



Department for  
Communities and  
Local Government

Gladman Developments Ltd  
Gladman House  
Alexandria Way  
Congleton  
Cheshire  
CW12 1LB

Our Ref: APP/P1615/W/15/3005408

21 December 2016

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY GLADMAN DEVELOPMENTS LIMITED  
LAND NORTH OF LOWER LANE, BERRY HILL, COLEFORD, GLOUCESTERSHIRE  
APPLICATION REF: P1482/14/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs KA Ellison BA, MPhil, MRTPI, who held an inquiry from 17 November 2015 – 4 December 2015 into your client's appeal against the refusal by Forest of Dean District Council ('the Council') to grant outline planning permission for: residential development (up to 200 dwellings), open space, with associated infrastructure and details of highway access, in accordance with application reference P1482/14/OUT, dated 9 September 2014.
2. On 22 January 2016 the 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, because the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

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

3. The Inspector recommended that the appeal be allowed. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Maria Stasiak, Decision Officer  
Planning Casework  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Tel 0303 444 1624  
pcc@communities.gsi.gov.uk

## **Procedural matters**

4. At the inquiry, the Appellant proposed that the appeal should be determined on the basis of a 180 dwelling scheme, with some adjustment made to the areas proposed for residential development, access and green infrastructure (IR1.4) For the reasons given at IR1.5, the Secretary of State agrees with the Inspector that there is no reason to expect any prejudice would be caused to others with an interest in the appeal. The Secretary of State has therefore proceeded to determine the case on that basis.
5. At the inquiry, an application for a partial award of costs was made by Gladman Development Limited, against Forest of Dean District Council. That application is the subject of a separate decision letter.

## **Matters arising since the close of the Inquiry**

6. Representations received following the close of the inquiry are listed at Annex A. The Secretary of State has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties.
7. On 20 April 2016 the Secretary of State wrote to the main appeal parties to afford them an opportunity to comment on the implications for the appeal, if any, of the Court of Appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd & Secretary of State for Communities and Local Government* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168.
8. A list of representations received in response to this letter is also at Annex A. Your letter of 4 May stated that it is unlikely that the definition of policies for the supply of housing would be now narrowly defined to just the settlement boundary of Coleford and Berry Hill (Policy CSP4) or distribution (CSP5), but would also now undoubtedly extend to (R) F.Coleford 11 and emerging policy AP64. You stated that whilst these policies are not set aside, the weight attributed to them must be considerably reduced. The Council stated on 20 May that weight is a matter for the decision maker and though policies CSP4, CSP5, (R) F.Coleford 11 and emerging AP64 may be relevant to housing supply, it does not necessarily follow that the weight they are given should be 'considerably reduced'. The Berry Hill Action Group stated on 5 May that the Forest of Dean Allocations Plan and the Berry Hill, Christ Church and Edge End still include policies stating support for the protected status for the Lower Lane site, and should be given increased weight reflecting their progress since the appeal last November.
9. These representations were circulated to the main parties on 16 May 2016 and 14 June 2016. The Secretary of State has given careful consideration to these representations in determining the appeal.
10. Copies of the correspondence may be obtained on written request from the address at the bottom of the first page of this letter.

## **Policy considerations**

### The development plan

11. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the Forest of Dean Core Strategy (adopted 2012), and the saved policies of the Forest of Dean Local Plan 2005 (the LP). The Secretary of State considers that relevant development plan policies include those set out in IR 3.1-3.2.

### Emerging policy

12. The Secretary of State notes that the Council is currently preparing a new Allocations Plan to show how the proposals in the Core Strategy will be implemented. The Plan was examined in January 2016 and the Inspector's Interim Findings were issued in June 2016. Further work is currently being undertaken before consultation on Focused Changes. The Secretary of State considers that the relevant emerging policies include draft policy AP64 (which protects an area around Coleford from development).
13. There are also two emerging Neighbourhood Plans – the Berry Hill, Christchurch and Edge End Neighbourhood Development Plan, and the Coleford Neighbourhood Development Plan. The Berry Hill, Christchurch and Edge End Neighbourhood Development Plan has been published for consultation. While the Plan area only covers a small section of the appeal site, the Plan describes the site at Lower Lane as an essential boundary between settlement at Berry Hill and the town of Coleford (page 25 of the NP), and states that developments on the 'buffer area' must not detract from the open environment. The Coleford Neighbourhood Development Plan has not yet been published for consultation.
14. Paragraph 216 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.
15. With regard to the first limb, the Secretary of State has taken into account that the Inspector's Interim Findings on the Allocations Plan were published on 24 June 2016. The Berry Hill, Christchurch and Edge End Neighbourhood Development Plan is at an early stage and has not yet been subject to an independent Examination. The Coleford Neighbourhood Development Plan is at an early stage and has not yet been published. With regard to the second limb, he has taken into account evidence from the Allocations Plan Summary of Responses of unresolved objections relating to settlement boundaries. This is relevant to the Allocations Plan and the Berry Hill, Christchurch and Edge End Neighbourhood Development Plan. With regard to the third limb, the Secretary of State has taken into account the Inspector's Interim Findings which set out areas where he has concerns about the soundness of the Allocations Plan. These include housing need and supply. On this basis the Secretary of State considers that whilst the overarching aim of the emerging policies is consistent with the Framework's aim of conserving and enhancing the natural

environment (paragraph 17), at this stage it has not been demonstrated that policy AP64 in the emerging Allocations Plan, and the settlement boundary in the emerging Berry Hill, Christchurch and Edge End Neighbourhood Development Plan are consistent with the objectives of the Framework. Overall, the Secretary of State takes the view that the relevant policies in the emerging Allocations Plan and the emerging Berry Hill, Christchurch and Edge End Neighbourhood Development Plan carry limited weight. No policies have yet been published in connection with the emerging Coleford Neighbourhood Development Plan.

#### Other material considerations

16. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework), the associated planning practice guidance (the Guidance) and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

### **Main considerations**

#### Location of development

17. Policy CSP.4 indicates that most changes in towns and villages will be expected to take place within the existing settlement boundaries. Exceptions to this may include affordable housing for local persons and building conversions and (rarely) new buildings for employment uses on the edge of settlements. The Secretary of State has taken into account that the proposal does provide some affordable housing, and that some of this may be allocated, through the Council's normal processes, to local people. However, this is not the sole or main purpose of the development, and he considers that the proposal conflicts with policy CSP.4.

#### Landscape and visual impact

18. For the reasons at IR14.3-14.4 the Secretary of State agrees with the Inspector that although not all the site would contain built development as a result of this proposal, the mix of housing, recreational open space and infrastructure means that it would change from open countryside to urban edge and that this would diminish the openness and rural character of the countryside between Berry Hill and Coleford, putting the proposal in direct conflict with policy (R) F. Coleford 11.

#### *Landscape character*

19. The Secretary of State has given careful consideration to the Inspector's assessment at IR14.5-14.10. He agrees with the Inspector that the intrinsic character of the site does not warrant classification as 'valued landscape' in its own right, according to NPPF paragraph 109 (IR14.9). He also agrees that the site makes a positive contribution to local character in its current, undeveloped condition, and helps counter the urbanising influence of the development around it (IR14.8).
20. He has considered the Appellant's view, as set out in IR14.7, that the appeal site in its existing state does not make a significant contribution to the aims of either policy (R) F.Coleford 11 or AP64, so that the effect of the appeal proposal on those aims would not be unduly harmful. However, the Secretary of State disagrees with this assessment. He agrees with the Inspector that for the reasons given at IR14.9 there is a valid and valuable interrelationship between the site and the land south of Lower

Lane, and that the site is on the 'lip' or 'rim' of the Coleford bowl rather than entirely outside it. He considers that the adverse landscape impacts of the proposal are magnified as a result of its position on the horizon, notwithstanding the limited intervisibility between the site and the public footpaths within the bowl. For the reasons given above, he considers that the appeal site does make a significant contribution to the aims of policies F.Coleford 11 and AP64, and that the effect of the appeal proposal on those aims would be harmful.

21. He further agrees with the Inspector at IR14.10 that there would be a noticeable effect in relation to the character of the area identified under policy (R) F.Coleford 11, due to its effect of consolidating and extending the built edge of Berry Hill further towards Coleford. Overall he concludes that there is a moderate adverse impact on landscape character, and considers that this carries moderate weight against the proposal.

#### *Visual effect*

22. The Secretary of State has taken into account the appellant's assessment of visual effects, which show that there are few clear views into the site, other than from immediately adjoining vantage points such as Lower Lane, and that factors such as the presence of existing development, the screening afforded by the current hedgerows and the further screening from the proposed wooded greenway along the southern edge of the development would all mitigate the extent of the impact (IR14.11-14.12). However, for the reasons given at IR14.12 the Secretary of State agrees with the Inspector that the adverse visual effect along the main route between Berry Hill and Coleford would be considerable, that there would be considerable harm to views from locations close to the site along Grove Road, Lower Lane and Hillcrest, and that the harm would be of increasing severity the further west the development was taken. He considers that this adverse impact in terms of visual effect carries significant weight.
23. For the reasons given, the Secretary of State shares the Inspector's conclusion at IR14.13 that the proposal would be harmful both as to its effect on the character of the land which forms the setting to Coleford, and as to its visual impact, and that whilst these effects would in the main be confined to the immediately surrounding area, the proposal would still be contrary to policy (R) F.Coleford 11 and draft policy AP64. By virtue of its impact on the landscape, it would also conflict with Core Strategy policy CSP.1 (IR14.52). He also considers that the proposal would run counter to the aim of the draft Berry Hill, Christchurch and Edge End Neighbourhood Plan, to retain this part of the settlement boundary to Berry Hill at its current extent, as set out in Figure 5a of the Neighbourhood Plan.

#### Best and most versatile agricultural land

24. Paragraph 112 of the Framework requires that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land and that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. In this case the Council acknowledges that the use of such land has proved necessary elsewhere in the district in order to provide land for housing. The Secretary of State agrees with the Inspector's conclusion at IR14.15 that the extent to which use of best and most versatile land should count against the proposal is dependent on the level of need for

the site which can be demonstrated, and has taken into account the Inspector's conclusions at IR14.56.

25. The Secretary of State's conclusions on housing need and supply are set out below at paragraphs 29-30. He considers that taking these conclusions into account, and also taking into account the aims of paragraph 47 of the Framework, a need for housing has been demonstrated. However, he does not consider that this translates directly into a need for housing on this specific site. In view of the adverse impacts on landscape and visual effect which weigh against the use of this particular site for housing, he considers that the use of best and most versatile agricultural land carries moderate weight against the proposal.

### Other matters

#### *Site remediation works*

26. For the reasons given at IR14.16-14.17 the Secretary of State agrees with the Inspector's conclusion that on the information provided, there can be reasonable certainty that the effects of past mining could be addressed by way of a condition which required that all necessary remediation works were carried out. In agreement with the Inspector he considers that, on this basis, it would be reasonable to conclude that the level of remediation work is not a consideration which should weigh against the proposal in the planning balance.

#### *Flood risk*

27. The Secretary of State has carefully considered residents' concerns relating to surface water flooding. He shares the Inspector's view at IR14.19 that the evidence provided does not demonstrate that the site should be treated as anything other than Flood Zone 1. He also agrees with the Inspector that there is sufficient information in the Flood Risk Assessment to show that flood risk could be managed within the site and that this could be achieved by a suitably worded condition. Like the Inspector, the Secretary of State considers that, on this basis, the development would not give rise to harm in relation to flood risk.
28. The Secretary of State also agrees with the Inspector at IR14.20 that although other issues were raised, including the possible effects on tourism and the availability of alternative transport choices, none are of sufficient substance as to weigh in the balance against the proposal.

### Housing need and supply

29. The Secretary of State has carefully considered the Inspector's analysis of housing need and supply at IR14.21-14.45. However, as set out on the Council's website, matters have moved on since then, with further progress being made on determining the housing requirement and supply. The Council's Draft Housing Supply Note of 25 November 2016 states that with the backlog being addressed over 10 years, there is a 5.4 years supply, while addressing the backlog over 5 years gives a 5.16 years supply. Once the Inspector and the Council have agreed the revised housing requirement and consultation material, these Focused Changes will be subject to public consultation. The Inspector will then decide if further hearings are required before Main Modifications to the emerging Allocations Plan can be finalised.

30. While the Council currently claim a more than 5-year supply, consultation on their analysis has not yet been undertaken. The Secretary of State considers that on the basis of the material before him, he cannot yet conclude that the Council's analysis is robust or that a 5-year supply of housing land has been adequately demonstrated. He considers that the shortfall has improved since the inquiry, and that there is currently likely to be a housing land supply in the range between 3.7 years<sup>1</sup> and 5 years. He therefore considers that paragraph 14 of the Framework is engaged.

Whether the proposal is in accordance with local and national policy for the provision of housing

31. Having taken account of paragraph 49 of the Framework, your representation of 4 May, and the circumstances of this case, the Secretary of State considers that Policy (R) F.Coleford 11, which serves to protect the open countryside from development; Policy CSP.4, which indicates that most changes in town and villages will be expected to take place within the existing settlement boundaries; and Policy CSP.5, which deals with housing, should not be considered as up-to-date for the purposes of paragraph 49 of the Framework. He also considers that emerging policy AP64 and the settlement boundary set out in the emerging Berry Hill, Christchurch and Edge End Neighbourhood Development Plan are not up-to-date for the purposes of paragraph 49 of the Framework. He has gone on to consider the weight which should apply to these policies in the light of paragraph 215 of the Framework.
32. The Secretary of State has carefully considered the Inspector's analysis at IR14.52-14.55. He has taken into account that the coverage of policy (R) F.Coleford 11 was defined on the basis of settlement boundaries which have not been reviewed for some time, and that those boundaries were defined in the context of long outdated assessments of population and housing levels (IR14.53). He considers that this reduces the weight which attaches to that policy. However, as the Inspector also states at IR14.53, this policy is primarily one for the protection of the countryside, and the Secretary of State considers that its overarching aim is consistent with the Framework's aim of conserving and enhancing the natural environment, for example at paragraph 17. He agrees with the Inspector at IR14.53 that policy (R) F.Coleford 11 is not inconsistent with national policy simply because it seeks to protect a landscape which is below the level of national designations. He considers that this policy carries moderate weight.
33. The Secretary of State notes that the strategic objective of policy CSP.4 is to promote thriving sustainable communities and facilitate regeneration, and that the strategic objective of CSP.5 is to promote thriving sustainable communities and provide affordable housing. He considers that these aims are consistent with the Framework's focus on sustainable development, and carry moderate weight.

**Conditions**

34. The Secretary of State has considered the Inspector's comments at IR13.1-13.7 on planning conditions and the schedule of conditions she recommends at Appendix A of her report. The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, the Secretary of State does not consider that the conditions would overcome his reasons for dismissing the appeal.

---

<sup>1</sup> Based on the figures set out in IR14.47-14.51.

## **Obligations**

35. The Secretary of State has carefully considered the s.106 agreement, the Inspector's analysis at IR13.8-13.15, national policy set out at paragraphs 203-205 of the Framework, the relevant PPG, and the CIL Regulations 2010 as amended. The Secretary of State agrees with the Inspector for the reasons given that the covenants and obligations within the s.106 agreement comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.
36. On 14 June 2016, the Secretary of State wrote to the Council to clarify 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. The Council responded on 16 June, confirming that any s.106 contribution would be within the pooled contributions threshold. Therefore the Secretary of State concludes that the agreement is compliant with Regulation 123(3), as amended. However, the Secretary of State does not consider that the s.106 agreement overcomes his reasons for deciding that the appeal should be dismissed for reasons which are unrelated to the adequacy of the agreement, as set out in this letter.

## **Overall planning balance and conclusion**

37. The Secretary of State has had regard to s.38(6) of the Planning and Compulsory Purchase Act 2004. He has found conflict with policies (R) F.Coleford 11, CSP.1 and CSP.4. Because of the fundamental nature of the conflict with policies (R) F.Coleford 11 and CSP.4, he considers that the appeal proposal does not accord with the development plan taken as a whole. He has taken into account that policies (R) F.Coleford 11, CSP.4 and CSP.5 are out of date by virtue of the lack of a 5-year housing land supply and paragraph 49 of the Framework.
38. Given that these policies are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. He has therefore considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.
39. The Secretary of State has concluded overall that the landscape impact carries moderate weight against the proposal. He further considers that the adverse impact in terms of visual effect carries significant weight, and the use of best and most versatile agricultural land carries moderate weight against the proposal.
40. He has concluded that emerging plan policy AP64 carries limited weight, and he attributes limited weight against the proposal to the conflict with that policy. He has further concluded that the emerging Berry Hill, Christchurch and Edge End Neighbourhood Development Plan carries limited weight, and he attributes limited weight against the proposal to the conflict with the aim of that Plan to retain the site at Lower Lane as an essential boundary between settlement at Berry Hill and the town of Coleford.
41. The Secretary of State considers that the contribution to housing, including 40% affordable housing, is a substantial benefit which carries substantial weight in favour of the proposal, and that there would be a small net benefit from the open space, community park and woodland parking, to which he attributes limited weight. He agrees with the Inspector's assessment at IR14.59 that the proposal would also bring



economic benefits, particularly in relation to investment and employment in construction. He attributes moderate weight to the economic benefits.

42. Having carefully considered all the material considerations in this case, the Secretary of State considers that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole. There are no material considerations that indicate that the appeal proposals should be determined other than in accordance with the development plan.

### **Formal decision**

43. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation, and hereby dismisses your client's appeal for residential development (up to 200 dwellings), open space, with associated infrastructure and details of highway access, in accordance with application reference P1482/14/OUT, dated 9 September 2014.

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

44. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the 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.
45. A copy of this letter has been sent to Forest of Dean District Council and Berry Hill Action Group. Notification has been sent to all other parties who asked to be informed of the appeal decision.

Yours faithfully

*Maria Stasiak*

**Maria Stasiak**

Authorised by Secretary of State to sign in that behalf

## **Annex A SCHEDULE OF REPRESENTATIONS**

### **General representations received**

| <b>Date</b>      | <b>Party</b>                                      |
|------------------|---|
| 6 January 2016   | Dennis Priest<br>Berry Hill Action Group          |
| 26 February 2016 | Martin Hillier<br>Forest of Dean District Council |
| 9 March 2016     | Martin Hillier<br>Forest of Dean District Council |
| 15 July 2016     | Dennis Priest<br>Berry Hill Action Group          |
| 5 December 2016  | Dennis Priest<br>Berry Hill Action Group          |

### **Representations received in response to the Secretary of State's letter of 20 April 2016**

| <b>Date</b>  | <b>Party</b>                                     |
|--------------|--|
| 4 May 2016   | Jason Tait<br>Planning Prospects Ltd             |
| 5 May 2016   | Dennis Priest<br>Berry Hill Action Group         |
| 20 May 2016  | Nigel Gibbons<br>Forest of Dean District Council |
| 14 June 2016 | Dennis Priest<br>Berry Hill Action Group         |

### **Response received to the Secretary of State's letter to the Council of 14 June 2016 on CIL pooling**

|              |   |
|--------------|---|
| 16 June 2016 | Martin Hillier<br>Forest of Dean District Council |
|--------------|---|

---

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

**by Mrs KA Ellison BA, MPhil, MRTPI**

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

**Date: 25 February 2016**

---

**Town and Country Planning Act 1990**

**Forest of Dean District Council**

**Appeal by**

**Gladman Developments Limited**

Inquiry opened on 17 November 2015

Land north of Lower Lane, Berry Hill, Coleford, Gloucestershire

File Ref: APP/P1615/W/15/3005408

---

|   |    |
|---|----|
| 1. Procedural Matters.....  | 3  |
| 2. The Site and Surroundings.....   | 4  |
| 3. Planning Policy .....  | 5  |
| 4. Planning History .....   | 5  |
| 5. The Proposals.....   | 5  |
| 6. Other Agreed Facts .....   | 6  |
| 7. The Case for Forest of Dean District Council .....                     | 7  |
| 8. The Case for Berry Hill Action Group (BHAG) and Mr Walt Williams ..... | 23 |
| 9. Representations from interested parties who spoke at the inquiry.....  | 26 |
| 10. The Case for Gladman Developments Ltd.....                            | 27 |
| 11. Written Representations .....   | 56 |
| 12. Post inquiry comments .....   | 56 |
| 13. Conditions and planning obligation.....                               | 62 |
| 14. Conclusions .....   | 65 |
| Recommendation .....  | 78 |
| INQUIRY DOCUMENTS.....  | 80 |
| Core Documents .....  | 81 |
| Annex 1 Conditions .....  | 86 |

**File Ref: APP/P1615/W/15/3005408**

**Land north of Lower Lane, Berry Hill, Coleford, Gloucestershire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Limited against the decision of Forest of Dean District Council.
- The application Ref P1482/14/OUT dated 9 September 2014 was refused by notice dated 10 December 2014.
- The proposal was described as: residential development (up to 200 dwellings), open space, with associated infrastructure and details of highway access.

**Summary of Recommendation: The appeal be allowed.**

---

**1. Procedural Matters**

- 1.1. The appeal was recovered by direction dated 22 January 2016. The reason given was that the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- 1.2. Prior to the opening of the inquiry, two notes were issued. The first, dated 5 November 2015, concerned programming matters, including the possibility of considering housing land supply issues by way of a 'round table' session. The second, dated 12 November 2015, gave a preliminary view of the main issues among other things.
- 1.3. The inquiry opened on 17 November and sat for 7 days. It was adjourned on 26 November to allow for the submission of further information in support of contributions to be dealt with through the Unilateral Undertaking. Information on this subject was provided by the Council on 2 December. The Appellant responded on 3 December. The inquiry was then closed in writing on 4 December 2015.

*Proposed amendment to appeal scheme*

- 1.4. The scheme considered by the Council was for up to 200 dwellings. Early in 2015 the Appellant made a planning application for up to 180 dwellings on the site, which the Council declined to determine on the basis that it was substantially the same as the appeal scheme. At the inquiry, the Appellant proposed that the appeal should be determined on the basis of the 180 dwelling scheme. Under that scheme, some 5.57ha is proposed for residential development compared with 6.17ha under the original scheme. There would be a corresponding increase in the area given over to access and green infrastructure, from 4.71ha to 5.31ha. The proposal remains the same in all other key respects.
- 1.5. The Council advised it had no objection to consideration of the 180 dwelling scheme at the inquiry. The letter of notification had made reference to the proposal for 180 dwellings. No other objections were made at the inquiry to the proposed amendment. In addition, the Appellant had undertaken a consultation exercise on the 180 dwelling scheme comparable to that on the original proposal. That did not reveal any novel form of objection or any

greater level of opposition. In view of the modest nature of the amendment and the outcome of the consultation exercise, there is no reason to expect any prejudice would be caused to others with an interest in the appeal. My report, therefore, is made on the basis of the amended proposal.

#### *Planning obligation*

- 1.6. The proposal is accompanied by a completed planning obligation which deals with open space and provides for contributions towards recreational, educational and library facilities.

#### *Application for costs*

- 1.7. At the Inquiry, an application for a partial award of costs was made by Gladman Developments Limited against the Forest of Dean District Council. That application is the subject of a separate Report.

#### *Statements of Common Ground*

- 1.8. Three Statements of Common Ground were submitted. That between the Appellant and Gloucestershire County Council related to highways and transport matters. The others were between the Appellant and Forest of Dean District Council, one dealing with general planning matters, the other with ground conditions. During the course of the inquiry, two further agreed statements between the Appellant and Forest of Dean were submitted which dealt with, respectively, the Statutory Forest boundary stones within the site and Objectively Assessed Need.

#### *The Berry Hill Action Group*

- 1.9. Prior to the inquiry, the Berry Hill Action Group (BHAG) advised it wished to present evidence on a range of topics. An initial set of statements and supporting evidence was submitted, which was supplemented at various points as the inquiry progressed. In recognition of the level of interest from local residents I also agreed that BHAG, in combination with any other interested parties, should be permitted to provide a closing statement.

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

- 2.1. The appeal site is a gently undulating, broadly rectangular-shaped piece of land lying between the built up area of Berry Hill and the A4136 Lower Lane. It is some 10.88ha in size and comprises five fields in agricultural use<sup>1</sup>. Along the northern boundary sit properties within Berry Hill, mainly those which face on to Crow Ash Road. To the west is Grove Road which connects Berry Hill with Coleford and which also forms the easternmost boundary of the Wye Valley Area of Outstanding Natural Beauty (AONB). To the east is the Gamekeepers Inn public house as well as the built up area of Berry Hill. There is a commercial garage mid-way along the site's southern boundary and a residential development at its south-west corner. There is also sporadic development along the opposite side of Lower Lane. Boundaries are in the form of mature hedgerows which reinforce stock-proof fencing.

---

<sup>1</sup> To aid understanding at the inquiry, the fields were given numbers, with the northern field on the western part of the appeal site being field 1, the southern one being field 2 and the remainder numbered 3-5 from west to east. I have followed the same numbering system in this report.

### **3. Planning Policy**

- 3.1. The Forest of Dean Core Strategy was adopted in February 2012, shortly before publication of the National Planning Policy Framework (NPPF). It plans for the delivery of 6200 houses over the period to 2026, the equivalent of 310 dwellings per annum. Policy CSP.1 sets out a wide range of matters to be considered, including the effect of the proposal on the landscape. It also states that development which is not able to be satisfactorily accommodated in respect of the various considerations will not be permitted. Under policy CSP.4, development is required to be located in accordance with the existing settlement pattern and hierarchy. Locations for new housing are identified through policy CSP.5, of which about 650 should be located in Coleford. For the purposes of this policy, Berry Hill is regarded as forming part of Coleford.
- 3.2. Saved policy (R) F.Coleford 11 of the Forest of Dean Local Plan 2005 states that an area of land between Berry Hill and Milkwall will be retained primarily as open countryside. Development with an essential need to locate within this area should not detract from its open character.
- 3.3. The Forest of Dean Allocations Plan was published in March 2015 and submitted for formal examination in August. At paragraph 1.2, it notes that the evidence base for the Allocations Plan is an extended and updated base of that for the Core Strategy. With regard to housing it concludes, at paragraph 2.10, that following a full review of Objectively Assessed Need it is appropriate to plan on the basis of a basic demographic requirement very close to that of the Core Strategy. The Allocations Plan is intended to deliver 320 dwellings a year or 4,800 over the period to 2026. Policy AP64 identifies an area of largely undeveloped land to be protected from development that would detract from the open setting of Coleford.
- 3.4. The greater part of the appeal site lies within the Coleford Town Council area. Although work on a Neighbourhood Plan for that area is underway, no draft plan had been published at the time of the inquiry. However, two narrow slivers of land along the northern edge of the site lie within the area of West Dean Parish Council. The Berry Hill, Christchurch and Edge End Neighbourhood Plan has now been published for consultation. At the time of the inquiry, it was expected that the plan would be submitted for examination early in 2016. Based on development plan policy (R) F.Coleford 11 and policy AP64 of the emerging Allocations Plan, the Neighbourhood Plan refers to the importance of the buffer zone at Lower Lane (p25). Although not directly identified as proposed Local Green Space under policy CE.2.1, the Neighbourhood Plan notes the importance of land at Lower Lane as representing the boundary between Berry Hill and Coleford.

### **4. Planning History**

- 4.1. There is no relevant planning history for this site.

### **5. The Proposals**

- 5.1. The proposal is for up to 180 dwellings and is made in outline with all matters reserved, save for access into the site. It makes provision for 40%

Affordable Homes. The associated infrastructure would include pedestrian links; a large area of informal public open space, wildlife corridors, retained hedgerows and landscaping.

- 5.2. The residential element of the proposal would occupy the eastern half of field 1 and the greater part of fields 3, 4 and 5. The remainder of field 1 and the whole of field 2 would be given over to a Community Park, an attenuation area and other infrastructure. Other attenuation areas would be provided on the southern parts of fields 3 and 4 and at the south eastern corner of field 5, near the Gamekeepers Inn. There would be two points for vehicular access: one at the western end, from Grove Road into field 2; the other at the eastern end, from Lower Lane into field 5.
- 5.3. The appeal plans consist of the Site Location Plan (6108-L-06), the Development Framework plan (6108-L-100, January 2015) and the Proposed Access Arrangement plan (C14453 001).

## **6. Other Agreed Facts**

- 6.1. Matters agreed between the Council and Appellant in the Statement of Common Ground (Planning) include:
- that the appeal site is within a generally sustainable location;
  - that the provision of 40% affordable housing would accord with Core Strategy policy CSP.5;
  - that there are no objections regarding flood risk, archaeology, air quality or noise, subject to conditions;
  - that the proposal would provide safe and suitable access, opportunities for sustainable modes of transport and that the development would not have a detrimental impact upon the highway network.
- 6.2. In the Statement of Common Ground (Highways and Transport), the Appellant and County Council agree:
- that there would be no greater impact or material difference in highways and traffic terms as a result of the revised proposals for the 180 dwelling scheme;
  - that the residual impact of the proposed development on the highway network would not be severe and no highway improvements are required;
  - that the agreed Travel Plan should be dealt with by a planning condition.
- 6.3. The Statement of Common Ground (Objectively Assessed Need) between the Council and Appellant agrees that the parties have followed broadly similar steps and identifies four significant points of difference, which are dealt with in greater detail at part 14 of this report.
- 6.4. The Statement for inclusion in the Statement of Common Ground relating to boundary stones agrees the Statutory Forest boundary stones should be considered to be non-designated heritage assets of local significance. Their heritage interest and enhancement could be secured by a suitably worded planning condition.



