



Appeal Decision

Hearing held on 12 July 2023

Site visit made on 12 July 2023

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Appeal Ref: APP/B1605/W/23/3317851

Land north of Church Road, Leckhampton GL51 3GS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Redrow Homes Ltd against the decision of Cheltenham Borough Council.
 - The application Ref 21/02750/FUL, dated 9 December 2021, was refused by notice dated 14 December 2022.
 - The development proposed is a residential development of 30 dwellings (Class C3); vehicular, pedestrian and cycle access from Church Road; pedestrian and cycle access from Farm Lane; highways improvement works; public open space, landscaping, orchard planting and children's play space; surface water attenuation and other associated works.
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Decision

1. The appeal is allowed and planning permission is granted for Residential development of 30 dwellings (Class C3); vehicular, pedestrian and cycle access from Church Road; pedestrian and cycle access from Farm Lane; highways improvement works; public open space, landscaping, orchard planting and children's play space; surface water attenuation and other associated works, at land adjoining Leckhampton Farm Court, Cheltenham, GL51 3GS in accordance with the terms of the application, Ref 21/02750/FUL, dated 14 December 2021, and the conditions in the Conditions Schedule below.

Main Issues

2. The main issues with this scheme are
 - a) whether the development accords with the spatial strategy for the distribution of housing;
 - b) whether it would preserve the landscape and scenic beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB) and preserve the character and appearance of the area;
 - c) its effect on ecology, including the Cotswold Beechwoods Special Area of Conservation (SAC);
 - d) whether the nature and distribution of affordable housing is acceptable, and
 - e) if harm would be caused by any or all of the above, whether that would be outweighed by material considerations.

Reasons

Spatial strategy

3. Policy SP2 in the *Gloucester, Cheltenham and Tewkesbury Joint Core Strategy* (the JCS) broadly aims to focus development in built-up areas, allocated sites and designated urban extensions. JCS Policy SD10 says that housing development will be permitted on a list of locations, including on allocated sites and on previously developed land in the Principal Urban Areas of Cheltenham and Tewkesbury. Policy SD10(4) goes on to say that on other sites, housing will only be permitted if it accords with one of 4 specific criteria.
4. On its western side, the appeal site abuts Farm Lane, which at this point forms the boundary between the boroughs of Cheltenham and Tewkesbury. On the opposite side of that lane are the recent housing developments of Brizen Park and Brizen View (which I shall collectively term the Brizen Farm development). These are in a Principal Urban Area within Tewkesbury borough, though on the ground appear as part of the built-up area of Cheltenham. However, while the appeal site is therefore very close to that Principal Urban Area, separated by only a narrow lane, it nonetheless lies outside of the Principal Urban Areas of both Cheltenham and Tewkesbury. It is also unallocated and not in a designated urban extension, while the development accords with none of the criteria given in JCS Policy SD10(4).
5. Moreover, locating in Principal Urban Areas can be assumed to ensure residents would enjoy a greater choice of alternative transport modes to services and facilities. The site is close to the school, and access there and to whatever services lay beyond would be enhanced by a pavement the appellant is proposing along part of Farm Lane. However, the most recent version of the *Leckhampton and Warden Hill Neighbourhood Plan* shows the site as being just over 1000m from any shops that serve the neighbourhood area, and I consider the pavement along Church Road to the nearest shop is narrow in places. Therefore, while some residents may not find walking such distances a problem, I consider many may look upon a round trip of 2km to be too far or too unattractive to walk. On balance, I therefore find this location would offer limited choices of alternative transport modes, resulting in a reliance on private motorised vehicles. Whilst it may not be as far from services as the Brizen Farm development that does not lead me to different findings.
6. Accordingly, I conclude the scheme would be contrary to the spatial strategy, with limited alternative modes of transport available for future residents, and so would conflict with JCS Policies SP2 and SD10 and guidance in the *National Planning Policy Framework* (the Framework).

Character and appearance

7. The appeal site contains no buildings apart from a dilapidated shed, and comprises an overgrown orchard with numerous old fruit trees, most of which are subject to a Tree Preservation Order (TPO). Its western and southern boundaries are strongly defined by dense hedging and scrub along Farm Lane and Church Road respectively, while a woodland is on the east side and a modern housing development around Leckhampton Farm Court is to the north.
8. It forms part of a wedge of land (the wedge) that is constrained between the Brizen Farm development to the west, the village of Leckhampton to the east,

and the built-up area of Cheltenham to the north. Much of this wedge comprises Local Green Space, paddocks or playing fields, and so has an open, undeveloped character, maintaining its historic rural nature. The site is not in the Local Green Space while the wedge has no specific status in the adopted development plan other than being outside of the Principal Urban Areas. Moreover, the site is subject to no other specific development plan or national landscape designation.

