



Department for
Communities and
Local Government

Mark Chadwick
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Our Ref: APP/F1610/A/12/2173305

13 February 2013

Dear Mr Chadwick

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY HANNICK HOMES AND DEVELOPMENT LTD
LAND TO THE SOUTH OF BERRELLS ROAD AND THE WEST OF BATH ROAD,
TETBURY, GLOUCESTERSHIRE
APPLICATION REF: 12/00219/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jessica Graham BA(Hons) PgDipL, who held a public local inquiry on 1, 2 and 3 August 2012 into your client's appeal against the decision of Cotswold District Council (the council) to refuse outline planning permission for the erection of up to 39 dwellings and associated works, including the formation of a vehicular access on land to the south of Berrells Road and the west of Bath Road, Tetbury, Gloucestershire, in accordance with application ref: 12/00219/OUT, dated 16 January 2012.

2. The appeal was recovered for the Secretary of State's determination on 11 July 2012 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, so that he could consider it alongside an appeal concerning the residential development of a site outside the development boundary on the northern side of Tetbury, which had already been recovered by letter dated 26 January 2012. That appeal (APP/F1610/A/11/2165778) is the subject of a separate decision by the Secretary of State.

Inspector's Recommendation and Summary of the Decision

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

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Procedural Matters

4. The Secretary of State notes that after the inquiry closed, the Council resolved on 12 September 2012 to grant planning permission for 174 dwellings on the SIAC/Matbro site on Quercus Road, which comprises some previously developed land within the Tetbury settlement boundary, and that the Inspector has taken this into account in her consideration of the appeal (IR1.9)

5. The application for costs made by your client at the inquiry (IR1.6) will be the subject of a separate decision letter.

6. The Secretary of State notes that at the inquiry the Inspector expressed concerns about some of the provisions of the appellant's unilateral undertaking, and about the information provided by the council to justify the requested financial contributions, and allowed additional time for the parties to provide further material in accordance with an agreed timetable (IR1.7). The Secretary of State notes that this material was provided after the inquiry closed and was taken into account by the Inspector in preparing her report. He considers the planning obligation at paragraph 24 of this letter.

Policy Considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises Regional Planning Guidance for the South West (which became the Regional Spatial Strategy for the South West (RS) (2001); the saved policies of the Gloucestershire Structure Plan Second Review (SP) (1999); and the saved policies of the Cotswold District Local Plan 2001-2011 (LP) (2006). Development plan policies relevant to this appeal are set out at IR 5.2 – 5.9.

8. Work has commenced on a replacement to the Cotswold Local Plan, but it is still in the early stages of preparation. Two Core Strategy issues and options papers have been published, in 2007 and 2010 (IR5.10). Although these are material considerations, the Secretary of State affords them only limited weight given the early stage of plan preparation.

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

10. Other material considerations include the National Planning Policy Framework (the Framework) (IR5.12); RS Proposed Changes (2008) (IR5.13); and local policy documents listed at IR5.14 – 5.15. In addition the Secretary of State has had regard to Circular 11/95 the Use of Conditions in Planning Permissions; the Community Infrastructure Levy (CIL) Regulations (2010) as amended; Technical Guidance to the National Planning Policy Framework (2012); Baroness Hanham's Written Ministerial Statement on Abolition of Regional Strategies of 25 July 2012; and the Written Ministerial Statement on Housing and Growth of 6 September 2012.

11. In determining this appeal, the Secretary of State has had regard to the purpose of conserving and enhancing the natural beauty of the Cotswolds AONB, as

required under section 85 of the Countryside and Rights of Way Act 2000. He has also had special regard to the desirability of preserving listed buildings and their setting or any features of special architectural or historic interest they possess, as required under the provisions of sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. There is intervisibility between the appeal site and Highgrove House (IR 13.52), which is a grade II listed building. The former Toll House at the corner of Grange Lane is also grade II listed.

Main Issues

12. The Secretary of State agrees with the Inspector that the main issues are those set out in the Inspector's conclusions at IR13.1 – 13.68.

The development plan

13. The Secretary of State agrees with the Inspector the proposed development would fundamentally conflict with adopted development plan, which seeks to restrict residential development on land which, like the appeal site, lies outside any settlement boundary and inside an AONB. He agrees that the Framework states that relevant policies for the supply of housing should not be considered up to date if the council cannot demonstrate a five year land supply, and that this should be considered by establishing the housing requirement and then the supply of deliverable sites (IR13.2 – 13.3).

Housing requirement and buffers

14. The Secretary of State agrees with the Inspector's reasoning and conclusions on the housing requirement for the district as set out in IR13.4 - 13.19. He agrees that the SP housing requirement remains the starting point, but the plan was only intended to cover the period to 2011 and its housing requirement calculation was based on household projections from 1996 (IR13.6 – 13.8). He agrees with the Inspector that there is more up to date evidence available and has carefully considered the Inspector's conclusions on the evidence noted at IR13.9 - 13.13. He agrees with the Inspector that the housing requirement in the SP is so out of date as to be unfit for purpose in terms of defining the five year housing requirement for the district (IR13.16) and that it is reasonable to use the figure at the lowest end of the spectrum of more up to date forecasts and projections, to assess the five year housing requirement. He therefore proposes to use the figure of 2,022 dwellings, derived from the draft RS Proposed Changes, as the five year housing requirement in this instance (IR13.17). He agrees with the Inspector that this is not an endorsement of this figure as representing the objectively assessed housing need for the district, but in the absence of an up to date development plan, he considers it to be a more robust housing requirement than the SP requirement. In reaching this conclusion he has taken account of the policy in the Framework to boost significantly the supply of housing.

15. The Framework also requires that an additional buffer of 5%, or 20% in cases where there is a record of persistent under delivery of housing, should be added to the supply of deliverable sites. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR13.20 – 13.26 that there has been persistent under delivery of housing in the district, which justifies an additional buffer of 20%. This increases the five year housing requirement to 2,426 dwellings over the next five years (IR13.26).

Supply

16. The Secretary of State agrees with the Inspector's reasoning and conclusions on the housing supply for the district as set out in IR13.27 – 13.34. He finds that the five year land supply of 1,828 dwellings amounts to a very serious shortfall against the lowest estimate of the five year requirement, with a 20% buffer, of 2,426 dwellings (IR13.31).

17. The Secretary of State notes the Inspector's explanation for the discrepancy in the housing supply figure between this case and the Highfield Farm case (APP/F1610/A/11/2165578) which is determined contemporaneously with this appeal. He agrees with the Inspector that even though the evidence provided by parties differed in the two cases, the resulting assessment of five year land supply in the Highfield Farm case of 1,711 dwellings has no bearing on the Inspector's conclusions on land supply (IR 13.34). Whichever supply figure is used, there is still a considerable shortfall against the five year housing requirement.

Implications of the housing supply position

18. The Secretary of State agrees with the Inspector's reasoning and conclusions on the implications of the housing supply position as set out in IR13.35 – 13.40. He finds that the inability of the council to demonstrate a five year land supply means that the relevant policies for the supply of housing cannot be considered up to date, in accordance with policy in the Framework (IR13.35). The Secretary of State agrees with the Inspector that the special emphasis in the presumption in favour of granting planning permission in such circumstances does not automatically apply in this case; because of the specific policies in the Framework that indicate development should be restricted and the duty to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. The Secretary of State further agrees that the serious shortfall in the supply of housing land is a material consideration that weighs heavily in favour of allowing the proposed development, but there are other material considerations that need to be weighed in the balance (IR13.40).

The effect of the development upon the character and appearance of the area

19. The Secretary of State agrees with the Inspector's reasoning and conclusions on the effect of the proposed development on the character and appearance of the area as set out in IR13.41 – 13.54. He notes that both parties considered that the proposal did not constitute major development within the AONB (IR13.41). Like the Inspector, he sees no reason to differ from this joint conclusion in the particular circumstances of this case. However he agrees that this does not lessen the great weight that should be given to conserving landscape and scenic beauty in AONBs (IR13.42). The Secretary of State agrees with the Inspector that the proposed development, with suitable landscaping, planting and boundary treatments would achieve a softer transition from the countryside to the town than presently exists (IR13.46). Like the Inspector, he considers that sufficient information has been provided to demonstrate that 39 dwellings could be accommodated on the site, with the necessary planting, landscaping and open space and that the details can all be addressed at the reserved matters stage and by conditions (IR13.50-13.51).

20. The Secretary of State notes that the Inspector found intervisibility between the appeal site and the upper storeys of the grade II listed Highgrove House. He notes that the separation distance is such that the proposed development would not, in the

Inspector's judgement, have any appreciable impact on the setting or significance of that heritage asset. The Secretary of State agrees (IR13.52). He also agrees that the proposed development would not affect the setting or significance of the grade II listed former Toll House at the corner of Grange Lane (IR 13.52).

21. The Secretary of State agrees with the Inspector's conclusions on this issue that the proposed development would have benefits in terms of improving the southern edge of the built-up part of Tetbury, and enhance the setting of the town although it would result in the loss of a field that is part of an AONB. The Secretary of State agrees that this particular field makes little contribution to the overall character of the AONB, being surrounded on three sides by existing development and a road but acknowledges that its loss would clearly be harmful (IR 13.54).

Other considerations

22. The Secretary of State has carefully considered all the other matters noted by the Inspector at IR13.55 – 13.63 and agrees with her reasoning and conclusions on these matters. He agrees that the provision of affordable housing would help address the needs in the district and he attaches some weight to this (IR13.55). He agrees that there are no significant impacts in highway terms that would weigh against the proposal (IR13.57 – 13.58). He notes the concerns about impacts on existing infrastructure and services but does not find that these weigh significantly against the proposal (IR13.61 – 13.63).

Local involvement in the planning system

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

Conditions and obligations

24. The Secretary of State agrees with the Inspector's reasoning and conclusions on the planning obligation and conditions set out in IR 11.1 - 12.8. He is satisfied that the terms of the planning obligation are necessary and that the provisions within it satisfy the tests of Regulation 122 of the CIL Regulations 2010 as amended. He has therefore taken it into account in determining this appeal (IR11.6).

25. The Secretary of State has considered the proposed conditions, the Inspector's assessment of these at IR12.1 – 12.8 and national policy as set out in Circular 11/95. He agrees with the Inspector's assessment that the conditions, as recommended, are necessary and he considers that they comply with the provisions of Circular 11/95.

Overall Conclusions

26. The Secretary of State agrees with the Inspector's overall conclusions on the planning balance as set out in IR13.69 – 13.71. He agrees that the proposed development would conflict with the development plan. However, he considers that there are material considerations that weigh in favour of the proposal, in particular the

serious shortfall in the district housing provision and the scope for the development to go some way towards addressing that shortfall in market and affordable housing, in a location close to the town centre, within acceptable walking distance of many local facilities and public transport.

27. The Secretary of State concludes that the overall benefits of the proposed development in this case decisively outweigh the conflict with the development plan, and all other material considerations including the harm that would be caused to the AONB (IR13.71).

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation at IR14.1. He hereby allows your client's appeal and grants outline planning permission for the erection of up to 39 dwellings and associated works, including the formation of a vehicular access to the site at land to the south of Berrells Road and the west of Bath Road, Tetbury, Gloucestershire, in accordance with application ref: 12/00219/OUT, dated 16 January 2012 subject to the conditions listed at Annex A of this letter.

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

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

Right to Challenge the Decision

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

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

Yours sincerely

Pamela Roberts

Authorised by the Secretary of State to sign in that behalf

Annex A Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development on land to which the reserved matters relate begins, and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) Subject to the provisions of condition no. 4 below, applications for the approval of the reserved matters shall be in accordance with the principles and parameters described and identified in the Design and Access Statement (December 2010). A statement shall be submitted with each reserved matters application which demonstrates that the application proposals comply with the Design and Access Statement (December 2010) or, where relevant, explaining why they do not.
- 4) Notwithstanding the provisions of condition no. 3 above, none of the buildings hereby permitted shall have more than two storeys; the buildings located on the Bath Road frontage shall be constructed of natural Cotswold stone; and no building shall have a gable width exceeding 7 metres.
- 5) The details to be submitted in accordance with condition no. 1 above shall include slab levels; a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geographical context of the development, including details of how the scheme is to be maintained and managed once implemented; details of a 2 metre wide footway from a point north of the main site access along Bath Road to a point on the south side of Berrells Road, 50 metres west of its junction with Bath Road; details of vehicular parking and manoeuvring facilities, and cycle parking provision; details of the water butts that will be provided to serve each dwelling; a scheme detailing the provision of fire hydrants served by mains water, and a timetable for their installation; and a five-year Ecological Management Plan for the site, setting out the mitigation and habitat features to be provided, with details of how they are to be managed and monitored once implemented.
- 6) No development shall commence until the access arrangements detailed on drg. no. 59001-TS-003 Rev A have been completed to at least base course level for the first 25 metres into the site, and a timetable for full completion submitted to, and agreed in writing by, the local planning authority.
- 7) The development shall be served by access roads laid out and constructed in accordance with details to be submitted to and approved in writing by the local planning authority at reserved matters stage. None of the dwellings hereby permitted shall be occupied until the road (including any proposed turning heads, street lighting and footways) providing access to that dwelling has been completed to at least base course level in accordance with the approved details. All roads and footways within the site shall be completed no later than five years after first occupation of any dwelling served and

shall be maintained thereafter until adopted as highway maintainable at the public expense.

- 8) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) hours of working on site during the period of construction.
- 9) No development shall take place within the appeal site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority.



Report to the Secretary of State for Communities and Local Government

by Jessica Graham BA(Hons) PgDipL

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

Date: 9 November 2012

TOWN AND COUNTRY PLANNING ACT 1990

COTSWOLD DISTRICT COUNCIL

APPEAL MADE BY

HANNICK HOMES AND DEVELOPMENT LTD

Inquiry opened on 1 August 2012

Land to the south of Berrells Road and the west of Bath Road, Tetbury, Gloucestershire

File Ref: APP/F1610/A/12/2173305

File Ref: APP/F1610/A/12/2173305

Land to the south of Berrells Road and the west of Bath Road, Tetbury, Gloucestershire

- 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 Hannick Homes and Development Ltd against the decision of Cotswold District Council.
- The application Ref 12/00219/OUT, dated 16 January 2012, was refused by notice dated 26 March 2012.
- The development proposed is the erection of up to 39 dwellings and associated works, including the formation of a vehicular access to the site.

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

CONTENTS

	Page
1. Procedural matters	2
2. The site and surroundings	3
3. Planning history	3
4. The proposal	4
5. Planning policy	4
6. Agreed matters	7
7. The case for the Council	7
8. The case for Hannick Homes and Development Ltd	16
9. The cases for interested parties	25
10. Written representations	30
11. S.106 Obligation	30
12. Conditions	31
13. Inspector's conclusions	34
14. Inspector's recommendation	47

Appendices

A. Appearances	48
B. Documents	49
C. Suggested conditions	52
D. Glossary of acronyms and abbreviations	56

1. Procedural matters

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

- 1.1 The inquiry sat for three days, on 1, 2 and 3 August 2012. I made an unaccompanied pre-inquiry visit to the area on 31 July, an accompanied site visit on 3 August, and a further unaccompanied visit to the area on 20 August.
- 1.2 The application was submitted in outline, with details of access to be considered as part of the application, and details of scale, layout, appearance and landscaping reserved for future consideration.
- 1.3 The Council's reason for refusing the application referred to the location of the site within countryside outside any defined development boundary; its status as undeveloped rather than previously developed land; the fact that the Council was then progressing two applications for residential development on previously developed land within Tetbury's development boundary, which it considered would have a material impact upon its (then) acknowledged housing shortfall; and the effect the development would have upon the character and appearance of the Cotswolds AONB and upon the setting of Tetbury.
- 1.4 The appeal was recovered by the Secretary of State by letter dated 11 July 2012, so that he could consider it alongside an appeal concerning the residential development of a site outside the development boundary on the northern side of Tetbury, which had already been recovered by letter dated 26 January 2012. That appeal (Ref. APP/F1610/A/11/2165778) is the subject of a separate, but contemporaneous, report.
- 1.5 At the date when the Council determined the application, it considered that it was unable to demonstrate a five year supply of housing land. That position has subsequently changed, and the Council now considers it is able to demonstrate a five year supply of housing land. This more recent position informs the Statement of Common Ground (INQ 1) and the Council's evidence to the inquiry (LPA 1 – LPA 2.24).
- 1.6 At the inquiry, I agreed that the appellant's proposed application for costs, the Council's response to that application, and the appellant's opportunity to comment on the Council's response, could take the form of written representations submitted in accordance with an agreed timetable. Those representations were duly made (INQ 27 – 29), and form the subject of a separate costs report.
- 1.7 At the inquiry I also agreed, having expressed concerns about some of the provisions of the appellant's Unilateral Undertaking, and about the information provided by CDC to justify the requested financial contributions, to allow additional time for the parties to provide further material in accordance with an agreed timetable. That material was duly provided (INQ 30 – 31), and I have taken it into account in preparing this report.
- 1.8 While not addressed in the evidence of the Council or the appellant, it became apparent at the site visit that there is intervisibility between the appeal site and Highgrove House, which is a Grade II listed building. The relevant

witnesses for the Council and the appellant were recalled to give evidence on this point, which I have taken into account in my consideration of the appeal.

- 1.9 After the inquiry closed, the Council resolved on 12 September 2012 to grant planning permission for development (to include 174 dwellings) of the SIAC/Matbro site on Quercus Road, which comprises some previously developed land, and lies within the Tetbury settlement boundary. In the interests of fairness, the appellant and the Council were invited to submit written representations on the implications of that resolution for their respective cases. Those representations are attached as documents, and have been taken into account in my consideration of this appeal.
- 1.10 A large number of other appeal decisions were drawn to my attention. I have commented upon those I consider particularly relevant to the current appeal, but as a general principle, each proposal for development must be considered on the basis of its own merits and site-specific circumstances.