## 7. The Case for Forest of Dean District Council

*This summary is based on the closing submissions from the Council. The material points are:*

- 7.1. The landscape characteristics of the appeal site have formed a large part of the evidence before the Inquiry. The site sits at the lip of the Coleford “bowl”, as clearly seen in the photo-montages produced by the Council<sup>2</sup>. To the south, between the site and the bowl, runs the A4136. Mr Rech's view appears to be that the road may divide the site from the bowl in landscape character terms<sup>3</sup>. It is not, of course, correct. The relevant LCA (Coleford & Christchurch Hills 2c) includes the appeal site. Furthermore, it is not the settlement boundary of Berry Hill in planning policy terms<sup>4</sup>. The site sits outside the settlement boundary of Berry Hill and is also part of the Landscape Protection Area (below).
- 7.2. In landscape character terms the site is in LCT2 Limestone Hills and LCA2c Coleford and Christchurch. The site benefits from many of the characteristics of these landscape designations, including:
  - (a) Rolling landscape of interlocking convex hills and dry valleys formed with carboniferous Limestone and Coal Measures;
  - (b) Generally poor soils and Hilly landform well suited to pasture;
  - (c) Fields defined by well maintained hedgerows;
  - (d) Hedgerow trees, copses on steeper slopes and large areas of mixed and coniferous woodland;
  - (e) Small villages are well integrated with their surroundings;
  - (f) Scowles and other remnants of mining activity;
- 7.3. The site contains some hedgerows, although not all are complete. The site is very much part of the countryside, and therefore has the characteristics representative of the intrinsic character and beauty of that type of landscape. It sits at a relatively high elevation and provides the open rural setting of Berry Hill. The elevation means that the site looks out across the bowl. It also means that, when viewed from within the bowl, the site sits on the skyline, although it does not always form it. The existing edge of the settlement emphasises the characteristics of the bowl. The statutory Forest is to the west of the site, as is the AONB.
- 7.4. The appeal site and the surrounding area is a “valued landscape” in planning policy terms and therefore benefits from the protection of NPPF paragraph 109, which requires that development protects and enhances the valued landscape. Although the term is undefined in NPPF, Ouseley J has provided guidance in his judgment in *Stroud DC v. SSCLG* [2015] EWHC 488. The judicial guidance put forward requires that the landscape has characteristics that elevate it above the ordinary.
- 7.5. The site does show clear signs of value, with the primary source being its countryside setting. Mr Radmall made it clear that:

---

<sup>2</sup> VP 5-8

<sup>3</sup> Mr Rech XX. For the relevant plan and boundaries, see, e.g., Rech Fig. 9.

<sup>4</sup> Mr Hillier XC.

- (a) in assessing value, existing landscape designations are important (see GLVIA 5.20, 3rd b/p, and 5.25).
- (b) The reasoned justification for policy (R) F.Coleford 11 at 3.45 refers to the landscape's "high quality setting" to the built up areas and that it complements the statutory Forest setting<sup>5</sup>.
- (c) Emerging policy AP64 regards it as a locally valued landscape.
- (d) From the appeal site, the Wye Valley AONB can be seen as a wooded skyline that complements the statutory Forest to the east. It is a subtle relationship<sup>6</sup> which links with the way that the area, including the appeal site, was seen when designated in the past as a Special Landscape Area.<sup>7</sup>
- (e) Mr Radmall deals with both the characteristics of the appeal site and the wider area at paras. 5.16-5.18 and concludes that the local landscape, including the site, continues to be "highly valued at a district-wide level" (para. 5.21).
- (f) The impact of the development is therefore one which impairs the open landscape character of the area and adversely affects the setting of Coleford<sup>8</sup>, reduces the separation between Coleford and Berry Hill and urbanises a landscape whose chief feature is its open character (see (R) F.Coleford 11 reasoned justification, 3.44-3.46).

7.6. The importance of the impact on the setting of Coleford is because of the attempts by the Appellant to show that there is a break in the landscape character between Berry Hill and Coleford at Lower Lane. LCA2c has no such boundary. Put simply, the character area includes the appeal site as well as the bowl. Even if that were not so, the fact that the appeal site forms part of the setting of Coleford means inevitably that it is important to that setting and to the important landscape feature of the bowl.

7.7. Bearing in mind what is said about the setting, it is also important to note what the Inspector said about this area at the time of the Local Plan inquiry in 2005. He said that he was "satisfied that the protection of the open countryside between [Coleford and Berry Hill] as designated by the plan is important to the particular character of the settlement". For that reason he thought the special protection in policy (R) F.Coleford 11 was justified (see Hillier Appendix 7 at 7.93.).

7.8. The Inspector dealt with the detail of the appeal site when he considered the omission site at Crowash Farm, Berry Hill (Hillier, Appendix 7 at 7.95). His general judgment about the site is important: "the site is undoubtedly prominent as it lies at the lip of the slope north of the main settlement of Coleford. It contributes to the protected rural gap protecting the satellite communities within the Coleford defined settlement boundary" (13.131). That judgment, the Council says, supports the judgment both of Mr Radmall in relation to the landscape and Mr Hillier and Mr Gibbons in relation to the appropriateness of the policy in present conditions.

---

<sup>5</sup> The statutory Forest boundary is at the northern edge of the appeal site.

<sup>6</sup> Radmall para. 5.13.

<sup>7</sup> Hillier App. 7, p. 7.86(i) (Landscape Character Assessment for Undulating Plateau LCA).

<sup>8</sup> Mr Rech accepted, xx, that the appeal site is part of Coleford's landscape setting.

- 7.9. It is correct that the Inspector went on to say that housing at the eastern end of the site would be comparatively unobtrusive between Berry Hill and Lower Lane and could be seen as a logical consolidation of Berry Hill without detracting to any major extent from the rest of the LPA. Notwithstanding that judgment he rejected any part of the omission site for inclusion in the Local Plan.
- 7.10. There was considerable discussion at the Inquiry as to what the Inspector was considering when he made his judgments about the easternmost part of the appeal site. The Inspector was working from the plan at CPA/4 because that is where, ultimately, the development was to go. His starting point may have been the 10.7ha in para 13.129 of his report but the objector, having in effect ruled out fields 1, 2 and 3,<sup>9</sup> he went on to consider development in fields 4 and 5.
- 7.11. When the Inspector refers to the “western half of the omission site” he can only mean the westernmost part of fields 4 and 5. The easternmost field was the one that the Inspector considered might constitute a “logical consolidation of Berry Hill and Five Acres to the south west, without detracting to any major extent from the rest of the Landscape Protection Area to the west and south”.
- 7.12. Furthermore, the Inspector refers to the built development and it is clear from CPA/4 that the only area of built development is the red-hatched area in fields 4 and 5. The rest of the site is proposed to remain as countryside, both in plans CPA/4 and 5. The central field number 4 still has, in the Inspector’s mind, a visual link across Lower Lane and towards Coleford, as can be seen in the gap in plan CPA/4 immediately in front of that field overlooking the bowl.
- 7.13. This interpretation of the plan and the decision shows why the Inspector, despite what he said about the eastern half of the site, rejected the omission site. If he had really thought that the two easternmost fields (4 and 5) were acceptable there would have been no reason why he should not have recommended their allocation. As a footnote, it can be seen by walking on the site that the easternmost part of the appeal site is lower than the rest of the land which slopes up to the west, making any development there more prominent. Even if the Inspector was talking about the western half of the omission site, i.e. fields 1, 2 and 3, it is still a judgment that built development in this area will be unacceptable. The indicative framework plan before the Inquiry includes some built development on these fields which, in the terms of the Local Plan Inspector, would be unacceptable.
- 7.14. The site is accessible and can be seen from footpaths and the golf course to the south of the site within the bowl. It has been suggested that these views will be diminished if the allocated site at Poolway Farm<sup>10</sup> were to be developed. However, although this site has been allocated in the emerging plan, no planning application has been made. Therefore any potential impact on the view of the appeal site from within the bowl is entirely hypothetical. It should not form a consideration in deciding this appeal.

---

<sup>9</sup> By proposing it as part of the countryside and not for development.

<sup>10</sup> Mr Rech XX.

- 7.15. The site is also in a strategic position with regard to the AONB and the statutory Forest. The Council is not arguing that the appeal site is within the setting of the AONB, but the views from the bowl up to the site and beyond to the AONB and forest do elevate this site above the ordinary. These views of the AONB and the forest from within the bowl are not available save for over the site.
- 7.16. As well as the protection from NPPF, this site has a long history of protection in local planning policy through saved policy R(F) Coleford 11. This policy locates the site within an area of Strategic Open Space that is safeguarded from development. As the text observes this is a 'high quality landscape setting' [3.45]. The terms of the policy are consistent with the principles of the NPPF so it should be afforded full weight in the final planning balance. The policy is not drafted in the same terms as NPPF but it requires an assessment to be made as to the need for development to locate in the protected area (which in itself may involve issues of balance and judgment). If the need is established, a judgment must then be made on whether the development is "designed and located so as not to detract from the open landscape character of the area". Therefore development one might expect in the countryside – farm buildings, tourism buildings etc. – can still take place within the protected area, provided it meets the test in the policy.
- 7.17. The appellant claims that R(F) Coleford 11 is a blanket ban and therefore is not consistent with NPPF<sup>11</sup>. As the preceding analysis demonstrates, it is not. If the position of the Appellant on this issue is preferred, the Council draws attention to the long history of the protection for the site, which has been in place since the 1996 District Local Plan, based on a district-wide landscape character assessment carried out in 1991. The policy protection has survived since then, including through the 2004 Local Plan. That the policy is so long standing and has been subject to detailed scrutiny on at least two occasions further emphasises the importance and weight that should be attached to adherence to its terms. The history also means that the policy should be given significant weight in the final planning balance.
- 7.18. That is emphasised by NPPF paragraph 113, which says that LPAs should set 'criteria based policies' against which proposals relating to, inter alia, landscape areas should be judged.<sup>12</sup> The reference is to 'criteria based' policies. (R) F.Coleford 11 has criteria. Thereafter, protection must be commensurate with the landscape's status and importance. In this instance the long-standing importance of the area as recognised in the 1996 and 2005 Local Plans and the supporting landscape assessments show that the protection it provides is justified<sup>13</sup>.
- 7.19. Policy AP64 of the Allocations Plan states that the site is a "locally valued landscape". The proposal would detract from the open setting of Coleford,

---

<sup>11</sup> Mr Hillier XX.

<sup>12</sup> This follows similar provisions (as was accepted by Mr. Tait xx.), in PPG7, 1997, and PPS7, 2004.

<sup>13</sup> For the landscape assessments in the 1996 Local Plan see Hillier at 7.83-7.86. The landscape is compared favourably with the AONB to the west. Reference can also be made to the reasoned justification in both the 1996 and 2005 Local Plans which refer to the high quality of the area and the need for sensitive consideration where development, particularly visually prominent development, is to take place, see Hillier at 7.60 and 7.18 and at 7.22 – 7.23

as has been demonstrated through the Council's photo-montages. In particular, the proposal would form the skyline (VP1); the settlement edge would move forward<sup>14</sup> (VP2); and the scale and density of the development would be discernible (VP3 and 4).

- 7.20. Moving further into the bowl, the photo montages (VPs 5–8) show that the site would break the skyline. They also show the scale of the development. It is evident that the development would move the settlement edge southward and, as a simple matter of fact, would reduce the gap between the edges of Berry Hill and Coleford<sup>15</sup>. The existing development on Lower Lane, including the Pike House, self-evidently does impact upon the intervisibility between the bowl and the appeal site<sup>16</sup>. However there are gaps between the existing development on Lower Lane which mean that the appeal site will be visible from in or close to the bowl<sup>17</sup>. That development is not a visual barrier.
- 7.21. It is apparent from the montages that the Appellant's LVIA, although technically sound, has underestimated the scale and extent of the visual and landscape harm the development will cause. Mr Radmall was clear in his evidence that the correct assessment of harm is that the landscape effects will be Major Adverse on the site and Moderate Adverse on the immediate context. The visual impact ranges from Major Adverse in the closer range views to Minor Adverse at longer range.
- 7.22. Although the Appellant maintains that the visual impact would be lessened through the screening on and off site, this would take time to develop. Additionally, any screening provided by existing vegetation off site would not be within the control of the developer and therefore little weight should be given to any potential screening from off site vegetation. It may be the case that owners would not immediately cut down trees or remove hedges but the point is a simple one: the appellants or their successors have no control over what may happen. Nor has the LPA. Very great caution should be exercised in assuming that the screening will continue for the foreseeable future.
- 7.23. There is an unacceptable adverse impact in both character and visual terms which, particularly given the policy protection for this area, counts heavily against the proposed development.

### ***Housing Land Supply***

- 7.24. There is no doubt from the St. Albans and Solihull cases<sup>18</sup> that there should be an objective assessment of full housing needs and then a distinct assessment as to whether other policies may justify constraint. It is plain that the latter assessment (in effect, a 'policy on' assessment) cannot be carried out in a s.78 appeal. An assessment of objectively assessed need is

---

<sup>14</sup> Accepted by Mr Rech in XX.

<sup>15</sup> Curiously, Mr Rech would not accept this in XX.

<sup>16</sup> As accepted by Mr Radmall in XX.

<sup>17</sup> See, e.g., v/p 5 (Radmall).

<sup>18</sup> *Solihull MBC v. Gallagher Estates Ltd.* [2014] EWCA Civ 1610 and *St. Albans DC v. Hunston Properties Ltd.* [2013] EWCA Civ 1610.

necessarily imperfect in those circumstances. Furthermore, any evidence to be called should be 'proportionate'<sup>19</sup> to what can be decided.

7.25. In addition, the calculation of the 5 year housing land supply, still less objectively assessed need, is not an exact science and requires the exercise of judgment. The housing land supply can only be a snapshot at any given moment. There will not necessarily be a single right answer to the question.<sup>20</sup>

7.26. The essential differences between on the issue of objectively assessed need are summed up in the Statement of Common Ground. Thus:

- (a) an adjustment needs to be made to reflect the 10-year average flow rates for flow to and from the rest of the UK. The issue is the extent of that adjustment. For the Appellant, Barton Willmore's adjustment is 190 or 60% while, for the Council, the NMSS adjustment is 110 or 35% (see Row B in table 1).
- (b) The formation rates of those aged 25-44; Barton Willmore believe that the LPA should plan for a return to the rates in the DCLG 2008 household projections by 2031; NMSS that the DCLG 2012 household formation rates should be used, and no such adjustment is appropriate.
- (c) Assumptions about job increases in the district and the housing implications of this are a major difference.<sup>21</sup> NMSS have made adjustments to Experian, OE and CE jobs growth projections based on the advice received from Nupremis.<sup>22</sup>
- (d) NMSS does not believe that there should be any adjustment to reflect market signals. BW say an adjustment should be made although in fact no specific figure is put forward.<sup>23</sup>

7.27. At this point, it is important to note that this is not a Local Plan examination. The disadvantage of carrying out this assessment in a s.78 appeal are obvious and have been referred to in appeal decisions and in judicial decisions. That apart, there are a number of policy approaches that should be borne in mind according to the Planning Practice Guidance (PPG):

- (a) The assessment of need should be 'proportionate' and should consider scenarios which are reasonably expected to occur [003].
- (b) There is no one methodological approach [005].
- (c) The usefulness of each source of information should be considered [009].
- (d) Following on from (b), establishing future need is not an exact science and no single approach will provide a definitive answer [014].
- (e) Household projections are the starting point but 'may require' adjustment and hence LPAs should take 'a view based on available evidence' of the extent to which they have been constrained by supply [015].

---

<sup>19</sup> As the PPG at 003 recognises.

<sup>20</sup> See *Bloor Homes v. SSCLG* [2014] EWHC 754 Admin at [104]-[105].

<sup>21</sup> Rows F, G and H in Table 1.

<sup>22</sup> Row H in Table 1.

<sup>23</sup> See Donagh, proof, p. 40 and Table 2.2. No figure appears under 'Market signals assessment'.

- (f) When dealing with market signals (e.g., affordability<sup>24</sup>) because these are affected by a number of economic factors plan makers should not attempt to estimate the precise impact of an increase in housing supply. Plan makers should increase planned supply by an amount that, 'on reasonable assumptions and consistent with principles of sustainable development' could be expected to improve affordability.

7.28. The importance of these principles is that they emphasise the need for judgment as to the topic of objectively assessed need. That experts will differ is obvious. That neither (or both) may be 'right' is also obvious. A great deal of caution is needed in dealing with OAN in a s.78 appeal. The sensible approach is to see what the 'best fit' is after all the evidence has been considered.

7.29. Dealing with **flow rates**, the experts agree on the need to adjust the projected flows to and from the rest of the UK to reflect the 10-year average rate of flow rather than the 5-year average rates used by the ONS. The differences relate to the method used. Thereafter:

- (a) It seems to be agreed that it is impossible to replicate the ONS projections for the inflow to individual authorities without immense labour. The position is helpfully explained in Mr McDonald's Supplementary Proof where he deals with this highly technical matter.
- (b) The ONS projections use average outflow rates for each authority on an age and gender basis and the flow rates are then multiplied by the projected population in each year to estimate the annual outflows for each authority. They are then allocated to recipient authorities according to the historical pattern of the destinations of out-migrants.
- (c) Thus the inflow to any given authority is the sum of the outflows from the other authorities that are projected to have that authority as their destination.
- (d) It is the inflow where the chief difference lies. BW use the Popgroup program. In paragraph 6 of Mr McDonald's Supplementary Proof, he explains that the programme estimates historic flow rates for the flows into the Forest of Dean by dividing the historic inflow for a given single year of age and gender by the population in the rest of the UK of that age and gender. It then averages those rates over the ten year period 2002-12. The projected inflow into the Forest of Dean in any given year in a given age and gender group is simply the projected population of the rest of the UK in that group multiplied by the average flow rate for that group.
- (e) The NMSS approach compares the average annual flow rate into the Forest of Dean for the ten year period 2002-12 with that for the period 2007-12.<sup>25</sup> The 10-year flow rate is 5.8%<sup>26</sup> larger than the 5-year rate. The 2012 ONS projections for inflows to the

---

<sup>24</sup> Different from the problems relating to affordable housing; see 029.

<sup>25</sup> See SPE para. 8 and main PoE paras. 10-11.

<sup>26</sup> See NMSS Report Oct. 2014 para. 25.

- district are therefore uplifted by 5.8% to correct for the use of the 5-year period instead of the more typical 10-year period.
- (f) Both methods are approximations which seek to replicate the very much more complex methodology used by the ONS. The Popgroup method depends on averaging the flow rates calculated by dividing actual inflows by the rest of the UK population because it is not practicable to identify the originating authorities and then to calculate a suitably weighted set of flow rates. Thus, the method depends crucially on the 'rest of the UK' being a reasonable proxy for the authorities from which people migrate to the Forest of Dean.
  - (g) However, as Mr McDonald explained,<sup>27</sup> the Forest of Dean is in many respects not a typical authority and the 'rest of the UK' may not be a good proxy for the originating authorities in this case. It is physically separated from the rest of the county by two major rivers; and has a substantially older age profile with a smaller proportion of its population in the younger age groups, from which most people who move from one authority to another tend to come.
  - (h) Furthermore, and perhaps importantly, between 2001-2011 the Forest of Dean's population grew by 2.7% when England's population grew by 7.4%. If the rest of the UK's population grew so much faster in the relevant period than the population of the authorities from which most of those who moved to the Forest of Dean came, then using the rest of the UK as a proxy for the originating authorities has the danger of over-estimating the inflow rates.<sup>28</sup> This may well be what has happened here.
  - (i) Mr McDonald points out<sup>29</sup> that if the previous Popgroup method had been used, very much lower results would have been obtained. That divided past inflows by the population of the authority itself rather than of the rest of the UK. For the reasons given by Mr McDonald, that would have been a more suitable proxy and perhaps makes the point that the method now used by Popgroup exaggerates the results.<sup>30</sup>
  - (j) That said the NMSS method avoids the difficulty of not being able to identify a suitably weighted group of originating authorities by "scaling up" the flows calculated by the ONS. In doing so it builds on the ONS method which reflects the historical pattern of flows rather than replacing it with an uncertain proxy population (the rest of the UK) which is unlikely to be a good fit for an atypical authority such as the Forest of Dean.
  - (k) In the end, the issue is which method is likely to be a 'better fit' for the Forest of Dean. Mr McDonald's method seeks to replicate the actual position as closely as is reasonably possible and is to be preferred.

---

<sup>27</sup> See main PoE para. 14.

<sup>28</sup> Main POE para. 14.

<sup>29</sup> Paras. 11-13 and App. A.

<sup>30</sup> SPE para. 11.



7.30. As to **formation rates**, the issue here is whether an adjustment should be made to the DCLG 2012 household formation rate projections. BW believe that the rates are suppressed and that it is important to return to the 2008 based formation rates by 2031. In summary:

- (a) the background is that Mr McDonald considered<sup>31</sup> that a partial 'return to trend' for 25-34s from the 2011-based projections was appropriate. However, this only applied to 25-34s and was only a move to the mid-point between the 2008 and 2011 projections for this age group, not a full return. The approach is set out in his October 2014 report, referenced above.
- (b) The 2012-based projections are very different from the interim 2011-based projection for the 25-34 age group. As was explained at the inquiry, this is brought out very clearly by the chart produced by Mr Donagh at Figure 1, page 45.
- (c) The difference between the 2012-based projection and the 2011-based projection, as Mr McDonald explained, is dramatic. The 2012-based projection starts a relatively small distance below the 2008-based projection in 2012 and then broadly follows the same trajectory whereas the 2011-based projection starts significantly lower and then heads downwards very fast.
- (d) In those circumstances, the conclusion in the October 2014 report was, unsurprisingly, that something had happened to affect the 2011-based projection for this age group and that that was unlikely to provide a reliable indication of what was likely to happen in the future.
- (e) By contrast, the 2012-based projections make, as is accepted, fuller use of the 2011 census results and come up with a very different trajectory. This can be seen clearly from the green line on the chart which follows closely the 2008 line. There has been a huge change when the 2012 results are applied.
- (f) Mr Donagh considers that the 2012-based household formation rate is suppressed across the 25-44 age range. However, those reasons are based heavily on the premise that the 2008-based projections represent the "norm".<sup>32</sup>
- (g) It is difficult to see how that can be justified. Professor Simpson<sup>33</sup> shows that the 2008-based projections should not be thought of as the norm and concludes that they are "neither a substitute [for the latest projections – then the 2011-based set] nor a benchmark".<sup>34</sup>
- (h) While it may be right that there are circumstances when increasing house prices and the deteriorating affordability of housing relative to earnings will have affected the projections, the actual trajectories of household formation rates suggested by the 2012 based projections for Forest of Dean imply that any such effects in this case are small.
- (i) The key issue is whether this is a case of suppression which will return to a 'norm' (above) or a fixed or permanent change in the

<sup>31</sup> NMSS Oct. 2014, para. 29ff.

<sup>32</sup> That term is used four times in paragraphs 7.11, 7.12, 7.14 and 7.15, pp. 42-43 of his proof.

<sup>33</sup> The acknowledged expert in this area.

<sup>34</sup> See McDonald main POE pp. 8-10.

social and economic environment. As Mr McDonald pointed out, Professor Simpson gives a number of reasons for believing that the factors that previously drove increasing household formation rates amongst the young are unlikely to apply in the future. (paras. 23-24 of Mr McDonald's main POE.)

- 7.31. In particular, increasing student debt and welfare reform; a sustained increase in young persons not leaving home which began at the turn of the century (i.e. well before the recession); and the increase in precarious employment, including rapid growth in part-time work, can all be seen, however regrettably, as fixed circumstances of the policy and economic environment.
- 7.32. These therefore should be treated as permanent changes and not matters of suppression which require further adjustments (see, e.g., PPG 015).
- 7.33. The debate about **adjustments for job forecasts** involved Ms. Blaken for the Council and Mr Lucas for Gladman. As with other suggested adjustments, the need for caution is obvious. There may be conflicting signals. While the suggestion is that under-supply of housing is to be avoided, the same is true of over-supply in reliance on surveys or estimates that may be faulty and are certainly subject to large error margins. Over-supply results in too many houses on precious land and, in extreme cases, a demand for the housing to be turned to other purposes.
- 7.34. Mr McDonald dealt with the topic (main POE paras. 34-42) but it was dealt with in considerable detail by Ms. Blaken who explained why the forecasts were unreliable and why they should be reviewed and, where appropriate, adjusted.<sup>35</sup> There is no doubt that the job forecasts, whether taken from OE, CE or Experian, are highly volatile and uncertain. That is seen most dramatically in Ms. Blaken's main POE at paras. 9-10. Thus:
- (a) The Experian forecasts (2014-2031) increased 85% between the 2014 and 2015 forecasts.
  - (b) The most recent CE forecast (July 2015) has fallen by 29% (from April 2015).
  - (c) The 2015 forecasts show that there was a decline of 800 jobs between 2011-2014 (CE); or an increase of 1,300 jobs over the same period (Experian); or an increase of 1,900 jobs over the same period (OE). The difference between the highest and the lowest amounts to 2,700 employment jobs.<sup>36</sup> The BRES data does not assist or show any additional consistency.<sup>37</sup>
  - (d) Further examples of the position can be found in paragraph 85 of Ms Blaken's rebuttal proof where she deals with the unadjusted BRES data of 2014. She shows that the level of economic growth in relation to employment and employees between 2011 and 2014 should be 500 and 900 respectively.
  - (e) Nobody suggests that the forecasters are not reputable or that one forecast is better than the other or there is any way to suggest one or a combination provide a definitive answer.

---

<sup>35</sup> See the sensitivity testing carried out by Ms Blaken.

<sup>36</sup> See Ms. Blaken rebuttal proof paras. 26-27 and 29-33.

<sup>37</sup> Ms. Blaken rebuttal proof para. 28.

- 7.35. In relation to **market signals**, Mr Donagh identified four areas in which he felt there were grounds for making an adjustment. These were the rate of development, house prices, affordability and concealed households (the latter only in the under 25 age group). In relation to these:
- (a) On the rate of development he overlooked the fact that the data presented is for 2006/07 to 2013/14 which, of course, included the economic downturn and recession during which house-building fell across the country.
  - (b) Median house prices in the Forest of Dean are below the HMA and national average and have risen less quickly than either so there is no reason to suspect that they indicate a housing market under greater stress than any others.
  - (c) On the issue of affordability and concealed households under 25, Mr McDonald's evidence shows that any difference was small and probably not statistically significant<sup>38</sup>.
- 7.36. Returning to job forecasts and employment growth (or fall), Ms. Blaken refers to the unadjusted BRES data. It is important to note that employee and employment growth in the Forest of Dean is still significantly below the rates of growth in the county and the region for 2009–2014 and 2011–2014. Thus for the former period employment in Forest of Dean declined by 5.4% compared to a growth in Gloucestershire of 3.2%. For the latter period, employment change in the Forest of Dean was 2.1% compared to a growth of 3.5% for Gloucestershire. It is clear that the numbers for actual jobs or employment in 2014 are still below those for 2009 (see tables 1 and 2 on page 3 of Ms Blaken's rebuttal). Forest of Dean is still in negative territory compared to the positive figures for Gloucestershire and the southwest region.
- 7.37. Ms. Blaken demonstrated that there was a data anomaly in the Temporary Employment Agency Services which shows that the actual growth in the District should be considerably reduced and there is no room for optimism in assuming economic growth (see rebuttal proof paragraph 77 and paragraphs 12 to 15 on page 4).
- 7.38. Finally on this issue it is clear that the Strategic Economic Plan produced by GFirst shows that Cheltenham, Gloucester and Tewkesbury are the key growth locations, unlike the Forest of Dean, which suggests a measure of out-commuting.
- 7.39. In dealing with the forecasts, the best that has been suggested by Mr. Lucas is that an arithmetic average of the three forecasts should be taken. This is the so-called triangulation. The difficulty with that is illustrated by the volatility of all the forecasts that have been referred to above. In those circumstances there must be serious doubts of the ability of an average figure to provide a robust representation of the job growth figures.

---

38 See para. 020 PPG dealing with Market Signals. The important point to note is that comparisons of indicators should be made; this means comparisons in the HMA, similar demographic and economic areas, and nationally. If, as pointed out by Mr McDonald in the roundtable, the comparative trends are broadly the same, then there is no need to make any adjustment. That is the position here as looking at Mr Donagh's tables will show.

