



Department for  
Communities and  
Local Government

Kevin Waters  
Gladman Developments Ltd  
Gladman House, Alexandria Way,  
Congleton, Cheshire CW12 1LB

Our ref: APP/F1610/W/16/3157854

Date: 21 September 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY GLADMAN DEVELOPMENTS LTD  
LAND AT LAND WEST OF HORCOTT ROAD, FAIRFORD, GL7 4DA  
APPLICATION REF: 16/01766/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Hayley Butcher BSc (Hons) MSc MRTPI, who held a hearing on 15 March 2017 into your client's appeal against the decision of Cotswold District Council to refuse planning permission for up to 92 dwellings (including up to 50% affordable housing), landscaping, public open space and children's play area, surface water attenuation, vehicular access from Horcott Road and associated ancillary works, in accordance with application ref: 16/01766/OUT, dated 28 April 2016.
2. On 8 March 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Matters arising since the close of the inquiry**

5. On 19 May 2017, the Secretary of State wrote to the interested parties, inviting representations on the implications, if any, of the Supreme Court judgment on the cases

of Cheshire East BC v SSCLG and Suffolk Coastal DC v SSCLG, which was handed down on Wednesday 10 May 2017.

6. On 27 July 2017, the Secretary of State wrote to all the interested parties, inviting comments on the representations made by Cotswold District Council to the Secretary of State on 26 July 2017, and representations made by Gladman Developments Ltd to the Secretary of State on 21 and 27 July 2017. With these representations, the Appellant enclosed a signed Unilateral Undertaking and confirmation from the Council that it was content with it. The Secretary of State's consideration and conclusions on this matter are set out in paragraphs 22 and 27 of this letter.
7. The Secretary of State received correspondence from Fairford Town Council on 12 September 2017, updating him on the timetable for the examination of the Fairford Neighbourhood Plan. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
8. A list of representations received is set out at Annex A. The Secretary of State has carefully considered all the representations received and has taken account of them as appropriate. Copies of these representations can be obtained by request to the address at the bottom of this letter.

### **Policy and statutory considerations**

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of Cotswold District Local Plan 2001-2011 (LP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR10-15.
11. The Secretary of State agrees with the Inspector at IR94 that Policy 19 applies to a set period of growth which has now expired (2001-2011). As such, this policy is no longer consistent with the Framework, which seeks to boost housing supply. Therefore, like the Inspector, the Secretary of State considers that limited weight can be attached to conflict with this policy (IR94).
12. The Secretary of State notes the agreement between the main parties that Policy 15 is inconsistent with the Framework because it does not include the paragraph 134 balance of "less than substantial harm" against the public benefits of the proposal (IR84). He therefore considers that limited weight can be attached to conflict with this policy.
13. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
14. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

### *Emerging plan*

15. The Secretary of State notes that the current form of the emerging Cotswold District Local Plan 2011-2031, (the Emerging LP) has yet to be finally examined and adopted. He agrees with the Inspector that the emerging policies of most relevance to this case include those set out at IR16.
16. The Secretary of State notes that the Fairford Neighbourhood Plan (FNP) has also yet to be finally examined and become part of the development plan. He agrees with the Inspector that the emerging policies of most relevance to this case are those set out at IR19.
17. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
18. Given that both the Emerging LP and the FNP are at an early stage and there are unresolved objections, the Secretary of State considers that they carry limited weight.

### **Main issues**

19. The Secretary of State agrees with the Inspector that the main issues are those set out at IR74.

### *Character and appearance of the area and the setting of Fairford Conservation Area (CA)*

20. For the reasons given at IR76-78, the Secretary of State agrees with the Inspector that the proposed development would cause the separation between Fairford and Horcott settlements to be lost, and thus would be harmful to the character and appearance of the area. He agrees with the Inspector at IR83 that the development would conflict with Policy 42 of the LP which seeks to respect the character, appearance and local distinctiveness of Cotswold District.
21. The Secretary of State has carefully considered the Inspector's analysis at IR79-84. For the reasons given at IR79, he agrees with the Inspector that the appeal site's proximity to the town, and its relationship with it, means it forms an important part of the setting in which the CA is experienced and consequently it makes a positive contribution to the character and appearance of the CA. For the reasons given at IR81-82, the Secretary of State agrees with the Inspector that harm caused by loss of openness would not be adequately mitigated. For the reasons given at IR80 and IR83, he considers that the development would harm the character and appearance of the area; and would result in harm to the significance of the CA as a whole.

### *Affordable housing*

22. The Secretary of State has carefully considered the Inspector's analysis at IR87-90 and at IR96. He agrees with the Inspector at IR90 that affordable housing is most often secured by a planning obligation and that a legally constituted agreement is the only way to secure this. Following the Inquiry, the appellant prepared and signed a Unilateral Undertaking for the provision of affordable housing and obtained confirmation from the Council that they are content with it. The Inspector's conclusion at IR90 with regard to

Policy 21 is therefore superseded and the Secretary of State gives the benefits of affordable housing moderate weight.

#### *Other matters*

23. For the reasons given at IR91, the Secretary of State agrees with the Inspector that the detailed drainage design is a matter that can be secured by conditions. For the reasons given at IR92, he agrees that there would be no severe traffic impact. With regard to school capacity, for the reasons given at IR93, he agrees with the Inspector that mitigation has been secured through the planning obligation. Regarding concerns relating to the capacity of the local doctors' surgery and Post Office, he agrees with the Inspector at IR93 that there is no substantive evidence with respect to this.

#### **Planning conditions**

24. The Secretary of State has given consideration to the Inspector's analysis at IR58-73, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

#### **Planning obligations**

25. Having had regard to the Inspector's analysis at IR53-57, the planning obligation dated 15 March 2017 and the planning obligation dated 9 August 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State considers that these obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that these obligations overcome his reasons for dismissing this appeal and refusing planning permission.

