



Ministry of Housing,  
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Our ref: PCU/APP/G1630/W/3184272  
Your ref: 13475

20 December 2018

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY R KEENE AND SONS  
LAND SOUTH OF OAKRIDGE, HIGHNAM, GLOUCESTERSHIRE, GL2 8EF  
APPLICATION REF: 16/00486/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of H Baugh-Jones BA (Hons) DipLA MA CMLI, who held a public local inquiry on 22-25 May 2018 into your client's appeal against the decision of Tewkesbury Borough Council to refuse your client's application for outline planning permission for the erection of 40 dwellings with all matters reserved except access, in accordance with application ref: 16/00486/OUT, dated 3 May 2016.
2. On 4 July 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

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

3. The Inspector recommended that the appeal be dismissed, and planning permission refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

5. On 26 October 2018, Government published "Technical consultation on updates to national planning policy and guidance", dealing with the calculation of Local Housing Need and other matters.

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6. On 12th November 2018 the “Joint Core Strategy Review: Issues and Options” consultation was published. This responds to the original JCS, which committed to an immediate partial review of the plan to deal with identified issues, including a housing shortfall in Tewkesbury.
7. While a number of the issues dealt with in both of these documents are relevant to this case, given both remain the subject of consultation and may not be the final position, the Secretary of State has made his decision here based on existing policy. The Secretary of State does not consider that this raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

### **Policy and statutory considerations**

8. In reaching his decision, 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.
9. In this case the development plan consists of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) 2017, saved policies of the Tewkesbury Local Plan (TLP) 2006, and the Highnam Neighbourhood Development Plan (NP) 2017. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR17-24.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (‘the Framework’) and associated planning guidance (‘the Guidance’). The revised National Planning Policy Framework was published on 24 July 2018, and unless otherwise specified, any references to the Framework in this letter are to the revised Framework.
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

### *Emerging plan*

12. The emerging plan comprises the Tewkesbury Borough Plan 2011 to 2031. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. This plan is still at a very early stage of preparation and underwent a Preferred Options consultation between 10 October 2018 and 30 November 2018. Like the Inspector, and for the reasons set out at IR25 and 259, overall the Secretary of State considers that this emerging plan carries no weight.

## **Main issues**

13. The Secretary of State agrees with the Inspector that the main issues in this case are those set out in IR197

### *Housing Land Supply*

14. The Secretary of State has carefully considered the Inspector's assessment of housing demand and of housing land supply, as set out at IR198-221. For the reasons given in that assessment, he agrees with the Inspector's conclusions that 520 homes per year are required (IR209), and that, considering the definition of "deliverable" and "developable" in the glossary of the revised National Planning Policy Framework, the housing land supply is 3.99 years (IR220). He considers that, without a five-year supply of housing land, the presumption in favour of sustainable development, as set out in paragraph 11 of the Framework, applies.
15. In the absence of a five-year land supply, and as set out at IR261-262, the Secretary of State agrees that there would be clear benefits to the proposal, including the provision of 40 new affordable and market homes and the creation of jobs during construction and afterwards through residual support for the local shop. He agrees with the Inspector that both the new homes and the economic benefits attract significant weight.

### *Character and appearance*

16. The Secretary of State agrees with the Inspector at IR222 that the main issues to consider are the effect of the proposal on the settlement pattern, and the landscape and visual effects of the proposal.
17. In respect of the settlement pattern, for the reasons given at IR223-227 the Secretary of State agrees with the Inspector that Oakridge provides a definitive and robust edge between the settlement and open countryside, and that development would result in harm by disrupting the settlement pattern by extending the urban area into open countryside beyond a well-defined edge.
18. The Secretary of State notes that the site does not fall within a landscape subject to any specific designation for its character and/or quality (IR228). He agrees with the Inspector's assessment that the development would result in a change to the experience of travelling along Oakridge, and that the proposal would be very prominent from other foot and cycle routes (IR237). He has also agrees with the Inspector's conclusion that there would be no unacceptable effect on the historic landscape of Highnam Court (IR-238-241).
19. Taking all of the above into account, the Secretary of State agrees with the Inspector's conclusions (IR242-243) that there would be harm to the settlement pattern, the landscape and the way it is experienced, and that the proposal would not have sufficient regard for local distinctiveness or contribute positively to a sense of place. He further agrees that the proposal would therefore run counter to JCS policy SD6 and NP policy H2. He concludes that this carries very substantial weight.

### *Other matters*

20. For the reasons given at IR244-255, the Secretary of State considers that matters relating to social wellbeing, provision of safe access, and the access to shops and services do not weigh against the proposal.

## **Planning conditions**

21. The Secretary of State has given consideration to the Inspector's analysis at IR184-192, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

## **Planning obligations**

22. Having had regard to the Inspector's analysis at IR193-195, the planning obligation dated 4 June 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR195 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

23. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the appeal. For these reasons, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

24. The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of regulation 123 prior to determining this appeal. However, the Secretary of State does not consider that the planning obligation overcomes his reasons for deciding that the appeal should be dismissed, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

## **Planning balance and overall conclusion**

25. For the reasons given above, the Secretary of State considers that the proposed development is not in accordance with JCS policy SD6 (covering the protection of landscape character) and NP policy H2 (covering design and visual character) of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

26. As the Secretary of State has found that the local authority cannot demonstrate a five year supply of housing land, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

27. The Secretary of State considers that the housing benefits of the proposal carry significant weight, and the economic benefits of the proposal also carry significant weight.

28. However, the Secretary of State considers the conflict with the development plan on matters of character and landscape impact to carry very substantial weight.

29. Paragraph 12 of the Framework states that where a planning application conflicts with a Neighbourhood Plan that has been brought into force, planning permission should not normally be granted. Although the Neighbourhood Plan does not allocate sites, meaning that paragraph 14 of the Framework is not engaged, or set a settlement boundary, it represents an expression of how the community wishes to shape its local environment, and is relevant to the assessment whether the appeal proposal is acceptable or not.
30. The Secretary of State considers that there are no protective policies which provide a clear reason for refusing the development proposed. However, taking into account the material considerations set out above, including that there is conflict with a recently made Neighbourhood Plan, he considers that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. He considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
31. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

### **Formal decision**

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses outline planning permission for the erection of 40 dwellings with all matters reserved except access.

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

33. 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 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
34. A copy of this letter has been sent to Tewkesbury Borough Council and Highnam Parish Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Andrew Lynch*

Andrew Lynch  
Authorised by the Secretary of State to sign in that behalf



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

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State

Date: 28 September 2018

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**TOWN AND COUNTRY PLANNING ACT 1990**

**TEWKESBURY BOROUGH COUNCIL**

**APPEAL BY**

**R KEENE AND SONS**

Inquiry Held on 22, 23, 24 and 25 May 2018

Land South of Oakridge, Highnam, Gloucester GL2 8EF

File Reference: APP/G1630/W/17/3184272

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## LIST OF ABBREVIATIONS

ALA	Assessment of Land Availability
AONB	Area of Outstanding Natural Beauty
CA	Conservation Area
CIL	Community Infrastructure Levy Regulations
DP	Development Plan
dpa	Dwellings per annum
GLVIA	Guidelines for Landscape and Visual Impact Assessment
HLS	Housing land supply
HMA	Housing Market Area
HPC	Highnam Parish Council
JCS	Gloucester, Cheltenham and Tewkesbury Joint Core Strategy
LCASA	Landscape Characterisation Assessment and Sensitivity Analysis
LDS	Local Development Scheme
LP	Local Plan
LPZ	Landscape Protection Zone
LVIA	Landscape and Visual Impact Assessment
LVSS	Landscape and Visual Sensitivity Study
MfGS	Manual for Gloucestershire Streets
MfS	Manual for Streets
NP	Neighbourhood Plan
OAN	Objectively Assessed Need
PPG	Planning Practice Guidance
PRoW	Public Right of Way
SHMA	Strategic Housing Market Area
SLA	Special Landscape Area
SoS	Secretary of State
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
TBC	Tewkesbury Borough Council
TBP	Tewkesbury Borough Plan (eTBP also refers)

**File Ref: APP/G1630/W/17/3184272**

**Land South of Oakridge, Highnam, Gloucester GL2 8EF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by R Keene and Sons against the decision of Tewkesbury Borough Council.
- The application Ref 16/00486/OUT, dated 3 May 2016, was refused by notice dated 14 March 2017.
- The development proposed is outline application for the erection of 40 dwellings with all matters reserved except for access.

**Summary of Recommendation: That the appeal be dismissed.**

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**Procedural matters**

1. On 4 July 2018, the Secretary of State (SoS) directed that he would determine this appeal. The reason for this direction is that the SoS would like to consider the implications of an up to date development plan, including a made neighbourhood plan where the neighbourhood plan does not allocate sites for housing.
2. The planning application was made in outline form with all matters other than access into the site reserved for future consideration. However, the application documents include an indicative layout plan that shows how the development might be laid out and the general ratio of built development to areas of open space. I have had regard to this in my report but have treated it as indicative information only.
3. I made an unaccompanied site visit on the day before the Inquiry opened and an accompanied visit on the final day. After closing the Inquiry, I also made a further unaccompanied visit to view the site from the Gloucestershire Way.
4. The appeal proposal was refused for 6 reasons. Reasons 3 - 6 relate to the lack of planning obligations to cover matters of highways, affordable housing and relevant infrastructure. However, it was agreed by Tewkesbury Borough Council (TBC) and the Appellant prior to the Inquiry that highway matters could be addressed by planning condition and that the other matters could be dealt with via the provision of section 106 planning obligations (s106). Highnam Parish Council (HPC), which was granted Rule 6 status, nevertheless maintains its highways concerns.
5. A draft s106 agreement was submitted at the Inquiry, which covers on-site affordable housing and public open space along with financial contributions towards education, libraries, healthcare, leisure, dog waste bins and signage and recycling. Following the close of the Inquiry, I gave the Appellant a period of 14 working days to submit an executed s106 agreement. This was received on 7 Jun 2018. In the event that planning permission is granted, the obligations contained therein would come into effect.
6. On the basis of the above, TBC did not seek to defend reasons for refusal 3 – 6. In addition, TBC confirmed that it would not be defending its stance on social cohesion included in reason for refusal 2. Nevertheless, HPC also maintains its objection to the scheme on social cohesion grounds.

7. Following the publication of the revised National Planning Policy Framework on 24 July 2018 (after the Inquiry had closed), the parties were given the opportunity to submit further representations in writing. Responses were received from TBC, the Appellant and HPC and have been taken into account in my report.

### **The site and surroundings**

8. Highnam is a settlement about 3 miles to the north-west of Gloucester, with a population of 1,936 according to the 2011 Census.
9. The appeal site lies to the south of Highnam opposite its settlement boundary and comprises about 1.97ha of arable land beyond the curvilinear road named Oakridge. This road loops around Highnam facilitating access to the network of cul-de-sacs and other internal roads within the settlement. Oakridge combines with the B4215 to the south-west and Maidenhall which leads to Lassington Lane to the west to generally surround the settlement although a new development is taking place immediately to the west of Lassington Lane.
10. The site forms the northernmost part of a larger agricultural field that extends to the south where it is bounded by the B4215 as it sweeps to meet the A40. The site has an open character and is largely flat, presently bordered by mature but well-maintained low clipped hedgerows except along its southern edge. The site contains no buildings or structures. The site is not subject to any formal designations although the Landscape Protection Zone (LPZ), as defined in the Tewkesbury Local Plan (2006) (LP) extends up to the eastern edge of Highnam some 300m to the north-east of the site.
11. Immediately to the north of the site and between its boundary with Oakridge lies a wide grass verge beyond which there is a 20<sup>th</sup> Century housing estate. The Grade I listed Holy Innocents Church and Grade II listed Rectory, Church Lodge and school lie to the west and approximately 0.4km to the south-west lies the Grade II\* listed Highnam Court Registered Park and Garden. The rest of the site's surroundings comprise arable farmland.
12. As the land broadens out away from the site to the south and east, there are changes in topography. To the south of the site the land falls away into a wide valley that forms part of the Vale of Gloucester. There is a pronounced higher area of wooded land to the north-east of the site but which lies close to the eastern edge of the settlement. There is a group of tall mature Pine trees a short distance from the site's southern boundary referred to locally as 'the roundel'.
13. There is a network of Public Rights of Way (PROWs) within the area including some which run next to or close to the site and all the indications are that they are well-used.

### **The proposals**

14. It is proposed to build 40 dwellings and although the scheme is in outline, the indicative layout plan demonstrates how they could be provided within the site spatially. This drawing shows the main vehicular and pedestrian access points, the internal roads and footpaths and also includes an indicative residential mix and scale of the dwellings. The single vehicular access would be from Oakridge.

## Planning policy

15. The Development Plan (DP) includes the policies of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017) (JCS), the saved policies of the LP and the Highnam Neighbourhood Development Plan (2017) (NP).
16. The JCS has been adopted<sup>1</sup> in the intervening period between the proposal being refused and the appeal taking place. Consequently, the saved LP policies cited in the reasons for refusal have been superseded by those in the JCS. The JCS provides the strategic part of the development plan and it makes clear that more detailed, locally specific policies will be set out in district plans. In Tewkesbury, this will be the Tewkesbury Borough Plan (TBP) which will include local allocations of land for development and local policies to guide decisions on planning applications. Notwithstanding this, the parties are in agreement that a number of JCS policies are relevant to the determination of this appeal.
17. JCS policy SP1 sets out that during the plan period (2011-2031), provision will be made to meet the need for approximately 35,175 new homes with an apportionment to each of the three authorities' areas. In Tewkesbury Borough this equates to at least 9,899 new homes. This number is also referenced in policy SP2 that sets out how development will be distributed and includes that in Tewkesbury, at least 7,445 dwellings will be provided through existing commitments, development at Tewkesbury town, smaller scale development to meet local needs at Rural Service Centres and Service Villages and sites covered by Memoranda of Agreement.
18. Policy SP2 makes clear that the lower level of development at rural service centres and service villages will be allocated through the Tewkesbury Borough Plan (TBP) and Neighbourhood Plans (NPs) proportional to their size and function. Such development will also reflect the proximity of those settlements to Cheltenham and Gloucester and take into account the environmental, economic and social impacts including existing levels of growth over the plan period. Highnam is classified as a service village which means it has been assessed as having two or more primary services, two or more secondary services and benefitting from bus service or road access to a major employment area. Policy SP2 sets out that service villages will accommodate in the order of 880 new homes.
19. Policy SD10 says that within the JCS area, new housing will be planned in order to deliver the scale and distribution of housing development set out in policies SP1 and SP2. This policy replaces LP policy HOU4. Insofar as policy SD10 relates to Tewkesbury, on sites that are not allocated, it permits housing development on previously developed land in the existing built-up areas of Tewkesbury town, rural service centres and service villages except where restricted by other policies within district plans. Housing development on other sites will only be permitted where it would meet one of four specific circumstances.
20. Although there is no defined settlement boundary to Highnam, it is easy to discern that the site lies outside the built-up area and thus policy SD10 restricts the type of development proposed. This is the key development plan policy for the location of development. There is no dispute between the parties that the

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<sup>1</sup> Adopted on 11 December 2017

proposal conflicts with policy SD10 and I have nothing before me to indicate that I should take an alternative view.

