

**PROOF OF EVIDENCE OF PAUL INSTONE BSc(Hons), DipTP, MRTPI**

**PLANNING APPEAL UNDER SECTION 78 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990**

**Appeal Site:** Land at Oakley Farm, Cheltenham, GL52 6PW

**Appeal by:** Robert Hitchins Ltd

**Against:** Non-determination of Outline Planning Application

**Appeal Proposal:** Outline application for development comprising of up to 250 residential dwellings including provision of associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and formation of new vehicular access from Harp Hill. All matters reserved except for means of access to site from Harp Hill

**LPA Ref:** 20/01069/OUT

**PINS Ref:** APP/B1605/W/21/3273053

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## 1 INTRODUCTION

- 1.1 My name is Paul Edward Instone. I hold the qualification of BSc (Hons) in City and Regional Planning and a Diploma in City and Regional Planning from Cardiff University. I am a member of the Royal Town Planning Institute.
- 1.2 I am Director of Applied Town Planning Ltd and I have been working with Local Planning Authorities within the Joint Core Strategy Area on a regular basis since 2016.
- 1.3 I have been commissioned by Cheltenham Borough Council ('the Council') to present part of its case at this Inquiry.
- 1.4 My evidence should be read in conjunction with the evidence provided John Rowley, Stuart Ryder, Will Holborow as well as Gloucestershire County Council ('County Council') and the Cotswolds Conservation Board ('Conservation Board') who have been given Rule 6 status.
- 1.5 I will address specifically putative Reason for Refusal 1, the policy justification for Putative Reason for Refusals 2 and 4 and the overall planning balance.
- 1.6 In the absence of an appropriate planning obligation/agreed common ground, I also address the policy justification for the Council seeking a planning obligation to secure housing that would be available to households who cannot afford to rent of buy houses available on the existing market (putative Reason for Refusal 5).
- 1.7 In the absence of an appropriate planning obligation/agreed common ground I also address the policy justification for the Council seeking a planning obligation towards open space, outdoor recreation and sports facilities, and management and maintenance of hard and soft landscaped areas and any private streets (putative Reason for Refusal 5).
- 1.8 In my evidence I do not address the specific substance of the planning obligation requirements. Officers of the Council will attend the Inquiry to address the Inspector on these matters, if the putative reasons for refusal have not been overcome by the time of Inquiry.
- 1.9 The County Council as Local Education Authority with Rule 6 status will address the Inquiry on Reason for Refusal 6 and why the proposed development does not adequately provide for education and library provision. The County Council as County Highways Authority will also address the Inquiry on putative Reason for Refusals 3 and 7 insofar as the reasons why the proposal would result in a severe impact on the highway network, would fail to provide a safe and suitable access for all users, and the requirements for financial contributions towards necessary highway improvements works and the funding and implementation of the Residential Travel Plan.
- 1.10 The evidence I have prepared and provided for this appeal in this Proof of Evidence is true and has been prepared and is given in accordance with the

guidance of my professional institution and I confirm that the opinions expressed in this proof are my true and professional opinions.

## 2 THE APPLICATION AND THE PUTATIVE REASONS FOR REFUSAL

- 2.1 The planning application was validated on 16<sup>th</sup> July 2020. It was ascribed the Council reference number 20/01069/OUT. The description of development was as follows:

*‘Outline application for development comprising of up to 250 residential dwellings including provision of associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and formation of new vehicular access from Harp Hill. All matters reserved except for means of access to site from Harp Hill’.*

- 2.2 The appellant lodged an appeal against the non-determination of the planning application. The appeal was validated on 18<sup>th</sup> May 2021. Subsequently, the application was reported to the Council’s Planning Committee on 20<sup>th</sup> May 2021 in order to seek a resolution from the Committee as to how it would have determined the proposals if the Council remained the determining authority. The officer report considered the proposals and the Committee accepted the recommendation that the Council be minded to refuse the application proposals for the following reasons:

### Reason for Refusal 1

1) The application proposes the erection of 250 houses on greenfield/agricultural land within the Cotswolds Area of Outstanding Natural Beauty (AONB) and on land outside of the Principal Urban Area of Cheltenham (PUA).

Policy SD10 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (December 2017) stipulates that on sites that are not allocated for residential development, new housing development within the Cheltenham Borough administrative area will normally only be permitted on previously developed land within the PUA except where otherwise restricted by policies within District Plans. The proposed development does not satisfy any of the exception criteria of SD10 that would support housing development on this site.

The proposed development conflicts therefore with Policies SP2 and SD10 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (December 2017) in that the proposed development does not meet the strategy for the distribution of new development within Cheltenham Borough and the application site is not an appropriate location for new residential development.

### Reason for Refusal 2

2) The proposals constitute major development within the Cotswolds Area of Outstanding Natural Beauty (AONB). In accordance with national planning policy, the AONB is afforded the highest status of protection in relation to conserving and enhancing landscape and scenic beauty and in which major development is prohibited unless in exceptional circumstances and when in the public interest.

The proposed construction of 250 houses would, by virtue of the location and size of the application site, the scale and extent of development and the numbers of dwellings proposed plus associated infrastructure would fail to conserve or enhance the landscape and scenic beauty of the AONB and would result in significant harm to and permanent loss of the landscape quality and beauty of this part of the AONB. The proposed indicative mitigation measures intended to minimise harm to the AONB are considered inadequate, do not address the concerns and would alter the character of the site as a whole and result in harm to the AONB in themselves.

The applicant has failed to demonstrate any exceptional circumstances (or public interest) that would justify the proposed development within the AONB and thereby outweigh the identified harm to the AONB.

The proposed development is therefore contrary to Policies L1 and D1 of the Cheltenham Plan (2020), Policies SD4, SD6 and SD7 of the Joint Core Strategy (2017), Policies CE1, CE3, CE10 and CE12 of the Cotswolds AONB Management Plan 2018-23 and paragraphs 170 and 172 of the NPPF.

#### Reason for Refusal 3

3) The proposed development would, by virtue of design, layout and traffic generation result in a severe impact on the highway network and would fail to provide a safe and suitable access for all users, contrary to paragraphs 108, 109 and 110 of the National Planning Policy Framework, Policies INF1 and INF6 of the Joint Core Strategy (adopted December 2017), Policies LTP PD 0.3 and 0.4 of the Local Transport Plan (adopted March 2021), Policy CE10 of the Cotswolds AONB Management Plan 2018-23 and Manual for Gloucestershire Streets (adopted July 2020).

#### Reason for Refusal 4

4) The application site lies adjacent to designated heritage assets (grade II listed Hewlett's Reservoir and Pavilion). The proposals would have an unacceptable harmful impact on the setting of the heritage assets within Hewlett's Reservoir. As such, the proposed works are considered not to sustain or enhance the designated heritage assets and would cause harm to the significance of the affected designated heritage assets. In weighing this harm against the public benefits of the proposal, through the provision of housing, the public benefits of the proposals are not considered to outweigh the harm caused to the significance of the affected heritage assets. The proposed development is therefore contrary to Section 66(1) of the Planning (Listed Building and Conservation Area) Act 1990, Policy SD8 of the Joint Core Strategy 2017, Policy CE6 of the Cotswolds AONB Management Plan 2018-23 and Chapter 16 of the National Planning Policy Framework.

#### Reason for Refusal 5

- 2.3 5) Policies INF4, INF6 and INF7 of the Joint Core Strategy (JCS) (adopted 2017) (and Policy CI1 and CI2 of the Cheltenham Plan) state that where

infrastructure requirements are generated as a result of site proposals, new development will be served by appropriate on and/or off site infrastructure (including maintenance requirements) and community services. Financial contributions towards the provision of necessary infrastructure and services will be sought through the s106 or CIL mechanisms, as appropriate.

Policy SD12 of the JCS seeks the provision of 40% affordable housing in developments of 11 or more dwellings within the Cheltenham Borough administrative area. Affordable housing requirements will be delivered by way of on and/or off site provision and secured through the s106 mechanism.

The proposed development will lead to:

1. An increase in demand for playspace provision in the Borough and therefore the development should mitigate its impact in terms of adequate provision for on and/or offsite outdoor playing space. (Supplementary Planning Guidance - Playspace in Residential Development, Policy INF4, INF6 of the JCS, Policy C11 and C12 of the Cheltenham Plan and Section 8 of the NPPF).
2. Management and maintenance of hard and soft landscaped areas and any private streets
3. A need to provide for an element of affordable housing (Policy SD12 of the JCS and Policy C11 of the Cheltenham Plan) which would be expected to be provided in full on site.

No agreement has been completed to secure the delivery of affordable housing requirements, and schemes/strategies for play space provision and site management and maintenance. The proposal therefore does not adequately provide for affordable housing requirements, schemes/strategies for play space provision and site management maintenance and conflicts with Policies SD11, SD12, INF3, INF4, INF6 and INF7 of the JCS, Policies C11 and C12 of the Cheltenham Plan (adopted 2020), Supplementary Planning Guidance – Playspace in Residential Development and the NPPF as referred to above.

#### Reason for Refusal 6

Policy INF4, INF6 and INF7 of the Joint Core Strategy (JCS) (adopted 2017) (and Policy C11 of the Cheltenham Plan) states that where infrastructure requirements are generated as a result of site proposals, new development will be served by appropriate on and/or off site infrastructure and community services. Financial contributions towards the provision of necessary infrastructure and services will be sought through the s106 or CIL mechanisms, as appropriate. The proposed development will lead to a need to provide for education and libraries provision for the future residents (Policy INF6 of the JCS).

There is no agreement from the applicant to pay the requested financial contributions towards education (school places) and libraries provision that would be generated by the proposed development to make the application acceptable in planning terms. The proposal therefore does not adequately provide for education and library provision and conflicts with Policy INF4, INF6 and INF7 of the JCS

(adopted 2017), Policy CI1 of the Cheltenham Plan (adopted 2020) and guidance on developer contributions set out in the NPPF, CIL Regulations (as amended) and DfE Guidance on Securing Developer Contributions for Education.

Reason for Refusal 7

Policies INF4, INF6 and INF7 of the Joint Core Strategy (JCS) (adopted 2017) (and Policy CI1 of the Cheltenham Plan) state that where infrastructure and services requirements are generated as a result of site proposals, new development will be served by appropriate on and/or off site infrastructure, services and other remedial measures. Financial contributions towards the provision of necessary infrastructure, services and other remedial measures will be sought through the s106, s278 or CIL mechanisms, as appropriate. The proposed development would lead to a requirement for necessary off-site highway improvement works (JCS Policies INF1 and INF6) and the implementation of the Residential Travel Plan.

No agreement has been completed to secure the provision of necessary highway improvements works and the funding and implementation of the Residential Travel Plan. The proposal fails therefore to meet the expectations of Policy INF1 and INF6 of the JCS (adopted 2017), Policy CI1 of the Cheltenham Plan (adopted 2020) and guidance on developer contributions set out in the NPPF.

