions recommended by the Inspector and set out at Annex A of the IR and Annex A of this letter meet the tests of paragraph 206 of the Framework and comply with the planning practice guidance. (Numbering after Condition 24 in the IR has been corrected.)
23. The Secretary of State agrees with the Inspector's assessment of the two planning obligations at IR14.12-14.21. He is satisfied that the requirements of the completed, signed and dated Section 106 agreements referred to at IR14.12 are in accordance with paragraph 204 of the Framework and the CIL Regulations 2010 as amended.

### **The planning balance and overall conclusion**

24. The Secretary of State agrees with the Inspector's assessment at IR15.66-70 about the harm to the Green Belt and other harm that the proposal would cause.
25. The Inspector noted correspondence from the Minister of State for Housing dated 9 July 2015 that reiterated that the single issue of unmet demand for housing alone would be unlikely to outweigh harm to the Green Belt (IR15.71). More recently, Government policy as set out in a letter dated 31 August 2015 and followed up in a Written Ministerial Statement on 17 December 2015 has stated that unmet need is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However in the

particular circumstances of this case, in addition to the considerable weight that the Secretary of State gives to the housing benefits of the scheme referred to at paragraph 18 above he also attaches significant weight to the longstanding strategic planning aims referred to at IR15.72 and paragraph 19 above, and also considerable weight to the economic benefits of the scheme referred to at IR15.73 and paragraph 20 above. To this must also be added the limited weight he attaches to the various other benefits referred to at IR 15.73 and paragraph 21 above. Overall, the Secretary of State agrees with the Inspector that the various considerations in favour of the proposal are sufficient to clearly outweigh the harm to the Green Belt and all the other harm identified, and that very special circumstances have been demonstrated in this case (IR15.74).

26. The Secretary of State also agrees with the Inspector's planning balance and overall conclusions at IR15.75-15.80. He agrees that the proposal would accord with the social, economic and, on balance, the environmental dimensions of sustainable development. He therefore considers that the proposal would be sustainable development in terms of paragraphs 6-10 of the Framework.
27. However, as the proposal concerns land designated as Green Belt, the presumption in favour of sustainable development at paragraph 14 of the Framework does not apply in view of the provisions of footnote 9 (IR15.77).
28. The proposal is in direct conflict with the adopted development plan as regards its policies on the Green Belt and housing, including settlement boundaries. There is also some conflict with policy on landscape (IR15.78). The Secretary of State has therefore gone on to consider if there are any material considerations that indicate the planning application should be determined other than in accordance with the development plan.
29. As the Inspector notes at IR15.79, although LP Policy GRB1 is consistent with the Framework with regard to its treatment of built development, it does not make provision for assessing the question of very special circumstances. LP Policies HOU2 and HOU4 are dated, since they are based on the revoked Structure Plan. They also represent relevant policies for the supply of housing so that, in any event, they should not be regarded as up to date in view of the accepted lack of an adequate housing land supply in Tewkesbury Borough. Thus the Secretary of State agrees with the Inspector that, whilst there is conflict with the adopted development plan, there are other important considerations to be weighed in the balance. With regard to the conflict in relation to the LP's Green Belt policy, as concluded at paragraph 25 above he agrees with the Inspector that very special circumstances have been demonstrated, so that the proposal would accord with Framework paragraph 88 (IR15.80).
30. With specific reference to housing, the Secretary of State agrees that two points made by the Inspector at IR15.80 are of particular importance: firstly, the stated aim in the Framework to significantly boost the supply of housing; and, secondly, the strategic approach of the emerging JCS. As regards the first, although the actual figure for the full objectively assessed housing need of Tewkesbury has not yet been established, the evidence to the JCS examination to date points overwhelmingly to high and persistent levels of unmet need. In relation to the second, the approach of the JCS is based on strategic allocations and associated alterations to the Green Belt and it adheres to the recognition of the planning

merits of an urban extension north of Brockworth. Moreover, the appeal Inspector notes that the JCS Examiner had indicated acceptance as to the question of exceptional circumstances. The Secretary of State considers that the points made at IR15.80 are consistent with further provisional findings of the JCS Examiner that the appeal Inspector did not see (paragraph 5 of this letter).

31. Bearing in mind that the JCS has been prepared so as to be broadly consistent with current national policy, the Secretary of State agrees with the Inspector that considerable weight should be attached to the broad approach of the JCS and, as a consequence, the contribution which the application site is expected to make to the strategic planning of the area. For these reasons, combined with there being very special circumstances in this case, the Secretary of State agrees with the Inspector that there are sufficient considerations to outweigh the conflict with the development plan (IR15.80).

### **Formal decision**

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission for the mixed use development of up to 1,500 dwellings including extra care housing, community facilities including A1, A2, A3, A4 and A5 local retail shops, B1 /B8 employment uses, D1 health facilities and formal/informal public open space, in accordance with application ref 12/01256/OUT, dated 5 December 2012, subject to conditions set out at Annex A of this letter.

33. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

34. This letter serves as the Secretary of State's statement under regulation 24(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

### **Right to challenge the decision**

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

36. A copy of this letter has been sent to Tewkesbury Borough Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Julian Pitt*

**Julian Pitt**

Authorised by the Secretary of State to sign in that behalf

## **Annex A**

### **Planning conditions attached to grant of planning permission: application ref 12/01256/OUT**

#### Reserved Matters

1. The development shall not be begun before detailed plans for the relevant phase of the development showing the landscaping, layout, scale and external appearance of the buildings (hereinafter referred to as "the reserved matters") have been submitted to and approved by the Local Planning Authority. The development shall be carried out as approved.

2 Applications for the approval of the reserved matters relating to Phase One of the development, as shown on the phasing plan (drawing no. 10.67.111 Rev H) shall be made to the Local Planning Authority before the expiration of 2 years from the date of this permission.

3. Phase One shall be begun before the expiration of 12 months from the date of the approval of the reserved matters applications relating to that phase.

4. Applications for the approval of reserved matters relating to all following phases of development shall be made to the Local Planning Authority before the expiration of 10 years from the date of this permission; and development shall begin on those phases not later than two years from the date of the approval of reserved matters applications relating to that phase.

5. All reserved matters and details required to be submitted pursuant to condition 1 shall be broadly in accordance with the principles and parameters described and identified in the Illustrative Masterplan (Drawing No. 10.67.108 Rev E), the Conceptual Masterplan (Drawing No. 10.67.107 Rev F) and the Design and Access Statement (Revised July 2014) received on 2nd July 2014. A statement shall be submitted with each reserved matters application, demonstrating how the submitted reserved matters comply with the Design and Access Statement and Masterplan documents.

6. No more than 1,500 dwellings shall be constructed on the site.

7. The development shall include no more than 22,000 square metres gross external floor space of B1 and B8 of and no more than 2,500 square metres gross external floor space of A1, A2, A3, A4 and A5. The A-Class land uses shall have no more than one unit of up to 400 square metres gross internal floor space, with the remaining units being up to 75 square metres gross internal floor space.

#### Flood Risk/Drainage

8. The first application for the approval of reserved matters on the site shall be accompanied by a surface drainage strategy for the entire application site. No building hereby permitted within each phase of the development shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority as part of the reserved matters applications for that phase. The information submitted shall be in accordance with the principles set out in the approved drainage strategy. Before these details are submitted, an assessment shall be carried out of



the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in DEFRA's non-statutory technical standards for the design, maintenance and operation of sustainable drainage systems to drain surface water (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

9. Floor levels of all properties shall be set a minimum of 600mm above the modelled 1 in 100 year flood level, including an allowance for climate change at the appropriate locations along the Horsbere Brook.

10. No building for any phase of development hereby permitted shall be occupied until sewage disposal works for that phase have been implemented in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

11. No new buildings, structures (including gates, walls and fences) or raised ground levels shall be constructed or erected within 5 metres of the top of any bank of a watercourse, and/or the side of any existing culverted watercourses, inside or along the boundary of the site.

#### Trees and Landscaping

12. The plans and particulars required to be submitted in accordance with the condition 1 shall include:

(i) a plan showing the location of, and allocating a reference number to, all trees protected by Tree Preservation Orders and all trees on the site which have a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;

(ii) details of the species, diameter (measured in accordance with paragraph (i) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (iii) and (iv) below apply;

(iii) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;

(iv) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree;

(v) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development. In this condition “retained tree” means an existing tree which is to be retained in accordance with the plan referred to in paragraph (i) above.

13. If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place.

#### Highways

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 approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors
- ii) loading and unloading of plant and materials
- iii) storage of plant and materials used in constructing the development
- iv) wheel washing facilities
- v) measures to control the emission of dust and dirt during construction
- vi) a scheme for recycling/disposing of waste resulting from demolition and construction works

15. No part of the development hereby permitted shall be occupied until such time as the improvement works to the junction of the A417 and A46 as shown in the Development Transport Planning Drawing no. 60007-TA-011 Rev B has been completed in accordance with the Local Planning Authority’s approval.

16. Except as specified in condition 17, no building shall be occupied on Phase 1 of the development until the Mill Lane highway improvement works shown on plan no. 60007-TA-015 have been completed in accordance with engineering details to be submitted to and approved in writing beforehand by the Local Planning Authority.

17. No more than 80 dwellings shall be occupied on Phase 1 of the development until the Mill Lane highway improvement works shown on plans no. 60007-TA-014 have been completed in accordance with engineering details to be submitted to and approved in writing beforehand by the Local Planning Authority.

18. No building shall be occupied on Phases 2, 3 or 5 until a scheme of works broadly in accordance with the following plans has been submitted to and approved in writing by the Local Planning Authority:-

- (i) Court Road compact roundabout highway works as shown on plan no. 60007-TA-005 rev B;
- (ii) the Court Road Bus Layby highway works as shown on plan no. 60007-BUS-002;
- (iii) the Vicarage Lane Half Width Bus Layby highway works as shown on plan no.60007-BUS-001;

- (iv) the Westfield Road / Ermin Street junction improvements highway works as shown on plan no. 6007-TA-009;
- (v) the Ermin Street / Shurdington Road junction improvement highway works as shown on plan no.60007-TA-010; and
- (vi) the Cycle Route signage scheme as shown on plan no. 60007-AUDIT-03.

Development shall be carried out in accordance with the approved details.

19. No building hereby permitted shall be occupied on Phases 4 and 6 of the development until a scheme of works broadly in accordance with the following plans has been submitted to and approved in writing by the Local Planning Authority:-

- (i) Valiant Way normal roundabout highway works as shown on plan no. 60007-TA-006 rev D; and,
- (ii) The cycle/footway works shown on plan no. 60007-TA-013.

Development shall be carried out in accordance with the approved details.

20. No building hereby permitted shall be occupied on Phase 7 of the development as shown on the approved Phasing Plan until a scheme of works broadly in accordance with the following plans has been submitted to and approved in writing by the Local Planning Authority:-

- (i) Delta Way normal roundabout highway works as shown on plan no. 60007-TA-007 rev A;
- (ii) the A417/Delta Way roundabout improvements works as shown on plan no. 60007-TA-008; and
- (iii) the cycle/footbridge works shown on plan no. 60007-TA-012

21. No dwellings 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.

22. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development 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 either a dedication agreement has been entered into or a private management and maintenance company has been established.

#### Archaeology

23. No development shall take place within any phase of the development until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation for the relevant phase, which shall have first been submitted to and approved in writing by the Local Planning Authority.

#### Noise

24. No development shall take place within any phase of the development until a Noise Assessment has been carried out by a suitably qualified person. The Noise

Assessment shall particularly address the likely effects of road noise and noise from the Henley Bank Kennels on any proposed residential areas within the site. It shall provide details of measures to mitigate and minimise any identified adverse noise effects within those areas. It shall also specify measures to protect any individual properties as required. A scheme of measures based on the Noise Assessment and broadly in accordance with the proposals set out within the Design and Access Statement shall be submitted to and approved in writing by the Local Planning Authority, together with a timetable for their implementation. No dwelling shall be occupied until any measures in the approved scheme which are relevant to it have been carried out in accordance with the approved details. The approved measures shall be retained thereafter.

25. No external construction works, deliveries, external running of plant and equipment or internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1400 on Saturday and not at all on Sundays, Public or Bank Holidays.

#### Environmental

26. No development shall take place until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the Local Planning Authority. The EMP shall be in accordance with the mitigation and enhancement measures in the submitted Environmental Statement. It shall include a timetable for implementation, details for monitoring and review and how the areas concerned will be maintained and managed. Development shall be in accordance with the approved details and timetable in the EMP.

27. No development shall take place until a Construction Environmental Management Plan in accordance with the approach outlined in the Environmental Statement has been submitted to and approved in writing by the Local Planning Authority. This shall deal with the treatment of all environmentally sensitive areas, their aftercare and maintenance as well as detailing measures for their protection during construction. The scheme shall include details of the following and the works shall be carried out in accordance with the approved method statement.

- (i) The timing of the works
- (ii) The measures to be used during the development in order to minimise environmental impact of the works (considering both potential disturbance and pollution)
- (iii) The ecological enhancements as mitigation for the loss of habitat resulting from the development
- (iv) A map or plan showing habitat areas to be specifically protected (identified in the ecological report) during the works.
- (v) Any necessary mitigation for protected species
- (vi) Construction methods
- (vii) Any necessary pollution protection methods

#### Waste Minimisation

28. All applications for reserved matters shall include details of the proposed design and location of recycling and refuse storage arrangements within that phase. The recycling and refuse storage facilities shall then be provided in accordance with the approved scheme and retained as such thereafter.

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# Report to the Secretary of State for Communities and Local Government

by Mrs KA Ellison BA, MPhil, MRTPI

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

Date: 4 December 2015

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**Town and Country Planning Act 1990**

**Tewkesbury Borough Council**

**Application by**

**ERLP and the Merchant Venturers**

Inquiry opened on 28 July 2015

Land at 'Perrybrook' to the north of Brockworth and south of the A417, Brockworth, Gloucestershire

File Ref: APP/G1630/V/14/2229497

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1.	Procedural Matters .....	1
2.	The Site and Surroundings .....	2
3.	Planning Policy .....	2
4.	Planning History .....	3
5.	The Proposals .....	3
6.	Other Agreed Facts .....	4
7.	The Case for Tewkesbury Borough Council .....	6
8.	The Case for Save the Brockworth Greenbelt Limited (SBGB) .....	8
9.	The representations made by interested parties who spoke at the inquiry .....	13
10.	The Case for ERLP2 and the Society of Merchant Venturers.....	15
11.	Written Representations .....	36
12.	Environmental Statement .....	37
13.	Relationship to the Cotswold Beechwoods SAC .....	37
14.	Conditions and Obligations.....	38
15.	Conclusions .....	41
	The planning balance and overall conclusion .....	57
	Recommendation.....	59
	Annex A Conditions .....	69

**File Ref: APP/G1630/V/14/2229497****Land at 'Perrybrook' to the north of Brockworth and south of the A417, Brockworth, Gloucestershire**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 24 November 2014.
- The application is made by ERLP and the Merchant Venturers to Tewkesbury Borough Council.
- The application Ref 12/01256/OUT is dated 5 December 2012.
- The development proposed is mixed use development of up to 1500 dwellings including extra care housing, community facilities including A1, A2, A3, A4 and A5 local retail shops, B1 /B8 employment uses, D1 health facilities and formal/informal public open space.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
  - (i) the consistency of the proposal with the development plan for the area;
  - (ii) its conformity with policies contained in the National Planning Policy Framework on delivering a wide choice of high quality housing and on protecting Green Belt land;
  - (iii) any other matters the Inspector might consider relevant.

**Summary of Recommendation: The application be approved.**

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**1. Procedural Matters**

- 1.1. A pre-inquiry meeting was held on 10 April 2015, when the parties were advised as to those other matters which the Inspector considered to be relevant. These included the housing land supply situation, the status of the development plan, accessibility, effect on the Green Belt, effect on character and appearance, effect on heritage assets, highway matters, living conditions, whether the planning obligations would make the development acceptable in planning terms and whether the very special circumstances necessary to justify the development could be demonstrated.
- 1.2. The inquiry sat for three days from 28-30 July. It was adjourned to allow for the receipt of survey information to update the Environmental Statement and for the submission of completed planning obligations<sup>1</sup>. The inquiry was closed in writing on 9 September 2015.
- 1.3. While the inquiry was adjourned, SBGB provided a copy of the Secretary of State's decision on appeal ref APP/B1930/A/12/2180486 & APP/B1930/A/13/2201728<sup>2</sup> concerning land at Harpenden Road, St Albans, on the basis that it was relevant to this appeal. I deal with this at paragraph 15.71 below.
- 1.4. The application is not opposed by Tewkesbury Borough Council. At the Council's Planning Committee of the 19 August 2014, it was recommended that permission be delegated to the Development Manager subject to certain matters. These included referral of the application to the Secretary of State, alterations to planning conditions as necessary and completion of a Section 106 Agreement. The Planning Committee resolved to delegate permission in accordance with the recommendation.

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<sup>1</sup> ID03&04, ID14 &15

<sup>2</sup> ID 16

- 1.5. The Save Brockworth Green Belt (SBGB) opposes the development, as do many local residents. SBGB was granted Rule 6(6) status on 20 April 2015. Although one Proof was submitted, on the opening day of the inquiry SBGB advised that it would call no witnesses. It should be noted therefore, that no formal oral evidence was presented in opposition to the proposal, nor was there any opportunity for the Applicants' case to be put to opponents in cross examination.
- 1.6. Four Statements of Common Ground (SoCG) were submitted: one between the Applicant and Council; one between the Applicant, Council and SBGB; one on Transport and Highways Matters; and one on planning conditions and CIL compliance. [CDG4-G7]
- 1.7. I carried out an accompanied site visit before the inquiry opened on 27 July and a further, unaccompanied visit on 31 July.
- 1.8. Two planning obligations were submitted, one between the Applicants and Tewkesbury Borough Council, the other between the Applicants and Gloucestershire County Council. Their provisions are considered at part 14 of this report.

## **2. The Site and Surroundings**

- 2.1. The site is located immediately to the north of Brockworth and is some 76.65 hectares in area. It is mainly agricultural land within a generally open, slightly undulating rural landscape. Other land uses within and around the site include the urban area of Brockworth, open space, sports pitches and a clubhouse associated with Brockworth Rugby Club, orchards, isolated dwellings, a small number of commercial enterprises and the strategic road network.
- 2.2. The site is bounded to the north by the A417(T), to the west by the M5 and to the east by the A46 Shurdington Road. The southern boundary of the site is formed by Mill Lane from its junction with the A46 to the Horsbere Brook. From there, the brook forms the southern boundary as far as the western limit of Cedar Road. Valliant Way and Court Road run north and south and serve to divide the site into three distinct parcels. A network of Public Rights of Way (PROW's) also crosses the land. A significant number of mature trees are covered by Tree Preservation Orders.
- 2.3. The site is located within the Gloucestershire Green Belt as defined by the Tewkesbury Borough Local Plan 2006. The banks of the Horsbere Brook fall within Flood Zone 3 but the remainder of the land is within Flood Zone 1. The Brockworth Court Manorial Complex is outside the application site but enveloped by it. The group includes a Grade I listed church, a grade II\* listed manor house and tythe barn and some other grade II listed structures. A poorly maintained Perry Pear Orchard is located towards the eastern end of the site.

## **3. Planning Policy**

- 3.1. Relevant policies are those saved policies contained in the Tewkesbury Borough Local Plan to 2011, which was adopted in March 2006. With regard to housing, policy HOU2 identifies Brockworth as a larger settlement capable of satisfactorily providing additional housing development. However, the



application site lies outside the defined residential development boundary for Brockworth, where policy HOU4 does not permit new residential development except in limited circumstances. Policy HOU13 provides that the Council will seek to negotiate with developers to provide affordable housing, subject to there being an identified need.

- 3.2. The site also lies in the Green Belt. Policy GRB1 sets out those forms of development in the Green Belt where planning permission will be granted. None are applicable to this proposal. Policy LND4 states that in considering proposals for development in rural areas, regard will be given to the need to protect the character and appearance of the rural landscape. Policy LND7 requires that high quality landscaping schemes should be provided which form an integral part of the overall development and encourages the retention of existing landscape features.
- 3.3. On detailed matters, policy EVT3 states that new development will be sited away from sources of noise and expects noise effects to be ameliorated. Standards for outdoor playing space are set out in policy RCN1 which requires 2.43 ha of open space per 1000, of which 1.2ha should be playing pitches. Policy TPT1 expects development to make provision for access by various modes of transport. Highway access should not affect the safety or satisfactory operation of the highway network. Policy GN11 requires the provision of the infrastructure and public services necessary to enable a development.
- 3.4. The Joint Core Strategy (JCS) for Gloucester, Cheltenham and Tewkesbury was submitted for examination in November 2014. At the time of the inquiry, an initial round of Hearing sessions had taken place but the Inspector advised that further work was required. Nevertheless, the emerging JCS provides important context for the assessment of this proposal.
- 3.5. The most relevant policies are those concerned with strategic development. The strategy of the JCS, as set out in policy SP1, is to provide for housing primarily through urban extensions to Gloucester and Cheltenham, where much of the need arises. This requires the Green Belt boundaries to be redefined. The distribution of development is outlined in policy SP2 and includes land to the north of Brockworth. Policy SA1 designates the various Strategic Allocations and requires a comprehensive scheme for each area. Plan A4 to that policy identifies Land north of Brockworth for housing, with an indicative capacity of 1500.

#### **4. Planning History**

- 4.1. Various planning permissions have been granted for agricultural, sport and other recreational uses but none are particularly relevant to this proposal. There have been no applications for major housing development. However, the site has been promoted for housing through the plan-making process for several years.

