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## Appeal Decision

Hearing Held on 7 December 2017

Site visit made on 25 January 2018

**by Phillip J G Ware BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27<sup>th</sup> April 2018**

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**Appeal Ref: APP/G1630/W/17/3175559**

**Land off Ashmead Drive, Gotherington**

- 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 J J Gallagher Limited and Mr Richard Cook against the decision of Tewkesbury Borough Council.
  - The application Ref 16/00901/OUT, dated 2 August 2016, was refused by notice dated 21 February 2017.
  - The development proposed is an outline scheme with only the means of access from Ashmead Drive to be determined (all other matters reserved for subsequent approval) for the erection of up to 50 dwellings (Class C3); earth works; drainage works; structural landscaping; formal and informal open space; car parking; site remediation; and all other ancillary and enabling works.
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### Procedural matters

1. A previous Hearing was held into this appeal in September 2017. However due to the demise of that Inspector the Hearing had to be held afresh. I have no knowledge of the events at the first Hearing, nor of the approach being taken by my late colleague.
2. On the date of my site visit there were road works in the area, which may have had the effect of distorting traffic flows and volumes. I have therefore not taken account of the traffic position which I saw when I visited the site.
3. The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) was adopted by Tewkesbury Borough Council on 5 December, and was adopted by the last of these authorities on 11 December 2017. At that point it became part of the development plan. All parties at the Hearing were well aware of the position, and the Hearing progressed on the assumption that the JCS would be adopted.
4. In December 2016 the Planning Minister issued a Written Ministerial Statement (WMS) on Neighbourhood Planning. At the time of the Hearing a High Court challenge had been lodged to the WMS by a group of housebuilders. As the site visit was unavoidably delayed, I afforded the opportunity to the parties to comment on the judgement when it was issued (which occurred in January 2018). Both parties have done so and I have taken account of their comments.
5. The parties were also given the opportunity to comment on the draft revisions to the National Planning Policy Framework (The Framework). Both parties

agreed that the draft revisions can be accorded very little weight at present, and I agree with that assessment.

## Decision

6. The appeal is dismissed.

## Main issues

- Whether the site is suitable for development at this time, in the light of the locational policies in the development plan
- The effect on the character and appearance of the surrounding area, including the effect on the gap between Gotherington and Bishop's Cleeve
- The effect on the vitality and social well-being of Gotherington

## Reasons

### *Development plan locational policies*

7. The development plan comprises some saved policies of the Tewkesbury Borough Local Plan (TBLP) 2006<sup>1</sup>, the JCS (December 2017) and the Gotherington Neighbourhood Development Plan (GNDP) (September 2017). For completeness, it should be noted that the Council is in the very early stages of preparing a Borough Plan. However the parties agreed that no weight can be accorded to it at this stage. I have no reason to disagree with that assessment and it is obviously not part of the development plan.
8. Section 38(6) of the 2004 Act requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. One such material consideration is the existing Framework.
9. The appeal site is outside the settlement boundary for Gotherington and, in such locations, the JCS adopts a restrictive approach towards development. However it states that Service Villages such as Gotherington will be expected to accommodate of the order of 880 new homes over the plan period (policy SD2).
10. In a similar vein the JCS (policy SD10) deals with allocated housing sites and exceptional circumstances. It sets out that housing development will be permitted at sites allocated for housing in the development plan, including allocations in neighbourhood plans. Development on other sites will only be permitted in specified circumstances – in this case none of these circumstances are argued.
11. At the more local level the GNDP was not referred to in the reasons for refusal, which pre-date the plan being 'made'. However the parties agree that, given the change in circumstances, it should now be accorded full weight as part of the development plan.
12. The GNDP allocates three sites for development outside the settlement boundary (policy GNDP/2), but the appeal site is not one of these. The policy

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<sup>1</sup> The TBLP, which includes a relevant landscape policy, is time expired and in accordance with paragraph 215 of the Framework, it is necessary to give due weight to the saved policies in the light of their consistency with the Framework.

also states that, in the event that the development plan identifies a need for additional strategic housing development in Gotherington, any further sites will be encouraged to meet a set of criteria. These include being adjacent to the settlement boundary, maintaining the village's east-west linear form, avoiding having an adverse impact on the AONB, and maintaining the separation of settlements. The appeal site is adjacent to the boundary, whilst the other criteria are relevant to the next issue – but it is important to stress that these matters are only triggered if the plan led system requires that further sites are brought forward.

