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# Appeal Decision

Site visit carried out on 26 January 2016

**by Mrs J A Vyse DipTP DipPBM MRTPI**

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

**Decision date: 07 March 2016**

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**Appeal Ref: APP/P1615/W/15/3139025**

**Land at Longhope School, School Lane/Church Road, Longhope,  
Gloucestershire GL17 0LL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by the Diocese of Gloucester against the decision of Forest of Dean District Council.
  - The application No P1303/14/FUL, dated 1 August 2014, was refused by a notice dated 12 August 2015.
  - The development proposed is described on the application form as comprising the construction of 30 dwellings with access road.
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## Decision

1. For the reasons that follow the appeal is dismissed.

## Procedural Matters

2. Notwithstanding the description of development set out above, the appeal scheme was amended prior to determination of the application by the Council. The number of dwellings proposed was reduced to 28, including three affordable homes, and the site layout was revised accordingly, including repositioning of the proposed public open space.
3. The Council's decision notice sets out seven reasons for refusal. In seeking to address some of those, additional material relating to drainage and tree matters, together with further amended plans, was submitted with the appeal. It is normal good practice that the appeal process should not be used to evolve a scheme<sup>1</sup>. Exceptionally, however, amendments can be made, taking account of the Wheatcroft principles<sup>2</sup>. The key test is whether the various submissions would so change the development that to grant permission based on them would deprive those who should have been consulted on the changed development the opportunity of such consultation.
4. In relation to potential overlooking, one of the amended plans<sup>3</sup> proposes relocating a first floor front facing bedroom window on plot 26 to the side elevation. Implications for the design and appearance of the front elevation aside, the introduction of a bedroom window on the side elevation could have 'knock-on' implications for the privacy of occupiers of an existing property adjacent to the site (No 16 Rectory Meadow) the side facing gable of which would be some 17 metres from the proposed dwelling. I saw that there are

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<sup>1</sup> The Inspectorate's Procedural Guide: Planning appeals – England July 2015 (Annex M)

<sup>2</sup> Bernard Wheatcroft Ltd v SSE [JPL, 1982, p37]

<sup>3</sup> Plan No 7718/81A

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first floor windows in the gable end elevation of No 16. There may also be implications in terms of overlooking of the rear garden area to that property. Despite specific requests from the appellant, there is nothing to demonstrate that these amended details have been brought formally to the attention of occupiers of that property by the Council. The officer's report specifically notes that no windows are proposed on the side of the dwelling proposed on plot 26, and that the addition of any future windows on that elevation should be controlled by condition. That seems to me to recognise potential privacy issues. It might well be that, in the event, the revised arrangement proposed proves to be acceptable. However, since there is the potential for it to affect existing interests, it would not be appropriate to deal with it as part of the appeal.

5. The update to the appellant's arboricultural report<sup>4</sup> simply provides additional information about works required to various trees to be retained, with the amended Tree Retention and Protection Plan<sup>5</sup> providing further information about the extent of hand digging, erosion control matting, minimal dig and temporary ground protection measures and the proposed location of services between the northern and southern areas of the development site. The details provide additional information, as opposed to changing the nature of any part of the scheme proposed. As such, they raise no additional issues. Since the Council has had the opportunity to comment on these details, no party would be prejudiced were I to proceed to a decision on the basis of this material.
6. In correspondence to the appellant dated 18 December 2015, the Council suggested, among other things, that plot 11 be revisited in terms of the rear bedroom window which would overlook the neighbouring plot, and commented that plot 8 (house type E) has an inaccurate north elevation. With regard to plot 11, the amended plan<sup>6</sup> relocates the proposed rear facing first floor window to bedroom 3, to the side. Any implications in terms of the appearance of the resulting rear elevation aside, the amendment would address the Council's concerns in terms of privacy with no implications for any existing properties outwith the appeal site, or for other proposed dwellings. In relation to plot 8, the amended plan<sup>7</sup> includes the first floor side facing windows for this house type (to a bathroom on one side and a landing on the other) which had been missed off the plans originally submitted. Again, there is no suggestion that there would be any implications as a consequence of the corrected plans for the occupiers of existing properties outwith the site, or for other of the proposed dwellings. On that basis, no party would be prejudiced were I to proceed to a decision on the basis of these particular amendments.
7. A revised site layout was also submitted with the appeal<sup>8</sup>. It substitutes the 'F' house type on plot 5 with a slightly revised type, 'F1'. For the reasons set out below in my reasoning relating to living conditions, I am satisfied that this particular amendment overcomes the Council's concerns in relation to potential overlooking without affecting any other interests. However, the revised layout plan also amends the social housing provision from two x 2 bed houses (type A) and one x 3 bed house (type B) to three type A houses. There is nothing in the Council's evidence to suggest that they have considered this arrangement

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<sup>4</sup> Arboricultural Report revised Sept 15

<sup>5</sup> Drg No LGHPTRP-SEPT15

<sup>6</sup> Drg No 7718/65A

<sup>7</sup> Drg No 7718/63A

<sup>8</sup> Drg No 7718/50J

in the light of current affordable housing needs in the District. Moreover, the unilateral undertaking submitted with the appeal sets out that the three affordable homes proposed comprise two type A and one type B properties. It seems to me, therefore, that the amendment proposed in this regard raises an additional issue. As such, it would not be appropriate to consider it as part of the appeal.