21. Policy SD4 sets out a series of principles relating to design that proposals for development will need to demonstrate have been incorporated. The policy aims to ensure that development takes into account a number of factors that contribute to good design.
22. Policy SD6 seeks to protect landscape character for its own intrinsic beauty and for its environmental, economic and social benefits. The policy requires that proposals have regard to local distinctiveness and historic character of different landscapes within the JCS area, drawing as appropriate upon existing Landscape Character Assessments and the Landscape Character and Sensitivity Analysis. The documents before the Inquiry are the JCS Landscape Characterisation Assessment and Sensitivity Analysis (2013) (LCASA)<sup>2</sup> and a Landscape and Visual Sensitivity Study Rural Service Centres and Service Villages (2014) (LVSS)<sup>3</sup>. Policy SD6 says that all applications for development will consider the landscape and visual sensitivity of the area in which they are to be located or which they may affect. Applications should be supported by a Landscape and Visual Impact Assessment (LVIA) where TBC deems one to be required. All three parties have provided a LVIA.
23. The NP was made in January 2017 and whilst it does not allocate sites for development, it contains policies that align to the overall NP vision for Highnam. To achieve the vision, the NP sets out that Highnam will remain separate and distinct from Gloucester and not become a suburb; maintain and develop its own range of local facilities, services and employment opportunities; develop in ways appropriate to the needs of the community; ensure that development reflects the nature, character, scale and density of the community; and maintain its relationship with its landscape setting.
24. NP policy H2 says that the design and visual character of any new development in Highnam should make a positive contribution to forming a sense of place: demonstrating both design quality and sensitivity to the existing environment. Density of any new development should reflect that of the existing settlement though exceptions can be considered for specialised homes for the elderly, including care provision.

### **Agreed matters**

25. The Appellant and TBC agree that the Supplementary Planning Guidance (SPG) and Supplementary Planning Documents (SPD) most relevant to this appeal are the Affordable Housing SPG (2005, updated 2006) and the Flood Risk and Water Management SPD (2018). They also agree that the emerging Tewkesbury Borough Plan 2011 to 2031 (eTBP) cannot be afforded weight due to its very early stage of preparation.

It is agreed by the Appellant and TBC that in the event of the appeal being allowed and planning permission granted, the scheme would provide 40% affordable housing on site that would be secured by means of a s106 planning obligation and that this would represent a significant benefit of the scheme. It is

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<sup>2</sup> Core Document (CD) D10

<sup>3</sup> CD D11

26. also agreed that the scheme would give rise to economic benefits during construction and residually from the dwellings' occupants thereafter through the use of the local shop.
27. It is also agreed by the Appellant and TBC that there would be no harm to ecology, flood risk, existing residential amenity, archaeology (subject to condition(s)) or existing trees
28. Finally, there is agreement between the Appellant and TBC that there are a good range of day-to-day facilities in Highnam within reasonable walking distance of the site.

### **The case for TBC**

*The Council's case is fully set out in its evidence, including its opening and closing submissions and its further written representations following the publication of the revised Framework<sup>4</sup>*

*The main points are:*

29. The development plan (DP) is always the starting point for taking planning decisions, as a matter of law (s38(6) of the 2004 Act)<sup>5</sup>. There is no deviation from this principle. Conformity or otherwise of the development with DP policies must always be established, as the baseline from which the correct planning exercise can begin.
30. These fundamental legal principles were not affected in any way by the introduction of the Framework. DP policies have a statutory basis. The Framework is guidance, which only has the status of a material consideration, with weight attributed to it by the decision maker.
31. The balancing exercise is undertaken with the ultimate goal of establishing whether the development under consideration is 'sustainable'. 'Sustainable' is not a benefit to be weighed in the benefits side of the planning scales and 'unsustainable' is not a harm. These are two labels that are used to describe development proposals that have completed the exercise and which triumph or fail in the planning balance. The weights in the scales on either side are harms, benefits and other material consideration, if something different.
32. Framework paragraph 11 contains the complete and close definition of "presumption in favour of sustainable development". There is no other definition of this presumption. The presumption in favour of sustainable development for decision-taking means approving development proposals that accord with the DP without delay. The converse of this proposition is that proposals which do not accord with the DP are not presumed to be sustainable and will not be granted unless material considerations indicate otherwise.

### *Reason for refusal 1*

33. This reason, although short, is significant. Conflict with the DP is a harm in and of itself as the Appellant accepted. That is the very reason why development that conflicts with the DP should be refused. Conflict with the DP does not constitute a

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<sup>4</sup> Documents ID05, ID12 and ID16

<sup>5</sup> Planning and Compulsory Purchase Act 2004

- neutral starting point. It results in a default position that permission should be refused. This can only be rebutted if material considerations indicate so.
34. Other appeal decisions have confirmed that conflict with the DP policies in and of itself can constitute a harm that can justify a refusal of permission even in the absence of other impacts or harms. An example is the Oundle appeal decision<sup>6</sup>. Here there were no other particular site constraints. It was just a greenfield site outside the settlement boundary when the DP restricted it and the Council in that appeal had a 5 year housing land supply (HLS).
35. There is no dispute in this appeal that there is conflict with the policies of the DP (the JCS). This development conflicts with policy SD10, which is a critical element of the JCS spatial strategy and its unjustified breach is a clear example of unsustainable development. The Appellant accepts that the conflict with policy SD10 (and any other DP policy) could be given significant weight<sup>7</sup>. Policy SD10 has the significant weight that comes from a recently adopted JCS, examined and approved by the plan Inspector.
36. The Appellant confirmed that "the JCS was a long drawn out process"<sup>8</sup> which called for many amendments and updates. This only confirms that the adopted JCS constitutes a hard won and robust policy base-line. It ought not lightly be departed from or dismissed as out-of-date.
37. The Appellant has maintained an argument that emerging allocations earmarked by the eTBP are already indicating a necessary 'breach' of the settlement boundary. This is not an unusual situation for planned allocations, otherwise settlements would be fixed in perpetuity. It is no argument at all for abandoning settlement boundaries and spatial strategies altogether, which is what the Appellant's argument amounts to. Planned extensions through the plan process are an entirely different matter to ad-hoc windfall development in the open countryside.
38. The Appellant has attempted to attribute great weight to the officer's recommendation for approval in this case. However, the policy basis at the time was different. The JCS was still emerging in March 2017 and 9 months away from adoption. The preceding spatial strategy policy HOU4 was old and based on out-of-date evidence. Even if the policies appeared similar in scope and language, they would attract different weight because of their age and the evidence base upon which they were founded. The Appellant argued that the officer gave policy HOU4 full weight and yet still recommended approval of the scheme. If that was the case then he should not have done so as the Appellant accepted<sup>9</sup>. His assessment of the planning balance would have been flawed and his overall recommendation tainted. In any event, it is very clear from the officer's report that, notwithstanding the apparent lack of objection from consultees it was a "finely balanced" conclusion<sup>10</sup>.

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<sup>6</sup> (CD H16)

<sup>7</sup> Mr Campbell's PoE paragraph 1.29

<sup>8</sup> Mr Campbell's PoE paragraph 4.5

<sup>9</sup> Mr Campbell in cross examination

<sup>10</sup> Paragraph 18.27, page 60 of the officer report (CD A45)

*Five year housing land supply (5 year HLS)*

39. The test of the 5 year HLS has only one purpose and that is to establish whether the local planning authority's policies are working and are delivering housing. On any view, this Council's policies are working and have consistently over-delivered housing for the last five years. This is not an authority that is holding back or blocking housing.
40. The only way to argue that the Council does not have a 5 year HLS is by taking an artificial approach to the figures and to set a bar that is far too high for any authority to reach. This approach was frowned upon by the Court of Appeal in the case of *Hunston Properties*<sup>11</sup>. It provided a warning against allowing developers to massage figures in artificial ways to calculate a 'below 5 year HLS' position just so they can have their development.
41. The Appellant's approach to calculating the 5 year HLS is wholly misconceived. The supply situation in the other two JCS authorities (Cheltenham and Gloucester) cannot have any impact on the judgement as to whether Tewkesbury has a 5 year HLS or not.
42. The JCS evidence base is meticulous and calculated an objectively assessed housing need (OAN) on a district by district basis, on bespoke evidence. This was not a global Housing Market Area (HMA) calculation apportioned out on a policy-on basis. The JCS was found sound and thereafter adopted. This could not have occurred if there had not been a justifiable housing requirement and a matching 5 year HLS identified for each area individually. It is no part of TBC's duty to meet any part of the Cheltenham or Gloucester housing requirements.
43. TBC's housing supply policies are working and yielding more than their annual targets. There is no justification for discounting that success. This is not to disregard a national housing need but it is important to approach this issue realistically. The national need cannot be cured by one local planning authority alone. The aspiration must be to bring all councils up to a similar standard of over-delivering against their targets.
44. The duty placed upon a council in the plan- led system is to "meet the need" set for it through the development plan process. That need has recently been calculated and it includes corrections and uplifts to ensure it is robust. The Appellant's argument that TBC is not meeting its need involves an approach that ignores their over-provision to date and simply 'loses' it. This approach focusses, speculatively, upon the future and hypothesises that the Council will not be able to meet its need in years to come, although it can do now, at the point in time of this decision.
45. The Appellant's argument<sup>12</sup> is that without a plan in place and without allocations, TBC will not meet their OAN. However, TBC will have a Local Plan and will have allocations in any relevant time frame that could impact upon the 5 year HLS. Any shortfall in provision is not anticipated to be felt until 2025 in the JCS plan period. However pessimistic the Appellant is about slippage in the LP timetable, a slippage from 2019 to 2025 is inconceivable. In any event, no

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<sup>11</sup> The Queen (on the application of) *Hunston Properties Limited v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610. See paragraph 31

<sup>12</sup> Expressed in paragraph 5.38 on page 26 of Mr Campbell's PoE

inquiry could proceed upon assumptions of that degree of uncertainty and base decisions on such speculative concern as opposed to the position that presents itself at this point in time. The Appellant's case is that it is appropriate to grant this site now, notwithstanding the existence of a 5 year HLS because TBC might not have allocations in place in time for 2025. This is not a sustainable approach and would justify virtually any application.

46. The Appellant speculatively suggested that the appeal site might come forward as an allocation but fairly accepted that if the eTBP is to be given little weight at this stage, then that point could also be given little weight<sup>13</sup>. It is apparent from the eTBP that this site is not indicated as an allocation whereas other sites are. There will be growth and development in Highnam but there are better locations than the appeal site.
47. TBC is not dependent upon allocations for its 5 year HLS. The Appellant's argument<sup>14</sup> appeared to be that since there will need to be allocations for future provision, sites must come forward now in advance of those allocations. That point has no logic.

*Boosting the supply of homes*

48. Boosting the supply is a plan led activity.
49. The Court of Appeal in the case of Daventry<sup>15</sup> judged that most of the bullets of paragraph 47 of the 2012 version of the Framework pertained exclusively to the Council's plan-making exercise, but the second bullet went further, requiring annual monitoring of the 5 year supply, which is not a plan-making exercise. However, the Court was clear that, if a council has established its 5 year HLS, then paragraph 47 has nothing to do with individual decision making on application either by councils or on appeal.
50. Simply having a 5 year HLS complies with the meaning of "boosting" in paragraph 47. The Appellant's case that the Council must 'lose' its over-supply to the cause of 'boosting' and then pretend that they do not have a 5 year HLS as a consequence, is a poor argument. This supply should not be lost. It represents real houses delivered on the ground that real people can live in. The Appellant argues that the over-supply should be regarded as a 'bonus' that is simply considered as boosting supply. That cannot be right when the consequence is to find, artificially, that TBC no longer has a 5 year HLS when it clearly does and that accordingly, it is no longer entitled to rely upon its DP policies. "Boosting" is not a free-standing general objective, but a structured one in a plan-making context.
51. Many of the Appellant's points such as casting doubt on TBC's provision of its housing requirement have been fully canvassed in the JCS process. Factors such as historic shortfall; hidden households; working patters; commuting; migration; market signals including affordability and more have already been taken into account in the OAN assessment. The development of 40 houses will make a negligible difference to the affordability of houses in the area even if there is a direct correlation between sheer numerical provision and improved affordability,

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<sup>13</sup> Mr Campbell in cross examination

<sup>14</sup> Paragraph 5.43 of Mr Campbell's PoE

<sup>15</sup> Gladman Developments Ltd v Daventry District Council & Anor [2016] EWCA Civ 1146

which is not such a straightforward equation. As the Appellant accepted<sup>16</sup>, having a 5 year HLS and crossing that threshold must mean something in planning terms. It is not appropriate to identify that threshold but then have to continue to identify more and more sites to meet a more nebulous 'boosting supply' test, with no differentiation between the two situations. The housing requirement figure does not operate as a cap on further sustainable applications being granted. However, that does not mean TBC does not get to approach decisions differently according to whether or not it has a 5 year HLS. Applications get no special treatment after the 5 year HLS watershed and will have to overcome their conflict with policy with weighty material considerations in order to get planning permission.

