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## Appeal Decision

Hearing Held on 13 & 14 June, 2017

Site visit made on 13 June 2017

**by David Richards B Soc Sci DipTP MRTPI**

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

**Decision date: 15 August 2017**

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**Appeal Ref: APP/G1630/W/16/3165534**

**Land rear of Dormans, Mill Lane, Prestbury, Cheltenham, Gloucestershire GL52 3NE**

- 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 Gleeson Developments Ltd against the decision of Tewkesbury Borough Council.
  - The application Ref 16/00417/OUT, dated 12 April 2016, was refused by notice dated 2 August 2016.
  - The development proposed is residential development of up to 76 dwellings with the creation of a new access to Southam Road (B4632) together with an emergency, pedestrian and cycle link to Mill Lane, associated landscaping, and public open space.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are the effect of the proposal on the landscape character of the area, the effect on heritage assets, and the effect on housing land supply.

### Reasons

3. The application was made in outline, with all matters except access reserved for subsequent determination.
4. The appeal site is irregular in shape, of some 5.25 hectares in area and generally level, though rising slightly towards the Cotswold scarp to the east. It is divided into two parcels of approximately 2.8 and 2.5 hectares, with the smaller field to the south-east. Both parcels are bounded by hedgerows of varying height and maturity, some containing mature trees. The western field parcel is laid to pasture and has a number of mature field trees planted in its central and northern section, with a secondary line of planting to the north-west. The eastern parcel contains no tree planting and is currently in arable use.
5. The site lies to the north east of Prestbury, a settlement which has been subsumed into the urban area of Cheltenham. The site boundaries are defined by roads, with the B4632 Southam Road running north-south along the western boundary, Gravel Pit Lane to the north and Mill Lane to the south.

### *Planning Policy*

6. The development plan for the area is the adopted Tewkesbury Borough Local Plan 1996 – 2011 (LP).
7. Saved Policy LND2 of the LP is concerned with the protection and enhancement of the Special Landscape Area identified on the proposals map, and requires that special attention should be paid to the protection and enhancement of the landscape character in the assessment of proposals for development. Saved Policy HOU 4 states that outside the residential development boundaries of defined settlements new residential development will only be permitted where such dwellings are essential to the efficient operation of agriculture or forestry, or in other limited circumstances.
8. Saved Policy HEN2 advises that particular attention should be paid to the impact of a proposal on a conservation area, including on its setting.
9. The LP is of some age, and I consider the weight to be accorded to relevant policies in accordance with paragraph 215 of the Framework under the various topic headings.
10. Replacement plans are in course of preparation. The emerging Tewkesbury, Gloucester and Cheltenham Joint Core Strategy (JCS) was submitted to the Secretary of State (SoS) for examination in November 2014 with the examination commencing in May 2015. The Inspector's interim report published on 31 May 2016 found that the JCS did not plan for the full objectively assessed need (OAN) and that the proposed housing requirement was therefore inadequate. The main parties to the appeal agree that the examination Inspector has accepted that land will need to be removed from the Green Belt to meet housing requirements and that there will be adverse environmental impacts in order to meet the housing requirement in the JCS area. In consequence the Inspector recommended a 5% uplift to the housing requirement to assist the delivery of affordable housing. The Inspector has recommended the release of sites on the urban edge of Cheltenham in order to meet the housing requirements.
11. Main modifications to the JCS were published for consultation in Spring 2017 with consultation closing on 10 April 2017. Further hearing sessions are anticipated in summer 2017. I consider the weight to be given to relevant policies in accordance with paragraph 2016 of the Framework under the various topic headings.
12. The replacement Borough Local Plan is at a very early stage of preparation and carries no weight at the present time.

### *Landscape*

13. Saved Policy LND2 of the LP is concerned with the locally designated Special Landscape Areas (SLAs), defined in the (now defunct) Gloucester Structure Plan as 'Areas of high quality countryside of local significance'. The policy states that 'The SLA is defined where the topography is a continuation of the adjacent AONB and/or where the vegetation and associated features are characteristic of the AONB. The boundaries are identified by breaks of slope, or the inclusion of the foreground setting to a change of slope and will follow identifiable physical features including ditches, rivers and streams, hedgerows and field boundaries, woodland edges, roads, public rights of way and tracks,

railway lines and settlement edges. In relation to development proposals the policy states: 'In the assessment of proposals for development, special attention will be accorded to the protection and enhancement of the landscape character of the SLA which are of local significance. Within this area proposals must demonstrate that they do not adversely affect the quality of the natural and built environment, its visual attractiveness, wildlife and ecology, or detract from the quiet enjoyment of the countryside.'