13. Policy GNDP/3 deals with proposals in the countryside outside the settlement boundary, and sets criteria for any development in that area. These criteria again refer to any evidenced need for additional housing stemming from the development plan.
14. The appeal site was taken into consideration as part of the Council's 2014/15 Assessment of Land Availability, which confirmed that the site (dealt with in two parcels) was available, suitable and achievable. However the parties agree that this document did not make policy or allocations, but only provided background evidence on potential availability.
15. In conclusion, the site is outside the settlement boundary and none of the exceptional circumstance in the JCS or GNDP apply or are argued. For that reason the appeal scheme would conflict with the locational policies in the development plan and is not suitable for development at this time. This weighs heavily against the proposal.

*Effect on the character and appearance of the landscape*

16. The appeal site is a field, around 6.3 hectares in extent, located adjacent to the southern edge of Gotherington. It has a gentle slope and is contained by mature hedgerow and tree planting along its boundaries.
17. Gotherington is a broadly linear settlement running east – west along the road, with a limb extending southwards towards Bishop's Cleeve. The settlement is generally horseshoe shaped and encloses the site on three sides, with agricultural land to the south. There are a number of public rights of way running across the site and leading to the west and south. The parties agree that the site does not contain any landscape features of particular merit.
18. The Cotswolds Area of Outstanding Natural Beauty (AONB) lies to the north and east of Gotherington, but does not include the appeal site. The site is within a locally designated Special Landscape Area (SLA).
19. The access to the proposed development, which is the only part of the scheme to be determined at this stage along with the principle of the scheme, would be obtained from Ashmead Drive to the north of the appeal site. The illustrative masterplan shows that around 46% of the total site area would be developed. A proposed open space would include a range of uses such as a play area, amenity open space, landscape buffers, SUDs and a range of pedestrian/cyclist links. A landscape buffer is shown along the southern boundary.
20. In assessing the effect of the proposal on the character and appearance of the area, and in particular the surrounding landscape, I have taken careful note of the Landscape and Visual Sensitivity Study undertaken by the Council in 2014. This looked at Rural Service Centres and Service Villages (such as

Gotherington) and sought to identify where development could possibly be accommodated in such settlements. Gotherington was identified as including six parcels of land, including the appeal site, where development could possibly be accommodated. The report identified the appeal site and the surrounding area as being of low landscape and visual sensitivity and refers to the site as receding into the existing settlement pattern. From the evidence before me and my visit to the area, I agree with this assessment.