8. The correspondence referred to above also noted that the red line boundary to the south-western and north-western corners of the appeal site did not correspond exactly with the site layout. The revised location plan (unnumbered) corrects the anomalies. In coming to a view on this, I am mindful that the extent of the development proposed was readily apparent from the site layout plan and, in both locations, the amendment is minor, with the adjoining land comprising open agricultural fields in the ownership of the appellant. I am satisfied, in this regard, that no interests would be affected by accepting the revised location plan at this stage.
9. I deal with the additional drainage information provided in the section of my reasoning below relating to flood risk.
10. One of the Council's reasons for refusal relates to the absence of a planning obligation to secure the provision of affordable housing, the provision and management of public open space, on-site play provision and equipping of that provision, future management of the southern and western boundaries and the proposed soft landscaping corridor within the site, and financial contributions towards secondary education and library provision. A completed planning obligation in the form of a unilateral undertaking was submitted with the appeal. It secures the provision of three affordable homes on the site, a library contribution of £5,488 and an education contribution of £74,896. The Council is concerned that the education contribution is not sufficient and that the undertaking does not make any provision in relation to the management and maintenance of the open space etc. The Council also takes issue with the appellant's proposed substitution of the plan within the undertaking with a revised version. However, since I conclude that the appeal should not succeed, there is no requirement under Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 to consider any of these matters further. Therefore, other than with regard to assessing the sustainability of the proposals, I have not done so.

### **Planning History**

11. Planning permission was granted in May 2012 for 13 dwellings and the provision of public open space with associated landscaping, parking and access on land included in the current appeal site<sup>9</sup>. The approved plans show a small group of dwellings located to the west of The Old Rectory Residential Nursing Home, arranged around a proposed cul-de-sac off School Lane on what appears to have been the playground and other land associated with the former school, the school having now been converted to two dwellings. The remaining dwellings within the southern part of the site were to be served off an extension to an existing residential cul-de-sac, Rectory Meadow. The two groups of housing were to be linked by a footpath through a proposed area of public open space, which was to include a toddler play area. The open space was also to have been accessed via a proposed footpath link onto Church Road.

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<sup>9</sup> Application No P1975/11/FUL

12. The appellant advises that it has not proved possible to implement this now lapsed permission for viability reasons, and because the approved access off Rectory Meadow was prevented by a ransom strip. The Council does not dispute this or provide evidence to the contrary.

### **Main Issues**

13. I consider these to be:

- the principle of the development proposed and its effect on the landscape and visual character of the area, and on the character and appearance of Longhope Conservation Area;
- its effect on the setting, and thus significance of the grade II\* listed All Saints church and other listed structures;
- the effect on biodiversity, with particular regard to the Wye Valley and Forest of Dean Bat Sites Special Area of Conservation;
- the acceptability of the proposal in terms of flood risk and drainage matters;
- the effect on the living conditions of nearby properties, having particular regard to outlook and privacy;
- the degree to which the proposal is supported by sustainable development and housing land supply considerations, and the overall planning balance.

### **Reasons for the Decision**

#### *Principle of the development and effect on character and appearance*

14. The 0.97 hectare appeal site, which comprises open agricultural land, is located within the northern part of the village of Longhope on the western side of Church Road. The site is contained to the south, in part by the dwellings of Rectory Meadow, the rest of that boundary abutting adjacent fields. To the north, the site is adjoined by The Old Rectory, which occupies a generally elevated position in relation to the site, ground levels falling to the south. It is separated from the appeal site by a ha-ha feature which extends to the west before turning south along the western boundary of the appeal site. The site is also adjoined to the north by the dwellings formed through conversion of the former school and a surrounding cluster of trees. For the most part, the eastern boundary, along Church Road, comprises a wide, well treed and vegetated bank, the appeal site being higher than the road. The eastern boundary also abuts the long rear boundary of The Bungalow, a detached dwelling on Church Road, which is at a lower level than the appeal site. To the west/south-west lies an open, tree lined field in the ownership of the appellant, the land falling to the south towards a small watercourse.
15. The appeal scheme proposes the erection of 28 dwellings, together with 0.18 hectares of public open space, including a toddler play area, associated landscaping and the creation of a new church car park. As per the previous scheme, a small group of dwellings are proposed on what appears to have been the playground and other ground associated with the old village school and would be accessed off School Lane. The remainder would be served via a new access to be created off Church Road. Access to the proposed church car park would be via an existing, but currently unused entrance, off School Lane.