9. To the south, the land rises steeply up to the Cotswolds escarpment, and offers a high level of public access through a widely used footpath network and vantage points. From not just the escarpment itself but also from the slopes, there are impressive views over Cheltenham along the Severn valley and across to the hills in Wales. Church Road, as it passes the appeal site, forms the boundary to the AONB beyond. The scenic and landscape beauty of this area lies, to a great extent, in its pleasing pattern of fields, woodland and rocky outcrops, and the dominant effect of the escarpment. This is emphasised all-the-more as it abuts the built-up area of Cheltenham and the expansive and relatively flat valley floor of the Severn.
10. The proposal comprises 30 dwellings arranged to either side of a central spine road. Strong emphasis has been placed on retaining the trees across the site, especially those that are protected, resulting in open space being intended in the north-west corner, along the Church Road frontage to the south, and down the eastern boundary. Accordingly, as the site's area is just under 3ha, the scheme has a density in the region of 10 dwellings per hectare. It would be removing from this undeveloped orchard some boundary planting and would be reducing the extent of open grassland, while it would be introducing a small suburban housing estate, with its associated hard-surfacing, lighting and other paraphernalia.
11. The presence of the Brizen Farm development means the proposal would not have an effect on the wider rural landscape to the west. However, it would diminish the extent of the wedge, particularly as it would be narrowing its southern boundary, and so reducing its integration and visual link to the countryside on the opposite side of Church Road.
12. The Framework states that decisions should contribute to and enhance the natural environment by, amongst other things, protecting and enhancing valued landscapes (paragraph 174). There is no definition in the Framework as to what constitutes '*a valued landscape*'. However, in this regard reference was made to an appeal from 2016 (Document LPA2 which I shall refer to as the 2016 appeal), and that sought permission for a larger housing development (650 dwellings plus other elements on a 31.7ha site) at the northern end of the wedge. I understand that at that time the Brizen Farm development had not been built but Tewkesbury Borough Council had indicated it was minded to approve it, and so the Secretary of State no doubt gave it appropriate weight. The school may also have been built since then, but otherwise the character of the wedge was similar to what is now before me.
13. In that decision the Inspector (the previous Inspector), in his report, described that site as being in a '*memorable landscape*' due to its mosaic of uses, its varied topography, its history and its network of footpaths, fields and mature vegetation. No doubt taking these criteria into account, he then went on to conclude that the scheme before him would lead to a loss of '*a valued*

landscape' (paragraph 264) and this he identified as one of its adverse effects (paragraph 307). These views were shared by the Secretary of State who, despite describing it as a '*locally valued landscape'* in paragraphs 19 and 32 of his decision, nonetheless concluded in paragraph 20 that the development of the site would harm the character and appearance of the area through the loss of '*a valued landscape'* and, in paragraph 33, confirmed he agrees with the conclusions in paragraph 307 of the previous Inspector's report.

14. When assessing what constitutes a valued landscape I consider that a single field or site should be viewed as part of a landscape rather than being assessed as a landscape in its own right. Moreover, in any such landscape there will be areas that contribute more positively than others to its overall value, while parts will add to the value in different ways.
15. From the submissions before me it is not totally clear what either the previous Inspector or the Secretary of State considered the extent of the valued landscape to be. The previous Inspector spelled out that the landscape value of the site was due not to its visual relationship to the AONB but rather to its own intrinsic charm (paragraph 260), while the Secretary of State accepted the scheme would not harm the structural elements of the wider contextual landscape character, such as the nearby AONB. Moreover, I am aware that the wedge, even then, had a constrained character, and so it is unlikely the previous Inspector and the Secretary of State were taking into account the countryside outside of the AONB to the west of what is now the Brizen Farm development. It is therefore fair to assume the valued landscape that both the previous Inspector and the Secretary of State found would be harmed was contained within the wedge, rather than included any wider landscape.
16. Overall, I share the views of the characteristics of the wedge identified by the previous Inspector, considering its mosaic of uses, its history and its network of footpaths, fields and mature vegetation are positive attributes. I therefore have no basis to depart from the findings of the Secretary of State. Consequently, as it would be within the constrained area of the wedge, I am of the view that the appeal site too is within a valued landscape.
17. The scheme would be introducing a suburban development into this wedge of open land that runs into Cheltenham. More particularly, it would result in a housing development in this historic orchard that would fragment its extent and scale, and change its context. Although much of the boundary planting would remain, the development would be apparent from a short length of the public footpath that runs to the north of the site, with housing replacing and impeding not only the trees and grassland in the foreground, but also the longer views of the escarpment beyond. As a result, it would cause some harm to the countryside character of this path, and so detract to a degree from the enjoyment of its users.
18. Furthermore, the new access would open up views into the development, thereby reducing the rural nature of Church Road. On Farm Lane there is already an awareness of the Brizen Farm development, and the appeal proposal is showing only one dwelling near to the carriageway. However, the creation of the pavement link would also allow the housing to be apparent, meaning the character of that rural lane would also be harmed. Indeed, while the retention of much planting round the site would soften the impact of the

scheme, it would not be concealed totally when looking from surrounding land, and there would still be an awareness of the development.

19. Therefore, mindful it is outside of the settlement boundary, and even taking into account the suggested conditions, I consider the scheme would cause harm to the character and appearance of the countryside. Moreover, this encroachment of suburban form into the wedge would fail to protect or enhance the valued landscape.
20. However, the Local Green Space is currently defined to a great extent by the escarpment to the south and otherwise by the development around. As such, whilst there may be an awareness of this proposal, I consider the recreational value of the Local Green Space would not be unduly harmed.
21. Turning to the effect on the AONB, in paragraph 176 the Framework states that

'Great weight should be given to enhancing landscape and scenic beauty in ... Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues'.

