

Appeal by Gladman Developments Ltd
Land at Hill Farm, Hempsted Lane, Gloucester

Against the non-determination of a planning application submitted to Gloucester City Council with the description of development:

“Outline planning application for the erection of up to 245 dwellings with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access point from Hempsted Lane. All matters reserved except for means of vehicular access.”

Appeal Reference: APP/U1620/W/22/3296510

Proof of Evidence

by

Mr Christien Lee BSc (Hons) MCD MRTPI



August 2022

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1 PREAMBLE

1.1 Qualifications

1.1.1 I am Christien Lee, BSc (Hons) MCD MRTPI.

1.1.2 I am a chartered Town Planner. I hold an upper second class BSc (Hons) in Geography from the University of Bristol and a MCD with Distinction in Town and Regional Planning, from the University of Liverpool.

1.1.3 I have been employed by Gladman Developments Ltd (GDL) since March 2014 and I am currently a Planning Director leading one of the strategic Project Teams. My role primarily consists of the promotion of strategic residential sites for development. This includes site appraisals, planning policy scrutiny, statistical analysis of housing demand and land supply, authoring reports, managing the submission of planning applications and negotiation of S106 agreements and attending inquiries, hearings and Local Plan examinations.

1.1.4 To be clear, I have no legal qualifications and where references are made to court judgments, my evidence does not represent legal submissions but sets out my professional understanding of the implications of such judgments in so far as they clarify the correct interpretation of policy. Given the nature of my role, I have had the benefit of advice from a number of solicitors and barristers in reaching this professional understanding.

1.1.5 The scope of my evidence is set out in Section 1.3 below, responding to the planning policy position of the council and the sustainability of the site and settlement.

1.2 Statement of Truth

1.2.1 The evidence that I shall provide for this appeal (reference APP/U1620/W/22/3296510) has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true professional opinions. In providing expert evidence to the Inquiry, I am fully aware that my duty is to the inquiry and to provide my honestly held professional view, irrespective of by whom I am employed.

1.3 Scope of my Evidence

1.3.1 My evidence relates to matters of planning policy, sustainability and I also undertake the overall planning balance for the appeal proposals. I have also appended a statement on the matter of Five-Year Housing Land Supply produced by Planning Prospects to my proof.

1.3.2 I do not produce a separate 'Summary Proof' but for ease of reference my 'Summary and Conclusions' are produced at Section 11 of this proof of evidence.

1.3.3 A separate proof of evidence and related reports are also produced with regard to the following specific matters:

- Odour impact (Mr Malcolm Walton, Wardell Armstrong)

1.3.4 Short statements have also been produced with regard to the following specific matters:

- Landscape (Mr Clive Self, CSA Environmental)
- Heritage (Ms Lorna Goring, Wardell Armstrong)
- Biodiversity and ecological matters (Mr Greg Chamberlain, Wardell Armstrong)
- Flooding and drainage (Mr Matt Travis, Enzygo)
- Highways (Mr Nigel Weeks, Stirling Maynard Transportation)

1.3.5 In arriving at my overall conclusions, I have relied upon the professional view of these witnesses, as expressed in their own proofs of evidence/statements submitted to this inquiry.

1.4 Structure

1.4.1 My evidence is set out as follows:

- Section 2 sets out the background to the appeal
- Section 3 identifies the key issues for the appeal
- Section 4 outlines the appeal site and suitability for development
- Section 5 provides an introduction to the development plan
- Section 6 provides an appraisal of the appeal proposals against the relevant planning policies of the adopted development plan
- Section 7 provides a summary of other material considerations
- Section 8 provides a summary of the benefits and harm of the scheme
- Section 9 sets out the planning balance
- Section 10 outlines the summary and conclusions

2 THE APPLICATION

2.1 Outline

2.1.1 This proof of evidence is prepared in respect of an outline planning application for up to 245 residential dwellings on land at Hill Farm, Hempsted Lane, Gloucester ¹. Permission is sought for:

“Outline planning application for the erection of up to 245 dwellings with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access point from Hempsted Lane. All matters reserved except for means of vehicular access.”

2.1.2 It is notable that the Appellant is proposing a condition to ensure that no more than 185 dwellings are constructed on the site, as illustrated in the revised Development Framework Plan CSA/6036/103 Rev D (CD6.17).

2.1.3 The appeal site consists of 12.22 hectares of land which is currently in agricultural use. The site lies adjacent to the existing residential development in Hempsted, an area encapsulated within the settlement boundary of the City of Gloucester.

2.1.4 The site description and location are an agreed matter in the Planning Statement of Common Ground (SoCG).

2.1.5 The planning application was supported by a suite of reports which informed the preparation of the proposals. The supporting reports, together with the related updated reports, demonstrate that subject to the imposition of appropriate planning conditions, there are no technical impediments that should prevent the successful implementation of the development.

2.1.6 Full details of the supporting reports are contained within the application documents in Folder 1 (CD1.1-1.28 and CD2.1-CD2.8).

2.1.7 The plans for which approval is sought are as follows:

- Location Plan (GM10710-020) (CD1.2)
- Site Access Plan (P19105-00-03A) (CD6.9)

¹ LPA ref. 20/00315/OUT

2.1.8 The appellant undertook a public consultation exercise in relation to the planning application. Comments received were duly considered in the formulation of the proposals. Full details of the engagement exercises carried out are contained within the Statement of Community Involvement (CD1.22). Third party responses to the appeal have also been collated, assessed and responded to in appendix 1 of this Proof.

2.2 Planning Application

2.2.1 The planning application for the proposed development was validated by GCC on 29th April 2020 (Application ref: 20/00315/OUT).

2.2.2 In this context, the original statutory 13-week period for determining the Appellant's application proposals expired on 29th July 2020, after which point the Appellant and the Council sought to agree further Extensions of Time (EoT). The most recent EoT agreed by both parties expired on 10th October 2021. A further EoT until 7th January 2022 was proposed by the Appellant, but no response was received from the Council.

2.2.3 Subsequently, GCC announced that a cyber-attack in December 2021 had disabled some of its computer systems, including those of its planning service. On 16th February 2022, the case officer informed Gladman that the Council was unable to access the online public access application portal, internal planning processing system or planning file due to the cyber-attack and that it was therefore unable to proceed with the assessment of the current application proposals. In light of this, with reluctance, the Appellant lodged an appeal against the non-determination of the planning application, which will be heard at a public inquiry commencing in September 2022.

2.2.4 The application went before Planning Committee on Tuesday 5th July with an officer report stating that had the appeal for non-determination not been submitted, the application would have been recommended for refusal (see Committee Report at CD7.18). The Planning Committee endorsed the officer's report and the putative reasons for refusal (RfR) to form the Council's case at appeal. In summary, these concern:

1. Conflict with the development plan due to development outside the settlement boundary;
2. Lack of an appropriate planning obligation to secure affordable housing;
3. Adverse impact on future occupiers due to unacceptable levels of odour, resulting in a poor standard of amenity and environmental quality;

4. Failure to provide adequate facilities to meet the play and sports needs arising from a residential development of the proposed size;
5. Failure to provide sufficient information to demonstrate that development of the site would not increase flood risk within the site or elsewhere;
6. Failure to demonstrate the full impacts of the development upon ecology and biodiversity, including protected species;
7. Lack of a planning obligation to mitigate the highway impacts of the development;
8. Lack of a planning obligation to adequately provide for community and education facilities.

2.2.5 Following the Statement of Case submitted by the Council on the 12th July 2022, the Council anticipate that putative RfR 2, 4, 7 and 8 will be addressed by appropriate s106 obligations and will therefore be resolved.

2.2.6 The Appellant submitted an updated Odour Assessment (CD6.15) and following the Council's review of the assessment, on the 11th August 2022 a without prejudice meeting took place between the Council and the Appellant to discuss the position in respect of putative RfR 3. As explored in more detail throughout this proof, this meeting resulted in an agreed, open, position being reached that is reported in this proof, whereby the Council considered that if development were to be located outside of the higher projected odour contours, the Appellant would be compliant with emerging Policy C6 and the introduction of residential development on the appeal site would not adversely affect the continued operation of the Netheridge Sewage Treatment Work. The Appellant has provided a revised Development Framework Plan (CD6.17) which indicates how development may be placed outside of the 3-odour unit contour buffer area. It is now on this basis that it is proposed that an appropriately worded condition is imposed in order to restrict the number of dwellings provided to up to 185 dwellings and to outside of the odour zone identified in the revised location plan (CD6.18)

2.2.7 The Council has reviewed the Appellant's further submissions of information provided subsequently to the 5th July committee meeting in respect of putative reasons for refusal 5 and 6. The Council has confirmed that it no longer intends to contest putative RfR 5 and 6, subject to the agreement of appropriate conditions.

2.2.8 It is agreed within the Planning Statement of Common Ground, the only remaining reason for refusal is putative RfR 1 which identifies a conflict with the Council's spatial strategy and policies SP1, SP2 and SD10 of the JCS. However, in the context that the Council cannot demonstrate a

five year housing land supply and the appeal is to be determined in accordance with paragraph 11dii of the NPPF, that the Council will no longer contest the appeal solely due to the PRfR1. In short, the LPA advised that provided agreement can be reached in respect of the UUs/obligations and the conditions the appeal would now be uncontested.

2.3 Planning History

2.3.1 The site has no relevant past planning applications.

2.4 Environmental Impact Assessment

2.4.1 With reference to the current appeal, the Appellant received a letter on 31st May 2022 confirming that the Secretary of State has considered the proposals in accordance with Regulation 14 (1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017) ('THE EIA REGULATIONS'). The letter states that given the nature and scale of the Proposed Development and the nature of the receiving environment, it is considered that while there may be some impacts on the surrounding area as a result of this development, it would not be of a scale and nature likely to result in significant environmental effects. The letter concludes that the development is not Environmental Impact Assessment (EIA) development.

3 KEY ISSUES

3.1.1 This section of my proof outlines the key issues in respect of the determination of this planning appeal having regard to the development plan, national planning policy and other material considerations including technical and site-specific issues.

3.1.2 Section 38(6) of the Planning and Compulsory Purchase Act (2004) refers to the development plan and states that:

“If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

3.1.3 As such, the relevant test in respect of this appeal is thus:

- 1) Do the appeal proposals accord with the statutory development plan taken as a whole?
- 2) Do other material considerations indicate that a decision should be taken other than in accordance with the plan?

3.1.4 The National Planning Policy Framework (the Framework) is an important material consideration in the determination of planning applications/appeals. The presumption in favour of the development plan is confirmed in the Framework. The Framework acknowledges the importance of the plan-led approach, with paragraph 12 noting that the presumption at paragraph 11 does not remove the statutory presumption that the development plan is the starting point for decision making. That said, the Framework makes clear that development plans should be up to date and in accordance with the Framework, which is a material consideration in the decision-making process.

3.1.5 As such, in preparing this proof, I first consider whether the appeal proposals conform with the development plan for Gloucester. I then consider:

- The degree to which the most important policies for the determination of the application are up to date and consistent with the Framework;
- Whether the presumption or often-termed “tilted balance” at paragraph 11 (d) is engaged;
- If engaged, whether the application of policies in the Framework provide a clear reason for refusing the development (see footnote 7 to paragraph 11 (d));

- The weight to be attached to any claimed adverse impacts (which cannot be addressed by conditions and/or the s106 obligation);
- The weight to be attached to the benefits of the development;
- If there are any other material considerations that need to be weighed in the decision making process; and
- Whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

3.1.6 The key issues for this appeal, as outlined by the Inspector at the Case Management Conference, are as follows:

- a) Whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to sewage odour, and/or constrain the future operation of Netheridge Treatment Works (RfR 3);
- b) The proposal's effects on the risk of flooding in and around the site (RfR 5);
- c) The proposal's effects on biodiversity (RfR 6);
- d) The proposal's effects on the character and appearance of the area, including the landscape setting of Hempsted village and its Conservation Area.

3.1.7 Another issue which is also likely to be discussed at the inquiry and is subject of a discrete statement is Highways.

3.1.8 The Inspector's key issues are addressed throughout this and the appellant's accompanying proofs of evidence and statements.

4 THE APPEAL SITE AND SUITABILITY FOR DEVELOPMENT

4.1 Introduction

4.1.1 In this section of my evidence, I assess the suitability of both Hempsted and the wider city of Gloucester as a location for development and demonstrate why the appeal site itself is a suitable housing site.

4.1.2 In coming to my conclusions, in this and following sections, I rely upon the evidence submitted in the form of short statements, the Odour proof of evidence prepared by Mr Walton, as well as the Planning, Odour, Highways Statements of Common Ground, comments in the Officer's Report and consultation responses as well as the documentation submitted to support the planning application.

4.2 Suitability of Hempsted as a Location for Development

4.2.1 The site is in a sustainable location in Hempsted and has good access to the nearby facilities in Gloucester City.

4.2.2 Hempsted as a village encapsulated by Gloucester City has a number of services and facilities including:

- General Store
- Post Office
- Primary School
- St Swithun's Church

4.2.3 Gloucester City is the central hub of the county of Gloucestershire, where all necessary services are available, all of which can be reached by sustainable modes from the appeal site. The city centre is accessible by bus from the stops located along Secunda Way and within Hempsted Village with a regular bus service providing links into Quedgeley and Gloucester. Across Secunda Way, there are foot and cycle links via the canal which also provides convenient access to facilities up Bristol Road. In particular, I consider that the appeal scheme's location in close proximity to the canal, Gloucester Docks and St Pauls area is a particular benefit of the proposals.

4.2.4 The locational sustainability of the proposed development, in the context of the level of housing need in the city and the national imperative to encourage sustainable travel/reduce

reliance on the private car, is an important material consideration in favour of the appeal proposals. As will be detailed later in my proof of evidence, a residential travel plan will be secured as part of the S106 which will include measurable targets and measures to encourage additional use of sustainable transport modes.

- 4.2.5 Overall, I am content that Hempsted, in its location within Gloucester City is a highly sustainable location for the scale of the development proposed. No issues have been raised by the main parties to this appeal in respect of impact on the ongoing sustainability of those facilities² indeed, in many cases the additional housing proposed will likely generate additional patronage for those facilities.

4.3 Suitability of the Site for Development

- 4.3.1 The site is considered to be a suitable option for development and the following factors have been considered and demonstrate this suitability.

