



CLOSING STATEMENT

COTSWOLDS CONSERVATION BOARD

Town and County Planning Act 1990

Section 78 Appeal

Planning appeal by: Robert Hitchins Ltd

Proposed Development: Outline application for development comprising of up to 250 residential dwellings including provision of associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and formation of new vehicular access from Harp Hill. All matters reserved except for means of access to site from Harp Hill.

Location: Land at Oakley Farm, Cheltenham, GL52 6PW

Cheltenham Borough Council Reference: 20/01069/OUT

Planning Inspectorate Reference: APP/B1605/W/21/3273053

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Date: 22 February 2022

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SUMMARY

The Oakley Farm site is a headland of un-eroded natural beauty which merits its place within the nationally important Cotswolds Area of Outstanding Natural Beauty (AONB). The site:

- is characteristic of the lower slopes of the Cotswold escarpment;
- contributes significantly to the dramatic relief feature and backdrop that the escarpment provides for Cheltenham;
- plays a key role in bringing the natural beauty of the escarpment landscape closer to the centre of Cheltenham;
- provides a strong sense of contrast with the neighbouring urban development; and
- is visually, functionally and ecologically contiguous with the rest of the AONB.

The proposed major development of 250 dwellings would have significant adverse effects on the natural beauty of the Cotswolds AONB, including its landscape and scenic beauty and special qualities. Specifically, it would have a 'moderate / major adverse' landscape effect, overall, and multiple 'major adverse' and 'moderate adverse' visual effects.

It would also adversely affect the designated heritage assets at Hewlett's Reservoir, particularly the setting of the Grade II listed pavilion (albeit less than substantial harm), and would result in the loss of a sizeable area of medieval 'ridge and furrow'.

If the development is permitted the site would no longer merit its AONB status – in effect, it would become an urban extension to Cheltenham.

The development would be contrary to national and local planning policy and guidance.

We would question whether an outline planning application for major development in an AONB is appropriate, both in principle and specifically in relation to the Oakley Farm proposal. This is because there is insufficient binding detail to demonstrate compliance with the requirements of the National Planning Policy Framework (NPPF).

The appellant has failed to adequately address the major development 'tests' specified in paragraph 177 of the NPPF. Exceptional circumstances do not apply and the development would not be in the public interest.

The application of the AONB and heritage related policies of the NPPF provide clear reasons for refusal, both individually and collectively. The tilted balance, in favour of granting planning permission, should therefore be dis-applied.

The adverse effects of the development, combined with the benefits of keeping the site undeveloped, outweigh the potential beneficial effects of providing 250 dwellings, particularly when great weight is applied to conserving and enhancing the landscape and scenic beauty of the AONB and conserving the designated heritage assets at Hewlett's Reservoir.

The appeal should be dismissed and planning permission refused.

1.0 INTRODUCTION

1.1 Context

1.1.1 This Closing Statement sums up the case of the Cotswolds Conservation Board ('the Board') as a Rule 6 party in the planning appeal relating to the proposed development of 250 dwellings at Oakley Farm, Cheltenham. It is structured in a way that reflects the topics that have been covered during the inquiry (that are relevant to the Board's case) in the order that they were covered:

- Landscape matters
- Heritage matters
- Housing land supply
- Affordable housing
- Highway safety matters
- Planning policy and planning balance

1.1.2 The relationship between these topics, the 'main issues' identified by the Planning Inspector at the Case Conference in June 2021, Cheltenham Borough's putative reasons for refusal and the main issues as identified by the appellant in their Statement of Case is summarised in Appendix 1 of this document.

1.1.3 The Closing Statement complements the evidence that has already been submitted by the Board. Whilst it summarises key points from our Proof of Evidence, it does not seek to repeat that evidence in detail. Instead, the Closing Statement updates the Board's position in the light of the evidence that has been heard at the inquiry.

1.2 Purpose of AONB designation

1.2.1 Before discussing each of these topics individually it is important to mention the statutory purpose of designating Areas of Outstanding Natural Beauty (AONB).