As the site is outside of the AONB it will not directly affect the landscape and scenic beauty 'in' that area. Indeed, while I had no evidence to explain why the boundary was drawn where it was, it is of note that, although immediately adjacent, the site was not included in the AONB when that was designated.

22. However, Framework paragraph 176 goes on to say

'The scale and extent of development within [Areas of Outstanding Natural Beauty] should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas'.

This is therefore requiring development outside of an Area of Outstanding Natural Beauty, but nonetheless within its setting, to have regard to the designated area. However, it does not impose upon the setting the same level of protection as is confirmed within the Area of Outstanding Natural Beauty itself. Moreover, it does not preclude new development in the setting or state that adverse impacts must always be avoided. Rather, it accepts that adverse impacts can be acceptable if minimised.

23. This position is broadly supported by JCS Policy SD7, which says

'All development proposals within the setting of the Cotswolds AONB will be required to conserve and, where appropriate, enhance its landscape, scenic beauty, wildlife, cultural heritage and other special qualities'.

I take the reference to 'its' in the second line of that extract to be referring to the designated AONB rather than the setting.

24. The setting of an Area of Outstanding Natural Beauty is not defined. However, it was nonetheless agreed that the development would be within the setting of the AONB and I share this view. Furthermore, as it would be immediately adjacent to the boundary, I consider its relationship to the AONB would be different to that of the scheme subject of the 2016 decision.
25. From Crippetts Lane, near to its junction with Church Road, the site would remain substantially concealed by boundary planting, even in winter months.

Given this, and mindful too of the prominence of the Brizen Farm development at that junction, the scheme would not have a harmful effect. From the south side of Church Road, although the development would be visible I consider any adverse impacts would be minimised by the retention of boundary planting and from this viewpoint its effects would not be so noticeable as to compromise the landscape and scenic beauty of the AONB.

26. Leckhampton Hill and Devil's Chimney on top of this escarpment are popular viewpoints, being the destination for a number of footpath routes and having an array of benches that allow an appreciation of the expansive panoramic views over Cheltenham and across the Severn valley. The appeal site is a relatively small element of the overall view, with much of the middle-distance being taken up by the built-up area of Cheltenham. Moreover, it is some distance away, and even after the scheme was implemented, it would be cradled by trees, especially on its eastern side, that would conceal the development to some extent in these longer views. From where it could be seen, and although separated by the trees along Farm Lane, it would be set against the much larger Brizen Farm development, which is a relatively striking and unbroken mass of new housing when seen from this point. Moreover, the retention of many of the trees on the site would mean they continued to play any softening role they might now have on that neighbouring residential scheme. As such, when taking into account the proposed retention of planting, I consider any impact of the scheme on the landscape and scenic character of the AONB from these viewpoints would be minimised.
27. Seen from the top of Crippetts Lane, again the site would be viewed very much in the context of the dominant Brizen Farm development and once more would be a small part of an expansive view and some distance from the viewer.
28. When on the footpath running down Leckhampton Hill towards the church, the appeal scheme would be closer and the views less extensive, and so it would be more apparent. However, once more it would be against the Brizen Farm development, while the lower angle would mean the screening effects of the trees would be improved.
29. Therefore, when taking into account the proposed retention of planting, I accept that there would be a change to the view from inside the AONB. However, being visible, and even introducing some change, does not necessarily equate to unacceptable conflict with Framework paragraph 176. Given its size, the distances involved, the planting to be retained and the scheme being in the context of the built-up area of Cheltenham in general and the striking Brizen Farm development in particular, I consider any impact the proposal may have on the AONB would not harm its landscape and scenic beauty.
30. It was also contended that Framework paragraph 176 should be engaged because the proposal would impede views of the AONB from within its setting. I accept there would be an effect in this regard when looking from the footpath to the north of the site. However, built form in the setting of the AONB would often impede views of the AONB from somewhere and to some extent. Furthermore, such a consequence does not affect the landscape and scenic beauty 'in' the AONB, and does not have adverse impacts 'on' the designated area. Rather, its effects relate solely to the setting, which of course is outside of the designated area and not a part of it. As such, I consider Framework

paragraph 176 does not apply to such harms. In any event, the effect on the views of the AONB from that footpath would be minimised by the extent, siting and height of the northernmost terrace in the scheme and, to my mind, would not have an appreciable effect on the appreciation of the landscape and scenic beauty of the AONB by its users. As such, I am not satisfied the scheme would conflict with Framework paragraph 176, even if I had found differently concerning the application of that paragraph to views towards the AONB from within the setting.

31. Accordingly, whilst I have not found the adverse effects on the AONB would conflict with paragraph 176 of the Framework, I nonetheless conclude the development would detract from the character and appearance of the countryside, and cause harm to a valued landscape, in conflict with JCS Policies SD4 (which requires development to respond positively to its context) and SD7, *Cheltenham Plan* Policy D1, which requires development to complement the locality, and guidance in paragraph 174 of the Framework. It would also conflict with Policy LWH5 in the Neighbourhood Plan, though this plan has not yet been 'made' and so the weight it is afforded is reduced accordingly.