16. The development plan for the area includes the saved policies of the District Local Plan Review 2005 and the Forest of Dean Core Strategy (adopted February 2012). The Core Strategy does not define settlement boundaries. These were identified previously in the Local Plan Review. The boundary for Longhope is shown on Part 3 of the Proposals Map and is retained pending adoption of the emerging Allocations Plan<sup>10</sup>. Most of the appeal site lies within the defined settlement boundary, with most of that part of the site being allocated for housing (saved policy (R)F.Longhope 1).
17. With some exceptions, policy CSP.4 of the Core Strategy requires that new development should reinforce the existing settlement pattern and expects most changes in towns and villages to take place within existing settlement boundaries. Policy CSP.5 relates specifically to housing, with priority given to previously-developed land and to allocated sites, with no new greenfield sites to be released, other than where necessary to meet the Plan's requirements. Policy CSP.16 confirms that, where appropriate, settlement boundaries will be a key determinant in judging the acceptability of proposals, with the supporting text stating that identified Service Villages such as Longhope are likely to see relatively little change.
18. The existing housing allocation is repeated in the emerging Allocations Plan (policy AP 79). The explanation to the policy notes that an application for a revised (larger) area is being considered (the appeal application) and that, should it be permitted, the Plan would support that scheme although there are unresolved issues. Given the advanced stage of the emerging Plan, I afford it moderate weight. I am aware, in this regard, that the appellant has made representations in relation to policy AP 79, on the basis that the allocation is not deliverable because of access problems and that the provision of 28 dwellings on a slightly larger site, meets all the demands placed on the appellant by the Development Management process.
19. My attention is also drawn to the emerging Longhope Neighbourhood Plan. The consultation period on the draft version of the Plan has recently concluded and it is anticipated that Examination will take place later in the year. Given the stage of its progress, I can only afford the emerging Neighbourhood Plan limited weight. I note, however, that it is supportive of suitable small scale high quality development that respects the high quality setting of the village and the Conservation Area. It does not propose any additional housing beyond that already made in the Allocations Plan, including that which comprises part of the appeal site.
20. The earlier consented scheme aligned with the development plan allocation as does much of the current scheme and, whilst the proposed church car park and associated access lie outside the allocated site, that land is within the settlement boundary. However, the western part of the appeal scheme (plots 16-25) extends beyond the settlement boundary (and the allocated site) into what is, in planning policy terms, open countryside. Since the development does not meet any of the specified exceptions, there would be conflict with the development plan in this regard.

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<sup>10</sup> The Examination into the Allocations Plan is currently underway. Once adopted, it will replace the remaining parts of the 2005 Local Plan Review, setting out the location for new development in the District. Whilst the saved development boundaries are being reviewed as part of the emerging Plan, no changes to the boundary for Longhope are currently envisaged.

21. The appeal site is not the subject of any national designation or local landscape specific planning policy. The Council's evidence refers to the site as lying within the Wooded Hills Landscape Character Type and the May Hill and Outliers Character Area, as defined in its Landscape Character Assessment of 2002. However, the appellant's LVIA suggests that the site lies within the Breakheart Hill Landscape Character Area, within the Ridges and Valleys Landscape Character Type. Whichever is correct, I saw that this linear village lies within the relatively narrow, sheltered valley of Longhope Brook. The landform constrains built development, with the consequence that development generally extends along the bottom of the valley, with a concentration at the southern end of the village, at the mouth of the valley. The village is surrounded by the rising valley sides, which are characterised by a generally intimate landscape comprising a mosaic of generally small fields bounded by established hedgerows and hedgerow trees, interspersed with numerous copses, woodlands and tree belts.
22. I saw that the appeal site is generally well contained visually and note that the vast majority of boundary trees and vegetation would be retained. Whilst the appeal scheme would extend built development into the open countryside, the existing vegetation and topography means that, for the most part, the site is not readily visible from longer distance public vantage points, including public footpaths, including those to the east of the site. Any views that there are would be in the context of existing built development on Rectory Meadow and future development on the allocated site. I am not persuaded in this regard, that the provision of ten additional dwellings beyond the development boundary would be seen as particularly intrusive or incongruous in those longer range views.
23. Public footpath DLH/26, which forms part of the long distance Gloucester Way footpath, descends along the western site boundary. This part of the footpath starts opposite to a small group of new dwellings on School Lane and runs adjacent to that part of the allocated site that would be accessed off School Lane. Beyond that however, heading south, the development proposed would result in a change to the existing landscape and visual character of the edge of the settlement here. However, the experience of users of the footpath would change in any event, were the allocated site, currently an open agricultural field, to be developed. Moreover, the western boundary of the main part of the allocated site does not follow any existing boundary feature, it simply cuts an arbitrary line across an open field. I note, in this regard, that the previously approved scheme would have created a hard edge to the village.
24. The scheme now proposed would bring built development on this part of the site some 30-50 metres closer to the footpath (and to other footpaths further away to the west and south) than the allocated land. It would, however, align with the western extent of that part of the allocated site off School Lane and would follow an existing field edge, marked by an old ha-ha, in effect rounding off this part of the village. It would also be seen in the context of the existing backdrop of built development within the village, plus future development on the allocated land, and would affect only a small part (approximately 50 metres) of the overall footpath route. I have no reason to suppose that the development would be anything other than of high quality. All in all therefore, I consider that the impact of development on this part of the site in terms of landscape and visual character would be minor adverse, which impact would reduce over time with landscape assimilation.