52. Two recent appeal decisions<sup>17</sup> support TBC's view that it can demonstrate a 5 year HLS, the weight to be attached to benefits and that its policies are functioning to significantly boost housing supply.
53. If the Secretary of State concludes that TBC has a 5 year HLS, the conflict with policy weighs heavily against the proposal in terms of the principle of development and in the context of landscape protection.
54. Paragraph 73 of the Framework requires councils to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies. The position as of 1st April 2018 is set out below.

#### *The full OAN*

55. The JCS sets out a total housing requirement of 9,899 dwellings from 2011-2031 through policy SP1. The requirement consists of the demographic objectively assessed need, plus an uplift for economic growth and a further 5% uplift to boost the supply of housing. Over the 20 year plan period this housing requirement equates to the need for 495 dwellings per year. This housing requirement is the most up to date and robust figure on which to base the five year housing land supply calculation.
56. The housing requirement for the five year period from 2018/19 to 2022/23 is 1,771 dwellings. This requirement is the 495 annual requirement multiplied by 5 with the surplus of 704 dwellings against the previous plan period requirements removed.

#### *Previous delivery*

57. Over the plan period so far (2011-31 August 2018) housing completions have totalled 4,169 and have exceeded the annual requirement for the last five monitoring years. Furthermore, there is a dwelling surplus against the total requirements over the 7 years of the plan period so far.

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<sup>16</sup> Mr Campbell in Cross examination

<sup>17</sup> Refs APP/G1630/W/17/3174525 (CD H06 – see DL paragraph 29) and APP/G1630/W/17/3172841 (CD H08 – see DL paragraph 7)

Year	JCS requirement	Annual completions	Delivery against requirement
2011/12	495	318	-177
2012/13	495	462	-33
2013/14	495	513	+18
2014/15	495	573	+78
2015/16	495	630	+135
2016/17	495	728	+233
2017/18	495	945	+450
<b>Total</b>	<b>3,465</b>	<b>4,169</b>	<b>+704</b>

#### *Housing requirement with buffers*

58. Framework paragraph 73 also requires that the 5 year requirement includes an additional buffer of either 5%, 10% or 20%, moved forward from later in the plan period. As housing completions in the Borough have exceeded the JCS annual requirement for the last 5 years, and the cumulative requirement over the 7 years of the plan period so far, there has not been significant under delivery of housing. It is appreciated that the JCS Inspector did conclude that a 20% buffer was justified but she also noted that the situation was improving. It is now necessary to go back five years to discover the last time that the housing supply requirement was not met. The picture is that TBC is consistently over-delivering. As long as it is entitled to count that overprovision as part of its supply then it could still demonstrate a 5 year HLS with a 20% buffer. This only demonstrates how robust the supply position is. The consideration of a 20% buffer is not relevant.

59. At this time TBC has not sought to progress an annual position statement as described under Paragraph 74 of the Framework. However, as the JCS was adopted in December 2017 it is considered as a 'recently adopted plan' through Paragraph 73 and footnote 38. As such a 10% buffer could be applied which would result in a five year requirement of 1,948 dwellings. With a 5% buffer the five year requirement would be 1,859 dwellings. In either scenario, a five year supply can be demonstrated.

#### *Housing supply sources*

60. The following sources of supply have been included within the 5 years HLS calculation:

A – Larger sites (5+ dwellings) with planning permission

Larger sites where planning permission has been granted

B – Smaller sites (1-4 dwellings) under construction

Smaller sites where planning permission has been granted and where the delivery of dwellings has commenced

C – Smaller sites (1-4 dwellings) with extant permission

Smaller sites where planning permission has been granted but the site is not yet under construction. For these sites a lapse rate of 22% has been calculated and total delivery has been discounted accordingly. This approach to lapse rates has been established through the JCS Examination and is noted in the Inspector's Interim Report

D – Sites with a resolution to permit

Sites which TBC has resolved to grant planning permission but a s106 agreement is pending

E – Windfall allowance

A small windfall allowance has been included within the supply and is based on an analysis of historic windfall delivery since 2003. This has produced an average windfall delivery of 46 dwellings. However, the windfall supply does not make a contribution in the trajectory until 2019.20 and has been discounted by the number of extant dwellings from small sites. This approach to windfall has been established through the JCS Examination.

Anticipated delivery from these sources of supply over the 5 year period from 2018/19 to 2022/23 is 2,075 dwellings.

*Housing delivery*

61. Where no site-specific information is present, the following assumptions are made for the delivery of sites and their anticipated trajectory:

Lead-in times

Deliverable sites without planning permission and under 100 dwellings will have a one year lead-in from planning permission being granted to the first house being completed. For sites of 100+ dwellings, there will be an 18 months lead-in period

Build-out rates

The build-out rates used are based on local circumstances and evidence including that provided by developers. Where no delivery trajectory developer update has been provided, the following assumptions are made: 25 dwellings in the first year and 50 dwellings per annum per developer thereafter. On sites which constitute parcels of larger developments already under construction (e.g. Coopers Edge, Brockworth and Homelands, Bishop's Cleeve) a delivery rate of 50 dwellings in the first year has been assumed.

62. This approach to lead-in times and build-out rates has been established through the Assessment of Land Availability (ALA) process and has been subject to review by the independent ALA sites assessment panel. Through the annual monitoring of planning permissions and the ALA process. Further information on site delivery, particularly for larger sites, may be obtained which provides additional detail and greater certainty.
63. With a 5% buffer, there is a 5.58 years supply and with a 10% buffer the supply is 5.33 years. This equates to an over-supply of 215 and 126 dwellings respectively.
64. An alternative scenario includes this supply but also includes future expected supply (within the 5 year period) from a site at Mitton in Wychavon District as well as supply from emerging sites in the eTBP.

65. The site at Mitton, is included within the JCS through Policy SP2 as making a contribution of 500 dwellings towards the housing requirements of Tewkesbury Borough. This is supported by a joint planning statement, signed by the Leader and Managing Director of Wychavon District Council and the Leader and Chief Executive of TBC, that establishes an agreement to co-operate over the principle of development on this site contributing 500 homes towards the needs of Tewkesbury Borough.
66. This site is not an allocation within the JCS as it is located outside of the plan area. It is also not allocated within the South Worcestershire Development Plan as the plan was prepared and adopted prior to the completion of the JCS Examination and as such at the time of writing the site at Mitton to meet the needs of Tewkesbury Borough had not yet then been established. Nevertheless, development at Mitton is expected, as set out through the JCS, to be a significant part of Tewkesbury's housing land supply going forward and this has been clearly established through the local plan process. At the present time an outline application for up to 500 dwellings on the site had been submitted to Wychavon, but had not yet been determined.
67. The eTBP is at its Preferred Options stage. It will look to allocate smaller-scale sites at Tewkesbury town, the Rural Service Centres and Service Villages as directed by the JCS through Policy SP2. The allocation of these sites will provide further growth within the Borough and an additional source of housing supply against the requirements of the JCS. From a calculation of the expected capacities of these allocations and their anticipated trajectories it is considered reasonable that an allowance for the delivery of 300 dwellings will occur within the five year period.
68. On the basis of this scenario and applying a 5% buffer there is a 7.13 years supply and applying a 10% buffer there is a 6.80 years supply. This equates to an oversupply of 790 and 701 dwellings respectively.

#### *Landscape*

69. The proposal will lead to the loss of an undeveloped field and it will extend the settlement of Highnam. The proposal is not infill on any proper consideration. The extension is clear and stark.
70. JCS Policy SD6 states that a proposal must have regard to local distinctiveness and historic character of the different landscapes in the JCS area by drawing, as appropriate, upon the LVSS and the LCASA.
71. However, these documents are not definitive and do not provide support for this proposal. At best, the studies identify some potential for development in some locations in the area but this is hedged with caveats. The Appellant cannot derive support from the LCASA or LVSS.
72. The detailed work to assess the suitability of the appeal site in landscape terms was indispensable. The conclusions that this site is not suitable in landscape terms are clear and robust –. Any references in the LVSS and LCASA to sites in the area having “potential” therefore transpires not to apply to this site after detailed analysis. They were not intended to establish the suitability of this site for development. Their purpose is set out in the introductory sections of the studies themselves. The analysis of the site prepared for the Inquiry was done for

- the very purpose of assessing site's suitability for this particular proposal and that is where attention should be directed. The site crosses area boundaries so the need for a bespoke consideration is even more acute.
73. Crucially, the development would breach Oakridge for the first time in the context of this part of Highnam, which is an important issue. Arguments that Oakridge has been breached before elsewhere in the village do not undermine this point. The construction of Lassington Reach to the west of the village, for example, does not have the same effect. It relates more to Lassington Lane and not Oakridge and is accompanied by scattered and dispersed development to the south and south-west, in distinction to the appeal site. The effect of the proposed breach at this point in the village is much more stark. It clearly constitutes encroachment into the open countryside.
74. Highnam was designed and built (beyond its historic origins) in the 1970s and early 1980s. It clearly resulted in a self-contained inward focussed settlement with a very distinctive edge in the form of Oakridge. The Appellant sought to dismiss Oakridge<sup>18</sup> because it was "only" an access road for local residents. However, this is what is important about it. Residents use it every day and value the experience of it, including its curvilinear enclosing nature and the openness to the south side of it. It is an integral part of the design of the development and of the character of the settlement.
75. The appellant was prepared to accept the edge of the settlement qualities and the 'necklace' of trees and greenery. This vegetation tracks the road and emphasises its qualities in that regard. The road and these green features go together, forming the attractive road corridor and the settlement edge. The hedges surrounding the site are not as degraded as the Appellant implies. The road corridor is integral to the sense of place in Highnam.
76. The proposed development would not preserve the sense of place or make a positive contribution to it. These conflicts cannot be designed out in reserved matters because they are fundamental to the very location of the development. If permission was granted for up to 40 dwellings, it is what the Appellant would want in reserved matters. The breach of Oakridge and jarring development would be harmful in terms of policy.
77. The landscape is nothing like as degraded and denuded as claimed by the Appellant and has actually seen small scale and only modest change in its agricultural character over the decades.
78. The change in character and the impact on the settlement would also be stark. The justification for the proposal does not overcome the jarring contrast with the current curves of Oakridge. The site has a historical quality to its character, which the Appellant has not fully recognised. There is a link between Highnam Court and the appeal site as the Appellant accepted<sup>19</sup>.
79. Visually, the proposal is extensively harmful as well. There are views from all around the site. Paths can be walked in both directions. People can and do turn their heads and look around them. The perception of their location is important and particularly to local people who see it all the time.

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<sup>18</sup> Mr Harris IC

<sup>19</sup> Mr Harris in cross examination

80. There are cumulative effects with the nearby solar farm, granted on appeal<sup>20</sup>. The Inspector was obviously not considering any prospect of the views of solar panels being seen in combination with housing. The potential views represent further harm.
81. Taken together, the harm represented by the appeal proposal to policy in principle and in substantive terms, is significant. Even if it is found that there is no 5 year HLS, the harm still significantly and demonstrably outweighs the benefits.
82. The tilted balance does not provide additional weight to benefits. Benefits, as material considerations, carry whatever weight they are deemed to carry. Paragraph 11 of the Framework addresses the harm that a proposal causes, whatever the decision maker decides that should be. It requires an assessment as to whether that harm significantly and demonstrably outweighs the benefits, whatever weight those benefits might be assessed as having. It is not the weight of benefits that is increased, nor the weight of conflict with policy that is diminished. The decision maker is not required to apply any unusual weighting to those conflicts or benefits. When the balancing exercise has been done, the decision maker has to be sure that the harms significantly and demonstrably outweigh the benefits.
83. The conflicts with policy still exist even if the tilted balance applies. Even a finding that policies are "out-of-date" does not mean there is no conflict with policy and it does not pre-judge how much weight that policy should be given either. It would still be entirely possible to refuse this proposal even if the tilted balance applies.
84. None of the benefits highlighted by the Appellant are in any way unique or special to this site and proposal. They are all very much to be expected of a settlement edge greenfield site like this.

### **The case for HPC**

*HPC's case is fully set out in its evidence, including its closing submissions and its further written representations following the publication of the revised Framework<sup>21</sup>*

*The main points are:*

#### *Highnam Neighbourhood Plan*

85. Paragraph 2, dealing with the importance of the development plan, is effectively unchanged in the revised Framework. It generally makes more reference to neighbourhood plans whose very concept had been introduced only the year before the issue of the original Framework. Since then neighbourhood plans have been extensively, if not evenly, produced across England, and it is appropriate that the revised Framework acknowledges more strongly their place as part of the development plan in the planning system. More specifically, the first two of seventeen references to neighbourhood plans in the revised Framework are at footnote 2 and paragraph 12, which confirm their status.

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<sup>20</sup> CD H04

<sup>21</sup> Documents ID13 and ID18

86. The proposed development is contrary to the provisions of the NP, which should be afforded full weight as a component of the development plan.

*Social cohesion*

87. Notwithstanding the responses to consultation on the planning application, the location and nature of the proposed development are likely to give rise to adverse effects on social cohesion and wellbeing, and that this should be given some weight. The issue is more complex and subtle than simply calculating the percentage increase in the dwelling stock in a settlement.

*Planning policy*

88. HPC agrees with TBC that the proposed development is contrary to the policies of the JCS and in particular, policy SD10 as it does not fit into any of the categories of exception to it.
89. All parties agree that the eTBP can be afforded no weight. It follows that the two sites at Highnam referred to in the most recent Plan document as potential sites for housing, and to which the Appellant made reference, have no status. As a result, any comparisons made by the Appellant between these and the current appeal site are not relevant to the determination of this appeal.
90. Looking ahead, HPC agrees with TBC that future development in the parish should be plan-led. This is especially important where as in this case, the nature of the existing settlement means that opportunities for windfall development are very limited.