Natural environment

32. Numerous old pear trees are now on site that can be defined as forming 2 traditional orchards (although in some submissions they are considered to form a single large one) and fall under the definition of a Priority Habitat in the *Natural Environment and Rural Communities Act 2006*. The protection of biodiversity is a theme running through the Framework. In paragraph 179 it states that plans should promote the conservation, restoration and enhancement of priority habitats, while paragraph 174(a) seeks the protection and enhancement of biodiversity sites and paragraph 180 says that development resulting in the loss or deterioration of irreplaceable habitats should be refused.
33. The site is identified on the Green Infrastructure list in the Neighbourhood Plan, and so under Policy LWH4 its role should be positively considered. The site is also in the Cotswold Nature Improvement Area, as identified by the Gloucestershire Natural Capital Mapping Project (the Project).
34. These fruit trees are of a value in their own right, and also for the biodiversity they accommodate. This is reflected in the Project identifying it as an ecosystem of greater importance than much of the agricultural land around. Moreover, they also represent a key element of the history of the area, which has been known for its orchards. However, these fruit trees appear to be unmanaged, and there is no public access to the land. Therefore, in the absence of proper husbandry, it cannot be assumed their lifespan or their benefits to the community will be maximised.
35. The appeal scheme seeks to safeguard the orchard trees, with the north-west corner and the southern band remaining free from new houses and used as open space. Any development in these areas would be limited to paths, and, to the south, the play area, the access road and the SuDS ponds. Furthermore, protective measures are to be placed around the trees to mean they would not be subject to climbing or other damage from users of those areas. The trees would also remain protected by the TPO in place on the site.

36. The development would change the context of the orchard by putting it in proximity to housing. It would also introduce much more activity within the orchard, as residents would walk and play among the trees. However, mindful the orchard would be proactively managed, on the evidence before me I am not satisfied that it would be harmed to any material degree, either directly through construction for example, or indirectly as a result of subsequent activity. Therefore, its value as a priority habitat would not be diminished, and the trees' contribution to the history of the area would be protected. Indeed, while I have little before me to show that if the appeal was dismissed the future of the fruit trees would be secured, with suitable management it is realistic to consider that through this scheme the orchard trees could be conserved and enhanced.
37. Down the eastern side of the site is a dense area of woodland around a stream. I have no reason to consider the habitat this creates would be compromised unacceptably by the development.
38. As it is a relatively unmaintained site with little public access on the edge of the built-up area, it is to be expected that it contains an appreciable variety and diversity of wildlife, which uses the land as either habitat or for foraging. Indeed it was said that numerous protected species were found on the site. I recognise too that it is a significant part of the connection between the wedge and the AONB to the south. However, whilst accepting there would be a loss of habitat and foraging, I have no basis to find that any harm to the protected species would be unacceptable. Furthermore, while I note the value of the site identified by the Project, I am aware that is not part of the development plan and carries no statutory weight in that regard. Therefore, when taking into account the Biodiversity Net Gains proposed, I have insufficient grounds to consider I can resist the scheme on this basis. Similarly, whilst the Biodiversity Net Gain maybe relatively low, that of itself is not unacceptable in the current planning policy context.
39. The site is 4.7km from the Cotswold Beechwoods Special Area of Conservation (the SAC). This comprises attractive, floristically rich, beechwoods that are vulnerable to damage from visitor pressures. Therefore, given the closeness of the site, the development could have a likely significant effect on the integrity of the SAC, whether alone or in combination with other plans and projects.
40. In coming to this view, I have had regard to the extensive nearby public footpath network, in both the Local Green Space and the AONB, that is available for use by residents of the scheme for recreation and is much nearer to their homes than the SAC. However, even accounting for this, the attractiveness of the beechwoods and their proximity means they would still draw recreational pressure from residents. As a result these alternative options may reduce the scheme's impact on the SAC but would not mean there would be no likely significant effect on its integrity.
41. To address this, 3 areas of mitigation have been proposed. The first is the delivery of on-site green space. This though is not extensive, and whilst it would no doubt be much used by the future residents, it would not fulfil the same recreational needs as the SAC as it would not allow lengthy walks or a sense of remoteness that I anticipate would be found in the woods. Secondly, householder packs are proposed that would inform the residents about the beechwoods and how they should be visited. On the evidence before me

though I consider this places a great deal of weight on the householders being aware of the packs, noting their contents and responding suitably. As a result, although they would be of some assistance in this regard, I consider these 2 areas of mitigation would not be sufficient, even if taken together, to allay my concerns.

42. However, there is also now a further requirement for financial contributions to be provided. These would be to fund Strategic Access Management and Monitoring measures, such as management, education and awareness monitoring, and Sustainable Alternative Natural Greenspace. The monies are to be secured through a Unilateral Undertaking the appellant has submitted (dated 10 August 2023), and I have no basis to consider the Council would not then use the money responsibly for the purpose it was given.
43. I therefore conclude that, when considered in combination with other plans and projects, the development would adversely affect the integrity of the SAC, but this would be suitably mitigated by the measures secured under the submitted Unilateral Undertaking and proposed conditions. As such, the scheme would not conflict with the Regulations or the Framework, which seek to protect the SAC from adverse effects on its integrity.
44. Accordingly, I therefore conclude that the development would not have an unacceptable effect on biodiversity, whether on the site or nearby, and so would not conflict in this regard with the Framework or the emerging Neighbourhood Plan.

