



## Appeal Decision

Inquiry held on 23-25 June 2015

Accompanied site visit made on 24 June 2015

**by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI**

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

**Decision date: 13 July 2015**

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**Appeal Ref: APP/G1630/W/14/3001706**

**Land adjacent to Cornerways, High Street, Twyning, Tewkesbury GL20 6DE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 [hereinafter "the Act"] against a refusal to grant planning permission.
  - The appeal is made by Persimmon Homes (South Midlands) Ltd against the decision of Tewkesbury Borough Council.
  - The application Ref 13/00978/FUL, dated 18 September 2013, was refused by notice dated 9 December 2014.
  - The development proposed is residential development of 58 dwellings, access from Shuthonger Lane, landscaping, SUDs drainage, public open space and services and proposed community car park.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of 58 dwellings, access from Shuthonger Lane, landscaping, SUDs drainage, public open space and services and proposed community car park on land adjacent to Cornerways, High Street, Twyning, Tewkesbury GL20 6DE in accordance with the terms of the application, Ref 13/00978/FUL, dated 18 September 2013, subject to the conditions set out in the attached *Schedule of Conditions*.

### Procedural matters

2. The appeal site address and description of development, set out above, has been taken from the appeal form, with the postcode being that for the nearest property, Cornerways. Amongst other things section 1.2 of the Statement of Common Ground [CDB3], confirms that the number of dwellings has been reduced from the 82 originally applied for to 58. A revised set of plans were submitted to the Council in support of the modified scheme and consultation was undertaken by the Council on that revised scheme before it was considered by the Council's Planning Committee. The plans before the Inquiry are as listed on pages 6 and 7 of the Statement of Common Ground, and it is agreed [Document 5.2] that revision E of drawing Nos 16916/100 and 16916/101 [copies at CDE3 and E4], which concern substitution of a house type on 2 plots, should now be considered. I propose to deal with this appeal on this basis.
3. The Planning Inspectorate wrote to the Council on 5 June 2015, in advance of the Inquiry opening, drawing attention to Regulation 123(3) of the Community Infrastructure Levy [CIL] Regulations 2010 [As Amended]<sup>1</sup>. The Council's reply [Document 3] sets out reasons why the threshold of 5 planning obligations has not been met in respect of any of the financial contributions that the Council

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<sup>1</sup> See Planning Practice Guidance ['the Guidance'] for further information, including paragraph reference 23b-024-20150326.

has sought. The Appellant has not challenged this information and in these circumstances there is no evidential basis on which to conclude that the relevant financial contributions that have been sought cannot lawfully be taken into account in this appeal. The level of contributions, summarised below, are examined against Regulation 122 of the CIL Regulations in due course.

4. Two Section 106 agreements have been submitted in this appeal. The first [Document 4] is between all relevant interests in the land and Gloucestershire County Council, the headline summary of which is that:
  - i) £10,976 is offered as a contribution towards Tewkesbury Library; and,
  - ii) £100,000 is offered as a contribution towards the enhancement of bus service provision.
5. The second [Document 10] is between all relevant interests in the land and Tewkesbury Borough Council, the headline summary of which is that:
  - i) £3,424 is offered as a contribution towards the provision of Astro Turf at Tewkesbury Sports Centre or resurfacing of the Multi-Use Games Area [MUGA] at Twyning Recreation and Community Complex [TRAC];
  - ii) £650 is offered as a contribution towards the provision of dog waste bins and signage on or in the vicinity of the site;
  - iii) £24,608 is offered as a contribution towards proposed new primary care facilities in Tewkesbury;
  - iv) £72,735 is offered as a contribution towards providing playing pitches within the vicinity of the site;
  - v) £50 per dwelling is offered as a contribution towards the provision of recycling facilities and services for the development;
  - vi) £24,992 is offered as a contribution towards the improvement of the village hall or the provision of TRAC facilities; and,
  - vii) 21 of the dwellings provided shall be affordable housing units, which comprise 11 affordable rented units and 10 shared ownership units, and it is agreed this is 36 % affordable housing [CDB3, paragraph 6.1.3].

### **Planning policy: *Development Plan***

6. In *R (oao Cherkley Campaign Ltd) v Mole Valley District Council & Anor* [2014] EWCA Civ 567 [Document 12] the Court of Appeal set out the correct approach towards a saved Local Plan [LP] policy. Richards L.J., who gave the leading judgement with which the others agreed, held that the reasoned justification to a LP policy is relevant to the interpretation of that policy to which it relates but it is not a policy or part of a policy. The reasoned justification cannot operate independently to impose a policy requirement that the policy does not contain. However there was a consensus between the main parties that Richards L.J. held that the effect of the saving direction was to save not only the policies referred to in it, but also any supporting text relevant to the interpretation of the policy, so that it would continue with unchanged meaning and effect.<sup>2</sup>
7. The Development Plan [DP] includes the Tewkesbury Borough LP to 2011, which was adopted in March 2006 [CDA1]. Paragraph 9 of the LP Introduction says: "*Within each chapter, each policy is numbered and capital letters used to distinguish [ing] it from its accompanying reasoned justification*". Although the reasons for refusal also refer to LP Policies HOU13, RCN1, GNL11 and TPT1, the Inquiry focussed upon LP Policy LND4. Under a title "*Subject: Landscape – Countryside Protection Policy LND4*" [*original emphasis*] it says: "*In considering*

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<sup>2</sup> Closing submissions were sought on this point at the Inquiry given paragraphs 14 ii) and 15 of the judgement which, at face value, could be read the other way.

*proposals for development in rural areas...regard will be given to the need to protect the character and appearance of the rural landscape". Under a further title "Reasoned Justification" [also original emphasis] it says: "The countryside of the Borough is worthy of protection for its own sake. [Outside designated areas such as AONB]..., the remaining rural areas of the Borough are also of great importance in terms of their visual amenity and biodiversity. In order to safeguard the existing environmental quality of the Borough development proposals affecting these rural areas should be designed to harmonise with their character or, if they are unacceptably intrusive, be refused".*

8. The first point is that applying the ratio of *Cherkley* the reasoned justification is not part of the saved policy, such that the key policy test is that regard be had to the need to *protect* the character and appearance of the rural landscape [*my emphasis*]. So whilst paragraph 3.2.2 of the proof of Mr Jones says: "*Policy LND4 is clear that "unacceptably intrusive development is to be refused"*" [*original emphasis*], I disagree. That part of the reasoned justification is relevant to the interpretation of the policy but, to the extent that it might be said to do so, it does not impose an additional policy requirement. As in *Cherkley* there is a clear distinction between the policy and supporting text.
9. The second point is that, given the date of adoption, it is unremarkable that the reasoned justification should reflect national advice that has been withdrawn. Planning Policy Statement [PPS] 7 "*Sustainable Development in Rural Areas*" was published on 3 August 2004 and the fourth key principle therein said: "*the Government's overall aim is to protect the countryside for the sake of its intrinsic character and beauty*". However the first sentence of the reasoned justification appears to hark back to even earlier advice in Planning Policy Guidance [PPG] 7 "*The Countryside - Environmental Quality and Economic and Social Development*". Paragraph 2.14 thereof said: "*The Government's policy is that the countryside should be safeguarded for its own sake*". The reasoned justification contains the phrase "*for its own sake*" in the first sentence and uses the word "*safeguard*" in the last sentence.
10. Paragraph 4 of the LP Introduction says the Inspector's Report was received in 2003 and that following consideration of the Inspector's recommendations the LP: "*...was approved for development control purposes on 2<sup>nd</sup> June 2004*". There is nothing on the face of the document to suggest the LP was subject to external examination or substantial change after June 2004, which is plainly before the publication of PPS7. Moreover at the time the LP would have had to have been in general conformity<sup>3</sup> with the Gloucestershire Structure Plan, which paragraph 4 of the Introduction to the LP records to have been adopted in November 1999, in respect of the period 1991-2011. In the circumstances it is appropriate to conclude that LP policy LND4, together with its reasoned justification, was drawn up in the context of Government policy that dates back to 1997. This is most evident from the reasoned justification but that, in turn, informs the wording of the policy itself, in terms of protection, i.e. '*to protect*'.
11. Paragraph 215 of the National Planning Policy Framework ["the Framework"] says: "*...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*". The fifth core planning principle, at paragraph 17 of the Framework, refers to "*protecting*" Green Belts but "*recognising the intrinsic*

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<sup>3</sup> See section 46 of the Act.

*character and beauty of the countryside*". The analogy made on behalf of the Appellant at the Inquiry to recognising a famous individual who is protected by bodyguards is apt. Recognising, in its context, requires the decision maker to identify and respond correctly to the identified attributes of the countryside. Protect is a stronger verb, which means to keep safe from harm or aim to preserve. It appears to be common ground that this is not a valued landscape, as referred to in paragraph 109 of the Framework. In closing it was said for the Appellant that term should equate to designated landscapes, e.g. AONB, but that does not sit easily with the findings of Ouseley J. in *Stroud DC v SSCLG and another* [2015] EWHC 488 (Admin) [CDC30]<sup>4</sup>. The judge is clear that to be a valued landscape physical attributes, rather than popularity, need to be shown but, as was submitted for the Appellant in closing, the Council has not even argued that the site is a valued landscape; the belated attempt to salvage the point in closing<sup>5</sup> does not reflect the Council's proofs of evidence.

12. In the circumstances the test in LP Policy LND4, which is the need to give particular attention to protect the character and appearance of the rural landscape, is not only out-of-date, but also inconsistent with the policy of the Framework. This reduces the weight that it is appropriate to attach to LP policy LND4, which will be quantified following my review of other salient material.
13. In an appeal decision in Stratford on Avon [CDC14] a similar LP Policy, CTY.1, was considered by the Inspector, who said: "...*this Policy seeks to resist development in the countryside on the basis that Government policy requires the countryside to be protected for its own sake. That approach was not carried forward into the Framework and, as a result of this lack of consistency, I give this conflict with LPr Policy CTY.1 little weight*"<sup>6</sup>. Two points arise. First, as in Tewkesbury, the phrase is contained in the supporting text not the policy and in that context the Inspector's sentiments are of direct relevance. Second the Inspector does not actually attribute the policy limited weight but, noting the Council did not rely on the policy in that case, the conflict with the policy. However paragraph 215 suggests it is necessary to attribute weight to a policy.
14. LP Policy LND4 was considered at an Inquiry earlier this year [CDC9] and the appeal decision says: "*The policy does not seek to preclude development...*"; I agree and note that paragraph 5.1.4 of the Statement of Common Ground [CDB3] records agreement that it is "*a permissive policy*". It continues: "*The thrust of policy LND4 conforms to the balanced approach set out within the Framework which seeks to boost housing supply but also states that planning should recognise the intrinsic value and beauty of the countryside, this being one of the core principles at paragraph 17*"<sup>7</sup>. This view is examined below. However it is material to note that the Inspector found that the appeal scheme for 45 dwellings would be in accordance with the aims of LP Policy LND4.
15. The view that policy LND4 conforms with the balanced approach in the Framework is challenged by the Appellant who has drawn attention to, firstly, the case of *Anita Colman v SSCLG and others* [2013] EWHC 1138 (Admin) [CDC15]. Parker L.J. held that the DP Policies at issue in that case were: "...*on their own express terms very far removed from the "cost/benefit" approach of the NPPF...[and]...do not permit any countervailing economic or similar benefit*

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<sup>4</sup> Paragraph 13 of the transcript says: "*The NPPF is clear: that designation is used when designation is meant and valued is used when valued is meant and the two words are not the same*".