- 7.40. In dealing with the sensitivity tests Ms Blaken has identified one sector in each forecast where there are, in her view, strong and convincing reasons to adjust the forecasts to reflect quantitative evidence and analysis. This is because they represent an adjustment to the forecast that shows more plausible future scenarios which reflect local data, analysis of performance of the sectors within the District and have regard to the national economic climate (paragraphs 51 to 74 of her rebuttal proof).
- 7.41. Ms Blaken has dealt with the sensitivity tests in relation to the two areas where there appears to be convincing reasons to adjust the forecasts to reflect other analysis (paragraphs 57 to 67 in the rebuttal proof). Mr Lucas suggests that the sensitivity tests ought to include an upside risk which, in this instance, relates to manufacturing because between 2009 and 2014 the sectors with positive employment performance are manufacturing and agriculture (see table 6 page 22). However, while there was an increase in manufacturing up to 2013, a steady decline is projected to 2031. All three economic forecasts agree on this (see rebuttal, paragraph 70). This is supported by the GVA Grimley data of October 2015 and the EEF, which is the industry body for engineering and manufacturing employers (see rebuttal paras. 71-72). In those circumstances, as Ms Blaken says, the manufacturing sector can be considered to be in recession.
- 7.42. Mr Lucas has carried out no investigation of the sectoral levels of growth in the forecasts, unlike Ms Blaken and suggests that a potential source of alternative assumptions is positive growth in the Cinderford Northern Quarter (CNQ). There is no doubt that the CNQ has the potential to provide serviced employment land of a quality that is limited at the moment in the Forest of Dean. However, allocating the land and seeking to bring it forward (which of course the Council is doing) simply creates an opportunity for existing businesses in the District to have modern and high quality accommodation, consolidating the existing enterprises. Without such consolidation, businesses may be less productive or seek alternative sites and premises outside the District (Ms Blaken paras 40–47 of her rebuttal). Again, Mr Lucas has not provided any investigation of the sectoral levels of growth and has not included any assessment of CNQ as a tertiary business location. This is not to diminish the importance of the CNQ regeneration; it simply seeks to put a reasonable forecast on likely levels of actual growth.
- 7.43. The two industrial sectors that stand out are government services (for which the CE projection is very high) and finance and business services (for which the OE job-growth forecast is over twice CE's).<sup>39</sup> Nupremis have applied an adjustment and sensitivity analysis similar to that which has been accepted by the Inspector examining the Stroud LP. There is no reason why it should not be accepted here<sup>40</sup>.
- 7.44. One criticism by Mr Donagh was that the analyses were not carried out (save for that in October 2014) by reference to the HMA. The July 2015 update referred, of course, to the Forest of Dean area. It is correct that Mr McDonald has departed from the PPG on this point. That advises that the

---

39 See the chart on p. 109 of the October 2014 NMSS Report.

40 Nupremis have applied an adjustment and sensitivity analysis similar to that accepted by the Inspector inspecting the Stroud LP.

HMA should be the normal reference area. However, it is well settled as a matter of legal authority, that Guidance is no more than that. It is not direction and certainly not rules. It must be taken into account but can be departed from if there is proper reason to do so. There are sensible reasons, as Mr McDonald (supported by Mr Gibbons) made clear, for departing from the guidance in this instance:

- (a) To carry out such an exercise would have required up date core strategies from Stroud, Cotswold and the Forest of Dean. They would have required review to adjust any implausible sector projections and a further analysis of the housing implications of each. It is doubtful whether such an updated forecast would have been 'proportionate' [003].
- (b) Moreover, the case for a full update of the HMA-wide analysis presented in the October 2014 NMSS report is very much less strong when, as Mr Gibbons explained, the Gloucestershire authorities are proposing to meet their own housing needs within their boundaries and none has asked Forest of Dean to provide overflow capacity (EiC).

7.45. On the **supply side**, a helpful schedule has been provided, large parts of which are agreed, showing the sites available and likely to come forward in the next 5 years. Remembering the policy test in NPPF paragraph 47 footnote 11, the Council submits that the position is:

- (a) a deliverable site (without planning permission) is one that is *'available now, offers a suitable location for development now, and [is] achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable.'*
- (b) The chief area of difference is over those sites that have been allocated in the emerging Allocations Plan but have not yet received planning permission and which the Council says will contribute to the five year supply.
- (c) Where previous Inspectors may have gone wrong is in treating these sites en bloc rather than individually. What is needed is an individual assessment bearing in mind the material put before the inquiry.
- (d) In that respect the Council makes two points. The first is that sites have been through a sieving process already in the sense that they have been subjected to assessment and/or challenge during the consultation process of the emerging Allocations Plan.
- (e) The second point is that all sites have evidence from owners/ developers that they will be brought forward. There is no dispute that conditions for housing development in the Forest of Dean can be challenging but the Council seeks to bring forward those sites which can be and will be developed in the 5 years to 2020 and are sustainable.

*The Position since the issue of the Ross Road, Newent appeal decision*

7.46. The Inspector asked for an indication of the Council's position in relation to housing land supply since this decision was issued. That Inquiry took place on 23 June–1 July and the evidence base was to a large extent based on a date four weeks before the 23rd June. What the Council says is:

- (a) The Allocations Plan was published following the Council meeting on 26th February 2015 and was open to comment until 20th May. At the time of the Ross Road appeal the Council was considering and responding to the representations.
- (b) The publication version of the plan was supported by an OAN paper (NMSS, October 2014) which used ONS 2011 figures as its base and recommended 365dpa. Further work was commissioned in the light of rather different CE and OE employment forecasts.
- (c) An interim OAN figure of 320dpa was proposed by the Council and was the figure used for the Ross Road appeal.
- (d) The Council received further research from NMSS and Nupremis in July 2015 and this was published as the July 2015 OAN papers. These took a recommended OAN of 310dpa and the Council adopted 320dpa.
- (e) As a result, the 365dpa figure is now history and has no supporting evidence as it is based on out of date OAN material and economic forecasts.
- (f) In fact the July paper shows that the Allocations Plan is capable of supporting a figure of 340dpa but that is not the recommended one, simply the possible upper end of a range.
- (g) The Allocations Plan was submitted for examination on 28th August. As it has reached a further stage, as set out in NPPF paragraph 216, it can receive additional weight<sup>41</sup>.
- (h) Bearing in mind the application of NPPF footnote 11, the Council draws attention to the following changes:
  - (i) CNQ, site 3: site activity progressing (clearance of route for approved spine road); ministerial approval for land transfer of development plots to Forest of Dean DC; discharge of further conditions.
  - (ii) Lydney, site 17: resolution to permit fresh outline permission for developers of Lydney B (conclusion of s.106 from County Council awaited).
  - (iii) Lydney, Highfield Hill, site 41: agreed amendment to s.106 to allow 25% delivery of affordable housing.
  - (iv) Mitcheldean, site 59: planning permission for 31 dwellings.
  - (v) Principality House, site 43: new permission granted.
  - (vi) There are other sites that are the subject of pre-application or application discussions, e.g. site 51 at Beachley Road; site 42 at Foley Road Newent.
  - (vii) Neither Mr McDonald nor Ms Blaken gave evidence at the Newent Inquiry and the OAN evidence used in support at that time was only partially complete. The full updated evidence of both has only been available for this Inquiry.

### ***Planning Policy and Balance***

7.47. The starting point is the Development Plan, which in this instance means a careful consideration of policies CSP.1 and (R) F.Coleford 11. In the case of

---

<sup>41</sup> The Council argues that, despite Mr Tait's evidence in RX, NPPF 216 is perfectly clear that the emerging plan receives greater weight "the more advanced the preparation, the greater the weight that may be given".

CSP.1, Mr Radmall is clear that there is a breach of this policy. The development does not take into account important characteristics of the environment, nor does it conserve, preserve or otherwise respect them so that they maintain their contribution to the environment. The effect of the proposal on the landscape is adverse for the reasons explained by Mr Radmall and one of the important characteristics of the environment is the "bowl" and the landscape setting of Coleford, of which this site, it is agreed, is a part.

- 7.48. CSP.1 has been found to be consistent with the framework: see the decisions referred to by Mr Hillier in paras.7.35-7.36. Consistency in decision making indicates that those decisions of those Inspectors ought to be followed, particularly bearing in mind that the whole thrust of the Core Strategy is one of sustainability<sup>42</sup> – the golden thread running through the NPPF.
- 7.49. The importance of this part of the landscape derives not just from its character and visual impact, as explained by Mr Radmall, but also from its history and importance as part of the landscape setting of Coleford, emphasised and protected by the policies in two local plans – and of course the reasoned justifications that supported them. Policy (R) F.Coleford 11 applies to the site for the reasons set out above.
- 7.50. The emerging policy AP64 is important for a number of reasons. First, it seeks to continue the landscape protection of RF11 (and the earlier policy FCL3) but translated, as it should be, into modern national policy terms.
- 7.51. Secondly, while it is an emerging policy, it is one that is coming closer to adoption and should be given significant weight (Hillier POE 6.17). NPPF paragraph 216 shows that weight increases the nearer one gets to adoption and also increases in the light of the number of and nature of the objections. The objection from Gladman is not an objection in principle to the policy<sup>43</sup>. It is a limited objection which amounts to, understandably, a wish to have the site removed from AP64 and a criticism of the evidence base which supports it. There is a huge amount of support for the retention of this policy (see Hillier Appendix 8) and the only other objection relates to a desire to strengthen the policy in relation to tourism<sup>44</sup>. Consequently, it can be given substantial weight not only as a matter of principle but also in its drafting and justification, since the substance of the objection relates to the appeal site and the nature of the evidence base for the policy. If the Local Plan Inspector regards the evidence base as unsatisfactory, then further justification can be requested. However, the justification for the landscape protection policies in the two previous local plans is, on its own and as a matter of common sense, a powerful justification for the continued protection of this landscape.
- 7.52. Thirdly the policy is consistent with the NPPF particularly taking into account paragraph 17 bullet points 5, 7 and 11 and paragraph 157. As a result, the

---

<sup>42</sup> See Mr Tait xx.

<sup>43</sup> Tait XX.

<sup>44</sup> see Mr Williams objection reference APPV307

contravention of policies AP64 and RF11 carries significant weight in the planning balance and counts heavily against this proposal.

- 7.53. Whilst the Council, unlike the third party objectors, is not advancing a positive case on mining, evidence has been put before the Inquiry. The potential house builders have not been made aware of the mining surveys that have been carried out<sup>45</sup> and any expressions of interest which are relied on to suggest that the site is readily developable should be treated with caution. It is accepted that there is a risk of further mine shafts being discovered. The appellant says the risk is low and the action group's expert rates it as medium to high. The cost of remediation is agreed at £795,000. However if this rises upon discovery of additional mine shafts, the Council has a concern that, and it is put no higher, the marketability of the site and therefore the benefits advanced by the appellant may be put at risk.
- 7.54. The Council accepts that the provision of market and affordable housing is a highly material benefit. It is by no means clear that other aspects of the development can also be properly classed as benefits. The landscaping, site layout and the provision of an ecological corridor or buffer zone are aspects of mitigation. They would not be needed if 180 houses were not proposed on this site. Even assuming that the provision of such a buffer and new tree and hedge planting are properly regarded as benefits they still must be seen in the light of the very real impacts of 180 houses, the people and pets that will be living there and the new public open space and play space and car parking connecting with them.
- 7.55. When the landscape and visual harm of this development is weighed against its true benefits, the harm plainly outweighs the benefits and the appeal should be dismissed.
- 7.56. Even if one assumes the lack of a 5-year housing land supply, that does not mean that policies other than CSP1 lose their development plan status. They may attract less or restricted weight, but that will depend on, for example, *"the extent to which the policies actually fall short of providing for the required five-year supply, and the prospect of development soon coming forward to make up the shortfall"*<sup>46</sup>. In this case the Council, if it falls short of a 5-year housing land supply does not do so to any major extent and in any event is seeking to deal with the position in the Allocations Plan, which is currently being examined.
- 7.57. In those circumstances the development plan policy CSP1 and saved policy RF11 should be given full effect. CSP1 is not a relevant policy for the supply of housing<sup>47</sup> and section 38(6) should be applied. The development fails to comply with the development plan and the appeal should fail. If that is wrong, and NPPF paragraph 14 is fully applied, then the Council says that the harm significantly and demonstrably outweighs the benefits and the appeal should fail in any event.

---

<sup>45</sup> Mr Tait XX.

<sup>46</sup> *Crane v SOSCLG* [2015] EWHC 425 (Admin), per Lindblom J at para. 71.

<sup>47</sup> See Mr Tait XX and Council's Opening Submission para. 20.



## **8. The Case for Berry Hill Action Group (BHAG) and Mr Walt Williams**

*BHAG made statements on the topics of mining, transport, housing, employment, tourism, flood risk, planning policy and sustainability (Doc 13). Mr Williams' statement covered visual impact, sustainability and drainage (Doc 16). Although the statements from BHAG and Mr Williams were presented separately, Mr Williams joined with the Group to present a combined closing statement. These are the material points of the combined case, as summarised:*

- 8.1. The Berry Hill Action Group and Mr. Williams do not consider the Lower Lane development to be either sustainable or appropriate.

### *Mining remediation costs*

- 8.2. There is good reason to be concerned over the ability of the Appellant to deliver affordable housing due to the largely unknown costs for remediation of the historic, widespread shallow mine workings on the site. The conditions below ground are variable and complex and insufficient data has been collected from the limited number of boreholes for a site of this size to properly evaluate the situation. The whole of the eastern area (field 5) has been shown to be substantially undermined and yet only one bore hole has been used to assess the situation. This is a clear indication of the under assessment which is common across the site.
- 8.3. It has been stated that even full site remediation would not come close to the Council's assessment of the point at which site costs might affect viability (£14,000 per plot). Residents assess the potential costs as being in the region of £15,000-£18,000, raising serious questions as to the deliverability of affordable housing on this site.<sup>48</sup> There is a distinct possibility that when a fuller investigation discovers the true extent of remediation the site will become unattractive and remain undeveloped, so that the site would not make any contribution to housing land supply. Thus confidence in remediation and viability is essential and fuller investigation and assessment should be compulsory before this site can be accepted for any extra housing.

### *Coal Authority Requirements*

- 8.4. It has been incorrectly stated that the consulting engineers can reduce the zone of influence for avoiding building near mineshafts. It is possible that the Coal Authority's requirement for a 20 metre Zone of Influence (ZOI) will restrict the amount of housing which can be delivered, even taking into account that the proposal is made in outline. This raises further questions as to viability.

### *Travel plan*

- 8.5. There has been substantial evidence provided which indicates that the Appellant's traffic plan is not compliant with the minimum standards set by Central Government. The bus service is not as stated and is limited in

---

<sup>48</sup> (mine shafts £66,000 + drill and grout plots £1,800,00 + drill and grout total road £224,000 + supervision, etc. £25,000 = costs of £11,750 per plot. To this should be added the s106 costs of £3,975 = £15,725. If the cost for garage remediation was also included (£3,000 per plot), the overall cost could be as high as £18,725 per plot.

frequency. Furthermore, the route to Coleford has a gradient in excess of the maximum permitted for pedestrian and cycle access. This travel plan does not meet the sustainability criteria. The development is therefore not sustainable.

#### *Employment*

- 8.6. Much has been said about Coleford being a top tier town for development and employment purposes but that does not mean that it has jobs available or that it should be abused with over-development. No evidence to support development distribution on a sustainable basis has been provided beyond generalizations which are logically unacceptable. Although designated as a sustainable town within the Forest of Dean, Coleford has not shown the growth in employment seen in other parts of Gloucestershire. Any increase in population has to be measured against the local employment trend; otherwise the out commuting situation (14,000 daily) will only get worse. This will increase pollution and congestion at the Forest of Dean bottlenecks of Gloucester, Chepstow and Monmouth. There is a core strategy policy to limit or reduce outward commuting with a view to reducing congestion and pollution in the Forest and its boundaries. The failure of the appellant to demonstrate that local employment is available should indicate that this development is not sustainable.

#### *Sewage*

- 8.7. There is an ongoing problem with the management of sewage flows to the Newland works. All sewage has to go via Coleford and if permission was granted for this site then other sites in the area may not be able to go forward.

#### *No adverse housing supply indicators*

- 8.8. There are no adverse signals such as house price rises, house rental rises or declining affordability in the Forest of Dean area. The present house market is fragile with some sectors still not recovered from the 2008 housing slump. Uncontrolled development could destabilise this situation.

#### *Planning policy*

- 8.9. The Berry Hill, Christchurch and Edge End Neighbourhood Plan and the Forest of Dean Allocations Plan are in the final stages of their development and should be ready for inspection in 2016. The Coleford Neighbourhood Plan should follow some 9 to 10 months later. The Local Authority and the local communities are all acting responsibly and with good intent to manage their area in a sustainable way and fulfilling the NPPF aims (para 58) by 'establishing a strong sense of place'. Sufficient evidence has not been provided to justify overturning local aspirations and policies for the protection of the countryside and this valued landscape, which represents the outcome of the democratic process.

#### *Housing Provision*

- 8.10. Residents supported the Council's case as to the existence of a five year housing land supply. If that is not accepted, it should be noted that the logical distribution for housing in the District for sustainability should still be

as per the Local Plan. While housing numbers and policy may be silent through NPPF para 49, any new housing should still be distributed as per the evidence and methodology used to form the plan — which is sustainable and is not silent. Thus, either: a) extra housing such as this should be in an area of the District where the housing allocation is not coming forward fast enough, or, b) this 'extra' housing should be distributed in a similar sustainable ratio to the Plan. Single sites such as this, overloading any one area, especially one compliant on adequate housing provision, flies against common sense for sustainable location and distribution. The Appellant confirmed that other sites were not considered. The case on housing land supply is District wide, not locally specific.

#### *Surface water management*

- 8.11. The Environment Agency data used in their flood risk document ref CD1.18 map1 indicates high risk areas of flooding on at least two areas of the site as well as adjacent to the site and downstream. The most onerous is at the eastern end, adjacent to the Gamekeepers Inn site at the top of the Thurstan's Brook water course leading to Coleford, where there is an established flood mitigation scheme of soakaways. (NPPF para 14, footnote 9).
- 8.12. The NPPF states the need to gain advice from the Lead Local Flood Authority and the Strategic Flood Risk Assessment. This has not been done. In order to direct development away from areas of flooding to more sustainable locations, a Sequential Test should have been undertaken as the high risk of flooding promotes this site from Flood Zone 1 to Flood Zone 3a as per the Strategic Flood Risk Assessment strategy. The evidence does not satisfy the advice in the PPG so this Application fails the Sequential and Exception Tests. The Appellants have confirmed that no other sites have been considered which might be more sustainable. As the area including Coleford town centre and beyond has serious flooding issues a precautionary approach should always be adopted. The proposal is incomplete in this regard.

#### *Economic benefits*

- 8.13. The arguments for economic benefits from this site are flawed. It is claimed that benefits would arise from the proposal in terms of construction jobs and growth in the economically active population through increased household expenditure, some of, which would be spent on local services. This is contrary to common sense. If it is accepted that there are benefits from 180 dwellings built on rural land (415 population increase), it follows that building 1800 dwellings will have a proportionate 10 times better benefit, 18,000 more homes will give the local economy 100 times more benefit - ad infinitum until the economic benefit has been maximised by building everywhere and there is no more rural land left. In engineering terms it is a way of testing an equation by applying the extremes. A rural area with its rural economy must survive and thrive in spite of increased population, not because of it and any harm to this most important area of the Forest for Tourism should be avoided wherever possible.

## Conclusions

- 8.14. Residents trust, taking into account the above and other issues, that it will be accepted that this proposal is obviously misplaced and unsustainable.

## 9. Representations from interested parties who spoke at the inquiry

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

*Cllr Clive Elsmore, Coleford Central ward, Forest of Dean District Council*

- 9.1. Many constituents have approached Cllr Elsmore in relation to this proposal. The site is outside the settlement and in an area of valued landscape where development has been resisted going back to 1989. The open area enhances the identity of both Coleford and Berry Hill. It is protected in the existing development plan and is identified in the emerging Berry Hill, Christchurch and Edge End Neighbourhood Plan. An evaluation has also been carried out as part of the preparations for the Coleford Neighbourhood Plan. All reinforce the view that this is not the right place for housing
- 9.2. Past mining was often not recorded so that further shafts and air vents might be discovered. There have been problems with flooding, especially near the Gamekeepers Inn. Works to stabilise the site might lead to drainage problems which would affect Coleford. Sewage would have to travel via Coleford, where the pipes are old and inadequate, which would put an intolerable strain on the system.
- 9.3. The information on traffic impact cannot be relied upon as it is based on a survey which was carried out while Grove Road was closed. There are also many other inaccuracies in the analysis of bus services in the Transport Assessment. People will need to commute for work and local bus routes are inadequate. Traffic will add to existing delays at bottlenecks such as the A4136 at Monmouth or the A40/A48 at Gloucester. It will also add to the delays at local road junctions, which are particularly severe in the summer, when the caravan sites are in use.
- 9.4. The development will put added pressure on local health services. There is no need for additional housing in this area.

*Eileen Dyer, West Dean Parish Council*

- 9.5. The Parish Council has published a pre-consultation draft of the Berry Hill, Christchurch and Edge End Neighbourhood Plan. Housing policy 1 supports small scale housing development up to 35 dwellings. Although the appeal site is outside the village boundary, the Plan recognises there is an influence over this land and strongly supports the policy to safeguard the space between Coleford and the surrounding villages.
- 9.6. Berry Hill and Coleford town each value their own identities and clearly defined areas. The proposed development would not be a natural extension to Berry Hill. It would be unwanted urbanisation within the Coleford area. The Parish Council and the Neighbourhood Plan committee both support the protection of this area which is to be proposed through the Coleford Neighbourhood Plan. Both Neighbourhood Plans will make appropriate

provision for housing as required by the LPA. Indeed, they have offered extra sites for development.

- 9.7. The site is a green landmark within a valued landscape. It is outside the settlement of Berry Hill, on a hillside on the edge of the Wye Valley AONB. The village boundary is not the A4136. It is the hedgerow at the northern edge of the site, which is the statutory forest boundary. This development would be visually harmful and would destroy the village feel of Berry Hill. There is extensive public feeling against the development. Any further burden on the drainage system would be disastrous.

## **10. The Case for Gladman Developments Ltd**

*This summary is based on the closing submissions from the Appellant. The material points are:*

### ***Introduction***

- 10.1. At the start of the inquiry, the Inspector identified the main issues as follows:
- (i) Visual impact of the proposal and its effect on landscape matters.
  - (ii) The effect of the proposal on the supply of best and most versatile agricultural land.
  - (iii) Whether the proposal makes appropriate provision in respect of affordable housing, libraries, youth and adult recreation.
  - (iv) Any other matters that might weigh against the proposal, especially in relation to land remediation, transport, tourism and flood risk.
  - (v) Whether the Council can demonstrate a five year supply of deliverable housing sites.
  - (vi) Whether the proposal accords with the development plan as a whole, and the presumption in favour of sustainable development.
- 10.2. This scheme will deliver substantial benefits including in respect of sustainability, and so is a scheme for sustainable development.

### ***Issue 1: Visual impact of the proposal and its landscape effects***

- 10.3. The Council's case overstates the landscape value of the site, which is not designated in national terms. There is no allegation of harm to the AONB or its setting<sup>49</sup>.
- 10.4. The Council alleges that the landscape is locally valued. As Mr Tait indicated<sup>50</sup>, the fact that the landscape has a degree of popularity or value to residents does not make it a "valued" landscape within the meaning of the NPPF. Mr Radmall accepted<sup>51</sup> that the Stroud case<sup>52</sup> indicates that in order to be a "valued landscape" within the meaning of paragraph 109 of the NPPF, "some sort of demonstrable physical attributes which would take this site beyond mere countryside...but below that which was designated"

---

<sup>49</sup> Accepted MH and PR xx

<sup>50</sup> RX

<sup>51</sup> xx

<sup>52</sup> *Stroud DC v SSCLG* [2015] EWHC 488 (Admin) (CD 17.5)

was required<sup>53</sup>. The Secretary of State has come to similar conclusions in the Orby Village case<sup>54</sup>, endorsing the Inspector's conclusion that:

*"...as all landscapes are valued by someone at some time, the words "valued landscape" must mean something more than just the countryside in general".*<sup>55</sup>

10.5. The evidence before the inquiry does not support a conclusion that the site has any demonstrable attribute taking it beyond mere countryside. To the contrary, this is fairly commonplace landscape located on and influenced by the settlement of Berry Hill.

10.6. In substantive terms, both expert landscape witnesses accepted that GLVIA box 5.1<sup>56</sup> was relevant to the assessment as to the factors that identify whether a site is a part of a valued landscape. However, it is manifestly clear that, having regard to those factors, the appeal site is not of high value (or a valued landscape). In particular:

- a) Mr Radmall expressly agreed that the condition of the site is not something that supports a finding that the site is high value. The site is influenced by development at each of its edges and a raw settlement edge to its rear. It has previously been disturbed by mining. In terms of landscape features within the site, the hedgerows are "gappy and poorly maintained". He also agreed that in terms of scenic value, the site was "unremarkable".<sup>57</sup>
- b) He accepted that there were no features of rarity, conservation interest, associations and no recreation value to the site itself (xx).
- c) He accepted that the site was not wild or tranquil, or therefore valued for its perceptual aspects (xx).
- d) He accepted that the site did not contain any features or elements that were considered particularly important examples within the landscape character area, and the site is not therefore representative.<sup>58</sup>

10.7. This final point is important. In his evidence, Mr Radmall assessed the qualities of the appeal site against the landscape characteristics discussed in the relevant Landscape Character Assessment. The site only scores a "high" where it is influenced by development, and two of the "medium – highs" also fall into this category on the same basis. Other characteristics that lead to a score of "medium – high" and "medium" relate to the fact that the site is under pasture, is defined by hedgerows, and is part of the rolling countryside (in that it occupies a hill top location).<sup>59</sup> Mr Radmall accepted that none of these were "particularly important examples" or could therefore lead to a conclusion that the site was particularly representative in landscape terms.

<sup>53</sup> 6 para 16 of *Stroud* (above)

<sup>54</sup> CD 7.12

<sup>55</sup> Paragraph 12.6 Inspector's Report page 124, endorsed by Secretary of State at paragraph 11

<sup>56</sup> Page 84, CD14.4

<sup>57</sup> All accepted by Mr Radmall, and see PoE paras 4.1, 4.2, 4.3 and 5.17

<sup>58</sup> See Box 5.1 GLVIA: Representativeness is defined as "whether the landscape contains *particular character and/or features or elements which are considered particularly important examples*"

<sup>59</sup> PoE p6 and xx on Mr Radmall's table

- 10.8. Further, Mr Radmall also expressly accepted that none of the characteristics that the appeal site shared with the landscape character area (as identified by the LCA) took the site “beyond mere countryside”. This was an important concession. This is because the Council’s case is that its relevant landscape policy is based on the LCA. However, if the characteristics that the appeal site shares with the landscape character area do not take it “beyond mere countryside”, then that document does not support a conclusion that the appeal site is valued landscape within the meaning of paragraph 109 of the NPPF.
- 10.9. In the end, Mr Radmall accepted that an assessment against the industry standard (GLVIA) did not support a conclusion that the site was a valued landscape. To the contrary, he expressly accepted that when assessed against these factors, the value of the appeal site itself was “low”. He then had to fall back on the fact that the site was designated in policy (R) F.Coleford 11 to substantiate a case that the site formed part of a valued landscape. However, as he fairly accepted,<sup>60</sup> designation and value are not necessarily the same thing. Caution needs to be exercised before local designations are accepted at face value. In particular, the GLVIA advises that it is necessary to understand the reasons for designation, and to understand how the criteria relate to the particular area in question.<sup>61</sup>
- 10.10. The fact of designation within policy (R) F.Coleford 11 cannot, of itself, support a case that the land is “valued landscape” within the meaning of the NPPF, since that concept was introduced after the adoption of the Local Plan. If the reasoned justification accompanying the policy is properly scrutinized, it is clear that in landscape terms the reasons for designation do not support a conclusion that the site is “locally valued” landscape within the meaning of the NPPF. The policy was promulgated in order to protect the area of open landscape *“between Coleford and its adjoining arc of settlements”*. It is the land between Coleford and its adjoining arc of settlements that is said to provide *“a high quality setting to the existing built up areas...”*.<sup>62</sup> It is clear that the appeal site does not, in landscape and visual terms, form part of the open landscape that the policy is seeking to protect.
- 10.11. Firstly, the Local Plan itself notes that Coleford sits in a bowl. In contrast, the surrounding *“arc of settlements” “generally lie on higher ground above the town”*.<sup>63</sup> The appeal site, together with the remainder of the Berry Hill settlement, sits on a plateau above both the bowl and Coleford. As such, the appeal site, together with the existing settlement at Berry Hill, is distinguished from the bowl and from Coleford by the terms of the Local Plan itself.
- 10.12. Further, Mr Radmall expressly accepted that the appeal site occupies a settlement fringe location. It is influenced to its north and north eastern boundaries by the edges of Berry Hill and Four Acres. Its southern boundary is formed by Lower Lane and the development along it. This development includes the substantial and “prominent” 2.5 – 3 storey

---

<sup>60</sup> PoE p15 para 5.22

<sup>61</sup> GLVIA p83 para 5.25

<sup>62</sup> CD10.5, esp para 3.44

<sup>63</sup> CD10.5 para 3.3

development at Pike House, a petrol station and garage with illuminated signage and substantial parking areas for commercial vehicles, a telecommunications mast, a large outdoor centre, further residential properties, the game keeper's public house, and street lighting to both sides of the road. All of these development influences sit on the plateau together with the appeal site and the remainder of the Berry Hill settlement. All of them lie between the appeal site and the bowl of open countryside that falls away to the south of Lower Lane.