#### **5. The Proposals**

- 5.1. The proposal is made in outline, with the principal means of access to be determined at this stage. The key elements of the proposal are:

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- residential development of up to 1,500 dwellings of which 40% would be affordable housing including up to 175 units of extra care accommodation;
  - 3.3ha of new B1 and B8 employment uses, comprising up to 22,000sqm of floor space on the western part of the site;
  - a mixed use community hub including Classes A1, A2, A3, A4 and A5 local retail uses (totalling 2,500sqm) and Class D1 health facilities to be located adjacent to Brockworth Court;
  - 2ha of land for a new primary school of 1.5 form entry capacity;
  - playing pitches and associated facilities around the Brockworth Rugby Club site;
  - formal and informal areas of open space and children's play areas, as well as a green corridor along the Horsbere Brook; and
  - 0.78ha of on-site allotments.
- 5.2. It is proposed to develop the site in seven separate phases, commencing from the eastern side and moving westwards. The sports pitches would be provided within the first phase of development. The community and retail hub and primary school would all be delivered within the second phase. The employment land is proposed to be delivered within the seventh and final phase.
- 5.3. In terms of the road network, it is proposed to improve the junction between Mill Lane and the A46 Shurdington Road, to the east of the site. Going from east to west, there would be two accesses from Mill Lane to serve Phase 1 of the development; a further access from Mill Lane to serve Phases 2 and 5, together with a new roundabout on Brockworth Road, which would also serve Phases 3 and 4 further to the west; a new roundabout on Valliant Way would serve Phases 4 and 6 as well as Phase 7 and the employment area; south of the employment area, there would also be a roundabout junction onto Delta Way.

## 6. Other Agreed Facts

- 6.1. The site is within the Gloucester and Cheltenham Green Belt. The proposed development constitutes inappropriate development in the Green Belt which is harmful by definition and to which substantial weight should be attributed. Consequently, it is necessary to demonstrate that there are very special circumstances which clearly outweigh harm by reason of inappropriateness and any other harm.
- 6.2. The development would, by definition, result in loss of openness and would conflict with the stated Green Belt purpose of safeguarding the countryside from encroachment. These factors amount to the 'other harm', which will attract substantial weight against the proposal. It was also agreed that the following factors should weigh in favour of the proposal, although the degree of weight was not agreed:
- the siting of the development at an identified sustainable location making best use of existing infrastructure at a 'First Tier' settlement;
  - the added benefits from the 0.4 hectare site for a GP surgery, which would support provision of other health facilities and provide a surgery in the

northern part of Brockworth, where the majority of patients would be based;

- the extension to the facilities at Brockworth Rugby Club would enable the Club to unlock available funding. Millbrook Academy would also benefit, in view of its strong links with the Rugby Club;
- the financial contribution towards the services carried out by the Brockworth Community Project (BCP), which operates the Brockworth Community Library and helps local residents in many ways, including the provision of practical assistance to find jobs and advice on financial difficulties as well as a youth club and youth support services;

- 6.3. The housing requirements of the Tewkesbury Borough Local Plan are based on a now revoked Structure Plan housing figure and are therefore out of date. The housing requirement for the purposes of paragraph 47 of the Framework should be the full, objectively assessed need (OAN). As the figure in the emerging JCS has yet to be tested and is subject to unresolved objections, it should be afforded limited weight at this stage. The Council cannot demonstrate a 5-year housing land supply. In the context of NPPF paragraph 47, a 20% buffer should be applied.
- 6.4. The proposal is in accordance with the emerging JCS and development of the site at this stage will not undermine the plan-making process. Given the position in respect of the OAN, there is a need for the release of the application site to meet the immediate development requirements for the locality.
- 6.5. There are views of the site from within the Cotswolds AONB, including Coopers Hill, Churchdown Hill and Crickley Hill. Although views from within the AONB and around Brockworth Court are considered to be of 'high sensitivity', the overall visual sensitivity of the site is 'medium to low'. Due to its scale, the development would have an adverse impact on the landscape. However, due to the physical characteristics of this particular site, and its immediate environs, it will be possible to secure a sensitively designed form of development and any significant long-term impacts can be adequately mitigated through future reserved matters applications and planning conditions.
- 6.6. It was agreed that the masterplan provides for a quality development. This will allow the development to be based on sound urban design principles that will be appropriate to the character and appearance of the existing settlement. It was also agreed that the layout would satisfactorily incorporate landscape features and that safe and suitable access could be achieved. With regard to archaeological interests, it was agreed that a planning condition requiring an appropriate programme of further archaeological recording prior to the commencement of development would adequately mitigate the proposal so that the development would result in less than substantial harm to the value of those assets.
- 6.7. On flood risk, it was agreed that the development would not be at risk of fluvial flooding and that the impact of surface water discharge could be adequately mitigated through the submission of a comprehensive SuDS scheme.

- 6.8. The site is located within 2km of the Cotswold Beechwoods Special Area of Conservation (SAC). However, it was agreed that there would be no likely significant impact.
- 6.9. The provision of up to 40% affordable housing would equate to up to 600 units on the site, which would be provided in a suitable mixture that would assist in meeting the needs of the area.
- 6.10. The allotment land would be adequate to serve the proposed development.

## **7. The Case for Tewkesbury Borough Council**

The material points are:

### *The Green Belt*

- 7.1. The site is located within the Gloucester and Cheltenham Green Belt. The built parts of the proposed development comprise inappropriate development. As such, it is up to the Applicants to demonstrate that there are very special circumstances which outweigh the harm to the green belt by way of inappropriateness and any other harm. The Council's Planning Committee accepted that very special circumstances were made out in this case. This remains the Council's position.
- 7.2. One of the functions of the green belt in this location is to resist the coalescence of Gloucester and Cheltenham which, in turn, goes to the point about the "permanence" of green belt boundaries. The nature of this application is such that, if granted, the green belt boundary will be shifted northward to the alignment of the A417(T). Green belt policy places great weight on the "permanence" of green belt boundaries.
- 7.3. As Mr Rider explained, the original green belt boundary to the south of the A417(T) was drawn to the line of the Horsbere Brook, which presumably was a physical feature at that time. Aside from that, there is nothing special about the brook in green belt terms and the A417(T) will serve exactly the same function, although it would be a more robust boundary.
- 7.4. The EiP Panel for the draft Regional Strategy for the South West of England concluded that 'the land [i.e. this site] could be developed without compromising the purposes of the wider Green Belt hereabouts inasmuch as sprawl, merging and encroachment in to the countryside would all be held in check by the bordering road network.' For the reasons given by Mr Rider, the Council is content that the coalescence of Gloucester and Cheltenham at this point will be held in check by the bordering road network.
- 7.5. As to the site's contribution to the green belt, Mr Rider has placed an extract from the AMEC Green Belt Assessment (September 2011) at his Appendix 8 and he has pointed out that the site was assessed as making a "limited contribution", the lowest rating in the scale applied.

### *Housing land supply*

- 7.6. The Council confirms that it does not have a supply of developable housing sites for the next 5 years. It has between 2.7 and 3.9 years of supply.

- 7.7. The 2.7 year figure is taken from the projections which were used in the preparation of the Draft Regional Spatial Strategy for the South-West (RSS) - the now somewhat tired rationale being that the base dates and subsequent projections were tested at the Examination in Public which took place in 2007. It is important to note that the Draft RSS never became a development plan document. A consolidated consultation draft was issued by the Secretary of State in 2008, showing his proposed changes, and there it stood until 2010, when there were moves to revoke the Regional Strategies.
- 7.8. The Draft RSS was created in a very different planning policy climate and, importantly, the evidence base was collated, at best, about 10 years ago. Some of the evidence is much older. The Council has, in the past, been content to have regard to figures from the Draft RSS, but there has to come a point when this simply becomes an exercise in archaeology. As Mr Rider has indicated, that point in time has probably arrived. Notwithstanding this, examples of some recent appeal decisions have been provided where the Council has been content to accept the 2.7 years for the simple reason that, whichever way one cuts it, the Council's land supply figure falls below the 5 years which triggers paragraph 14 of the NPPF.
- 7.9. Turning to the 3.9 years figure, this is taken from the evidence which has been prepared in connection with the emerging Joint Core Strategy. This is intended to be a strategic planning document which will provide overarching policies for the three participating local planning authorities: Tewkesbury, Cheltenham and Gloucester. The JCS was submitted for examination in November 2014. The public hearing sessions commenced on 19 May 2015 and are still progressing. Predictably, the topic of housing requirement is the subject of considerable discussion. The JCS is based on considerable research and has been referred to in other appeals when considering the matter of the 5 year supply of deliverable housing sites.
- 7.10. Clearly, there is a difference between the Applicants and the Council as to the exact figures, depending on which methodology is used<sup>3</sup>. Mr Lewis helpfully indicated that the most important thing is the fact that, whichever set of figures one uses, the upshot is that the shortfall is a significant material consideration. The Council has always concurred with, and accepted, that overall conclusion.
- 7.11. With regard to Mr Lewis' Table A [p17], the most appropriate scenario is that shown in the final column headed: "JCS policy on without green belt sites" which gives an outturn of 3.9 years<sup>4</sup>. Mr Rider drew attention to the corresponding column of Table B3 [p19] and advised that this is the appropriate column which, if one uses Mr Lewis' assumptions, gives 2.9 years. However, Mr Rider pointed out that Mr Lewis' 10% discount for non-implementation is not appropriate for large sites albeit the Council does apply it to small sites. Some LPAs use a blanket 10% buffer, but that is a matter for them and their local circumstances. Mr Lewis has not pointed to

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<sup>3</sup> See pages 17-19 of Mr Lewis' proof of evidence

<sup>4</sup> This figure includes the contributions which the Council have adopted for Cheltenham and Gloucester under the 'duty to cooperate

any market evidence of non-delivery for this locality to support this assumption. Indeed, at one point in his evidence Mr Lewis expressed the view that housing sites are being marketed and that he is confident that this site will follow suit.

### *Affordable Housing*

7.12. At paragraph 14.9 of Mr Rider's proof, he notes that the current need for affordable housing in the Tewkesbury administrative area is for 1,619 homes. This scheme will provide 600 houses. This will meet 37% of that need. To invert the figures, 63% of this unmet need will still remain. If a threshold of 10 houses was introduced, it would place more weight on delivery via large sites<sup>5</sup>. The case for the affordable housing is not only uncontested but adds considerable weight to the case for very special circumstances.

### *The proposed masterplan*

7.13. The Council is satisfied that the proposed masterplan will adequately mitigate the impacts of, and to, the development including heritage assets, landscape, ecology and noise. Expert witnesses on heritage assets, landscape and associated topics have provided clear explanations as to the impacts of the development and the mitigation measures. The nature of the mitigation measures are set out in the design and access statement and extremely full environmental statement, which includes separate technical studies of these and other topics. Both of those documents are tied in by the proposed planning conditions and so the mitigation measures mentioned by them can be carried into effect and monitored.

### *Conclusion*

7.14. The Council is supportive of the proposals and recommends that the Secretary of State grants planning permission for them.

## **8. The Case for Save the Brockworth Greenbelt Limited (SBGB)**

The material points are:

8.1. This scheme proposes to take what is an almost completely open site and cover it with approximately 70ha of built development. It will become the antithesis of an open Green Belt site. It would clearly harm three of the stated purposes of the Green Belt as well as its essential characteristics. The alleged very special circumstances are largely a restatement of some of the usual benefits of providing housing where there is unmet need. The Secretary of State has made clear on a number of occasions that this is unlikely to outweigh the harm to the Green Belt, and other harm, so as to constitute very special circumstances.

### ***Green Belt Policy***

8.2. Green Belts have been an essential element of planning policy since 1955. The Framework notes "The Government attaches great importance to Green

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<sup>5</sup> Inspector's note: Such a change was in place at the time the inquiry was held but had been removed from the Planning Practice Guidance (PPG) at the time of writing

Belts." Firstly, it is not in dispute that this is inappropriate development. What flows from being inappropriate development is that it is "by definition harmful to the Green Belt and should not be approved except in very special circumstances." (NPPF para 87.)

- 8.3. The policy is clear that "when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt" (NPPF para 88). Harm by definition alone would need to be given very substantial weight in the determination of any Planning application. Very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

*Harm to the Fundamental Aim of Preserving Openness*

- 8.4. The site contains a small enclave of buildings (the village church and Brockworth Court and associated buildings) but apart from that is completely open. It is fulfilling the fundamental aim of Green Belt policy of preventing urban sprawl by keeping land permanently open. The application, if granted, would destroy this openness with 1500 houses and the necessary facilities. It would be a massive incursion into the Green Belt. The majority of the site would become urbanised and would lose its openness completely, contrary to the aims of the NPPF para 79.
- 8.5. This harm should be given great weight and is separate from inappropriateness by definition. There are many Green Belt cases where houses could, for example, replace an industrial series of buildings which would be inappropriate but could be said not to damage openness. This is not the case here.

*Purpose 1 – Preventing Urban Sprawl*

- 8.6. It would be totally contrary to this purpose to grant this application. The application site does not presently represent urban sprawl. This is a place where there are fields. The development would do very real harm to the first Green Belt purpose because it would replace open land with urban sprawl. It would allow substantial urban development to break the current northern boundary of Brockworth that has been so successful at stopping incursions.
- 8.7. It has been argued in previous cases before the Secretary of State that a development could not be urban sprawl because it was well designed. The inspector rejected this submission upon the basis that the idea that something ceases to be urban sprawl because it is well designed would effectively undermine Green Belt policy<sup>6</sup>.
- 8.8. Size is also a factor to be taken into account and this is a large amount of development.

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<sup>6</sup> For example this is consistent with the interpretation of urban sprawl in APP/M1520/A12/2177157, the "Castlepoint" decision/Fox Land and Property Limited versus Secretary of State for Communities and local Government, Castlepoint Borough Council (2014) EWHC 15 (Admin ID22a)

*Purpose 3 – Safeguarding the Countryside from Encroachment*

- 8.9. The third purpose of safeguarding the countryside is fulfilled at the moment by the appeal site. It is clearly countryside and not urban fringe. This development would cause the direct loss of 74ha of countryside.

*Purpose 4 - To Preserve the Setting and Special Character of Historic Towns*

- 8.10. The development will encroach upon the setting of the church and Brockworth Court and there will be damage to archaeological assets.

*Other harm*

- 8.11. There will be harm to the landscape.

*Conclusion on Harm*

- 8.12. The evidence shows that as well as the substantial weight to be given to Harm by Definition, there would be the following additional harm:
- substantial harm to the fundamental purpose of keeping land permanently open;
  - substantial harm to the purpose of checking unrestricted sprawl;
  - substantial harm to the safeguarding of the countryside from encroachment;
  - other harm to historic setting/archaeological assets and settings;
  - harm to the landscape.

***Very Special Circumstances***

- 8.13. The Applicants' Statement on Very Special Circumstances refers to the significant contribution of housing, the identification within the emerging JCS as a strategic development site, the provision of wider housing choice, the sustainability of the location, improvements to healthcare infrastructure, support for Millbrook Academy, improvements to sports facilities, improved public access along the Horsbere Brook, securing the Henley Bank Orchard and contributions towards community library services.
- 8.14. Whether considered in isolation or in combination, this list does not clearly outweigh the harm to the Green Belt, such that it could be considered that very special circumstances exist.
- 8.15. The Secretary of State has already set out that: "The single issue of unmet demand for conventional housing is unlikely to outweigh harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development in the Green Belt."
- 8.16. Most of the considerations set out by the Applicants, including the land supply issues, the wider housing choice, care homes, homes for key workers, the securing of planned housing requirements, are largely different ways of relying on unmet demand. As a matter of policy, unmet demand is unlikely to outweigh harm so as to be very special circumstances. In this case, where there is not just harm by definition but substantial harm to openness, to Green Belt purposes and other harm, it is even less likely to be very special circumstances.



- 8.17. The further considerations set out by the Applicants amount to no more than what would be required to serve the residential development. If housing need is unlikely to amount to very special circumstances then the provision of what is a standard requirement to serve the needs of future occupants is unlikely to amount to very special circumstances.
- 8.18. With regard to the contribution to meeting housing need and the identification of the site within the emerging JCS, all parties agree that the LPA is unable to demonstrate a deliverable supply of housing land. Similarly it is agreed that the housing requirement in the 2011 Tewkesbury Borough local plan is not up to date and that there is no independently verified up to date Objectively Assessed Housing Need (OAN) figure.
- 8.19. The LPA says that 3.9 years is the most appropriate measurement of supply to use at present. The OAN, as set out within the Submission Joint Core Strategy (JCS), is currently subject to independent examination. This process has not been straightforward and during her initial session on the housing matters, the Inspector concluded that she could not find the OAN sound on the basis of the evidence currently before her. Additional work would be required<sup>7</sup>.
- 8.20. The evidence of Ian Bickerton sets out criticisms of the methodology employed in arriving at the OAN of 30,500. It is his view that the need is considerably less than that. Also, the Inspector has asked that a list of sites that have been omitted from the calculation be drawn up and considered. Despite this uncertainty, the Applicants contend that the only likely readjustment of the OAN is upwards. No detailed response is given to Mr Bickerton's criticisms.
- 8.21. There can be no certainty regarding the outcome of the work to be undertaken. There are realistic prospects of producing a very much lower figure and, with the discovery of additional land, it may be that there is no need to take land from the Green Belt (for example one of the omission sites is Norton Farm, Twigworth which would produce 1,000 units). Alternatively, even if it is necessary to do so the Perrybrook site may not be identified for removal from the Green Belt. There is a great deal of objection and dispute regarding the OAN figure and so little weight should be given to the identification of this site in the emerging JCS.
- 8.22. In accordance with the Secretary of State's own guidance, the single issue of unmet demand for conventional housing is unlikely to outweigh harm to the Green Belt and therefore is unlikely to constitute a very special circumstance.
- 8.23. As to housing choice, this is a restatement of another normal aspect of the provision of housing. Nor could an absolutely standard requirement for the provision of affordable housing turn unmet demand into very special circumstances.

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<sup>7</sup> See note dated 1 July 2015, Appendix R1 to rebuttal proof of Mr Lewis

- 8.24. Although it is of some benefit that the proposal would bring forward development at an identified sustainable location, this is not of any great weight.
- 8.25. With regard to healthcare infrastructure, the Applicants admit that the surgery has current capacity to absorb some of the likely demand generated by the development. It is further suggested that a new surgery would have the advantage of being able to provide complimentary healthcare or preventative healthcare facilities. These advantages are little more than standard provision for a development of this sort.
- 8.26. It was not properly explained how the proposal would help the Millbrook Academy to function "at optimum capacity." In fact common sense would suggest that greater numbers would produce greater pressures. Again, the provision of a secondary school is standard in a development of this size and the evidence from Mr Clyne confirmed that the school would very soon be at full capacity and have to be expanded further. This standard provision should carry no weight.
- 8.27. The facilities at the rugby club and the football club are not going to be any greater than would be expected from a development of this type. It is suggested that the rugby club would be able to apply to the Rugby Football Union for a grant. They currently do not qualify to apply for these grants. That is a very speculative benefit over and above the standard provision. There is no guaranteeing that they would be awarded the grant.
- 8.28. The Applicants accept that many parts of the brook are currently available to the public. It is also conceded by the Applicants that the parish plan has identified a key objective within the parish as being to secure environmental enhancements along the Horsbere Brook and improve access along the length of the river corridor. An action group has been formed to assist in meeting that objective and since 2011 significant improvements have been made to facilitate access along those parts of the brook where public access is permissible. So there is already in place a programme giving improved access to the brook, allowing the public to have access to other parts of the brook. The claimed improvements to public access along the Horsbere Brook would not be of great benefit and should carry little if any, weight.
- 8.29. Although the transfer of the Henley Bank Orchard to the Gloucestershire Orchard Trust would ensure long term stewardship, conservation and celebration of this unique resource, the current position is that the Orchard is owned by the Applicants and is in a poor state of repair but the trees are subject to Tree Preservation Orders and so must be preserved. The public do not currently have access to the orchard. Having access to an orchard is unlikely to have much weight bearing in mind the loss of so much open Green Belt land in return.
- 8.30. It is understood that the grant of £290,000 to the Community Centre represents no more than the standard provision. The benefit here over and above standard provision, is said by the applicant to be the placing of the funds into the community project rather than to the County Council. Regardless of who it is paid to it remains standard provision.

## **Conclusions**

8.31. In conclusion, the evidence shows that the other considerations, even cumulatively, are not sufficient to clearly outweigh the harm by reason of inappropriateness and all the other Green Belt harm in this case and the application should be refused.

## **9. The representations made by interested parties who spoke at the inquiry**

The material points of the cases made by those who appeared at the Inquiry and who are opposed to the development are:

*Mr Mark Calway, for Laurence Robertson MP*

- 9.1. The Planning Committee decision was 7 for and 7 against, but the Chair used his casting vote. This shows there is not a great appetite for this application within the LPA. It also demonstrates there was good reason for this proposal to be called in by the Secretary of State. Green Belt is a vital tool in this area. The JCS is not yet adopted so the site still enjoys the full protection of its Green Belt status.
- 9.2. There is some inconsistency around the arguments on housing need. The site is required to meet the needs of Gloucester, yet that Authority has a five year housing land supply. In his letter to Laurence Robertson of 9 July 2015, the Minister of State for Housing and Planning reiterates that the single issue of unmet demand for housing would be unlikely to outweigh the harm to the Green Belt<sup>8</sup>.
- 9.3. As for the A417(T), this was deliberately sunk so as to protect the landscape and reduce noise. The discussions concerning the by-pass back in 1995 made clear the purpose was not to open up land for development. In terms of landscape, there are several important features to consider including Coopers Hill, Chosen Hill and Gloucester Cathedral. It is also very important to ensure development does not straggle out towards Shurdington. The AMEC study notes the greater sensitivity of the eastern part of the site in landscape terms.
- 9.4. It should not be assumed that the site will be removed from the Green Belt through the JCS, as the Inspector has not yet issued any formal conclusions.

