



## Appeal Decision

Inquiry Held on 21 January 2020

Site visit made on 21 January 2020

**by S Hunt BA (Hons) MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> March 2020

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**Appeal Ref: APP/B1605/W/19/3238462**

**Land off Kidnappers Lane, Cheltenham, Gloucestershire GL51 0NP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Robert Hitchins Limited against Cheltenham Borough Council.
  - The application Ref 19/00334/OUT, is dated 19 February 2019.
  - The development proposed is Residential development of up to 25 dwellings, associated infrastructure, open space and landscaping, with creation of new vehicular access from Kidnappers Lane, demolition of existing buildings.
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### Decision

1. The appeal is allowed and outline planning permission is granted for Residential development of up to 25 dwellings, associated infrastructure, open space and landscaping, with creation of new vehicular access from Kidnappers Lane, demolition of existing buildings at Land off Kidnappers Lane, Cheltenham, Gloucestershire GL51 0NP in accordance with the terms of the application, Ref 19/00334/OUT, dated 19 February 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

### Preliminary Matters

2. The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission. Whilst the Council did not issue a decision notice, it confirmed in its Statement of Case that it would have refused permission for the proposed development for two putative reasons. These were in relation to the location of the site outside the principal urban area of Cheltenham, and associated effects of the development on the character and appearance of its surroundings (including landscape and visual effects) and the lack of a mechanism to secure affordable housing.
3. At the pre-inquiry case conference the Council confirmed that the second reason, in relation to affordable housing, would fall away as a main issue as it could be suitably addressed through a planning obligation. Later, also prior to the inquiry, the Council confirmed they would also not be defending the first putative reason for refusal, and as such did not supply any proofs of evidence. Leckhampton with Warden Hill Parish Council as Rule 6 party (the 'PC') subsequently confirmed that they would also not be presenting evidence at the inquiry, given that they were in support of the Council's case.

4. The Council specified that this was based on i) the Council's continuing lack of ability to demonstrate a five year supply of deliverable housing land; and ii) the progress of proposals by Gloucestershire County Council for a new secondary school on a nearby emerging mixed use allocation. They accepted that the adverse impacts that they had previously identified in relation to its location and landscape effects would not significantly and demonstrably outweigh the benefits when assessed against the National Planning Policy Framework (the Framework) as a whole. The Council clarified at the Inquiry that this decision had been endorsed by Members in December 2019.
5. Two Statements of Common Ground (SOCG) between the Council and the appellant were submitted prior to the inquiry, setting out extensive areas of agreement. One relates specifically to landscape issues and the 'main SOCG' to all other issues including five year housing supply and benefits. The extent of shortfall in housing land supply is disputed, however the main parties agree that the shortfall is significant. Both documents set out that the areas which remain in dispute are not determinative and should not prevent planning permission being granted<sup>1</sup>. Notwithstanding the revised position of the Council and the PC, it is necessary for me to consider the issues involved, not least as a number of concerns have been raised by interested parties.
6. Whilst not specifically detailed in the description nor on the application form, the accompanying documents state the proposals are in outline form with all detailed matters reserved for future approval. This was confirmed to be the case at the inquiry. I have treated the masterplan and access plan as submitted with the application for illustrative purposes only.
7. Two draft planning obligations under Section 106 (S.106) of the Town and Country Planning Act were submitted prior to the inquiry, together with a statement of compliance with the Community Infrastructure Levy (CIL) Regulations<sup>2</sup> prepared by the Council. Final versions dated 22 January 2020 were signed and submitted after the close of the inquiry. They separately make provision for affordable housing and public open space. I am satisfied that the agreements would accord with the tests and have had regard to their provisions in the consideration of this appeal.
8. I undertook an accompanied site visit on the day of the inquiry. This included views from within the site itself and from the adjoining highway and public right of way network. Additionally I viewed the site from within the nearby Area of Outstanding Natural Beauty (AONB) at Leckhampton Hill. I also visited a nearby housing development under construction at Brizen Park, an existing cul-de-sac of dwellings at Leckhampton Farm Court, and the proposed secondary school site.
9. The site is located just over 5km from the Cotswold Beechwoods Special Area of Conservation (CBSAC). Although not forming a matter in dispute, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the ecological integrity of the CBSAC under the Habitats Regulations<sup>3</sup>. Natural England have established that, without mitigation, the proposals would have an adverse

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<sup>1</sup> Main SOCG paragraph 9.2; Landscape SOCG paragraphs 9.1 to 9.3

<sup>2</sup> Community Infrastructure Levy Regulations 2010, Regulation 122

<sup>3</sup> Regulation 63 of the Conservation of Habitats and Species Regulations 2017

effect on the CBSAC<sup>4</sup>, and subsequently mitigation measures have been put forward. For this reason it is necessary for me to consider this matter as a main issue.

