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# Appeal Decision

Inquiry opened on 20 March 2012

Accompanied site visit made on 22 March 2012

**by L Rodgers BEng (Hons) CEng MICE MBA**

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

**Decision date: 20 June 2012**

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**Appeal Ref: APP/B1605/A/11/2164597**

**Land at Hunting Butts Farm, Swindon Lane, Cheltenham, Gloucestershire, GL50 4NZ**

- 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 Galliard Developments Ltd against the decision of Cheltenham Borough Council.
  - The application Ref 11/00257/OUT, dated 11 February 2011, was refused by notice dated 13 May 2011.
  - The development proposed is described as an "outline planning application for development of up to 135 dwellings with all matters reserved".
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## Decision

1. The appeal is dismissed.

## Preliminary matters

2. The application for up to 135 dwellings was submitted in outline with all matters reserved for future determination. I have dealt with the appeal on that same basis.
3. On the 13 March 2012 the Council wrote to the Secretary of State requesting that he exercise his 'call-in' powers to recover jurisdiction and determine the appeal. Having considered the Council's request the Secretary of State decided not to recover jurisdiction. This decision was confirmed by letter from the Planning Inspectorate dated 19 March 2012.
4. The inquiry opened on the 20 March 2012. However, it was announced during the course of the initial sitting that publication of the National Planning Policy Framework (NPPF) was about to take place. Given that, once published, the NPPF was likely to become a weighty material consideration the inquiry was adjourned in order to allow the parties the opportunity to assess its effect on their cases and to submit supplemental proofs. The inquiry resumed on the 15 May 2012.
5. A full and final list of the Core Documents (Version 9 – 14 May 2012) was submitted to the inquiry as Document 19.
6. The Appellant has submitted a planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990. This forms a material consideration which I shall take into account in my decision.

## **Main Issues**

7. The appeal site lies in the Green Belt. It is common ground between the main parties that the proposal would constitute inappropriate development in the Green Belt. Having had regard to Paragraph 89 of the NPPF I see no reason to take a different view. Taking account of this and the submissions to the Inquiry I consider the main issues to be;
- the effect of the proposed development on the Green Belt and the purposes of including land within it;
  - the effect of the development on the character and appearance of the area;
  - the effect of the development on the Council's spatial vision for the area;
  - the presumption in favour of sustainable development contained in the NPPF;
  - the effect of the development on the supply of housing, including affordable housing; and
  - whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

### *Background*

8. The Appellant is seeking planning permission for the erection of up to 135 dwellings with associated development on agricultural land at Hunting Butts Farm to the north of Cheltenham.
9. The appeal site encompasses two agricultural fields on a landform which slopes gently downward from Swindon Lane to form a shallow depression before rising upward on a predominantly south facing slope to the Hunting Butts ridgeline. Hunting Butts Farm lies on top of the ridge and the developed area of Cheltenham lies to the south side of Swindon Lane. The site itself is open and undeveloped but there is some, albeit limited, development near to the periphery of the site. The site is crossed below the ridgeline by a public right of way known as the Cheltenham Circular Walk (CCW).

### *The Green Belt and the purposes of including land within it*

10. The NPPF states at Paragraph 79 that the Government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence.
11. The area proposed for the development lies below the line of the CCW. In consequence, the built form would occupy around 6.8Ha out of a total site area of some 9.3Ha. Nevertheless, and despite the Appellant's intentions to reduce the visual impact of the development through landscaping and careful management of the proposed housing configuration and its levels, I am in no doubt that the proposed development would significantly reduce the openness of the Green Belt.