Affordable housing

45. The number and nature of affordable houses in the scheme was deemed satisfactory by the Council, and I have no reason to conclude differently. Whilst they would be grouped at the northern end, and would comprise smaller units, it appears they would be equal to that of the market housing elsewhere on the site in terms of appearance, build quality and materials. Moreover, the scheme is not large, and so this distribution would not be unsatisfactory. The affordable units would not have a view towards the AONB, but neither would all the market houses. In any event, some would overlook the attractive pond feature with the footpath beyond, whilst others would sit in the general streetscape of a housing scheme. They would also not look onto the play area, but only a few properties would, and the play area could be accessed by a short walk along estate roads that would be relatively quiet.
46. Overall, I therefore conclude the affordable housing would be suitably integrated into the estate as a whole, and so would not conflict with Policies SD4 and SD12 in the JCS, which require inclusive design with such housing being seamlessly integrated into, and distributed throughout developments, and paragraph 92 of the Framework, which seeks inclusive places.

Other matters

47. I consider visibility from the access would be satisfactory, and the traffic flows associated with the scheme would not compromise highway safety on Church Road, Farm Lane or any of the other lanes and road junctions in the vicinity. I also have no reason to find the site cannot be suitably drained.
48. As well as the Unilateral Undertaking concerning the SAC monies, an agreement under section 106 of the Act (dated 5 July 2023) was also

submitted. This not only secures the affordable housing, but also addresses the delivery and maintenance of on-site open space. I consider the requirements of both of these legal obligations satisfy Regulation 122 in the *Community Infrastructure Levy Regulations 2010* and so are reasonable, necessary and justified. While the Council has said it is '*unfortunate*' that there is no indexation clause in the Unilateral Undertaking, the implications of this are not sufficient to render the Undertaking unacceptable. Although reference was made to overstretched health facilities nearby, there was neither evidence nor planning policy support for contributions to address those areas.

49. Leckhampton Farmhouse is a Grade II listed building that stands just to the north of the site. Its significance lies, in part, in its setting that reflects its rural origins. This though has already been compromised to some degree, most notably by the Leckhampton Farm Court development adjacent. Mindful of this, and noting the separation between the listed building and the northernmost terrace now proposed, I consider that what is before me would not harm the significance of Leckhampton Farmhouse. Various other listed buildings were also cited in the area, but the development would not be within their settings, and so again would not harm their significance.
50. I was told of commitments the appellant had given in the past about the site, but they do not affect the planning merits of this case.

Other considerations and the Planning Balance

51. I have therefore found development plan conflict in relation to the spatial strategy with regard to the proposal's location outside of the Principal Urban Areas and its access to services. There is also harm to the character and appearance of the area, mindful that I have considered it to be within a valued landscape. However, section 38(6) of the *Planning and Compulsory Purchase Act 2004* says development should be in accordance with the development plan '*unless material considerations indicate otherwise*', and this is reaffirmed in the Framework. Therefore, whilst the development plan has primacy in decision-making, there are situations where material considerations could indicate a decision that was otherwise than in accordance with the plan. In this regard a number of such considerations have been offered by the appellant.
52. Principally, attention is drawn to paragraph 11(d) in the Framework. This says that where the development plan policies that are most important in determining the application are deemed to be out-of-date planning permission should be granted unless one of 2 scenarios are applicable.
53. The first of these is in Framework paragraph 11(d)(i), which says permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance (listed in Framework Footnote 7) provide a clear reason for refusing the development. It was contended that the effect on the AONB and also on the priority habitat site and the irreplaceable habitat would mean this paragraph was applicable, as these were listed in the Footnote. However, as I have found that none provides a clear reason for refusing the development then I consider they do not result in the application of that paragraph.
54. The second scenario is in Framework paragraph 11(d)(ii) and says permission should not be granted if the adverse impacts of doing so would significantly and demonstrably outweigh the benefits - often referred to as 'the tilted

balance'. As the Council accepts that it can show a housing land supply of 2.9 years, below the 5 years required in the Framework, I consider that the policies relating to the location of housing are deemed out-of-date and so this 'tilted balance' is engaged.