*Mr John Eccles*

- 9.5. There are no exceptional circumstances to justify development on this valued area of open countryside, especially since the Government has stated that unmet housing need is unlikely to outweigh harm to the Green Belt. Looking at this site on a map or plan can be deceptive as it gives only a two-dimensional view. On site, when experienced in three dimensions, the by-pass cannot be seen. The site is visually continuous with the rest of the Green Belt. There is a continuous panorama in views from Coopers Hill. The countryside does not appear fragmented, even from the public footpath network. Also, this Grade 3 land is in active agricultural use. It is not low

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<sup>8</sup> ID02

quality urban fringe. Food production should count for more than development [NPPF paragraph 112].

- 9.6. Noise levels are unacceptably high, having been recorded as 55dB at the nearby Michael Wood motorway services. These have not been addressed. Nor has the issue of whether the development is compatible with the nearby kennels. Traffic on the A46 between Gloucester and Cheltenham is already congested, with peak time journeys taking about 40 minutes compared to 10 minutes at other times. This development will make the situation worse. Road capacity needs to be improved. As to affordable housing, it will be placed on the less desirable parts of the site.

*Councillor H Turbyfield, Ward Member, Brockworth*

- 9.7. He spoke on behalf of local residents. One of their main concerns was that this amount of housing would have an impact on its surroundings as well as the landscape. There are 360 degree views of the countryside from the church at Chosen Hill. Despite the presence of the A417(T) by-pass, the development will appear as a scar on the landscape. The vote at Planning Committee was very close and the proposal was only accepted as a result of the use of a casting vote.

*Lydia Lavia, Noise Abatement Society (NAS)*

- 9.8. The Society's remit is to find solutions to noise pollution problems for the public benefit. In relation to this proposal, it would have liked to see a qualitative as well as quantitative assessment of the soundscape, in reflection of the Noise Policy Statement for England and current professional guidance. Assessment methods have evolved significantly since the Noise chapter of the Environmental Statement was prepared in 2012. This development has the potential to become an exemplar site, if the latest standards were applied<sup>9</sup>. NAS recommends either that a revised noise impact assessment is prepared or that all of the conditions requested by the Council's Environmental Health Officer in respect of noise mitigation be upheld. These should not remain open for dispute under best practicable means arguments.

*Mr N Smith, Henley Bank Kennels*

- 9.9. The Kennels provide accommodation for 60 cats and 80 dogs. They have been in business since 1969 and employ 14 staff. The owners are concerned that if residential development is brought any closer it may lead to complaints which could, in turn, cause increased costs to the business, such as if it was required to meet more stringent noise limits. The noise survey should not be relied on as it was carried out in February 2012, whereas the busiest period for the kennels is the summer, a period when dogs spend more time outdoors, including overnight. Also, it fails to address the annoyance factor associated with dogs barking. The proposed noise barriers will not be effective for those dwellings positioned on the higher ground towards the A46 (the eastern side of the site).

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<sup>9</sup> BS4142:2014 Methods for rating and assessing industrial and commercial sound replaced the 1997 version referred to in the Environmental Statement

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## 10. The Case for ERLP2 and the Society of Merchant Venturers

The material points are:

### ***Introduction***

- 10.1. The central judgment in determining this application is whether the particular prevailing circumstances, seen in the round, are 'very special', thereby justifying the approval of a major scheme in the Green Belt, when seen against the scheme's negative effects. Such a judgment would be unique to the case - there can be no 'precedent' effect, because very special circumstances are just that.
- 10.2. That judgment can be made now. There is only the faintest suggestion from some local objectors that it would be 'premature' to grant permission for the proposals. Indeed, the JCS authorities, including of course Tewkesbury Borough Council, strongly support the grant of permission before the finalisation of the JCS. It is important in this case to recognise that releasing one of the least impactful, most easily delivered, JCS strategic allocations at this point would be entirely in line with the Framework, because it would further the aims of the JCS rather than undermine them and would represent sustainable development.
- 10.3. The first part of the Green Belt balance is an assessment of harm to the Green Belt by reason of inappropriateness and any other harm. There will be harm to Green Belt by reason of inappropriateness, and loss of openness, albeit that the baseline conditions have radically changed in the area since the Green Belt was drawn in 1968. There will be very low levels of residual harm, at most, to heritage settings, and to landscape and visual receptors. There will be a loss of some Best and Most Versatile Agricultural Land.
- 10.4. However, at no stage of the 'harm' assessment should it be forgotten that this is an application in relation to which the officers of the local planning authority recommended approval, and which the members voted to approve; in which the scheme in places lies in the setting of Grade I and II\* Listed Buildings, but which is said by Historic England to preserve and enhance those settings<sup>10</sup>; in which the proposals have the support of Highways England and the County Highway Authority, and which lacks objection from any statutory consultee or internal Council expert. Due weight should be given to the way that the proposals have been successfully brought together with the input of these key consultees over some years. Due weight should also be given to the fact that not a single expert witness has been produced to the inquiry who takes a different line on any of these points.
- 10.5. The second part of the Green Belt assessment is the 'benefit' or 'very special circumstances' appraisal. The ability to begin to deliver housing with minimum delay, including up to 600 affordable dwellings, is a very substantial benefit indeed when (as is agreed to be the case) there is:
  - (a) a significant 5 year housing shortfall;

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<sup>10</sup> Core Document F4.

(b) a very large affordable housing need; and

(c) the need to plan for consistent delivery throughout the plan period to meet needs.

10.6. Of course, nothing in Government policy or guidance requires the ability to meet needs to be excluded from the very special circumstances calculation. The consistent message in Ministerial statements since the Framework is that the ability of a Green Belt site to meet housing needs should not alone be judged to represent very special circumstances. In a case such as this, the role that meeting housing needs plays in the overall assessment of whether there are very special circumstances is compelling. The cumulative effect of the prevailing relevant circumstances clearly outweighs the harms identified.

### ***Effect on openness and permanence of the Green Belt***

10.7. The site is designated Green Belt and there is no dispute that the proposed development should be treated as inappropriate development for the purposes of paragraph 87 of the Framework. That is so notwithstanding that some of its elements (the open space and playing fields for instance) would not, on their own, amount to inappropriate development.

10.8. Harm would therefore be caused "by definition" (as indicated in paragraph 87 of the Framework). All inappropriate development is harmful by definition, but it is a nice question as to whether such "in-principle" or "definitional" harm varies in its extent according to the scale of the proposed development. Although it is right to note that Mr Lewis appeared to accept that it might, there is a respectable argument that such definitional harm cannot rationally be related to the scale of the development. Actual harm to openness or to the purposes of the Green Belt is a separate question – that plainly will vary as a matter of degree. Being harmful "by definition" should not overlap with those Green Belt considerations. In the Applicant's submission, "definitional" harm is an irreducible fixed element of harm which applies to all inappropriate development and it attracts the same due weight in all applicable cases.

10.9. The key question in this and other cases of inappropriate development is not so much that which relates to the definitional harm but that which relates to the degree of impact on openness, on permanence and on the purposes of the Green Belt. NPPF Paragraph 79 establishes that the "fundamental aim ... is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence." However, national policy recognises that even a planning policy with the expressed aim of affecting the environment on a 'permanent' basis must be able to respond to changing circumstances. Both the plan-making test in paragraph 83 of the Framework ("exceptional circumstances") and the decision-taking test in paragraph 87 ("very special circumstances") demarcate the policy limits of the idea of Green Belt "permanence".

10.10. There is no definition in national policy or guidance of the expression "exceptional circumstances" but clearly something is meant which counts as very unusual, or unforeseen when the Green Belt was designated. One

can readily see why general societal change, or the increasing demand for housing alone, would not naturally fall within the ambit of the test.

10.11. Returning to the approach to Green Belt harm:

- Openness is the absence of development; the degree to which this is affected is largely ascertainable by objective means but also entails an assessment of more subjective questions such as the visual effect of the proposal.
- The extent to which the Green Belt meets the national policy purposes (ie those set out in paragraph 80 of the Framework) is relevant to the degree of harm to the Green Belt. It may be that circumstances have changed in relation to part of the designated Green Belt since its designation such that it has ceased, or largely ceased, to perform the functions for which it was originally designated, or where its ability to perform those functions has been materially diminished.
- As to permanence, it makes no sense to ask whether developing a Green Belt site would affect its ability to remain permanently open – it would of course entirely negate that ability. Rather, the issue of permanence is relevant to whether there would be harm to the purposes of the Green Belt and to whether there might be consequential effects on the remaining Green Belt in the area were the particular parcel in question lost to the Green Belt.

10.12. With these principles in mind, the main points in relation to the application site are as follows:

- There would be harm caused by the proposals by definition, due to them amounting to inappropriate development in the Green Belt. Due weight should be attached to that.
- Looked at in bald terms, there would inevitably be a substantial impact on the openness of the site, ie its currently undeveloped status, as a result of up to 1500 homes, and nearly 30,000 sq m of other uses being placed on it. That is an effect to which it would be right to attach substantial weight, were it not for countervailing factors relating to the lack of Green Belt function and purpose served by the site, to which these submissions turn in a moment.
- Similarly, as to the more subjective aspects of openness, it is right to say that there would be areas which would take on a developed urban or suburban appearance, and some others which would be semi-rural or even (eg Horsbere, the Orchards) rural. The subjective aspect of loss of openness does not add, in any event, to the harm caused simply through the presence of built development.

10.13. The extent to which the purposes of the Green Belt would be affected by the development of the site shows a quite different picture, one which inevitably has an effect on the way one appraises the harm to the Green Belt, beyond definitional harm. The evidence shows the following:

- A radical change has occurred since the Green Belt was designated, when the site formed part of the countryside on the edge of Brockworth. At that stage, the Horsbere Brook formed a feature up to which built development progressed but beyond which stretched open countryside

to the north and west (containing some rural roads), and to the east as far as the A46. In 1971, the M5 imposed a major road to the west; in 1995, the A417(T) was driven through the area to the north, creating the application site as a parcel between a major road and the northern edge of Gloucester/Brockworth. With the A417(T) came the extended overbridge to the A46 and Valiant Way.

- This change has been recognised as making an important change to the role of the site as Green Belt; as far back as 2007, the EiP Panel made the following finding: *"... it also seems to the Panel that there is further capacity within a narrow sliver of land to the south of A417 and west of A46. The land is within the Green Belt but has become physically and visually detached from it in consequence of road construction works. The Panel considers that land within this area could be developed without compromising the purposes of the wider Green Belt hereabouts inasmuch as sprawl, merging and encroachment into countryside would all be held in check by the bordering road network, and in its present undeveloped state it makes no positive contribution to the setting or character of the city or to urban regeneration. We estimate the capacity here (which, like other land at Brockworth, lies within Tewkesbury Council's area) to be about 1,500 dwellings and accordingly recommend inclusion of this land as an additional area of search."*<sup>11</sup>
- From that point onwards, the plan-making authorities (including the then Secretary of State) have regarded the application site as a location for urban expansion of Gloucester/Brockworth. It is only because the plan-making process has either failed (RSS cancellation before adoption in 2010/13) or been inordinately drawn out (Joint Core Strategy, beginning in 2010 but still only at examination stage and perhaps a year or more away from adoption<sup>12</sup>) that the application site still lies within the designated Green Belt.
- Recent analyses of the contribution the site makes to the purposes of the Green Belt show a consistent approach. The allocation of the site for 1500 units and its removal from the Green Belt is promoted by the JCS authorities; their evidential basis includes the assessment by ENTEC<sup>13</sup>, which concludes *"this land [ie, the application site] could be developed without compromising the purposes of the wider Green Belt in terms of sprawl, merging and encroachment which would be held in check by the bordering road network... [t]he A417(T) Brockworth bypass, M5 and A46 road infrastructure dominates this location and provides very strong boundaries that would effectively contain development. This would prevent sprawl and ribbon development. It is therefore concluded that the whole area contributes little to this Green Belt purpose."*
- The ENTEC Report has not been challenged by conflicting expert evidence at this inquiry. Its conclusions also deal with the Green Belt

<sup>11</sup> CDC1, Panel Report extract, paragraph 4.3.28.

<sup>12</sup> There is no firm timetable, but Mr Lewis (response to Inspector) estimated that due to the need for modifications, further consultation and then the adoption process, the examination itself is unlikely to finish before mid 2016 and, at the earliest, the plan might be adopted in late 2016.

<sup>13</sup> CD C8, paragraph 6.7.2.



purpose of preventing neighbouring towns from merging<sup>14</sup>, saying "*PPG2 recommends that the most important attribute of Green Belts is their openness; however, a reduction of the separation distance by 200 m would not compromise the openness, especially as the A417(T) Brockworth Bypass forms a prominent landscape feature. If this area was released from the Green Belt there would be little risk of merging Gloucester and Cheltenham, or Brockworth with Shurdington, and the Green Belt in this location must be considered to be making little contribution to fulfilment of this purpose*".

- More recently, the AMEC Report<sup>15</sup> (in which the site is referred to as segments SE7-9 in Figure 4.1) assesses the contribution the site makes to Green Belt purposes as "limited"<sup>16</sup>. Its conclusion reads: "*Whilst forming the immediate boundary to Gloucester, intrusion of urban uses compromises its sense of openness. Severance from the main Green Belt tract to the north by the A417(T) further limits its function, meaning that there could be opportunities for re-examining its designation and boundaries. There would be no risk of sprawl or encroachment due to the strength of the A417(T) as a boundary. The segments' enclosure on all sides by major roads results in them serving little or no Green Belt function.*"
- Mr Harris has undertaken his own appraisal for this appeal, and has reached the same broad conclusions as to the limited contribution the site makes to the Green Belt, and (it follows) the limited harm in Green Belt terms that would arise were it to be developed.

10.14. In such a case, the fact that the site has been rightly assessed to make little or no contribution to the purposes for which Green Belt is designated inevitably affects the weight to be given to the loss of openness. It makes little real sense to give great weight to the quantitative assessment of Green Belt harm (ie the fact of the 1500 units, etc) in circumstances where the site plays such a limited Green Belt role. Cut off by the later major road system, the site is like an oxbow lake, separated from the main flow of the river. Placing a lot of weight on its Green Belt value would be as fruitless as boarding a boat in an oxbow lake in the hope of sailing to the sea.

10.15. Nor should the very weighty and consistent accumulation of expert opinion and plan-making judgment be set aside simply on the basis that the site has not yet been released from the Green Belt in the JCS process. The evaluative considerations which will inform the JCS Inspector's conclusions about the value of the site to the Green Belt are remarkably unequivocal in this case. No representation has been made at this inquiry referring to any expert opinion which is contrary to that of the EIP Panel, the Secretary of State, ENTEC and AMEC<sup>17</sup>, either at this inquiry or at the JCS hearings.

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<sup>14</sup> CD C8, paragraph 6.7.3.

<sup>15</sup> CD C9.

<sup>16</sup> CD C9, Table 5.1 and Figure 5.2.

<sup>17</sup> Whilst Mr Eccles expressed contrary views, his views are those of a local resident opposed to the development. He is not a landscape architect and has undertaken no proper

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Particular weight should be placed on the consistency of the expert opinion as to the site's Green Belt value since the advent of the roads.

10.16. As for the Inspector's questions at this inquiry:

- as Mr Harris said<sup>18</sup>, Mill Lane is not a comparable boundary to the A417(T) – it would not be as robust or capable of containing sprawl, particularly in the long run, when applications are coming forward against a background of increased needs.
- The site is not comparable to the Green Belt land beyond the A417(T) – partly, of course, because that land runs unbroken to the edge of Cheltenham, serving a clear Green Belt function with no similar demarcating or severing features; and partly because the character of the countryside in that location is different: less urban edge, less disturbed, less active, as Mr Harris said<sup>19</sup>.
- Mr Lewis<sup>20</sup> said that in his view the Green Belt status is a particular factor in the progress of changes to the development plan; such changes are often locally controversial. These submissions have recited, and rely on, the clear conclusions of expert assessments. But it is also true that as far as regional, national and local plan-making bodies are concerned, there is unanimity that the site should be released from the Green Belt. So in relation to this particular site, rather than the generality (perhaps even vagueness) of Green Belt considerations more broadly, there is little doubt that the evidence discloses no bar to the site being released. It is partly for that reason that Mr Lewis was able fairly to say that it is "pretty obvious" that the site is to be released in due course anyway through the JCS process.
- As to whether there are landscape or visual aspects to the site which should inform a Green Belt impact appraisal, Mr Harris was clear that the site, whilst in agricultural use, is affected by the urban edge and by road noise. He made it clear that the aspect of his character and visual assessment which might be most relevant to the Green Belt assessment is that relating to settlement pattern; as such, his judgments chime with those of other expert assessments undertaken over the past 7 or 8 years.

10.17. The Applicants' case is therefore that:

- the value of the site in Green Belt terms should be treated with circumspection, and therefore
- apart from the definitional harm caused by inappropriateness, the lack of Green Belt purpose served by the site, (and the identified limited harm its development would cause to the purposes of the Green Belt), should diminish to some extent the degree of Green Belt harm. It is

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assessment of the question. The last minute reference by the Rule 6 party to conclusions of an Inspector in 2002 were not put in context and were before the EiP Panel's conclusion.

<sup>17</sup> In answer to the Inspector's question.

<sup>18</sup> In answer to the Inspector's question.

<sup>19</sup> Again, in answer to the Inspector's question.

<sup>20</sup> Towards the end of his answers to the Inspector's questions.

recognised that Paragraph 88 of the Framework says that substantial weight should be given to *any* harm to the Green Belt; but that weight should be applied to a reduced degree of harm.

- 10.18. The Applicants recognise that there are two ways of reasoning the Green Belt purposes point (although there should be no 'double counting'). Instead of applying the 'lack of Green Belt purpose' point to diminish the *harm*, it would rationally be possible instead to leave the harm judgment unaffected but to take the point into account when assessing whether there are very special circumstances in this case. The difficulty with the latter course of action is that it is generally accepted that lack of harm is not traditionally one of the elements of a 'very special circumstances' set. So on balance, the Applicants suggest that (if the point is accepted as the evidence suggests it should be) the lack of, or diminished, Green Belt role played by the site should be taken into account when assessing the harm to the Green Belt that the development would cause.
- 10.19. In summary therefore, the Green Belt would not be seriously harmed by the development. The new boundary would plainly be capable of enduring beyond the plan period and underpinning the aspiration in national policy that such a boundary should be permanent<sup>21</sup>.

*Visual impact and landscape character changes, particularly in Green Belt and AONB terms*

- 10.20. The first point to note is that Mr Harris was quite clear that the landscape character and visual appraisal of the scheme was a separate exercise from the Green Belt issues. His assessment of whether the landscape and visual characteristics add anything in particular to the Green Belt issues is summarised above. The urbanisation of parts of the site, loss of openness, and truncation of some views by built form, would not really cause additional harm to what is relevant for the Green Belt, which is not a landscape or visual designation. Those effects inform a judgment as to the impact on openness. In equal measure, the fact that the site is not important *as Green Belt* goes directly to the amount of weight that should properly be given to these impacts in the 'Green Belt' part of the assessment.
- 10.21. Clearly, the site is not within a designated landscape. This sets it apart from a number of the Green Belt sites before the JCS inspector. Mr Lewis reported that the JCS Inspector had expressly distinguished between her acceptance that 'exceptional circumstances' exist for the release of Green Belt land and those Green Belt sites which are in addition constrained by AONB.
- 10.22. Given its importance, it is right to start with the potential effects of the proposal on the setting of the AONB. Leaving aside the fact that the 'setting' of an AONB is not a recognised asset to be protected or even assessed, the position is plain. Any impact could only be visual. From the

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<sup>21</sup> The Applicants note the point made for the first time in the rule 6 party's closing submissions at IR8.7 about the *Castlepoint* decision. It is however irrelevant to this decision as good design is not being prayed in aid here as contributing to very special circumstances.

key escarpment viewpoints<sup>22</sup>, the site lies in a narrow strip between the urban edge of Gloucester/Brockworth and the highly prominent line of the A417(T). It is in these elevated views, in fact, that the road system is at its most visually intrusive. The effect of the proposal in such large-scale views, where one is seeing the Severn Vale settled character at its most cartographic, would be relatively limited. As such, no finding of harm should be made as against the AONB or its 'setting'.

- 10.23. Turning to other distant views, it is said<sup>23</sup> that the site is visible from elevated views from Churchdown Hill (also referred to as Chosen Hill) and Coopers Hill (the site of the cheese-rolling event). As Mr Harris showed<sup>24</sup>, elevated views from the former are limited by landform and vegetation, even in the winter (and there is no view of the site at all from the Church or from directly outside it). Lower down, the site is seen lying beyond the A417(T) on the edge of an extensive urban area stretching away to the south.
- 10.24. From Coopers Hill<sup>25</sup>, the site is only partially visible (it is screened by intervening landform for some of the views) or else foreshortened by distance and perspective into a strip lying adjacent to the northern edge of Brockworth. Beyond it, the settled agricultural landscape of the Vale stretches away to the north in a vast panorama. There would not be any material harm to character or views from these locations.
- 10.25. As to the site and its immediate surroundings, it is accepted<sup>26</sup> that the development would cause harm, albeit that it will be limited. The site is not designated for its value, but it does contain valuable landscape elements: the Horsbere Brook corridor and the declining Perry Pear Orchards (including Henley Bank Orchard) are both of higher value. The Masterplan approach would enhance those landscape character elements. Those parts of the landscape lie in discrete areas of the site and do not inform or create its overall character.
- 10.26. It is only those elements, rather than the landscape as a whole, which could even qualify as locally valued. Indeed Mr Harris has assessed the landscape character of the site bearing in mind the guidance on paragraph 109 of the Framework given by the Inspector in the Kings Stanley case<sup>27</sup>, subsequently approved by Ouseley J in *Stroud District Council v SSCLG*. He finds that the landscape of the site does not fall into the 'locally valued' category, since it does not contain any "demonstrable physical attribute rather than just popularity"<sup>28</sup>.