12. The appeal proposal represents inappropriate development in the Green Belt. According to the NPPF at Paragraph 87, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. NPPF Paragraph 88 states that in considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt and 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
13. Policy CO6 of the Cheltenham Local Plan 2006 (LP) states that, except in very special circumstances, there will be a presumption against the construction of new buildings within the Green Belt other than for certain defined purposes. The proposed development does not fall within those defined purposes. Although the Local Plan was not adopted pursuant to the Planning and Compulsory Purchase Act 2004, Policy CO6 aligns with the NPPF.
14. NPPF Paragraph 80 identifies that the GB serves five purposes. The first of these is to check the unrestricted sprawl of large built up areas. In terms of preventing urban sprawl, the Appellant believes that the existing Green Belt boundary along Swindon Lane is weak. A similar position was also advanced in the 2007 Green Belt Review<sup>1</sup> undertaken on behalf of the Council. However these are both views with which I have some concerns.
15. The Green Belt Review notes at paragraph 6.4.1 that the then extant guidance in Planning Policy Guidance: Green Belts (PPG2) sought for boundaries to be clearly defined using readily recognisable features such as roads. Nevertheless, the review then goes on to draw distinctions between various types of road (as shown in Table 6.1) suggesting that only some types of road form strong boundaries. Based on the categorisations given in Table 6.1 Swindon Lane is classified as a 'weak' boundary.
16. However, there is only limited justification of the categorisations in the review and it seems to me that Swindon Lane provides a boundary to the Green Belt that is physically very distinct and likely to have a high degree of permanence. The NPPF notes at Paragraph 85 that when defining boundaries local planning authorities should use physical features that are readily recognisable and likely to be permanent. In my view Swindon Lane is just such a feature.
17. The Appellant argues that the proposed development would provide a contained boundary to the developed area through the presence of the ridge and the proposed landscaping. However the ridge lacks definition and the landscaping would need to be created as part of the development and would lack permanence. Consequently I see neither as providing a clear or strong boundary – even in combination. In any event, approving the appeal proposal would not, of itself, result in an alteration of the Green Belt boundary; it would, however, considerably diminish the value of Swindon Lane as a well defined Green Belt boundary in its own right.
18. The proposed development would be more or less contiguous with that to the south of Swindon Lane. Notwithstanding that the development would be visually contained by Hunting Butts ridge it would clearly extend the built form of the town into the defined Green Belt. In so doing it is my view that it would

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<sup>1</sup> CD10/5

not only compromise the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open but it would also lead to a weakened and less well defined boundary to the Green Belt.

19. The second purpose of Green Belts is to prevent neighbouring towns from merging into one another. In this respect the appeal site lies more or less directly south of Bishop's Cleeve. As the development would push northwards from Cheltenham and would occupy what is presently open land between Cheltenham and Bishop's Cleeve it is bound to bring the settlements physically closer together. Indeed, the Appellant accepts that in ".....plan form the settlements will be marginally closer."
20. However, the Appellant also argues that the concept of merging requires consideration of both visual and perceived separation. In this respect the Appellant points out that the topography of the land, and specifically the presence of the ridge, would prevent any visual merging or growing together of the settlements. It is also suggested that the development would be screened from the road connecting the two settlements and that in all these circumstances the proposals would not lead to a merging of the settlements.
21. I have some sympathy with the Appellant's contentions; certainly in many views from the north the development would be unseen. Consequently, and taken in isolation, in those views from the north the perception of separation would remain unchanged. However, it is an argument that could be taken too far – even to the point at which it might be suggested that development could take place up to the ridge on both sides.
22. The reality is that the proposed development would extend the built form of Cheltenham to the north and would clearly be visible from Swindon Lane - as well as from some other areas further back within the settlement. In consequence its presence would be well known to local residents and despite it being hidden in views from Bishop's Cleeve by the ridge line it would nevertheless be obvious to local residents that the separation of the settlements had been reduced.
23. Having regard to the extent and plan form of the development along the southern edge of Bishop's Cleeve and its geographic location relative to that of Cheltenham, it seems to me that in terms of preventing the merging of neighbouring towns the Green Belt in this location is especially valuable and somewhat vulnerable.
24. The third purpose of including land in Green Belts is to assist in safeguarding the countryside from encroachment. The Appellant considers that the topography and degree of containment would ensure that any impact would be localised. However, whilst I agree that from certain directions the topography is likely to lessen the development's visible impact, from other directions – such as in views down Tommy Taylor's Lane – the impact of the development may actually be more pronounced as a result of the topography.
25. In any event, the appeal site is in the Green Belt and outside of the residential areas and should be regarded as countryside. Consequently, even if the visual impact of the development were to be contained by the topography - and whilst also acknowledging that the built form would occupy only some 6.8Ha of the total site - the proposed development would still represent a significant encroachment into the countryside.