14. Development proposals within the SLA should be accompanied by landscaping schemes which should reflect the character of the location.
15. The site lies outside of any defined settlement boundary and within the Special Landscape Area (SLA) identified in the Tewkesbury Borough Local Plan. The Cotswolds Area of Outstanding Natural Beauty (AONB) borders the site to the north and east and the Cheltenham and Gloucester Green Belt borders the site to the north and west. Prestbury Conservation Area borders the site to the south west, the boundary running north along Southam Road from Mill Street, including the Hayes (formerly Prestbury Manor), a prominent Grade II listed building set in extensive open grounds to the east of the site within it. The site adjoins but is not within the Conservation Area.
16. The site lies within the valley at the foot of the Cotswold AONB scarp slope to the east, rising gently towards it. The ridgeline associated with Cleeve Common is prominent in views from the site and the surrounding road and footpath network. The site is currently in agricultural use, the eastern parcel being in arable use surrounded by established hedgerows of varying maturity and height, and the western parcel being pastureland with a number of mature field trees giving it an acknowledged parkland character. The site and adjoining land was formerly in common ownership with the Hayes, and there is evidence that the parkland planting was associated with the listed building.
17. The Appellant accepts that the site is part of a valued landscape, to which paragraph 109 of the Framework is relevant.
18. The proposed development includes up to 76 dwellings up to 9 metres in height set within a framework of open spaces and landscape planting. The Appellant states that the design of the proposal has been landscape led with extensive mitigation built into the indicative scheme. The location of housing within the site has been restricted to the southern part of the site so that it relates to the existing built edge of Prestbury. The open character of land to the north and east of the site has been retained. A substantial landscape buffer would be included along the eastern edge of the of the development parcels to reflect the landscape treatment characteristic to the existing edge of Prestbury.
19. The Appellant accepts that some harm will arise to the present landscape character of the area.
20. There are numerous published assessments of landscape character relating to the appeal site location. In Natural England's national assessment it lies within National Character Area (NCA) 106: Severn and Avon Vales. Key characteristics include a low lying agricultural vale landscape, where the Cotswolds and the Malverns form abrupt boundaries providing prominent viewpoints across the vales. Immediately to the east of the site is NCA 107: Cotswolds. The dominant pattern of the Cotswold landscape is of a steep scarp crowned by a high open wold... The Scarp provides a backdrop to the major settlements of Cheltenham,

Gloucester, Stroud and Bath and provides expansive views across the Severn and Avon Vales to the west. Smaller towns nestle at the scarp foot, in the valley bottoms and on the gentler valley slopes at springlines. These defining characteristics are broadly reflected in the regional and local character assessments.

21. Of particular relevance is landscape character area 2 of the Cotswolds AONB Landscape Character Assessment. While the site does not lie within this area, it is bounded by it to the east and north, and in my judgment forms an important part of its setting. The key characteristics of Character area 2 (Escarpmnt) include: - steep exposed and elevated west facing scarp slope, partly cloaked in semi natural broadleaved woodland; - distinct sense of elevation with dramatic panoramic views over the Severn Vale to the Forest of Dean and beyond into Wales, the Malverns and the Shropshire Hills; - continuity of escarpment face interrupted by a series of major valleys and embayments; - gentler landform on the lower slopes below the springline; - woodlands, hedgerows, scrub and isolated trees give the impression of a well treed landscape.
22. I walked some of the extensive network of footpaths, bridleways and restricted byways which lead from Mill Lane and Gravel Pit Lane up on to the scarp, and intersect with the Cotswold Way long distance footpath, and other paths across Cleeve Common. I visited all the key viewpoints identified by the parties. To my mind the extension of urban development across the site would cause substantial harm to the setting of the AONB, when viewed from the more elevated parts of the scarp. I accept that views would be more restricted from paths lower down the slope, and that development would be to some extent screened by existing vegetation and the landform. However, it would appear prominent from many of the identified viewpoints higher up the scarp, and would result in substantial harm to the rural character of the valued landscape itself.
23. Key viewpoints that would be adversely affected can be identified by reference to the photographic survey included within the Appellant's Landscape and Visual Impact Assessment (LVIA). In my judgment the proposed development would be particularly harmful when seen from the following viewpoints: 01, 02, 08, 09, 10, 11, 12, 15, 15A, 16, 17, 18, 20. The majority of these are classified as open views of the site, though 18 is a partial view. These provide clear indications of how the present rural character of the valued landscape would be affected by the proposed development.
24. I acknowledge that the designers of the scheme have attempted to respond to the character of the site by introducing features designed to soften the impact of the scheme, and to integrate with features of landscape significance. The scheme would include a significant network of green infrastructure, to provide for recreational use and visual amenity, and to allow for the retention of trees which contribute to the existing parkland character. To my mind however, the attraction of the parkland on the western parcel is precisely the appearance of large field trees in an open setting. While the northern part of this parcel would remain free of development, the southern part closer to Mill Lane would be adversely affected by the construction of housing within the setting of the trees, together with the location of the new access and road infrastructure within the site.