55. In terms of the benefits, and starting with the Council's housing land supply shortfall, I share the view of the Inspector in the Oakley Farm appeal (the Oakley Farm decision APP/B1605/W/21/3273053 dated 5 October 2022) and find it is very large, and demonstrates a pressing and urgent need. This scheme would therefore make a notable contribution to addressing this shortfall.
56. Furthermore, it would also contribute to reducing the shortage of affordable dwellings, while there would be economic benefits through the construction period, and subsequently as the new residents used local shops and facilities. I have found too that the scheme is likely to preserve the historic orchard, open it up for community enjoyment, and deliver biodiversity benefits. These factors are given appreciable weight in favour of the scheme.
57. The appellant has drawn attention to the delivery of the footpath along Farm Lane and the desire lines for pedestrians across the site to Church Road, but I am aware of no pressing need for these in the absence of the development and so afford them limited weight. The scheme would also bring payments under the legal obligations but those are needed to make it acceptable in planning terms, so have a neutral weight in my decision-making. Finally, how any New Homes Bonus would deliver a benefit relevant to this specific scheme is unclear.
58. Turning to the weight to be given to the areas of harm, it is often necessary for sites to be developed outside the Principal Urban Areas to meet a shortfall in housing land supply. Moreover, in such instances the development would often be changing an area of countryside to a housing estate, and the development would, in all probability, be generally further from local services when compared to houses in the Principal Urban Area. As a result, these are not harms that, collectively, outweigh the benefits.
59. However the additional concern I have found arises from this site being in a valued landscape. The Framework does not state such landscapes should be immune from development, but rather that they should be protected and enhanced. In my opinion, and in the light of this guidance, the harm I have identified runs contrary to the need for protection, and so should be afforded great weight in the decision-making process. I am mindful though that the trees around the site and the scale of the development, although not allaying it, nonetheless reduce the magnitude of harm to the valued landscape.
60. I therefore recognise the great level of protection afforded to a valued landscape but I am also aware that I have found the shortfall in housing land supply to be very large, and demonstrates a pressing and urgent need. On balance, the harm identified, even taking all the areas of harm together, does not significantly and demonstrably outweigh the benefit of providing these houses in the face of such a shortfall. As a result, I conclude that planning permission should be granted.
61. In this regard I recognise similarities and differences between my position and the 2016 decision. As stated above, I too defined the wedge as being a valued

landscape while the 2016 decision was made against the backdrop of the Council being '*about 2 years short of an identified 5-year housing land supply*', so therefore having a supply of about 3 years. However, in that case there were further harms, namely the severe residual cumulative transport impacts and the scheme prejudicing the possible designation of the Local Green Space, and these would have provided greater weight against any benefits that existed.

62. I have also noted the Oakley Farm decision but, as that Inspector was at pains to make clear, it was based on the very specific circumstances of that case, including the site characteristics, which are unlikely to be replicated elsewhere. Therefore, beyond sharing the view on the scale of the housing land shortfall, I have given that decision little weight.
63. It was said that Leckhampton has been subject to much housing over recent years. However, this may well be because it is one of the few places around Cheltenham that is not designated as Green Belt and so is one of the limited areas where development of this nature is possible. To my mind though, whilst I acknowledge these concerns, they are not a reason to dismiss the scheme or to assess the 'tilted balance' differently.

Conditions

64. The general commencement condition should be imposed [Condition 1]. For the avoidance of doubt the approved plans should be specified [2] and the development should be in accordance with them unless otherwise required by subsequent conditions.
65. Having regard to the character and appearance of the area, the materials should be approved [12]. Mindful of the effect on the SAC, Householder Information Packs should be provided to inform about recreation [18]. In order to safeguard the character and appearance of the area and have regard to biodiversity, there should be agreement of
- a Construction Environmental Management Plan [4]
 - a Landscape and Ecological Management Plan [5]
 - landscaping details [8]
 - tree protection methods and practices during and after construction, including how the trees to be retained will be safeguarded when forming pathways, roads and services that would run through or close to their root protection areas [9];
 - tree management details including an Arboricultural Monitoring scheme and a Post-development Arboricultural Management Plan [10];
 - a Landscape Maintenance and Management Plan [11] and
 - lighting details [19].
66. To ensure the site is adequately drained a drainage scheme, together with a SuDS strategy, management and maintenance programme should be approved [3], and contamination should be addressed along the lines of the scheme already submitted [7]. Whilst the contamination measures can be in accordance with the submitted GCL Geo-technical and Geo-environmental

Interpretative Report I am aware that is now nearly 2 years old and so will need to be revisited. If any contamination is found on the site outside of that identified, other legislation will require it being addressed and so a further condition is not required.

67. To protect neighbouring living conditions a Construction Management Plan should be agreed [6] and the hours of construction work limited [13]. In the interests of accessibility the pavement to Farm Lane [15], the access to Church Road [16] cycle storage [17] and Travel Packs [18] should all be provided. A condition relating to archaeological investigation is also justified [14].
68. Many of the suggested conditions involved lengthy lists of what was required for the plan or scheme in question. However, I have felt it is not necessary to include those, as the precise contents of the plans or schemes could be subject to discussion between the parties to ensure relevance. I also consider elements of the suggested landscaping condition were more akin to informatives, and so again have not been justified.
69. Given other requirements, there is now no need for a condition relating to electric charging points.
70. Many of the conditions require agreement of matters 'pre-commencement'. This is justified though because the matters in question will either influence how the development is undertaken or safeguard what could otherwise be lost.