26. The fourth purpose of including land in Green Belts is to preserve the setting of and special character of historic towns. I am in no doubt that Cheltenham should be regarded as a historic town although, as the Appellant points out, the historic core of the town and its conservation areas are somewhat distant from the appeal site. Indeed, the more immediate parts of the settlement are fairly modern in origin. That having been said, it is clear from the information put before the inquiry and from my site visit that the setting of Cheltenham as a whole is dependent on its relationship with the surrounding countryside. This countryside is, in many instances, elevated above the town and provides both a sense of containment and enclosure to Cheltenham as well as affording views into and across the town that allow its setting to be appreciated.
27. Clearly the Hunting Butts ridge and the appeal site do not have the presence or significance of some of the other surrounding countryside. Nevertheless, they do in small measure provide some of the containment that I see as being a characteristic of Cheltenham's setting, particularly in views from Tommy Taylor's Lane.
28. The CCW also affords views across Cheltenham which not only give a panoramic appreciation of the town's historic skyline but which also reveal the town's setting in the surrounding countryside - particularly against the background of the Cotswold Hills. Although access to the CCW is not especially easy, and would in fact be facilitated by the development, nor is it particularly difficult. Having regard to the statements put before the inquiry as well as my own observations on site I consider it likely that the footpath is well used. Even if much of that use is local that alone does little to diminish the importance of views from the path.
29. The proposed design would restrict development to the area below the CCW and in so doing it is likely that views of Cheltenham's skyline from the CCW would be retained. Nevertheless, in contrast to the current situation, these views would have development in the immediate foreground. This would not only disguise what is currently a well defined edge to the town but would make the views from the CCW more intimate. In consequence it would be more difficult to appreciate the relationship of Cheltenham to the surrounding countryside and as such the proposed development must compromise the town's setting when seen from the CCW. In addition views of the countryside from Tommy Taylor's Lane would become confined to a small area of Hunting Butts ridge appearing above the developed area. As a result some sense of being surrounded by countryside would be lost.
30. I therefore find that the appeal site does contribute to the historic setting of the town and despite the fact that the design and layout of the development would be sensitive to some of the more significant characteristics of the appeal site, the development would compromise that setting. Consequently it would also offend the fourth purpose of the Green Belt.
31. In terms of the fifth purpose of Green Belts to assist in urban regeneration by encouraging the recycling of derelict and other urban land, at a prima facie level it seems that the use of a Green Belt site is likely to discourage rather than encourage the use of derelict and other urban land. However, in the case of Cheltenham it appears as though the Council cannot meet its development targets on previously developed land and is already looking to the development of land outwith the settlement boundary. Consequently, I do not see the fifth purpose of Green Belts as being materially compromised by the proposal.

*Character and appearance*

32. NPPF Paragraph 109 states, amongst other matters, that the planning system should contribute to and enhance the natural environment by protecting and enhancing valued landscapes and Paragraph 113 notes that "Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged".
33. The appeal site lies in the countryside and falls within the 'settled unwooded vale' character type as identified in the Gloucestershire Landscape Character assessment.<sup>2</sup> However the site is not subject to any explicit character or landscape designation and should not be regarded as a 'protected landscape' for the purposes of NPPF Paragraph 113.
34. Whether or not the site should be regarded as a 'valued landscape' in terms of Paragraph 109 is more debateable. Whilst the Council has not accorded the site any particular designation it is clear that local residents appreciate its visual amenity value - and, as noted earlier, the undeveloped site contributes to the setting of Cheltenham. In any case, irrespective of whether the site has any formal designation, one of the core planning principles in NPPF Paragraph 17 is that planning should take account of the different roles and character of different areas by recognising, amongst other matters, the intrinsic character and beauty of the countryside. The site is clearly in the countryside and consequently, whether or not it should be regarded as a 'valued landscape' in terms of Paragraph 109 the need remains to assess the impact of the development on its character and appearance.
35. In terms of the development plan, LP Policy CO1 states that development will only be permitted where it would not harm attributes and features which make a significant contribution to the character, distinctiveness, quality and amenity value of the landscape and where it would not harm the visual amenity of the landscape.
36. The Appellant considers LP Policy CO1 to be restrictive whereas the NPPF is considered permissive; as such the Appellant believes there to be more than a limited degree of conflict with the NPPF. Consequently the Appellant also considers that the proper balancing test should be that laid out in NPPF Paragraph 14; in other words, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. However, as the appeal site is in the Green Belt the site is subject to a specific Framework policy indicating that development should be restricted. In these circumstances Paragraph 14 is clear that, even if relevant development plan policies are out of date, the presumption to grant permission does not apply.
37. The Appellant nevertheless suggests that having regard to LP Policies CO1 and CP 1 (Table 2), as well as Policy NHE.1 of the Gloucestershire Structure Plan Second Review (SP), there is a recognition that further development outside the settlement is necessary and will inevitably change its character.
38. SP Policy NHE.1 is clear that, amongst other matters, the countryside's character and appearance will be protected from harmful development unless any such harm is outweighed by social or economic needs and LP Policy CP1