Affordable Housing, Conditions, CIL and Section 106 Obligations

Affordable Housing

- 4.3.2 The Joint Core Strategy sets out the ambitions and objectives of Gloucester and the other joint authorities in Part 2 of the document, titled: *Visions and Objectives*. Ambition 3 – *A healthy, safe and inclusive community*, contains Strategic Objective 8 – *Delivering a wide choice of quality homes*, and Strategic Objective 9 – *Promoting Healthy Communities*.
- 4.3.3 These objectives clearly state the commitment of Gloucester and the other joint authorities to “meeting the housing needs of all age groups and vulnerable groups” through “delivering, at least, a sufficient number of market and affordable homes” with the aim of “creating stronger communities by reducing inequality and social exclusion.”³
- 4.3.4 Core Strategy Policy SD12 – *Affordable Housing* provides further detail on the authorities’ planned delivery of the ambitions and objectives set out in part 2 of the Core Strategy. Policy SD12 demonstrates that the joint authorities appreciate the need for sufficient affordable housing delivery, and the explanation below this policy specifically identifies “higher levels of need in Gloucester City than in other districts. This site will be able to deliver up to 37 affordable dwellings and this will provide people with a local connection to access an

² Save for impact on education places and NHS provision, which the relevant consultees are satisfied can be dealt with by the provision of a proportionate contribution towards additional provision.

³ Gloucester, Cheltenham and Tewkesbury Joint Core Strategy Ambition 3, Page 15.

affordable property to call their own. Therefore, the provision of affordable housing is regarded as a very significant benefit of the proposals.

Conditions

- 4.3.5 It is my evidence that subject to appropriate conditions the site is a sustainable location for housing development. It is anticipated that the Appellant and LPA will be able to agree to a set of conditions and submit these to the inquiry.

Community Infrastructure Levy

- 4.3.6 According to the 2022 Gloucester CIL Charging schedule with indexation applied the amount payable is £45 per m² applicable to the market housing.

Section 106 Obligations

- 4.3.7 As above provision for Affordable Housing is secured through the Section 106 obligation. In addition to Affordable Housing, also included in the Section 106 obligation is provision and contributions for:

- Secondary school
- Library
- Formal Sport
- Open Space
- NEAP/MUGA/LEAP and Kickabout area
- Highways improvement

- 4.3.8 Reasons for refusal 2, 7 and 8 are relating to a lack of signed Section 106 agreement but it is agreed in the SoCG that these reasons fall away through the unilateral undertaking to be submitted to the Inquiry.

- 4.3.9 I discuss the relevance of these contributions as necessary in the sections below.

Access, Highways and Public Transport

- 4.3.10 The proposed access strategy for the appeal site will provide a priority-controlled access point onto Hempsted Lane. It has been confirmed that the required visibility splays can be achieved and that the site access junction will operate comfortably within capacity in both the morning

and evening peak periods with the proposed development traffic as demonstrated by the Transport Assessment prepared by Stirling Maynard [CD1.9]. The site will be able to be safely accessed by refuse vehicles and delivery vehicles.

- 4.3.11 The site has good accessibility to all services in Hempsted, Gloucester Docks and other areas of Gloucester City Centre by foot, cycle and public transport services. The site is also linked to Gloucester railway station via bus which provides access to a range of neighbouring settlements which inter alia include; Bristol, Cheltenham and Cardiff. I therefore consider that rail travel is a convenient and accessible option of transport that further enables access to a range of regionally strategic locations and major settlements.
- 4.3.12 As set out within the Highways SoCG, there are no matters of outstanding disagreement between the main parties hence the final decision by Gloucestershire County Council not to object to the proposed development.

Arboriculture

- 4.3.13 There are no adverse impacts to weigh in the planning balance on arboricultural grounds subject to the imposition of appropriate planning conditions.

Ecology and Biodiversity

- 4.3.14 The appeal proposals will not have an unacceptable impact on protected species or habitats subject to securing the recommended mitigation through conditions, would not likely affect the integrity of the Netheridge Reserve, Alney Island Local Nature Reserve, Cotswold Beechwoods Special Area of Conservation and Severn Estuary Special Protection Area/Special Area of Conservation/, RAMSAR either alone or in combination with other development, thus meeting the test of the Habitats Regulations 2017
- 4.3.15 The proposals are capable of achieving a biodiversity net gain (BNG) of at least 10%. The most recent BNG Assessment [CD6.13.1] demonstrates that based on the Development Framework Plan Rev C [CD6.10] the appeal site has capacity to result in an increase in hedgerow habitats on site by 31.81% and a Biodiversity Net Gain in habitats of 26.91%.

Flood Risk and Drainage

- 4.3.16 The Flood Risk Assessment submitted as part of the planning application (CD1.16) and the Drainage and Flood Risk Technical Note prepared by Enzygo for the purposes of the current appeal (CD8.1), demonstrate that the appeal site would be operated with minimal risk from flooding, would not increase flood risk elsewhere, and is in accordance with the requirements

of national policy and guidance. There are no objections in relation to drainage matters subject to the imposition of appropriate conditions and therefore, it is common ground that putative RfR 5 has been resolved.

Heritage

- 4.3.17 Whilst I consider that there is no harm in respect of the impact on the significance of heritage assets nor to the setting of Hempsted Conservation Area, both parties agree that any harm identified in respect of impact on the significance of heritage assets would be outweighed by the public benefits of the proposal.

Landscape and Visual Impact

- 4.3.18 It is agreed that the Appeal Site is not covered by any landscape designation and does not form part of a 'valued landscape' for the purposes of Framework paragraph 174.
- 4.3.19 Both parties agree that any landscape harm arising from the development would not give rise to significant adverse impact, albeit landscape impact is a matter to be considered in the planning balance. The parties agree that any perceived degree of landscape harm would be outweighed by the benefits of the proposals in the planning balance.
- 4.3.20 It is agreed that releasing greenfield sites for development is an inevitable consequence of meeting the city's housing needs.

Odour

- 4.3.21 The appeal site is situated in the current Cordon Sanitaire (CS) associated with the Netheridge Sewage Treatment Works (STW) as defined by policy FRP12 of the 2002 local plan, and policy C6 of the emerging Gloucester City Plan (GCP).
- 4.3.22 As detailed in Section 7 below, both parties agree that Policy 6 of the GCP is now the most appropriate policy against which to assess the appeal proposals, as opposed to FRP. 12. The appellant has made representations on Policy 6 of the emerging GCP though our involvement in the associated Examination in Public process, highlighting concerns of the datedness of the evidence base underpinning the policy's Cordon Sanitaire and that the policy needed to more flexible (as opposed to precluding all development 'likely to be adversely affected by odour').
- 4.3.23 Although no further modelling of the CS boundary was suggested by the Examination Inspector, she did recommend that the policy should adopt a more flexible approach (as suggested by a Main Modification), allowing applicants to demonstrate their proposals would

not be significantly adversely impacted by odour. Whilst Gladman welcome the additional flexibility that has been built into Policy 6, we continue to object to the revised policy wording, as we believe the test it seeks to apply places a higher bar on development than that contained in national policy and guidance. The appellant has also raised concerns over the test applied to development proposals in respect of future operations at the WwTW. For these reasons and when read consistently with paragraph 187 of the Framework, I believe this policy can only attract limited weight at the present time.

- 4.3.24 Notwithstanding this, as detailed in Section 2 above, an updated Odour Assessment Report (CD6.15) has now been submitted to the Council. On the basis of this report and further dialogue between the appeal parties and their respective odour experts, it has now been agreed that subject to providing a 'buffer zone' along the southern and eastern boundaries of the appeal site, such that development would not encroach into the 'worst case' 3 odour unit contour ($3 C_{98} \text{ OU}_E/\text{m}^3$), the Council would no longer object to the appeal on odour grounds.

Open Spaces

- 4.3.25 The proposal would create a high-quality sustainable development with strong green infrastructure in the on-site open space. The revised Development Framework Plan (CD6.17) indicates approximately 7.51ha of the site will be given to Green Infrastructure and Public Open Space. There is currently no public access to the site, with the exception of the public right of way along the eastern boundary, and therefore, the opportunity to provide extensive open spaces on-site including a LEAP, NEAP AND MUGA, in addition to informal parkland with recreational footpath and structural planting represents a positive planning benefit.

Residential Amenity

- 4.3.26 A scheme can be suitably accommodated on the site without impacting any neighbouring property including overshadowing and other residential amenity issues. The protection of residential amenity can be controlled through the reserved matters application stage.

4.4 Conclusion on Suitability of the Site and Hempsted, Gloucester for New Development

- 4.4.1 The site is an appropriate and sustainable location for new development, including affordable housing for real people in real need.

5 THE DEVELOPMENT PLAN

5.1 Introduction

5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

5.1.2 The statutory development plan comprises:

- The 'saved policies' of the 1983 Gloucester Local Plan
- Gloucester, Cheltenham, and Tewkesbury Joint Core Strategy (JCS) (2011-2031)
- Gloucestershire Waste Core Strategy (adopted November 2012)
- Minerals Plan for Gloucestershire (adopted March 2020)

5.1.3 For the avoidance of doubt, it is not considered that the Minerals Plan for Gloucestershire is relevant to the determination of this appeal, and it is not considered further.

5.1.4 The Joint Core Strategy was adopted in 2017 to guide development in the three authority areas over the period 2011 - 2031 and was prepared and examined under the provisions of 2012 version of the National Planning Policy Framework (The Framework). Two policies remain extant from the 1983 Local Plan, with all other saved policies from this document having now been superseded through the adoption of the JCS. These policies are not relevant to the appeal proposals, so this plan is not considered further.

5.1.5 The JCS Vision places a strong commitment to the housing and employment needs of the existing and growing population. Given the current site's location adjacent to development encapsulated by the City of Gloucester, the proposed development meets the vision of the plan which emphasises the importance of establishing new developments in sustainable locations, whilst respecting the natural and built environment. The appeal site can be successfully and sensitively developed to respect the characteristics of its location, whilst providing improved access to housing.

5.1.6 The Gloucestershire Waste Core Strategy was adopted in November 2012 and covers the period 2012-2027. It is the county wide waste plan.

5.1.7 In the next chapter I shall assess the appeal proposals against those saved policies of the development plan which are relevant.

6 POLICIES OF RELEVANCE

6.1 Introduction

6.1.1 In this Section, I consider the degree of conformity of the appeal proposals with the relevant policies of the development plan and the weight to be attributed to these policies in decision making.

6.1.2 Paragraph 11 of the Framework sets out two ways in which the tilted balance may be triggered. The first is a procedural trigger, when the Council cannot demonstrate a 5YHLS. That is the position here, and the tilted balance applies unless either limb (i) or limb (ii) of paragraph 11(d) applies. The second is a trigger which applies if the most important policies for determining the appeal are substantively out of date and requires the decision taker to consider the basket of policies as a whole (see the **Wavendon** case below). The Appellant does not need to rely on the substantive trigger given the 5YHLS position, but it is nonetheless important to consider whether the policies are substantively up to or out of date, since that will affect the weight that can be given to those policies and any conflict with them in the planning balance.

6.1.3 I assess the appeal proposals against all policies cited in the Council's reasons for refusal, along with other policies which are considered to be important for the determination of the application; the Statement of Common Ground between GCC and the appellant sets out all other relevant policies and unless specifically stated it is considered that there is agreement that the proposals comply with all policies not elaborated in this chapter.

6.1.4 It is clear that in addressing development plan policies, the following questions should be asked:

1. Is the policy one of the most important for determining the planning application (or appeal)?
2. Is the policy out-of-date having regard to both paragraph 219 of the Framework but also wider issues, such as the extent to which the plan in which it features addresses present development needs such as up-to-date housing requirements, whether it has been superseded by more recent policy, or if things have changed "on the ground"?
3. Does the proposal conflict with the policy?
4. What level of harm results from conflict with the policy?

5. What weight should be afforded to the policy and any conflict with it?

6.1.5 The decision of Mr Justice Dove in the *Wavendon* case is clear that the decision taker must look at the basket of policies which are most important and decide if, collectively, they are out-of-date before deciding whether the tilted balance at paragraph 11 d) (ii) applies. As outlined above, in this case it is not fundamental to engage in the question of which are the most important policies and whether the basket is out of date, as the appeal proposal benefits from the procedural trigger of the tilted balance as a result of the Council's inability to demonstrate a five-year housing land supply. However, in forming a conclusion on compliance with the development plan taken as a whole, I will assess the policies which I consider are the most important for the determination of the appeal, and the questions above.

6.1.6 Clearly, were a Local Planning Authority to have an up-to-date development plan, the above process would not be necessary. However, this is not the case in Gloucester, and therefore in order to establish whether the tilted balance applies, it seems to me that this is the process to which the decision-taker must apply themselves.

6.2 Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2017 (JCS)

6.2.1 The putative reasons for refusal allege conflict with the following policies of the JCS:

- SP1 – The need for new development
- SP2 – Distribution of new development
- SD4 – Design requirements
- SD9 – Biodiversity and geodiversity
- SD10 – Residential development
- SD11 – Housing mix and standards
- SD12 – Affordable housing
- SD14 – Health and environmental quality
- INF1 – Transport network
- INF2 – Flood risk management
- INF3 – Green Infrastructure
- INF4 – Social and community infrastructure

- INF6 - Infrastructure delivery
- INF7 – Developer contributions

6.2.2 It is considered that putative RfRs 2, 4, 7 and 8 can be satisfactorily addressed prior to the inquiry through the provision of a Unilateral Undertaking securing obligations towards the respective infrastructure requirements. As such, it is expected that by the time of the inquiry it will be common ground between the parties that the appeal scheme does not conflict with policies SD11, SD12, INF1, INF3, INF4, INF6 and INF7. As such, these policies are not considered further.

6.2.3 I assess the appeal proposals against each of the policies cited in RfR1, 3, 5 and 6 below. I also consider the following policies which are relevant to the Inspector’s fourth main issue.

- Policy SD6- Landscape
- Policy SD8- Historic Environment

6.2.4 I also briefly touch upon policy REV1 which is relevant in terms of the up-datedness of the plan (and its most important policies).