25. The appeal scheme includes a pedestrian link between the School Lane part of the site and the rest of the site, which would pass beneath the canopies of two trees that are included in a Tree Preservation Order,<sup>11</sup> and beneath the canopy of large oak (not included in the Order) crossing the respective root protection areas - a similar arrangement to that previously approved. I am advised that any underground services running between the two parts to the site would be located along the western side of the proposed path.
26. Whilst the updated arboricultural report sets out relevant construction methodologies, all of which could be secured by condition were the appeal to succeed, the Council is concerned that the 0.2 metre maximum depth of excavation in the root protection areas for services is unlikely to be sufficient to allow for safe installation. Concern is also expressed about the absence of details relating to the excavations required for the foul and surface water drains shown within the Flood Risk Assessment and Drainage Statement (July 2015). However, I have no reason to suppose that satisfactory arrangements could not be achieved without harm to the trees referred to and I see no reason why the matter could not be left to be dealt with by condition. I am satisfied, in this regard, that the development proposed would not, necessarily, result in any harm to the character and appearance of the area through any long term impact on these trees. There would be no conflict either, with policy CSP.1 of the Core Strategy, or with policy AP 8 of the emerging Allocations Plan, both of which require that account be taken of the effects of development on the landscape. In general terms, I find the policies to be broadly consistent with the objectives of the Framework, although it does need to be read in conjunction with the presumption in favour of sustainable development and the need to apply an overall balancing exercise.
27. That part of the appeal site to the north-east and to the north-west of The Old Rectory lies within Longhope Conservation Area, as does The Old Rectory itself and the former school and the location of the proposed Church Road access. The remainder of the site lies outwith, but adjacent to the Conservation Area. All Saints church, which lies to the north east of the site, on the opposite side of Church Road, is grade II\* listed and there are a number of listed structures within the churchyard. Two of the cottages opposite to the church are also listed. I deal with listed buildings and structures in the following section of this Decision.
28. Longhope Conservation Area encompasses three sub areas: the original village core at the northern end, with its historic buildings and more open rural settlement pattern (sub area 1); the more densely settled, larger part of the settlement to the south, where milling and, from the 17<sup>th</sup> Century iron working, took place (sub area 3); and the land in between (sub area 2). The Conservation Area Appraisal (April 2001) indicates that the appeal site straddles sub-areas 1 and 2. The picturesque sub area 1 includes All Saints church and the listed cottages opposite, Court Farm, The Old Rectory, the former school and the Manor House. In relation to sub area 2, the Appraisal records that the substantial trees within the garden of The Old Rectory and the church beyond are prominent in the Conservation Area. Whilst it goes on to note that the sense of enclosure provided by hedgerows and trees is an essential part of the character of this part of the village it adds that, when

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<sup>11</sup> The 2012 Order (DFTPO 188: Land at The Old Rectory, Longhope) relates to five trees within and around the site.

- examined in more detail, it is noticeable that there are a number of breaks and openings.
29. Both saved policy (R)F.Longhope 1, and policy AP 79 of the emerging Allocations Plan envisage that the larger, southern part of the allocated site would be accessed from Rectory Meadow, as was the previously approved scheme. However, as mentioned earlier, a strip of land at the end of Rectory Meadow that needs to be crossed to provide access to the allocated site is not in the ownership of the appellant, creating a ransom strip which appears to have contributed to non-implementation of the previous permission. That said, I have no reason to suppose that the matter that could not be overcome by other means.
  30. However, the uncontested evidence of the appellant, as set out in the Transport Assessment, is that there are significant problems with Rectory Meadow as a suitable access. The carriageway only has a width of 5 metres. Even then, the lack of private parking for existing residents there results in significant on-street parking, often reducing lengths of the carriageway to single car width, as evidenced by submitted photographs. Indeed, I saw that to be the case during my site visit. There is, in any event, a pinch point of 3 metres where the road enters the existing parking area at the end of the cul-de-sac, beyond which lies the appeal site. Moreover, the footway is only 1.2 metres wide. Together, these are significant shortcomings which have implications for vehicular and pedestrian safety. Even were development to come forward only on the allocated site, those shortcomings would, it seems to me, still tell against taking access from Rectory Meadow, notwithstanding that the previously approved scheme was accessed via this route. Construction of a direct access from Church Road would overcome the identified problems of serving the larger part of the development site from Rectory Meadow, whether it was only the allocated land that was developed, or the slightly larger site the subject of this appeal. Whilst the Council suggests that there are other access options none, other than reference to the Rectory Meadow approach, are spelled out. In any event, I am required to deal with the scheme on its own particular merits.
  31. A vegetated belt along the western boundary of the appeal site with Church Road, including trees and an understory, currently screens the appeal site from the road (the appeal site is at a higher level than Church Road) contributing to the sense of enclosure referred to in the Appraisal. In coming to a view on the appeal scheme, I am mindful that the previously approved scheme included the formation of a footpath link from Church Road through the roadside belt. Whilst it would appear that no trees were intended to be removed, it seems that understory vegetation/ hedge was to be cleared. Although in a slightly different position on the road frontage from the current scheme, which is at a point where the level difference is at its least, the overall width of understory removal previously accepted appears similar to that now proposed (approximately 15 metres at its widest) with both creating a break in the roadside belt.
  32. The main difference between the two schemes is that the proposed vehicular access would cut through the bank, whereas the approved footpath access looks as though it would have wound over the bank to the land behind. In addition, two trees would also need to be removed, a twin stemmed wych elm



(T36) and a yew (T35)<sup>12</sup>. Neither tree is included in the Tree Preservation Order. The wych elm leans out over the road and is identified in the arboricultural report as hazardous. As such, removal is recommended, in any event, on safety grounds. The yew however, which leans to the east towards the road, is classified as being of moderate quality and landscape value, with potentially more than 20 years safe life expectancy.