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<sup>2</sup> CD 10/8

- refers to safeguarding attractive landscape. I therefore accept that the development plan recognises that some development in the countryside may be necessary - whilst at the same time seeking to conserve its most valuable features. The value of the landscape and the impact of the development on it are clearly matters which must be taken into account in the overall balance.
39. As has already been mentioned, the appeal site is not subject to any landscape designations and albeit that it forms part of the 'settled unwooded vale' character type I find this of limited use in assessing the impact of the development. To my mind the landscape character type merely defines, rather than values, the landscape. As such I find it of little help in identifying any harm or benefit consequent on development of the land.
40. The Appellant argues that the site has little to commend it in terms of landscape features, further suggesting that the site has a number of negative, urbanising features. I accept that the site is comprised of fairly typical agricultural fields. However, with its peripheral hedging and expansive views the site does exhibit a number of typical countryside characteristics and I consider that the Appellant's views in terms of 'negative, urbanising features' are somewhat overstated.
41. Were it to be a flat extension from the urban edge of Cheltenham, the site would have little to distinguish it from many other agricultural fields. However, the landform of the area, particularly the sweep up to Hunting Butts ridge, does in my view present as being visually attractive and the site provides a highly visible and effective contrast to, and relief from, the residential development south of Swindon Lane. Although the Appellant suggests that there are only limited, short views from within the urban environment, the appeal site is clearly highly valued by local residents - particularly those with properties facing towards it.
42. I accept that the ridge would serve to contain the development and as such it would not generally be seen from the countryside nor would it be seen in the context of the broader countryside. However, to my mind that does not alter the site's value to those receptors in the urban area of Cheltenham or to those travelling along Swindon Lane. Whilst it is also suggested that development to the north of Swindon Lane, both to the east and west of the appeal site, has an urbanising influence on the site I consider any such influence to be limited.
43. I note that the layout of the development would respect the ridge, and that the intention is to provide significant landscaping. I am also conscious that the skyline, and some views from the bottom of Tommy Taylor's Lane, would be preserved and that views from the CCW have been carefully considered. Nevertheless, despite the proposals for a high quality, well landscaped development there would be a significant urbanising effect on a site that not only exhibits a number of countryside characteristics but that also has an attractive and interesting landform. In my judgement the development would cause material harm to the area's character and appearance and would thus be in conflict with LP Policy CP1.
44. However, it should be remembered that the site has no particular landscape designation and, other than the landform, the site has few distinguishing features. Consequently the degree of harm should not be overstated and should carry no more than moderate weight against the development.