- 2.4 The Council expect that Reason for Refusals 5 and 7, and the library component of Reason for Refusal 6, will be addressed by appropriate planning obligations. However at the time of writing this Proof of Evidence a completed planning obligations has not been provided.



### 3 PUTATIVE REASON FOR REFUSAL 1

- 3.1 The first putative Reason for Refusal identifies conflict with Policies SP2 and SD10 of the Joint Core Strategy (JCS) (2017) (Core Document E1) in that the proposed development does not meet the strategy for the distribution of new development in Cheltenham Borough and the application site is not an appropriate location for new residential development.
- 3.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
- 3.3 The Development Plan currently comprises of the Cheltenham Plan (CP) (adopted 2020) (Core Document E2A) and the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS) (adopted 2017) (Core Document E1) and the saved policies of the Local Plan Second Review 2006 (Core Document E17).
- 3.4 Other material policy considerations include, but are not limited to:
- The National Planning Policy Framework (NPPF) (Core Document D1)
  - Planning Practice Guidance (PPG)
  - The Cotswolds AONB Management Plan 2018-23 (CMP) (Core Document J1)
- 3.5 Whilst the Council is firmly of the view that the proposal is contrary to the spatial strategy and housing related policies in the JCS, it is also the case that the Council cannot currently demonstrate a 5-year supply of deliverable housing sites. The Council's current position is that it can demonstrate a 3.9 year supply at March 2020 (Cheltenham Borough Council Five Year Housing Land Supply Position Statement 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2021) (Core Document F8A). John Rowley addresses the background to this position in his evidence.
- 3.6 At the time of preparing this Proof of Evidence, it is unclear whether the appellant agrees with the Council's stated 5-year supply position. I will not address the merits of alternative housing land supply calculation methodologies in my Proof of Evidence and if there are difference in opinions on the extent of the shortfall this matter will dealt with by John Rowley.
- 3.7 However, while it appears that the parties may disagree about the extent of the shortfall, it is common ground that a 5-year supply of deliverable housing sites cannot currently be demonstrated. The NPPF states at paragraph 11 and footnote 8, that if a local authority cannot demonstrate that a 5 year housing land supply exists, then the policies which are most important for determining the application are deemed out of date.

- 3.8 Consequently, paragraph 11 of the NPPF states that planning applications should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF as a whole, or that the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (my emphasis) (i.e. the presumption in favour of sustainable development).
- 3.9 Footnote 7 of the NPPF confirms that policies in the NPPF that protect areas or assets of particular importance relate to an Area of Outstanding Natural Beauty and designated heritage assets.
- 3.10 The protected areas or assets of particular importance as defined by footnote 7 which are of relevance to this case are:
- Cotswolds Area of Outstanding Natural Beauty (Cotswolds AONB),
  - Grade II listed structures at Hewlett's Reservoir including No. 1 Reservoir; No.2 Reservoir; Pavilion at Hewlett's Reservoir; Gates, gatepiers and boundary walls at Hewlett's Reservoir and Stone Lodge (curtilage listed).
- 3.11 The Council contends that the presumption in favour of sustainable development does not apply for two separate reasons set out in putative Reasons for Refusal 2 and 4, namely:
1. The proposals constitute major development within the Cotswolds Area of Outstanding Natural Beauty (AONB). In accordance with national planning policy, the AONB is afforded the highest status of protection in relation to conserving and enhancing landscape and scenic beauty and in which major development is prohibited unless in exceptional circumstances and when in the public interest. The proposed construction of up to 250 houses would, by virtue of the location and size of the application site, the scale and extent of development and the numbers of dwellings proposed plus associated infrastructure would fail to conserve or enhance the landscape and scenic beauty of the AONB and would result in significant harm to and permanent loss of the landscape quality and beauty of this part of the AONB. The proposed indicative mitigation measures intended to minimise harm to the AONB are considered inadequate, do not address the concerns and would alter the character of the site as a whole and result in harm to the AONB in themselves. The applicant has failed to demonstrate any exceptional circumstances (or public interest) that would justify the proposed development within the AONB and thereby outweigh the identified harm to the AONB. The appeal proposals therefore conflict with paragraphs 176 and 177 of the NPPF which conserves and enhances Areas of Outstanding Natural Beauty and that the application of this policy that protects areas and assets of particular importance provides a clear reason for refusing the development proposed.
  2. The proposal would have an unacceptable impact on the setting of Grade II listed No.1 Reservoir; No.2 Reservoir; Pavilion at Hewlett's Reservoir; Gates, gatepiers and boundary walls at Hewlett's Reservoir; and curtilage listed Stone

Lodge. The proposed development does not put great weight on conservation of the affected heritage assets and does not sustain and enhance the significance of heritage assets, therefore leading to less than substantial harm to the significance of the heritage assets. In weighing this harm against the public benefits of the proposal, including through the provision of housing, the public benefits of the proposals do not outweigh the harm caused to the significance of the affected heritage assets. The appeal proposals therefore conflict with paragraphs 199 and 202 of the NPPF and that the application of these NPPF policies that protect assets of particular importance provides a clear reason for refusing the development proposed.

- 3.12 The reasons why the application of policies in the NPPF that protect Areas of Outstanding Natural Beauty, which are defined as areas or assets of particular importance, provide a clear reason for refusing the appeal are set out in Section 4 of the Proof of Evidence.
- 3.13 Section 6 of this Proof of Evidence sets out the reasons why the application of policies in the NPPF that protect designated heritage assets, which are defined as areas or assets of particular importance, provide a clear reason for refusing the appeal.
- 3.14 On the basis of putative Reason for Refusals 2 and 4, and the evidence set out in this Proof of Evidence, alongside the evidence of Stuart Ryder and Will Holborow I consider that the 'tilted balance' is disapplied in so far as paragraph 11di of the NPPF is engaged. These present clear reasons to refuse the appeal and therefore the presumption in favour of sustainable development ceases to apply, however it is still necessary for the decision maker to have regard to all other relevant considerations before determining the appeal.
- 3.15 As confirmed by paragraph 12 of the NPPF, the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. The decision maker may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

### ***The Development Plan***

- 3.16 Policy SP1 of the JCS sets out the overall strategy concerning the amount of development required and Policy SP1(3ii) states that during the plan period 2011-2031 the housing requirement for Cheltenham will be at least 10,917 new homes.
- 3.17 Policy SP1(2) states that this is to be delivered by development within existing urban areas through District Plans, existing commitments, and urban extensions. This strategy aims to locate jobs near to the economically active population, increasing sustainability, and reducing out commuting thereby reducing carbon emissions from unsustainable car use.

- 3.18 Policy SP2 of the JCS sets out the distribution of the new development. Policy SP2(3) states that to meet the needs of Cheltenham Borough the JCS will make provision for at least 10,996 new homes over the plan period 2011-2031. This will be provided within the Cheltenham Borough administrative boundary and cross-boundary urban extensions at North West Cheltenham and West Cheltenham (both of which are partly within Tewkesbury Borough) defined in Policy SA1, and commitments covered by any Memoranda of Agreement. JCS Table SP2a identifies the sources of housing supply for Cheltenham Borough which would provide some 11,092 dwellings exceeding the housing requirement for at least 10,917 new homes as required by Policy SP1 and the objectively assessed need.
- 3.19 Of these 11,092 new homes, Policy A4 of the JCS identifies that the Strategic Allocation at North West Cheltenham will be expected to deliver 4,285 new homes and Policy A7 identifies that the Strategic Allocation at West Cheltenham will be expected to deliver 1,100 new homes. The principal reason why the Council cannot currently demonstrate a 5-year supply of deliverable housing sites, and is no longer able to meet its full housing requirement across the plan period, is because these Strategic Allocations have not progressed as intended. However, it is an important consideration in this appeal that housing delivery on both of these Strategic Allocations is progressing albeit at a longer trajectory. I rely on the evidence of John Rowley to set out the progress of the Strategic Allocations and the contributions that they will make towards the JCS housing needs provisions within and beyond the plan period.
- 3.20 In accordance with Policy SP1, Table 1 of the CP identifies sources of housing supply to meet the requirements of the JCS, including from the Strategic Allocations, completions, allocations, commitments and a windfall allowance. The CP identifies a total housing supply between 2011 and 2031 (as of June 2019) of 11,632 dwellings, exceeding the JCS objectively assessed need by 715 dwellings which equates to a 6.5% oversupply.
- 3.21 In confirming that the CP was sound and capable of adoption, the CP Inspector states at paragraph 75 of the Cheltenham Borough Council Cheltenham Plan, Inspectors Report 17 March 2020 (CPIR) (Core Document E16) that 'I am satisfied that the CP as modified identifies a supply of housing land in accordance with the requirements of Policy SP1 and is sound'.
- 3.22 In reaching this conclusion the CP Inspector states at paragraph 52 of the CPIR that:
- In the event of a failure to deliver the five year housing land requirement arising from the policies of the JCS, it is for the review of the JCS to determine the up to date requirement for housing and how it should be met. In these circumstances it is not a matter for the CP to demonstrate the provision of a five year supply of housing land (my emphasis).*
- 3.23 This approach is in accordance with Policy SP2(8) of the JCS which states that:
- 'The identification of any additional urban extensions to help meet the unmet needs of a local planning authority must be undertaken through a review of the*

*plan [JCS]. Any additional site allocations made through a local plan or any neighbourhood plans must be in conformity with the JCS spatial strategy' (my emphasis)*

- 3.24 Furthermore, at paragraphs 7.1.10 – 7.1.12 of the JCS, there is a Housing Supply Review Mechanism which states at paragraph 7.1.11 that:
- 'In the event of the strategic allocations cumulatively delivering less than 75% of their projected housing completions (considered annually), over three consecutive years (based on the trajectories set out in the Housing Implementation Strategy), this will trigger the need for the consideration of a partial or full JCS review'*
- 3.25 The evidence of John Rowley confirms that this trigger has been overtaken by events, however if a full JCS Review had not already started, a Review would most likely have been triggered once the monitoring data for the year 2020/21 had been published.
- 3.26 It is acknowledged that the Strategic Allocations have been delayed which has resulted in the Council currently being unable to demonstrate a 5-year supply of deliverable housing sites, and consequentially the Council is no longer able to meet its full housing requirement across the plan period. However, in these circumstances, both Policy SP2(8) of the JCS, paragraph 7.1.11 of the JCS and the CPIR clearly identify that in these circumstances it must be for the JCS/JCS Review to determine how the delayed and currently unmet housing requirements of the Strategic Allocations will be met.
- 3.27 A full review of the JCS is in progress with an Issues and Options consultation (Core Document E5) taking place at the beginning of 2019, and a Preferred Options (Regulation 18) consultation expected later in 2021. This will include a revision of housing requirements taking account of the progress of Strategic Allocations, and allocations to meet both housing and employment needs and all policies. Local Development Schemes for the JCS Authorities (Core Document E18) state that the JCS Review Adoption will be in Winter 2023.
- 3.28 The CP was adopted on that basis that in the event of a failure to deliver the five year housing land requirement arising from the policies of the JCS, it is for this JCS Review to determine the up to date requirement for housing and how it should be met. Policy SP2(8) of the JCS is also clear that the identification of any additional urban extensions to help meet the unmet needs of a local planning authority must be undertaken through a review of the JCS.
- 3.29 Therefore, it is evident that in the event of the current circumstances and the delay in the delivery trajectories of the Strategic Allocations, the CP was adopted on the basis, and Policy SP2(8) and paragraph 7.1.11 are clear that, it is for the JCS Review to determine how the housing requirement shortfall must be met.
- 3.30 The appeal site is located in open countryside, with the Cotswolds AONB and lies outside of the Principal Urban Area of Cheltenham as defined in the CP Proposal Map (Core Document E2B). The site is not allocated for housing in the JCS nor the CP.