*HLS*

91. HPC agrees with TBC that it can demonstrate a 5 year HLS and that there has been, in the appropriate timescale, no persistent under delivery of housing which would warrant the application of a 20% buffer. Furthermore, the Appellant's references to the position beyond the 5 year period, and to the situation in Gloucester and Cheltenham, are not relevant to the determination of this appeal.
92. Paragraph 65 of the revised Framework is forward looking; it would not be possible to apply it retrospectively. However, in respect of paragraph 66, early work on the eTBP did provide an indicative figure for housing provision in settlements defined as service villages, of which Highnam is one. Completions and commitments nearly matched this figure, making the release of land in the area on the scale of the proposed development unnecessary.
93. Paragraph 73(c) makes clear, as the 2012 Framework did not, the relevant period for a consideration of "*persistent under delivery of housing*". This paragraph refers to a period of three years in which, as TBC's evidence showed, has exceeded the annual requirement. Therefore the 20% buffer which the Appellant argued should apply does not.
94. The new buffer of 10% set out in paragraph 73(b) does not apply as the circumstances it describes are not relevant to TBC. Applying the dates in footnote 38, the JCS qualifies as a "recently adopted plan". However, although the JCS itself does not seek to demonstrate a five year supply, the annual position statement to which TBC referred addresses this issue and is still the current document. We interpret "fluctuations" in this context as a temporary dip in

output; whereas TBC's figures showed that in each of the three years from April 2014 to March 2017 output exceeded the annual requirement. Furthermore, this excess of completions over requirement in the relevant period more than compensated for the shortfall in output in the first two years of the Plan period. It is therefore concluded that a 5% buffer applies in this case.

#### *Landscape*

95. The proposed development, by breaching the firm and distinctive settlement edge, which is a significant part of the character of the village, would have a disproportionate and damaging effect on the local landscape. It therefore fails to comply with JCS policies SD6 and SD8.

#### *Traffic*

96. The prospects for the provision of an access to the site which is safe for pedestrians, cyclists and motor vehicles are at best uncertain owing to third party land considerations, which must raise doubts about the delivery of the site in a reasonable timescale. A Grampian condition can ensure the site does not proceed without suitable access but such a condition cannot ensure that an access is realised within a given timescale. Moreover, the site's location outside the perimeter of Oakridge and its distance from the limited facilities the village provides will not encourage travel by sustainable means.

#### *Planning balance*

97. In this particular case, HPC agrees with TBC that the proposed development is contrary to the development plan and that there are no other material considerations sufficient to outweigh the lack of compliance.

#### *Sustainability*

98. There have been minor revisions to the descriptions of the three dimensions of sustainable development, now at paragraph 8 of the revised Framework. Their spirit and purpose is broadly the same, but there is the addition to the environmental dimension of "*making effective use of land*". Section 11 is an entirely new section on this topic. The proposed development is inconsistent with the first sentence of paragraph 117 as it neither makes effective use of land nor meets the requirements of the final clause. In this context "efficient" is a criterion of "effective" and therefore the provisions of paragraph 123(c) could be seen as applying retrospectively. The proposed development would not make effective use of land and the relevant provisions of the revised Framework thus shifts the balance against it.
99. Independently of the consideration of the development plan, the proposed development does not constitute sustainable development. Its economic and social benefits are small and are outweighed by its adverse environmental impacts.

## **The case for R Keene and Sons (the Appellant)**

*The Appellant's case is fully set out in its evidence, including its opening and closing submissions and its further written representations following the publication of the revised Framework<sup>22</sup>.*

*The main points are:*

### *Preliminary points*

100. The JCS does not allocate the full requirement for housing over the plan period. Paragraph 11(b) of the revised Framework requires that strategic policies should, as a minimum, provide for objectively assessed housing needs as well as any needs that cannot be met within neighbouring areas. The strategic policies in the JCS do not provide for OAN for housing and will only do so when the district plans are adopted. The soundness of the JSP is not being questioned. However, it is only one piece of the strategic policy/ development plan puzzle, which needs a local plan to be complete. The NP makes no allocations and so cannot fill the gaps. The DP is only part way there as indicated by paragraph 11(b) of the Framework.
101. Policies SP1 and SP2 identify that to meet the needs of Tewkesbury there will be provision for 9,899 new homes. At least 7,445 will be provided through existing commitments, development at Tewkesbury town, smaller-scale development meeting local need at Rural Service Centres and Service Villages and sites covered by Memoranda of Agreement. Policy SP2 further identifies that in the remainder of the rural area, policy SD10 will apply to proposals for residential development.
102. Policy SD10 relies upon strategic allocations and allocations in district and neighbourhood plans to deliver the scale and distribution of housing development set out in policies SP1 and SP2. Whilst it is accepted that this proposal does not meet the criteria in paragraph 4 of SD10, there is no planned development proposed for the rural service villages and, in particular, Highnam. There is a NP for Highnam but there are no allocations. The district plan is uncertain.
103. It is acknowledged that the appeal scheme conflicts with policy SD10 because it is not an allocated site, is not within the Built up Area, although there are no settlement boundaries, and does not meet the criteria listed. However, the JCS only allocates strategic sites. The non-strategic sites are yet to be allocated.
104. The eTBP is at an early stage. The Local Development Scheme (LDS) as published in October 2017 has slipped. There was no information from TBC as to whether the first step in the LDS had started let alone completed. The timetable has slipped and it was accepted that in the majority of cases when this happens plans are delayed and not accelerated<sup>23</sup>.
105. There can be no confidence that the LDS timetable will be met. More importantly, there is no evidence from TBC, in the light of the slippage, as to when adoption can be expected. There could be objections to local allocations

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<sup>22</sup> Documents ID04, ID14, ID19 and ID20

<sup>23</sup> Mr Smith in cross examination.

and there could be issues that lead to the plan eventually not being found sound at all.

106. Conflict with the spatial policies and policy SD10 must attract less weight than if the allocations required were identified and enshrined in adopted policy. Furthermore, the settlement boundary for Highnam has not been amended through the JCS. It was agreed by TBC<sup>24</sup> that the undrawn settlement boundary will have to be amended in order to accommodate the allocations that will, at some point in the future, be made to meet the increased housing requirement. This further affects the weight to be attached to the conflict with spatial policy SD10.
107. Leaving aside the 5 year housing land supply position, which is considered below, there is a gap in “**relevant** development plan policies”. The “most important” policies are out of date. Firstly, policy SD10 simply does not work in the absence of allocations in the NP and an uncertain district plan. It needs the second layer of district policies to give it substance and that gap needs to be filled for SD10 to work properly. Secondly, SD10 is one of the “most important” policies in this appeal as it is the policy about residential development but it is ‘half-baked’ without district allocations.
108. Reading Framework paragraph 11(d) as a whole, it is argued that the lack of a district plan for Tewkesbury does create a lacuna in the development plan. In relation to a criteria-based policy for residential housing policy SD10 is not fit for purpose. There is therefore no relevant development plan policy for residential housing.
109. As TBC accepted<sup>25</sup>, much of Tewkesbury is constrained by an Area of Outstanding Natural Beauty (AONB), Green Belt, high flood risk area, Landscape Protection Zone (LPZ)<sup>26</sup> and Special Landscape Area (SLA)<sup>27</sup>. TBC did not accept it to be inevitable that in order to meet housing need, development will have to take place on greenfield land but said it was part of the “direction of travel”<sup>28</sup>.
110. The facts are that the potential allocations for Highnam, which HPC were not even aware of, are on greenfield sites outside the settlement boundary and outside Oakridge. Nothing is known about these allocated sites or if they are more suitable than the appeal site
111. Furthermore, in relation to Tewkesbury the JCS requires an immediate review because of the shortfall in housing over the plan period.

*The principle of development*

112. The appeal site:
- a) is not subject to any designation
  - b) does not affect ecology, ancient woodland, a conservation area (CA)
  - c) is not a valued landscape and Framework paragraph 109 is not engaged
  - d) is well-located in accessibility terms as accepted by TBC.

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<sup>24</sup> Mr Smith in cross examination

<sup>25</sup> Mr Ryder in cross examination

<sup>26</sup> See page 149 CD C01

<sup>27</sup> See page 149 CD C01

<sup>28</sup> Mr Ryder in cross examination

113. In terms of the principle of development, its failing is to be adjacent to, but just outside, the built up area. The built up area will have to be extended in order that the future allocations for Highnam can be made to comply with policy SD10.

*Whether a 5 year supply of housing exists in the borough*

114. There are 3 issues of disagreement with TBC

- a) how to deal with past over-supply
- b) the buffer
- c) deliverable sites.

115. TBC has failed to deliver housing to meet its need for 11 out of the last 16 years. It has exceeded its annualised target over the last 5 years and now deducts the notional 'surplus' from the 5 year housing requirement. The effect is that the requirement is reduced. If a Council uses past over-supply to anticipate for under-supply in future years then the result is to reduce the requirement in future years. Rather than being concerned that in year 4 it will under deliver against the annual requirement by 143 dwellings and in year 5 it will under deliver by 476 dwellings, TBC sits back because it has a 'credit' that it banks and uses against future supply. It reduces its annualised requirement.

116. The housing requirement is not a target. TBC has submitted a plan representing the housing requirement as a target. That betrays its preference. However, a main modification was required in order to ensure that the requirement is a minimum figure<sup>29</sup>. Its mind-set has not changed despite the main modification. However, the purpose of a 5 year HLS is to ensure sufficient housing to meet need and improve affordability. Need will only be met if TBC does not treat the housing requirement as a minimum. The approach to the calculation of 5 year HLS demonstrates the default position of TBC which is to massage the numbers resulting in housing provision to the lowest common denominator.

117. The Appellant's evidence<sup>30</sup> derives from enormous experience in the matter of calculating an appropriate OAN for local authorities and in defending them at local plan inquiries and in understanding the economic and social consequences of HMAs and housing delivery. Its evidence on this matter is intelligent, thoughtful and credible.

118. The lowest common denominator leads to constraining housing delivery and household growth which will constrain the ability of households to form and/or the ability of people to move into the borough. The negative social consequences are growth in overcrowded or concealed households and declining affordability.

119. It is not good enough to say that the JCS Inspector took market signals and affordability into account in October 2016 when the JCS was found sound. The data on affordability was from 2011<sup>31</sup>. The affordability data has been updated from 2011 to 2017<sup>32</sup>. It shows that affordability has been worsening in Tewkesbury since 2011 with a change of house price to income ratio of 7.24 to 8.65. This is worse than it is nationally. This is evidence indicating that more

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<sup>29</sup> Paragraphs 55 and 56 of CD C05

<sup>30</sup> By Mr Ireland

<sup>31</sup> Paragraph 2.29 JCS - CD C01 (noted by Mr Campbell in evidence in chief)

<sup>32</sup> ID02

housing is needed. The lowest common denominator approach exacerbates the worsening affordability. It is not accepted that 40 houses will not improve affordability as all supply counts.

120. Affordable housing as a component of the OAN identified through the Strategic Housing Market Assessment (SHMA) will not come forward if market housing is constrained. This is because TBC relies on housing supply policies to refuse planning permission because its 5 year HLS is based on notional surplus. The housing waiting list data that has been presented is relevant<sup>33</sup> in assessing affordable housing need as advised by the Planning Practice Guidance (PPG). The waiting list does not, of course, identify the affordable housing need. But it exceeds the JCS evidence base and at this point in time there is a significant level of need and there is a significant level of acute need right **now** based on the reasonable preference category of 768 people<sup>34</sup>.
121. There is no policy, guidance or authority which suggests that it is appropriate to carry forward past over-supply. The PPG provides guidance on under delivery but despite its thousands of pages, it provides no similar guidance on over-supply.
122. In support of the Appellant's approach, attention is drawn to recent appeal decisions at Wendover and Doncaster<sup>35</sup>. The only appeal decision that TBC refers to arises out of a two day hearing in which, the evidence would not have been tested in the same way. It is plain from the Wendover and Doncaster decisions that the issue of the principle of over-supply as a part of the HLS calculation was argued in depth. The level of detail is also evidence of the extent of the testing.
123. The JCS Inspector considered the issue of past over-supply in response to an objection to the mechanism that TBC used to incorporate the over-supply. This related to the use of the Sedgfield approach rather than the Liverpool approach as argued by an objector. This is different from the current point being argued, which relates to the principle of incorporating past over-supply per se not the mechanism for incorporating it. If that principle was not argued at all by any party at the Examination, there was no reason for the Inspector to consider it.

#### *The buffer*

124. The purpose of the buffer is to ensure choice and competition in the market for land. The test for whether a 20% buffer is appropriate is whether there has been a record of persistent under delivery. The word "record" means, as TBC accepted<sup>36</sup>, in the past. The word "persistent" means ongoing for a period of time. It does not mean that it is continuing now.
125. TBC was part of the JCS authorities who put forward to the JCS Inspector a 20% buffer for Tewkesbury in their own housing implementation strategy. It was an appropriate approach. It was the position TBC advocated less than a year ago and which the Appellant and the JCS Inspector agreed.

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<sup>33</sup> Table 3 on page 13 of Mr Irelands' PoE

<sup>34</sup> Mr Ireland in cross examination

<sup>35</sup> Appendices C and D of Mr Ireland's PoE

<sup>36</sup> Mr Barker in cross examination

126. It is appropriate to look back at delivery over a market cycle and it is appropriate to look back to 2006/07. TBC under-delivered in every year for the last 15 years save for the last 4 years. The cumulative under-delivery is 2,229. A 20% buffer is appropriate as found by the JCS Inspector.
127. Whilst TBC will argue that under the provisions of the revised Framework its 3 year record moves it into 5% buffer territory, that part of the test is to be implemented in November 2018 as set out in footnote 39. It would be premature to apply that test at this point particularly as the JCS Inspector applied a 20% buffer for Tewkesbury. Furthermore, there has been historical under-delivery across the HMA overall over the last 3 years.