*The Council's spatial vision for the area*

45. Development round the periphery of Cheltenham is constrained by both the Green Belt and the AONB and, if Cheltenham's housing and economic development needs are to be met, development outside the settlement boundary appears inevitable. This in part has led to the three councils of Gloucester, Tewkesbury and Cheltenham promoting a Joint Core Strategy (JCS) with the aim of taking a coherent approach to development. The Council believes that release of this site has the clear potential to undermine that coherent approach.
46. The JCS is at a very early stage and there are no policies to be considered under NPPF Paragraph 216 - nor is there yet a preferred option. Nevertheless, as part of 'Developing the Preferred Option' sites have been identified in the Green Belt that would deliver some 5750 homes outside Cheltenham. However, these sites lie to the north-west and to the south of Cheltenham and the appeal site is not amongst those put forward. Indeed, the area between Cheltenham and Bishop's Cleeve has been identified in both the Cheltenham Green Belt Review of 2007 and the Joint Core Strategy Green Belt Assessment of September 2011 as being of particular importance in preventing the merger of the two settlements. This is a view with which, for the reasons given earlier, I concur. Although the Appellant suggests that the reviews relate to an area much larger than the appeal site this is an argument that could be repeated too often.
47. Despite the JCS being at a very early stage *The Planning System: General Principles* says that in some circumstances it may be justifiable to refuse planning permission on the grounds of prematurity where a DPD (Development Plan Document) is being prepared or is under review. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development being addressed in the policy in the DPD.
48. At up to 135 homes the appeal proposal is not so substantial that it would prejudice the DPD. The Council nevertheless argues that if the appeal proposal were to be approved then it would constitute a salient of development into the Green Belt that would mean that the boundary provided by Swindon Lane would cease to be regarded as permanent. In turn this is likely to lead to further applications on nearby land using similar arguments to those advanced here. In support of this, the Council points out that nearby land has previously been the subject of both planning applications for residential development and promotion through successive development plan processes, again for residential development.
49. Although the Appellant points out that there have been no recent applications on the adjoining land I have some sympathy with the Council's view that approving this proposal would make it more difficult to resist future applications nearby. However, given that each development would need to be considered on its own merits I have no reason to believe that even the cumulative effect would be so significant as to prejudice the scale, location or phasing of new development in the DPD.
50. I also have some sympathy with the Council's views that the potential for a patchwork of ad-hoc releases of Green Belt land would not be co-ordinated and

would not represent good planning. However, as the Appellant points out, given that Members are 'minded' to support as a preferred option for the JCS a strategy not to build in the Green Belt – an option that Officers consider unsound – there are some risks to the adoption of the JCS by 2014 and it may end up being delayed. In all these circumstances I can give little weight to any potential prejudice to the Council's spatial vision for the area.

### **Other considerations**

#### *The National Planning Policy Framework and the presumption in favour of sustainable development*

51. With respect to the presumption in favour of sustainable development the NPPF is a weighty material consideration in determining applications. However, it does not change the statutory status of the development plan as the starting point for decision making. The NPPF itself is clear at Paragraph 11 that planning applications should continue to be determined in accordance with the development plan unless material considerations indicate otherwise.
52. Paragraph 49 of the NPPF states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the local authority cannot demonstrate a five-year supply of deliverable housing sites. I shall return to these matters below but it is clear that the Council is unable to demonstrate a supply of specific deliverable sites sufficient to provide five years worth of housing. The Council also has a chronic shortage of affordable housing. In these circumstances it is clear that policies relevant to the supply of housing should not be considered up-to-date.
53. Paragraph 14 of the NPPF states that a presumption in favour of sustainable development is a 'golden thread' running through both plan-making and decision-taking. For decision taking this means that (unless material considerations indicate otherwise) development proposals that accord with the development plan should be approved without delay.
54. The second bullet point 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 (again, unless material considerations indicate otherwise) permission should be granted unless: any adverse impacts of so doing would significantly and demonstrably outweigh the benefits when assessed against the NPPF policies as a whole or specific NPPF policies indicate development should be restricted.
55. In this case the development plan is not absent nor is it silent. Nevertheless, having regard to NPPF Paragraph 49 and the housing supply situation, it is clear that relevant policies for the supply of housing should be considered out of date. Given the particular circumstances of Cheltenham, where the town is virtually surrounded by green belt or AONB, it could even be argued that Green Belt policies themselves were "Relevant policies for the supply of housing....." and thus they too could be deemed out of date.
56. However, whilst I accept that Paragraph 49 casts a wide net, even if Green Belt policies were to be deemed "Relevant policies for the supply of housing.....", the final part of Paragraph 14 makes it clear that (again, unless material considerations indicate otherwise) where specific policies, including Green Belt

policies, indicate that development should be restricted then the presumption in favour of granting permission does not apply. That is the case here.