21. In a similar vein the appellants' Landscape and Visual Assessment (undertaken in relation to a significantly larger scheme on the site than the current proposal) found generally minor effects in most respects with, unsurprisingly, a moderate effect on the 'Perceptual and Sensory' dimension. Any proposal to extend built form into the open countryside would have that effect, but this cannot preclude development in principle as this would prevent any expansion of existing settlements.
22. The Council has criticised some details of the appellants' Assessment, but has singularly failed to produce an alternative assessment. In addition, the Council's position is significantly weakened in that the landscape officer who appeared at the Hearing was the same officer who recommended approval of the proposal to the Council. Despite questioning from me, he was unable to give a convincing reason for his apparent change in professional landscape opinion.
23. The appeal site is heavily influenced by the surrounding settlement and is not prominent in views from any surrounding vantage points. The most notable view of the appeal site from a distance is obtained from Nottingham Hill to the southeast, from which the settlement can be seen as generally horseshoe shaped with the appeal site enclosed by existing buildings on three sides. Although the proposal would not entirely accord with the generally linear shape of the settlement, it would read as an infill development largely surrounded by existing buildings.
24. The Council has suggested that this is a valued landscape in terms of paragraph 109 of the Framework. However, although the land may well be locally appreciated, that paragraph deals with the protection and enhancement of valued landscapes, and there is nothing before me which persuades me that the appeal site can be described in that way.
25. The Council does not claim that the proposal would cause direct visual harm to the AONB. I agree with that position as, viewed from a distance looking towards the AONB, the development would recede into the form of the existing settlement.
26. The proposal would obviously extend part of the southern edge of Gotherington towards Bishop's Cleeve, and I agree that the effect on the separation of the villages is an important matter. However given the way in which the existing built form wraps around much of the appeal site and includes buildings which are closer to Bishop's Cleeve than the southernmost parts of the site, the overall effect would be that the separation would not be diminished.
27. I have also taken account of the experience of receptors crossing the site on rights of way or viewing it from nearby. The Council's position is that the proposal would substantially and irreversibly change the appearance of the site and local views. That is clearly the case, but is an inevitable consequence of

any change from open countryside to built development. It cannot be regarded as a persuasive objection in principle to a scheme in a location with low landscape and visual sensitivity.

28. Overall, the proposal would not cause significant harm to the intrinsic character of the countryside, and would not harm the character and appearance of the surrounding area within the SLA, including the gap between Gotherington and Bishop's Cleeve. It would therefore not conflict with TBLP policy LND2. However, whilst this policy reflects the general approach of The Framework in relation to the conservation and enhancement of the natural environment, the policy deals with adverse effect in absolute terms and does allow for any benefits arising from proposals to be taken into account. In the light of Framework paragraph 215, I consider that this policy should only be accorded moderate weight in this case.

*The vitality and social cohesion of Gotherington*

29. As I saw on my site visit, Gotherington contains a range of facilities including a village store and post office, a primary school and a village hall. The main parties agree that the appeal site is well located in relation to the settlement and that, in turn, there is reasonable access to other settlements which include higher order facilities.
30. The Framework sets out the need to contribute to the achievement of sustainable development, and sets out three mutually dependant dimensions – economic, social and environmental. The economic and environmental roles will be addressed below, but the social role is relevant to this issue and relates to support for strong, vibrant and healthy communities. The appeal proposal would bring about some social benefits, especially in the provision of open market and affordable housing, but this would result from this type of development wherever it was located.
31. The issue between the parties, which is reflected in a wide range of local representations, is whether the proposed development of up to 50 dwellings, taken in conjunction with those already permitted in the area, and those proposed or allocated in the GNDP would sustain the cohesion of the local community.
32. The agreed Statement of Common Ground details the sites with planning permission and those allocated in the GNDP. Looked at in plan form, these sites are grouped around the majority of the settlement.
33. The 50 dwellings proposed, on their own, would represent around an 11% increase in the size of Gotherington and, when considered in conjunction with allocated sites and permitted schemes, this would increase to about 31%. I appreciate that Gotherington is identified as a Service Village in the JCS, and is the fourth largest such Village. It is accordingly expected to take a reasonable amount of new housing over the JCS plan period.
34. However, given the extent of approved and potential development around the settlement, I share the concern of the Council and residents that the substantial number of new dwellings currently proposed would be hard to assimilate and I have not been provided with persuasive evidence that current facilities would be capable of expansion. Whilst I appreciate that the GNDP envisages the expansion of the settlement, this would occur in a controlled and

plan-led manner and the recently adopted plan clearly envisages a more limited expansion than is currently proposed.