Conclusion

71. Accordingly, I conclude planning permission should be granted.

JP Sargent

INSPECTOR

Conditions Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise modified under the conditions below, the planning permission hereby granted shall be carried out in accordance with drawings and plans listed in the Plan Schedule below.
- 3) Prior to the commencement of development, and notwithstanding any details on the approved plans, drainage plans for the disposal of foul and surface water flows, together with a SuDS Strategy document, a SuDS management and maintenance plan and a timetable for the implementation of the works shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and timetable, and thereafter retained, and managed and maintained in accordance with the approved SuDS management and maintenance plan.
- 4) Prior to the commencement of development, a Construction Environmental Management Plan (CEMP) for the development shall be submitted to and approved in writing by the Local Planning Authority. The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.
- 5) Prior to the commencement of development, a Landscape and Ecological Management Plan (LEMP) for the development shall be submitted to and approved in writing by the Local Planning Authority. The LEMP should include a 5-year management plan and link with the habitats described in the Biodiversity Net Gain report/calculations. The development shall be implemented in accordance with the approved details, and managed in accordance with the approved management plan.
- 6) Prior to the commencement of development, details of a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The construction phase shall then be undertaken in accordance with the methodology in the approved CMP.
- 7) Prior to the commencement of development, a site investigation and risk assessment in accordance with the recommendations in the Geotechnical and Geoenvironmental Interpretative Report (dated November 2021) shall be submitted to and approved in writing by the Local Planning Authority, together with details of any remediation that is necessary and a timetable for its implementation. The works shall then be undertaken in accordance with the approved recommendations and timetable.
- 8) Prior to the commencement of development, and notwithstanding any details on the approved plans, details of a hard and soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify all trees, hedgerows and other planting which are to be retained, and provide details of all new walls, lighting columns, fences, or other boundary treatments; new hard surfacing of open parts of the site which shall be permeable or drained to a permeable area; a planting specification to include species, size, position, method of planting and treepits of all new trees and shrubs; and a timetable for its implementation. All hard and/or soft landscaping works shall be carried out in accordance with the approved details within the approved timetable. Any trees or plants

on the approved scheme which, within a period of 10 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a location, species and size which shall be first agreed in writing by the Local Planning Authority.

- 9) Prior to the commencement of development an Arboricultural Method Statement and a Tree Protection Plan, shall be submitted to and approved in writing by the Local Planning Authority. The Tree Protection Plan shall include measures and practices to protect the trees to be retained during the construction phase (including how hardsurfacing, roads/paths, and services are going to be laid within the vicinity of retained trees) and also after the construction period has finished. The approved tree protection measures and practices for the construction phase shall be in place during that period, and the approved tree protection measures for after the construction phase shall be in place prior to the first occupation of any dwelling and thereafter retained.
- 10) Prior to the commencement of development an Arboricultural Monitoring scheme and a Post-development Arboricultural Management Plan (detailing management prescriptions for a 30-year period) shall be submitted to and approved in writing by the Local Planning Authority. The trees shall then be managed and monitored in accordance with the approved Arboricultural Monitoring scheme and Post-development Arboricultural Management Plan.
- 11) Prior to the commencement of development, a Landscape Maintenance and Management Plan (LMMP) for the development shall be submitted to and approved in writing by the Local Planning Authority. The plan will describe how the hard and soft landscaping will be managed by the site's owners and subsequent beneficiaries of the planning permission and stipulate how the continuation of the LMMP by future site, or homeowners is entered into.
- 12) Prior to any construction works above slab level, and notwithstanding any details on the approved plans, details and samples of any external facing or roofing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be undertaken in accordance with the approved details and samples only.
- 13) Work during the construction phase shall not take place on Sundays or Bank Holidays, and otherwise shall be within the following times only: 0800h – 1800h Monday – Friday and 0800h – 1300h Saturdays.
- 14) No development shall take place within the application site other than site clearance works necessary to enable a geophysical survey, until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation informed by the geophysical survey, which has been submitted to and approved in writing by the Local Planning Authority.
- 15) No dwelling shall be occupied until the pedestrian link along Farm Lane as shown on drawing R406/06 Rev C has been constructed and completed.
- 16) No dwelling shall be occupied until the means of access for vehicles, pedestrians and cyclists has been constructed and completed as shown on drawing R406/05 Rev C.

17) No dwelling shall be occupied until sheltered, secure and accessible bicycle parking has been provided for that dwelling in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The approved cycle parking shall thereafter be kept available for the parking of bicycles only.

18) No dwelling shall be occupied until details have been submitted to and approved in writing by the Local Planning Authority of

a) a Travel Information Pack, and

b) a Home Owner Information Pack that presents informal recreation opportunities concerning public space nearby, a short drive away by car or bus, and further afield,

together with details of how these documents will be delivered to all initial and subsequent occupiers, and how they will be updated over time. These documents with the approved wording shall then be submitted to all initial and subsequent occupiers, and updated in accordance with the approved approach.

19) Notwithstanding any details on the approved plans, no external lighting shall be installed unless its siting, scale and luminance has been first submitted to and approved in writing by the Local Planning Authority.