2. The site and surroundings

- 2.1 The appeal site lies to the south of Tetbury; adjacent to, but outside, the settlement boundary defined by the Cotswold District Local Plan. It is an agricultural field of some 1.73ha in area, and contains a single-storey, open sided stone building in its north east corner.
- 2.2 The site is bound on its northern and western sides respectively by the rear gardens of residential properties at Southfield and Long Furlong Lane. The eastern boundary is a dry stone wall, about 1m high, which separates the site from the A433 Bath Road and incorporates a gated access. This wall continues round to form the southern boundary of the site, where there is also a mature hedgerow containing trees.
- 2.3 The appeal site and the surrounding area, including the whole of Tetbury, is part of the Cotswolds AONB. Tetbury is Cotswold District's second largest town, and is designated within the Local Plan as a 'Principal Settlement'. It provides a wide range of facilities and services including a library, schools, shops, a hospital and GP surgery, sports and leisure facilities and employment opportunities.

3. Planning history

- 3.1 An outline planning application for the erection of 40 dwellings and the construction of a new vehicular and pedestrian access was refused permission on 20 July 1988, and a subsequent appeal against that refusal was dismissed on 20 June 1989 (LPA 2.3).
- 3.2 In determining that appeal, the Inspector recorded the main parties' agreement that there was a 5-year supply of available housing land in both the South Cotswold District policy area and the district as a whole, such that an additional presumption in favour of development did not apply. He noted that any extension of the built-up area of Tetbury would be likely to have some impact upon the AONB, but concluded that the manner in which the development then proposed would extend the built-up area of the town southwards into the countryside would be detrimental to the attractive rural setting of Tetbury, and the AONB.

- 3.3 An outline planning application for the erection of 54 dwellings and associated works, including the formation of a vehicular access to the site, was refused permission on 31 August 2011, and a subsequent appeal was dismissed on 23 December 2011 (LPA 2.4).
- 3.4 In determining that appeal, the Inspector recorded the main parties' agreement that there was not a 5-year supply of housing land, such that paragraph 71 of (then extant) PSS 3, which stated that planning applications for housing should be considered favourably subject to various other considerations, applied. He considered that the residential development of the site was justified by the shortage of available housing land, and that the loss of the field would not result in harm to the adjacent countryside, if suitably landscaped. However, he also considered that the residential density depicted by the illustrative scheme before him left insufficient space within the development layout to provide a softer edge to the southern approach to Tetbury. In what he described as "a very finely balanced judgement", he concluded that the proposed number of dwellings would be likely to give rise to an unduly excessive amount of built development, resulting in harm to the landscape of the Cotswolds AONB.

4. The proposal

- 4.1 Although in outline at this stage, with all matters apart from access reserved for future consideration, the development is intended to provide up to 39 residential units. If 39 were provided, 16 would be affordable dwellings, of different types and tenures, including intermediate and social rented housing types.
- 4.2 The development would be served by a single new vehicular access from the A433 Bath Road. There would also be a pedestrian access to the site, leading from the north end of the site's frontage with Bath Road, which would be the closest point to the town centre, and would provide access to 2 bus stops on Bath Road.
- 4.3 A full description of the scheme is given in the Design and Access Statement (CD 1.3).

5. Planning policy

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

The Regional Strategy

- 5.2 Regional Planning Guidance for the South West (RPG 10) was issued in October 2001 and under the changes to the Development Plan system introduced by the Planning and Compulsory Purchase Act 2004, became the Regional Strategy for the South West. The Localism Act 2011 makes provision for the abolition of Regional Strategies, but until those extant are duly revoked, they remain a part of the Development Plan. Policy HO1 (CD 2.13) sets out the average annual rates upon which provision for net additional housing, to be made in the region's structure plan areas over the period 1996-2016, should be based. The figure for Gloucestershire is 2,400 dpa.

The Structure Plan

- 5.3 The Gloucestershire Structure Plan Second Review (CD 4.28), adopted in 1999, sets out the strategic framework for the use and development of land in Gloucestershire for the Plan Period mid-1991 to 2011. In September 2007 the Government Office issued a saving direction which prevented all of the policies within the *Gloucestershire Structure Plan Second Review* (adopted 17 November 1999) from expiring in accordance with the Planning and Compulsory Purchase Act 2004.
- 5.4 Housing policies are contained in Section 6. Policy H.1 requires 50,000 new dwellings to be provided in the period 1991 to 2011. Policy H.2 then provides for about 6,150 of these to be in the Cotswold District, which equates to 307.5 per year.
- 5.5 Structure Plan policies of particular relevance to this appeal are agreed in the SoCG (INQ 1). Policy NHE.4 provides that within AONBs, the conservation and enhancement of the natural beauty will be given priority over other considerations; regard will be had to the economic and social well-being of the AONB; and that provision should not be made for major development within the AONB unless it is in the national interest and the lack of alternative sites justifies an exception. Policy S.2 states that Local Plans should identify Principal Settlements which will form the focal points for a scale of development consistent with the character and function of the settlement.

The Local Plan

- 5.6 The Cotswold District Local Plan 2001 to 2011 was adopted in 2006. In January 2009, the Government Office issued a saving direction which prevented a number of policies of the Cotswold Local Plan from expiring in accordance with the Planning and Compulsory Purchase Act 2004.
- 5.7 Section 3 of the Local Plan (CD 2.1) sets out the district's Development Strategy. This is based on the housing figures contained in the Structure Plan, and defines Tetbury as a Principal Settlement. The overall strategy is to apply restraint on additional development, with "about 63%" of the District's planned growth between the end of March 2004 and mid-2011 focused on Cirencester, and the remainder allocated to Principal Settlements commensurate with local economic and social needs. Development at Principal Settlements should take account of their role as a local service centre, give priority to the development of previously developed land, and avoid encouraging commuting.
- 5.8 The Council's reason for refusal makes specific reference to Policy 19, which deals with development outside development boundaries, where it will be permitted provided that it relates well to existing development, and would not result in new market housing other than that to help meet the social and economic needs of those living in rural areas; cause significant harm to existing patterns of development; lead to a material increase in car-borne commuting; adversely affect the vitality and viability of settlements; or result in development that significantly compromises the principles of sustainable development. Note 2 to this Policy explains that the provision for new market housing that would "help to meet the social and economic needs of those living in rural areas" is intended to meet a degree of flexibility in meeting needs,

rather than demands, in rural areas as exceptions to the generally restrictive policies. It advises that the numbers involved are likely to be very small.

- 5.9 Policy 21 sets out a requirement for affordable housing to be provided as part of the development of any significant site in Tetbury, whether or not that site is allocated for housing in the Local Plan. Policy 34 concerns the provision of landscaped open spaces within residential development, and states that the Council may seek a planning obligation to ensure the future maintenance of such spaces. Policy 49 provides that where appropriate, conditions or planning obligations will be used to secure the provision or improvement of community infrastructure and services that would be made necessary by, and relate directly to, the development in question.

The Local Development Framework

- 5.10 Work has commenced on a replacement to the Cotswold Local Plan, to cover the plan period 2011-2031. However, while a considerable amount of evidence-gathering work has been undertaken, the development of a Core Strategy is still at an early stage. A Core Strategy Issues and Options paper was published for consultation in 2007, and a second Issues and Options paper in 2010 (CD 2.3), but no housing requirement has yet been published. The next stage of the process, anticipated for autumn 2012, will be consultation upon the distribution of development. It is envisaged that a draft Core Strategy will be subject to consultation in spring 2013, with the Examination in Public unlikely to be held before early 2014 (INQ 1, 7.2).
- 5.11 The SoCG records the agreement of the Council and the appellant that to grant planning permission for the currently proposed development would not prejudice the Council's consideration of the spatial planning options for the emerging Core Strategy (INQ 1, 7.3).

National Planning Policy

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

Other documents

- 5.13 Although it is not (and will not now become) part of the Development Plan, a Draft Regional Spatial Strategy for the South West ("Draft RSSW") was prepared, and reached an advanced stage of progress towards adoption. It was published for consultation in June 2006, with an Examination In Public leading to a Panel report in December 2007. Changes recommended by that report were considered by the Secretary of State, whose RS Proposed Changes were published in July 2008 (CD 4.26). Policy HMA 3 required the provision of 6,300 dwellings in the Cotswold District. Policy HD1 set this out as the provision of 345 dwellings per annum in the period 2006 to 2026.
- 5.14 While not part of the Development Plan, nor adopted as Supplementary Planning Documents, the Council's 2011 "Interim Housing Guidance Note and Five Year Housing Supply" (CD 2.10) and "5 Year Housing Land Supply Assessment 2012" (LPA 2.9) are of relevance to this inquiry.

- 5.15 Also of relevance are the Cotswold District Strategic Housing Land Availability Assessment (2010) (CD 2.5); the 2010 DCLG Household Projections (CD 4.25); the Gloucestershire Local Projections 2010 (CD 5.29); and the Gloucestershire Housing Trend Analysis and Population and Household Projections 2011 (CD 5.30).

6. Agreed matters

- 6.1 The appellant and the Council helpfully provided a Statement of Common Ground (INQ 1), with a subsequent addendum concerning affordable housing (INQ 3). The matters agreed by these parties not to be in dispute between them include the following:
- Since the appeal site lies within the AONB, it is subject to planning policies restrictive towards development, in accordance with paragraph 14 of the Framework and the accompanying footnotes 9 and 10. The Cotswolds AONB entirely 'washes over' Tetbury, such that any development taking place in or adjacent to the town cannot avoid being located within the AONB, and would affect the AONB to varying degrees.
 - The site is located in a highly sustainable location, close to the town centre, within acceptable walking distance of many local facilities, and enjoys ready and convenient access to public transport facilities.
 - The proposed development does not constitute "major development".
 - Tetbury has an identified housing need, and the number of affordable housing units proposed as part of this development would assist in meeting some of that need.

7. The case for the Council

Introduction

- 7.1 Regardless of the position on 5 year housing land supply, the presumption in favour of sustainable development does not apply. There are 4 fundamental barriers to its application. Firstly, the development plan is not absent, silent or out-of-date. Secondly, the site is in the AONB and thus subject to the restrictive policies in the Framework, meaning that permission is not required to be granted under the presumption. Thirdly, the adverse effects in terms of harm to the AONB would significantly and demonstrably outweigh the benefits – it being noted that the harm caused has in the past been considered of such weight as to outweigh other presumptions in favour of granting permission. Fourthly, the development is not to be regarded as sustainable for the purposes of the Framework, in that it does not fulfil all three roles (specifically, the environmental role) as is required under paragraph 8.
- 7.2 If the Council's position on the presumption is accepted, it should be noted that not only has the requirement for favourable consideration of housing development been swept away with the repeal of PPS3, but it has not been replaced with any other presumption of equal or greater force, such that, even if the Council's position on 5 year housing land supply is rejected, the consequent weight to be given to that factor will still be less than that given by the 2011 Inspector, justifying a departure from his conclusion.

- 7.3 It is recognised that the degree of consistency between the policies of the Development Plan and those contained in the Framework has an importance independent of its impact on whether or not the presumption in favour of sustainable development applies. The Council's evidence demonstrates that there is a high degree of consistency between the restraint inherent in the Local Plan policies and the approach advocated in the Framework.

The planning policy framework

- 7.4 The Council's decision on the application was taken prior to the publication of the Framework, and at a time when the Council accepted it could not demonstrate a 5 year supply of housing land; accordingly, it was taken in the light of the then-extant policy requirement at paragraph 71 of PPS3 to consider applications for housing 'favourably' (CD 4.21). Notwithstanding the favourable consideration given to the application, planning permission was refused.
- 7.5 In the few months that have passed since the date of that refusal, the planning landscape has changed considerably at both national and district levels. At national level, nearly all existing policy has been swept away and replaced with the Framework. At district level, the Council has revisited its 5 year housing land supply figures and arrived at a credible, locally-determined interim requirement against which it can demonstrate a 5.3 year supply (CD 2.9). It is against this new background that the appeal has to be determined, and it is a background that the Council considers only strengthens its case.
- 7.6 The Framework, like PPS3 before it, seeks to secure the provision of sufficient affordable and market housing. There is undoubtedly a pro-growth agenda, but this agenda is tempered throughout by the recognition that development proposals must not be allowed to compromise our natural environment. Paragraph 115 of the Framework provides that the AONB will achieve a degree of protection commensurate with its status as a nationally protected landscape. The desire for growth must be read in the light of the desire for the continued protection of the countryside and valued landscapes, and thus circumspection on development taking place within them. Insofar as any harm to the AONB is identified, "great weight" must be attached to it in the planning balance. The Framework also endorses a plan-led system, giving local authorities the breathing space to produce their own plans, and ensuring that weight will continue to be given to Development Plan policies (not excluding those which are time-expired) so far as they are consistent with its aims.
- 7.7 Contrary to the appellant's suggestion, it is no part of the Council's case that because the presumption in favour of sustainable development set out in the Framework does not apply, planning permission cannot be granted. It is simply the case that it will need to meet the test set by S. 38(6) of the Planning and Compulsory Purchase Act 2004; that is, be granted in accordance with the Development Plan, unless material considerations indicate otherwise.
- 7.8 In this case, the presumption in favour of sustainable development does not apply. The appellant agrees, on the basis that the site is subject to planning policies which are restrictive toward development (INQ 1, para 13.7). The only thing that needs to be said about the Framework presumption in favour of sustainable development, then, is that given it does not apply, it can be noted

that the requirement set out in paragraph 71 of PPS3 (to give favourable consideration to applications for housing) has been swept away and is not replaced by a similar presumption, or another presumption of any kind.

- 7.9 That reduces the weight that was in favour of granting planning permission in the 2011 appeal. In that case, the Inspector's view that housing might be acceptably accommodated on the site was expressly founded on there being a shortfall of housing land, and this triggered the paragraph 71 requirement to consider the proposal favourably (LPA 2.4). Regardless of the view taken about the position today on housing land supply figures, that paragraph 71 requirement no longer applies, and so the additional weight it conveyed in favour of the application is removed from the balancing exercise. It must follow that if there is no housing land supply shortfall, the weight in favour of the grant of permission must be substantially reduced, with the result that what was expressed to be a 'finely balanced' decision to refuse overall becomes more clear-cut.
- 7.10 It is agreed that in order to constitute sustainable development in the terms of the Framework, a proposal must undertake all three roles set out at paragraph 7 – economic, social and environmental – "jointly and simultaneously" and achieve net gains against them (APP 1, para 9.3). The current proposal does not meet this requirement in respect of the environmental role. The appellant identifies two environmental benefits; accessibility to the town, and improvements to the built and historic environment. They may be benefits, if accepted (the Council does not accept the latter), but they cannot outweigh the environmental harm caused by the loss of the field itself.
- 7.11 The appellant's own evidence was that the development "clearly must cause harm" (Mr Evers, xx) to the field itself. That harm cannot be regarded as other than an environmental disadvantage. The intrinsic value of the countryside, its undeveloped nature, is lost forever once it is built upon. This justifies the greater weight to be attached to it than to the identified benefits, which are less profound. Such a loss cannot be regarded as sustainable.
- 7.12 The appellant relies on the conclusion of the SoS in the Bishop's Cleeve decision (APP 8.2, para 17) as confirming that LP Policy 19 is out of date. This, the appellant claims, supports the conclusion that since LP Policy 19 is time-expired (albeit saved) and relates to an historic development strategy, it should be afforded no weight.
- 7.13 However, the Bishops' Cleeve decision relates to other Local Plan policies, in a different district. Two points should be noted. Firstly, the appellant has not sought to establish the content of those policies, and their similarities or otherwise to LP Policy 19. Secondly, in that case the Inspector's conclusions were made prior to the Framework, which seeks to establish the degree of consistency between its own policies and those in older Development Plans. Although the SoS invited comments on the Framework before determining that appeal, it is not known whether any representations made the point that policies cannot simply be discounted for their age, but must rather be assessed for consistency with the objectives of the Framework. Certainly no conclusions are drawn which suggest the point was ever made, or considered.
- 7.14 It therefore appears that the Bishop's Cleeve decision was made without a consideration of the consistency between the relevant Development Plan

policies, and the policies of the Framework. But even if such a consideration were undertaken, it was an exercise conducted in relation to different policies, contained in the Development Plan of a different district, and we have no knowledge of their content. Reliance on the Bishop's Cleeve decision in these circumstances would be wrong.

- 7.15 In this current case, the aims of LP Policy 19 are based on locating development in the most sustainable locations, protecting and supporting rural communities, and protecting the natural environment. These are consistent with those of the Framework (set out in its paragraphs 17, 11, 35, 54 and 55). As Mr Lewis accepted in cross examination, there is no policy in the Framework relating to the presence or otherwise of development boundaries, so no conflict arises that way.
- 7.16 This position is supported by the Inspector's decision at Coberley (INQ 22). There, the fact that LP Policy 19 had time expired was not identified as a reason to disapply it, or denounce its weight. In fact, conflict was expressly ruled out. Although not a housing decision, the basis of this particular policy as encouraging sustainable development has been recognised. This is to be preferred to the Bishop's Cleeve decision where conflict (or lack thereof) does not seem to have been explored.
- 7.17 Mr Lewis' sole concern was that there is a tension between the requirement in paragraph 47 of the Framework to boost significantly the supply of housing, and the restriction in LP Policy 19(a) on open market housing beyond the development boundaries. But the Council does not accept that there is such a tension. As accepted initially, LP Policy 19(a) does not rule out such open market housing. It simply rules out open market housing which does not help meet the social and economic needs of rural communities.
- 7.18 While it is true that express reference is made to the numbers of applications meeting the requirement being small, and to the provisions of the Annex to PPS 7 in respect of agricultural dwellings, the terms of the policy are in no way limited to that. Those examples are illustrative and it would be open to developers to make a case that their open market developments would meet social and economic needs of the communities. Moreover, such circumspection in relation to rural development, and the purposes for which it should be permitted, is a feature which remains in the Framework. It is also agreed that there is no objection to affordable housing under LP Policy 19 – a need of the kind the appellant has sought heavily to focus on at this inquiry.
- 7.19 In the circumstances, full, or at least a very high degree of weight, can be placed on LP Policy 19. Without it, and much to the concern of local residents, there would in effect be a free-for-all on development beyond Tetbury's boundaries, and those of the other settlements in the District. Nor does the appellant contend that Policies S2 and NHE4 of the Structure Plan are inconsistent with the Framework. There is arguably some tension here in respect of the appellant's position on LP Policy 19; since that policy is informed by SP Policy S2, how can one be consistent with the Framework but not the other? In any event, full weight must be afforded to the Structure Plan policies.