35. In coming to that view, I am aware of the Council's document entitled 'Approach to Rural Sites Background Paper' (2015). This provides a disaggregated housing figure for Gotherington, which would be substantially exceeded if the appeal scheme were to proceed. This document was produced as a background paper for the emerging Borough Plan, which itself attracts no weight, although this background paper stands on its own feet. The Paper does serve to further illustrate the extent the scale of development already proposed around the settlement.
36. I appreciate that other appeal decisions elsewhere have allowed increases proportionately larger than that proposed here. However these decisions were taken in the light of the particular circumstances of those locations, and are of very limited relevance in the specific circumstances of this case. Of greater significance is an appeal decision issued in August 2017 related to a proposal at Manor Lane, Gotherington. In that case the Inspector concluded that the development would have an adverse effect on the vitality and social well-being of Gotherington.
37. Overall, the Framework policy is that development should meet the roles of sustainability, including the social role. This is described as supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being. In this case, for the reasons set out above the proposal would conflict with this policy and would harm the vitality and social well-being of Gotherington.
- Other matters – housing land supply, heritage and highways*
38. In relation to housing land supply there are a number of areas of agreement between the main parties. Most importantly the housing requirement as set out in the JCS is agreed (9,899) along with completions. The Borough has an identified shortfall, as set out in the JCS Inspector's report, of around 2,400 dwellings against Objectively Assessed Need.
39. The main difference is how to deal with delivery. The Council's position is to deal with this over 5 years whilst the appellant advocates delivery over the whole plan period. The parties agreed that there is no established approach, but I have some sympathy with the Council's position which is that the houses in question are largely already in existence, and that to spread delivery over the whole plan period would be an artificial approach. There is also a difference related to build out rates.
40. The appellants have evidenced a 4.19 year supply based on their assessment of the housing target, surplus and supply, with a 20% buffer and the oversupply addressed across the plan period. The appellant has also calculated the position based on the Council's housing target and supply figures, with the oversupply spread across the plan period and a 20% buffer. This gives a 4.94 year supply. In either case, on the appellants' figures, the authority does not have a five year housing land supply.

41. The authority considers it has a 5.3 year supply (applying a 20% buffer) or 6.06 years with a 5% buffer. The Council's evidence, especially the Tewkesbury Borough Housing Land Supply Statement (2017), represents a robust evidence base which persuasively demonstrates more than a 5 year housing land supply.
42. The JCS was adopted following an Inspectors report which found the plan to be sound and legally compliant. This was subject to an immediate partial review which, amongst other matters, will include a review of the Council's housing supply.
43. It has been suggested that, as result of the accepted need for a review of the JCS, the policies and allocations in the GNDP should carry reduced weight, as they allow for the potential for additional housing should the development plan indicate the need for further sites. However I do not accept that approach as the potential need for further development in and around Gotherington would clearly be triggered within the development plan process. The results of the review generally and in relation to Gotherington specifically is entirely unknown, and there is no diminution in the weight which should be accorded to the GNDP.
44. Both the JSP and the GNDP were adopted very recently, and it is not the place of this appeal to challenge the contents of these documents, the conclusions of the JSP Inspector, or those of the GNDP Examiner. Should further housing be required, potentially in the light of the JSP review, this could be allocated in a number of ways within the GNDP. This mechanism, along with the existing provisions in the GNDP, would preserve the plan led approach.
45. The parties have commented on the Written Ministerial Statement on Neighbourhood Planning (December 2016). This set out a change with regard to the circumstances under which relevant policies for the supply of housing in neighbourhood plans are deemed to be out of date where there is a shortfall in the housing land supply below five years. However, given my conclusions above regarding the extent of the supply based on the evidence before me, this is not of any relevance in this case.
46. As a result of the above matters, I conclude that the 'tilted balance' as set out in Framework paragraph 14 is not engaged by reason of the housing land supply position. However it is important to stress that this does not represent a cap on further development.