<sup>5</sup> Paragraph 10, second bullet-point, Document 14, noting that 'valued' in the fourth sentence of paragraph 11, Document 13 was deleted during its oral delivery.

<sup>6</sup> Source of quote: paragraph 22, appeal decision APP/G1630/A/14/2223858 [CDC14].

<sup>7</sup> Source of quotes: paragraph 39, appeal decision APP/J3720/A/14/2216615 [CDC9].

*to be weighed in the scales*<sup>8</sup>. In closing the Council has helpfully set out key Policy ENV1, at issue in *Colman*, and it is clear that it is far more restrictive than Policy LND4 insofar as it says development will only be permitted where 3 criteria are met, including where development "...protects or enhances" the countryside. In the circumstances I accept the Council's closing submission that the *Colman* judgement is of limited application here and is not directly comparable because the policies at issue in that case were more prescriptive.

16. Secondly the Appellant has drawn attention to the Inspector's report to the Secretary of State with regard to appeals in Wychavon [CDC13]. The report says: "*In terms of Policy ENV1, in so far as it seeks to protect the countryside, this policy can be said to be consistent with the NPPF. However, in so far as it seeks to halt necessary development, it cannot be said to be consistent. This is clear from the case of Anita Colman...*"<sup>9</sup>. The Secretary of State agreed with the Inspector's reasoning and said that only "*limited weight*" could be given to the policy<sup>10</sup>. However I have already given reasons for finding that a policy that seeks "*to protect*" goes well beyond the Framework and is not consistent with it and recorded the consensus that LP Policy LND4 is permissive rather than restrictive of development. In that sense a clear distinction can be drawn between the respective policies. Since this goes to the weight that the Secretary of State gave to Policy ENV1 the rationale is not comparable.
17. In light of the above LP Policy LND4 can be distinguished from DP policies at issue in North Devon [CD15] and Wychavon [CD13] because it is agreed to be permissive. However it is out-of-date, being reflective of national advice in PPG7, and inconsistent with the policy of the Framework because the key policy test of protection is far stronger than the fifth core planning principle. In reaching this view I have taken account of the letter from Brandon Lewis MP to The Planning Inspectorate [CDA22], but this restates the policy as being to "*...recognise the intrinsic character and beauty of the countryside*"<sup>11</sup>, which has not changed. For these reasons it is inappropriate to attribute LP Policy LND4 considerable weight<sup>12</sup>. Given that the key test, in paragraph 215 of the Framework, is consistency with policies in the Framework rather than whether it reflects the thrust of the document, I attribute LP Policy LND4 limited weight. In reaching this view I acknowledge that the policy also contains no element of balance, in terms of the cost/benefit approach evident in the Framework, and this tends to reinforce my findings in terms of both inconsistency and weight.

### ***Emerging strategic planning policy***

18. The examination into the Joint Core Strategy [JCS], started with its submission to the Secretary of State on 20 November 2014. In accordance with paragraph 216 of the Framework, account can be taken of emerging policies. However the weight to be attached to such policies will depend on a range of factors namely: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and the degree of consistency of the relevant policies in the emerging plan to the

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<sup>8</sup> Source of quote: paragraph 22, *Anita Colman v SSCLG and others* [2013] EWHC 1138 (Admin) [CDC15].

<sup>9</sup> Source of quote: paragraph 8.15, Inspector's report APP/H1840/A/13/2199085 & 2199426 [CDC13].

<sup>10</sup> Source of quote: paragraph 11, decision APP/H1840/A/13/2199085 & 2199426, dated 2 July 2014 [CDC13].

<sup>11</sup> Source of quote: second paragraph of letter dated 27 March 2015 [CDA22].

<sup>12</sup> As per paragraph 7.8 of Mr Smith's proof of evidence.

policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

19. Although not expressly addressed in the Statement of Common Ground [CDB3] there appears to be a consensus that only limited weight can be given to relevant JCS Policies. Mr Smith expresses this view in paragraphs 8.7, 8.9 and 8.16 of his proof of evidence. Mr Jones is clear that he defers to Mr Smith in all planning policy matters. Mr Hill has expressed the view that JCS Policy SD7, which is the most relevant in the sense that it is relied upon by the Council in the first reason for refusal, is inconsistent with the Framework. So whilst noting the minimal level of objection to that policy<sup>13</sup>, I share the Council's view that only limited weight should be given to relevant JCS policies at the present time, including policies SP2, SD7, SD12, SD13, INF1, INF2, INF5 and INF7.

### ***Emerging local planning policy***

20. The Statement of Common Ground [CDB3] records that the Council published the Tewkesbury Borough Plan [TBP] for consultation between February and April 2015. The TBP is aligned with targets for growth set in the JCS but, given the weight I attach to that document and for reasons discussed further below, those figures might change. Draft policy HOU1 identifies the appeal site as an option, "B", and paragraph 3.1.17 of the Statement of Common Ground [CDB3] confirms that the next stage of the TBP will be to formally identify allocations. Thereafter there would be a need for further consultation prior to submission to the Secretary of State, which is projected to be in 2016. In the circumstances it is clear that very limited weight can be given to the TBP at this early stage.

### ***Neighbourhood Plan***

21. In an email dated 13 June 2015 the Parish Council submitted, for the first time in this appeal, a copy of the draft Twyning Neighbourhood Development Plan [NP]; the pdf copy is labelled "v8" and on its face it is dated June 2015. Whilst the Inquiry was told that the body responsible for its production is independent of the Parish Council it is not disputed that there has been some professional input. The NP makes no housing allocation: Policy H1 says that the allocation is to be added following the outcome of this Inquiry and so, as the Appellant submitted, it remains in prospect that the appeal site could be allocated, in which case this scheme would not conflict with the NP, but fully accord with it. Moreover pending the identification of any such allocation the NP can only be given very limited weight because it has not been the subject of consultation.
22. This view is not inconsistent with that of the Secretary of State in a decision in Faringdon [CDC17] where, it would appear, the NP was more advanced. It is also consistent with 3 adverse judgements that the Inquiry was advised were handed down within one week. In two of these, Rolleston on Dove [CDC18] and Devizes [CDC20], the Secretary of State consented to judgement and in the third, *Woodcock Holdings Limited v SSCLG and another* [2015] EWHC 1173 (Admin) [CDC19], the decision was quashed on all 4 grounds. It is difficult to dispute the Appellant's submission that the consistent message is that it is inappropriate to attribute significant weight to an emerging NP in advance of the external examination and/or a referendum having been held.

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<sup>13</sup> See paragraph 40, appeal decision APP/G1630/A/14/2223858 [CDC9].

### **Background to and identification of the Main Issues: *Housing land supply***

23. Paragraph 4.2.3 of the Statement of Common Ground [CDB3] refers to an appeal decision from earlier this year [CDC9] and says: “...for the purposes of the appeal a range between 2.7 years and 3.9 years was appropriate, which represents a *significant shortfall*” [*my emphasis*]. It says the Inspector took the view that the housing figure for the JCS area had yet to be examined. Paragraph 4.2.4 continues by recording agreement that there has been a persistent under-delivery of homes in the Borough such that, in accordance with paragraph 47 of the Framework, a 20 % buffer should be included.
24. Ahead of the Inquiry Mr Hill’s proof of evidence provided a comprehensive critique of the Council’s housing land supply and challenged, amongst other things, delivery rates and the absence of a discount for non-implementation. He concludes at paragraph 6.154 of his proof that the RSS figure is the most robust figure against which to assess the Council’s housing land supply because the emerging JCS figures remain untested. It is clear from Mr Hill’s update on the concurrent Examination in Public [EiP], which I have no reason to doubt, that the Inspector conducting the EiP has raised concerns about the quantum of the objectively assessed need and its relationship with economic projections for the area. Whilst that is a matter for others it supports Mr Hill’s claim that the JCS housing figures cannot be relied upon at this stage. Against this background Mr Hill estimates, in Table 7.23 of his proof, that against the RSS requirement the Council has as little as 1.4 years of housing land supply.
25. Upon opening the Inquiry the Council sought an adjournment [Document 2] the reasons for which, in summary, related to the derivation of this figure, which the Council does not accept, and the perceived unfairness in raising the matter in the manner that it was. In the event, following an adjournment, the main parties reached an agreed position [Document 5.1], which expressly records that the “...*Council accepts the shortfall is significant*”. Acknowledging that the recent case of *Phides Estates (Overseas) Limited v SSCLG and others* [2015] EWHC 827 (Admin) [CDC31] has confirmed that the size of the shortfall is relevant, a point which is agreed in the position statement, this descriptor is appropriate. As I suggested to the Inquiry even if a great deal of Inquiry time had been spent examining the assumptions that underpin the estimate of 1.4 years, it might still have been appropriate to describe that as a significant shortfall. At its best 3.9 years remains significantly and materially below the 5-years’ worth of housing supply that paragraph 47 of the Framework requires.

### ***What are the relevant policies for the supply of housing?***

26. At paragraph 4.2.6 of the Statement of Common Ground [CDB3] the main parties agree that: “...*local policies for the supply of housing should be considered out of date*”. Paragraph 10.10 of Mr Smith’s proof of evidence acknowledges that LP Policies HOU3 and HOU4 are relevant policies for the supply of housing that are out-of-date. The first permits residential development within the settlement boundary of villages, such as Twynning, and the second precludes such development in areas, such as the appeal site, which are outside the development boundaries of those settlements. The proposed development inevitably conflicts with LP Policy HOU4.
27. The issue between the main parties is whether LP Policy LND4 is a relevant policy for the supply of housing, as referred to in paragraph 49 of the Framework. In paragraph 48 of *South Northamptonshire Council v SSCLG and*

*Barwood Land* [2014] EWHC 573 (Admin) [CDC27] Ouseley J. held that once an Inspector has properly directed himself as to the scope of paragraph 49 of the Framework: "...the question of whether a particular policy falls within its scope, is very much a matter for his planning judgment"<sup>14</sup>. It is material that this conclusion post-dates *Tesco Stores v Dundee City Council* [2012] UKSC 13.