#### **Planning balance and overall conclusion**

26. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies 15, 19 and 42 of the development plan, and is not in accordance with the development plan overall. However, for the reasons given above he considers that conflict with policies 15 and 19 carries limited weight. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

27. While there is no dispute that the Council can demonstrate a five year supply of housing land, paragraph 47 of the Framework is clear that, regardless, there is a need to significantly boost the supply of housing. The Secretary of State therefore gives moderate weight to the benefit of housing provision. Given that the Appellant has now prepared and signed a planning obligation relating to affordable housing, the Secretary of State gives moderate weight to the benefit of affordable housing provision. He considers that the proposal offers a number of public benefits, such as temporary employment during construction, the contribution of future occupants to local expenditure, and the provision of public areas of open space. However he considers that these benefits

would be at the expense of harm to the visual amenity of local public rights of way and the character and appearance of the area generally.

28. The proposal would cause less than substantial harm to the significance of the Fairford CA. Paragraph 132 of the Framework sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. As set out in paragraph 134 of the Framework, where a development 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. The Secretary of State considers that the harm to the CA would outweigh the public benefits in this case. He further considers that the totality of harm, taking into account the harm to the CA and the harm to the character and appearance of the surrounding area would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development, as set out in paragraph 14 of the Framework, would not, therefore, apply.

29. Overall, therefore, the Secretary of State concludes that the appeal should be dismissed and planning permission refused.

### **Formal decision**

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for up to 92 dwellings (including up to 50% affordable housing), landscaping, public open space and children's play area, surface water attenuation, vehicular access from Horcott Road and associated ancillary works, in accordance with application ref: 16/01766/OUT, dated 28 April 2016.

### **Right to challenge the decision**

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

32. A copy of this letter has been sent to Cotswold District Council and Fairford Town Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Merita Lumley*

Authorised by Secretary of State to sign in that behalf

## Annex A: SCHEDULE OF REPRESENTATIONS

### General representations

<b>Party</b>	<b>Date</b>
Kevin Waters, Gladman Developments Ltd	21 and 27 July 2017
Alison Williams, Cotswold District Council	26 July 2017
Roz Capps, Fairford Town Council	12 September 2017

### Representations received in response to the Secretary of State's letter of 19 May 2017

<b>Party</b>	<b>Date</b>
Alison Williams	1 June 2017

### Representations received in response to the Secretary of State's letter of 27 July 2017

<b>Party</b>	<b>Date</b>
Jason M Tait, Planning Prospects	9, 10 and 18 August 2017
Kevin Field, Cotswold District Council	10 August 2017
Roz Capps, Fairford Town Council	10 August 2017

# **Report to the Secretary of State for Communities and Local Government**

**by H Butcher BSc (Hons) MSc MRTPI**

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

**Date: 5 May 2017**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**COTSWOLD DISTRICT COUNCIL**

**APPEAL BY**

**GLADMAN DEVELOPMENTS LTD**

**LAND WEST OF HORCOTT ROAD, FAIRFORD, GL7 4DA**

**File Ref: APP/F1610/W/16/3157854****Land west of Horcott Road, Fairford, GL7 4DA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Cotswold District Council.
- The application Ref 16/01766/OUT, dated 28 April 2016, was refused by notice dated 11 August 2016.
- The development proposed is a residential development (up to 92 dwellings (including up to 50% affordable housing), landscaping, public open space and children's play area, surface water attenuation, vehicular access from Horcott Road and associated ancillary works. All matters reserved with the exception of the site access from Horcott Road.

**Summary of Recommendation:**

That the appeal be dismissed

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**Procedural Matters**

1. The application sought outline planning permission with all matters reserved except for access. A plan submitted with the appeal includes details relating to landscaping and layout<sup>1</sup>. It was suggested that this was intended to inform the reserved matters. However, these matters are clearly reserved for future consideration therefore I am considering this plan solely on the basis that it has been submitted for illustrative purposes only.
2. A signed and dated Unilateral Undertaking (UU) was submitted at the hearing which provides for contributions towards a travel plan, education, and libraries. It also secures the laying out and future management of open space on the site<sup>2</sup>.
3. On 8 March 2017 the Secretary of State directed that the appeal was to be recovered for his own determination. The reason for this Direction was that the appeal involved a proposal for a residential development of over 25 units in an area where a qualifying body has submitted a proposal for a neighbourhood plan but the relevant plan has not yet been made.
4. The hearing sat for one day, on 15 March 2017, and I conducted an accompanied site visit on the same day.

**The Site and Surroundings**

5. The appeal site comprises two fields totalling 4.4ha (approx) of agricultural land. One of the fields includes an historic stone field shelter and enclosure which the Council have identified as a non-designated heritage asset<sup>3</sup>. Along the front boundary are four Lime trees which are protected by a Tree Preservation Order<sup>4</sup>.
6. To the north-west of the appeal site are a row of residential properties which form part of Fairford. The nearest of these are relatively modern, but slightly further along are The Virgills which are a terrace of older properties. They mark the edge of the Fairford Conservation Area (CA) which extends around the junction of Horcott Road and Cirencester Road to The Old Piggery<sup>5</sup>. Beyond The Old Piggery, on the Cirencester Road, are open paddocks, and a residential

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<sup>1</sup> Folder 1 CD1 1.3 Illustrative Development Framework Plan Ref:6786-L-01 Rev K

<sup>2</sup> Document 1 tabled at the hearing

<sup>3</sup> Planning Officer's Report under Site Description

<sup>4</sup> TPO Number 16/00011 Horcott Road, Fairford

<sup>5</sup> Folder 3 CD6 6.01 Fairford Conservation Area map



development in the final stages of construction which was granted outline planning permission at appeal<sup>6</sup>.

7. To the south-east are Lakeside and Little Horcott Lane which are 1960s and 1970s residential development within Horcott.
8. South of the appeal site is largely open countryside with the exception of a small group of residential properties which include Mere House, Mere Park and Mere Coach House. These are accessed by a long access road off of Horcott Road which runs along the south-east side of the appeal site.
9. Opposite the appeal site, on the other side of Horcott Road (north-east), are playing pitches belonging to Coln House School, and beyond these the River Coln and Fairford town centre.