*The supply of housing (including affordable housing)*

57. The NPPF at Paragraph 47 seeks for local planning authorities to boost significantly the supply of housing by, amongst other matters, identifying a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. An additional 5% buffer should be provided to ensure choice and competition in the market for land - and where there has been a persistent under delivery of housing that buffer should be increased to 20%.
58. In this case it is undisputed that the Council cannot demonstrate a five year housing land supply, let alone a buffer. What is in dispute is the extent of the shortfall and whether or not the Council has a record of persistent under delivery.
59. The Council believes that its deliverable supply amounts to just over 4 years; however, that does not take account of the significant shortfall against the annual requirement for 2011/12 nor does it account for any buffer. Whilst changes to the 5 year trajectory are not yet certain and any figures should be treated with a degree of caution the inquiry was told that, based on the Council's assessments and accounting for the shortfall of delivery in 2011/12, the supply would fall to something around 3.8 years. Allowing for a 5% buffer would give a deliverable supply of just over 3.6 years and a 20% buffer would give a supply of just over 3 years.
60. The Appellant takes a different view of deliverability and the particular sites that have reasonable prospects both of coming forward and of being viable. Taking account of these assessments and the 2011/12 shortfall would, in the Appellant's view, give the Council a supply of some 2.3 years. Adding in the need to deliver 5% and 20% buffers would result respectively in supplies of around 2.2 and 1.9 years.
61. I see no benefit in seeking to further analyse the deliverability of individual sites; suffice to say that, excluding the need for a buffer, the supply is likely to fall somewhere between 2.3 and 3.8 years.
62. In terms of the buffer to be applied the Appellant maintains that there has been a record of persistent under delivery noting that the Council has failed in each of the past four years to deliver its annual housing target. The Appellant also points out that in 2010/2011 the Council delivered only a third of its annual requirement and in 2011/2012 appears to have delivered just 36 dwellings against a target of 395. The Appellant also suggests that the Council has been unable to demonstrate a five year housing supply for some time and that in these circumstances the buffer should be 20%.
63. In contrast the Council points out that over the period 2006/7 to 2010/11 it had around 2175 completions compared to a requirement of 2025, an over provision of some 150. As such the Council believes that it has not had a record of 'persistent' under delivery.
64. The recent economic climate has not been conducive to housing delivery and this must have had some impact on the number of completions. Nevertheless, the fact that the Council has had ongoing difficulties in being able to

demonstrate a five year supply, has failed to deliver its annual target in any of the last four years, and by a very considerable margin in the last two, seems to me indicative of an underlying problem that points towards adopting the larger buffer. On this basis the likely supply would fall somewhere between 1.9 and just over 3 years.

65. The calculation of housing land supply is not an exact science and I see no need to treat it as such. It is very clear that even on the Council's best scenario the supply of housing land, including a 5% buffer, would represent only some 3.6 years supply and on the Appellant's projections and including a 20% buffer the supply would be less than 2 years. In either case, the supply would fall well short of five years. The provision of housing against this shortfall must carry significant weight in favour of the proposed development.
66. Turning to the matter of affordable housing the Council accepts that there is an acute shortfall. Indeed, the Appellant suggests that the current supply measured against the need amounts to a supply equivalent to something between 19 and 43 days. The quantum of affordable housing being put forward on the appeal site exceeds the average delivery of affordable housing over the last five years and almost quadruples the amount delivered in the last year.
67. The development plan, through LP Policy HS4, seeks for a minimum of 40% of the total dwellings to be provided as affordable housing. In this case, the Appellant is proposing that 60% of the dwellings would be provided as affordable housing; these would be secured through a planning obligation. The Council states that it would welcome the provision of additional affordable housing were the development to be approved. However, the Council also has reservations as to whether a provision in excess of that which is necessary for conformity with the development plan would meet the test in Regulation 122 of the Community Infrastructure Levy Regulations.
68. To some extent the argument is academic in that, given that the Council cannot demonstrate a five year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to-date. This, to my mind, would include Policy HS4 and it therefore seems to me that little weight can be attached to the fact that the policy seeks a minimum of 40% affordable housing.
69. Having regard to the presumption in favour of sustainable development contained in NPPF Paragraph 14, even though in this case there are specific Green Belt policies indicating that development should be restricted, it is still necessary to look to whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations.
70. In undertaking that balance I consider that the acute shortfall of affordable housing and the provision of affordable housing on the site are other considerations that must be taken into account in the overall Green Belt balance. If, having undertaken that balance, it is determined that permission should be granted then, as the Appellant suggests, the obligation would be necessary to secure the delivery of the affordable housing on the same basis that its merits have been assessed.
71. Although the Council argues that the proposed level of affordable housing would represent no more than 11 days supply, this is an argument which could