28. Against this background the judgements to which my attention has been drawn suggest that there is a continuum of policies. In *Cotswold DC v SSCLG* [2013] EWHC 3719 (Admin) [Document 15.4] it was held that the Inspector was correct in finding that: "...Local Plan Policy 19 should be disapplied "to the extent" that it "seeks to restrict the supply of housing"<sup>15</sup>. Amongst other things Policy 19: "...dealt with new-builds and other matters if the authority was to allow housing outside the development boundary"<sup>16</sup>. At the other end of the spectrum is the green wedge type policy at issue in *William Davis Limited v SSCLG and Others* [2013] EWHC 3058 (Admin), which was held not to relate to the supply of housing, even though it had the potential to restrict housing development. A challenge to one of my own decisions described Policy EV2, at issue in *South Northamptonshire*, to be: "...somewhere between the Cotswold case and the Davis case"<sup>17</sup>. Policy SP29, which was at issue in *Hopkins Homes v SSCLG and Others* [2015] EWHC 132 (Admin), was held to be: "...equivalent to Policy EV2"<sup>18</sup>. Although I recognise that permission has recently been granted [Document 15.2] to challenge the more recent case of *Cheshire East Borough Council v SSCLG and another* [2015] EWHC 410 (Admin) [CDC12] in the Court of Appeal it is necessary to apply the law as it stands. At the present point in time the distinction in *William Davis*, which was followed by Ouseley J. in *South Northamptonshire* and Lang J. in *Cheshire East*, remains good law.
29. For the reason identified above I am familiar with Policy EV2, at issue in *South Northamptonshire*, and that policy is negatively worded, "will not be granted"<sup>19</sup> and set out limited exceptions, e.g. conversions and development necessary for agriculture and forestry. In that sense it is far closer to LP Policy HOU4, which only permits new residential development in 3 categories: agriculture/forestry; conversions and affordable housing. Ouseley J. in *South Northamptonshire* held: "Such policies are the obvious counterparts to policies designed to provide for an appropriate distribution and location of development"<sup>20</sup>. However if Policy EV2 sits in the middle of the continuum, as per *Plummer*, this would suggest that LP Policy LND4 is towards the far end of the spectrum.
30. In its legal submissions [Document 14], the Council has drawn attention to a passage of Lang J. in *Cheshire East*, between paragraphs 51 and 57. It was held that the term *relevant policies for the supply of housing* means policies which make provision for housing and: "does not have the meaning suggested to me in court, namely, policies "relevant to the supply of housing"...". Whilst endorsing the "...broader purposive interpretation..." of paragraph 49 of the

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<sup>14</sup> Source of quote: paragraph 48 of *South Northamptonshire v SSCLG and Barwood* [2014] EWHC 573 (Admin) [CDC27].

<sup>15</sup> Source of quote: paragraph 72 of *Cotswold DC v SSCLG* [2013] EWHC 3719 (Admin) [Document 15.4].

<sup>16</sup> Source of quote: paragraph 46 a) of *Cheshire East Borough Council v SSCLG and another* [2015] EWHC 410 (Admin) [CDC12].

<sup>17</sup> Source of quote: paragraph 35 of *South Northamptonshire v SSCLG and Plummer* [2013] EWHC 4377 (Admin) [quoted at paragraph 4, Appendix D to Document 15.3].

<sup>18</sup> Source of quote: paragraph 38 of *Hopkins Homes v SSCLG and Others* [2015] EWHC 132 (Admin) [quoted at paragraph 6, Appendix D to Document 15.3].

<sup>19</sup> Source of quote: paragraph 38 of *South Northamptonshire v SSCLG and Barwood* [2014] EWHC 573 (Admin) [CDC27].

<sup>20</sup> Source of quote: paragraph 47, *Ibid*.



Framework, Lang J. held: "...it seems unlikely that the Minister intended local policies protecting the environment or identifying areas where development would be inappropriate to be treated as out-of-date, solely on the ground that their indirect effect was to restrict the supply of housing in those areas, without consideration of their wider planning purpose and value". She continued: "...I doubt that the Minister intended the NPPF to be used to routinely bypass local policies protecting specific local features and landscapes, as that would undermine the statutory scheme"<sup>21</sup>.

31. Although I accept that LP Policy LND4 is a policy relevant to the supply of housing it is agreed to be permissive, rather than restrictive. In the unique circumstances of this Borough the obvious counterpart policy is LP Policy HOU4 and in contrast LP Policy LND4 does not have the wider role that is evident of other policies, such as Policy EV2 in *South Northamptonshire*. It is not a policy that: "...generally affects housing numbers, distribution and location in a significant manner"<sup>22</sup> [*my emphasis*], which was the broadest category that was identified by Ouseley J. in *South Northamptonshire*. In my planning judgment LP Policy LND4 is not a policy for the supply of housing within the meaning of paragraph 49 of the Framework and should not, using the language of Lang J. in *Cheshire East*, be: "...dis-applied in its entirety"<sup>23</sup>.
32. In reaching this view I have taken account of the Reasoned Justification but, applying *Cherkley*, whilst that is relevant to the interpretation of LP Policy LND4 it is not part of the policy. The Reasoned Justification, whilst more restrictive, cannot of itself be a relevant policy for the supply of housing. It has not altered the consensus between the parties that LP Policy LND4 is a permissive policy.

### **Main Issues**

33. Paragraph 5.2.34 of the Statement of Common Ground [CDB3], records that, subject to the completion of appropriate section 106 agreements: "...refusal reasons 2 to 5 will have been overcome". Given that section 106 agreements, as outlined previously, have subsequently been concluded there are 2 main issues in this appeal. The first is the effect of the proposed development on the character and appearance of the area. The second is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### **Reasons: (i) Character and appearance**

34. The Statement of Common Ground [CDB3] records that the main parties agree the following points. The appeal site is located along the western boundary of Twyning and extends to approximately 4.7 hectares. The existing vehicular access to the site is gained through a gated farm access at the junction of Bockeridge Road and Shuthonger Lane. To the east of the appeal site is residential development of varied age and typology, with the adjacent dwelling, Cornerways, being of typical 1970s-80s design. To the south of the proposed development area lies the balance of the pasture field, with a fall in relief away from the appeal site. The field has mature hedgerows and narrow grass

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<sup>21</sup> Source of quotes: paragraphs 51, 53, 54 and 57, respectively, *Cheshire East Borough Council v SSCLG and another* [2015] EWHC 410 (Admin) [CDC12].

<sup>22</sup> Source of quote: paragraph 46 of *South Northamptonshire v SSCLG and Barwood* [2014] EWHC 573 (Admin) [CDC27].

<sup>23</sup> Source of quote: paragraph 62, *Cheshire East Borough Council v SSCLG and another* [2015] EWHC 410 (Admin) [CDC12].

- margins along its northern and western boundaries. The field is crossed by a public footpath, which broadly runs north-south away from the entrance gate.
35. The landscape witnesses for the main parties broadly agree the key public vantage-points from which there are views of the site. It is agreed that whilst it might be theoretically possible to see the appeal site from the east of the River Avon, including from the vicinity of Bredon's Hardwick, such views are extremely limited in practice and, where available, they are compromised<sup>24</sup>. Although there are views from Twynning towards the Cotswolds it is common ground that it would be difficult to discern the appeal site in the reverse view. Whilst the Zone of Visual Influence<sup>25</sup> appears to be more tightly defined than the equivalent Zone of Theoretical Visibility<sup>26</sup>, based on my site visits and all of the information before the Inquiry, public views of the appeal site are localised.
36. Even within the Zone of Visual Influence Mr Jones, for the Council, effectively discounts views towards the appeal site that are available from the footpath in the vicinity of the David Stokes Recreation Area and from the footpath to the west of Shuthonger Lane. It is conceded that the proposed development would not have a material effect when seen from these vantage-points. Although it has been suggested that there are views of the appeal site from the tarmacked drive that runs broadly east-west to the south of the appeal site, this is a private access. It is right to describe the view from a field gateway near the junction of Shuthonger Lane and Cherry Orchard Lane to be fleeting. Mr Jones notes that individual householders adjacent to the site have no right to a view.
37. Views from Shuthonger Lane would vary along its length. From the vicinity of the junction with Cherry Orchard Lane<sup>27</sup> the trees in the south-west corner of the site, which would be supplemented with additional planting, would screen or at the very least, even in winter, heavily filter views of the development. From a closer vantage-point<sup>28</sup> the retained hedgerow together with the new trees that are proposed leads me to question Mr Jones's claim that the proposal would give rise to an urbanising effect at this point. The term *urbanising effect* should be interpreted in the context of this appeal to mean to make more developed, or built-up, in character. To an extent this depends on management of the hedgerow, acknowledging that as the proposed tree planting matures the trees might close off more extensive views towards Bredon Hill. However road users are likely to be predominantly in transient vehicles because the road is not an obvious route for pedestrians because it runs parallel to the public footpath to Church End which, in amenity terms, is a far more attractive route.
38. Although Shuthonger Lane would undoubtedly become more developed and less rural this effect would not extend very far beyond the southern boundary of the proposed development, in the vicinity of plot 45. To the north of this point 130 m of hedgerow is proposed to be removed and only 35 m replaced outside of the visibility splay. The scale of the built form, in terms of height and mass, would render it dominant along this stretch of road because the mitigation from the existing and/or proposed replacement hedgerow would be minimal. The slab level of the proposed dwelling on plot 45 is above the level of the carriageway<sup>29</sup> and at almost 8 m to the ridge<sup>30</sup> the new dwelling would be

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<sup>24</sup> Figure 15, Appendix LA.2 to proof of evidence of Mr Jones.

<sup>25</sup> Figure 3, Landscape and Visual Appraisal [CDD13].

<sup>26</sup> As defined in the Glossary of the Guidelines for Landscape and Visual Impact Assessment Third Edition.

<sup>27</sup> Viewpoint F, Figure 7, Landscape and Visual Appraisal [CDD13].

<sup>28</sup> Figure 6, Appendix LA.2 to proof of evidence of Mr Jones.

<sup>29</sup> As the Council pointed out at the Inquiry the slab level is given as 34.2 m AOD, compared to 33.56 m AOD on the nearest part of Shuthonger Lane [see Planning Layout Drawing No 16916/1008L, CDE2].