25. The landscape strategy also includes buffer planting along key site boundaries and the internal trackway which divides the site parcels. I acknowledge that on maturity these would provide screening to much of the development when viewed from the network of lanes in the immediate surroundings. However they would themselves intrude in views towards the scarp, and would not significantly reduce the impact of development when viewed from the elevated viewpoints on the scarp.
26. The northern edge of Prestbury is presently characterised by low density development with many trees which soften the interface between development and the countryside, and which limit the impact of existing development in views from the scarp. This transitional character is also experienced by residents, and by users of Mill Lane and Southam Road, which currently afford fine open views up the scarp slope towards the ridge. I accept that the views change and are sometimes obscured by vegetation and existing houses, particularly those on the northern side of Mill Lane adjoining the western site parcel. The eastern site parcel is very much more open in character and here the views of the scarp slope would be replaced by prominent housing development, as illustrated in the visualisations prepared by the Appellant. It was accepted at the hearing that these do not have the status of verified views, but they are nevertheless helpful in assessing the visual impact of the proposals.
27. I accept that in the context of the current developed extent of the Cheltenham/Gloucester conurbation, and other nearby settlements, the development would be a relatively minor addition to residential development north of Prestbury. Nevertheless, in my judgment it represents a prominent extension to development in a sensitive landscape area, acknowledged as a valued landscape. While it was argued that the built-up area of Prestbury currently extends to the north of the Hayes, Southam Road has an open, essentially rural character on both sides, attributable to the site itself on the east side of the road, and the grounds of the Hayes on the west. I acknowledge that there are some minor features associated with the approach to the urban edge, including street lighting and speed limit signs, and the group of dwellings at the junction of Mill Lane and Southam Road, but this does not detract significantly from the rural character of this approach to Prestbury.
28. The appellant further argues that the development would be well related to the urban form of Prestbury. In my judgement however it would contrast unacceptably with the low density character of development on the southern side of Mill Lane. While there is sporadic development to the north of Mill Lane, this is very limited in extent, and related more to the countryside character of the area rather than to the built-up area of Prestbury.
29. Saved Policy LND 2 of the LP states: 'The extent of the special landscape area is defined on the proposals map. In the assessment of proposals for development special attention will be accorded to the protection and enhancement of the landscape character of the area which are of local significance. Within this area proposals must demonstrate that they do not adversely affect the quality of the natural and built environment, its visual attractiveness, wildlife and ecology, or detract from the quiet enjoyment of the countryside.' The supporting text to the policy explains that while the quality of the landscape in the SLA is worthy of protection in its own right, it also plays a role in providing the foreground setting for the adjacent AONB. The principal

parties to the hearing agree that the first part of the policy (i.e the requirement to accord special attention to the protection and enhancement of the landscape character of the SLA) is consistent with the Framework, but that the final sentence is not consistent, in accordance with the conclusions of an Inspector on a previous appeal<sup>1</sup>. The Framework takes an approach which requires any harm identified to be balanced against benefits in reaching a conclusion on a development proposal. I will undertake this exercise in the overall planning balance.

30. I conclude that the proposal would result in substantial harm to the character and appearance of the SLA and the setting of the AONB. It would fail to protect or enhance a valued landscape, as required by paragraph 109 of the Framework.

#### *Effect on Heritage Assets*

31. The application site lies immediately to the north of Prestbury, within the setting of Prestbury Conservation Area (located within Cheltenham Borough), which includes numerous listed buildings including The Hayes, a Grade II listed early nineteenth century country house set to the west of Southam Road, opposite the appeal site. The boundary of the Conservation Area runs along the west side of Southam Road. It is acknowledged that the proposed development would result in some harm to the setting of the Hayes and to the setting of Prestbury Conservation Area. The parties are in agreement that any harm would be less than substantial, and that paragraph 134 of the Framework is relevant to determination of the case. Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving a listed building or its setting. In accordance with case law 'considerable importance and weight' should be given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise<sup>2</sup>.
32. The immediate setting for the Hayes comprises the extensive garden plot it occupies. The house is sited to the rear of the plot and is flanked to the north and west by mature trees, hedgerows and open lawns. To the east (i.e. looking towards the appeal site) the immediate setting is landscaped lawn and mature specimen tree planting, giving onto a wider view of the site itself, which appears as a maintained field with further specimen tree planting. To the south-east, denser tree planting along the driveway extends into the rear gardens of properties on the north side of Mill Street. To the south-west the stable range of the property has been augmented by a residential development dating from the 1990s.
33. The extended setting of the Hayes includes the historic core of Prestbury, though the extensive garden plots and mature trees to the rear of the Mill Street properties provide a degree of separation. Long views are available from the Hayes to the north and east towards the surrounding slopes of Cleeve Hill, with the appeal site visible in the foreground beyond Southam Road. The southern part of the appeal site, where development would be focused, would be in the periphery of views to the east from the Hayes, while views to the north-east towards the scarp would be unaffected by development.