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<sup>22</sup> See for instance Mr Harris' Appendices, viewpoints 3 to 5.

<sup>23</sup> Cllr Turbeyfield, Mr Eccles and Mr Calway all made this point to the inquiry.

<sup>24</sup> See for instance his photo viewpoints 9 (Coopers Hill) and 11 (Churchdown Hill).

<sup>25</sup> See Mr Harris' photo viewpoints 9 and 10.

<sup>26</sup> See his evidence, section 6, which reflects the LVIA contained within the ES.

<sup>27</sup> Mr Harris' paragraph 6.4, and Appendix B.

<sup>28</sup> Having heard this discussion at the inquiry, the rule 6 party now asserts (new document "Value of the Landscape") that the Green Belt is "valued locally as a much loved recreational space". That does not fall within the principles set out in the Stroud case (CDD13).

- 10.27. Mr Eccles described it as “proper countryside” when he spoke at the inquiry but, as assessed by the landscape architects, it would be better to call it ‘ordinary’ countryside which lies on the urban edge. Indeed, there was a certain tension inherent in Mr Eccles’ evidence as he asserted a high value for the site as unspoilt countryside and at the same time criticised the proposal for housing in a location that is, according to him, “not a good place to live” and “horrible and noisy” due to the effects of the strategic road network on the perceptual qualities of the site.
- 10.28. Perhaps the key aspect of the assessment undertaken by Mr Harris was his analysis of the way the relatively flat Vale landscape on and near the site relates to its surroundings. From the Vale itself, including the site, one experiences a compartmentalised landscape, in which one’s view is usually truncated by vegetation or minor changes in levels, but from which one has views of the hills. The latter point is a characteristic of the urban areas of the Vale as well as the undeveloped parts. So the capacity of the landscape to accept development of the type proposed here is good. No character aspect prevents residential and business development and visual impact is limited by the fact that the scene is a series of relatively enclosed short/medium distance views delimited by vegetation<sup>29</sup>.
- 10.29. The report to committee<sup>30</sup> refers to the conclusions of the *Landscape Characterisation Assessment and Sensitivity Analysis*<sup>31</sup> which graded the site as of medium/low or medium sensitivity, recording that the analysis concluded that the western portion in particular had “lost its tranquillity due to the extensive road networks surrounding it”. The Borough Landscape Officer is recorded<sup>32</sup> as agreeing with that conclusion and those of the Environmental Statement on landscape and visual matters. That officer raised no objection to the grant of permission, partly due to the mitigation proposed.
- 10.30. The Environmental Statement recognises that a few residential receptors and those using footpaths<sup>33</sup> will be detrimentally affected, but the residual harm would be minor given the mitigation proposed. Mr Harris also accepted<sup>34</sup> that there would be a limited degree of landscape/visual harm.
- 10.31. Field boundaries, especially important hedgerows, are intended to be retained, and that has been one of the guiding principles of the Masterplan<sup>35</sup>. Whilst it will not be feasible to guarantee the survival of every stretch of existing hedge, the landscape-led masterplan does take as one of its cues the position of existing field boundaries and this would be delivered through the reserved matters process under the supervision of the Council, if outline permission is granted. All important trees will be protected.

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<sup>29</sup> Mr Harris’ photo viewpoint 25 is a good example to which he spoke in XC.

<sup>30</sup> CD G1.

<sup>31</sup> CD C11,

<sup>32</sup> CD G1 paragraph 8.5-8.6.

<sup>33</sup> See Mr Harris’ evidence at paragraph 5.12, page 21 (“moderate adverse effects”)

<sup>34</sup> XX by Mr Gadd

<sup>35</sup> In answer to the Inspector’s question.

- 10.32. Mr Harris' overall conclusions were also informed by the mitigation proposals that underlie the Masterplan<sup>36</sup>. The northern boundary of the site with the A417(T) will be heavily screened with a tree and planting belt 20 metres deep as a minimum, deepening to several substantial areas of tree planting. As Mr Harris put it, this would 'draw the landscape elements to the north into the site'. There would be very little perceptible 'urban edge' in views from the north, once this planting has matured. The improvements to the landscape value of the brook and its surrounding area as well as the orchards should also be taken into account.
- 10.33. It is quite true that the success of the scheme in landscape and visual terms depends on the successful implementation of the mitigation proposals illustrated on the Masterplan. There is no reason to fear that the proposals would not be successfully delivered: the draft conditions require a landscaping plan, and trees are dealt with separately in the list of conditions. There is no procedural or other reason why the Council will not be able to enforce delivery of the landscaping scheme; indeed they confirm that they will be able to.
- 10.34. In summary on landscape and visual impact, the Framework is the key policy guide. It simply requires that recognition is taken of the landscape, not that it be protected for its own sake<sup>37</sup>. That is what the landscape proposals have done. There would be limited harm to landscape character and some local views.

### ***Impact on the significance of heritage assets***

- 10.35. It is a notable feature of this application that a proposal for 1500 units and nearly 30,000 sq m of other floorspace, most of which lies within the wider (though not immediate) setting of a Grade I and a Grade II\* Listed Building, along with other designated heritage assets, is described by English Heritage (now Historic England) as a scheme which "*should help to enhance the setting to this historic complex so that its setting is preserved and enhanced*". There is obviously no Historic England objection<sup>38</sup>, and none from the other relevant statutory consultees on heritage. Substantial weight should be given to those views, given that they were formed after a lengthy period of engagement with the Applicants' professional team.
- 10.36. The Statement of Common Ground<sup>39</sup> also records the agreement between the Applicants and the Council's Conservation Officer that the mitigation planting "*buffer, together with the instigation of new planting of an orchard to the north and new hedgerows will help to preserve the setting of the historic complex*".

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<sup>36</sup> CD A4.

<sup>37</sup> See the discussion on this point, and the consequential effect for the weight to be given to saved Tewkesbury Local Plan policy LND4 in the *Cornerways* DL (CD 10 at [6] to [17]).

<sup>38</sup> The EH letter (CD F4) is not entirely straightforward to interpret, but it is clear (a) that there is no EH objection, (b) that the author considered that the mitigation would preserve and enhance the setting, and (c) that to the extent that one looked at the Framework, the test in paragraph 134 was passed.

<sup>39</sup> CD G4 at paragraph 5.8.4.

10.37. The only countervailing evidence before the inquiry is the Ecus Report<sup>40</sup>, which assesses the site as constrained by heritage assets. The Rule 6 party relies on the document as evidence that the Applicants and Historic England have underestimated the likely harm to designated heritage assets. However, it is very important to recognise the Ecus Report's limitations<sup>41</sup>. It was a desk-based study. Its assessment of setting was therefore necessarily coarse-grained. It relies on an alleged impact on archaeology for its conclusions, but entirely omits to consider the work undertaken by the County Council, by Historic England and by Cotswold Archaeology. Moreover, the Ecus report (dated March 2014) was commissioned by the JCS authorities, who are jointly promoting the site as an allocation for 1500 units. Just as the document does not suggest that development is inappropriate, the JCS authorities plainly do not consider that the setting of the designated heritage assets represents a bar to the site's development.

10.38. In fact, as Ms Stoten's analysis shows, the site as *setting* is of limited importance to the significance of the designated assets nearby<sup>42</sup>. The site is a relatively modern agricultural landscape with significant urban and transport effects upon it. As Ms Stoten said, the value of the site as "associative" rural setting to the manorial complex is limited because:

- There has been wholesale change in the character of the agricultural landscape since the date of the relevant buildings;
- The site is not particularly remote or rural, in the sense that it lends any particular value to the significance of the heritage assets; she tested this conclusion against other manorial complexes in Gloucestershire;
- There are few views out from the Listed Buildings which borrow from the landscape of the site in a way that adds to their significance; similarly there are limited views from the site towards the assets which add to the significance of the assets, and these would be enhanced by the proposals.

10.39. Again, the delivery of the mitigation package would be key. There is no reason to suspect that it will not be delivered under the Council's supervision. Indeed, they would be likely to consult Heritage England and the County Council on the detailed proposals that would come forward. The scheme would not only enhance the setting of the Grade I and Grade II\* buildings, but directly improve the Grade II listed wellhead (as well as its setting). These benefits should be given due weight. Plainly, the enhancement to the setting to the Grade I and Grade II\* buildings should be given significant weight and that the Grade II structures slightly less weight, reflective of the different value of the assets. Bearing those points

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<sup>40</sup> CD C12.

<sup>41</sup> See Ms Stoten's Note on Heritage Assets (appended to Mr Lewis' evidence), at paragraphs 4.1 to 4.11.

<sup>42</sup> Ms Stoten confirmed, in answer to one of the Inspector's questions, that the "Manorial complex" or the "group" did not represent the designated asset for the purposes of assessment, and therefore there was no requirement to assess the effect on setting of a "group". Nonetheless, her work does give some consideration to the assets in views where they are seen together and this point does not affect her overall conclusions.

in mind, Ms Stoten's evidence<sup>43</sup> is that there would be a very limited ("minor" and in some cases "negligible") adverse effect overall on designated heritage assets (stemming from the loss of a minor contributor to significance, the undeveloped agricultural fields).

10.40. The consequences for the overall planning balance are that a very limited degree of harm would be caused to the settings of Listed Buildings. For the purposes of s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, even such limited harm should be treated as a matter of considerable importance and weight, following the Court of Appeal judgment in *Barnwell Manor*<sup>44</sup>. There are three points to note in relation to the legal duty and how it affects planning balances like this one:

- No reliance should be placed on the notion that a finding of minor harm to the setting of a Listed Building establishes a strong presumption against the grant of planning permission. That proposition, drawn mainly from the later *Forge Field Society* case<sup>45</sup>, has been effectively dismantled by the High Court in a later case, *Mordue*<sup>46</sup> and should not be regarded as good law.
- *Mordue* itself, as decided in the High Court, is a reminder of the potentially absurd effects of *Barnwell Manor* – in that case, the Inspector's finding was of "negligible" harm to the relevant asset; the Inspector recited the guidance at paragraph 132 of the Framework that "great weight" should be given to the asset's conservation; but the decision was quashed because the Inspector omitted to make it crystal clear that he had given what harm he had found "considerable importance and weight". The judge deciding *Mordue*, John Howell QC, makes his unhappiness at having to reach that conclusion quite clear in paragraph 73 of the judgment.
- It is therefore also important to note that *Mordue* is on its way to the Court of Appeal. The terms of the grant of permission are instructive<sup>47</sup>: Sullivan LJ (who was the lead judge in *Barnwell*) makes it clear that the basis for the decision in *Barnwell* may well be wrong. Therefore whilst as at 30 July 2015 it is necessary to stick to the terms of *Barnwell* and give any harm to designated assets "considerable importance and weight", that may not be the case by the time this case comes to be decided. The Secretary of State is a party to *Mordue* and would be expected to bear the outcome in mind. Nevertheless, representations will be made directly to the Secretary of State on this point if the Court of Appeal decides *Mordue* before the decision on this called-in application is released.

10.41. As for the Framework, the very minor harm identified would come at the bottom of the "less than substantial" category in paragraph 134. It is clear that, even if one restricted the scope of the balancing exercise to the way

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<sup>43</sup> Reflecting the ES chapter on heritage.

<sup>44</sup> *Barnwell Manor Wind Energy Limited v SSCLG and East Northants DC* [2014] EWCA Civ 137, here CD D4.

<sup>45</sup> *R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin) per Lindblom J.

<sup>46</sup> *Mordue v SSCLG* [2015] EWHC 539 (Admin), here, CD D8.

<sup>47</sup> CD D9



the scheme would meet housing and affordable housing needs, the public benefits of the proposal would outweigh the harm identified. That conclusion is shared by Historic England, the County Council and Tewkesbury Borough Council.

10.42. There would be no harm in respect of archaeology, as the County agrees<sup>48</sup>.

***Effect on highway conditions in the area***

10.43. There would be no harm to weigh in the balance stemming from highways or transportation. The site is in a sustainable location, and there are no objections from Highways England, or from the County as Highways Authority<sup>49</sup>. Attention is also drawn to the contents of the report to committee on this point<sup>50</sup>.

10.44. The on and off site highway works are contained in the drawings (some formally application drawings, some illustrative) which would be tied into the proposals by condition. The relevant authorities have given detailed consideration to the phasing of those works, a matter also reflected in the draft conditions. There is no basis for doubt about their deliverability or timing.

10.45. It is a point of some importance in the overall balance that a site and development of this scale can be brought forward with so little need for additional infrastructure. No harm needs to be put into the balance but some benefit should be recorded because of the swift, or unconstrained, deliverability of the scheme to meet needs.

***Other harms – noise, air pollution, agricultural land***

10.46. All relevant statutory consultees are satisfied that the scheme can be delivered without any harm in respect of noise or air pollution. The relevant sections of the report to committee should be taken into account<sup>51</sup>, as should the detailed consideration of noise and air quality in the submitted ES as revised in July 2013 and May 2014<sup>52</sup>. The representation made by Ms Lavia on behalf of the Noise Abatement Society does not purport to be a consideration of the merits of this particular case, and she made it clear that the NAS was neutral in relation to whether permission should be granted. Her letter<sup>53</sup> and oral representations suggest either that a revised ES chapter on noise be produced (although she did not suggest that she had evidence that it was wrong, having not done a technical review), or peer reviewed, or the EHO conditions should be applied without alteration. The latter is in fact the case, and so Ms Lavia's suggestion has already been taken on board. It is of course

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<sup>48</sup> There is no evidential justification for the assertion to the contrary by the Rule 6 party

<sup>49</sup> CD G6: The Statement of Common Ground on Highways and Transportation embodies the agreement on this point between the relevant parties.

<sup>50</sup> CD G1 at section 10.

<sup>51</sup> CD G1: noise is dealt with at paragraphs 15.1 to 15.8. Air Quality is covered at paragraphs 5.9 to 15.11.

<sup>52</sup> CD B18.

<sup>53</sup> 24 July 2015

inappropriate to seek to exclude negotiation on details at the condition discharge stage.

- 10.47. As for the kennels, they will be protected by way of mitigation negotiated with the relevant officers and which would be delivered through planning conditions, of which the Council's EHO approves. Draft condition 29 would control the effect of noise by reference to a 45dBA<sup>(L<sub>Amax</sub>)</sup> level within the proposed properties *with the windows open*. That is a very stringent requirement, and there will be no consequent detrimental impact on the kennels business<sup>54</sup>. Plainly as the condition shows, there is no requirement for the windows of proposed units to be fixed shut on this part of the site. The concerns expressed on behalf of the kennels about the noise survey are not shared by the Council's EHO. The concerns about details of the mitigation measures (sunlight and access of air) are completely unfounded as a glance at the Masterplan shows. The noise measures will be on the bank many metres away to the west, and there will be no 'walling in' by acoustic barriers.
- 10.48. On the other hand, there will be harm through the loss of Best and Most Versatile Agricultural Land; some 41.6 ha of the site is assessed as falling within Grade 3a. The harm that would thereby be caused is however relatively limited, given that it would not result in any identifiable disruption to any agricultural business or concern. The loss of agricultural land is inevitable where large scale urban extensions are required, as the JCS authorities have recognised when assessing their various development options. Moderate weight should therefore be given to this issue in the planning balance.

### ***Contribution to meeting housing needs***

- 10.49. The issue of housing need weighs unequivocally in favour of the grant of permission. Clearly, the view of the JCS authorities is that the site should come forward to meet a range of housing needs.
- 10.50. The proposals would deliver up to 1500 units, of which up to 600 would be affordable (across a range of tenures). It would deliver up to 175 units of extra care housing<sup>55</sup>, of which 70% would be affordable (ie up to 123 units)<sup>56</sup>. These are substantial numbers on any view.
- 10.51. Housing need is very pressing in this area. It is agreed that in the short term, the Council is unable to demonstrate a 5 year supply of deliverable housing sites<sup>57</sup>. Mr Rider's evidence on behalf of the Council is that it has between 2.7 and 3.9 years' supply<sup>58</sup>. That is based on an acceptance that a 20% buffer should be applied to reflect persistent under-delivery<sup>59</sup>. Mr Lewis explains that in his view, on the basis of the work that the JCS

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<sup>54</sup> References made by Mr Smith to the experience of a neighbouring honey business and to audibility from Nightjar Close are to a situation before mitigation.

<sup>55</sup> See the ES description of development, Chapter 3, paragraph 3.1.2 (references elsewhere to 150 units of extra care housing reflect the pre-application stage of the project).

<sup>56</sup> See the draft condition relating to housing numbers.

<sup>57</sup> Statement of Common Ground, paragraph 5.2.3 (CD G4).

<sup>58</sup> Mr Rider's paragraph 5.8.

<sup>59</sup> Ibid paragraph 5.7.

authorities themselves have carried out, the supply is no more than 2.4 years<sup>60</sup>, and if one adds in (a) shortfall adjusted by reference to the Sedgefield method<sup>61</sup>, and (b) an allowance for 10% lapse rate, and (c) recognise that there have been problems with some of the Tewkesbury Local Plan 2011 allocations which have not yielded permissions despite having been allocated for 9 years<sup>62</sup>, then the relevant supply figure drops to 1.8 years.

- 10.52. Whichever approach one takes, the overall result is the same – a significant undersupply and pressing housing need. Little time has been spent at the inquiry debating the precise figure because as Mr Lewis said, it makes little material difference to the outcome of the application. Such an approach was also taken in the recent *Cornerways* decision letter<sup>63</sup>. The situation in this area of Gloucestershire has been the opposite of that urged by paragraph 47 of the Framework, that the supply of housing should be boosted significantly.
- 10.53. Furthermore, the need is not to be seen solely in terms of the 5 year supply, but in terms of the needs for housing over a plan period which started in 2011. There is already a substantial shortfall against those targets and the longer the delivery of the JCS is delayed, the further behind the three authorities fall in trying to meet their targets. Housing targets are not maxima in any event, but minima, as the JCS Inspector has recently reminded the JCS authorities<sup>64</sup>.
- 10.54. Specifically in relation to affordable housing, it is no surprise that need outstrips supply. The current need in Tewkesbury Borough is for 1619 homes, with the assessment of need for social rented units in Brockworth alone gauged as 489 units<sup>65</sup>. The committee report recognises that for a 40% affordable housing target to be achieved across the Borough, it is essential for strategic sites to deliver that percentage<sup>66</sup>.
- 10.55. Extra Care Housing (affordable and market) is needed given the ageing population in Tewkesbury as elsewhere.
- 10.56. In locational terms, the needs of Gloucester in particular cannot be met within its administrative boundary, even taking the most positive approach to brownfield regeneration in the City<sup>67</sup>. These needs translate, through the duty to co-operate, into needs pressing upon this area of Tewkesbury.
- 10.57. Given the range and extent of housing needs in the area, very substantial weight should be given to the way that the proposal would contribute to meeting those needs. It would provide some 500+ units of

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<sup>60</sup> Mr Lewis' page 17, Table A, column headed *Submission Joint Core Strategy with urban extensions*.

<sup>61</sup> Ibid paragraph 3.8 page 18

<sup>62</sup> Ibid.

<sup>63</sup> See CD D10 paragraphs 23 to 25.

<sup>64</sup> See Note of 1 July 2015 by Ms Ord, Mr Lewis' Rebuttal Appendix R2, paragraph 15.

<sup>65</sup> See Mr Rider's evidence, paragraph 14.9.

<sup>66</sup> See CD G1 paragraph 16.1.

<sup>67</sup> See the JCS assessment at CD C37 page 6 paragraph 3.1.

accommodation in the next five year period<sup>68</sup>. It would underpin the JCS trajectory, which is already in danger of failing, as Mr Rider indicates<sup>69</sup>. The plan-making authorities need the site to deliver housing soon (indeed they are currently reliant on an assessment which has the site delivering housing in 2016/17<sup>70</sup>). The delivery of units on the application site would therefore make a major contribution to achieving Framework-compliant local planning. Substantial weight should be attached to that alone. It would also provide a major boost to the delivery of affordable housing in the area, including to the provision of affordable housing to meet elderly needs<sup>71</sup>.

- 10.58. The focus should not be solely on numbers. The pressing housing need reflects the way that continued failure to provide sufficient housing detrimentally affects the ability of people in this area to lead flourishing lives. The severe affordable housing need equates to numerous children, families and individuals without suitable accommodation, or who are unable to get onto the housing ladder or to move to the area at all for family or work purposes. The meeting of a significant part of the need through a major application like this is crucial to the achievement of good planning and social and economic sustainability.
- 10.59. Particularly significant weight should be attached to the ability of the proposal to meet of a range of housing needs.

***Other considerations weighing in favour of permission***

- 10.60. Although there is a difference in weight between aspects of the application which reflect the requirements of policy (for instance the provision of affordable housing) and those which go beyond it, one cannot draw a bright line between the two as far as positive considerations are concerned. Some benefits of the proposals are both required in order to service the needs of the scheme *and* are beneficial more generally.
- 10.61. The list of scheme benefits is unsurprisingly long, since it has been recognised from the outset that very special circumstances are required to be shown before the site can be released. They are set out in detail in the Applicants' *Statement on Very Special Circumstances*<sup>72</sup> and in Mr Lewis' evidence<sup>73</sup>.
- 10.62. The key considerations are as follows:
- The meeting of pressing housing and affordable housing needs as well as extra care housing requirements. These substantial benefits are not ruled out from playing an important part in an overall assessment of benefits (indeed, it would be unlawful to exclude them, given the clear

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<sup>68</sup> See Mr Lewis in answer to the Inspector's question and the note agreed between the Council and the Applicants.

<sup>69</sup> Mr Rider's paragraph 14.16 .

<sup>70</sup> Ibid.