be repeated on most sites. Consequently it does not alter my view that the proposed affordable housing provision would represent a further benefit of the proposal. It should, however, be noted that the provision of affordable housing would reduce the level of market housing, itself in short supply. Nevertheless, the provision of affordable housing should again carry significant weight, albeit not the 'compelling' weight suggested by the Appellant.

### *Sustainability*

72. There is no dispute that the site is in a sustainable location with respect to transport. Although the Council suggests that in this respect it is no different to many other sites around the urban periphery it is nonetheless a material consideration that should attract some limited weight.

### *Design, landscape and accessibility*

73. It is agreed that the scheme could deliver a high quality and attractive design but as the Council points out this is no more than would be expected from any scheme. However, I am conscious that the proposed layout is respectful of the CCW, that significant landscaping is proposed, that there would be accessibility to the upper ridge and that access to the CCW would be improved. I also note that the landscaping plan allows for new wildlife corridors and habitats and that the watercourse would be opened up. Irrespective of the need for any scheme to deliver high quality design I consider that these matters should again carry some limited weight in favour of the proposal.

### **Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations**

74. The proposal would constitute inappropriate development, harmful to the Green Belt. The presumption against inappropriate development means that this harm alone attracts substantial weight. The development would also significantly reduce the openness of the Green Belt when the most important attributes of Green Belts are their openness and permanence. The NPPF makes it clear that substantial weight should be given to any harm to the Green Belt.
75. In addition, of the five purposes of including land within the Green Belt the proposed development would materially offend four. Firstly, not only would the development compromise the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open but it would also result in a weakened and less defined boundary to the Green Belt. This could make it more difficult for the Council to resist further Green Belt incursions.
76. Secondly the proposal would be contrary to the Green Belt purpose of preventing neighbouring towns from merging into one another. I consider this of particular importance as the Green Belt between Cheltenham and Bishop's Cleeve is especially valuable in this respect - whilst also being somewhat vulnerable. Thirdly, the development would conflict with the Green Belt purpose of safeguarding the countryside and would represent a significant encroachment into it. Fourthly, the development would compromise the Green Belt's purpose to preserve the setting of and special character of historic towns, in this case Cheltenham. I do not, however, see the fifth purpose of Green Belts (to assist in urban regeneration) as being materially compromised by the proposal.

77. In addition to the Green Belt harm I have found that there would also be harm to the character and appearance of the area. However, I consider that the degree of harm should not be overstated and should carry no more than moderate weight against the development. I give little weight to any prejudice to the Council's spatial vision for the area.
78. The development would, however, provide both market and affordable housing. The Council is unable to demonstrate a five-year supply of deliverable housing sites; indeed the supply would fall well short of five years irrespective of any buffer now to be added in accordance with the NPPF. The provision of housing against this shortfall must carry significant weight in favour of the proposed development. The Council also accepts that it has a chronic shortage of affordable housing and the provision of 60% affordable housing must also represent a further benefit of the proposal. Given the severe shortage, this must again carry significant weight.
79. Matters of sustainability, design, landscaping and accessibility add some further limited weight in favour of the proposal but the presumption in favour of sustainable development laid out in NPPF Paragraph 14 does not apply.
80. I consider that the harms to the Green Belt and its purposes are very real and substantial and development of the appeal site raises particular issues in respect of the Green Belt purposes of preventing the merger of settlements and preserving the setting of historic towns. The harm to the Green Belt is added to by the harm to the character and appearance of the area. Balanced against those harms are the provision of housing and affordable housing on the site and some additional benefits in terms of sustainability, design, landscaping and accessibility.
81. Seen as a whole, and despite attributing significant weight to the housing benefits, it is my judgement that the totality of the harm is not clearly outweighed by the other considerations. Consequently the very special circumstances necessary to justify the development do not exist and the proposed development would be contrary to LP Policy CO6 and the NPPF.