- 3.31 JCS Policy SP2(6) states that in the remainder of the rural area, Policy SD10 will apply to proposals for new development.
- 3.32 Of relevance to this appeal, Policy SD10 of the JCS states that:
1. *Within the JCS area new housing will be planned in order to deliver the scale and distribution of housing development set out in Policies SP1 and SP2.*
  2. *Housing development will be permitted at sites allocated for housing through the development plan, including Strategic Allocations and allocations in district and neighbourhood plans.*
  3. *On sites that are not allocated, housing development and conversions to dwellings will be permitted on previously-developed land in the existing built-up areas of Gloucester City, the Principal Urban Area of Cheltenham and Tewkesbury town, rural service centres and service villages except where otherwise restricted by policies within District plans.*
  4. *Housing development on other sites will only be permitted where:*
    - i. It is for affordable housing on a rural exception site in accordance with Policy SD12, or;*
    - ii. It is infilling within the existing built up areas of the City of Gloucester, the Principal Urban Area of Cheltenham or Tewkesbury Borough's towns and villages except where otherwise restricted by policies within District plans, or;*
    - iii. It is brought forward through Community Right to Build Orders, or;*
    - iv. There are other specific exceptions / circumstances defined in district or neighbourhood plans.*
- 3.33 The appeal site is open countryside within the Cotswolds AONB, is located outside of Principal Urban Area of Cheltenham and is not allocated for housing development. The site is not previously developed land within the Principal Urban Area; is not a rural exception scheme; and does not represent 'infilling'. It has not been brought forward for development through a Community Right to Build Order and there are no policies in the CP which allow for the type of development proposed. The proposal therefore conflicts with Policies SP2 and SD10 of the JCS. The appellants accept the conflict with Policy SD10 in the Draft Planning Statement of Common Ground and this is common ground between the parties.
- 3.34 The proposal therefore conflicts with Policies SP2 and SD10 of the JCS and the spatial strategy in the CP. In my view it is contrary to the development plan taken as a whole.
- 3.35 It is recognised that the development would contribute towards the supply of market and affordable housing to help meet the objectively assessed need for housing in the area. This is of particular relevance given the fact that the Council cannot currently demonstrate a 5 year deliverable supply of housing, nor a plan

period supply. However, as set out in the evidence of John Rowley, the current 5 year supply and plan period shortfall has arisen because the Strategic Allocations have not progressed as intended.

- 3.36 The CP was adopted on that basis that in the event of a failure to deliver the 5 year housing land requirement arising from the policies of the JCS, it is for the JCS Review to determine the up to date requirement for housing and how it should be met. Policy SP2(8) of the JCS is also clear that the identification of any additional urban extensions to help meet the unmet needs of a local planning authority must be undertaken through a review of the JCS. The appeal proposal therefore conflicts with the spatial strategy taken as a whole.
- 3.37 In conclusion, I consider that the appeal proposal conflicts with Policies SP2 and SD10 of the adopted JCS. The conflict with the policies of the adopted development plan means the proposals are not in line with the development plan read as a whole, and this is the starting point for decision making. The proposed development does not meet the strategy for the distribution of new development in Cheltenham Borough and the appeal site is not an appropriate location for new development. In addition, the proposal conflicts with the Council's plan making process which in accordance with Policy SP2(8) states that the identification of any additional urban extensions to help meet the unmet needs of a Local Planning Authority must be undertaken through a review of the JCS.

## 4 PUTATIVE REASON FOR REFUSAL 2

- 4.1 The second putative Reason for Refusal identifies that the proposals constitute major development within the Cotswolds AONB. In accordance with national planning policy, the Cotswolds AONB is afforded the highest status of protection in relation to conserving and enhancing landscape and scenic beauty and in which major development is prohibited unless in exceptional circumstances and when in the public interest.
- 4.2 The reason for refusal identifies that the proposed construction of 250 houses would, by virtue of the location and size of the application site, the scale and extent of development and the numbers of dwellings proposed plus associated infrastructure would fail to conserve or enhance the landscape and scenic beauty of the Cotswolds AONB and would result in significant harm to and permanent loss of the landscape quality and beauty of this part of the Cotswolds AONB. The proposed indicative mitigation measures intended to minimise harm to the Cotswolds AONB are considered inadequate, do not address the concerns and would alter the character of the site as a whole and result in harm to the Cotswolds AONB in themselves. The applicant has failed to demonstrate any exceptional circumstances, or public interest, that would justify the proposed development within the Cotswolds AONB and thereby outweigh the identified harm to the Cotswolds AONB.
- 4.3 As such, the reason for refusal identifies that the proposed development is contrary to Policies L1 and D1 of the CP, Policies SD4, SD6 and SD7 of the JCS, Policies CE1, CE3, CE10 and CE12 of the CMP and paragraphs 176 and 177 of the NPPF (NPPF July 2021 paragraph numbers).
- 4.4 As a point of clarity, the reason for refusal identifies a conflict with Policy CE10 (Development and Transport) of the CMP, but this should refer to CE11 (Major Development). The appellant has been advised and this matter is addressed in the Draft Planning Statement of Common Ground.
- 4.5 The appeal site is located within the Cotswolds AONB Landscape Character Type 2 (Escarpment) and Landscape Character Area 2c (Escarpment: Coopers Hill to Winchcombe) and the appeal proposes the development of up to 250 houses, including associated infrastructure, a new vehicle access, ancillary facilities as well as open space and landscaping within the boundary of the Cotswolds AONB.
- 4.6 Paragraph 176 of the NPPF states that 'Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues... The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas (my emphasis)'
- 4.7 I rely on the evidence of Stuart Ryder to identify the detrimental impact of the proposal on the landscape and scenic beauty of the Cotswolds AONB, and why the indicative mitigation measures intended to minimise harm to the Cotswolds



AONB are considered inadequate, do not address the concerns and would alter the character of the site and result in harm to the Cotswolds AONB.

- 4.8 The evidence of Stuart Ryder demonstrates the proposals do not conserve and do not enhance the landscape and scenic beauty of the Cotswolds AONB. Indeed, Stuart Ryder's evidence demonstrates that the proposal would have a *Major Adverse and Permanent effect on the landscape character of the Site. It would cease to be a recognisable or functioning part of the Cotswolds AONB and as a valued landscape its overall character is neither protected nor enhanced.*
- 4.9 In accordance with paragraph 176 of the NPPF, great weight must be afforded to the identified Major, Adverse and Permanent harm to the landscape and scenic beauty of the Cotswolds AONB in the decision making process and that the proposal fails to either conserve or enhance the AONB.
- 4.10 Paragraph 177 of the NPPF states that '*When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:*
- (a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
  - (b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
  - (c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated' (my emphasis).*
- 4.11 In regard to AONB matters and the requirements of the NPPF, the appellant's case as set out in their Statement of Case is summarised that the Council cannot currently demonstrate a five year or plan period housing supply and that there is a 'pressing need' for housing in the area. The appellant also considers that the failure to meet housing needs for Cheltenham would have a 'detrimental effect' on the economy and undermine the economic objectives of the JCS. Concurrently the appellant makes the case that Cheltenham is 'highly constrained' and that if development does not take place in the Cotswolds AONB adjacent to the built-up area housing development would need to take place in the Green Belt or in locations more distant from Cheltenham and that in these circumstances housing needs would not be met where they arise. Finally, in terms of detrimental effect on the environment, the landscape and recreational opportunities, the appellant makes the case that 'the development proposals retain the features which make the greatest contribution and have the highest sensitivity, limiting potential adverse impacts [on the Cotswolds AONB]'.
- 4.12 Having regard to the appellant's case I firstly consider, the requirements of paragraph 177 of the NPPF.

*Is the Proposal Major Development?*

- 4.13 Paragraph 177 of the NPPF confirms that permission should be refused for major development in the AONB other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Footnote 60 of the NPPF confirms that *'For the purposes of paragraphs 176 and 177, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined'*.
- 4.14 It is common ground that the appeal proposal is 'major development' for the purposes of paragraphs 176 and 177 of the NPPF, so I do not provide detailed consideration of this matter.
- 4.15 However, I consider the proposal is major development for the following reasons:
1. The application site extends to 15.15 hectares and proposes up to 250 houses alongside associated infrastructure. The nature, scale and form of the proposal is therefore major and significant in the context of the AONB.
  2. The evidence of Stuart Ryder confirms that the proposal would have major, adverse and permanent overall landscape effect at the site and there is no protection or enhancement of the scenic qualities of the Cotswolds AONB as a valued landscape at the site and as experienced in views from other parts of the AONB. The proposal would therefore have a significant adverse impact on the purposes for which the AONB has been designated or defined, which as set out in Appendix A of the CMP is to conserve and enhance their natural beauty. Page 18 of the CMP confirms that Cotswold escarpment is one of the special qualities of the AONB, including views from and to the AONB, and the proposal would detrimentally impact on this special quality.

*Are there Exceptional Circumstances and can it be demonstrated that the development is in the public interest?*

- 4.16 Paragraph 177 of the NPPF states that planning permission should be refused for major development in an AONB other than in exceptional circumstances and where it is can be demonstrated that the development is in public interest. I consider the factors which the NPPF states should be included in this assessment of exceptional circumstances below:

**a and b) The need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; and the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way**

- 4.17 The appellant contends that the LPA is unable to demonstrate a five year housing land supply or a plan period supply and that these are clear indicators that identified housing needs are not being met now or in the foreseeable future and that the provision of 250 additional homes (40% of which will be affordable) will make a significant contribution to addressing those needs. The appellant also

considers that the failure to provide sufficient homes for the local workforce will in turn undermine the ability to meet the economic objectives of the JCS.