#### *The sites*

128. The PPG is clear that the onus is on a council to provide “robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out”. The PPG is clear that this exercise should be undertaken annually and based upon “up to date and sound evidence, taking into account the anticipated trajectory of housing delivery, and consideration of associated risks, and an assessment of the local delivery record”.
129. The evidence showed that this exercise has not been thoroughly undertaken by TBC. Firstly, the Delivery Schedule contains numerous errors. There must be concerns when a council cannot get its monitoring right. Even more concerning is that, when the errors were pointed out, nothing was done to either check the accuracy of the data put out or amend its schedule. Secondly, it had not made any enquiries in relation to the sites on which deliverability was challenged.
130. The best evidence on Homelands Farm 2 Phase 2, Phase 1B, Phase 3A and 3B and Phase 1 came from the Appellant. After checking with the developers it is clear that TBC has erroneously included dwellings in its 5 year HLS which should be deducted and moved to completions.
131. In terms of the Brockworth District Centre, Whittle Square, this site has planning permission and benefits from the definition of “deliverable” in the revised Framework. However, there is no realistic prospect of delivery. The site has been in TBC’s housing trajectory since 2010. There were 25 dwellings delivered in 2010/11 but nothing further has been built since. The planning agent is no longer involved and the applicant is a commercial property investment firm who have business interests in developing employment space. TBC’s view is that commercial development is unviable because the previous owner had presented evidence of the same in 2016.
132. The position has changed since 2016. The market has moved on. There are a number of sites within the business park that are being built out for active development which suggests it is commercially viable on a greenfield site on the edge of a business park with access in place. There is a new owner who could take a different view to the previous one. Faced with a planning permission which is 8.5 years old, an owner who does not seem to have any interest in residential development and no developer in place, there is no realistic prospect of delivery and TBC should remove this site from its HLS.
133. The Nerva Meadows site does not benefit from the “deliverable” definition. It does not have planning permission because the resolution to grant permission

was subject to a s106 agreement. After the round table discussion at the Inquiry and after giving its evidence, TBC produced a draft s106 agreement. There was some activity in tracked changes dated November 2017 and further activity in March 2018 but none since. There was no evidence of what the sticking points were or when it might be signed. TBC had earlier suggested it might be down to a new owner. This supports the point that the new owner may be reviewing what it wants to do with the land, hence the stalling. The site has no planning permission, no developer, no reserved matters submitted, no conditions discharged, no evidence of a landowner wishing to build. It has no realistic prospect of delivery and should be removed from the HLS.

134. On the basis of the above information and using the definition of “deliverable” in the revised Framework, TBC is concluded to have a HLS of 4.25 years.

*Other HLS points*

135. The context for considering TBC’s land supply position is a council which has only delivered sufficient homes to meet its requirement in 5 of the last 16 years. When stepping back to consider its cumulative under-delivery and comparing it to its neighbouring authorities, it is a woeful position.
136. TBC does not have a complete plan-led response to enact the requirement to boost significantly the supply of housing. Even on its own case, the supply will drop off within 10 years of the adoption of the JCS. It has no local plan, no identified allocations and no evidence of how it will plug the shortfall of 2,400 dwellings. All it could tell the Inquiry was high level: it is currently undertaking a phase 1 concept master plan for where development could take place but it is not completed and is not published. There are no firm deadlines. As a consequence, the plan fails to meet the requirement to boost significantly the supply of housing. It matters not what date a plan is adopted as to whether its policies are out-of-date<sup>37</sup>. The Appellant does not argue that the policies are out-of-date but does argue that they are not working.
137. The Framework objectives are not being met by the housing supply policies as they stand and the fragility of the future supply of land is also a material consideration in this appeal. Moreover, the neighbouring authorities of Cheltenham and Gloucester have a HLS of 2.6 years and 3-3.4 years respectively. The three JCS authorities are in the same HMA and the appeal site is only 3 miles to the north west of Gloucester. This should not be ignored because households’ decisions to move home are not constrained within local authority boundaries. It is entirely possible that households will move short distances across a local authority boundary to access housing. It shows a real-life problem with consequences for people and their children.

*Standard method*

138. Under the standard method in the revised Framework, the OAN for Tewkesbury would be higher and would increase from 495 dwellings per annum (dpa) to 540 dpa from 2017 onwards.

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<sup>37</sup> See *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC* [2017] UKSC 37.

139. It is not submitted that the revised Framework and the standard methodology should supersede the OAN in the JCS in order to calculate 5 year HLS for this appeal. However, it demonstrates two things:
- (a) the direction of travel for housing need for TBC is one that means that housing need has been under-estimated and this will inevitably have a knock-on effect on supply. TBC should not sit back and rely on the JCS OAN as a minimum figure. It needs to take steps now because the need is immediate.
  - (b) the JCS needs an immediate review in any event. However, based on the standard method indicating that there has been an under-estimate of housing need, the review is even more pressing.

*The character and appearance of the area including the setting of Highnam Court and Holy Innocents Church*

*Heritage*

140. A comprehensive assessment has been undertaken. Both TBC and HPC agree that there would be no impact on the significance of any heritage assets<sup>38</sup>.
141. The only party to argue a breach of policy SD8 is HPC. This is a policy about the historic environment. Any alleged breach argued simply replicates the arguments made in relation to the breach of policy SD6. In terms of conservation and enhancement of heritage assets, there is no breach of policy SD8.

*Landscape*

142. The adopted development plan policy context is the alleged conflict with policy SD6. This policy requires development proposals to "...avoid detrimental effects on types, patterns and features which make a significant contribution to the character, history and setting of a settlement area".
143. This site has no attributes or features that make any significant contribution to the character, history or setting of the settlement or landscape. The site features are limited. The hedges are relatively modern reflecting the history of Oakridge. The hedge to the south of the site has disappeared. The eastern hedge was planted in the 20<sup>th</sup> century. The arable land has no visual historic features and no particular history. The features make a very limited contribution to the character of the area. Development of the site avoids detrimental effects on any features that make a significant contribution because there are no features on the site.
144. TBC stated that the two landscape effects of greatest note are the reduction in the historical landscape character of the surrounding area and the change in settlement character with residential development being placed to the open side of Oakridge where no development exists to the south of Highnam.
145. The appeal site does not fall within a historic landscape. There are no features that show a sense of time depth or any physical form or past link prior to the 20<sup>th</sup> century. It is part of the historic landscape class A1f<sup>39</sup> which is unremarkable.

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<sup>38</sup> It was agreed between the parties before the Inquiry that no oral evidence would be presented on heritage matters. See also the Statement of Common Ground. Written evidence on archaeology and heritage can be found in Mr Armour Chelu's PoE (treated as a written representation)

<sup>39</sup> Mr Armour Chelu's supplementary PoE

The site is in a degraded landscape. It is not intact and there are very few features of the original layout.

146. All of the Appellant's evidence was consistent with the LCASA<sup>40</sup> which is integral to the functioning of policy SD6 (accepted by TBC and HPC). It is right that the LCASA's objective was to assign value as to the sensitivity of the landscape to large scale development but policy SD6 does not distinguish between large and small scale development. If the sensitivity study is appropriate for determining sensitivity for up to 4,000 dwellings then it must, as a matter of logic, be appropriate for determining sensitivity of a site for 40 dwellings.
147. HPC wanted to cherry pick the map that suited it in the LCASA but the LCASA split out area 'V' into, inter alia, G4 and G44. The text relating to G4<sup>41</sup> shows that Highnam Court was not ignored when this compartment of land was identified as its own area. It is directly referenced in G4 and yet the sensitivity remains medium-low and the area of G44 was not extended to include the appeal site. That is because there is no link between the appeal site and Highnam Court. G4 is given the lowest sensitivity despite that relative proximity. This detailed and robust study which feeds into policy SD6 did not identify any historic character. The site displays the reasons for the low sensitivity. It is heavily influenced by the settlement edge, the roads, the lights, the houses. Agricultural intensification has occurred.
148. Within the LVSS the appeal site sits in High-06 which is given low visual and low landscape sensitivity<sup>42</sup>. No witness appears to know why. Further on in the LVSS, it is given medium landscape and visual sensitivity. There is no reference to any historic links other than time depth being moderate. However, every single land parcel in Highnam has time depth moderate or strong. Highnam Court sits within High-01 with high landscape and visual sensitivity. The appeal site does not sit in High-01. Again, another independent professional who finds no connection.
149. Further to policy SD6's recommended use of the LCASA, so does Guidelines for Landscape and Visual Impact Assessment (GLVIA)<sup>43</sup>. Interestingly, it states "Those published and adopted by competent authorities are usually the most robust and considered documents". TBC agrees that there is a hierarchy of and a full suite of assessment.
150. The studies undertaken are the starting point and are to be built upon. However, TBC and HPC have advocated "tearing them up" because they do not like the sensitivity attributed so they find excuses for changing it. However, the authors knew about Highnam Court, Lassington Wood and the listed buildings. No connection has been made with the appeal site. It is just another field and historical landscape links are contrived.
151. HPC argues that there is a designed view from Highnam Court across to the roundel and across to Lassington Wood. That view is possible from one small corner of Highnam Court and takes in the south-east corner of the appeal site. However, a designed view has never been recognised and it is doubtful that it

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<sup>40</sup> CD D10

<sup>41</sup> Page 30 CD10

<sup>42</sup> LVSS page 13

<sup>43</sup> See GLVIA 3 paragraph 5.12

exists because it has never been recorded. HPC had tried to squeeze the site into a view which is not true of any designed view out. Using HPC's evidence, it is obvious that there was a hedge-line that ran behind the roundel, which would have restricted and blurred the view. It also demarcates any land that had tree planting from ordinary agricultural land. It is accepted that there may be a possible view of the roundel but not a further designed view. In terms of the view of the roundel, which is not afforded statutory protection, the site layout ensures that it remains protected.

152. In terms of the change in settlement character, no importance is ascribed to Oakridge Road. It is not a buffer at the north-western edge so it is only a part boundary at best. It is an access road and will continue to be such. It is not a gateway to the village. It is a 2D feature and from any distance is not experienced. It is the hedges and trees that soften the setting of development beyond Oakridge, not the road. The proposed development will sit comfortably and the impact on the character of the settlement is extremely limited. Highnam is quite well-treed and the proposed development, with mitigation, would melt into the backdrop of the Highnam Court parkland and other woodland.
153. The proposed development would maintain a strong relationship with the existing settlement areas and Oakridge. There is a strong western boundary to be restored to give filtered views into the development when approaching on Oakridge. Open space will be retained along the highest ground on the eastern boundary to protect the skyline and views from the Sustrans route. Most hedges and trees will be retained and a strong new boundary hedge will be created along the southern boundary reflecting the boundary generally found along the edges of Oakridge. The site is not isolated and road margins can be used to create a seamless link between the existing settlement and the proposed development. The site makes use of the curve in the road to tuck into it. It also benefits from topography and containment to minimise impact. There are also benefits like a better arrangement for the gateway to the Sustrans route and utilising the opportunity to create something more important and linking it into the community.
154. In terms of visual impact, the church spire and the woodland are seen in association with the settlement and are very distinctive features in the setting of Highnam and seen in many locations because of the prominent location. The appeal site sits at the same level as neighbouring development and rises slightly to the east but there will be no obliteration or blocking of views as suggested. There will be views of the development but views of the assets that make a contribution to Highnam are constantly changing around the village and the development will not impact that significantly.
155. The layout is indicative and not fixed. There is sufficient space that could be used in different ways and ability to move dwellings around. There will be an opportunity for 'rounding off' and 'softening' when the layout is fine tuned in order to minimise visual impact.
156. The landscape in which the site sits is unremarkable. It was not identified in the NP and has not been identified as highly sensitive or valued in any relevant decision letter or document. It is not AONB or Green Belt. Development would not affect ecology, a CA or ancient woodland. It is agreed that Framework paragraph 170 is not engaged. The settlement is unremarkable. No study has

identified particular historic connections. Oakridge is an access road that has already been breached.

157. In summary, the development is in outline. From a landscape or visual perspective it does not remove or harm attributes or features that make a significant contribution to the character, distinctiveness, quality and amenity of the site or its adjoining landscape. The LVSS found that the site could accommodate development without significant loss of the characteristic and valued views out from Oakridge across the vale landscape<sup>44</sup>. Detailed design and appropriate mitigation can be delivered through reserved matters such that the scheme can deliver a development compliant with the terms of the JCS and policies which seek to protect landscape character. Development at this site removes pressure to allocate land locally which is likely to take time and in the context of considerable constraints.

#### *Sense of place*

158. The alleged breach of policy SD4 is unfounded because it is a detailed design policy referring to, inter alia, street pattern, layout, mass, form, scale, type, density and materials. Even NP policy H2 refers to design quality and density. These are all matters to be considered at a later date.

159. In any event, reference to Highnam as an “historic settlement” in the context of the proposed development is without foundation. The settlement known today as ‘Highnam’ represents a later 20<sup>th</sup> century foundation, largely based around the extant Oakridge and recent development adjacent to the remaining parkland.

160. . The development that is in and around Oakridge mostly dates from the 1970s. It could be anywhere. It is a suburban development made of cul-de-sacs of housing.

161. Both TBC and HPC have overlaid the modern development in Highnam. There is no ‘experience’ and the development would not harm any purported sense of place. There is no policy in the JCS or NP that protects Oakridge.

#### *The effect on the social community*

162. HPC maintains that an additional 40 dwellings would have an impact on the community.

163. TBC’s officer report concluded that if permission was granted, the increase in dwellings at the site and including the development at Lassington Lane would be 18%. It is not appropriate to include potential development in a cumulative increase figure. In other appeal decisions where social cohesion was found to be impacted, the increase was 39%<sup>45</sup> and 36-37%<sup>46</sup>. The officer concluded that the cumulative increase resulting from this development would not negatively impact on community cohesion. Other Service Villages, smaller than Highnam, have accommodated higher levels of growth in the JCS plan period.

164. The Parish Council appears concerned about infrastructure and confirmed that, unlike the Beckford Road appeal decision there was no concern over employment

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<sup>44</sup> CD A27

<sup>45</sup> Ref APP/G1630/A/14/2222147

<sup>46</sup> Ref APP/G1630/W/15/3003278

opportunities and other local services. Whilst primary school websites are quoted, there is no direct evidence from, for example, a head teacher at a local school to detail any concerns in capacity. The local education authority did not raise any objection on the basis of lack of capacity in schools. Rather, a contribution under the Community Infrastructure Levy Regulations was calculated which the Appellant is obliged to provide<sup>47</sup>. The same applies to primary healthcare.

165. There is no harmful effect on the social community. On the contrary, the additional 40 dwellings, which will include affordable housing, a mix of house types (compared to 80% detached housing in Highnam<sup>48</sup>) and bungalows will create a more diverse community and improve social cohesion as envisaged in paragraph 4.12.2 of the JCS<sup>49</sup>.

*Whether safe access can be provided*

166. A Grampian condition has always been advocated in relation to securing land necessary for access and visibility splays. TBC originally thought it should be dealt with through a S106 Agreement but changed its mind and agrees that a Grampian condition is the appropriate way to deal with the situation.