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<sup>1</sup> APP/G1630/W/14/2222147 (Land east of St. Margaret's Drive, Alderton)

<sup>2</sup> Barnwell Manor judgment [2014] ECWA Civ 137 C1/2013/0843

34. The significance of the asset derives principally from the architectural and aesthetic values embodied in its fabric, which is of gothic style with high quality stone detailing. The immediate setting comprising its large grounds makes a positive contribution to the significance of the asset, which in my view is of considerable importance to its status as an isolated country house. This is reflected in its inclusion within Prestbury CA.
35. The Appellant acknowledges that it is likely that the house was designed with an orientation designed to maximise the wide views of the Cotswold scarp, and particularly those eastwards towards Cleeve Hill. The appeal site forms a small portion of the asset's extended setting and the northern portion, with its mature tree planting, extends the parkland like character of the grounds of The Hayes. While the Appellant contends there is no known evidence linking the Hayes with the site or its ownership, this was contradicted by evidence from the Prestbury Tithe Map and Apportionment Register which shows that they were once in common ownership.
36. I acknowledge that the site is severed from The Hayes by the Southam Road, which is very much more than the country lane it would have been in the 19<sup>th</sup> century. Nevertheless the parkland planting is likely to have occurred at a time when the land was in common ownership, and now contributes positively to its setting and significance.
37. I accept that the layout has been designed as far as possible to minimise the intrusion of built development into the setting of The Hayes, and that housing would only be visible in the periphery of eastward views to the scarp. Nevertheless it would give rise to significant harm to the openness and character of the wider parkland setting and the designed relationship between The Hayes and the high ground around Cleeve Hill. While the harm would be less than substantial in the context of Paragraph 134 of the Framework, it is a matter to be given considerable importance and weight in the balancing exercise. In my view the Appellant's assessment that the site makes only a 'tiny' positive contribution to the significance of the asset itself is a considerable underestimate of the degree of harm.
38. Prestbury Conservation Area covers a large area of the historic core of the village. It is defined by Mill Street and the High Street running east-west, and by the Burgage to the west end of the village, running north-south. It is predominantly residential in character but also contains a number of community and village centre uses. The eastern boundary, closest to the appeal site, is on the west side of Southam Road. The significance of the Conservation Area primarily derives from the tight-knit character and appearance reflecting the historic street pattern and the clustering of historic buildings in relation to it, with open spaces interspersing the built form.
39. The Appellant's assessment recognises that the open countryside to the north and east provides an extended setting of open agricultural land with some strong views of the Cotswolds scarp to the north and east. There is a clear view of the scarp across the site from Mill Street as illustrated from Viewpoint 17 of the Appellant's LVIA. The relationship of The Hayes to the appeal site and the wider setting is discussed above.
40. Although not in the Conservation Area, the two fields which make up the site contribute to its significance as part of its setting, albeit that it occupies a relatively small part of the view obtainable from the eastern part of Mill Street,

with stronger views obtainable from The Hayes. I agree that there is no intervisibility between the appeal site and the majority of the conservation area. Nevertheless I consider the appeal site to be a significant component of the setting of the conservation area. Due to the expansion of Cheltenham and its absorption of Prestbury into the wider urban area, there is no other point at which the historic core of the village touches its historic rural setting. I note the Appellant's view that Prestbury in its entirety can be characterised as a village at the point of transition between urban and rural landscapes but, as I concluded above, the site at present has a strongly rural character which, as a valued landscape, contributes to the setting of the conservation area. To my mind the Appellant's characterisation of the site as transitional undervalues the existing strong rural character and overplays minor elements of urbanisation such as street-lighting and road signs. The substantially open rural character of the Appeal site makes an important positive contribution to the setting of the conservation area, which would be harmed if the appeal proposal were to proceed. It is agreed that the harm would be less than substantial, but in accordance with the Framework, when considering the impact of a proposal on a heritage asset, great weight should be given to the asset's conservation.

41. There are a number of other designated and non-designated heritage assets identified in the Appellant's Built Heritage Statement dated February 2016. The impact on Knoll Hill House (grade II listed) was assessed as being a negligible/minor level of harm to the significance of the asset, due to the distance from the asset to the edge of the site, and the intervening vegetation. The development was assessed as causing a minor degree of harm to the setting of the Mill (Grade II listed). The Statement also identified minor harm to the setting of two locally listed buildings, Dormans and Woodgreen, due to development within their setting. These assessments were not challenged at the hearing, and the levels of harm were agreed to be less than substantial. These are matters to be taken into account in the planning balance.
42. A resident also drew attention to archaeological assets, including a trackway which passes through the site, said to be part of an ancient route from Cleeve Hill to Winchcombe. The Appellant submitted reports relating to a programme of archaeological assessment and evaluation, which comprised a desk based assessment, an Archaeological Geophysical Survey dated 2015 and the results of trial trenching dated February 2016 with the application. The geophysical survey concluded that traces of a partially extant ridge and furrow system are present throughout the evaluation area. Ditch like features in the south west of the site appear to be either of recent origin, or to have been recently backfilled. A few possible individual pit like features are sparsely distributed, and do not suggest the presence of clusters or concentrations of archaeological features. On this basis the County Archaeologist concluded that the proposal is unlikely to have any adverse impact on significant archaeological remains, and recommended no further archaeological investigation or recording should be required.
43. With regard to the trackway, the route through the site would be for the most part unaffected by the development, though careful attention would be needed to the design where the access road would cross the route. However, I do not consider that there would be material harm to the significance of the non-designated heritage or justification for dismissing the appeal on this ground alone.