33. The Council refers to a proposed 'steep' treatment to the proposed cutting required to facilitate the proposed access, suggesting that the plans submitted do not show that approach. However, the point of access onto the road, and the overall width, remains the same as is shown on the layout plan considered by the Council in determining the application. The alteration relates to annotation on the revised Tree Retention and Protection Plan, to the effect that the batter angle to the southern side of the cutting is proposed to be increased, with digging to be carried out by hand and with the bank stabilised with coir erosion control matting. There is no suggestion that the arrangement proposed, which could be secured by condition, could not be achieved or that it would have any greater impact than a shallower slope to the 'cutting'. Whilst no lighting details for this part of the proposed access road are shown on the submitted plans, I have no reason to suppose that, in principle, a suitable lighting scheme could not be achieved without material harm to the retained trees, or to the character and appearance of the Conservation Area more generally. This is also a matter that could be dealt with by means of an appropriately worded condition were the appeal to succeed.
34. The appeal scheme includes a footway between the proposed Church Road access and the junction with School Lane to the north. However, the details before me show that this can be provided within the existing grassed verge with no tree removal required. Although some understory vegetation may need to be trimmed back both to facilitate passage by pedestrians and to create the necessary visibility splay at the junction, I find no harm in this regard to the character and appearance of the Conservation Area. Moreover, since the appeal site is at a higher level than the verge, I am not persuaded that the trimming back would necessarily open up views in to the site as feared by the Council.
35. The proposed access road is shown curving into the site which, together with a detailed scheme of planting, would foreshorten views through to the proposed housing beyond. Whilst the Appraisal identifies a key Conservation Area view up Church Road, towards the church and the group of buildings opposite, I am satisfied that the proposed access would be off to the side of that view and would not intrude into it.
36. The officer's report refers to concerns about the proposed church car park and access being seen from the Conservation Area. However, that something can be seen does not, necessarily, equate to harm. The access track already exists and the area proposed for parking is the site of the now demolished 'Squirrel Lodge' (Pippins pre-school) building. Although becoming overgrown, no existing trees along the stone access track, or on the site of the proposed car park, would need to be removed. Whilst the car parking area may be seen through the gap that would be created by the proposed access, it would be at a higher level than, and set back from Church Road, the layout plan showing that

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<sup>12</sup> The 'T' references relate to the trees as identified in the appellant's arboricultural report

- it would be enclosed by proposed shrub and hedge planting. I find no harm in this regard to the established character or appearance of the Conservation Area.
37. Other concerns relate to general noise and lighting from the proposed housing development. However, this is, for the most part, an allocated site lying within and adjacent to a Conservation Area that already includes a significant amount of existing housing, including housing immediately adjacent to the appeal site. Lighting, as already mentioned, is a matter that can be controlled by condition and I am not persuaded that, in its context, noise associated with 28 dwellings would result in any greater impact than might arise from the 15 dwellings or so anticipated on the allocated site. Again, I find no material harm in terms of the character or appearance of the Conservation Area.
38. All in all, I consider that the removal of a short stretch of roadside vegetation, including the loss of a yew tree, would result in some harm to the established character and appearance of the Conservation Area. The introduction of dwellings on what is currently an open agricultural field would also change the character and appearance of the Area. However, any harm in these regards needs to be viewed having regard to the Conservation Area as a whole, the overall length of the vegetated belt here, the acknowledgement in the Council's Appraisal that there are already noticeable breaks and openings in the roadside vegetation and given that the approved scheme included a similar sized break in the boundary vegetation here, together with the fact that much of the site is already allocated for residential development. Overall, I consider that any harm to the character and appearance of the Conservation Area would be less than substantial.
39. Less than substantial harm is a consideration of significant weight and, under the terms of the Framework, requires justification by way of public benefits. I am also mindful that Core Strategy policies CSP.1 and CSP.4 together, and among other things, require account to be taken of any impact on historic sites and heritage assets, including conservation areas. As an allocated site, development of the land here is required to help deliver the Council's required housing land supply. I have also found that, in order to deliver housing on the majority of the allocated site, an access off Church Road is to be preferred over an access off Rectory Meadow for highway safety reasons. In the overall balance, irrespective of the fact that the appeal site is larger than the allocated site, I consider those to be public benefits that outweigh the harm to the character and appearance of the Conservation Area that I have identified.
40. To conclude overall on this particular issue, the appeal scheme would essentially round off the development envelope here, using, for the most part, existing boundary features. The identified harm to the character and appearance of the Conservation Area would be outweighed by public benefits associated with the development. I am also satisfied, subject to appropriate conditions, that any harm to the landscape and visual character of the area would be localised in effect and that it could, by and large, be assimilated successfully within the context of other development against which it would be seen, with the result that any impact would, at most, be minor adverse. That said, the development would be contrary to the development plan policies referred to above, and relevant policies of the emerging Allocations and Neighbourhood Plans. That conflict carries a degree of weight which will need weighing in the overall planning balance.