- 10.13. In short, there is a very distinct change in character between Lower Lane and the open land that falls away to the South. Mr. Radmall *expressly accepted* this in xx and the same will have been evident on the site visit. The appeal site is influenced by, and sits together with, the existing settlement of Berry Hill. The open land that policy (R) F.Coleford 11 was concerned to protect is, quite clearly, the land that falls away below Lower Lane, and which is of a different character to the land north of Lower Lane. Indeed, even residents seem to accept that this is the case. In their opening submissions to the inquiry, residents agreed with the Appellant that, in character terms, *"Berry Hill ends at Lower Lane"*, and that this was *"because of the hill"*.
- 10.14. The Appellant's case in respect of this change in character, or distinction between the open landscape of the hill and the land to the north of Lower Lane, has been expressly endorsed by an Inspector in a recent appeal at Poolway farm.<sup>64</sup> In that case, the Inspector expressly noted that Lower Lane provided a *"strong boundary"* to the landscape bowl, and contained the landscape area comprised of the bowl. It is of note that in coming to this conclusion, the Inspector was accepting the Council's case as it was then put by Mr. Radmall.<sup>65</sup>
- 10.15. In substantive terms, therefore, the reasons for designation do not support a conclusion that this landscape is *"locally valued"* within the meaning of the NPPF. The fact of designation can have limited weight in landscape terms and visual terms.
- 10.16. The Council's case has sought to emphasise that the appeal site has formed part of a *"designated area"* for some time, firstly as part of the now defunct Special Landscape Area, then through policy (R) F.Coleford 11 and now through policy AP64 of the emerging Allocations Plan. However, this does not in truth assist the Council's case in circumstances where the reasons for designation set out within the relevant policies do not support the case that the site is *"locally valued"* within the meaning of the NPPF.
- 10.17. In any event, as Mr Tait and Mr Gibbons set out<sup>66</sup>, the boundaries of (R) F.Coleford 11 (and indeed the former SLA) were not drawn exclusively by reference to landscape considerations. Their geographical extent reflected the old settlement boundaries, which are being reconsidered as part of the

---

<sup>64</sup> Mr. Hillier appendix 14, para 20-21: *"These roads, along with the development along them, mainly houses, provide strong boundaries, and as a result, contain the landscape area the appeal site lies within."*

<sup>65</sup> CD17.4 paras 2.6, 2.8 and 2.9

<sup>66</sup> Re – x JT, and xx NG



Council's emerging Allocations Plan. Mr Gibbons accepted (xx) that the old settlement boundaries are out of date in that they do not reflect, on any analysis, the current development needs of the District. It follows that very limited weight can be accorded to the geographical extent of policy (R) F.Coleford 11.

- 10.18. With regard to landscape matters, the evidence base supporting that policy does not support the Council's case that the appeal site is valued landscape. The LCA was the primary landscape evidence when the Local Plan was adopted but it does not reflect the reasons for designation. In particular, it does not assess the value of the open landscape (however defined) between Coleford and its arc of settlements, or the geographical extent of the boundaries of the policy.<sup>67</sup>
- 10.19. Paragraph 165 of the NPPF is clear. Planning policies should be based on up to date information about the natural environment and other characteristics of the area. The reasons for designation in policy (R) F.Coleford 11 are not justified by an up to date evidence base or any assessment that could justify a finding that the site is part of a "valued landscape". It follows that the policy cannot be considered up to date.
- 10.20. Emerging policy AP64 does not assist the Council in "plugging the gap" in respect of the evidence base. In Mr Radmall's own words, the landscape study that is supposed to be the evidence base for the emerging policy is "*a strange piece of work*".<sup>68</sup> This was because, as he accepted, it does not consider the landscape value of the Coleford bowl (there is not one mention of "value" within it). Nor does it consider the proper boundaries of the existing landscape area, even though these are the very issues that the emerging policy is concerned with. The visual assessment within it is also accepted to be "poor quality".<sup>69</sup> The evidence base, quite simply, does not support the case that the site falls within a valued landscape.
- 10.21. The Appellant has objected to policy AP64 on the basis that its evidence base is inadequate and on the basis that the appeal site should be excluded from the designation. The plan has not yet been examined and those objections have not yet been tested. This was sufficient to convince the Inspector at Staunton<sup>70</sup> that AP64 should be accorded limited weight. On the basis of the considerations set out above, policy AP64, and the evidence base underpinning it, can be afforded limited weight at present.
- 10.22. Whether by assessment against the industry standard (GLVIA), the reasons for designation under policy (R) F.Coleford 11, or the relevant evidence base, none of these support the Council's case that the site is part of a "locally valued landscape" within the meaning of paragraph 109 of the NPPF.
- 10.23. In any event, even if the site is part of a "valued landscape", there is no embargo or restriction on development in such areas. The landscape and

---

<sup>67</sup> And neither did the evidence base in respect of the former SLA – see MH appendix 7

<sup>68</sup> Mr Radmall xx

<sup>69</sup> Mr Radmall xx; see VP2 within it compared to Mr Rech's appendix 2 figure 11

<sup>70</sup> CD 7.11

visual impacts fall to be assessed on their own merits, and in context of the presumption in favour that applies in this case.

- 10.24. The GLVIA is clear. Value is one component of sensitivity. The sensitivity of the landscape should be assessed by combining judgments about the value of the landscape, and susceptibility to change. The judgment should be recorded on the verbal scale and the basis of it made clear. Mr Radmall's evidence fails to carry out such an assessment. It falls back on general assertions made within the LCA that the landscape area as a whole is "sensitive". However, as he accepted (xx), the GLVIA is clear that although landscape studies can provide useful background information, they cannot provide a substitute for an individual assessment of the particular receptor to the particular proposal.<sup>71</sup> Mr Radmall's assessment of sensitivity fails to grapple with the development influences noted above that, in reality, make this site able to accommodate change and reduce its sensitivity.
- 10.25. The landscape impacts would not be significant in this case, having regard to the proper analysis of sensitivity and magnitude of impact carried out by Mr. Rech. Indeed, notwithstanding the comments in his Proof, Mr Radmall accepted in xx that:
- (i) There would be a "very limited" loss of landscape fabric, and the arboricultural report indicates that net gains are in fact likely.
  - (ii) The design of the proposed green space will be secured at reserved matters stage and there is no reason to suppose that it could not function as an integral part of the development.
  - (iii) Whilst there would inevitably be a loss of a green field site as a result of the development proposals, that harm would apply to any green field development within the District, including on sites that the Council promoted for development as part of its emerging Allocations Plan.
- 10.26. The appeal proposal would not harm the open setting of Coleford or lead to coalescence. There is a distinct change in character between Lower Lane and the open land to the south. The development would sit behind the "*strong boundary*" of Lower Lane and would not have an impact on the open land that provides the positive contribution to the setting of Coleford.
- 10.27. That the appeal site can be developed without significant harm to the aims and objectives of policy (R) F.Coleford 11 is supported by the comments of the Local Plan Inspector. It is clear from the wording (which expressly refers to the entire omission site of 10.7ha) that he was considering the entirety of the appeal site.<sup>72</sup>
- 10.28. The Inspector concluded that the eastern part of the appeal site could be developed for housing, since such housing would "*lie comparatively unobtrusively between the dwellings fronting Hillcrest Road to the North and Lower Road to the south, at a point where it is lined with frontage development along its southern side. In my opinion such development could be seen as a logical consolidation of Berry Hill and five Acres to the south west, without detracting to any major extent from the rest of the Landscape*

---

<sup>71</sup> CD14.4 GLVIA p89 paras 5.43 & 5.41

<sup>72</sup> MH appendix 7, para 13.129

*Protection Area to the west and south. Undue encroachment into the rural landscape and significant coalescence of Berry Hill and Coleford could thus be avoided".*

- 10.29. Irrespective of the technical argument as to which fields were being considered, it is clear that the Inspector was recognizing that parts of the site had the capacity to be developed without harming the remainder of the Landscape Protection Area or rural landscape, and without leading to coalescence. His justification for this was that parts of the appeal site lie between the dwellings fronting Hillcrest Road and the development influences along Lower Lane. As a minimum, the substance of the Inspector's reasoning must apply to fields 4 and 5, since both are influenced by the housing to the rear of the appeal site and the development along Lower Lane.
- 10.30. Further, it is clear from the evidence supporting the objection that the "eastern part" of the appeal site is comprised of fields 4 and 5. The "eastern" part of the appeal site was proposed for 90–120 units at a density of 30dph. These units could not fit on to field 5 alone at 30dph. In addition, the eastern part of the appeal site is said to comprise 4.4 ha, which is consistent with the fact that both fields were being considered. Further, the description of the eastern fields includes proposed open space, which was proposed in field 4. Mr. Radmall expressly accepted (xx) that, on this basis, when the Inspector was discussing the eastern fields, he was referring to both fields 4 and 5.
- 10.31. Mr Radmall expressly accepted that the Inspector's conclusions could be given weight in determining what parts of the appeal site could be developed without undue harm to the aims and objectives of policy (R) F.Coleford 11. The appeal proposal is of a similar density and the development of fields 4 and 5 would be acceptable for the reasons set out by the Local Plan Inspector.
- 10.32. Mr Radmall's view points 2, 3 and 4 should be considered in this context. It is true that development will be visible, although of course landscaping and detailed design will mitigate the impact. As Mr Rech explained, any development is likely to be visible at short range. In addition, as Mr Radmall accepted, VP 3 and 4 show the impact of developing field 5, which the Local Inspector considered to be acceptable on any basis.<sup>73</sup> VP2 also shows, at least in part, the impact of developing the fields that the Local Plan Inspector considered to be acceptable. As would be seen on site, and as accepted by Mr Radmall in xx, these fields are already influenced by the extensive development along Lower Lane and Hillcrest Road. He was undoubtedly correct that they could be developed without undue harm to the rural context and without leading to coalescence.
- 10.33. The Local Plan Inspector went on to consider the impact of developing the western part of the "omission site".<sup>74</sup> He had previously described this as constituting 10.7ha of land, so it is clear that he is dealing with fields 1-3 here (JT xx and re – x). In any event, it is the substance of the Inspector's

---

<sup>73</sup> Including on the basis put to JT by Mr Wadsley

<sup>74</sup> MH appendix 7, para 13.132

conclusions that are relevant. He concluded that built development would harm the western part of the site because that part of the site provided a "visual link" across the main road to Coleford beyond, which could be impacted by the proposals before him.

10.34. As Mr Rech explained, the appeal proposals have been designed to respond to that visual link and to retain it. Mr Radmall's VP 5 illustrates the point. As accepted by Mr. Radmall (xx), only field 2 has a visual link across the main road to Coleford beyond. No housing is proposed on this field.

10.35. The topography of the site "flattens out" across field 1, so that there is a foreshortening of the view and the housing on Crow Ash Road is brought forward in the view. As Mr Radmall accepted, even though it is currently free from development, field 1 is not seen or perceived as an open field. Nor is field 3. As he also accepted, they are influenced by the prominent Pike House and other development on Lower Lane. These fields do not contribute in any meaningful way to the "open setting of Coleford". Nor is there a visual link with the open landscape to the south of Lower Lane.

10.36. It is also clear from Mr Radmall's longer distance viewpoints that there will not be significant harm in landscape and visual terms. Indeed, he clearly accepts as much, since his view is that the impact on VPs 6 – 8 would, at worst, be "minor adverse". He further accepted that this impact would reduce to "negligible" for VP 6 and 7 as the landscaping associated with the scheme matured and that it had the potential to reduce to negligible in respect of VP 8 (although he couldn't be sure in respect of this VP). On any scenario, and on the Council's own case, it is therefore clear that there will be no significant harm to longer distance views as a result of the appeal proposals.

10.37. There can be no serious argument that the aims and objectives of policy (R) F.Coleford 11 are significantly prejudiced in these circumstances. That point is underscored when the following points are further considered (in relation to VPs 6 – 8):

- (i) Whilst it is right that the appeal site is currently undeveloped, its character is not "open" in these longer distance views because of the existing vegetation and development along Lower Lane.
- (ii) Where there is a glimpse of an open field, this will be retained, since no development is proposed in these fields (accepted Mr Radmall xx).
- (iii) Existing development along Lower Lane is visible in all of the views. The appeal proposals will be set behind Lower Lane, and development will not be moved forward in the view (accepted Mr Radmall xx). As explained by Mr Rech, there can be no question of visual coalescence with Coleford in these circumstances.

10.38. Based on the above, Mr Radmall accepted that there would be no significant impact on openness from any of these viewpoints.

10.39. For all of the reasons set out above, the Council's landscape case is unsupported and unsupportable. These proposals would not cause unacceptable harm to the character and appearance of the landscape or the objectives of policy (R) F.Coleford 11, let alone significant and demonstrable harm. There are no good reasons for refusing consent on the basis of landscape and visual harm.

*Policy implications*

10.40. The reason for refusal alleges conflict with policy (R) F.Coleford 11 which, it is accepted, is not a policy for the supply of housing. However, as Mr Gibbons accepted (xx), policies can still be out of date if they are inconsistent with the NPPF. This policy is out of date having regard to the provisions of the NPPF. In particular:

- (i) Its aims and objectives are not supported by an up to date evidence base, contrary to paragraph 165 NPPF, either in general terms or in respect of the appeal site specifically.
- (ii) Its geographical extent is informed by out of date settlement boundaries.
- (iii) Even if the site is “valued landscape”, the NPPF requires that a “criteria based approach” is taken to the assessment of landscape effects (paragraph 113 NPPF). The policy requires an Applicant to demonstrate that there is an “essential need” for the development in all cases and before a judgment is called for. That is, on the strict terms of the policy, a proposal could have no negative impact on the landscape aims and objectives of the policy, but it would still be contrary to the policy because no essential need for the development has been demonstrated. As noted by JT (re – x), that restrictive approach is manifestly at odds with the NPPF, its positive approach to development, and paragraph 113, which calls for a criteria based approach to the assessment and acceptability of landscape effects. The point is underscored by virtue of the fact that the Council’s emerging policy AP64 contains no such in principle restriction (accepted PR xx), but judges the acceptability of the proposal against the rationale behind the policy (whether there would be harm to the open setting of Coleford).

10.41. For all of those reasons, whilst policy (R) F.Coleford 11 forms part of the development plan and is the statutory starting point, it is out of date. In any event, the appeal proposal would not conflict with the aims and objectives of that policy. Any conflict is therefore a technical one and can be accorded limited weight in the planning balance (JT re x).

10.42. The Council also relies on emerging policy AP64. That policy can be given limited weight at the present time, having regard in particular to paragraph 216 of the NPPF<sup>75</sup>. In particular:

- (i) There is a significant outstanding objection to the inclusion of the appeal site in that policy.
- (ii) There is a significant outstanding objection to the evidence base that the Council relies upon to support the policy and the Council’s own expert landscape witness had concerns about its robustness. The policy is not therefore in accordance with NPPF paragraph 165.
- (iii) These matters can only be resolved through the Local Plan examination. Until they are, the emerging policy can be accorded limited weight.

---

<sup>75</sup> See also CD17.5, Stroud

- 10.43. In any event, the Appellant's case is that there is no conflict with emerging policy AP64.
- 10.44. The Council's reason for refusal alleges conflict with policy CSP.1 of the Core Strategy.<sup>76</sup> There is no such conflict.
- 10.45. Firstly, CSP.1 does not act as an embargo to the development of green field sites on the edge of a settlement. Indeed, the reasoned justification expressly recognises that change is inevitable and that the strategy in the policy is to seek to ensure that new development makes a positive contribution, which may include environmental improvements, in this context. The appeal proposals will secure such environmental improvements, including to the landscape fabric of the appeal site and its green infrastructure.
- 10.46. Secondly, the policy requires that new development takes into account the "important characteristics" of the environment. The Council has failed to identify any specific "important" landscape characteristics that would be significantly harmed as a result of the appeal proposal. In the language of CSP.1, the appeal proposal therefore "respects" the landscape character and visual amenity of the local area and there is no significant harm identified by the Council.
- 10.47. Finally, in so far as policy CSP.1 requires that all of its criteria are met before development can proceed, it is not fully consistent with the NPPF (JT re – x). As recognised by the Inspector at Newent<sup>77</sup>, policy CSP.1 needs to be read in conjunction with the more recent guidance in the NPPF, including the presumption in favour of sustainable development and the need to apply an overall balancing exercise. When that exercise is undertaken, it is clear that planning permission should be granted.

### ***Issue 2: Best and Most Versatile Agricultural land***

- 10.48. It is accepted that the appeal site is comprised of best and most versatile land. However, it is disputed that the loss of such land is, of itself, sufficient to justify a refusal of consent in this case.
- 10.49. Firstly, as accepted by Mr Hillier (xx), the use of such land for development is not the subject of any embargo by the NPPF and there is no policy of restriction.<sup>78</sup> The Inspector at Newent<sup>79</sup> accepted that the NPPF does not rule out the development of best and most versatile land as a matter of principle.
- 10.50. Secondly, the Council's emerging allocations plan recognises that it will be necessary to release best and most versatile land, including higher grade land than is found at the appeal site<sup>80</sup>, in order to meet the housing needs of the District. This includes the release of such land in Coleford. The Council is also reliant on its emerging allocations without planning

---

<sup>76</sup> CD 10.1, page 38

<sup>77</sup> CD7.13

<sup>78</sup> In the sense of foot note 9 to paragraph 14 NPPF or otherwise

<sup>79</sup> CD7.13

<sup>80</sup> eg Foley Rd Newent

permission (including the release of best and most versatile land) to meet its five - year supply. On any basis, it is clear that this land is "necessary" (within the meaning of paragraph 112 NPPF), because best and most versatile land will have to be released to meet development needs.

10.51. Thirdly, as accepted by Mr Hillier (xx), there is a significant amount of best and most versatile land around Coleford and across the District more generally. The release of the appeal site will not be significant, having regard to these wider areas. Nor is there any evidence that the loss of these fields will prejudice the continued operation of any farming business. The Inspector at Newent referred to both of these factors when assessing the weight that should be attributed to the loss of best and most versatile land. The same conclusions apply in the present case.

10.52. There is no justifiable reason for withholding consent on this basis.

### ***Issue 3: Infrastructure and contributions***

10.53. Whilst this was identified as a key issue at the outset of the inquiry, Mr Hillier accepted (xx) that there is no outstanding reason for refusal on this basis. The Council has confirmed that the s106 obligations and conditions adequately deal with infrastructure needs and contributions. Where there is a dispute between the parties in respect of the s106 obligations, the obligation deals with the dispute by ensuring that its provisions bite in the event that the Inspector finds that the relevant tests under the CIL Regulations are met. There is no extant reason for refusal in respect of the adequacy of the s106 obligation or conditions and no reason to refuse consent on this basis.

### ***Issue 4: Other development impacts and issues raised by residents***

10.54. There is no reason for refusal in respect of tourism and no objection from the Officer at the Council that deals with such matters. As noted by Mr Tait, it is difficult to see how there could be a material impact in terms of tourism or visitor spend simply by virtue of the fact that housing is proposed for this site.

10.55. In respect of highways, a statement of common ground has been signed by the LPA confirming that they have no objection to the proposed development on the basis of highway safety, accessibility or locational sustainability. There was no objection from the Highways Authority and an email from the relevant officer demonstrates that due regard was had to residents' concerns. The Authority is satisfied in respect of capacity (taking into account the representativeness of the relevant capacity assessments), accessibility (taking into account gradients) and highway safety.

10.56. Berry Hill is classed together with Coleford for the purposes of the Council's Core Strategy. As accepted by Mr Gibbons (xx), it is a "top tier settlement" in which growth, including housing development, is promoted and encouraged as a matter of principle. There are facilities available to residents in Berry Hill itself and reasonable alternatives to the private car are available for services in Coleford and beyond. The reality is that this is a sustainable location for development.

- 10.57. Ecology and flood risk were dealt with in the technical reports produced in support of the application. The relevant statutory consultees do not object to this proposal, subject to conditions. All of the expert evidence indicates that these matters can be dealt with appropriately. They are not development impacts that weigh against the proposal.
- 10.58. In so far as mining is concerned, the impact on viability is dealt with below. However, in respect of development impacts and safety, there is no objection from the LPA, who took advice from the Coal Authority. The Coal Authority did not object to the scheme. The Coal Authority were further consulted in respect of the amended proposal, had access to the revised framework plan, and made no objection. The LPA has the opportunity to take further advice in respect of detailed layout at the reserved matters stage. The Appellant's submission is based on expert evidence. There is no substantive reason to think that the land cannot be adequately remediated or that consent should be refused on the basis of any of the queries raised by residents.
- 10.59. The issue of statutory boundary stones has been dealt with in the SCG, which agrees that, subject to conditions, there will be no unacceptable harm on the significance of these undesignated assets. To the contrary, the SCG recognises the opportunity for enhancement.
- 10.60. At the time of the inquiry, the Berry Hill, Christchurch and Edge End Neighbourhood Plan was still out for consultation. Only two "slivers" of the appeal site are included within the Neighbourhood Plan area so that Plan will not have any substantive authority over the appeal site. The Coleford Neighbourhood Plan was at an even earlier stage, with no draft or consultation available to the inquiry. As explained by Mr Tait, very limited weight can be given to the Neighbourhood Plans in this case, having regard to NPPF paragraph 216.
- 10.61. In short, there are no other development impacts or policy considerations that weigh against the proposal. The Appellant's submission is fully supported by expert reports which have been accepted by the LPA. There are no outstanding objections from statutory consultees. There are no sound reasons for refusing to grant planning permission on the basis of the additional impacts identified by residents.

### ***Issue 5: Five year supply***

- 10.62. It is manifestly apparent that the Council cannot demonstrate a five year supply of deliverable housing sites:
- (i) Even if the Council's figure for OAN is accepted, it does not have sufficient supply (3.67 years on the basis of the Council's OAN but the Appellant's supply<sup>81</sup>); and
  - (ii) Even if the Council's supply is accepted, its OAN is not robust. A proper OAN would demonstrate that there is not a five year supply of housing (3.91 years on the basis of the Appellant's OAN but the Appellant's supply).

---

<sup>81</sup> J Tait table at para 5.57, as amended



10.63. The Appellant's case is that the Council's assessment of its OAN, and of its five year supply are not robust. On this basis, the Council only has a 2.56 year supply of land.

10.64. On any scenario, the Council falls significantly short of being able to demonstrate that it has a five year supply. The reality is that this is an authority where it is accepted that there has been persistent under delivery of housing. Those problems are only likely to be perpetuated unless supply is increased now. The lack of a five year supply weighs heavily in favour of the appeal proposals.

### *Supply*

10.65. The issues of supply were dealt with in the round table discussion. There are several broad points to note.

10.66. Firstly, the Council's figure for the five year supply is wholly dependent on sites contained in the emerging Allocations Plan, which remain the subject of significant and substantial objection. The Inspector at Newent has recently confirmed the earlier decision at Staunton<sup>82</sup> to the effect that the inclusion of such sites is "over optimistic" and cannot be relied upon until the after the Local Plan has been examined. Continued reliance on these sites is not in accordance with the Wainhomes case<sup>83</sup> and is directly contrary to the appeal decisions at Newent and Staunton. Nothing material has changed since those decisions. As accepted by Mr. Gibbons (xx), there remain significant and unresolved objections to the emerging allocations<sup>84</sup> and the Plan has still not reached the stage where these matters can be considered and determined by an Inspector. Indeed, the Council itself has not given any further consideration to these objections since the Newent appeal, as it has not considered the objections since the Plan's publication.

10.67. Further, Mr Tait confirmed that there have been no material changes in the supply of sites (and the assessment against the criteria at NPPF footnote 11) since the Newent inquiry. He indicated that at Newent, the Council were arguing a total supply of 2219 compared to 2227 at this appeal (a difference of 8, which cannot be considered material). He was not challenged on this point.

10.68. Mr Hillier expressly accepted in xx that in the absence of a material change in circumstances since Newent, the Council could not reasonably hang onto its assertion that the emerging allocations without planning permission should be counted in the five year supply<sup>85</sup>. That was a very significant concession since, without these sites, the Council does not have a five year supply. The only reasonable conclusion, on the basis of the evidence given to the inquiry, is that there is no five year supply.

---

<sup>82</sup> CD 7.11, para 43 - 48

<sup>83</sup> J Tait para 5.40 - 42

<sup>84</sup> Including from statutory consultees, developers, amenity groups and residents

<sup>85</sup> This was disputed by the Council. My own note of this part of the cross examination is that Mr Hillier agreed with the statement that, as a matter of principle, it would not be reasonable for the Council to promote a case for a five year housing land supply unless there were new material considerations since the Newent and Staunton appeals.

10.69. In addition, a number of the sites relied upon are ancient, have been the subject of repeated renewals of permission. They have no realistic prospect of coming forward within the next five years. Again, the Inspector at Newent agreed that the Council's housing land supply was "overly optimistic" on the basis that these sites had been included. This further supports the Appellant's analysis of supply, as set out in the round table discussion, which was fair, thorough, based upon wholly reasonable assumptions, and undertaken with full and proper regard to the tests in the NPPF. Therefore, even if the Council is right that its OAN is 320, there is no five year supply in this District.

10.70. However, for the reasons set out below, the Council's assessment of OAN is not robust, is not in accordance with the PPG, and is a serious underestimate of the needs of this District.

#### *Objectively Assessed Need*

10.71. The "tipping point" in respect of five year supply is an OAN of 343dpa. That is, if the OAN for the District is above 343, the Council will not be in a position to demonstrate that it has a five year supply of land even if its case on the supply side is accepted in its entirety.

10.72. The Council's assessment is that the OAN for the District is 320dpa. This is not robust, nor is it in accordance with the guidance set out in the PPG. The absence of a PPG compliant objective assessment of needs means that the Council cannot demonstrate that it has a five year supply of housing.<sup>86</sup> The evidence from the Appellant indicates that a PPG compliant assessment would give a minimum OAN of 406dpa. The evidence previously provided by the Council's own consultant, and which took into account the needs of the wider HMA, indicates a minimum OAN of 365dpa. On either basis, the Council would not have a five year supply.

#### *The Council's approach*

10.73. There are some general points in respect of the Council's approach. Firstly, the Core Strategy sets an annual figure of 310dpa. It was accepted by Mr Gibbons (xx) that the assessment of needs that fed into the Core Strategy was based upon out dated demographic projections. It also coincided with an RSS target that was not an NPPF compliant assessment of need carried out in accordance with the PPG. As set out in the Appellant's evidence<sup>87</sup> that figure also took into account environmental constraints and land availability constraints and so was not a "policy off" or unconstrained assessment of need. Mr Gibbons accepted that the Core Strategy figure coincided with this constrained figure. The parties agree that the Core Strategy figure of 310dpa does not represent the OAN for the District.

10.74. Rather surprisingly, in that context, the Council has decided to press ahead with its emerging Allocations Plan. This is surprising because, as accepted by Mr. Gibbons (xx), the purpose of the Allocations Plan is to make provision for the District's housing and employment needs in accordance

---

<sup>86</sup> CD 7.2 Fairford

<sup>87</sup> Mr Donagh, Ch 5

with the level of need implied by the Core Strategy. As Mr Gibbons confirmed, and as is confirmed in the Allocations Plan itself<sup>88</sup>, the Council is “required to show” that the Core Strategy figure remains up to date in the sense that an objective assessment of need will come out with a figure that is broadly the same. This is because, as accepted by Mr Gibbons, if the new objective assessment of need had implied a figure that was materially greater than the Core Strategy figure, a review of the Core Strategy would have been necessary.

10.75. As a result, the tail has been wagging the dog. That is, the Council’s “pragmatic” imperative to press on with its Allocations Plan has influenced its assessment of OAN and has led it to adopt a constrained figure in an attempt to demonstrate consistency with its out of date Core Strategy figure. This is supported by the evidence and the history of the Council’s approach to this matter.