- highly visible above the existing hedgerow, albeit that over time the trees in the adjacent paddock would restrict views from the south. The new traffic calming and 30 mph signs that the Highway Authority require, together with night time illumination from the new houses, reinforces this conclusion.
39. In addition to the above the proposed development would have a marked effect on users of the public right of way which crosses the site, including views in the vicinity of the junction of Brockeridge Road and Shuthonger Lane. Although it has been claimed that the views from the vicinity of the junction are channelled and interrupted I found them to be open and extensive. These views would be lost and replaced by an enclosed view of housing, albeit set back behind the proposed informal green with the housing broken up to some extent by existing and proposed landscaping. I find it difficult to contest the claim of Mr Jones that the proposed development would have a substantial adverse effect on views currently available in the vicinity of the junction. However it is significant that Appendix C of the NP, which identifies important views and vistas around Twyning, does not identify the view from this junction. In this context, whilst the view helps to establish the setting to the village in the wider landscape, its significance should not be overstated. As Mr Jones has said: "*...the view will be deferred to the south at the edge of the new development*"<sup>31</sup>. At this point the proposed planting would change, but not diminish, the views available.
40. On approach to Twyning along the public footpath from the south, more distant views<sup>32</sup> are agreed to not be material. From this public vantage-point houses on Brockeridge Road and Towbury Court are conceded to be clearly visible and occupy a portion of the skyline. Although the proposed development would bring the village edge forward and has the potential to breach the skyline its effect would be mitigated by the proposed tree planting. On balance it would be appropriate to concur with Mr Jones that the perception of the settlement edge would not be significantly altered in more distant views on this approach. However closer views on approach along the public footpath from the south<sup>33</sup> would be materially affected. Despite the proposed planting the new dwellings would be prominent in the middle distance because of the topography. At the present time the existing dwellings, whilst visible, are relatively inconspicuous. New houses would create an entirely new skyline across a large expanse, which would result in a substantial adverse effect on users of the public right of way. This assessment of visual effects confirms they are localised and that adverse effects are limited to the public footpath through the site and a relatively small length of Shuthonger Lane from the junction to the extent of the new houses.
41. In that context it is appropriate to concur with the finding of the Landscape and Visual Appraisal [CDD13] that the landscape effects of the proposal on the wider Twyning Hills Landscape Character Area<sup>34</sup> would be insignificant. The Topography plan<sup>35</sup> shows the appeal site lies around 30 m AOD, which is well below the hills to the north of the village, which rise to approximately 50 m AOD. Judging by the description, as well as photographs, in section 5.12 of the Gloucestershire Landscape Character Assessment [CDA13] it is the "*Low Hills and Commons*" [*my emphasis*] that are quintessential of this Character Area. It says: "*As the Low Hills and Commons Character Type name infers, areas of*

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<sup>30</sup> See elevation drawing No 16916/118B [CDE23].

<sup>31</sup> Source of quote: Appendix B2 to Appendix LA.1 to proof of evidence of Mr Jones.

<sup>32</sup> Figure 11, Appendix LA.2 to proof of evidence of Mr Jones.

<sup>33</sup> Figure 10, Appendix LA.2 to proof of evidence of Mr Jones.

<sup>34</sup> SV12A, as defined in the Gloucestershire Landscape Character Assessment [CDA13].

<sup>35</sup> Appendix 2 to Mr Jackson's proof of evidence.

*common land are a distinctive feature...*<sup>36</sup>. Whilst the contrast is drawn with surrounding pastures and fields the key characteristics are: “*Notable areas of commons...*” as well as “*Nucleated settlements...*”, rather than the pastoral landscape. The reference to expansive views in the key characteristics is also properly read as: “*From more elevated and open locations on the Hillock...*”<sup>37</sup>. This does not appear to be reflected in the landscape assessment undertaken by Mr Jones, which refers to distinctive characteristics that are not evident in the Gloucestershire Landscape Character Assessment. In the circumstances I conclude that the moderate adverse effect on the local landscape character would not equate to harm or give rise to a conflict with LP Policy LND4.

42. Paragraph 5.12.4 of the Gloucestershire Landscape Character Assessment identifies both Twyning and Church End to be nucleated villages but this proposal would not compromise the undeveloped gap between them<sup>38</sup>. The proposal would have a strong relationship with the existing adjacent built-up area, but this is not to say that it is “*urban fringe*” because, as Mr Crofts has pointed out, the Concise Oxford English Dictionary defines urban to be “*of...a town or city*”. Twyning is neither: it is fair to say it is a typical English village. The proposed development is consistent with the existing settlement form and is agreed to be a: “*...sensitive response to the morphology of the existing village*”<sup>39</sup>. So whilst the Landscape and Visual Sensitivity Study identified key sensitivities around Twyning to “*...include development that might encroach into open countryside at odds with the established settlement pattern*”<sup>40</sup>, this proposal could not be categorised as such given the Council’s stance.
43. Just as it is appropriate to take issue with the proposition that the appeal site comprises urban fringe, so I take issue with the claim in the first reason for refusal that the proposal has an “*urban character*”. Twyning has residential estates that are of their time but that has not made it a town. The proposal is agreed to be a “*...sensitive and distinctive design*”<sup>41</sup> and represents a natural extension of the village rather than displaying urban characteristics. For this rationale I decline to adopt the term *urbanising effect* used by Mr Jones.
44. Although the proposed development would give rise to a loss of openness at least half of the appeal site would be open in the sense of being undeveloped. I reject the contention that new tree planting within the proposed open space would remove the sense of openness. The drainage feature has received some criticism but there is no reason to think that it would have an engineered appearance. Conditions could be imposed to ensure that the Council could control its form and planting to ensure that it was appropriate to its context.
45. The first reason for refusal also alleges that it is a significant encroachment into open countryside, but this needs to be considered in the context of emerging planning policy. The JCS proposes 752 dwellings in named service villages such as Twyning. The TBP identifies the appeal site to be part of a larger rural site option for between 59 and 89 dwellings. Given its date, February 2015<sup>42</sup>, the TBP has presumably taken account of the earlier Landscape and Visual Sensitivity Study in reaching its view that the appeal site should be one of two

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<sup>36</sup> Source of quote: paragraph 5.12.2 of the Gloucestershire Landscape Character Assessment [CDA13].

<sup>37</sup> Source of quote: paragraph 5.12.1 of the Gloucestershire Landscape Character Assessment [CDA13].

<sup>38</sup> Appendix D to the NP.

<sup>39</sup> Source of quote: paragraph 5.2.31 of the Statement of Common Ground [CDB3].

<sup>40</sup> Source of quote: page 15, Landscape and Visual Sensitivity Study [CDA12].

<sup>41</sup> Source of quote: paragraph 5.2.32 of the Statement of Common Ground [CDB3].

<sup>42</sup> See front cover of TBP at CDA4.

options for housing allocations around Twynning. So whilst noting Table 16 of the Landscape and Visual Sensitivity Study it is not my role to undertake a comparative analysis of this and other sites. The Background Paper [CDA18] identifies, in Appendix D, an outstanding balance of 42 dwellings in Twynning. However that figure must be seen in the context of Mr Hill's update on the concurrent EiP and it would appear that it is only likely to go in one direction. I note that in dealing with an appeal in Alderton my colleague<sup>43</sup> attached limited weight to the figure of 752 dwellings because of the prospect that it might change and the evidence before this Inquiry confirms that view to be correct. Moreover in allowing an appeal in Launceston my colleague<sup>44</sup> made the point that the Framework does not refer to a ceiling or upper limit; I agree.

46. The Strategic Assessment of Land Availability [SALA, CDA11] identifies the appeal site to be suitable, available and achievable. In contrast to most of the sites around Twynning that are contained in the excerpts from the SALA which are before the Inquiry it is contiguous with the main settlement. The other option, "A", in the TBP is also within open countryside and is identified for a similar number of dwellings, i.e. between 52 and 79. In the absence of any significant previously-developed sites in the village it would appear to be inevitable that there would need to be an encroachment of this magnitude into the countryside in order to meet the identified housing needs of the Borough. There is nothing in the NP that leads me to a different conclusion, noting that it refers to a minimum of 42 homes<sup>45</sup>; my earlier comments apply to this figure.
47. Finally under this heading it is appropriate to consider the Committee report and the landscape advice embedded within it. It is trite to record that the application subject of this appeal was recommended for approval by Officers. In making that recommendation the landscape comments raised no objection to the revised scheme. The comments [Appendix 1 to CDB3] confirm that the extent of development is in alignment with the existing built form and says its lower density is more sympathetic with the rural character of the existing settlement. Reasons are given as to why the amended layout addresses earlier concerns. In conclusion it envisages that the proposed development would be satisfactorily assimilated into its setting. Although it is understandable that Mr Jones should seek to distance himself from those comments and rely on the earlier landscape comments<sup>46</sup>, it is clear that the author of those envisaged that a modified scheme might be capable of being delivered. That appears to be inconsistent with any claim that there is a landscape objection in principle. Nevertheless it is clear from paragraph 7.7 of the Committee report that it was *"...a matter which weighs against the development in the planning balance"*<sup>47</sup>.
48. For the reasons set out above, I conclude on the first main issue that the proposed development would not harm the distinctive characteristics of the Twynning Hills Landscape Character Area. The landscape in the vicinity of the appeal site is not identified as being of high value and with the exception of part of the hedgerow on Shuthonger Lane, the site's main landscape features would be retained. Despite this positive finding, the proposed development would fail to protect the appearance of the rural landscape and to this extent there is a conflict with LP Policy LND4. The proposed development would have

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<sup>43</sup> See paragraph 41, appeal Ref. APP/G1630/A/14/2222147 [CDC10].

<sup>44</sup> See paragraph 51, appeal Ref. APP/D0840/A/13/2209757 [CDC24].

<sup>45</sup> Page 30 of the NP.

<sup>46</sup> Dated 29 January 2014 and submitted as part of the questionnaire bundle.

<sup>47</sup> Source of quote: paragraph 7.7, CDB4.

a substantial adverse effect on the open and extensive views that are currently available at the junction of Brockeridge Road and Shuthonger Lane, as well as on users of the public right of way, notably on approach from the south, and this harm cannot be mitigated by landscaping or other planning conditions.

***(ii) Whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits***

49. Mr Crofts conceded in cross-examination that it was not necessary to make a preliminary finding as to whether something was sustainable development before applying the presumption. Although the presumption only applies to sustainable development Lang J in *Cheshire East* quoted with approval Patterson J in the earlier case of *Dartford* who held: “*sustainability*” therefore inherently requires a balance to be made of the factors that favour any proposed development and those that favour refusing it in accordance with the relevant national and local policies”<sup>48</sup>. This informs my approach to this issue.
50. Paragraph 7 of the Framework says that there are 3 dimensions to sustainable development: economic, social and environmental, the roles for which are then defined. Paragraph 14 says that for decision taking the presumption in favour of sustainable development means that where: “... relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted”<sup>49</sup>. Footnote 9 gives examples of the latter to be locations at risk of flooding and since local residents have expressed concerns about flooding this point is examined first.

