



Department for  
Communities and  
Local Government

Mr N Whitehead  
WPB  
143A Calton Road  
Bath  
BA2 4PP

Our Ref: APP/F1610/A/11/2165778

13 February 2013

Dear Mr Whitehead,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY FAY & SON LTD  
HIGHFIELD FARM, TETBURY, GLOUCESTERSHIRE GL8 8SD  
APPLICATION REF:11/01591/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jessica Graham BA (Hons) PgDipL, who held a public local inquiry which opened on 22 May 2012 into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Cotswold District Council (the council) to refuse outline planning permission for residential development up to a maximum of 250 units, access road and landscaping, with all other matters reserved, on land at Highfield Farm, Tetbury in accordance with planning application ref: 11/01591/OUT, dated 8 March 2011.

2. The appeal was recovered for the Secretary of State's determination on 26 January 2012 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves residential development of over 150 units and is on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. The appeal was also recovered to enable the Secretary of State to consider whether the proposal would have any impact on the Cotswolds Area of Outstanding Natural Beauty (AONB) within which it is situated.

**Inspector's Recommendation and Summary of the Decision**

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and outline planning permission be granted. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Pamela Roberts  
Planning Casework Division  
Department for Communities and Local Government  
Zone 1/H1, Eland House  
Bressenden Place  
London SW1E 5DU

Tel 03034444359  
Email: PCC@communities.gov.uk

## **Procedural Matters**

4. The Secretary of State notes that the council and the appellant agree that the provision of affordable housing could be adequately secured by condition and that this reason for refusal was not pursued at the appeal (IR1.4). He also notes that the council resolved to grant outline planning permission for 174 dwellings on the SIAC/Matbro site on Quercus Road, Tetbury after the close of the inquiry and that the Inspector has taken this into account in her consideration of the appeal (IR1.8).

5. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) made in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Like the Inspector, the Secretary of State considers that the environmental information as a whole meets the requirements of these regulations and that sufficient information has been provided for him to assess the environmental impact of the application (IR6.1).

## **Policy Considerations**

6. 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. In this case, the development plan comprises Regional Planning Guidance for the South West (which became the Regional Spatial Strategy for the South West (RS) (2001)); the saved policies of the Gloucestershire Structure Plan Second Review (SP) (1999); and the saved policies of the Cotswold District Local Plan 2001-2011 (LP) (2006). Development plan policies relevant to the appeal are set out at IR5.2 - 5.9.

7. Work has commenced on a replacement to the Cotswold Local Plan, but it is still in the early stages of preparation. Two Core Strategy issues and options papers have been published, in 2007 and 2010. Although these are material considerations, the council and the appellant agree that the emerging plan can be afforded only limited weight (IR5.11). The Secretary of State agrees, given the early stage of plan preparation.

8. The Localism Act 2011 provides for the abolition of Regional Strategies by Order. However, the Secretary of State has attributed limited weight to the proposed plan to revoke the South West RS. Any decision to revoke the RS will be subject to the environmental assessment which is in train.

9. Other material considerations include the National Planning Policy Framework (the Framework) (IR5.12); RS Proposed Changes (2008) (IR5.13); and local policy documents listed at IR5.14-5.16. In addition the Secretary of State has had regard to Circular 11/95 The Use of Conditions in Planning Permissions; the Community Infrastructure Levy (CIL) Regulations (2010) as amended; Technical Guidance to the National Planning Policy Framework (2012); Baroness Hanham's Written Ministerial Statement on Abolition of Regional Strategies of 25 July 2012; and the Written Ministerial Statement on Housing and Growth of 6 September 2012.

10. In determining this appeal, the Secretary of State has had regard to the purpose of conserving and enhancing the natural beauty of the Cotswolds AONB, as required under section 85 of the Countryside and Rights of Way Act 2000. He has also had special regard to the desirability of preserving listed buildings and their setting or

any features of special architectural or historic interest they possess, as required under the provisions of sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Highfield Farmhouse, adjacent to the site, is a grade II listed building.

### **Main Issues**

11. The Secretary of State agrees with the Inspector that the main issues are those set out in the Inspector's conclusions at IR14.1 - 14.81.

### **The development plan**

12. The Secretary of State agrees with the Inspector that the proposed development would fundamentally conflict with the development plan, which seeks to restrict residential development on land like the appeal site which lies outside any settlement boundary and inside an AONB. He agrees that the Framework states that relevant policies for the supply of housing should not be considered up to date if the council cannot demonstrate a 5 year land supply, and that this should be considered by establishing the housing requirement and then the supply of deliverable sites (IR14.2).

### **Housing requirement and buffers**

13. The Secretary of State agrees with the Inspector's reasoning and conclusions on the housing requirement for the district as set out in IR14.3 - 14.18. He agrees that the SP housing requirement remains the starting point, but the plan was only intended to cover the period to 2011 and its housing requirement calculation was based on household projections from 1996 (IR14.5 - 14.7). He agrees with the Inspector that there is more up to date evidence available and has carefully considered the Inspector's conclusions on the evidence noted at IR14.8 - 14.12. He agrees with the Inspector that the housing requirement in the SP is so out of date as to be unfit for purpose in terms of defining the five year housing requirement for the district (IR14.15) and that it is reasonable to use the figure at the lowest end of the spectrum of more up to date forecasts and projections, to assess the five year housing requirement. He therefore proposes to use the figure of 2,022 dwellings, derived from the draft RS Proposed Changes, as the five year housing requirement in this instance (IR14.16). He agrees with the Inspector that this is not an endorsement of this figure as representing the objectively assessed housing need for the district, but in the absence of an up to date development plan, he considers it to be a more robust housing requirement than the SP requirement. In reaching this conclusion he has taken account of the policy in the Framework to boost significantly the supply of housing.

14. The Framework also requires that an additional buffer of 5%, or 20% in cases where there is a record of persistent under delivery of housing, should be added to the supply of deliverable sites. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR14.19 – 14.24 that there has been persistent under delivery of housing in the district, which justifies an additional buffer of 20%. This increases the five year housing requirement to 2,426 dwellings over the next five years (IR14.24).

## **Housing supply**

15. The Secretary of State agrees with the Inspector's reasoning and conclusions on the housing supply for the district as set out in IR14.25 - 14.42. He finds that the five year land supply of 1,711 dwellings amounts to a very serious shortfall against the lowest estimate of the five year requirement, with a 20% buffer, of 2,426 dwellings (IR14.39).

16. The Secretary of State notes the Inspector's explanation for the discrepancy in the housing supply figure between this case and the Bath Road/Berrells Road case (APP/F1610/A/12/2173305) that was recovered for his consideration alongside this appeal (IR14.40 -14.42). He agrees with the Inspector that even though the evidence provided by parties differed in the two cases, the resulting assessment of five year land supply in the Bath Road/Berrells Road case of 1,826 dwellings has no bearing on the Inspector's conclusions on land supply (IR14.42). Whichever supply figure is used, there is still a considerable shortfall against the five year housing requirement.

## **Implications of the housing supply position**

17. The Secretary of State agrees with the Inspector's reasoning and conclusions on the implications of the housing supply position as set out in IR14.43 - 14.46. He finds that the inability of the council to demonstrate a five year land supply means that the relevant policies for the supply of housing cannot be considered up to date, in accordance with policy in the Framework (IR14.43). The Secretary of State agrees with the Inspector that the special emphasis in the presumption in favour of granting planning permission in such circumstances does not automatically apply in this case, because of the specific policies in the Framework that indicate development should be restricted and the duty to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. The Secretary of State further agrees that the serious shortfall in the supply of housing land is a material consideration that weighs heavily in favour of allowing the proposed development, but there are other material considerations that need to be weighed in the balance (IR14.46).

## **The effect of the development upon the AONB, the setting of Highfield Farmhouse and the setting of Tetbury**

18. The Secretary of State agrees with the Inspector's reasoning and conclusions on the effect of the proposed development on the AONB as set out in IR14.47 - 14.69. He agrees that great weight should be given to conserving and enhancing the natural beauty of the AONB. He further agrees that the appeal proposal represents major development, which should be refused except in exceptional circumstances and where it can be demonstrated it is in the public interest (IR14.47). In accordance with policy in the Framework he has considered the Inspector's assessment of the considerations applying to major development proposals in an AONB.

- Need for the development

19. The Secretary of State agrees that there is a pressing need for the proposed houses locally and a need nationally to boost significantly the supply of housing (IR14.48).

- The cost of, and scope for, developing elsewhere

20. The Secretary of State agrees that it is preferable for development to be accommodated on previously-developed land (IR14.51); but there is no evidence to indicate that the remaining shortfall could be addressed solely through the use of previously developed sites. He notes that the Inspector found no evidence of anything other than very limited scope to provide housing on sites outside the AONB (IR14.52). Although preliminary work on the Core Strategy Second Issues and Options Paper identifies a potential strategic site at Cirencester, outside the AONB (IR8.33), he attributes limited weight to this due to the early stage of plan preparation.

- Any detrimental effect on the environment or landscape, and the scope for mitigation.

21. The Secretary of State agrees that the primary concern about the impact on the AONB is the loss of fields to housing development (IR14.53). Despite the visual improvements that would result from the landscaping proposals, and to some extent moderate the impact of the new buildings, he agrees that the loss of open fields must inevitably have a detrimental effect on the landscape and environment (IR14.54 – 14.56). He notes that the appeal site is grade 2 agricultural land, and agrees that in the absence of recent evidenced analysis of the comparative quality of agricultural land throughout the district, no reliable conclusions can be drawn on the possibility of developing alternative sites which would result in the loss of land of poorer agricultural quality than the appeal site (IR14.57).

22. The Secretary of State agrees that the significance of the heritage asset, Highfield Farmhouse, has been somewhat diluted by various works (IR14.58- 14.59). However the open fields separating the farmhouse from the town make a positive contribution to the setting, and thereby the significance, of Highfield Farmhouse (IR14.61). The Secretary of State agrees with the Inspector that the loss of the fields to development would lead to less than substantial harm to the significance of the heritage asset, and that this harm needs to be weighed against the public benefits of the proposal (IR14.62 – 14.63).

23. Turning to the impact on the setting of Tetbury, the proposed development would extend the edge of the settlement further north, and would be visible on the approach from the north in the context of other development on the opposite side of the approach road (IR14.66). The Secretary of State agrees that the landscaping proposals would improve the visual quality of the relationship between the edges of the town and the adjoining countryside and would enhance the setting of Tetbury (IR14.68). In reaching this conclusion, he fully supports the Inspector's view that the cumulative effect of expanding the town and the impact on the historic relationship between the town and the surrounding countryside is a matter that will need to be assessed as part of the updating of the local plan (IR14.67).

24. In concluding on these three considerations, the Secretary of State agrees that the proposed development would not harm the setting of Tetbury; it would detract from the significance of Highfield Farmhouse; and harm the AONB through the loss of open fields. He agrees that there is no evidence that there is anything other than very limited scope to provide housing within the district on sites that are not in the AONB. He also agrees that there is a clear and pressing need for more housing both in terms of the shortfall locally within Cotswold District and nationally. He agrees with the Inspector that these amount to exceptional circumstances, where permitting the

proposed development can reasonably be considered to meet the wider public interest in terms of the Framework (IR14.69).

### **Other matters**

25. The Secretary of State has carefully considered all the other matters noted by the Inspector at IR14.70 – 14.76 and agrees with her reasoning and conclusions on these matters. He agrees that the provision of 50% affordable housing and the economic benefits associated with housing weigh in favour of the scheme (IR14.70). He notes that the Environment Agency has not raised objection on flood risk, subject to appropriate conditions and that the proposed mitigation measures may bring benefits in terms of reducing flood risk elsewhere (IR14.71). He agrees with the Inspector's findings on all other matters.

### **Local involvement in the planning system**

26. The Secretary of State notes the Inspector's comments and conclusion on this issue at IR14.77 – 14.81. He considers that she has correctly reflected his views which are contained in the extract from his Written Ministerial Statement: Housing and Growth of 6 September 2012 at IR14.80. The Framework also clearly emphasises the importance of keeping plans up to date; meeting the full, objectively assessed needs for housing; and maintaining a five year supply of deliverable housing sites.

### **Conditions and obligations**

27. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and the planning obligation, as set out in IR12.1 – 13.3. He agrees that no account should be taken of the Local Footpath Infrastructure and Development Boundaries Contribution in the planning obligation in determining this appeal (IR12.9). He is satisfied that the provisions of the planning obligation, with the exception of the Local Footpath Infrastructure and Development Boundaries Contribution which he has not taken into account, satisfy the tests of Regulation 122 of the CIL Regulations 2010 as amended.

28. The Secretary of State has considered the proposed conditions, the Inspector's assessment of these at IR13.1 – 13.13 and national policy as set out in Circular 11/95. He agrees with the Inspector's assessment that the conditions, as recommended, are necessary and he considers that they comply with the provisions of Circular 11/95.

### **Overall Conclusions**

29. The Secretary of State agrees with the Inspector's overall conclusions on the planning balance as set out in IR14.82 – 14.84. He agrees that the proposed development would conflict with the development plan. However, he considers that there are material considerations that weigh in favour of the proposal, in particular the ability to contribute to meeting the severe shortfall in market and affordable housing provision, on a site that is well located to Tetbury, and which would provide scope for improvements to the setting of the town and benefits for the local and national economy (IR14.82). He agrees with the Inspector that the main considerations weighing against the proposal are the reduction in the natural beauty of the AONB; the reduction in significance of Highfield House as a designated heritage asset; and the loss of grade 2 agricultural land (IR14.83).

30. Having weighed up all of the material considerations, the Secretary of State agrees that the material considerations in favour of the proposed development outweigh the conflict with the development plan.

### **Formal Decision**

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation at IR15.1. He hereby allows your client's appeal and grants outline planning permission for residential development up to a maximum of 250 units, access road and landscaping, with all other matters reserved, on land at Highfield Farm, Tetbury in accordance with planning application ref: 11/01591/OUT, dated 8 March 2011 subject to the conditions listed at Annex A of this letter.

32. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the local planning authority fail to give notice of their decision within the prescribed period.

33. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

34. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

### **Right to Challenge the Decision**

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

36. A copy of this letter has been sent to Cotswold District Council. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours sincerely

Pamela Roberts  
Authorised by the Secretary of State to sign in that behalf

## **Annex A    Conditions**

- 1) Details of the appearance, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins 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 three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) Subject to condition no. 9 below, the development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination: 2440-30 Rev F, 969.03 Rev L and 2440-31 Rev A.
- 4) Applications for the approval of the reserved matters shall be in accordance with the principles and parameters described and identified in the Design and Access Statement. A statement shall be submitted with each reserved matters application which demonstrates that the application proposals comply with the Design and Access Statement or, where relevant, explaining why they do not. Reserved matters applications shall also be accompanied by a detailed design statement explaining the architectural and landscaping design rationale in the context of the adjacent listed building and its setting.
- 5) None of the dwellings hereby permitted shall have a height exceeding three storeys.
- 6) The details to be submitted in accordance with condition no. 1 above shall include:
  - the existing and proposed ground levels on the development site and on neighbouring land, and the slab levels of neighbouring buildings and the proposed buildings;
  - a footway/cycleway link and emergency access of a minimum width of 3 metres, from the development site to Northlands Way;
  - a link of a minimum width of 10 metres, from the development site to the adjacent school playing fields on the western boundary of the site;
  - vehicular parking (commensurate with predicted levels of car ownership for 2026) and manoeuvring facilities within the development site;
  - secure and sheltered cycle parking facilities;
  - a Waste Minimisation Statement, prepared in accordance with GCC's "Waste Minimisation in Development Projects" Supplementary Planning Document (September 2006);
  - details of the water butts that will be provided to serve each dwelling; and
  - a scheme for the provision of fire hydrants, to be served by mains water supply, and a timetable for their installation.



- 7) Prior to commencement of development, details of a surface water drainage scheme shall be submitted to, and approved in writing by, the local planning authority. The scheme shall be in accordance with the Flood Risk Assessment (issue 4, prepared by Fairhurst and dated 5 July 2011) and shall include details of the phasing of the surface water infrastructure; the drainage design for each plot, phase or parcel of land; and source control measures. The development shall be implemented in accordance with the approved scheme.
- 8) Prior to commencement of development, a ten-year Ecological Management Plan shall be submitted to, and approved in writing by, the local planning authority. The Plan shall include:
- a detailed mitigation strategy for reptiles, showing how harm to the grass snakes on the site will be avoided, and enhancements made for reptiles;
  - a detailed method statement, in line with recommendations laid out in the Great Crested Newt Survey dated June 2010 by Ecosulis, for dealing with the great crested newts on site, including details of the proposed new newt ponds and other enhancements;
  - post-completion management prescriptions for all the areas of grassland, hedges, trees, swales, reed bed and newt ponds, together with maintenance and monitoring schedules;
  - a detailed lighting plan, in order to avoid potential damage to flight paths for bats along the hedgerow boundaries.
- The development shall be implemented in accordance with the approved Plan.
- 9) Notwithstanding the provisions of condition no. 3 above and the information shown on the submitted Landscape Structure Plan, no development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include boundary treatments; surfacing; signage; street furniture; planting details (including species, numbers, planting distances/densities and plant sizes); removal of the conifers on land to the north-east of the development site and replacement planting, in accordance with the details shown on drg. no. 969.06B submitted with the application; and a programme for the implementation of all of the landscape works, including the Public Open Space detailed on drg. no. 969.03 Rev L (to include a Locally Equipped Area for Play). The development shall be implemented in accordance with the approved details.
- 10) Any grassed areas, plants or trees forming part of the landscape works approved under condition no. 9 above (for the avoidance of doubt, this includes retained trees and grassed areas), which within a period of 5 years from the completion of the approved landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season. Replacement trees and plants shall be of similar size and species to those lost, unless the local planning authority gives written approval to any variation.
- 11) The development shall be served by access roads laid out and constructed in accordance with details to be submitted to and approved in writing by the

- local planning authority at reserved matters stage. None of the dwellings hereby permitted shall be occupied until the road (including any proposed turning heads, street lighting and footways) providing access to that dwelling has been completed to at least base course level in accordance with the approved details. All roads and footways within the site shall be completed no later than five years after first occupation of any dwelling served and shall be maintained thereafter until adopted as highway maintainable at the public expense.
- 12) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- the parking of vehicles of site operatives and visitors
  - loading and unloading of plant and materials
  - storage of plant and materials used in constructing the development
  - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - wheel washing facilities
  - measures to control the emission of dust and dirt during construction
  - hours of working on site during the period of construction.
- 13) No development shall take place within the appeal site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority.
- 14) (1) Site Characterisation: No development shall take place until an assessment of the nature and extent of any contamination has been submitted to and approved in writing by the local planning authority. This assessment shall consider the nature and extent of any contamination on the site, whether or not it originates on the site. The assessment must include:
- (a) a 'desk study' report documenting the site history, environmental setting and character, related to an initial conceptual model of potential pollutant linkages;
  - (b) a site investigation, establishing the ground conditions of the site, and a survey of the extent, scale and nature of the contamination;
  - (c) a 'developed conceptual model' of the potential pollutant linkages, with an assessment of the potential risks to:
    - (i). - human health,
    - (ii). - property (existing or proposed) including buildings, service lines and pipes,
    - (iii). - adjoining land,
    - (iv). - groundwaters and surface waters, and
    - (v). - ecological systems.

(2) Submission of Remediation Scheme: No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(3) Implementation of Approved Remediation Scheme: The Remediation Scheme, as agreed in writing by the local planning authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the local planning authority in advance of works being undertaken. On completion of the works the developer shall submit to the local planning authority written confirmation that all works were completed in accordance with the agreed details.

(4) Reporting of Unexpected Contamination: In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing within 2 days to the local planning authority and development must be halted on that part of the site affected by the unexpected contamination. An assessment must be undertaken in accordance with the requirements of paragraph (1) of this condition, and where remediation is necessary a Remediation Scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the local planning authority in accordance with the requirements of paragraph (2) of this condition. The measures in the approved Remediation Scheme must then be implemented in accordance with the approved timetable. Following completion of measures identified in the approved Remediation Scheme written confirmation that all works were completed must be submitted to and approved in writing by the local planning authority in accordance with paragraph (3) of this condition.

- 15) Prior to commencement of development full details of the pedestrian improvements listed on, and in the locations shown on, Plan FMW0275-GA02 shall be submitted to and approved in writing by the local planning authority. Those improvements shall be implemented in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted.
- 16) Prior to commencement of development a scheme for the provision of affordable housing as part of the development shall be submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework, or any future guidance that replaces it. The scheme shall include:
  - the numbers, type, tenure and location on the site of the affordable housing provision to be made, which shall consist of not less than 50% of the total number of dwellings permitted;

- the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- the arrangements for the transfer of the affordable housing to an affordable housing provider, or alternative arrangements for the future management of the affordable housing;
- arrangements to ensure that the affordable housing is affordable not only for the first occupiers but also for subsequent occupiers; and
- the occupancy criteria to be used for determining the identity of occupiers of the affordable housing, and the means by which such occupancy criteria will be enforced.



The Planning  
Inspectorate

---

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

by Jessica Graham BA(Hons) PgDipL

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

Date: 9 November 2012

---

TOWN AND COUNTRY PLANNING ACT 1990

**COTSWOLD DISTRICT COUNCIL**

APPEAL MADE BY

**FAY & SON LTD**

Inquiry opened on 22 May 2012

Highfield Farm, Tetbury, Gloucestershire GL8 8SD

File Ref: APP/F1610/A/11/2165778

---

**File Ref: APP/F1610/A/12/2165778**  
**Highfield Farm, Tetbury, Gloucestershire GL8 8SD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Fay & Son Ltd against the decision of Cotswold District Council.
- The application Ref 11/01591/OUT, dated 8 March 2011, was refused by notice dated 23 November 2011.
- The development proposed is residential development up to a maximum of 250 units, access road and landscaping, with all other matters reserved.