## **Planning Policy**

### The Cotswold District Local Plan 2001-2011

10. At the date of completing this report the Development Plan for the area is the Cotswold District Local Plan 2001-2011 (LP). The Council's reasons for refusal rely on Policies 15, 19, 21, 42 and 45 of the LP.
11. Policy 15 seeks to preserve or enhance the character or appearance of conservation areas. This includes protecting against the loss of open spaces, which, by their openness, make a valuable contribution to character or appearance.
12. Policy 19 of the LP restricts new build open market housing outside of development boundaries for the purposes of promoting sustainable development and protection of the countryside for, amongst other things, its beauty. The appeal site falls outside of any defined development boundary.
13. Policy 21 requires a proportion of affordable housing to be provided as part of the development of any site outside Cirencester, Tetbury, Moreton-in-Marsh and Bourton-on-the-Water, which this site is.
14. Policy 42 requires development to respect the character, appearance and local distinctiveness of the Cotswold District. Policy 45 seeks high standards of landscaping in all developments.
15. At the hearing my attention was drawn to two further policies. Policy 38 which states that where improvements are required to transport infrastructure the Council will seek appropriate provision. This ties in to Policy 49 which sets out that, where appropriate, planning obligations will be sought to secure the provision or improvement of community infrastructure and services that would be made necessary by, and directly related to, a development.<sup>7</sup>

### The emerging Cotswold District Local Plan 2011-2031, Submission Draft Reg. 19 June 2016

16. At the hearing I was provided with Policies DS1, SA1 and S5 of the emerging Cotswold District Local Plan 2011-2031 (DLP)<sup>8</sup>. These set out the development strategy for the District for delivering new dwellings over the plan period. Policy S5 outlines two allocated housing development sites within Fairford which do not include the appeal site. The supporting text states that there are no further

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<sup>6</sup> Folder 3 CD7 7.01 APP/F1610/A/14/2213318

<sup>7</sup> Document 6 tabled at the hearing

<sup>8</sup> Document 2 tabled at the hearing

housing allocations in Fairford given the high number of planning permissions that have come forward in this area since April 2011.

### Fairford Neighbourhood Plan 2016-2031 (Reg 16 submission version)

17. The Fairford Neighbourhood Plan (NP)<sup>9</sup> has been submitted to Cotswold District Council. I was informed at the hearing that the pre-examination publicity period commenced on 1 March 2017 and was to end on 11 April 2017.
18. The purpose of the NP is to plan for the growth of the town over the next 15 years. It seeks to ensure that development is built in the most suitable places, protecting the special historic character of the town and its surrounding landscape, and ensuring there are crucial improvements to local infrastructure.
19. Draft Policies FNP10 and FNP11 of the NP in particular have been highlighted. FNP10 seeks to protect local green spaces which are considered to play an integral part in the enjoyment of the town. The appeal site is identified as local green space 'The Short Piece.' FNP11 seeks to protect the Fairford–Horcott Local Gap to prevent the coalescence of the two settlements. This gap includes the appeal site.

### **Planning History**

20. There is no planning history at the appeal site.

### **The Proposal**

21. The proposal is for a development of up to 92 dwellings. All detailed matters except access are reserved. The proposed access would be off Horcott Road and would allow for visibility splays either side.

### **Agreed Matters**

22. As set out in the Statement of Common Ground there is no dispute between the main parties that the Council can demonstrate a five year supply of land for housing. The main parties also agree that Policy 19 of the LP is no longer consistent with the National Planning Policy Framework (the Framework) as it was intended to guide planned growth between the period 2001-2011 and as such should carry limited weight.
23. There was also agreement at the hearing that Policy 15 of the LP which concerns conservation areas is inconsistent with the Framework as it does not include the paragraph 134 balance of 'less than substantial harm' against public benefits.
24. Highways Development Management have not raised any objection to the proposed access<sup>10</sup>. There is also no longer an objection from the Lead Local Flood Authority following the submission of further drainage information, subject to conditions<sup>11</sup>. The Statement of Common Ground also confirms that there is no issue with respect to the settings of any Listed buildings, nor, subject to appropriate conditions, archaeology. Neither is any concern raised with respect to any potential for mineral extraction from the site or the value of the agricultural land in question.

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<sup>9</sup> Folder 1 3<sup>rd</sup> Party Representations, 3 Fairford Town Council additional comments, Appendix 1: Fairford Neighbourhood Plan Reg 16 submission Feb 2017

<sup>10</sup> Consultation response dated 19 July 2016 from David Simmons Development Coordinator at Gloucestershire County Council

<sup>11</sup> Consultation response dated 25 July 2016 from Naveen Tangri SuDS Engineer at Gloucestershire County Council

25. The Council confirmed at the Hearing that they raised no strong objection in respect of impact to any non-designated heritage assets or the loss of one of the Lime trees to the front of the site, protected by a Tree Preservation Order, which is necessary to create the access to the site.
26. The provision of 50% of the development as affordable housing and contributions towards education and libraries are also agreed, subject to agreement over securing such provision and confirmation of compliance with the Community Infrastructure Levy (CIL) Regulations where appropriate.
27. It is agreed that the emerging DLP is not at a stage where it can be given more than limited weight. Similarly, it is agreed that the emerging NP can only be afforded limited weight.
28. The development does not require an Environmental Impact Assessment (EIA) and the proposed development was screened for EIA at pre-application stage.

### **The Case for the Appellant**

#### *Character and appearance of the area*

29. The site is considered to have a low/medium landscape value in the submitted Landscape and Visual Assessment and it is disputed that the site is an important rural buffer between Fairford and Horcott. Reference is made to the Council's emerging DLP which states that Horcott is an integral part of Fairford and that any physical separation between the two is fairly imperceptible on the ground<sup>12</sup>.
30. In further support of the appellant's case a Technical Response (Landscape and Visual Matters)<sup>13</sup> states that the site has existing built development adjoining or close to it on three sides, and Horcott Road and a school playing field on the fourth. Consequently there is very limited visual or physical connectivity with the wider countryside and it is not a rural site. Furthermore the site is not a valued landscape for the purposes of paragraph 109 of the Framework.
31. It is acknowledged that the existing openness of the site will be directly impacted by the development. However, the overall landscape and visual effect would not be significant and any localised harm would be largely mitigated by the new planting and landscaping areas which will mature over time further reducing any harm. It is also intended that a gap in the built form to the front of the development would remain and the separation of the areas of older buildings in the two areas would remain legible<sup>14</sup>.
32. Public views of the site are limited to two short stretches of Horcott Road and Cirencester Road, and from a stretch of public footpath along the north-west boundary of the appeal site.
33. Groundwater and surface water flooding mitigation would require part of the site to be raised. It was clarified at the hearing that this would relate only to a corner of the site to allow for drainage to an attenuation pond. The distances involved versus the minor increase in ground level required would allow for gentle grading which would have limited visual impact and could be agreed at reserved matters stage.