### *Listed Buildings*

41. There is no suggestion that the development proposed would have a direct effect on the nearby grade II\* listed parish church of All Saints, the listed monuments within the adjacent church yard, or the listed cottages opposite the church. However, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires, among other things, that special regard be given to the desirability of preserving the setting of listed buildings. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced. Setting embraces all of the surroundings from which an asset can be experienced, or that can be experienced from or within the asset. In essence, if a development could be seen from, or in conjunction with the listed church, then there would be an effect on its setting. An assessment is then required as to whether that impact would harm the significance of the asset.
42. There is no intervisibility between the appeal site and the listed cottages and I have no reason to suppose that the appeal site contributes anything to the heritage significance of those buildings.
43. The stone church and its tower date from the C12, C14 and C15 with C19 restoration. It seems to me that the special interest of the building derives not only from its age and history, but also its form, architecture and appearance. It is also a distinctive feature at the northern end of the village Conservation Area. The elements of setting that contribute to its significance include its relationship with the churchyard and the street. Whilst the appeal site, in particular the vegetated boundary with Church Road, lies within the setting of the church, I am not persuaded that it makes any contribution to the heritage significance of the church itself, or those listed features within the churchyard, the significance of the latter deriving from their immediate rather than extended setting. As such, I consider that the development proposed, including the Church Road access, would not cause any harm to the special interest or significance of the listed church. There would be no conflict in this regard, with Core Strategy policies CSP.1 and CSP.4 referred to above, or with related advice in the Framework.

### *Special Area of Conservation*

44. Since the previous grant of permission in 2012, The Old Rectory, immediately adjacent to the appeal site, has been found to support an active Lesser Horseshoe Bat colony of at least 271 individuals, functioning both as a maternity and hibernation roost. The colony is considered by Natural England to be a significant supporting population of the Wye Valley and Forest of Dean Bat Sites Special Area of Conservation (SAC), a European designated site.
45. Bats are a European protected species under Article 12(1) of the Habitats Directive<sup>13</sup> and the nature conservation interest of the site is covered by The Conservation of Habitats and Species Regulations 2010 ('the Habitats Regulations'). Regulation 61 requires that if a development is likely to have a significant effect on the interest features of a European site, alone or in combination with other plans and projects, then it is necessary for the competent authority (the decision-taker) to undertake an appropriate

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<sup>13</sup> Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora.

- assessment, in view of the site's conservation objectives, to determine whether the proposed development would adversely affect the integrity of the site.
46. The Ecological Appraisal that accompanied the planning application confirms that the development could have a significant impact on bat roosts in the area, including the Lesser Horseshoe roost adjacent to the site. It recommended that surveys be carried out in order to determine the use of the site by bats advising that, as a minimum, three surveys should be carried out between April-September, although it notes that a greater effort may be required in this instance given the close proximity of known roosts and the general high quality of the habitat in the surrounding area.
47. An interim bat activity report was presented to the Council in July 2015 detailing the findings of surveys carried out between April and July 2015. The surveys indicated that the northern parts of the appeal site, namely the woodland in the north-eastern corner (around The Old Rectory) and the hedge running along the north edge of the field and along part of the western boundary, are important commuting routes for Lesser Horseshoe bats using the roost within the Old Rectory. The majority of activity by other bat species was also concentrated in those areas. Importantly though, the report recommends that a full season of surveys is required in order to provide a more accurate assessment of bat activity on the site. Indeed, the report confirms that changes may take place later in the year, in particular use of the site by juvenile bats when in flight later in the season. Although the report suggests that those surveys were ongoing, no further information has been submitted in this regard.
48. Given the presence of bats at The Old Rectory, and the evidence that they forage/commute over at least part of the appeal site, it seems to me that there is a reasonable likelihood that they could be affected by the proposals. I am mindful in this regard that the development would entail the removal of some trees and vegetation, as well as introducing residential development onto the site. In this case, the appellant's own specialist report concludes that further surveys are required, with the latest comments from Natural England<sup>14</sup>, the Government's adviser for the natural environment in England, confirming that there is still insufficient evidence that the mitigation proposed would satisfactorily ensure that bats associated with the SAC would not be affected.
49. In the absence of the additional surveys recommended, particularly later season surveys at a time when juveniles might be active, and with the precautionary principle in mind, I am not satisfied that it has been demonstrated that the development proposed would necessarily be acceptable with respect to its impact on a protected species and having regard to the conservation objectives of the SAC, which include the maintenance or restoration of the supporting processes on which the habitats of the qualifying species rely. Without understanding the full extent of use of the site by bats throughout the seasons, I cannot come to a definitive view on the impact of the development proposed. Neither am I in a position to be able to assess whether the proposed measures of mitigation are appropriate.
50. There would be conflict, therefore, with policies CSP.1 and CSP.2 of the Core Strategy and policies AP 7 and AP 8 of the emerging Allocations Plan, which together and among other things, require that consideration be given to the

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<sup>14</sup> 10 August 2015

effect of development on protected sites/species and the potential for avoiding and/or mitigating any impact on the integrity of nature conservation sites, or providing net biodiversity gains. There would be conflict too with the Government's objective, as set out in the Framework, of minimising the impact of development on biodiversity and halting the overall decline in biodiversity by providing net gains in biodiversity where possible, and establishing coherent ecological networks that are more resilient to current and future pressures.