1.2.2 The statutory purpose of AONB designation is to conserve and enhance the natural beauty of these areas. As I explained in our Proof of Evidence, there are a number of factors that contribute to the natural beauty of AONBs. The most obvious of these factors is their landscape quality and scenic quality (i.e. their landscape and scenic beauty). Other factors that contribute to the natural beauty of AONBs include:

- natural heritage (including biodiversity);
- cultural heritage (including historic environment); and
- relative tranquillity (including dark skies).

1.2.3 As such, 'landscape matters' are not the only consideration in this regard.

1.2.4 If a proposed development within an AONB would adversely affect *any* of these factors, it would also adversely affect the natural beauty of the AONB in that regard. Development proposals that would have a net adverse effect on these factors would conflict with the statutory purpose of AONB designation and would fail to conserve and enhance the natural beauty of the AONB.

1.2.5 If a proposed development is considered to adversely affect multiple factors then that increases the cumulative adverse effects on the natural beauty of the AONB.

1.2.6 Sir, as a representative of the Planning Inspectorate, you have a statutory duty to have regard to the purpose of AONB designation under Section 85 of the Countryside and Rights of Way Act 2000. In doing so, I urge you to give all of these considerations the full weight that they deserve.

2.0 LANDSCAPE MATTERS

2.1 Landscape and visual effects

2.1.1 The Oakley Farm site is located within the Cotswolds AONB. The site is an integral component of the Cotswold escarpment, which is one of the 'special qualities' of the AONB. For example, the site is representative of the moderately sized, steeply sloping fields of improved pasture, bounded by mature hedgerows, which are characteristic features of the lower escarpment. There are no urbanising features within the site to detract from the site's landscape quality. As such, the site merits its AONB status.

2.1.2 The appellant considers that development of the Oakley Farm site would just constitute infilling because of the development that already exists on three sides. However, we, on the contrary, consider the site to be a headland of un-eroded natural beauty which deserves to be retained for current and future generations.

2.1.3 In particular, the undeveloped and relatively open nature of the site:

- contributes significantly to the dramatic relief feature and backdrop that the escarpment provides for Cheltenham;
- plays a key role in bringing the natural beauty of the escarpment landscape closer to the centre of Cheltenham; and
- provides a strong sense of contrast with the neighbouring urban development.

2.1.4 The site is also visually, functionally and ecologically contiguous with the rest of the AONB. It is clearly visible across a large geographical area, including from public rights of way and access land on the escarpment and high wold, with the Cotswold Way National Trail being the most important of these public rights of way.

2.1.5 It would result in significant adverse effects to the AONB's natural beauty, particularly with regards to the following special qualities of the AONB:

- the Cotswold escarpment, both in terms of its landscape character and in terms of the views from and to the AONB;
- the high wolds, including the associated long-distance views; and
- tranquillity, in terms of visual intrusion and traffic movements.

2.1.6 It would also adversely affect the following special qualities of the AONB:

- dark skies, in terms of increased levels of lighting within this currently unlit site;
- significant archaeological, prehistoric and historic associations, specifically:
 - medieval 'ridge and furrow' fields, a sizeable area of which would be lost;
 - the designated heritage assets of Hewlett's Reservoir, particularly the setting of the Grade II listed Pavilion.

- 2.1.7 Specifically, it would have a ‘moderate / major adverse’ landscape effect, overall, and multiple ‘major adverse’ and ‘moderate adverse’ visual effects. The harm to the designated assets of Hewlett’s Reservoir would be less than substantial.
- 2.1.8 In effect, the proposed development of 250 dwellings and associated infrastructure would result in the site becoming an urban extension of Cheltenham. As a result, it would no longer merit its AONB status.