#### *Setting of Fairford Conservation Area*

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<sup>12</sup> Folder 1 CD1 1.6 page 7 paras 3.8 & 4.7

<sup>13</sup> Appendix 1 to the Appellant's Full Statement of Case

<sup>14</sup> Folder 1 CD1 1.3 Illustrative development Framework Plan (Ref: 6786-L-01 rev K)

34. The appellant has submitted a Technical Note (Matters of Built Heritage)<sup>15</sup> in support of their case regarding the setting of the CA. This finds that the appeal site makes a negligible contribution to the significance of the CA through its setting. The appeal site is not prominent in views from the western approach along the Cirencester Road to the CA which has a strongly modern character, and the relationship between the historic town edge and the countryside generally has been much altered by the construction of modern housing.
35. The southern edge of Fairford is defined by the river and flanking open space (in its floodplain) and this relationship will not be affected by the development. Any important areas of agricultural land lie within the boundaries of the CA, such as the area of water meadow across which St Mary's Church Tower can be seen on the western approach to the town. The development would not alter this view.
36. It is therefore argued that the site does not make a valuable contribution to the character or appearance of the CA, nor does it allow important views into or out of it. Nevertheless, the Technical Note does identify a very small, or negligible amount of harm to the CA, at the lowermost end of 'less than substantial' but notes that this should be weighed against the public benefits of the proposal as set out in paragraph 134 of the Framework. These would include the repairing of the field shelter and its enclosure on site, as well as other public benefits referred to below in the case for the appellant.

#### *Public benefits*

37. The public benefits put forward as a result of the development include: the provision of high quality affordable and market housing in a sustainable location; ecological enhancement of the site; the economic benefits of construction and local expenditure; the formation of new areas of public open space including equipped children's play areas and allotment gardens; improvements to local drainage, and, as previously noted; enhancement of the existing field barn and its enclosure.
38. The appellant suggests the 'less than substantial' harm to the CA would be outweighed by the weighty public benefits of the development. Furthermore, this harm along with any other harm would not significantly and demonstrably outweigh the benefits. The presumption in favour of sustainable development therefore applies.

### **The Case for the District Council**

#### *Character and appearance of the area and Fairford Conservation Area*

39. The Council have set out that historically Fairford developed as three distinct but conjoined settlements: central Fairford, Milton End and East End. Horcott was both historically and physically an entirely separate settlement to Fairford. Historic maps are provided as evidence<sup>16</sup>. The gap and distinction between Fairford and Horcott, the Council argue, remains today and is clearly visible from the Horcott Road due to a rural corridor created by the appeal site and countryside to the south, and the playing fields to the north-west. This would be lost if the site was developed effectively creating a continuous belt of development along the Horcott Road.
40. The Council identify that a further key characteristic of Fairford is its relationship with the surrounding countryside. It is described as a town with open country penetrating right to the centre in a Statement of Policy from the County Planning

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<sup>15</sup> Appendix 2 to the appellant's Full Statement of Case

<sup>16</sup> The Statement of the Local Planning Authority Appendix 1 Figures 1-3

Committee from 20 January 1971 at the time of the CA's initial designation<sup>17</sup>. Open countryside abutting and penetrating into the town is therefore a distinct feature of the CA.

41. The site, in conjunction with the countryside to the south and the playing fields to the north-east provides a corridor of undeveloped rural space which links the centre of the town to the surrounding rural landscape. As such the site is considered to contribute positively to the setting of the CA and the character and appearance of the CA generally.
42. This corridor of open space can be experienced from the footpath to the north-west of the site and from Horcott Road. It can also be appreciated in more distant views from Cirencester Road and reference is made to the Inspector's remarks in appeal decision APP/F1610/A/14/2213318<sup>18</sup> which are said to refer to the appeal site: "...views across the paddock to the countryside beyond to the south would act as a reminder of the conservation area's relationship with the countryside."
43. Whilst more recent developments are visible across the site the Council do not consider that they detract from the rural corridor of which the appeal site forms a part.
44. Despite the lack of landscape designations covering the site, for the above reasons the Council consider it has a high/medium sensitivity to development, a view which is supported by an addendum to the study of SHLAA sites by White Consultants<sup>19</sup> which forms part of the evidence base which will inform the emerging DLP.
45. The Council acknowledge that the intention is that approximately 40% of the site would be retained as open space, but consider that the development would still fundamentally change the character and appearance of the area and the setting of the CA. Additional planting would, in their opinion, close off views across the site and any landscaping would provide only a setting for the proposed housing rather than serving a purpose in the context of the wider landscape.
46. The Council also raise concern regarding the building up of site levels as part of drainage attenuation measures which could mean the development would be elevated making it overly prominent.

#### *Public benefits*

47. The Council consider that the harm to the CA whilst 'less than substantial' in terms of paragraph 134 of the Framework would not be outweighed by the public benefits of the scheme. Furthermore, this harm, and the harm to the character and appearance of the surrounding area would significantly and demonstrably outweigh the benefits.

#### **Written Representations**

48. Many of the written representations cover similar ground to the Council's case and these are therefore not repeated here.
49. Concern was raised in respect of pressure from the new development on the public sewerage network, local schools, the doctor's surgery and the Post Office, and increased traffic and highway safety in respect of the new access onto Horcott Road.