<sup>71</sup> something that PPG identifies as a 'critical' need nationally Ref 021-2A-021

<sup>72</sup> CD B5

<sup>73</sup> At paragraph 4.17

terms of the Ministerial Statement that it is only housing needs *alone* which cannot in policy terms amount to very special circumstances).

- The fact that the site has long been identified for a major residential development (since 2007), and as part of the Green Belt which it would be appropriate to develop. In the light of housing needs, and the cross-boundary issues affecting Gloucester, Cheltenham and Tewkesbury, it is a major benefit of this scheme that it underpins the satisfaction of the duty to co-operate and brings forward housing to meet Gloucester's needs in circumstances where the City is hugely constrained.
- The promotion of the site in the JCS process. It is true that the Inspector has not formally reported and has not given an express view, as of the end of July 2015, about the site. However, there is ample material before the inquiry to be able to form the same judgment which has been reached by Mr Lewis, namely that it is inevitable that the site will be allocated in the JCS in due course – but that might be eighteen months or more away.
- It is no answer to this either to say that formally little weight should be given to the JCS at this stage, or to point<sup>74</sup> to the additional work which the Inspector has required of the JCS authorities (to be completed by the end of September 2015). Such work is relatively modest in the scale of such examinations, certainly nothing like the 6 month suspensions imposed in nearby authorities like South Gloucestershire and Stroud<sup>75</sup>. Reading her note<sup>76</sup>, it is unmistakable that the Inspector has asked for a review of the JCS figure for Objectively Assessed Need in the light of numerous factors (earlier reports, the latest data on population, economic forecasts) which *all* appear to support a higher, rather than lower, OAN figure than the 30,500 which the JCS authorities promote. As Mr Lewis said, that was the lowest figure which emerged from the work undertaken pre-submission. If the application site is needed to meet that figure it is, as he said “pretty obvious” that it will need to be released from the Green Belt.
- It is also clearly the case that substantial weight should be given to the way the site plays a critical role in the JCS approach, and to the evidence base which suggests it performs better than most other sites including most of the other sites which are to be allocated to meet the 30,500 requirement figure.
- None of this is inappropriately premature or anticipatory of the JCS outcome. Prematurity is not an objection made by the Council. Indeed, the release of the site is in direct accordance with the process of the Local Plan, rather than running counter to it. There is simply no realistic scenario in which brownfield sites in Gloucester, or grants from Government<sup>77</sup>, or omission sites to the south of the city, are going to be

<sup>74</sup> As the rule 6 party did in its cross-examination of Mr Lewis.

<sup>75</sup> Lewis in answer to the Inspector's question.

<sup>76</sup> Lewis Rebuttal Appendix R2 pages 4-10; Lewis RX.

<sup>77</sup> This point was floated for the first time in XX by Mr Gadd and is now repeated in the very late rR6 party document under “Prioritising Brownfield”. They have misunderstood the situation in Gloucester. Even allowing for all and any realistic brownfield releases, Gloucester

able to meet the needs identified. It is also easy to see why the JCS Inspector, having asked the authorities to re-examine the requirement figure, also wants to look at the main omission sites before she reports. If, as is clearly the case, the requirement goes up, additional sites are going to be needed to meet it and ensure that the plan is sound. It would be fruitless to identify the requirement and then report, before it was clear that there would be sufficient sites to meet that elevated requirement. Mr Bickerton's written evidence is dealt with by Mr Lewis in the rebuttal proof, and very limited weight should be given to it (a) because it was not tested in cross-examination, and (b) it is plainly wrong, as Mr Lewis points out.

- The site is located adjacent to a "Tier 1" settlement, ie, is located sustainably. It will benefit from good public transport, walking and cycling credentials. There has been no substantive criticism of these very important aspects of the scheme, which weigh heavily in favour of the proposal.
- Health care improvements go beyond what would be required to meet the additional need created. The new surgery, for which serviced land would be provided, would enable complementary and preventative medicine services that cannot be offered now. The need for those services stems from the existing as well as proposed population of the area. The need is particularly in this area<sup>78</sup>. Mr Lewis confirmed<sup>79</sup> that discussions with the NHS and surgery had factored in the financial deliverability of the new facilities from the beginning: they will be delivered. It is usually said that further housing should be restricted because of the impact on over-stretched local services like healthcare. The benefits of strategic scale schemes, and of this one in particular, is the ability to cater for some existing needs as well as those of the proposed additional population; substantial weight should be attached to this benefit to the community.
- There would be a substantial additional benefit in terms of the community facilities. As Mr Rider explained, the withdrawal of funding for the library led to the establishment of the Brockworth Community Project. The scheme will not just supplement this initiative for the benefit of proposed residents of the area, but underpin the overall continued benefits that the Project will bring.
- Sports facilities would be hugely improved by the proposals<sup>80</sup>, to a degree that goes well beyond the needs of the proposed development. The proposals will allow the Rugby Club to establish itself on a secure footing<sup>81</sup>. Indeed, the club's representation says that without the proposal there would be a likelihood of the club failing. There would also be indirect but important benefits to the local football team, Brockworth Albion, the success of which is currently constrained by its limited

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City Council still argues forcefully at the JCS hearings for the release of this site from the Green Belt.

<sup>78</sup> See CD B5 page 4.

<sup>79</sup> In answer to the Inspector's question

<sup>80</sup> See for the detail CD B5 pages 4 to 5.

<sup>81</sup> ID xx letter dated 25 July 2015 from the Chairman of Brockworth Rugby Club.

facilities, but which would be enabled to grow by the scheme. Mr Rider's view was that the indirect or spin-off benefits of a critical mass of greatly improved sports facilities would bring a substantial benefit to the area, going beyond mere mitigation of the scheme itself.

- Environmental benefits would accrue, which again go beyond scheme mitigation. Two locally significant orchards would be rescued and public access permitted where it is currently denied. That goes beyond mitigation for the scheme. Improvement of, and greatly expanded public access to, the Horsbere Brook corridor for the entirety of its length through the site, would bring a substantial benefit. This is underlined by the fact that there is an active group trying to do the best it can with the limited areas where public access exists. It is important to stress the qualitative as well as quantitative aspects of that improvement. Whilst some of the Brook can be reached by a footpath, the existing route is of poor quality and suffers from a lack of management. Substantial weight should be attached to these benefits, which echo the wishes of the Parish in its Parish Plan of 2011<sup>82</sup>.
- Open space in general would be provided on a scale (24 ha) which vastly exceeds the basic mitigation requirement of the scheme (some 9 ha<sup>83</sup>)
- There may well be an additional benefit to the education provision in the area, going beyond what could strictly be required, due to the provisions of the s.106 and the setting aside of a 2ha site within the masterplan<sup>84</sup>. There would be additional benefit to Millbrook Academy in the years before rising numbers ensured it was full.

10.63. Overall, the proposals would bring a package of benefits which goes directly to the three dimensions of sustainability in the Framework and reaches well beyond the minimum requirements even of such a large scheme. They will be delivered through the s.106 measures and secured in some respects by the conditions.

### ***The Green Belt very special circumstances balance***

10.64. The Applicants' case is that there would be harm in the following respects:

- 'Definitional' harm due to inappropriateness;
- Harm due to loss of Green Belt openness but the weight to be given to that to be circumscribed because of the lack of Green Belt function that the site now performs, given radical changes to the physical layout of the area since 1968, as reflected in an entirely consistent set of expert and plan-making judgments since 2007. So the guidance in the Framework (paragraph 88) that all harm to the Green Belt should be given substantial weight needs in this case to be tempered by those factors.
- Limited harm to landscape character and local views.

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<sup>82</sup> See CD B5 page 5.

<sup>83</sup> Mr Rider in XC.

<sup>84</sup> Inspector's note: see also IR14.16 and 15.58

- Very limited harm to the setting of designated heritage assets, to which (as things currently stand) 'considerable importance and weight' should be given. This should be seen in the light of the fact that Heritage England does not object and says in terms that the test in paragraph 134 would be passed and that the settings of the relevant assets would be preserved and enhanced.
- Some harm through the loss of Best and Most Versatile Agricultural Land. The context for that loss is the need to expand onto agricultural land to meet housing needs; there is no suggestion of particular agricultural harm and therefore only moderate weight should be given.
- Against the aggregate of those harms, which is significant, should be set the very substantial benefits of the proposals. Those benefits go beyond what is required for the scheme mitigation. More to the point, they gain particular weight from being, in most cases, urgently needed at the present time, with lasting benefits for the local and wider area.

10.65. It is very uncommon indeed for a Green Belt site (a) to have been recognised for 8 years as serving little continuing Green Belt function, (b) to have been consistently earmarked for urban expansion to meet Gloucester's needs but not brought forward because of successive false starts and delays in plan-making, and (c) to be urgently promoted by the Council even as its JCS is continuing.

10.66. Mr Lewis is right to say that the development would be plan-led. That is the key distinguishing feature of this case and, in combination with the package of benefits, is what really sets this site apart. The application was made in December 2012 at the instigation of the Council, to underpin the JCS process. It was the subject of a resolution to grant permission; the Council even opposed a suggestion that it might be more helpful to postpone this inquiry until the interim findings of the JCS inspector were published<sup>85</sup>. It is a deeply held conviction at the Council that this proposal should be granted permission ahead of the JCS, because of the pressing need for it and the benefits it would bring. Therefore there is a particularly unusual combination of substantive and timing benefits associated with this proposal. These would clearly outweigh the harm by reason of inappropriateness and the other harm, thus putting the proposal into the category of very special circumstances.

***Relationship of the proposals with policy including emerging policy (including having regard to the purposes of the Green Belt)***

10.67. The Statement of Common Ground<sup>86</sup> identifies the relevant policies. The proposals do not comply with the saved policies of the Local Plan 2011 but the housing chapter is accepted to be out of date. Landscape policy protection is also out of date<sup>87</sup>. Green Belt policy in that document is not out of date, but for the reasons set out, is complied with.

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<sup>85</sup> Representations at the PIM.

<sup>86</sup> CD G4

<sup>87</sup> See the *Cornerways* DL, CD D10 at paragraph 25.



- 10.68. The proposal is agreed between the Applicants and the Council to accord with the Framework. In particular, it is agreed to represent sustainable development, and not to fall foul of any policy which indicates that permission should be refused.
- 10.69. Paragraph 14 would ordinarily apply as a matter of course, but, in a Green Belt case, the prior question is whether the very special circumstances test is passed. In any event, an Appropriate Assessment (AA) is required, so paragraph 119 appears to apply.
- 10.70. There is an interesting but minor point about paragraph 119 in this case. The objective of that paragraph was to avoid a policy presumption cutting across the European legal restriction on granting permission at all where an Appropriate Assessment showed some adverse consequences for the protected environmental asset. It was felt that in cases where the habitats screening process showed the need for an AA because the project might have a significant effect on the asset, then it would not be right as a matter of policy to impose the new pro-development balance in paragraph 14. In this case however, the AA was done before any screening stage, and in the absence of any information being provided to Natural England through the JCS (at that stage, ie the second half of 2012)<sup>88</sup>. The Applicants therefore took the wise precaution of moving straight to the second stage and providing an AA. As that document shows, the proposal would not cause an adverse effect on the protected area. In fact, it should have been negatively screened as it would not be likely to have a significant effect.
- 10.71. So this is a case where it is right to say that the AA was not strictly speaking "required", and to which the objective underlying paragraph 119 of the Framework does not really apply. This is a minor material consideration here, though the Applicants do not ask the Secretary of State to find that paragraph 14 applies.
- 10.72. The JCS can be given due weight because it has reached an advanced stage. There are of course unresolved objections, but the evidence is clear that the site will be needed and indeed the principle of "exceptional circumstances" in relation to the Green Belt in general in the JCS area, has been expressly recognised already by the JCS Inspector. The proposals are not said to be premature and would accord directly with the terms of the JCS.

### **Overall Conclusions**

- 10.73. This is a case where permission should be granted, for the reasons outlined above and set out in greater detail in the evidence, which was largely unchallenged. The Council promotes the development at this inquiry and the JCS authorities as a whole are behind the site and want it to be allocated (and removed from the Green Belt).
- 10.74. The trouble all along has been timing. The evidence shows that by now, there should be 1500 houses on this site, meeting some of Gloucester's

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<sup>88</sup> CD B13

needs – that was clear as long ago as 2007-2008. The JCS process, despite the best efforts of those concerned and the good intentions behind the 2004 Act reforms and the Framework of 2012, has taken many years even to reach examination. All the while, the housing needs of Gloucester and Tewkesbury have been going unmet, compounding year on year.

- 10.75. In many cases, despite these factors, and the significant shortfall against the 5 year supply requirement, the presence of Green Belt would have acted as a deterrent to release; but that is not the case here, for all the reasons given. This is an unusual case in which the value of the site to the Green Belt has been greatly diminished since its designation. Waiting until the JCS finally releases the site in 2016 or 2017 would be a continuation of the failure to plan properly for the area.
- 10.76. That is the basis on which the Applicants, supported by the Council, seek a decision. It is by no means necessary to wait for the JCS interim report, let alone its adoption. The evidence is compelling that such further delay would simply add to the mounting harm. The grant of planning permission would make an important move to stem the tide of worsening housing supply in this area, as well as providing many other benefits.
- 10.77. The Applicants urge the Secretary of State to grant permission without delay.

## **11. Written Representations**

The main points in written representations to the inquiry are summarised here. However, the Secretary of State should note the extensive range of representations as summarised in the Committee Report [CD G1].

- 11.1. Brockworth Parish Council does not agree that very special circumstances can be demonstrated. Its own Housing Needs Assessment in 2012 identified a need for only 69 homes, of which 40 should be affordable. Brockworth is already undergoing significant expansion with the construction of 1900 properties. The proposed medical hub will be less accessible for those living in the south of the village. There is no guarantee that children from this development will attend the Millbrook Academy. The sports hub would cater mainly for rugby and football rather than a wider range of sports. Although 52% of respondents to the 2011 Brockworth Parish Plan stated they would welcome more access to the Horsbere Brook, 94% stated it was important that the countryside was not built upon. The contribution to the Community Library Service would only guarantee security of tenure. It would not meet ongoing running costs. The Parish Council is also concerned as to the harm to heritage assets, especially the loss of the ancient view and historical setting of Brockworth Court farm and hall from the public rights of way.
- 11.2. Churchdown Parish Council argues that the JCS proposals for the Green Belt need to be looked at in the round. A grant of planning permission now could bring the whole JCS process into disrepute. The Council supports the many objections put forward by residents, especially the loss of Grade 3 agricultural land.

- 11.3. Cheltenham, Gloucester and Tewkesbury CPRE considers that very special circumstances have not been demonstrated. No changes to the Green Belt boundary should be permitted until the outcome of the JCS is known. The City of Gloucester has a more than adequate housing land supply. There is no immediate need to bring this site forward, in view of the three large housing developments already underway in Brockworth [Coopers Edge, 2000 units, Kennel Lane 100 units and the Nylon factory, 200 units]
- 11.4. Cheltenham Alliance states that the application is premature, given the current stage of the JCS, including provision for contributions towards infrastructure through CIL. The evidence base of the JCS is in dispute, especially around housing numbers. The case for exceptional circumstances has not been proven. A boundary change of this magnitude should be plan-led. No decision should be made until after the JCS has been finalised.
- 11.5. SBGB: representations from individual members - the main points are largely covered in the SBGB case as put to the inquiry. However, additional points include: - reference to the slow rate of development of the former Brockworth airfield, where some 900 of the total of 1900 have yet to be built and where employment land remains vacant; press reports as to the capacity of sites in the Gloucester city area; the argument that Gloucester should expand southwards, with implications for Stroud District, rather than northwards within Tewkesbury Borough; and setting out the strength of local opposition to development on the Green Belt at Brockworth.
- 11.6. Many of the letters from individuals reiterate the points made previously. Other concerns are raised in relation to flood risk, design quality and congestion.

## **12. Environmental Statement**

- 12.1. The proposal constitutes EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. When the planning application was made in 2012, it was accompanied by an Environmental Statement (ES). Updates to the original ES have been provided as necessary and are listed in the ES Revision Dates Summary document.
- 12.2. An ES Addendum and updated Non-Technical Summary were provided in July 2015. A Bat Survey Results Addendum (August 2015) was also submitted on 3 September 2015 but this did not affect any conclusions reached. The ES provides the data and information required to adequately assess the impacts on the environment of the proposed development and meets the requirements of the EIA Regulations<sup>89</sup>.

## **13. Relationship to the Cotswold Beechwoods SAC**

- 13.1. The application site lies some 1.9km from the Cotswold Beechwoods SAC. This covers some 585ha and was designated on account of its beech

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<sup>89</sup> CD B15-18, ID01, ID14, ID15

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forests and semi-natural dry grasslands. The conservation objectives are to maintain these habitats in a favourable condition.

- 13.2. Natural England's initial view was that there was not enough information to rule out the likelihood of significant effects arising from the project alone or in combination with others, particularly in relation to increased recreational pressure. A report has been provided setting out relevant information to enable the potential effect to be assessed<sup>90</sup>.
- 13.3. The report sets out the findings of a user survey to assess potential recreational pressures arising from this proposal. It concludes that it would generate some 7 new visitors to the SAC per 1000 population and that this could be readily absorbed without contributing to a significant effect. It also notes that the 24ha of informal recreation within the proposed scheme would provide suitable recreational opportunities for future residents. The report does not identify any adverse effects within the hydrology and air quality assessments. On that basis, the report concludes that the project, alone or in combination, would not contribute to an overall significant effect on the SAC.
- 13.4. The report's conclusions have been accepted by English Nature. In addition, the Habitats Regulations Assessment (HRA) for the draft JCS concluded that it (the JCS) would not have adverse in-combination effects on the integrity of European sites through increased recreational activity<sup>91</sup>. This would include the application site, since it was identified as a strategic site within the draft JCS. There is no other evidence to suggest a likely significant effect. Although an assessment under Regulation 61 of the Habitats Regulations<sup>92</sup> has been carried out, the information provided allows the competent authority to conclude that there would be no likely significant effect on the Cotswold Beechwoods SAC from this proposal, either alone or in combination. It is not necessary therefore to go on to carry out an Appropriate Assessment.

#### **14. Conditions and Obligations**

- 14.1. Annex 1 contains a list of suggested conditions should planning permission be granted. It is based on the list agreed between the Council and the Applicants, with some amendments in the light of the discussion at the inquiry and so as reflect the requirements of the Planning Practice Guidance (PPG). In this section of the report, numbers in brackets indicate the number of the recommended condition.
- 14.2. The proposal is made in outline so the reserved matters should be defined. The development would be brought forward in phases. Conditions setting out the timing for submission of the reserved matters and their broad content are necessary to ensure timely commencement of the development, particularly so that it will contribute to the delivery of housing as envisaged in the JCS housing trajectory. They would also serve to protect the setting of listed buildings and visual amenity of the Green

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<sup>90</sup> CD B13: Information for an Appropriate Assessment November 2013

<sup>91</sup> Ibid 3.64-66

<sup>92</sup> The Conservation of Habitats and Species Regulations 2010

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Belt as well as ensuring accordance with good urban design principles and the integration of the development with its surroundings. (1,2,3,4,5)

- 14.3. The proposal has been assessed on the basis of the number of dwellings and amount of commercial and retail floor space set out in the Environmental Statement so that the planning permission should be defined to reflect that. The level of extra care provision is dealt with through the planning obligation so that element of the suggested condition is not required. Controls over the floor space of the retail units are necessary to ensure that a range of retail formats will be provided. (6,7)
- 14.4. Conditions relating to drainage are necessary to limit the risk of flooding and to ensure a satisfactory form of development. (8,9,10,11)
- 14.5. The high quality of the landscape proposals is an important consideration in the planning balance. Conditions to protect existing trees and hedgerows, especially those which are protected, are necessary in view of their importance to visual amenity and to the quality of the development. (12,13)
- 14.6. A Construction Method Statement would allow the potential impact on the public highway and other environmental effects to be properly managed. Other conditions dealing with off-site highway works and other measures are necessary in the interests of the safe and efficient operation of the road network and ensuring the opportunities for sustainable transport are taken up. (14,15,16,17,18,19,20,21,22)
- 14.7. There are known areas of archaeological interest within the site so that a condition requiring a scheme of investigation is appropriate to record and advance understanding of any heritage assets which would be lost. (23)
- 14.8. Suggested conditions 26 and 29 are intended to address noise issues. The ES sets out noise mitigation measures for the control of noise from road traffic. However, as the Noise Abatement Society indicated, the approach to noise management has moved on since that work was conducted. For example, the 1999 version of BS8233 was superseded in 2014. Whilst I note the concerns of the Noise Abatement Society as to possible changes to the wording of these conditions, they do not satisfy the relevant advice. I have therefore recommended an alternative form of wording, to require submission of an up to date noise assessment. This would allow the potential impact of the Henley Bank Kennels to be reconsidered and the proposed measures for the control of noise either from road traffic or the kennels to be formulated in the light of current good practice. I have reworded the condition on hours of construction in the interests of precision. These conditions are necessary to protect the living conditions of residents. (24,25)
- 14.9. The ES identified a number of valuable ecological features so that an Ecological Management Plan is necessary to safeguard protected species and their habitats. The Construction Environmental Management Plan is also necessary to ensure protection during the construction phases. (26,27)

- 14.10. Arrangements to manage waste during the construction phases would be dealt with as part of the Construction Management Plan. (28)
- 14.11. A number of other conditions were suggested but I do not recommend they are imposed<sup>93</sup>. The distribution of fire hydrants is dealt with by other legislation so that suggested condition 23 does not meet the relevant tests. The provision of pedestrian cycle links within Phases 3 and 4 can be dealt with as part of the reserved matters for those phases so that suggested condition 24 is unnecessary. Various controls were suggested in conditions 27-33 and 37. If controls over the employment area and any commercial businesses in the community hub were shown to be necessary, they could be imposed as part of the reserved matters, once details of any such development were known. Noise effects during the construction period would be controlled by the condition on hours. The Construction Method Statement already requires details of measures to control the emission of dust so a Dust and Noise Action Plan would be unnecessary. The conditions relating to the landscaping of each phase must satisfy the requirement that they are in accordance with the Masterplan and Design and Access Statement. In addition, the more specific requirements of this suggested condition could be dealt with under the Ecological Management Plan and Construction Environmental Management Plan. The suggested separate condition for the Horsbere Brook is unnecessary. Details of refuse disposal facilities should be provided as part of the reserved matters to ensure their adequacy and their proper integration into the development.
- 14.12. Two planning obligations have been provided setting out agreement with, respectively, Gloucestershire County Council (Agreement 1) and Tewkesbury Borough Council (Agreement 2).
- 14.13. Agreement 1 sets out the arrangements with the County Council in relation to primary and secondary education, travel plans, highway works and sustainable transport.
- 14.14. For primary education, the agreement allows either for all provision to be made within a new primary school or for demand to be met by a combination of a new school and the funding of additional places at existing schools. With regard to the possible transfer of the school site to the LEA, the land transfer terms make separate arrangements for dealing with any 'excess additional land' beyond that necessary for provision of either a 1 or 1.5 form entry school. The secondary education contributions would be paid on a phased basis as the development progressed. The education provisions are based on the forecast need arising from the development and accord with Local Plan policy GN11, which seeks to ensure that the infrastructure and public services necessary to enable a development to take place are available.
- 14.15. On highways matters, arrangements are made for a payment to provide a new roundabout (the C&G roundabout) to serve the western part of the site. Contributions would also be made to address sustainable transport and the cost of residential and business travel plans. These contributions

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<sup>93</sup> These are as numbered in ID12

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reflect the assessments made by the highways authority as being required to meet the needs arising from the development and would accord with Local Plan policy TPT1.