**Summary of Recommendation: That the appeal be allowed, subject to conditions set out in Appendix C**

---

<b>CONTENTS</b>	<b>Page</b>
1. Procedural matters	2
2. The site and surroundings	3
3. Planning history	3
4. The proposal	4
5. Planning policy	4
6. Environmental Impact Assessment	7
7. Agreed matters	7
8. The case for the Council	8
9. The case for Fay & Son Ltd	17
10. The cases for interested parties	27
11. Written representations	32
12. S.106 Obligation	32
13. Conditions	34
14. Inspector's conclusions	37
15. Inspector's recommendation	53
<b>Appendices</b>	
A. Appearances	54
B. Documents	55
C. Suggested conditions	64
D. Glossary of acronyms and abbreviations	69

## 1. Procedural matters

*References in round brackets are to documents (listed in Appendix B), while references in square brackets are to paragraphs within this report.*

- 1.1 The inquiry opened on 22 May 2012, but due to the late submission by the appellant of a large volume of additional evidence, I agreed to adjourn to give all parties a fair opportunity to consider the material. The inquiry resumed on 28 August, and also sat on 29, 30 and 31 August, and 10 September. I made an unaccompanied pre-inquiry visit to the area on 21 May, further unaccompanied visits on 20 August and 10 September, and an accompanied visit on 10 September.
- 1.2 The application was submitted in outline (CD 1.1), with details of access and landscaping to be considered as part of the application, and details of scale, layout and appearance reserved for future consideration.
- 1.3 The Council's Refusal Notice (CD 1.6) cited two reasons for refusing planning permission. The first referred to the location of the site outside any defined development boundary, and within the AONB; the concern that major residential development of this scale could undermine the emerging development strategy and pre-empt community consultation and participation; the need to prioritise previously developed rather than undeveloped sites; and the effect the development would have upon the character and appearance of the Cotswolds AONB, the setting of Highfield Farmhouse (which is a Grade II listed building), and the setting of the historic market town of Tetbury.
- 1.4 The Council's second reason for refusal referred to a failure to demonstrate why up to 50% affordable housing could not be provided as part of the proposed development. However, the appellant now intends to provide 50% affordable housing, and the SoCG (APP 3.3) records the agreement of the appellant and the Council that this provision could be adequately secured by way of condition. I agree that this would be an appropriate mechanism, and set out below [13.12; Appendix C] the condition that would be appropriate if the SoS were minded to allow the appeal.
- 1.5 The appeal was recovered by the SoS by letter dated 26 January 2012. The letter advised that he wished to determine the appeal himself because (a) it involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities; and (b) he would wish to consider whether the proposal would have any impact on the Cotswolds AONB within which it is situated.
- 1.6 An appeal concerning the residential development of a site outside the development boundary on the southern side of Tetbury (Ref. APP/F1610/A/12/2173305) has also been recovered for determination by the SoS, and is the subject of a separate, but contemporaneous, report.
- 1.7 At the date when the Council determined the application, it considered that it was unable to demonstrate a five year supply of housing land. That position has subsequently changed; the Council now considers that it is able to demonstrate a five year supply. This more recent position informs the

Amendment to the SoCG (INQ 35) and the Council's evidence to the inquiry (LPA 1-10).

- 1.8 An application for development (to include 174 dwellings) of the SIAC/Matbro site on Quercus Road, which comprises some previously developed land, and lies within the Tetbury settlement boundary, was scheduled for determination at the Council's Committee Meeting on 12 September 2012, after the inquiry was due to close. At the inquiry the Council and the appellant helpfully clarified the implications that the decision on that application, which ever way it went, would have for their respective cases in this appeal. The Council subsequently resolved to grant outline planning permission for the proposed development of the SIAC/Matbro site, and I have taken that into account in my consideration of this appeal.
- 1.9 A large number of other appeal decisions were drawn to my attention. I have commented upon those I consider particularly relevant to the current appeal, but as a general principle, each proposal for development must be considered on the basis of its own merits and site-specific circumstances.

## **2. The site and surroundings**

- 2.1 The appeal site lies to the north of Tetbury. It is adjacent to, but outside, the settlement boundary defined by the Cotswold District Local Plan. It is a broadly rectangular area measuring some 8.92 hectares of agricultural land, formed of paddocks and open fields.
- 2.2 A number of individual trees on site, and the two main tree groupings, are the subject of a Tree Preservation Order (CD 4.29). Other features of the site are the low stone walls, which define boundaries between individual fields and around the site perimeter; two small ponds, with associated mature tree cover, and a larger pond adjacent to the north-west corner of the site.
- 2.3 The eastern side of the site adjoins the A433 (London Road), which forms the main route from Cirencester to Tetbury. The residential areas of Shepherds Mead, Rylands Close and Cheviot Close lie to the south, paddocks and open fields to the north, and to the west lies 'Sir William Romney's School and Sports Centre' and its grounds. A public footpath crosses the eastern part of the site, and a public footpath also skirts the western boundary between the site and the school. Highfield Farm neighbours the appeal site; it has a traditional-style Cotswold stone farmhouse, which is Grade II listed, and a collection of converted outbuildings.
- 2.4 The appeal site and the surrounding area, including the whole of Tetbury and some 80% of the Cotswold District as a whole, is included within the Cotswolds AONB. Tetbury is Cotswold District's second largest town, and is designated within the Local Plan as a 'Principal Settlement'. It provides a wide range of facilities and services including a library, schools, shops, a hospital and GP surgery, sports and leisure facilities and employment opportunities.

## **3. Planning history**

- 3.1 While the adjoining land to the rear of Highfield House has been subject to a number of planning applications, no previous applications appear to have been made in respect of any of the land forming the current appeal site.



#### **4. The proposal**

- 4.1 Outline planning permission is sought for residential development of the site to provide up to 250 dwellings. 50% of them would be secured as affordable dwellings. Details of access and landscaping are provided, with details of appearance, scale and layout reserved for future consideration.
- 4.2 The proposed strategic landscaping scheme includes
- the provision of 16 allotments, incorporated within a public open space, a minimum of 30m wide, along the southern boundary;
  - a conservation zone incorporating two ponds;
  - a 10m wide planting strip on the northern boundary set behind a new Cotswold stone boundary wall, a 10m wide planting strip on the western boundary, and a 12m wide landscaped frontage strip to London Road;
  - removal of the conifer belt on land to the north-east of Highfield Farm, and replacement with native hedgerow planting; and
  - buffer planting between the proposed development and Highfield Farm, and the residential area to the south.
- 4.3 The development would be served by a single vehicular access to the site via a new fourth arm taken from the A433 London Road / Quercus Road roundabout.
- 4.4 A full description of the scheme is given in the Design and Access Statement (CD 1.8). A copy of the entry in the Statutory List for Highfield Farmhouse is included in the SoCG (APP 3.3).

#### **5. Planning policy**

- 5.1 The statutory Development Plan for the site includes the Regional Strategy for the South West, the 'saved' policies of the Gloucestershire Structure Plan Second Review (adopted 1999), and the 'saved' policies of the Cotswold District Local Plan 2001 – 2011 (adopted 2006).

##### *The Regional Strategy*

- 5.2 Regional Planning Guidance for the South West (RPG 10) was issued in 2001 and under the changes to the Development Plan system introduced by the Planning and Compulsory Purchase Act 2004, became the Regional Strategy for the South West. The Localism Act 2011 makes provision for the abolition of Regional Strategies, but until those extant are duly revoked, they remain a part of the Development Plan. Policy HO1 (CD 3.8) sets out the average annual rates upon which provision for net additional housing, to be made in the region's structure plan areas over the period 1996-2016, should be based. The figure for Gloucestershire is 2,400 dpa.

##### *The Structure Plan*

- 5.3 The Gloucestershire Structure Plan Second Review, adopted in 1999, sets out the strategic framework for the use and development of land in Gloucestershire for the Plan Period mid-1991 to 2011. In September 2007 the Government Office issued a saving direction which prevented all of the policies

within the *Gloucestershire Structure Plan Second Review* (adopted 17 November 1999) from expiring in accordance with the Planning and Compulsory Purchase Act 2004.

- 5.4 Housing policies are contained in Section 6 (CD 3.9). Policy H.1 requires 50,000 new dwellings to be provided in the period 1991 to 2011. Policy H.2 then provides for about 6,150 of these to be in the Cotswold District, which equates to 307.5 per year.
- 5.5 The Structure Plan policy of particular relevance to this appeal is agreed in the SoCG to be Policy NHE.4 (CD 3.9). This policy provides that within AONBs, the conservation and enhancement of the natural beauty will be given priority over other considerations; regard will be had to the economic and social well-being of the AONB; and that provision should not be made for major development within the AONB unless it is in the national interest and the lack of alternative sites justifies an exception.

#### *The Local Plan*

- 5.6 The Cotswold District Local Plan 2001 to 2011 was adopted in 2006. In January 2009, the Government Office issued a saving direction which prevented a number of policies of the Cotswold Local Plan from expiring in accordance with the Planning and Compulsory Purchase Act 2004.
- 5.7 Section 3 of the Local Plan (CD 3.10) sets out the district's Development Strategy. This is based on the housing figures contained in the Structure Plan, and defines Tetbury as a Principal Settlement. The overall strategy is to apply restraint on additional development, with "about 63%" of the District's planned growth between the end of March 2004 and mid-2011 focused on Cirencester, and the remainder allocated to Principal Settlements commensurate with local economic and social needs. Development at Principal Settlements should take account of their role as a local service centre, give priority to the development of previously developed land, and avoid encouraging commuting.
- 5.8 The Council's reason for refusal makes specific reference to Policy 19 (CD 1.6; CD 3.10). This Policy deals with development outside development boundaries, and states that it will be permitted provided that it relates well to existing development, and would not result in new market housing other than that to help meet the social and economic needs of those living in rural areas; cause significant harm to existing patterns of development; lead to a material increase in car-borne commuting; adversely affect the vitality and viability of settlements; or result in development that significantly compromises the principles of sustainable development. Note 2 to this Policy explains that the provision for new market housing that would "help to meet the social and economic needs of those living in rural areas" is intended to provide a degree of flexibility in meeting needs, rather than demands, in rural areas as exceptions to the generally restrictive policies. It advises that the numbers involved are likely to be very small.
- 5.9 Policy 21 (CD 3.10) sets out a requirement for affordable housing to be provided as part of the development of any significant site in Tetbury, whether or not that site is allocated for housing in the Local Plan. Policy 49 (CD 3.10) provides that where appropriate, conditions or planning obligations will be used to secure the provision or improvement of community infrastructure and services

that would be made necessary by, and relate directly to, the development in question.

#### *The Local Development Framework*

- 5.10 Work has commenced on a replacement to the Cotswold Local Plan, to cover the plan period 2011-2031. However, while a considerable amount of evidence-gathering work has been undertaken, the development of a Core Strategy is still at an early stage. A Core Strategy Issues and Options paper was published for consultation in 2007 (CD 4.17), and a second Issues and Options paper in 2010 (CD 4.18), but no housing requirement has yet been published. The next stage of the process, anticipated for autumn 2012, will be consultation upon the distribution of development. It is envisaged that a draft Core Strategy will be subject to consultation in spring 2013, with the Examination in Public unlikely to be held before early 2014 (LPA 1, para 6.12).
- 5.11 The SoCG records the agreement of the Council and the appellant that since this emerging plan is not yet particularly well advanced, it can be afforded only limited weight.

#### *National Planning Policy*

- 5.12 When the Council determined the application, PPS 3 and PPS 7 remained extant, and are referred to specifically in the Refusal Notice. Since then, those national Planning Policy Statements have been superseded by the National Planning Policy Framework ("the Framework"), and it is this new Framework which now provides the national policy guidance for this appeal.

#### *Other documents*

- 5.13 Although it is not (and will not now become) part of the Development Plan, a Draft Regional Spatial Strategy for the South West ("Draft RSSW") was prepared, and reached an advanced stage of progress towards adoption. It was published for consultation in June 2006, with an Examination In Public leading to a Panel report in December 2007. Changes recommended by that report were considered by the Secretary of State, whose RS Proposed Changes were published in July 2008 (APP 10.13). Policy HMA 3 required the provision of 6,300 dwellings in the Cotswold District. Policy HD1 set this out as the provision of 345 dwellings per annum in the period 2006 to 2026.
- 5.14 The Council's *Affordable Housing* Supplementary Planning Document (adopted February 2007) elaborates upon the affordable housing policy set out in the Local Plan (CD 3.12). Also of relevance is *The Cotswold Design Code*, adopted as Supplementary Planning Guidance in March 2000 (CD 3.11).
- 5.15 While not part of the Development Plan, nor adopted as Supplementary Planning Documents, the Council's 2011 "Interim Housing Guidance Note and Five Year Housing Land Supply" (CD 4.21) and "5 Year Housing Land Supply 2012" (LPA 6.1) are of relevance to this inquiry.
- 5.16 Also of relevance are the Cotswold District Strategic Housing Land Availability Assessment (2010) (CD 4.15); the 2010 DCLG Household Projections (CD 5.35); the Gloucestershire Local Projections 2010 (CD 5.42); and the Gloucestershire Housing Trend Analysis and Population and Household Projections 2011 (CD 5.36).

## **6. Environmental Impact Assessment**

- 6.1 The application was accompanied by an Environmental Statement (CD 1.11 – CD 2.6) made in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (“the EIA Regulations”). The ES includes a non-technical summary (CD 1.12). It covers all the matters normally associated with large-scale housing development, includes additional site-specific matters and sets out mitigation proposals. At the inquiry I heard further evidence on the characteristics of the site, local infrastructure, and the relationship of the development to the wider AONB. I am satisfied that all of this represents the necessary environmental information for the purposes of Regulation 3 of the EIA Regulations, and I have taken this information into account in making my recommendations.

## **7. Agreed matters**

- 7.1 In advance of the inquiry, the appellant and the Council agreed a SoCG (APP 3.3), with a subsequent amendment submitted at the inquiry to reflect the Council’s current position on housing supply (INQ 35). The matters agreed by these parties not to be in dispute between them include descriptions of the appeal site and the surrounding area, the proposal, the planning history, the supporting information submitted with the application, and relevant policy documents. Other agreed matters include the committed structural landscaping, and the conformity of the appellant’s adopted methodology for the assessment of landscape and visual impacts with the ‘Guidelines for Landscape and Visual Impact Assessment, Second Edition’ published by the Landscape Institute and the Institute of Environmental Management and Assessment.
- 7.2 A SoCG between the appellant and Wessex Water is also provided (APP 3.4). It records those parties’ agreement that the proposed surface water drainage strategy has been approved by the Environment Agency, and that the Developer would requisition a surface water outfall sewer under S.98 of the Water Industry Act once outline planning permission was granted. Those parties also agreed that while sufficient capacity is available at the treatment works to accept foul water from the proposed development, foul sewers adjacent to the site do not currently provide capacity for a development of this scale, so a connection point from the site to the existing foul sewer network would be requisitioned by the Developer once outline planning permission was granted.
- 7.3 A further SoCG, between the appellant and Gloucestershire County Council, addresses highway matters (APP 3.6). The matters agreed include absence of any significant existing road safety problem within Tetbury or the surrounding area, and that the existing situation would not be adversely affected by the proposed development; the most appropriate location for primary vehicular access to the site would be via a new fourth arm from the A433 / Quercus Road roundabout; the impact of the traffic generated by the proposed development would not have a detrimental effect upon the operational performance of the surrounding road network; the site benefits from good pedestrian accessibility to key services and facilities; and that subject to a suggested condition, there are no highway or transportation issues that should prevent development of the appeal site.

## **8. The case for the Council**

### *The policy framework, including the National Planning Policy Framework*

- 8.1 It is trite law that the appeal scheme must be determined in accordance with the development plan unless material considerations indicate otherwise, as required by S.38(6) of the Planning and Compulsory Purchase Act 2004. There has been no change or amendment to this section of the Act at any time, as the Framework makes very clear.
- 8.2 Paragraph 215 of the Framework suggests that in the case of the Council's Local Plan, policies should be given due weight according to their degree of consistency with the Framework: the closer the policies in the Plan to the policies in the Framework, the greater the weight that may be given. In the light of S.38(6) of the 2004 Act, the provisions of paragraph 215 can be nothing other than another way of saying that the policies in the Framework are a material consideration when determining applications in accordance with the Development Plan. Therefore the degree of conflict between the Development Plan policies and the Framework policies would be a material consideration to which to have regard when determining an application.
- 8.3 In this, the two policies to consider are LP Policy 19 and SP Policy NHE4. LP Policy 19 is entirely consistent with the Framework. It is a permissive policy which sets out criteria within which development appropriate to a rural area will be permitted, and its purpose is to ensure development meets the principles of sustainable development. The current proposal is in clear conflict with this policy. The appellant's evidence accepts that, and Mr Whitehead agrees that LP Policy 19 is broadly consistent with the Framework (APP 1, para 6.42).
- 8.4 SP Policy NHE4 states that in AONBs, the conservation and enhancement of the natural beauty will be given priority over other considerations. Provision should not be made for major development within the AONB, unless it is in the national interest and the lack of alternative sites justifies an exception.
- 8.5 The appeal site is in the AONB, and the Council's position is that this major development is not justified. Since the Council can demonstrate a 5 year supply of housing land, there is no need to consider alternative sites. Nevertheless an alternative site plainly exists; the Matbro/SIAC site is a brownfield site, within the settlement boundary, which will provide 174 dwellings, a 60 bed care home and 50 extra-care apartments. Therefore there is clear conflict with SP NHE4, and the appeal should be dismissed.
- 8.6 Paragraphs 115 and 116 of the Framework set out its policies on the proper approach to the AONB. They state that great weight should be given to conserving the AONB, and that it has the highest status of protection in relation to landscape and scenic beauty. SP Policy NHE4 is highly consistent with this approach. Paragraph 116 requires that planning permission should be refused for major development in the AONB except in exceptional circumstances, and where it can be demonstrated to be in the public interest. Therefore it is abundantly clear that there is a presumption against major development in the AONB.
- 8.7 Paragraph 116 goes on to set out the considerations that would be relevant to the determination of such applications. These include an assessment of 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; the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and any detrimental effect upon the environment, the landscape, and recreational opportunities, and the extent to which that could be moderated.

*The need for the development*

- 8.8 The Council's case is that there is no need for this major development to be permitted in the AONB, outside the settlement boundaries, and on greenfield land. One measure of need is to consider whether there is a 5 year supply of housing land for the Council's area. The evidence Mr Eaton gave on behalf of the Council, in writing and orally, amply explains that there is (LPA 1 – LPA 8.7). The calculation demonstrating that the Council has a 5.3 year supply of housing land is set out at p.10 of the June 2012 5 Year Housing Land Supply document (LPA 6.1).
- 8.9 The calculation of the 5 year housing supply is not an exact science, but rather a snapshot in time. A conclusive figure will be determined through the Development Plan process in due course, on the basis of detailed evidence. The best available evidence at present supports the Council's position that there is a 5 year housing supply.
- 8.10 In cross examination, it was clear that the attempt by Mr Bateman, on behalf of the appellant, to reduce the supply in Table 3 of his evidence (APP 8, p48; APP 11.1) was not justified. He was unable to substantiate why he had arbitrarily deducted numbers from the Council's calculation of supply. First, his deduction of 10% of permissions on large sites is contrary to the advice in paragraph 47 of the Framework, at footnote 11. He did not appear to understand what the footnote meant.
- 8.11 Footnote 11 makes it clear that sites with planning permission "should be considered deliverable" – in other words, available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that the site is viable – "unless there is clear evidence that the site will not be implemented within five years".
- 8.12 All the sites in Mr Bateman's list (APP 8, para 7.58) have permission, and 3 have been implemented. The e-mail in respect of the fourth at Rissington (LPA 8.3) indicates that this too is likely to be implemented. There is therefore no basis at all for deducting 111 dwellings from the large permissions. Mr Bateman was merely applying some general rule of thumb for which there was no evidential basis. His evidence should be treated with great caution on this point, and generally.
- 8.13 Further confusion abounds when it is seen that in the text of his proof (APP 8, para 7.55) Mr Bateman said that he was discounting 10% from sites which had not been started. However, of his list of large permissions (APP 8, para 7.58), he acknowledged that 3 had been started and were expected to deliver in accordance with that proposed, and in light of the e-mail about the Rissington site he agreed that would be implemented. Yet he had deducted 10% from all these sites in any event. He went on to say that he should deduct 10% from

all dwellings within a permission that had not yet been completed, even when the permission had been implemented. The basis of this belief is unclear. Mr Bateman seems confused as to the difference between completions and implementation of a permission. He had no evidence to support a stance that where a permission for 100 houses has been implemented, anything less than 100 would be delivered.

- 8.14 There was no reason to deduct a further 15 from the small sites permissions. Neither was there any evidential basis for reducing the allocated sites by 10%. The SHLAA sites have been through a thorough process, in accordance with the relevant guidance, and there is no justification for unilaterally discounting these by 20% or 27 dwellings.
- 8.15 Again, there was no basis for discounting rural exceptions by 10% or 5 dwellings. Finally, Mr Bateman discounted all 118 windfall sites. The Council considers this approach to be surprising, and to lack any credibility. Paragraph 48 of the Framework represents a material change from the previous PPS 3 policy. It states: *Local planning authorities may make allowance for windfall sites in the five year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.*
- 8.16 Paragraph 59 of PPS 3 stated: *Allowances for windfalls should not be included in the first 10 years of land supply unless Local Planning Authorities can provide robust evidence of genuine local circumstances that prevent specific sites being identified. In these circumstances, an allowance should be included but should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends.*
- 8.17 The Framework policy is entirely different and permissive, while the PPS 3 policy did not permit windfalls to be included unless it was not possible to identify sites due to local circumstances. Therefore Mr Bateman's reasoning - that all windfalls should be discounted on the grounds that the new policy is the same as that in PPS 3, and that since the Council had not included them previously it must consider there is no basis for them now - is entirely flawed.
- 8.18 His contention that the test in paragraph 48 of the Framework is not met also fails to stand up to scrutiny. He claimed that the Council's June 2012 Housing Land Supply document (LPA 6.1) did not set out the windfall sites included, but Appendix 1 clearly sets out evidence that housing has come forward consistently through windfall sites. Details of the sites are set out. Given that windfall sites are by their nature unexpected, in the absence of any change in policy to restrict windfall sites it is reasonable to deduce that this historical pattern of delivery is a compelling indicator that they will continue to provide a reliable source of supply in the future.
- 8.19 As explained by Mr Eaton, there is no change in policy to restrict such sites, and instead it is arguable that the policy in paragraph 54 of the Framework may bring forward more rural exception sites. As these would be windfall sites they are not included among the 52 current rural exception sites accounted for in the June 2012 Housing Land Supply document, because those are all rural

exception sites recorded in the SHLAA (CD 4.15). Mr Bateman could not put forward any reason why previous completions should not be a compelling indicator for the future. In conclusion, there is no basis whatever for his deduction of 118 windfalls.