- 4.18 It is common ground that the Council cannot current demonstrate a 5-year supply of deliverable housing sites and that the Council cannot currently demonstrate a plan period supply. As set out in John Rowley’s Proof of Evidence, there are specific reasons for this housing supply shortfall, being that the Strategic Allocations within the JCS have not progressed as intended. However, it is an important consideration in applying the exceptional circumstances test, that these Strategic Allocations are now progressing and will provide housing within and beyond the plan period. Notwithstanding this matter, as required by the JCS in these circumstances, a full review of the JCS is in progress which will include a revision of housing requirements taking account of the progress of the Strategic Allocations.
- 4.19 Paragraph 15 of the NPPF states that *‘the planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings’ (my emphasis).*
- 4.20 Paragraph 31 of the NPPF states that *‘The preparation and review of all policies should be underpinned by relevant and up-to-date evidence’ (my emphasis).*
- 4.21 Paragraph 32 of the NPPF states that *‘Local plans and spatial development strategies should be informed throughout their preparation by a sustainability appraisal that meets the relevant legal requirements. This should demonstrate how the plan has addressed relevant economic, social and environmental objectives (including opportunities for net gains). Significant adverse impacts on these objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where significant adverse impacts are unavoidable, suitable mitigation measures should be proposed (or, where this is not possible, compensatory measures should be considered)’(my emphasis).*
- 4.22 Paragraph 35 confirms that in order for plans to be sound they are required to be:
- ‘(a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;*
- (b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;*
- (c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and*

*(d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant’ (my emphasis),*

- 4.23 I rely on the evidence of John Rowley to explain the plan preparation process and the progress of the JCS Review. However, the NPPF is clear that the planning system should be genuinely plan-led and this is fundamental to the purpose of the planning system to contribute to sustainable development. It is the role of the plan-led system to demonstrate how a plan has addressed relevant economic, social and environmental objectives, and provide an appropriate strategy, taking into account the reasonable alternatives, based on proportionate evidence.
- 4.24 I consider that the plan-making approach is in the public interest. The plan-led system provides a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings. The plan-led system is underpinned by relevant and up-to-date evidence and an appropriate strategy must be justified taking into account the reasonable alternatives, and based on proportionate evidence. This approach is integral to achieving a sustainable pattern of development within the public interest.
- 4.25 Paragraph 3.2.2 of the JCS states that it has long been recognised that Gloucester and Cheltenham cannot wholly meet their development requirements within their administrative areas, and as such collaborative working across boundaries through the Duty to Co-operate is necessary. All the Gloucestershire local planning authorities are working together, within the context of the Duty to Co-operate and Policy SP2 of the JCS to ensure that new development plan documents properly address strategic planning and cross-boundary issues.
- 4.26 The JCS Review is being prepared in this context and in accordance with the requirements of the NPPF. As such the JCS Review will provide a consideration of reasonable alternatives based on proportionate evidence, giving consideration to cross boundary issues to ensure that the JCS properly addresses strategic planning and cross-boundary issues, whilst providing a platform for local people to shape their surroundings. This approach allows for consideration of alternatives through an evidence-based system taking into account the considerations of all stakeholders including the public to achieve a sustainable pattern of development allowing housing needs to be met where they arise.
- 4.27 It is therefore in the public interest that the plan period and five year supply shortfall which has arisen because the Strategic Allocations have not progressed as intended, is planned for strategically as part of the plan-led approach as required by paragraph 7.1.11 of the JCS. In my opinion this approach may lead to the removal of land from the Green Belt, housing development in the AONB and/or development within and outside the Council’s administrative boundary. However, the plan-led approach allows for detailed consideration of alternatives through an evidence-based approach and the Plan will demonstrate how it has addressed relevant economic, social and environmental objectives whilst avoiding significant adverse impacts on these objectives wherever possible.

4.28 By contrast, Section 4 of the appellant's Environment Statement (Core Document A36A) submitted in support of the planning application states at paragraph 4.2.2 that:

*'The main alternatives to the Proposed Development which the Applicant has studies[sic] include:*

- *The 'No Development' Alternative; and*
- *Alternative Designs'*

4.29 This approach is in stark contrast to the requirements of paragraph 177b of the NPPF which states that consideration of major development in the AONB should include an assessment of whether there is scope to develop outside of the designated area of the AONB, and whether the need can be met in some other way. The appellant's Environmental Assessment is clear that no alternatives have been considered outside the designated area of the Cotswolds AONB, and no assessment has been undertaken of whether the need for housing can be met in some other way, including on other sites within the Cotswolds AONB which may give rise to less harm. I consider that this inadequate consideration of alternatives is harmful to the public interest, as the approach leads to significant harm to the Cotswolds AONB without appropriate justification.

4.30 The fact that the proposal will also harm the landscape and scenic beauty of the AONB and thus the public's enjoyment of the Cotswolds AONB, which is the foundation on which the tourism industry is based as well as being a recreational facility for local residents is also harmful to the public interest.

4.31 It is the case that the appeal proposals would contribute to housing need, including the shorter term need arising from the delay in the delivery of the Strategic Allocations. It is also considered that there is a considerable public interest in the Council being able to demonstrate a 5-year supply of deliverable housing sites and for the Council to be able to demonstrate that it can meet its minimum housing requirement across the plan period. However, a plan-making mechanism is in place through the JCS Review which will address the housing supply shortfall.

4.32 However, it is significantly harmful to the public interest for the requirements of the JCS and the plan-making approach to be circumvented, and for major housing development to be delivered within an Area of Outstanding Natural Beauty without a consideration of alternatives through an evidence-based system taking into account the considerations of all stakeholders including the public to achieve a sustainable pattern of development.

4.33 I consider that the significant harm to the public interest of circumventing the plan-making approach and delivering major development within an Area of Outstanding Natural Beauty without a consideration of alternatives through an evidence-based system significantly and demonstrably outweigh the benefits to the public interest arising from the delivering of housing (when recognising the current 5-year housing supply and plan period shortfall). I therefore consider that the appeal proposal is significantly harmful to the public interest and this is a clear reason to

refuse the proposal in accordance with paragraph 177 of the NPPF as the proposal 'is not in the public interest', and is indeed significantly harmful to the public interest.

- 4.34 The appellant's may allege that as the Council is unable to demonstrate a 5-year supply of deliverable housing sites and is unable to demonstrate that it can meet its minimum housing requirement across the plan period this equates to an 'exceptional circumstance' in the context of paragraph 177 of the NPPF.
- 4.35 I agree with the appellant that there is a 'pressing need' for the delivery of housing in Cheltenham and it is my view that significant weight should be afforded to the delivery of open market and affordable house in the decision-making process. However, I consider that the provision of housing in isolation does not amount to an exceptional circumstance taking into account that the plan-making mechanisms are in place to address the housing shortfall arising from the delay in delivery of Strategic Allocations.
- 4.36 Moreover, even if the 'pressing need' for the delivery of housing in Cheltenham were to be considered an 'exceptional need', I consider that this need does not equate to an 'exceptional 'circumstance' to warrant support for the proposal, without consideration of whether there may be alternative sites that are more suitable which would result in less harm to the AONB.
- 4.37 This principle is set out in to R (Mevagissey Parish Council) v Cornwall Council [2013] EHC 3684 (Core Document K25) in which Justice Hickinbottom states at paragraph 52 that:
- 'Even if there were an exceptional need for affordable housing in an area, that would not necessarily equate to exceptional circumstances for a particular development, because there may be alternative sites that are more suitable because development there would result in less harm to the AONB landscape' (my emphasis).*
- 4.38 This approach is consistent with paragraph 177 of the NPPF which states that the exceptional circumstances test should include an assessment for the scope for developing outside of the AONB, or meeting the need in some other way. The appellant has provided no detailed analysis in support of the planning application nor within their Statement of Case considering whether the need for housing can be met on alternative sites, either inside or outside of the AONB which would result in a form of development which would be less harmful to AONB landscape. The Environmental Statement (Core Document A36A) submitted in support of the application at paragraph 4.2.2 also confirms that the only alternatives which have been considered are the no development alternative and alternative development options on the appeal site.
- 4.39 In these circumstances the appellant has clearly not demonstrated that the exceptional circumstances test is satisfied and no assessment has been undertaken of the scope for developing outside the AONB or meeting the need in some other way. Merely the appellant is seeking to circumvent the plan-led

approach, and the consideration of alternatives, through an evidence-based system taking into account the considerations of all stakeholders.

- 4.40 The proposal therefore also fails to satisfy the exceptional circumstances test for these reasons.
- 4.41 Paragraph 173a of the NPPF also states that the consideration of the exceptional circumstances test, should include any national considerations, and the impact of permitting, or refusing, the proposal on the local economy.
- 4.42 At the outset, when considering the impact of the proposal on the local economy, the value of the AONB to the local economy must be understood. The Assessment of the economic value of the Cotswolds AONB (Core Document J4) Final Report identifies at Section 2.3 that at 2013 *'it is estimated that some 23 million people visit the Cotswolds AONB each year, the majority of whom are on day visits, often as part of a wider tour. Visit England's Strategic Framework for Tourism 2010 – 2020 refers to the Cotswolds as one of England's long established and world-famous "attract" brands, which can help to attract visitors and encourage them to travel and spend more widely in the country as a whole. It is estimated that tourism in the area generates revenues of around £425 million each year'*.
- 4.43 The text on page 55 of the CMP (Core Document J1) also states that *'The natural beauty of the Cotswolds AONB is the foundation on which the tourism industry in the Cotswolds is based'*
- 4.44 Therefore in considering the net economic impacts of the proposal, it is necessary to recognise that the AONB is a national economic asset and a national resource and the foundation of the tourism industry is based on its natural beauty.
- 4.45 Furthermore paragraph 7.1 of the CP identifies that Cheltenham owes much to its setting at the foot of the Cotswold escarpment and that the town's eastern fringes include the high-quality scenery of the escarpment. Paragraph 7.4 of the CP recognises that Cheltenham's attractive setting is undoubtedly one of its prime assets and is recognised by the emerging Place Strategy for the Borough (Core Document E19) as a key factor in helping to achieve sustainable economic growth and securing social wellbeing.
- 4.46 The harm which arises from this proposal to the landscape and scenic beauty of the AONB and its escarpment special quality, as well as the setting of Cheltenham, which is both a national, regional and local economic asset, must be considered against any economic benefits that arise from the proposal.
- 4.47 In terms of the potential positive impact of the proposal on the the local economy, the appellants assert in their Statement of Case that the 'failure' to meet housing needs will have a detrimental effect on the economy both directly and indirectly, noting that the spatial strategy identifies Cheltenham as the principal provider of job and homes along with Gloucester. As such the appellant considers that the failure to provide sufficient homes for the local workforce will undermine the ability to meet the economic objectives of the JCS.