Policy SP1 – The need for new development & Policy SP2- Distribution of Development & Policy SD10- Residential Development

Policy Analysis

6.2.5 These policies are addressed together as they effectively function together to provide the spatial strategy of the JCS. Policy SP1: The Need for New Development sets out each Authority’s overall housing requirements, with Policy SP2: Distribution of New Development and Policy SD10: Residential Development providing a more specific breakdown on the allocated housing figures for the major settlements, rural service centres and service villages, and the criterion for housing delivery.

6.2.6 **Policy SP1** sets out that over the plan period provision will be made to meet the need for “approximately” 35,175 new homes across the plan area. Of this, Gloucester’s housing requirement is “at least 14,359 homes” [emphasis added]. The policy states that this will be delivered by development within existing urban areas through district plans, existing commitments, urban extensions to Cheltenham and Gloucester and the provision of strategic allocations at Ashchurch. This strategy “aims to locate jobs near to the economically active population, increasing sustainability, and reducing out-commuting thereby reducing carbon emissions from unsustainable car use.

- 6.2.7 The supporting text to the policy explains that “one of the biggest challenges facing the JCS authorities is to accommodate the level of growth the area is likely to need in terms of [inter alia] housing...whilst continuing to protect the natural and built environment”. It sets out that the housing requirement was generated from an Objectively Assessed Need calculated by NLP, and sets out that through the examination of the plan, the Inspector recommended that an additional 5% be added to the OAN to increase the provision of affordable housing and to add flexibility.
- 6.2.8 **Policy SP2** sets out the proposed spatial strategy for the distribution of the requirements set out in SP1. It states that “to support their economic roles as the principal providers of jobs, services and housing, and in the interests of promoting sustainable transport, **development will be focused at Gloucester and Cheltenham, including urban extensions to those areas**”. In the overall settlement hierarchy, Gloucester and Cheltenham are classified as “key urban settlements”, which is the top tier of the hierarchy⁴. In respect of Gloucester’s housing requirement, it states that “at least 13,287 dwellings” (of the identified minimum requirement of 14,359 set out in policy SP1) will be provided within the Gloucester City administrative boundary, including the Winneycroft strategic allocation, and [within] urban extensions at Innsworth and Twigworth, South Churchdown and North Brockworth within Tewkesbury Borough [emphasis added]. The policy states that in the rural area (excluding the Rural Service Centres and Service Villages) policy SD10 will apply to proposals for residential development, and that the unmet needs of Gloucester and Cheltenham “beyond their administrative boundaries” [emphasis added] will only be delivered on strategic allocations and/or through a memorandum of agreement between the authorities. The identity of additional urban extensions to help meet the unmet needs of a local planning authority must be undertaken through a review of the plan, and any additional allocations made through local or neighbourhood plans should meet the JCS spatial strategy.
- 6.2.9 The supporting text to the policy expands upon this, acknowledging that the nature of Gloucester’s tightly drawn administrative area boundary means it is unable to meet its housing requirements within its own boundaries, hence the need for sites in Tewkesbury borough to be allocated to assist with meeting this need. These matters were acknowledged through previous structure plans/RSS, as was Gloucester’s role as among the region’s strategically significant cities. It is key to the spatial strategy of the plan that new development is

⁴ While not explicitly set out as the plan does not utilise settlement boundaries, it is clear that the whole area of Gloucester, including Hempsted Village, is included within this top tier settlement area. As such, in spatial planning terms at least, Hempsted forms part of Gloucester.

concentrated around the existing urban areas of Cheltenham and Gloucester “to meet their needs, to balance employment and housing needs, and provide new development close to where it is needed and where it can benefit from the existing and enhanced sustainable transport network”. As such, most of the ‘exported’ need is to be accommodated within extensions to Cheltenham and Gloucester which technically fall within Tewkesbury borough, as opposed to elsewhere in that borough.

- 6.2.10 Taking into account existing completions/commitments, the strategic allocations (including those within Tewkesbury, which count as part of Gloucester’s supply) and windfall development, the plan ultimately sets out a need for 1,518 dwellings to be allocated in the Gloucester City Plan, the daughter document of the JCS, in order that the overall requirement can be accommodated over the plan period to 2031. Even taking this into account however, it is acknowledged that only 31, 824 homes are provided for through the JCS, which equates to **a shortfall of 3,351 dwellings against the minimum requirement set out through policy SP1 of the plan, and that this shortfall occurs in meeting the needs of both Gloucester City and Tewkesbury Borough.** In this regard, it is stated that “due to significant constraints and availability of land it has not been possible to allocate sites in the JCS to meet all of Gloucester’s need over the plan period. Nevertheless, Gloucester has a good supply of housing land for the short to medium term that will enable it to meet its requirements to at least 2028/29” **This will allow adequate time for an early review of the plan to explore further the potential for additional sites to meet Gloucester’s needs in the longer term towards the end of the plan period”** [emphasis added]. Of the allocations that are made in the JCS to meet Gloucester’s need, just shy of 5,000 dwellings (c. 37%) will be within Tewkesbury borough.
- 6.2.11 **Policy SD10** is effectively a counterpart policy to policies SP1 and (particularly) SP2. It states that within the JCS area, new housing will be planned to deliver the scale and distribution of housing development set out in those policies. On sites that are not allocated, housing development will be permitted on previously developed land in the existing built up areas; on other sites, housing development will only be permitted where it meets one of a strict list of criteria.
- 6.2.12 The supporting text to the policy states that LPAs are required to maintain a five year housing land supply, and if they do not it may be difficult to prevent “ad hoc” development on greenfield land. It goes on to state that the allocation of green field land in the plan should be sufficient to ensure that the authorities can maintain a five year supply. It is said that “outside cities....there are generally insufficient facilities to support development and so they

are not considered sustainable locations for residential development” [my emphasis], hence the criteria-based approach to development outlined in the policy.

Policy REV1

6.2.13 Prior to assessing the level of conflict with the above policies, and the weight to be afforded to them, it is worth briefly touching upon policy REV1 of the JCS, which was added at the examining Inspector’s request in order to ensure soundness, in the context of the aforementioned points regarding the need to address Gloucester’s unmet need with an early review of the JCS. The policy states that a “partial review of the housing supply for Gloucester and Tewkesbury will commence **immediately upon adoption of the JCS**” [my emphasis] and that upon adoption of the JCS, the authorities will publish a Local Development Scheme to set out the timescales for completion of the review. The review will cover the allocation of sites to help meet any shortfall in housing supply against the JCS housing requirements for the respective authorities. The supporting text states that it is “critical” that the shortfall for Gloucester is addressed over the plan period.

6.2.14 I consider the progress of the JCS review further at Section 7 below.

Assessment of Conflict/Weight

6.2.15 RfR1 states that the proposed development would not constitute sustainable development as required by national and local policy “in that it relates to land which is not allocated within the development plan, is land outside the built up area of Gloucester and does not meet the strategy of the JCS for the distribution of new development within the City”. The Council’s SOC elaborates further on this RfR, which effectively deals with the principle of development. It is stated that the Council will argue that “by reason of the cumulative harms arising from the putative reasons for refusal...the proposal is not for the right type of scheme in the right place, does not support healthy communities and does not protect and enhance the natural environment, and that when the harms and benefits are considered as a whole, the proposal does not constitute sustainable development”.

6.2.16 Aside from the conflict with the spatial strategy of the JCS, which I will address shortly, I note that the above appears to be a cumulative planning balance exercise taking into account all harms and benefits of the proposal. I will undertake the overall planning balance exercise at chapter 9 of my proof of evidence, but at this stage it is sufficient to note that the Council’s assessment of the overall planning balance in its SOC factors in a number of harms which it is now understood to be resolved matters between the parties, such that the Council accept that no negative weight should be afforded to these factors in the balance .

- 6.2.17 The Council's SOC also refers to the statutory test in S38(6) of the PCPA 2004, and the NPPF's emphasis on the planning system being genuinely plan-led (paragraph 15). This is all agreed, and I have prepared my evidence on this basis. However, I would also emphasise that paragraph 15 of the NPPF goes on stress that plans should be up-to-date. Indeed, the NPPF is scattered with references to the need for plans to be up-to-date (most notably paragraphs 11 and 12). In this case, it is anticipated to be common ground that the most important policies of the JCS are out-of-date as a result of the Council being unable to demonstrate a five year housing land supply. Therefore, the plan should not be followed slavishly in this case if it can be demonstrated that the appeal proposal comprises sustainable development. It is noted that the Inspector in the Ashchurch appeal (CD9.3) considered, in similar circumstances within the same JCS area, that a plan-led approach to development is desirable but in circumstances where there is a little prospect of a timely plan-led remedy to the housing land supply position, housing supply from individual planning applications become all the more valuable (para 21).
- 6.2.18 With respect to the principle of development, the Council's statement outlines that the appeal proposals do not meet any of the criteria outlined within SD10 as being acceptable outside the existing built-up area of Gloucester. They state that this means the proposal does not accord with the strategy for the distribution of new development in the city. However, they then accept that the Council is unable to currently demonstrate a five year housing land supply. They accept that this means the most important policies for the determination of the application are out of date, including SP2 and SD10, and that the proposals should be determined in accordance with the 'tilted balance' outlined at paragraph 11 of the Framework. It is stated that while reduced weight should therefore be afforded to conflict with these policies, in accordance with the judgment in *Hallam Land* (CD9.2) it will be adduced that they should still attract significant weight in this case.
- 6.2.19 As a matter of principle, I accept that the appeal proposals conflict with policy SD10 and do not strictly accord with the spatial strategy envisaged in the JCS. However, in order to assess the weight to be afforded to this conflict, it is important to consider the degree of harm that would be caused to the spatial strategy if the appeal proposal were to be allowed. Firstly, while I accept that the site lies outside of the existing built up area of Gloucester, it does not fall outside of an explicitly-drawn "settlement boundary". Based on my professional judgement, and the evidence provided by the appellant's witnesses in respect of landscape and locational sustainability, I consider that the site is well related to the existing built up area both functionally and spatially. This in itself reduces the weight to be afforded to the conflict with the policy.

- 6.2.20 Secondly, and more importantly, the built up area which the appeal site adjoins is explicitly acknowledged in the plan to be one of the two top tier settlements in the area, an area which should be the focus of growth within the plan period, and an area which benefits from the best economic and sustainable transport opportunities within the plan area. There is clearly some tension in the wording of policy SD10, in that it states the overall plan strategy was formulated on the basis that development outside cities is generally poorly served by services and facilities, hence the criteria-based approach put forward in that policy- but that fails to recognise that there may be sites outside the existing built up area, which, like the instant appeal site, are very sustainably located and therefore should not be precluded as coming forward for development on the basis that they are not, for example, agricultural workers' dwellings or rural exception sites. This seems to me to go against the fundamental principles of sustainable development outlined in the Framework, and clearly reduces the weight to the policies further.
- 6.2.21 Thirdly, the Council accepts and acknowledges that it has not allocated enough sites within or adjacent to the Gloucester City boundary to meet its housing needs over the plan period. The plan explicitly recognises that an early review was necessary to allocate further sites to ensure that delivery towards the back end of the plan period (2028 onwards), and I note (as explained further in chapter 7 of my proof) that this plan review has not progressed as quickly as anticipated. Furthermore, at the time of the JCS adoption, the Council had a healthy five year land supply against its plan requirement in the short and medium term; as I shall consider next it now concedes that it does not have such a supply. In light of the above, it would be somewhat irrational to attach significant weight to a policy which constrains sites from coming forward in sustainable locations, which can deliver housing to meet the plan period shortfall.
- 6.2.22 Fourthly, the Council concedes that policy SP1, SP2 and SD10 are 'most important policies' in the terms of paragraph 11 of the Framework. This in itself reduces the weight to be afforded to any conflict with a policy which is constraining development in a sustainable location from coming forward to help address the five year housing land supply shortfall.
- 6.2.23 Bringing all of the above together, it is my professional opinion that the level of planning harm which would result in this case from conflict with the spatial strategy of the JCS as outlined through policies SP1, SP2 and SD10 would be very limited, and it follows logically therefore that I attach only **limited weight** to that policy conflict. Moreover, as described in Section 2 above, the Council has also now confirmed that it will no longer contest the appeal solely on the basis of its first putative RfR, which cites conflict with these policies, noting that it cannot

demonstrate a five-year supply and that the appeal is to be determined on the basis of the tilted planning balance.

6.2.24 Finally, I would note the most recent appeal decision that I am aware of which considers policies SP1, SP2 and SD10 in the current situation⁵.

6.2.25 The appeal, relating to Land to the north west of Fiddington, Ashchurch in Tewkesbury district (CD9.3), identified that (within the context of a district which similarly has a shortfall allocated land vis a vis its housing requirement) the Inspector considered that now that some time has passed since the adoption of the JCS, and with the JCS review being at a very early stage of preparation, the urgency with which the [need to address the plan period deficit] should be addressed in [sic] now arguably greater". In this context, he found at para. 52 that:

"The spatial strategy remains incomplete in that the JCS does not currently make provision for sufficient housing to meet identified housing needs. Limited progress has been made in reviewing the JCS in accordance with policy REV1 and so there is no firm plan to address the matter or realistic prospect of the plan period deficit being rectified within a reasonable timeframe. The deficit must be made up sooner rather than later if housing needs are to be met within the plan period. As such, I attach only limited weight to the conflict with policies SP2 and SD10"

6.2.26 The planning context in this appeal is analogous to that in the recent Tewkesbury appeal. I therefore consider that Inspector Boniface's conclusions endorse the approach that I take towards conflict with the spatial strategy of the plan in this appeal.

Policy SD4: Design Requirements

6.2.27 This policy outlines the ways in which development within the Joint Authority area will be expected to contribute towards sustainability through incorporated principles and the submission of relevant documentation. In particular, it refers to the need for new development to avoid or mitigate potential disturbances to amenity, such as smell.

6.2.28 In their SOC, the Council alleges that as insufficient information has been submitted to demonstrate that the proposed development would not have an unacceptable impact on

⁵ While this appeal has not taken place in relation to sites within the Gloucester City boundary, the JCS is acknowledged to be a single strategy covering the whole plan area so the conclusions of other Inspectors in relation to those policies is clearly an important material consideration here.

future occupiers as a result of its proximity to the Netheridge WWTW, the appeal proposals would conflict with this policy.