2.2 Lack of sufficient, binding detail

- 2.2.1 In reaching these conclusions, we took account of the evidence provided by the appellant, including their Environmental Statement,¹ Illustrative Masterplan,² Landscape Strategy,³ Parameter Plans⁴ and Verified Views⁵.
- 2.2.2 However, during the inquiry sessions with the appellant’s landscape expert witness, Mr Harris, it was clarified that the appellant would not actually be committing themselves to implement the measures proposed in documents such as the Illustrative Masterplan and Landscape Strategy if planning permission was granted. The only binding documents, in this regard, would be the parameter plans.
- 2.2.3 This is a fundamentally important consideration because the conclusions reached in the appellant’s Environmental Statement (and in the evidence of the other main parties) are based on a number of mitigation measures being put in place.
- 2.2.4 These measures include so-called ‘inherent mitigation’, which includes the retention of boundary hedgerows and the retention of open pasture on the upper slopes. They also include ‘proposed mitigation’, which includes a strategic belt of new tree planting across the site and further hedge planting.
- 2.2.5 However, the parameter plans make no reference to any of the inherent or proposed mitigation measures referred to above.
- 2.2.6 Given that most of the inherent and proposed mitigation that is identified in the Environmental Statement is not addressed in the parameter plans, there is very little certainty that these mitigation measures would actually be put in place if planning permission is granted. Without this mitigation, the adverse landscape and visual effects would be significantly higher.
- 2.2.7 During the inquiry there has been some discussion about making explicit reference to the Illustrative Masterplan in the planning conditions. However, these references are currently framed in terms of the scheme being ‘in general accordance with’ the Illustrative Masterplan. The wording ‘in general accordance with’ is so vague as to be practically meaningless, providing little more certainty than that provided by the parameter plans.
- 2.2.8 The ‘alternative’ Illustrative Masterplan that has been proposed would not add any certainty to proceedings. Mr Hutchison, the appellant’s planning expert witness, has indicated that this ‘alternative’ masterplan would, in effect, be ‘in general accordance with’ the original

¹ Core Documents A36 (A-T).

² Core Documents A23 and A36-I.

³ Core Document A29.

⁴ Core Documents A25-A28.

⁵ Core Documents A18 (Parts 1-3).

masterplan.⁶ So, even if planning conditions are applied to the ‘alternative’ masterplan, the resulting development could potentially be more like the scheme shown in the original masterplan. This further demonstrates the lack of certainty provided by the phrase ‘in general accordance with’.

- 2.2.9 Even if these mitigation measures are put in place, there is a great deal of uncertainty as to the extent to which these measures would mitigate (or, indeed, exacerbate) adverse effects. For example, when I cross-examined Mr Harris, I referred to Figure 20 of the appellant’s verified views⁷. Based on this verified view, I pointed out that by Year 10 the tree planting adjacent to the access road would block views of the Cotswold escarpment to a considerable degree. Mr Harris’ response was that the photo montage (and the tree planting shown in it) is only indicative and that this issue could potentially be addressed at the reserved matters stage.
- 2.2.10 In effect, the photomontages do not necessarily provide an accurate indication of likely visual effects from the specified viewpoints. As such, they leave a considerable amount of uncertainty about what the landscape and visual effects are likely to be.
- 2.2.11 Mr Harris’ response of deferring these issues to the reserved matters stage became a recurring theme in the inquiry, both with Mr Harris, in relation to landscape matters, and with Ms Stoten, in relation to heritage matters, as well as with Mr Eves, in relation to transport matters. Indeed, it was clarified during the inquiry that *all* matters of detail would be dealt with at the subsequent ‘reserved matters’ planning application stage.
- 2.2.12 This is another fundamentally important consideration. Whilst outline planning applications are a common feature of the planning system, we would question whether such planning applications are appropriate for a major development proposal in an AONB, both as a matter of principle and specifically in relation to the Oakley Farm development.
- 2.2.13 The uncertainty created by deferring all matters of detail to the reserved matters stage potentially makes it very difficult for you, Sir, as the decision maker, to reach robust conclusions, at this current outline planning application stage, regarding the following points:
- (i) the significance of the adverse landscape and visual effects;
 - (ii) the extent to which these adverse effects would be moderated;
 - (iii) whether exceptional circumstances apply;
 - (iv) whether the development would be in the public interest;
 - (v) whether the application of the NPPF policies relating to AONBs provides a clear reason for refusal;
 - (vi) whether the tilted balance should be dis-applied; and
 - (vii) the overall planning balance.

⁶ Email correspondence from Mr Hutchison (to all main parties), dated 10 December 2021. Point 17 of this email states that ‘*had the appeal been allowed with a condition requiring [Reserved Matters] to be in general accordance with the Original Masterplan, then the Appellant would submit that the Alternative Masterplan layout would still have been in general accordance with the original*’.

⁷ Core Document A18 – Part 2.