10.76. The Council commissioned jointly a report to assess the OAN for the Forest of Dean, Cotswold and Stroud, which took into account the needs of the wider HMA. In that report, Mr McDonald recommended a figure of 365dpa as representing the OAN for this District. The matter was taken back to Committee, which resolved not to follow that recommendation but to rely on a lower figure. That figure represented no additional homes for jobs, and was based upon the demographic projection produced by Mr McDonald at that time.<sup>89</sup>

10.77. There is no credible explanation as to why the Council departed from the clear advice given by Mr McDonald that “it would not be prudent, however, to ignore the indication from the CE projections that Stroud, Cotswolds and Forest of Dean may need some additional housing to support economic growth by 2031”.<sup>90</sup> What is clear is that, on the basis of the 365 figure, the Council would not have had a five year supply. Further, the 365 figure was significantly higher than the figure in the adopted Core Strategy.

10.78. What is also clear is that in determining not to follow the advice of its consultant, the Council took into account policy considerations. The last time Members considered the question of the Council’s OAN, they were advised that out commuting from the Forest of Dean was one of the issues that the Core Strategy and Allocations Plan are attempting to address.<sup>91</sup> The advice was that the impact of planning policy, if successful, would be to reduce out commuting by providing jobs of the right type within the District, thereby reducing the need for further housing to meet the needs imposed by some of the additional jobs. In short, one of the reasons that the Council decided not to provide for the additional homes implied by the objective assessment of needs was because it hoped that policy interventions promoting a certain type of job would see those jobs being taken by the existing population. Mr Gibbons accepted in xx that these issues were taken into account in determining the Council’s OAN and were “policy on” issues.

---

<sup>88</sup> CD10.3, paragraph 2.9

<sup>89</sup> CD12.1

<sup>90</sup> Recognised in the Report that went to Committee at paragraph 1.29 – see CD12.1

<sup>91</sup> CD12.1 para 1.36

- 10.79. In the Gallagher case<sup>92</sup> the Court was absolutely clear that a decision taken, as a matter of policy, to encourage or discourage particular migration patterns reflected in demographic trends is a “policy on” approach, and should not be relevant to the assessment of OAN. Quite clearly, in settling on an OAN of 320, the Council has taken into account policy considerations. This matter has not been taken back to Committee since that date and this approach therefore continues to vitiate the figure promoted by the Council.
- 10.80. The Council then commissioned subsequent work from Nupremis to look further at the economic justification for its OAN. Again, it appears that the tail was wagging the dog. Not only was the Nupremis Report commissioned after the Council had already decided to constrain its figure to a level below that advocated by Mr McDonald, but Mr Gibbons accepted in cross examination that the Council had drawn Nupremis’ attention to two specific employment sectors where the Council had concerns that the forecasts were too high. Whilst the Nupremis report looks at other sectors, there is no sensitivity analysis within it as to what would happen if other sectors performed better than expected (for example, manufacturing) or exceeded the expectations implied by the forecasts on the basis of committed employment development at Cinderford. This is perhaps unsurprising. Mr Gibbons expressly accepted that Nupremis were asked to look at the two sectors which appeared to be overly optimistic “in more detail”. It was somewhat inevitable on this basis that the sensitivity tests would imply a more pessimistic outlook than that initially advocated by the Council’s own consultant.
- 10.81. Having considered the Nupremis work, Mr McDonald produced a second report<sup>93</sup>. There are significant issues with the approach that he has adopted. However, in respect of the Council’s response, Mr Gibbons expressly accepted in xx that he understood that Mr McDonald was advocating an OAN of up to 340dpa to reflect the fact that up to 600 additional jobs might need to be accommodated across the Forest of Dean<sup>94</sup> and that the demographic projection of 310dpa may not be sufficient to accommodate jobs growth across the District.
- 10.82. Having taken Mr McDonald’s advice, the Council’s position remains that its OAN is 320dpa. Therefore, whatever Mr McDonald’s position may now be, this Authority accepts that it should not be planning on the basis of no additional homes to meet jobs growth or on the basis of the demographic projection he put forward (310dpa).
- 10.83. What is wholly unclear, on the Council’s case, is why, having accepted that additional housing should be provided to meet jobs growth, there is any justifiable reason to constrain OAN to 320dpa. Again, at best, the decision to do so appears to be based on “policy on” considerations. In particular, the Council’s Report<sup>95</sup> sets out that one reason it is not promoting an OAN of 340dpa is because the Allocations Plan contains “sufficient flexibility” to meet the requirement of providing dwellings at a rate of 340dpa. In short,

---

<sup>92</sup> CD 8.7, paragraph 37 (iii)

<sup>93</sup> CD 12.10

<sup>94</sup> CD 12.10, table at para 49

<sup>95</sup> Mr Gibbons Appendix 3 paragraph 2.36

the Council is saying that it does not matter whether the figure is 320 or 340, because it has sufficient land available on any basis. That is not an acceptable approach and the Council's figure is not an objective assessment of needs in these circumstances. Land availability is constraining or influencing the figure that the Council is promoting as its objective assessment of need. Mr Gibbons accepted in xx that the supply of housing influenced the Council's determination of the appropriate figure.

- 10.84. It is of note that if the Council had adopted the figure of 340dpa, its 5 year supply would have been at the tipping point.
- 10.85. It is clear that a further review of the Council's figure will be necessary to provide a more robust OAN, because the approach now promoted by this authority could have wider implications across the HMA. The PPG and NPPF require that housing needs are assessed across the HMA.<sup>96</sup> Functional housing needs are not constrained by local authority boundaries.
- 10.86. However, the Nupremis Report and Mr McDonald's second report only consider the position at the Forest of Dean level. The only report that considers housing needs at a wider level is the first NMSS Report<sup>97</sup>, which looks at needs across the HMA as a whole and then disaggregates this between the various authorities. The HMA-wide assessment indicates that there will be a need for 7,300 homes (or 365dpa). The OAN promoted by the Council envisages 6,400 homes (or 320dpa), a reduction of some 900 dwellings as compared with the HMA wide assessment.
- 10.87. In this respect, it is of note that the other authorities within the HMA are not proposing a lower figure than that in the HMA-wide assessment and are planning to meet, as a minimum, the needs implied by that assessment. In promoting a lower figure, Forest of Dean could generate a need for 900 additional homes elsewhere in the HMA.
- 10.88. Secondly, the Joint Core Strategy (JCS) Inspector has indicated that there is a need for consistency as between the approach within the JCS<sup>98</sup> and the wider HMA<sup>99</sup> to ensure that housing needs are adequately assessed. The JCS Inspector has indicated to the JCS authorities that significant additional work is necessary in respect of the assessment of the most up to date economic forecasts, household formation rates and sensitivity testing. It is clear that she has concerns in respect of the approach advocated by the JCS authorities, which is replicated in the approach taken by the Forest of Dean. Further review of the Council's OAN will also be necessary if an HMA approach is undertaken. In the absence of that review, this Authority's OAN cannot be considered to be robust. Mr McDonald's most recent work is not a robust assessment of housing need, even based on local authority boundaries.

---

<sup>96</sup> NPPF paragraph 47 and PPG 2a – 09

<sup>97</sup> CD12.8

<sup>98</sup> Examination of the Joint Core Strategy for Cheltenham, Gloucester and Tewkesbury was in progress at the time of the inquiry

<sup>99</sup> CD 13.5 paragraph 7 and 8

*The assessment of housing need*

10.89. The key issues between the parties in respect of the objective assessment of housing needs can be summarised as follows:

- (i) Homes needed for economic growth
- (ii) Household formation rate adjustment
- (iii) 10 year flow rates
- (iv) Uplift to take into account market signals.

10.90. The OAN Statement of Common Ground essentially demonstrates that if the Council is wrong in respect of only one of these issues, it would bring the OAN up to around 340dpa. On this basis, the Council would need to show that each and every one of the sites in its five year supply can properly be counted and that all of its assumptions about delivery are correct. Even if the Council were right in respect of all of their supply assumptions however, any uplift at all for market signals would then mean that the Council did not have a five year supply. It is quite clear, on this basis, that the Council's claim that it has a five year supply is not robust.

*Economic growth*

10.91. The starting point is the latest official household projections, which are trend based. As accepted by Mr McDonald,<sup>100</sup> any set of trend based projections can only tell you what is likely to happen if past trends continue. The PPG sets out<sup>101</sup> that plan makers "should" make an assessment of likely job numbers based on past trends or economic forecasts as appropriate, also having regard to the growth of the working age population in the HMA. This part of the assessment is mandatory because, if there is additional employment growth over the relevant period, this could lead to additional demand for housing (because of the increased number of workers in the population) over and above that implied by the demographic projection. The consequence of failing to adequately plan for employment growth could be to reduce the resilience of local business, and increase unsustainable commuting patterns.

10.92. It is unsurprising in those circumstances that Mr McDonald's first report to the Council recognised that it "would not be prudent to ignore the indication from the CE forecast that some additional housing will be necessary to accommodate economic growth". What is surprising is that Mr McDonald now advocates an OAN that does precisely that, since the consequence of the 310dpa figure is that there will be no additional homes for economic growth at all provided over the plan period.

10.93. The PPG is clear. The assessment of the number of homes needed to support economic growth should be based on past trends or economic forecasts. This authority has based its analysis upon economic forecasts, which it has then reduced on the basis that it considers that some of the assumptions within them may be over optimistic. The assertion within the Council's evidence that the economic forecasts are in some way volatile and cannot be relied upon is completely at odds with the Council's own

---

<sup>100</sup> CD12.8 para 7(a), page 15

<sup>101</sup> PPG 2a – 18

approach, which is clearly based upon economic forecasts. The Nupremis Report itself makes it clear that it is not seeking to provide new economic forecasts, and nor does it seek to suggest that there are errors in the forecasts themselves.<sup>102</sup>

10.94. As shown by Ms Blaken, the forecasts by OE and CE move closer together in all of the neighbouring Authorities in the more recent forecasts.<sup>103</sup> In the Forest of Dean, the more recent forecasts from 2015 converge at 115dpa. As explained by Mr Lucas, the forecasters are able to reach a more settled view of the economy in 2015 because, as the economy moves out of the recession, there is more certainty as to growth prospects. It is significant that there is now broad consensus amongst OE and CE about the prospects for growth. That consensus indicates that there is a degree of robustness to the forecasts (since the forecasters have a similar view about the growth prospects in the Forest of Dean). It also indicates that, in line with the Appellant's case and the JCS Inspector's approach, a more robust approach would take into account the more up to date forecasts. The Council's evidence fails to do this.

10.95. Ms Blaken asserted that the Council takes a more "locally based approach" in its assessment than is implied by a "simple" reliance on the forecasts. However, the "sensitivity tests" actually "mix and match" the forecasts. In respect of the OE forecast, the assumptions made in respect of business and financial services are replaced by the equivalent from CE (which were more pessimistic). In respect of the CE forecast, the assumptions in respect of government services are replaced with the national percentage increase for that sector (which is more pessimistic).<sup>104</sup> Those figures are no more "locally derived" than the overall forecasts themselves (and the remainder of which is relied upon by the Council). All they seek to do is to allow for a more pessimistic approach in respect of those two sectors.

10.96. Further, despite criticisms of an "averaging approach" in NB's proof of evidence, it is clear that the averaging approach is not seriously in dispute between the parties. This is because what Mr McDonald then does is to take an average of the two "adjusted" forecasts. That is, Mr McDonald and Ms Blaken use an averaging approach across all sectors and across the forecasts. The difference between the parties in truth is that before applying that averaging approach, Ms Blaken and Mr McDonald adjust two of the sectors downwards. That is, they take a mid point between the two more pessimistic outcomes implied by the "adjusted forecasts" to derive a figure of 0 additional homes for jobs growth.

10.97. Taking a "mid point of pessimism" is not a robust approach, is asymmetric, and is not consistent with the overarching objective of the NPPF to provide a significant boost to the supply of housing. There has been no proper consideration as to what might happen if more optimistic scenarios

---

<sup>102</sup> CD12.6 p1

<sup>103</sup> In Ms Blaken's Proof, the chart on p3 shows the blue (OE) and orange (CE) moving together in the later forecasts

<sup>104</sup> CD12.6 p68

are achieved for the various sectors. It simply does not allow for the possibility that a more optimistic scenario might occur.

10.98. As Ms Blaken accepted, sensitivity tests are supposed to test “plausible” outcomes. That a more optimistic outcome might be achieved than is implied by either the adjusted (or even the unadjusted) forecasts is entirely plausible on the basis of the evidence before the inquiry. For example, the Nupremis report indicates that growth has been relatively strong in the manufacturing sector compared to the long term national picture and BRES data indicates higher levels of jobs growth within this sector than implied by either the OE or CE forecasts (which both forecast decline in this sector).<sup>105</sup> No sensitivity tests in this respect have been carried out. There is no explanation as to why the “local approach” (which looks at BRES data and local intelligence) has been set aside in respect of this sector.

10.99. The need to provide a sensitivity test in this area has been raised.<sup>106</sup> Mr Donagh’s assessment tests the implications of what would happen to the forecasts if manufacturing was simply held steady (as oppose to decreasing).<sup>107</sup> The JCS Inspector has specifically asked the JCS authorities to consider this approach. A robust assessment for the Forest of Dean would not simply concentrate on the most pessimistic outcomes but would also consider this as an entirely plausible more optimistic outcome.

10.100. It is also unclear why the Council continues to allege that a downward adjustment in the financial and business service sector is the only plausible outcome. Nupremis’ argument that the OE jobs forecast for this sector was based on 2 factors:

- (i) The job losses in this sector since 2009
- (ii) The District has a relatively low share of jobs in the sector compared to other locations in the County<sup>108</sup>

10.101. In respect of job losses the BRES team at ONS has confirmed an anomaly in the data for 2009 as it is likely to have over reported employment.<sup>109</sup> The perceived “jobs losses” in this sector, which is relied upon to support a downwards adjustment, was not in truth a reduction in jobs, but represented an anomaly in the base data from 2009. The reasoning behind the downwards adjustment in this sector is not supported by the evidence.

10.102. As to the second reason, those points were dealt with comprehensively in the round table discussion. It is unclear from Ms Blaken’s analysis why she considers that the forecasts, which are produced at a national level and then disaggregated at a regional and District level, would not have picked up such differences in any event and reflected them in the forecast for the District. Further, the Council is planning for significant employment growth at Cinderford. On Ms Blaken’s own analysis, around 980 direct jobs will be

<sup>105</sup> CD12.6 p12 and p55 table 5

<sup>106</sup> Paper on the approach taken by NMSS to job growth in Gloucestershire for the purposes of assessing housing need, appendix 4 Mr Donagh, p14-17

<sup>107</sup> page 16

<sup>108</sup> CD12.6 pp65–66

<sup>109</sup> Mr Lucas pp19–20 explains that it may have reported agency staff employed by other businesses not based in the Forest of Dean and may have represented double counting



created if the Cinderford proposal comes forward.<sup>110</sup> In reality, the 980 figure is likely to be an underestimate as it does not take into account indirect jobs. Nor does it take into account the fact that “a job not lost is a job gained” having regard to the overall figure in the forecast (since the forecasts take into account both jobs lost and jobs gained when delivering their forecast for growth).<sup>111</sup>

10.103. Whatever the final figure for jobs growth at Cinderford, the Nupremis report is clear. If Cinderford is delivered, jobs growth will align with or exceed the unadjusted OE forecast (which is the higher forecast in this sector).<sup>112</sup> In this context, Ms Blaken accepted that the key issue was whether Cinderford would be delivered. The problem for her analysis in respect of delivery at Cinderford is that it is completely inconsistent with the Council’s approach. Mr Gibbons was absolutely clear on this issue. In his words (xx)

*“The Council anticipates that Cinderford will occur, and is doing what it can to promote it”.*

10.104. The Council’s position in respect of Cinderford is reflected in the documents and evidence before the inquiry. In particular:

- (i) Core Strategy policy CS73<sup>113</sup> sets out that Cinderford is the major new focus for development in the plan, including employment growth. The scale of change is anticipated to be complementary to, and not in competition with, growth elsewhere.
- (ii) Ms Blaken accepts that the Cinderford proposal focuses growth on its key employment sites where these are “still attractive to the market”, and where there is an “identified need” for further development opportunities.<sup>114</sup> As noted by Mr Lucas, there is nothing inconsistent in the SEP with these proposals, which in fact considers and promotes the development at Cinderford.
- (iii) Outline planning permission is in place for the entirety of the development, and full planning permission for the college and road.
- (iv) An ES has adequately assessed the development impacts of the scheme, including ecological impacts.
- (v) Funding is and has been secured for delivery of much of the change needed.<sup>115</sup> In this respect, Mr Gibbons confirmed that the funding was in place to deliver the spine road to serve the site. The college, which is to provide the “anchor” for the project, has funding. Further funding will be required in respect of the remainder but the Council has “positive indications” that this will be secured (xx).
- (vi) Preliminary work has started on site and ecological mitigation has begun. That is, there is clear commitment to development of the site and Mr. Gibbons expressly accepted that the delivery of development at Cinderford was not simply a “policy aspiration” (xx).

---

<sup>110</sup> Mr Lucas rebuttal proof p29

<sup>111</sup> SL evidence

<sup>112</sup> See CD12.6 pp 66 & 68

<sup>113</sup> CD 10.1, p67-68

<sup>114</sup> CD12.6 p70

<sup>115</sup> CD10.1 para 7.12

- (vii) Housing from phase 1, which will be brought forward with an element of the employment allocation, is included in the Council's 5 year supply, demonstrating that the Council is satisfied that that development will come forward in the short term.
- (viii) Delivery is also supported by an AAP, which was examined and found sound. The Council is also promoting the employment allocations as part of its emerging Allocations Plan. Mr Gibbons accepted that, in accordance with paragraph 182 of the NPPF, the Council is therefore satisfied that the allocation is deliverable over the plan period.

10.105. It is clear from Mr. Gibbon's evidence that the Council is confident that the Cinderford employment development will come forward by 2026. The failure of Nupremis to even consider this as a plausible outcome undermines the whole approach to a downward adjustment to the forecasts in this sector. Indeed, when one takes into account Cinderford, as the evidence suggests one must, it is immediately apparent that the adjusted forecasts are simply not plausible:

- (i) In the financial and business sectors, the adjusted jobs growth is between 287 (OE) and 303 (CE), as compared with planned growth of at least 980 in this sector at Cinderford alone.<sup>116</sup>
- (ii) The mid point of the total of the two adjusted jobs figures, which the Council uses as the basis of its OAN, is 889.<sup>117</sup> The total figure relied upon by the Council for all jobs across the District is less than is implied by the Cinderford development for a single sector.
- (iii) In making no allowance for additional employment growth, the Council's OAN is therefore simply not plausible, and does not align with what the Council is anticipating will happen in respect of jobs growth in this District.

10.106. The Appellant's approach is to look at the forecasts and make assumptions based on an average of the three. As Mr Lucas explained, this is standard economic practice because taking an average allows for any over optimism or over pessimism or any concerns in respect of volatility to be ironed out. Such an approach must be more robust. The JCS inspector has welcomed the use of the Experian forecasts and has specifically asked the JCS authorities to look at the more recent economic forecasts. As Mr. Lucas explained, these take account of the most recent BRES data. Further, as the economy emerges from the recession, and more is known about the economic recovery, one would expect the forecasts to become more reliable and to start to converge. Finally, the Experian forecasts provide an additional reputable source or indication of economic growth prospects for the Forest of Dean – since they are higher than the other two, they are a further indication that a more optimistic approach than implied by the other forecasts is plausible.

10.107. For all of those reasons, it is clear that the Council is seriously underestimating the additional need for housing that is implied by the anticipated employment growth in this District.

---

<sup>116</sup> CD12.6 table 10 at pp 68 and 66

<sup>117</sup>  $1205 + 573/2 = 889$ : See CD12.6 table 10 p68 and evidence of S Lucas

- 10.108. It is unsurprising that the Inspector at Newent found that there were grounds for considering that an increase to the 365dpa figure was necessary on the basis of the likely level of employment growth in the District.<sup>118</sup> The Appellant respectfully submits that its OAN of 406dpa is more realistic.

#### *Flow Rates*

- 10.109. If Mr McDonald is wrong in respect of this issue, the Council's own OAN will be at the tipping point in terms of 5 year supply.
- 10.110. Both parties agree that the UK migration flows used by ONS in their 2012 projections would have been affected by the economic downturn because they are based upon a five year trend from 2007-12. Accordingly, both parties agree that an adjustment should be made so that flow rates are taken over a longer period (2002-12) so that they are not unduly affected by those influences. The difference between the parties relates to how the adjustment should be made.
- 10.111. The Council has not adopted a robust approach to their assessment of flow rates. As explained in the round table discussion and in his report, Mr McDonald looks at the total inflow into the Forest of Dean for the period 2002-12 and compares that absolute number with the inflow over 2007-12. He notes that the figure for 2002-12 is higher than for 2007-12 (due to the recessionary influences). He calculates the difference between the absolute numbers and the % difference between the two. The % uplift is then applied as an uplift to the 2012 ONS flows, which he says accounts for the change between the two periods. A similar process is then carried out in respect of outflows.
- 10.112. The fundamental difficulty with Mr McDonald's approach is that it is based on the absolute difference between flows, as opposed to the changes in flow rates. Whilst both parties accept that it is impossible to replicate ONS projections precisely, it is highly material that ONS uses flow rates in its assessment (accepted by Mr McDonald). This is important because the inflow rate is, basically, the number of people coming into the area as a proportion of the relevant population. A rate can therefore be affected by either a change in the number coming in, or moving out of, the District, or by a change in the population (or by both). In short, whether and to what extent the inflow rate increases or decreases is affected by the size of the population as well as by the absolute numbers of people moving in or out of the area.
- 10.113. Mr McDonald's approach does not deal with the population at all. Because there is no assessment of the population, and because ONS deals in flow rates as opposed to absolutes, his assessment is not comparable with ONS methodology and underestimates the extent of the adjustment required. His case is that the Forest of Dean is "atypical", and that the approach used by Mr Donagh may not be a reasonable proxy for the approach used by ONS. Setting aside the fact that Mr Donagh has used a reputable and widely used methodology (Popgroup) in his approach (whereas Mr McDonald has used his own), such criticisms do not begin to

---

<sup>118</sup> CD7.13 para 18

grapple with the fundamental issue in respect of Mr McDonald's assessment, namely that he is dealing in absolute figures and failing to take into account changes in the size of the population. If the Forest of Dean is atypical, and if there is evidence that this makes a difference, then the appropriate response would have been to examine how and why those differences affect the flow rates implied in Mr Donagh's analysis. There is no such analysis within any of the evidence presented by Mr McDonald to this inquiry and no analysis at all as to what an appropriate assumption would be in respect of the population.

- 10.114. In the circumstances, it is clear that Mr McDonald's approach to flow rates is not robust. There is no cogent evidence before the inquiry to demonstrate why, and if so to what extent, the assumptions used by Mr Donagh are wrong. They are the only evidence in respect of flow rates before the inquiry, and are the most robust assessment available for the reasons set out by him in the round table session.

#### *Household formation*

- 10.115. The two issues here concern whether there should be any uplift to household formation rates and, if so, what that uplift should be.
- 10.116. Mr McDonald has not allowed for any adjustment to the 2012 household formation rates. That approach is completely inconsistent with the approach that he took in his first report and in a paper that he produced to the RTPI.<sup>119</sup>
- 10.117. In his first report, Mr McDonald accepted that there should be an uplift to the 2011 based projections to reflect a "partial return to trend" in household formation in the 25-34 age bracket. The "trend" referred to was that implied by the 2008 projections.<sup>120</sup> He thought that an uplift towards the 2008 based projections was necessary because the 2008 projections "predate the economic down turn and are often taken as broadly indicative of the previous longer term trend".<sup>121</sup> Mr McDonald considered that an uplift was warranted in this category because, whilst household formation had been affected by a number of factors (including international migration, house prices exceeding earnings, and the impact of the economic downturn), as the economy moves out of the recession there were "fairly strong reasons" for believing that some of the effects would be reversed, and that there would be a partial return to trend in this age group.<sup>122</sup>
- 10.118. Equally, in the RTPI paper, Mr McDonald recognised that whilst structural change was likely to have an impact upon the extent to which household formation rates might be expected to return to trend, the other "key factor" was likely to be the affordability of housing. He expressly indicated that:

---

<sup>119</sup> CD12.8 & CD 12.16, p11 and 17

<sup>120</sup> CD12.8 p6 para 2

<sup>121</sup> CD12.8 para 46

<sup>122</sup> CD12.8 p7

*“Without substantial improvements in the supply of housing, the prospects for improved affordability or even the prevention of a further deterioration are not good in the short term”<sup>123</sup>*

10.119. Mr McDonald goes on to recognise that whilst no one can say whether household formation patterns will return to previous trend, or how quickly, what is required is an *“estimate of how much difference a plausible range of assumptions might make should provide a useful indication of how much flexibility should be planned for as well as helping to guide the choice of a central planning assumption”*.<sup>124</sup>

10.120. The 2012 projections were then published. Mr McDonald now argues that there should be no uplift to household formation rates. The 2012 projections include data from the 2011 census. They will therefore still incorporate recessionary influences, poor economic performance and affordability constraints. It is wholly unclear how, if Mr McDonald accepted that an uplift was necessary to the 2011 household formation rates on the basis that the recession and affordability had constrained household formation, he comes to a different view now. Whilst some reliance has been placed upon an article from Professor Simpson, there is nothing in Professor Simpson’s work to indicate that there will be no improvement to household formation as the economy emerges from the recession and some constraints in respect of affordability are lifted.

10.121. Mr McDonald’s approach is contrary to the NPPF and the PPG.<sup>125</sup> The PPG expressly notes that where formation rates have been suppressed historically by undersupply and the worsening affordability of housing (which Mr McDonald accepts is the case here), an adjustment should be made to ensure that those influences are not projected forward. Providing for no uplift whatsoever to household formation rates which are accepted to have been constrained by worsening affordability and undersupply is contrary to the clear guidance in the PPG.

10.122. The Appellant’s approach is to allow a full return to trend across the 25-44 age groups. This is wholly in accordance with the guidance in the PPG.

10.123. Whatever the extent of the appropriate uplift, the Council’s approach is not in accordance with the PPG, or even Mr McDonald’s own RTPI work, which recommended that a plausible range of assumptions be tested. It is wholly unsurprising in those circumstances that the JCS Inspector has requested further sensitivity testing of Mr McDonald’s work to show the impact of uplifting the 2012 projections to a full and part return to trend across all age brackets.

10.124. In the circumstances, the Council’s approach to household formation is not robust, and again indicates that this Authority is underplaying its housing needs.

---

<sup>123</sup> CD12.16

<sup>124</sup> CD12.16

<sup>125</sup> NPPF para 47 seeks to boost the supply of housing; PPG para 2a – 15 on the assessment of OAN

---

### *Market signals*

- 10.125. The PPG is clear. The housing need suggested by household projections (the starting point) “should” be adjusted to reflect appropriate market signals as well as other market indicators of the balance between the demand for and supply of dwellings. A worsening trend in any of the indicators set out in the PPG “will” require an upward adjustment to the demographic OAN.<sup>126</sup> The PPG then goes on to give guidance as to the extent of the uplift that should be required. However, it is absolutely clear that an uplift will be required and is mandatory where there is a worsening trend in any of the indicators set out in the PPG. The Council makes no uplift to its figure.
- 10.126. On the basis of the evidence before the inquiry, an uplift should be made. For example, as set out by Mr Donagh,<sup>127</sup> until 2001-2 affordability ratios in this District were below all other Districts within the HMA (except for the Cotswolds), and broadly comparable with England. However, from then on the Forest of Dean overtook England and the other authorities in the District, becoming more unaffordable at a faster rate. In absolute terms, there was a significant deterioration in affordability over this period (92%). Quite clearly, there has been a worsening trend in this market signal in both absolute terms and in comparison with neighbouring Districts and the national picture. An upward adjustment is required.
- 10.127. The evidence in respect of concealed families also indicates that Forest of Dean is worse than all of the other Authorities except Gloucester, with whom it is on a par, and that the proportion of concealed families has worsened in the HMA since 2001. This reflects the difficulties faced by young people in being able to afford their own homes, which is particularly acute within the HMA.<sup>128</sup> This market signal indicates that an adjustment should be made.
- 10.128. Thirdly, annual delivery in this authority has persistently fallen below planned supply (such that the LPA accepts that a 20% buffer in respect of its 5 year supply is required).<sup>129</sup> Since the Core Strategy figure was based upon a constrained figure, which took into account environmental constraints, past delivery not only fell below planned supply, but also below the actual need or demand for housing within this District. Again, this indicates that an adjustment should be made.
- 10.129. Finally, it is of note that the need for affordable housing in this District is acute, with a net annual need of some 814dpa. That is the third highest level of affordable need within the HMA. The PPG is clear. An increase in the total housing figure in the plan should be considered where it could help deliver the required number of affordable homes.<sup>130</sup>
- 10.130. On this basis, there can be no serious dispute that some uplift to the demographic projection advanced by the Council is required. The Inspector

---

<sup>126</sup> PPG ID 2a – 019 and 020

<sup>127</sup> JD1 page 69 - 75

<sup>128</sup> JD1 p 80, para 7.31

<sup>129</sup> See p72 JD1 – average delivery of 263 against CS target of 310dpa

<sup>130</sup> PPG 2a - 029

in the Newent decision<sup>131</sup> has accepted the same (on the basis of the same evidence on market signals in Mr McDonald's first report), which is wholly unsurprising. This Authority's failure to provide any uplift whatsoever is contrary to the PPG, and is contrary to the Inspector's decision at Newent.