6.2.29 For the reasons set out in greater detail with respect to the other policies set out in RfR3 (see later sections of this proof of evidence), the Appellant considers that it has now been robustly demonstrated that future occupiers would not be unacceptably impacted by odour, so I consider that there would be no conflict with this policy, and therefore no harm to weigh in the overall planning balance. Furthermore, as detailed earlier in my evidence, it has now been agreed that the Council has no objection to the appeal proposals on odour grounds, subject to residential development being located outside of the 'worst case' 3 odour unit contour detailed in the Appellant's updated Odour Report (CD6.15).

6.2.30 Policy SD4 is also referred to in other RfR where matters can be resolved through the production of a satisfactory planning obligation; these matters are therefore not considered further.

Policy SD6- Landscape

6.2.31 In this policy, it is stated that development will seek to protect landscape character for its own intrinsic beauty and for its benefit to economic, environmental and social well-being. It requires proposals to have regard to the local distinctiveness and historic character of the different landscapes in the JCS, drawing as appropriate upon existing Landscape Character Assessments and the Landscape Character and Sensitivity Analysis, as well as demonstrating how the development will protect or enhance landscape character and avoid detrimental effects on types, patterns and features which make a significant contribution to the character, history and setting of a settlement or area. Proposals should also consider the landscape and visual sensitivity of the area in which they are located through the provision of a LVIA, with proposals for appropriate mitigation and enhancement measures set out.

6.2.32 A full LVIA was submitted to the Local Planning Authority with the revised proposals for up to 215 dwellings in May 2022, which provided a full analysis of development's impact on landscape character and visual receptors in the area, taking into account previous studies undertaken by the Council, and proposed mitigation which informed the revised proposals. The LVIA was reviewed by the Council's landscape officer who concluded that the proposals would result in a minor harm to the landscape when considered with the proposed level of mitigation. They were content that a scheme could come forward at reserved matters which would be acceptable, and agreed with the Appellant that the site was not located in a

designated or "valued" landscape, and contains no particular features or characteristics that are striking or unusual.

- 6.2.33 Mr Self has produced a statement which is appended to my proof to assist the Inspector on landscape matters; in it, he essentially agrees with the Council's analysis of the value of the landscape. It is important to note therefore that the Council did not object to this proposal in landscape terms and it does not form part of the RfR. While I accept that inevitably there is a level of landscape harm as a result of the conversion of a green field to built development, which I shall weigh in the overall planning balance, I am content on the basis of the analysis of the Council and Mr Self that there is no conflict with policy SD6 and no harm as a result of any such conflict to weigh in the balance.

Policy SD8- Historic Environment

- 6.2.34 This policy seeks to value the built, natural and cultural heritage of Gloucester city and the wider countryside for its important contribution to local identity, quality of life and the economy. It states development should make a positive contribution to the local character and distinctiveness, having regard to valued and distinctive elements of the historic environment. Designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance, and for their important contribution to local character, distinctiveness and sense of place. Development should aim to sustain and enhance the significance of heritage assets.
- 6.2.35 The supporting text to the policy refers specifically to distinctive elements of the historic environment in the plan area such as "historic suburbs and their settings within the key urban areas" and "smaller historic settlements and their settings...on the edges of Gloucester and Cheltenham (including former villages)". It states that new development should complement and relate to their surroundings, not only in terms of appearance but in the way it functions. Developers should consider the relationship between heritage assets and the wider landscape, which contributes to local character and distinctiveness.
- 6.2.36 Ms Goring has produced a Heritage Statement, which is appended to this proof of evidence, to assist the Inspector in his consideration of his fourth main issue, in particular with regard to any potential impact that the appeal proposal could have on the significance of the Hempsted Conservation Area. It is important to note in the first instance that while the Council's conservation officer did identify the potential for the proposals to lead to some harm to the significance of the Conservation Area, at the lower end of the 'less than substantial'

spectrum, as a result of changes to its landscape setting, this was not considered to form a putative reason for refusing the proposed development.

6.2.37 Nevertheless, for my analysis I rely upon the conclusions of Ms Goring, who has explained why the appeal proposals are not considered to cause any harm to the significance of the Hempsted Conservation Area through change within its setting, as a consequence of development within the appeal site. Whilst on this basis I therefore consider that the appeal proposals do not conflict with policy SD9, I will consider the consequences for the overall planning balance, if the Council's case is accepted, having regard to national policy, in chapter 9 of my evidence.

Policy SD9: Biodiversity and Geodiversity

6.2.38 Policy SD9 seeks to protect and enhance the biodiversity and geological resource of the Joint Core Strategy area in order to establish and reinforce ecological networks that are resilient to current and future pressures. It states that this will be achieved by ensuring that protected species and sites will be safeguarded in accordance with the law and national policy. It also seeks to encourage new development to contribute positively to biodiversity.

6.2.39 The Council's SOC states with reference to RfR6 that at the time of writing, further surveys were required to fully assess the implications of the proposals upon bats, badgers and Great Crested Newt, to ensure compliance with SD9. At the time, an updated Ecological Assessment had recently been submitted by the Appellant, which was under review by the Council.

6.2.40 The Council's ecologist has since confirmed that the development and landscaping has been designed to achieve positive BNG and that protected species mitigation can be secured through suitably worded planning conditions. Therefore, the Council raises no objection on ecology grounds, and it is considered that putative RfR 6 has been satisfactorily addressed. I am content that the appeal scheme complies with Policy E1 and no harm in respect of ecology should be weighed in the overall planning balance.

6.2.41 Furthermore, it is noted that the Appellant has submitted information to demonstrate that a net biodiversity gain of 31.81% could be achieved on site in respect of the proposal. This positively accords with the provisions of this policy and is a benefit to be weighed in the overall planning balance.

Policy SD14- Health and Environmental Quality

6.2.42 This policy seeks high quality development which protects and looks to improve environmental quality. It states that development should not create or exacerbate conditions

that could impact on human health or cause health inequality. In particular, it considers that new development must cause no unacceptable harm to local amenity, and result in no exposure to unacceptable risk from existing or potential sources of pollution.

6.2.43 Unlike the policies relating to the Cordon Sanitaire around Netheridge WWTW, which I consider later in my evidence, I consider that policy SD14 (by reference to avoiding unacceptable harm) is fully compliant with national policy in respect of amenity and health impacts, therefore should be afforded full weight in the determination of this appeal.

6.2.44 In their SOC, the Council state that based on the information before the Council at the time of its preparation, the Appellant has failed to demonstrate that new occupants would not be subject to unacceptable levels of odour, resulting in a poor standard of amenity and environmental quality.

6.2.45 An updated Odour Assessment Report (August 2022) has now been submitted to the Council and should be read alongside the Appellant's initial odour reports/responses (CDs 1.25, 2.4 and 6.3). In the appellant's view, a full robust assessment has now been carried out to assess the impact on future occupiers from odour.

6.2.46 As detailed by Mr Walton, the Appellant's case in this appeal is that occupiers of the proposed development will not be exposed to unacceptable risk from the existing source of odour pollution at Netheridge WWTW, as such I consider that the proposals fully comply with policy SD14 and there is no adverse impact in this regard to weigh in the overall planning balance. The Council has also confirmed that it no longer object to the proposals on odour grounds, as explained further in Section 2 above.

Policy INF2: Flood Risk Management

6.2.47 INF2 sets out the elements of flood risk management and further strategies that should be considered by all development proposals within flood risk zones. Priority should always be given to development within Flood Zone 1, if flood zone development is to come forward. Development in either Flood Zone 2 or 3 will only be considered once the exception test has been applied. Irrespective of any flood zone, all development should prove it will be safe, without increasing flood risk elsewhere. New development will be required to incorporate suitable Sustainable Drainage Systems to manage surface water drainage.

6.2.48 The Council's SOC, in respect of RfR5, states that at the time of writing further information was required from the Appellant to demonstrate that the provisions of policy INF2 relating to

on-site drainage could be satisfactorily adhered to. Additional drainage information had recently been submitted and was under consideration by the Council's drainage consultees.

6.2.49 It is understood that the Council no longer object on the basis of surface water drainage, subject to the imposition of satisfactorily worded planning conditions, so I am therefore content that the proposals fully comply with policy INF2 on the basis of the information submitted, and no harm in respect of flood risk should be weighed in the overall planning balance.

6.1 Gloucestershire Waste Core Strategy 2012

6.1.1 Putative RfR3 cites conflict with WSC11 (Safeguarding Sites for Waste Management) of the Waste Core Strategy (WCS). The policy states that:

Existing and allocated sites for waste management use will normally be safeguarded by local planning authorities who must consult the Waste Planning Authority where there is likely to be incompatibility between land uses. Proposals that would adversely affect, or be adversely affected by, waste management uses will not be permitted unless it can be satisfactorily demonstrated by the applicant that there would be no conflict.*

The Waste Planning Authority (WPA) will oppose proposals for development that would prejudice the use of the site for waste management.

** includes sewage treatment works*

6.1.2 The supporting text to the policy references the need to safeguard existing sites from encroachment or sterilisation by incompatible land uses. Netheridge WWTW is specifically referenced at 4.108 of the plan as one of the two main wastewater treatment plants in the county which will be safeguarded through the above policy.

6.1.3 In their SoC/RfR, the Council state that based on the information available to them at the time of writing, the proposal would result in incompatibility of uses with the Netheridge WWTW.

6.1.4 However, based on the evidence of Mr Walton and the position that has now been reached with the Council I do not consider that the appeal proposals would prejudice the use of the WWTW for waste management, and therefore there would be no conflict with this policy, and no harm to weigh in the overall planning balance on the basis of impact on the future operation of the WWTW.

6.2 Conclusions on the Development Plan

Most Important Policies

6.2.1 I consider that the following policies form the 'basket' of most important policies which the Inspector will need to engage himself with in determining this appeal:

- SP1- The Need for New Development
- SP2- Distribution of New Development
- SD10- Residential Development
- SD4- Design Requirements (to the extent that it deals with odour impacts)
- SD14- Health and Environmental Quality (to the extent that it deals with odour impacts)
- WSC11- Safeguarding Sites for Waste Management

6.2.2 Clearly, SP1, SP2 and SD10 function together in providing the framework for determining whether the principle of residential development on the appeal site are acceptable. I have also included in my basket those policies which deal with the other remaining fundamental issue in this appeal (odour). I have excluded policies relating to issues which it is now understood are matters of common ground between the main parties in this appeal, although I appreciate that the Inspector will still need to engage himself with them in respect of his main issues.

6.2.3 In the table below, I assess each of the policies in my basket of most important policies with reference to the questions outlined at 6.1.4 above, in order to inform my assessment of whether the basket as a whole is out of date. I have assessed policies SP1, SP2 and SD10 together in the same way that I have above, as they effectively function together.

Joint Core Strategy

Policy	Is the policy out of date?	Does the scheme comply with the policy?	What level of harm results from the conflict?	Weight to be attached to the conflict in the planning balance
Policy SP1 (The Need for New Development)	The housing requirement element remains up to date.	No - on the basis that the site is not allocated and is not included in the criteria of acceptable	Limited harm, for the reasons explained in paragraphs 6.2.15 to 6.2.23 of my evidence	Limited

Policy	Is the policy out of date?	Does the scheme comply with the policy?	What level of harm results from the conflict?	Weight to be attached to the conflict in the planning balance
	The spatial strategy element is out of date on the basis that the Council has allocated insufficient sites to meet its requirement to the end of the plan period, and cannot demonstrate a 5 year housing land supply.	development within policy SD10, this essentially means it does not technically conform with all three policies.		
Policy SP2 (Distribution of New Development)	Yes. The spatial strategy is out of date on the basis that the Council has allocated insufficient sites to meet its requirement to the end of the plan period, and cannot demonstrate a 5 year housing land supply.			
Policy SD10 (Residential Development)	Yes. The policy is out of date as it is tied to the spatial strategy, which is out of date for the reasons set out above.			
Policy SD6 (Landscape)	No. The policy is broadly in compliance with the NPPF.	Yes	N/A	N/A

Policy	Is the policy out of date?	Does the scheme comply with the policy?	What level of harm results from the conflict?	Weight to be attached to the conflict in the planning balance
Policy SD8 (Historic Environment)	No. The policy is broadly in compliance with the NPPF	Yes	N/A	N/A

Gloucestershire Waste Local Plan

Policy	Is the policy out of date?	Does the scheme comply with the policy?	What level of harm results from the conflict?	Weight to be attached to the policy in the planning balance
Policy WCS11 (Safeguarding Sites for Waste Development)	No	Yes	N/A	N/A

6.2.4 On the basis of the above, and taking into account the judgments in *Wavendon* it is my professional opinion that when read as a whole, the basket of the policies which are most important for determining the appeal is out-of-date and where conflict is alleged it should be afforded limited weight.

Conclusions on the Development Plan as a whole

6.2.5 I have accepted that the appeal proposals conflict with policies SP1, SP2 and SD10 of the JCS. As these are the key development plan policies for determining the principle of the development proposed, I accept therefore that the appeal proposals conflict with the plan read as a whole. However, for the reasons I have stated above, I consider that these policies, and by association the basket of policies most important for the determination of the application, are out-of-date and conflict with them should be afforded no more than limited weight in determining the appeal. The policies are out-of-date substantively due to the plan's

inability to provide for the full plan period housing requirement, but are also deemed to be out-of-date as a result of the Council's inability to demonstrate a five year housing land supply.

6.2.6 I will carry out the overall planning balance on this basis in section 9 of my evidence. However, at this juncture, I consider that it is again relevant to note that the Council has confirmed that it will no longer contest the appeal solely on the basis of its first putative RfR, which cites conflict with these policies, noting that it cannot demonstrate a five-year supply and that the appeal is to be determined on the basis of the tilted planning balance.

6.2.7 Having considered the development plan, I next consider other material considerations.

7 OTHER MATERIAL CONSIDERATIONS

7.1 Introduction

7.1.1 This chapter sets out other material considerations which I consider should be taken into account in the planning balance and ultimately the decision-making process.

7.2 Second Stage Deposit City of Gloucester Local Plan

7.2.1 The Second Stage Deposit City of Gloucester Local Plan was approved by the Council for the purposes of making development management decisions in 2002 but is not a formally adopted document. It is however a material consideration in the determination of applications.