### *Housing land supply*

44. The Appellant's position is that the Council is unable to demonstrate a 5 year supply of deliverable housing sites, and that accordingly policies for the supply of housing in the LP cannot be considered up to date. When the application was determined on 2 August 2016, the Council accepted that it could not demonstrate a 5 year supply of housing land. For the appeal however the Council reappraised its position in the light of progress on the JCS, and specifically the publication by the Inspector of her views on the requirement.
45. The LP Inspector has identified a requirement for Tewkesbury of 9,899 dwellings, or 495 dwellings per year. The 5 year requirement for the period 2016/17 to 2020/21 is 2,454 dwellings. The Council has identified a supply of 3,079 dwellings over the period. Applying a 5% buffer, the supply would be 5.97 years. If as the Appellant argues, a 20% buffer is applied to reflect persistent underdelivery, the supply would still be 5.22 years, with an 'oversupply' of 134 dwellings. In consequence the Council considers that 'substantial weight should be afforded to LP Policy HOU4, which restricts housing development outside the established settlement boundaries.
46. In its evidence to the hearing, the Council included completions data for 2016/17 which has not yet been published in an annual monitoring report. For consistency and fairness I consider it is appropriate to base the assessment of housing land supply on the latest published monitoring report, with a start date of 2015/16 and an end date of 2020/21.

### The requirement

47. The JCS Examination commenced in May 2015. There has been extensive examination, and the process has concluded that the objective assessment of need for the three authorities is 33,495 dwellings. The Inspector conducting the examination has proposed a 5% uplift in respect of affordable housing, which gives a requirement of 35,175 dwellings over the plan period. This assessment has formed the basis of proposed main modifications, with a requirement for Tewkesbury of 9,899 new homes, which the Inspector considered should be a minimum figure.
48. The Appellant points out that this is a 'policy on' figure, and that in accordance with the Hunston judgment<sup>3</sup> the assessment of supply for the purposes of this appeal should be made on the basis of the full objectively assessed need (OAN). The Appellant has not put forward any alternative evidence on the OAN so I consider that substantial weight should be given to the requirement as expressed in the published main modifications. Although the JCS is not yet adopted, this requirement has emerged following a lengthy examination and includes a 5% uplift on the identified OAN. The Council's assessment of supply has proceeded on this basis, and in my view there is no prejudice to either main party by adopting this approach.

### The Buffer

49. Where there is evidence of persistent underdelivery, it is appropriate to apply a 20% buffer to the requirement. The Council's position is that there has not been a record of persistent underdelivery in relation to the JCS annualised requirement, which has been exceeded in 3 out of the last five years (to 2015

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<sup>3</sup> Hunston Properties Ltd. v St Alban's City and District Council [2013] EWCA Civ 1610

- 16), and a surplus of 21 dwellings over the emerging JCS requirement for the plan period to date. The Appellant contends that a longer term view should be taken, which shows significant underdelivery in 6 out of the last 10 years.
50. The Appellant's position is supported by the JCS Housing Implementation Strategy published in January 2017. This states that 'it is appropriate that the 20% NPPF land supply buffer is applied to both Cheltenham Borough and Tewkesbury Borough's OAN in recognition of past underdelivery of housing land. The housing land supply buffer has been applied to both the housing requirement and plan period shortfalls in accordance with the Inspector's Interim Report.' This is a very recent statement of an agreed position which cannot be ignored. I acknowledge that the Council's evidence for completions in 2016/17 demonstrates a considerable improvement in completions, but I agree with the Appellant that any change with regard to the application of the buffer must await the publication of an updated HIS.
51. Accordingly I consider that a 20% buffer is appropriate in this instance.

#### Components of supply

52. The Council's housing land supply for the five year period is made up of sites which have been granted planning permission, as well as sites with a resolution to permit but where the S106 legal agreement is not yet resolved. The supply also includes sites under construction, and includes a small windfall allowance.
53. The Appellant identifies a number of active sites where it is considered that the Council's delivery trajectories are considered overoptimistic and should be reduced. At Cooper's Edge, the developer confirmed that completions have averaged 40 dwellings p.a., consistent with historic monitoring reports, and the supply should be reduced by 40 dwellings accordingly. Notwithstanding the developer's advice, the Council responded with evidence of higher rates of delivery in recent years, and I do not consider that projected completions of 50 p.a is unreasonable. At Pamington Lane, the Appellant states that pre-commencement conditions have yet to be discharged, and the developer suggests a delivery rate of 39 units per year, rather than the maximum of 50 relied on by the Council. I note however that the Developer anticipates that the site will be built-out by 2020, which is within the 5 year supply period, and therefore consider the Council's assumptions to be reasonable.
54. At Cleavelands, the developer has confirmed that the current build rate is 60 units per year, while the Council relies on 75. Accordingly the Appellant considers the supply should be reduced by 75 units. In response, the Council states that 100 dwellings were completed on the site in 2016/17 and that further phases now have reserved matters approval and are expected to deliver from 2018. The developer's latest trajectory suggests an increase in delivery at this site, and I consider that the Council's assumptions are reasonable in the circumstances.
55. With regard to Land at Longford, the Appellant questions the assumed delivery rates and proposes a reduction of 25 units. As yet no reserved matters application has been submitted for phase 3. In response, the Council states that the Appellant's information relates to only one of the parcels at land at Longford, and that there are two further delivery parcels where delivery is strong. Here again, the Council's assumptions on delivery within the 5 year period do not appear to me to be unreasonable.