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<sup>17</sup> Council's Core Documents CD9.2 Statement of Policy 1971

<sup>18</sup> Folder 3 CD7 7.01 para 72

<sup>19</sup> Folder 4 LPA Core Documents CD10 10.1 White Report update 2015

50. There is also concern over flooding and drainage of the southern part of the site. Photographic evidence of flooding of the site is provided by Fairford Town Council (TC) in their comments dated 2 June 2017.

### **Other Oral Submissions**

51. Oral submissions from the TC support the Council's case in respect of character and appearance of the area and the setting of the CA and it was emphasised that the NP supported the Council's approach with specific policies in the NP referring to the designation of the site as a local green space and forming part of the Fairford-Horcott Local Gap.

52. The TC also made the point that they would want to see the detailed design of any drainage measures to protect against surface water flooding.

### **Obligations and Conditions**

#### *The Unilateral Undertaking*

53. The Gloucestershire County Council Local Developer Guide (February 2014)<sup>20</sup> sets out the formula and approach to calculating contributions towards infrastructure and services. In line with this the UU provides for the payment of contributions towards education and libraries. The calculation of these amounts uses a cost per house and is dependent on the final number of qualifying dwellings.

54. The education contributions will be used for providing additional pre-school places, and works to extend, remodel, upgrade and improve the capacity and suitability of Fairford C of E Primary and Farmors Secondary School. The library contribution is towards providing additional library resources at Fairford Library. The County Council have provided confirmation that the contributions sought for education and library services will not contravene the pooling restriction.

55. The UU also provides for a Travel Plan contribution of £46,488. This is payable towards the County Council's costs of implementing a travel plan for the development to deliver a modal shift away from the private car in favour of public transport and other means of travelling including cycling and walking, and towards the employment of a person or organisation to co-ordinate that plan. Although not requested by Gloucestershire County Council or the District Council initially, the appellant provided justification for this by way of Gloucestershire Council Transport Planning Advice Sheets<sup>21</sup>. This sets out the calculation of the contribution sought for Residential Travel Plans which is based on the number of dwellings. The Council raised no objection. The Travel Plan Contribution is not funding infrastructure and as such would not be caught by the pooling restriction.

56. Based on the above, I consider these contributions are necessary to meet Policies 38 and 49 of the LP and meet the relevant legal and policy tests set out in Regulations 122 and 123 of the CIL Regulations 2010 and the Framework paragraph 204.

57. Finally, the UU also secures the layout of open space on site and provides for the transfer of this to a management company.

#### *Conditions*

58. The Council provided a list of conditions on which the appellant provided comments, and these were discussed at the hearing. If permission is granted, the standard conditions relating to reserved matters and time limits for submission and commencement are necessary. As requested by the Council I

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<sup>20</sup> Document 7 tabled at the hearing

<sup>21</sup> Document 5 tabled at the Hearing

have also specified that the reserved matters, with respect to layout, should include the submission of vehicular parking and turning facilities within the site, and cycle parking, to ensure a satisfactory layout of development.

59. A condition is needed to ensure that the proposed access to the site is constructed in accordance with the relevant approved plan, since access is not a reserved matter. However, it is not necessary to condition the appellant's Development Framework Plan Drawing No 6786-L-01 K as this refers to matters which are reserved for later consideration.
60. A condition to secure the implementation of a programme of archaeological work is necessary as there is the potential for archaeological remains to be present on the site as confirmed by Gloucestershire County Council's Archaeologist<sup>22</sup>. To ensure any contamination of the site is identified and appropriately remediated an appropriate condition to this effect it is also necessary to protect construction workers and future occupiers.
61. The Council suggest a 10 year ecological management plan be submitted and approved. Whilst I agree this is necessary to ensure the biodiversity of the site is protected and enhanced I consider five years, as suggested by the appellant, is sufficient. No strong justification for a 10 year plan was advanced at the hearing.
62. Drainage of the site will require an attenuation basin. A new body of water at the appeal site may, over time, provide additional habitat that attracts and supports populations of birds that would be hazardous to air traffic associated with RAF Fairford. A condition to minimise the attractiveness of this new body of water to birds is therefore necessary.
63. It is necessary to ensure the first 20m of the access road is completed to at least binder course level and that visibility splays are provided prior to work commencing on site to ensure there is a suitable and safe means of access to the site. Furthermore, a condition to ensure the carriageways within the development are completed to binder course level and the dropped kerb tactile crossing points are provided prior to first occupation of any dwellings is necessary in the interest of the safety of future occupants and their visitors.
64. Given the relatively narrow nature of Horcott Road and the proximity of neighbouring properties a construction method statement is necessary to ensure the construction is adequately managed.
65. Details of surface water drainage, surface water attenuation/storage works, and a SuDS maintenance plan should be submitted to ensure satisfactory drainage of the site and to prevent flooding in line with Environment Agency guidance. To protect against pollution of a water abstraction source a condition to prevent the infiltration of oil into the ground is also justified.
66. To protect properties against fire a condition requiring the provision of fire hydrants served by mains water on the development is necessary.
67. Details in respect of the importation of top soil and earthworks associated with the development are necessary to ensure a satisfactory scheme and to protect soil resources. Details of hard and soft landscaping are reserved for future consideration but it is necessary to protect the retained trees along the frontage of the site which are protected by a Tree Preservation Order by way of a suitable condition.
68. Whilst concern has been raised with respect to the drainage of foul water and sewerage and a condition requiring a drainage strategy in respect of such

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<sup>22</sup> Comments from Charles Parry, Archaeologist dated 12.5.16

matters have been suggested by the Council and the Town Council. I have been given no substantive evidence to conclude this could not be adequately dealt with by sewerage undertakers. I therefore consider such a condition to be unnecessary.