7.2.2 In light of the Joint Core Strategy and the adoption of the National Planning Policy Framework, the policies of the Deposit Local Plan were reviewed. A number of policies within the document were considered to be a material consideration for plan decision-making, and as such should continue to be attributed weight during the planning process.

7.2.3 Relevant saved policies within the Deposit Local Plan have therefore been taken into consideration during the process of development of this proposal. Only three policies of the DLP are listed in the Council's RFR; policy FRP12 is considered below, policies OS2 and OS3 are considered to be addressed through the provision of a planning obligation and therefore I do not consider them further.

Policy FRP.12- Sewage Works Cordon Sanitaire

7.2.4 This policy sets out that any development within the area designated under the cordon sanitaire policy on the proposals map will not be permitted should there be a "likely" adverse effect due to the smell from either Netheridge or Longford Sewage Works.

7.2.5 It is noted that the supporting text of the policy refers to the disposal of sludge on fields surrounding the WWTW. It is the appellant's understanding that this practice no longer takes place. The supporting text goes on to state that development will generally not be permitted within the cordon sanitaire i.e. there is a presumption against development within this area without providing any opportunity for applicants to positively demonstrate development would not be adversely affected by odour.

7.2.6 As a starting point, the Appellant does not consider that this policy is consistent with national policy, so it (and any conflict with it) can only be afforded limited weight in the determination

of the appeal. It states that development within the Cordon Sanitaire (itself based on evidence produced at the time this plan was produced, which is acknowledged by all parties not to be up to date) will not be accepted if there is likely to be any adverse impact from odour. This is not reflective of current national policy/ guidance which references the need to avoid “unacceptable” levels of air pollution (NPPF 174). The Planning Practice Guidance refers to the need to avoid “significant” effects of odour quality⁶. In assessing the significance/acceptableness of odour impacts of/on a development proposal, as will be explained further in Section 7.5 of this proof, the IQAM’s *Guidance on the Assessment of Odour for Planning* is particularly relevant as the guidance issued by the relevant professional body. The fact that the Deposit Local Plan was never subject to formal examination further reduces any weight to be afforded to conflict with it.

7.2.7 All parties agree that policy C6 of the emerging Gloucester City Plan (considered below) is the most appropriate policy basis against which to assess the odour impacts of the proposals. As such I will not consider this matter further at this juncture. Notwithstanding this, or the limitations of Policy FRP.12, the Council has now confirmed that it does not object to the development of the appeal site on odour grounds for the reasons explained earlier above. On this basis, I do not believe it can be alleged that the appeal proposals would give rise to a conflict with Policy FRP.12’s requirements either.

7.3 National Planning Policy Framework

7.3.1 The latest version of the NPPF was published on the 20th July 2021. Paragraph 2 of the Framework sets out that it is an important material consideration in the determination of planning applications. At **Appendix 2** of my evidence, I consider in detail the appeal scheme’s conformity with the relevant sections of the Framework. I also make reference through this proof to those paragraphs of the Framework which are of direct relevance to the appeal.

7.3.2 In summary, the appeal proposals have been assessed against the various relevant chapters of the Framework, which confirms that they comprise sustainable development as a result of:

- i. Providing a deliverable housing development that will make a valuable contribution towards national and local objectives for economic growth;

⁶ Paragraph: 005 Reference ID: 32-005-20191101

- ii. Benefiting from a real choice of sustainable transport modes, promoted through a Travel Plan as well as providing enhancements to further promote travel by sustainable modes;
- iii. Making an important contribution towards meeting the five-year housing land requirement in the city;
- iv. Contributing to housing choice and the mix of housing in the area, making effective use of land and in particular making an important contribution to affordable housing needs;
- v. Being capable of delivering beautiful design;
- vi. Promoting healthy communities through integration with the existing settlement and the provision of open space;
- vii. Being located on land at low risk of flooding and ensuring that the development will not increase flood risk downstream;
- viii. Being resilient to the challenge of climate change; and
- ix. Conserving and enhancing the natural and historic environment.

7.3.3 Of particular importance in light of main contested issues in this appeal are the Framework's provisions in relation to pollution/amenity. Paragraph 174 e) states that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of air pollution. Paragraph 185 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. Paragraph 186 states that decisions should sustain compliance with relevant limit values or national objectives for pollutants. Paragraph 8 also refers to minimising pollution in reference to the environmental strand of sustainable development.

7.3.4 In light of national policy, it is clear that in this appeal it will be important for the Inspector to understand whether future occupiers would be adversely impacted by unacceptable levels of odour from the Netheridge WWTW. Whether future occupiers would be exposed to such an unacceptable level of odour is clearly a matter of judgment, and I rely upon Mr Walton's conclusions in this regard. Nevertheless, I accept that should unacceptable levels of harm

resulting from odour be identified, this is matter which would attract significant negative weight in the overall planning balance.

7.4 Planning Practice Guidance

7.4.1 The Planning Practice Guidance (or PPG) was first published on 6th March 2014 and it expands and provides additional guidance on policies within the Framework. The most recent revisions to the PPG were published on the 24th June 2021.

7.4.2 Where necessary, this proof of evidence makes reference to relevant sections of the PPG. Chapter 32 of the PPG, dealing with air quality (relevant for odour assessment) is included as a Core Document at [CD7.13](#).

7.5 Emerging Gloucester City Plan (GCP)

7.5.1 The Gloucester City Plan (GCP) is a part 2 document to the JCS, setting out detailed development management policies and site allocations to deliver the requirements and spatial strategy set out in the Core Strategy. The GCP was submitted for examination in November 2020; the examination process has been protracted, being delayed first by the pandemic and more recently by the cyber incident. Hearings took place in summer 2021, with consultation on main modifications taking place between 16th May and 4th July 2022. At the time of writing, the Inspector's report on the soundness of the plan is awaited.

7.5.2 The putative reasons for refusal allege conflict with the following policies of the GCP:

- Policy A6 – Accessible and adaptive homes
- Policy C1 – Active design and accessibility
- Policy C3 – Public open space, playing fields and sports facilities
- Policy C6 – Cordon Sanitaire
- Policy E2 - Biodiversity and geodiversity
- Policy E6 – Flooding, sustainable drainage, and wastewater
- Policy G1 – Sustainable transport

7.5.3 I also consider the following policy which is pertinent to the Inspector's identified main issues:

- Policy D1- Historic Environment

- 7.5.4 It is considered that any conflict with policies A6, C1, C3 and G1 will be dealt with satisfactorily through the provision of conditions and a Unilateral Undertaking which secures the necessary infrastructure requirements. As such these policies are not considered further in this proof of evidence. The remaining policies with which conflict is alleged are addressed below. Policy E2 is renamed policy E1 through the Main Modifications of the GCP (summer 2022) and will be addressed as such below. Similarly, E6 is now referred to as E4 in line with the proposed Main Modifications to the plan.
- 7.5.5 I note in respect of the overall delivery of housing that the local plan's examining Inspector was clear in her post hearing letter (CD7.5) it was not her role within the examination of the non-strategic "daughter" development plan document to assess either the plan's ability to demonstrate a five year housing land supply, or indeed the need to make sufficient allocations to meet the overall housing requirement over the plan period as a whole. This matter was addressed through the JCS and relies upon an early review being undertaken (see 7.6 below). Notwithstanding this, she was clearly cognisant of this issue (she describes the plan period shortfall as "substantial" at her paragraph 14), and I do note that she recommended modifications to introduce flexibility into the wording of the plan with regard to windfall development coming forward which was in accordance with other policies of the development plan. These suggested modifications were carried forward by the Council in its consultation document as Main Modifications 9 and 10 (CD7.4).

Policy C6- Cordon Sanitaire

- 7.5.6 Policy C6 seeks to set a Cordon Sanitaire (CS) for the Netheridge Waste Water Treatment Works (WWTW). As stated above, all parties accept that it is the emerging plan policy which is of greater importance in the determination of this appeal, as opposed to policy FRP.12 of the Deposit Local Plan. In recognition of the importance of this policy to the determination of any application/appeal for sensitive development on the appeal site, the Appellant has made representations on the soundness of the policy throughout its formulation and subsequent examination. Gladman's representations on the policy are included as Core Documents for this appeal (CD7.7 - 7.9).
- 7.5.7 For the purposes of this appeal, it is important to understand the evidential basis for policy C6, and its evolution since the publication draft version of the policy, to take account of the objections raised by the Appellant. The CS was first established in the Deposit Local Plan through policy FRP12, as highlighted above. It was based upon a modelling exercise undertaken at that time to understand the area around the WWTW where development was

most likely to be affected by adverse odour conditions, while also seeking not to constrain further development within the existing built up areas surrounding the WWTW. To inform the GCP, GCC instructed Phlorum to produce a report highlighting whether the boundaries of the CS as drawn in the DLP should be amended. In this report, a number of methods were undertaken to assess the potential odour impacts on land surrounding the WWTW. A new odour modelling exercise was undertaken as part of this assessment, but it should be noted that additional odour sampling at the WWTW was not undertaken; instead, the report utilised emission factors from a report produced in 2008 along with library emissions data, on the basis it was not considered emissions would have changed significantly in the interim. Their report, which is included at CD7.12, concluded that the boundaries remained robust and should be carried forward into the GCP. The extent of the CS itself was defined by the extent of the '3 odour unit' contour; this is the same contour which is taken as representing a significant odour impact by the appellant's odour witness in the modelling undertaken for this appeal (to be discussed further below). The majority of the appeal site fell within this contour in Phlorum's assessment and therefore remains within the CS in the GCP.

- 7.5.8 The publication draft version of policy C6 sought to preclude all development "likely to be adversely affected by odour" within the CS, with no mechanism for applicants to positively demonstrate that their proposals would not be significantly adversely impacted by odour from the WWTW (CD7.4).
- 7.5.9 In its Regulation 19 representations, hearing statements and at the hearing sessions, Gladman raised concerns about the soundness of this approach. Gladman suggested that the policy needed to be worded in a more flexible manner, in line with national guidance. It also made representations regarding the datedness of the evidential basis lying behind the boundaries of the CS itself, arguing that it was not appropriate for the CS boundaries to be based on survey work undertaken in 2008, as upgrade work had been undertaken at the WWTW in 2016 which may have impacted upon the odour contours. In light of this, it was requested that the Council instruct new survey work to identify whether the boundaries of the CS remained robust.
- 7.5.10 This matter was discussed in some detail at the hearing sessions in summer 2021, and the examining Inspector requested that GCC and Gladman produce a Statement of Common Ground summarising areas of agreement and dispute (see CD7.15). In her post-hearing letter, the Inspector did not recommend further modelling of the CS boundaries themselves, but did recommend that the policy should adopt a more flexible approach which allowed applicants to demonstrate that their proposals would not be significantly adversely impacted by odour.

In light of this, the Council produced a list of proposed Main Modifications for consultation in Summer 2022. In this document, it was proposed that the policy wording be amended as follows:

Planning permission will be granted for development within the Cordon Sanitaire, as shown on the policies map, where it can be clearly demonstrated through a robust odour assessment that:

- 1. The users/occupants of the proposed development will not be adversely affected by odour nuisance; and*
- 2. The introduction of the proposed use **will not adversely affect** the continued operation of the Netheridge Sewage Treatment Works [emphasis added]*

7.5.11 In the supporting text to the policy, a reference to fields adjoining Netheridge being used for sludge disposal is deleted, in recognition that this practice no longer occurs. The revised text states that “in order to prevent development that would be subject to odour nuisance and to prevent unreasonable constraints on the operation of NSTW, a Cordon Sanitaire is shown on the policies map. Development within the Cordon Sanitaire will not be permitted unless it can be shown that odour nuisance risk is **negligible** to future occupiers of that development” [emphasis added]. The supporting text goes on to state that the Waste Planning Authority will oppose proposals for development that would prejudice the use of the site for waste management, with reference to policy WCS11 of the WCS.

7.5.12 The Appellant continues to object to the updated wording of policy C6, as detailed within Gladman’s Main Modifications representations at CD7.8. It is considered that the test applied within the policy continues to impose a higher bar on development than that provided through national policy and guidance, therefore the policy is neither justified or consistent with national policy. The Appellant considers that the policy should be permissive of development within the CS unless it cannot be demonstrated that future users/occupiers would not be subject to significant or unacceptable adverse impact from odour, in line with IAQM guidance on the assessment of odour for planning. Furthermore, the guidance states that even where an effect is significant should not, of itself, mean that a development proposal is unacceptable and the planning application should be refused; rather in these circumstances it is suggested that careful consideration would need to be given to the consequences, scope for further mitigation, and the balance with any wider environmental, social and economic benefits that the proposal would bring. In other words, even where an effect is significant, there should be a further balancing exercise of that harm against the public benefits of the

proposals. The test of whether an effect is in itself significant or unacceptable is ultimately a matter of judgement, but clear parameters for this assessment are provided within the IAQM guidance, as explained further by Mr Walton.

7.5.13 Gladman further raise concerns regarding the test applied to development proposals in respect of their impact on the future operation of the WWTW. In this regard, reference is made to the 'agent of change' principle introduced in the 2018 Framework (paragraph 187), such that it should not be for a developer to take into account unknown future operations at the odour source; rather, should future operations be proposed at source, this should be subject to a test of whether it would have a significant adverse effect on surrounding users (which, if the appeal is allowed, would include occupiers of the appeal site). This is in fact highlighted in the Phlorum report (CD7.12, para 3.9) where it is stated that "any future changes to the STW must demonstrate that they will not significantly increase the risk of local odour impacts"; for this reason future changes were not factored into *their* analysis of the CS boundaries in 2019. It was therefore suggested that the policy be modified to ensure that development proposals take account of any planned changes to the operations of the WWTW within the current Asset Management Period (ie. work which has already been approved by the regulator to take place within the current funding cycle of the statutory undertaker).

7.5.14 In light of the above, and with reference to paragraph 48 of the Framework, while I recognise that the examination of the GCP is at a fairly advanced stage, given the fundamental objections to the soundness of the policy which will only be resolved upon receipt of the Inspector's report into the soundness of the plan, including its inconsistency with paragraph 187 of the Framework, I consider that in this appeal, the policy should continue to attract limited weight⁷. As stated above in respect of policy FRP12, this is not to say that should a significant adverse impact be identified, it would only be afforded limited weight. Such harm would attract significant weight due to conflict with national policy. However, based on the current wording of policy C6, any adverse impact from odour would be sufficient to justify refusal of proposals within the CS, which is not a sound approach.