### *Conclusion*

10.131. For all of those reasons, the Council's approach to objectively assessing its housing needs is not robust and underplays true housing need within this District. The Appellant's approach is to be preferred. The Council has not demonstrated that it has a five year supply.

### ***Issue v: Planning balance***

10.132. The reason for refusal only alleges conflict with Core Strategy policy CSP.1 and Local Plan policy (R) F.Coleford 11. It is accepted that these are not policies for the supply of housing. However, for the reasons set out above, policy (R) F.Coleford 11 is inconsistent with the NPPF and is out of date on that basis. Policy CSP.1 is out of date in so far as it operates as a policy of restriction and falls to be considered in the wider context of the presumption in favour of sustainable development. For the same reason, policy (R) F.Coleford 11 cannot be accorded significant weight in the appeal and cannot be accorded significant weight in so far as it acts as a policy of restriction.

10.133. In any event, for the reasons set out above, any conflict with policy (R) F.Coleford 11 is technical in this case and should be accorded limited weight. The proposals are generally consistent with policy CSP.1. Conflict with that policy could only arise if it were interpreted as a policy of restriction, contrary to the positive approach advocated within the NPPF and the comments of the Inspector at the Newent inquiry.

10.134. There is no allegation within the Council's reasons for refusal, or indeed within the Council's closing submissions, to suggest that planning permission should be refused on the basis that this development falls outwith the adopted settlement policy boundaries. Of course, if the Secretary of State agrees with the Appellant that there is no five year supply, relevant policies for the supply of housing<sup>132</sup> are out of date in accordance with paragraph 49 NPPF. However, even if there is a five year supply, relevant policies for the supply of housing are out of date in this case. This is because, in the Forest of Dean, the settlement plan policy boundaries and relevant policies associated with this were based on a housing figure that did not represent an objective assessment of needs for the District and had been drawn up in a different context. Mr Gibbons therefore expressly accepted that these policies were out of date, irrespective of the position in respect of five year supply (xx). It is therefore unsurprising that the Council does not pursue a reason for refusal on the basis of conflict with its policies relating to settlement boundaries.

---

<sup>131</sup> CD 7.13 para 19

<sup>132</sup> Accepted by Mr. Gibbons to include CSP.4 and 5. As set out by Mr Tait, policy CSP.14 is also a policy for the supply of housing (in so far as it deals with distribution of the housing number)

10.135. The second consequence of an acceptance that relevant policies are out of date is that the presumption in favour of sustainable development in paragraph 14 of the NPPF applies. The same conclusion would flow from a finding that policies (R) F.Coleford 11 and CSP.1 are out of date, since the presumption bites where any relevant policies of the development plan are out of date (and not simply policies for the supply of housing). Mr Gibbons expressly accepted that the presumption in favour applies in this case.

*Benefits of the scheme*

10.136. There are a number of significant benefits that weigh in favour of the grant of consent in this case.

10.137. Firstly, the provision of open market housing would be a very significant benefit in view of the lack of a five year supply. Even if there is a five year supply, on the Council's own case the position is marginal (5.6 years). There has been persistent underdelivery so that the provision of additional housing is a very significant material consideration in any event, having regard to the imperative in the NPPF to provide a "significant boost" to the supply of housing.

10.138. Secondly, the provision of 40% on site affordable housing is, as Mr Hillier ultimately accepted, a "significant benefit". There is an acute need for affordable housing in the District. This is the third worst District within the HMA in terms of affordability. The appeal proposals would secure 72 affordable units on site, nearly 10% of the annual figure through one single development.

10.139. The Council's attempt to underplay the significance of the affordable housing benefit is wholly misconceived. As Mr Hillier accepted (xx), the starting point is the development plan. The development plan requires 40% affordable housing and the Council is satisfied that it is up to date and underpinned by appropriate and robust viability evidence (accepted in xx). If a lesser contribution were going to be justified, the PPG and NPPF would require the developer to submit a detailed viability appraisal justifying departure from the Council's adopted policy. In the absence of such arguments being presented by the developer, Mr Hillier accepted that the starting point was that the affordable housing contribution could be viably secured at 40%. Indeed, if the position was genuinely otherwise, this Authority should not be seeking a condition to secure 40% affordable on this site.

10.140. Neither the Council nor third parties have produced any robust evidence to demonstrate that the affordable housing cannot be secured. Mr Hillier indicated that he agreed that £795,000 was the "best evidence available" as to the costs of remediation. Those costs are appropriately based on expert advice from Opus. The PPG is clear, and Mr Hillier accepted, that viability assessments should be based upon what is known about current costs and today's circumstances.<sup>133</sup> The only substantiated figure before the inquiry in respect of costs is £795,000. At that level, taking into account the full s106 costs and remediation costs, the cost per plot would be £8,391 per dwelling.

---

<sup>133</sup> PPG 10 - 017



The Council's own viability evidence assumes that s106 costs of £14,000 per plot would be viable.

10.141. Unsubstantiated assertions that costs "might go up" if more shafts are discovered are plainly without merit, and should be accorded very limited weight. Opus has carried out a phase II investigation and has dug trial pits across the entirety of the site. Mr Hillier accepted that those investigations were comprehensive. Opus did not recommend, in its phase II survey, that further investigations in respect of mine shafts were necessary, or that the discovery of further shafts was likely. Whilst there is no absolute guarantee that further shafts will not be discovered, the prospect is, on the basis of the evidence to the inquiry, purely hypothetical. The Council presents absolutely no evidence to suggest that this is a realistic outcome, or that even if it were, it would tip the scales to make the scheme unviable, having regard to the significant headroom per plot that exists in respect of the Council's own assessment of viability. In these circumstances, the starting point is that the scheme is viable.

10.142. In any event, all of this is somewhat of a red herring. The Appellant is offering a 40% contribution, and this will be secured by way of condition. If a variation of that requirement were ultimately sought, the Applicant would have to make an application under S73 TCPA. The Council would then assess the viability evidence produced, but would also be in a position to reassess the merits of the scheme on the basis that the benefits had changed. In short, if such an application were ever made, there can be no assumption that the development could proceed without the affordable housing contribution because that would fall to be assessed on the evidence available at the time. Conditions attached to any planning permission for this proposal would secure 40% affordable housing. The scheme should be considered on that basis.

10.143. The scheme will also deliver net benefits in respect of ecology and arboriculture, as detailed in the relevant reports. As explained by Mr Tait, these are benefits that go beyond mitigation of the scheme's impact and would not be secured without this planning permission. The provision of a community park will be a benefit to new and existing residents, and will provide opportunities to access a high quality open space and opportunities for recreation, which in turn will make an important contribution to the health and well being of the community in accordance with paragraph 73 NPPF. As confirmed by the SCG, the proposals have the opportunity to enhance the statutory boundary stones, which are non designated heritage assets. There will be economic benefits in respect of investment in jobs, construction and support to local services and the economy over the longer term, together with the provision of a New Homes Bonus. In general terms, Mr Hillier accepted that these were benefits that weighed in favour of the proposals. Contributions towards new bus stops will be provided, which will assist residents seeking to access sustainable modes of transport. Again, this is a benefit of the scheme.

### ***Overall balance***

10.144. The appeal proposals represent sustainable development located in a settlement at the top of the Council's settlement hierarchy. The Council

does not have a 5 year supply of housing, its need for both market and affordable housing is acute, longstanding and continuing. There are clear benefits of the scheme in respect of the economic, social and environmental dimensions of sustainability set out in the NPPF.

10.145. The Appellant's case is that the landscape and visual impacts of the scheme are acceptable, but in any event, any harm occasioned by this factor together with the loss of best and most versatile agricultural land does not come close to significantly and demonstrably outweighing the very significant benefits of this scheme when assessed against the provisions of the NPPF as a whole.

10.146. This is a scheme that will deliver net benefits in terms of sustainability. It is respectfully requested that planning permission is granted.

## 11. Written Representations

*The main points in written representations at appeal stage are summarised here. There were also many objections to the original planning application, which are summarised in the Committee Report [CD 5.1].*

11.1. The **Coleford Neighbourhood Development Plan Steering Group** provides comments in the light of its preparatory work on that Plan. The Character Assessment for this part of Coleford parish refers to the importance of the green ring around Coleford to local identity. The countryside around Coleford is valued by local residents and visitors. Sites for some 58 dwellings within Coleford would be required to satisfy the Core Strategy and these are expected to be met through smaller allocations. There would be adverse traffic impacts, particularly at school times or at congested locations such as the junction with the A4136.

11.2. An objection from **Alison Monk** reiterates her earlier points and highlights concerns as to road safety, the availability of other sites for housing and the effect on the character of Berry Hill. **Mr Winterbourne** objects on the basis of the impact on the landscape, the lack of need for such a large site, the impact on local services and the need for extensive remediation work.

## 12. Post inquiry comments<sup>134</sup>

### The Lydney decision

*Comments from the Council<sup>135</sup> can be summarised as:*

12.1. At the time of the Lydney appeal, the Council could not demonstrate a five year housing land supply so the Appellant's evidence on that matter went uncontested. Things have moved on. The Council has now completed an up to date OAN, as presented to this Inquiry through the evidence of Mr McDonald and Miss Blaken.

---

<sup>134</sup> In this section, the Secretary of State's decision on appeal APP/P1615/A/14/2218921 (Doc 36) is referred to as the Lydney decision. The Inspector's decision on APP/P1615/A/3003662 (Doc 39) is referred to as the Tutshill decision

<sup>135</sup> Doc 36

- 12.2. With regard to the emerging Allocations Plan, the Secretary of State affords it moderate weight due to its stage in the examination process. That is relevant when considering the weight to be applied to any potential conflict with the Allocations Plan and the weight to be given to the sites in the Plan. The site subject of this appeal is not included in the Allocations Plan. Applying the Secretary of State's decision, the conflict with the Plan should be awarded moderate weight in the final planning balance.
- 12.3. The sites allocated in the Allocations Plan will contribute to the five year supply. The Secretary of State's decision strengthens this aspect of the Council's argument that the sites should be considered individually and an assessment made as to the likelihood of their deliverability. On an individual assessment, and on the evidence put before this Inquiry, the Council is able to demonstrate a five year housing land supply. As a result, the weighted balance in NPPF paragraph 14 does not apply. The harms outweigh the benefits and the appeal should be dismissed.
- 12.4. Under NPPF paragraph 109, the development must "protect and enhance" the landscape. Further, the proposal conflicts with specific and longstanding saved policy ((R) F.Coleford 11) and policy AP64 of the emerging Allocations Plan. Following the Lydney decision, policy AP64 should be given at least moderate weight in the final planning balance. The weight afforded to that policy should be significant for the reasons set out in paragraph 7.51. If the Secretary of State does not agree that the landscape is valued in the terms of NPPF paragraph 109, then in line with the Lydney decision, the harm to the landscape should be given moderate weight in the planning balance.
- 12.5. It is also relevant that the Secretary of State reduced the weight to be applied to the benefits of the Lydney proposal. He found that the contributions to the supply of market and affordable housing weighed in favour, as did the social, economic and environmental benefits. However, weighing against the proposal were the conflict with the Allocations Plan and Neighbourhood Plan (moderate weight), adverse landscape and character impact (moderate weight), traffic impacts and adverse effect on the AQMA (limited weight).
- 12.6. The consequences of the Lydney decision for this appeal are:
- (a) Moderate weight to be given to the emerging Allocations Plan and therefore moderate weight to be given to the conflict between the appeal site and that Plan;
  - (b) Given the weight afforded to the emerging Allocations Plan, the allocations should be included in the assessment of the five year housing land supply. When this is done, the conclusion is that the Council has a five year supply.
  - (c) Consequently the weighted balance does not apply.
  - (d) If it is found that the Council does not have a five year housing land supply, then the weighted balance will be engaged.
  - (e) The benefits of the proposal are comparable with those in the Lydney decision (principally a contribution to market and affordable housing) and so should be given the same weight as in that decision.
  - (f) Against those benefits, and following the same reasoning, the conflict with the emerging Allocations Plan and the adverse landscape and character impacts (if it is found that the landscape does not fall within

NPPF paragraph 109, which is not the Council's case) should be given moderate weight.

- (g) Protection of the site should be afforded significant weight through the terms of policy AP64.

12.7. On a straightforward balance, the benefits are outweighed and the appeal should be dismissed. If the weighted balance is found to apply, then this appeal includes some of the harms of moderate weight that led the Secretary of State to conclude that the harms outweighed the benefits in the Lydney decision. In addition, significant weight should be attached to policies AP64 and (R) F.Coleford 11. Taken together, the harms significantly and demonstrably outweigh the benefits.

*Comments from the Appellant<sup>136</sup> can be summarised as:*

12.8. Given the differing circumstances of the respective appeals and the up to date information presented at the Berry Hill Inquiry, the Lydney decision does not weigh against the appeal at Berry Hill.

12.9. The Secretary of State confirms that the Allocations Plan cannot be given substantive weight. He gives any conflict with that Plan only moderate weight. The Appellant does not agree that "moderate weight" should be given to the emerging Allocations Plan for the Berry Hill appeal. At Lydney, it was concluded that the Allocations Plan was supported by a revised OAN (see paragraphs 10 and 14 of the decision). The Council had not contested the appeal and, it appears, matters such as the evidence on OAN in the emerging Allocations Plan and the objections to that Plan were not tested at that inquiry. Such evidence was considered in detail at the Berry Hill inquiry. At the very least, the Berry Hill inquiry heard, there remains substantial doubt as to the correct OAN. This goes directly to the weight that can be attributed to the emerging Allocations Plan.

12.10. Further, since the appeal was not contested it is unclear what evidence was tested in respect of specific policies within the Allocations Plan. The evidence in the present case is substantially different. The weight to be given to the emerging Allocations Plan and the relationship between its policies and this appeal should be determined in accordance with this evidence. For the reasons set out in the Appellant's evidence, the emerging Allocations Plan should not be accorded anything more than limited weight. The Lydney decision does not invite a different conclusion, in circumstances where key evidential points were not explored.

12.11. In addition, the matter of whether or not sites in the Allocations Plan that do not have planning permission can be accorded weight simply because they are included in the emerging Plan does not appear to have been explored in the Lydney appeal. That "moderate" weight could be accorded to the Plan has no bearing on this specific issue. The appeal decisions referred to in evidence at the Berry Hill Inquiry expressly dealt with this matter and should be preferred.

---

<sup>136</sup> Doc 37

12.12. Although the Allocations Plan has been progressed since February 2015, it is still at the same stage of preparation. At DL14, the Secretary of State was unable to conclude that the Council had a robust five year housing land supply and agreed that relevant policies for the supply of housing were out of date, including those in the emerging Neighbourhood Plan. The presumption at NPPF paragraph 14 applied and he gave limited weight to the housing land supply figure in the Allocations Plan. He then gave any conflict with relevant policies in the Core Strategy and Neighbourhood Plan only limited weight. (DL15, 16 and 20), including the Core Strategy settlement plan policies CSP4 and CSP5. With regard to the Berry Hill appeal, the Council did not promote a reason for refusal on the basis that the development is outside the settlement boundary. It is also noted that Core Strategy Policy CSP12 relates specifically to Lydney and has no relevance to this appeal.

12.13. The Lydney Neighbourhood Development Plan had been recommended to proceed to referendum, yet the Secretary of State gave it that only moderate weight. With regard to Berry Hill, the Neighbourhood Development Plans are at much earlier stages. They can be afforded very limited weight as a result.

12.14. The Lydney case turned on different issues to this appeal in respect of the Neighbourhood Development Plan, housing land supply and the emerging Allocations Plan. It should not have any impact on the decision for this appeal.

#### The Tutshill decision

*Comments from the Appellant<sup>137</sup> can be summarised as:*

12.15. This recent appeal decision serves to again confirm that the Council cannot demonstrate a five year land supply. The Inspector also, again, found the Council's approach to OAN not robust and raised "significant and fundamental" concerns with the assessment, noting that the OAN should not be less than 365 dwellings per annum. Importantly, the Inspector also confirmed that a five year supply cannot be demonstrated on either OAN figure. Three Inspectors have now told the Council its approach to housing supply (ie the inclusion of emerging sites) is not robust, yet the Council continues to rely on such sites. The Council's approach is manifestly at odds with all these recent appeal decisions.

12.16. The Inspector gave the emerging Allocations Plan only limited weight and took into account the Secretary of State's decision on the Lydney appeal. In addition, the Inspector made comments on substantive points on definition of locally valued landscape, best and most versatile agricultural land and the acceptability of conditions suggested by the Council, which were also suggested at the Berry Hill inquiry.

12.17. In summary, the Inspector at Tutshill quite rightly reached the same conclusion as his colleagues at Newent and Staunton in respect of housing land supply and OAN.

---

<sup>137</sup> Doc 39

*The response from the Council<sup>138</sup> can be summarised as:*

- 12.18. Each case needs to be considered on its merits in the light of the evidence presented and the circumstances of the site. The evidence at the Tutshill Inquiry was given in August 2015, before the Allocations Plan had been submitted for examination. At the time of the Berry Hill Inquiry in November 2015, that Plan was under examination. At Berry Hill, the inquiry also heard additional and updated evidence on objectively assessed need and housing land supply, with an additional witness (Ms Blaken) being present. The evidence base of the Council was therefore materially different from that at Tutshill. It also post-dated evidence given at the Staunton and Newent Appeals, which are relied upon in the Tutshill decision (see paragraphs 7.24-7.46 above).
- 12.19. The Council agrees with the Tutshill Inspector<sup>139</sup> that the robustness of the FOAN can only be properly tested at the Allocations Plan examination, where the hearing sessions are about to begin. Notwithstanding the view of the Tutshill Inspector, the figure of 365 is now history. It has no supporting evidence and is based on out of date OAN material, including ONS forecasts which have been replaced by newer ones.
- 12.20. The inclusion of emerging sites is justified by the weight that should be given to the emerging Allocations Plan.<sup>140</sup> A number of sites first identified in the formative Allocations Plan now have had permission including ones specifically referred to by the Inspector eg the George Hotel, Mitcheldean. Further applications are in the pipeline. Consequently, the Council is able to demonstrate a five year land supply when the more up to date evidence given to the Berry Hill Inquiry is considered.
- 12.21. Although the Inspector at Tutshill only gave the emerging Allocations Plan document limited weight, the Secretary of State in the Lydney decision recognised it was at an advanced stage and gave it moderate weight. Therefore the emerging Allocations Plan should be accorded moderate weight for this appeal. Also, although the Inspector at Tutshill was aware of the Secretary of State's decision on Lydney, he was not aware of the legal challenge to the Newent appeal decision, which was put before the Berry Hill inquiry. In light of this, limited weight should be given to the Tutshill Inspector's decision as to the weight to be attached to the emerging Allocations Plan.
- 12.22. With regard to landscape, there is a local designation in place for the Berry Hill appeal which is widely supported and recognised. The site has different characteristics and impact on the landscape should always be assessed separately.
- 12.23. There is a change of circumstances between the various decisions, especially between the Staunton appeal and now, both in terms of the stage the Allocations Plan has reached, the way in which land supply is assessed (using information for 2014/15 not 2013/14 as at Staunton), and the

---

<sup>138</sup> Doc 40

<sup>139</sup> Doc 39: Tutshill, paragraph 33

<sup>140</sup> held to be "moderate" by the Secretary of State in the Lydney decision, paragraph 10

Secretary of States recent decision in the Lydney appeal. The OAN has been reviewed and complete evidence in support of the Allocation Plan submission is now available. As the Inspector concedes in paragraph 29, determinations in relation to land supply evidence are a snapshot based on the best available evidence at that time. Additional information was provided for the Berry Hill Inspector and an additional witness attended to help deal with OAN issues particularly in relation to employment.

12.24. The Inspector considering the Berry Hill Appeal has been furnished with far more robust evidence on housing need and supply. In terms of landscape designation there are clear policies defining the appeal site as being within a valued landscape where paragraph 109 of the Framework applies. The Council's case has been cogently presented and summarised in the closing submissions of the Council's barrister that clearly shows the differences between the evidence and planning policy considerations examined at the Berry Hill appeal compared to those considered at Tutshill. The costs of mining mitigation and the advancing status of the emerging Neighbourhood Plan for Berry Hill that seeks to maintain the site as a buffer between Berry Hill and Coleford, as well as the site's prominence from the main road are further factors differentiating between the two appeals. The council therefore considers that the relevance of the Tutshill appeal decision to the Inspector's consideration of the appellant's proposals at Berry Hill should be given little weight and the appeal should be dismissed on the basis of the Council's evidence given to the Inquiry, the application of the Secretary of State's decision on the Lydney appeal and the Council's response thereon, and the moderate and increasing weight of the Council's Allocations Plan that is now being examined.

*Comments from BHAG<sup>141</sup> can be summarised as:*

12.25. Obviously, the other decisions are of importance and must be taken into account when considering the Berry Hill site. Unfortunately, the outcomes are not consistent and therefore cause confusion rather than creating clarity. The Newent appeal is being challenged so the OAN of 365 quoted by the Tutshill inspector, which was directly extracted from the Newent appeal, cannot be considered as relevant to the Berry Hill appeal.

12.26. The issues of OAN and Housing Supply will be considered when the examination of the allocation plan reaches its final public stages. The inspector has been scrutinising information and requesting updates since last August and this justifies the moderate weight afforded the Allocations Plan by the Secretary of State in the Lydney decision. The Lydney NDP will be going to referendum in February and once again this justifies the moderate weight placed on it by the Secretary of State.

12.27. Given the contradictory evidence on OAN and Housing Supply, this appeal should concentrate on the site specific issues raised at the appeal, which included: -

- The uncertain remediation costs, to which the appellant could give no convincing rebuttal.

---

<sup>141</sup> Doc 41

- The ill prepared transport plan, which excluded both the distance and gradient of the access route to Coleford and overstated the capacity of the bus service.
- The landscape protection afforded the site within the core strategy and proposed allocation plan.
- Strong local opposition to the proposed development
- The provisions of the two emerging Neighbourhood Plans for West Dean and for Coleford Town.

12.28. The Neighbourhood Plans are being progressed. In both, the Lower Lane site is considered as a valued landscape resource in line with the District planning policy. More weight should be afforded to the Neighbourhood Plans as they are a true representation of local opinion.

12.29. The proposed site and the number of dwellings planned is almost twice that of the Tutshill site and in relative terms Berry Hill is a smaller community than the Tutshill/Sedbury area. The site is far more prominent than the Tutshill site and will be more difficult to screen from the passing traffic on the A4136, which will include incoming tourists. The overall negative impact of this development will be far greater than the Tutshill development as a consequence.

### **13. Conditions and planning obligation**

13.1. The conditions in the Annex are along the lines of those suggested by the parties, subject to revisions to reflect the discussion at the inquiry and so as to accord with Planning Practice Guidance.

13.2. The application is in outline so that conditions 1-5 are necessary to allow for consideration of full details as well as to allow for a coordinated approach to development in the event that the development comes forward in more than one phase, as indicated by the Appellant at the inquiry. The parties suggested a two year rather than three year period for submission of reserved matters, so as to ensure expeditious delivery of housing. In view of the potential contribution of this site to the housing land supply, this period is appropriate.

13.3. Although provision of foul drainage to the development itself would be dealt with under building regulations, further discussions with the relevant water authority were necessary to establish that a suitable foul drainage proposal was available.<sup>142</sup> In view of the possible phasing of the development, I consider that a condition requiring details of such drainage is necessary to ensure a satisfactory form of development and to allow for assessment of the possible implications for the wider area. Details of the surface drainage arrangements are necessary to minimise flood risk. A Construction Method Statement is necessary to manage highway and other environmental impacts, including the management of construction waste, as well as to protect the living conditions of nearby residents during the construction period (conditions 6,7,8).

---

<sup>142</sup> CD2.10



- 13.4. Landscape details and a landscape management plan are necessary to ensure that the development would be of a high standard and in order to protect the remaining open area between Berry Hill and Coleford. The management plan and works specification would complement the transfer arrangements within the Unilateral Undertaking. Measures to protect the boundary stones are necessary to preserve these non-designated heritage assets (conditions 9,10,11). Having regard to the standoff distances from Lower Lane and the petrol station, the Noise Assessment identified a limited need for mitigation measures in relation to road traffic noise and for some properties near to the Gamekeepers public house. To reflect this, I have suggested a less onerous condition than the one agreed between the parties. Investigations indicate the site is of potential archaeological value so that a scheme of investigation is reasonable in order to record matters of heritage interest. A condition setting out arrangements for the provision of affordable housing is necessary to meet the terms of Core Strategy policy CSP.5 (conditions 12,13,14).
- 13.5. Provision of the accesses, those improvements to pedestrian routes and bus stops identified as part of the proposal and the arrangements for street management are all necessary in the interests of highway safety and sustainable development. Provision of fire hydrants is necessary in the interests of safety. The Travel Plan is necessary to provide opportunities for sustainable travel choices (conditions 15,16,17,18,19). Given the findings of the Phase 1 site investigation and the information concerning past mining activity, conditions relating to treatment of contamination and land stability are necessary in the interests of providing an acceptable form of development (conditions 20,21,22). The suggested condition setting out the standard for the carriageways on occupation is necessary to protect the living conditions of future residents (condition 23).
- 13.6. In July 2015 the Council adopted its Air Quality Technical Guidance which sets out a method to assess the impact of a proposal on local air quality together with a range of measures which could be incorporated to mitigate that impact. A condition is necessary therefore to require details of the air quality impact and the appropriate level of mitigation, in accordance with the Guidance and in the interests of protection of the environment. The wording reflects the terms used in the Technical Guidance (condition 24).
- 13.7. Details of parking and turning facilities and access within the site would be covered as part of the reserved matters so that suggested conditions 6 and 7 would be unnecessary. Given the findings of the Ecological Appraisals and the Arboricultural Assessments, I am not convinced that the ecological value of the site is such as to demonstrate the need for suggested condition 15 requiring protection of existing trees and hedgerows. Nor are there sufficient planning reasons to require a Construction Environmental Management Plan, a Landscape and Ecological Management Plan or a lighting design strategy for biodiversity, as set out in suggested conditions 16, 17 and 33. The appearance of the buildings is a reserved matter. Whilst some parts of the site have a greater level of visual sensitivity, I consider that the height of any buildings could be dealt with at reserved matters stage. The appearance of the services and the provision of electric vehicle charging points are detailed matters which can be dealt with at a

later stage. For these reasons, suggested conditions 30 and 31 are unnecessary.

#### *Unilateral Undertaking*

- 13.8. The Unilateral Undertaking makes provision for the transfer of the open space to a company with responsibility for its management. It also makes arrangements for payment of contributions for adult/youth recreation, education and library services.
- 13.9. Under the Community Infrastructure Levy Regulations 2010 (CIL), regulation 122(2) states that a planning obligation may only constitute a reason for granting planning permission if the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind. Regulation 123(3) does not allow a planning obligation to constitute a reason for granting planning permission if it provides for the funding of an infrastructure project or type of infrastructure where five or more separate planning obligations for that project have been entered into within the area of the charging authority on or after 6th April 2010.
- 13.10. The open space and areas of landscaping form key elements of the overall design of the scheme which would serve to minimise both its landscape and visual impact. The provisions within the Unilateral Undertaking concerned with the management and maintenance of the open space are necessary, therefore, to make the development acceptable in planning terms.
- 13.11. The Council seeks a contribution towards the provision of off-site adult and youth recreation facilities within the locality. This is a per dwelling sum calculated according to the Council's published Play Area Provision Supplementary Planning Guidance, July 2000, as updated in September 2009. Representations were made at the inquiry on behalf of Coleford Town Council and West Dean Parish Council which indicated material deficiencies in the current level of adult and youth recreation facilities in the locality and outlined potential projects which could benefit from a financial contribution.
- 13.12. At the time of the inquiry, the Council confirmed that the contribution would be within the limitation on pooled contributions, although the Secretary of State may wish to seek further confirmation from the Council that this is still the case at the time the appeal is determined.
- 13.13. It stands to reason that future occupants of the proposed development would be likely to have similar recreational interests to those residing in other parts of Berry Hill and Coleford. Given the objective basis for the contribution, as set out in the guidance, I consider that it has been shown that the adult/youth recreation contribution meets the tests in CIL Reg 122(2).
- 13.14. The education and library services contributions are required towards specific projects. The County Council confirms that these would not exceed the limitation on pooled contributions. Given that the intended purpose has been specified, it is unlikely that this situation would change in the

period between the end of the inquiry and the time the appeal is determined.