- 4.48 In considering the economic impact on the local economy, firstly some sense of proportionality is required. Policy SP1 of the JCS identifies that the housing requirement for the JCS area is 35,175 homes across the plan period and the housing requirement for Cheltenham is at least 10,917 homes. Assuming that the site delivers 250 homes, the site would provide 0.7% of the JCS housing supply and 2.3% of the Cheltenham Borough housing supply. The proposal will therefore make a negligible contribution to the plan period housing supply in the context of delivering Strategic Objective 1 of the JCS to build a strong and competitive urban economy.
- 4.49 Secondly, it is an important consideration, that the delivery of housing has only been delayed because the Strategic Allocations have not progressed as intended. The housing delivery on both of these Strategic Allocations is progressing albeit at a longer trajectory. The JCS Review, which will be adopted during the plan-period, will address the housing shortfall arising from the delayed progression of the Strategic Allocations and homes will be provided for the local workforce as a result of the JCS review. The plan-making mechanisms are in place to address the housing shortfall and are being implemented as required by paragraph 7.1.11 of the JCS, and it is not the case that homes for the local workforce will simply be 'lost', but instead will be planned for through an appropriate plan-led approach.
- 4.50 Having regard to the above, I consider that the AONB is a national economic asset and the proposal would result in significant harm to the landscape and scenic beauty of the Cotswolds AONB which is the foundation on which the tourism industry is based. In addition as the plan-making mechanisms are in place to deliver the shortfall in houses to meet the needs of the local workforce, and given the scale of the proposal, any net benefits to the economy of permitting the proposal would not amount to an exceptional circumstance to justify approval of the proposal, which is the threshold test in paragraph 177 of NPPF.
- 4.51 For these reasons it is not considered that there are economic circumstances, including on the local economy, that amount to exceptional circumstances.

**C) Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated**

- 4.52 Paragraph 173(c) of the NPPF states that consideration of whether exceptional circumstances are demonstrated, should include an assessment of any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
- 4.53 I rely on the evidence of Stuart Ryder's evidence to identify the detrimental impact of the proposal on landscape, and why the indicative mitigation measures intended to minimise harm to the AONB are considered inadequate, do not address the concerns and would alter the character of the site and result in harm to the AONB.
- 4.54 The evidence of Stuart Ryder demonstrates that the overall landscape effect at the site is Major, Adverse and Permanent; the overall landscape effect in the contextual area to the site is Moderate, Adverse and Permanent; and all the short,



mid and long range views that include the site as a piece of the Cotswolds AONB are reduced in scenic quality.

- 4.55 I rely upon the evidence of Stuart Ryder to explain the reasons why the appeal proposal would result in these identified harms and I equate these harms to a significant harm in the planning balance.
- 4.56 Whilst it is also acknowledged that there is potential for a net biodiversity gain arising from the proposed development, this needs to be weighed against the overall harmful effects of proposals on the character of this site and the significant adverse impact on the Cotswolds AONB. Any achievement of net biodiversity gain that may occur does not amount to an exceptional circumstance but is simply according with the requirements of paragraph 174(d) of the NPPF.
- 4.57 Similarly, whilst the proposal would increase public access to the site and create areas of open space which are publicly accessible, the proposal would in effect result in the loss of part of the AONB. In any event, the proposal does not give rise to recreational opportunities, which would amount to exceptional circumstances in the context of Paragraph 177(c) of the NPPF.
- 4.58 For these reasons, the significant adverse impact of the proposal on the landscape and scenic beauty of the AONB gives rise to a reason to refuse the application in isolation. Therefore, the significant adverse impact on landscape, and the effect of the proposal on environment and recreational opportunities do not give rise to any decision other than refusal of the proposal in accordance with paragraph 177 of NPPF. There are no exceptional circumstances.

#### **Conclusions on NPPF AONB policy and the Exceptional Circumstances and Public Interest Tests**

- 4.59 The evidence of Stuart Ryder demonstrates the proposals do not conserve and do not enhance the landscape and scenic beauty of the AONB. Indeed, Stuart Ryder's evidence demonstrates overall landscape effect at the site is Major, Adverse and Permanent and that all the short, mid and long range views that include the site as a piece of the Cotswolds AONB are reduced in scenic quality. In accordance with paragraph 176 of the NPPF great weight must be afforded to this harm to the AONB landscape and scenic beauty of the Cotswolds AONB in the decision making process and that the proposal fails to either conserve or enhance the AONB.
- 4.60 Moreover, the proposal represents major development in the AONB and paragraph 177 of the NPPF states that major development should be refused other than in exceptional circumstances and where it is in the public interest.
- 4.61 My evidence concludes that the development is not in the public interest and is indeed significantly harmful to the public interest.
- 4.62 I consider the economic impacts of the proposal do not give rise to any decision other than refusal of the proposal when considering the factors in 177a of NPPF.

- 4.63 No assessment has been undertaken of the scope for developing outside the Cotswolds AONB or meeting the need in some other way. The appellant is merely seeking to circumvent the plan-led approach, and the consideration of alternatives, through an evidence-based system taking into account the considerations of all stakeholders. The proposals therefore do not give rise to any decision other than refusal of the proposal when considering the factors in 177b of NPPF.
- 4.64 The significant adverse impact on landscape, and the effect of the proposal on environment and recreational opportunities do not give rise to any decision other than refusal of the proposal when considering the factors in 177c of NPPF.
- 4.65 For these reasons, when considering the factors in paragraph 177 of NPPF, I do not identify exceptional circumstances which would give rise to any decision other than refusal of the proposal. I do not consider there are any other material considerations which would amount to exceptional circumstance considerations which are outside of those factors which should be included in the assessment of exceptional circumstances as set out in paragraph 177 of the NPPF which lead to any decision other than refusal.
- 4.66 For these reasons, there are no exceptional circumstances and the proposal is not in the public interest, and permission should be refused for this major development within the AONB in accordance with paragraph 177 of the NPPF.
- 4.67 It is the case that a judgement must be made as to whether policies in the NPPF that protect Areas of Outstanding Natural Beauty provide a clear reason for refusing the appeal and whether paragraph 11d(i) of the NPPF is engaged, before applying the planning balance in the decision making process.

***Development Plan Policy and Cotswolds AONB Management Plan 2018-23***

- 4.68 Turning to the adopted development plan, Policy SD7 of the JCS states that all development proposals in or within the setting of the Cotswolds AONB will be required to conserve and, where appropriate, enhance its landscape, scenic beauty, wildlife, cultural heritage and other special qualities. Proposals will be required to be consistent with the policies set out in the CMP (my emphasis).
- 4.69 JCS Policy SD6 states that development will seek to protect landscape character for its own intrinsic beauty and for its benefit to economic, environmental and social well-being. Proposals will have regard to local distinctiveness and historic character of different landscapes and proposals are required to demonstrate how the development will protect landscape character and avoid detrimental effects on types, patterns and features which make a significant contribution to the character, history and setting of a settlement area.
- 4.70 JCS Policy SD4 states that new development should respond positively to, and respect the character of, the site and its surroundings, enhancing local distinctiveness, and addressing the urban structure and grain of the locality in terms of street pattern, layout, mass and form. It should be of a scale, type, density and materials appropriate to the site and its setting.

- 4.71 Paragraph 7.1 of the CP identifies that Cheltenham owes much to its setting at the foot of the Cotswold escarpment and that the town's eastern fringes include the high-quality scenery of the escarpment, with landscape and woodlands that are designated as part of the Cotswolds AONB.
- 4.72 Paragraph 7.4 of the CP recognises that Cheltenham's attractive setting is undoubtedly one of its prime assets and is recognised by the emerging Place Strategy for the Borough as a key factor in helping to achieve sustainable economic growth and securing social wellbeing. The Council will therefore seek to continue the protection of the town's setting and encourage its future enhancement through sensitively designed / located development. Page 24 of the Council's Place Strategy Vision Document (Core Document E19) which was approved by Council in March 2018 recognises that adopting the value of being environmentally friendly means recognising the long-term success of Cheltenham relies on protecting and enhancing the environmental resources that underpin it.
- 4.73 In seeking the protection of the town's setting and encouraging its future enhancement through sensitively designed / located development, paragraph 7.5 of the CP states that the Council is mindful of the need to protect views into and out of areas of acknowledged importance such as conservation areas, ancient monuments, sites included on the Register of Historic Parks and Gardens, the AONB, the Green Belt, Sites of Special Scientific Interest, statutory and non-statutory nature reserves, Regionally Important Geological and Geo-morphological Sites, listed buildings and buildings of local importance (my emphasis).
- 4.74 Against the background of the stated and acknowledged importance of the value of the town's setting, including the Cotswold escarpment on the town's eastern fringes, Policy L1 of the CP states that development will only be permitted where it would not harm the setting of Cheltenham including views into or out of areas of acknowledged importance (my emphasis).
- 4.75 Paragraph 7.3 of the CP, confirms that for the purposes of this policy, the 'setting' of Cheltenham is considered to embody those features which create the distinctive sense of place for the Borough, including the Cotswold escarpment. Paragraph 7.5 of the CP states that areas of 'acknowledged importance' includes areas such as AONB's.
- 4.76 Policy D1(b) of the CP states that development will only be permitted where it complements and respects neighbouring development and the character of the locality and / or landscape.
- 4.77 Turning to the CMP, the Cotswolds Conservation Board has a statutory duty to prepare and review a management plan for the Cotswolds AONB at five-yearly intervals. The Board adopted the CMP 2018-2023 on 20th September 2018. The CMP is a material consideration in the decision-making process and more specifically, Policy SD7 of the JCS states that proposals are required to be consistent with the CMP.
- 4.78 Policy CE1 (Landscape) states that proposals that are likely to impact on, or create change in, the landscape of the Cotswolds AONB, should have regard to, be

compatible with and reinforce the landscape character of the location, as described by the Cotswolds Conservation Board's Landscape Character Assessment and Landscape Strategy and Guidelines (Core Documents J5 and J8).

- 4.79 Policy CE3 (Local Distinctiveness) states that proposals that are likely to impact on the local distinctiveness of the Cotswolds AONB should have regard to, be compatible with and reinforce this local distinctiveness. This should include being compatible with the Cotswolds Conservation Board's Landscape Character Assessment, Landscape Strategy and Guidelines and Local Distinctiveness and Landscape Change; being designed and, where relevant, landscaped to respect local settlement patterns, building styles, scale and materials; and using an appropriate colour of limestone to reflect local distinctiveness.
- 4.80 Provision 1 of Policy CE11 (Major Development) states that proposals for major development in the Cotswolds AONB and in the setting of the AONB, including site allocations in Local Plans, must comply with national planning policy and guidance and should have regard to – and be compatible with – the guidance on major development provided in Appendix 9 of the Cotswolds AONB Management Plan. Appendix 9 states that:
- *The Board would expect any such development proposal to be accompanied by a statement of need in the context of national considerations and, ideally, in the context of needs arising from within the AONB. The impacts of permitting or refusing the development should be clearly identified, including the social, economic and environmental impacts, with specific reference to the impacts upon the natural beauty, special qualities of the AONB, and the economic and social needs (including housing needs) of the local communities affected. Such a statement should be based upon objective assessment and clear evidence.*
  - *The Board would encourage any such development proposal to be accompanied by a report setting out a sequential approach to site selection. This should evidence the extent to which alternative sites have been assessed before the selection of sites within the AONB, and clearly identify why sites outside of the designated area could not be developed. The report should also identify and evidence why the need for the development could not be met in some other way. The report should include relevant evidence of the cost of developing outside of the AONB.*
  - *The Board would expect any such development proposal to be accompanied by a report identifying any detrimental effects upon the environment, the landscape and recreational opportunities. Such a report should relate directly to the special qualities of the AONB as a whole as well as those specific to the development site.*
- 4.81 Provision 2 of Policy CE11 goes on to state that major development proposed in the Cotswolds AONB, including major infrastructure projects, should be 'landscape-led', whereby it demonstrably contributes to conserving and enhancing the natural beauty of the Cotswolds AONB and, where appropriate, to the understanding and enjoyment of its special qualities. This should include fully respecting and integrating the special qualities of the AONB into the planning,

design, implementation and management of the development, from the very beginning of the development's inception.