167. The Appellant relies on the PPG<sup>50</sup> which highlights that it would be inappropriate to use a Grampian condition when there is no prospect of the land being secured. It also provides that when land is in the control of the local authority it is for the local authority to be satisfied of the same. On that basis, the issues of deliverability raised by HPC are not well founded.

168. HPC challenged whether safe access can be provided based on the assertion that the visibility splay that can be provided does not meet Manual for Gloucestershire Streets (MfGS) guidance and because HPC has its own evidence on speed surveys. However, HPC has resiled from the speed surveys and it was agreed that they were not relevant for the purposes of the Inquiry<sup>51</sup>.

169. In relation to the visibility splay, HPC had not allowed for the adjustment to the speeds for wet weather. The guidance in relation to those adjustments is contained in Chapter 3 of Appendix C to MfGS<sup>52</sup> which incorporates TA22/81 and sets out that for single carriageways there should be a deduction of 4kmh (2.5 mph). Following the Appellant's explanation, HPC agreed that the guidance for safe visibility was met but that the Appellant was "working at the margins". However, the guidance documents are prepared with some comfort already built in and that safe access can be provided. HPC produced no calculations to show otherwise.

*Whether the development's occupants would have satisfactory access to shops and services*

170. There are regular bus services stopping along Oakridge north and south of the site that run between Highnam and Gloucester<sup>53</sup>. There is also a shared cycle and

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<sup>47</sup> CD A36

<sup>48</sup> CD G07

<sup>49</sup> CD C01

<sup>50</sup> Ref Id: 21a-009-20140306

<sup>51</sup> Mr Moss in cross examination

<sup>52</sup> Page 30

<sup>53</sup> See Appendix A of Mr Padmore's PoE

pedestrian route on the north-east side of the site from Oakridge near the proposed vehicular access to Gloucester. The proposal includes the provision of connections to this route and the existing footways along Oakridge thereby allowing non-motorised user connection to the bus stops and local amenities in Highnam. This would reduce reliance on private vehicle use in accordance with national planning policy<sup>54</sup>.

171. TBC does not make the case that the appeal site is not accessible. The officer report states: "It is considered that the proposal would achieve a good mix of housing and would deliver much needed affordable housing in a location which is in close proximity to employment, existing housing, community facilities and is well served by public transport. These are benefits which weigh significantly in favour of the development"<sup>55</sup>.

172. MfGS replicates Manual for Streets (MfS) guidance<sup>56</sup> at paragraph 3.21 and provides that "Walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes (up to about 800m) walking distance of residential areas". HPS's evidence was that the recommended walking distances are "flawed".

173. Notwithstanding this evidence, MfGS and MfS are material considerations in this appeal. The MfS guidance has dramatically improved the previous advised approach of the Institute for Highways and Transportation which suggested 2km was an acceptable walking distance. The MfS standards are appropriate to be followed. The site is within walking or cycling distance of a number of key services and facilities<sup>57</sup>. Furthermore, as HPC accepted, it is within an appropriate distance of the bus stop.

174. Although there is nothing wrong with the existing footpaths, the proposal includes improvements to them, ensuring desire lines are followed and identifying the most suitable crossings with tactile paving and dropped kerbs. The Government cannot force people to walk or cycle. It cannot force preference. However, the proposal would provide genuine choice in how to travel and its occupants would be far from car dependent.

#### *The planning balance and conclusions*

175. The tilted balance is triggered in this appeal. The adverse impacts are so limited that they do not outweigh the numerous benefits of the proposal.

176. The Council has not identified how the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The reasons for refusal do not assist. The policies in the Framework as a whole encourage development that brings environmental, social and economic benefits and advocates significantly boosting the supply of housing.

177. Should the decision maker disagree and take the view that the tilted balance does not apply, then the delivery of market and affordable housing justifies a

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<sup>54</sup> Paragraphs 108 and 110 of the Framework

<sup>55</sup> CD A45

<sup>56</sup> CD D12 page 22

<sup>57</sup> See Table 3.1 of Mr Padmore's PoE

departure from the conflict with policy SD10. That conflict attracts reduced weight by virtue of the following:

- (a) the development plan has not yet allocated non-strategic sites
- (b) Tewkesbury does not have a much needed strategic allocation
- (c) settlement boundaries will need to be amended in order to allocate
- (d) the plan period shortfall, the dropping off of housing supply at years 6-10
- (e) there was not one professional consultation objection, including landscape at application stage
- (f) suitability of the proposal was accepted by officers at application stage when the same settlement boundary applied and when there was a 5 year HLS and when conflict with policy HOU4 was given substantial weight.

178. The fact that Highnam does not have a defined settlement boundary does not mean permitting any development in breach of the development plan. However, in relation to the appeal site, there is so much going for it and so little wrong with it, the fact of the existence of settlement boundaries is immaterial. Market and affordable housing can be delivered on this site which is suitable in every other way other than being a green field adjacent to the settlement.

179. TBC do not consider the benefits to outweigh the conflict. The benefits of the scheme are market and affordable housing to which significant weight should be given in the context of worsening affordability and affordable housing need. There are economic benefits in the form of construction and labour and new residents' use of shops and services. The development will improve social cohesion through the housing mix. There will be open space, footpath improvements, links with green infrastructure, habitat creation and the improved gateway for the Sustrans route. The benefits cumulatively are enough to outweigh the conflicts with the Development Plan policies. The Appellant does not attach significant weight to **all** benefits.

180. The adverse impacts are limited and do not rebut the tilted balance. Moreover, the balancing of the impacts also justifies a departure from the limited conflict with policy SD10 even if the tilted balance is not applied. The Land Rear of Canonbury Street, Berkeley appeal decision is relied upon<sup>58</sup>.

### **Interested persons**

181. Whilst a number of people attended the Inquiry, none wished to make any oral representations.

### **Written representations**

182. The representations received expressed some form of objection to the proposal. Those submitted in response to the original planning application are summarised in the officer's report to the Council's Planning Committee<sup>59</sup>.

183. The responses submitted to the appeal were all objections. The planning arguments raised are summarised below and cover the same ground as those received in relation to the original planning application, notably:

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<sup>58</sup> APP/C1625/W/15/3133335 (CD H03)

<sup>59</sup> CD A45

- Increase in traffic in combination with previously permitted development. The B4215 already experiences a high volume of fast moving large vehicles.
- There is a problem with speeding on the B4215 and HPC is in the process of setting up a Community Speed Watch.
- Development of part of this open field will lead to further development running down to the A40.
- Schools – most classes at Highnam have over 30 children. There would be insufficient school places to meet the needs of the Lassington Lane development let alone from another 40houses.
- Will the doctor's surgery be expanded to accommodate more residents?
- If Highnam is to take more houses in the future, it would be more sensible to build on the other half of the field being developed off Lassington lane. There would be an opportunity to build enhanced community facilities.
- The application represents sporadic unplanned development on land not zoned for residential development.
- The development at Lassington Lane in itself represents a considerable increase in the size of Highnam, putting demands on local infrastructure, including sewerage and storm water systems.
- The application is on the other side of the village to that at Lassington Lane which is focussed around an existing service hub. In contrast the appeal proposal is outside the perimeter of the Oakridge loop road and represents an intrusion into the countryside at a topographically conspicuous location. The mass and profile of the buildings would represent urban sprawl.
- Need for further housing in Highnam in addition to that at Lassington Lane has not been established.
- The wide grass margin along the Oakridge loop road is owned by the Council and as access across it is required to facilitate vehicular access to the proposed development there is a potential conflict of interest.
- It is crucial that all relevant parties adhere to the village development plan. This is the cornerstone for the local authority to manage resident expectations and cooperation of any future village improvements and development.
- The proposal would have an adverse effect on the surrounding area, both aesthetically and practically (noise, over-utilisation of public services). The site is in an elevated position. The proposal would damage the far reaching views for existing residents and walkers.
- The social wellbeing of the community would be adversely affected by construction and additional associated traffic in the short term.

- The site lies outside the defined residential development boundary of Highnam where new housing is strictly controlled. The proposal represents a significant encroachment into the surrounding rural landscape.
- We would be overlooked by the houses.
- The proposal would result in a 13% increase in the population of the village and does not accord with the vision in the NP.
- The site entrance would be in a dangerous location.

### **Conditions**

184. As set out in the Framework, conditions must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have made a number of amendments to the conditions as presented in the interests of clarity, precision and implementation and to avoid repetition. These amendments were discussed and agreed at the Inquiry. It was also agreed at the Inquiry, that a number of the suggested conditions were not necessary either because they would be more appropriately imposed at reserved matters stage and in some cases, that they could not be reasonably justified.
185. The conditions defining the scope of the reserved matters; specifying the time limits for submission of reserved matters and commencement of development; and requiring compliance with the relevant plans are necessary to provide certainty.
186. Conditions relating to finished floor levels; the principles in the Design and Access Statement; hard and soft landscaping; and vehicular parking and turning areas are necessary to assist in defining the scope of the reserved matters; in the interests of ensuring the appearance of the development is satisfactory; and highway safety.
187. A condition relating to existing trees and hedgerows is necessary to ensure the retention of these features in the interests of protecting the character and appearance of the local environment. This is required pre-commencement to ensure that the necessary protection is in place before any building works start.
188. A drainage condition is necessary to ensure the site is properly drained and to mitigate flood risk.
189. A series of conditions relating to highways are necessary to ensure highway and pedestrian safety. The main access needs to be provided before any other building operations begin to ensure a safe and suitable entry for construction traffic.
190. The Construction Method Statement and the hours of construction conditions are necessary to ensure that there is no adverse impact upon the living conditions of local residents or upon the highway network during construction. This is required before commencement of development in order to provide the necessary protection from building works.

191. An ecology condition is necessary update the previous Ecological Appraisal and more broadly, to enhance biodiversity on the site. It is necessary for this to be a pre-commencement condition in order to ensure the protection of flora and fauna prior to any development works taking place and so that appropriate mitigation can be carried out.
192. It was agreed between the appellant and the Council that a Grampian condition in relation to the access is not necessary as the requirements on the land owned by the Council are addressed by the relevant highways conditions. I agree.

### **Obligations**

193. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) requires that if planning obligations contained in s106 Agreements are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonable related in scale and kind to the development in question.
194. The obligations were not disputed by the Appellant. They relate to affordable housing; the laying out and ongoing maintenance of public open space; education; libraries; healthcare; leisure; dog waste bins and signage; and recycling.
195. Evidence of the necessity, relevance and proportionality of the obligations was set out in submissions from TBC<sup>60</sup>, which were discussed at the Inquiry. Overall, the written and oral evidence demonstrate the basis for the obligations and how they relate to the development proposed, set out how any financial contributions have been calculated and indicate whether the CIL regulation pooling limits have been breached. They set out the planning policy basis for the obligations. In my judgement, the available evidence sufficiently demonstrates that the above obligations meet the tests set out in the Regulations.

### **Conclusions**

196. The following conclusions are based on the written evidence submitted, on my report of the oral and written representations to the Inquiry and on my inspection of the site and the wider area. The numbers in square brackets thus [ ] refer, as necessary, to paragraphs in other sections of the report.
197. The main considerations in this appeal are:
- Whether a five year supply of housing exists within the Borough and, if not, whether any adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits.
  - The effect on the character and appearance of the area including the settings of Highnam Court and Holy Innocents Church.
  - The effect on the social wellbeing of the community.
  - Whether safe access would be provided.
  - Whether occupants of the proposed development would have satisfactory access to shops and services.

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<sup>60</sup> ID11

## ***Housing land supply***

### *Housing need in Tewksbury Borough*

198. Framework paragraph 59 says that in order to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. Paragraph 73 of the Framework says, amongst other things, that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than 5 years old Unless these strategic policies have been reviewed and found not to require updating. In this case the strategic policies in the JCS were adopted very recently indeed.
199. As already set out, at least 9,899 new homes need to be built in Tewkesbury borough over the JCS plan period [para 17]. This equates to a base requirement of 495 dpa. The Framework requires a buffer to be added at either 5% to ensure choice and competition in the market for land; or 10% where the local planning authority wishes to demonstrate a five year supply of deliverable housing sites through an annual position statement or recently adopted plan (i.e. between 1 May and 31 October), to account for any fluctuations during that year; or 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.
200. The written submissions sought from the parties in response to the potential implications arising from the publication of the revised Framework clearly indicate a vastly diverging opinion between TBC (supported by HPC) and the Appellant over whether a 5 year HLS can be demonstrated. It is clear from these submissions, as indeed it was at the Inquiry, that the opposing stance of TBC and the Appellant is focussed on three main factors:
- i) whether TBC can discount any surplus arising from over delivery of housing against the housing requirement in previous years;
  - ii) based on historic housing delivery, which buffer should apply; and
  - iii) the deliverability of certain sites in the trajectory.

These factors determine whether TBC can or cannot demonstrate a 5 year HLS and I deal with each of them in turn.

### *Surplus from over delivery*

201. It has already been identified in this Report [para 57] that the annual housing completions between 2011 to 2018 total 4,169 against the JCS requirement of 3,465, thus leading to 704 more homes than required.
202. Both the Framework and PPG are silent on the matter of oversupply. However, the Appellant has provided two appeal decisions<sup>61</sup>, both of which were tested at Inquiry. The respective Inspectors did not support an approach whereby an oversupply figure is 'banked' so as to reduce the annualised target in later years

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<sup>61</sup> APP/J0405/W/16/3158833 (DL 37); and APP/F4410/W/16/3158500 (DL 119-120).

of the plan period. They concluded that this would run counter to the requirement to significantly boost the supply of housing.

203. TBC sought to make a case that the over-supply should not be “lost”. However, the emphasis in the revised Framework is on determining the **minimum** number of homes and the requirement for local planning authorities is to demonstrate a **minimum** of 5 years’ worth of housing against the requirement. Consequently, TBC’s approach would run counter to that advocated in national planning policy and I do not therefore consider that an over-supply from previous years should be ‘banked’ so as to reduce the housing target in future years. This bears on the calculation of TBC’s HLS which I address later on but the surplus should not be counted in the calculations.