### *Living conditions*

51. The development proposed would clearly be seen from The Old Rectory, from dwellings on Rectory Meadow to the south, and from the dwellings within the former school building off School Lane, and would result in a very obvious change from the current open, agricultural landscape. However, development of the allocated site is, as confirmed earlier, evidentially acceptable in principle. In that context, I am not persuaded that the dwellings proposed on that part of the appeal site outwith the allocated site would necessarily exacerbate any impact in terms of outlook for existing residents, since they would be screened by development on the allocated land.
52. Moving on then to privacy. At its closest, the nearest part of the front elevation of the proposed two storey dwelling on plot 26 would be offset approximately 16 metres from the north-western corner of the rear garden to No 11 Rectory Meadow, which backs onto the appeal site. The separation would be some 17.6 metres from the proposed front facing bedroom window at first floor level. The Council's Residential Design Guide<sup>15</sup> does not suggest a minimum distance for relationships such as this. However, given the oblique angle involved, combined with the separation that would be achieved, I consider that the neighbouring garden would not be overlooked to such a degree that the privacy of occupiers would be materially compromised. I note also that additional planting is shown along the boundary here. Whilst it would take a number of years before it reached sufficient height and density to provide a physical screen, it would help mitigate any impact over time.
53. In terms of the relationship of the property proposed on plot 5 with the dwellings within the converted school on School Lane and The Old Rectory nursing home, there is a comparison to be made with the previously approved scheme. However, as noted above, that permission is no longer extant and does not provide a 'fall-back' position. I have, therefore, considered the appeal scheme on its own merits, in the light of current standards and guidance.
54. The dwelling on plot 5 would lie roughly to the south of the former school building, the side being some 13 metres from the rear elevation of the existing building, with around 9 metres remaining between the gable end of the side garage proposed and the rear of the former school. I understand in this regard, that those distances exceed the separation suggested in the Council's Residential Design Guide in relation to potential overshadowing. As demonstrated by the sections provided<sup>16</sup>, ground levels fall away to the rear of the former school. As a consequence, I am satisfied that the proposed dwelling, which would be at a lower level than the old school, would not be seen as overbearing. No windows are proposed in the side elevation of the proposed dwelling facing the existing dwellings and the addition of future

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<sup>15</sup> Adopted as Supplementary Planning Guidance in August 1998 following public consultation.

<sup>16</sup> Drg No 7718/75A

windows, particularly at first floor level, could be controlled by condition were the appeal to succeed.

55. A single storey part of the nursing home complex is located along the rear (eastern) boundary of plot 5, separated by approximately 2 metres. Unlike the previous scheme, the dwelling proposed has two bedroom windows and a landing window on the rear elevation. Whilst the landing window could be obscure glazed, it would be unreasonable to require that the only window to each of two of the bedrooms be obscure glazed as well. Those windows would be 9-12 metres from the nearest part of the nursing home. However, as set out above, the amended plans submitted with the appeal include a revised house type (F1) for plot 5<sup>17</sup>. The built form would be exactly the same, on exactly the same footprint, but the internal layout at first floor is altered. One of the rear facing bedrooms is swapped with a side facing bathroom. The resulting rear facing bathroom window can be obscure glazed. The rear facing window to the other affected bedroom is relocated to the side (south facing) elevation<sup>18</sup> which, together with the window to the relocated bedroom, would face down into the appeal site, along a proposed footpath link. I am satisfied, in this regard, that those amendments would overcome the Council's concerns in terms of overlooking and loss of privacy and that the revisions would not have any adverse implications for those who might legitimately have an interest in the scheme. Were the appeal to succeed, a condition could ensure that it was the revised house type on plot 5 that was implemented and that no additional windows could be introduced to the first floor rear facing elevation without the need for planning permission.
56. Other concerns raised by local residents in relation to the bungalow on Church Road, which is at a lower level than the appeal site, were addressed in the officer's committee report and I have no reason to come to a different view, given the separation distances involved.
57. To conclude on this issue, I have found no harm in relation to the living conditions of occupiers of existing dwellings. There would be no conflict therefore, with the Council's Residential Design Guide, and corresponding guidance in the Framework and the Government's Planning Practice Guidance which seek to protect such interests.

#### *Flood Risk*

58. One of the Council's reasons for refusal referred to there being insufficient information to demonstrate that the site could be drained satisfactorily and that it would not increase the risk of flooding elsewhere. However, shortly after the Council's decision was issued, the Lead Local Flood Authority confirmed that the further information and calculations submitted by the appellant on 15 August 2015, demonstrating an acceptable drainage scheme<sup>19</sup>.
59. The letter also confirmed that the issue regarding discharge from the site to either the existing highway drain, or to a new dedicated surface water sewer in Church Road, remained to be agreed with the highway authority and/or the Severn Trent Water Company. I am aware, in this regard, as evidenced not only by the comments of the Council, but also by the letters of representation

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<sup>17</sup> Drg No 7718/82

<sup>18</sup> Not the side that faces the former school building

<sup>19</sup> Letter to the appellant dated 17 August 2015 (Appendix 11 to the Grounds of Appeal)

submitted at both the planning application and appeal stage, that significant problems associated with flooding are already experienced in the village. However, there is no suggestion in the comments of the Lead Local Flood Authority that there would, necessarily, be any practical difficulty in securing a suitable scheme for discharging surface water from the site. Moreover, there is no substantiated evidence from the Council, or from interested parties, that discharged surface water could not, in practice, be accommodated safely by either of the means anticipated by the Lead Flood Authority. On balance, therefore, I am satisfied that this is a matter that can properly be dealt with by condition were the appeal to succeed. I find no harm, in this regard, with policy CSP.1 which among other things requires that account be taken as to whether development can be permitted taking into account risks associated with flooding, or with corresponding guidance in the Framework and the Government's Planning Practice Guidance.