- 2.2.14 We recommend, Sir, that your conclusions should be based on the evidence for which there would be a binding commitment, such as the parameter plans, rather than on any of the non-binding evidence that has been provided by the appellant.
- 2.2.15 The evidence that has come to light during the inquiry provides no reason for lowering the significance of effects that we identified in our Proof of Evidence as these conclusions are based on the proposed mitigation being put in place. However, given that there is no certainty that all of the proposed mitigation *would* actually be put in place, we consider that the landscape and visual effects could potentially be even *more* significant than we have previously identified.
- 2.2.16 Finally, in relation to this point, the appellant has asserted, in the Statement of Common Ground covering planning issue, that the level of detail that they have provided '*is normal for this type of application and has been found acceptable on appeal in other cases in the JCS area including Innsworth, Twigworth, Fiddington and Coombe Hill*'.⁸ However, as Mr Hutchison acknowledged during cross-examination, none of these appeal sites are located within, or even particularly close to, an AONB. As such, they were not subject to the requirements of paragraph 176 or 177 of the NPPF. On this basis, we consider the appellant's assertions in this regard to be irrelevant.

2.3 Tranquillity / Dark Skies

- 2.3.1 In our Proof of Evidence we acknowledged that the relative tranquillity and dark skies of the AONB, which are both 'special qualities' of the area, are not as strong in this location as they would be in more remote locations. However, we consider that the currently undeveloped nature of the site helps to ensure that there would be no further erosion of these special qualities in this locality.
- 2.3.2 In this regard, it is worth noting that, during cross-examination, Mr Harris commented that the adjacent Oakley Grange development would have adversely affected the relative tranquillity and dark skies of the AONB in relation to the Oakley Farm site. Given that the appellant has accepted that an adjacent development has adversely affected these special qualities then it surely follows that a development of 250 dwellings on this site *within* the AONB would have a much more significant adverse effect.
- 2.3.3 Even if you, Sir, conclude that these special qualities are not adversely affected to a significant degree, it is worth reiterating some key points from our Proof of Evidence, which derive from national guidance and appeal decisions:
- not all factors [that contribute to an area's natural beauty] have to be present across a designation;⁹
 - in terms of policy and statute, the notion of relative beauty, and the fact that the appeal site is not with in deep countryside, with other areas perhaps having greater scenic beauty, is not important; neither is the fact that the appeal site is a tiny corner of a much larger AONB;¹⁰

⁸ Core Document C9. Paragraphs 4.3 and 4.4.

⁹ Core Document J13. Paragraph 6.10.

¹⁰ Core Document K43. Paragraph 40.

- every part of a designated area contributes to the whole in some way and care must be taken if considering areas in isolation.¹¹

2.3.4 I will return to the issue of tranquillity when I cover the topic of ‘highway safety matters’.

2.4 Change to AONB boundary

2.4.1 In our Proof of Evidence we made the following statement regarding changes to the AONB boundary:

- *The contribution that the site makes to the AONB is reflected in the fact that the Cotswolds AONB boundary was actually extended, in the 1990 AONB boundary review, to include the whole of the site, whereas previously the most westerly field had been excluded.*¹²

2.4.2 During the inquiry, Mr Tucker challenged this assertion by suggesting that the original AONB boundary could have potentially followed the line of a historic footpath that used to run through the most westerly field (Field 1) rather than along the eastern boundary of this field.

2.4.3 However, this is highly unlikely given that it is standard practice for AONB boundaries to follow clearly defined features such as field boundaries. Mr Tucker’s line of questioning is further undermined by the ‘Proposed Boundary Variations’ map shown in Appendix 4 of our Proof of Evidence, which shows the original boundary following the eastern boundary of Field 1. This is the only map that is before the inquiry which shows both the original AONB boundary and the field boundaries.

2.4.4 Even if the original AONB boundary did follow the historic footpath, this would still mean that the AONB boundary was extend to include the remaining two-thirds of Field 1, right up to the adjoining urban development along Wessex Drive to the west.

2.4.5 Under cross-examination, during the inquiry, Mr Harris indicated that the character of the site would become more akin to that of the land south of Harp Hill.

2.4.6 In this regard, it is important to note that much of the land south of Harp Hill, on the north and north-westerly side of Battledown Hill, was included within the original AONB boundary but was subsequently excluded from the AONB following the 1990 boundary review.¹³

2.4.7 In other words, the site would become more like the area of Battledown Hill that no longer merits its former AONB status.