### **Main Issues**

10. Notwithstanding the Council's concession that the location is acceptable and any harm to the landscape would be outweighed by the benefits of the provision of housing, I have had regard to the remaining matters in dispute in the SOCGs. Locational and landscape issues have also been raised in numerous objections from interested parties, some of whom have provided evidence relating to potential effects on the nearby Cotswolds Area of Outstanding Natural Beauty (AONB) and therefore I include these as main issues. The third main issue relates to an assessment of likely significant effects on the CBSAC.
11. Consequently, the main issues are:
  - i) Whether the site is an appropriate location for housing development, with particular regard to its accessibility to the town of Cheltenham;
  - ii) The effect of the proposals on the character and appearance of the area, including the Cotswolds AONB; and
  - iii) The effect of the proposals on the Cotswold Beechwoods Special Area of Conservation.

### **Reasons**

#### *Adopted and Emerging Planning Policy*

12. The development plan for this area comprises the Gloucester, Cheltenham and Tewksbury Joint Core Strategy (JCS), adopted in 2017, and the saved policies of the Cheltenham Local Plan (second review) (CLP), adopted in 2006.
13. Consultation took place on Proposed Main Modifications to the emerging Cheltenham Plan (CP)<sup>5</sup> in November-December 2019, and I was informed at the Inquiry that representations were recently forwarded to the Planning Inspectorate<sup>6</sup>. The parties differ in terms of the weight they give to the CP<sup>7</sup>. In view of the guidance at paragraph 48 of the Framework I give consideration to the stage of preparation of the emerging CP, any unresolved objections and the degree of consistency of relevant policies to the Framework.
14. The CP is at an advanced stage of preparation but there are unresolved objections to Policy H2 (Land Allocated for Mixed Use Development) specifically in relation to proposed nearby emerging allocation MD5. Whilst the appeal site itself is not part of this allocation, site MD5 has direct relevance to my consideration of this appeal, particularly in relation to how circumstances have changed since a previous appeal for up to 45 dwellings on the appeal site was dismissed in 2018<sup>8</sup> ('the 2018 appeal').

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<sup>4</sup> Core Document A30: Natural England comments 4 September 2019

<sup>5</sup> Core Document C7: Cheltenham Local Plan (Main Modifications) Tracked Changes (October 2019)

<sup>6</sup> ID6 : Cheltenham Borough Council to Planning Inspector Wendy Burden enclosing results of the Cheltenham Plan Proposed Main Modifications Consultation dated 13 January 2020

<sup>7</sup> Paragraphs 7.27-7.28, main Statement of Common Ground

<sup>8</sup> Core Document H7a : APP/B1605/W/17/3178952 Land off Kidnappers Lane, Cheltenham

15. The Main Modifications submission sets out some notable changes to MD5 since the examination hearings took place. It proposes an increase to the site area (from 15 to 21ha) and in the number of dwellings (from 250 to 350) and provision of a secondary school on land previously proposed as Local Green Space (LGS). In the light of the unresolved objections, the changes made since examination, and in the absence of the Examiners report, I can only give moderate weight to Policy H2.
16. The site lies within the Parish of Leckhampton with Warden Hill which was designated for Neighbourhood Plan purposes in 2015. The Neighbourhood Plan is at an early stage of preparation and no draft Plan is in the evidence before me therefore I give it very little weight.

#### *Location and Accessibility*

17. The appeal site lies close to the town of Cheltenham, but outside of its Principal Urban Area (PUA) as shown on both the adopted and emerging proposals maps. It is therefore situated in the countryside for the purpose of planning policies. No harm has been identified to the spatial distribution which is set out in Policy SP2 of the JCS. Part 3 of this Policy directs development to within the administrative boundary of Cheltenham Borough, and this differs from the PUA of the town.
18. Policy SD10 of the JCS is a most important policy. It makes provision for some development outside of the PUA on an exceptional basis, and there is no suggestion that the appeal scheme would meet any of the exception criteria including those in part 4 of the Policy.
19. The supporting text to Policy SD10 (paragraph 4.11.5) gives an indication as to why residential development is not considered appropriate outside of the settlement limits; there are generally insufficient facilities to support development in such locations. I note the concerns raised by interested parties that the proposals would result in isolated housing, distanced from local services.
20. Whilst the site is detached from the PUA, it is not isolated in the meaning of paragraph 79 of the Framework. A single field (Lotts Meadow) separates the site from the urban edge of Cheltenham at Vineries Close, leading onto Church Road and Leckhampton Road. Whilst existing dwellings do not immediately adjoin the site, there are a small number in close proximity to it.
21. Kidnappers Lane is a narrow road without footpaths, and there are proposals to enhance the accessibility to the town by the provision of a new footpath linking the site to Vineries Close around 260 metres away<sup>9</sup>. The main parties have agreed a condition requiring provision of these off-site highway works prior to the first occupation of any of the dwellings, and such works have the support of the Highway Authority. These works would assist in providing direct access to the outlying areas of Cheltenham which include a range of services and facilities.
22. The development of emerging allocation MD5 for housing and a school would eventually bring the urban edge of Cheltenham closer to the appeal site. This is a significant change since the 2018 appeal decision. Notwithstanding the

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<sup>9</sup> Core Document A14 : Transport Statement December 2018

undeveloped immediate surroundings, the appeal site would be situated only a short distance from the proposed new school and housing.