*Other matters – Unilateral Obligation*

47. The proposal is accompanied by a signed and dated Unilateral Obligation (6 December 2017) which includes arrangements for the policy compliant provision of affordable housing<sup>2</sup>, contributions towards open space, off-site play and pitch provision and other infrastructure and educational contributions<sup>3</sup>.
48. Some of the provisions are designed to mitigate the impact of the scheme and these elements therefore do not provide benefits in favour of the proposal. However other matters, most notably the provision of affordable housing, weigh in favour of the appeal and comply with the policy in paragraph 204 of

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<sup>2</sup> JCS policy SD12 and Affordable Housing SPG

<sup>3</sup> TBLP policy RCN1, JCS policies INF3 and INF6

the National Planning Policy Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

*Other matters – heritage and traffic*

49. There are a number of Grade II Listed Buildings in the wider area, as I saw on my site visit. The Council's position, with which I have no reason to disagree, is that there is no effect on the setting of any heritage assets.
50. Some local residents have raised concern about the effect of the additional traffic generated by the proposal. I can understand this concern given the scale of the development in this location. However the Highway Authority has not raised any objection to the proposed access and visibility arrangements or to the ability of the surrounding highway network to accommodate the traffic arising from the proposed development. I accordingly do not have any evidence to substantiate residents' concern.

*Planning balance and conclusion*

51. The proposal would clearly bring with it a number of economic benefits, in particular the fact that the construction phase would generate employment and that the completed development would add to the potential spend in the area.
52. As discussed above, the proposal would inevitably have a visual impact on the local environment but, for the reasons set out above, this would not amount to harm to the character and appearance of the area and would not represent environmental harm.
53. In terms social issues, the provision of both market and affordable housing is to be welcomed. However the Framework is clear that such development needs to reflect the community's needs and support its health, social and cultural well-being. As set out above, the current proposal fails to achieve that objective and therefore does not accord with the social role of sustainable development, and this weighs very heavily against the proposal.
54. I have carefully considered the appellants' position in relation to paragraph 14 of the Framework, and whether the 'tilted balance' contained therein comes into play in this case. I have concluded that the authority is currently able to demonstrate a five year supply of housing sites and therefore paragraph 49 and paragraph 14 are not engaged for that reason.
55. However I have concluded that TBLP policy LND2, dealing with landscape matters, does not fully comply with current national policy and I have accordingly reduced the weight which can be accorded to it. This policy is clearly relevant to this case, as it is the only local policy which relates to one of the main issues. It is out of date and the tilted balance in paragraph 14 of the Framework therefore comes into play for that reason.
56. However, based on my considerations above, the benefits of the proposal (especially the provision of market and affordable housing), are significantly and demonstrably outweighed by the adverse impacts of the proposal – particularly the conflict with the recently adopted development plan locational policies and the conflict with the social role of sustainable development. The lack of harm to the character and appearance of the area is a neutral factor.



57. For the reasons given above I conclude that the appeal should be dismissed.

*P. J. G. Ware*

Inspector

**APPEARANCES**

|                    |                                     |
|--------------------|-------------------------------------|
| FOR THE APPELLANT: |                                     |
| Mr M Sitch         | Senior Partner, Barton Wilmore      |
| Mr Bird            | Barton Wilmore                      |
| Mr B Connolly      | Environmental Dimension Partnership |

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| FOR THE LOCAL PLANNING AUTHORITY: |                                     |
| Ms C Ashby                        | Team Leader, development management |
| Mr Den Hoed                       | Landscape officer                   |
| Mr M Barker                       | Policy officer                      |

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| INTERESTED PERSONS: |                               |
| Cllr M Gore         | Tewkesbury Borough Councillor |
| Cllr C Ryman        | Parish Councillor             |
| D Ward              | Parish Council                |
| D Mawby             | Resident                      |

**DOCUMENTS**

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| 1 | List of persons present at the Hearing   |
| 2 | Extract from Assessment of Landscape Value                                     |
| 3 | Adopted JCS and Council agenda (5 December 2017)                               |
| 4 | Unilateral Undertakings dated 6 December 2017                                  |
| 5 | Plan of Gotherington showing potential development sites around the settlement |