2.4.8 As such, the key points that we made in our Proof of Evidence in relation to this issue remain unchanged.

¹¹ Core Document J17. Paragraph 5.24.

¹² Core Document C18 – A (Section 9.3.2, particularly paragraph 9.3.2.6).

¹³ As shown on the maps in Appendix 4 of our Proof of Evidence (Core Document C18 -A), pages vi and vi.

3.0 HERITAGE MATTERS

3.1 Effects on heritage assets

- 3.1.1 In our Proof of Evidence, we highlighted that the currently undeveloped nature of the Oakley Farm site is an important component of the setting of the heritage assets of the Hewlett's Reservoir complex, particularly with regards to the Grade II listed pavilion.¹⁴
- 3.1.2 We concluded that the proposed development would have an adverse effect on this setting. We agree with Cheltenham Borough Council's conclusion that the harm to the asset's significance from the proposed development would be 'moderate'.
- 3.1.3 A key consideration, in this regard, is the fact that the 'Reasons for Designation' for the pavilion include the statement that '*the building ... gives the appearance of a country house garden building*'.¹⁵
- 3.1.4 Under cross-examination, Ms Stoten, the appellant's heritage expert witness, seemed to disagree with this statement or, at least, cast doubt on its validity. However, Historic England, who wrote this list entry, is the Government's statutory advisor on the historic environment. As such, we consider that much greater weight should be given to the statements made in the pavilion's 'Reasons for Designation', than to the opinion of the appellant's heritage expert witness in this regard.
- 3.1.5 In other words, the pavilion *does* give the appearance of a country house garden building and the impact of the proposed development on the setting of this heritage asset should be considered in this context.
- 3.1.6 During Ms Stoten's cross-examination there was some discussion of the potential adverse (and beneficial) effects of the proposed development on these heritage assets and their setting, particularly with regards to the setting of the pavilion. Ms Stoten indicated that any adverse effects would be addressed by implementing the mitigation measures that had been outlined in the appellant's landscape evidence.
- 3.1.7 However, as outlined in relation to 'landscape matters', earlier in this Closing Statement, there is currently no guarantee that some of these mitigation measures *would* be implemented. Or, if they are implemented, there is no certainty of how effective these measures would be. This is because the relevant details would only be addressed at the reserved matters stage.
- 3.1.8 The evidence that has come to light during the inquiry provides no reason for reducing our concerns regarding adverse effects on heritage assets, as outlined in our Proof of Evidence.
- 3.1.9 The conclusions that we reached in our Proof of Evidence were based on the proposed mitigation being put in place. However, given that there is no certainty that all of the proposed mitigation *would* actually be put in place, we consider that the adverse effects on the heritage assets could potentially be even *more* significant than we have previously identified.
- 3.1.10 Finally, on this point, it is important to re-iterate the point that we made in our Proof of Evidence that ridge and furrow field patterns, such as those found on the Oakley Farm site,

¹⁴ Core Document C18 – A. Section 9.7.

¹⁵ Core Document H13. Page 10.

are one of the ‘special qualities’ of the Cotswolds AONB. Sir, we recommend that your assessment of the significance of the loss of ridge and furrow should take this into account.

4.0 HOUSING LAND SUPPLY

4.1 Five year housing land supply

4.1.1 In our Proof of Evidence we aligned our position regarding housing land supply, for Cheltenham Borough as a whole, with that of Cheltenham Borough Council.¹⁶ The same principle still applies now. As such, I will not go into detail on matters such as the status of Cheltenham Borough’s five-year housing land supply as these matters will no doubt be addressed in Cheltenham Borough Council’s Closing Statement.