*Sustainable development and housing land supply matters*

60. The Framework indicates that applications should be considered in the context of the presumption in favour of sustainable development. It goes on to identify three dimensions to sustainable development: economic, social and environmental.
61. The development would generate some economic benefit during the construction phase and I have no reason to doubt that future occupiers would use services and facilities available in the village, increasing local spend. However, whilst there would be Council Tax revenues, there would also be a new population to serve. I am not persuaded therefore, that this would be a specific economic advantage. The District Council would benefit from the New Homes Bonus although, absent any evidence about what this would be spent on, it is difficult to consider it as a benefit of this particular development.
62. In terms of the social dimension, the provision of market and affordable housing, largely on an allocated site, is an objective of national planning policy and would help meet the general need for housing in the District. The development plan also designates Longhope as a Service Village, indicating that it is a reasonably sustainable location for new development. I understand that, at present, church users park on the road which can, at times, cause problems. The appeal scheme includes a dedicated car park for the church which is a social benefit of the scheme that attracts positive weight. The scheme also includes an area of public open space and a toddler play area. In as much as they would be available for use by existing, as well as future residents, there would be some benefit in this regard.
63. As to environmental considerations, I have no doubt that the scheme would be of high quality, but that would be expected of any scheme and is not a benefit of this particular development to be weighed in the balance. I have found that the less than substantial harm to the character and appearance of the Conservation Area would be outweighed by public benefits. I have, however, found that there would be some harm to landscape and visual character, although that would, at most, be minor adverse, particularly in the context of most of the appeal site comprising an allocated site for housing in the development plan and in the emerging Allocations and Neighbourhood Plans. More significantly however, the lack of sufficient survey information to be able to come to a properly informed view as to the full implications of the

- development proposed on the Lesser Horseshoe bat population within the SAC is a major negative environmental factor.
64. Moving on to housing land supply, the Framework sets out that relevant policies for the supply of housing are not to be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Such policies here would include saved policy (R)F.Longhope 1, policies CSP.4, CSP.5, CSP.16 and emerging policy AP 79, although they also have other purposes.
65. In this case, the appellant disagrees with the Council's position that it can demonstrate a 5.6-6 years supply<sup>20</sup>. However, there is no indication as to what the appellant considers the supply to be. Rather, my attention is drawn to a number of appeal decisions, where Inspectors have found that the authority could not demonstrate a five year supply<sup>21</sup>, and to the Statement of Case for the appellant (Gladman) in the appeal referred to by the Council, referred to in footnote 20 below, which sets out that the Council acknowledges that the Council cannot demonstrate a five year supply, although no figure is given there as to what the figure is calculated to be. I am mindful, however, that that the latest of the Decisions referred to by the appellant (2228822) has recently been the subject of a successful challenge by the Council, which limits the weight it can be afforded.
66. In coming to a view on the best way to proceed, I have had regard to the advice in the Government's Planning Practice Guidance that: *"The examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals, where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position"*. I am aware, in this regard, that the Examination into the Allocations Plan is currently underway and that it should, in due course, provide a definitive view on housing land supply.
67. Were I to find that the Council is unable to demonstrate a five-year supply, the relevant policies for the supply of housing would be out-of-date. In such circumstances, paragraph 14 of the Framework advises that the presumption in favour of sustainable development means that, for decision-taking, permission should be granted unless specific policies in the Framework indicate that development should be restricted. Footnote 9 of the Framework confirms that this includes sites protected under the Habitats Directive, with paragraph 119 specifically advising that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.
68. I have found that, with the precautionary principle in mind, the survey information before me is not sufficient for me to be able to conclude with any degree of certainty that the development would not have an adverse impact on

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<sup>20</sup> As set out at Appendix 17 to the Council's evidence. That Appendix comprises the Council's proof of evidence in relation to housing land supply, as presented to the Inquiry dealing with an application for up to 200 dwellings on land at Lower Lane, Berry Hill, Coleford (Appeal Ref: 3005408 outcome unknown).

<sup>21</sup> Appeal Ref 2188516 Erection of a detached bungalow, Sling (allowed April 2012); Appeal Ref 2177029 up to 120 dwellings etc on land off Foley Road, Newent (allowed March 2013); Appeal Ref 2204158 Erection of 14 dwellings etc on land off Reddings Lane, Staunton (dismissed June 2014); Appeal Ref 2222494 18 dwellings etc on land at Trenona Nursery, Corse (dismissed 11 March 2015); Appeal Ref 2228822 85 dwellings etc on land north of Ross Road, Newent (allowed August 2015).



the population of Lesser Horseshoe bats, a European protected species, the colony here being considered by Natural England as being a significant supporting population of the SAC. On that basis, even were I to have agreed with the appellant's position on housing land supply, the resultant increased benefit of housing supply in meeting the Council's requirement, in combination with the other benefits set out above would, in my judgement, be insufficient to outweigh the harm in terms of potential impact on a European protected species, and the albeit limited harm to the character and appearance of the area. For these reasons, there is no need to consider the housing land supply further.

69. Overall therefore, I find that the proposal does not represent sustainable development and thus, for the reasons given above, I conclude on balance that the appeal should not succeed.

*Jennifer A Vyse*

INSPECTOR

Richborough Estates