- 4.82 Finally, Policy CE12 (Development Priorities and Evidence of Need) states that development in the Cotswolds AONB should be based on robust evidence of local need arising from within the AONB. Priority should be given to the provision of affordable housing, maintaining and enhancing local community amenities and services, and improving access to these amenities and services.
- 4.83 In considering the appeal proposal against these development plan policies and CMP policies, I consider that the proposal does not accord with any of these policies.
- 4.84 The evidence of Stuart Ryder demonstrates the overall landscape effect at the site is Major, Adverse and Permanent and that all the short, mid and long range views that include the Site as a piece of the Cotswolds AONB are reduced in scenic quality. Therefore the proposal fails to conserve or enhance the landscape and scenic beauty of the AONB and the proposal is therefore contrary to Policy SD7 of the JCS. For the reasons set out below the proposal is also not consistent with the policies in the CMP. Therefore the proposal conflicts with Policy SD7 of the JCS. For the same reasons the proposal is contrary to Policy SD4 of the JCS as the proposal does not respond positively to, and respect the character of, the site and its surroundings. It is also contrary to Policy D1 of the CP as it does not complement and respect the character of the locality and landscape.
- 4.85 The proposal also fails to protect landscape character for its own intrinsic beauty as required by Policy SD6 of the JCS. Furthermore, the CP identifies that Cheltenham owes much to its setting at the foot of the Cotswold escarpment and that the town's eastern fringes include the high-quality scenery of the escarpment and that Cheltenham's attractive setting is undoubtedly one of its prime assets in helping to achieve sustainable economic growth and securing social wellbeing. In causing significant adverse impact to these prime assets, the proposal also fails to protect landscape character for its benefits to economic, environmental and social well-being contrary to Policy SD6.
- 4.86 The evidence of Stuart Ryder confirms that the appeal site is part of the 'setting' of Cheltenham and contributes to the recognisable and attractive escarpment setting to Cheltenham. Paragraph 7.3 of the CP also confirms that the Cotswold escarpment forms part of the setting of Cheltenham. The appeal site is part of the Cotswolds AONB and forms part of the lower slopes of the escarpment which is identified as an area of acknowledged importance in paragraph 7.5 of the CP. The evidence of Stuart Ryder identifies there would be a reduction to the quality of the setting to this part of Cheltenham which help to give the town its distinctive sense of place. The proposal causes harm to the setting of Cheltenham and causes harm to views into and out of areas acknowledged importance. The appeal proposal therefore conflicts with Policy L1 of CP which states that development will only be permitted where it would not cause harm to the setting of Cheltenham including views into and out of areas of acknowledged importance.

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- 4.87 Furthermore, the evidence of Stuart Ryder confirms that the proposal is not compatible with and does not reinforce the landscape character of the location, and is not compatible and does not reinforce the local distinctiveness of the AONB. The appeal proposal therefore also conflicts with Policies CE1 and CE3 of the CMP.
- 4.88 As set out above, the proposal conflicts with national planning policy on major development within AONB's and no exceptional circumstances or public interest is demonstrated. Moreover, the proposal does not meet the requirements of Appendix 9 of the CMP. Notably the appellant has not provided a report setting out a sequential approach to site selection and consideration of alternatives, has not provided evidence on how the need could be met in some other way, nor provided evidence of the cost of developing outside of the AONB. Furthermore, the proposal does not demonstrably contribute to conserving and enhancing the natural beauty of the Cotswolds AONB. Therefore the proposal conflicts with Policy CE11 of the CMP.
- 4.89 Finally, the proposal does not seek to meet local need arising from the AONB, nor is it based on robust evidence of local need arising from within the AONB. Therefore the proposal also conflicts with Policy CE12 of the AONB Management Plan.
- 4.90 The proposal therefore conflicts with policies SD4, SD6 and SD7 of the JCS, policies L1 and D1 of the CP and Policies CE1, CE3, CE11 and CE12 of the CMP. I consider that this conflict weighs significantly against the proposals. Great weight must be afforded to conserving and enhancing the landscape and scenic beauty of the AONB and the proposal fails to either conserve or enhance the AONB.
- 4.91 It is the case that a judgement must be made as to whether policies in the NPPF that protect Areas of Outstanding Natural Beauty provide a clear reason for refusing the appeal and whether paragraph 11d(i) is engaged, before applying the planning balance in the decision making process.
- 4.92 However, on the basis that paragraphs 176 and 177 of the NPPF that protect Areas of Outstanding Natural Beauty provide a clear reason for refusing the appeal, I consider that the conflict with, policies SD4, SD6 and SD7 of the JCS, policies L1 and D1 of the CP and Policies CE1, CE3, CE11 and CE12 of the CMP weighs significantly against the proposals.

## 5 PUTATIVE REASON FOR REFUSAL 3

- 5.1 The third putative Reason for Refusal identifies that the proposed development would, by virtue of design, layout and traffic generation result in a severe impact on the highway network and would fail to provide a safe and suitable access for all users, contrary to the NPPF, Policies INF1 and INF6 of the Joint Core Strategy (adopted December 2017), Policies LTP PD 0.3 and 0.4 of the Local Transport Plan (adopted March 2021), Policy CE10 of the Cotswolds AONB Management Plan 2018-23 and Manual for Gloucestershire Streets (adopted July 2020).
- 5.2 This putative reason for refusal has been requested by Gloucestershire County Council as County Highways Authority and the identified severe impact on the highway network and failure to provide a safe and suitable access for all users, will be addressed by them as a Rule 6 party.
- 5.3 I do not provide evidence on the reasons for the refusal.
- 5.4 However, paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 110 also states that in assessing specific applications for development it should be ensured that safe and suitable access to the site can be achieved for all users.
- 5.5 Similarly, Policy INF1 of the JCS states that developers should provide safe and accessible connections to the transport network to enable travel choice for residents and commuters. All proposals should ensure that safe and efficient access to the highway network is provided for all transport modes; connections are provided, where appropriate, to existing walking, cycling and passenger transport networks and should be designed to encourage maximum potential use; and all opportunities are identified and taken, where appropriate, to extend and/or modify existing walking, cycling and public transport networks and links, to ensure that credible travel choices are provided by sustainable modes.
- 5.6 Criterion 2 of Policy INF1 also states that planning permission will be granted only where the impact of development is not considered to be severe. Where severe impacts that are attributable to the development are considered likely, including as a consequence of cumulative impacts, they must be mitigated to the satisfaction of the Local Planning Authority in consultation with the County Highway Authority and in line with the Local Transport Plan.
- 5.7 The requirement for mitigation to the satisfaction of the Local Planning Authority in consultation with the County Highway Authority also accords with Policy INF6 of the JCS which states that where infrastructure requirements are generated as a result of the development, having regard to cumulative impact, development will be served by adequate on and off-site infrastructure.
- 5.8 Finally, Policy CE10 of the CMP states that proposals relating to development and transport in the Cotswolds AONB and in the setting of the AONB should comply with national planning policy and guidance.

- 5.9 At the time of preparing this Proof of Evidence, it is understood that discussions are ongoing between the County Highways Authority and the appellant regarding the impact of the proposal on the highway network and whether safe and suitable access for all users can be achieved.
- 5.10 However, if this matter is not resolved before the inquiry and it is determined that the proposal, by virtue of design, layout and traffic generation would result in a severe impact on the highway network and would fail to provide a safe and suitable access for all users in conflict with the NPPF, Policies INF1 and INF6 of the JCS , Policy CE10 of the CMP as well as the Manual for Gloucestershire Streets and the Local Transport Plan, I consider that this would be significant and severe harm arising from the development.



## 6 PUTATIVE REASON FOR REFUSAL 4

6.1 The fourth putative Reason for Refusal identifies that the proposals would have an unacceptable harmful impact on the setting of the heritage assets within Hewlett's Reservoir. As such, the proposed works are considered not to sustain or enhance the designated heritage assets and would cause harm to the significance of the affected designated heritage assets. In weighing this harm against the public benefits of the proposal, through the provision of housing, the public benefits of the proposals are not considered to outweigh the harm caused to the significance of the affected heritage assets. The Reason for Refusal identifies that the proposed development is therefore contrary to Section 66(1) of the Planning (Listed Building and Conservation Area) Act 1990, Policy SD8 of the Joint Core Strategy 2017, Policy CE6 of the Cotswolds AONB Management Plan 2018-23 and Chapter 16 of the NPPF.

6.2 I rely on the evidence of Will Holborow which sets out the impact of the proposed development on the setting of designated assets at Hewlett's Reservoir.

6.3 In respect to designated heritage assets, Will Holborow confirms in Section 7 of his Proof of Evidence that:

*The central issue is the impact of the proposed development on the setting of designated heritage assets at Hewlett's Reservoir, especially the two listed reservoirs, the listed pavilion and the listed boundary wall.*

*The open and outward looking character of the existing setting of these heritage assets will be compromised by the proposed development including the new belt of tree screening and access road from Harp Hill;*

*The overall impact is to extend a form of suburban development into the rural setting of the designated heritage assets;*

*The overall effect is to cause a low to moderate degree of less than substantial harm to the setting of the designated heritage assets;*

*Considerable importance and great weight must be given to the desirability of preserving the setting of a heritage asset and therefore the Inspector is respectfully requested to dismiss the Appeal.*

6.4 The No.1 Reservoir, No.2 Reservoir, Pavilion, Gates, gatepiers and boundary walls at Hewlett's Reservoir and Stone Lodge (Curtilage Listed) are Grade II listed and in accordance with the definition within Annex 2 of the NPPF, which includes listed buildings, are designated heritage assets.

6.5 The relevant statutory provisions are contained in Section 66 (1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990. This makes it a duty for a local planning authority, or, as the case may be, the Secretary of State, in considering whether to grant planning permission for development which affects a listed building or its setting, to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or

*historic interest which it possesses*. As the settings of a number of listed buildings would be affected by the appeal proposals, the statutory duty under s66 (1) is directly engaged in this instance.