#### *The buffer*

204. The Appellant argues that a buffer of 20% should be applied based on past under delivery. The Framework says a 20% buffer should apply where there has been significant under delivery over the previous three years. The evidence is clear that TBC has over delivered in the last 5 years when the latest monitoring data from 2017/18 is taken into account. I acknowledge that this latest data was not before the Inquiry and has come to light in the intervening period between its closing submission and the writing of this Report. However, the Appellant has had the opportunity to comment upon it and has indeed done so. The latest evidence provides the clearest current picture and I consider it to be relevant to the determination of the appeal.
205. On that basis, and on a straightforward reading of the previous housing completion figures [para57], delivery against requirement rose in each of the previous 5 years (2013/14 to 2017/18). Moreover, there was a steep upward trajectory of those rises across that period demonstrated by the surpluses of 18 dwellings in 2013/14 compared to 450 dwellings in 2017/18. This demonstrates that TBC has not failed to meet its housing targets and in my view it is not significantly under-delivering.
206. I therefore consider that a 5% buffer should be applied in Tewkesbury borough. This chimes with the findings of the JCS Inspector, who concluded that a 20% buffer should apply at the time of the JCS Examination, nonetheless noted that the strong delivery indicated that this could drop to 5% in the future<sup>62</sup>.
207. The Appellant says that by employing the standard method of calculating housing need, the annual figure of 495 dpa would increase to 540 dpa [para 138]. However, the Appellant acknowledges that this does not necessarily supersede the OAN provided for in the JCS [para 139]. I have no disagreement with that given that this is the figure arising from a plan adopted in late 2017 after testing at examination. Moreover, whilst the use of the standard method might give rise to a review of the Plan, it is not any part of the role of this Inquiry to involve itself that work.
208. The Appellant seeks to make the case that there has been past under-delivery in the wider HMA which includes Gloucester and Cheltenham. That may be the case. However, the reason for determining whether TBC can or cannot

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<sup>62</sup> CD C05 para 97

demonstrate a 5 year HLS is to establish whether or not Framework paragraph 11 is engaged. For the purposes of this exercise, it is not relevant to consider the performance of other local planning authorities even though there might be an element of migration between them as people seek homes in various places.

209. I therefore see no compelling reason to base a 5 year HLS calculation on a higher figure than the starting point of 495 dpa. Consequently, the base requirement is 2,475 dwellings (495 x 5) plus a 5% buffer (124) which results in a per annum requirement of 520 dwellings. The Appellant agrees this to be the appropriate figure in the scenario that a 5% buffer is applied<sup>63</sup>.

#### *Deliverable supply*

210. The 5 year supply period over which to address the matter of deliverability is 2018/19 to 2022/23. The Appellant has confirmed that on this basis, the challenge to the inclusion of supply at various phases of development at Homelands Farm, Bishops Cleeve is not relevant as these sites have been built out. The Appellant's previously raised issues with these sites can therefore be set aside<sup>64</sup>.

211. Paragraph 73 of the Framework includes a requirement to identify specific deliverable sites. Consequently, I therefore agree with the Appellant that the eTBP allocations should not be included in the deliverable supply for the purposes of determining this appeal. This is because the eTBP is at an early stage of development and it is as yet unknown what objections there may be to it. It would be an unusual situation if there were none. Moreover, broad allocations would not meet the definition of "specific deliverable sites". This view has not been challenged by TBC.

212. TBC considers the deliverable supply relative to the 2018/19 to 2022/23 period to be 2,075 dwellings<sup>65</sup>. Included within this are a number of sites that the Appellant considers will not be delivered in the above 5 year period. It is necessary to make an assessment of each site and I turn to this below bearing in mind the definition of "deliverable" and "developable" in the Glossary to the Framework.

#### *Brockworth District Centre – Whittle Square*

213. This mixed-use scheme comprises a residential element of 52 dwellings, 27 of which remain outstanding. The other 25 dwellings were completed in 2010/11 and TBC acknowledges that progress has stalled since<sup>66</sup>. The Appellant observes that the applicant is a commercial property investment firm and there is no planning agent in place<sup>67</sup>. The permission has been extant for almost 9 years. However, bearing in mind what the Framework says regarding what constitutes a deliverable site, there is no convincing evidence that it will not be delivered within the next 5 years particularly given the potentially short lead-in time for a development of the size remaining. It is too soon in my view to discount the site from the deliverable supply.

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<sup>63</sup> ID20

<sup>64</sup> ID20

<sup>65</sup> ID16

<sup>66</sup> ID16

<sup>67</sup> See paragraph 4.24 of Mr Ireland's PoE

Moorcroft House, Minsterworth

214. This is a new site and as such it was not put forward by TBC at the Inquiry. Outline permission was granted in January 2018 for 10 dwellings. There is no evidence of a forthcoming reserved matters application or an application for the discharge of conditions. Moreover, there is no evidence that a developer is in place to take the scheme forward. Consequently, there is no convincing evidence to show that housing completions will begin on site within 5 years. Accordingly, it is appropriate to discount this site from the deliverable supply.

Nerva Meadows, Brockworth

215. TBC resolved to grant outline permission for 106 dwellings on this site in December 2016 pending a s106 agreement, which to date has not been substantively progressed. The development does not therefore have planning permission and there is no housebuilder in place. No evidence was put to the inquiry to show that this scheme will come forward in time to see completions within 5 years and none has been forthcoming since. Consequently, there is no clear evidence to show that housing completions will begin on site within 5 years. Accordingly, it is appropriate to discount this site from the deliverable supply.

Part Parcel 2691, Twigworth

216. TBC resolved to grant outline permission for up to 10 dwellings on this site in August 2015 pending a s106 agreement, which to date has not been substantively progressed. The development does not therefore have planning permission. There is no clear evidence to show that housing completions will begin on site within 5 years. Accordingly, it is appropriate to discount this site from the deliverable supply.

Land East of Railway, Aschurch

217. Outline planning permission was granted in October 2017 for 45 dwellings. The evidence indicates that the site was sold on to another housebuilder in spring 2018. There is no evidence of a reserved matters application having been submitted. There is no clear evidence to show that housing completions will begin on site within 5 years. Accordingly, it is appropriate to discount this site from the deliverable supply.

218. Taking all of the above sites into account it is appropriate to reduce TBC's suggested deliverable supply by 171 dwellings for the purposes of calculating supply within the period of 2018/19 to 2022/23.

*Conclusion on HLS*

219. With the application of a 5% buffer, the Council considers it can demonstrate a 5.58 year HLS. However, as already noted, this is based on the calculations that include a reduction in requirement because of the notional surplus of dwellings and a number of sites that I have found should be discounted from the deliverable supply.

220. Pulling all of this together, the total housing requirement is 2,475 plus a 5% buffer (124) = 2,599. Set against a deliverable supply of 1,904 (2,075 minus a reduction of 171), this indicates that the Council is able to demonstrate a HLS of around 3.99 years.

221. I recognise that this is a very different picture than the one formed by the JCS Inspector, who found the HLS position to be more robust and indeed that the Council could demonstrate a 5 year HLS. However, things have moved on and the evidence that has led me to take an alternative view is persuasive. I also acknowledge that previous appeal decisions<sup>68</sup> found that the Council had a 5 year HLS. However, my conclusions are based on the evidence I have been given, which includes a further year of monitoring, amongst other things.

*Character and appearance*

222. There are two main aspects to consider here: firstly, the effect on the settlement pattern; and secondly, the landscape and visual effects.

*Settlement pattern*

223. The characteristics of Highnam give the settlement a distinctive, contained and inward-looking form.

224. In my view the winding form of Oakridge and in particular its tighter bends next to the appeal site is an integral part of the character and form of the settlement. This conspires to 'reject' further development on the more open landscape to the immediate south and east of Oakridge.

225. There was considerable discussion at the Inquiry relating to whether Oakridge is an 'edge' because of its two-dimensional nature. Irrespective of this, the road provides a definitive feature beyond which no development has breached it to the south or east of Highnam. Furthermore, the trees and hedges along the road are there because of it and they follow its alignment. Taking these features together, Oakridge forms a definitive and robust edge between the settlement and the open countryside beyond.

226. Both TBC and HPC raised concerns at the Inquiry over the proposed site boundary to the south and in particular that it would appear out of character with the more sinuous curve of Oakridge. Whilst there is a line of vegetation including mature trees that extends from the west towards the site, the proposed boundary hedgerow would nonetheless be somewhat arbitrary in the context of the much larger field that it would bisect.

227. The proposed development would result in harm by disrupting the settlement pattern on the eastern and southern sides of Highnam by extending the urban area into the open countryside beyond a well-defined edge.

*Landscape and visual effects*

228. The site does not fall within a landscape subject to any specific designation for its character and/or quality. It is part of a much larger field extending to the south and which is characteristic of the general field sizes in much of the area between Highnam and Gloucester. There is some variation in topography as it rises from the settlement edge to a plateau before dropping into the wide valley landscape to the east. Although the application is in outline, the evidence to the Inquiry was that the proposed dwellings would be on the land to the west of the plateau. This would provide a degree of visual containment to the development.

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<sup>68</sup> Refs APP/G1630/W/17/3174525 (CD H06 – see DL paragraph 29) and APP/G1630/W/17/3172841 (CD H08 – see DL paragraph 7)

229. The LCASA makes clear that it is not a detailed visual appraisal as that will be required as part of any planning application. It is a tool to inform strategic land use decisions such as large allocations as part of the JCS<sup>69</sup>. The LCASA is indeed broad brush but is nonetheless required to be taken into account by JCS policy SD6. However, doing so takes us on a circular journey back to the LCASA and what it says about detailed visual appraisals being required as part of planning applications. Policy SD6 also says the LCASA should be drawn on “as appropriate”.
230. Moreover, Policy SD6 says that all applications for development will consider the landscape and visual sensitivity of the area in which they are to be located or which they may affect. The LCASA does not take away from or act as a substitute to that requirement. It seems to me that the LCASA’s findings in terms of landscape sensitivity cannot in themselves be relied upon to assess the development proposal subject to this appeal. That is a task for a different, more detailed study.
231. The LVSS places the site within the High-06 land parcel within which it assesses both landscape and visual sensitivity as being “low” and “medium” in different parts of the document. Even on the worst case scenario(i.e. more harmful), the LVSS defines “medium” in the following terms:
- “Landscape and/or visual characteristics of the land parcel are susceptible to change and/or its intrinsic values are medium. The land parcel may be able to accommodate some development without significant adverse effects. The threshold for significant change is moderate”<sup>70</sup>.
232. Nevertheless, the LVSS goes on to stress that landscape and visual sensitivity to new development is not the same as the ‘capacity’ of a place to accommodate development. It says, quite correctly in my view, that unsympathetic or inappropriate development will not be suitable in a land parcel, even if the area is deemed to have a low sensitivity.
233. Whilst I acknowledge the findings of both the LCASA and the LVSS and that they are useful documents for assessing a proposed development (particularly the LVSS), they do not provide a definitive method of determining the effects of the appeal proposal. The settlement edge has some influence on the rural landscape to the south and east but from my own observations, there is a clear and pronounced edge to the settlement here which marks a sudden change between built development and the rural landscape beyond.
234. At my accompanied and unaccompanied site visits, I was able to walk some of the recreational routes and view the site from a number of locations. It was clear that in some views, the proposed development would be fairly prominent while in others, less so.
235. In some views, the spire of the nearby Holy Innocents Church is seen in combination with the existing housing. However, in others it is not. Notably, when viewing from some areas along the nearby recreational routes, the spire appears as an isolated and prominent feature in the rural landscape. In these views, the proposed development would appear in front of the spire. Although it

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<sup>69</sup> Page iv under the heading “How the Sensitivity Analysis is to be used”.

<sup>70</sup> Table 1 on page 7 of the LVSS.

would not sit at a level such that it would block out views of the spire, it would diminish the pleasing views currently created by the spire nestling into the landscape behind an undeveloped, pastoral and verdant foreground.

236. An as yet unimplemented planning permission has been granted for the construction of a solar farm in a nearby field. Only the back of the solar array would be seen in the same views as the proposed housing. However, whilst solar farms are not now uncommon in rural areas, they nonetheless appear as hard additions to the landscape in otherwise open fields. There is no evidence that the solar farm permission will not be implemented and in combination with the proposed housing, the open and rural character of the area to the east of Highnam would change dramatically as a result of these developments.
237. The proposed development would result in a change to the experience of travelling along Oakridge. However, it would be for only a modest distance when compared to the length of the road as a whole. Having said that, there are a number of other publicly accessible routes along which people would be travelling on foot or by cycle. The nature of these routes is such that people will pause to take in their surroundings and although there are hedges that constrain views along some parts of them, the proposed development would be very prominent from others.
238. The setting of the historic landscape associated with Highnam Court was also covered in detail at the Inquiry. It was argued by HPC that there is a visual link between the historic parkland and the area within which the site is located. There is a roundel of mature Pine trees a short distance to the south of the site and similar contemporary tree planting within the parkland. It would be easy to make an assumption that the roundel is in some way linked to the laying out of the parkland. However, there is no evidence of a designed view, particularly given the limited views towards the east with only a modest break in the line of vegetation along the eastern boundary of the parkland.
239. Whilst it is impossible to be certain given the absence of any historical records, it seems to me that this planting actually constrains views and the design intention might equally therefore have been to create an intimate inward-looking area of parkland around Highnam Court. In light of such doubts, and on the balance of probabilities, I do not consider that the roundel to the south of the site is part of a designed view out of the parkland.
240. The LVSS shows the character area within which the site is located to be separate from that covering the parkland. Given my findings above of the likely inward looking nature of the parkland, there is no clear visual or physical link between the historic landscape and the site.
241. The historic landscape seems to me to be visually and physically well-contained such that there would be no unacceptable effects on its historic significance.

*Conclusion on character and appearance matters*

242. There would be harm to the settlement pattern, the landscape and the way it is experienced. Consequently, for the reasons given, the proposal would not have sufficient regard for local distinctiveness or contribute positively to a sense of place. Thus, it runs counter to JCS policy SD6 and NP policy H2.