23. Policy H2 requires improvements to local infrastructure as part of the development of MD5 including safe, easy and convenient pedestrian and cycle links to key centres. As such, additional links alongside Kidnappers Lane and to Shurdington Road (where I note there are a range of facilities and services including bus stops) would be expected to be provided as part of the development of the housing and school. I have no reason to believe that the allocation will not come forward in a timely manner. In my view such development would, in time, also enhance the accessibility of the appeal site.
24. Whilst the proposals are contrary to Policy SD10 of the JCS, I am satisfied that the appeal site offers a suitable and accessible location and could accommodate housing development of the scale proposed. In turn it would meet the aims of section 9 of the Framework in seeking to direct development to accessible locations.

#### *Character and Appearance*

25. The site predominately comprises rough grassland, and there are remnants of hard standings and former horticultural nursery structures on the site and adjoining land. It cannot be classified as previously developed land, as defined in Annex 2 of the Framework, given that it was last occupied by agricultural buildings. Nonetheless the presence of these disused structures gives the site a distinctly different appearance to the undeveloped fields around it.
26. The site otherwise has an open appearance with mature vegetation mostly confined to its boundaries with Lotts Meadow. It is largely screened from the highway network, other than where the existing access drive leads onto Kidnappers Lane. This access is shared with two dwellings and other horticultural nursery structures immediately adjacent to the site. The remaining boundaries of the site adjoin open fields. Whilst the site is partly degraded, it has a pleasant semi-rural character which reflect its proximity to the edge of the town and nearby hills, and together with the adjacent fields its openness makes a positive contribution to the surrounding area.
27. Whilst there is no public access to the site itself, there is a public right of way network close to the site. Evidence from interested parties indicates that the public rights of way are well used and valued for recreational purposes. Such users are sensitive receptors to change in the character of this area. I note that the land around the site has been previously described as 'valued'<sup>10</sup>, and it is also clear from the representations from local residents that the area is cherished.
28. The appeal site and its immediate surroundings do not have any statutory landscape designation, but it is near to the Cotswolds Area of Outstanding Natural Beauty (AONB). Interested parties directed me towards viewpoints high up Leckhampton Hill which is a key feature within the AONB. From there I noted the 'patchwork' of small fields in the area and saw that the urban edge of Cheltenham is clearly evident from those high viewpoints.

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<sup>10</sup> Core Documents H2/3, H7a, PC1 and PC2

29. Natural England's (NE) comments in relation to the 2016 recovered appeal proposals ('the 2016 appeal')<sup>11</sup> were highlighted to me at the inquiry. NE previously raised concerns relating to the impact of the major mixed use development proposal on the setting of Leckhampton Hill. Nonetheless, the scheme before me is of a significantly smaller scale and I note that NE do not offer comments in relation to the landscape impacts of the current proposals on the AONB.
30. Notwithstanding that the site is partly visible from elevated viewpoints and is within the setting of the Hill, I consider that the proposals would not result in any harm to the setting of the AONB. This is due to the distances involved and the relatively small size of the development site, together with its proximity to the urban edge of Cheltenham. Moreover, in the 2018 appeal the Inspector concluded the proposal for up to 45 dwellings on this site would not materially harm views of the AONB as a whole and I agree with his conclusions on this matter.
31. The site and adjacent two dwellings are surrounded by land which is identified in the emerging CP by Policy GI1 as Local Green Space (LGS). The PC and interested parties have provided extensive evidence in relation to the LGS application<sup>12</sup>. However I note that the site and other land associated with the former horticultural nursery were not included in the LGS application, and therefore were subsequently excluded from the emerging Policy GI1 for a number of reasons. Indeed the PC accepted as part of that process, and as part of their evidence to the inquiry, that the site could accommodate some residential development.
32. The main parties agree that the site itself and its surroundings have not changed physically since the previous Inspector's conclusions in 2018 that the development would result in an incongruous and permanently harmful visual effect on the character and appearance of the area. Notwithstanding this, there have been fundamental changes to both the scale of the proposals and to the planning policy climate since then. The scale of development has been substantially reduced in the description of the current proposals from up to 45 to a maximum of 25 dwellings with a resultant decrease in density.
33. The layout on the illustrative masterplan shows a range of house types, many of which would have sizeable gardens, together with areas of public open space around the site. The previous Inspector noted a lack of space for screen planting, but the current illustrative layout allows for additional amounts of tree and hedge planting in and around the site. The development of the site in this manner, with generous green spaces, would broadly reflect the semi-rural character of the site allowing a suitable transition to the open fields beyond. As a result of the proposed development there would inevitably be more direct views into the site via the widened access road due to highway visibility requirements, however any concerns about 'suburban' character could be addressed through suitable design and use of materials at reserved matters stage.
34. Leckhampton Farm Court has been put forward by interested parties as the type of development they would favour here. I note that it is smaller than the appeal site, and appears to be located on the site of a former farmstead,