69. The Council suggested a condition relating to internal and external noise levels for the proposed dwellings. The reason given is to protect the amenity of the locality especially for people living and/or working nearby. However, the development, being predominantly residential is not a land use which would cause undue noise or disturbance to adjacent residential uses. When questioned further at the hearing concern was raised in respect of noise for future occupants of the development from nearby roads. However, I was not provided with any evidence that the Horcott Road or any other roads in the vicinity of the appeal site posed significant harm in terms of noise. I therefore see no necessity for such a condition.
70. It is not necessary to include a condition for a Travel Plan as this is covered in the UU. Nor is it necessary to condition details of the future management and maintenance of the proposed streets within the development as these are to be put up for adoption by the County Council Highways Department.
71. In addition to the above, the TC questioned whether a condition requiring fencing around the attenuation pond was necessary to protect children but this is a matter which could be dealt with at reserved matters stage.
72. The appellant proposes that affordable housing be secured by condition and has suggested a condition for this purpose.
73. I have attached at Appendix 1 to this report a list of recommended conditions, which I consider should be imposed if planning permission is granted. In doing so, I have undertaken some further minor editing and rationalisation of those proposed by the Council, in the interests of precision and clarity. I have also limited the number of pre-commencement clauses to those cases where this is essential for the condition to achieve its purpose.

## **Inspector's Reasoning and Conclusions<sup>23</sup>**

### *Main issues*

74. In the light of all the evidence and submissions I find that the main issues in the appeal are as follows:
  - (i) The effect of the development on the character and appearance of the surrounding area including the setting of Fairford Conservation Area, and;
  - (ii) Whether the development makes appropriate provision for affordable housing.
75. A further reason for refusal required financial contributions towards education and libraries. However, this matter is no longer disputed following the submission of a UU at the hearing [53-56].

### *Character and appearance of the area and the setting of Fairford Conservation Area*

76. When viewed from Horcott Road the appeal site is an open area of undeveloped land which both physically and visually separates the developed edges of Fairford to the north-west and Horcott to the south-east. This separation is enhanced by the open land directly opposite the appeal site to the north-east formed by the playing fields belonging to Coln House School, and predominantly open rural land to the rear of the site to the south. The effect is that of a long strip of

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<sup>23</sup> In this section, the numbers in square brackets [] refer to earlier paragraphs of this report.



undeveloped rural land between the two settlements. Given that historically and physically Fairford and Horcott have always been separate settlements [39] I consider the appeal site plays an important role in maintaining this separation which contributes to the character and appearance of the area.

77. Although the open countryside to the south of the appeal site is interrupted by a small cluster of residential properties which include Mere House, Mere Coach House and Mere Park, these have the appearance of an extended rural estate and do not diminish the overall effect of this rural, undeveloped strip of land.
78. The development of the site would effectively sever this creating a continuous belt of development along Horcott Road. Any physical and visual separation between Horcott and Fairford here would be lost. For this reason I consider that the development would be harmful to the character and appearance of the area.
79. As set out by the Council in their evidence [40] a key characteristic of Fairford and a reason for the designation of the CA is the sense of the countryside penetrating right to the centre of the town. The appeal site with the countryside to the south links to the playing fields to the north-east, which link to the Coln River and the open space around it, which then extends into the CA and the town, up towards St Mary's Church [35]. To my mind this is a good example of the countryside penetrating into the town, and the appeal site forms a part of this. Although the appeal site falls outside the CA I consider that its proximity to the town and its relationship with it, as described above, means it forms an important part of the setting in which the CA is experienced and consequently it makes a positive contribution to the character and appearance of the CA.
80. Developing the site in the scale and manner proposed would result in the link provided by the appeal site between the town and the surrounding countryside being cut off. This would result in harm to the setting of the CA which would in turn cause harm to the significance of the CA as a whole.
81. This strip of open land to which the appeal site belongs can be appreciated from the footpath along the north-west boundary of the appeal site, from Horcott Road, and along a further footpath to the north-east which heads towards the town. In my view the presence of modern housing on the periphery of this strip of undeveloped land does not diminish its importance. I agree that the appeal site is not prominent in views from the Cirencester Road [34], being located beyond two smaller parcels of land. Nevertheless, its undeveloped and rural nature can be appreciated from here and I note the Inspector's comments in consideration of appeal APP/F1610/A/14/2213318 that the views to the countryside from Cirencester Road, of which the appeal site forms a part, would act as a reminder of the conservation area's relationship with the countryside [42].
82. The appellant proposes that a large proportion of the site is retained for landscaping and that a gap in the built form to the front of the development is provided [31]. However, I consider this would not adequately mitigate the harm caused by a loss of openness across the site as a whole as a result of the proposed development.
83. For the above reasons I consider that the development would be harmful to the character and appearance of the surrounding area and as such would conflict with Policy 42 of the LP which seeks to respect the character, appearance and local distinctiveness of Cotswold District. It would also cause harm to the setting of the CA which would, as a result, harm the significance of the CA as a whole. It would therefore conflict with Policy 15 of LP in terms of its aim to preserve or enhance conservation areas.

84. The harm to the CA must, however, be considered in light of the Framework which is a material consideration given the agreement between the parties that Policy 15 is inconsistent because it does not include the paragraph 134 balance of 'less than substantial harm' against the public benefits of the proposal [23]. The Framework clearly sets out the need to address 'less than substantial harm' in a balanced manner against benefits associated with such schemes and I address this in my overall planning balance below.
85. It is also worth noting that the proposal would be contrary to emerging policies in the NP. Policy FNP10 identifies the larger field which forms part of the appeal site as a local green space where new development will not be permitted except in very special circumstances. FNP11 also includes the site in the Fairford – Horcott Local Gap, the purpose of which is to prevent the coalescence of the two settlements. Given the early stage of the NP at the time of writing this report these policies should only be given limited weight. Nevertheless, they are a material consideration.
86. In coming to the above findings I consider that any raising of the land as part of drainage works could be gently graded given the overall size of the site so as to not cause harm to character and appearance, and this could be dealt with at reserved matters stage.