- 14.16. Agreement 2 deals with affordable housing, sports and green infrastructure and payments towards a range of community facilities.
- 14.17. Details of the affordable housing would be considered as part of each phase of the development. In accordance with the terms of Local Plan policy HOU13 and Supplementary Planning Guidance (SPG), the proportion is set at 40% of the whole development.
- 14.18. The arrangements for sports and green infrastructure cover formal sports pitches and changing facilities as part of a new Sports Hub. This would accord with Local Plan policy RCN1 and the Council's Playing Pitch Strategy. The provision of outdoor playing space also reflects the requirements of Local Plan policy RCN1. The arrangements for Henley Bank Orchard are part of the mitigation proposals and accord with Local Plan policy NCN5.
- 14.19. With regard to community facilities, the Community Project Contribution has been calculated on the basis of the County Council's assessment of the cost of providing a library service. The Brockworth Community Project now manages such provision, along with other education, recreational and community based programmes. On the basis that a similar range of services is likely to be provided by the Project, I consider that the sum fairly and reasonably relates to the development proposed.
- 14.20. A plot of 0.4ha is to be provided for a surgery and associated health care uses. The plot would be made available prior to the occupation of the 400th dwelling. An area of 0.78ha would be provided for allotments. Other contributions would be made with regard to off-site provision for gypsy and traveller sites as well as recycling, dog bins, signage and a lockable store or office. All of these are based on the requirements of Local Plan policy GN11 and policies SA1, INF5 and 1NF7 of the emerging JCS. Although the policies are not yet part of the adopted development plan, the status of the application site in the emerging JCS is highly relevant to the assessment of whether very special circumstances can be demonstrated. On that basis, I consider that these contributions should be regarded as necessary to make the development acceptable in planning terms.
- 14.21. The Statement of Common Ground in respect of planning obligations sets out details of any relevant planning obligations made since 2010 and confirms that none of the obligations exceed the pooling restrictions in Regulation 123(3) of the Community Infrastructure Levy Regulations 2010 (as amended). The obligations also accord with Regulation 122 in that they are necessary to make the development acceptable, directly related to it and are fair and reasonable in scale and kind.

## 15. Conclusions

*Numbers in square brackets at the end of each paragraph refer to earlier paragraphs in this Report.*

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- 15.1. In view of the evidence presented, the main issues could be identified as:
- (i) the effect of the proposal on the openness, permanence and purposes of the Gloucester and Cheltenham Green Belt;
  - (ii) the effect on landscape character and the visual impact, with particular reference to the relationship with the Cotswolds AONB;
  - (iii) its effect on the significance of designated and non-designated heritage assets within and in the vicinity of the site;
  - (iv) whether the proposal would give rise to any other harm (particularly with regard to highway conditions, the noise environment and agricultural land);
  - (v) the contribution which the proposal would make to the supply of market and affordable housing;
  - (vi) whether there are any other considerations which should weigh in favour of the proposal;
  - (vii) whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.
- 15.2. There is clear agreement that this proposal represents inappropriate development in the Green Belt. There is also agreement that NPPF paragraphs 86-87 set out a staged approach to the assessment of the proposal: firstly, that the degree of harm should be established, with weight assigned accordingly; then, that other considerations be identified in favour of the proposal, with weight assigned in proportion to those effects; finally, an overall balancing exercise should be carried out, to establish whether or not the harm would be clearly outweighed.
- 15.3. The Applicants' approach is to identify the existence of 'definitional harm' and then to move on to carry out an assessment of harm to the essential characteristics of the Green Belt and its purposes and assign weight accordingly. I do not wholly agree with this approach. NPPF paragraph 87 does state that inappropriate development is by definition harmful. However, NPPF paragraph 88 requires substantial weight to be given to 'any' harm to the Green Belt. On my reading, it does not provide the basis for a process whereby varying degrees of weight can be attributed to different aspects of harm. I agree that it is necessary to consider the ways in which harm may arise. However, my advice is that it is the harm as a whole, rather than its individual components, which should attract substantial weight. [8.3, 10.3-5, 10.7-9, 10.17-17]
- 15.4. One further point needs to be borne in mind. If planning permission were granted for this proposal, the Green Belt boundary would be unchanged, since that can only be done through the development plan process. The studies which accompany the submitted JCS compare the merits of the Horsbere Brook and the A417(T) as a boundary to the Green Belt and this approach has been carried across into the case for the Applicants and the treatment of the planning application by the Council. Whilst such arguments need to be employed when a boundary change is being considered, they are not so directly relevant in relation to a proposal such as this, for development of a specific site. This proposal must be considered according to the boundary as it stands, not what it may become once the JCS reaches adoption. [7.2]



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**Issue 1 – the openness, permanence and purposes of the Green Belt**

- 15.5. As shown on the masterplan, the scheme would include considerable areas which would be free of built development, such as the playing fields, public open space and orchards. However, as the built edge of Brockworth would be extended northwards to the A417(T), the overall result would be a loss of openness across the entire site. [8.4-5, 10.12]
- 15.6. With regard to permanence, I agree that the issue is whether there would be consequential effects for the remaining Green Belt. In view of the fact that the proposed change to the Green Belt boundary at Brockworth is contained in the submitted JCS, it should be regarded as having the formal support of all three JCS Authorities, notwithstanding those representations which refer to dissenting voices within the Authorities. In addition, Mr Lewis reports that the Inspector carrying out the JCS examination has indicated qualified acceptance that the exceptional circumstances needed to support an alteration to the Green Belt boundary can be demonstrated<sup>94</sup>. Furthermore, no systematic analysis has been provided to counter the evidence dating back to 2007 that a change to the boundary in the Brockworth area will be necessary to meet development needs. Finally, Mr Lewis also advised that the proposed change to the Green Belt boundary had been a key factor in the decision to bring forward the planning application. In other words, it seems that it is the proposed boundary change which has prompted the making of the planning application, not the other way round. Whilst there should be no prejudgement of the outcome of the JCS examination, the extensive body of evidence in support of this element of the submitted JCS indicates that it can be afforded a good deal of weight, even though it is subject to objections. For these reasons, I consider that the proposal should be seen as having a very limited adverse effect in relation to permanence. [9.1, 9.7, 10.11, 11.4]
- 15.7. The main purpose of the Green Belt north of Brockworth is to prevent the merger of Gloucester and Cheltenham. It is for the Local Plan process to establish the suitability of any new Green Belt boundary north of Brockworth as proposed in the JCS (although as far back as 1997 the RSS Panel Report had concluded that the bordering road network would hold development in check). The point at issue here is whether the arguments hold good that the application site does not fulfil the purposes of the Green Belt to the same degree as the remainder of the Green Belt. I take each purpose in turn below.
- 15.8. Sprawl occurs when built development spills over from the urban area into the adjacent countryside. Although the ENTEC and AMEC studies agree as to some increase in urbanising influences, they do not identify instances of sprawl within the application site. Nor does the evidence for the Applicants. Indeed, the Council advised that there had been no breach of the Green Belt boundary in this locality to date<sup>95</sup>. I consider, therefore, that in the period since designation there has been no diminution of the

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<sup>94</sup> Mr Lewis Rebuttal paragraphs 3.5-3.6. Mr Lewis' evidence on this point is undisputed

<sup>95</sup> Mr Rider, in answer to Inspector's question

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extent to which the application site fulfils the purpose of checking unrestricted sprawl. [8.6-8, 10.13]

- 15.9. In order to prevent towns from merging, the Green Belt should serve not only as a physical gap but also to convey some sense of passing from one settlement to another. The proposal would, in effect, extend the built up area of Brockworth (and, by association, Gloucester) northwards by some 200m. As the Applicants state, a clear gap with Cheltenham would remain. However, such an argument could be repeated too often – and indeed, this type of argument is frequently brought to bear when development of open land at the edge of a built up area is being considered. On its own, the point is of little merit in the particular context of this application. [10.13]
- 15.10. The more important point concerns the appearance of the application site in relation to the rest of the land between Brockworth and Cheltenham. The AMEC study reviewed the whole of the Gloucester and Cheltenham Green Belt. It notes that this land (identified as segments SE7, 8 and 9 in that study) forms a distinct parcel in the open gap between Gloucester and Cheltenham<sup>96</sup>. The ENTEC study reaches a similar conclusion when considering landscape character<sup>97</sup>. In visual terms, the Environmental Statement concludes that the effect of the proposed development in relation to long distance views would be slight, increasing to slight-moderate for medium distance views and moderate for short distance views. These findings were confirmed in the only professional landscape evidence to the inquiry<sup>98</sup>. [10.13, 10.15]
- 15.11. I accept that the application site can be experienced as part of the wider countryside, especially from those points within the site where there are no views of the A417(T)<sup>99</sup>. However, the A417(T) is in place. It was constructed in 1995, a considerable period of time after the Green Belt boundary was first decided upon. Whilst not always visible, it is nonetheless a feature which creates a clear distinction between the application site and the countryside to the north, being dual carriageway at this point. I agree that this lack of connection limits the contribution which the site makes to the separation of Gloucester and Cheltenham and to the purpose of preventing them from merging. [9.5, 10.13-14]
- 15.12. Both the ENTEC and AMEC studies conclude there would be limited harm in terms of encroachment, referring to existing urban influences and the more clearly definable edge of the A417(T). The Environmental Statement and professional landscape evidence follow suit. However it seems to me this does not address the more fundamental point, as made by SBGB, that the application site would no longer form part of the countryside. To my mind, that change would represent a clear instance of encroachment. Whilst there have been material changes to the landscape of the locality in the period since 1968, those changes do not provide mitigation for the fact

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<sup>96</sup> CD C9 5.2.12 and Fig 5.2

<sup>97</sup> CD C8 Figs 6.1 and 6.3

<sup>98</sup> Mr Harris, 5.3-5.13

<sup>99</sup> Mr Eccles, a local resident with some experience in relation to landscape matters, spoke convincingly in this respect. The written representations from local residents make similar points.

that encroachment would occur if this development was to proceed. [8.9, 10.11, 10.16]

- 15.13. The application site is some distance from the historic centre of Gloucester and it has not been identified as contributing to its setting. SBGB seek to link consideration of the setting of Brockworth Manor to this Green Belt purpose. However, as the manorial complex is not an historic town, such matters fall outside Green Belt policy. I find no harm in respect of the Green Belt purpose of preserving setting. [8.10]
- 15.14. As regards urban regeneration, the City of Gloucester has stated that its housing needs cannot be met within the City boundary<sup>100</sup>. Whilst SBGB refer to work currently underway to bring forward previously developed land within the city, there is no indication that such initiatives would be affected if this development was to proceed. I consider that no harm has been established in relation to this purpose. [8.1]
- 15.15. The proposal would be harmful to the Green Belt mainly in relation to the loss of the essential characteristic of openness and being contrary to the purposes of checking sprawl and safeguarding the countryside. There would also be lesser adverse effects in relation to some weakening of permanence, which is the second essential characteristic of the Green Belt and to the purpose of preventing neighbouring towns from merging. This harm to the Green Belt should carry substantial weight. [10.12, 10.19]

### ***Issue 2: landscape character and visual impact***

- 15.16. The application site sits between the Cotswolds AONB to the east and the Special Landscape Area (SLA) around Chosen Hill<sup>101</sup> to the west.
- 15.17. The Gloucestershire Landscape Character Assessment 2006 places the site within the Vale of Gloucester character area which, in turn, is a sub-area of the Settled Unwooded Vale Landscape Character Type<sup>102</sup>. Key landscape characteristics include an undulating landform which encloses views in some areas whilst in other areas the views are distant. Other characteristics are the strong influence of the road network and the mix of rural character and urban influence. The ENTEC report notes that the site is generally representative of the Vale of Gloucester landscape character area. With regard to landscape character sensitivity, the report concludes that the western area is generally of low sensitivity, apart from in the areas near the Horsbere Brook and Brockworth Court, with the eastern area being of moderate sensitivity. This is generally confirmed within another piece of work, the JCS assessment, which identifies the western area as being of medium-low sensitivity and the eastern area as of medium sensitivity<sup>103</sup>. [11.1, 11.2]
- 15.18. The LVIA in the Environmental Statement comprises a more detailed analysis specifically directed towards the site itself. It notes that the site

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<sup>100</sup> CD C37, 3.1-3.6

<sup>101</sup> In this section, I use the term 'Chosen Hill' to refer to the area of higher ground to the north west of the application site. That area is sometimes also called 'Churchdown Hill'.

<sup>102</sup> CD C20 and C21

<sup>103</sup> CD C11

reflects some of the desirable natural characteristics of the wider landscape such as the watercourse and orchard remnants. It also records the presence of some of the less desirable social and cultural elements of landscape character, such as the road network and the mix of rural and urban influence. Despite its proximity to the AONB, the application site does not share the landscape characteristics of the nearest feature, which is the Cotswold scarp. The LVIA classifies the local landscape character as: 'disturbed vale agriculture with strong urban fringe influence'. The nature and level of objections from interest groups and local residents indicate that great store is placed on the site in its present, undeveloped state. However, local popularity is not sufficient to demonstrate that the site should be regarded as 'locally valued' in the terms of NPPF paragraph 109. [8.11, 9.3, 9.5, 10.26-7, 11.5]

- 15.19. It stands to reason that the proposal would have an adverse impact on some aspects of landscape character. However, the site is well enclosed. Also, due the sizeable area involved, there is sufficient capacity for a comprehensive landscape strategy which would ensure that, on the whole, the landscape effects would be localised. Measures would include protection of valued elements such as the watercourse and its vegetated corridor. Other measures could also be taken to enhance the positive elements within the site, such as the Perry Pear Orchard at Henley Bank on the eastern side of the site and the orchard remnant in the centre of the site near the Manorial Complex. Provided careful attention was paid to the strategy, I consider that the impact on the character of the wider landscape would be slight. [10.22, 10.28-30]
- 15.20. It is within the site that the most severe harmful effects to landscape character would occur. These would be particularly associated with the extension of built form over such large areas of arable farmland, with the effects being greatest within the more sensitive, elevated eastern section of the site. The Design and Access Statement identifies the main components of the proposed landscape strategy, including the creation of links between key features such as the watercourse corridor and orchards, the use of strategic landscaping to provide visual containment and the incorporation of green fingers of open space to retain the sense of informal rural vale landscape. It also identifies the use of different residential character areas, to reflect the relationship with these key features. To my mind, there is sufficient scope within the proposal as it stands for an effective mitigation strategy to be implemented. On the basis that such a strategy would be put in place, I consider that the overall degree of harm to local landscape character could be regarded as moderate. [10.2]
- 15.21. The LVIA acknowledges that people experiencing views of the application site should be judged as having a medium-high susceptibility to change – a judgement which would certainly be consistent with the concerns expressed in the many written responses to the planning application. In terms of the value of the views themselves however, I accept that those of most value are the long distance ones from within the Cotswolds AONB, with those from within and close to the site being of lesser value, mainly due to their more limited nature. [10.22]

- 15.22. The site is visible as part of the long distance views of the Vale of Gloucester. These can be enjoyed from viewpoints to the east of the application site, along the Cotswold scarp towards the edge of the AONB such as Crickley Hill or Shab Hill. It is also visible from Coopers Hill to the south, which has particular significance for Brockworth because of its association with the cheese-rolling event. These panoramic views extend across the whole Vale and encompass the main settlements of Cheltenham and Gloucester as well as other smaller settlements. The sheer scale of these views means that the site does not appear as a prominent feature – it has to be picked out. Due to its linear nature and the presence of the A417(T) dual carriageway, the site already has a strong visual connection with the adjacent built up area. Provided a landscape strategy was implemented along the lines proposed, I agree that the development would have only a limited adverse effect on these long distance views. Looking from the opposite direction, where there are some opportunities for views from Chosen Hill, similar considerations would apply. [10.23-24]
- 15.23. Short distance views are generally restricted, mainly as a result of the landform or hedgerows. The main effects on public viewpoints would be those from the public footpaths which cross the site and from the existing playing fields. Whilst these views may not be expansive, they are undoubtedly of open land. The landscape strategy indicates the existing footpath network would be integrated within the green corridors through the site. Although this would create a pleasant setting, the area would no longer be open as it is now. As for residential areas, the presence of boundary vegetation means that there are few views into or across the site. The exception is the area of recent housing development around Nightjar Road, which lies across Mill Lane from the easternmost section of the site. The change from open countryside to residential area would be particularly noticeable owing to the elevated nature of this part of the site. [10.25]
- 15.24. A development of this scale would inevitably have some adverse effect on this rural landscape. In this instance, the effects will be particularly marked at the local scale, in terms both of landscape character and visual impact. Whilst the proposed landscape strategy would go a long way towards addressing this, both in terms of landscape character and visual effects, I consider the overall landscape effect should be regarded as moderate adverse. [10.30-34]

### ***Issue 3: Designated and non-designated heritage assets***

- 15.25. With regard to heritage, the main concern relates to the setting of the Grade I listed St George's Church as well as Brockworth Court and Tithe Barn, both of which are Grade II\* listed. Together with other structures, these form a self-contained manorial unit which sits on the southern boundary of the application site, roughly mid-way between the M5 and the A46. There are also two designated assets within the site, a Grade II Listed wellhead to the east of Brockworth Court and a WWII pillbox in the central area of the site.

- 15.26. The ECUS report<sup>104</sup> states that the area makes a high contribution to the setting of designated assets. That report however, relied on desk-based assessments. The more detailed assessment conducted for the Environmental Statement observes that it is the churchyard which makes the greatest contribution to the setting of St George's church. Also, as the landform restricts views from the north, it is the inter-relationship of Brockworth Court and the Tithe Barn, along with the other listed outbuildings in the group, which forms the key setting for these assets. It concludes that, for all of these buildings, the wider area of agricultural land makes only a small contribution to their significance through setting. Given the much greater degree of detail within the Environmental Statement, I consider that its conclusions should be preferred. [10.37-38]
- 15.27. The Design and Access Statement indicates that built development to the east of Brockworth Road, on that part of the application site facing Brockworth Court, would comprise single storey development within the community hub and would be set behind an area of open space and fruit trees. Other measures would include reinstatement of orchards and historic field boundaries in the vicinity of Brockworth Court, with buffer planting between the Court and the proposed residential area to the north-west. I accept that such measures would be sufficient to preserve the immediate setting of each of the listed buildings. Nevertheless, the residential development of the wider area would effectively absorb the church and manor into the built up area of Brockworth. Historic England concluded that the measures proposed would preserve the setting of these buildings as a group. However, the Applicants' more detailed assessment is that the complete separation of these buildings from their agricultural past would represent an adverse effect in associative terms on their setting. To my mind, that assessment should be preferred, albeit that the harm would fall within the category of less than substantial. [10.39-41]
- 15.28. The wellhead, which is in a field a short distance to the east of Brockworth Road, was constructed to serve Brockworth Court. It is overgrown by vegetation and the roof has collapsed so it has a historical rather than visual relationship with Brockworth Court. In these circumstances, I agree that the wider setting should not be seen to contribute strongly to its significance. The proposed development makes provision to repair the fabric of the wellhead and manage the surrounding vegetation. Subject to these measures, I consider that there would be no adverse effect on the wellhead or its setting. [10.39]
- 15.29. The scheme also proposes retention in situ of the WWII pillbox. No harm has been identified in relation to that structure.
- 15.30. Previous archaeological work and the surveys conducted in relation to the Environmental Statement indicate the likely presence of below-ground remains dating back to the Bronze Age. None have the status of designated heritage assets and the evidence does not suggest any of the remains are worthy of preservation in situ. The effect on their significance

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<sup>104</sup> CD C12

could be addressed by means of a scheme of investigation and recording. [10.42, 11.1]

#### ***Issue 4: any other harm***

##### *Highway network*

- 15.31. Although not developed in its case to the inquiry, SBGB maintained an objection with regard to impact on the road network, particularly in relation to a nearby strategic housing site, situated on the southern edge of Cheltenham, known as the Leckworth site<sup>105</sup>. Residents also expressed concern over the ability of the existing road network to accommodate the extra traffic arising from the development, particularly along the A46 Shurdington Road between Brockworth and Cheltenham. [9.6, 11.6]
- 15.32. The application is accompanied by a Transport Assessment which was prepared in consultation with Gloucestershire County Council and Highways England. There is also a Statement of Common Ground (SCG) on Transport and Highways Matters which has been agreed with these bodies. The SCG sets out the lengthy process by which agreement was reached as to the technical requirements for the Transport Assessment. It also summarises the infrastructure improvements which would be necessary, including the widening of Mill Lane as well as works to Shurdington Road and Ermin Street. Subject to those works being carried out, the technical evidence indicates that the proposal would not have an unacceptable effect on the existing road network
- 15.33. The combined impact of the application site and the Leckworth site has also been considered by the County Council as the relevant Highways Authority, as part of a separate planning application relating to the Leckworth site, where the impact on the highway network was also found to be within acceptable limits<sup>106</sup>. [10.43-45]
- 15.34. I consider that no material harm has been identified in relation to the impact on the highway network.