5 year housing land supply

- 7.20 The Council maintains that its approach to the setting of the interim housing requirement, and to supply figures, is credible. It has considered the most up to-date reliable evidence, and the housing trends depicted in the population figures. This evidence has informed its decision to apply the Structure Plan requirement, factoring in an upward projection to deal with existing shortfall. Similarly the Council's supply figures are calculated in conformity with the relevant guidance, including that in the Framework, and are as robust as is required.
- 7.21 The Inspector appointed to conduct this current inquiry reported to the SoS on an inquiry into housing on a site at Moreton in Marsh in 2011 (APP 3.5). She endorsed an approach based on projecting forward the Structure Plan housing requirement figure, and factoring in the shortfall to that date, just as the Council has done here. Although the Structure Plan figures were recognised to be "increasingly out of date", they remained a "useful starting point" for determining the District's housing requirement (APP 3.5, para 174).
- 7.22 At the time of that appeal, the data upon which the Structure Plan figures were based was 15 years old. At the time of this appeal, it is 16 years old. Something that is useful and relevant at 15 years old will not cease to be relevant just one year later, without any change in circumstances to justify such a conclusion. An alleged change of circumstances has been identified by the appellant: at the time of the Moreton in Marsh decision, the Structure Plan figures were not time-expired. That occurred in June 2011, at which point the appellant contends that the figures ceased to have any relevance.
- 7.23 However, this analysis ignores the fact that the figures applied at that time by the Inspector to the forthcoming five year period were about to become time-expired, and would have been regarded as time-expired for the vast majority of the five year period to which they were being applied. If purportedly time-expired figures could be relevant for the five year period from 2011 to 2016, there is no reasonable basis for saying that they are not relevant for a five year period from 2012 to 2017.
- 7.24 Categorising policies as "out of date" or not "up to date", based on a particular cut-off date specified in a plan, is misconceived. Planning policy is about approach, and as accepted in cross examination by Mr Lewis, who appeared for the appellant, it is possible for a policy to be old, but still be up to date in terms of current thinking.
- 7.25 It has been suggested that the Inspector's reasoning in the Moreton in Marsh case did not show she accepted that the Structure Plan figures (as updated) were the requirement against which the 5 year housing land supply was to be assessed. The Council disagrees. It is made quite clear that "more weight" was attached to those figures, with only a caveat that it seemed likely from the more up-to-date projection figures that the requirement would increase (APP 3.5, para 185). Nowhere is it said that the higher requirement from those figures applied. The appellant contends that the 2010 DCLG Household Projections (2008-based data) should be preferred to the "out of date" Structure Plan figures. But the equivalent figures at the time (2006-based data) appear to have been before the Inspector in the Moreton in Marsh case, and were not suggested as suitably forming the basis for the 5 year housing

land supply requirement. Similarly, the local household projection data were before the Inspector, and were not used (APP 3.5, paras 175-176).

- 7.26 Accordingly, around 18 months ago, in this same District, this same Inspector was presented with evidence on all fours with that which is before her now. There are no material differences justifying a departure from the approach she took then; indeed, it is if anything now more appropriate given the clear downward direction of travel evident from the local population data (LPA 1, paras 11.24 – 11.30).
- 7.27 It is noted that in an appeal decision concerning housing in Torbay, this same Inspector accepted a housing requirement figure based solely on the 2010 DCLG projection (APP 3.7, para 52). But in that appeal, the local planning authority was not making a case based on its Structure Plan or Local Plan figures. In any event, more weight should be given to the approach applied previously in this District, rather than that elsewhere. To take one approach in this District and to reject it two years later, in the face of comparable data sets, would require very soundly reasoned justification, based on clear changes in circumstance. Although the Inspector made passing reference to decisions being “site specific”, the Council respectfully notes that it cannot see how the particular nature of the appeal site under consideration could affect the housing requirement figure applied.
- 7.28 It is not disputed that the 2010 DCLG household projections are robust official figures, but they clearly have limitations in terms of their use. Mr Lewis agreed in cross examination that they are only intended to form part of the evidence base for housing figures, and that there is not a direct correlation between household numbers and new build dwellings required. There are, as was said, policy considerations and other factors to be applied to those figures. The Council submits that this is a good reason why they should not be applied as a starting point, and are more appropriately used as a reference.
- 7.29 A considerable amount of inquiry time was taken up by the appellant’s criticisms of the figures included in the 2010 and 2011 GCC local population and household projections. Broad points made against them were that they are not straight data because they take into account policy; that there is a lack of clarity about the purpose of their production; that they are not intended to replace the national figures; and that being ‘internal’, they are not subject to scrutiny.
- 7.30 Such points are either not borne out, or are found to be unfair, when one reads the documents as a whole. In particular, it was identified and agreed that the projections do not take into account policy; only Appendix 1 to the 2010 figures does that (CD 5.29). The purpose of their production is clearly to inform a range of services (and not just spatial planning services) of population figures, to enable them to plan properly for the likely needs of the area, in which regard it would be dangerous to ‘play down’ the likely figures. They are not intended to replace national figures, but national policy clearly intends that such figures might usefully be produced as a supplement, and local data plainly have advantages, in terms of precision, over national. Finally, while not independently or externally produced, the figures are nevertheless derived from a transparent methodology. Since they are expected to be subject to later examination as part of the LDF process, the Council would have no interest in making them anything other than robust.

- 7.31 However, all of this failed to recognise that the Council's sole purpose in producing these figures was simply to illustrate the direction of travel of household figures in the District, confirming that the housing requirement figure in the Structure Plan is not an unreasonable one to ensure a supply of homes to the District in advance of a full and robust Plan figure coming forward. It also serves to illustrate that the figures preferred by the appellant in fact reflect the likely current housing requirement less well than does the Structure Plan figure. The downward direction of travel was not, in substance, actually disputed, and considerable weight should therefore be attached to it.
- 7.32 As to the recent appeal decision at Siddington (APP 8.1), the "Reasons" section does not, contrary to the appellant's assertions, only contain the reasons for the decision. It sets out the cases for both sides. The only express conclusion is that there is "no certainty" that the Council's 5 year housing land supply is robust. The Structure Plan figures were not rejected as a starting point. The evidence was not subject to the extensive testing that takes place at an inquiry.
- 7.33 There is no basis for suggesting, in light of the general approach taken by other Inspectors, that paragraph 47 of the Framework requires an additional buffer of 20% to be applied to the District's 5 year housing land supply. It is accepted that there has in the past been some under-delivery, and that is why a residual figure has been added to the Structure Plan housing requirement figure, to result in the interim requirement of 325.3 dpa set out in the Council's 5 year housing land supply document (LPA 1.13). But that under-supply is not persistent. Last year was a "bumper year", in which the Council made significant progress on delivery. There have, as Mr Lewis fairly recognised, been fluctuations above and below the Structure Plan figure over both the last 5 year period and the last 10 year period. In the Sellar's Farm appeal decision (APP 3.6) the level of shortfall in housing delivery in the District of Stroud was not considered by the Inspector to constitute persistent under-delivery, and the level of shortfall here in this District is significantly less. It would be quite unfair to apply the 20% buffer requirement to this Council for a failure that is plainly less profound.
- 7.34 Save insofar as it is accepted that the number of dwellings deliverable on the Tesco site is to be reduced by 5, the Council maintains that its housing supply figures are robust. The appellant has conceded that all of the proposed units at South Cerney are deliverable, and the single remaining permission questioned by the appellant is that at Upper Rissington.
- 7.35 The appellant also contests the deliverability of the Northfield Garage site, on the grounds that it is owned by Tesco, which has permission to extend its existing store on to the site. There is no evidence from Tesco as to its intentions in respect of the land. The Council remains satisfied that the site can accommodate at least 10 dwellings, and there is no evidence that it cannot be so developed.
- 7.36 The appellant questions the deliverability of the SIAC/Matbro site because it is said that development would not be viable solely on the previously developed part of the site. However, the Council is currently in the process of determining a planning application in respect of that site which includes a part which has not been previously developed, and is for the same number of

houses. The Council maintains that the site that is the subject of that application is clearly suitable, available and viable (and hence deliverable), and that there is no reason to think that the total number of houses to come forward will be reduced.

- 7.37 In terms of the SHLAA sites generally, the appellant contends that the data cannot be regarded as sufficiently robust because there has not been a recent update. It has not, however, produced any tangible evidence which conflicts with the evidence of the SHLAA.
- 7.38 A finding that the Council does have a 5 year housing land supply would have serious implications for the appellant's case. Not only would it undermine its own rationale for making the application (to assist with the provision of 'much needed' housing in the area), but it would justify a substantial departure from the reasoning of the Inspector who determined the 2011 appeal (LPA 2.4).

Harm to the AONB

- 7.39 While the planning application now the subject of this appeal was made in outline, the decision on the appeal will establish the acceptability of the parameters of any development on the site. The decision maker has to be satisfied that what is proposed can be accommodated acceptably on the site, and must be influenced by the evidence that has been provided. If the indicative layout plan submitted by the appellant does not show how the proposed development could be acceptably accommodated, that casts doubt over the scheme as a whole.
- 7.40 The Council's case is simple: save in numerical terms alone, there is so little, in terms of the approach taken to the proposed built form on site, and the levels of open space, to distinguish the scheme before this inquiry from that before the 2011 Inspector, that it cannot reasonably be concluded that the objections that led him to refuse have been addressed.
- 7.41 The Inspector who determined the 2011 appeal considered the parameters of the development then proposed would be harmful to the AONB. This was on the basis of his concerns that its density would result in unduly excessive built development, leaving insufficient space in the layout for further planting and softening, and being out of keeping with neighbouring development (LPA 2.4, paras 16-17). The appellant appears now to contend that the density proposed for the appeal site would be the same as that at Southfields, although no calculations to support this claim have been seen. Contrary to the tenor of the appellant's evidence, the decision in this current case is in no way a 'done deal' simply because, in numerical terms at least, the density of the housing proposed has been reduced. But even in purely numerical terms of density, the proposed scheme would not be in keeping with that of the surrounding existing development.
- 7.42 The concerns of the Inspector who determined the 2011 appeal were founded on the basis of the information shown in the indicative layout plan provided in that case, an approach which has never been challenged as inappropriate. His findings, and his approach, are a material consideration in this current appeal. The harm that he identified must have been considered substantial, in order to be sufficient to outweigh the acknowledged benefits that would have arisen from that proposal in terms of contributing towards the shortfall in the 5 year

housing land supply, the visual improvements to the approach to Tetbury, and contributing affordable housing, as well as the presumption in favour of housing applications that then arose from paragraph 71 of PPS 3.

- 7.43 The Council was therefore right, in the context of the current proposal, to look at whether the concerns identified by the Inspector who determined the 2011 appeal had been addressed. The only way that this can be done is by reference to the indicative layout, to which the appellant has itself attached substantial weight. Evidence of the emphasis that the appellant places on the indicative layout, in support of the proposed development, can be seen, for example, in the production by its witness Mr Evers of coloured plans comparing the indicative layout of the current scheme with that of the 2011 appeal (APP 6.1). If the appellant did not think it appropriate to rely on the indicative layout, why then put in such detailed evidence about it. The Council has to deal with all the points put in evidence, and has done so properly.
- 7.44 Between the indicative layout considered in the 2011 appeal, and the indicative layout for the current proposal, there has only been one change of any real substance, which concerns the freeing up of some additional space in the south west corner of the site. Other than that, minor changes are spread throughout the site, and their overall impact is minimal. The evidence shows that the previous Inspector's concerns in 2011 about the amount of built development proposed on the site have not been addressed. There is no certainty that 39 houses can acceptably be accommodated on the site so as to address this concern.
- 7.45 Nor can the appellant justify the acceptability of 2.5 storey development on this site, to which the Design and Access Statement refers. Mr Evers could not say whether development of that nature would be acceptable. If at Reserved Matters stage the Council were to refuse permission for a design incorporating 2.5 storeys, the appellant could argue that the grant of outline planning permission established that the principle of 2.5 storey development on the site was accepted, and the Council would then be at risk of an award of costs against it, for not following the findings of the Inspector. The acceptability of 2.5 storey development was for the appellant to justify, and its own witness could not do it.

Conclusions

- 7.46 Although the Council's position is that the changes relating to national policy and the 5 year housing land supply position strengthen its case, it needs none of the findings on those points to go its way in order to succeed at this inquiry. It needs only to persuade the decision maker on harm to the AONB alone. If the presumption in favour of sustainable development applies, and there is not a 5 year supply, the background to the decision will in fact largely reflect the position that prevailed at the time the decision was taken.
- 7.47 Conversely, though, the Council would stress that neither does its case rely on the acceptance that there would be harm to the AONB. Were a finding made, contrary to that of the 2011 Inspector, that there was no harm to the AONB, the Council's decision could still stand if either the absence of any presumption in favour, or the presence of a 5 year housing land supply is accepted, reducing the weight to be attached in favour of granting permission.

8. The case for Hannick Homes and Development Ltd

Introduction

- 8.1 The starting point for the determination of any appeal is the Development Plan. But here, there isn't one. At least, certainly nothing up-to-date or remotely consistent with the need for a Development Plan which allocates land for housing. Both the Structure Plan upon which the Council continues to rely for its housing numbers, and the Local Plan which is meant to identify housing allocations, are now time-expired.
- 8.2 There are saved policies, and so there is an extant Local Plan, but it has become increasingly irrelevant, especially in terms of addressing the need for new housing sites. It has to be read in the light of the penultimate paragraph of the standard letter from Thoss Shearer of the GOSW (APP 3.9).
- 8.3 Specifically in terms of housing policy, and more particularly housing allocations, there is no meaningful local Development Plan. The last housing allocations were made 6 years ago, and no new land has been allocated since then. Worse, there has been virtually no progress towards identifying any new allocations: the Core Strategy has not even progressed to the stage of a preferred option upon which the Council could conduct consultation, and there is no Development Plan Document to identify the sites through which the Council could address the need for both market and affordable housing in the District. This situation is completely at odds with paragraph 12 of the Framework.
- 8.4 The appellant's view is that the Development Plan process in Cotswold District has literally collapsed. This collapse is not just a procedural flaw, it has real and significant consequences for the local area, local people and the growth which the Government so obviously requires. Paragraph 47 of the Framework requires Councils to boost significantly the supply of housing. That is simply not happening in Cotswold District, and the consequence reveals itself most obviously in the growing shortfall in housing land supply, which is now well below five years on the basis of any sensible requirement figure.

The acceptability of the appeal site and the proposal

- 8.5 This should have been a very simple case. There was an appeal decision in respect of the site barely seven months ago, in which the principle of development in the absence of a 5 year housing land supply was accepted by the Inspector. He accepted that "the loss of this field contained by existing housing would not result in harm to the adjacent countryside, if suitably landscaped and that it would acceptably round-off development in this locality" (LPA 2.4, para 14).
- 8.6 The acceptability of that previous scheme did not rest solely with the principle. In terms of the indicative layout, the wide area of open space containing the pond at the front of the development was judged positively in terms of its ability to "funnel views into the town from this southern approach". The Inspector also took a positive view of the "4m landscape buffer along the southern boundary".
- 8.7 It is clear from his decision that the Inspector's only concern was the density of the proposed development, and that should have been the only concern that

the appellant needed to address. He took the view that the development then proposed would give rise to an excessive amount of built form. He clearly felt that at a gross density of 31 dwellings per hectare, the unit density was too high and probably reflective of the old PPS3, which set a minimum density of 30 dwellings per hectare (CD 4.21). Every aspect of his concern is about the number of houses he would have been potentially allowing, as seen in his references to the indicative site yield figure in the SHLAA (LPA 2.4, para 15); neighbouring developments (LPA 2.4, para 17) and to the previous scheme that formed the subject of an appeal in 1989 (LPA 2.3).