#### *Affordable housing*

87. The Council and the appellant agree on providing 50% of the development as affordable housing [26]. The appellant considers this can be provided by way of a condition requiring a scheme for the provision of affordable housing as part of the development to be submitted to and approved in writing by the local planning authority, and that the affordable housing shall be provided in accordance with the approved scheme.
88. The advice in the Planning Practice Guidance (PPG) is that only in exceptional circumstances is it appropriate for a condition requiring a planning obligation or other agreement to be entered into before certain development can commence, such as in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.
89. The appellant was not able to refer to any exceptional circumstances in this appeal to warrant the use of such a condition in respect of affordable housing. However, the point was made that the appellant's suggested condition did not require them to enter into a planning obligation and therefore did not conflict with the advice in the PPG. The appellant also stated such a condition had been used in a large number of other cases.
90. Affordable housing is most often secured by a planning obligation and I consider a legally constituted agreement to be the only secure way to do this. In respect of this appeal I am clear that, going on the advice set out in the PPG, a condition for affordable housing would not be appropriate in assuring the delivery of affordable housing in this scheme. The development would not, therefore, make appropriate provision for affordable housing and as such conflicts with Policy 21 of the LP.

#### *Other matters*

91. With regard to drainage and flooding I appreciate the concerns expressed and am mindful of the photographic evidence regarding past flooding events at the

appeal site [50]. However, the drainage information submitted is sufficient to meet the requirements of an outline application as confirmed by the Lead Local Flood Authority [24]. I am therefore satisfied that the detailed drainage design is a matter that can be secured by conditions.

92. The development would increase traffic onto the Horcott Road. Highways Development Management at Gloucester City Council carried out a detailed assessment of the traffic impact of the development. This found that there is sufficient junction capacity at the Cirencester Road (A417) and the Horcott Road Junction to accommodate the development. Although there is restricted visibility from Horcott Road at this junction there is no evidence to suggest the development would significantly increase the risk to road safety and result in a severe impact. On the wider network the development would not result in a significant increase in traffic movements given existing levels of traffic as set out in the response received from the Highway Authority [24].
93. In terms of local school capacity, mitigation in the form of contributions has been secured by way of a UU as set out above. Whilst noting concerns regarding the capacity of the local doctors' surgery and Post Office there are no relevant policies relating to such matters in the current development plan or any substantive evidence before me with respect to this. These are not matters, therefore, which in themselves would lead to a refusal of planning permission.

#### *Overall planning balance*

94. The site falls outside of a defined development boundary therefore the proposed development conflicts with Policy 19 of the LP [12]. However, because the development boundaries in Policy 19 apply to a set period of growth which has now expired (2001-2011) this part of the policy is no longer consistent with the Framework which seeks to boost the supply of housing. This is a material consideration which means limited weight can be attached to this conflict with this policy. This approach is supported by an appeal decision cited by the Council<sup>24</sup>. Notwithstanding the above I have had regard to matters of sustainable development and the protection of the countryside in my reasoning and conclusions.
95. As set out previously I have found conflict with the development plan in respect of harm to character and appearance and the setting of the CA [83]. Given the conflict with Policy 15 of the LP found above [84] I now return to the Framework and the paragraph 132 balance. Paragraph 132 of the Framework sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The harm to the significance of Fairford Conservation Area, by virtue of harm to its setting, can be considered 'less than substantial' for the purposes of paragraph 134 of the Framework. Nevertheless, even harm that is 'less than substantial' still represents a harmful impact to the conservation of this heritage asset. As set out in paragraph 134 where a development 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.
96. The proposal would provide a number of benefits as set out by the appellant [37]. Whilst there is no dispute that the Council can demonstrate a five year supply of housing, paragraph 47 of the Framework is clear that, regardless, there is a need to significantly boost the supply of housing. I therefore consider the benefit of housing should carry moderate weight. The benefit of providing affordable housing would, however, be significantly reduced due to the lack of an appropriate mechanism by which to secure this [90].

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<sup>24</sup> APP/F1610/W/15/3121622

97. There would be other limited public benefits such as temporary employment during the construction of the development and insofar as future occupants of the development would likely contribute to local expenditure in the area. The site is currently not a public open space, and the development would provide public areas of open space, but this would be at the expense of harm to the visual amenity of local public rights of way and the character and appearance of the area generally therefore I consider the benefit to be neutral. From all that I have seen and heard nothing leads me to conclude that the enhancement of the existing field barn and its enclosure, or any ecological enhancements to the site would be anything other than a limited benefit.
98. In weighing the harm to the CA against the public benefits of the proposal I consider that the harm to the CA would outweigh the public benefits in this case. This indicates that the proposal would not represent sustainable development and should be dismissed. However, even if a different conclusion were to be reached in respect of the paragraph 134 balance I consider that the totality of harm, taking into account the harm to the CA and the character and appearance of the surrounding area would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development, as set out in paragraph 14 of the Framework, would not, therefore, apply.

### **Recommendation**

99. For the reasons set out above I recommend that the appeal be dismissed.
100. In the event that the SoS disagrees with me and decides to allow the appeal, it is recommended that the conditions in Appendix 1 be imposed and careful consideration be given to resolving my concerns over the absence of a planning obligation by which to secure the necessary affordable housing.

*Hayley Butcher*

INSPECTOR

## **APPENDIX 1: SCHEDULE OF RECOMMENDED CONDITIONS**

- 1) No development shall be commenced until details of the appearance, landscaping, layout (including space for the parking and turning of vehicles and cycle parking), and scale, hereinafter called "the reserved matters", have been submitted to the local planning authority and approved in writing. The development shall thereafter be carried out in accordance with the details thus approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The access to the site shall be constructed in accordance with the submitted plans: 'Access Arrangement' Drawing No P16036-001, Redline Plan Drawing No 6786-L-04.
- 5) No development shall take place until a programme of archaeological work in accordance with a written scheme of investigation, including a timetable for the submission of findings, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved written scheme of investigation.
- 6) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any significant contamination is found during the site investigation, a remediation scheme specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development begins.
- 7) The remediation scheme, as agreed in writing by the local planning authority, shall be fully implemented in accordance with an approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the local planning authority in advance of works being undertaken. On completion of the works the developer shall submit to the local planning authority written confirmation that all works were completed in accordance with the agreed details.