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<sup>11</sup> Core Document H2/3 : APP/B1605/W/14/3001717 Land at Kidnappers Lane, Cheltenham

<sup>12</sup> Chris Nelson Proof of Evidence : Section 3 and Annexes 1, 7 & 8

- however the planning history is not in the evidence before me. Therefore the site does not set a precedent and has little bearing on my decision. Regarding the 'community farmstead' design favoured by the PC, layout and appearance are not matters for my determination as part of this outline planning appeal.
35. Another significant change since the 2018 appeal is the advanced stage of the CP and the emerging major mixed use allocation MD5. The wider area would irrevocably change following build out of this allocation. The PUA of Cheltenham would increase, edging closer to the appeal site. Correspondingly, the landscape and visual character of the immediate area would inevitably alter. I note that the Council have registered their support for the proposals for the secondary school<sup>13</sup>. An associated footway/cycleway on Kidnappers Lane alongside the appeal site<sup>14</sup> would also result in a degree of change to the rural character of the lane.
36. The landscape within which the site is situated is sensitive to change and this is reflected in the aforementioned appeal decisions and the evidence provided in relation to the examination of the JCS and CP. Notwithstanding this, to my mind there is capacity within this discrete part of the landscape for small scale change and development. This is in view of its location proximate to the urban edge of the town and the emerging allocation, its partially degraded existing appearance, and the existence of two adjacent existing dwellings and former nursery structures. It is noteworthy that the PC and other interested parties recognise that the site has some scope for a sensitively designed, low density residential development.
37. Overall I find the harm would be moderate. Landscape harm would be localised to the partial loss of the 'patchwork' of small fields in the area, and some erosion of the semi-rural character of this area of Leckhampton. The matters which the PC find objectionable could be determined as part of a future reserved matters application, which can seek to meet the detailed design requirements of JCS Policy SD4 and CLP Policy CP7. Densities would be in keeping with the semi-rural location, and a condition can ensure that this maximum number of dwellings is adhered to so that the densities are also limited. Appropriate screen planting, suitable design, layout and use of materials would assist in minimising the harm to the character and appearance of the area.
38. Having regard to the above, I conclude that the harm to the character and appearance of the area would be moderate. As such, the development would result in conflict with Policies SD6 and SD10 (part 6) of the JCS which seek, amongst other things, for development proposals to protect or enhance landscape character for its own sake. There would also be some conflict with the provisions of Policies CO1 and CP7 (part c) of the CLP in relation to the effects on the character of the locality and the visual amenity of the landscape.
39. I have not found harm to the setting of the Cotswolds AONB therefore the proposals would be in conformity with Policy SD7 of the JCS, which requires development proposals within the setting of the AONB to conserve its special qualities.

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<sup>13</sup> ID3 : Cheltenham Borough Council Secondary School application consultation response 19/0058/SHR3MJ – 8 January 2020

<sup>14</sup> Paul Harris Proof of Evidence : Appendix E

40. Based on the illustrative layout, the quantum of development, the expected density and its illustrative layout would be in general conformity with the design policies of the development plan (JCS Policy SD4 and parts a and b of CLP Policy CP 7). This is subject to an appropriate future reserved matters submission.
41. The aforementioned landscape and design policies of the JCS and CLP are in compliance with the provisions of the Framework namely Part 12 'Achieving well-designed places' and Part 15 'Conserving and enhancing the natural environment', specifically paragraphs 170a and 172.
42. Finally the proposals would also partially conflict with emerging CP (Main Modifications October 2019) Policies D1 and L1 in relation to impact on the character of the locality and the landscape, on the setting of Cheltenham, and on views into and out of areas of acknowledged importance. These Policies are not subject to unresolved objections and are in compliance with the aforementioned parts of the Framework therefore I give them significant weight albeit I recognise that they do not form part of the adopted development plan.