- 8.8 The 2011 Inspector was not able to comment on the precise amount of built development because the scheme before him was in outline; layout, scale, appearance and landscaping were all Reserved Matters. But clearly he could see that giving permission for 54 dwellings was “likely to give rise to” (an entirely proper choice of phrase, in the context of a scheme submitted in outline) “an unduly excessive amount of built development” (LPA 2.4, para 17). He was concerned about what 54 units would mean at the Reserved Matters stage, and whether approving this number in outline would tie the hands of the Council to what, in simple terms, was just too many houses on the appeal site.
- 8.9 It was a clear invitation to the appellant to reduce the number of units in a meaningful way. That is what the appellant has now done, by reducing the proposed number of dwellings from 54 to “up to 39”. Reducing the number of units in this way was also how the professional Planning Officers of the Council have interpreted the decision, reflected in their recommendation to councillors for approval of the application. The 2011 Inspector’s conclusion that his decision was a “very finely balanced judgement” (LPA 2.4, para 17) was not an invitation to start all over again, as the Council’s witness suggested in cross examination. It was simply a plea to reconsider the density of the outline scheme, and that is what the appellant has now done.
- 8.10 All that is required at outline stage is the approximate location of the buildings, routes and open spaces included in the development, and the illustrative layout plan provides that. That the Council has the ability to address issues of design in the face of an illustrative plan that it does not favour is made clear in the Council Officers’ report on the SIAC/Matbro site (INQ 18). The approach there is entirely consistent with the views of the Council Officers on how such issues should be addressed at this appeal site; it is only the Council Members who took a different view.
- 8.11 The suitability of this appeal site, and the narrowness of the issues that should have been before this inquiry, are plain and obvious from the decision of the Inspector who determined the 2011 appeal. Moreover, the suitability of Tetbury as a location for new housing development, and the sustainability credentials of the site, are also addressed in that decision. These issues are largely agreed in the SoCG (INQ 1).

Development Plan Policy

- 8.12 As a greenfield site outside the settlement boundary, the principle of releasing the site for housing is obviously subject to the Council not having a 5 year housing land supply. But subject to the absence of a 5 year housing land supply, the principle of housing development has already been found judged

acceptable. Since the 2011 appeal decision we now also have the benefit of the SoS' very clear reasoning in the Bishop's Cleeve decision (APP 8.2). Significantly less weight can be given to conflict with the Development Plan in terms of a site being located outside the settlement boundary in the countryside, if the Development Plan is not up to date.

- 8.13 The current appeal site is within the AONB, and it is agreed in the SoCG that the proposed development is not "major development" within the AONB (INQ 1, para 6.4). The 2011 Inspector specifically considered the development then proposed in terms of the harm it would cause to the AONB (LPA 2.4, para 11 et seq). His conclusion was that there would be no harm to the adjacent countryside.
- 8.14 Structure Plan Policy NHE4 says that the enhancement of natural beauty is to be given priority over other considerations, but there is nothing more specific. Plainly it is not an embargo on development, and it follows that less weight can be given to it when the Council does not allocate appropriate land for housing. In the context of Tetbury, what is particularly important is the fact that the whole town is washed over with the AONB designation.
- 8.15 However, both LP Policy 19 and SP Policy NHE4 must be seen in the context of their respective elements of the Development Plan now being time-expired in terms of addressing housing needs. It is not that these policies are inconsistent with the Framework: to that extent, the conclusion in paragraph 3 of the Coberley decision (INQ 22) is not contested. Nor is it argued that there is anything other than conflict with these policies when they remain saved. But the critical issue is the weight to be given them, in circumstances when the Development Plan has become time-expired and there is no plan in place which is appropriately allocating land for development to meet identified needs. This issue has now been answered with absolute clarity by the SoS in the Bishop's Cleeve decision. In such circumstances, the weight to give all such policies "should be significantly reduced" (APP 8.2, para 17).
- 8.16 LP Policy 19 is particularly pertinent here. In answer to the Inspector's question on how to interpret paragraph 49 of the Framework, Mr Lewis made his view clear that LP Policy 19 is directly related to "relevant policies for the supply of housing" because the policy explicitly seeks to restrict market housing throughout the entire District in the wording of its part (a) (that being the list of what is not to be allowed outside of settlement boundaries).
- 8.17 In the appellant's submission, the same applies to SP Policy NHE4. Since Tetbury, and much of the Cotswold District as a whole, is washed over with the Cotswold AONB designation, development in the AONB is inevitable. The fact that the designation covers the entire town serves to reinforce Mr Evers' point that the AONB designation is not simply about undeveloped fields, but also the buildings, and more particularly the interface between the two (CD 5.34, APP 6.5).
- 8.18 The only alternative is to put all new development outside the AONB, in the small part of the District which is not covered by the designation. But the Council has already given reasons why that is not appropriate, in its Second Issues and Options Supporting Information document (CD 2.3, p 35).
- 8.19 Of course, there is no way of knowing whether that option will continue to be rejected by the Council and local people. There has been no progress on the

Core Strategy since that document was produced, and no preferred option has emerged. Until they progress a Core Strategy or Local Plan, the Council cannot provide the SoS with any guidance on whether that is acceptable. Hence the SoS has also made it very clear, through his Bishops Cleeve decision, that although allowing appeals appears to undermine the local democratic process and the planning system, the desire to give local people more say carries with it the responsibility to ensure that Local Plans are prepared expeditiously to make provision for the future needs of their areas (APP 8.2, para 32).

- 8.20 In terms of the AONB designation, the proposal brings with it many advantages. In the context of the housing being needed, it creates an attractive open space at the front of the site, while also funnelling the view. It will offer a more attractive entrance into the town than that which currently exists. The Council argued that Mr Evers only recently decided to highlight the advantages which the development would bring in terms of addressing this unsatisfactory visual gateway to Tetbury, but this features in the 2009 Landscape and Visual Appraisal (APP 6.4, paras 7.4 and 8.3), and is another example of the issues that should not have been taken by the Council at this inquiry.
- 8.21 In line with SP Policy NHE4, the proposal does actually offer some enhancement to the AONB. That is not the justification for the proposed development; that lies with the absence of a 5 year supply of housing land. But the ability to improve the approach to Tetbury is a benefit to the AONB which would arise out of the proposed development.

The National Planning Policy Framework

- 8.22 The Council try to argue that less weight can be given to the 2011 appeal decision, because that was made in the light of the guidance of PPS 3, whereas this current appeal decision will be made in the light of the Framework. It is suggested that the favourable consideration of the last appeal, derived from the requirement of paragraph 71 of PPS 3, no longer applies and as such this proposal should now be refused.
- 8.23 What that analysis fails to recognise is that paragraph 71 of PPS 3 only required favourable consideration of housing applications. Decisions remained subject to all other material considerations and, more particularly, paragraph 69 of PPS 3, which made it clear that conflict with the spatial strategy for the area was also relevant. The significance of paragraph 69 featured heavily in the Moreton in Marsh decision (APP 3.5, para 189 et seq). LP Policy 19, which seeks to prevent market housing outside settlement boundaries, and SP Policy NHE4, which seeks to restrict development in the AONB, form part of that spatial strategy for the Cotswold District. Conflict with these policies existed at the time of the 2011 decision, but despite that the Inspector still felt permission should be granted. Therefore to assume that paragraph 71 of PPS 3 gave an unqualified presumption in favour of development, as the Council appears to do, would be quite wrong.
- 8.24 The Council appears to be trying to equate paragraph 71 of PPS 3 with paragraph 14 of the Framework. From that they argue that the presumption in favour of sustainable development does not apply here because of the last part of paragraph 14, in particular the last bullet point read with footnote 9. It

would appear that the presumption does not apply in the AONB, even if the Development Plan is absent, silent or relevant policies are out of date. The appellant has accepted that, although it notes that the clarity offered in respect of the Birds and Habitats Directive (also part of footnote 9) at paragraph 119 of the Framework is absent in respect of AONBs. The appellant's case at this appeal proceeds on the basis that the proposed development does not enjoy the paragraph 14 presumption in its favour.

- 8.25 But that is not the end of the decision making process, and it does not mean that development for new housing should be refused in the AONB. Far from it. As footnote 10 of the Framework makes clear, nothing about the presumption in favour of sustainable development changes the need to take account of the normal planning balance exercise. This requires all relevant material considerations to be weighed in the balance. The Framework plainly could not require or dictate anything else in the light of the legislation, and in particular Section 38(6) of the Planning and Compulsory Purchase Act 2004.
- 8.26 As with any other planning application or appeal decision, conflict with the Development Plan must be weighed against material considerations. The key material consideration in this appeal, as in so many appeals at present, is the absence of a 5 year supply of housing land. Given what is stated in the Framework at paragraph 12 ("it is highly desirable that the Council should have an up-to-date plan in place"; paragraph 17 ("deliver the homes that the country needs"); paragraph 47 ("boost significantly the supply of housing") and paragraph 49 (housing policies not to be judged up-to-date if the Council cannot demonstrate a 5 year supply of housing land), the weight to be given to the absence of a 5 year supply of housing land must be very significant.
- 8.27 Mr Smith argues for the Council that the weight increases depending on the size of the shortfall in the 5 year housing land supply. If that is right, then it becomes all the more pertinent for the decision-maker to be clear about the scale of the shortfall. The Council and the appellant agree that clarity through the appeal process about precisely what the housing requirement is based upon, whether or not there has been "a record of persistent under delivery" (per paragraph 47 of the Framework), and the precise quantum of the housing land supply, is desirable. The appellant submits that this becomes even more important in a recovered decision, where the Inspector who hears the evidence is not the decision maker.

The evidence on the supply of housing land

- 8.28 As with PPS 3, the Framework requires the Council to demonstrate "five years worth" (paragraph 47) of specific, deliverable housing sites against their housing requirements. But the Framework also introduces an additional requirement for either a 5% or a 20% buffer.
- 8.29 For the avoidance of any doubt, the appellant's case is that the Cotswold District has a housing land supply of only 2.15 years. That is based on
- a housing requirement based on the 2008 DCLG household projections published in November 2010 (INQ 6, Table R1 Column D);
 - a 20% buffer, due to the Council's persistent under-supply over the last 10 years;

- inclusion of the 3.2% addition for second homes, because the Cotswold Water Park does not address the demand for second homes throughout the District; and
 - accepting most of the Council's figure on the supply (which has been done for the sake of convenience to get the inquiry completed in light of the state of the Council's 5 year supply), but allowing only 200 of the 368 for Upper Rissington in the next 5 years (so a deduction from the Council's supply figure of 1724, to 1556).
- 8.30 Even if only a 5% buffer is added, the figure is 2.45 years: less than half that which it should be. These figures do not appear in the submitted Housing Requirement Tables (INQ 6, INQ 19) because the appellant is not pursuing the deduction of 246 of the units which represent the difference of 414 set out in the tables. Even if the Council's entire supply figure of 1724 is accepted, the supply is still only 2.56 years with a 5% buffer, decreasing to 2.24 years if a 20% buffer is applied. Even if the Council's approach on second homes is accepted as well as their full supply figure, the supply is still only 2.68 years with a 5% buffer, and 2.34 years with a 20% buffer (INQ 19, Table R4 Column D).
- 8.31 It becomes very clear that on any of these figures, the Council has approximately a 2.5 year housing land supply, and certainly well below 3 years.
- 8.32 It is the absence of a Development Plan allocating land which has, unsurprisingly, given rise to this shortfall in supply. The shortfall was first revealed most clearly in the Moreton in Marsh decision (APP 3.5), and then again in the Upper Rissington appeal decision (CD 6.43), and very recently in the Siddington appeal decision (APP 8.1).
- 8.33 The only response the Council appears to have is to cling to the remains of the Structure Plan. That was adopted in 1999, making it now 13 years old. It is time-expired. But most relevant of all in terms of a housing requirement is its evidence base of household projections from, at best, 16 years ago (APP 8.3, para 6.4.1). The Council's continued reliance on household projections from 1996, despite their antiquity and despite being time-expired, is untenable. Not least because there is now available (since November 2010) household projections with a base date of 2008. Reliance on these figures is not only untenable, it is plainly unreasonable. Yet despite numerous decisions across the South West of England, in which the old Structure Plan figures have been firmly rejected time and again in appeals, some Councils still try to rely on them and will continue to do so until they are told that it is unreasonable to do so.
- 8.34 The Council's case, in terms of its 5 year housing land supply, is not entirely clear. Its case as to the actual basis for its housing requirement is both confused and confusing. All of the Council's calculations are based on the Structure Plan, including all the monitoring work. Its recently published document "5 Year Housing Land Supply: June 2012" (LPA 2.13) sets out the Council's 5 year housing land supply calculation at p.10. It is solely based on the Structure Plan. Mr Smith relies on this; he sets it out at p.51 of his proof, and in cross examination (day 1) confirmed that this was the Council's case. But in the table at p.59 of his proof, and as confirmed in cross examination on day 2, he places reliance on more recent household projections. This is

explained at paragraph 11.24 of his proof. But as if to emphasise that this is not really the Council's case, his table provides only the basic figures and there is no attempt to calculate the actual supply measured in terms of years.

- 8.35 So the appellant is left wondering. Does the Council base its case on the 5 year supply calculation shown in Mr Smith's proof and the Council's "5 Year Housing Supply" document, or is it something else based on more recent household data. There is a complete lack of clarity.
- 8.36 On any figures other than those of the Structure Plan, Cotswold District does not have a 5 year supply of housing land, which ever way the numbers are approached. That is very evident from Tables R3 and R4 of the SOCG on housing numbers, and Mr Smith accepted in cross examination that it is the case.
- 8.37 For the avoidance of doubt, the appellant's case is that the 1996 household projections relied upon in the Structure Plan are not adequate or up-to-date (per paragraph 158 of the Framework). As Mr Lewis made clear, the same view is taken of the 2004 household projections produced by DCLG and used in the draft RSSW. That is why the appellant does not rely on that figure. The most up-to-date DCLG figures are the 2008 household projections, published in November 2010. There are no more recent DCLG household projections.
- 8.38 In his own decision, it would be odd if the SoS did not base his decision on his own department's own statistics. Especially given the fact that the Gloucestershire County Council figures expressly make clear that they are at odds with the DCLG figures (LPA 2.18 p 4). The importance and relevance of the DCLG figures is explained in detail on pages 12 and 13 of the 2008 ONS-based document (LPA 2.17):
 - they provide consistent national, regional and local projections;
 - the projections should be used as part of the evidence base regarding the future demand for housing that would arise as a result of the demographic trends;
 - the data has a range of users, including the SoS for the DCLG;
 - it is specifically referred to as relevant to PPS3 (as planning policy for housing then was) because of the requirement that regard should be had to the assessment of future housing requirements in local strategies;
 - the quality of the data is described on page 13 as being produced by "highly professional standards set out in the Code of Practice for Official Statistics";
 - they undergo regular quality assurance reviews;
 - the work is undertaken by two independent companies, Experian and Oxford Economics;
 - they are quality assured by an independent Steering Group, including experts from various leading universities and DCLG itself;
 - once prepared, the statistical release is subject to peer review before being cleared for publication.
- 8.39 In contrast, with the Gloucester County Council in-house figures
 - there is no evidence before this inquiry that they are subject to any quality assurance, independent scrutiny, code of practice or peer review;

- unlike the national statistics, they do not purport to be consistent with anything else;
 - reading the Executive Summary, it is not entirely clear what is their exact purpose, it being said they are forecasts which “they may wish to take account of in some service planning situations”;
 - their purpose is expressly acknowledged not to replace the official projections;
 - it is described as an alternative forecast;
 - Mr Smith accepted in cross examination that they should be subject to independent scrutiny, and also accepted that as far as he was aware, there has been no independent scrutiny.
- 8.40 The appellant submits that it would be extremely unsafe to rely on these Gloucestershire County Council statistics in preference to the DCLG household projections, given all of the above. Particularly as reliance on such local figures, at odds with national housing figures, is precisely the sort of evidence which should be tested at a Core Strategy or Local Plan Examination in Public, where it would be made subject to the test of soundness.
- 8.41 The concerns about relying on the 2010 population figures when they have not been converted into household figures by DCLG were expressed and adopted by this Inspector in the Torbay appeal decision (APP 3.7, para 51). In this current appeal, the population figures have at least been converted into household figures. But the very fact that they are expressly purported to be at odds with the DCLG figure would be one very good reason to treat them with immediate caution. Where the Council relies on these GCC figures is not entirely clear, since the Council accepts that it does not have a 5 year supply of housing on any measure.
- 8.42 The Siddington appeal decision (APP 8.1) is further confirmation that the Council does not have a 5 year housing land supply. Mr Smith appears to disagree, but the appellant’s position is that it is impossible to read that decision and believe the Inspector did not find there was no 5 year supply. The fact that the appeal was allowed, on a greenfield site outside the settlement boundary, reveals all that really need be known about that particular decision. At paragraph 16 the Inspector raises a concern about the Council’s under-delivery, and while the precise words of the Framework are not used, it is very clear that she did not consider it an acceptable record on delivery. Mr Smith’s contention that this was not part of the Inspector’s reasoning is simply a deliberate misreading of the decision. The best way to judge that is to look at how the Council Officers have interpreted that decision in the Committee report on the SIAC/Matbro site (INQ 18).
- 8.43 The Inspector in the Sellars Farm case took a different view, even with a shortfall against the Structure Plan of 360 dwellings (APP 3.6, para 12). That is more than a little surprising. The Inspector appears to have erroneously placed weight on the recession to excuse that shortfall. Economic circumstances, however, form no part of national policy. That decision could

not be challenged by the appellant, as it won the appeal¹. Moreover, the appellant's case in that inquiry was based solely on the Structure Plan figures. In contrast, there is in this current appeal another useful way in which to judge the record of housing delivery in the Cotswold District. That is to measure the performance against the appellant's requirement figure, which is the DCLG 2008 household projection figures, and as Table R1 (INQ 6) shows, the annual figure is 453 per annum. That figure was only reached (and exceeded) in one year during the currency of the relevant period (2006 onwards) to which those household projections apply.