56. The Appellant also questions the Council's reliance on four sites that have been included in the Council's deliverable supply. There are resolutions to approve on all the sites, though this is subject to the agreement of S106 obligations. The Council has resolved to approve development even though they are not allocated and do not have planning permission. The developer of Gloucester Business Park has confirmed that progress on completion of the obligation has been slow. It is also understood that the developer intends to sell the site once outline permission is secured, and leave the submission of reserved matters to the purchaser. The Council's evidence is that Barratt Homes are now involved with the site, and have confirmed the expected delivery of 25 dwellings in 2018/19, in line with the Council's projection. While I acknowledge that there have also been delays in the completion of Section 106 Obligations for 3 other relatively small sites totalling 109 dwellings, I do not consider the Council's projected delivery rates for these four sites to be unduly overoptimistic in the circumstances.

#### Conclusion on Housing Land Supply

57. The Council has identified a supply of 3,079 dwellings over the period 2015/16 – 2020/21. For reasons set out above, I consider this to be a robust assessment and do not accept that the supply should be reduced as, applying a 20% buffer, this equates to a housing land supply of 5.22 years.

#### **Other matters**

58. A number of residents drew attention to the extensive history of flooding, expressing concern that the development would only exacerbate existing documented problems. Residents had personally observed water pouring down Mill Lane when it rains, and seen that the stream alongside Mill Lane was close to overflowing the bridge in the lower field. It was argued that the Mill Brook which runs adjacent to Mill Lane takes water from a large section of the scarp of Cleeve Hill which is prone to periods of heavy rainfall. The recent flood alleviation works adjacent to Southam Road have not been fully effective as far as the Mill Lane section is concerned due to the deposit of sand and gravel swept down from the hill during storms, causing the silting up of the culverts and flooding across Mill Lane into the development site. Flooding continues to be a problem downstream, with properties on Mill Street and Bowbridge Lane at further risk of flooding if the development goes ahead.

59. The Appellant undertook a Flood Risk Assessment at application stage in accordance with the advice in the Framework. The majority of the site area lies within Flood Zone 1 (low probability). However a small area in the south west corner of the site is identified as being in Flood Zone 2, adjacent to Mill Lane and Mill Stream.

60. The Environment Agency (EA) raised concerns with the original layout with regard to the potential of the access and some proposed dwellings to interfere with the maintenance of the existing flood alleviation works. The EA also commented that given the relative size of the catchment upstream of the site there is limited detail in the FRA relating to the potential for flooding from surface water and ground water, and suggested amendments to the design to relocate one of the attenuation basins from the area known to flood in the south-west corner of the site. The Lead Local Flood Authority (LLFA) concluded that the proposal met the requirements of a major application, and that an

- acceptable detailed design could be secured through the attachment of conditions.
61. In response to the EA's concerns, the Appellant produced a revised illustrative layout (Revision F) to remove any development from within the flood zone and protect the 8 metre access buffer to the alleviation works. The flood basin serving the western development parcel was taken out of the flood zone and resized accordingly.
  62. At the hearing, Mr Cotter said that the authorities had not taken into account the effect of surface water pouring onto the site from the surrounding network of lanes during heavy rainstorms. On the site visit I was shown where water from Queenswood Grove had been observed discharging onto the site at a 90 degree turn, where the field was at a lower level than the lane.
  63. I do not question the potential for this to happen, nor that the water would eventually find its way into Mill Stream. Nevertheless, while I take these concerns seriously, I have to acknowledge that the issue of flood risk has been given thorough consideration by the relevant authorities, who have accepted the conclusions of the FRA addendum. Accordingly, I am satisfied that the issue is capable of being addressed by a condition requiring the provision of an appropriate sustainable urban drainage scheme which would ensure that the development would not increase the risk of flooding elsewhere.
  64. Many residents also raised issues of highway safety. Southam Road is a B road which is already heavily used at peak times, resulting in congestion building up from Prestbury High Street and Noverton Lane mini-roundabout along Southam Road, and making it difficult to enter or exit from Mill Lane. In addition, many drivers entering Prestbury were said to ignore the 30 mph speed limit that starts north of the Mill Lane Junction with Southam Road, and only slow down once they pass the Mill Lane junction. Residents consider that the construction of 76 new houses would result in unacceptably high levels of daily traffic, together with much higher levels of traffic noise and pollution, increase the risk of collisions and accidents. Residents also questioned whether satisfactory visibility splays could be provided without removal of significant lengths of the existing hedgerow.
  65. The principal access would be from Southam Road, at a point almost opposite the access to the Hayes, with an emergency access from Mill Lane. A Transport Assessment was submitted with the application which indicates that the development would give rise to 41 vehicle trips in the morning and evening peak hours. The percentage impact on the local road network would be some 3.6% in the morning peak and 4.6%.
  66. Historic personal injury data reveals only two recorded collisions locally, both of which were the result of driver error and not highway design issues. I acknowledge that residents currently feel that congestion and traffic conditions are unacceptable, and would be made worse by adding the traffic from the development. I also accept that pedestrians would have to take care in crossing the road at the junction of Mill Lane and Southam Road in the afternoon peak. Nevertheless increases of less than 5% at peak hours are not normally regarded as being significant in terms of congestion, pollution or safety effects. While the highway consultee raised an issue about the survey work on which the TA was based, it was subsequently accepted that the

assessment is robust and would result in an impact of 5% or less, and therefore would be acceptable in transport terms.