### **s106 Unilateral Undertaking**

82. The Community Infrastructure Levy Regulations 2010 confirm that it is unlawful for a planning obligation to be taken into account in a planning decision on a development which is capable of being charged CIL if the obligation does not meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development (Regulation 122). NPPF Paragraph 204 reinforces these provisions.
83. Whilst the submitted Undertaking would ensure the provision of affordable housing as part of the development, a matter I have previously addressed, it would also make provision for matters such as public art, a travel plan, transport and library facilities. However, given that I have found that the very special circumstances necessary to justify the development do not exist I see no reason to assess the submitted obligation against the CIL Regulations and the NPPF.

## **Conclusion**

84. I accept that it is highly likely that development outside the settlement boundary of Cheltenham, probably in the Green Belt, will be necessary if Cheltenham's housing and economic development needs are to be met. However, in this case I have found that despite the clear benefits of the scheme in meeting some of those housing needs the particular characteristics of the appeal site mean that the totality of the harm would not be clearly outweighed by other considerations and the very special circumstances necessary to justify the development do not exist.
85. Having had regard to all other matters before me, including the economic benefits of the development, the effect of the New Homes Bonus and the range of issues raised by third parties, I find nothing to materially affect my finding above. The appeal must therefore fail.

*Lloyd Rodgers*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr P Goatley of Counsel	Instructed by One Legal, The Legal Service for Cheltenham and Tewkesbury Borough Councils
He called	
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### FOR THE APPELLANT:

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Mr R Brogden BSc	Bruton Knowles
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Mr R Tetlow MSc	Tetlow King Planning
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### INTERESTED PERSONS:

Mr W Lewis	Local resident
Mr C Wharton	Local resident
Cllr L Godwin	Ward Councillor, Prestbury
Mr A Cameron	Local resident
Mr R Fuller	Local resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Agenda item 9. Cheltenham Borough Council minutes of 10 November 2011. Submitted by Mr Williams.
- 2 Final draft of s106 Unilateral Undertaking. Submitted by Mr Williams.
- 3 Annotated panoramic view: Hunting Butts Farm. Submitted by Mr Goatley.
- 4 Appellant's opening statement. Submitted by Mr Williams.
- 5 Summary proof of evidence of Mr J Overall. Submitted by Mr Goatley.
- 6 Letter from the Council to the Secretary of State for Communities and Local Government. Submitted by Mr Goatley.
- 7 e-mail from Mr J Coker of Knight Frank. Submitted by Mr Goatley.
- 8 Joint Core Strategy summary guide. Submitted by Mr Goatley.
- 9 Written statement of Mr A Cameron
- 10 Written statement and attachments of Cllr L Godwin
- 11 Statement of Common Ground- Affordable Housing
- 12 Bruton Knowles 5 year housing supply calculation. Submitted by Mr Williams.
- 13 Unilateral Undertaking dated 14 May 2012. Submitted by Mr Williams.
- 14 Notification of inquiry resumption. Submitted by Mr Goatley.
- 15 Core Documents List (Version 8 – 23 February 2012). Submitted by Mr Goatley.
- 16 Council's statement re North Place and Portland Street Car Park sites. Submitted by Mr Goatley.
- 17 Laying the Foundations: A Housing Strategy for England (CD10/22). Submitted by Mr Goatley.
- 18 The National Planning Policy Framework. Submitted by Mr Goatley.
- 19 Core Documents List (Version 9 – 14 May 2012). Submitted by Mr Goatley.
- 20 Corrected tables. Appendix A4.6 to CD10/5. Submitted by Mr Goatley.
- 21 Statement of CIL compliance by Gloucestershire County Council acting as Highway Authority. Submitted by Mr Goatley.