- 8) If during the course of development any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this contamination shall be submitted to the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 9) No development shall take place until a five year ecological management plan for the site has been submitted and approved in writing by the local planning authority. The plan shall include:
  - a) The long-term aims and objectives for ecological habitat creation, mitigation, management and monitoring (including baseline species and habitat information);
  - b) Details of ecological features to be retained;
  - c) Details of how these features will be protected during construction;
  - d) Details of structural planting and habitat creation;
  - e) Details of bat mitigation;
  - f) Details of long-term management and monitoring for at least 5 years post completion of the development.
  - g) Maintenance schedules, including annual work programmes for the first 5 years.

The approved ecological management plan shall be implemented in full according to the timescales laid out in the plan, unless otherwise agreed in writing by the local planning authority.

- 10) The bank sides of any attenuation basin should be steep, any grass verges surrounding the pond should be maintained as long grass, and goose proof fencing should be installed.
- 11) No works shall commence on site (other than those required by this condition) until the first 20m of the proposed access road, including the junction with the existing public road and associated visibility splays have been completed to binder course level.
- 12) No dwelling on the development shall be occupied until the carriageways (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the public highway to the dwellings have been completed to at least binder course level and the footways to surface course level.
- 13) Prior to first occupation of any dwellings on site, the dropped kerb tactile crossing points on Horcott Road shall have been constructed in accordance with details to be first submitted to and approved in writing by the local planning authority.
- 14) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The statement shall provide for:
  - a) The parking of vehicles of site operatives and visitors;
  - b) Loading and unloading of plant and materials;
  - c) Storage of plant and materials used in constructing the development;
  - d) Wheel washing facilities;

- e) Measures to control the emission of dust and dirt during construction;
- f) Construction working hours;
- g) Consideration as to the location and use of heavy machinery, plant or material in areas where infiltration has been proposed to avoid soil compaction of such locations.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 15) Prior to the commencement of development details of surface water attenuation/storage works shall be submitted to and approved in writing by the Local Planning authority. The volume balance requirements should be reviewed to reflect the actual development proposal, agreed discharge rate and the extent of impermeable areas and runoff to be generated. The scheme shall be completed in accordance with the approved details before the development is first brought into use.
- 16) Development shall not take place until an exceedance flow routing plan for flows above the 1 in 100 30% event has been submitted to and approved in writing by the local planning authority. The proposed scheme shall identify exceedance flow routes through the development based on proposed topography with flows being directed to highways and areas of public open space. The scheme shall subsequently be completed in accordance with the approved details before the development is first brought into use.
- 17) Development shall not take place until a scheme for surface water drainage has been submitted to and approved in writing by the local planning authority. The proposed scheme shall reduce the surface water discharge rate as close as practicable to the Greenfield runoff rate i.e. equivalent to the previously undeveloped character of the site. Any attenuation feature should be designed to attenuate all flows up to and including the 1 in 100 year event +30% for climate change. The scheme shall subsequently be completed in accordance with the approved details before the development is first brought into use.
- 18) Prior to the development being first brought into use a SUDS maintenance plan for all SUDS/attenuation features and associated pipework has been submitted to and approved in writing by the local planning authority. The approved SUDS maintenance plan shall be implemented in full in accordance with the agreed terms and conditions.
- 19) Prior to the infiltration of water to the ground oil interceptors shall be installed for road run off within the development.
- 20) The development hereby permitted shall not be occupied until water hydrants have been provided in accordance with a scheme submitted to and approved in writing by the local planning authority for the provision of fire hydrants (served by mains water).
- 21) The handling of soils shall be carried out in accordance with MAFF Good Practice Guide for handling Soils (April 2000) and no topsoil shall be moved on the site except when the full depth of the soil to be moved or spread is in a suitably dry soil moisture condition and in such a manner so as to avoid compaction.
- 22) No development shall commence until the following have been submitted to and approved in writing by the local planning authority:

- a) Details of ground preparation prior to importation of topsoil, including de-compaction of material and removal of any debris including plastic, wood, rock and stone greater in size than 50mm in any dimension;
- b) Arrangements for stripping, storage and re use of top soil;
- c) Arrangements for importation of top soil, including volume, source, quality, depth and areas to be treated;
- d) Details of earthworks associated with the development, including volumes of cut and fill and arrangements for disposal of any excess excavated material or importation of material.

The development shall be carried out in accordance with the approved details before any part of the development is first occupied.

- 23) No preparatory work of development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5838: Trees in relation to design, demolition, and construction – Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]



## **APPENDIX 2: APPEARANCES**

### FOR THE APPELLANT:

Pet Twigg	Gladman Developments
Jason Tait	Planning Prospects
Chris Dodds	Planning prospects
Tim Jackson	FPCR Environment and Design
Gail Stoten	Pegasus Group
Dr Paul Hardwick	Enzygo

### FOR THE LOCAL PLANNING AUTHORITY:

Alison Williams	Senior Planning Officer
Will Harley	Landscape Consultant
Justin Ayton	Heritage
Andrew Doherty	
Raymond Theodoulon	

### OTHER INTERESTED PERSONS:

Jon Hill	Fairford Town Council
Neil Homer	Fairford Town Council
Richard Harrison	Fairford Town Council
Malcolm Cutler	Local resident
Kevin Easey	Local resident
Patsy Egerton	Local resident

## **APPENDIX 3: DOCUMENTS TABLED AT THE HEARING**

1. Signed and dated Unilateral Undertaking
2. Cotswold District Local Plan 2011-2031 Submission Draft Reg. 19 (June 2016) Policies DS1, SA1, S5.
3. Cotswold District Focussed Changes Addendum to the Local Plan 2011-2031: submission Draft Reg. 19 (December 2016).
4. Agreed list of documents
5. Correspondence between Gladman Legal Department and a Senior Lawyer at Gloucester County Council regarding the Travel Plan contribution in the s.106 agreement.
6. Policies 38 and 49 of the Cotswold District Local Plan 2001-2011 (Adopted April 2006).
7. Gloucester County Council Local Development Guide, Infrastructure & Services with New Development (Adopted February 2014).
8. Gloucester Country Council Planning Obligations (Libraries and Education Infrastructure) CIL Compliance Statement March 15<sup>th</sup> 2017
9. Suggested condition from Fairford Town Council in relation to a foul water drainage strategy.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

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

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

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

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

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

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