- 8.20 The Council's calculations of a 5 year housing supply of 1724 dwellings are realistic, and should not be discounted. These calculations represent the best evidence before the inquiry, and demonstrate a 5.3 year housing supply. Even if any discounts were to be made, it would also be necessary to have regard to the fact that 60 dwellings have recently been permitted at Siddington (APP 11.6) which were not accounted for in the June 2012 housing supply calculation (LPA 6.1). 37 dwellings have been permitted at Pips Field, which is 18 more than accounted for in the June 2012 calculation. Further, it is likely that 174 dwellings will be permitted on the Matbro/SIAC site, also not accounted for in the June 2012 calculation. Plainly, any discounts made would be more than compensated for by these 252 additional dwellings not accounted for in the June 2012 supply.
- 8.21 Although this ought to be sufficient to address any suggestion that there is a need for the appeal site, it is also necessary to consider the alternative approach to calculating the 5 year housing supply taken by Mr Bateman.
- 8.22 It was suggested that the Council should not use the SP figure of 307.5 plus the shortfall annualised over 5 years. The Council considers the use of this figure entirely justified and appropriate, pending the calculation of a conclusive figure through the development plan process. In this case, the SP figure was considered a good starting point, as set out in the Council's June 2012 Housing Supply document (LPA 6.1). That figure was then tested against other up-to-date evidence, to consider whether it was appropriate. The other evidence taken into account was the downward trend of household and population projections, taking into account migration and demographic change. All the household and population projections, including the ONS 2008 figures and the Gloucestershire Projections 2010 (CD 5.42) and 2011 (CD 5.36), show a downward trend when compared to the data that fed into the draft RS figures (APP 10.13), which were based on 2004 ONS figures.
- 8.23 When compared against the Council's draft RS Option 1 figure of 300 dwellings, which was also arrived at using the 2004 ONS figures, it is clear that the SP figure of 307.5 was an adequate basis on which to calculate the 5 year housing supply. The SoS can be satisfied that pending the production of conclusive figures through the development plan process, the Council has used an appropriate basis for calculating whether it has a 5 year supply of housing land.
- 8.24 Mr Bateman's own calculation of the housing land supply position was, in essence, based solely on the 2008 ONS figures (APP 11.1, Table 2). The DCLG Household projections 2008-2033 (CD 5.35) contain advice to the effect that they are not a forecast, and should be used as part of the evidence base regarding the future demand for housing. They also note that users may wish to determine their own forecasts of how the projections could differ, in light of alternative policy scenarios, using local knowledge and models. It can therefore be immediately concluded that column 3 in Mr Bateman's Table 2 (APP 11.1) cannot be used to represent the 5 year housing supply. The



approach needs to take into account more factors than this. At best, the DCLG household projections can only be part of the evidence base, and even then, they do not represent the most up-to-date evidence.

- 8.25 The more up-to-date figures for household and population projections are those produced by Gloucestershire County Council (CD 5.36; CD 5.42). These are trend-based statistics which use ONS figures, but also locally derived estimates. It is plain that their purpose is to address gaps within the ONS projections, where local trends and information based on local records are not accounted for in the same way. The purpose of the 2011 Gloucestershire projections is to form part of the new, locally-derived assessment of housing requirement as opposed to the top-down approach of the RS (CD 5.36, p.17).
- 8.26 Paragraph 158 of the Framework refers to “adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area”. The GCC projections are more up to date, they rely on information and data relating to the local area, and they are based on the DCLG 2008 headship rates. The 2011 Report was commissioned by GCC and 6 local planning authorities, for the purpose of contributing to the Gloucestershire Housing Review evidence base and supporting planners in their development of policies (CD 5.36, p3). Therefore, while the Council does not consider that household projections on their own can be used to demonstrate the housing need in the area, if such an exercise is to be undertaken then it is more relevant and appropriate to use the 2011 Gloucestershire projections than the DCLG 2008 projections.
- 8.27 Mr Eaton demonstrated that using the 2011 GCC projections, the Council would still have more than a 5 year supply of housing (INQ 16, columns 7 and 8). This shows that having regard to the household projections, the Council’s decision to base its housing supply figures on the SP requirement remains appropriate. Mr Eaton also demonstrated that the Council would also have a 5 year supply if the draft RS option 1 figures were used (INQ 16, column 6).
- 8.28 The Council does not consider that Mr Bateman’s use of the DCLG 2008 figures is appropriate, in particular their use as his sole basis for contending that there is less than a 5 year supply of housing. The Council has, in contrast, used a variety of approaches to validate its reliance on the Structure Plan figure.
- 8.29 The basis on which Mr Bateman sought to question the validity of the 2010 and 2011 GCC projections was unclear. His complaint seemed to be based on a contention that only national statistics should be used, and that local statistics were unreliable. But the Framework does not state that only ONS statistics should be used. Both the ONS and GCC statistics are trend-based, and the approach of the Government is to remove top-down targets. It is entirely proper to seek to derive local projections, to be used as the evidence base for determining local housing need. To the extent that Mr Bateman performed calculations based on the GCC 2010 and 2011 projections, his method was flawed for the reasons explained by Mr Eaton.
- 8.30 The Council contends that a 20% buffer on housing supply is not appropriate, since there has not been a persistent record of under delivery (LPA 5, s.4). On the contrary, based on the requirement of 307.5, there has on average been over-delivery over the past 5 years, with 538 completions in 2012. There is no definition of what might constitute a record of persistent under delivery,

and on any reasonable interpretation, this Council does not have one. A 5% buffer, in accordance with paragraph 47 of the Framework, is therefore appropriate.

- 8.31 Having regard to the above, and to the first bullet point of paragraph 116 of the Framework, the Council contends that in view of the fact that it has a 5 year supply of housing land, there is no need for the proposed development. The appeal should therefore be refused.

*The cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way*

- 8.32 The Council is in the process of considering the planning application on the SIAC/Matbro site, which if permission were granted, would result in 174 dwellings. The application is to be considered at Committee on 12 September, and the Planning Officer's recommendation is for approval, subject to the resolution of a S.106 agreement and a viability assessment for affordable housing. The SIAC/Matbro site is a brownfield site, developed for employment use in the past, which has an A1 permission. It is within the settlement boundary of Tetbury. It is plainly more appropriate to prefer this brownfield site to the use of the appeal site, which comprises high-grade farm land that is entirely undeveloped.
- 8.33 It is a highly material consideration that planning permission for this large-scale housing development is likely to be granted in Tetbury, and further undermines any basis upon which the current appeal proposal could ever be regarded as acceptable. It is plain that there is scope for meeting housing need on brownfield land, within the settlement boundary, through the SIAC/Matbro site. There is also full scope for any need to be met through the Development Plan process. The Core Strategy second Issues and Options document (CD 4.18) sets out numerous options for development, including a strategic site at Cirencester which is not in the AONB. The plan process will determine the most sustainable and appropriate site. There is no requirement for any perceived need to be met in Tetbury. It can be met anywhere in the Council's area.
- 8.34 Therefore having regard to the second bullet point of paragraph 116 of the Framework, the development proposed in this appeal would not meet the test for exceptional circumstances and the public interest.

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

- 8.35 The appeal site lies on an important and major route into Tetbury. The ES identifies the visual impact from the development as substantial. It states that *The retention of existing boundary trees and new tree planting would partially mitigate the visual impact of the new built form, however changes to the view would be permanent and development would become a dominant element in the view* (CD 1.11, p.50).
- 8.36 There would also be substantial impacts on views from the footpaths. These views would change from open, rural fields to urban housing, and as Mr Potterton's evidence for the Council said, this substantial change would be adverse. This site provides an important and significant part of the landscape

setting of the town of Tetbury, and the landscape character of the area will be adversely impacted as set out by Mr Potterton. The loss of rural open fields in their entirety, and the substantial harm to the AONB, cannot be moderated or mitigated.

- 8.37 The development would result in the total loss of the open farm land surrounding Highfield House. Mr Heaton, appearing for the appellant, agreed in his oral evidence that this did form part of the setting of the heritage asset, regardless of what he had originally claimed in his written evidence. It was clear that Mr Heaton's entire evidence was based on the premise that he did not consider the Framework definition of "setting" to be appropriate, preferring instead an unidentified definition used by one Inspector in an appeal decision in Leeds, many years before the Framework was published (APP 7.1). He admitted, however, that this appeal would need to apply the Framework definition, and that where he had sought to narrow the meaning of "setting", his assessment would be inconsistent with that required by the Framework.
- 8.38 In fact, it became clear from his evidence in cross examination that his approach was inconsistent not only with the Framework, but also the approach to considering the impact on setting set out in the English Heritage document "The Setting of Heritage Assets" (2011) (CD 5.32). The Framework definition of "setting" is based on that document, and the definition previously set out in PPS 5. The Framework glossary makes clear that "setting" embraces all of the surroundings from which the heritage asset can be experienced, or that can be experienced from or with the asset. Setting does not have a fixed boundary, and cannot be definitively and permanently described as a spatially bounded area. The Framework also states in its glossary that elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.
- 8.39 "Significance" for heritage policy is defined in the Framework's glossary as *The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.* Paragraphs 132 and 133 of the Framework make clear that any harm or loss through alteration or destruction of the heritage asset, or development within its setting, requires clear and convincing justification. Substantial harm or loss should be exceptional, and consent refused unless the harm or loss is necessary to achieve substantial public benefits which outweigh that harm or loss.
- 8.40 It is clear that the open fields, as part of the setting of Highfield Farm, make a substantial contribution to its significance as a heritage asset. Mr Heaton's written evidence makes plain this significance in the context of the enclosures of the 17<sup>th</sup> – 19<sup>th</sup> centuries. He states: *Around Tetbury, Enclosure appears to have commenced in the mid 17<sup>th</sup> century with the private purchase, from the Lord of the Manor, of farm-sized holdings and the construction – for the first time - of suites of farm buildings amongst their fields outside the town and by the physical delineation of fields by fixed boundaries. Highfield Farm appears to have been one of the earliest of these, possibly established c. 1663 by a Richard Talboys of Doughty* (APP 7.1).

- 8.41 The setting of Highfield Farm among open fields is therefore highly important in terms of its contribution to the significance of the heritage asset itself. As Mr Heaton himself agreed, the heritage asset is not architecturally important. It is the fact that it is one of the earliest examples of farm buildings being constructed amongst their own fields following enclosure. The loss of these very fields among which Highfield Farm sits, and which have remained unchanged since the sixteenth century, will undoubtedly result in the substantial loss or destruction of the heritage asset through development within its setting.
- 8.42 The fields clearly make a positive contribution to this heritage asset, and in replacing them with urban housing, the proposed development will fundamentally and negatively affect the ability to experience or appreciate the heritage asset within the surroundings of the open fields or from within the heritage asset. Mr Heaton's suggestion to the Inspector that the effect would be neutral is unsustainable: the fields, as the setting of Highfield Farm, will be destroyed or lost entirely. Given the significance of the fields to the heritage asset, and the experience of the asset, it must follow that the effect will be negative. The fact that a historian may know that the boundary walls once delineated open fields would not overcome their loss and destruction. The fact that a vista to the east may be maintained is neither here nor there when the correct approach to "setting" is taken.
- 8.43 It is also clear from Mr Heaton's evidence (APP 7.1, para 2.2) that the countryside around Tetbury has historical significance, in that it supported it as common downland grazing or ploughland. The latter was contained within the extensive communally cultivated "open fields". Therefore the development would harm the setting of the historic market town of Tetbury. Mr Heaton agreed it was not necessary for there to be any direct visual link with the Conservation Area in order for the open fields to function as a setting to Tetbury.
- 8.44 In all the circumstances, having regard to paragraphs 128-133 of the Framework, the substantial loss and destruction of the setting of the heritage asset should not be permitted. Even if the loss were considered to be less than substantial, the development would not be justified, having regard to the important contribution the open fields make to the significance of Highfield Farm. The harm to the setting of Tetbury through the loss of the open fields is not justified and should not be permitted.
- 8.45 It can therefore be concluded that having regard to the third bullet point of paragraph 116 of the Framework, the proposed development should be refused.

*Conclusions on the policy framework, including the National Framework*

- 8.46 Overall, the proposed development falls foul of paragraph 116 of the Framework, and in accordance with that paragraph, should be refused.
- 8.47 Therefore, whether the scheme is considered against the Development Plan policies, or the Framework, or both, it is quite clear that it conflicts fundamentally with both and should be refused.

*Other material considerations*

- 8.48 Other material considerations that weigh against the scheme include the harmful and pre-emptive effect it would have on community consultation and public participation. This type of strategic development proposal should not be permitted through this type of ad hoc application. Mr Eaton's proof of evidence sets out the timetable for the Core Strategy (LPA 1, para 6.12) and it is clear that it is well under way, with submission to the SoS expected in November 2013.
- 8.49 Of significance is the fact that in the Second Issues and Options Paper (CD 4.18) land to the north of Tetbury (which includes the appeal site) is included as one of the Proposed Strategic Locations. However, at present the views of the community on the various Proposed Strategic Locations are still being sought and considered. Permitting a major development, such as the appeal proposal, in one of the Proposed Strategic Locations effectively pre-empts the outcome of the Second Issues and Options Paper and renders it pointless. It would harmfully pre-empt effective public participation in the choice of the most sustainable sites, robbing the views of the community of any meaningful influence in guiding the spatial strategy for the area.
- 8.50 The appeal site comprises Grade 2 Agricultural land, and so the proposed development would also conflict with paragraph 112 of the Framework, which requires poorer quality land to be used in preference to high quality land. Mr Brown agreed that this must weigh against the scheme.
- 8.51 The Council acknowledges that the affordable housing that would be provided as part of the development is a positive factor, and that housing in general carries economic benefits. However, such contribution would be expected to be provided with other more appropriate development in any event.

*Further considerations*

- 8.52 The Council makes the following further points. As the site is within the AONB, it is plain that even if there were less than a 5 year housing supply, this would not of itself be sufficient to overcome paragraph 116 of the Framework, which requires all matters under all three bullet points to be assessed. The question of the impact on the AONB only really comes into consideration if the first two bullet points of paragraph 116 are met. Otherwise, paragraph 116 is clear that the proposal should be refused.
- 8.53 In so far as it is contended that the White Report (CD 5.34) lends any support to the proposal, it is clear that the Council has never, to date, included the appeal site in any Development Plan. The White Report preceded the adoption of the Local Plan, in the course of which the Council followed the Inspector's recommendation to exclude the site.
- 8.54 In so far as it is claimed that the Council's Officers supported the proposal, the documentary evidence demonstrates (APP 3.1) that it was always considered to be a departure from Development Plan policy. It is a change in material circumstances that the Council now has a 5 year housing supply. It is also a change in material circumstances that the Framework has been published, and takes a different approach to housing, with the deletion of the former policy approach in paragraph 71 of PPS 3.

- 8.55 The Council considers that LP Policy 19 and SP Policy NHE4 do not conflict with the Framework, and full weight should be given to them. Even if they did conflict, it would make no difference as the application of paragraphs 115 and 116 lead to a fundamental conflict with the Framework itself, and the refusal of the scheme.
- 8.56 Even if it were considered that the Development Plan policies were absent, silent or out of date this would not result in any presumption in favour of the proposal under paragraph 14 of the Framework, because footnote 9 to that paragraph makes clear that this does not apply where specific policies in the Framework indicate that development should be restricted. Footnote 9 refers to policies relating to the AONB. This in turn requires the application of paragraphs 115 and 116, which require major development in the AONB to be refused, unless there are exceptional circumstances and the proposal is in the public interest.
- 8.57 While other appeal decisions are of passing interest, each appeal must be decided on its own merits, and the approach taken in one particular case cannot constitute a precedent in another. The site-specific evidence will be different in each case, and in some cases relate to another local planning authority altogether. The particular considerations which may have influenced a decision maker are unlikely to be replicated.
- 8.58 Specifically, the Council considers that the Siddington decision (APP 11.6) lends no support to the appellant whatsoever. The up-to-date housing issues were dealt with by written exchange, rather than oral evidence. The clear tenor of the Inspector's decision letter is one of merely setting out the various positions. She did not find either a lack of a 5 year housing supply, or persistent under-delivery. She found the proposal to be sustainable in any event. The evidence before her was not tested at inquiry, and it is not possible to predict what her findings may have been in if the evidence she had before her had been subject to cross examination. Furthermore, that decision is now several months old, and the matters before this inquiry would not be the same as those before her.
- 8.59 This appeal should be considered on its own merits, having regard to the relevant evidence, including the Council's up-to-date contentions regarding its housing supply.
- 8.60 In all the circumstances, the appeal proposal is in fundamental conflict with the Development Plan and the Framework. No material considerations exist such as to indicate that the scheme should be permitted. It is respectfully requested that this proposal be recommended to be refused.

## **9. The case for Fay & Son Ltd**

### *The Framework*

- 9.1 The appellant rejects the suggestion, made for the first time by Mr Eaton in his oral evidence, that the presumption in favour of development, as set out in paragraph 14 of the Framework, does not and cannot ever apply to major development in the AONB. There is one paragraph of the Framework, paragraph 119, which explicitly advises that the presumption in paragraph 14 does not apply; that relates to development proposals requiring an appropriate

assessment under the Birds or Habitat Directives. There is no other explicit exclusion, and accordingly the Council is wrong to suggest the presumption does not apply to major development in the AONB.

- 9.2 The Council criticised Mr Brown and Mr Whitehead for their failure, in their written evidence on behalf of the appellant, to draw attention to footnote 9 to paragraph 14 of the Framework. This admitted omission is of no real substance, because each of them explicitly considered and assessed the development proposals against paragraphs 115 and 116. Moreover footnote 9, beginning as it does with the words “for example”, does not add anything of substance to the policy approach. Rather, it simply alerts the decision maker to the fact that there are policies in the Framework which indicate how, or the circumstances in which, developments should be restricted.
- 9.3 As the opening sentence in paragraph 116 explicitly advises, permission should be refused for major developments in the AONB except in exceptional circumstances, and where they are in the public interest. If the decision maker is satisfied that there are exceptional circumstances, and that planning permission for the proposal has been demonstrated to be in the public interest, there is no restriction on the grant of permission simply because the appeal site is in the AONB. In these circumstances, the presumption in favour of development applies.
- 9.4 The fact that this application was solicited by the Council’s Forward Planning Manager, in the context of an acknowledged shortfall of housing land and delay in the production of the Core Strategy, will not be lost on the Inspector or SoS. Significant weight should be attached to the fact that the Council’s professional officers were seeking, at a relatively early stage, to find a positive solution to the District’s housing shortfall.

*The onus to demonstrate a 5 year supply of housing land*

- 9.5 The onus is on the Council to demonstrate a 5 year supply of deliverable housing sites, per paragraph 49 of the Framework, as Mr Eaton accepted in cross examination. The Framework requires Councils firstly to objectively assess, and meet in full, market and affordable housing needs in the housing market area; secondly, it requires Councils to identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing against their housing requirements, with an additional buffer of 5%, increased to 20% where there has been a record of persistent under-delivery of housing.

*The implications, in terms of national policy, of not having a robust 5 year supply*

- 9.6 Without an adequate supply of housing land widening the choice of high quality homes, as per paragraph 9 of the Framework, will not be possible. Nor will the proactively driven support for sustainable economic development, to deliver the homes that the country needs, be secured (paragraph 17 of the Framework). Crucially, the significant boost to housing, required by paragraph 47 of the Framework, will not be achieved. Thus these important national policy objectives will not be secured, contrary to both the national and public interest.

- 9.7 In terms of decision making, paragraph 49 of the Framework is clear that housing applications should be considered in the context of the presumption in favour of sustainable development. It is noteworthy that this policy approach is not contingent upon a finding that there is no robust 5 year supply. The appellant submits that this indicates the importance the government attaches to the delivery of new houses as part of the growth agenda. The publication "Laying the Foundations: A Housing Strategy for England" (INQ 30) makes this clear. As the SoS said in his statement of 6 September 2012 (INQ 37), "The Coalition Government's number one priority is to get the economy growing".
- 9.8 However, if there is not a 5 year supply, then relevant policies for the supply of housing should not be considered up-to-date. That has clear implications in the context of paragraph 14 of the Framework, which states that where the relevant policies of the Development Plan are out of date, permission should be granted unless any adverse impacts of so doing would significantly outweigh the benefits as a whole, or where specific policies in the Framework indicate that development should be refused.
- 9.9 As to whether LP Policy 19 and SP Policy NHE4 are "relevant" policies in this context, they are both policies which seek to restrict development, including housing development, and are therefore relevant policies in the context of a housing shortfall. In the Sapcote decision (APP 11.5, paras 5,11,46), which involved a housing proposal in the context of a housing shortfall and in an area of separation as defined by local Policy C4, the Inspector concluded that Policy C4 had to be considered out of date. This decision illustrates that it is not simply those policies which set out the overall housing numbers, or allocate housing sites, that are to be regarded as out of date when there is no robust 5 year supply.
- 9.10 The fact that the AONB washes over all the land in and around Tetbury, and indeed most of the Cotswold District, does not detract from the fact that the AONB policy is a relevant policy. It is still necessary to consider, in accordance with paragraph 14 of the Framework, whether any adverse impacts would significantly and demonstrably outweigh the benefits of the development proposed.
- 9.11 The fact that the application of LP Policy 19 is not limited solely to housing proposals outside the settlement boundary does not mean, as Mr Eaton asserts, that it is not a "relevant" policy for the purposes of paragraph 49 of the Framework. The fact that it is cited in the reasons for refusal is proof positive of its relevance. LP Policy 19 has to be seen in the context of the fixing of the settlement boundary at Tetbury, an exercise conducted several years ago against the background of the Structure Plan (itself adopted in 1999), and a development plan strategy covering the period to 2011. This policy is time-expired and past its sell-by date. Thus it is out of date for two reasons.
- 9.12 Mr Eaton places weight on the fact that the SoS has saved these policies. But as he accepted in cross examination, the SoS' saving letter (APP 10.10) dated 19 January 2009 made it clear that he would not necessarily endorse the saved policies if presented as new; that saved policies were not to be used to delay the production of Development Plan Documents; and that Cotswold was advised to make good progress with the production of their Local Development



Scheme. Mr Eaton also accepted that the SoS' letter had explicitly advised that maximum use should be made of national policies, and he agreed that PPS3 would have been highly material and that new policy should be afforded considerable weight. It was of course against that background, and a deficit in housing land supply, that this application came forward in the first place.

- 9.13 It is apparent that LP Policy 19 has been used by Council Members to resist applications for housing, even in the context of an admitted shortfall in the 5 year supply of housing land, as was the case here when they decided to reject their professional officers' advice which had been consistently maintained over a two-year period.
- 9.14 It was symptomatic of the prevailing attitude, seemingly still held by Members, that Mr Eaton was not able to accept that the picture of policy making in Cotswold District is one of delay. Mr Eaton did however accept that the right to have a plan-led system, set out at paragraph 17 of the Framework, comes with the responsibility to keep plans up to date. The Framework is seeking to incentivise local planning authorities to get on with their plans, but even now CDC has not formally published, or committed to, a timetable for the production of its local Core Strategy in any Local Development Scheme.
- 9.15 There may be enthusiasm in some quarters for a Neighbourhood Plan, but there is no evidence that this process has begun or is anywhere near beginning. There is no emerging Development Plan because there has, to date, been no attempt by the Council to identify the numbers of houses required based on an objective assessment. In that sense, no strategy has yet emerged that this currently proposed development could prejudice, as alleged in the reason for refusal. The Core Strategy has not yet been published for consultation, and even if it had been, the delay in determining the future use of the appeal site would not be justified in the context of a shortfall in housing and the national imperative for the need for growth now (CD 3.3, para 18).
- 9.16 Moreover it cannot seriously be contended that one housing scheme for up to 250 units adjoining the boundary of Tetbury, a principal settlement of the Cotswold District, would be so substantial as to predetermine decisions which can only properly be taken in the Development Plan. As Mr Whitehead explained in his evidence in chief, this proposal alone would result in a 9.9% increase in dwellings in Tetbury, which would rise to 16% if the Council decided to grant permission for the outline scheme on the SIAC/Matbro site. He then drew a comparison with the situation prevailing in the Moreton in Marsh appeal (APP 3.8), where the Council had already granted permission for a scheme which would increase the dwellings by 20%, so that the proposal for a further 300 would have resulted in a 40% increase. Tetbury is materially larger than Moreton in Marsh, and even the combination of this proposal, the site at Bath Road and the SIAC/Matbro site would not compare on a pro rata basis with the situation in the Moreton in Marsh appeal. It is also noteworthy that the Moreton in Marsh appeal decision preceded the Framework, where it is plain that permission for sustainable development is to be granted without delay given the imperative for growth.
- 9.17 The officers of the Council invited this application precisely because of the delay in the production of the Core Strategy, and the housing shortfall. To reject it now, several years later, when the Council has made no real progress

in producing a Core Strategy, would be perverse. It would be seen by the appellant, and the development industry, as rewarding a Council for constantly delaying their Local Development Framework. That would mean the SoS would be sending precisely the wrong message, which would only serve to contradict and undermine his efforts to get the economy growing through the delivery of more housing.