***Environmental benefits***

51. The Statement of Common Ground [CDB3] records agreement that the Flood Risk Assessment [FRA] demonstrates the site is in Flood Zone 1 where there is a low risk of fluvial flooding. The Environment Agency raised no objection and the Council is satisfied that the discharge volume calculations in the FRA show the proposed mitigation strategy would adequately attenuate surface water. This strongly supports the consensus between the main parties that the appeal site is not a location at risk of flooding where development should be restricted. Although the photographs of flooding elsewhere in the village are striking the proposed development would not add to the known problem on the High Street because it would drain to the south-east, i.e. away from this road network.
52. The Appellant’s evidence to the Inquiry regarding this issue was convincing. The Inquiry was told that a hydrobrake was proposed, which would be a vertical flood control mechanism in a large manhole. This would be adopted by Severn Trent Water [STW] under section 104 of the Water Industry Act 1991. This should give riparian landowners, including householders, comfort because STW would be responsible for the maintenance of the key control mechanism. The pond would be designed to cope with a 1 in 100 year flood event plus an allowance of 30 % for climate change. The Appellant’s unchallenged evidence was that the flow control mechanism would reduce the run off from the present 18 litres per second [lps] to 7.4 lps, which would represent a 60 % betterment. This is the first environmental benefit of the proposed development and it is a consideration to which it is appropriate to give significant weight.

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<sup>48</sup> Source of quote: paragraph 20, *Cheshire East Borough Council v SSCLG and another* [2015] EWHC 410 (Admin) [CDC12].

<sup>49</sup> Source of quote: paragraph 14 of the Framework.

53. The second environmental benefit is new tree planting, which the Planning Layout Drawing No 16916/1008L [CDE2] shows to be extensive. Conditions could be imposed on any grant of planning permission to deliver this benefit. Beyond the development area the trees are proposed to be planted in groups of locally occurring large stature trees such as oak and lime. An extension to the existing copse in the south-west corner of the site is also proposed, which would reinforce this existing landscape feature. Although there has been some criticism of planting within the development on the basis that some is within back gardens and could be removed by future residents, a condition could ensure that it was allowed to get established over the first 5 years. Residents might view such planting as an asset, in terms of visual amenity and breaking up views between respective dwellings. In any event strategic landscaping is proposed along the line of the path and the southern edge of the development area. It is a consideration to which it is appropriate to give moderate weight.
54. The third environmental benefit is ecological enhancement of the proposed open space. The Statement of Common Ground [CDB3] refers to the Phase 1 Habitat Survey [CDD10], which confirms that the ecological interest is limited to the boundary hedgerows/trees, ditches and grass margins. It also refers to the Phase 2 Habitat Surveys [CDD11] which, subject to the implementation of a biodiversity and mitigation plan, says the proposed development would not adversely affect any protected species. Paragraph 5.2.8 of the Statement of Common Ground confirms that it is anticipated that the overall habitat variety and ecological value of the site would be improved. This ensures compliance with LP Policy NCN5 and the relevant provisions of the Framework, including the seventh core planning principle in paragraph 17, which says planning should contribute to conserving and enhancing the natural environment. This is a benefit of the proposal to which it is appropriate to give moderate weight.
55. A further environmental benefit cited in paragraph 8.22 of Mr Hill's proof of evidence relates to energy conservation. I note section 17 of the Committee Report [CDB4], but the fact is that no condition was then identified in either that report or in Appendix 4 to the Statement of Common Ground [CDB3]. The policy rationale is given as LP Policies GNL8 and EVT1, but neither expressly justifies a 30 % reduction over and above the building regulations. In the circumstances, since no such condition appears to have been offered and the policy justification is not made out it is not necessary to impose the condition and mere compliance with building regulations is not a benefit of the scheme.

### ***Economic benefits***

56. Turning to the economic dimension of sustainable development, the Government has made clear its view that house building plays an important role in promoting economic growth. The proposed development would give rise to a number of economic benefits. In the short term this would include the creation of jobs in the construction industry, which the Appellant has estimated would exceed 50 FTE employment posts, as well as the multiplier effect in the wider economy arising from the increase in economic activity. In the long term future occupiers of the proposed new houses would provide more custom for the existing shops and services in the village, including the post office and public houses, and the wider area, thereby contributing to the local economy.
57. Based on the average household size in the 2011 census and the ONS family spend survey the Appellant's unchallenged estimate is that the development would give rise to over £1.5 m of spending power per annum. The scheme

would therefore contribute towards building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type was available in the right place at the right time to support growth. These economic benefits should be given considerable weight and to the extent that additional patronage would help to secure the continuing presence of accessible local services this contributes to the social dimension of sustainable development.

### **Social benefits**

58. Turning to the social dimension of sustainable development, the Framework places importance on widening the choice of high quality homes and ensuring that sufficient housing (including affordable housing) is provided to meet the needs of present and future generations. Given the significant shortfall in the 5-year housing land supply the provision of 58 dwellings, 36 % of which would be affordable dwellings, is a consideration that Mr Smith, for the Council, accepted should be given substantial weight in the planning balance. The Government's objective to boost significantly the supply of housing is evident from paragraph 47 of the Framework and new housing is acutely needed in this Borough given the magnitude of the deficiency in the housing supply. In all the circumstances there is no reason to question Mr Smith's attribution of weight.
59. In closing the Appellant has drawn attention to the findings of my colleague in an appeal in Launceston, who said: "*Other benefits of the scheme include...a potential increase in the supply of housing which could result in greater competition in the local market and price benefits for the community*"<sup>50</sup>. Paragraph 47 of the Framework does seek to significantly boost the supply of housing in order to, amongst other things, ensure choice and competition in the market for land. The delivery of new market housing would provide an alternative to the second hand market in Twynning and, given the recent permission in Fleet Lane, a choice of new housing. The extent to which a development of this scale would give rise to price benefits in the context of a Borough where there is acknowledged to be a significant shortfall in housing supply is doubtful. The increase in choice and competition in the local market is however a benefit to which it is appropriate to attribute moderate weight.
60. The delivery of new public open space would contribute to the community's health and social well-being. Mr Hill's unchallenged estimate is that 61 % of the total site area of 4.68 hectares is proposed as open space. However that includes the private paddock which, whilst open, would not be publically accessible. My estimate is that approximately 30 % of the site area is proposed as public open space, comprising the informal green adjacent to the road junction and the on-site open space in the south-east quadrant of the site. Although some doubts have been raised about the value of this area, both with the suggestion that our four legged friends enjoy this area already and having regard to the size of the balancing pond, there is a clear benefit in formally facilitating public access. The pond has the potential to be an attractive feature in its own right that might contribute in a positive way to the amenity of the public open space. In the circumstances the provision of public open space is a consideration to which it is appropriate to give significant weight.
61. Paragraph 10.5 of Mr Smith's proof of evidence says that significant weight should be given to the provision of the community car park, which is a further social benefit. Paragraph 4.3.1 of the Highways Statement of Common Ground

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<sup>50</sup> Source of quote: paragraph 52, appeal decision APP/D0840/A/13/2209757 [CDC24].



[Appendix 2 to CDB3] confirms that the Highway Authority see this as a benefit of the proposal that would ensure that overspill parking is available for local residents using the adjacent sports facilities. Planning Layout Drawing No 16916/1008L shows a gated footpath is proposed to link with the adjacent community land, which would link the existing and proposed open spaces together. There is no reason to question Mr Smith's attribution of weight.

62. The proposed development would create a high quality built environment, which is one of the identified social roles of sustainable development. I have already noted that it is agreed to be a sensitive and distinctive design, but the Council's Urban Design Officer also commended the revised scheme as a: *"...more contextually sensitive and distinctive design"*. Amongst other things the architectural design of individual units was considered: *"...to strike a relatively good balance between the sense of cohesion and variety across the site"*<sup>51</sup>. In this context I understand why Ms Olphert was not called to give evidence but I have no reason to doubt her conclusions that: (i) *"The scale, form, massing, design of individual dwellings and public and private spaces within the appeal proposal achieve high quality and inclusive design"*; and, (ii) *"The appeal proposal provides a high quality design and a visually attractive development that would integrate well with the village"*<sup>52</sup>. As such the scheme complies with paragraphs 56, 57 and 58 of the Framework and so this factor should be given moderate weight in the overall planning balance.

### **Affordable housing**

63. Mr Smith agreed that the delivery of 21 affordable dwellings is a social benefit of the proposal to which it was appropriate to give substantial weight. There is a great deal of unchallenged evidence before the Inquiry to demonstrate that there is a housing crisis in this country that manifests itself in this Borough in terms of an acute shortage of affordable housing. Table 7.16 of the Strategic Housing Market Assessment [SHMA] Update [CDA17] identifies that the net annual need for affordable housing in Tewkesbury is 587 dwellings. This is more than twice the equivalent figure for the neighbouring District of Wychavon<sup>53</sup>, despite the fact that Tewkesbury's population is little more than two thirds of that in Wychavon<sup>54</sup>. The Inspector in the Wychavon appeal found that the provision of affordable housing in that case: *"...is a clear material consideration of significant weight that mitigates in favour of the site being granted planning permission"*<sup>55</sup>; the Secretary of State agreed. Given the much larger quantum of identified need in Tewkesbury and the magnitude of the accumulated shortfall in affordable housing delivery<sup>56</sup>, it would be appropriate to attribute very substantial weight to this important benefit of the proposal.
64. In contrast to the level of need, Table 16 of the most recent Annual Monitoring Report [AMR, CDA16] records 1,111 net affordable housing completions over the last 11 years, which is an average of just 101 dwellings per annum. In the context of that level of delivery the 21 units on this site represents a significant and material contribution towards meeting the identified need. Of the 1,619 households<sup>57</sup> registered with Gloucestershire Homeseeker 42 have said they

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<sup>51</sup> Source of quotes: paragraphs 5.2.32 and 5.2.31, respectively, of the Statement of Common Ground [CDB3].

<sup>52</sup> Source of quotes: paragraphs 4.9 and 4.15, respectively, of Ms Olphert's proof of evidence.

<sup>53</sup> Paragraph 8.124 of Inspector's report, appeal APP/H1840/A/13/2199085 [CDC13].