Richborough

Plan Schedule

Site Location Plan-32042 PL-01-B
Constraints and Opportunities Plan-32042 CON-01-E
Existing Site Section-32042 ES-01
Housetype Planning Drawing Warwick (Plots 12-13)-32042 HT-WARWICK-01
Housetype Planning Drawing Harrogate (Plots 5, 8)-32042 HT-HARROGATE-01
Housetype Planning Drawing Hampstead (Plots 2, 3) - Elevations-32042 HT-HAMPSTEAD-01.1
Housetype Planning Drawing Hampstead (Plots 2, 3) - Floor Plans-32042 HT-HAMPSTEAD-01.2
Housetype Planning Drawing Hampstead (Plot 11) - Elevations-32042 HT-HAMPSTEAD-02.1
Housetype Planning Drawing Hampstead (Plot 11) - Floor Plans-32042 HT-HAMPSTEAD-02.2
Housetype Planning Drawing Richmond (Plots 1, 4, 6, 9) - Elevations-32042 HT-RICHMOND-01.1
Housetype Planning Drawing Richmond (Plots 1, 4, 6, 9) - Floor Plans-32042 HT-RICHMOND-01.2
Housetype Planning Drawing Wye (Plot 30)-32042 HT-WYE-01
Housetype Planning Drawing Chew (Plot 27)-32042 HT-CHEW-01
Housetype Planning Drawing Single Garage-32042 HT-SGAR-01
Housetype Planning Drawing Warwick (Plots 18-19)-32042 HT-WARWICK-02-A
Housetype Planning Drawing Shaftesbury (Plots 7, 22) - Floor Plans-32042 HT-SHAFTESBURY-01.1-A
Housetype Planning Drawing Shaftesbury (Plots 7, 22) - Elevations-32042 HT-SHAFTESBURY-01.2-A
Housetype Planning Drawing Harrogate (Plot 21)-32042 HT-HARROGATE-02-A
Housetype Planning Drawing Harrogate (Plot 10)-32042 HT-HARROGATE-03-A
Housetype Planning Drawing Harrogate (Plot 20)-32042 HT-HARROGATE-04-A
Housetype Planning Drawing Leadon (Plots 23-26)-32042 HT-LEADON-01-B
Housetype Planning Drawing Tavy (Plot 16-17)-32042 HT-TAVY-01-A
Housetype Planning Drawing Severn (Plot 15)-32042 HT-SEVERN-01-A
Housetype Planning Drawing Severn (Plot 29)-32042 HT-SEVERN-02
Housetype Planning Drawing Yeo (Plots 14, 28)-32042 HT-YEO-01-A
Adoptable Construction Details-R406/24
Adoptable Drainage Details-R406/25
Longitudinal Sections-R406/26
Tree Constraints Plan 12914_P08-D
Orchard Path Plan R406/32
Planning Layout-32042 PL-03-H
Materials Layout-32042 PL-04-D
Boundary Treatments Plan-32042 PL-05-D
Car Parking Plan-32042 CP-01-E
Refuse and Recycling Strategy Plan-32042 RS-01-C
Street Scenes and Site Section-32042 SS-01-C
Proposed Site Access Arrangements-R406/05-C
Farm Lane Pedestrian Link-R406/06-C
Engineering Layout-R406/21-A
General Arrangement-R406/22-A
Lighting Lux Plan-R406/23-A
Impermeable Areas and Catchments DR-C-1001-P07
Surface Water Drainage Strategy DR-C-1002-P07
Exceedance Flow Paths DR-C-1003-P07
Foul Water Drainage Strategy DR-C-1004-P07
Illustrative Landscape Masterplan 20-03-PL-201-I

APPEARANCES

FOR THE APPELLANT:

C Flannagan	Planning consultant
C Goodman-Smith	Ecology consultant
D Manley KC	Counsel instructed on behalf of the appellant
J Pratt	Arboricultural consultant
P Richards	Landscape consultant
D Trundle	Planning consultant

FOR THE LOCAL PLANNING AUTHORITY:

N Gillett	Principal Planning Officer for the Council
Dr E Pimley	Ecology consultant
S Ryder	Landscape consultant
H Waller	Barrister instructed by the Council

INTERESTED PARTIES:

C Braunholtz	Local resident
Cllr M Horwood	District Councillor for Leckhampton Ward
Dr A Mears	Local resident
K Pollock	Local resident

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

BY THE APPELLANT

APP1: Bundle of the plans subject of the appeal.

APP2: Selection of photographs showing existing and expected views of the site
from Viewpoints 10, 16, 17 & 18.

APP3: Natural England's response to the planning application.

APP4: Comments on the effect on the hedgerow along Farm Lane
(dated 18 July 2023).

APP5: Comments on Cllr Horwood's submissions (dated 3 August 2023).

APP6: Comments on Natural England's response (dated 4 August 2023).

APP7: Signed Unilateral Undertaking dated 10 August 2023.

APP8: Comments on Local Planning Authority's email of 16 August 2023
(dated 24 August 2023).

BY THE LOCAL PLANNING AUTHORITY:

LPA1: Statement of Case by Ewan Wright.

LPA2: The Secretary of State decision (dated 5 May 2016) and the associated report from the Planning Inspector for appeal APP/B1605/W/14/3001717 at Kidnappers Lane, Leckhampton.

LPA3: Judgement of *Stroud District Council v SSCLG & Gladman Developments Limited [2015] EWHC 488 (Admin)*.

LPA4: *Cotswold Beechwoods SAC Recreation Mitigation Strategy*.

LPA5: Comments on the draft Unilateral Undertaking concerning SAC payments (dated 16 August 2023).

BY OTHER PARTIES

OP1: Statement by Dr Adrian Mears CBE.

OP2: Comments from Cllr Horwood (dated 18 July 2023).

OP3: Comments from Natural England concerning the Cotswold Beechwoods
(dated 19 July 2023).