- 9.18 In his most recent statement, under the heading "Reducing Planning Delays", the very same message is given: *The Localism Act has put the power to plan back in the hands of communities, but with this power comes responsibility: a responsibility to meet their needs for development and growth, and to deal quickly and effectively with proposals that will deliver homes, jobs and facilities* (INQ 37). It is the elected Members who have undermined the attempts of Council officers to ensure that the District had an adequate supply of housing.

#### *The housing requirement*

- 9.19 In the absence of any more recent housing requirement figure in the Development Plan, the Inspector who conducted the Moreton in Marsh appeal concluded that the Structure Plan requirement figure of 307.5 was a useful starting point (APP 10.27, IR 174), and that it was somewhat out of date but nonetheless should carry more weight than the Council's interim housing requirement figure (APP 10.27, IR 185). In his decision on that appeal the SoS agreed that the Structure Plan requirement was a useful starting point. But as Mr Bateman explained, the Structure Plan requirement is now time-expired, and so no longer the useful starting point that it once was. It cannot possibly be described as up-to-date in accordance with paragraph 17 of the Framework. The Council now relies on its June 2012 Housing Supply document (LPA 6.1) to demonstrate that it has a 5 year supply. This report takes the Structure Plan requirement as both starting and end point; the text of the report makes no reference to any other requirement figure.
- 9.20 Thus, despite the clear warning in the Moreton in Marsh decision about the pedigree and utility of the Structure Plan requirement figure, and the subsequent publication of the Framework, the Council seems to have made absolutely no progress in seeking objectively to identify the affordable and market housing needs of the housing market area, as required by paragraphs 17 and 47 of the Framework.
- 9.21 The weight to be given to any calculation based on the Structure Plan housing requirement has substantially diminished given that we are beyond the time period to 2011; in terms of the Framework, the Structure Plan requirement does not reflect up-to-date Development Plan policy, nor any up-to-date objective assessment conducted by the Council. It is now, as the Inspector observed in the Siddington appeal (APP 11.6), over 20 years old. Consistent with the Wootton Bassett appeal decision (APP 10.24), the appellant suggests that housing requirements which start and end on the basis of an out of date Structure Plan requirement, in the face of a more up to date and tested RS evidence base, are untenable. No 5 year supply calculation based on the Structure Plan could sensibly be described as Framework-compliant.
- 9.22 In the context of the Framework, the appellant contends that the revised RS is now the useful starting point. Although not part of the Development Plan, it is

---

more up to date than the Structure Plan, is based on 2004 household projections, and is the product of an independent examination and the SoS' response to that examination. Consistent with the Torquay (APP 11.3) and Homneybourne (INQ 8) appeal decisions and the Framework, the appellant suggests preference for these figures over the time-expired Structure Plan requirement as a starting point.

- 9.23 Just prior to the resumption of the inquiry in August, Mr Eaton sought to introduce some new calculations using the earlier option 1 housing requirement figures suggested in the Draft RS. There is no mention of these in the Council's 2012 Housing Supply Paper. They are utilised by Mr Eaton in a bid to substantiate the continued use of the Structure Plan figures in the face of the Siddington appeal decision. It is, as Mr Bateman explained, less appropriate to use the Draft RS figures since these did not stand the test of examination, and are based on 2003 household projections. The 2004 projections produced a further requirement for 5000 dpa, or 100,000 over the whole region over a 20 year period, which led to the figures in the SoS' proposed changes to the RS (APP 10.13).
- 9.24 Unsubstantiated concerns about the RS SEA that Mr Eaton mentioned orally, but did not substantiate by reference to the process or documents, ought to be given no weight. Moreover none of the figures in column 6 of Mr Eaton's housing requirements table (INQ 16) are evidenced by any support from the Council, which continues to rely on the June 2012 Housing Supply document presented to Members (LPA 6.1), in which no mention is made of the Option 1 figures.
- 9.25 Even worse is Mr Eaton's decision to use the draft figures in a manner which does not actually reflect the document itself. His column 6 is not based on an annualised requirement of 340 units to 2016, and thereafter 260. Mr Eaton's approach is based upon a variant or distortion of the annualised requirements, which artificially reduces the requirement. If the Draft RS is to be regarded as remotely relevant, the calculations must accurately reflect the Draft. He advances no justification for doing otherwise. Accordingly, as he accepted in cross examination, using the Sedgefield approach the 5 year requirement is 377 per annum. This produces a total requirement of 1887, which rises to 1981 with a 5% buffer and 2264 with a 20% buffer. In short, these figures do not evidence a 5 year supply. Mr Eaton accepted in cross examination that the Council used the Sedgefield approach in its 2012 Housing Supply document, and that the Inspector in the Honeybourne appeal considered the Sedgefield approach to comply with the Framework (INQ 8, para 36).
- 9.26 Even more up to date and relevant are the 2008-based ONS population projections, which underlie the DCLG household projections published in 2010 (APP 10.28). Mr Bateman uses these to arrive at a 5 year requirement for 3199 dwellings, which rises to 3359 if a 5% buffer is added, and 3839 with a 20% buffer. The appellant's position is that full account should be taken of this requirement, which is based upon the most up to date "consistent national, regional and local projections" (CD 5.35, p 12). Mr Bateman indicated that in his experience other authorities were using these projections in assessing the objective need, as are Inspectors determining appeals; see for example the Torquay appeal decision (APP 11.3).

- 9.27 As Mr Bateman pointed out, the DCLG publication advises that “the projections should be used as part of the evidence base regarding the future demand for housing that would arise as a result of these demographic trends” (CD 5.35 p 12). These are nationally derived household projections which are produced to high professional standards, undergo regular quality assurance reviews and are free from political interference.
- 9.28 The Council’s June 2012 Housing Supply document (LPA 6.1) makes no reference whatsoever to these more up-to-date projections. Nor does it make any reference to any housing requirement, much less any five year supply, derived from GCC’s in-house research team’s projections.
- 9.29 Mr Eaton seeks to rely upon both the RS Option 1 figures, and the GCC projection figures, to validate the continued use of the out of date SP housing requirement. The fact is there is nothing in the 2012 Housing Supply document which suggests any such validation exercise. No document has been produced as evidence that the Members have ever been asked to consider requirements based on anything other than the Structure Plan. It is obvious that this validation exercise is no more than an attempt by Mr Eaton to ratify the continued use of the Structure Plan figures as the basis for assessing the housing requirement part of the 5 year supply calculation.
- 9.30 Mr Eaton’s evidence contained calculations based on the GCC research team’s projections, but these cannot be compared to Mr Bateman’s calculations using those figures, because they do not relate to the same period. Mr Eaton’s written rebuttal refers to projections for 2011-2031 (LPA 5, para 4.18), but there is no mention that the period 2006-2011 should be ignored, which is what Mr Eaton later sought to do. Ignoring any historic shortfall is unwarranted, as the Inspector conducting the Examination of the Bath and North East Somerset Core Strategy made clear (APP 11.7, 137–139).
- 9.31 The Executive Summary of the GCC Interim Report 2010 (CD 5.42) makes plain that the locally produced figures are not meant to replace the ONS 2008 projections, but this seems to be what Mr Eaton was seeking to do. It is apparent from the 2011 Report (CD 5.36 p 18) that the GCC figures contain an amalgam of national and local statistics, with inputs from both going into the model used. It carries a health warning to planners. What is important to note is that as Mr Bateman’s evidence indicates (APP 11.1, column 5), using the local projections on a comparable basis, the total 5 year requirement is 2215, rising to 2326 with a 5% buffer and 2685 with a 20% buffer. But the other crucial point is that the 2011 projections are not accurate, and therefore not robust. They should not be used to usurp the ONS based projections. In evidence, Mr Bateman compared the Census figure for 2011 of 597,000 with the ONS figure of 597,000: this contrasts with the GCC figure of 608,000.
- 9.32 In cross examination, Mr Bateman pointed out that the 2011 figures have not been tested in any examination process. When eventually the Council assesses objectively its housing needs, and formulates a development strategy to ensure that these are met in accordance with its statutory duty to co-operate, this will be tested at examination. Until then, little if any weight should be given to a housing requirement based upon these projections.

*The supply of housing land: discounts*

- 9.33 The application of a discount to small sites with planning permission is, as Mr Eaton accepted in cross examination, agreed. The principle of a discount is thus not in dispute. In the Council's 2011 Housing Supply document (CD 4.21) a discount of 15 per annum was identified, and used over the last 4 years of the 5 year period to reflect the fact that permissions do lapse. In the 2012 Housing Supply document, as Mr Eaton accepted, the use of 15 per annum was reduced to 3 years. He could offer no logical reason why this had occurred.
- 9.34 If the principle is accepted on small sites, why not on large sites? There is no logic to the Council's approach of disregarding a discount on large sites with permissions. Mr Eaton accepted, by reference to the e-mail about Upper Rissington (LPA 8.3) that there is no certainty in the delivery projections of those developers, who are already a couple of weeks behind their projected timetable. It is precisely because there can be no certainty that it is common practice to apply a discount.
- 9.35 The Framework does not exhort a discount. Nor did PPG 3 or PPS 3, but that has not prevented the practice of applying a discount from becoming well-established. The Council, and the SoS, ought to be looking to identify a robust 5 year supply. Utilising discounts for the larger sites with permissions, the 2010 SHLAA sites, and rural exception sites, as Mr Bateman has done, accords with the identification of a robust supply (APP 8). Mr Bateman's comparison, in his evidence in chief, of the projections in the Council's 2006/7 AMR with its actual completion figures, demonstrated that the Council has consistently failed to achieve that which it projected it would.
- 9.36 In the Torquay appeal decision, both parties accepted that provision should be made for non-completions; a 30% rate was used (APP 11.3, para 55). In the Honeybourne decision, a 10% reduction was applied by the appellant and accepted by the Inspector (INQ 8, para 39) as being a reasonable approach to adopt. Such an approach serves to avoid detailed questions at inquiries about individual sites, and by accepting all sites as potentially developable, is consistent with the Framework.

*The supply of housing land: windfalls*

- 9.37 The advice in paragraph 48 of the Framework is clear, and not substantially different to the position under PPS 3. For local planning authorities to use windfalls in their housing land supply calculation, there must be compelling evidence that such sites have consistently become available in the local area, and will continue to provide a reliable source of supply in the future. Any allowance should be realistic, having regard to the SHLAA. CDC's assessment of windfalls (LPA 6.1) only looks back, and no detailed analysis has been undertaken to justify why, in the face of a SHLAA which identifies all potential sites, windfalls will continue to be provided. Rural exception sites are already part of the supply, so cannot be added back in as windfalls, as Mr Eaton sought to do. Windfalls should be disregarded from the supply calculation, as clearly there is no compelling evidence for them. Such an approach also has the virtue of being consistent with the approach taken by the BANES Core Strategy Examination Inspector (APP 11.7, para 2.5) and the Honeybourne appeal decision (INQ 8, para 40).

*The supply of housing land: buffers*

- 9.38 In the Siddington appeal, the Inspector found the Council's record to be one of under-delivery (APP 11.6, para 16). She found two measures of this. Firstly, by reference to the Structure Plan requirement, the fact that in 7 out of the last 10 years there has been under delivery, as shown in the December AMR 2011, with a shortfall of 89 dwellings. Secondly, by reference to completions, the target has not been met for 8 out of the past 10 years. As that Inspector observed, the Council's difficulties have extended well beyond the current economic downturn. Mr Eaton has not sought to adduce any evidence to contradict these findings, and the Council is not challenging that decision. These findings in themselves warrant a finding of persistent under-delivery, and therefore the need for the Council to have a buffer of 20% in any robust housing supply calculation.

*The supply of housing land supply: conclusion*

- 9.39 The appellant's position is that there is no robust 5 year supply of housing in the Cotswold District, and that a significant boost to housing is urgently required, which this appeal proposal can go some way to meeting, in a location abutting the edge of one of the District's Principal Settlements.

*The impact on the Listed Building*

- 9.40 Highfield Farmhouse is a Grade II listed building, and as such is a heritage asset which has a degree of significance. Only the appellant has presented an assessment of this significance, through the expert evidence of Mr Heaton. He assessed the significance of this listed building as only moderate (APP 7.1, para 4.2.1), and in his oral evidence made it clear that this is because of its historic, as opposed to its architectural, interest.
- 9.41 Mr Heaton accepted in cross examination that applying the broad definition of "setting" in the Framework, the open fields to the south form part of the setting of the listed building. He assesses the contribution made by the fields to be due to the historic field boundaries. These boundaries have been deliberately retained within the proposed development. He also assesses the vista towards Highfield Farm from the road to be an important part of the setting of the listed building, because the house faces the road. That vista has been quite deliberately kept open and free from residential development in the appeal proposal; accordingly, he assesses the overall impact of the proposed development to be neutral. It is plain from the officer's report to committee (APP 3.1) that proper consideration was given to the setting of the listed building by the professionals advising the Council Members. No contrary expert assessment has been offered.

*The impact on the AONB*

- 9.42 Because of the shortfall in housing land supply, Council officers are recommending that permission for major development be granted on a site immediately opposite this appeal site. That land comprises both previously developed land, and greenfield land designated for employment use. Thus Council officers are consistent in having no in-principle objection to major development in the AONB to the north of Tetbury.

- 9.43 The need for housing in the Cotswold district, the national imperative for growth and the Framework objective to significantly boost housing are plainly capable of amounting to need, and the grant of planning permission is plainly in both the national and public interest, in terms of paragraph 116 of the Framework and SP Policy NHE4. There is no scope for providing housing at Tetbury other than on land in the AONB, and it is no part of the Council's case to suggest any shortfall should be met on other land outside the AONB. It is their case that they have, or will have, no shortfall if permission is granted on the SIAC/Matbro site.
- 9.44 The reason for refusal asserts that it is preferable to redevelop allocated previously-developed employment land. In fact, the application before the Council on the SIAC/Matbro site also involves the loss of greenfield land safeguarded for future employment use. A recent study commissioned by the Council confirms that in future, the Council will need its existing and safeguarded employment land, together with even more land (CD 5.37). In this inquiry, the Council have not sought to contend otherwise.
- 9.45 The fact that the SIAC/Matbro application, if granted and built out, will ultimately give rise to the need for more employment land at Tetbury, which will have to be found on greenfield land in the AONB, has not yet been properly considered by the Council. But the important point is that there is no dispute that meeting housing needs in the Cotswold District will involve further housing in Tetbury in the AONB.
- 9.46 With regard to whether there would be any detrimental effect on the environment and the landscape, and the extent to which it could be moderated, the Council relies on the evidence of Mr Potterton (LPA 9). He sought to take issue with the photographic assessment carried out in the appellant's LVIA, suggesting it was deficient because it lacked photo viewpoints from the public footpath, but accepted in cross examination that the text of the ES included an assessment of the proposals on views from the footpath. He offered no alternative LVIA or photo viewpoints of his own.
- 9.47 He agreed that the primary visual envelope was limited. He acknowledged that the site did not have any particular scenic quality and that the loss of the pasture was not a fatal flaw to the scheme. Indeed in cross examination he explained he was not against the principle of development per se on the appeal site, rather the issue was one of size and scale. That was a significant shift from the position Members adopted in the reasons for refusal, and a significant shift from the way he had put the matter in his written proof of evidence.

*Impact on the historic market town of Tetbury*

- 9.48 The town of Tetbury is not a "designated heritage asset" as defined in the glossary to the Framework. It is not a heritage asset identified in any local list. It is an undesignated heritage asset. In accordance with paragraph 135 of the Framework, the effect of the appeal proposals on the significance of Tetbury should be taken into account in determining the appeal.
- 9.49 The Council's concern focuses on the loss of open fields to housing development. The fields are themselves adjacent to housing, and opposite industrial land. Mr Potterton described them as forming part of a buffer, or

area of transition, rather than part of the open countryside to the north. He is not against the introduction of residential development on the appeal site, and so some loss of open landscape is accepted.

- 9.50 Moving the edge of Tetbury across the appeal site would result in the loss of the fields, but in the context of arriving into or departing from the town of Tetbury, the form of residential development proposed in this appeal would make a much better entrance or exit than Shepherds Mead. As the White report acknowledged, the northern edge of Tetbury suffers from houses comprising a "monotonous suburban edge which does not compliment the landscape" (APP 7.8 p 5). The relationship of the settlement with this surrounding landscape was singled out as a negative relationship. The appeal proposal, which takes a landscape-led approach and has been carefully planned in collaboration with the Officers of the Council and the Cotswold Conservation Board, offers the prospect of improving the landscape and the edge of Tetbury.

### *Conclusion*

- 9.51 Set against the acknowledged loss of open fields are all the social, environmental and economic benefits that Mr Eaton did not seek to dispute. The contribution toward meeting the housing shortfall, and the provision of 50% affordable housing in the context of the little development that Tetbury has enjoyed in the last decade (APP 3.27 s 5), would be a significant boost to the town. Additional revenue, job creation, and in particular more secondary school children, ought to be welcomed. Additional allotments, increased public access, reinstatement and repair of the traditional stone walling, ponds and the planting of trees are all benefits for the environment. So too would be the improvements to flooding, through proper drainage arrangements.
- 9.52 In the context of the Framework the case for the grant of permission is overwhelming, and the appellant invites the Inspector to recommend to the SoS that permission be granted.

## **10. The cases for interested parties**

Oral representations made in addition to those of the main parties are summarised below; where speakers made substantially the same points, these are not repeated in this report. Copies of the speaking notes and supporting material provided are attached as documents (INQ 11-13, 18, 22-26).

### *Ms L Morgan, representing STEPS*

- 10.1 STEPS represents 282 people who have signed up to our website to oppose this and other greenfield planning applications. We support brownfield developments, for our town's sustainable growth. As these sites sit within the town's boundaries, new residents would be able to access its services and facilities without necessarily using their motor vehicles; Tetbury suffers greatly with gridlocked roads. The development of brownfield sites also has the advantage of improving areas in the town for everyone.
- 10.2 The government also wants brownfield sites prioritised over greenfield sites, therefore the application currently before the District Council, to develop the SIAC/Matbro site directly opposite this appeal site, makes much more sense as a way forward.



10.3 The site proposed in this current appeal is in an AONB, and should be protected for future generations. Regard must be given to the people who live and work here, and those people do not want this development to go ahead. Residents of Conygar in Tetbury have used these fields for over 20 years to walk their dogs and enjoy the countryside, and have used them as a recreation area. Tetbury is at present drawing up a Neighbourhood Plan that will inform our future in the town. So surely now is not the time to be allowing this development.

*Ms D Hicks, Councillor*

10.4 Tetbury is a warm and welcoming town, with many active clubs and societies. It makes visitors feel welcome, and new residents have commented on how quickly they have been accepted and made to feel at home. Granting planning permission for 250 new houses, with very little contribution towards existing infrastructure and facilities, would ruin both the appearance of the town, and its friendliness. A good example of how caring the community is can be found in the action groups that have been set up to protect it. They are not fighting each other, but pulling together in an effort to make Tetbury even better.

*Mr B Gibbs, Councillor*

10.5 Tetbury does not reject development outright, and recognises that it must take its share of the increased housing numbers that the District requires. What the community asks is to have a choice in how, and where, Tetbury is to be developed.

10.6 If all the applications circling the town were approved, this would increase its size by 30%. Over the past few years, the town has been successful in utilising brownfield sites to provide housing, and now has an opportunity to extend this policy using the SIAC/Matbro site. That proposal has the support of Tetbury Town Council, and local residents, in contrast to the current appeal proposal. The SIAC/Matbro site would also deliver a care home employing 90 people, making it the second largest employer in Tetbury. Conversely, three local action groups have been formed to object to the greenfield sites under consideration around the town.

*Ms C Braidwood, representing TUPC*

10.7 Tetbury Upton Parish has 250 residents. As the parish almost encircles Tetbury, the Parish Council works closely with Tetbury Town Council. TUPC has consistently and unanimously opposed this proposal. The appellant contends that under the Framework, development of this greenfield site, outside the development boundary, should be permitted to meet the 5 year supply of housing. But there is no proven evidence of any housing shortage, and in any event, development of the alternative brownfield site would better meet the Framework criteria.

10.8 Development of the appeal site would be premature, given that TUPC and the Town Council are fully committed to the production of a Neighbourhood Plan. This development would also be unsustainable, given that there is little employment in the area; an extra 400 adults of working age could lead to Tetbury becoming a dormitory town. The Inspector who determined an appeal concerning development proposed at Berrells Road found that proposal would

harm the AONB; at Highfield Farm, there is even more of a case for its protection. In addition, the reduction in the original S.106 financial contributions, to achieve more affordable housing, would place even more strain on the town's existing infrastructure.

*Mr A Taylor, representing STAG*

- 10.9 STAG represents over 100 concerned households, across Tetbury and Tetbury Upton, who oppose this application. We understand that while CDC's 5 year housing supply is now thought to have been met, an additional allowance may be required to encourage economic growth. We would highlight that the appeal proposal is significantly larger than any of the 5-year shortfalls officially published over the last year or so. Also, by pre-determining the location for a significant proportion of Tetbury's housing requirements for the period up to 2026, granting permission for it now would seriously compromise the ability of the local community to determine where future housing growth should take place.
- 10.10 The Localism Act and the Framework both set out the Government's intention of empowering local people to shape their surroundings, and enabling communities to exert greater control over decision making. Approval of this appeal proposal would be contrary to a plan-led approach, and could be deemed detrimental and prejudicial.
- 10.11 A number of sites have been identified for development, so we strongly believe that Tetbury's development should be based on a democratically constructed local Development Plan, taking all suitable sites into consideration. Approval of this proposal now would prejudice the preparation and viability of such a plan.