Supply

- 8.44 At this inquiry there has been little argument over the supply of housing. All that stands between the parties is 414 units. Given the state of the Council's 5 year housing land supply on everything other than the Structure Plan requirement figure, the appellant elected, before and during the inquiry, not to argue over most of the supply.
- 8.45 The one area where there is an issue is the figure for Upper Rissington. The principle of including the site in the supply figure is not in issue, because it has outline permission. But the appellant does not agree that the entire site of nearly 400 units will be delivered in the next 5 years, when no Reserved Matters have yet been submitted. The Council relies on an e-mail from one of the developers saying they will submit a Reserved Matters application in mid-August, start delivering houses next year and thereafter deliver 100 a year (INQ 13). But such an e-mail should be treated with some caution; there is no guarantee that the Reserved Matters application will be submitted. The appellant has provided its own statement on delivery (APP 8.8).
- 8.46 The SIAC/Matbro site does not yet have planning permission. If the current application is successful, it may well form part of the District's housing supply. But it should be noted that most of the proposed houses are on the greenfield part of the site; the inquiry was informed this would be the location of two thirds of the 174 units.

The Council's Interim Housing Guidance Note

- 8.47 The Council recognises the need to release sites for housing because of the absence of a 5 year housing land supply. Mr Smith accepted in cross examination that little weight could be given to the CDC Interim Housing Guidance Note (LPA 2.11), in light of the fact that it has not been subject to any public consultation. Mr Smith offered the view that the 12 criteria set out in this document should be taken in the round, rather than as cumulative criteria, all of which must be met. He took the view that the currently proposed development only conflicts with criterion 7. Mr Smith accepted that the criteria requiring priority to be given to previously developed land is not consistent with the Framework, and should now be viewed in the light of the very recent SoS decision in Salford (INQ 17).

¹ You cannot appeal a decision you win: R (Redditch Borough Council) v First Secretary of State [2003] 2 P&CR 338.

- 8.48 The issue of affordable housing, which is the subject of a separate SoCG (INQ 3), is another important material consideration in favour of this proposal. The Council does not dispute the need for more affordable housing at Tetbury. The annual need in Tetbury and the surrounding wards is 54 per annum according to the latest information from the Council's Housing Officer (INQ 20).

9. The cases for interested parties

Oral representations made in addition to those of the main parties are summarised below; where speakers made the same points, these are not repeated in this report. Copies of the speaking notes and supporting material provided are attached as documents (INQ 8-10, INQ 14-16, INQ 21 and INQ 24).

Ms L Morgan, representing STEPS

- 9.1 STEPS represents 274 people who have signed up to our website to oppose this and other greenfield planning applications. We support brownfield developments, for our town's sustainable growth. As these sites sit within the town's boundaries, new residents would be able to access its services and facilities without necessarily using their motor vehicles; Tetbury suffers greatly with gridlocked roads. The development of brownfield sites also has the advantage of improving areas in the town for everyone.
- 9.2 The government also wants brownfield sites prioritised over greenfield sites, therefore the application currently before the District Council, to develop the SIAC/Matbro site, makes much more sense as a way forward.
- 9.3 The site proposed in this current appeal is in an AONB, and should be protected for future generations. Regard must be given to the people who live and work here, and those people do not want this development to go ahead. Tetbury is at present drawing up a Neighbourhood Plan that will inform our future in the town. So surely now is not the time to be allowing this development.

Mr E Thornton, local resident

- 9.4 The introduction of the Framework is a recent change, which happened after the previous appeal on this site was decided. The Framework recognises the intrinsic value of undesignated countryside, which, if it applies outside an AONB, then more so inside. In the previous appeal it was suggested that this field was not high grade agricultural land. Neither is most of the Cotswolds, being more suited to pasture, but that is not the reason it is an AONB.
- 9.5 Earlier assessments commenting on the existing developments along Berrells Road describe them as an encroachment, a false introduction to the town, and the Southfields development as stark. The proposed new development would greatly increase the size of the false introduction and the time taken to drive past it.
- 9.6 The short drive past the present Berrells Road development is rewarded on the descent to the Bath Road Bridge by the momentary and iconic view to the left of the old part of the town across the small valley. This is best seen on foot from the left hand side of the bridge, where there is no footpath. There has been considerable local complaint about the expected increase in road traffic

impacting on either end of Long Street, which has to date been ignored or dismissed, as also has the effect on pedestrians.

Mr B Lunn MRICS, local resident

- 9.7 Reforms to the planning system emphasise that they place considerable power in the hands of local people to shape the places in which they live. The people of Tetbury have expressed over many years their rejection of this site for development. It is outside the development boundary, in an AONB, and would constitute an encroachment of built development into the open countryside.
- 9.8 This site is not sustainable because it would necessitate vehicles having to be used, due to its remoteness from all necessary amenities for normal family life. Pedestrian access to the town is via a very narrow footpath over Bath Bridge on the busy A433, which is only safe if you walk in single file, due to the danger of overhanging lorry wing mirrors. An application to build an 82 unit Nursery, to the north of Tetbury, was approved by the Council in May this year. This is another facility inaccessible by foot from the appeal site, as it would involve a 3 mile return journey, and so could necessitate the need for a second car.

Ms A Mills, landscape architect and local resident

- 9.9 Some uncharitable opinions have been expressed about the existing development on Southfields. The current view of this development on the approach to Tetbury is not unusual; it is of the rear elevations of the houses, and the planting in their rear gardens. It is not perhaps the best view, but it is an expected view. As a result of the development currently proposed, 16 further elevations would be visible from the approach, and urban development would be pushed out further into the countryside.
- 9.10 The main concern is the AONB. This needs to be protected not only for its natural beauty, but also for the open space it provides, and the important role it plays in meeting the needs, of visitors and residents alike, for quiet enjoyment of the countryside.
- 9.11 The appeal site is just a field in the Cotswolds, with stone walls and a stone barn. It is not extraordinary in itself, but as part of an unbroken tapestry of fields, hedgerows, walls, footpaths and trees it is of immense intrinsic value as part of the AONB. Incremental destruction of the countryside doesn't benefit anyone, it just dilutes what we hold most dear, what gives us quality of life, the air we breathe and the rural context to our lives.

Ms D Hicks, Councillor

- 9.12 This proposed development, on a greenfield site on the outskirts of Tetbury, is on the wrong side of town. The access through our beautiful market town down Long Street is often congested, and the alternative route to the school via Cutwell, which has no footpath at all for a long stretch of the road, could easily become a rat-run at peak times.
- 9.13 Alternative sites have been identified nearer to the schools, to the shops and to the centre of town. They are within level walking distance of most of the facilities that Tetbury has to offer. We need to take care of our old market towns, and the surrounding countryside, and to plan their development

sustainably and sympathetically, in order to inspire future generations to do the same.

Mr R Levin, on behalf of Tetbury and District Civic Society

- 9.14 The Civic Society has 125 members. Conscious of this Inspector's request not to merely repeat the content of written representations already submitted, we wish to reiterate one point: disappointment with the previous Inspector's rejection of the unanimous opinion (of the District Council, Town Council, residents and Amenity Societies) that development of this site would be detrimental to the AONB and would impair the soft approach to the town from the south east. Because of the medieval structure of the town centre, there is only very limited scope for infrastructure improvement, and the town has a finite capacity for parking and traffic absorption.
- 9.15 If confusing deliberations regarding the adequacy of the 5 year housing supply show that there is a shortfall, we believe it is fundamentally wrong that a green field in the AONB should be developed merely because other brownfield sites have yet to come forward elsewhere in the District. Tetbury Town Council has been successfully proactive regarding the brownfield SIAC/Matbro site. It would be unfair to punish Tetbury because the District Council, or other Town Councils, have not been as proactive.
- 9.16 If the decision is to approve, we ask that you consider the following detailed aspects. Three storey units are inappropriate; car ports should be set further back from the northern boundary, otherwise the reinforced screen will shade south-facing gardens on Southfields; the number of houses should be reduced to 30 as a result; there is a need to address the problem of pedestrian access to the town, about which the previous Inspector was flippant; there is no pedestrian crossing over the A433; and the narrowness of the footpath (0.87m) prevents use by wheelchairs or pushchair/child combinations. We believe that higher S.106 contributions should be required, to address the problem of the narrow footpath and lack of crossings.

Mr S Hirst, District and Town Councillor

- 9.17 The Town Council is concerned about the adverse impact of the site for highway safety, and has provided the inquiry with illustrative photographs. The entrance to the site would be on a fast road, and the development would increase the risk of accidents. Looking right from the entrance would be a blind bend, and to the left a bus shelter would impede visibility. There is a traffic blind spot, leaving and entering Berrells Road, that this development would duplicate. Vehicles turning right into the site would also increase the risk of conflict.

Messrs N Cook, S Keitley and P Martin, representing BRAG

- 9.18 BRAG consists of around 110 members, who oppose this appeal. It would appear that both the Council and the appellant are ignoring the existence of a perfectly viable brownfield site, which has the support of the District and Town Councils, and is within the development boundary. That site provides a great deal more housing than required under the current remit, meets the criteria of sustainability, and accords with the objectives of the Framework.

- 9.19 The appellant has not conclusively demonstrated that CDC cannot demonstrate a 5 year supply of housing land. It seems there is no Central Government methodology to define the correct way to determine a five-year plan, or funding to drive it. This would indicate that the calculation process is more of an art form than an exact science, and perhaps it has to be accepted that the process is woolly at best. You cannot determine the calculation of ranges of figures to a decimal point, and so the figures quoted are irrelevant and arbitrary, and the supply position will be a continuously moving target.
- 9.20 The appellant has claimed that there has not been a challenge to the principle of development on the site when in fact there has. The last two planning committees have both challenged the principle of development on the site on sustainability and AONB grounds. The site is in an area of land that has never been earmarked for development (although it has been identified in the SHLAA) and is in an AONB. The Framework makes it clear that the "presumption in favour of development" at paragraph 14 does not apply if a site is within the AONB (footnote 9 to paragraph 14).
- 9.21 The development of our Neighbourhood Plan, under the framework of the National Planning Policy Framework, is in process but it will take at least 12 months to complete, and paid-for resources are non-existent. We have been given an opportunity to determine our future, please allow us to go through the process, and deny random, speculative applications like this one until such time as they can be judged against truly local community-led plans.
- 9.22 The development of 39 houses on a greenfield site on the edge of Tetbury cannot meet the Framework's aspiration to achieve sustainable development. The appellant's proposal has not demonstrated any of the sustainability remits. The developer has not offered or engaged in any consultation with the local community, and has not demonstrated how this development would enhance the community or the surrounding area.
- 9.23 The site could clearly meet its density objectives by having a tower block stuck in one corner, or two rows of back to back terraces. Of course these would not be appropriate, but neither would any form of development as previously advised.
- 9.24 The appellant claims that this development would improve the visual impact of this part of Tetbury on the grounds that the current development at Southfields is "harsh". But if the appellant considers that adding green space and planting trees is necessary to mitigate the impact of its proposed development, it follows that logically the best way to mitigate what is already there is to leave the existing green space and to plant extra trees on it. In admitting that its proposal needs extensive landscaping, the appellant is also admitting that any further development is intrinsically harmful to the rural landscape. The existing approach to the town is more than acceptable, and has been for over 25 years in its current guise.
- 9.25 If this site is granted permission, a precedent will be set for an even bigger urban infill on this side of town to be exploited, and any location where there are two boundaries with existing adjacent development.
- 9.26 Although the Highway Authority has raised no objection, we believe its paper assessment of the proposed access road was rushed through due to an error in

notification and does not reflect the actual situation on the ground. The 1989 appeal specifically called for a right turn lane at the entrance to the proposed site, which the Highway Authority has never commented upon in subsequent applications.

- 9.27 The answer to the question "is the appeal site any worse than anywhere else in Tetbury?" is yes. There are numerous other greenfield sites round town which are not only bounded on more than one side by existing development, but which are attached to the main body of the town and afford far greater sustainability due to their proximity to services and amenities. The existing development that borders the appeal site is substantively separate from the rest of Tetbury, and this constitutes a reason in its own right for refusing consent.
- 9.28 It has never been denied that there are multiple alternative sites in and around Tetbury with development potential. Some are similar to the appeal site in terms of being greenfield and within the AONB (as is the whole area), there are marked differences in terms of being within or outside the development boundary, and the sustainability benefits afforded by their proximity to local services and amenities. These differences are reinforced by clear directions in the Framework; brownfield sites within the development boundary, and which offer considerable benefits towards sustainability, are to be given greater weight than those which cannot demonstrate such characteristics.
- 9.29 As an example, this appeal site and the proposed development site at Highfield Farm are both greenfield, but are starkly different in terms of their proximity to principal amenities and in their capacity to deliver new homes. The SIAC/Matbro site is brownfield, and within the development boundary. It is clear that a hierarchy of desirable planning benefits exists that would suggest very strongly that a sequential approach to development in Tetbury would be rational and entirely practical.
- 9.30 What we would like the Inspector to consider (and to put to the SoS) is the idea that in circumstances where there is a clear hierarchy of planning benefits suggesting a rational preference for one site over another, and sites that are equally deliverable, a Guidance Note is issued to allow Councils to make a preferential choice in line with a rational assessment of all relevant policies. To fail to do this would be to create a de facto system of "first come first served", which would be highly detrimental to the broad aims of the planning process.
- 9.31 It is our view that consent for housing development should not be granted, regardless of any shortfall in housing supply, until such time as all other more suitable sites (those which would cause less harm to the landscape, and offer greater material planning benefits) have been developed.
- 9.32 As residents we have witnessed the complete breakdown of the formal planning process, caused not by us but by political initiatives beyond our control, and by an understandable failure of the Council to adapt to a new process in time to prevent the old one lapsing. We feel very vulnerable to numerous developers seeking to exploit a legal technicality in order to surround our homes with development which would not be allowed if this temporary situation did not exist. We feel we are entitled in law to expect

some protection from this by the planning system. We do not consider that the absence of a five year housing land supply in any way mitigates the harmful impact of the proposed development, nor does it absolve the relevant planning authorities from determining the appeal using the full range of policies and considerations at its disposal.

10. Written representations

- 10.1 56 letters of objection to the proposed development were received by the Council at the application stage (collected in Folder TP 1), and 44 by the Planning Inspectorate at the appeal stage (collected in folder TP 2). Many of these set out similar concerns to those subsequently articulated by the local residents who spoke at the inquiry, as outlined above.
- 10.2 Other matters raised were the lack of local employment for the new residents; the impact on existing infrastructures such as local schools, hospitals and GP surgeries; the impact on wildlife; the effect that the proposal would have on the character of the town; the potential for traffic congestion on Bath Road and elsewhere; the impact of the development upon the Council's stated aim of reducing the carbon footprint of the area; loss of privacy and increased noise and disturbance for neighbouring residents; the effect the proposal would have on tourism; the absence of recreational opportunities for young people in Tetbury; the impact on historic listed buildings; the inadequacy of existing public transport provision; and concerns about flooding and drainage.

11. S.106 Obligation

- 11.1 A Unilateral Undertaking (INQ 4) was submitted by the appellant and discussed at the Inquiry. An amended version of the Unilateral Undertaking, reflecting those discussions, was subsequently executed and submitted by the appellant (INQ 31). In summary, this Undertaking binds the appellant, should the appeal succeed, to
- the on-site provision of 16 units of affordable housing;
 - providing, and securing the maintenance of, the open recreational space within the development;
 - payment of £5,000 to cover the cost of reducing the speed limit on Bath Road within the proximity of the development;
 - payment of £7,557 towards supporting existing bus services in Tetbury; and
 - payment of £6,000 for the provision of bus shelters within the proximity of the development.
- 11.2 The Undertaking sets out the tenure mix and floor area of the affordable dwellings to be provided, and makes provision to secure their future affordability. The Council has confirmed that the terms of the Undertaking meet its requirements in this regard, and it is apparent that the provision made for affordable housing accords with LP Policy 21 and the Affordable Housing SPD. The Undertaking also secures the ongoing future maintenance of the Open Space within the development by a Management Company, which meets the objectives of Local Plan Policy 34. In these respects I am satisfied that the provisions of the Undertaking accord with the statutory tests, set out

in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010, as being necessary, directly related to the development, and fairly and reasonably related to it in scale and kind.

- 11.3 As regards the financial contributions for which the Undertaking makes provision, I am told that £5,000 is the cost, calculated by the Highway Authority, of extending the part of Bath Road covered by the 30mph speed limit to include the vicinity of the appeal site. The Highway Authority's advice is that this would need to be done in the interests of highway safety, to ensure that traffic would be travelling at an appropriate speed within the vicinity of the access to the development. On that basis I agree that this sum is necessary, and directly, fairly and reasonably related to the proposed development.
- 11.4 It is not entirely clear to me, from the evidence provided, why bus shelters at existing bus stops would become necessary as a direct result of the proposed development, or why developers of new housing should be expected to make a financial contribution to "support existing bus services" because the County Council has decided to cut existing bus subsidies by 40%. The terms of CIL Regulation 122 indicate that contributions required toward transport infrastructure ought to be restricted to the sums necessary to offset the impact of the particular development proposal, rather than used to fund services and improvements which, however welcome they might be to the community as a whole, are only tangentially related to the development in question.
- 11.5 However, the occupiers of the new dwellings would clearly place increased pressure on the existing transport infrastructure, and it is reasonable to require some financial mitigation in this respect. The calculation for the requested transport contribution is based on the number of predicted future occupiers, and the supporting text to LP Policy 49 makes it clear that planning obligations may be used to secure improved accessibility by public transport, and reduce the need to travel by private car. On balance, given that these financial contributions appear to be required to enable the proposal to comply with those aims, I find that the bus stop and transport contributions can also be considered to meet the tests of Regulation 122.
- 11.6 As a result I conclude that the Undertaking can, in its entirety, be taken into account in determining this appeal.

12. Conditions

- 12.1 The SoCG contains a list of draft conditions (INQ 1 App 2), 15 of which were agreed between the Council and the appellant, and 3 of which were suggested by the Council but not agreed by the appellant. These were discussed by all parties at the inquiry. I have amended the construction or content of some conditions, amalgamated others and altered their phraseology, following discussion or on the basis of the advice included in Circular 11/95 *The Use of Conditions in Planning Permissions*. The list of conditions thus amended is attached as Appendix C to this report. I recommend that the conditions in this Appendix be imposed if the Secretary of State decides to allow the appeal and grant planning permission for the proposed development.
- 12.2 The application was submitted in outline with matters of appearance, landscaping, layout and scale reserved for future determination, so it is

necessary to attach the standard conditions setting out the timetable for submission and approval of these reserved matters.