- 6.6 The Courts have held (Ref. South Lakeland DC v Secretary of State for the Environment [1992] 2 AC 141) (Core Document K28) that *'preserving means doing no harm'*. The Courts have also held (Barnwell Manor Wind Energy Ltd v. East Northamptonshire District Council, English Heritage, the National Trust and the Secretary of State for Communities and Local Government [2014] EWCA Civ 137) (Core Document K24) that decision-makers should give *"considerable importance and weight"* to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise (paragraph 29).
- 6.7 With regard to the presumption in favour of sustainable development, paragraph 11 of the NPPF states that planning applications should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole, or that the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (my emphasis) (i.e. the presumption in favour of sustainable development).
- 6.8 Footnote 7 of the NPPF confirms that that policies in the NPPF that protect assets of particular importance include designated heritages.
- 6.9 The policies in the NPPF that protect designated heritage assets are set out in Chapter 16 of the NPPF, and in particular paragraphs 194 to 208.
- 6.10 Will Holborow concludes in his proof of evidence that the overall effect is to cause a low to moderate degree of less than substantial harm to the setting of the designated heritage assets.
- 6.11 Monkhill Ltd v SSHCLG [2021] EWCA Civ 74 (Core Document K29) confirms at paragraph 45 that when less than substantial harm is identified to designated heritage assets consideration of the proposal *'falls within the reach of paragraph 11d)i'* of the NPPF.

*Likewise in my view, paragraph 196 [paragraph 202 NPPF 2021], which says that "[where] a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal... ' falls within the reach of paragraph 11d)i. This policy must be read together with the policy in paragraph 194 [paragraph 200 NPPF 2021] that '[any] harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification'. Like paragraphs 172 and 173 [paragraphs 176 and 177 NPPF 2021], it allows for an appropriate balancing exercise to be undertaken. It is inherent in the policy that if the harm to the heritage asset is not outweighed there may be a 'clear reason' for refusing planning permission. Here again, the policy does not prescribe the outcome of the balancing exercise in a particular case. That is for the decision-maker to resolve*

*by applying the policy appropriately, in accordance with the relevant principles.* (paragraph 45 Core Document K29).

- 6.12 It is therefore the case that a judgement must be made as to whether policies in the NPPF that protect designated heritage assets provide a clear reason for refusing the appeal and whether paragraph 11d(i) of the NPPF is engaged before applying the planning balance in the decision-making process.
- 6.13 Therefore, turning to the NPPF policies that protect designated heritage assets, paragraph 199 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (my emphasis).
- 6.14 Paragraph 200 of the NPPF states that any harm to, or loss of, the significance of heritage assets (including from development within its setting) should require clear and convincing justification (my emphasis).
- 6.15 Paragraph 202 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (my emphasis).
- 6.16 Turning first to paragraph 200 of the NPPF, I consider that there is no clear and convincing justification for the identified low-to-moderate level of less-than-substantial harm to the significance of the affected designated heritage assets. I will not repeat fully the arguments within Section 4 of my Proof of Evidence here.
- 6.17 However, I agree with the appellant that there is a 'pressing need' for the delivery of housing in Cheltenham and it is my view that significant weight should be afforded to the delivery of open market and affordable house in the decision-making process. It is also the case that the appeal proposals would contribute to the current five year supply and current plan period shortfalls, including the shorter term need arising from the delay in the delivery of the Strategic Allocations. However, I do not consider that these factors in themselves amount to a 'clear and convincing justification' in this instance.
- 6.18 This is because a plan-making mechanism is in place through the JCS Review which will address the housing supply shortfall. The JCS review will consider how the current housing supply shortfall, which has arisen due to the delay in the Strategic Allocations will be met, and will include a consideration of alternatives through an evidence-based system taking into account the considerations of stakeholders to achieve a sustainable pattern of development. It is not the case that the shortfall in homes will simply be 'lost from the supply', but instead will be planned for through an appropriate plan-led approach.
- 6.19 In these circumstances, and against the background of the JCS Review which will put a plan in place to deliver the housing supply shortfall, and will include a

consideration of alternatives sites, I do not consider there is a clear and convincing justification for a proposal which circumvents the plan-led system and causes a low-to-moderate level of less-than-substantial harm to the designated heritage assets. A clear and convincing justification for the proposal has therefore not been demonstrated as required by paragraph 200 of the NPPF.

- 6.20 Turning next to paragraph 202 of the NPPF which states that the harm must be weighed against the public benefits of the proposal.
- 6.21 It is the case that the appeal proposals would contribute to market and affordable housing need, including the shorter-term need arising from the delay in the delivery of the Strategic Allocations which is in the public interest and to the public benefit. However, it is significantly harmful to the public interest and public benefit for the plan-making approach to be circumvented, and for major housing development to be delivered without a consideration of alternatives through an evidence-based system taking into account the consideration of alternatives, and including taking into account the considerations of all stakeholders including the public to achieve a sustainable pattern of development.
- 6.22 In these circumstances, paragraph 4.61 of my evidence concludes *‘that the development is not in the public interest and is indeed significantly harmful to the public interest’*. As such, it also follows that the proposal is also significantly harmful to public benefit.
- 6.23 For these reasons, I consider that the harm of the proposal to designated assets, is a low-to-moderate level of less-than-substantial harm. In addition, the net effect of the proposal is significantly harmful to the public benefit. Therefore the harm to designated heritage assets is not outweighed by the public benefits of the proposal. In addition there is no clear and convincing justification for the harm caused to the significance of the heritage assets. Great weight must be given to this consideration of the impact of the proposed development on the significance of the designated heritage assets in the decision-making process.
- 6.24 I therefore consider that the application of policies in the NPPF that protect assets of particular importance, namely designated heritage assets, provides a clear reason for refusing the development proposed and paragraph 11d(i) is engaged.
- 6.25 Although not specifically stated in reason for Reason for Refusal 4, in addition to harm identified to designated heritage assets, Will Holborrow’s evidence also identifies harm to non-designated heritage assets, namely the surviving ridge and furrow fields across the appeal site. A moderate harm to the significance of these non-designated assets is identified which are of low to medium significance. Paragraph 203 of the NPPF confirms that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

- 6.26 Turning to the adopted development plan, Policy SD8 of the JCS states at criterion 2 that developments should make a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment. Criterion 3 confirms that designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance, and for their important contribution to local character, distinctiveness and sense of place.
- 6.27 In regard to non-designated heritage assets, Policy HE1 of the CP states that development proposals that would affect a locally important or non-designated heritage asset, including its setting, will be required to have regard to the scale of any harm or loss to the significance of the heritage asset.
- 6.28 Criterion 2 of Policy CE6 of the CMP also confirms that designated historic environment sites, including listed buildings, should be protected, in line with national policy and guidance. Of relevance to Will Holborow's Proof of Evidence, the Statement of Significance on the Special Qualities of the Cotswolds AONB also identifies ridge and furrow fields of the Cotswolds AONB as one of the special qualities of the AONB, which Will Holborow identifies as a non-designated heritage asset of low to medium significance to which the appeal proposal causes moderate harm.
- 6.29 Policy SD8 of the JCS, Policy HE1 of the CP and Policy CE6 of the CMP echo the heritage policies in the NPPF, and for the reasons set out above the proposals also conflict with these policies. The proposal does not conserve or enhance either designated or non-designated heritage assets. In accordance with paragraph 202 of the NPPF, the identified less than substantial harm to significance of designated heritage assets should be weighed against the public benefits of the proposal. The effect of an application on the significance of non-designated heritage assets should also be taken into account when determining the application and a balanced judgement is required having regard to the scale of any harm or loss and the significance of the asset.
- 6.30 I consider that the conflict with adopted development plan policy SD8 and Policy CE6 of the CMP, and the fact that proposal does not conserve and enhance designated heritage assets is a matter which weighs significantly against the proposals. I consider the harm to non-designated heritage weighs moderately against the proposals and a balanced judgement must be afforded to this harm in the planning balance and decision making process.
- 6.31 In conclusion, it is the case that a judgement must be made as to whether policies in the NPPF that protect designated heritage assets provide a clear reason for refusing the appeal and whether paragraph 11d(i) of the NPPF is engaged, before applying the planning balance in the decision making process.
- 6.32 However, on the basis that paragraph 11d(i) is engaged and that policies that protect designated heritage assets provide a clear reason for refusing the appeal, I consider that the conflict with policies in NPPF that protect designated heritage assets, as well as the conflict with adopted development plan policy SD8, and Policy CE6 of the CMP weighs significantly against the proposals. In considering

these harms, great weight must be given to the conservation of the designated heritage assets in the decision making process. The moderate harm to non-designated heritage assets should also be taken into account in the decision making process.

## 7 PUTATIVE REASON FOR REFUSAL 5

- 7.1 The fifth putative Reason for Refusal, identifies that in the absence of completed planning obligations the proposal does not adequately provide for affordable housing requirements, schemes/strategies for play space provision and site management maintenance and conflicts with Policies SD11, SD12, INF3, INF4, INF6 and INF7 of the JCS, Policies CI1 and CI2 of the Cheltenham Plan (adopted 2020), Supplementary Planning Guidance – Playspace in Residential Development and the NPPF.
- 7.2 In regard to affordable housing, JCS Policy SD12 sets out that on sites outside of strategic allocations, a minimum of 40% affordable housing will be sought, which should be provided on site and should be seamlessly integrated and distributed throughout the development scheme. Affordable housing must have regard to meeting the requirements of Policy SD11 concerning type, mix, size and tenure of residential development.
- 7.3 At the time of preparing this Proof of Evidence, discussions between the appellant and the Council’s Housing Strategy and Enabling Officer are ongoing. The appellants have not confirmed that they are agreeable to the Council’s requested contributions at this stage, and in the absence of an agreement, and a signed obligation to secure the number/type and mix of affordable units the Council object to the proposals.
- 7.4 The Council hopes that this issue will be resolved by the preparation of suitable planning obligations in advance of the Inquiry.
- 7.5 However, if a suitable planning obligation is not agreed this would be a matter which heavily weighs against the proposal and would diminish the benefits of the proposal in contributing towards the supply of market and affordable housing to help meet the objectively assessed need for housing in the area.
- 7.6 In regard to schemes/strategies for play space provision and site management maintenance, in the absence of agreed and completed planning obligation the proposal does not adequately provide for schemes/strategies for play space provision and site management maintenance.
- 7.7 Policies INF4, INF6 and INF7 of the JCS and policies CI1 and CI2 of the CP provide that where infrastructure requirements are generated as a result of a development it should be supported by adequate on and/or off site infrastructure and that the Council will expect new development to adequately meet for local standards in respect to sports and open space provision. The Council’s Supplementary Planning Guidance – Playspace in Residential Development (Core Document E20) sets out the Cheltenham’s expected play space standards.
- 7.8 It is understood the Council has negotiated the requirement for the appellant to submit details of schemes/strategies for play space provision and site management maintenance as part of the first reserved matters application and prior to the commencement of development.

- 7.9 However, at the time of preparing this proof of evidence there is no signed planning obligation. The Council hopes that this issue will be resolved by the preparation and completion of a suitable planning obligations in advance of the Inquiry. However, I consider that if the appropriate planning obligations are not secured then this is a harm arising from the appeal proposal.