- 13.15. The formula for education contributions has been subject to public consultation and is based on research into the level of demand arising from new development. Although there are uncertainties as to the likely level of future pre-school provision, I am satisfied as to the reasonableness of the assessment. I consider that it is fairly related to the level of demand likely to arise from the proposed development. It is likely that the library contribution would be used to extend the opening hours of the existing library and increase its stock. As with recreation, future occupants of the proposed development would be likely to make demands on the library service at a comparable level to the existing population. The quantum is based on recognised costs and the library is in a readily accessible location in relation to the appeal site. I am satisfied that it, also, meets the terms of CIL Reg 122.

## **14. Conclusions**

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

- 14.1. The Council's decision identified two reasons for refusal. However, at the inquiry it confirmed that the matters identified in the second reason, concerning affordable housing, libraries and youth/adult recreation, had been addressed by the planning obligation or could be dealt with by way of conditions. Although the Council's remaining objections related only to impact on the landscape and use of best and most versatile agricultural land other parties, especially the Berry Hill Action Group, had raised a number of other issues. Inquiry note 2 set out my view as to the main issues at that point. [1.2,10.1]
- 14.2. However, in the light of the evidence presented at the inquiry, the main issues could be defined as:
- (i) the effect of the proposal on the landscape and its visual impact;
  - (ii) any other matters which might weigh against the proposal, especially in relation to use of best and most versatile agricultural land, site remediation works and flood risk;
  - (iii) whether the Council can demonstrate a five year supply of deliverable housing sites;
  - (iv) whether the proposal is in accordance with local and national policy for the provision of housing.

### ***Issue 1 – landscape and visual impact***

- 14.3. The appeal site lies within the area designated under Local Plan policy (R) F.Coleford 11 to be retained primarily as open countryside. The supporting text refers to the physical setting of the market town of Coleford within a bowl, with its arc of surrounding settlements located on higher ground. These settlements are also aligned along the edge of the statutory Forest, making them characteristic of the Forest Ring. The purpose of retaining this open land is stated to be as a setting to the existing built up areas and to prevent the physical linking of Coleford with the other settlements.

- 14.4. There is some intermittent development along Lower Lane within the area defined by policy (R) F.Coleford 11 but the settlement boundary as defined within the existing Local Plan follows the rear of the properties in this part of Berry Hill. Although not all of the site would contain built development as a result of this proposal, the mix of housing, recreational open space and infrastructure means that it would change from open countryside to urban edge. This would diminish the openness and rural character of the countryside between Berry Hill and Coleford, putting the proposal in direct conflict with policy (R) F.Coleford 11.

*Landscape character*

- 14.5. The area covered by policy (R) F.Coleford 11 was previously part of a larger, special landscape area identified within the 1996 Local Plan under then policy FCL.3, which refers to the location of Coleford within a natural bowl. The current policy relies for its justification on the 2002 Landscape Assessment and the 2005 Landscape Strategy. Although these refer to the urbanising influence of Coleford and the visually exposed hillside, they do not go into detail as to the extent of any area which would merit particular protection. There can be little doubt, therefore, that the area protected under policy (R) F.Coleford 11 was defined with reference to the settlement boundaries as they stood at the time. [10.17]
- 14.6. The successor to policy (R) F.Coleford 11 in the Allocations Plan is draft policy AP64. This would extend the area to be protected and is accompanied by a further landscape study. That study, however is directed primarily towards providing a justification for the extension of protection to another area of land to the west of Coleford. It, too, accepts the existing settlement boundaries. It provides no detailed consideration of whether the whole of the area to be covered by policy AP64 merits additional protection. [7.15-16, 10.18]
- 14.7. The Appellant does not take issue with the underlying aim of protecting the setting of the town of Coleford itself. Rather, it is contended that the appeal site in its existing state does not make a significant contribution to the aims of either policy (R) F.Coleford 11 or draft policy AP64 so that the effect of the appeal proposal on those aims would not be unduly harmful. [10.25-27]
- 14.8. In terms of its landscape effects, the Council points out that the site and its immediate setting are moderately representative of Landscape Character Type LCT2, Limestone Hills and slightly more representative at the more localised level of LCA2c, which covers the area from Christchurch and Berry Hill southwards to Coleford. In my view, the site does make a positive contribution to local character in its current, undeveloped condition. It also helps counter the urbanising influence of the development around it. However, as the Appellant points out, there is nothing unusual or distinctive about the site when considered in relation to the Landscape Character Assessment. Despite the proximity to the AONB for instance, there is no significant interrelationship. On that basis, it is fair to conclude that the site is not of particular value in its own right. [7.2,10.4-8]
- 14.9. On the other hand, I am not persuaded as to the Appellant's assessment that Lower Lane should be taken to represent the full extent of the

Coleford bowl, which would place the appeal site outside of it. It is the case that there is limited intervisibility between the site and the public footpaths within the bowl. Nonetheless, during my site visits I observed that there is a distinct sense of the land falling away southwards when standing within the appeal site and again at Crow Ash Road, albeit the slope is gentler and less regular than is the case with the land beyond Lower Lane. Thus, I agree that the intrinsic character of the site does not warrant classification as 'valued' landscape in its own right, according to NPPF paragraph 109 and the procedure outlined in the GLVIA. Even so, I consider that there is a valid and valuable interrelationship between the site and the land south of Lower Lane. On that basis, I agree with the Council's assessment that the site is on the 'lip' or 'rim' of the bowl rather than entirely outside it. [7.3-6,8.9,9.1,10.10, 10.13-14]

- 14.10. The proposal would have a limited adverse effect on landscape character when considered in the context of LCA2c. Nevertheless, there would be a more noticeable effect in relation to the character of the area identified under policy (R) F.Coleford 11, due to its effect of consolidating and extending the built edge of Berry Hill further towards Coleford.

#### *Visual effect*

- 14.11. The Appellant's assessment of visual effects shows that there are few clear views into the site, other than from immediately adjoining vantage points such as Lower Lane.<sup>143</sup> In particular, few viewpoints provide the opportunity to appreciate the undeveloped quality of the appeal site in relation to Coleford and Berry Hill at the same time. The most significant is that from Gorse Road, where the viewer is able to take in the existing edge of Berry Hill, the intermittent development along Lower Lane and, turning southward, is then able to see the change in topography as the land falls away steeply towards Coleford.<sup>144</sup>
- 14.12. The photomontages illustrate the increased visibility of built development which would occur if the appeal proposal was to proceed. Factors such as the presence of existing development, the screening afforded by the current hedgerows and the further screening from the proposed wooded greenway along the southern edge of the development would all mitigate the extent of the impact. Nevertheless, even taking all of these into account, the roofscapes and upper levels of the proposed housing would be readily visible, with more extensive views of the development on fields 2 and 3. This view is along the main route between Berry Hill and Coleford and, to my mind, the adverse visual effect would be considerable. Despite the care taken in the formulation of the Development Framework, I consider that there would also be considerable harm to views from locations close to the site along Grove Road, Lower Lane and Hillcrest. I accept that the impact on field 5 would be moderated owing to its relationship with the existing built up area. Nevertheless, the harm would be of increasing severity the further west the development was taken. My assessment on this point would be consistent, in my view, with that of the

---

<sup>143</sup> See also Radmall, paragraph 4.17, which notes the lack of opportunities for medium to longer distance views

<sup>144</sup> Radmall, viewpoint 5; GDL 2, Fig A

Inspector who conducted the inquiry into the 2005 Local Plan.<sup>145</sup>  
[7.19-22, 10.27-39]

- 14.13. The proposal would be harmful both as to its effect on the character of the land which forms the setting to Coleford and as to its visual impact. Whilst these effects would in the main be confined to the immediately surrounding area, the proposal would still be contrary to policy (R) F.Coleford 11 and draft policy AP64. It would also run counter to the aim of the draft Berry Hill, Christchurch and Edge End Neighbourhood Plan, to retain the boundary to Berry Hill at its current extent.

***Issue 2: other matters which might weigh against the proposal***

- 14.14. Although the only other formal objection from the Council concerned the use of best and most versatile agricultural land, a range of other objections were made by BHAG and local residents, most notably with regard to site remediation works and flood risk.

***Best and most versatile agricultural land***

- 14.15. The Appellant has provided a report which confirms that the site is predominantly grade 2 and 3a agricultural land suitable for arable cropping and improved grassland. NPPF expects account to be taken of the economic and other benefits of the best and most versatile agricultural land, with development of areas of poorer quality land being preferred to that of a higher quality. I note the views of the letting agent as to certain characteristics which affect its attractiveness as grazing land but, as these could primarily be addressed by changes in the management regime, I consider that they do not indicate any lower value should be attached to its contribution to the supply of better quality agricultural land. However, the Council acknowledges that the use of such land has proved necessary elsewhere in the District in order to provide land for housing. Consequently, the extent to which use of best and most versatile land should count against the proposal will be dependent on the level of need for the site which can be demonstrated. [10.48-51]

***Site remediation works***

- 14.16. Local residents contend that the site should not be regarded as a normal greenfield site in view of the extensive mining which has been carried out and the limitations this would impose on the proportion of the site where development could take place, particularly in the eastern part of the site where most of the housing development would be located. This is due to the Appellant's having underestimated the likely cost of remediation works, the risk that further, as yet unidentified, remediation work will be required, or that the presence of mineshafts will restrict the capacity of the site due to the Coal Authority's requirement for a 20m zone of influence.<sup>146</sup> [8.2-3]

---

<sup>145</sup> Hillier Appx 7, pp 7.99-7.101: On my reading, the Inspector is treating field 5 of the appeal site as the eastern part of the omission site and field 4 as the western part.

<sup>146</sup> See especially Doc 24, BHAG response to Opus

14.17. The initial desk-based risk assessment indicated that a range of remediation works may be required.<sup>147</sup> However, this was followed by a second report which confirmed that, following a walk-over of the site, no further mine shafts had been identified. This suggests a relatively low risk for the unexpected discovery of additional shafts. In addition, the position of the mine shafts has now been clearly established by survey and has been taken into account in the indicative layout, meaning that the number of plots would be unlikely to be affected as a result of the need to maintain an appropriate stand-off distance.<sup>148</sup> Even adopting BHAG's estimated costings, which the Appellant considers to be on the high side, the likely remediation works would not render the scheme unviable. On the information provided, there can be reasonable certainty that the effects of past mining could be addressed by way of a condition which required that all necessary remediation works were carried out. On that basis, it would be reasonable to conclude that the level of remediation work is not a consideration which should weigh against the proposal in the planning balance. [8.4, 10.58, 10.140-142]

#### *Flood risk*

14.18. Residents point out that surface water flooding frequently occurs on the appeal site, with the Gamekeeper Inn having been affected on a number of occasions. In addition, the site lies on higher ground so that there could be an increased risk of flooding elsewhere unless appropriate arrangements were in place to manage run-off. The Flood Risk Assessment (FRA) acknowledges the occurrence of surface water flooding and notes the main post-development risk would be associated with storm water. It recommends that attenuation storage requirements should be designed to cater for a 30% increase in peak rainfall intensity and confirms that the four attenuation ponds correspond with the catchments within the site, based on the topographic survey. [8.11-12, 10.57]

14.19. Although it is clear that surface water flooding does occur, the evidence provided does not demonstrate that the site should be treated as anything other than Flood Zone 1. In addition, there is sufficient information in the FRA to show that flood risk could be managed within the site. This could be achieved by way of a suitably worded condition. On that basis, the development would not give rise to harm in relation to flood risk.

14.20. Although other issues were raised, including the possible effects on tourism and the availability of alternative transport choices, none are of sufficient substance as to weigh in the balance against the proposal. [8.5, 8.7]

#### ***Issue 3: housing need and supply***

14.21. The Appellant suggests the Council's case on housing need is at least in part driven by consideration of the Core Strategy figure of 310 dwellings per annum (dpa), even though there is no dispute that this does not represent the full, objectively assessed need for the District. The extent to which some authoritative assessment of need can be established through

---

<sup>147</sup> CD1.19

<sup>148</sup> Confirmed in Doc 23, paragraph 2.3

the Allocations Plan is a matter for that Local Plan examination. However, in the meantime, the evidence as to housing need and housing land supply in Forest of Dean is probably best described as in an evolving state. Through a series of planning inquiries, the Council's position as to need has developed, in line with the growing body of its own evidence and the findings of the various appeal decisions.

### *Housing need*

- 14.22. At the time of the inquiry into this appeal, the latest issued appeal decision dealing with this question, as tested at an inquiry, concerned an event held in June and July 2015 in relation to a site at Ross Road, Newent (the Newent decision).<sup>149</sup> In that decision, the Inspector concluded that the housing requirement of 320dpa was a constrained figure which did not take full account of likely job growth. Along with the need for affordable housing, it was his view that the housing requirement might be even greater than the 365dpa contained in the 2014 NMSS report,<sup>150</sup> then the most up to date assessment of objectively assessed need available. In the period since this inquiry was held, the Inspector at Tutshill indicated in his decision<sup>151</sup> that a figure of 320dpa lacked robustness and that need in the District would not be less than 365dpa.<sup>152</sup> [10.74-5, 12.15, 12.18-19]
- 14.23. Whilst regard is had to those previous decisions, this report considers the matter afresh, taking into account the updates to the relevant evidence base. A breakdown of the parties' cases is set out at Doc 5.
- 14.24. Using the more recent 2012-based household projections, the Council's current position is that the full, objectively assessed need stands at 320dpa.<sup>153</sup> Taking 2011 as the starting point, this would result in a backlog of 70 dwellings as at March 2015, giving a requirement of 1,670 over the next five years. Due to the record of persistent under delivery, the Council considers a buffer of 20% should be provided so that a supply of at least 1,990 deliverable sites needs to be demonstrated.
- 14.25. The Appellant takes issue with this on four main points: the adjustment to the 2012-based population projections with regard to 10 year flow rates; the adjustment in the light of the 2012-based household projections for household formation rates for the 25-44 age group; whether the figure takes proper account of economic growth; and whether an adjustment should be made on the basis of worsening market signals. [7.26,10.89]

### Migration flow rates

- 14.26. The parties agree that it is necessary to make an adjustment to the ONS projections since migration patterns during 2007-2012 would have been affected by economic recession. [7.29]

---

<sup>149</sup> CD7.13, APP/P1615/A/14/2228822, land north of Ross Road, Newent

<sup>150</sup> CD12.8/Mr McDonald Appx 1

<sup>151</sup> Although the Lydney decision has also been issued, the Council did not seek to argue that a five year housing land supply could be demonstrated at that time so its conclusions do not bear directly on this section of the Report.

<sup>152</sup> Doc 39 paragraph 37

<sup>153</sup> Based on an assessment of 310dpa plus an allowance for flexibility – see Gibbons paragraph 17



- 14.27. For the Council, it is argued that the Forest of Dean is highly atypical compared to the rest of the country. Attention is drawn to two particular factors: the lower rate of population growth in the Forest of Dean for 2001-2011, which was 2.7% compared to 7.4% for England; and a fall in the 20-39 age group of 16% during 2002-2012, this being the age group most likely to migrate. [7.29, 10.110]
- 14.28. The NMSS approach used by the Council adjusts the rate of inflow upwards by 5.8%, based on a comparison of the migration pattern over a ten year period. It concludes this would result in a population increase of 110pa, the equivalent of 44 additional dwellings a year. Using the Popgroup approach, the Appellant suggests the increase should be 190pa which would be the equivalent of 77 additional dwellings a year. [7.29]
- 14.29. As I understand it, the Popgroup approach takes into account age and gender as well as population movements between authority areas across the extended time period. The Appellant explains that the model's design is such that it will preserve the ratio of any movement so that, where an Authority experiences a lower inflow, such a pattern would be captured within the outputs. In comparison, the NMSS approach looks at the longer term picture and simply applies a percentage uplift to the ONS flow rates to bring them closer to the trend during 2002-2007, without making any adjustments elsewhere in the model. [10.111]
- 14.30. The Popgroup approach shows a greater degree of sophistication and has a greater level of internal consistency. However, despite its complexity it is accepted that Popgroup does not precisely reproduce the ONS model – it can only approximate it. The NMSS approach has the advantage of leaving the sensitivity to the particular characteristics of the Forest of Dean within the ONS model undisturbed whilst at the same time maintaining reasonable continuity between the pre-recession trend and the post-recession projections. Notwithstanding its methodological shortcomings therefore, it seems to me to be the more convincing assessment. As such, I consider that the Council's adjustment in relation to migration is to be preferred. [10.112-3]

#### Household formation rates

- 14.31. The Council contends that no adjustment to household formation rates is warranted. The Appellant contends that an upward adjustment should be made which would result in an additional 27dpa. [7.30, 10.116]
- 14.32. In 2014, using the 2011 DCLG household projections, the Council had accepted there should be an adjustment based on a partial return to trend for the 25-34 age group, calculated with reference to the 2008-based DCLG projections. At that point, the predicted number of households projected to form between 2011-2031 was increased from 5,780 to 6,110<sup>154</sup> and the annual rate was adjusted from 255dpa to 320dpa<sup>155</sup>. However the update report for the Forest of Dean in October 2015<sup>156</sup> notes

---

<sup>154</sup> McDonald, paragraph 16

<sup>155</sup> CD12.1 Review of Objectively Assessed Need,; CD12.8, The objectively assessed housing needs of Stroud, Forest of Dean and Cotswold

<sup>156</sup> CD12.10: The Objectively Assessed Housing Needs Of Forest Of Dean: update report

that the recently published 2012-based projections have fewer groups for which the household formation rates are projected to fall and that any falls are smaller than in the 2011-based projections. The report states that the 2012 projections can be used without adjustment. [7.30, 10.117-121]

- 14.33. Against this, the Appellant points out that the 2012 projections were still based on the 2011 census, which recorded fewer households in the 25-44 age group than had been expected. Their use, unadjusted, would thus fail to address the implications of continuing suppression of household formation amongst younger age groups.<sup>157</sup> In support of this, the Appellant suggests that the DCLG 2008 projections did not fully reflect reduced household formation rates in this age group, as observed in the Labour Force Survey data from 2008. In addition, attention is drawn to the evidence of worsening affordability such as the increase in the lower quartile ratio in the Forest of Dean from 4.1 to 9 between 2001 and 2008, compared to a national increase from 4.1 to 7.<sup>158</sup> [10.122]
- 14.34. This dispute turns, in large measure, on an understanding of the reliance which can be placed on the trends which informed the 2008 projections. On the one hand, it is argued, there are other reasons for reduced household formation amongst this key age group which will persist beyond any recessionary influence, such as student debt and precarious employment. In that case, the 2008 projections may have overestimated future household formation rates so that no return to trend is warranted. On the other, it may be that the 2008 projections were already reflecting the effects of undersupply, in which case even though the rates observed in the 2012-based projections have improved, they would still underestimate demand in this age group to some degree. [10.120]
- 14.35. It must be recognised that factors other than recession may influence household formation. Also, a large element of judgement is necessary in the interpretation and application of population data to the assessment of housing need. However, current planning policy places particular emphasis on meeting need in full and addressing the consequences of past under delivery.<sup>159</sup> Given the lack of any firm evidence that these non-recessionary factors are likely to materially affect the propensity for this age group to form separate households in the future, it seems to me that the 2008 projections provide the more reliable reference point so that some upward adjustment of the 2012 projections is still warranted in order to arrive at a full assessment of need. On that basis, the Appellant's assessment as to the need for an adjustment in relation to household formation rates should be preferred. [7.31-32, 10.122]

### Economic growth

- 14.36. The Council's analysis suggests that the housing requirement could be increased by 29dpa in order to meet increased demand based on the economic forecasts. However, following further examination of the forecasts and bearing in mind the level of uncertainty, the Council takes

<sup>157</sup> Donagh Fig 1 p45

<sup>158</sup> Donagh paragraphs 6.30-6.44

<sup>159</sup> NPPF paragraph 47; PPG Paragraph: 015 Reference ID: 2a-015-20140306

the view that no upward adjustment of the housing figure for the Allocations Plan is warranted at this stage. According to the Appellant, an increase of 36dpa should be made to the figure for objectively assessed need in order to allow for economic growth. The key difference therefore, is the principle of making any adjustment at all, rather than the quantum. [7.33-44]

14.37. Although the relevant labour market area is Gloucestershire, the location of the Forest of Dean to the west of the Severn means that it is somewhat peripheral to the main centres of economic activity. The District has high levels of out-commuting and generally performs less well in comparison with the County as a whole, with the projected job growth for the Forest of Dean to 2031 being 2.5% compared with 6.1% for Gloucestershire. [7.33-34, 8.6, 10.91]

14.38. Even so, in some respects the District's economic performance and prospects appear quite healthy. As the Appellant points out, the latest BRES data suggests strong employment growth including in the private services sector and the manufacturing sector, the latter being relatively more important to the Forest of Dean. There has also been substantial growth in self-employment. Both the Council and Appellant identify anomalies in the employment data which may be significant at the local level. The Council's analysis indicates possible over-reporting in agency services, suggesting that employment growth in the private services sector may not have actually occurred to the extent indicated. The Appellant points out that the apparent steep decline in public sector jobs may in fact be due to an error in the data which was subsequently corrected rather than to an actual fall in the number of jobs in that sector. However, I take the point that even if this was the case, there would nevertheless have been a fall in that sector, albeit in the region of 400 jobs rather than 2,200. [7.40-44, 10.95, 10.100-102]

14.39. A similar level of disagreement was demonstrated in relation to the employment forecasts. The Council's assessment draws on the 2014 forecasts by Cambridge Econometrics and Oxford Economics, both of which appear to show substantial growth in unexpected sectors. To my mind, the further analysis resulting in a correction to the predicted growth in the Cambridge figures in Government services is plausible, in view of the national context for public spending. This would amend the job growth in that forecast from 2,260 to 1,205. I am less convinced as to the basis for the correction to the Oxford figures for Financial and Business Services, bearing in mind the proposed development of the Cinderford Northern Quarter which is intended, in part, to address the comparative weakness of this sector in the Forest of Dean's economy. This would have the effect of reducing the forecast job growth in the Oxford projections from 1,220 to 575. [7.42, 10.96, 10.98]

14.40. The Appellant points out that there is a greater degree of consensus in the more recent, 2015 data for the 2014-2031 period, including having regard to the Experian forecast. These projections also show higher annual rates of job growth than the 2014 data. I recognise that volatility remains an issue when considering projections at this level. Also, I agree that it would be somewhat simplistic to rely on an average of the three forecasts,

without first considering critically the very different assumptions on which each forecast is based and, in turn, the implications of these for the Forest of Dean area. As such, I do not wholly accept the Appellant's assessment that job growth would be as high as 128 jobs per annum. Nor do I accept that, at this stage, expectations of employment as part of the Cinderford Northern Quarter project should be seen to be additional to the forecasts. The project has attracted public investment and has the support of the LEP. These are indicators that it is likely to progress and to provide some support to the local economy in the coming years. [10.94, 10.98, 10.106]

- 14.41. I am not persuaded as to the Appellant's argument that a job not lost should be regarded as a job gained. A job not lost is no more than that. It may be that the projections have made some allowance for a reduction in employment in this sector. However, those assumptions would be on the basis of a larger scale economic analysis so that the availability of a new source of business premises is unlikely to materially affect them. As such, I consider there is insufficient evidence to show that the overall forecasts should be raised by some 80-90 jobs per annum to allow for growth at Cinderford. [10.103-105]
- 14.42. There is then the question of whether such additional employment would be likely to lead to increased demand for housing. Whilst there would be some scope for a shift from part to full time working and productivity could also be expected to improve, it seems to me that this level of growth would be of an order sufficient to generate additional housing demand.
- 14.43. In summary therefore, I consider that the Council's assessment of the economic outlook for the area is overly pessimistic. Even though employment in the Forest of Dean may not grow at the same rate as that of the wider County or national economy, the more recent forecasts are all agreed that growth is expected. None suggest it would be as low as 575<sup>160</sup> and even the higher figure of 1,205<sup>161</sup> would be some way below any of the most recent forecasts. PPG expects the housing need assessment to be based on that which is likely to be needed over the plan period.<sup>162</sup> It does not require any greater level of certainty. The evidence provided indicates, on balance, that a higher level of growth is likely and that it would be of such significance as to warrant an upward adjustment in the housing figure, albeit not as high as estimated by the Appellant, owing to the treatment of growth at Cinderford in that analysis.

#### Worsening market signals

- 14.44. NPPF expects plans to take account of market signals. PPG then advises that adjustments should be made to reflect appropriate market signals and other market indicators of the balance between demand and supply. Although PPG states that a worsening trend in any of the indicators will require upward adjustment, this guidance is given in the context that appropriate comparisons of indicators should be made.<sup>163</sup> [7.44, 10.125]

---

<sup>160</sup> The adjusted Oxford figure

<sup>161</sup> The adjusted Cambridge figure

<sup>162</sup> See eg Paragraph: 003 Reference ID: 2a-003-20140306 and 018 Reference ID: 2a-018-20140306

<sup>163</sup> Paragraph: 020 Reference ID: 2a-020-20140306

14.45. The Appellant provides data on affordability ratios, concealed families, the rate of development and the need for affordable housing. Compared to England as a whole, affordability in the Forest of Dean deteriorated between 1997 and 2013. The affordability ratio is significant because it indicates the relationship between local house prices and local incomes. Although the Council and BHAG have provided evidence that there has been only a modest change in overall house prices during this period, this is of limited assistance in assessing affordability in the absence of data on local income levels over the same period. The Appellant provides data to show that the District compares poorly at County and national level in relation to the increase in concealed households. Whilst the changes on these indicators may not have been greatly different from the national picture, they suggest that the situation has nonetheless worsened materially over that time. Forest of Dean also has the third highest level of need for affordable housing in the housing market area. Taken together, these factors indicate worsening trends which would support an upward adjustment. [7.35, 8.8, 8.10, 10.126-130]

#### *Conclusions as to housing need*

14.46. In my view, the Council has dealt appropriately with the matter of migration flow rates. Nevertheless, further upward adjustment of the housing requirement is warranted, having regard to the evidence on household formation rates and economic growth. Whilst that adjustment may not be as great as the Appellant contends (27dpa to correct for household formation rates and 36dpa by reason of economic growth), it is also important to bear in mind the need to respond to market signals and the emphasis in national policy on planning for the full, objectively assessed need. On that basis, I take the view that the housing requirement for the plan period is likely to be in the region of 370dpa.<sup>164</sup> The backlog since 2011 would increase from 70 to 270 as a consequence.

#### *Housing land supply*

14.47. In the Newent decision, the Inspector took the view that significant weight could not be attached to the policies in the Allocations Plan, then at pre-examination stage. He took the Council's lower figure of 2,219 as the basis for his calculations, whilst noting that it may prove over-optimistic.<sup>165</sup> The Council's case to this inquiry was that the supply stood at 2,227. Based on my assessment of the housing requirement, the Council would need to demonstrate a supply of 2,120 dwellings which, with a 20% buffer, would amount to 2,544.<sup>166</sup> On that basis, even on the Council's own figures, a five year supply of deliverable housing sites has not been demonstrated.

14.48. In the event that the Secretary of State comes to a different view, I set out here my consideration of the evidence as to supply which was discussed at

---

<sup>164</sup> Taking 310dpa as the starting point and making upward adjustments according to the Appellant's assessment (27+36), this would produce a figure of 373. Given the uncertainties within my assessment, I have rounded this down to 370dpa

<sup>165</sup> CD7.3

<sup>166</sup>  $370 \times 5 = 1,850 + 270 \text{ (backlog)} = 2,120 + 20\% (424) = 2,544$

the inquiry.<sup>167</sup> With regard to sites allocated in the adopted plan, there appears to have been some progress in relation to the Cinderford sites. Despite the undoubted challenges of bringing forward development, the Council's assessment seems reasonable in the current circumstances (although I do not think this applies to sites 8 and 9). However, no material progress appears to have been made at Poolway Farm (site 12) or Sling (site 22) and the Council's assessment of delivery at Lydney continues to appear over optimistic (sites 15 & 17). For sites with existing or lapsed planning permission, two have not been renewed and the Council's assessment of delivery on the third disputed site appears on the high side (sites 32,41,43). [7.45,10.69]

14.49. With regard to sites in the Allocations Plan, the examination was underway at the time of the inquiry. It should be noted that this further stage in the plan preparation process led the Council to make proposals for only minor modifications to the consultation version of the Plan, suggesting that the plan publication stage had not given rise to fundamental doubts on the part of the Council as to the soundness of the Plan. That represents some advance in planning status which, for example, could well result in an allocation being accorded greater weight in the Council's own decision-making process. However, whilst allocated sites should be considered individually, NPPF footnote 11 expects there to be a 'realistic prospect' of housing being delivered. This indicates a potential site should be supported by specific evidence that it has attracted developer interest. Although there has been progress on the Allocations Plan, it does not constitute such evidence. [10.66-67]

14.50. The deliverability of sites in the Allocations Plan was dealt with in some detail as part of the Staunton appeal.<sup>168</sup> I do not entirely agree with the findings of that Inspector as, in the time since that inquiry was held, it appears that progress has been made on some sites, either in the form of a resolution to grant planning permission or with the opening of pre-application discussions.<sup>169</sup> However, many other sites still lack any clear expression of developer interest, notwithstanding the positive responses from landowners or agents. In that respect therefore, whilst I do not accept the Council's case in full, I consider that this source could be seen to contribute a further 128<sup>170</sup> sites to the supply, over and above those agreed between the parties. [7.46]

14.51. On that basis, the supply of deliverable sites is likely to be in the region of 1,900 sites, which would be a substantial shortfall against the 2,544 required to meet the full, objectively assessed need.<sup>171</sup>

---

<sup>167</sup> The sites referred to are as listed in Doc 3, the agreed list of disputed housing sites, which was considered at the housing land supply round table session.