- 12.3 The Council sought a condition requiring future applications for reserved matters to accord with drawing no. 09.064.APP 2-SK2 (the Site Layout Plan dated October 2010). However, at all stages of the application and appeal the appellant made it very clear that this is simply an indicative plan, for illustrative purposes only. Accordingly, I agree with the appellant that since layout is a reserved matter, it would be inappropriate to bind future development to a layout that was only ever intended to be indicative of what might be done [13.48, 13.49].
- 12.4 I have however adopted the Council's proposed wording for a condition requiring the reserved matters to comply with the principles and parameters set out in the DAS, as these are fundamental to the acceptability of the scheme and its visual impact on the surrounding area. For similar reasons, I have attached the parties' agreed condition requiring the dwellings on the Bath Road frontage to be constructed of natural Cotswold stone, and restricting gable widths to a maximum of 7 metres. For the reasons set out below [13.49] I have also incorporated the requirement that none of the dwellings should have more than two storeys.
- 12.5 A number of the conditions agreed between the parties required the provision of further details which, while certainly necessary, should in my view be addressed at reserved matters stage, when they can be assessed in the light of the detailed layout and design features then put forward. These details include slab levels; a surface water drainage scheme (including its future management and maintenance); details of the proposed pedestrian link; provision for vehicular parking and manoeuvring space, and cycle parking; the provision of water butts and fire hydrants; and an Ecological Management Scheme. I have therefore recommended a single condition requiring all of these further details to be submitted at reserved matters stage.
- 12.6 Since access is not a reserved matter, and has instead informed the acceptability or otherwise of this outline proposal, a condition requiring the construction of the access in to the site in accordance with the submitted details is needed. I have included the Council's suggested requirement that the access be completed to at least base course level, for the first 25 metres into the site, prior to the commencement of development. The Council suggested requiring its final completion prior to occupation of the first dwelling, but since this would be the only vehicular access to the site, and it is therefore likely that it may still be in use by heavy construction traffic even after the first dwelling is occupied, I have amended the requirement for its completion to accord with a timetable to be agreed with the Council.
- 12.7 To avoid any confusion between the access arrangements that formed part of the outline proposal and the details that would remain to be agreed at reserved matters stage, I have included the agreed condition specifying that details of the access roads serving each dwelling are to be submitted at reserved matters stage, and setting time limits for their completion. I agree with the parties that measures governing the construction works, such as specified working hours and on-site parking provision, are needed to protect the living conditions of nearby residents and the safety of highway users, and

have recommended the model condition requiring compliance with an approved Construction Method Statement.

- 12.8 In the light of the appellant's archaeological assessment and the recommendations of the County Council's Senior Archaeological Officer, I recommend that a condition be imposed to secure the implementation of a programme of archaeological work, first agreed in writing by the Council, before development commences. I do not share the parties' view that a condition requiring the development to be completed in accordance with the Waste Minimisation Strategy submitted in 2010 need be attached at this stage, since details of layout and scale, to be finalised at reserved matters stage, may suggest amendments to that strategy. The Council could then attach the condition to any reserved matters approval.

Richborough Estates

13. Inspector's conclusions

- 13.1 The following conclusions are based on the oral and written evidence given to the inquiry, and the accompanied and unaccompanied inspections I made of the site and its surroundings. The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.
- 13.2 The proposed development would fundamentally conflict with adopted Development Plan policies aimed at restricting residential development on land which, like the appeal site, lies outside any settlement boundary and inside an AONB. However, Paragraph 49 of the National Planning Policy Framework states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
- 13.3 Therefore, as the appellant has helpfully acknowledged [8.12], the principle of allowing the appeal site to be used for residential development will be subject to the absence of sufficient other sites to provide a five year supply of housing. It will be useful, then, to begin by considering whether or not the Council is able to demonstrate a five-year supply of deliverable housing sites. This involves firstly establishing the housing requirement for the next five years, and then going on to assess whether sufficient deliverable sites are available to meet that need.

Housing requirement

- 13.4 The Council's assessment of its housing supply position is set out in a document entitled *5 Year Housing Land Supply June 2012* ("the 2012 document") (CD 2.9). The introduction to that document states that it has been prepared "in compliance with" government advice set out in the Framework, and the "latest position described by the Planning Inspectorate" in a report to the SoS in respect of an appeal at Moreton in Marsh (APP 3.5).
- 13.5 I was the author of that report, but do not share the Council's view that it constitutes the latest position on housing supply in the Cotswold District. That is because it was written nearly two years ago, prior to the introduction of the Framework. The Framework has not only made a number of changes to the national policy landscape, but also has a direct bearing on the interpretation and application of local Development Plan policies. For example, paragraph 215 states that the weight to be given to policies in existing plans adopted prior to 2004 will be dependant upon the extent to which those policies comply with the Framework.
- 13.6 The Council's approach to assessing its five-year housing requirement is to project forward the Structure Plan requirement for 307.5 dwellings per year, plus an additional 17.8 dwellings per year to ensure that the residual shortfall of 89 is addressed within five years, giving an annual requirement of 325.3 dwellings [7.20]. While this does indeed follow the initial stages of the approach I took in the Moreton in Marsh case, it completely ignores the other important material considerations I noted in my report; for example, that the Structure Plan was becoming increasingly out of date (APP 3.5, para 169) and that the evidence base which informed the preparation of the intended replacement

Regional Strategy and Structure Plan should not simply be disregarded (APP 3.5, para 172).

- 13.7 The Framework explains, at paragraph 12, that its introduction has not changed the statutory status of the Development Plan as the starting point for decision making. The Structure Plan was saved by Direction of the SoS in September 2007, and consequently remains an extant component of the Development Plan. On that basis, and in the absence of any more recent Development Plan document setting out an updated figure, the housing requirement contained in the Structure Plan must remain the starting point for any consideration of housing supply [7.25]. But it is crucial to bear in mind the full requirement of S.38(6) of the Planning and Compulsory Purchase Act 2004: proposals must be determined in accordance with the Development Plan *unless material considerations indicate otherwise* (my emphasis).
- 13.8 Paragraph 47 of the Framework states that local planning authorities should “use their evidence base” to ensure that their Local Plan meets their full, objectively assessed needs for housing. Paragraph 158 explains that the evidence needs to be adequate, up-to-date and relevant, and paragraph 159 explains that an understanding of housing needs should be informed by household and population projections, taking account of migration and demographic change. The Structure Plan was only intended to cover the plan period 1991 to 2011, and its housing requirement calculation was based on household projections dating from 1996. Those projections are now 16 years old, and cannot possibly be considered up-to-date [8.33]. It is clear that other, more recent, evidence must be a material consideration in any assessment of the District’s housing requirement for the next five years.
- 13.9 There is a wealth of such evidence available. The draft RSSW was informed by 2004-based projections [5.13]. More recently, in 2010, DCLG published household projections that are informed by 2008-based ONS population projections. GCC has also published, in 2010 and 2011 respectively, a “Gloucestershire Local Projection” and a “Housing Trend Analysis & Population and Household Projections” [5.15].
- 13.10 Turning firstly to the draft RSSW, I noted in my report on the Moreton in Marsh appeal that while this emerging plan was unlikely to proceed to adoption and so carried little weight, that did not mean that the evidence base which informed its preparation should simply be disregarded [13.6]. Now that the Localism Act 2011 is in force, it is even less likely that the draft RSSW will be adopted. But it remains the case that its evidence base was thoroughly tested at an Examination in Public, the findings of which resulted in the (then) Secretary of State publishing a series of Proposed Changes in 2008, including a revised housing requirement figure [5.13]. That figure, as opposed to the ‘Option 1’ figure preferred by the Council but rejected by the Panel, therefore carries considerable weight. The agreed Housing Requirements Tables submitted to the inquiry (INQ 6) record the main parties’ agreement that using this figure for the five-year period 2012-2017 would result in a requirement of 2,022 dwellings.
- 13.11 As to the 2010 DCLG household projections, to convert these to housing requirements it is necessary to include allowances for vacancies and existing unmet need. These allowances were agreed by the Council and the appellant

to be 3% and 547 dwellings respectively (INQ 6). It is also usual to add an allowance for second home ownership. The Council contends that no such allowance should be made here, because it has granted permission for approximately 1500 holiday homes in the Cotswold Water Park (LPA 1). I am not persuaded by the argument that the provision of dedicated holiday accommodation in one specific area will remove demand throughout the district, which has many attractive towns and villages that have long proved a popular location for second homes (LPA 2.23). In the absence of any convincing evidence that the existing level of take-up will be very much reduced, I agree with the appellant's approach of adding a 3.2% allowance in respect of second homes (APP 7). The five year requirement thus derived was agreed to be 3212 dwellings (INQ 6).

- 13.12 While it is clear that the 2010 and 2011 GCC forecasts have been produced for the specific purpose of contributing to the evidence-base for local decision-making on housing [7.30], I share the appellant's concerns about the absence of any evidence that they have been subject to independent scrutiny or peer-review [8.39]. Local data-sets and recorded trends can play an important role in establishing an accurate picture of local housing need, but they are only one element of the evidence-base that will eventually be used to establish the District's housing requirement. For present purposes, I have been presented with a variety of calculations aimed at deriving a five year housing requirement for the District from these figures. The results range from 1,863 to 2,690 dwellings (INQ 6).
- 13.13 My understanding of the Council's position is that having reviewed all of this more recent evidence, it concluded that the GCC projections indicate a downward direction of travel in the district's housing requirement, and that this makes it reasonable to continue using the Structure Plan derived five-year housing requirement figure of 1,627 dwellings [7.20]. That is not, in my view, a conclusion that can properly be drawn. The local projections are only one aspect of the available evidence and, as the Council itself pointed out, were not intended to replace the national figures [7.30]. The annual housing requirement for the District derived from the most up-to-date national figures published by DCLG is very nearly double that derived from the Structure Plan requirement, so is hardly indicative of a "downward direction in travel".
- 13.14 Paragraph 50 of the Framework advises that housing should be planned on the basis of current and future demographic trends. I can see no reasonable justification for continuing to use the outdated Structure Plan figure in the hope that a perceived downward trend might eventually result in a housing requirement matching a prediction, made in the mid-nineties, about a 10 year period that is now in the past. Such an approach would be in direct conflict with the Framework's objective to "boost significantly the supply of housing" (paragraph 47). Without exception, all of the more recent forecasts and projections indicate that the figure should be higher than that derived from the outdated Structure Plan.
- 13.15 As to determining a precise and up-to-date housing requirement figure for the District [8.27], that is not for me, or even the SoS, to dictate. It is the role of the Council to arrive at a full and objective assessment of the housing needs for its area, having regard not only to household projections and market trends but all of the other evidence available to it. The need to establish the

housing requirement, and address how it is to be met, is not a new obligation imposed for the first time by the Framework: it has long been a fundamental component of any Development Plan. It is then both surprising and disappointing, given that the plan periods covered by both the Structure Plan and Local Plan have now expired, that such little progress has been made toward the adoption of any replacement plan establishing the Cotswold District's current and future housing requirement, and setting out a strategy for its delivery [8.1 – 8.4]. No "preferred option" has even been identified for consultation yet, and no Examination in Public is likely to take place before early 2014 [5.10].

- 13.16 Nevertheless, for the purpose of reporting on this appeal, I am obliged to arrive at a conclusion on the Council's current ability to demonstrate a five year supply of housing land. For the reasons set out above I hold the Structure Plan to be so out of date as to be unfit for that purpose, and while I recognise the local GCC projections will have a valuable role to play as part of the overall evidence base for the district's emerging Local Plan, I consider that it would be premature to rely upon them at this early stage in that process.
- 13.17 I conclude that the District's five-year housing requirement figure is likely to lie somewhere between the 2,022 derived from draft RSSW Proposed Changes [13.10], and the 3,212 derived from the most recently published DCLG national household projections [13.11]. Since I have insufficient evidence to inform any attempt at assessing whereabouts within that range the actual requirement might lie, I will use the figure at the lowest end of the spectrum.
- 13.18 I need to make it absolutely clear that this conclusion should not be confused with an endorsement of that figure as representing the objectively assessed housing need for the district. My decision to use the draft RSSW figure is made on the premise that if a five year housing supply cannot even be demonstrated against the lowest credible housing requirement, then it clearly does not exist. That is the same premise that informed my findings in the Moreton in Marsh appeal: the Council was unable to demonstrate a five year supply against the Structure Plan housing requirement, and since the evidence of the more recently published projections suggested that the housing requirement was likely to increase rather than decrease, that could only worsen the shortfall in housing provision (APP 3.5, para 185).
- 13.19 I can understand local residents' frustration with the amount of time taken up at the inquiry (and consequently in this report) in dealing with complex considerations of housing supply [9.15, 9.19]. The approach I am here obliged to adopt is a product of the wholly unsatisfactory circumstances that arise when a local planning authority fails to keep its Development Plan up to date, such that its housing requirement must instead be deduced from the best of the evidence made available to the decision maker.

Buffers

- 13.20 Before moving on to consider housing supply, it is necessary to have regard to the second bullet point at paragraph 47 of the Framework. This explains that local planning authorities should not only be able to identify sufficient sites to provide five years worth of housing against their housing requirements, but also an additional buffer of 5%, to ensure choice and competition in the

market for land. It goes on to state that where there has been a record of persistent under delivery of housing, this buffer should be increased to 20%.

- 13.21 "Persistent" under delivery is not further defined in the Framework, or elsewhere. Paragraph 47 does however specify that it is the record of "delivery" of housing (rather than, for example, the number of permissions granted for housing, or sites duly allocated or identified as deliverable) that should act as a measure of the buffer to be applied. My attention was drawn to an appeal decision at Sellars Farm in Stroud [7.33], in which the Inspector held that completions over the past five years were the most relevant to a consideration of the Council's delivery record. On the basis that the Framework requires the assessment of future housing delivery to look forward five years, looking back five years to assess the record of past delivery seems to me a reasonable approach. The Inspector in that case concluded that a total shortfall of around 360 dwellings, during a period affected by recession, did not amount to a record of persistent under delivery. I note CDC's contention that this District has a better performance record than that, in that its shortfall over the past five years has been only 80.5 dwellings [7.33].
- 13.22 My attention was also drawn to an appeal decision at Siddington, of particular relevance since it is within the Cotswold District [8.42]. The Inspector noted that there was under delivery in 7 out of the last 10 years, with an identified shortfall of 89 dwellings over the period 1991-2012; and that in terms of housing completions, the target has not been met for eight out of the past ten years (APP 8.1, para 16). She went on to state that the difficulties with housing delivery in the District have extended to the period well before the current economic downturn, and that on two measures looking back over the past 10 years, the Council's record is one of under delivery. Whether these statements are the Inspector's own conclusions, or merely (as the Council contends) her summary of the appellant's representations in that case [7.32, Mr Smith xx], the Council has not, in the context of this current appeal, put forward any evidence that contradicts them. I have no reason to doubt their accuracy.
- 13.23 Turning to the evidence presented in this current case, the Council has adopted the approach of measuring past completions against the annualised Structure Plan (LPA 1). Last year saw 538 housing completions [7.33], which provided some compensation for the fact that in each of the four preceding years delivery had fallen short of the requirement; and by a very wide margin in 2009/2010, which saw only 177 completions (INQ 1). Since the Structure Plan requirement is itself an average annual target, I consider it reasonable to allow for some fluctuations above and below that figure, by looking at the average annual completions over the last five years. On that basis the Council's completions rate, at 291 dwellings per year, also falls short of its own housing requirement.
- 13.24 A further consideration is that it would not be fair, in the context of assessing the record of delivering housing, simply to ignore the fact that delivery here is being measured against a housing requirement that was artificially low; being based (as I have discussed at length above) on projections that were out of date [8.43]. That being the case, the resulting shortfall in housing delivery will in real terms have been considerably greater than that calculated by measuring completions against the Structure Plan requirement.

- 13.25 As to whether or not the difficulties of delivering housing during a period of recession should have any bearing on assessing whether a 20% buffer is needed, the appellant rightly points out [8.43] that “economic circumstances” form no part of national policy, as set out in paragraph 47 of the Framework. Similarly, while Councils have a responsibility to ensure that there is a sufficient supply of deliverable sites available, they have little control over the actual delivery of the housing for which they have granted planning permission. It may therefore be perceived as somewhat unfair to require a 20% buffer in circumstances where a Council has done all it can to provide sufficient deliverable sites, and the under-delivery of housing in its area is demonstrably due to the state of the market, rather than an inadequate land supply.
- 13.26 Be that as it may, my interpretation of the evidence provided in the current case is that it provides a strong indication, for the reasons set out above, that there has been persistent under-delivery of housing in the Cotswold district. An additional buffer of 20% should therefore be added. This increases the five year housing requirement figure derived from the draft RSSW to 2,426 dwellings over the next five years (INQ 6).