67. With regard to the provision of visibility splays, it appeared to me from the site visit that the required visibility could be accommodated without significant harm to the existing hedgerow, though some trimming back may be required at the northern end.
68. I therefore conclude that the proposed access arrangements would operate safely and would not in themselves give rise to a reason to dismiss the appeal.
69. Residents were also concerned that current local amenities would be unable to cope with the additional population arising from this and other proposed developments in the Prestbury area.
70. The main parties are in agreement that the site is well located in relation to local services in Prestbury and the wider Cheltenham area, with a good bus service from the High Street. The S106 obligations make provision for contributions to educational provision made necessary by the development and for public open space within the development which could also be used by existing residents. While I understand that other services may be under some pressure, including primary health care, there is no substantial evidence that they would be unable to cope with the needs of new residents.

#### *S106 obligations*

71. Two completed obligations have been submitted by the Appellant. The Agreement with Tewkesbury Borough Council makes provision for a number of financial contributions as follows: £3,295 towards the provision of a new astro-turf facility at Cleeve Sports Centre; £93,040 towards provision of changing rooms at Prestbury playing fields; £85,000 towards the improvement of children's play areas; £32,729 towards improvements to community buildings; £50 per dwelling towards recycling; £25,262 towards improvements at Cleeve Sports Centre; £28,800 towards new provision/improvements at Prestbury playing fields; £31,370 towards swimming pool improvements in Cheltenham. It would also provide 40% affordable housing on site (70% affordable rented and 30% shared ownership) and the delivery and management of 1.09 ha of public open space and landscaping within the development.
72. The Agreement with Gloucestershire County Council provides for the following contributions: £14,896 towards improving library services at Prestbury; £72,893 towards the creation of additional pre-school places at Prestbury; £228,569 towards additional capacity at St. Mary's Primary School; £213,944 towards additional capacity at Pitville School.
73. In my view these obligations would be necessary to make the development acceptable in planning terms in the event of the development being found acceptable in other respects, are directly related to the development and are fairly and reasonably related in scale and kind to the development. Accordingly they would be compliant with the Community Infrastructure Levy Regulations 2010. The local planning authority has certified that there are not 5 or more pooled contributions relating to the same infrastructure/projects, and that the obligations therefore comply with Regulation 123.

## Balancing exercise and conclusion

74. The development plan is the starting point for determination of the appeal. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications should be determined in accordance with the development plan, unless material considerations indicate otherwise.
75. The development would conflict with saved Policy LND2 of the TBLP. The site is within an SLA where special attention should be accorded to the protection and enhancement of the of the landscape character of the SLA. Notwithstanding the care with which the illustrative design has evolved, I have concluded that there would be substantial harm to the landscape character of the SLA, which would also impact harmfully on the setting of the adjacent AONB and views from within it.
76. I have also concluded that the development would be harmful to the setting of The Hayes (Grade II listed) and Prestbury CA. Having regard to Paragraph 134 of the Framework this harm would be less than substantial but nevertheless is a matter of considerable importance and weight in the balancing exercise. Where a proposal will lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal.
77. The Courts have held that Paragraph 134 is a policy indicating that development should be restricted for the purpose of assessing the relevance and effect of paragraph 14 of the Framework in the determination of appeals<sup>4</sup>. The Appellant accepted in closing that 'as the law currently stands, the tilted balance in Framework Paragraph 14 of is disapplied by Footnote 9.'
78. Where a five year supply of housing land cannot be demonstrated, relevant policies for the supply of housing should not be considered up to date. In this case I have concluded that the Council can demonstrate a five year supply of housing land, albeit by a relatively small margin. Nevertheless Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The recent supreme court judgement<sup>5</sup> has established that the weight to be given to specific policies alongside other material considerations remains a matter for the decision maker in accordance with ordinary principles.
79. Policy HOU4 of the LP places a strong restriction on development outside established residential development boundaries identified elsewhere in the plan. The development would be in clear conflict with this Policy. I accept that the definition of development boundaries in the Plan is based in part on a previous housing requirement set by a now defunct Structure Plan, and that housing need as identified in the emerging JCS will require substantial changes to existing development boundaries. It is clear to me that its weight needs to be reduced if the acknowledged housing objectives for the JCS Boroughs are to be achieved and I therefore attach limited weight to HOU4.
80. Policy LND2 states that special attention will be accorded to the protection and enhancement of the landscape character of the SLA which are of local

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<sup>4</sup> Forest of Dean District Council v Secretary of State for Communities and Local Government [2016] EWHC 421 (admin)

<sup>5</sup> Suffolk Coastal DC v Hopkins Homes and another, Richborough Estates Partnership LLP and another v Cheshire East BC [2017] UKSC 37

significance. I have concluded above that the first part of the policy is consistent with the advice in Paragraph 109 of the Framework, and attracts considerable weight. Policy HEN2 is consistent with the Framework insofar as it requires particular attention to be paid to the effect of a development on a conservation area and its, setting, subject to the balancing approach set in paragraph 134 of the Framework.