#### *Cotswold Beechwoods Special Area of Conservation*

43. The site lies just over 5km away from the CBSAC European site. Information to inform a Habitats Regulations Assessment (HRA) has been provided by the Appellant<sup>15</sup>, and the Council as competent authority has previously carried out an Appropriate Assessment during the planning application process, which clearly sets out the conservation objectives for this particular SAC<sup>16</sup>. The approach taken by the parties to the HRA meets the guidance set out in the Planning Practice Guidance 'Appropriate Assessment'.
44. The potential effects arising from the proposals for housing development (in combination with other plans or projects, including the nearby emerging MD5 allocation) primarily relate to increased recreational use of the SAC. Conditions subsequently agreed by NE relate to the provision of on-site open space and the provision of a homeowner information pack to inform future occupants about local recreation resources and the sensitivities of the CBSAC.
45. In carrying out my duty as the competent authority under Regulation 63 of the Habitats Regulations I have considered the evidence provided by the appellant, the Council and consultation responses from NE<sup>17</sup>. Firstly, the proposals are not directly connected with or necessary to the management of the protected site. Secondly, from the evidence before me it is uncertain whether the appeal proposals, either alone or in combination with other plans and projects, are likely have a significant effect on the CBSAC site.
46. As part of my Appropriate Assessment to determine whether or not the development will have an adverse effect on the integrity of the site I note that the Council and NE accepted the additional information provided by the appellant subject to conditions. I am satisfied that the proposed mitigation measures in relation to provision of open space, a Landscape and Ecological Management Scheme and a homeowner information pack can be secured by

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<sup>15</sup> Core Document A18: Additional Information for Appropriate Assessment June 2019

<sup>16</sup> Core Document A17: Habitats Regulations Assessment and Appropriate Assessment Form - Table 1

<sup>17</sup> Core Document A30: Natural England consultation response

appropriate conditions and the signed Section 106 Agreement, both of which meet the respective tests<sup>18</sup>.

47. These measures would assist in mitigating any potential adverse effects by minimising the possible increase in recreational use of the CBSAC through the education of future occupiers and the provision of alternatives. I have no reason to disagree with the evidence before me supplied by the parties and NE, and there is no evidence to suggest that the conclusions of the Council with regard to their Appropriate Assessment are incorrect.
48. Therefore, I conclude that with the proposed mitigation measures, the development proposals would not adversely affect the integrity of the CBSAC, either alone or in combination with other plans and projects. Consequently, the proposals would comply with part 3 of Policy SD9 of the JCS which requires any development that has the potential to have a likely significant effect on an international site to be subject to a Habitats Regulations Assessment. The Policy accords with paragraphs 175-176 of the Framework.

### **Other Matters**

49. Whilst the concerns of interested parties principally reflect the main issues already addressed above, a number of other matters have been raised as part of the planning application and as evidence to the inquiry.

#### *Traffic and Highway Safety*

50. The 2016 appeal decision has been highlighted by interested parties, within which the Secretary of State concluded amongst other matters that those proposals would contribute to a severe impact on traffic within a wider area of Cheltenham. However the 2016 appeal comprised a significantly larger mixed use scheme including up to 650 dwellings and commercial uses. As such it is not directly comparable to the current proposals. Conversely, it is noteworthy that the Inspector for the 2018 appeal (for 45 dwellings) was satisfied that any increase in traffic would not result in any significant effect on highway safety.
51. Cumulative traffic impact with the nearby emerging allocation MD5 has been cited, however, the Traffic Assessment for the secondary school application is not before me in the evidence, and I was informed at the inquiry that consideration of the traffic impact of the school proposals is ongoing.
52. I note the lack of objection from the Highway Authority subject to conditions, including measures to improve visibility and provision of a footway to connect the site to the edge of Cheltenham. Whilst there would be no direct access to public transport from the appeal site, there are bus stops with frequent services between 10-13 minutes walk away which lead to the centre of Cheltenham and beyond<sup>19</sup>. This is a reasonable distance to make public transport a viable alternative to use of the car for some residents.
53. In view of the above I have no reason to reach a different conclusion to the previous Inspector in the 2018 appeal nor the Highway Officer's comments that the proposals would not result in an unacceptable impact on highway safety nor would the residual cumulative impacts on the road network be significant.

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<sup>18</sup> Paragraphs 55-56 of the National Planning Policy Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

<sup>19</sup> Core Document A14 : Transport Statement December 2018

### *Biodiversity*

54. The application submission is supported by a phase 1 ecological assessment<sup>20</sup> which concludes that the site is of low ecological value. Based on the evidence that is before me, the recommended mitigation and enhancement measures proposed within the report and the imposition of suitable conditions would ensure biodiversity enhancement within the site. I have dealt with potential effects in relation to the CBSAC in the main issues above.

### *Flooding and Drainage*

55. The site lies with flood zone 1, therefore is at low risk of flooding. The scheme includes a submitted drainage strategy which would ensure adequate drainage and flood risk measures would be implemented. I note that there is no objection from the drainage authorities, subject to conditions requiring further detail and the implementation of suitable mitigation. Based on the available evidence I have no reason to reach a different conclusion.