7.5.15 In the Council's SOC, it is stated that it is considered that the appellant has failed to robustly demonstrate that the proposed development would not have an unreasonable impact on new sensitive receptors and that it would not pose an unreasonable constraint on the WWTW's operations. It is considered this could result in a poor standard of amenity and

⁷ In the event that the Inspector's report into the GCP is published prior to the determination of the appeal, I reserve the right to alter my position in this regard.

environmental quality, and that residential use on the appeal site would be incompatible with the operation of the WWTW.

- 7.5.16 An updated Odour Assessment Report (August 2022) has now been submitted to the Council and should be read alongside the Appellant's initial odour reports/responses (CDs 1.25, 2.4 and 6.3). In the appellant's view, a full robust assessment has now been carried out to assess the impact on future occupiers from odour.
- 7.5.17 The accompanying evidence of Mr Walton provides further background on the further odour work that has been undertaken. Taking account of his evidence and the findings of the updated Odour Assessment Report (CD 6.15), it is my view that odour would not pose a constraint to the appeal site's development or the WWTW's operations.
- 7.5.18 Importantly, and as described in Section 2 and in the accompanying Planning SoCG, further discussions have taken place between the Council and the appellant on this matter. Subject to excluding development from the 'worst case' 3 odour unit contour detailed in the modelling work that has been completed, the Council is now also in agreement that odour would not pose a constraint to the appeal site's development. In accordance with emerging requirements of Policy C6, the Council considers that a robust odour assessment has demonstrated that users/occupants of the proposed development will not be adversely affected by odour nuisance, and the introduction of the proposed use will not adversely affect the continued operation of the WWTW.

Policy D1- Historic Environment

- 7.5.19 This policy states that development proposals must conserve the character, appearance and significance of designated and non-designated heritage assets and their settings. Protection and enhancement of existing heritage assets and their settings should be in proportion with the significance of the asset, and important views into or out of conservation areas should be retained. It then repeats statute in terms of the importance of applying great weight to the conservation of designated heritage assets. The supporting text highlights the detail that will be required in a heritage statement to support applications.
- 7.5.20 As discussed earlier in this proof in respect of policy SD8 of the JCS, on the basis of the evidence of Ms Goring I am content that the appeal proposals conserve the character, appearance and significance of the Hempsted Conservation Area and its setting, so I do not consider there to be any conflict with this policy to weigh in the planning balance.

Policy E1- Biodiversity & Geodiversity

7.5.21 This policy states that development proposals must demonstrate the conservation of biodiversity, in addition to providing net gains appropriate to the ecological network. Potential adverse impacts on natural environment assets must be avoided or satisfactorily mitigated. It repeats the tests set out in national policy/statute regarding protected sites, and states that development proposals that could adversely affect legally protected species will only be permitted where it can be demonstrated that suitable safeguarding measures will be provided.

7.5.22 In the Council's SOC, it is stated with reference to RfR 6 that at the time of writing, further surveys were required to fully assess the implications of the proposals upon bats, badgers and Great Crested Newt.

7.5.23 Following the submission of an updated Ecological Assessment by the Appellant, the Council has confirmed that the development and landscaping has been designed to achieve positive BNG and that protected species mitigation can be secured through suitably worded planning conditions. Therefore, the Council raises no objection on ecology grounds and it is considered that putative RfR 6 has been satisfactorily addressed. I am content that the appeal scheme complies with Policy E1 and no harm in respect of ecology should be weighed in the overall planning balance.

Policy E4- Flooding, Sustainable Drainage and Wastewater

7.5.24 This policy states that development shall be safe from flooding and shall not lead to an increase in flood risk elsewhere. In accordance with the Framework, opportunities provided by new development should be used to reduce the causes and impacts of flooding, through layout, application of sustainable drainage systems and natural flood management techniques. In this regard, it essentially repeats the provisions of policy INF2 of the adopted JCS.

7.5.25 The Council's SOC, in respect of RfR 5, states that at the time of writing further information was required from the Appellant to demonstrate that the provisions of policy E4 relating to on-site drainage could be satisfactorily adhered to. Additional drainage information had recently been submitted and was under consideration by the Council's drainage consultees.

7.5.26 It is understood that the Council no longer object on the basis of surface water drainage, subject to the imposition of satisfactorily worded planning conditions, so I am therefore content that the proposals fully comply with policy E4 on the basis of the information submitted, and no harm in respect of flood risk should be weighed in the overall planning balance.

7.6 Gloucester, Cheltenham and Tewkesbury JCS Review

7.6.1 Alongside the preparation of the GCP, Gloucester, Cheltenham and Tewkesbury are also in the early stages of undertaking a Joint Core Strategy review as required by policy REV1 of the JCS. Instead of undertaking a partial review as stated in that policy, the Councils opted to undertake a full JCS review process. An initial Issues and Options consultation took place in 2018; a Call for Sites exercise took place in early 2022, through which the appeal site was submitted for consideration. However, the timescales for the preparation of the JCS review have slipped considerably from those anticipated following adoption of the JCS, with the most recent Local Development Scheme (March 2021) suggesting a Preferred Options consultation would have taken place in summer 2021. At the time of writing, there is no further indication of when the Preferred Options consultation will now commence or whether any updated timescales have now been set for the remainder of the JCS review preparation process (although a recent Tewkesbury LDS draft suggests Preferred Options has been put back to Spring 2023). While the Councils have technically commenced a review as required by policy REV1, given the slow progress that has been made, I would struggle to consider that its pace has been that of an “immediate” review, and all the while the plan period shortfall in housing land supply continues to mount. It goes without saying that the JCS attracts no material weight in the determination of this appeal.

7.7 Five Year Housing Land Supply

7.7.1 Paragraph 73 of the Framework states, inter alia:

Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old⁸. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- a) 5% to ensure choice and competition in the market for land**
- b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently**

⁸ Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.

**adopted plan, to account for any fluctuations in the market during that year;
or**

c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply⁹.

7.7.2 Gloucester's strategic policies are less than five years old and as such, Gloucester has an adopted housing requirement of **718dpa**.

7.7.3 The 2021 Housing Delivery Test results were published in January 2022 and confirm that delivery in Gloucester over the previous 3 years was not below 95%, thus the authority's buffer for the coming year should be **5%**.

7.7.4 Gloucester City Council acknowledges that it cannot currently demonstrate a five-year housing land supply. Within its Statement of Case, the Council sets out that it is unable to confirm the exact housing land supply position but based upon March 2021 monitoring data, it can demonstrate no more than a 4.41 year housing land supply. It is agreed in the Housing Land Supply Statement of Common Ground that this represents a shortfall of at least 569 dwellings, which I consider to be a significant shortfall.

7.7.5 The Government's requirement for local planning authorities to demonstrate a five year housing land supply is a crucial element in its objective to boost significantly the supply of housing nationwide.

7.7.6 An important factor in the weight to be afforded to the supply of new housing in circumstances where there is no five-year housing land supply is the Council's ability to make up the shortfall in the foreseeable future (see later chapter on Hallam Land judgment). Clearly, the lack of evidence to support the current (lack of) housing land supply demonstrates that the Council does not have a grasp on the situation and indeed, a short to medium term solution is not established.

7.7.7 It may be said that the imminent adoption of the JCS will provide the Council with a fix to the housing land supply position, however I note the following:

- 1) In its five year housing land supply position statement issued in April 2022 to aid the local plan examination process (CD7.6) the Council claims a land supply upon adoption of the plan of just 5.03 years, which equates to a surplus within the five year period of just 32

⁹ This is measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement.

dwellings over and above the requirement. This is clearly a marginal surplus and slippage of just a single site within the Council's supply could lead to this supply being wiped out.

- 2) The examining Inspector of the GCP has confirmed it is not her role to assess the ability of the Council to demonstrate a five year housing land supply upon adoption of the plan, so no scrutiny of the deliverability of the supply has been undertaken.
- 3) In any event, even if the Council's supply were to improve upon adoption of the plan, it remains the case that there is an acknowledged shortage of sites to deliver the requirement over the whole plan period, and we are now 11 years into said plan period with less than 9 years left to run. As described in my previous section, the JCS review which was intended to address that shortfall has made painfully slow progress, so the weight to new housing which can be delivered in sustainable locations within that plan period should not be diminished. This reflects the findings of the Ashchurch inspector (CD9.3).

7.7.8 The needs of real households, in real need, right now, are simply not being met. As such, significant weight should be afforded to any proposals which can deliver housing within the five-year period.

7.8 Affordability

7.8.1 The affordability of housing in Gloucester is a significant issue.

7.8.2 A useful marker of affordability is the ratio of average house prices to average earnings in a particular area. A ratio of 3.5 is considered to be the marker of an affordable housing market i.e. the ability to purchase is based on a mortgage 3.5 times' gross income. With respect to the Gloucester City Council administrative area, the latest data¹⁰ shows that the affordability ratio in 2021 was 7.3, meaning that an average (median) house price is 7.3 times an average salary in the city.

7.8.3 One reason house prices have been driven upwards is due to a lack of supply. There is a need to address this issue by offering a wider range of house types which are more affordable, thus encouraging young start-up families to the area. If the cost of housing remains high, younger families are unable to enter the housing market, or a higher percentage of their income is

¹⁰ Office for National Statistics. House price (existing dwellings) to workplace-based earnings ratio. Release date 23 March 2022. Table 5c: Ratio of median house price (existing dwellings) to median gross annual (where available) workplace-based earnings by local authority district, England and Wales, 1997 to 2018. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/housepriceexistingdwellingstoworkplacebasedearningsratio>. Accessed 18/08/2022.

spent on mortgage or rental payments and household bills leaving little disposable income to spend locally. The appeal proposals will provide the opportunity for a range of family houses that reflects market demand and will also deliver a range of affordable housing for which there is a clear need in the district. The provision of 20% affordable housing should therefore be afforded significant weight.

7.9 Affordable Housing

- 7.9.1 Separate from, but linked to, the issue of the general affordability of housing in Gloucester is the need for affordable housing in the area. Affordable housing allows those with the least means in society to access the housing market.
- 7.9.2 In terms of Gloucester specifically, there are various indicators of affordable housing need in the district. Along with the aforementioned measure of general affordability in the area, it is also notable that the Gloucestershire Local Housing Needs Assessment 2019 identified that there is a total affordable housing need of 3,039 dwellings in the district, with a net annual need for the provision of 152 dwellings. The assessment also reaches the conclusions for Gloucester City that **30% of all households in Gloucester are unable to afford market housing**. Lone Parent Families with 1 or more dependent children are the most at risk, where **62% are unable to afford market housing**¹¹. Moreover, 7,002 households were identified as being overcrowded¹²
- 7.9.3 In light of the above, and considering the evidence set out in the appended Statement, in my view it is indisputable that the provision of 20% affordable housing as part of the appeal proposals (up to 37 dwellings, or 24% of a single year's need in Gloucester) should be afforded very significant weight in the overall planning balance as a result of the identified need nationally, in Gloucester, and in the local area of Hempsted.
- 7.9.4 In 2021, the average salary in Gloucester was £28,371¹³ and the average house price was £214,162 (April 2021).¹⁴ This is now over 7 times the full time the average salary.
- 7.9.5 In 2021, the average house price in Hempsted was £277,955¹⁵. In order to afford the average home with a mortgage of 3.5 times salary, the salary required would equate to over £67,503

¹¹ Gloucestershire Local Housing Needs Assessment, Figure 36, Page 56.

¹² Gloucestershire Local Housing Needs Assessment, Figure 40, Pages 59-60

¹³ <https://www.nomisweb.co.uk/reports/lmp/la/1946157375/report.aspx>

¹⁴ landregistry.data.gov.uk

¹⁵ <https://www.zoopla.co.uk/house-prices/hempsted/>

per annum, with a 15% deposit being £41,693. This demonstrates the heightened unaffordability of Hempsted in the context of the wider Gloucester housing market.

7.10 Delivery of Housing within Five Years

- 7.10.1 The proposed development would make a significant contribution to the delivery of housing. The proposals would create up to an additional 185 dwellings, including up to 37 affordable dwellings. I believe the housing would be delivered within the five-year period, with all of the houses completed by 2029 at the latest. This is an important factor given the national housing crisis currently being experienced and the general imperative to 'boost significantly' the supply of housing, as set out in the Framework; the urgent need to address a shortfall in GCC's five-year housing land supply position; and the need to address affordability issues.
- 7.10.2 The Gladman track record supports my view that the grant of planning permission for the appeal proposal will lead to the construction of the majority of the proposed development within the five-year period. In terms of the ownership position, Gladman is acting as site promoter, on behalf of the landowner. The nature of the legally binding, contractual agreement between Gladman and the landowner means that once permission is secured, Gladman works with the landowner to sell the site on the open market to a housebuilder. It is in the interests of both Gladman and the landowner to market the site expeditiously to receive a capital receipt. In addition, because the site is purchased by a housebuilder in a competitive process, they are equally motivated to secure a reserved matters approval and commence construction to begin making a return on their investment as soon as possible. In short, this is not a scenario where an outline permission is being sought to meet obligations within a lengthy option agreement, for valuation purposes or to 'land bank' the site. All those involved in the process are motivated to see an outline permission converted into occupied new homes as quickly as possible.
- 7.10.3 In terms of track record, Gladman, as a land promotion business, has secured planning permissions for housing for more than 34,000 dwellings. All of these have been outline permissions and many have been granted on appeal, where delivery within the five-year period has been a key factor in the decision of appeal inspectors and the Secretary of State. The Gladman site delivery table (Appendix 5) illustrates this strong track record of delivery sites within the five-year period.
- 7.10.4 I note that the land team at Gladman has good market intelligence and sites are generally not taken forward and promoted through the planning process unless there is a very good

prospect of it being attractive to the market. The land team also keeps in regular contact with housebuilders that are active in the local market or have aspirations to enter the market.