## 8 PUTATIVE REASON FOR REFUSAL 6

- 8.1 The sixth putative Reason for Refusal states that the proposed development does not adequately provide for education (school places) and library provision contrary to policies INF4, INF6 and INF7 of the JCS, Policy CI1 of the CP, DfE Guidance on Securing Developer Contributions for Education, CIL Regulations and the NPPF.
- 8.2 It is understood the appellant will enter into an appropriate planning obligations to provide the library contributions, but will contest the quantum of the education contributions.
- 8.3 I do not provide evidence on the alleged conflict that the proposed development does not adequately provide for education facilities. The contributions have been requested by the County Council and will be addressed by them as a Rule 6 party.
- 8.4 I do not provide evidence on whether it is appropriate to seek these contributions through a S106 or CIL mechanism, and it is understood that the appellant will not contest which mechanism is appropriate.
- 8.5 However, Policy INF4 of the JCS states that where new development will create, or add to, a need for community facilities, it will be fully met as on-site and/or as a contribution to facilities or services off-site. Policy INF6 criterion 2 states that where need for additional infrastructure and services and/or impacts on existing infrastructure and services is expected to arise, the local planning authority will seek to secure appropriate infrastructure which is necessary, directly related, and fairly and reasonably related to the scale and kind of the development proposal, including with relevance to this appeal, community and early years and education contributions. Policy INF7 criterion 1 confirms that financial contributions will be sought through the S106 and CIL mechanisms as appropriate.
- 8.6 Policy CI1 of the CP states that development proposals will only be permitted where adequate community infrastructure capacity exists, or where additional capacity is capable of being provided as part of the development without unacceptable impacts on people or the environment. In order to secure community infrastructure improvements, the Council will employ planning obligations as necessary and appropriate. The policy confirms that obligations may relate to education contributions.
- 8.7 PPG paragraph ID: 23b-002-20190901 (Core Document D7) confirms that planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms and that they must be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. These tests are set out as statutory tests in Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended by the 2011 and 2019 Regulations) and as policy tests in paragraph 57 of the NPPF.
- 8.8 Therefore, by definition, the purpose of a planning obligation is to make a development which would otherwise be unacceptable acceptable. If it is accepted

that the that the requested obligations are necessary to make the development acceptable in planning terms, it follows that if the requested obligations are not provided the development should be refused as the necessary obligations have not been provided to make the development acceptable.

- 8.9 Setting aside this clear issue of principle and direction towards refusal if the necessary contributions are not provided, there are significant and demonstrable social and economic harms of developers not providing the necessary infrastructure and I rely on the evidence of the County Council to explain these harms.

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## 9 PUTATIVE REASON FOR REFUSAL 7

- 9.1 The seventh putative Reason for Refusal states that the proposed development, in the absence of an appropriate planning obligations does not secure provision for the necessary highway improvement works and the funding and implementation of a Residential Travel Plan.
- 9.2 The contributions have been requested by the County Council as County Highways Authority and will be addressed by them as a Rule 6 party, including the harm arising from the proposal if the requested contributions are not provided. I do not provide evidence on whether these contributions are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
- 9.3 However, criterion 2 of Policy INF1 of the JCS states that planning permission will be granted only where the impact of development [on the transport network] is not considered to be severe. Where severe impacts that are attributable to the development are considered likely, including as a consequence of cumulative impacts, they must be mitigated to the satisfaction of the Local Planning Authority in consultation with the Highway Authorities and in line with the Local Transport Plan. Criterion 4 of Policy INF1 also states where appropriate the local planning authority may require applications to be accompanied by a Travel Plan that has full regard to the criteria set out in the NPPF.
- 9.4 Policies INF4, INF6 and INF7 of the JCS and Policy CI1 of the CP also provide that where infrastructure requirements are generated as a result a development it should be supported by adequate on and/or off site infrastructure.
- 9.5 The Council hopes that this issue will be resolved by the preparation of suitable planning obligations in advance of the Inquiry.
- 9.6 However, if suitable planning obligations are not agreed which would mitigate the severe impacts that are attributable to the development which give rise to putative Reason for Refusal 3, then I consider that this would be a significant and severe harm arising from the development.

## 10 SUMMARY PROOF OF EVIDENCE/THE PLANNING BALANCE

- 10.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
- 10.2 On the basis that the Council cannot at this time demonstrate a five year supply of deliverable housing land, the most important policies for determining the application are deemed to be out of date. However the statutory status of the development plan is not affected and nor does it mean that Policies SP2 and SD10 of the JCS, or any other development plan policy, is to be disregarded and the development plan remains the starting point for decision making.
- 10.3 As the Council cannot at this time demonstrate a five year supply of deliverable housing land, in accordance with Paragraph 11 of the NPPF, the presumption in favour of sustainable development indicates that permission should be granted unless policies for protecting areas or assets of particular importance in the NPPF provide a clear reason for refusing the development proposed, or any adverse impacts of permitting the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.
- 10.4 Footnote 7 of the NPPF confirms that policies in the NPPF that protect areas or assets of particular importance include both Areas of Outstanding Natural Beauty and designated heritage assets.
- 10.5 My evidence demonstrates that the application of policies in the NPPF that protect both Areas of Outstanding Natural Beauty and designated heritage assets provide clear reasons for refusing the development proposed.
- 10.6 The identified harms to both the Cotswolds AONB and designated heritage assets, both individually represent a clear reason why planning permission should be refused and therefore the tilted balance is not engaged.

### **Benefits**

- 10.7 The development would contribute towards the supply of market and affordable housing to help meet the objectively assessed need for housing in the area. This is of particular relevance given that because the JCS Strategic Allocations have been delayed the Council is currently unable to demonstrate a 5-year supply of deliverable housing sites, and consequentially the Council currently is no longer able to meet its full housing requirement across the plan period.
- 10.8 The provision of 150 market and 100 affordable dwellings would make a considerable contribution towards the supply of market and affordable housing (if the appellants provides a suitable planning obligation to secure affordable housing

in perpetuity in advance of the inquiry). Therefore I give significant weight to the supply of market and affordable housing.

- 10.9 In economic terms, it is clear that a number of benefits would flow from this development if permitted, including during the construction process. There would also be economic and social benefits arising from spend from future residents which would help sustain local facilities, as well as in the wider area. The dwellings would also provide homes for an economically active population which would contribute to the economy. The economic and arising social benefits are not quantified in the appellant's Statement of Case. However, I consider that the social and economic benefits through employment during the construction phase, spend from future residents which would help sustain services, as well as providing homes for economically people should be afforded moderate weight.
- 10.10 There is also considerable public interest in the Council being able to demonstrate a 5-year supply of deliverable housing sites and for the Council to be able to demonstrate that it can meet its minimum housing requirement across the plan period. However as set out in paragraph 10.13, it is not considered that there is net public interest or public benefit arising from this proposal.

### Harms

- 10.11 Harm arises from the conflict with development plan policies relating to the strategy for distribution of housing and policies SP2 and SD10 of the JCS and the Council's plan making process. These are adopted development plan policies and the starting point for decision making, and significant harm arises by virtue of the conflict with the plan making process and that the proposed development does not meet the strategy for the distribution of new development in Cheltenham Borough and the appeal site is not an appropriate location for new development.
- 10.12 The evidence of Stuart Ryder demonstrates the proposals do not conserve and do not enhance the landscape and scenic beauty of the AONB. Indeed, Stuart Ryder's evidence demonstrates the overall landscape effect at the site is Major, Adverse and Permanent and that all the short, mid and long range views that include the site as a piece of the Cotswolds AONB are reduced in scenic quality. Great weight must be afforded to the identified significant harm
- 10.13 It is significantly harmful to the public interest for the requirements of the JCS and the plan-making approach to be circumvented, and for major housing development to be delivered within an Area of Outstanding Natural Beauty without a consideration of alternatives through an evidence-based system taking into account the considerations of all stakeholders including the public to achieve a sustainable pattern of development. I consider that the significant harm to the public interest of circumventing the plan-making approach and delivering major development within an Area of Outstanding Natural Beauty without a consideration of alternatives through an evidence-based system significantly and demonstrably outweigh the benefits to the public interest arising from the delivering of housing as identified in para 10.8.

- 10.14 The AONB is a national, regional and local economic asset and the proposal would result in significant harm to the landscape and scenic beauty of the Cotswolds AONB which is the foundation on which the tourism industry is based. I consider the harm to this economic asset is a factor which weighs moderately against the proposals.
- 10.15 Whilst the Local Planning Authority cannot currently demonstrate a five year supply of deliverable housing sites, the impacts on the Cotswolds AONB and the application of the policies in the NPPF, namely paragraphs 176 and 177, that protect Areas of Outstanding Natural Beauty represent a clear reason for refusing the appeal and weighs significantly against the proposals. Great weight must be afforded to conserving landscape and scenic beauty of AONBs in the decision making and planning balance processes.
- 10.16 Furthermore, whilst the Local Planning Authority cannot currently demonstrate a five year supply of deliverable housing sites, the impacts on the designated heritage assets and the application of the policies in the NPPF that protect designated heritage assets also represent a clear reason for refusing the appeal and weighs significantly against the proposals. Great weight must be afforded to the conservation of designated heritage assets in the decision making and planning balance processes.
- 10.17 Will Holborrow's evidence also identifies harm to non-designated heritage assets, namely the surviving ridge and furrow fields across the appeal site. A moderate harm to the significance of these non-designated assets is identified which are of low to medium significance.
- 10.18 By virtue of design, layout and traffic generation the proposal would result in a severe impact on the highway network and would fail to provide a safe and suitable access for all users, I consider that this would be significant and severe harm arising from the proposals.
- 10.19 If the necessary education contributions are not provided, there are significant and demonstrable social and economic harms of developers not providing the necessary infrastructure. These harms are explained by the County Council as Rule 6 party.

***Harms (understood to be resolved)***

- 10.20 It is understood that the appropriate library, schemes/strategies for play space provision and site management maintenance, provision for the necessary highway improvement works and the funding an implementation of a Residential Travel Plan will be agreed and appropriate contributions contained within a completed planning obligation with the appellant before the opening of the Inquiry. However, I consider that if the appropriate financial obligations are not secured then this is a significant harm arising from the appeal proposal as the proposal would not provide appropriate infrastructure which is necessary, directly related and fairly and reasonable related to the scale and kind of development.

10.21 The appellant has indicated that they are willing to provide the requested affordable housing and off-site financial contribution and provide an appropriate planning obligation. However, if a suitable planning obligation is not agreed this would be a matter which heavily weighs against the proposal and would significantly diminish the benefits of the proposal in contributing towards the supply of affordable housing in the area.

10.22 For the purposes of the planning balance exercise carried out below, I have assumed that the appellant enters into the requested planning obligations before the opening of the Inquiry and these harms set out in paragraphs 10.19 to 10.22 do not arise.

***Overall Conclusion***

10.23 Whilst there would be some benefits from the development namely the delivery of housing and associated economic and social benefits this is a case where the tilted balance is not in play. The identified harms to both the Cotswolds AONB and designated heritage assets, both individually represent a clear reason why planning permission should be refused.

10.24 However, it is also the case that the identified harms and the conflict with the development plan point clearly towards a refusal to such an extent that, even if the presumption in favour of sustainable development were engaged, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.

10.25 For these reasons I respectfully invite the Inspector to dismiss the appeal.