*Mr M Van Sloots, representing STAG*

- 10.12 The appeal site has never been allocated for development in any adopted Development Plan. The appellant places weight on the findings of the White Report, but assessments of landscape are inherently subjective, as those of art: what one person might view appreciatively, another might view with horror. Seemingly valueless 'scrub' land may in fact have ecological benefits. Landscape issues were fully considered by Councillors, in the course of a site visit, before deciding to reject the current proposal.
- 10.13 Many residents of Shepherds Mead already find it too far to walk into town. The appeal site is so far distant from the town centre that future occupiers of the proposed housing would probably drive there, increasing Tetbury's parking problems. As to addressing the development's ecological impacts, the value of including ponds within high density housing developments is questionable, as they often fill up with rubbish, and thereby become harmful in ecological terms.
- 10.14 The residents of Shepherds Mead already have easy access to the footpath that runs alongside the site, so the appellant's claim that there would be benefits in terms of increased public accessibility is not accepted. There would instead be the loss of attractive views of the countryside, and the loss of land used for recreational purposes. Paragraph 77 of the Framework provides an

opportunity for the community, if allowed to do so, to designate the site a Local Green Space.

- 10.15 The proposed development would conflict with paragraph 75 of the Framework, in that re-routing a right of way through an intensely developed site is hardly protecting or enhancing it.
- 10.16 The appeal site is not just at risk of flooding, it does regularly flood. The Councillors wanted to cite flooding as one of their reasons for refusal, but were advised against it by their Planning Officers. STAG's written representations objecting to the application give full evidence, including photographs, of the flooding aspect. Against this background, paragraph 100 of the Framework should carry very high weight, and would in itself constitute grounds for refusing the current appeal.

*Mr P Morris, CEO and majority owner, Howard Tenens Group*

- 10.17 Howard Tenens Group employs over 500 people directly, and operates and owns over 3 million square feet of storage. We also have a joint venture development business with partners Builders Ede, and have built several hundred homes locally as well as the Cotswold Water Park Hotel. The supporting documents submitted give background to our ownership of the former Matbro site, and our ability so far to find tenants to occupy the available space.
- 10.18 The buildings, along with those of neighbouring SIAC, were built 50 years ago specifically for manufacturing purposes. They do not readily lend themselves to other uses, and are not conveniently located. The area is well served by land for employment; there is space currently available for any realistic future requirement. Redundant farm buildings provide further opportunities.
- 10.19 Five people are currently employed on the Matbro site. If the current application for redevelopment of the site is permitted, they would be re-housed in the remaining building, which will be refurbished. The redevelopment would result in the direct employment of some 100 people for the various care facilities proposed, and the removal of some rather unsightly large old industrial buildings. We would then still have some 10,000 sq feet to meet any local requirement, although regular advertising indicates there is none at present. The submitted supporting information contrasts the 90% occupancy levels of other sites we own/operate with the current occupancy level at this site of 9%.

*Mr J Ede, owner of Builders Ede, joint owner of Matbro site*

- 10.20 The SIAC/Matbro site was included in the Local Plan, and scheduled to provide 80% residential and 20% commercial, at the eleventh hour, when the Highfield Farm site was withdrawn. Sites should not be retained for employment use unless there is a reasonable prospect that they will actually be required for that use. No evidence on this point was produced to support the current application for development of the SIAC/Matbro site because neither we nor the Council thought it necessary, the site already being allocated for development in the Local Plan. The findings of the Inspector who examined the Local Plan (INQ 24, 8.99 -8.100) remain as valid today as they were then.

*Mr G Robinson, SIAC Commercial Development Divisional Director, representing Tetbury Steel Ltd and Tetbury Structures Ltd*

- 10.21 The SIAC Tetbury Steel Ltd factory building dates from the 1950s to the 1980s. Steel fabrication ceased there in November 2009. The closure of the factory was due to reductions in turnover caused by wider economic conditions, and the rationalisation of the SIAC steel businesses in the UK, and was not related to the current planning application, submitted nearly two years later.
- 10.22 The factory building, which amounts to some 4,100m<sup>2</sup>, has been unused since its closure in 2009, apart from the use by SIAC Wind Energy UK of about 100m<sup>2</sup> for the short-term storage of micro wind turbines from August 2011 to June 2012. One of four micro masts, bolt-assembled at the factory in sections, currently remains there awaiting delivery. The use of 100m<sup>2</sup> for temporary storage does not represent an active or viable use of the building as a whole.
- 10.23 The 2011 figures contained in the 2012 Economy Study prepared by Peter Brett Associates LLP are incorrect; the cited number of employees of SIAC Tetbury Steel (53) was from mid-2009, before steel fabrication ceased. By December 2011 the number of employees was reduced to 18, all based in the office building. At peak production, SIAC Tetbury Steel had 76 employees. The current joint application for development of the site includes proposals for a 60 bed care home and 50 extra-care apartments. These facilities would provide 100 full time equivalent jobs, more than SIAC Tetbury Steel employed.
- 10.24 The factory remains closed, and will not re-open for steel fabrication in the future.

*Mr R Levin, representing the Tetbury & District Civic Society*

- 10.25 The Civic Society conducted an extensive consultation exercise with its membership (125 in December 2011) regarding CDC's Core Strategy (Second Issues and Options Paper). There was overwhelming support for development only on brownfield sites, and two thirds of members voted to limit the town's growth to approximately 10% over the next plan period; that is, less than 250 houses. We object to this development because of the site's greenfield nature and strategic location in our AONB, and because it would inevitably set a precedent and lead to two or three further greenfield sites being developed, and hence over 650 houses being built in the next plan period; a 30% growth.
- 10.26 We are working with Tetbury Town Council and TUPC on setting up the processes and forums to determine a Neighbourhood Development Plan. We know this Plan will have to deliver the plan growth required by CDC, and would like the opportunity the Localism Process affords to determine the disposition of this growth.
- 10.27 Highfield Farm is so far from the town centre that most people will consider it necessary to use their car to visit it. This will result in more congestion in Long Street as these cars then join the circular hunt for parking spaces. This will harm the historic setting of the town, whose streets were designed for horses not cars. They will soon extend their shopping journeys to Malmesbury, Nailsworth or Cirencester rather than Tetbury.

*Mr S Hirst, Councillor*

10.28 The overall purpose of the Framework is to achieve sustainable development. Much time has been spent at this inquiry discussing housing numbers, but what of the local community, and the effect on the ground. The Framework's core planning principles speak of the need to build strong economies, and actively drive economic growth. But how does a scheme for 250 houses in a rural area contribute to meeting the need for a strong economy, when it doesn't provide additional employment.

10.29 In the view of Tetbury Town Council the current proposal is unsustainable, because it contains nothing to sustain the community. The S.106 deed offers little in the way of community benefit, and the extra houses would have to be supported by the already creaking infrastructure. We would therefore ask that the contents of the S.106 Undertaking be re-examined.

## **11. Written representations**

11.1 331 letters of objection to the proposed development, and 3 letters of support, were received by the Council at the application stage and are collected at folder TP1. 29 further written representations, the vast majority of which opposed the proposal, were received by the Planning Inspectorate at the appeal stage and are collected in folder TP2. Many of the letters of objection set out similar concerns to those subsequently articulated by Council and by local residents who spoke at the inquiry, as outlined above.

11.2 Other matters raised were the impact on wildlife; the lack of any parking at the proposed allotments; concern that the doctor, dentist, school, police, fire and other services for Tetbury are already overwhelmed; concern that traffic from the development would cause hazards at the junctions of London Road and Shepherd's Mead; the impact of the development upon the Council's stated aim of reducing the carbon footprint of the area; the development would be better located in Stroud or Cheltenham where there is a need for regeneration; the houses would be too small; the need for a massive investment in social housing rather than more homes for the wealthy; increased levels of commuting traffic; shopping opportunities in the town catering predominantly for tourists rather than residents; the need for a bypass around the town; and the inadequacy of existing public transport.

11.3 Many of the matters raised in the letters written in support of the proposal were the same as those subsequently articulated by the appellant, so are not listed again here. Generally, the writers expressed support for this site in preference to others in and around Tetbury; doubt as to the acceptability of the development of the SIAC/Matbro site for housing; and support for the provision of affordable housing.

## **12. S.106 Obligation**

12.1 A draft Unilateral Undertaking was submitted by the appellant, discussed at the Inquiry, and duly executed before the Inquiry closed (INQ 38). In summary, the Undertaking binds the appellant, should the appeal succeed:

- not to use the land within the site identified for the provision of allotments, for anything other than allotments;

- to set up one or more management companies, for the purpose of owning and managing the various communal areas, open spaces and surface water management areas;
  - to draw up a Travel Plan, for the approval of the Highway Authority, and thereafter implement, monitor and review that Travel Plan at its own cost; and
  - to pay a Transport Infrastructure Contribution of £29,796, a Library Contribution of £49,000, a Travel Plan Contribution of £5,000, and a Local Footpath Infrastructure and Development Boundaries Contribution of £15,000.
- 12.2 The Council has had the opportunity to consider the terms and content of the Undertaking, and has confirmed that it deems them satisfactory. The County Council has provided a Statement of Compliance (LPA 10) setting out the basis of the need for the requested contributions, and stating why these are believed to comply with the tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010, which require them to be necessary, directly related to the development, and fairly and reasonably related in scale and kind.
- 12.3 I consider that the provisions concerning the future retention of the allotments, and the future management of the communal areas and open spaces, are necessary to secure these important aspects of the proposed development. Similarly, a Travel Plan is needed to encourage future residents toward the use of sustainable modes of transport, and the monitoring fee of £5,000 appears reasonable in terms of the need for the County Council to review the future effectiveness of the scheme and suggest amendments if appropriate. I am satisfied that these components of the Undertaking meet the tests of CIL Regulation 122.
- 12.4 The County Council's evidence (INQ 33) identifies deficiencies in the existing level of bus service to the site, and the appellant's Transport Assessment (CD 2.1) accepts the need to deliver a modal shift to public transport. The Transport Infrastructure Contribution has been calculated by reference to the number of bus trips likely to be generated by the proposed development, and the Highways SoCG (APP 3.6) sets out the potential for this sum to be spent on extending existing bus services along London Road to serve a new bus stop on the frontage of the appeal site. On that basis I accept that the contribution would satisfy the tests of CIL Regulation 122.
- 12.5 The increase in population likely to arise from the proposed development would place additional pressure on the local library, and a financial contribution to mitigate this impact has been calculated on the basis of the capital cost of extending the existing service to meet the increased demand. I am satisfied that this contribution would meet the tests of CIL Regulation 122.
- 12.6 The position concerning the Local Footpath Infrastructure and Development Boundaries Contribution of £15,000 is less clear. TUPC has provided what is described as an estimate (INQ 41) of the costs of erecting 6 Mobility Kissing Gates, and engraved wooden signs for the footpath that crosses the appeal site. The estimated costs also include the sum of £3,200, to renew the footpath where it has become severely run down and overgrown, and an unspecified "contingency for extra work on the path" of £3,600. The estimate is £13,836 in total.

- 12.7 If it is the case that the path is currently so severely run down and overgrown that it needs to be renewed, then that is a cost attributable to past neglect, rather than the additional use that will in future be made of it by occupiers of the proposed development. It is likely that the proposed new kissing gates and waymarkers would benefit occupiers of the proposed development, but there is no evidence to indicate that these installations would be rendered necessary by that development. Nor have I been provided with any explanation of the difference between the estimated costs, which total £13,836, and the £15,000 for which provision is made in the Undertaking.
- 12.8 I advised the parties, when I opened the inquiry, that I would require evidence to justify each of the contributions contained in the S. 106 Undertaking. In the absence of sufficient evidence to demonstrate that this contribution is directly related to the proposed development and is necessary to make it acceptable in planning terms, I find that it does not comply with the tests of CIL Regulation 122.
- 12.9 I therefore conclude that the provisions of the Undertaking, with the exception of the Local Footpath Infrastructure and Development Boundaries Contribution, can be taken into account in determining this appeal.

### **13. Conditions**

- 13.1 The SoCG contains a list of draft conditions (APP 3.3), which comprises those suggested in the Officer's report to Committee, plus four additional conditions agreed between the Council and the appellant. These were discussed at the inquiry. I have amended the construction or content of some conditions, amalgamated others and altered their phraseology, following discussion or on the basis of the advice included in the Annex of DoE Circular 11/95 *The Use of Conditions in Planning Permissions*. The list of conditions thus amended is attached as Appendix C to this report. I recommend that the conditions in this Appendix be imposed if the Secretary of State decides to allow the appeal and grant planning permission for the proposed development.
- 13.2 The application was submitted in outline with matters of appearance, layout and scale reserved for future determination, so it is necessary to attach the standard conditions setting out the timetable for submission and approval of these reserved matters. One of the additional conditions agreed between the Council and the appellant suggested a much shorter timetable of six months for the submission of reserved matters application, as a means of securing the prompt delivery of the housing. While I commend the intention, I consider the proposed condition would be of limited utility, since prompt submission and approval of reserved matters applications are not at all the same thing as prompt completion, and availability for occupation, of the dwellings themselves; those latter are matters which cannot reasonably be governed by condition. I therefore see no necessity to alter the standard time limits, which do not in any event serve to preclude early submission of reserved matters applications.
- 13.3 It is necessary to attach the model condition requiring compliance with the submitted plans, in so far as they relate to matters not reserved for future determination. That being the case, there is no need to attach the second additional condition agreed between the Council and the appellant, to the effect that no alterations be made to the details shown in those plans without

further consent; further consent for alterations is rendered necessary by the model condition.

- 13.4 I have however adopted the Council's proposed wording for a condition requiring the reserved matters to comply with the principles and parameters set out in the DAS, as these are fundamental to the acceptability of the scheme and its visual impact on the surrounding area. For similar reasons I have included the parties' agreed condition specifying that the maximum height of the dwellings shall be three storeys, but have deleted the stipulation about plan-depth since this will need to be informed by the design and layout of the dwellings.
- 13.5 A number of the conditions agreed between the parties required the provision of further details which, while certainly necessary, should in my view be addressed at reserved matters stage, when they can be assessed in the light of the detailed layout and design features then put forward. These details include the existing and proposed ground levels and slab levels; a footway/cycleway link to Northlands Way; a link to the adjacent school playing fields on the western boundary of the site; vehicular parking and manoeuvring facilities; cycle parking facilities; a Waste Minimisation Statement; details of the water butts to be provided to serve each dwelling; and a scheme for the provision of fire hydrants.
- 13.6 In order to ensure that the development would not increase the risk of flooding, on the appeal site or elsewhere, it is appropriate to attach a condition requiring that it be carried out in accordance with an approved Surface Water Drainage scheme, compiled in accordance with the findings of the Flood Risk Assessment.
- 13.7 A condition requiring the prior approval of an Ecological Management Plan is also needed, to minimise the adverse effect of the development upon protected species and other wildlife, and to ensure that the necessary mitigation measures are maintained and monitored. I have not incorporated the Council's suggested requirement for a plan showing how 50% of the houses are to include bat bricks and provision for birds, as details of the design of the dwellings may not be determined until reserved matters stage; the adequacy of the provisions made for bats and birds could form part of considerations at that stage.
- 13.8 Details of landscaping have been provided on the Landscape Structure Plan, but the Council and appellant agree, and I concur, that it is also necessary to require the submission of further details including boundary treatments, planting details and, crucially, a programme for the implementation of the landscape works. I have included within this recommended condition the provision of the Public Open Space. As discussed at the inquiry, since the replacement of the conifer belt to the north-east of the site is an important component of the overall landscaping scheme, I have also specified a requirement to provide details of, and include within the timetable, both the removal and the replacement planting. In order to ensure the success of the landscaping scheme, a condition is also needed to secure the replacement of any trees, plants or grassed areas which are lost within the first five years.
- 13.9 To avoid any confusion between the 'access' arrangements that formed part of the outline proposal and the details that would remain to be agreed at



reserved matters stage, I have included the agreed condition specifying that details of the access roads serving each dwelling are to be submitted at reserved matters stage, and setting time limits for their completion. I agree with the parties that measures governing the construction works, such as specified working hours and on-site parking provision, are needed to protect the living conditions of nearby residents and the safety of highway users, and have recommended the model condition requiring compliance with an approved Construction Method Statement.

- 13.10 In the light of the appellant's archaeological assessment and the advice of the County Council's Senior Archaeological Officer, I recommend that a condition be imposed to secure the implementation of a programme of archaeological work, first agreed in writing by the Council, before development commences. Given the proposed use of the site for housing, the absence of any clear indication that the land is free from contamination, and the presence of watercourses on the site, I consider it necessary to attach a condition requiring a contamination risk assessment, and setting out the procedure governing potential remediation measures.
- 13.11 The list of agreed conditions included one requiring the submission of a Pedestrian Environment Reviews (PERs) audit at reserved matters stage, and the subsequent implementation of any resulting agreed works prior to occupation of the dwellings. However, in the time that has elapsed since that list was compiled, the appellant has undertaken the required PERs audit, and the Highway Authority has confirmed that the works detailed in the associated plan would satisfy its requirements (INQ 36). I agree that it is reasonable to secure provision of the identified works prior to occupation of any of the new houses, since they would be needed to ensure adequate and safe pedestrian access to and from the development. I have included the updated version of the suggested condition.
- 13.12 Finally, since determination of this appeal has proceeded on the basis that 50% of the permitted dwellings be provided as affordable housing, it is necessary to secure that provision by condition. Since on-site provision of actual dwellings is proposed, rather than a financial contribution toward the off-site provision of affordable housing elsewhere, I am satisfied that this can be properly secured by the use of an appropriately worded condition.
- 13.13 I do not consider there is any need at outline stage to attach the suggested condition aimed at preventing the location of service runs and roads within the Root Protection Areas of trees and hedgerows, since this would in any event be one of the considerations informing consideration of the layout details to be submitted as reserved matters. I do not consider it necessary to attach the proposed condition concerning the disposal of foul water, since the need to make adequate provision for this is already addressed under other legislation. Nor do I consider it necessary, in the light of the housing land supply position, to attach the agreed condition restricting annual completions to a maximum of 75 dwellings per year; I understand that this was prompted by concerns about the impact of the development upon existing infrastructure, but those are addressed by the S.106 Obligation, as discussed at section 12 above.

## Inspector's conclusions

- 14.1 The following conclusions are based on the oral and written evidence given to the inquiry, and the accompanied and unaccompanied inspections I made of the site and its surroundings. The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.
- 14.2 The proposed development would fundamentally conflict with adopted Development Plan policies aimed at restricting residential development on land which, like the appeal site, lies outside any settlement boundary and inside an AONB. However, Paragraph 49 of the National Planning Policy Framework states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. It will be useful, then, to begin by considering whether or not the Council is able to demonstrate a five-year supply of deliverable housing sites. This involves firstly establishing the housing requirement for the next five years, and then going on to assess whether sufficient deliverable sites are available to meet that need.

### *Housing requirement*

- 14.3 The Council's assessment of its housing supply position is set out in a document entitled *5 Year Housing Land Supply June 2012* ("the 2012 document"). The introduction to that document states that it has been prepared "in compliance with" government advice set out in the Framework, and the "latest position described by the Planning Inspectorate" in a report to the SoS in respect of an appeal at Moreton in Marsh (APP 3.8).
- 14.4 I was the author of that report, but do not share the Council's view that it constitutes the latest position on housing supply in the Cotswold District. That is because it was written nearly two years ago, prior to the introduction of the Framework. The Framework has not only made a number of changes to the national policy landscape, but also has a direct bearing on the interpretation and application of local Development Plan policies. For example, paragraph 215 states that the weight to be given to policies in existing plans adopted prior to 2004 will be dependant upon the extent to which those policies comply with the Framework.
- 14.5 The Council's approach to assessing its future housing requirement is to project forward the Structure Plan requirement for 307.5 dwellings per year, plus an additional 17.8 dwellings per year to ensure that the residual shortfall of 89 is addressed within five years, giving an annual requirement of 325.3 dwellings [8.8]. While this does indeed follow the initial stages of the approach I took in the Moreton in Marsh case, it completely ignores the other important material considerations I noted in my report; for example, that the Structure Plan was becoming increasingly out of date (APP 3.8, para 169) and that the evidence base which informed the preparation of the intended replacement Regional Strategy and Structure Plan should not simply be disregarded (APP 3.8, para 172).
- 14.6 The Framework explains, at paragraph 12, that its introduction has not changed the statutory status of the Development Plan as the starting point for decision making. The Structure Plan was saved by Direction of the SoS in

September 2007, and consequently remains an extant component of the Development Plan. On that basis, and in the absence of any more recent Development Plan document setting out an updated figure, the housing requirement contained in the Structure Plan must remain the starting point for any consideration of the Cotswold District's housing supply [8.22, 9.19]. But it is crucial to bear in mind the full requirement of S.38(6) of the Planning and Compulsory Purchase Act 2004: proposals must be determined in accordance with the Development Plan *unless material considerations indicate otherwise* (my emphasis).

- 14.7 Paragraph 47 of the Framework states that local planning authorities should "use their evidence base" to ensure that their Local Plan meets their full, objectively assessed needs for housing. Paragraph 158 explains that the evidence needs to be adequate, up-to-date and relevant, and paragraph 159 explains that an understanding of housing needs should be informed by household and population projections, taking account of migration and demographic change. The Structure Plan was only intended to cover the plan period 1991 to 2011, and its housing requirement calculation was based on household projections dating from 1996 [9.21]. It is clear that the evidence of other, more recent, projections must be a material consideration in any assessment of the District's housing requirement for the next five years.
- 14.8 There is a wealth of such evidence available. The draft RSSW was informed by 2004-based projections [5.13]. More recently, in 2010, DCLG published household projections that are informed by 2008-based ONS population projections. GCC has also published, in 2010 and 2011 respectively, a "Gloucestershire Local Projection" and a "Housing Trend Analysis & Population and Household Projections" [5.16].
- 14.9 Turning firstly to the draft RSSW, I noted in my report on the Moreton in Marsh appeal that while this emerging plan was unlikely to proceed to adoption and so carried little weight, that did not mean that the evidence base which informed its preparation should simply be disregarded [14.5]. Now that the Localism Act 2011 is in force, it is even less likely that the draft RSSW will be adopted. But it remains the case that its evidence base was thoroughly tested at an Examination in Public, the findings of which resulted in the (then) Secretary of State publishing a series of Proposed Changes in 2008, including a revised housing requirement figure [5.13]. That figure, as opposed to the 'Option 1' figure preferred by the Council but rejected by the Panel, therefore carries considerable weight [9.22]. It indicates a five year housing requirement, for the period 2012-2017, of 2,022 dwellings (APP 11.1).
- 14.10 As to the 2010 DCLG household projections, to convert these to housing requirements it is necessary to include allowances for vacancies and existing unmet need (APP 8). The Council accepted the appellant's identification of these figures as 2.6% and 547 dwellings respectively (INQ 16). It is also usual to add an allowance for second home ownership. The Council contends that no such allowance should be made here, because it has granted permission for approximately 1500 holiday homes in the Cotswold Water Park (LPA 5). I am not persuaded by the argument that the provision of dedicated holiday accommodation in one specific area will remove demand throughout the District, which has many attractive towns and villages that have long proved a popular location for second homes (LPA 6.6). In the absence of any convincing

evidence that the existing demand throughout the District will be very much reduced, I agree with the appellant's approach of adding a 3.2% allowance in respect of second homes (APP 8). The five year housing requirement thus derived from the 2010 DCLG household projections is 3,199 dwellings (APP 11.1).