- 7.10.5 In order to provide further assurances that the site can be brought forward quickly and contribute to addressing GCC's five-year housing land supply position, GDL is prepared to accept conditions reducing the standard time periods for the submission of reserved matters applications and the commencement of development. Specifically, conditions requiring applications for approval of reserved matters to be made within 2 years and for development to take place within 1 year from the date of approval of the last of the reserved matters are suggested as being appropriate. Indeed, paragraph 77 of the Framework suggests that local planning authorities should consider imposing such conditions where this would expedite development.

7.11 IAQM Odour Guidance

- 7.11.1 The IAQM's *Guidance on Odour Assessment for Planning* (CD7.11) is an important material planning consideration in this appeal, and is referred to by both myself and Mr Walton in forming an overall judgement as to the acceptability of any potential odour impact on future occupiers of the appeal proposal from the Netheridge WWTW. In relation to odour impacts, it is the key piece of guidance from the relevant professional body which interprets national planning policy in the NPPF (as described above) in respect of how to form a judgement as to whether impacts are "acceptable".

7.12 Third Party Representations

- 7.12.1 I have considered the representations made by third parties in response to the planning application. I do not consider that they raise any substantive issues which have not been picked up already in my consideration of the Council's case. However, a summary of the appellant's responses to points raised is provided at Appendix 1 and I reserve the right to respond to any further issues raised by third parties at the Inquiry.

8 BENEFITS AND HARM

8.1 The Benefits of the Scheme

8.1.1 The appellant submits that the considerable benefits of the appeal proposals include:

Social

- Up to 148 market homes to meet a pressing local need in the context of a five year housing land supply deficit and a national policy imperative to boost significantly the supply of housing.
- Up to 37 affordable dwellings, in a district where there is a considerable need for affordable homes and low affordability. 7.51ha of formal and informal open space in areas previously inaccessible to the public (over 61% of the gross site outline application area) including provision of a Local Equipped Area of Play (LEAP) and Neighbourhood Equipped Area for Play (NEAP)
- Contribution towards the delivery of additional / improved resources at Gloucester Library.
- Contribution towards local education provision.
- Contribution towards improvements to local footway crossing points within Hempsted.
- Contributions towards formal sport facilities in the vicinity of Hempsted;

Environmental

- On site Sustainable Drainage System to provide a betterment in surface water runoff from the site, including a network of swales and ditches which will bring biodiversity benefits to the site.
- At least 10% Biodiversity Net Gain on site in line with government aspirations through, for example, additional tree planting, reinforcement of existing hedgerows and boundary features to improve the connectivity of habitat.

Economic¹⁶

¹⁶ Figures correct as of April 2022; please see Appendix 5 for a summary update reflecting the reduced quantum of development to up to 185 dwellings

- Construction spend of approximately £19.6 million, supporting approximately 167 full time equivalent construction jobs over a 4 year build out, with an additional 182 FTE indirect jobs in associated industries.
- Up to 444 new residents, of whom 232 new residents could be expected to be economically active and in employment, and who will generate gross expenditure of £7.03m annually in local businesses.
- Financial receipts to the Local Authority through the New Homes Bonus, CIL and Council Tax receipts.

8.1.2 Even where these benefits are offered to mitigate the impact of the appeal proposals, they will also be of benefit to existing residents of the local area and there is no guarantee they would be provided in the absence of the appeal proposals coming forward. The benefits are unique to this development and this locality.

8.2 Harm

The Council's Position

8.2.1 The appellant has addressed the harm alleged by the Council through its reasons for refusal through evidence. For the reasons stated and given these issues are no longer disputed between the parties, I do not give any weight to harm alleged in respect of the following:

- Odour
- Flooding and drainage
- Ecology
- Lack of infrastructure provision secured by the development (and by association conflict with various local plan policies) – all necessary infrastructure required to mitigate the impacts of the development, including impact on local education provision and highways mitigation, is secured through the unilateral undertaking, which will be provided to the inspector in advance of the inquiry.

8.2.2 I accept that there is a conflict with policy SP1, SP2 and SD10 of the adopted development plan however for the reasons outlined in this proof of evidence I consider that such conflict should attract limited weight in the planning balance and should not be considered determinative. As described earlier in my evidence, this is also now also the position of the Council, as confirmed within the accompanying Planning SoCG.

Other main issues

- 8.2.3 I note that the Inspector has identified the proposal's effects on the character and appearance of the area, including the landscape setting of Hempsted village and its Conservation Area, as a main issue in the pre-CMC note, despite this not being a RfR advanced by the Council.
- 8.2.4 For the reasons set out in the Heritage Statement appended to this proof, I do not consider there to be any harm to the significance of the Hempsted Conservation Area asset and therefore do not give weight to any harm in this respect. I do however accept that there will be some harm in respect of landscape character as a result of the change from a green field to built development, although in light of Mr Self's evidence (reflective of the Council's case) I consider such harm to be minor.
- 8.2.5 As described in further detail below, the Council's case is that the proposals have the potential to cause less than substantial harm to the significance of the Hempsted Conservation Area, at the lower most end of the less than substantial spectrum. Notwithstanding the appellant's case, having regard to paragraph 202 of the Framework and the statutory duty to afford considerable weight to the preservation of heritage assets, it is my view that the degree of less than substantial harm alleged by the Council would also be outweighed by the public benefits of the appeal proposals. This is also agreed in common ground with the Council.

8.3 Sustainable Location

- 8.3.1 As discussed in chapter 4 of this proof, it is considered that the appeal site's location on the edge of the sustainable settlement of Gloucester and its associated employment zone, with good access to services and facilities and the train station, weighs in favour of the proposal. There is no evidence that allowing the appeal would result in any detrimental impacts upon services and facilities, subject to mitigation measures which will be secured by condition and/or obligation.

8.4 Sustainable Development

- 8.4.1 The proposals are sustainable when assessed against the social, economic and environmental dimensions of sustainability.

An Economic Role

- 8.4.2 The demonstrable beneficial economic impacts of the appeal proposal are included within the Socio-economic Sustainability Statement (CD6.4) and more recently summarised in Appendix

5. Delivery of new homes now in locations such as Gloucester is one component which will enable the Council to promote and sustain a strong, responsive and competitive economy.

A Social Role

8.4.3 The appeal proposals will deliver well-designed new homes of the right type, in the right place and at the right time to meet market and affordable housing need and will assist GCC towards improving its current significant housing land supply deficit. Without a sufficient supply of new homes, GCC cannot meet the housing needs of present or future generations. The site is located close to key services and facilities in a sustainable location on the edge of Hempsted, encapsulated in the city of Gloucester.

An Environmental Role

8.4.4 The proposals do not give rise to any material harm in terms of ecology and biodiversity, odour or flood risk and drainage, subject to the imposition of appropriately worded planning conditions. Whilst some harm is identified in respect of landscape and visual impacts, this is considered to be an inevitable consequence of releasing greenfield land on the edge of Gloucester in order to meet future needs. It is common ground that the appeal site does not form part of a valued landscape as understood by paragraph 170 of the Framework, and that any harm in landscape terms would be minor. As a site which is not designated, it clearly sits at the lowest end of the scale of protection to be afforded to landscape areas.

9 PLANNING BALANCE

9.1 Introduction

9.1.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) indicates that development proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. I have accepted that the proposals conflict with policies SP1, SP2 and SD10 of the adopted development plan and the development plan when taken as a whole. However, this chapter sets out the material considerations which I consider favour the grant of planning permission.

9.1.2 I have set out my position that the §11(d) tilted presumption of the Framework is engaged in respect of this appeal. For the avoidance of doubt, I consider that the tilted balance is engaged in any event, as a result of the most important policies of the development plan being substantively out-of-date due to the plan's shortfall of allocated sites to provide for the full housing requirement across the plan period. However, I also consider that the most important policies for the determination of this appeal are deemed to be out-of-date as a result of the lack of a five year housing land supply. This triggers the tilted balance, unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.

9.1.3 Footnote 7 of the Framework provides a closed list of the policies of the Framework which protect assets of particular importance. One such example is that of policies dealing with heritage assets. For the reasons outlined in my evidence, I do not consider that the appeal proposals would result in any harm to the significance of heritage assets. However, I note that the Council's conservation officer identified harm at the lower end of the less than substantial spectrum to the significance of Hempsted Conservation Area, through changes to its setting. As such, I undertake a precautionary heritage balance below, in the event that the Council's position on harm is accepted.

9.2 NPPF 202: Heritage Assets

9.2.1 Paragraph 202 of the Framework states:

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

- 9.2.2 As such, I am required to undertake a simple, 'un-tilted' planning balance of the public benefits of the proposal against the harm to heritage assets, being mindful of the duty at S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (which is repeated in policy at paragraph 193 of the Framework) to afford great weight to the preservation of the asset.
- 9.2.3 On the basis of the Council's case that there is potential for a very minor degree of harm to the significance of the Hempsted Conservation Area through changes to setting, which is clearly less than substantial and at the lower end of the spectrum (and noting that harm to the significance of heritage assets does not form part of the Council's reason for refusal), applying the statutory duty to afford considerable weight to the preservation of heritage assets, I consider that any harm to the conservation area is plainly far outweighed by the public benefits of the proposal. This is agreed by the Council in the Statement of Common Ground. As such, paragraph 202 does not provide a clear reason for refusing the appeal proposals.
- 9.2.4 In light of the above conclusions, it is clear that there are no policies in the Framework which indicate that the development should be restricted, and therefore the tilted balance at paragraph 11(d) (ii) comes into play.

9.3 Hallam Land Judgment

- 9.3.1 Davis LJ, Lindblom LJ and Heekingbottom LJ in *Hallam Land vs SSCLG*¹⁷ (CD6.25) made clear that the extent of the five year housing land supply shortfall is a material consideration in determining the weight to be afforded to the benefits of providing new housing on a particular proposal:

The policies in paragraphs 14 and 49 [as were] of the NPPF do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. This is a matter for the decision-maker's planning judgment, and the court will not interfere with that planning judgment except on public law grounds. But the weight to be given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet. [para. 51]

¹⁷ [2018] EWCA Civ 1808

9.3.2 As such, while the tilted balance applies in any event in this case, the weight to be afforded to the benefit of market and affordable housing, and the corresponding weight to harm resulting from conflict with policies which restrict the supply of new housing, will depend on the extent of the shortfall. In this appeal, it is common ground between the Appellant and the Council that the housing land supply in Gloucester is a maximum of just 4.41 years. This is a significant shortfall to which considerable weight must be attached. Furthermore, as outlined in this proof of evidence, GCC does not have a short or medium term strategy to address the land supply shortfall. If the appeal is allowed, for the reasons I have set out, I consider the majority of the homes will be delivered within the five year period and that this will make a considerable contribution towards the existing shortfall of at least 569 dwellings. As such, it follows that the weight to be afforded to the benefit of new housing must be considerably increased, and the weight to conflict with those policies which restrict the supply of housing (SP1, SP2 and SD10) must be decreased accordingly.

9.4 The Balance

9.4.1 In the first instance, I consider that the myriad benefits set out at section 8 of my evidence alone are strong material considerations, to which very substantial weight attaches, which indicate that planning permission should be granted in this case.

9.4.2 However, having found that there are no specific policies in the Framework which provide a clear reason for refusing the appeal scheme, the tilted balance at paragraph 11(d)(ii) of the Framework is a further material consideration which may indicate that departure from the development plan is warranted in this case.

9.4.3 The approach I have taken when assessing and grading weight is to use the following categories of descriptors – very significant, significant, moderate, limited and negligible.

9.4.4 In respect of public benefits, I afford very **significant weight** to the provision of up to 37 affordable dwellings given the acknowledged local affordable housing need (and lack of supply) outlined in this proof of evidence, and very **significant weight** to the provision of up to 148 market dwellings given the substantial shortfall in housing land supply, which the Council does not have a strategy for addressing in the short to medium term. I also afford **significant weight** to the potential for net biodiversity gain on site (meeting a key national policy objective). I afford **moderate weight** to the considerable economic benefits of the proposals along with provision of 61% of the appeal site as new accessible open space, and the provision of a sustainable drainage system. I afford **limited weight** to the contributions

which will be made towards community infrastructure, to the extent that they will provide a benefit for existing members of the community alongside new residents.

- 9.4.5 Against this, in terms of adverse impacts, I acknowledge that there will be some limited landscape harm as the proposals involve built development on a greenfield site, however as established the site is not designated and is not considered to fall within a valued landscape, and as such it should receive the lowest level of protection. Mr Self is clear that the site has the ability to accommodate development of the scale and nature proposed without a significant adverse landscape character or visual impact. I therefore afford **limited weight** to this landscape harm.
- 9.4.6 I have identified that the appeal proposals conflict with out-of-date policies SP1, SP2 and SD10 of the development plan, however I only afford **limited weight** to this conflict for the reasons outlined above. Again, the Council have also now confirmed that they do not contest the appeal on the basis of putative RfR1, which alleges conflict with these policies, due to their housing land supply position and the engagement of the tilted planning balance.
- 9.4.7 I have also concluded that there would be a small amount of short-term adverse impact in the construction phase, albeit this can be mitigated to some extent by condition.
- 9.4.8 In my view, the identified harm does not come close to significantly and demonstrably outweighing the benefits of the provision of up to 185 homes, including 20% affordable housing, in a district with a significant shortfall in housing land supply, with no credible strategy to meet the shortfall in the short to medium term, and in a sustainable location on the edge of a major city hub. The reasons for refusal in respect of the appeal can therefore not be substantiated and the balance clearly tips in favour of the grant of planning permission.

10 SUMMARY AND CONCLUSIONS

10.1 Introduction

- 10.1.1 I set out a summary of the key material considerations pertaining to the case in favour of the appeal proposals and draw my conclusions in respect of each.
- 10.1.2 This section aims to identify the relevant material considerations and demonstrate that in the planning balance the benefits of the proposal demonstrably outweigh the harm identified.
- 10.1.3 Sustainable development is about positive growth; making economic, environmental and social progress for this and future generations. The appeal proposals strongly accord with the three dimensions of sustainable development; economic, social and environmental.