243. It was argued by the Appellant that design matters are properly to be considered at reserved matters stage and for that reason there would be no conflict with JCS policy SD4. However, good design goes beyond merely considering the appearance of the development itself and should properly include wider considerations of how it fits into the settlement and the landscape. I have found that it would not and also therefore find the proposal to run counter to policy SD4.

*Social wellbeing*

244. HPC maintains that an additional 40 dwellings would have an adverse effect on the community. Taking into account the housing development currently taking place to the west of Lassington Lane, the addition of a further 40 dwellings would represent an 18% increase in the size of Highnam.

245. In my view, this is a modest level of growth that would not place undue pressure on the available shops and services in the village. On the contrary, it would be likely to assist in the ongoing economic vitality of the local shop and potentially increase the number of people using the church and community centre. There is no substantive evidence before me to suggest that the local schools and GP surgery would be unable to cope with the additional number of residents in Highnam. In any case the appellant has provided an executed s106 Agreement that makes financial provision to education and healthcare. There is no compelling reason to indicate that the proposed development would cause the harm that HPC alleges.

246. A mix of dwelling types has been proposed including bungalows. This could be the subject of a reserved matters application, which along with the proposed inclusion of a proportion of affordable homes, would provide more overall housing choice in Highnam.

247. For these reasons, the proposal would not result in harm to the social cohesion of the settlement.

*Whether safe access would be provided*

248. TBC raises no objections to the proposal on highways grounds. However, as I have already set out, this is still a matter of concern for HPC and indeed a number of local residents.

249. HPC's highways witness agreed<sup>71</sup> that its speed surveys were not relevant for the purposes of the Inquiry. However, it was argued that in calculating the visibility splays, the appellant was, as he put it 'working at the margins'.

250. The appellant put the counter argument that the visibility splay calculations provided are based on wet weather conditions as the guidance<sup>72</sup> suggests and that this has comfort built in. HPC have not produced any evidence to show that the calculations are not robust. Consequently, there is no reason to believe that vehicle speeds in the vicinity of the site are such that the proposed access would be unsafe.

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<sup>71</sup> Mr Moss in cross examination

<sup>72</sup> Manual for Gloucestershire Streets (4<sup>th</sup> Edition) (Core Document D12)

### *Access to shops and services*

251. Although HPC suggests that Highnam contains limited facilities, it is nonetheless identified as a service village in the development plan. The local shop and post office is located in Maidenhall which lies to the western side of the village. The GP surgery and Highnam Nursery are also located on the westernmost edge of the village.
252. The appeal site is within reasonable walking and cycling distance of these services and the distances generally accord with guidance in MfGS, which reflects that in MfS. However, I agree with HPC that given its location away from the appeal site, occupiers of the proposed dwellings would be likely to travel to the shop by car during periods of cold or inclement weather. Although there are bus stops close to the store, it would seem unlikely to me that people travelling to and from the major employment area (primarily Gloucester) by public transport would alight in Maidenhall and then walk home particularly if laden with bags of shopping.
253. Similarly, the distance from the site to Highnam Nursery would not be an attractive walking proposition for those with nursery age children and neither would it be for those visiting the GP surgery. Although the primary school and recreation area are much closer to the site, these services are likely to be used frequently and with most visits to them made by car.
254. Having said all of that, those choosing to travel to work in Gloucester would have a choice of public transport as an alternative means to the car. Whilst the Framework seeks to promote the use of sustainable transport, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
255. There are bus stops close to the site along Oakridge and I see no reason why this service would not be used by the development's occupants. Whilst some may still opt to use private motorised transport, the site is in a location where there is a clear sustainable alternative for travelling to work and accessing the higher order services and facilities in Gloucester. Even in the event that travel to the day-to-day services in Highnam would be by car, these journeys would be of limited duration and overall, given the availability of public transport, I do not consider that the proposed development would occupy a location that would lead to an unacceptable level of less sustainable transport use.

### **Planning balance**

256. I have found that the Council is currently unable to demonstrate a 5 year HLS and thus paragraph 11 of the Framework is engaged. The parties accept that the proposal conflicts with JCS policy SD10. I have also found conflict with other development plan policies including those in the NP. The NP represents an expression of how the community wishes to shape its local environment. Accordingly, whilst it does not allocate sites, it is relevant to the assessment of whether the appeal proposal is acceptable or not.
257. The Appellant has put forward a number of considerations including suggested benefits of the scheme.

258. It is accepted by the parties that there will be a housing shortfall in later years of the JCS plan period. The Appellant's evidence, which is based on the Council's own information, indicates that deliverable supply will drop off sharply beyond year 2 of the 5 year period to 2022/23<sup>73</sup>.
259. The Council is working on the TBP, which will allocate sites. It is envisaged that this would be adopted in spring/summer 2019. However, whilst it might be possible to adhere to this timetable, I learned at the Inquiry that it has already slipped, which casts doubt in my mind over whether the eTBP will in fact be adopted in 2019.
260. Having said that, it seems inconceivable that the existing or any future slippage would be so serious as to prevent adoption of the eTBP taking place well in advance of 2022/23. However, the need for housing is pressing given the Council's HLS shortfall and although there is likely to be a plan in place within the next 5 year period that will allocate sites, it is unlikely those sites would be built out before the end of 2022/23. Thus, at the present time, I can see no mechanism to address Tewkesbury borough's housing need.
261. The development would deliver 40 new homes. There would be a mix of housing whereas the existing settlement is made up primarily of detached dwellings. The scheme would also include the policy level of affordable housing in a borough where there is a considerable level of need that is worsening year-on-year. These comprise social benefits that attract significant weight in the context of a housing shortfall with no plan currently in place to address it.
262. There would be economic benefits during construction through the creation of jobs and afterwards through the residual support for the local shop. Although I accept that some of the development's occupants would shop in Gloucester and elsewhere, combining shopping trips with those to and from their places of work, the local shop would be within acceptable walking and cycling distance from the development. It would therefore still benefit economically from the increase in the village's population. Moreover, Highnam is defined as a Service Village in the JCS and development in this location is therefore envisaged. These benefits also have significant weight.
263. However, the clear identified harm to the landscape and the resulting development plan policy conflict is a matter to which I give very substantial weight. Whilst the other policy conflicts would have reduced weight due to the HLS position they still weigh negatively in the planning balance. .
264. Placing these factors and all of the relevant material considerations in the balance, I find that the adverse impacts of the proposal significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. A decision other than in accordance with the development plan is not justified and the proposal would not represent sustainable development.

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<sup>73</sup> ID20 Figure 1

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265. For the reasons given above, and taking all other matters into consideration, I recommend that the appeal should be dismissed and planning permission refused.

266. If the Secretary of State disagrees with my recommendation, Annex C lists the conditions that I consider should be attached to the planning permission. The reasons for these suggested conditions are set out in paragraphs 185-193 of this Report and a consideration of planning obligations is given in paragraphs 194-196.

*Hayden Baugh-Jones*

Inspector

## **ANNEX A: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Sarah Clover of Counsel

Instructed by Tessa Yates, One  
Legal, Solicitor to Tewkesbury  
Borough Council

She called

Matthew Barker B.Sc(Hons) MA MRTPI

Planning Policy Manager,  
Tewkesbury Borough Council

Stuart Ryder BA(Hons) CMLI

Director, Ryder Landscape  
Consultants Ltd

Paul Smith BA(Hons) B.Sc(Hons)  
Dip. DesBltEnvt MRTPI

Sole Practitioner  
Planning Consultant

### FOR THE APPELLANT:

Emmaline Lambert of Counsel

Instructed by Mark Campbell,  
Evans Jones Ltd

She called

Nick Ireland BA(Hons) MTPI MRTPI

Planning Director, GL Hearn

Adam Padmore BSc MSc MSc MCIHT

Managing Director, Cotswold  
Transport Planning Ltd

Paul Harris BA DipLA CMLI

Director, MHP Design Ltd

Mark Campbell MA MRTPI

Senior Planning Consultant,  
Evans Jones Ltd

### FOR HIGHNAM PARISH COUNCIL:

Charles Coates FRICS (Rtd)

Councillor, Highnam Parish  
Council

Nicholas Harman BA(Hons) DipLA CMLI

Illman Young Design Ltd

Patrick Moss MRTPI

Director, Moss Naylor Young Ltd

## **ANNEX B: DOCUMENTS**

### **Core Documents**

See files A to G (in hard copy)

### **Documents submitted to the Inquiry**

ID01	Non-executed Section 106 Agreement
ID02	Table showing house prices to income ratio
ID03	Tabbed version of Mr Ireland's Appendices
ID04	Opening submissions on behalf of the appellant
ID05	Opening on behalf of Tewkesbury Borough Council
ID06	Section 106 Agreement relating to Arlington Business Park
ID07	Landscape Sensitivity Study by MHP Design Ltd
ID08	Gloucestershire County Council standing highways advice
ID09	Table of oversupply figures
ID10	Decision notice relating to Land at Maidenhall Farm, Highnam dated 21 March 1974 and accompanying Section 19 Agreement dated 30 August 1974
ID11	CIL Compliance Statement
ID12	Closing on behalf of Tewkesbury Borough Council
ID13	Closing Statement on behalf of Highnam Parish Council
ID14	Closing submissions on behalf of the appellant

### **Documents submitted after the close of the Inquiry**

ID15	Executed s106 Agreement
ID16	Tewkesbury Borough Five Year Housing Land Supply Statement July 2018
ID17	Tewkesbury Borough Council Monitoring Report 2017/18 (July 2018)
ID18	Comments on behalf of Highnam Parish Council on the revisions to the National Planning Policy Framework (July 2018)
ID19	National Planning policy Framework – Appellant's Update Ref: 13475, 15 August 2018
ID20	Appellant's response to Council's comments on revised Framework in respect of Five Year Housing Land Supply including commentary on the Council's and Highnam Parish Council's comments

## **ANNEX C: RECOMMENDED CONDITIONS**

### **APPROVAL OF DETAILS**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No 8081 PL01 Rev C; Topographical Surveys by A D Horner Limited Drawing Nos 4352-09Jul.15-01, 4352-09Jul.15-02, 4352-09Jul.15-03; Proposed Site Access Arrangement Drawing No 1506-40 Figure 6.1 Revision A (as detailed in Appendix A of Addendum Proof of Evidence Report in Respect of Highways and Transportation, May 2018 by Cotswold Transport Planning).
- 3) The reserved matters pursuant to condition 1 shall include details of the finished levels, above ordnance datum, of the ground floors of the dwellings, in relation to existing ground levels. The development shall be carried out in accordance with the approved details.
- 4) Any applications for the approval of reserved matters shall be in accordance with the principles and parameters in the Design and Access Statement dated April 2016.
- 5) The reserved matters pursuant to condition 1 shall include details of both hard and soft landscaping.  
Details of hard landscaping shall include:
  - i) positions, design, materials and type of boundary treatments;
  - ii) hard surfacing materials.Details of soft landscaping shall include:
  - i) planting plans;
  - ii) written specifications including cultivation and other operations associated with plant and grass establishment);
  - iii) schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate;
  - iv) Implementation timetables including time of planting.
- 6) The reserved matters pursuant to condition 1 shall include vehicular parking and turning facilities within the development. Development shall be carried out in accordance with the approved details and the parking and turning facilities shall be retained thereafter for those purposes.

### **TIMING OF IMPLEMENTATION**

- 7) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 8) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

## TREES AND HEDGEROWS

- 9) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees and hedgerows (the tree and hedgerow protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees and hedgerows shall be carried out as approved.

In this condition "retained tree and Hedgerow" means an existing tree or hedgerow which is to be retained in accordance with the approved plans and particulars.

## DRAINAGE

- 10) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation; and,
  - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

## HIGHWAYS

- 11) No development shall take place until the first 15m of the access road including its junction with the adopted highway has been completed to binder course level and associated visibility splays have been provided in accordance with the approved plans. The visibility splays shall thereafter be kept free from obstruction.
- 12) The footway connection with crossings from the development to the south of the Park Brake junction shall be implemented in accordance with the details on drawing SK03 (as detailed in Appendix A of Addendum Proof of Evidence Report in Respect of Highways and Transportation, May 2018 by Cotswold Transport Planning) prior to first occupation of the development hereby permitted.
- 13) Before any dwelling hereby permitted is occupied, a footway with crossings from the development to the existing footway on Williams Orchard via the junction with Oakridge, as indicated on drawing SK03 (as detailed in

Appendix A of Addendum Proof of Evidence Report in Respect of Highways and Transportation, May 2018 by Cotswold Transport Planning)., shall be provided in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. Development shall be carried out as approved.

- 14) Before any dwelling hereby permitted is occupied, tactile drop kerb footway crossings shall be provided in locations and in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. Development shall be carried out as approved.
- 15) Before any dwelling hereby permitted is occupied, a footway/cycleway including an tactile crossing from the western boundary of the development to the existing footway alongside Oakridge shall be provided in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. Development shall be carried out as approved.
- 16) Before any dwelling hereby permitted is occupied, a footway/cycleway connection from the eastern boundary of the development to the existing footway/cycleway to Gloucester shall be provided in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. Development shall be carried out as approved.
- 17) No dwelling shall be occupied until the roads within the development have been constructed to binder course level and the footways within the development have been constructed to surface course level.
- 18) No dwelling shall be occupied until surface water drainage works for the roads and footways within the development shall have been carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority.
- 19) No dwelling shall be occupied until street lighting has been provided in accordance with details which shall have been submitted to and approved in writing by the local planning authority.

#### **CONSTRUCTION METHOD STATEMENT**

- 20) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall 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) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from construction works;
  - viii) signage for the routing of construction traffic.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

## **HOURS OF CONSTRUCTION**

- 21) No external construction works, no deliveries and no external operation of plant and equipment shall take place outside 0800 to 1800 on Mondays to Fridays and 0800 to 1400 on Saturdays. No works shall take place on Sundays or Bank Holidays.

## **ECOLOGY**

- 22) No development shall take place until an Ecological Appraisal and an Ecological Management Plan (EMP) have been submitted to and approved in writing by the local planning authority. The EMP shall include a timetable for implementation, details of monitoring and review and how the areas concerned will be maintained and managed. Development shall be carried out in accordance with the approved EMP.

End of conditions.



# Ministry of Housing, Communities & Local Government

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

## **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 day after 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 day after 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.