81. In my judgement, the proposal would be in conflict with the development plan as a whole. Planning permission should accordingly be refused, unless material considerations indicate otherwise.
82. The Framework identifies three dimensions to sustainable development: economic, social and environmental. To achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
83. With regard to the economic dimension, construction of housing would boost employment in the construction sector, and there would be an on-going requirement for maintenance and improvement in the longer term. There would also be increased demand for retail, leisure and other services in the locality, though I accept that this would not be specific to Prestbury, but would be distributed over a wider area. Nevertheless these are positive matters that carry moderate weight in favour of allowing the appeal.
84. With regard to the social dimension, the contribution of 76 dwellings would contribute to meeting identified housing need in the area, including 40% affordable housing. This is a matter which carries significant weight in the light of the extent of the on-going need for all types of housing in the locality identified in the emerging JCS.
85. Turning to the environmental dimension, I have identified substantial harm to the landscape of the Special Landscape Area, and to the setting of the AONB, to which I attach substantial weight. In addition there would be less than substantial, though still significant, harm to the setting of a listed building and to the setting of Prestbury Conservation area. I attach considerable importance and weight to this harm.
86. The Appellant identified a number of other benefits arising from the S.106 obligations, in particular that there would be open space provision in excess of what is required by policy, which would be of benefit to the wider community. However the extent of open space in the scheme is determined primarily by the design imperative of extensive landscaping to mitigate the impact of built development in the sensitive landscape, and should therefore be accorded little weight as a wider benefit. In all other respects, the provisions of the S.106 obligations would be necessary to make the development acceptable in the absence of any other overriding reason for refusal, and thus are of neutral effect.
87. In summary, I find that the development would be contrary to the development plan as a whole and would not amount to sustainable development in view of the environmental harm to the valued landscape and heritage assets. I conclude that the benefits of the scheme would not outweigh the harm, and that the appeal should be dismissed.

88. I accept that there are factors which may affect the Council's ability to demonstrate a rolling 5 year supply in future years. For example, the JCS makes a number of strategic allocations, which could deliver 11,400 new homes. 6,955 of these new homes would be provided by 5 sites within Tewkesbury Borough. At the present time only one of these allocations currently has outline planning permission, and two of the sites are the subject of planning appeals. The remaining two sites have outline applications currently under consideration by the Council. There is also a potential shortfall after 2023/24 arising from the omission of three major sites from the proposed Main Modifications to the JCS: MoD Ashchurch (2225 dwellings); Land at Mitton (1,100 dwellings reduced to 500); and Fiddington (900 dwellings). In consequence, the JCS main modifications consultation commits the Council to an immediate partial review of land supply and suggests that 'while this review is taking place it is important that Tewkesbury is able to maintain a rolling 5 year supply and show that it can deliver against a cumulative requirement for at least the next 10 years'.
89. It is also agreed by the main parties to the appeal that this will require additional sites to be identified in Tewkesbury, including sites presently within the Green Belt. Nevertheless this does not alter my conclusion that the development proposed would be contrary to the development plan and there are no material considerations of such importance as to warrant a decision other than in accordance with that plan.

*David Richards*

INSPECTOR

Richborough Estates



## APPEARANCES

### FOR THE APPELLANT:

Rupert Warren QC	Instructed by Pro Vision
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Liz Simes BA(Hons) Dip LA DipUD CLMI	Landscape and Visual
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### For CoRADICAL

Mervyn Dobson	HD Town Planning
Paul Harris	MHP Design
Gail Stoten	Pegasus Group
Jim Connell	Chairman of CoRADICAL
Diane Ryley	Local Resident
Simon Gillson	Local Resident
Martin Cotter	Local Resident

### FOR the PRESTBURY ACTION GROUP and the PEPS-NET ORGANISATION

Geoff Beardsmore

### FOR CPRE

David Crofts	Estcourt Planning
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### OTHER INTERESTED PERSONS

Councillor John Payne  
Councillor Anna Hollaway  
Councillor Malcolm Stennett

## DOCUMENTS

- 1 Attendance lists
- 2 Letter of notification
- 3 Illustrative Plan 1874 P 02 Rev F
- 4 Appellants Core Document List
- 5 Statement of Common Ground 13.06.17
- 6 Judgment Tewkesbury BC v SSCLG and others [2013] EWHC 286 (Admin)
- 7 Draft S106 with Tewkesbury BC
- 8 Draft S106 with Gloucestershire CC
- 9 Note on S106 Monitoring Fees (revised Version)
- 10 S106 Agreements – Summary of key planning obligations
- 11 Bundle of authorities put in by Ms Sharif
- 12 Closing statement for Tewkesbury BC
- 13 Appellant's Summary Points
- 14 Scanned copies of final S106 agreements dated 12 July 2017

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