### *Air Quality and Noise*

56. There is no evidence before me that the proposals are likely to give rise to unacceptable impacts on air quality or generate excessive noise. Furthermore, given the location of the site future residents are unlikely to be exposed to poor air quality or any particular noise source. No objections are raised on such grounds by the relevant consultees and I have no reason to suggest otherwise.

### *Local Services*

57. It has been suggested that the development would result in unacceptable pressure being placed on existing local services and facilities, including schools and healthcare. However a Community Infrastructure Levy charging schedule is in place in this area, and there is no evidence that these facilities would not be able to cope with the level of development proposed. I also note that the Council, and statutory agencies responsible for such facilities have not objected to the proposal. There is no substantive evidence before me demonstrating harm in this regard.

58. Evidence was provided at the inquiry that the determination of the secondary school application has been delayed for a number of reasons, and it was suggested that there is no certainty that it will go ahead. Nonetheless, I have had regard to the evidence suggesting the need for a school in the area and its inclusion in an emerging plan which is at an advanced stage. It is a consideration that adds weight to my decision.

### *Prematurity*

59. Concerns about prematurity in advance of adoption of the CP and a Masterplan for emerging allocation MD5 have been raised. The proposals for 25 dwellings are not so substantial and the cumulative effect would not be so great that it would undermine the plan making process. The proposed development could not be classed as piecemeal, as it does not form part of MD5 and would not form part of nor compromise any Masterplan for that site.

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<sup>20</sup> Core Document A13: Ecological Assessment, Ecology Solutions February 2019

### *Five Year Housing Land Supply*

60. The housing land supply position represents another significant difference between the current proposals and the 2018 appeal. At that time the Council was able to demonstrate a five year housing land supply, and consequently the tilted balance was not engaged. This is no longer the case.
61. At this time the Council cannot demonstrate a five-year supply of deliverable housing sites. The extent of the housing shortfall differs between the parties, and the appellant has provided evidence to dispute the deliverability of several sites. Nonetheless, I do not consider this issue further as the SOCG is clear that both parties agree that the shortfall is substantial therefore the extent of the shortfall does not alter my overall decision.

### **Planning Obligations**

62. Two signed and dated S.106 agreements have been submitted including obligations relating to affordable housing and open space. The obligation to provide not less than 40% of the proposed dwellings as affordable housing units accords with policy SD12 of the JCS and is necessary to ensure the proposal meets the identified need for affordable housing in the area.
63. The provision of open space including an equipped play area within the site and the associated management and maintenance provisions comply with Policy RC6 of the CLP and Policy INF4 of the JCS. In addition to facilitating a healthy and safe community for future residents the open space would also provide an alternative recreational provision to assist in mitigation of potential effects on the CBSAC.
64. From the evidence before me I am satisfied that the above obligations are necessary to make the development acceptable, are directly related to the development and are fairly and reasonably related in scale and kind to the development. Therefore, they would accord with the three tests set out in paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Regulations 2010.

### **Planning Balance**

65. My starting point is the development plan as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004. There are a number of relevant development plan policies which the proposals are not in accordance with, in both the JCS and the CLP. These relate to the location of the site beyond the boundary of the PUA of Cheltenham, and the moderate harm to the landscape character and appearance of the area. In this respect I have identified conflict with Policies SD6 and SD10 (part 6) of the JCS and Policies CO1 and CP7 (part C) of the CLP. The policies are 'most important' for determining the application.
66. There is agreement between the main parties that a five year supply of deliverable housing sites cannot be demonstrated, and that the shortfall is significant, therefore the tilted balance of paragraph 11 of the Framework is engaged. The aforementioned most important policies for determining the application are deemed out-of-date. As such they can only be afforded limited weight.
67. The collective harm that would result from the proposed development, notably its effects on the character and appearance of the area and in terms of it being

at odds with the Council's adopted strategy for the location of new housing, would be modest by comparison with the significant combined benefits. Whilst a development of 25 dwellings is relatively small I have taken account of the Framework's objective to significantly boost the supply of housing, and give significant weight to the scheme's housing supply contribution. This is notwithstanding the differences between the main parties regarding the level of shortfall of housing supply in the Borough, as both agree that it is 'substantial'. Additionally, there is an identified need for additional affordable housing and a policy compliant 40% is included in the S.106. This provision is a significant consideration that weighs in favour of the proposals.

68. Other more minor benefits include the creation of employment during construction, the delivery of public open space and biodiversity enhancements, provision of a new footpath along Kidnappers Lane and the positive re-use of a disused site.
69. Consequently, at this time, the harm does not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole such that the appeal scheme represents sustainable development in the terms of the Framework. On this basis a decision other than in accordance with the development plan is justified and therefore the appeal should be allowed.