- 14.11 While it is clear that the 2010 and 2011 GCC forecasts have been produced for the specific purpose of contributing to the evidence-base for local decision-making on housing [8.25], I share the appellant's concerns about the absence of any evidence that they have been subject to independent scrutiny or peer-review [9.31, 9.32]. Local data-sets and recorded trends can play an important role in establishing an accurate picture of local housing need, but as the Council rightly recognises, the GCC figures are only one element of the evidence-base that will eventually be used to establish the District's housing requirement [8.26]. For current purposes, I have been presented with a variety of calculations aimed at deriving a housing requirement for the District from these figures. The results, when due allowance is made for second homes, range from 2,682 (APP 11.1) to 1,679 (INQ 16) dwellings per year.
- 14.12 My understanding of the Council's position is that having reviewed all of this more recent evidence, it concluded that the GCC projections indicate a downward trend in the district's housing requirement, and that this makes it reasonable to continue using the Structure Plan derived housing requirement figure of 325 dwellings [8.22]. That is not, in my view, a conclusion that can properly be drawn. The local projections are, as the Council itself pointed out, only one aspect of the available evidence [8.26]. The annual housing requirement derived from the most up-to-date national figures published by DCLG [14.10] is very nearly double that derived from the Structure Plan requirement, which is hardly indicative of a "downward trend".
- 14.13 Paragraph 50 of the Framework advises that housing should be planned on the basis of current and future demographic trends. I can see no reasonable justification for continuing to use the outdated Structure Plan figure in the hope that a perceived downward trend might eventually result in a housing requirement matching a prediction, made in the mid-nineties, about a 10 year period that is now in the past. Such an approach would be in direct conflict with the Framework's objective to "boost significantly the supply of housing" (paragraph 47). Without exception, all of the more recent forecasts and projections indicate that the figure should be higher than that derived from the Structure Plan.
- 14.14 As to establishing a current and accurate housing requirement figure for the District, that is not for me, or even the SoS, to dictate. It is the role of the Council to arrive at a full and objective assessment of the housing needs for its area, having regard not only to household projections and market trends but all of the other evidence available to it [9.5]. The need to establish the housing requirement, and address how it is to be met, is not a new obligation imposed for the first time by the Framework: it has long been a fundamental component of any Development Plan. It is then both surprising and disappointing, given that the plan periods covered by both the Structure Plan and Local Plan have now expired, that such little progress has been made toward the adoption of any replacement plan establishing the Cotswold district's current and future housing requirement, and setting out a strategy

for its delivery [9.15]. No 'preferred option' has even been identified for consultation yet, and no Examination in Public is likely to take place before early 2014 [5.10].

- 14.15 Nevertheless, for the purpose of reporting on this appeal, I am obliged to arrive at a conclusion on the Council's current ability to demonstrate a five year supply of housing land. For the reasons set out above I hold the housing requirement figure contained in the Structure Plan to be so out of date as to be unfit for that purpose, and while I recognise the local GCC projections will have a valuable role to play as part of the overall evidence base for the district's emerging Local Plan [8.25, 8.26], I consider that it would be premature to rely upon them at this early stage in that process.
- 14.16 I conclude that the District's five-year housing requirement figure is likely to lie somewhere between the 2,022 dwellings derived from draft RSSW Proposed Changes, and the 3,199 dwellings derived from the most recently published DCLG national household projections [14.9, 14.10]. Since I have insufficient evidence to inform any attempt at assessing whereabouts within that range the actual requirement might lie, I will use the figure at the lowest end of the spectrum.
- 14.17 I need to make it absolutely clear that this conclusion should not be confused with an endorsement of that figure as representing the objectively assessed housing need for the district. My decision to use the draft RSSW figure is made on the premise that if a five year housing supply cannot even be demonstrated against the lowest credible housing requirement, then it clearly does not exist. That is the same premise that informed my findings in the Moreton in Marsh appeal: the Council was unable to demonstrate a five year supply against the Structure Plan housing requirement, and since the evidence of the more recently published projections suggested that the housing requirement was likely to increase rather than decrease, that could only worsen the shortfall in housing provision (APP 3.8, para 185).
- 14.18 I can understand local residents' frustration with the amount of time taken up at the inquiry (and consequently in this report) in dealing with complex considerations of housing supply [10.9, 10.28]. The approach I am here obliged to adopt is a product of the wholly unsatisfactory circumstances that arise when a local planning authority fails to keep its Development Plan up to date, such that its housing requirement must instead be deduced from the best of the evidence made available to the decision maker.

### *Buffers*

- 14.19 Before moving on to consider housing supply, it is necessary to have regard to the second bullet point at paragraph 47 of the Framework. This explains that local planning authorities should not only be able to identify sufficient sites to provide five years worth of housing against their housing requirements, but also an additional buffer of 5%, to ensure choice and competition in the market for land. It goes on to state that where there has been a record of persistent under delivery of housing, this buffer should be increased to 20%.
- 14.20 "Persistent under delivery" is not further defined in the Framework, or elsewhere. In an appeal decision concerning Sellars Farm in Stroud (LPA 6.4), the Inspector held that completions over the past five years were the most

relevant to a consideration of the Council's delivery record. On the basis that the Framework requires the assessment of future housing delivery to look forward five years, looking back five years to assess the record of past delivery seems to me a reasonable approach. The Inspector in that case concluded that a total shortfall of around 360 dwellings, during a period affected by recession, did not amount to a record of persistent under delivery. I note CDC's contention that it has a better performance record than that, in terms of its shortfall over the past five years (LPA 1).

- 14.21 My attention was also drawn to an appeal decision at Siddington [9.38], of particular relevance since it is within the Cotswold District. The Inspector noted that there was under delivery in 7 out of the last 10 years, with an identified shortfall of 89 dwellings over the period 1991-2012; and that in terms of housing completions, the target has not been met for eight out of the past ten years (APP 11.6, para 16). She went on to state that the difficulties with housing delivery in the District have extended to the period well before the current economic downturn, and that on two measures looking back over the past 10 years, the Council's record is one of under delivery. The Council has not here put forward any evidence that contradicts those findings, and I have no reason to doubt their accuracy [9.38].
- 14.22 Turning to the evidence presented in this current case, the Council and the appellant have both adopted the approach of measuring past completions against the annualised Structure Plan requirement. Last year saw 538 housing completions, which provided some compensation for the fact that in each of the four preceding years delivery had fallen short of the requirement [8.30]. It was short by a very wide margin in 2009/2010, which saw only 177 completions (APP 8). Since the Structure Plan requirement is itself an average annual target, I consider it reasonable to allow for some fluctuations above and below that figure, by looking at the average annual completions over the last five years. On that basis the Council's completions rate, at 291 dwellings per year, also falls short of its own housing requirement.
- 14.23 A further consideration is that it would not be fair, in the context of assessing the Council's record of delivering housing, simply to ignore the fact that delivery here is being measured against a housing requirement that was artificially low; being based (as I have discussed at length above) on projections that were out of date. That being the case, the resulting shortfall in housing delivery will in real terms have been considerably greater than the that calculated by measuring completions against the Structure Plan requirement.
- 14.24 Taking all of this into account, I conclude that there has been persistent under-delivery of housing in the Cotswold district, and so an additional buffer of 20% should be added. This increases the five year housing requirement figure derived from the draft RSSW to 2,426 dwellings over the next five years (APP 11.1).

### *Supply*

- 14.25 There are a number of differences between the Council and the appellant as to how the District's housing supply should be calculated. One of these concerns "commitments"; that is, sites where planning permission has been granted for a specific number of dwellings. While such sites can clearly be considered

“deliverable”, in the terms of footnote 11 to paragraph 47 of the Framework, it is fair to acknowledge that unforeseen problems can arise [8.11 – 8.13]. Delays in construction and funding can occur for a wide variety of reasons, and may lead to the delivery of fewer dwellings, or even the lapse of permissions before implementation; this makes it unlikely that every single dwelling for which planning permission has been granted will actually be built. To reflect this, the Council’s 2012 Housing supply document applies a ‘lapse rate’ of 15 dwellings per year, which is based on records of lapsed permissions in previous years, and takes account of the current economic climate [9.33]. That seems to me a reasonable approach.

- 14.26 While it appears that the lapse rate set out in the 2012 Housing Supply paper applies to both large and small sites, the SoCG records the agreement between the Council and the appellant that in this case, “a small sites lapse rate of 15 dwellings per annum is appropriate”. If it is the case that the lapse rate is only to be applied to small sites with planning permission, then it follows that some other means must be found to account for probable lapses on large sites with planning permission [9.34]. On that basis, I consider the appellant’s application of a 10% discount to such sites to be reasonable.
- 14.27 One of the “large sites” is at Upper Rissington, where outline planning permission was granted in 2010 for 368 units. The appellant has pointed out that delays have meant the completions predicted for years 2010/11 and 2011/12 did not occur (APP 8). However, the Council provided the inquiry with a copy of an e-mail from the developers of the site, confirming that all of the dwellings are on course for delivery in the next five years [8.12]. I appreciate that predicting the numbers of houses that will actually be delivered can never be a precise science, but on the basis of the available evidence, I do not consider it necessary to make any further downward adjustment beyond the 10% discount discussed above.
- 14.28 The appellant contends that a 20% discount should be applied to sites identified in the SHLAA, on the basis that not only do they not yet have planning permission, but some are not available, and others remain in active use for other purposes (APP 8). It is fair to note that the SHLAA has not been recently updated, but it is also important to bear in mind that the deliverability of these sites will have been carefully considered by the SHLAA panel, on the basis of evidence not provided to this inquiry [8.14]. In the absence of any substantive and compelling evidence that would justify setting aside the panel’s conclusion that these sites (including the “Rural Exception Sites”) would be deliverable in 0-5 years, I see no reason to apply a discount to them. For similar reasons, I see no compelling reason to apply a discount to the remainder of the sites allocated for residential development in the Local Plan, which the Council has assessed to be capable of delivering 80 dwellings within the next five years (APP 8).
- 14.29 The remaining point of difference between the Council and the appellant is the treatment of windfalls. Paragraph 48 of the Framework advises that local planning authorities may make an allowance for windfall sites in the five-year supply, if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply.

- 14.30 The Council's approach, set out at p.8 of the 2012 Housing Supply document, was to analyse the District's housing completions for the last five years to determine whether each site was either allocated for residential development in the Local Plan, included in the SHLAA, or constituted residential garden land [8.18]. Sites that did not meet any of these criteria were identified as windfall sites. The figures for the first two years were excluded, on the grounds that they may have been unrealistic due to the SHLAA then being at an early stage of development, and the results for the last three years were used to obtain an average delivery figure of 59 dwellings per year. The Council only seeks to apply this windfall allowance to the last two years of its five year supply, on the grounds that all sites which currently have planning permission have already been included.
- 14.31 I am not persuaded by the appellant's argument that this approach could lead to double counting. Some of the "commitment" sites already accounted for [14.25] will themselves have been windfalls, but that does not affect the chances of other windfall sites, not yet accounted for, coming forward in subsequent years.
- 14.32 My attention was drawn to the Preliminary Conclusions of the Inspector appointed to conduct the Examination in Public of the Bath and North East Somerset (BANES) Core Strategy, in which he points out (ID/28 2.5) that BANES Council's justification for including a windfall site allowance relies solely on past delivery, whereas the Framework also requires compelling evidence that such sites will continue to provide a reliable source of supply [9.37]. That Inspector's comments on the need to address this element of the justification were made in the context of his many concerns about the lack of adequate evidence in relation to that Council's housing requirement, and the need to establish a way forward. The entirety of the evidence-base eventually used to inform the Cotswold District's housing strategy has yet to be rigorously tested at the necessary Examination in Public, and I have neither the remit, nor sufficient information, to forestall that process in the context of an appeal concerning one specific development proposal.
- 14.33 For the purposes of considering this current appeal, I am satisfied that the Council's approach to establishing a windfall allowance has had proper regard to the SHLAA, and has excluded residential gardens, in accordance with paragraph 48 of the Framework. I note concerns about the need for evidence of future delivery to be compelling [9.37], but the very nature of a windfall site is that it cannot be predicted. On that basis, and in the absence of any convincing evidence of changes in circumstances likely to affect the incidence of windfalls in the District, I consider it reasonable for the Council to use an assessment of historic windfall delivery rates to inform future expectations. I recognise that the Inspector who determined an appeal at Honeybourne reached a different conclusion (INQ 8, para 40) but he was then, as I am now, obliged to reach a view on the basis of the evidence then put to him, rather than to issue general guidance on the calculation of windfall allowances.
- 14.34 Taking all of this into account, the only reduction that I consider needs to be made to the Council's calculation of its five year housing supply is a 10% discount for large sites with planning permission, which amounts to 111 dwellings (APP 11.1 Table 3). This gives an overall figure of 1613 dwellings.



- 14.35 A large amount of inquiry time was taken up by representations about whether or not the Council would grant planning permission for residential (in part) development of the SIAC/Matbro site. I am now informed that the Council has resolved to grant outline planning permission [1.8].
- 14.36 A resolution to grant planning permission is not, of course, the same thing as a grant of planning permission. The Council's resolution was made subject not only to the assessment of viability and the level of affordable housing to be provided, but also the completion of a legal deed concerning various contributions. Any or all of these matters could delay or even prevent the grant of permission, and once outline permission were granted, reserved matters applications would still need to be approved. Nevertheless, in the absence of any specific evidence to the contrary, I consider that for current purposes it is fairest to proceed on the basis that there is at least a reasonable prospect that the dwellings will come forward in the next five years.
- 14.37 The development would comprise a total of 174 accountable dwellings, which amounts to 109 more than the 65 already included in the Council's 2012 Housing Supply Document [8.32]. Applying a 10% discount, for the reasons discussed above, means that the calculated supply of dwellings should be increased by 98. In closing submissions [8.20] the Council referred to permissions recently granted that have not been included in the Council's 2012 housing supply calculation, but since I have accepted that an allowance should be added for windfall sites [14.33], there is no need to make any further upward adjustment to account for these particular unexpected additions.
- 14.38 This means that the Council can demonstrate a supply of housing sites sufficient to deliver 1,711 dwellings over the next five years.

*Conclusions on the District's housing supply position*

- 14.39 On the basis of the evidence before me, I have concluded that the five year housing requirement for the Cotswold District should be treated as, at its lowest, 2,426 dwellings [14.24]. There is however sufficient housing land to deliver only 1,711 [14.38]. This clearly amounts to a very serious shortfall.
- 14.40 In the interests of clarity and consistency, it is necessary to comment here on the findings set out in my report about the Bath Road appeal, which is to be determined contemporaneously by the SoS [1.6]. In that case, I concluded that the housing supply for the District was 1,828 dwellings. The discrepancy with the housing supply figure established in this case is due to differences in the evidence provided, and the cases put, by the parties to each of these two separate appeals.
- 14.41 The key difference was that the appellant in the Bath Road appeal did not contest most aspects of the Council's calculation of deliverable housing sites, on the (correct) assumption that this would make little difference to the overall housing supply position. The appellant in this case, however, took a number of issues with that calculation, and on the basis of the evidence provided, I found that a 10% reduction should be made in respect of large sites with planning permission [14.26].
- 14.42 If the difference between the two figures were capable of having any impact at all on conclusions about the District's housing supply, I would recommend

providing all the main parties with a further opportunity to comment. But that is clearly not the case. Comparison of the housing supply figures established in each appeal against the lowest credible housing requirement for the District shows that in each case, there is, at best, sufficient land to deliver only a 3.8 year supply of housing [14.39]. The difference between the figures in each case therefore has no bearing on the conclusion that the Council cannot demonstrate a 5 year supply of housing land.

*The implications of the housing supply position*

- 14.43 As noted above, paragraph 49 of the Framework states that if a local planning authority cannot demonstrate a five-year supply of housing, relevant policies for the supply of housing should not be considered up-to-date. This in turn has implications for the application of paragraph 14, which sets out the presumption in favour of sustainable development said to be “at the heart of” the Framework. The second bullet point of paragraph 14 states that where the Development Plan is absent, silent or relevant policies are out of date, then the presumption in favour of sustainable development means that permission should be granted: unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.
- 14.44 In this case, the Development Plan is neither absent nor silent. However, since the Council is unable to demonstrate a five-year supply of housing land, the provisions of Paragraph 49 of the Framework mean that “relevant policies for the supply of housing” should not be considered up-to-date. LP Policy 19 is relevant to the supply of housing, in that it seeks to prevent the provision of new-build, open-market housing outside development boundaries, other than that which (among other things) would help to meet the social and economic needs of those living in rural areas. Application of paragraphs 49 and 14 of the Framework means that in this case, to the extent that LP Policy 19 seeks to restrict the supply of housing, it should be considered out of date [9.8–9.11].
- 14.45 SP Policy NHE.4 seeks to restrict development within the AONB. On the basis that Tetbury (and much of the Cotswold District as a whole) is washed over with the Cotswold AONB designation, the appellant contends that this policy is relevant to the supply of housing in the terms of paragraph 49 of the Framework, and so should be considered out of date [9.9, 9.10]. But even if that were so, footnote 9 to the second bullet point of Paragraph 14 makes it clear that where specific policies in the Framework “for example, those policies relating to... land designated as... an AONB” indicate development should be restricted, then the presumption in favour of granting permission does not apply. That is the case here.
- 14.46 But finding that the presumption in favour of development does not apply is not the same as determining that planning permission should not be granted. I have established that the Council has a serious shortfall in its supply of housing land [14.39], and I consider that to be a material consideration that weighs heavily in favour of allowing the proposed development to go ahead. There are however a number of other material considerations which also need to be weighed in the balance, and not least among them is the impact that the

proposed development would have on the AONB, the setting of Highfield Farmhouse, and the setting of Tetbury.

*The effect of the development upon the AONB, the setting of Highfield Farmhouse and the setting of Tetbury*

14.47 Irrespective of whether SP Policy NHE.4 should not be considered up-to-date for the purposes of paragraphs 49 and 14 of the Framework, the overall thrust of its objective to conserve and enhance the natural beauty of AONBs accords with the aims of paragraphs 115 and 116 of the Framework [8.6]. Paragraph 115 states that great weight should be given to conserving landscape and scenic beauty in AONBs. Paragraph 116 states that planning permission should be refused for major developments in the AONB except in exceptional circumstances and where it can be demonstrated they are in the public interest. There is no dispute that the current proposal would constitute major development within the AONB, and since paragraph 116 lists three points which should be assessed as part of the consideration of any such proposal, it will be helpful to look at each in turn.

The need for the development

14.48 The Council pointed out that one measure of need would be whether or not there was already a sufficient supply of housing land to meet its requirements for the next five years [8.8]. As I have discussed above, there is not; on that basis, there is clearly a need, and a pressing one at that, for the houses now proposed. This is reinforced by the Framework objective “to boost significantly the supply of housing”, and the government’s focus on the importance of getting the economy growing through the delivery of housing [9.6].

The cost of, and scope for, developing elsewhere

14.49 Some 80% of the Cotswold District, including the whole of Tetbury, lies within the Cotswolds AONB [8.24]. Tetbury is the second largest settlement, and the Council recognises that meeting housing needs in the Cotswold District will involve providing further housing in Tetbury [APP 3.1]. The emerging Core Strategy, which has reached the Second Issues and Options stage, sets out a variety of different locational development options for consultation [8.33].

14.50 The plan process is intended to determine the most sustainable and appropriate sites for residential development, and I can understand the concern expressed by local residents that allowing this development in advance of that process might prejudice its outcome [10.8, 10.9, 10.25]. However, the emerging plan is still at a very early stage, and the Council has yet to identify the numbers of houses required based on an objective assessment. I agree with the appellant that in that sense, no strategy has yet emerged that this currently proposed development could prejudice [9.15].

14.51 Those opposing the scheme have repeatedly pointed out that residential development should be accommodated on previously-developed rather than greenfield sites. Where it can be achieved, that option is clearly preferable. After the inquiry closed, the Council resolved to grant planning permission for development of the SIAC/Matbro site [1.8], but even if all of the dwellings proposed for that site were to be built within the next five years, the Council would still have a significant housing shortfall [14.36, 14.39]. I note that the

Autonumis site may in future be developed for housing (LPA 1, para 7.5), but there is no substantive evidence to gainsay the SHLAA assessment that those dwellings would not be likely to come forward within the next five years.

14.52 There is, then, no evidence to indicate that the remaining shortfall could be addressed solely through the use of previously developed sites, and no “clear choice” between previously developed and greenfield sites, in the terms of the Council’s Interim Housing Guidance (CD 4.21, criteria 5). Nor is there evidence of anything other than very limited scope to provide residential development on sites not within the AONB [9.43].

Any detrimental effect on the environment or landscape, and the scope for mitigation

14.53 The primary concern about the impact of the development on the AONB is the loss of fields to housing development [8.42]. The fields in question are adjacent to existing housing, and lie on the opposite side of the road to industrial land [9.49]. Their subdivision and use as paddocks gives them a more domestic character than the larger, more open fields of the countryside to the north, but they retain a natural and undeveloped appearance, which is clearly apparent in views from the London road on the northern approach to Tetbury, and from public footpaths in the area [8.36].

14.54 The White Report’s assessment of Tetbury concluded that the most suitable area for significant growth would be to the north of the town, where the AONB is generally flatter and of lower landscape quality. It also found that the housing on the northern edge of Tetbury formed a monotonous suburban edge which does not compliment the landscape, and described the relationship of the settlement with this surrounding landscape as negative [9.50].

14.55 The landscaping proposals included in the current scheme would result in some visual improvements to that relationship, as well as replacing the incongruous row of conifers to the north of the Farmhouse with more appropriate native planting [9.50]. Other landscape and environmental benefits would include the repair of some traditional stone walls, more planting, and the provision of additional ponds and allotments. The proposed development would however result in the loss of some protected trees. And as the ES notes, while retention of existing boundary trees and new tree planting would mitigate the visual impact of the new built form, the new development would be a dominant element that would permanently change views of this part of the landscape [8.35].

14.56 In my judgment, while the carefully considered landscaping proposals would to some extent moderate the impact of the new buildings, the loss of open fields to development cannot constitute the conservation of landscape and scenic beauty in the AONB (per para 115 of the Framework) and must inevitably have a detrimental effect on the landscape and environment [8.48, 10.12].