<sup>168</sup> CD7.11 APP/P1615/A/14/2228466; those findings were also confirmed in the Tutshill appeal, Doc 39, paragraph 30

<sup>169</sup> See comments relating to Valley Road (site 54 for 15 units), The George, Mitcheldean (site 59 for 31 units), Netherend Dairy (site 61 for 7 units), North of Newnham (site 63 for 40 units) and Tutshill (site 65 for 35 units)

<sup>170</sup>  $15+31+7+40+35=128$

<sup>171</sup> Following the order of categories used in Doc 3, this consists of:  $754+450+277+370+48=1,899$

***Issue 4: whether the proposal is in accordance with local and national policy for the provision of housing***

- 14.52. The proposal would be contrary to Local Plan policy (R) F.Coleford 11. By virtue of its impact on the landscape, it would also conflict with Core Strategy policy CSP.1. The local plan was adopted in 2005 and its evidence base dates from 2002 whereas NPPF paragraph 165 expects policies to be based on up-to-date information. Also, the policy is not criteria-based, along the lines encouraged in NPPF paragraph 113. Whilst these shortcomings certainly point to an approach which is somewhat dated, the wording of NPPF paragraph 215 refers to the 'degree of consistency' with its policies. This suggests that the key test concerns the requirements of the policy and its effect in practice, rather than the way it is presented. [7.47-8, 7.49, 10.19]
- 14.53. National policy allows for the protection of valued landscapes. The argument as to whether the Coleford bowl (in whatever way it is eventually defined) should be designated as a landscape of local value is for the Allocations Plan examination process. For the purposes of this appeal, it is sufficient to note that such a designation is countenanced within NPPF so that policy (R) F.Coleford 11 is not inconsistent with national policy simply because it seeks to protect a landscape which is below the level of national designations. However, whilst this policy is primarily one for the protection of the countryside, it is undoubtedly also the case that its coverage was defined on the basis of settlement boundaries which have not been reviewed for some time. Those boundaries were defined in the context of long outdated assessments of population and housing levels. [10.20-21, 10.40-41, 10.132]
- 14.54. On that count, I consider that it is not consistent with NPPF. This has particular significance for this appeal because of the location of the appeal site, at the edge of one of the settlements. Given my findings as to the lack of a deliverable housing supply and the emphasis in NPPF on significantly boosting the supply of housing, this greatly diminishes the weight which the conflict with this policy should carry in the overall planning balance. In addition, since the conflict with CSP.1 is contingent on the conflict with policy (R) F.Coleford 11, the weight which that should carry in the planning balance should also be reduced. [10.45-47, 10.132-5]
- 14.55. The conflict with draft policy AP64 can carry limited weight in any event owing to the stage that plan has reached and the nature of the objections which have been made, especially in relation to the appeal site. That weight is further reduced since the aims of the policy, as a successor to policy (R) F.Coleford 11, have not been reviewed against the requirement to provide for full, objectively assessed housing need. At the time of the inquiry, the Berry Hill, Christchurch and Edge End Neighbourhood Plan was still at an early stage. Only a small portion of the appeal site lies within the plan boundary and there is no policy of direct relevance to the site. However, even though the conflict is of a minor nature, any weight which it might carry is further diminished by its reliance on the Berry Hill settlement boundary. At the time of writing, the Coleford Neighbourhood Plan has yet to be published so that no conflict can be identified in that regard. [7.50-52, 8.9, 9.5-6, 10.42]

- 14.56. According to my assessment, the supply of deliverable housing sites falls well short of that required to meet full, objectively assessed need. In view of the acknowledged use of best and most versatile agricultural land to meet housing need elsewhere in the District, I consider that the use of such land in this instance should carry limited weight against the proposal.
- 14.57. In favour of the proposal, a range of associated benefits have been identified. In the context of the shortfall in housing land supply, the contribution from this site would represent a substantial benefit, as would the provision of 40% affordable housing bearing in mind the high level of need identified. The open space, community park and woodland planting are primarily required to mitigate the impact of the development. However, I accept that there would be a small net benefit which would also weigh in favour of the proposal. [7.54, 10.137-139, 10.144-145]
- 14.58. In view of the reduced weight to be accorded to the conflict with the relevant development plan policies, I consider that these benefits would be more than sufficient to outweigh that conflict.
- 14.59. The proposal would bring economic benefits, particularly in relation to investment and employment in construction. Whilst BHAG provided data indicating there would be a limited range of employment opportunities in the immediate area, I have already noted that the weight of evidence is that there will be growth in employment in the District. The proposal would bring social benefits, particularly in meeting the need for market and affordable housing. Although the proposed woodland and tree planting would be beneficial, the impact on the landscape means that there would be a net disbenefit environmentally. However, taken as a whole, I consider that the proposal would represent a sustainable form of development. [8.13]
- 14.60. The balance in this case is whether the adverse impacts would significantly and demonstrably outweigh the benefits. To my mind, the adverse impact on the landscape would not be sufficient to significantly and demonstrably outweigh the range of benefits associated with the proposal, particularly the provision of market and affordable housing.

### **Recommendation**

- 14.61. Although the proposal would be in conflict with relevant policies of the development plan, the weight to be attached to that conflict is diminished by reason of inconsistency between those policies and NPPF. Applying the presumption in favour of sustainable development, the harm to the landscape would not significantly and demonstrably outweigh the benefits of the proposal, especially in view of the contribution to housing in the context of the shortfall in deliverable sites. These considerations are sufficient to outweigh the conflict with the development plan.
- 14.62. On that basis, I recommend that the appeal be allowed, subject to the conditions set out in Annex 1.

*K.A. Ellison*

Inspector





## INQUIRY DOCUMENTS

|     |    |   |
|-----|----|---|
| Doc | 1  | Note on proposed amendment ('Wheatcroft Application')   |
| Doc | 2  | Response to BHAG on Transport 13/11/2015  |
| Doc | 3  | Agreed list of disputed housing sites   |
| Doc | 4  | Itinerary for site visit  |
| Doc | 5  | Grounds of challenge to APP/P1615/A/14/2228822  |
| Doc | 6  | Inspector's Inquiry Note 01 – completed Table 1   |
| Doc | 7  | MJP Hillier Supplementary Statement – mining and viability (withdrawn)  |
| Doc | 8  | GCC CIL Compliance – Further Statement 18/11/15   |
| Doc | 9  | Agreed Statement on Boundary Stones for inclusion in SCoG   |
| Doc | 10 | Agenda, RTS Employment Growth   |
| Doc | 11 | Bundle of papers from BHAG concerning mining and stability  |
| Doc | 12 | Email correspondence GCC/Hydrock 28/10/15   |
| Doc | 13 | Berry Hill Action Group – Statements and Appendices   |
| Doc | 14 | Statement of Cllr Elsmore   |
| Doc | 15 | Statement of Eileen Dyer, West Dean Parish Council  |
| Doc | 16 | Statement of Walt Williams, BScEng  |
| Doc | 17 | Agenda, RTS Objectively Assessed Need   |
| Doc | 18 | Cornwall Local Plan – Inspector's Note  |
| Doc | 19 | NMSS worked example – UK internal migration   |
| Doc | 20 | Petition of Objection – 471 signatures  |
| Doc | 21 | Letter from Planning Inspectorate to West Dean PC concerning Neighbourhood Plan, dated 18/11/15                     |
| Doc | 22 | APP/P1615/W/15/3130372 Lydney   |
| Doc | 23 | OPUS response to MJP Hillier Supplementary Statement, 20/11/15  |
| Doc | 24 | BHAG response to OPUS   |
| Doc | 25 | Extracts from Planning Practice Guidance (PPG) – Viability  |
| Doc | 26 | Corrections to Mr Tait tables 2, 4, 5   |
| Doc | 27 | Gladman Developments Ltd - Representations to Forest of Dean Allocations Plan May 2015                              |
| Doc | 28 | Suggested conditions  |
| Doc | 29 | West Dean Parish Council – Five Acres project   |
| Doc | 30 | Coleford Town Council – recreational projects   |
| Doc | 31 | BHAG – A4136 road guide   |
| Doc | 32 | Completed Unilateral Undertaking  |
| Doc | 33 | Gloucestershire County Council Planning Obligations - Further Justification Statement November 28th 2015            |
| Doc | 34 | Forest of Dean Council Planning Obligation - Further Justification Statement 27/11/2015                             |
| Doc | 35 | Appellant's statement in response to further justification statements 2/12/2015                                     |
| Doc | 36 | Secretary of State decision dated 21 December 2015, APP/P1615/A/14/2218921 (the Lydney decision)                    |
| Doc | 37 | Appellant's comments on the Lydney decision dated 7 January 2016  |
| Doc | 38 | Council's comments on the Lydney decision dated 13 January 2016   |
| Doc | 39 | APP/P1615/W/15/3003662 dated 14 January 2016 (the Tutshill decision) and Appellant's comments dated 14 January 2016 |
| Doc | 40 | Council's comments on the Tutshill decision dated 21 January 2016   |
| Doc | 41 | BHAG's comments on the Tutshill decision dated 21 January 2016  |
| Doc | 42 | Partial application for costs on behalf of the Appellant  |

## **Core Documents**

### *CD1 planning application*

- 1.1 Application Covering Letter and Application Form
- 1.2 Location Plan Drawing No. 6108-L-06 (FPCR)
- 1.3 Socio-Economic Report (Gladman Developments Ltd)
- 1.4 Forest of Dean Housing Supply Assessment (Planning Prospects)
- 1.5 Planning Statement including Affordable Housing Statement and Draft S106 Heads of Terms (Savills)
- 1.6 Design and Access Statement (FPCR)
- 1.7 Landscape and Visual Impact Assessment (FPCR)
- 1.8 Development Framework (6108-L-03\_G) (FPCR)
- 1.9 Ecological Appraisal (FPCR)
- 1.10 Arboricultural Assessment (FPCR)
- 1.11 Noise Assessment (Wardell Armstrong)
- 1.12 Proposed Access Drawing (Hydrock)
- 1.13 Transport Assessment (Hydrock)
- 1.14 Travel Plan (Hydrock)
- 1.15 Air Quality Assessment (Wardell Armstrong)
- 1.16 Cultural Heritage and Archaeological Desk Based Assessment (CgMs)
- 1.17 Phase 1 Site Investigation Report (OPUS)
- 1.18 Flood Risk Assessment (OPUS)
- 1.19 Mining Risk Assessment Report (OPUS)
- 1.20 Coal Mining Assessment Review (Wardell Armstrong)
- 1.21 Geophysical Survey Drawings (Stratascan)
- 1.22 Statement of Community Involvement (Gladman Developments Ltd)
- 1.23 Sustainability Self-Assessment Form (Gladman Developments Ltd)

### *CD2 Additional & amended Reports submitted after validation*

- 2.1 Landscape Visual Impact Assessment Update (11 November 2014)
- 2.2 Updated Transport Assessment (October 2014)
- 2.3 Updated Travel Plan (October 2014)
- 2.4 Updated Ecological Appraisal (October 2014)
- 2.5 Updated Arboricultural Assessment (November 2014)
- 2.6 Archaeological Evaluation Report (October 2014)
- 2.7 Updated Housing Land Supply Assessment (October 2014)
- 2.8 Objective Assessment of Housing Need (September 2014)
- 2.9 Soils and Agricultural Land Use & Quality Report (October 2014)
- 2.10 Supplementary Foul Drainage Analysis Report (November 2014)

### *CD3 Correspondence with Local Planning Authority (not listed individually)*

### *CD4 Consultation Responses*

- 4.1 GCC Archaeologist (30 September 2014)
- 4.2 FoDDC EHO Scientific Officer email (2 October 2014)
- 4.3 FoDDC EHO Scientific Officer (2 October 2014)
- 4.4 GCC Highways (7 October 2014)
- 4.5 West Dean Parish Council (9 October 2014)
- 4.6 Coleford Town Council (14 October 2014)
- 4.7 The Coal Authority (14 October 2014)
- 4.8 FoDDC Biodiversity & Countryside Officer (15 October 2015)
- 4.9 GCC Highways (16 October 2014)

- 4.10 Welsh Water (6 October 2014)
- 4.11 FoDDC Biodiversity & Countryside Officer (20 October 2015)
- 4.12 Campaign to Protect Rural England (20 October 2014)
- 4.13 FoDDC EHO Scientific Officer (27 October 2014)
- 4.14 GCC Economic Development & Strategic Planning (28 October 2014)
- 4.15 GCC Archaeologist (30 October 2014)
- 4.16 GCC Highways (3 November 2014)
- 4.17 FoDDC Biodiversity & Countryside Officer (18 November 2015)
- 4.18 Welsh Water (25 November 2014)
- 4.19 FoDDC Land Drainage (26 November 2014)
- 4.20 Environment Agency (28 November 2014)

*CD5 Committee Report and Decision Notice*

- 5.1 Extract of Committee Report
- 5.2 Decision Notice
- 5.3 Extract of Committee Meeting Minutes

*CD6 Post Appeal Correspondence*

- 6.26 GDL to FODDC, application for costs, 16/9/2015

*CD7 Appeal Decisions*

- 7.1 Land at Beachley Road, Sedbury, Gloucestershire, NP16 7AA  
APP/P1615/A/14/2220590 (30 October 2014)
- 7.2 Land south of Cirencester Road, Fairford, GL7 4BS APP/F1610/A/14/2213318 (22 September 2014)
- 7.3 Land between Lydney Bypass and Highfield Road, Lydney, Gloucestershire  
APP/P1615/Q/14/2215840 (3 September 2014)
- 7.4 Homelands Farm, Bishop's Cleeve, Gloucestershire, GL52 8EN  
APP/G1630/A/11/2146206, PP/G1630/A/11/2148635 (16 July 2012)
- 7.5 Land to the South of Shutterton Lane, Dawlish, Devon APP/P1133/A/12/2188938  
(10 September 2013)
- 7.6 Highfield Farm, Tetbury, Gloucestershire GL8 8SD APP/F1610/A/11/2165778 (13 February 2013)
- 7.7 Former Asfordby Mine/Existing Asfordby Business Park LE14 3JL  
APP/Y2430/A/13/2191290 (4 March 2014)
- 7.8 Land off Reddings Lane, Staunton, Coleford, Gloucestershire  
APP/P1615/A/13/2204158 (23 June 2014)
- 7.9 Land off Foley Road, Newent, Gloucestershire APP/P1615/A/12/2177029 (11 March 2013)
- 7.10 Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa  
APP/H1840/A/13/2199085 and APP/H1840/A/13/2199426 (02 July 2014)
- 7.11 Land off Chartist Way, Staunton, Gloucestershire APP/P1615/A/14/2228466 (03 July 2015)
- 7.12 Land 7km north-west of Skegness and 2km south-west of Orby Village,  
Lincolnshire APP/D2510/A/11/2161066 (27 March 2015)
- 7.13 Land north of Ross Road, Newent, Gloucestershire GL18 1BE  
APP/P1615/A/14/2228822 (25 August 2015)
- 7.14 Land at New Haine Road, Ramsgate, Kent CT12 APP/Z2260/A/14/2213265 (29 October 2014)
- 7.15 Treona Garden Nursery, Gloucester Road, Corse APP/P1615/A/14/2222494 (11 March 2015)

7.16 Land between Leasowes Road and Laurels Road, Offenham, Worcestershire, WR11 8RE APP/H1840/A/13/2203924 (7 February 2015)

*CD8 Court of Appeal and High Court Judgments*

8.1 Cotswold District Council v SSCLG & Fay and Son Ltd - Mr Justice Lewis - [2013] EWHC 3719 - Case No: CO/3629/2013

8.2 East Northamptonshire DC v SSCLG - Mrs Justice Lang - [2013] EWHC 473 (Admin) - Case No: CO/4231/2012

8.3 Barnwell Manor Wind energy Ltd v East Northamptonshire DC – Lord Justice(s) Maurice Kay and Sullivan and Lady Justice Rafferty - [2014] EWCA Civ 137 - C1/2013/0843

8.4 Hunston Properties Ltd v SSCLG - Judge Pelling QC - [2013] EWHC 2678 (Admin)

8.5 City and District Council of St Albans v SSCLG - Lord Justice(s) Maurice Kay and Ryder and Sir David Keene - [2013] EWCA Civ 1610 - Case No: C1/2013/2734

8.6 Stratford on Avon DC v SSCLG - Mr Justice Hickinbottom - [2013] EWHC 2074 (Admin) - Case No: CO/12539/2012

8.7 Gallagher Homes Ltd & Lioncourt Homes Ltd v Solihull MBC - Mr Justice Hickinbottom - [2014] EWHC 1283 (Admin) - Case No: CO/17668/2013

8.8 Bernard Wheatcroft Ltd v SEE - Forbes J. - (1982) 43 P. & C.R. 233

8.9 Richard Hackett Pugh v SoSCLG - Mr. Justice Gilbart - [2015] EWHC 3 (Admin) - Case No: CO/3712/2014

*CD9 National documents*

9.1 National Planning Policy Framework

9.2 National Planning Policy Framework & Technical Guidance Note

9.3 not used

9.4 The Planning System: General Principles 2005

9.5 Regulation 122 of the Community Infrastructure Levy Regulation 2010

9.6 Circular 11/95: Use of conditions in planning permission 5 May 2006

9.7 Laying the Foundations (Nov 2011)

9.8 Housing and Growth (September 2012)

*CD10 development plan documents*

10.1 FoDDC Core Strategy (includes Appendix A: Replacement Policies) Adopted Version February 2012

10.2 FoDDC - LDF Proposals Map February 2012

10.3 FoDDC Allocations Plan, Submission Draft, August 2015

10.4 Report on the Examination into the Forest of Dean Core Strategy Development Plan Document, December 2011

10.5 Extracts from FoDDC Local Plan 2005

10.6 Extract from Local Plan Inspector's EiP Report (November 2003)

10.7 Direction Letter from the Government Office saving Local Plan policies (21 October 2008)

10.8 Gloucester and Cheltenham HMA Sub-Regional Strategy (extracts)

10.9 Forest of Dean Local Development Framework First Annual Monitoring Report, 2005 (AMR) (extracts)

*CD11 housing land supply*

11.1 FoDDC Strategic Housing Land Availability Assessment (SHLAA)

11.2 Housing Implementation Strategy and Trajectory 2013

11.3 Copy of Email from Persimmon Homes (dated 24 June 2105)

11.4 Forest of Dean District Council Housing Supply Updated July 2015 (Keynote 11)

*CD12 housing need*

- 12.1 Review of Objectively Assessed Need for Housing. Proposed Future Provision Allocations Plan 2011-26
- 12.2 Barton Wilmore OAN (September 2014)
- 12.3 Gloucestershire Strategic Housing Market Assessment (SHMA) update 2014
- 12.4 Gloucestershire Housing Affordability Model 2011
- 12.5 Consultation on the 2012-based SNPP: Summary of Responses, ONS, 29 May 2014
- 12.6 Forest of Dean Review of Economic Forecasts (June 2015)
- 12.7 not used
- 12.8 NMSS OAN (October 2014)
- 12.9 NMSS OAN Review (February 2015)
- 12.10 NMSS OAN FoD Updated (July 2015)
- 12.11 Strategic Economic Plan for Gloucestershire (March 2014)
- 12.12 Cinderford Northern Quarter Masterplan & Design Code (Delivery Extract) (July 2013)
- 12.13 Hybrid Planning Permission - Cinderford North (P0663/14/OUT)
- 12.14 Environmental Statement Volume 2: Technical Report (Cinderford North)
- 12.15 The Gloucestershire Housing Trends Report (2011)
- 12.16 Planning for housing in England: Understanding recent changes in household formation rates and their implications for planning for housing in England (RTPI Research Report no.1 January 2014)
- 12.17 Planning for Housing RTPI Toolkit FOD Results (extract)
- 12.18 Barker Review 10 Years On - HBF (March 2014)
- 12.19 Mark Carney speech (12 June 2014)

*CD13 Planning Documents*

- 13.1 FoDDC Topic Paper – Settlement Hierarchy for the Forest of Dean District
- 13.2 P0412/13/OUT Committee Report – Land off the Lydney Bypass and Highfield Road, Lydney
- 13.3 Report, late material and minutes of the Planning Committee meeting of 10 February 2015.
- 13.4 Reports to Cabinet and Council in relation to the Allocations Plan 26 February and minutes
- 13.5 CGT JCS Inspectors findings
- 13.6 FoDDC Affordable Housing Supplementary Planning Document (April 2010)
- 13.7 Air Quality Technical Guidance For FoDDC (dated July 2015)
- 13.8 FoD Play Area Provision SPG (dated July 2000)
- 13.9 FoD Residential Design Guide (adopted August 1998)
- 13.10 GCC Waste Minimisation in Development Projects SPD (September 2006)

*CD14 Landscape Documents*

- 14.1 Natural England Landscape Character Area Profile 105: Forest of Dean and Lower Wye
- 14.2 Forest of Dean District Landscape Strategy, Final Report, June 2004
- 14.3 Forest of Dean District Landscape Character Assessment, Final Draft Report, November 2002
- 14.4 Guidelines for Landscape and Visual Impact Assessment, third edition (GLVIA3), Landscape Institute and the Institute of Environmental Management and Assessment, 2013
- 14.5 Coleford Landscape Study (2013)
- 14.6 FoD Landscape SPD (March 2007)

*CD15 Amended scheme*

- 15.1 Development Framework Plan (drawing reference GLAD 6108-L-100)
- 15.2 Design & Access Statement, dated January 2015
- 15.3 Landscape and Visual Impact Appraisal, dated February 2015
- 15.4 Transport Assessment, dated February 2015

*CD16 Other Technical Documents*

- 16.1 Consolidated Geo-Environmental Report (Phase I and Phase II Site Investigation) dated 13 May 2015
- 16.2 Gas Risk Assessment (monitoring Report) dated 30 September 2015
- 16.3 Air Quality Screening Report (up to 200 residential dwellings) dated 16 September 2015
- 16.4 Air Quality Screening Report (up to 180 residential dwellings) dated 16 September 2015
- 16.5 Emissions Mitigation Assessment (up to 200 residential dwellings) dated 19 October 2015
- 16.6 Emissions Mitigation Assessment (up to 180 residential dwellings) dated 19 October 2015
- 16.7 Site Plan showing Boundary Stones locations (plan referenced 6108-L-07, dated October 2015)

**Annex 1 Conditions**

- 1) In the event that the development is phased, a phasing plan showing the proposed phases of development, including an outline of the sustainable drainage scheme for the entire site, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any development. Development shall be carried out as approved.
- 2) Details of the access within the site, 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 begins. In the event that the development is phased, development of the relevant phase shall not be begun before details of the reserved matters for that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out as approved.
- 3) Application for approval of the reserved matters for each phase of the development shall be made to the local planning authority not later than two years from the date of this permission.
- 4) The development hereby permitted or, if applicable, each phase of the development, shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 5) All reserved matters and details submitted pursuant to condition 1 shall accord generally with the parameters of the development as set out on the development Framework Plan 6108-L-100 dated January 2015 and shall include street scenes, existing site levels and sections and proposed site and slab levels and sections through the site at a scale of not less than 1:500.
- 6) No development shall commence until a scheme for foul water drainage broadly in accordance with the Supplementary Report by Utility Law Solutions dated November 2014 has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until details of the implementation, maintenance and management of a sustainable drainage scheme have been submitted to and approved by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
  - i) a timetable for its implementation, and
  - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.



8) No phase of the development shall take place until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall:

- i) specify the type and number of construction vehicles;
- ii) provide for the parking of vehicles of site operatives and visitors;
- iii) provide for the loading and unloading of plant and materials;
- iv) provide for the storage of plant and materials used in constructing the development;
- v) provide for wheel washing facilities;
- vi) provide for measures to control the emission of dust and dirt during construction;
- vii) specify the intended hours of construction operations;
- viii) provide for mitigation measures in accordance with BS:5228, Code of practice for noise and vibration control on construction and open sites.
- ix) provide for a Waste Minimisation Statement setting out a scheme for recycling/disposing of waste resulting from construction works.

9) No phase of development shall take place until full details of hard and soft landscape works for that phase have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. Details of hard landscape works shall include means of enclosure, vehicle and pedestrian circulation areas, hard surfacing materials, outdoor furniture, play equipment, refuse or other storage units, signs and lighting, and the routes of proposed and existing functional services above and below ground. Details of soft landscape works shall include species of trees and shrubs, their sizes and positions and the timetable for their planting. If, within a period of 5 years from the date of planting, any tree or plant is removed, uprooted, destroyed or dies, another of the same species and size shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

10) No phase of development shall take place until measures for the protection and interpretation of any Statutory Forest boundary stones within that part of the site have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved.

11) A landscape and open space works specification and management plan shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development. The Plan shall provide full details of the open space and associated car parking and play areas, including a Locally Equipped Area for Play at an area not less than 100 square metres per hectare of development. The Plan shall also include long term design objectives, management responsibilities and maintenance schedules for all public open space and play areas. Development shall be carried out in accordance with the approved details.

12) Construction work on each phase shall not begin until a scheme for protecting the proposed dwellings from noise, in accordance with the findings of the Noise Assessment Report August 2014, has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the mitigation measures for that dwelling have been implemented in accordance with the approved scheme.

13) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

14) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Guidance or any future guidance that replaces it. The scheme shall include:

- (i) The numbers, type, tenure, and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of housing units.
- (ii) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing.
- (iii) The arrangements for the transfer of the affordable housing to an affordable housing provider or for the management of the affordable housing if no registered provider is involved;
- (iv) The arrangements to ensure that such provision is affordable for both the first and subsequent occupiers of the affordable housing
- (v) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

15) For each phase of the development, no works shall commence on site (other than those required by this condition) until the access to that phase has been provided in accordance with details which have previously been submitted to and approved in writing by the local planning authority.

16) No development shall take place until the following have been submitted to and approved in writing by the local planning authority, together with a timetable for implementation and arrangements for adoption or maintenance:

- (i) a scheme for improvements to the existing footway alongside Grove Road or a comparable alternative pedestrian route;
- (ii) a footway and pedestrian crossing point in connection with the Lower Lane access;
- (iii) details of improvements to the existing bus stops on Lower Lane, to include a post, flag and hardstanding

17) No development shall be commenced until details of the arrangements for future management and maintenance of the proposed streets within each phase of the development have been submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

18) No development of any phase shall commence until a scheme has been submitted to and agreed in writing by the Council for the provision of fire hydrants for that phase served by mains water supply. No dwelling shall be occupied until the hydrant serving that property has been provided.

19) Prior to occupation of any phase of the proposed development, a travel plan shall be submitted to and agreed in writing by the Local Planning Authority broadly in accordance with the measures and actions outlined in the submitted Travel Plan report October 2014. The Travel Plan, which shall include measures for its implementation and monitoring, shall be operated in accordance with the approved details.

20) Prior to the commencement of each phase of development, a land contamination assessment and associated remedial strategy, together with a timetable of works, shall be submitted to and approved in writing by the Local Planning Authority:

(a) The land contamination assessment shall include a desk study and site reconnaissance and shall be submitted to the Local Planning Authority for approval. The desk study shall detail the history of the site uses, identify risks to human health and the environment, and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be submitted and approved in writing by the Local Planning Authority prior to investigations commencing on site.

(b) The site investigation shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.

(c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation strategy shall be submitted to and approved in writing by the Local Planning Authority prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters.

21) Prior to occupation of any dwelling:

(a) The approved remediation works shall be carried out in full on site under a Quality Assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works contamination

is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority in writing.

(b) A completion report shall be submitted to and approved in writing by the Local Planning Authority. The completion report shall include details of the proposed remediation works and Quality Assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the completion report together with the necessary waste transfer documentation detailing what waste materials have been removed from the site.

(c) A certificate signed by the developer shall be submitted to the Local Planning Authority confirming that the appropriate works have been undertaken as detailed in the completion report.

22) Prior to the commencement of the development, a scheme of remedial measures to address ground instability arising from mining activity shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full and no dwelling shall be occupied until the mitigation measures for that dwelling have been implemented in accordance with the approved scheme.

23) No dwelling shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the footway(s) to surface course level.

24) Prior to the commencement of each phase of the development, a Scheme Mitigation Statement in accordance with the Council's Air Quality Technical Guidance shall be submitted to and approved in writing by the Local Planning Authority. The Statement shall assess the estimated impact of the relevant phase on local air quality and specify equivalent mitigation measures. Development shall be carried out in accordance with the approved scheme.



## **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.