Supply

- 13.27 The Council has calculated its supply of specific deliverable housing sites to be sufficient to deliver 1,724 dwellings over the next five years; at the inquiry, it accepted that this should be reduced by 5 to reflect the updated situation concerning the Northfield Garage site [7.34]. At the inquiry the appellant elected not to dispute the components of the housing supply [8.44], other than the number of houses that would be delivered on the Upper Rissington site. I have therefore restricted my consideration of the Council’s housing supply calculation, in the context of this appeal, to that one point of difference.
- 13.28 The Upper Rissington site has outline planning permission, granted in 2010, for 368 units, but the appellant has pointed out that infrastructure improvements are required, and a significant number of reserved matters remain to be approved, before development can commence [8.45]. However, the Council provided the inquiry with a copy of an e-mail from the developers of the site, confirming that all of the dwellings are on course for delivery in the next five years (INQ 13). I appreciate that predicting the numbers of houses that will actually be delivered can never be a precise science, but on the basis of the available evidence, I do not consider it necessary to make any downward adjustment to the predicted delivery of 368 dwellings at the Upper Rissington site over the next five years.
- 13.29 After the inquiry closed, the Council resolved, at a Committee Meeting on 12 September 2012, to grant outline planning permission for development of the SIAC/Matbro site [1.9]. A resolution to grant planning permission is not, of course, the same thing as a grant of planning permission. The Council’s resolution to grant permission was made subject not only to the assessment of viability and the level of affordable housing to be provided, but also the completion of a legal deed concerning various contributions. Any or all of these matters could delay or even prevent the grant of permission, and once outline permission were granted, reserved matters applications would still need to be approved [INQ 32].

13.30 Nevertheless, in the absence of any specific evidence to the contrary, I consider that for current purposes it is fairest to proceed on the basis that there is at least a reasonable prospect that the dwellings will come forward in the next five years. The development would comprise a total of 174 accountable dwellings, which amounts to 109 more than the 65 already included in the 2012 Housing Supply Document [INQ 33]. This means that the Council's calculation that it has housing sites sufficient to deliver 1,719 dwellings over the next five years can be increased to 1,828.

Conclusions on the District's housing supply position

13.31 On the basis of the evidence before me, I have concluded that the five year housing requirement for the Cotswold District should be treated as, at its lowest, 2,426 dwellings [13.25]. There is however sufficient land to deliver only 1,828 [13.29]. This clearly amounts to a very serious shortfall.

13.32 In the interests of clarity and consistency, it is necessary to comment here on the findings set out in my report about the Highfield Farm appeal, which is to be determined contemporaneously by the SoS [1.4]. In that case, I concluded that the housing supply was 1,711 dwellings. The discrepancy with the housing supply figure established in this case is due to differences in the evidence provided, and the cases put, by the parties to each of these two separate appeals.

13.33 The key difference was that the appellant in this appeal did not contest most aspects of the Council's calculation of its total deliverable housing sites, on the (correct) assumption that this would make little difference to the overall housing supply position. The appellant in the Highfield Farm case, however, took a number of issues with that calculation, and on the basis of the evidence provided and arguments made in that case, I found that a 10% reduction should be made in respect of large sites with planning permission.

13.34 If the differences between the two sets of figures were capable of having any impact at all on conclusions about the District's housing supply, I would recommend providing all the main parties with a further opportunity to comment. But that is clearly not the case. Comparison of the housing supply figures established in each appeal against the lowest credible housing requirement figure for the District shows that in each case, there is, at best, sufficient land to deliver only a 3.8 year supply of housing. The difference between the figures in each case therefore has no bearing on the conclusion that the Council cannot demonstrate a 5 year supply of housing land.

The implications of the housing supply position

13.35 As noted above, paragraph 49 of the Framework states that if a local planning authority cannot demonstrate a five-year supply of housing, relevant policies for the supply of housing should not be considered up-to-date. This in turn has implications for the application of paragraph 14 of the Framework, which sets out the presumption in favour of sustainable development said to be "at the heart of" the Framework.

13.36 The second bullet point of paragraph 14 says that where the Development Plan is absent, silent or relevant policies are out of date, then the presumption in favour of sustainable development means that (unless material considerations

indicate otherwise) permission should be granted: unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.

- 13.37 In this case, the Development Plan is neither absent nor silent. However, since the Council is unable to demonstrate a five-year supply of housing land, the application of Paragraph 49 of the Framework means that to the extent that it concerns the supply of housing, LP Policy 19 should be considered out of date [8.16].
- 13.38 The Council drew my attention to a recent appeal decision in Coberley, in which the Inspector states, in terms, that LP Policy 19 and SP Policy NHE.4 (of which more below) are not in conflict with the policies of the Framework [7.16]. But that is quite beside the point at issue here. The absence of conflict is relevant for the purposes of paragraph 215 of the Framework, but for the purposes of deciding whether a policy should be considered up-to-date in terms of paragraph 49 (which was not at issue in the Coberley appeal), what is relevant is whether the local planning authority can demonstrate a five-year supply of housing.
- 13.39 SP Policy NHE.4 seeks to restrict development within the AONB. On the basis that Tetbury (and much of the Cotswold District as a whole) is washed over with the Cotswold AONB designation, the appellant contends that this policy is relevant to the supply of housing in the terms of paragraph 49 of the Framework, and so should be considered out of date [8.17]. But even if that were so, footnote 9 to the second bullet point of Paragraph 14 makes it clear that where specific policies in the Framework “for example, those policies relating to... land designated as... an AONB” indicate development should be restricted, then the presumption in favour of granting permission does not apply. That, as the appellant has accepted, is the case here [8.24].
- 13.40 However, finding that the proposed development would conflict with the Development Plan, and that the presumption in favour of development does not apply, is not the same as establishing that planning permission should not be granted [7.7, 8.25]. I have established that the Council has a serious shortfall in its supply of housing land, and that is a material consideration that weighs heavily in favour of allowing the proposed development to go ahead. There are a number of other material considerations which also need to be weighed in the balance, and not least among them is the impact that the proposed development would have on the AONB.

The effect of the development upon the character and appearance of the area

- 13.41 Irrespective of whether SP Policy NHE.4 should not be considered up-to-date (per paragraph 49 of the Framework) to the extent that it seeks to restrict residential development in the AONB, the overall thrust of its objective to conserve and enhance the natural beauty of AONBs accords with the aims of paragraphs 115 and 116 of the Framework [7.6]. “Major development” in the terms of paragraph 116 is not further defined, and I see no reason to differ from the joint conclusion of the Council and the appellant that this current proposal does not constitute major development within the AONB [6.1]. The advice of paragraph 116 (which sets out the “exceptional circumstances” in

which permission for such development might be granted) is therefore not applicable here.

- 13.42 Paragraph 115 is however highly relevant, and states that great weight should be given to conserving landscape and scenic beauty in AONBs, which have the highest status of protection in relation to landscape and scenic beauty. It also states that the conservation of wildlife and cultural heritage are important considerations in AONBs.
- 13.43 The Cotswold AONB includes the whole of Tetbury and the land adjacent to it, such that any new residential development at Tetbury, even on sites within the settlement boundary, would take place within the AONB [6.1]. Recognising that many other settlements are also included within the AONB, the Council commissioned a study of the land surrounding the District's key settlements, to determine where development would be least harmful in terms of its impact on the landscape.
- 13.44 The results of that study, known as "The White report", were published in June 2000. In its assessment of Tetbury the Report noted that "The Berrells Road area of housing extends Tetbury southwards. Post war and recent housing provide a poor introduction to the town from the south" (CD 2.6, para 19.5). The Berrells Road area of housing was also described as providing a "built edge detracting from settlement character" (CD 2.6, Figure T4), and was consequently identified in the Report as one of three negative relationships between town and landscape (CD 2.6, para 19.11).
- 13.45 I saw at my site visit that the initial stages of the southern approach to Tetbury, along Bath Road, have an attractively rural character. Once the road is level with the southern boundary of the appeal site, and the town comes into view, it is (as noted by the Inspectors who determined the 1989 appeal [3.1, 3.2] and the 2011 appeal [3.3, 3.4] "the rather stark, recent, Southfields development which dominates the scene, and not, except for the spire of St Mary's Church, the historic landscape" (LPA 2.4 para 11). The 2011 Inspector went on to describe the impression created by the appeal site as that of a field constrained by housing development, and the existing built development as providing an unsatisfactory visual gateway to Tetbury (LPA 2.4 paras 12 – 13). I consider that a fair summary.
- 13.46 The currently proposed development would be set back from the southern boundary of the appeal site behind a 4m wide landscape buffer. It would also be set back from the Bath Road frontage, with the existing dry stone wall largely retained and repaired, behind a communal green space, at its broadest toward the southern end, and narrowing toward the northern end. The houses on this side of the site would be of traditional Cotswold stone and would front on to this open green space [8.20]. In my judgment, these features would together serve to funnel views of the town when travelling northwards along Bath Road. Provided that suitable landscaping and planting were included throughout the site, with particular care given to the boundary treatments, the proposed development would achieve a softer transition from the countryside to the town than presently exists.
- 13.47 I note that the 2011 Inspector came to much the same conclusion concerning the very similar illustrative landscaping proposals that were then before him. He found that "the loss of this field would not result in harm to the adjacent

countryside, if suitably landscaped" and that it would "acceptably round-off development in this locality" (LPA 2.4, para 14). However, he also went on to find that the number of dwellings then proposed would be likely to give rise to an unduly excessive amount of built development, such as might prejudice the ability of the scheme to provide the open space and additional planting needed to achieve the intended visual improvements to the southern approach to the town [3.2].

- 13.48 In an effort to overcome this concern, the current appeal proposal seeks permission for "up to 39 dwellings" [8.9]. That is a significant reduction, and with fewer dwellings, there would be more room to provide open green space and planting within the eventually agreed layout.
- 13.49 While the Council officers considered that the indicative layout plan submitted with the application demonstrated that the proposed number of units could be satisfactorily accommodated on the site (APP 3.4 p 62), the Council Members considered that it did not [CD 1.14]. It is of course right to have careful regard to indicative material submitted with outline planning applications, but it is also necessary to bear in mind that such material is just that: "indicative". The appellant has made it very clear, at all stages of the application and appeal, that layout is one of the matters reserved for future determination, and that the indicative layout plan was provided to illustrate one possible way in which the maximum number of proposed dwellings might be arranged on the site [8.10].
- 13.50 In my judgment, sufficient information has been provided to demonstrate that up to 39 dwellings could be accommodated on the appeal site, while still achieving the necessary planting, landscaping and provision of open space to achieve the desired softening of this southern edge of town. I share some of the Council's concerns about the suburbanising effect of the high number of detached garages, and the proportions of some of the proposed dwellings (LPA 1), but since details of layout, scale and appearance do not form part of this outline proposal those are matters that could all be addressed at the Reserved Matters stage: if the Council considered the details then submitted unacceptable, it should refuse to approve them. Similarly, I share the Council's concern that dwellings with more than two storeys would be incongruous in the context of the site's slightly elevated position and the height of the surrounding development [7.45], but this concern could be adequately addressed by attaching an appropriately worded condition [12.4].
- 13.51 In terms of the impact that the proposed development would have upon wildlife and cultural heritage, reports and studies undertaken by the appellant and assessed by the Council demonstrate that any adverse effects can be appropriately mitigated, through the mechanism of imposing conditions to secure an Ecological Management Plan and a programme of archaeological work.
- 13.52 I saw at my site visit that there is intervisibility between the appeal site and the upper storeys of Highgrove House, which is a Grade II listed building [1.8]. However, the separation distance is such that the proposed development would not, in my judgment, have any appreciable impact on the setting or significance of that heritage asset. It was suggested at the inquiry that the gap in the vegetation on the southern boundary of the appeal site had been

created specifically to provide Highgrove House with views of the spire of St Mary's Church. If it is indeed the case that the church spire was intended to form the focus of planned views from this listed building, that would not in any event undermine the principle of permitting the proposed development, since such views already encompass intervening residential development in the form of Southfields.

13.53 The former Toll House at the corner of Grange Lane is also listed Grade II, but the proposed development would lie on the opposite side of the road beyond other existing development, and would not affect the setting or significance of this listed building.

13.54 I conclude that the proposed development would have benefits in terms of improving the southern edge of the built-up part of Tetbury, and thus enhancing the setting of the town. But it is important not to lose sight of the fact that the proposal would also result in the loss of a field that is part of an AONB. This particular field makes little contribution to the overall character of the AONB, being surrounded on three sides by existing development and a busy road, but nevertheless I recognise that as an open and undeveloped piece of land it has its own inherent natural beauty [9.9]. I do not underestimate the value placed on this, by local residents and visitors to the area as well as by the Framework; its loss would clearly be harmful.

Other considerations

13.55 The Council acknowledges that there is a need for more affordable housing in the District, and that the provision of affordable dwellings on the appeal site would help to address this need (INQ 3). That is a benefit to which I attach some weight.

13.56 Concerns were expressed by some local residents that occupiers of the new houses might drive into Tetbury, contributing to congestion and the competition for parking spaces. However, as the Council acknowledges [6.1], the site is located close to the town centre, within acceptable walking distance of many local shops and services, and has ready and convenient access to public transport. In this respect, the site occupies a sustainable location.

13.57 I saw at my site visit that the pedestrian routes between the appeal site and the town centre, via Bath Road or Cutwell, have footways that are narrow in some places, and entirely absent in others. But as the Inspector who determined the 2011 appeal observed, many of the footways within the town centre itself are also narrow (LPA 2.4 para 20). I do not underestimate the inconvenience, and potential hazards, that narrow or absent footways can sometimes cause but equally, it is important to recognise that requiring footways to be widened can cause significant harm to the character and appearance of historic market towns such as Tetbury. I have not been provided with any substantive evidence that the pedestrian routes are currently unsafe, or would be made more so as a result of the proposed development.

13.58 Further, the Highway Authority is satisfied that subject to the reduction of the speed limit along the stretch of Bath Road adjacent to the appeal site [11.3], the new development would have no adverse impact on the safety of road users; it has not identified a need for any new pedestrian crossings as a result

of the proposed development. I see no substantive reason to diverge from the Highway Authority's professional assessment, and so conclude that there are no significant impacts, in highway safety terms, that would weigh against the proposal.

- 13.59 The point was repeatedly made, by Councillors and residents, that residential development should be accommodated on previously-developed rather than greenfield sites. After the inquiry closed, the Council resolved to grant planning permission for residential development on the SIAC/Matbro site, a site that is previously developed in part, and lies within the Tetbury settlement boundary [1.9]. But even if all of the dwellings proposed for that site were to be built within the next five years, the Council would still have a significant housing shortfall [13.29, 13.30]. There is no evidence to suggest that the remaining shortfall could be addressed solely through the use of previously developed sites, and no "clear choice" between previously developed and greenfield sites, in the terms of the Council's Interim Housing Guidance (CD 4.21, criteria 5). Nor does there appear to be anything other than very limited scope for locating residential development in areas of the district not covered by the AONB designation [8.19].
- 13.60 The Localism Act 2011 makes provision for local communities to draw up plans to direct, at neighbourhood level, the location of new development. There is a great deal of local interest in pursuing this opportunity in Tetbury, but the process is still at a very early stage, with no clear indication of a date by which any Neighbourhood Plan might be ready for examination, let alone adoption.
- 13.61 I can understand local residents' concerns that in the absence of employment opportunities in Tetbury, future occupiers of the proposed dwellings would be obliged to commute elsewhere. But the core principles of the Framework, set out at paragraph 17, make it clear that the planning system must be proactive about driving and supporting economic development. Tetbury is one of the principal settlements in the Cotswold District, and employment provision will clearly need to be addressed in the Council's emerging Local Plan. In the meantime, I see no good reason why an alleged lack of existing job opportunities should act as a bar to the development of much needed housing, particularly on a site with good links to public transport.
- 13.62 I also understand that neighbouring occupiers are concerned about the impact the proposed development may have on their properties. These are however concerns which would be dealt with at the Reserved Matters stage, when details of the position, dimensions and fenestration of the buildings, and the height and species of the boundary planting, would need to be provided: any significant adverse impact on the living conditions of neighbouring occupiers would be reason, alone, for the Council to refuse permission.
- 13.63 As regards concerns raised about flooding and drainage, the appellant submitted a Flood Risk Assessment and the Environment Agency has raised no objection to the proposed development, subject to a condition requiring details of a surface water drainage scheme [12.5]. I note residents' concerns about the additional pressure new dwellings would place upon facilities such as education and healthcare provision, but the impact upon all types of infrastructure was assessed by the Council and the County Council, and where it was considered necessary (such as for the relocation of the speed limit

signage), a financial contribution was requested. I have not seen any substantive evidence that different, or greater, contributions ought to have been requested.

Local involvement in the planning system

- 13.64 It is only fair to bring to the attention of the SoS the concern, raised by a number of interested parties, that to grant planning permission for this proposal in the face of sustained and extensive local opposition would appear to undermine the government's stated intention, set out at paragraph 17 of the Framework, of "empowering local people to shape their surroundings" [9.15, 9.21, 9.32] (TP 1, TP 2). I can understand why local residents, keen to take up new opportunities for involvement in the planning process, may feel that allowing housing developments on appeal, in advance of the outcome of that process, is exactly the kind of top-down interference that the Framework was intended to prevent.
- 13.65 However, paragraph 17 of the Framework makes it clear that Plans should be kept up to date, to provide a practical framework within which decisions on planning applications can be made. Cotswold District does not have an up-to-date Plan. The Framework also maintains the requirement, formerly included in PPS 3, that local planning authorities should identify a supply of specific, deliverable sites sufficient to provide five years worth of housing against their housing requirement. Cotswold District has only identified sufficient sites to provide, at best, 3.8 years worth of housing.
- 13.66 In such circumstances there is, as the Inspector who reported on the appeals at Bishop's Cleeve noted, tension in policy between the desire for decisions to be taken locally and the requirement to maintain a five year supply of housing land (APP 8.2 IR para 14.26). I share his view that this is unsurprising, because it reflects the tension in reality between the understandable concerns of local residents, who wish to protect the qualities of the community and its environment, and the acute needs of other local people for housing.
- 13.67 The SoS has set out his view on this subject, in his decision on the Bishop's Cleeve appeals [8.19]. He said there that *...the changes to the planning system that give communities more say over the scale, location and timing of developments in their areas carry with them the responsibility to ensure that local plans are prepared expeditiously to make provision for the future needs of their areas* (APP 8.2, para 32).
- 13.68 The conclusion I draw from this is that in a situation where the absence of a sufficient supply of deliverable housing sites indicates that a district has a significant shortfall in its housing provision, action to address that shortfall should not be delayed by the absence of an up-to-date Local Plan.