14.57 In considering the effect on the environment it is also relevant to note that the appeal site is Grade 2 Agricultural land. Paragraph 112 of the Framework explains that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be used in preference to that of higher quality [8.50]. However, in the absence of any recent evidenced analysis of the comparative quality of agricultural land throughout the District, no reliable conclusions can be drawn as to whether it

would be possible to develop alternative sites which, other things being equal, would result in the loss of agricultural land of a poorer quality than this appeal site. Paragraph 112 states that account should be taken of the economic benefits of the land, and in that context I note that it is currently used as paddocks [APP 1]. That is not of course to say that a more economic use could not be made of it in future, if it were to remain undeveloped.

- 14.58 Highfield Farmhouse is listed Grade II, and so S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 confers a duty, when considering whether to grant planning permission, 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. A listed building also constitutes a “designated heritage asset” for the purposes of the Framework.
- 14.59 The Framework’s glossary explains that the “significance” of a heritage asset is the value that attaches to its heritage interest, and that this interest may be archaeological, architectural, artistic or historic. There is no dispute that the heritage interest of Highfield Farmhouse is purely historic [9.40]. It derives from the likelihood that the farm was one of the earliest examples of the private purchase of land from the Lord of the Manor, to enable the construction of a suite of farm buildings amongst its own fields, delineated by fixed boundaries, outside the town [8.41]. However, I saw at my site visit that the significance of the farmhouse has been somewhat diluted by the conversion and sub-division of many of the original buildings, the addition of others which do not respect the historic layout, and the creation of various ancillary driveways and domestic gardens.
- 14.60 The Framework’s definition of “significance” goes on to explain that the significance of a heritage asset derives not only from its physical presence, but also from its setting. The “setting” of a heritage asset is further defined by the Framework as the surroundings in which it is experienced. The definition notes that elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.
- 14.61 The appellant identified the vista towards Highfield Farm from the road as an important part of the setting of the heritage asset, because the house faces the road. That consideration informed the decision not to locate any of the proposed residential development within that vista, but to maintain its openness [9.41]. As to the fields to the south and west of the farmhouse, most of which form the appeal site, I note the lack of certainty about their historical ownership and relationship to the farm (APP 7.1, para 4.1.2). Nevertheless, they are clearly part of its setting in the terms used by the Framework. The evidence suggests that these fields have remained largely unchanged since the 16<sup>th</sup> Century [8.41]. The delineation of their boundaries, and the fact that their openness physically separates the farm buildings from the built-up settlement of Tetbury, contribute to an appreciation of the historic interest of Highfield Farmhouse in terms of its functional and spatial relationship to the surrounding landscape and the town. These fields therefore make a positive contribution to the setting, and thereby the significance, of Highfield Farmhouse.
- 14.62 Paragraph 132 of the Framework advises that the significance of a designated heritage asset can be harmed or lost through development within its setting.

In this case the proposed development would retain the delineation of the field boundaries [9.41], but the openness of the fields themselves, and consequently the physical separation of the farmhouse from the town, would be lost [8.4.1]. Bearing in mind the extent to which the significance of the heritage asset has already been diluted [14.59], I consider that the impact of this loss would not be so adverse as to be rightly described as leading to “substantial harm to or total loss” of that significance, in the terms of paragraph 133 of the Framework.

- 14.63 Nevertheless it would cause some harm, albeit less than substantial, to the significance of Highfield Farmhouse. On that basis, the provisions of paragraph 134 apply: these state that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal.
- 14.64 Before conducting that weighing exercise, it is necessary also to consider the impact that the proposed development would have on the setting of the historic market town of Tetbury, concerns about which formed part of the Council's reason for refusing planning permission [8.43].
- 14.65 Historically, the countryside around Tetbury has had very close links to the town. The land supported the settlement through common downland grazing, and the provision of ploughland in the form of extensive, communally cultivated, “open fields” (APP 7.1). The countryside that surrounds Tetbury can therefore be described, in the terms of the Framework, as a setting that makes a positive contribution to the significance of this historic settlement [8.43].
- 14.66 The development that is now proposed would take place within this setting, but would not appreciably alter the contribution which that setting makes toward the significance of Tetbury as a heritage asset. The development would effectively extend the edge of the settlement further to the north, but the town would still be surrounded by open fields and countryside [9.50]. The new development would be visible on the approach to Tetbury from the north, but in the context of other development on the opposite side of the approach road.
- 14.67 Of course the process of adding to the more recent development that encircles the historic core of Tetbury, such that the town continues to expand outward, could not continue indefinitely without undermining the historic relationship between the town and the surrounding countryside, and drastically changing the character of the town. But that is a matter that will need to be assessed cumulatively, in relation to each development proposal, and – importantly and urgently – as part of the process of updating the Local Plan.
- 14.68 In terms of character and appearance, rather than historic significance, the setting of Tetbury as viewed from the northern approach is not particularly positive [14.54]. As discussed above, the landscaping proposals that form part of the proposed development have been carefully considered, and would improve the visual quality of the relationship between the edge of the settlement and the adjoining countryside. In this respect, I consider that the setting of Tetbury would be enhanced rather than harmed.

### Conclusions in respect of paragraph 116 of the Framework

14.69 While I consider that the proposed development would not harm the setting of the historic town of Tetbury, I find that it would detract from the significance of Highfield Farmhouse, a designated heritage asset. It would also harm the AONB through replacing open fields with built development, thereby resulting in the loss of some of the natural beauty of the landscape. But importantly, in terms of the harm that would be caused to the AONB, I have not been provided with any evidence to suggest that there is anything other than very limited scope indeed to provide housing within the District on sites that are not part of the AONB [9.43, 9.45]. Moreover, there is a clear and pressing need for more housing; locally, in terms of the severe shortfall that currently exists in the Cotswold District [14.24], and nationally, in terms of the need to get the economy growing [9.6]. In my view, these amount to exceptional circumstances, where permitting the proposed development can reasonably be considered to meet the wider “public interest”, in the terms of the Framework.

#### *Other matters*

14.70 The Council acknowledges that there is a need for more affordable housing in the District [8.51]. The provision of 50% of the proposed houses as affordable dwellings [4.1] would help to address this need, and is a benefit to which I attach some weight. As the Council also acknowledges, the construction of housing brings with it economic benefits [8.51] in terms of jobs, additional spending power, and payment of the New Homes Bonus (APP 8), and these also weigh in favour of the proposed scheme.

14.71 In view of past problems, at Cooks Pool and elsewhere in the area, local residents are understandably concerned that building houses on currently open ground could increase the risk of flooding [10.16]. However, the proposed development would involve the installation of new infrastructure, including flow controls and underground storage, to re-direct surface water run-off from the appeal site and its immediate surrounds to a sewer rather than to Cooks Pool (APP 1). The appellant provided a Flood Risk Assessment, and the Environment Agency has had the opportunity to comment on the proposals. The Environment Agency has not raised any objection to the scheme, subject to appropriate conditions (APP 3.5). The evidence indicates that the impact of the proposed development could be successfully mitigated, and those mitigation measures may also bring benefits in terms of reducing flood risk elsewhere.

14.72 Concerns were expressed by some local residents that occupiers of the new houses might drive into Tetbury, contributing to congestion and the competition for parking spaces. However, the Highway Authority considers that the appeal site benefits from “good pedestrian accessibility to key services and facilities”, with the walking routes to and from local services and facilities being safe, and of a high standard (APP 3.6). I agree that in this respect, the site occupies a sustainable location.

14.73 I can understand local residents’ concerns that if there were an absence of sufficient employment opportunities in Tetbury, future occupiers of the proposed dwellings would be obliged to commute elsewhere to work. But the core principles of the Framework, set out at paragraph 17, make it clear that the planning system must be proactive about driving and supporting economic development. Tetbury is one of the principal settlements in the Cotswold

District, and employment provision will clearly need to be addressed in the emerging Local Plan. In the meantime, I see no good reason why concern about the number of existing job opportunities should act as a bar to the provision of much needed housing, particularly on a site where good links to public transport will be provided [12.4].

- 14.74 The occupiers of the proposed new dwellings would increase the population of Tetbury, and so increase the use of local services and facilities. Local residents have expressed concern that this would be detrimental to those facilities and infrastructure. An important part of the determination of any planning application is an assessment of the impact that it would have on existing infrastructure. Where there would be an adverse impact, this can be mitigated through measures such as financial contributions toward (for example) public transport improvements, or additional school places. In this case, the mitigation measures assessed as necessary by the Council and the County Council have been addressed by the appellant through a S.106 Undertaking [12.1–12.9]. There is no substantive evidence that the proposed development would lead to any other adverse impact on the services, facilities or infrastructure of the town.
- 14.75 At the inquiry I heard evidence that a number of local residents have used the appeal site for recreational purposes, including dog walking. However, the land is in private ownership, and there is no evidence that it is subject to any Public Right of Way, or rights of access, other than the public footpaths that have been taken into account in the appellant's proposals. It was suggested that the land could be designated a Local Green Space in accordance with paragraphs 76 and 77 of the Framework [10.14]. Any such designation would need to be sought as part of the Neighbourhood Plan process, which has not as yet formally commenced. The possibility that the land may be put forward as a candidate for Local Green Space designation at some point in the future needs to be weighed, along with all the other considerations, against the current and pressing need for more housing.
- 14.76 Concerns were expressed about the impact that the scheme would have on protected species and other wildlife. The proposed development contains a variety of measures aimed at mitigating the adverse impact on biodiversity, and in some cases providing enhancements to habitat. These measures have been assessed and approved, subject to appropriate conditions [13.7] by the Council's specialist advisor, and I have no reason to differ from that professional assessment. Similarly, I see no reason to doubt the Highway Authority's professional opinion that the proposed development would have no adverse effect upon highway safety in Tetbury or the surrounding area (APP 3.6).

#### *Local involvement in the planning system*

- 14.77 It is only fair to bring to the attention of the SoS the concern, raised by a number of interested parties, that to grant planning permission for this proposal in the face of sustained and extensive local opposition would appear to undermine the government's stated intention, set out at paragraph 17 of the Framework, of "empowering local people to shape their surroundings" [10.10, 10.25] (TP 1, TP 2). I can understand why local residents, keen to take up new opportunities for involvement in the planning process, may feel that



allowing housing developments on appeal, in advance of the outcome of that process, is exactly the kind of top-down interference that the Framework was intended to prevent.

- 14.78 However, paragraph 17 of the Framework makes it clear that Plans should be kept up to date, to provide a practical framework within which decisions on planning applications can be made. Cotswold District does not have an up-to-date Plan. The Framework also maintains the requirement, formerly included in PPS 3, that local planning authorities should identify a supply of specific, deliverable sites sufficient to provide five years worth of housing against their housing requirement. Cotswold District has only identified sufficient sites to provide, at best, 3.8 years worth of housing [14.42].
- 14.79 In such circumstances a tension in policy may be perceived, between the desire for decisions to be taken locally and the requirement to maintain a five year supply of housing land. This is unsurprising, because it reflects the tension in reality between the understandable concerns of local residents, who wish to protect the qualities of the community and its environment, and the acute needs of other local people for housing.
- 14.80 The SoS has set out his views on the subject in his recent statement on Housing and Growth: *The Localism Act has put the power to plan back in the hands of communities, but with this power comes responsibility: a responsibility to meet their needs for development and growth, and to deal quickly and effectively with proposals that will deliver homes, jobs and facilities* (INQ 37).
- 14.81 The conclusion I draw from this is that in a situation where the absence of a sufficient supply of deliverable housing sites indicates that a district has a significant shortfall in its housing provision, action to address that shortfall should not be delayed by the absence of an up-to-date Local Plan.

#### *The overall planning balance*

- 14.82 The currently proposed development would conflict with Development Plan policy. Nevertheless, permitting it would be a positive step toward addressing the Cotswold district's severe shortfall in housing provision. It would provide much-needed open-market housing, and much-needed affordable housing. The houses would be well-located in terms of proximity to the existing settlement, within easy reach of local services and facilities, and the landscaping proposals would provide some improvements to existing views of Tetbury from the northern approach. It would also have benefits for the local and national economy.
- 14.83 The main considerations weighing against the proposal are the reduction in the natural beauty of the AONB, the reduction in the significance of Highfield Farmhouse as a designated heritage asset, and the loss of an area of Grade 2 Agricultural Land.
- 14.84 In my view, neither these nor any other material considerations are sufficient cumulatively to outweigh the factors in favour of permitting the proposed development, primarily the clear and pressing need to address the shortfall in the district's provision of housing.

**15. Inspector's recommendation**

15.1 I recommend that the appeal be allowed, subject to the conditions set out in Appendix C.

*Jessica Graham*

INSPECTOR

## Appendix A: APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY

Ms Kabir Sheikh, of Counsel	Instructed by the Solicitor for Cotswold District Council
She called:	
Mr C Potterton BA, DipLA, CMLI	Director, Potterton Associates Ltd
Mr R Eaton BA(Hons), MTPL, MRTPI	Principal, RJE Planning

### FOR THE APPELLANT

Ms M Cook, of Counsel	Instructed by Mr Whitehead of WPB
She called:	
Mr C Brown BSc(Hons), DipLD, MA, MLI	Principal, LanDesign Associates
Mr M Heaton MifA, IHBC	Proprietor, Michael Heaton Heritage Consultants
Mr N Whitehead BA(Hons) MRTPI	Planning Director, WPB
Mr A Bateman BA(Hons) TP MRICS MRTPI MCMi MIOd	Managing Director, Pegasus Planning Group Ltd

### INTERESTED PERSONS

Ms L Morgan	Local resident, representing STEPS
Ms D Hicks	Councillor
Mr B Gibbs	Councillor
Ms C Braidwood	Representing TUPC
Mr A Taylor	Local resident, representing STAG
Mr M Van Sloots	Local resident, representing STAG
Mr P Morris	CEO, Howard Tenens Group
Mr J Ede	Builders Ede
Mr G Robinson	SIAC Commercial Development Divisional Director, representing Tetbury Steel Ltd and Tetbury Structures Ltd
Mr R Levin	Local resident, representing Tetbury & District Civic Society
Mr S Hirst	Councillor

## Appendix B: DOCUMENTS

### CORE DOCUMENTS

- CD 1.1 Application form
- CD 1.2 Site notices
- CD 1.3 Case sheet
- CD 1.4 List of consultees
- CD 1.5 Correspondence between case officer and agent, and case officer and Romney House Surgery
- CD 1.6 Decision Notice
- CD 1.7 Planning history decision notes
- CD 1.8 Design and Access Statement (April 2011)
- CD 1.9 Planning Statement (April 2011)
- CD 1.10 Core Plans, drg. nos:
  - 2440-17B Site boundary plan
  - 969.01D Site context plan
  - 2440-30F Indicative housing layout plan
  - 969.03L Development Strategy – Key Landscape Elements
  - 2440-31A Street Elevation to London Road
- CD 1.11 Environmental Statement
- CD 1.12 Environmental Statement Technical Appendix 1:
  - Location plan
  - Application site boundary
  - Non-Technical Summary
- CD 1.13 Environmental Statement Technical Appendix 2:
  - Formal Screening Opinion under Regulation 7 of the EIA Regulations 1999 (CDC dated 12/10/2009)
  - Planning Officer advice note to WPB under Regulation 10 of the EIA Regulations 1999 (20/10/2009)
  - Location Plan showing SIAC and existing Tesco Store, London Road, Tetbury
- CD 1.14 Environmental Statement Technical Appendix 3:
  - Planning Officer advice note to WPB under Regulation 10 of the EIA Regulations 1999 (20/10/2009)
  - Statement of Community Involvement
  - Draft S.106 Heads of Terms
- CD 1.15 Environmental Statement Technical Appendix 4:
  - Design and Access Statement (including development strategy)
  - Preferred Option indicative masterplan (2440-30)
  - Option A 2440-10A
  - Option B 2440-11A
  - Option C 2440-12B
  - Option D 2440-13A
  - Option E 2440-14
  - Option F 2440-15
  - Drg. no. 2440-20 Street Scene on London Road
  - Site layout Option B 2440-21
  - Site layout Option C 2440-22

- Site layout Option D 2440-23
- Site layout Option E 2440-24
- Illustrative Masterplan 2440-18B
- CD 1.16 Environmental Statement Technical Appendix 5:
  - Preferred masterplan
- CD 1.17 Environmental Statement Technical Appendix 6:
  - 1889 OS Plan Extract
  - Visual Envelope Fig 6.2
  - Photo viewpoint sheets 1-15
  - Development Analysis 969.02A
  - Development Strategy
  - North East Boundary off-site planting by agreement (drg. no. 969.06A)
  - Strategic landscaping details, sheets 1-8 (969.07-14)
  - Highfield Farm TPO Plan
  - Tetbury SHLAA Panel Potential Housing Site Map (November 2008)
  - Highfield Farm OROW Plan
  - Landscape and Visual Policy Context / Landscape and Visual Appraisals
  - Tree Survey and Impact Assessment
  - Proposed Temporary Diversion Route to Public Footpath NTU/B/1 (969.15)
- CD 1.18 Environmental Statement Technical Appendix 7:
  - Site Plan Ecology Zones (2440-08)
  - Phase 1 and Phase 2 surveys of land to the north of Tetbury
  - Technical appendix 2: Ecology impact assessment for land north of Tetbury
  - Great Crested Newt Survey of land north of Tetbury
  - Bat survey of trees and Great Crested Newt Habitat Assessment of land to the north of Tetbury
  - Bat and Reptile Surveys
  - Ecology and Conservation Summary
- CD 1.19 Environmental Statement Technical Appendix 8:
  - Flood Risk Assessment (March 2010)
  - Geo-Environmental Phase 1 Desk Study Report (June 2010)
  - Drainage Assessment (May 2010)
  - Soakaway Assessment (March 2010)
- CD 2.1 Environmental Statement Technical Appendix 9:
  - Transport Assessment (March 2011)
- CD 2.2 Environmental Statement Technical Appendix 10:
  - English Heritage letter dated 26 July 2010
  - Archaeological Evaluation (September 2010)
  - Existing Site Plan 2440-26
  - An Archaeological Desk-based Assessment of land at Highfield Farm (5 April 2002)
  - Policy 12 of the Cotswold District Local Plan
  - Visual Envelope Fig 10.6
- CD 2.3 Environmental Statement Technical Appendix 11:

- Environmental Noise Assessment (15 March 2010)
- CD 2.4 Environmental Statement Technical Appendix 12:
  - Plan showing extent of Tetbury Upton Ward
  - Plan showing Public Rights of Way
  - Visual Envelope Fig 12.3
- CD 2.5 Consultee Correspondence
- CD 2.6 Third Party letters
  
- CD 3.1 The National Planning Policy Framework
- CD 3.2 DCLG Strategic Housing Markets Assessments Practice Guidance (version 2, August 2007)  
DCLG Strategic Housing Markets Assessments Practice Guidance (annexes, April 2007)
- CD 3.3 The Planning System: General Principles
- CD 3.4 Circular 11/95 The Use of Conditions in Planning Permissions
- CD 3.5 Countryside and Rights of Way Act 2000
- CD 3.6 Model conditions for Inspectors (2010)
- CD 3.7 RPG 10
- CD 3.8 Policy HO1 (Levels of Housing Development 1996-2016)
- CD 3.9 Gloucestershire Structure Plan  
Policy NHE.4
- CD 3.10 Cotswold District Local Plan 2001-2011  
Policy 19  
Policy 21  
Policy 49
- CD 3.11 Cotswold Design Code
- CD 3.12 LDF Affordable Housing Supplementary Planning Document
  
- CD 4.13 Cotswold District Strategic Housing Land Availability Assessment: Methodology (March 2008)
- CD 4.14 CDC Sites Data Bases (2009) (Within SHLAA)
- CD 4.15 Cotswold District Strategic Housing Land Availability Assessment (October 2010)
- CD 4.16 Local Development Framework 5 Year Housing Land Supply (June 2011)  
5 year Housing Land Supply 2010-2015 Summary  
5 year Housing Land Supply 2010-2015 Detailed report  
5 year Housing Land Supply 2009-2014 Summary  
5 year Housing Land Supply 2009-2014 Detailed report  
5 year Housing Land Supply 2008-2013 Summary  
5 year Housing Land Supply 2008-2013 Detailed report
- CD 4.17 Local Development Framework Core Strategy First Issues and Options (November 2007)
- CD 4.18 Local Development Framework Core Strategy Second Issues and Options (December 2010)
- CD 4.19 Local Development Framework Core Strategy Second Issues and Options (Supporting Information December 2010)
- CD 4.20 Cotswold District Council Cabinet Agenda (July 2011)  
Agenda Item 7: Interim Housing Guidance Note and 5 year housing supply (Amendment 8 September 2011)
- CD 4.21 Cotswold District Council Interim Housing Guidance Note and 5 year housing land supply (adopted 12 August 2011)

---

CD 4.22	Residential Land Monitoring Statistics (April 2012)
CD 4.23	Cotswold AONB Management Plan (2008-2013)
CD 4.24	Cotswold Conservation Board: Position Statement (Housing and Development) March 2007
CD 4.25	Cotswold Conservation Board: Landscape Strategy and Guidelines for the Cotswolds AONB
CD 4.26	Extract from Natural England: National Character Areas. Character Area 107 Cotswolds
CD 4.27	Cotswold Conservation Board: Cotswold AONB Landscape Character Assessment (2004)
CD 4.28	Extract from Character Landscape Assessment: Sub Section 11a South Cotswold Lowlands
CD 4.29	Cotswold District Council Tree Preservation Order (15 January 2008)
CD 4.30	Cotswold Play Partnership Play Matters: A Play Strategy for the Cotswolds (2007-2011)
CD 5.31	The Landscape Institute: Guidelines for Landscape and Visual Impact Assessment, second edition 2002
CD 5.32	English Heritage: The setting of heritage assets 2011
CD 5.33	English Heritage: Understanding Place: Historic Area Assessments in a Planning and Development Context (June 2010)
CD 5.34	White Report: Study of Land surrounding Key Settlements in Cotswold District (June 2000)
CD 5.35	DCLG Household Projections, 2008-2033, England (26 November 2010)
CD 5.36	Housing Trend Analysis and Population and Household Projections (May 2011)
CD 5.37	CDC Employment Land Study Report (March 2007)
CD 5.38	CDC Employment Land Study Executive Summary
CD 5.39	CDC Employment Land Study Appendices
CD 5.40	CDC Annual Monitoring Report 2006-7
CD 5.42	Gloucestershire Local Projections (2010)

## THE COUNCIL'S DOCUMENTS

LPA 1	Proof of Evidence of Mr R Eaton
LPA 2	Appendices to Mr Eaton's main Proof of Evidence, comprising:
LPA 2.1	Decision Notice, Location Plan, Illustrative layout and Landscaping Plan, in respect of application ref: 11/01591/OUT
LPA 2.2	Chief Planner's letter to local planning authorities dated 6 July 2010
LPA 2.3	List of evidence supporting the Core Strategy
LPA 2.4	Engagement with stakeholders in respect of Core Strategy
LPA 2.5	Cotswold District Council: Second Issues and Options Paper
LPA 2.6	Comments of Tetbury Upton Parish Council and Tetbury Town Council in respect of the appeal proposal (additional papers to Committee Report)
LPA 2.7	Council's Interim Housing Guidance Note – August 2011
LPA 2.8	Site Location Plan 11/05069/OUT (SIAC site, Tetbury)
LPA 2.9	Site Location Plan 11/05890/OUT (Matbro site, Tetbury) and Local Plan Policy TET.2
LPA 2.10	Site location Plan: Alternative Housing Sites allocated in Tetbury,

- Local Plan Policy 20
- LPA 2.11 Tetbury Town Council – Initial objection to appeal proposal
- LPA 2.12 Appeal decision Ref: APP/F1610/A/10/2130320
- LPA 2.13 Cotswold District Council 5 Year Housing Land Supply Document (June 2011)
- LPA 2.14 Cotswold District Local Plan Policy 21
- LPA 2.15 Cotswold District Local Plan Policy 49
- LPA 3 Supplementary Proof of Evidence of Mr R Eaton
- LPA 4 Appendices to Mr Eaton’s Supplementary Proof of Evidence, comprising:
- LPA 4.1 Extract from the Residential Land Monitoring Statistics (p.6) (April 2012)
- LPA 4.2 Local Plan Policies 24 and TET.3 and Plan showing allocations
- LPA 4.3 Land allocation for Employment Use in 1999 Cotswold Local Plan
- LPA 4.4 Decision Notice 09/04337/FUL and site plan
- LPA 4.5 Decision Notice 08/01610/OUT and site plan
- LPA 4.6 Site location plan in respect of 12/01792/OUT
- LPA 5 Rebuttal Proof of Evidence of Mr R Eaton
- LPA 6 Appendices to Mr Eaton’s Rebuttal Proof of Evidence, comprising:
- LPA 6.1 CDC 5 Year Housing Land Supply – June 2012
- LPA 6.2 Household Growth 2009-2031 (Housing Trend Analysis & Population and Household Projections) May 2011
- LPA 6.3 Documentation relating to Ashton Downs
- LPA 6.4 Appeal decision ref: APP/C1625/A/11/2165865 (Sellars Farm)
- LPA 6.5 Appeal decision ref: APP/Q3820/A/08/2092933 (Crawley)
- LPA 6.6 Guidance for Holiday Accommodation within Cotswold District
- LPA 6.7 New Homes Bonus calculation
- LPA 7 Information update since adjournment of inquiry, submitted by Mr R Eaton
- LPA 8 Appendices to Mr. Eaton’s Information Update, comprising:
- LPA 8.1 CDC Housing Supply Update June 2012
- LPA 8.2 CDC Updated Employment Land Review
- LPA 8.3 Correspondence from developer of Upper Rissington Site
- LPA 8.4 South Cerney decision notice (12/01556/REM)
- LPA 8.5 Appeal decision ref: APP/F1610/A/12/2168728 (Coberley)
- LPA 8.6 e-mail from GCC
- LPA 8.7 ONS Household projections (2004 based)
- LPA 9 Proof of evidence of Mr C Potterton
- LPA 10 Statement of CIL Regulations Compliance, provided by GCC in its capacity as Highway Authority and Local Authority (Education).