<sup>54</sup> Document 8: Wychavon's population is 117,670 [2012] compared to Tewkesbury's population of 84,286 [2014].

<sup>55</sup> Source of quote: paragraph 8.124 of Inspector's report, appeal APP/H1840/A/13/2199085 [CDC13].

<sup>56</sup> Estimated to be 1,574 units in the Affordable Housing Note for the Inspector conducting the JCS examination, reproduced in Figure 5.16 of Mr Stacey's proof of evidence.

<sup>57</sup> Source for the figure of 1,619 and the subsequent figure of 42 is Document 6.

have a need to live in Twynning and of those the vast majority seek 1 or 2-bed units, noting that over 70 % of the proposed affordable dwellings would be of this size. Although the Council has sought the flexibility to meet those with the greatest needs across the Borough, rather than focussing on those with a local connection, it might be in prospect that the 10 households who have identified Twynning as their first preference could be accommodated on the development.

65. The significance of this scheme in meeting the needs of different groups in the Borough, as required by paragraph 50 of the Framework, is underlined by the stark figure that this scheme alone would result in a 100 % increase in shared ownership properties in the Parish of Twynning, as well as a 27 % increase in social rented properties<sup>58</sup>. Those figures are a powerful illustration of the extent to which the proposed development would contribute to creating a more mixed and balanced community, which is a key Government objective.

### ***Consideration of the legal agreements***

66. Dealing initially with the County Council agreement, the County Council's letter dated 15 May 2014, which is in the questionnaire bundle, sets out the rationale for the sum sought, which would be used for new computers, stock, furniture, opening hours or capital works. Whilst it is unclear why the calculation is based on 56 dwellings, rather than 58, there can be no doubt that the County Council were aware that 58 units were proposed because that is in the title of the letter. The letter otherwise refers to *qualifying dwellings*, albeit in the context of contributions to education, and so it might be that a similar concept applies to libraries. The policy rationale, LP Policy GNL11, justifies the principle of this contribution. In these circumstances the sum sought is compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations.
67. The Highways Statement of Common Ground [Appendix 2 to CDB3] contains a CIL compliance statement, which indicates that without the contribution of £100,000 the existing bus service may cease. By encouraging prospective residents to access employment, education, health and leisure by a means of transport other than the private car, this contribution is directly related to the proposed development. Over the 3-year life of the subsidy the bus service would have a reasonable opportunity to become self-sustaining, which would be assisted by the additional patronage that prospective residents might generate. In these circumstances the sum sought is compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations.
68. Turning to the second agreement, with the Council, it is not disputed that the contribution of £72,735 towards providing playing pitches within the vicinity of the site has been calculated in accordance with the Sport England calculator. There is no reason to doubt that Sport England applies the longstanding NPFA '6 acre standard' that is referred to in LP Policy RCN1. The money would be used towards making the existing playing area level and/or towards a pavilion for the sports club. In these circumstances the sum sought is compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations.
69. Contributions of £3,424 and £24,992 are offered towards the provision of Astro Turf at Tewkesbury Sports Centre or resurfacing of the MUGA at TRAC and new equipment at the village hall or refurbishment of the tennis courts respectively. Both are justified by reference to LP Policy RCN2, which relates to the provision of sports facilities, including the provision of indoor facilities, which should be

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<sup>58</sup> See in particular Figure 5.19C, Document 7; the closing submission, at paragraph 48 of Document 15.1, would appear to have got this the wrong way around but my note of Mr Stacey's evidence confirms what I have stated.

- borne in mind in the scenario that the sum is used for village hall equipment. In these circumstances the sums sought are compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations.
70. Contributions of £650 and £50 per dwelling are offered towards the provision of dog waste bins and signage on or in the vicinity of the site and recycling facilities and services for the development, respectively. Both are justified by reference to LP Policy GNL11, which requires the infrastructure and public services necessary to enable the development to take place to be provided. In these circumstances the sums sought are compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations.
71. The sum of £24,608 is offered as a contribution towards proposed new primary care facilities in Tewkesbury. The Inquiry was told that this is because existing GP facilities are at capacity. This contribution is also justified by reference to LP Policy GNL11. In these circumstances the sum sought is compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations.
72. Finally LP Policy HOU13, read with the Affordable Housing Supplementary Planning Guidance [SPG], which was adopted in August 2005, provides a policy basis for the level and mix of affordable housing, which has previously been examined. In these circumstances the affordable units comply with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations.
73. Section 70 of the Act confirms that the decision maker must have regard to local finance considerations, which include sums that an authority could receive, as far as material to the proposal. The Guidance says: "*Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms*"<sup>59</sup>. My detailed review of the individual financial contributions proposed indicates that they all meet this test, which is set out in paragraph 204 of the Framework. Accordingly these local finance considerations comprise economic benefits that should be given moderate weight in the overall planning balance.
74. Moreover the improvement of off-site open space and sports facilities and/or community facilities comprises a social benefit of the proposal. Paragraph 7 of the Framework defines the social role of sustainable development to include the creation of a high quality environment with accessible local services that reflect the community's needs and support its health, social and cultural well-being [my emphasis]. As well as the provision and/or enhancement of social and cultural facilities, prospective residents are likely to support local leisure clubs, facilities and services. The contributions towards other elements of social infrastructure, such as the library and NHS, would contribute towards meeting the social role of sustainable development. These social benefits should also be given moderate weight in the overall planning balance.

### **Accessibility**

75. Mr Hill's unchallenged claim is that Twyning ranks favourably as the fourth highest service village<sup>60</sup> out of the 12 identified in the JCS. This evidence base took account of the range of services, including employment and speed of broadband connection, as well as accessibility by public transport, in reaching the overall score and rank. In the context of that comprehensive approach by

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<sup>59</sup> Source of quote: paragraph reference 21b-011-20140612

<sup>60</sup> In the Rural Area Settlement Audit, corrected September 2014, at CDA14.

- the Council I reject the proposition that prospective residents would be highly dependent on the private car for journeys to work and many other purposes.
76. The full audit table [CDA14] reveals Twyning scored well for local employment opportunities. Mr Hill's analysis<sup>61</sup> shows that a wide range of services and facilities are within 800 m of the appeal site, which CIHT say is an acceptable walking distance<sup>62</sup>. The Highways Statement of Common Ground [Appendix 2 to CDB3] refers to a "reasonable bus service" serving a "range of destinations" and the contribution towards public transport would reinforce this position.
77. Although I have taken account of the census data from 2001 and 2011, referred to by CPRE, there is no sound evidence to support the contention that less rather than more development should take place at Twyning. To the contrary the Highways Statement of Common Ground [Appendix 2 to CDB3] concludes: "...that the package of mitigation measures being promoted will suitably facilitate sustainable transport opportunities for the local area"<sup>63</sup>. The Framework says opportunities to maximise sustainable transport solutions will vary from urban to rural areas and so this conclusion, taken together with the Rural Area Settlement Audit, supports a finding that Twyning is a sustainable village where this level of housing is acceptable because prospective residents would not be unduly dependent on the private car for many day to day trips.

### **Other material considerations**

78. The Appellant concedes that the proposed development would result in the loss of Grade 2/3 agricultural land and that this counts against the scheme; I agree and attach this consideration moderate weight in the overall planning balance. However the loss of such land in economic, as opposed to environmental, terms is not significant. There is no reason to doubt that an annual grass crop is taken for hay or animal feed but the absence of an ability to do so in future is likely to have no discernable effect upon the local rural economy.
79. Paragraph 10.6 of Mr Smith's proof of evidence says that a *substantial financial sum arising from the New Homes Bonus* would add to the benefits of the scheme. However, when pressed, the Council indicated that the New Homes Bonus would be used for "*wider services in the Borough*"<sup>64</sup> and no guarantee was given that it would be used in connection with the proposed development or in Twyning. In my earlier note to the Inquiry<sup>65</sup> I had drawn attention to the findings of the Secretary of State in a decision dated 15 December 2014. At paragraph 20 the Secretary of State found: "*...the New Homes Bonus cannot lawfully be taken into account as a material consideration, as there is not a clear indication that the Council intends to use the receipts in a way which is material to the development being proposed*"<sup>66</sup>. Given the Council's position in this appeal the Appellant fairly conceded this is not a benefit of the proposal that can be taken into account in the particular circumstances of this appeal.
80. Concerns have been expressed by the occupiers of adjacent dwellings about the impact of the development on their living conditions. Dealing initially with Cornerways, the flank wall of plot 1 of the proposed development would be approximately 10 m distant but would be separated by proposed tree planting. In the circumstances it would not be overbearing and a condition is proposed to

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<sup>61</sup> See paragraph 7.16 of Mr Hill's proof of evidence read in conjunction with Appendix 10.

<sup>62</sup> See excerpts at Appendix 9 to Mr Hill's proof of evidence.

<sup>63</sup> Source of quote: paragraph 5.1.6 of the Highways Statement of Common Ground [Appendix 2 to CDB3].

<sup>64</sup> Source of quote: My minute of Mr Powell's evidence on the third sitting day of the Inquiry.

<sup>65</sup> Dated 22 June 2015, which was circulated on the first day of the Inquiry.

<sup>66</sup> Source of quote: paragraph 20 of appeal decision APP/P2935/A/14/2212989, dated 15 December 2014.

- ensure the potential for overlooking from the first floor flank window of plot 1, which serves a bathroom, is addressed by obscure glazing. Other dwellings along Brockridge Road have a similar relationship and conditions regarding planting and obscure glazing would result in a satisfactory relationship.
81. Turning to 5 Towbury Court I made an accompanied inspection of this property. The existing dwelling is set down at a materially lower ground level than exists on the development site but the separation distance between the dwellings that are proposed on plots 19, 20 and 21 is considerable. The occupiers of that property fairly estimate that it would be of the order of 40 m. Moreover the protected oak tree, T2, would filter views towards the garden of No 5. Taken together these factors mean that the proposed development would not be overbearing or result in an unacceptable loss of privacy to existing occupiers. My view in this matter is reinforced by the Council's stance in this matter<sup>67</sup>.
82. The occupiers of 5 Towbury Court have made submissions in relation to Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998. I recognise that allowing this appeal would interfere with the occupiers' home and family life. However such interference must be balanced against the public interest in pursuing the legitimate aims stated in Article 8, which include public safety and the economic well-being of the country. In this instance the interference is permissible because, for the reasons outlined previously, the proposed development would not have a disproportionate effect on the occupiers' reasonable living conditions. The interference with the occupiers' peaceful enjoyment of their property is proportionate and strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol.
83. The appeal site lies to the south of a Grade II listed building identified in the list description as the wall and gate piers to the walled garden of the Old Manor House. The Council's Conservation Officer raised no objection to the proposed development, observing that the proposal would be unlikely to *seriously further erode their setting*. No claim is made that the proposed development would not, at a minimum, preserve the setting of the building. The proposed layout, which incorporates an informal green in the closest part of the site with new tree planting to complement the retention of the existing maples, reinforces this view. In these circumstances, since there would be no harm, this factor does not weigh against the scheme. The Statement of Common Ground [CDB3] otherwise records there would be no impact on the setting or character of the Conservation Area by reason of the considerable separation distance; I agree.
84. Concerns have been expressed on the basis of highway safety and capacity, but the position of the Highway Authority [Appendix 2, CDB3] is conclusive in these matters and there is no evidence to lead me to a different conclusion. Similarly whilst there is no dispute that Twyning School is currently full, the Local Education Authority [LEA] forecast that by 2016/17 there will be 14 surplus places and on that basis the LEA has not sought a contribution. The position taken by the LEA, which is best placed to make that assessment, is to be preferred. Whilst concerns are raised about the density of the scheme at just over 30 dwellings per hectare net<sup>68</sup> this would not be inappropriate to its context. None of these material considerations nor any other matters raised in the representations alter the overall conclusion to which I am drawn.