10.2 The Council's Position

- 10.2.1 Before setting out my views on overall planning balance and material considerations that apply in this case, I believe that it is first helpful to summarise the position that has now been reached between the appellant and the Council of the main issues that have been deemed relevant to the appeal's determination and the Council' putative Reasons for Refusal (RfR).
- 10.2.2 In this regard and as highlighted in the main Planning Statement of Common Ground (SoCG), following on-going dialogue between the parties, it has now been agreed that the Council is no longer proposing to advance putative RfRs 5 and 6, which relate to flooding and ecological matters, subject to the imposition of suitable conditions. It has also been agreed that putative RfRs 2, 4, 7 and 8 can also be addressed through appropriate planning obligations (which the appellant has agreed to).
- 10.2.3 As discussed in further detail below, following the preparation of an updated Odour Assessment Report (CD6.15), further dialogue has taken place between the parties and expert consultants on this matter. On the basis of excluding development from the 'worst case' 3 odour unit contour it is agreed that the Council no longer intends to contest putative RfR3.
- 10.2.4 As detailed in the Planning SoCG, the Council considers that in accordance with the policy requirements of Policy C6 of the emerging Gloucester City Plan, the applicant has clearly demonstrated through a robust odour assessment that the users/occupants of the proposed development will not be adversely affected by odour nuisance, and the introduction of the proposed use will not adversely affect the continued operation of the Netheridge Sewage Treatment Works.

10.2.5 The remaining putative Reason for Refusal is RfR1, which identifies a conflict with Joint Core Strategy policies SP1, SP2 and SD10. In this respect, it has been agreed that as the Council cannot demonstrate a five-year housing land supply and the appeal is to be determined in accordance with paragraph 11d(ii) of the Framework, the Council will no longer contest the appeal solely due to putative RfR1. In short, the LPA have advised that provided agreement can be reached in respect of the accompanying Unilateral Undertaking/planning obligations and conditions, the appeal would now be uncontested.

10.3 The Development Plan

10.3.1 The starting point for assessing the appeal proposals in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 is the Gloucester City Council Development Plan, comprising of:

- The 'saved policies' of the 1983 Gloucester Local Plan
- Gloucester, Cheltenham, and Tewkesbury Joint Core Strategy (JCS) (2011-2031)
- Gloucestershire Waste Core Strategy (adopted November 2012)
- Minerals Plan for Gloucestershire (adopted March 2020)

10.3.2 As a matter of principle, I accept that the appeal proposals would conflict with JCS Policy SD10 (by virtue of the appeal site's location outside of the existing built up area of Gloucester) and do not strictly accord with the Joint Core Strategy's spatial strategy. However, in order to assess the weight to be afforded to this conflict, it is important to consider the degree of harm that would be caused if the appeal were to be allowed.

10.3.3 In this respect, I have explained that whilst the appeal site lies outside of the existing built-up area of Gloucester, it does not fall outside of an explicitly drawn settlement boundary. Based on my professional judgement and the accompanying evidence of the appellant's landscape and locational sustainability witnesses, it is my view that the appeal site is well related to the existing built-up area of the settlement functionally and spatially, which itself reduces the weight to be afforded to a policy conflict.

10.3.4 I have also described how the built-up area which the appeal site adjoins is explicitly acknowledged to be one of two 'top tier' settlements in the JCS area, an area that should be a focus for growth over the plan period, and an area that benefits from the best economic and sustainable transport opportunities within the plan area. In this respect, I believe there is clearly some tension in the wording of JCS Policy SD10, in that has been formulated on the

basis that development outside of cities is generally poorly served by services and facilities, but fails to recognise that there may be sites, such as the appeal site, which are very sustainably located outside of the existing built-up area and should not be precluded from coming forward on the basis that they are not, for example agricultural workers dwellings or rural exception sites. This appears to be at odds with the fundamental principles of sustainable development contained within the Framework, and further reduces the weight that can be attached to the policies.

- 10.3.5 It is further the case that insufficient sites have been allocated within or adjacent to the Gloucester City boundary to meet the authority's housing needs over the plan period, with the JCS explicitly acknowledging that an early review was necessary to allocate further sites to ensure delivery towards the back of the plan period. This review has not progressed as quickly as anticipated, and in comparison, to the position at the JCS' adoption, the Council now concede that it does not have a healthy five-year housing land supply. On this basis, I believe that it would be somewhat irrational to attach significant weight to a policy that contains sites from coming forward in sustainable locations, which can deliver housing to meet the plan-period deficit.
- 10.3.6 Finally, and notwithstanding the above points, the Council acknowledges that Policies SP1, SP2 and SD10 are 'most important' policies for determining the appeal in terms of Framework paragraph 11. This itself reduces the weight that can be afforded to any policy that is constraining development in a sustainable location at the time of a five-year land supply shortfall.
- 10.3.7 For the foregoing reasons, it is therefore my professional opinion that the level of planning harm which would arise from a conflict with the JCS' spatial strategy through a conflict with Policies SP1, SP2 and SD10 would be very limited, and it follows logically therefore that I attach only limited weight to that policy conflict.
- 10.3.8 I have described how the appeal proposals would be consistent with all other relevant policies of the Development Plan and would not give rise to any conflict or harm to be weighted in the planning balance in this respect.

10.4 Other Material Considerations

National Planning Policy Framework

- 10.4.1 I have demonstrated that the appeal proposals achieve demonstrable accordance with the overall holistic objectives and relevant policies of the NPPF, in particular, the 'presumption in favour of sustainable development' which is clearly invoked in respect of the appeal proposals.
- 10.4.2 The appellant's evidence is clear that paragraph 11(d) of the NPPF is engaged and consequently, the 'tilted balance' is engaged. There are no specific policies in the Framework which indicate that development should be restricted and the presumption dis-engaged. It is therefore my professional opinion that in accordance with the Framework, planning permission should be granted provided that any adverse impacts of doing so would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Emerging Local Plan

- 10.4.3 Alongside the adopted Development Plan, the Council are currently in the process of advancing the Gloucester City Plan (GCP), which once adopted will set out more detailed development management policies and site allocations to deliver the JCS' spatial strategy.
- 10.4.4 The GCP was submitted to the Secretary of State for Examination in November 2020; the examination process itself has been somewhat protracted, being delayed first by the pandemic and more recently by the cyber incident. Hearings took place in summer 2021, with consultation on main modifications taking place between 16th May and 4th July 2022. At the time of writing, the Inspector's report on the soundness of the plan is awaited.
- 10.4.5 I have assessed the appeals from the relevant policies of the GCP cited in the Council's putative RfRs, describing why I believe there is no harm to weigh in the planning balance in this respect. In this context, a key policy in the consideration of the appeal proposals is GCP Policy C6, which seeks to set a Cordon Sanitaire (CS) for the Netheridge Waste Water Treatment Works (WWTW), and which the parties agree is of principal importance in the appeal's determination, as opposed to FRP.12 of the Second Stage Deposit City of Gloucester Local Plan.
- 10.4.6 I have described the evidential basis for Policy C6 and appellant's representations on the policy as part of the GCP preparation process. In respect, I have highlighted our concerns over the policy's soundness, including the justification for the proposed CS boundary and its restrictive nature. Whilst changes to the CS boundary were not proposed in the Examination Inspector's

post-hearings letter, she did recommend that the policy should adopt a more flexible approach, allowing applicants to demonstrate their proposals would not be significantly adversely affected by odour.

- 10.4.7 Whilst welcoming this revision, the appellant continues to object to the updated wording of Policy C6, as it is considered the test applied within the policy continues to impose a higher bar on developments than that provided through national policy and guidance. Gladman have also raised concerns regarding the policy's test in respect of their impact on future operations at the WWTW, with reference to the 'agent of change' principle introduced by the 2018 Framework (paragraph 187). On this basis, and despite the GCP being at a fairly advanced stage of preparation, it is my view that Policy C6 can only attract limited weight for the purposes of this appeal.
- 10.4.8 The Council's Statement of Case describes how the appellant has failed to robustly demonstrate that the appeal proposals would not have an unreasonable impact on new sensitive receptors and would not pose an unreasonable constraint on the WWTW's operations. However, an updated Odour Assessment Report (CD6.15) has now submitted to the Council, and the appellant believes that a robust assessment has now been carried out to assess the impact on future occupiers from odour.
- 10.4.9 The accompanying evidence of Mr Walton provides further background on the further odour work that has been undertaken. Taking account of his evidence and the findings of the updated Odour Assessment Report (CD6.15), it is my view that odour would not pose a constraint to the appeal site's development or the WWTW's operations.
- 10.4.10 Importantly, and as described above, further discussions have taken place between the Council and the appellant on this matter, and subject to excluding development from the 'worst case' 3 odour unit contour, the Council is also now in agreement that via the production of a robust odour assessment, it has now been demonstrated that odour would not pose a constraint to the appeal site's development.

Housing Need and Supply

- 10.4.11 As described above when assessing the issue of compliance with the adopted Development Plan, it is the case that the Council are currently unable to demonstrate a five-year housing land supply.
- 10.4.12 On the basis of the authority's March 2021 monitoring data, for the purposes of this appeal it is agreed that the Council can demonstrate a land supply of 4.41 years, equating to a shortfall

of at least 569 dwellings, which I consider to be significant and to which significant weight should be attached.

- 10.4.13 I have noted how the Council does not appear to have a short or medium term strategy to address this shortfall. As such, and noting the comments of Davis LJ, Lindblom LJ and Heckingbottom LJ in *Hallam Land vs SSCLG*¹⁸ (CD6.25), it is my view that that the weight to be afforded to the benefit of new housing must be considerably increased, and the weight to conflict with those policies which restrict the supply of housing (SP1, SP2 and SD10) must be decreased accordingly.

Affordable Housing Need

- 10.4.14 The proposals meet an identified affordable housing need and will contribute up to 37 affordable dwellings (20% of the total dwellings proposed) which will enable people in significant housing need to access housing in the city. The proposals will assist in helping to maintain and enhance the vitality of the community and will also ensure that they contribute towards the NPPF's objective of creating mixed and balanced communities.
- 10.4.15 The provision of a policy compliant level of affordable housing is a very important material consideration that weighs heavily in favour of the appeal proposals.

Economic Impact and Benefits

- 10.4.16 The proposal will result in economic benefits, through construction spend, job creation and an increase in Council Tax revenue. The proposal will attract a young, economically active population to Hempsted, creating a considerable level of new expenditure to support retailers and other services in the area. The new residents would generate household retail and other expenditure within the local economy and the wider housing market area.
- 10.4.17 Having examined the beneficial economic impacts that would arise from the appeal proposals, these should be considered to be important material planning benefits that weigh heavily in favour of the proposals.

Sustainable Location, Sustainable Site

- 10.4.18 The appeal proposals constitute sustainable development and will contribute to enhancing the vitality of Hempsted and the wider city. The proposals will deliver new homes of the right

¹⁸ [2018] EWCA Civ 1808

type, at the right place and at the right time to support the city's growth aspirations. The development accords with these principles in the Framework.

- 10.4.19 Where necessary, obligations will be secured via a Section 106 agreement, to mitigate against the impacts of the appeal proposals.
- 10.4.20 A mix of housing (up to 185 new dwellings) offering 1-5 bedroom properties, comprising a range of house types including linked townhouses and detached properties is proposed. This will add to the choice of high-quality homes available in the city and Hempsted itself. The proposal also sets a framework to enable the delivery of a high-quality residential development.
- 10.4.21 Existing and new residents will benefit from the additional social infrastructure provision on-site, on land which is currently not accessible to the public. 7.51 ha of public open space is proposed on-site (c61% of the site) including accessible open space, three children's play facilities, woodland planting and recreational footpaths and ecological habitat enhancement. The scheme provides an opportunity for net gains in biodiversity considerably in excess of the emerging national policy requirement of 10%.

10.5 Locational Sustainability

- 10.5.1 The Highways Statement of Common Ground between the Local Highway Authority and the Appellant confirms that the proposals will not have a detrimental impact on highway safety or capacity, subject to minor mitigation. Such mitigation will provide a material benefit to the existing community. The proposed vehicular access onto Hempsted Lane has been agreed as appropriate by the Highway Authority and they do not object to the proposals.
- 10.5.2 A Travel Pack will be provided to each household upon occupation of the proposed development. The Travel Pack will be produced in consultation with GCC and will inform residents about, and promote, sustainable travel choices for trips to/from the development. Vouchers providing money off cycle purchases will be made available to new occupants as part of the Travel Pack.
- 10.5.3 The Ecology Appraisal submitted with the application, and the subsequent Ecology Statement appended to this proof of evidence (Appendix 4), demonstrate that there will be no adverse impact of the appeal proposals in respect of biodiversity. Indeed, it is considered that there is the opportunity at Reserved Matters to bring forward a scheme which provides significant net biodiversity gains of over 10% in line with a key national policy objective.

- 10.5.4 The FRA demonstrates the proposed development would be operated with minimal risk from flooding and would not increase flood risk elsewhere. All built development is outside of those areas identified by the Environment Agency as being of high risk of flooding and a sustainable drainage strategy will be employed. Details of this will be submitted at the reserved matters stage.
- 10.5.5 It has also been demonstrated that the proposals would affect the significance of the Hempsted Conservation Area. In this respect, I have noted how the Council's case suggests that the proposals have the potential to give rise to less than substantial harm to the Conservation Area, at the lowermost end of the less than substantial spectrum. Having undertaken a simple 'un-titled' planning balance exercise in accordance with paragraph 202 of the Framework, it is my view that the public benefits of the appeal proposals would outweigh this degree of less substantial harm. I have also noted how this is also the Council's position, as agreed in common ground.
- 10.5.6 While the appeal proposals will result in an element of landscape and visual harm, as outlined by Mr Self, this is limited and does not equate to significant and demonstrable harm that would outweigh the numerous benefits of the appeal proposals.

10.6 Summary Overview

- 10.6.1 The tilted balance contained within paragraph 11(d) of the Framework is clearly engaged in respect of the appeal proposals, because of the Council's inability to demonstrate a 5YHLS.
- 10.6.2 It has been clearly demonstrated that there are no adverse impacts that arise as a consequence of the appeal that demonstrably outweigh the significant benefits of the proposals when assessed against the policies within the Framework.
- 10.6.3 There are very significant material considerations which indicate that planning permission should be granted; most notably the provision of up to 37 affordable homes and 148 market homes in a sustainable location at a time when the Council have a very considerable housing land supply deficit and no realistic ability to meet the shortfall in the short to medium term.
- 10.6.4 It is submitted that the proper application of section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the grant of planning permission, and it is respectfully requested that planning permission be granted.