## **THE APPELLANT’S DOCUMENTS**

- APP 1 Proof of Evidence of Mr N G Whitehead
- APP 2 Summary Proof of Evidence of Mr N G Whitehead
- APP 3 Appendices to Mr Whitehead’s Proof of Evidence, comprising:



- APP 3.1 CDC Committee Report (09/11/11)
- APP 3.2 Indicative Housing Layout 2440-30 Rev G, showing key parameters
- APP 3.3 Statement of Common Ground 1: CDC
- APP 3.4 Statement of Common Ground 2: Wessex Water
- APP 3.5 Statement of Common Ground 3: Environment Agency
- APP 3.6 Statement of Common Ground 4: GCC
- APP 3.7 Land Ownership Plan
- APP 3.8 Appeal decision ref: APP/F1610/A/10/2130320 (Moreton in Marsh)
- APP 3.9 Appeal decision ref: APP/F1610/A/11/2160376 (Berrells Road, Tetbury)
- APP 3.10 Annex 3 Documents replaced by the Framework
- APP 3.11 List of Saved CDC Local Plan Policies (25/04/2009)
- APP 3.12 Berrells Road Planning decision notice Ref. 12/00219/OUT (26/03/12)
- APP 3.13 PERS Report
- APP 3.14 Covering letter from Persimmon Homes, Wessex (24/05/12)
- APP 3.15 CDC Proposal Report T1, T2 and T3 sites
- APP 3.16 SHLAA details, inc Summary Map Assessment Form and Sites List
- APP 3.17 Minute of POAN Meeting (08/10/2009)
- APP 3.18 Letter regarding POAN Meeting (20/10/2009)
- App 3.19 Screening letter dated 12/10/2009
- APP 3.20 SOCI Report 10/12/2010
- APP 3.21 Second Issues and Options Paper (September 2010)
- APP 3.22 Framework Analysis of Key Services and Facilities, Supporting Information to Second Issues and Options Paper (September 2010)
- APP 3.23 PT/Bus Map (FMW)
- APP 3.24 Inset 4, Cotswold District Local Plan
- APP 3.25 Aerial photograph showing user companies on Tetbury Industrial Estate
- APP 3.26 Plan of TPOs
- APP 3.27 Supplementary Statement from Mr S Clyne (EFM) re Demographic matters
- APP 3.28 Tesco extension consent details (October 2008)
- APP 3.29 Location of Safeguarded Employment Sites, Tetbury
- APP 3.30 Extent of CDC, AONB and principal settlements
- APP 3.31 Plan of Tetbury Community Facilities and Services
- APP 3.32 Parameters plan / indicative housing layout
- APP 3.33 Masterplan of fixed elements
- APP 3.34 Location plan showing SIAC and Matbro Application details overlaid on to Inset Map 4
- APP 3.35 PROW details
- APP 4 Addendum to Mr Whitehead's proof of evidence
- APP 5 Proof of evidence of Mr C Brown
- APP 6 Summary proof of evidence of Mr C Brown
- APP 7 Appendices to Mr Brown's proof of evidence, comprising:
  - APP 7.1 Heritage Assessment by Mr M Heaton, Mifa IHBC
  - APP 7.2 Clarifications to Chapter 6 and TA6 of ES
  - APP 7.3 Consolidated drawings list of current plans and figures (Landscape & Visual)
  - APP 7.4 LDA drg. no. 969.01E
  - APP 7.5 CDC Planning Officers Advice Note 20 October 2009
  - APP 7.6 Map of AONB extent and CDC Local Plan area extent

- APP 7.7 CDC Framework Core Strategy; Options & Issues Paper 2 extract – Tetbury  
CDC Options & Issues Paper 2 Supporting Information extract – Tetbury
- APP 7.8 White Report; Study of Land Surrounding Key Settlements; Tetbury (pp 54 to 56 plus maps)
- APP 7.9 SHLAA Panel Review Map
- APP 7.10 CDC Cabinet Note 07/07/2011 and Interim Housing Guidance Note
- APP 7.11 CCB Fact Sheet 1: The Cotswolds AONB
- APP 7.12 CCB Position Statement on Housing and Development, adopted March 2007, Revised October 2010
- APP 7.13 CCB Reciprocal Agreement on Planning Protocol
- APP 7.14 Appeal decision ref: APP/F1610/A/11/2160376 (Berrells Road, Tetbury)
- APP 7.15 Plans referred to: LDA Figs 1, 3, 4, 5 Conservation Area extent
- APP 7.16 Photo viewpoints referred to: LDA Photo viewpoint sheets 1-15
- APP 7.17 Highfield Farm List entry and map
- APP 7.18 Play strategy
- APP 7.19 Allotment strategy
- APP 7.20 Southern boundary wetland area
- APP 7.21 Extract 1: 250,000 series Agricultural land Classification Map (land around Tetbury)
  
- APP 8 Proof of evidence of Mr A C Bateman
- APP 9 Summary proof of evidence of Mr A C Bateman
- APP 10 Appendices to Mr Bateman's proof of evidence, comprising:
  - APP 10.1 First Deposit Cotswold Local Plan (2001-2011)
  - APP 10.2 Relevant extracts from Landscape Assessment by White Consultants
  - APP 10.3 Cotswold SHLAA extracts
  - APP 10.4 Second Issues and Options – December 2010 and Supporting Information
- APP 10.5 Report to Committee (November 2011)
- APP 10.6 March Ministerial Statement (Planning for Growth)
- APP 10.7 Appeal decision ref: APP/X3025/A/10/2140962 (Andover)
- APP 10.8 Appeal decision ref: APP/D0840/A/09/2115945 (Bude)
- APP 10.9 RPG for the South West
- APP 10.10 Gloucestershire Structure Plan, Second Review
- APP 10.11 Cotswold District Local Plan
- APP 10.12 Settlements Hierarchy Topic Paper
- APP 10.13 Draft RS for the South West
- APP 10.14 Gloucestershire SHMA
- APP 10.15 Cotswold Housing Needs Assessment
- APP 10.16 Cotswold Affordable Housing SPD
- APP 10.17 Housing Trend Analysis – Gloucestershire
- APP 10.18 Gloucestershire Local Projections
- APP 10.19 Gloucestershire Housing Affordability Model
- APP 10.20 Draft Housing Plan 2012-2016
- APP 10.21 Residential Land Availability Statement
- APP 10.22 5 Year Housing Land Supply (June 2011)
- APP 10.23 Interim Housing Guidance Note
- APP 10.24 Appeal decision ref: APP/Y3940/A/10/2141906 (Wootton Bassett)
- APP 10.25 Withdrawn Inspectorate Advice

- APP 10.26 DCLG – Housing Delivery percentages
- APP 10.27 Appeal decision ref: APP/F1610/A/10/2130320 (Moreton in Marsh)
- APP 10.28 2008 based Household Projections
- APP 10.29 Appeal decision ref: APP/W3710/A/11/2153247 (Keresley)
- APP 10.30 First Issues and Options Document
- APP 10.31 Appeal decision ref: APP/H1840/A/10/2124085 (Evesham)
- APP 10.32 Settlement Strategy Background – Tetbury
- APP 10.33 Cotswold District Local Development Scheme (March 2009)
- APP 10.34 Annual Monitoring Report (December 2011)
- APP 10.35 Residential Land Availability Assessment (April 2012)
- APP 10.36 DCLG New Homes Bonus Calculator
  
- APP 11 Additional information submitted by Mr Bateman, comprising:
  - APP 11.1 Amendments to the Housing Tables
  - APP 11.2 Appeal decision ref: APP/Q4625/A/11/2157515 (Solihull)
  - APP 11.3 Appeal decision ref: APP/X1165/A/11/2165846 (Torquay)
  - APP 11.4 Appeal decision ref: APP/U4230/A/11/2157433 (Worsley)
  - APP 11.5 Appeal decision ref: APP/T2405/A/11/2164413 (Sapcote)
  - APP 11.6 Appeal decision ref: APP/F1610/A/11/2161332 (Siddington)
  - APP 11.7 Bath and North East Somerset Core Strategy Examination: Inspector’s Preliminary Conclusions on Strategic Matters and Way Forward – June 2012
  - APP 11.8 Council Officer’s report to Committee on application ref: 12/01792/OUT (SIAC/Matbro site)
  - APP 11.9 Copies of letters of objection, sent on behalf of the appellant, to application ref: 12/01792/OUT (SIAC/Matbro site)

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- INQ 1 List of appearances for the appellant
- INQ 2 Chronology of the appellant’s proof of evidence on housing and employment land supply
- INQ 3 Copies of the Council’s letters dated 06/02/12 and 22/02/12, notifying interested parties of the appeal, and the arrangements for the inquiry
- INQ 4 Draft S.106 Undertaking given by the appellant
- INQ 5 Statement of Common Ground: Housing land availability
- INQ 6 Copy of the Council’s letter dated 23/05/12, notifying interested parties of the arrangements for the adjourned inquiry
- INQ 7 Letter from Mr S Clyne to Mr N Whitehead dated 25/08/12
- INQ 8 Appeal decision ref. APP/H1840/A/12/2171339
- INQ 9 Opening submissions on behalf of the appellant
- INQ 10 Opening submissions on behalf of the Council
- INQ 11 Copy of oral submissions made on behalf of STEPS
- INQ 12 Speaking notes of Cllr B Gibbs
- INQ 13 Copy of oral submissions made on behalf of STAG
- INQ 14 Clearer copy of plan at Fig 6.2 of the ES (as at CD 1.17)
- INQ 15 Copy of the acknowledgments page of The White Report (CD 5.34)
- INQ 16 Table headed “Requirements calculated by R Eaton”
- INQ 17 Copy of Structure Plan Policy NHE.4
- INQ 18 Copy of oral submissions made on behalf of Tetbury Upton Parish Council

- INQ 19 Copy of e-mail exchange between Mr Brown and Mr M Watt (Planning Officer, Cotswolds Conservation Board)
- INQ 20 Copies of additional pages circulated to Members of the CDC Planning Committee in respect to the planning application at the SIAC/Matbro site
- INQ 21 Copy of e-mail from Mr M Watt to Mr Brown, dated 29/08/12
- INQ 22 Speaking notes of Mr P Morris, with supporting documents
- INQ 23 Speaking notes of Mr G Robinson
- INQ 24 Extract from the Inspectors Report on the Cotswold District Local Plan
- INQ 25 Copy of oral submissions made on behalf of the Tetbury & District Civic Society
- INQ 26 Speaking notes of Mr M Van-Sloots
- INQ 27 Copy of the contents page of the Cotswold District Local Plan
- INQ 28 Extract from *Laying the Foundations: A Housing Strategy for England*
- INQ 29 Extract from the Council's Annual Monitoring Report 2006/7
- INQ 30 Copy of *Laying the Foundations: A Housing Strategy for England*
- INQ 31 Letter from the Chief Planner dated 06/07/2010, concerning the revocation of Regional Strategies
- INQ 32 DCLG Household Projections 2008 to 2003 (Statistical Release dated 26/11/2010)
- INQ 33 Documents provided by GCC in support of the requested Public Transport Contribution
- INQ 34 Copy of drg. no. 969.06B: North East Boundary, off-site planting by agreement
- INQ 35 Signed Amendment to the Statement of Common Ground
- INQ 36 Copy of e-mail correspondence between Mr N Whitehead and the Highway Authority
- INQ 37 Copy of the SoS for CLG's statement of 06/09/12 entitled "Housing and growth"
- INQ 38 S.106 Undertaking executed by the appellant
- INQ 39 Closing submissions on behalf of the Council
- INQ 40 Closing submissions on behalf of the appellant

#### **DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED**

- INQ 41 Copy of e-mail correspondence between CDC and TUPC, enclosing a quote for work to be carried out to the footpath crossing the appeal site

#### **THIRD PARTY WRITTEN REPRESENTATIONS**

- Folder TP1 Representations received by CDC in response to the application
- Folder TP2 Representations received by the Planning Inspectorate in response to the appeal

## Appendix C: SUGGESTED CONDITIONS

- 1) Details of the appearance, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins 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 three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) Subject to condition no. 9 below, the development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination:  
2440-30 Rev F, 969.03 Rev L and 2440-31 Rev A.
- 4) Applications for the approval of the reserved matters shall be in accordance with the principles and parameters described and identified in the Design and Access Statement. A statement shall be submitted with each reserved matters application which demonstrates that the application proposals comply with the Design and Access Statement or, where relevant, explaining why they do not. Reserved matters applications shall also be accompanied by a detailed design statement explaining the architectural and landscaping design rationale in the context of the adjacent listed building and its setting.
- 5) None of the dwellings hereby permitted shall have a height exceeding three storeys.
- 6) The details to be submitted in accordance with condition no. 1 above shall include:
  - the existing and proposed ground levels on the development site and on neighbouring land, and the slab levels of neighbouring buildings and the proposed buildings;
  - a footway/cycleway link and emergency access of a minimum width of 3 metres, from the development site to Northlands Way;
  - a link of a minimum width of 10 metres, from the development site to the adjacent school playing fields on the western boundary of the site;
  - vehicular parking (commensurate with predicted levels of car ownership for 2026) and manoeuvring facilities within the development site;
  - secure and sheltered cycle parking facilities;
  - a Waste Minimisation Statement, prepared in accordance with GCC's "Waste Minimisation in Development Projects" Supplementary Planning Document (September 2006);
  - details of the water butts that will be provided to serve each dwelling; and
  - a scheme for the provision of fire hydrants, to be served by mains water supply, and a timetable for their installation.

- 7) Prior to commencement of development, details of a surface water drainage scheme shall be submitted to, and approved in writing by, the local planning authority. The scheme shall be in accordance with the Flood Risk Assessment (issue 4, prepared by Fairhurst and dated 5 July 2011) and shall include details of the phasing of the surface water infrastructure; the drainage design for each plot, phase or parcel of land; and source control measures. The development shall be implemented in accordance with the approved scheme.
- 8) Prior to commencement of development, a ten-year Ecological Management Plan shall be submitted to, and approved in writing by, the local planning authority. The Plan shall include:
- a detailed mitigation strategy for reptiles, showing how harm to the grass snakes on the site will be avoided, and enhancements made for reptiles;
  - a detailed method statement, in line with recommendations laid out in the Great Crested Newt Survey dated June 2010 by Ecosulis, for dealing with the great crested newts on site, including details of the proposed new newt ponds and other enhancements;
  - post-completion management prescriptions for all the areas of grassland, hedges, trees, swales, reed bed and newt ponds, together with maintenance and monitoring schedules;
  - a detailed lighting plan, in order to avoid potential damage to flight paths for bats along the hedgerow boundaries.

The development shall be implemented in accordance with the approved Plan.

- 9) Notwithstanding the provisions of condition no. 3 above and the information shown on the submitted Landscape Structure Plan, no development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include boundary treatments; surfacing; signage; street furniture; planting details (including species, numbers, planting distances/densities and plant sizes); removal of the conifers on land to the north-east of the development site and replacement planting, in accordance with the details shown on drg. no. 969.06B submitted with the application; and a programme for the implementation of all of the landscape works, including the Public Open Space detailed on drg. no. 969.03 Rev L (to include a Locally Equipped Area for Play). The development shall be implemented in accordance with the approved details.
- 10) Any grassed areas, plants or trees forming part of the landscape works approved under condition no. 9 above (for the avoidance of doubt, this includes retained trees and grassed areas), which within a period of 5 years from the completion of the approved landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season. Replacement trees and plants shall be of similar size and species to those lost, unless the local planning authority gives written approval to any variation.
- 11) The development shall be served by access roads laid out and constructed in accordance with details to be submitted to and approved in writing by

the local planning authority at reserved matters stage. None of the dwellings hereby permitted shall be occupied until the road (including any proposed turning heads, street lighting and footways) providing access to that dwelling has been completed to at least base course level in accordance with the approved details. All roads and footways within the site shall be completed no later than five years after first occupation of any dwelling served and shall be maintained thereafter until adopted as highway maintainable at the public expense.

- 12) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- the parking of vehicles of site operatives and visitors
  - loading and unloading of plant and materials
  - storage of plant and materials used in constructing the development
  - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - wheel washing facilities
  - measures to control the emission of dust and dirt during construction
  - hours of working on site during the period of construction.
- 13) No development shall take place within the appeal site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority.
- 14) (1) Site Characterisation: No development shall take place until an assessment of the nature and extent of any contamination has been submitted to and approved in writing by the local planning authority. This assessment shall consider the nature and extent of any contamination on the site, whether or not it originates on the site. The assessment must include:
- (a) a 'desk study' report documenting the site history, environmental setting and character, related to an initial conceptual model of potential pollutant linkages;
  - (b) a site investigation, establishing the ground conditions of the site, and a survey of the extent, scale and nature of the contamination;
  - (c) a 'developed conceptual model' of the potential pollutant linkages, with an assessment of the potential risks to:
    - (i). - human health,
    - (ii). - property (existing or proposed) including buildings, service lines and pipes,
    - (iii). - adjoining land,
    - (iv). - groundwaters and surface waters, and
    - (v). - ecological systems.

(2) Submission of Remediation Scheme: No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(3) Implementation of Approved Remediation Scheme: The Remediation Scheme, as agreed in writing by the local planning authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the local planning authority in advance of works being undertaken. On completion of the works the developer shall submit to the local planning authority written confirmation that all works were completed in accordance with the agreed details.

(4) Reporting of Unexpected Contamination: In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing within 2 days to the local planning authority and development must be halted on that part of the site affected by the unexpected contamination. An assessment must be undertaken in accordance with the requirements of paragraph (1) of this condition, and where remediation is necessary a Remediation Scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the local planning authority in accordance with the requirements of paragraph (2) of this condition. The measures in the approved Remediation Scheme must then be implemented in accordance with the approved timetable. Following completion of measures identified in the approved Remediation Scheme written confirmation that all works were completed must be submitted to and approved in writing by the local planning authority in accordance with paragraph (3) of this condition.

- 15) Prior to commencement of development full details of the pedestrian improvements listed on, and in the locations shown on, Plan FMW0275-GA02 shall be submitted to and approved in writing by the local planning authority. Those improvements shall be implemented in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted.
- 16) Prior to commencement of development a scheme for the provision of affordable housing as part of the development shall be submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework, or any future guidance that replaces it. The scheme shall include:



- the numbers, type, tenure and location on the site of the affordable housing provision to be made, which shall consist of not less than 50% of the total number of dwellings permitted;
- the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- the arrangements for the transfer of the affordable housing to an affordable housing provider, or alternative arrangements for the future management of the affordable housing;
- arrangements to ensure that the affordable housing is affordable not only for the first occupiers but also for subsequent occupiers; and
- the occupancy criteria to be used for determining the identity of occupiers of the affordable housing, and the means by which such occupancy criteria will be enforced.

## **Appendix D: GLOSSARY OF ACRONYMS AND ABBREVIATIONS**

AMR	Annual Monitoring Review
AONB	Area of Outstanding Natural Beauty
BRAG	Bath Road Action Group
dpa	Dwellings per annum
CD	Core Document
CDC	Cotswold District Council
CIL	Community Infrastructure Levy
DAS	Design and Access Statement
DCLG	Department of Communities and Local Government
ES	Environmental Statement
GCC	Gloucestershire County Council
GOSW	Government Office South West
LDF	Local Development Framework
LP	Local Plan
LVIA	Landscape and Visual Impact Assessment
ONS	Office for National Statistics
PPS	Planning Policy Statement
RS	Regional Strategy
RSSW	Regional Strategy for the South West
S.106	Section 106 of the Town and Country Planning Act 1990
SEA	Strategic Environmental Assessment
SHLAA	Strategic Housing Land Availability Assessment
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and local Government
SP	Structure Plan
STEPS	Stop Tetbury's Excessive Planning Schemes
TUPC	Tetbury Upton Parish Council



## Department for Communities and Local Government

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

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

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

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

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

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

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

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

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