### **Conditions**

70. I have considered the conditions put forward by the Council, as agreed by the appellant, and the amendments discussed at the Inquiry against the tests set out in the Framework and Planning Practice Guidance. This includes the agreement to imposition of any necessary pre-commencement conditions.
71. Whilst I impose most of them, I do not impose those that do not meet the required tests. I have combined some of the conditions and amended the wording of others where necessary, in the interests of precision and enforceability. I have amended the pre-commencement clause in some conditions where such details could reasonably be submitted prior to above ground development instead.
72. In addition to conditions limiting the life of the planning permission and setting out requirements for the reserved matters in accordance with the relevant legislation, I impose a condition specifying the approved site location plan for certainty. The other submitted plans are in illustrative form only so are not listed.
73. I have not imposed the suggested conditions requiring provision of details of materials, boundary treatments and refuse/recycling storage as these could be adequately dealt with as part of a reserved matters application. The conditions are therefore unnecessary.
74. I do not consider a condition requiring vehicular access from Kidnappers Lane only to be necessary, as this is the only highway which adjoins the site. I have simplified and amalgamated those conditions relating to provision of the access road (including fire hydrants and street lighting) and visibility splays. A condition requiring electric charging points and cycle parking is reasonable in meeting aims to reduce carbon emissions and improve air quality. I have

- amalgamated the suggested conditions together with those requiring details of vehicle parking with a future reserved matters submission for simplicity.
75. A condition requiring a new footway connecting the site to Vineries Close prior to first occupation is necessary in the interests of improving accessibility to the town. These off-site works are on highway land and have the support of the local highway authority, and I am satisfied that there is a realistic prospect of them being delivered. A condition requiring details of management and maintenance of the proposed street is necessary to ensure a safe, suitable and secure means of access is achieved and maintained.
76. A construction management plan condition is necessary to reduce impacts during construction on the highway network and on nearby occupiers. I have added a clause to require agreement of construction vehicle routing as some narrow roads in the vicinity of the site are unlikely to be suitable for heavy construction traffic. However, I have not specified an exact route as there is no agreed routing in the evidence before me.
77. A surface water drainage condition is necessary in order to prevent an increased risk of flooding of the site and its surroundings, and to provide for appropriate drainage for the dwellings. A contamination condition is necessary given the previous commercial use of the site to control pollution of land and water in the interests of the environment and public safety. I have amalgamated the three suggested conditions concerning contamination in the interests of clarity.
78. A detailed landscaping scheme is necessary to be submitted with reserved matters to assist in screening and reducing the effect of the development on its surroundings. I have reworded the condition for clarity. Details of tree/hedge protection are also required to ensure the protection of important existing vegetation on and around the site.
79. A Construction Environmental Management Plan is required to ensure the recommendations in the Ecological Assessment are implemented to ensure species and their habitats are properly protected during construction. A Homeowner's Information Pack providing details of recreational resources in the locality is necessary to meet the requirements of Habitats Regulations, to mitigate any potential effect on the CBSAC, as should the submission and implementation of a Landscape and Ecological Management Plan.
80. Finally I have added a condition limiting the development to a maximum of 25 for reasons of clarity and certainty.

### **Conclusion**

81. For the reasons given above I conclude that the appeal should be allowed.

*S Hunt*

INSPECTOR

## Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Site Location Plan 300.P.2 Rev A
- 5) The details to be submitted for the approval of reserved matters pursuant to condition 1 herein shall include vehicular access onto Kidnappers Lane and visibility splays (in general accordance with Site Access Plan ref LE.KL.SA.01 Rev A), parking and turning facilities within the site. The dwellings hereby permitted shall not be occupied until those facilities have been provided in accordance with the approved details and shall be maintained available for those purposes for the duration of the development.
- 6) No dwelling shall be occupied until the first 20 metres of the access road (including surface water drainage/disposal, any vehicular turning heads, fire hydrants and street lighting) and the junction with the existing public road at Kidnappers Lane together with associated visibility splays, have been completed to at least binder course level and the footways to surface course level.
- 7) Vehicle and cycle parking shall be provided prior to first occupation of each dwelling in accordance with details to be contained within the approval of reserved matters pursuant to condition 1 herein. Such details shall include a scheme for enabling charging of electric plug-in and other ultra-low emission vehicles. Parking and charging points shall be maintained for this purpose thereafter.
- 8) Prior to the commencement of any above ground works of the dwellings hereby permitted, details of a new footway between the site access off Kidnappers Lane and the existing footway near to the junction of Vineries Close (based on the principles shown on PFA drawing H561/2 at Appendix D of the Transport Statement dated December 2018 or a suitable alternative arrangement) shall be submitted to and approved in writing by the Local Planning Authority. The approved footway shall be provided prior to first occupation of any of the dwellings and maintained as such thereafter unless and until adopted as highway maintainable at public expense.
- 9) Prior to the first occupation of any of the dwellings hereby permitted details of the proposed arrangements for future management and

maintenance of the proposed streets within the development shall be submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) wheel washing facilities; and
  - v) a scheme of construction traffic routing on the local highway network.