The overall planning balance

- 13.69 In summary, I find that the proposed development would conflict with Policy 19 of the Local Plan and Policy NHE.4 of the Structure Plan. It would result in residential development outside the settlement boundary, and the loss of a field that is part of the Cotswold AONB.
- 13.70 On the other side of the balance, however, there is a serious shortfall in the District's housing provision, which must be addressed urgently. The proposed

development would go some way toward addressing that shortfall. It would provide much-needed market housing and affordable housing, in a location that is close to the town centre, within acceptable walking distance of many local facilities and readily accessible by public transport. The proposed development would also achieve visual improvements to the southern approach to Tetbury.

13.71 I find that the benefits of the proposed development in this case decisively outweigh the conflict with the development plan, and all other material considerations including the harm that would be caused to the AONB.

14. Inspector's recommendation

14.1 I recommend that the appeal should be allowed, subject to the conditions set out in the attached Schedule C.

Jessica Graham

INSPECTOR

Appendix A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Ms R Clutten, of Counsel

Instructed by the Head of Legal and Property Services, Cotswold District Council

She called:

Mr P M Smith BA(Hons),
BSc(Hons), DipDBE, MRTPI

Planning Consultant for Cotswold District Council

FOR THE APPELLANT

Mr C Young, of Counsel

Instructed by Mr C J Lewis of Hunter Page Planning

He called:

Mr C J Lewis DipTP, MRTPI

Hunter Page Planning

Mr N Evers DipLA(Glos), CMLI

Cooper Partnership

INTERESTED PERSONS

Ms L Morgan

Local resident, representing STEPS

Mr E Thornton

Local resident

Mr B Lunn

Local resident

Ms A Mills

Local resident

Ms D Hicks

Councillor

Mr R Levin

Local resident, representing Tetbury and District Civic Society

Mr S Hirst

Councillor

Mr N Cook

Local resident, representing BRAG

Mr S Keitley

Local resident, representing BRAG

Mr P Martin

Local resident, representing BRAG

Appendix B: DOCUMENTS

CORE DOCUMENTS

CD 1.1	Application form
CD 1.2	Covering letter
CD 1.3	Design and Access Statement (January 2012)
CD 1.4	Site notice
CD 1.5	Drawings: Site Location Plan (drg. no. 09.064.1000) Proposed Layout Plan (drg. no. 09.064.APP 2-SK2)
CD 1.6	Archaeological Evaluation (July 2010)
CD 1.7	Landscape and Visual Appraisal (August 2009)
CD 1.8	Ecological Assessment (July 2009)
CD 1.9	Initial Site Drainage Appraisal (March 2010)
CD 1.10	Flood Risk Assessment (June 2011)
CD 1.11	Transport Statement (January 2010)
CD 1.12	Waste Minimisation Strategy (January 2010)
CD 1.13	Consultee responses
CD 1.14	Decision Notice
CD 2.1	Cotswold District Local Plan (2001-2011)
CD 2.2	The Cotswold Design Code (March 2000)
CD 2.3	Second Issues and Options Paper LDF Core Strategy (December 2010) Second Issues and Options Paper supporting information (December 2010)
CD 2.4	Settlement Hierarchy Topic Paper LDF Core Strategy (November 2008)
CD 2.5	Cotswold District Strategic Housing Land Availability Assessment SHLAA (October 2010)
CD 2.6	Study of Land Surrounding Key Settlements in Cotswold District, White Consultants
CD 2.7	Local Countryside Designation Review: Special Landscape Areas, White Consultants (February 2001)
CD 2.8	Housing Needs Assessment Cotswold District Council, Fordham (November 2009)
CD 2.9	5 Year Housing Land Supply Assessment (June 2012) 5 Year Housing Land Supply Assessment (June 2012) Appendix 1: Windfall Assessment
CD 2.10	Cotswold District Interim Housing Guidance Note and Five Year Housing Land Supply (August 2011)
CD 2.11	Appeal Decision Notice – Todenham Road, Moreton in Marsh
CD 2.12	Appeal Decision Notice – Sellars Farm, Hardwicke
CD 2.13	Regional Planning Guidance for the South West (RPG 10) (September 2001)
CD 3.14	The Town and Country Planning Act 1990
CD 3.15	The Planning and Compulsory Purchase Act 2004
CD 3.16	The Localism Act 2011

- CD 4.17 The Countryside and Rights of Way Act 2000
- CD 4.18 Community Infrastructure Levy Regulations 2010 (as amended)
- CD 4.19 The National Planning Policy Framework (2012)
- CD 4.20 The Planning System: General Principles (2005)
- CD 4.21 PPS3: Housing
- CD 4.22 PPS7: Sustainable Development in Rural Areas
- CD 4.23 Circular 11/95 The Use of Conditions in Planning
- CD 4.24 Circular 1/2006 Guidance on Changes to the Development Control System
- CD 4.25 Household Projections 2008-2033, England (November 2010)
- CD 4.26 The Draft Revised Regional Spatial Strategy for the South West incorporating the Secretary of State's proposed changes – for public consultation July 2008
- CD 4.27 Plan for Growth by Department for Business Innovation and Skills (March 2011)
- CD 4.28 Gloucestershire Structure Plan Second Review (adopted 1999)
- CD 5.29 Gloucestershire Local Projections (June 2010)
- CD 5.30 Housing Trend Analysis and Population and Household Projections (May 2011)
- CD 5.31 Housing Supply and Planning Controls NHPAU (January 2010)
- CD 5.32 By Design Urban Design In The Planning System: Towards Better Practice (March 2010)
- CD 5.33 The Cotswolds AONB Management Plan 2008-2013, Cotswold Conservation Board
- CD 5.34 The Landscape Character Assessment for the Cotswolds AONB (2004), Cotswold Conservation Board
- CD 5.35 Landscape and Strategy Guidelines for the Cotswold AONB, Cotswold Conservation Board
- CD 5.36 CT.1264/1/M Planning application form
Appeal decision 88/099218
CDC Decision Notice
- CD 5.37 11/00528/OUT Planning application form
Appeal decision 11/2160376
CDC Decision Notice
- CD 6.38 Gloucester County Council Strategic Housing Market Assessment (January 2009)
- CD 6.39 Five Year Housing Supply Interim Report June 2012
- CD 6.40 Details of exception sites submitted to Inquiry at Top Farm, Kemble
- CD 6.41 Residential Land Monitoring Statistics (April 2012)
- CD 6.42 Appeal decision – Land at Brynard's Hill, Bincknoll Lane, Wootton Bassett (APP/Y3940/A/10/2141906)
- CD 6.43 Appeal decision – Land at Upper Rissington, Gloucestershire (APP/F1610/A/09/2112497)
- CD 6.44 Appeal decision – Land at Binhamy Farm, Stratton Road, Bude (APP/D0840/A/09/2115945)

THE COUNCIL'S DOCUMENTS

LPA 1	Proof of Evidence of Mr P M Smith
LPA 2	Appendices to Mr Smith's Proof of Evidence, comprising:
LPA 2.1	Decision Notice Ref 12/00219/OUT
LPA 2.2	Site Location Plan
LPA 2.3	1988 Planning Appeal Ref T/APP/F1610/A/88/099218/P3
LPA 2.4	2011 Planning Appeal Ref APP/F1610/A/11/2160376
LPA 2.5	Extracts of Environmental Report on Revocation of the RSS (RPG10)
LPA 2.6	Extracts of Planning Appeal Ref APP/B1605/A/11/2164597
LPA 2.7	Extracts of Development Plan
LPA 2.8	Settlement Hierarchy Topic Paper, CDC, November 2008
LPA 2.9	Report of Cotswold District SHLAA, October 2010
LPA 2.10	Study of Land Surrounding Key Settlements, June 2000
LPA 2.11	Interim Housing Guidance Note, CDC
LPA 2.12	Comparison between 2011 and 2012 housing layouts
LPA 2.13	Five year housing land supply, June 2012, CDC
LPA 2.14	Extract of Planning Appeal Ref: APP/C/1625/A/11/2165865
LPA 2.15	Draft Revised RSS, 2008
LPA 2.16	Extract of Planning Appeal Ref: APP/F1610/A/10/2130320
LPA 2.17	2008-based Household Government Projections
LPA 2.18	2010 Gloucestershire Local Projections
LPA 2.19	2011 Housing Trend Analysis 7 Population and Household Projections
LPA 2.20	2009 CDC Housing Needs Assessment
LPA 2.21	National Housing and Planning Advice Unit, June 2008
LPA 2.22	CDC Core Strategy Issues and Options Paper
LPA 2.23	CDC Second Homes Guidance Note
LPA 2.24	Press Release – Strategic Environmental Assessment, September 2009

THE APPELLANT'S DOCUMENTS

APP 1	Proof of Evidence of Mr C J Lewis
APP 2	Summary Proof of Evidence of Mr C J Lewis
APP 3	Appendices to Mr Lewis' Proof of Evidence, comprising:
APP 3.1	Site Location Plan
APP 3.2	Decision Notice Ref. 12/00219/OUT
APP 3.3	Pre-application advice note 09/02017/PAYPRE (CT.1264)
APP 3.4	Planning Officer's Report to Committee
APP 3.5	CALA Management Ltd Appeal Decision Ref APP/F1610/A/10/2130320
APP 3.6	Sellars Farm, Stroud Appeal Decision Ref APP/C1625/A/11/2165865 Hunting Butts, Cheltenham Appeal Decision Ref APP/B1605/A/11/2164597
APP 3.7	Riviera Way, Torquay Appeal Decision Ref APP/X1165/A/11/2165846
APP 3.8	Brynard's Hill, Wootton Bassett Appeal Decision Ref APP/Y3940/A/10/2141906
APP 3.9	Secretary of State's Direction letter saving Policies of the Local Plan, 2009
APP 3.10	Household projection extracts
APP 3.11	Extract from Matbro application report
APP 3.12	CDC's Interim Housing Guidance Note and Five Year Housing Land Supply, with associated Cabinet report and background papers

APP 3.13	Letter from Parliamentary Under Secretary of State
APP 4	Proof of Evidence of Mr N Evers
APP 5	Summary Proof of Evidence of Mr N Evers
APP 6	Appendices to Mr Evers' Proof of Evidence, comprising:
APP 6.1	Plan L1 – Bath Road Frontage Landscape Design Plan L2 – Comparison of 2011 Site Layout with 2012 Site Layout Plan L3 – Analysis Drawing; 2012 Layout Plan L4 – Analysis Drawing; 2011 Layout
APP 6.2	Viewpoints
APP 6.3	Plans and viewpoints from Landscape Proof of Evidence, October 2011
APP 6.4	Landscape and Visual Appraisal, August 2009
APP 6.5	The Cotswold Design Code
APP 7	Mr Lewis' Rebuttal Proof of Evidence
APP 8	Appendices to Mr Lewis' Rebuttal Proof of Evidence
APP 8.1	APP/F1610/A/11/2161332, Land west of Siddington Road, Siddington, Cirencester
APP 8.2	APP/G1630/A/11/2146206, Homelands Farm, Bishop's Cleeve APP/G1630/A/11/2148635, Land at Dean's Farm, Bishop's Cleeve
APP 8.3	Extract from Gloucestershire Structure Plan Second Review 1999
APP 8.4	APP/R0660/A/10/2140255, Land east of Marriott Road APP/R0660/A/10/2143265, Land South of Hind Heath Road, Sandbach
APP 8.5	Details of claim in the High Court
APP 8.6	CO/7802/2011 Consent Order
APP 8.7	Exminster Appeal Decision APP/P1133/A/11/2158146
APP 8.8	Statement in respect of general site deliverability
APP 8.9	Letter from Bloor Homes

DOCUMENTS SUBMITTED AT THE INQUIRY

INQ 1	Signed Statement of Common Ground
INQ 2	Copies of the Council's letters dated 27 April 2012, 21 May 2012 and 25 May 2012, notifying arrangements for the inquiry
INQ 3	Statement of Common Ground Addendum re. affordable housing
INQ 4	Unilateral Undertaking executed by the appellant
INQ 5	CDC's note to the Inspector concerning the Unilateral Undertaking
INQ 6	Narrative in support of housing requirement tables
INQ 7	Opening Statement on behalf of the Local Planning Authority
INQ 8	Speaking notes for Ms L Morgan, representing STEPS
INQ 9	Speaking notes for Mr E Thornton
INQ 10	Speaking notes for Mr B Lunn
INQ 11	Note by Mr P Smith concerning the Northfield Garage Site
INQ 12	Landscaping Proposal Plans SK1 and SK2
INQ 13	Copy of e-mail correspondence between CDC and Linden Homes re. Upper Rissington
INQ 14	Speaking notes for Cllr D Hicks
INQ 15	Speaking notes for Mr R Levin, on behalf of the Tetbury and District Civic Society
INQ 16	Photographs of the public highway near the appeal site

INQ 17	Appeal Ref. APP/U4230/A/11/2157433 (tabled by the Inspector)
INQ 18	Copy of the CDC Officer's Report re Application Ref 12/01792/OUT
INQ 19	Replacement Tables R3 and R4 for the Statement of Common Ground
INQ 20	Copy of e-mail from CDC Housing Strategy Officer concerning Tetbury's Affordable Housing Need
INQ 21	Speaking notes for Messrs N Cook, S Keitley and P Martin, with supporting documents
INQ 22	Appeal Decision Ref. APP/F1610/A/12/2168728
INQ 23	Letter from Mr Norwood giving permission for Inspector to view the appeal site from the rear garden of No. 9 Southfield
INQ 24	Copy of final submissions made by Mr P Martin
INQ 25	Closing submissions made on behalf of the Local Planning Authority
INQ 26	Closing submissions made on behalf of the appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

INQ 27	Appellant's application for an award of costs
INQ 28	CDC's response to the appellant's costs application
INQ 29	Appellant's comments on CDC's response to its costs application
INQ 30	Further information provided by GCC concerning the requested financial contribution toward Public Transport
INQ 31	Replacement Unilateral Undertaking, executed by the appellant, with explanatory letter from the appellant's solicitor
INQ 32	Appellant's written representations concerning the Council's resolution to grant permission at the SIAC/Matbro site
INQ 33	Council's written representations concerning its resolution to grant permission at the SIAC/Matbro site

THIRD PARTY WRITTEN REPRESENTATIONS

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

Appendix C: SUGGESTED CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development on land to which the reserved matters relate begins, and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) Subject to the provisions of condition no. 4 below, applications for the approval of the reserved matters shall be in accordance with the principles and parameters described and identified in the Design and Access Statement (December 2010). A statement shall be submitted with each reserved matters application which demonstrates that the application proposals comply with the Design and Access Statement (December 2010) or, where relevant, explaining why they do not.
- 4) Notwithstanding the provisions of condition no. 3 above, none of the buildings hereby permitted shall have more than two storeys; the buildings located on the Bath Road frontage shall be constructed of natural Cotswold stone; and no building shall have a gable width exceeding 7 metres.
- 5) The details to be submitted in accordance with condition no. 1 above shall include slab levels; a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geographical context of the development, including details of how the scheme is to be maintained and managed once implemented; details of a 2 metre wide footway from a point north of the main site access along Bath Road to a point on the south side of Berrells Road, 50 metres west of its junction with Bath Road; details of vehicular parking and manoeuvring facilities, and cycle parking provision; details of the water butts that will be provided to serve each dwelling; a scheme detailing the provision of fire hydrants served by mains water, and a timetable for their installation; and a five-year Ecological Management Plan for the site, setting out the mitigation and habitat features to be provided, with details of how they are to be managed and monitored once implemented.
- 6) No development shall commence until the access arrangements detailed on drg. no. 59001-TS-003 Rev A have been completed to at least base course level for the first 25 metres into the site, and a timetable for full completion submitted to, and agreed in writing by, the local planning authority.
- 7) The development shall be served by access roads laid out and constructed in accordance with details to be submitted to and approved in writing by the local planning authority at reserved matters stage. None of the dwellings hereby permitted shall be occupied until the road (including any proposed turning heads, street lighting and footways) providing access to that dwelling has been completed to at least base course level in

accordance with the approved details. All roads and footways within the site shall be completed no later than five years after first occupation of any dwelling served and shall be maintained thereafter until adopted as highway maintainable at the public expense.

- 8) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) hours of working on site during the period of construction.
- 9) No development shall take place within the appeal site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority.

Appendix D: GLOSSARY OF ACRONYMS AND ABBREVIATIONS

AONB	Area of Outstanding Natural Beauty
BRAG	Bath Road Action Group
dpa	Dwellings per annum
CD	Core Document
CDC	Cotswold District Council
CIL	Community Infrastructure Levy
DAS	Design and Access Statement
DCLG	Department of Communities and Local Government
GCC	Gloucestershire County Council
GOSW	Government Office South West
LDF	Local Development Framework
LP	Local Plan
PPS	Planning Policy Statement
RS	Regional Strategy
RSSW	Regional Strategy for the South West
S.106	Section 106 of the Town and Country Planning Act 1990
SHLAA	Strategic Housing Land Availability Assessment
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and Local Government
SP	Structure Plan
SPD	Supplementary Planning Document
STEPS	Stop Tetbury's Excessive Planning Schemes
xx	Cross examination



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: AWARDS OF COSTS

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

SECTION 3: INSPECTION OF DOCUMENTS

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