##### *Noise environment*

- 15.35. The scheme has been designed to manage the impact of road noise, such as through the placing of employment uses in the area closest to the M5 and through the use of landscaped buffer zones alongside the A417(T). As a result, the ES advises, noise control measures for new dwellings would be required only for those closest to the main roads in order to address the effects of road noise. [10.46]
- 15.36. Henley Bank Kennels is situated towards the eastern end of Mill Lane. It would be bounded by the proposed development on three sides. The owners of the kennels express concern that if new residential development was situated closer to the kennels than existing dwellings, the kennels business would become the focus of noise complaints from future occupants. [9.9]

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<sup>105</sup> CD C4: JCS Proposals Map p7, Strategic Site A6

<sup>106</sup> Mr Lewis PoE Appendix 2

- 15.37. The ES records that noise from dogs barking was measured during a holiday period. It notes that, at 100m from the kennels, the barking was barely audible against other local noise sources, especially road traffic. Continuous noise monitoring was also carried out at a distance of approximately 50m from the kennels, which resulted in a daytime noise exposure of 53-55dB  $L_{Aeq}$ . In order to create an acceptable noise environment for dwellings less than 100m from the kennels, the scheme proposes an acoustic fence along the boundary with the kennels. The Masterplan also identifies the provision of 'low, naturalised mounding' within the area of open space between the kennels and the housing area to the east.
- 15.38. The noise measurements for the kennels were taken in mid-February. Whilst this may have been a holiday period, the kennel owners advise this is not their busiest time of year. That occurs during the summer months, when weather conditions normally permit the dogs to stay outdoors well into the evening<sup>107</sup>. It is also a time when residents would be more likely to spend time outdoors and to have windows open for ventilation. Moreover, as the Noise Abatement Society points out, the current national policy context for noise assessment places much greater emphasis on the qualitative aspects of the noise environment, as opposed to the former reliance on measures of sound pressure levels and noise exposure categories. The Environmental Statement makes several references to the standards in PPG 24 but, although there is some reference to the more recent noise policy contained in NPPF paragraph 123, it does not discuss the merits of an approach based on the concepts of significant or lowest observed adverse effect levels.
- 15.39. In relation to the kennels, the Environmental Statement confirms that none of the land would come into Noise Exposure Category C (NEC C). That is hardly surprising, given the source of noise under consideration. However, there is no assessment of the characteristics of the noise source, which may include intermittent barking or howling, and the human reaction to these sounds, especially if they were to occur for sustained periods or at times of greater sensitivity, such as during the late evening or night. I am not convinced therefore, that the survey provides a robust assessment of the likely noise environment for occupants of any dwellings constructed in that band of 50-100m distance from the kennels. In addition, as there is no prediction as to the impact of proposed fence and mound, there is no basis to conclude on their effectiveness, especially having regard to local topography which includes rising land in this part of the site. Nor is there anything to indicate that the development would be capable of meeting the World Health Organisation (WHO) night time standard of 45dBA( $L_{Amax}$ ) level within the proposed properties with the windows open, which would be required by suggested condition 29. [10.47]
- 15.40. In the absence of firmer evidence that the appropriate quality of life could be achieved for occupants in the vicinity of the kennels, I consider that this

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<sup>107</sup> The noise measurements for the kennels record a clear pattern of higher noise levels from 07.00 up until about 18.00, with much lower levels outside those hours. (CD B Environmental Statement Appx 11.3)



should be taken to represent a deficiency in the proposal. However, it relates to a relatively small part of the site and the Environmental Statement provides sufficient information to demonstrate that the effect could be fully addressed as part of the reserved matters. Consequently, I consider that it should carry slight weight in the overall balance.

### *Agricultural land*

15.41. There is agreement that harm would occur due to the loss of almost 42ha of best and most versatile agricultural land. The Applicants point out that the loss of agricultural land is inevitable where large scale urban extensions are required, a point also recognised through the site selection process as part of the work on the JCS. Whilst there is nothing to suggest there would be any adverse impact on local agricultural interests, it nonetheless represents a moderate degree of harm. [9.5, 10.48, 11.2]

### ***Issue 5: the supply of market and affordable housing***

15.42. The Council cannot demonstrate a five year supply of deliverable housing sites. [7.6, 10.51]

15.43. On the basis that the Draft RSS represents the most recent, publicly tested data on housing need, the Council notes it would be able to demonstrate a supply of 2.7 years. However, it places no reliance on this figure, due to the outdated nature of the evidence base. Although one appeal decision in recent years did have regard to the Draft RSS, in subsequent appeals the existence of a shortfall has been agreed and its extent has not been a matter at issue<sup>108</sup>. [7.7-8]

15.44. The Council prefers a figure calculated against the requirements of the emerging JCS. On that basis, it contends, it has a 3.9 year supply of housing sites. This includes a 20% margin having regard to the evidence of persistent under delivery. The Council accepts this should be a significant material consideration. [7.9-11]

15.45. SBGB disputes the figure of 3.9 years on the basis that the figure for the full, objectively assessed need (OAN) of 30,500 in the emerging JCS is too high. SBGB provided documentation to the inquiry but no witness was available to allow the case to be tested. Exhibit IB1 (appended to the statement of Mr Bickerton) contends that the correct OAN figure should be 23,500. These arguments were put to the JCS examination and are dated 22 April 2015. On 1 July 2015, the JCS Inspector issued a note setting out her request for additional evidence following the Stage 1 Hearing sessions. These sessions had dealt with objectively assessed need, among other things, so it would be reasonable to expect that the Inspector had considered the arguments in the SBGB paper. She notes that the OAN figure relied on in the JCS was preceded by other reports which indicated higher levels of need; she raises the possibility that the OAN could be presented as a minimum; and she refers to elements of population data

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<sup>108</sup> Mr Rider: Appx 3 APP/G1630/A/13/2209001; Appx 4 CD APP/1630/A/14/2222147; CD D10 APP/G1630/W/14/3001706; D11 APP/G1630/W/15/3003278; and D12 APP/G1630/W/14/3001584

which may have underestimated the effects of migration<sup>109</sup>. As I read it, the general tenor of her request is to test whether the OAN figure is high enough. It gives no indication that she might consider the figure to be too high. Although there remains considerable uncertainty as to what the ultimate OAN figure will be, there seem to be few prospects that the further work to be undertaken would result in it being any lower than in the submitted JCS. [8.18-20]

- 15.46. For the Applicants, it is suggested that the supply is some 2.4 years at best, although it could be as low as 1.8 years if the arguments were accepted in relation to dealing with the shortfall, lapse rate and deliverability of some sites. In any event, it is argued, the data demonstrates that there is a significant undersupply and pressing housing need. [10.51-2]
- 15.47. On the basis of the information before the inquiry, I consider the indications are that the OAN figure will not be found to be excessive. It may well be adjusted upwards, although the degree of adjustment is unknown. As to housing land availability, this matter was not tested at the inquiry, since it would have been a poor use of inquiry time as it would not have contributed greatly to the merits of the case. It may be, as SBGB argues, that further sites will be included in the JCS, as SBGB refer to a possible large site at Twigworth which is not in the Green Belt. However, whilst such omission sites may be assessed for the purposes of adding to the supply, I see no rational basis to conclude that they might be substituted for the Brockworth strategic site. As to the parties' assessments of whether the housing land supply stands at 1.8 or 3.9 years, in my experience rigorous testing on matters of shortfall, lapse rate and deliverability do tend to result in a downward adjustment, although rarely to the extent argued for. The Council acknowledged that, using the Applicants' assumptions, the supply might be as low as 2.9 years. With that in mind, I take the view that the Council's assessment of the supply position may well prove to be on the high side, albeit the margin of error is probably not quite as great as the Applicants suggest. Consequently, I consider that the supply should be regarded as sitting within the range of 1.8-3.9 years. [7.11, 10.53, 11.3-4]
- 15.48. For the purposes of this decision, the relevance of the housing land supply position relates not only to the fact that there is an undersupply but also to the lengthy period over which it has persisted, the uncertain prospects for its early resolution and the implications of this situation for those seeking residential accommodation in the locality. In that regard, I take the view that if the application site was to be brought forward now, the delivery of some 525 units within the next five years would represent a substantial benefit in planning terms. That level of benefit should attract considerable weight, irrespective of where the supply may actually stand within the range discussed. [7.10, 10.6, 10.53, 10.57, 11.3, 11.5]
- 15.49. The proposal makes provision for 40% affordable housing or 600 units. Whilst this would be no more than necessary to meet policy expectations,

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<sup>109</sup> Mr Lewis, rebuttal proof paragraphs 12, 15 and 23

it would nevertheless make a valuable contribution in the context of an identified need for 1600 affordable homes across the Borough. [7.12, 10.54, 11.1]

- 15.50. The Applicants also draw attention to the range of housing needs which would be met by the proposal, which includes extra care housing as well as market and affordable housing. It is the case that housing developments are expected to meet a range of needs. However, the scale of this proposal means that it would be able to provide a much wider range of tenure and dwelling types. In this respect therefore, it would also make a valuable contribution to local housing. [10.55-59]

### ***Issue 6: other considerations weighing in favour***

#### *Policy context*

- 15.51. In terms of other considerations, the most distinguishing feature about this proposal is the policy context. The planning merits of enabling the expansion of Gloucester within the area to the north of Brockworth was first formally accepted in December 2007 with the publication of the RSS Panel Report. This was carried over into the Draft Revised RSS published in July 2008. The merits of the case for a change to the Green Belt north of Brockworth have been further assessed as part of the JCS process through the ENTEC (2010) and AMEC (2011) reports, amongst others. Identified as Area of Search G4 in the JCS Sustainability Appraisal (2011), the area was assessed as scoring 'extremely well' in relation to sustainability objectives<sup>110</sup>. There was a shift in national planning policy in 2012 through the publication of NPPF, with much greater emphasis being placed on plan-making at the local rather than regional level. It is significant therefore, that the site north of Brockworth continues to attract the support of all three of the planning authorities involved with the JCS, where it is now identified as being of strategic value<sup>111</sup>. It is also recognised as a necessary element in delivering the duty to co-operate, which replaced the hierarchical approach of the former RSS<sup>112</sup>. [10.13-15, 10.65-66]
- 15.52. SBGB and others suggest that the site should not come forward until after the JCS is adopted. However, the Applicants confirm that the purpose of making the application in 2012 was to support the JCS process. In this regard therefore, it could be described as a plan-led development rather than one which would undermine the plan-making process. Since it is in keeping with the emerging JCS, the proposal should not be regarded as premature within the terms of NPPF paragraph 216. Indeed, Gloucester City Council supports the early release precisely in order to avoid development at less sustainable locations being approved due to the housing supply situation. [7.4, 8.21, 9.1-2, 9.4, 10.2, 10.62]
- 15.53. Over the past decade, the area containing the application site has been subjected to extensive study covering a range of topics. The consistent

<sup>110</sup> CD C6, p19

<sup>111</sup> CD C4, Submission JCS 2014, policies SP2 and SA1

<sup>112</sup> CD C13 paragraphs 9.10-9.11, April 2015

conclusion has been that the area represents a logical and acceptable option for the extension of the built up area. On that basis, I consider that the planning policy context should be accorded significant weight.

*Benefits associated with the proposed development*

15.54. The proposal also makes provision in relation to local sports and recreational facilities as well as education, health and community facilities. To the extent that this provision is required to meet the needs generated by the development itself, I consider that it should not be seen to add further weight in support of the proposal. These forms of provision should only attract weight where they can be shown to deliver additional benefits, such as by exceeding policy expectations or enhancing local facilities in some other way. The fact that this distinction may not always be clearly demarcated does not alter that underlying principle. [8.16, 10.60]

*Open space, sport and recreation*

15.55. Under the standards set out in Local Plan policy RCN1, a development of this scale would be expected to provide around 8.5ha of public open space, of which about 4.2 ha should be playing pitches. As it stands, some 24ha would be provided in total, taking into account play areas, sports pitches, informal recreational land, orchards, ecological areas and landscaping. There would be just over 6ha of land for outdoor sports provision, of which about 4.8ha would be formal sports pitches.

15.56. The sports pitches would be located around the existing Brockworth Rugby Club in order to help provide a dedicated 'Sports Hub' that would be run by a Sports Foundation. Together with the provision of changing facilities and full control of the existing rugby pitch, the arrangement would give the Rugby Club greater security, reducing the risk of the club failing<sup>113</sup>. The improved facilities would also allow the local football team, Brockworth Albion, to grow. This additional benefit to the wider area should attract a limited amount of weight. [8.27, 10.62, 11.1]

15.57. The quantum of open space would be almost three times greater than the minimum policy requirement. However, the amount and arrangement of open space would be primarily to mitigate adverse impacts to landscape character, appearance and setting of heritage assets so that most of this additional provision has already been taken into account. [10.62]

*Education*

15.58. Negotiations have taken place as to making appropriate provision for educational needs arising from the proposal. Although it was originally expected that a 1.5 form entry primary school would be required, Mr Clyne's evidence was that the LEA would prefer the new school to provide 1.0 form entry, with the balance of places provided through the enlargement of other local schools. The planning obligation allows for either option and makes provision commensurate with the needs arising from the proposal. Mr Clyne estimates that there could be an overage of up to 0.8ha against the 2ha of land reserved for education on the

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<sup>113</sup> ID 05 – as stated in letter from Brockworth Rugby Club

masterplan. However, under the terms of the planning obligation, the 'excess educational land' would be dealt with separately from that for the school itself. As such, I am not persuaded the proposal would deliver any net benefit in relation to primary education. [10.62]

- 15.59. Secondary age pupils from the development could be expected to attend the nearby Millbrook Academy, which presently has surplus capacity. However, the Council points out that projections show that the school would be likely to reach full capacity anyway as a result of increased demand associated with other housing developments. I consider that there is insufficient evidence that this proposal would deliver any material net benefit in relation to secondary education. [8.26, 10.62]

#### *Health care*

- 15.60. A site of up to 0.4ha would be set aside for a new or relocated GP doctor's surgery. The existing surgery in Brockworth does not have the capacity to cater for the increased demand arising from this proposal and the current site lacks capacity for expansion. The proposed site would not only be sufficient to allow this necessary expansion but would also allow the surgery to offer complementary care services. Initial discussions indicate the surgery would be interested in relocating to the proposed new site at Perrybrook, since the site would also be better located geographically for patients. The need for the relocation would arise from the demands that would be created by the development. However, the opportunity to provide an increased range of health services would represent a benefit to the wider community. In facilitating this through the provision of a larger site, the proposal would make a modest contribution to assisting in this process. This should carry a limited amount of weight. [8.25, 10.62, 11.1]

#### *Community facilities*

- 15.61. A financial contribution would be made to Brockworth Community Project for the benefit of the community run library service and community based programmes. This reflects the sum which would formerly have been required as a library contribution, when that service was run by the County Council. No doubt the funding will be invaluable to the Community Project. However, the increased population associated with the proposed development would be likely to lead to increased demands on the Project. As such, I consider this element of the proposal should not be regarded as delivering any net benefit. [8.30, 10.62, 11.1]

#### *Sustainability of location*

- 15.62. Brockworth is identified as having good levels of accessibility. Whilst this proposal would enjoy similar public transport, walking and cycling credentials, no net benefit has been identified in this respect. As such, I consider that these considerations should not attract additional weight. [10.62]

#### *Other environmental gains*

- 15.63. Of the two orchards within the scheme, that to the north of Brockworth Court would be required to mitigate the impact on the setting of listed buildings. The other, Henley Bank, would be restored and transferred to a

local trust together with a commuted sum to provide for its maintenance. Public access to this orchard would be of value to the wider community due to its local heritage interest. It represents a modest net benefit. [8.29, 10.62]

- 15.64. There would be some improvements to the Horsbere Brook corridor, including enhanced public access to that section within the application site. Whilst this would be in keeping with the aims of the Parish Plan, the works would be primarily to mitigate landscape impact. The improved public access represents a very limited net benefit. [8.28, 10.62]

#### *Economic benefits*

- 15.65. The provision of housing on the scale proposed would deliver considerable economic benefits in the form of job creation, the stimulus to the local economy from the additional households and increased financial contributions through Council Tax and New Homes Bonus. The Applicants estimate Phase 1 would generate 300 construction jobs and 540 indirect jobs; it would generate around £4.6million gross household income; £190,000 in Council Tax; and £1.3million by way of new homes bonus. The economic benefits should be accorded considerable weight. [10.62]

#### ***Issue 7: very special circumstances***

- 15.66. The proposal would cause harm to the Green Belt by reason of inappropriateness. It would result in a loss of openness across the entire site. It would conflict with the purposes of the Green Belt in relation to checking the unrestricted sprawl of large built-up areas, preventing neighbouring towns from merging and safeguarding the countryside from encroachment. This harm carries substantial weight against the proposal.
- 15.67. To this should be added a limited amount of harm associated with the moderate adverse effect on the landscape.
- 15.68. In my view, there would be some harm to the setting of St George's Church and the listed buildings within the Manorial Complex. Under the terms of the *Barnwell Manor* judgement, this harm should be given considerable importance and weight although that situation may change, depending on the outcome of Court proceedings in relation to *Mordue*.
- 15.69. Separately, since it would be less than substantial harm, NPPF paragraph 134 states this should be weighed against the public benefits of the proposal. The benefits in relation to the provision of market and affordable housing would be more than sufficient, in themselves, to outweigh this particular harm so that there would be no conflict with NPPF paragraph 134.
- 15.70. I have also identified a slight degree of harm due to my reservations as to noise impact and a moderate adverse effect owing to the loss of best and most versatile agricultural land.
- 15.71. As to factors weighing in favour of the proposal, it has been shown that there is a significant undersupply of land for housing, as well as a pressing housing need. Correspondence was provided to the inquiry between the local Member of Parliament and the Minister of State for Housing and

Planning<sup>114</sup>. This reiterates the point that the single issue of unmet demand for housing alone would be unlikely to outweigh harm to the Green Belt. Also, it is of note that the recently determined St Alban's appeals were dismissed, notwithstanding the severe shortfall in housing land supply which was identified in that instance. However, the contribution of those proposals to unmet housing need was still found to weigh positively in the balance<sup>115</sup>. In view of the aim in NPPF to significantly boost the supply of housing, I consider that the contribution which this site would make to housing delivery in this locality would amount to a significant benefit worthy of very considerable weight. To this should be added moderate weight from the benefits associated with the provision of affordable housing and meeting a wide range of housing needs. [8.15-16, 9.2, 10.64]

15.72. In addition to meeting demand for housing, the proposal would accord with longstanding strategic planning aims. Despite never reaching the stage of a formal allocation in an adopted plan, the application site has been recognised as having a key role to play in plan making in the wider area for many years. Although the decision of the Council's Planning Committee may have been close, the principle of development on this site has support not only as a result of that decision but also by virtue of its status in the emerging JCS and the weight of evidence in support of the relevant policies in that plan. This should be accorded significant weight.

15.73. It would also deliver considerable economic benefits as well as more limited benefits in relation to support for local sports provision, health care and environmental gains.

15.74. The adverse effects of the proposal should not be underestimated. They would be considerable, especially in relation to impact on the Green Belt and the open countryside. However in my opinion, the other considerations are sufficient to clearly outweigh all of the harm identified so that very special circumstances have been demonstrated.

### **The planning balance and overall conclusion**

15.75. NPPF paragraph 7 refers to the three dimensions of sustainable development. This proposal seeks to bring forward land in a location which has for some time been identified as being in the right place to support growth. The comprehensive form of the proposal would ensure that the development would proceed in a coordinated manner so that the proposal accords with the economic strand of sustainable development. As regards the social dimension, the evidence on the lack of land for housing and the growing need for affordable housing shows that the proposal would make a valuable contribution to meeting housing need. The Illustrative Masterplan indicates this would be provided in the context of a high quality built environment. In terms of the environmental dimension, I recognise that the proposal would result in the loss of an extensive area of open countryside which is also protected as Green Belt. However, it would assist in satisfying a long-recognised need for development within a planned and

<sup>114</sup> ID 02: letter dated 9 July 2015 from Brandon Lewis MP to Laurence Robertson MP

<sup>115</sup> ID16, DL16

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comprehensive framework which would incorporate substantial mitigation, particularly as regards the impact on the natural and historic environment. On balance therefore, I consider that it would also accord with the environmental dimension of sustainable development.

15.76. This application should be determined in accordance with the development plan unless material considerations indicate otherwise. However, the presumption in favour of sustainable development set out at NPPF paragraph 14 states that where relevant policies are out of date, planning permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits or specific policies in the Framework indicate development should be restricted, for example policies relating to sites protected under the Birds and Habitats Directives or land designated as Green Belt.