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

- 11) No development shall commence on site until a detailed Sustainable Drainage System (SuDS) Strategy document has been provided for approval by the Local Planning Authority, this should be in accordance with the proposal set out in the Flood Risk Assessment and Drainage Strategy (January 2019) and address the advice and recommendations raised by the Lead Local Flood Authority in the letter dated 27 March 2019. The SuDS Strategy must include a detailed design, maintenance schedule, confirmation of the management arrangements and a timetable for implementation. The SuDS Strategy must also demonstrate the technical feasibility/viability of the drainage system through the use of SuDS to manage the flood risk to the site and elsewhere and the measures taken to manage the water quality for the lifetime of the development. The scheme for the surface water drainage shall be carried out in accordance with the approved details before any dwelling is occupied.
- 12) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the

local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the Local Planning Authority within 1 month of the report being completed and approved in writing by the local planning authority.

- 13) The reserved matters details relating to landscaping submitted pursuant to condition 1 herein shall include details of both hard and soft landscape works for the following:
- i) planting plans;
  - ii) written specifications (including cultivation and other operations associated with plant and grass establishment);
  - iii) schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate; and
  - iv) hard surfacing materials.

The landscaping works shall be carried out in the first planting season following the first occupation of any dwelling or prior to completion of the development, whichever is the sooner. The completed scheme shall be managed and maintained in accordance with an approved scheme of management and maintenance for a period of 5 years.

- 14) Prior to the commencement of any works on site (including demolition and site clearance) a Tree Protection Plan (TPP) to BS5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The TPP shall detail the methods of tree/hedge protection and clearly detail the positioning and specifications for the erection of tree protective fencing. The TPP shall be carried out as approved for the duration of the construction.
- 15) Prior to the commencement of any works on site (including demolition and site clearance) a detailed Construction Environmental Management Plan for bats, reptiles, birds and badgers with details of how they will be protected and the proposed enhancements in line with the recommendations and conclusions of the Ecological Assessment dated February 2019 should be submitted and approved in writing by the Local Planning Authority. The Plan shall be implemented in full in accordance with the timetable and details laid out within the approved Plan.
- 16) Prior to first occupation of any dwelling hereby permitted, details of a Homeowner's Information Pack providing information on recreation resources in the locality shall be submitted to and approved in writing by the Local Planning Authority. The pack should reference alternative local recreation opportunities (off site), including website information for Cotswolds AONB and recreation offer. Each dwelling shall be provided with the approved Homeowner Information Pack on occupation.
- 17) Prior to the first occupation of any dwelling hereby permitted a Landscape & Ecological Management Scheme shall be submitted to and approved in writing by the Local Planning Authority and then the development shall be carried out and maintained in full accordance with that Scheme.
- 18) The total number of dwellings authorised by this permission shall not exceed 25.

End of Schedule.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Sarah Clover of Counsel      Instructed by Cheltenham Borough Council

*No witnesses were called  
however the following  
contributed to the inquiry:*

Stuart Ryder (BA Hons) CMLI	Director, Ryder Landscape Consultants
Paul Smith (BA Hons) Bsc (Hons) MRTPI	Planning Consultant
Craig Hemphill	Principal Planning Officer, Cheltenham Borough Council
John Rowley	Senior Planning Policy Officer, Cheltenham Borough Council

### FOR THE APPELLANT:

Christopher Lockhart-Mummery      Instructed by Pegasus Planning Group Ltd for  
QC      Robert Hitchins Ltd

*No witnesses were called  
however the following  
contributed to the inquiry:*

Neil Tiley Assoc RTPI	Director, Pegasus Group
Paul Harris BA DIP LA CMLI	Director, MHP Design Ltd
David Hutchinson BSc (Hons) DipTP MRTPI	Executive Director, Pegasus Group

### OTHER APPEARANCES:

Mr Chris Nelson      On behalf of Leckhampton with Warden Hill Parish Council

### INTERESTED PERSONS:

Alan Bailey	Local Resident
Dr Adrian Mears	Local Resident, former Chair of Leckhampton with Warden Hill Parish Council
Kenneth Pollock	Local Resident
Margaret White	Local Resident
Jeannette Edwards	Local Resident

**DOCUMENTS SUBMITTED AT THE INQUIRY**

- ID1 Mr Lockhard-Mummery QC Opening Submissions
- ID2 Merestones Residents Association statement, addendum and plan
- ID3 Cheltenham Borough Council response to application consultation 19/0058/SHR3MJ – 8 January 2020 (document submitted by the Appellant)
- ID4 Statement by Kenneth Pollock
- ID5 Statement by Margaret White
- ID6 Cheltenham Borough Council to Planning Inspectorate - Cheltenham Plan Proposed Main Modifications Consultation – 13 January 2019