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<sup>67</sup> See section 10 of the Committee Report at CDB4.

<sup>68</sup> Based on Mr Hill's assessment that the developed area is approximately 39 % of the 4.68 hectare site

## Overall conclusion

85. In applying the presumption in favour of sustainable development the decision maker is required to undertake a balancing exercise that is skewed in favour of granting planning permission. The adverse impacts of the proposal include the fact that the site is outside of the settlement boundary, but given that LP Policy HOU4 is a policy for the supply of housing that is not, in itself, a reason to refuse permission. The loss of grade 2/3 agricultural land would count against the scheme and I give this factor moderate weight. In my consideration of the first main issue, which encompassed a range of issues including encroachment into open countryside and the loss of the hedgerow along Shuthonger Lane, reasons are given for finding that the proposed development would harm the appearance of the area, which gives rise to a conflict with LP Policy LND4. However only limited weight can be given to this policy, because of its lack of consistency with the Framework. Nevertheless, applying the statutory test, there is a need for material considerations to indicate that the determination should be made otherwise than in accordance with the DP.
86. It was submitted in closing for the Appellant that the benefits of the proposed development, which are identified in paragraphs 52-54 and 56-74 above, comprise a very significant and substantial list; I agree. This package of benefits is unique to this site and it would be wrong to assume a comparable set of benefits could come forward on other sites around Twyning. In particular, given the recent change in the affordable housing threshold, if the identified housing need in the village was not met on one large site<sup>69</sup> there is a danger that materially less affordable housing would be delivered. Any delay in granting planning permission would, inevitably, delay these significant benefits, including the delivery of affordable housing for people in need now.
87. On balance I conclude that the proposed scheme does comprise sustainable development because there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme, which include the prospect of early implementation in order to meet the urgent housing need in the area. Taking account of all the identified benefits, I conclude overall that planning permission should be granted because material considerations clearly outweigh the adverse impacts, including the identified conflict with LP Policy LND4. In reaching this view I have taken account of all other matters that have been raised, including the letters from local residents and other appeal decisions, but have found nothing that alters my conclusion that the appeal should succeed.

## Postscript

88. Finally it is appropriate to point out that even if I am wrong in holding that LP Policy LND4 is not a policy for the supply of housing, in line with the rationale<sup>70</sup> of Ouseley J in *South Northamptonshire*, it is clear that it would be appropriate to reach the same conclusion in the overall planning balance.

## Conditions

89. A list of 30 conditions is set out at Appendix 4 to the Statement of Common Ground [CDB3] and formed the basis of a discussion at the Inquiry. The suggested conditions need to be assessed against the advice in the Framework

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<sup>69</sup> Page 30 of the NP records that 88 % of those consulted disagreed with the proposition that the housing needs of the village should be met by one large scheme.

<sup>70</sup> Paragraph 49 of *South Northamptonshire v SSCLG and Barwood* [2014] EWHC 573 (Admin) [CDC27].

- and the Guidance. Where necessary I shall adopt the wording from the list of model conditions in Circular 11/95 in preference to those suggested.
90. The first is the standard commencement condition, which is a requirement of the Act. The second identifies the approved plans, which is necessary in the interests of proper planning and for the avoidance of doubt. The third, fourth and fifth are all advanced for the same reason and seek to ensure that the external materials are appropriate. There is no dispute that materials need to be agreed and submission of samples and/or a sample panel is necessary. However, reflecting the discussion at the Inquiry, the Council's objective can be achieved by imposing a single condition, adapted from the model conditions.
91. The sixth suggested condition relates to hours of working during construction phase. Although it is arguable that this condition duplicates existing powers under section 61 of the Control of Pollution Act 1974, there is some merit in the argument that imposition of the condition enables neighbours to readily identify what the permitted hours are. Given the consensus between the main parties in this matter it is appropriate to impose this condition but without the tailpiece that would allow variation to the permitted hours without a formal planning application. An exchange of letters would defeat my rationale for its imposition.
92. The seventh and eighth relate to soft landscaping, which are necessary in order to achieve a high quality scheme, ensure the planting gets established and to comply with LP policy LND7. However the ninth, which concerns works to trees that are subject of Tree Preservation Order [TPO] No 370, appears to duplicate the statutory provisions. Whilst a planning permission can override a TPO this planning permission would not do so because all of the protected trees are proposed to be retained. Any works that might be required to certain trees, e.g. lime tree T6, would either fall within the statutory exemptions or require an application for works to a protected tree under the relevant regulations. Accordingly the ninth suggested condition would serve no purpose, particularly given suggested condition 11, which would protect the existing trees on the site during construction phase and is plainly justified for that reason.
93. The tenth suggested condition is necessary to ensure that the proposed amenity space is both provided and maintained, but rather than refer to a drawing that is not an approved drawing it is appropriate to refer to the layout plan [CDE2], which identifies the area. At the Inquiry there was some discussion about the relationship between this condition and suggestion No 16, which concerns management and maintenance of other public areas such as streets. Whilst it was agreed that some revisions to the proposed wording are required there would be benefits in keeping the respective conditions separate. Conditions, 12-15, 19 and 22, all relate to various highway works, which are necessary to comply with LP policies TPT1 and TPT3. However it was agreed that since no street lighting is proposed this can be deleted from condition 15. An additional clause to condition 19, in respect of maintenance and retention of the visibility splay, is required in the interests of highway safety.
94. Condition 17 requires fire hydrants to be provided, which is necessary in the interests of the safety of future residents. Condition 18 requires the proposed parking spaces to be delivered and thereafter retained for their authorised purpose, which is necessary to comply with LP policy TPT1. Condition 20, which requires a construction method statement to be agreed, is required in the interests of highway safety and neighbours' living conditions, but there is no need to require details of hours of construction given suggestion No 6.

95. Condition 21 relates to what is called the '*approved Travel Plan*', but that which is before the Inquiry [CDD7] relates to the original application for 82 dwellings and so it would appear to need some revisions. In any event, as discussed at the Inquiry, whilst it might be appropriate for the sales negotiator to be the initial Travel Plan Co-ordinator, the Framework Travel Plan is suggesting that actions would be undertaken for 5-years after first occupancy. This might suggest that a residents' group, or similar, might need to assume that role after the houses have been sold. In these circumstances it is appropriate for the condition to be fundamentally revisited in order to require revised details to be submitted to, and approved by, the Council.
96. Condition 23 requires details of the proposed boundary treatment along the boundary with 'Cornerways' to be agreed and implemented, which is necessary in the interests of existing and prospective residents' living conditions. As noted at the Inquiry the existing occupiers of 'Cornerways' pointed out at the site visit that the hedgerow marked 'to be retained' on the layout plan [CDE2] is their hedge. At around 1.6 m tall a close boarded fence up to 2 m tall might be an appropriate boundary treatment in order to maintain mutual privacy.
97. Condition 24, which requires a risk assessment, is necessary in the interests of public health, given the claims that anthrax might be present on the site and the advice of Public Health England. Conditions 25 and 28 concern foul and surface water drainage, respectively, and both are necessary in order to minimise the risk of flooding, including foul sewers under flood conditions. However given the evidence at the Inquiry, discussed above, it is appropriate to ensure that the control mechanism and pipes are adopted by Severn Trent Water Limited and the suggested condition will be revised accordingly.
98. Suggested condition 26, which should be a preclusion on street lighting, rather than all external lighting such as that on individual dwellings, reflects what is proposed, but the tailpiece is again inappropriate. If street lighting is proposed at some future date, albeit unlikely, the appropriate way forward would be a planning application under section 73 of the Act. Suggested condition 27 is necessary to safeguard protected species and their habitats, to accord with LP policy NCN5. Suggested condition 29 requires obscure glazing to the flank windows of plots 1 and 8, which face towards the existing dwellings, and is necessary in the interests of maintaining the privacy of existing residents.
99. Finally condition 30 requires details of the proposed slab levels to be agreed with the Council and the rationale appears to be one of effect on visual and residential amenity, rather than drainage. In this regard the Council drew attention to the annotation on the planning layout that says the heights given on that drawing denote proposed finished floor level [FFL] but that "*FFL's are subject to +/- 450 mm*". Viewed in that light the suggested condition is essential and, moreover, any increase beyond the finished floor levels indicated on the approved drawing [CDE2] would need to be fully justified.