15.77. The Applicants do not rely on the presumption in favour since the proximity of the site to the Cotswold Beechwoods SAC and the initial concerns of Natural England led the Applicants to commission a Report on the information needed for an Appropriate Assessment. NPPF paragraph 119 states that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being determined. Paragraphs 13.1-13.4 of this report and CDB13 provide the information necessary for the Secretary of State, as the competent authority, to carry out the Appropriate Assessment in relation to this proposal, if one is deemed necessary. However, as no likely significant effect has been identified, it is not necessary for the competent authority to carry out an Appropriate Assessment. Consequently, paragraph 119 does not apply. However, as the proposal concerns land designated as Green Belt, the presumption in favour of sustainable development should not apply, in view of the provisions of footnote 9. [10.69-71]

15.78. The proposal is in direct conflict with the adopted development plan as regards its policies on the Green Belt (GRB1) and housing, including settlement boundaries (HOU2, HOU4). There is also some conflict with policy LND4, having regard to the landscape impact. [10.67]

15.79. Although policy GRB1 is consistent with NPPF with regard to its treatment of built development, it does not make provision for assessing the question of very special circumstances. Policies HOU2 and HOU4 are dated, since they are based on the revoked Structure Plan. They also represent relevant policies for the supply of housing so that, in any event, they should not be regarded as up to date in view of the accepted position on housing land supply. Policy LND4 is consistent with the NPPF, where one of the core principles is to recognise the intrinsic character and beauty of the countryside. This point was reiterated in correspondence between the Minister and the Planning Inspectorate<sup>116</sup>.

15.80. Thus, whilst there is conflict with the development plan, there are other important considerations to be weighed in the balance. With regard to the conflict in relation to the Local Plan's Green Belt policy, it is my view that

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<sup>116</sup> CD C24: letter to PINS dated 27 March 2015



very special circumstances have been demonstrated, so that the proposal would accord with NPPF paragraph 88. With specific reference to housing, two points are of particular importance: firstly, the stated aim in more recent national policy to significantly boost the supply of housing; and, secondly, the strategic approach of the emerging JCS. As regards the first, although the actual figure for the full objectively assessed housing need of Tewkesbury has not yet been established, the evidence to the JCS examination points overwhelmingly to high and persistent levels of unmet need. In relation to the second, it is the case that the approach of the JCS is based on strategic allocations and associated alterations to the Green Belt and it adheres to the recognition of the planning merits of an urban extension north of Brockworth. Also, the Inspector for the JCS examination has indicated acceptance as to the question of exceptional circumstances. Bearing in mind that the JCS has been prepared so as to be broadly consistent with current national policy, this suggests that considerable weight should be attached to that broad approach and, as a consequence, the contribution which the application site is expected to make to the strategic planning of the area. For these reasons, I consider that there are sufficient considerations to outweigh the conflict with the development plan. [10.72-77]

### **Recommendation**

15.81. I recommend that planning permission be granted, subject to the conditions set out in Annex 1.

*K.A. Ellison*

Inspector



- ID13 Revised agreed conditions 6 and 7  
 ID14 Responses to updated Environmental Statement  
 ID15 Environmental Statement – Bat Addendum  
 ID16 Secretary of State's decision on appeal APP/B1930/A/12/2180486

## CORE DOCUMENTS

Ref	Reference/ Author	Title	Date	Extracts
<b>A) Application Plans</b>				
A1	MHP Design	Site Location Plan - 10.67.903	10.12.12	
A2	MHP Design	Planning Application Boundary – 10.67.902 Rev D	03.10.11	
A3	MHP Design	Illustrative Masterplan - 10.67.108 Rev E	24.05.13	
A4	MHP Design	Conceptual Masterplan- 10.67.107 Rev F	25.01.13	
A5	MHP Design	Site Phasing Plan - 10/67.111 Rev H	28.02.12	
A6	Development Transport Planning	Dwg No. 60007-Bus-001	01.05.13	
A7	Development Transport Planning	Dwg No. 60007-Bus-002	01.05.13	
A8	Development Transport Planning	Dwg No. 60007-Audit-03	22.05.12	
A9	Development Transport Planning	Dwg No. 60007-TA-005 Rev B	06/02/13  Revised  25.03.13	
A10	Development Transport Planning	Dwg No. 60007-TA-006 Rev D	31/07/12 Revised 03/12/13	
A11	Development Transport Planning	Dwg No. 60007-TA-007 Rev A	30/07/12  Revised 25/03/13	
A12	Development Transport Planning	Dwg No. 60007-TA-008	30/07/12	

A13	Development Transport Planning	Dwg No. 60007-TA-009	30/07/12	
A14	Development Transport Planning	Dwg No. 60007-TA-010	23/10/12	
A15	Development Transport Planning	Dwg No. 60007-TA-012	29/05/13	
A16	Development Transport Planning	Dwg No. 60007-TA-013	03/12/13	
A17	Development Transport Planning	Dwg No. 60007-TA-0114	03/12/13	
A18	Development Transport Planning	Dwg No. 60007-TA-015	03/12/13	
<b>B) Application Reports</b>				
B1	MHP/HPP	Design & Access Statement	July 2014	
B2	Iceni Projects Ltd	Brockworth Statement of Community Involvement	Nov 2012	
B3	HPP	Planning Statement	January 2013	
B4	HPP	Economic Benefits of First Phase of Development	06.08.14	
B5	HPP	Statement of 'Very Special Circumstances'	08.08.14	
B6	Stuart Larkin and Associates Ltd	Affordable Housing Statement	August 2013	
B7	Acuity Consulting	Flood Risk Assessment - Rev D	July 2013	
B8	Richard Allitt Associates Ltd	Sewer Capacity Assessment	20.09.13	
B9	HPP	Utilities Statement	Nov 2012	
B10	MHP Design	Agricultural Land Use and Land Classification Report	December 2012	
B11	Tyler Grange	Tree Quality Survey	17.10.11	
B12	HPP	Waste Minimisation Strategy	July 2013	
B13	Ecology Solutions	Habitat Regulation Assessment	November 2013	

B14	HPP	Planning Obligations Head of Terms	Revised 31.07.14	
B15	HPP	Environmental Statement Volume 1		
		Non-Technical Summary	July 2015	
		1.0 Introduction	June 2015	
		2.0 Assessment Methodology	July 2013	
		3.0 The Proposed Development	June 2015	
		4.0 Planning Context	May 2014	
		5.0 Landscape and Visual Impact Assessment	June 2015	
		6.0 Biodiversity	June 2015	
		7.0 Hydrology, Hydrogeology and Water Quality	July 2013	
		8.0 Cultural Heritage	May 2014	
		9.0 Social and Economic Context	July 2013	
		10.0 Transport	Nov 2012	
		11.0 Noise and Air Quality	May 2014	
		12.0 Environmental Management	June 2015	
B16		ES Vol 2 – Plans and Appendices	Various	
B17		ES Vol 3 - Transport Assessment	Various	
B18		Note on the Revisions to the ES Chapters	15.07.15	
<b>C) Policy and evidence base documents</b>				
C1	GOSW Regional Strategies Team	Draft RSS for the South West Inc Proposed Changes – For Public Consultation	July 2008	Pages 84-88
C2	Tewkesbury BC	Tewkesbury Borough Local Plan to 2011	March 2006	
C3	Tewkesbury BC	Tewkesbury Borough Local Plan –	25 March	

		Saving Direction	2009	
C4	JCS Councils	The Submission Joint Core Strategy	Nov 2014	
C6	JCS Councils	JCS Initial Sustainability Appraisal Summary Report	2011	
C7	JCS Examination	Gloucester, Cheltenham and Tewkesbury JCS Programme, Matters and Issues v5	5th June 2015	
C8	Entec UK Ltd	JCS- Urban Extension Definition Study	July 2010	Pages 91-103
C9	AMEC	JCS – Green Belt Assessment	Sept 2011	Pages 27-47
C10	JCS Councils	JCS – Landscape and Visual Sensitivity and Urban Design Report	October 2012	Pages 22-25
C11	JCS Councils	JCS– Landscape Characterisation Assessment and Sensitivity Analysis	Sept 2013	Pages 75-80 & Appendices 1 & 2
C12	ECUS	JCS Historic Environment Assessment	March 2014	Pages 49-57 & 98-104
C13	JCS Councils	Housing Background Update Paper	November 2014	
C14	NLP/CCHPR	Assessment of Housing Requirements	Aug/ Nov 2014	
C15	JCS Councils	JCS Strategic Allocations Report		Pages 1-47 and Appendices 1, 2, 5 & 6
C16		not used		
C17	Tewkesbury BC	Five Year Land Supply	October 2014	
C18	Tewkesbury BC	5 Year Housing Land Supply Assessment	July 2013	
C19		not used		
C20	Natural England	National Character Map of England 106: Severn and Avon Vales	17/07/ 2012	
C21	Gloucestershire County Council	Gloucestershire Landscape Character Assessment	2006	

C22		not used		
C23		not used		
C24	DCLG	WMS by Local Government Minister Brandon Lewis	1st July 2013	
C25	HM Government	Laying the Foundations: A Housing Strategy for England	Nov 2011	Various pages
C26	JCS Councils	Joint Core Strategy Rural Area Settlement Audit	2014	
C27	HDH Planning and Development	Strategic Housing Market Assessment Update	March 2014	
C28	GFirst	Statement to the JCS Examination	June 2015	
C29	JCS Authorities	JCS Pre-submission responses summary report	November 2014	Page 9, Page 16
C30	Brockworth Parish Council et al	Objections to Submission JCS	August 2014	
C31	JCS Examination	JCS Programme, Matters and Issues V8	17 July 2015	
C32	JCS Authorities	Matter 8 Written Statement	June 2015	
C33	JCS Authorities/ERLP2 and SMV	Matter 8 Statement of Common Ground - Site A4	July 2015	
C34	CPRE	Matter 8 Written Statement	June 2015	
C35	Save Brockworth Green Belt	Matter 8 Written Statement - Site A4	June 2015	
C36	Hunter Page for ERLP2 & SMV	Matter 8 Written Statement - Site A4	June 2015	
C37	JCS Authorities	EXAM 77 JCS Brownfield Paper	July 2015	
C38	Home Builders Federation	Matter 3 Written Statement - Housing	April 2015	
C39	HASHTAG	Matter 3 Written Statement - Housing	April 2015	
C40	Pegasus Group for Robert Hitchins Ltd	Matter 3 Written Statement - Housing	April 2015	

C41	Pegasus Group for Robert Hitchins Ltd	Matter 7 Written Statement – Green Belt	June 2015	
C42	JCS Authorities	Matter 7 Written Statement – Green Belt	June 2015	
C43	Save the Countryside	Matter 7 Written Statement – Green Belt	June 2015	
C44	Gladman	Matter 7 Written Statement – Green Belt	June 2015	
<b>D) Relevant planning decisions and Judgements</b>				
D1	Planning Inspectorate	APP/G1630/A/13/2209001 Land to the south of Beckford Road, Alderton	22 May 2014	
D2	EWHC	Wildie v Wakefield MDC [2013] EWHC 2769		
D3a	EWCA	Wychavon District Council v Secretary of State [2008] EWCA Civ 692		
D3b	APP/G1630/A/12/2 173999	Land opposite Courtwright House, Court Road, Brockworth	22 Nov 2012	
D4	[2014] EWCA Civ 137: The Court of Appeal	Barnwell Manor Wind Energy Ltd	18 Feb 2014	
D5	[2014] EWHC 1895 (Admin)	ruling by Mr Justice Lindblom for Forge Field.	12 June 2014	
D6	APP/G1630/A/14/2 223858	Land Off Banady Lane, Stoke Orchard,	22 Jan 2015	
D7	APP/G1630/A/14/2 222147	Land east of St Margarets Drive, Alderton, Tewkesbury	17 March 2015	
D8	High Court - Admin	CO/4123/2014	9 March 2015	
D9	Court of Appeal- Civil Division	Order granting Permission to Appeal	20 May 2015	
D10	APP/G1630/W/14/ 3001706	Land adjacent to Cornerways,	13 July 2015	
D11	APP/G1630/W/15/ 3003278	Land west of Willow Bank Road, Alderton, Tewkesbury	17 July 2015	



D12	APP/G1630/W/14/3001584	Land east of Willow Bank Road,	17 July 2015	
D13	[2015] EWHC 488 (Admin)	Stroud District Council v SSCLG	6 Feb 2015	
<b>E) Parish Council Documents</b>				
E1	Brockworth Parish Council	Brockworth Parish Plan 2011	Nov 2011	Pages 12-21
<b>F) Research Documents and Submissions Made in Respect of the Application</b>				
F1	Brockworth Community Sports & Recreation Ltd	The Future of Sport In Brockworth	July 2014	
F2	Brockworth Community Project	Potential Section 106 contribution from proposed 'Perrybrook' development letter.	18th July 2014	
F3	Charles Parry, Senior Archaeological Officer, Gloucestershire County Council	Planning Application Consultation Response form the County Archaeologist in respect of Archaeological Impacts at Perrybrook.	4th February 2013	
F4	Caroline Power Historic England	Planning Application Consultation Response from English Heritage in respect of Statutorily Designated Heritage Assets Impacts at Perrybrook.	18th September 2013	
<b>G) Appeal documentation</b>				
G1	Tewkesbury Borough Council	Officer's Report to Planning Committee of 19 August 2014	19 August 2014	
G2	DCLG	Secretary of State's call-in letter	24 Nov 2104	
G3		Pre-Inquiry Meeting Note	10 April 2015	
G4	Statement of Common Ground	between the LPA and the Applicants	26th May 2015	

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G5	Statement of Common Ground	between the LPA and the Applicants and Save Brockworth Greenbelt Ltd	2nd June 2015	
G6	Statement of Common Ground	on Transport and Highways Matters	May 2015	
G7	Statement of Common Ground	on Planning Obligations and CIL Compliance Statement	Aug 2015	

## Annex A Conditions

### Reserved Matters

1. The development shall not be begun before detailed plans for the relevant phase of the development showing the landscaping, layout, scale and external appearance of the buildings (hereinafter referred to as "the reserved matters") have been submitted to and approved by the Local Planning Authority. The development shall be carried out as approved.
- 2 Applications for the approval of the reserved matters relating to Phase One of the development, as shown on the phasing plan (drawing no. 10.67.111 Rev H) shall be made to the Local Planning Authority before the expiration of 2 years from the date of this permission.
3. Phase One shall be begun before the expiration of 12 months from the date of the approval of the reserved matters applications relating to that phase.
4. Applications for the approval of reserved matters relating to all following phases of development shall be made to the Local Planning Authority before the expiration of 10 years from the date of this permission; and development shall begin on those phases not later than two years from the date of the approval of reserved matters applications relating to that phase.
5. All reserved matters and details required to be submitted pursuant to condition 1 shall be broadly in accordance with the principles and parameters described and identified in the Illustrative Masterplan (Drawing No. 10.67.108 Rev E), the Conceptual Masterplan (Drawing No. 10.67.107 Rev F) and the Design and Access Statement (Revised July 2014) received on 2nd July 2014. A statement shall be submitted with each reserved matters application, demonstrating how the submitted reserved matters comply with the Design and Access Statement and Masterplan documents.
6. No more than 1,500 dwellings shall be constructed on the site.
7. The development shall include no more than 22,000 square metres gross external floor space of B1 and B8 of and no more than 2,500 square metres gross external floor space of A1, A2, A3, A4 and A5. The A-Class land uses shall have no more than one unit of up to 400 square metres gross internal floor space, with the remaining units being up to 75 square metres gross internal floor space.

### Flood Risk/Drainage.

8. The first application for the approval of reserved matters on the site shall be accompanied by a surface drainage strategy for the entire application site. No building hereby permitted within each phase of the development shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority as part of the reserved matters applications for that phase. The information submitted shall be in accordance with the principles set out in the approved drainage strategy. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in DEFRA's non-statutory technical standards for the design, maintenance and operation of sustainable drainage systems

to drain surface water (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

9. Floor levels of all properties shall be set a minimum of 600mm above the modelled 1 in 100 year flood level, including an allowance for climate change at the appropriate locations along the Horsbere Brook.

10. No building for any phase of development hereby permitted shall be occupied until sewage disposal works for that phase have been implemented in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

11. No new buildings, structures (including gates, walls and fences) or raised ground levels shall be constructed or erected within 5 metres of the top of any bank of a watercourse, and/or the side of any existing culverted watercourses, inside or along the boundary of the site.

#### Trees and Landscaping

12. The plans and particulars required to be submitted in accordance with the condition 1 shall include:

(i) a plan showing the location of, and allocating a reference number to, all trees protected by Tree Preservation Orders and all trees on the site which have a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;

(ii) details of the species, diameter (measured in accordance with paragraph (i) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (iii) and (iv) below apply;

(iii) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;

(iv) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree;

(v) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development. In this condition "retained tree" means an existing tree which is to be retained in accordance with the plan referred to in paragraph (i) above.

13. If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place.

#### Highways

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 approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors
- ii) loading and unloading of plant and materials
- iii) storage of plant and materials used in constructing the development
- iv) wheel washing facilities
- v) measures to control the emission of dust and dirt during construction
- vi) a scheme for recycling/disposing of waste resulting from demolition and construction works

15. No part of the development hereby permitted shall be occupied until such time as the improvement works to the junction of the A417 and A46 as shown in the Development Transport Planning Drawing no. 60007-TA-011 Rev B has been completed in accordance with the Local Planning Authority's approval.

16. Except as specified in condition 17, no building shall be occupied on Phase 1 of the development until the Mill Lane highway improvement works shown on plan no. 60007-TA-015 have been completed in accordance with engineering details to be submitted to and approved in writing beforehand by the Local Planning Authority.

17. No more than 80 dwellings shall be occupied on Phase 1 of the development until the Mill Lane highway improvement works shown on plans no. 60007-TA-014 have been completed in accordance with engineering details to be submitted to and approved in writing beforehand by the Local Planning Authority.

18. No building shall be occupied on Phases 2, 3 or 5 until a scheme of works broadly in accordance with the following plans has been submitted to and approved in writing by the Local Planning Authority: -

- (i) Court Road compact roundabout highway works as shown on plan no. 60007-TA-005 rev B;
- (ii) the Court Road Bus Layby highway works as shown on plan no. 60007-BUS-002;
- (iii) the Vicarage Lane Half Width Bus Layby highway works as shown on plan no. 60007-BUS-001;
- (iv) the Westfield Road / Ermin Street junction improvements highway works as shown on plan no. 6007-TA-009;
- (v) the Ermin Street / Shurdington Road junction improvement highway works as shown on plan no. 60007-TA-010; and
- (vi) the Cycle Route signage scheme as shown on plan no. 60007-AUDIT-03.

Development shall be carried out in accordance with the approved details.

19. No building hereby permitted shall be occupied on Phases 4 and 6 of the development until a scheme of works broadly in accordance with the following plans has been submitted to and approved in writing by the Local Planning Authority: -

- (i) Valiant Way normal roundabout highway works as shown on plan no. 60007-TA-006 rev D; and,
- (ii) The cycle/footway works shown on plan no. 60007-TA-013.

Development shall be carried out in accordance with the approved details.

20. No building hereby permitted shall be occupied on Phase 7 of the development as shown on the approved Phasing Plan until a scheme of works broadly in accordance with the following plans has been submitted to and approved in writing by the Local Planning Authority: -

- (i) Delta Way normal roundabout highway works as shown on plan no. 60007-TA-007 rev A;
- (ii) the A417/Delta Way roundabout improvements works as shown on plan no. 60007-TA-008; and
- (iii) the cycle/footbridge works shown on plan no. 60007-TA-012

21. No dwellings 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.

22. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development 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 either a dedication agreement has been entered into or a private management and maintenance company has been established.

#### Archaeology

23. No development shall take place within any phase of the development until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation for the relevant phase, which shall have first been submitted to and approved in writing by the Local Planning Authority.

#### Noise

24. No development shall take place within any phase of the development until a Noise Assessment has been carried out by a suitably qualified person. The Noise Assessment shall particularly address the likely effects of road noise and noise from the Henley Bank Kennels on any proposed residential areas within the site. It shall provide details of measures to mitigate and minimise any identified adverse noise effects within those areas. It shall also specify measures to protect any individual properties as required. A scheme of measures based on the Noise Assessment and broadly in accordance with the proposals set out within the Design and Access Statement shall be submitted to and approved in writing by the Local Planning Authority, together with a timetable for their implementation. No dwelling shall be occupied until any measures in the approved scheme which are relevant to it have been carried out in accordance with the approved details. The approved measures shall be retained thereafter.

26. No external construction works, deliveries, external running of plant and equipment or internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1400 on Saturday and not at all on Sundays, Public or Bank Holidays.

26. No development shall take place until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the Local Planning Authority. The EMP shall be in accordance with the mitigation and enhancement measures in the submitted Environmental Statement. It shall include a timetable for implementation, details for monitoring and review and how the areas concerned will be maintained and managed. Development shall be in accordance with the approved details and timetable in the EMP.

26. No development shall take place until a Construction Environmental Management Plan in accordance with the approach outlined in the Environmental Statement has been submitted to and approved in writing by the Local Planning Authority. This shall deal with the treatment of all environmentally sensitive areas, their aftercare and maintenance as well as detailing measures for their protection during construction. The scheme shall include details of the following and the works shall be carried out in accordance with the approved method statement.

- (i) The timing of the works
- (ii) The measures to be used during the development in order to minimise environmental impact of the works (considering both potential disturbance and pollution)
- (iii) The ecological enhancements as mitigation for the loss of habitat resulting from the development
- (iv) A map or plan showing habitat areas to be specifically protected (identified in the ecological report) during the works.
- (v) Any necessary mitigation for protected species
- (vi) Construction methods
- (vii) Any necessary pollution protection methods

#### Waste Minimisation

27. All applications for reserved matters shall include details of the proposed design and location of recycling and refuse storage arrangements within that phase. The recycling and refuse storage facilities shall then be provided in accordance with the approved scheme and retained as such thereafter.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.