*Pete Drew*  
INSPECTOR



### ***Schedule of conditions***

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 16916/1008L, 16916/100E, 16916/101E, 16916/103A, 16916/122, 16916/122A, 16916/123A, 16916/104C, 16916/105A, 16916/106B, 16916/107C, 16916/108C, 16916/109A, 16916/110A, 16916/111A, 16916/112A, 16916/113B, 16916/114C, 16916/115A , 16916/116A, 16916/118B, 16916/120B and 16916/121B.
3. Building operations beyond foundation level shall not be commenced until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Such details shall include samples of bricks and tiles and a sample panel to show the texture, colour and finish of the proposed render. Development shall be carried out in accordance with the approved details and, where required, the sample panel shall be retained on site until the completion of the walling.
4. No external construction works, deliveries, external running of plant and equipment or internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1400 on Saturday. There shall be no such working or activities outside of these hours or on Sundays, Public or Bank Holidays.
5. No development shall take place until full details of soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include: indications of all existing trees (including spread and species) and hedgerows on the land and details of any to be retained, together with measures for their protection during the course of development; and the specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock. The details, including a management plan, shall accord with the principles set out on the Planning Layout Drawing No 16916/1008L.
6. All soft landscape works shall be carried out in accordance with the approved details in the first planting and seeding season following the occupation of the building(s) or completion of the development, whichever is the sooner. If within a period of 5 years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.
7. No dwelling shall be occupied until the area labelled open space on Planning Layout Drawing No 16916/1008L has been laid out as amenity open space in accordance with details, including long term arrangements for maintenance, to be submitted to and approved by the Local Planning Authority. That area shall not thereafter be used for any purpose other than as an amenity open space and shall be maintained in accordance with the approved details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

8. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the first date of occupation of any dwelling within the site:
  - i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998: 2010 "*Tree Work – Recommendations*" (or any equivalent standard replacing BS 3998: 2010).
  - ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
  - iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.
9. No development shall commence until details of a new pedestrian crossing point across Bockeridge Road as shown on Planning Layout Drawing No 16916/1008L, and improvements to the crossing points at the junctions of Bockeridge Road/Hill End Road and Bockeridge Road/Pound Close have been submitted to and agreed in writing by the Local Planning Authority. No dwelling shall be occupied until the approved works have been completed in all respects, which shall be retained as such thereafter unless and until adopted as highway maintainable at public expense.
10. No dwelling shall be occupied until the proposed footway along Church End/Shuthonger Lane, extending to Bockeridge Road, has been provided to surface course level in accordance with Planning Layout Drawing No 16916/1008L. The footway shall be retained as such thereafter unless and until adopted as highway maintainable at public expense.
11. No works shall commence on site until details of a scheme to reduce the speed of traffic along Church End/Shuthonger Lane along the site frontage, have been submitted to and agreed in writing by the Local Planning Authority. The approved works shall then be implemented in accordance with the approved details prior to first occupation of any dwelling.
12. No dwelling shall be occupied until the carriageway(s) (including surface water drainage/disposal and vehicular turning head(s)) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the footway(s) to surface course level.
13. No development shall commence until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance

with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

14. No development shall commence until a scheme has been submitted to, and agreed in writing by the Local Planning Authority, for the provision of fire hydrants (served by mains water supply). No dwelling shall be occupied until the hydrant serving that property has been provided in accordance with the approved details.
15. No dwelling hereby permitted shall be occupied until the vehicular parking facilities necessary to serve that dwelling have been provided in accordance with Planning Layout Drawing No 16916/1008L and those facilities shall be retained as available for those purposes for the duration of the development.
16. No development shall commence on site until the first 20m of the proposed access road, including the junction with the existing public road and associated visibility splays, has been completed to at least binder course level in accordance with Planning Layout Drawing No 16916/1008L. The development shall be retained as such thereafter unless and until adopted as highway maintainable at public expense. The visibility splays shall be maintained clear from obstruction over a height of 600 mm and retained.
17. No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall:
  - i. specify the type and number of vehicles;
  - ii. provide for the parking of vehicles of site operatives and visitors;
  - iii. provide for the loading and unloading of plant and materials;
  - iv. provide for the storage of plant and materials used in constructing the development;
  - v. provide for wheel washing facilities; and,
  - vi. specify measures to control the emission of dust and dirt during construction.
18. The dwellings hereby permitted shall not be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall be implemented in accordance with the approved details, including appointment of a Travel Plan Co-ordinator after the initial sales phase to ensure appropriate arrangements are in place for its delivery.
19. The development for which permission is hereby granted shall not be commenced until full details of the surfacing materials proposed to be used on any roadway, footpath, car park, lay-by or other paved or metalled areas have been submitted to and approved by the Local Planning Authority. No dwelling hereby permitted shall be occupied until the works have been completed in accordance with the approved details.
20. The dwellings hereby permitted shall not be occupied until details of the proposed boundary treatment for the north east boundary, adjoining 'Cornerways', have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

21. No works shall commence until a method statement which should include a risk assessment that will assess the occupational and public exposure at and near the site and include a sampling methodology, identified remedial options and a management plan to minimise off site deposition and a risk communication protocol shall be submitted to and approved in writing by the local planning authority. The approved method statement shall be adhered to throughout the construction period and, where necessary, remedial work shall be undertaken in accordance with the approved details.
22. No dwelling shall be occupied until the need for foul sewerage improvements has been investigated and the resulting foul sewerage improvements have been fully implemented and completed by Severn Trent Water Limited.
23. No street lighting shall be erected on any part of the site.
24. No development shall take place until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the Local Planning Authority. The EMP shall be in accordance with the mitigation and enhancement measures outlined in the Phase 1 Habitat Survey (March 2013) and the Great Crested Newt and Reptile Survey (August 2013). The EMP shall include a timetable for implementation, details of monitoring and review and details of how the areas concerned will be maintained and managed. Development shall proceed in accordance with the approved details and timetable in the EMP.
25. Development shall not start until comprehensive evidence based drainage details, including a SuDS/drainage management plan, have been submitted to and approved in writing by the Local Planning Authority fully in accordance with the commitments and strategy of the submitted Flood Risk Assessment and the subsequent letter from Woods Hardwick. The drainage details shall fully incorporate the principles of sustainable drainage and improvement in water quality, along with an assessment of the hydrological influences of the detailed drainage plan, including allowances for climate change. Any structures must be designed to cope with the 1 in 100 year event, plus an allowance for climate change. The submitted details shall include the arrangements for long term maintenance, such as adoption of the hydrobrake and pipes by Severn Trent Water Limited and the establishment of a private management and maintenance company to maintain the detention basin. The development shall only be implemented and thereafter maintained in accordance with the approved details.
26. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) the first floor window in the side, north-east, elevations of plots 1 and 8 shall, prior to the first occupation of the dwellings, be fitted with obscured glass that shall be non-opening unless the parts of the window which can be opened are more than 1.7m above the floor of the room in which the window is installed. The windows shall be maintained in this state hereafter.
27. Notwithstanding the submitted details, no development shall take place until details of existing and proposed ground levels and finished floor levels of the buildings relative to Ordnance Datum Newlyn have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Thomas Graham	Planning Advocate, Barrister and Solicitor, Tewkesbury Borough Council.
He called:	
Paul Smith BA (Hons), BSc (Hons), Dip DesBltEnvt, MRTPI	Planning Consultant commissioned by Tewkesbury Borough Council.
Toby Jones BA (Hons), Dip LA, CMLI	Managing Director, Toby Jones Associates Ltd, commissioned by Tewkesbury Borough Council.

Note: Kieron Powell, Planning Officer, and Michael Jones, Solicitor, assisted the Inquiry in dealing with the session on conditions and s106 legal agreements.

### FOR THE APPELLANT:

Chris Young of Counsel	Instructed by Paul Hill, RPS.
He called:	
Paul Hill BA (Hons), MA, MRTPI	Director, RPS Planning and Development.
James Stacey BA (Hons), MRTPI	Director, Tetlow King Planning.
Timothy Jackson BA (Hons), Dip LA, CMLI	Director, FPCR Environment & Design Ltd.
Joe Turner	Head of Technical Department, Persimmon Homes (South Midlands) Ltd.

Note: Mrs Kate Tait assisted the Inquiry in dealing with the session on conditions and s106 legal agreements.

### INTERESTED PERSONS:

Councillor Terry Spencer	Local Councillor.
Mrs Sue Lambert	Local resident.
Dave Luckett	Local resident [who put questions to Mr Turner].
David Crofts MRTPI	Director, Estcourt Planning, on behalf of CPRE.

## **DOCUMENTS SUBMITTED [referred to in this decision as 'Documents']**

- 1 Summary statement and statement submitted at the Inquiry by Mr Crofts.
- 2 Application for an adjournment on behalf of Tewkesbury Borough Council.
- 3 Email from Tewkesbury Borough Council to The Planning Inspectorate, dated 22 June 2015, with regard to Regulation 123(3) of the CIL Regulations.
- 4 Section 106 agreement between various parties and Gloucestershire County Council dated 22 June 2015.
- 5.1- Addendums to agreed statement of common ground dated 23 and 24 June
- 5.2 2015, respectively.

- 6 Affordable housing needs report provided by Tewkesbury Borough Council's Strategic Housing & Enabling Officer on 18 June 2015, which was submitted by the Appellant at the Inquiry.
- 7 Figures 5.19A-C, showing projected change of tenure profile in Twynning Parish, submitted by the Appellant at the Inquiry.
- 8 Population comparison between Wychavon and Tewkesbury, submitted by the Appellant at the Inquiry.
- 9 Statement of Oliver Pocock, Senior Engineering Hydrologist, RPS, which formed the basis of Mr Turner's evidence to the Inquiry.
- 10 Section 106 agreement between various parties and Tewkesbury Borough Council dated 25 June 2015.
- 11 Information note dated 6 March 2015, which was provided to Members of Parliament on the operation of "*The New Homes Bonus Scheme*", submitted by the Appellant at the Inquiry.
- 12 *R (oao Cherkley Court Ltd) v Mole Valley District Council & Anor* [2014] EWCA Civ 567, in respect of which the main parties made legal submissions.
- 13 Closing submissions on behalf of the Council.
- 14 Legal submissions on behalf of the Council.
- 15.1 Closing submissions on behalf of the Appellant, together with 4 attachments - referred to therein: i) permission to appeal the judgement in [2015] EWHC 15.5 40 (Admin); ii) grounds to appeal the judgement in [2015] EWHC 40 (Admin); iii) *Cotswold DC v SSCLG* [2013] EWHC 3719 (Admin), and iv) *Stroud DC v SSCLG and another* [2015] EWHC 488 (Admin).

#### **LIST OF CORE DOCUMENTS [referred to in this decision as 'CD']**

Given that this is a 5-page list, which is available in the public domain, no purpose would be served by setting out the full list. What is set out below is a summary and individual documents are referred to in this decision using this notation:

- A1- Local Policy and Evidence Base Documents.  
A27
- B1- Application and Appeal Documents.  
B8
- C1- Appeal Decisions and Court Judgements.  
C31
- D1- Application Documents.  
D21
- E1- Application Plans.  
E32

#### **LIST OF PROOFS AND APPENDICES SUBMITTED BY THE MAIN PARTIES**

1. Proof of evidence of Paul Hill [83-pages with 52 appendices as listed on page 4 thereof], including a summary on pages 82 and 83;
2. Proof of evidence of James Stacey [97-pages with appendices JS1-JS65], together with summary proof [10-pages];
3. Proof of evidence of Timothy Jackson [35-pages with 5 appendices];
4. Proof of evidence of Paul Smith [26-pages]; and,
5. Proof of evidence of Toby Jones [unpaginated but extending to paragraph 8.1.6, with appendices LA.1-LA.3], together with summary proof.