4.2 Housing need in the context of the Cotswolds AONB

4.2.1 As outlined in our Proof of Evidence, the Government’s National Planning Practice Guidance (NPPG) states that:

- AONBs ‘are unlikely to be suitable areas for accommodating unmet needs from adjoining (non-designated) areas’.¹⁷

4.2.2 If AONBs are unlikely to be suitable areas for accommodating unmet needs from adjoining (non-designated) areas, then, in my professional opinion, it follows that development in AONBs should be based on needs arising within the AONB. This is reflected in Policy CE12 of the Cotswolds AONB Management Plan, which states that:

- *Development in the Cotswolds AONB should be based on robust evidence of local need arising within the AONB.*¹⁸

4.2.3 As such, we consider that Policy CE12 is consistent with – and complementary to - the NPPG guidance.

4.2.4 We acknowledge that the standard method for calculating housing need identifies the (unconstrained) needs arising across the whole of a local authority area. However, as I indicated during the inquiry, a key starting point in the standard method calculation is the baseline quantity of existing housing stock.

4.2.5 Under cross examination, Mr Tiley acknowledged that, as a rule of thumb, if the existing baseline is a small number of houses then projected growth (and, in effect, the resulting housing need) is also likely to be relatively small. Mr Tiley also acknowledged that, in the case of Cheltenham Borough, the majority of the existing housing stock is located within Cheltenham town (in other words, within the Principal Urban Area).

4.2.6 During the inquiry, I raised the NPPG statement that I’ve just referred to with Mr Hutchison, the appellant’s planning expert witness. Mr Hutchison acknowledged that:

¹⁶ Core Document C18 – A. Section 9.10.

¹⁷ Core Document D2. Specifically <https://www.gov.uk/guidance/natural-environment#landscape>. Paragraph 041.

¹⁸ Core Document J1. Policy CE12 is based on best practice such as the relevant policies (and supporting information) in the West Oxfordshire Local Plan. A case study of the WOLP is provided in Appendix 2 of the Conservation Board’s Housing Position Statement (Core Document F12 – Part 2).

- the vast majority of the Principle Urban Area of Cheltenham does not lie within the Cotswolds AONB;
- the Principle Urban Area adjoins the AONB; and
- the Principle Urban Area is, therefore, an ‘adjoining, non-designated area’.¹⁹

4.2.7 Based on the information outlined above, it is clear that the vast majority of the objectively assessed housing need identified for Cheltenham Borough arises from the ‘adjoining, non-designated area’ of the Principle Urban Area and *not* from within the AONB.

4.2.8 As we identified in our Proof of Evidence, the AONB contains less than half a percent of Cheltenham Borough's total housing stock (or 0.38% to be precise).²⁰ If this 0.38% figure is applied to the JCS requirement of 11,092 dwellings, this would equate to 42 dwellings. This is less than the 51+ dwellings that have already been built in the Cheltenham Borough section of the Cotswolds AONB since the start of the plan period in 2011.²¹

4.2.9 Therefore, even without factoring in the constraint of the AONB designation, the Cotswolds AONB has already accommodated more than its proportionate share of the new housing required in Cheltenham Borough during the Cheltenham Plan period (i.e. between 2011 and 2031).²²

4.2.10 Based on the points outlined above, we do not consider that Mr Tiley’s evidence demonstrates exceptional need or over-riding public interest, in the context of paragraph 177 of the NPPF or in the context of the NPPG.

4.2.11 Sir, we recommend that this NPPG guidance, and our interpretation of it in the context of the Oakley Farm proposal, should be an important consideration in the planning appeal decision.

5.0 AFFORDABLE HOUSING

5.1 Affordable housing need in the context of the Cotswolds AONB

5.1.1 The principles that I’ve outlined above, in relation to housing land supply are also applicable to the issue of affordable housing.²³

5.1.2 So, for, example, paraphrasing the NPPG guidance that I’ve just referred to, AONBs are unlikely to be suitable areas for accommodating unmet affordable housing needs from adjoining, undesignated areas. In the context of the Oakley Farm proposal, we consider that the Cotswolds AONB (specifically, the Oakley Farm site) would not be a suitable area for accommodating such needs as they arise primarily from the Principle Urban Area of Cheltenham.

¹⁹ In the context of the PPG statement that AONBs ‘are unlikely to be suitable for accommodating unmet needs from adjoining, non-designated areas’.

²⁰ Core Document C18 – A. Paragraphs 9.10.4 – 9.10.10.

²¹ Core Document C18 – A. Paragraph 9.10.9.

²² Core Document C18 – A. Paragraph 9.10.10.

²³ The key considerations, in this context, being Policy CE12 of the Cotswolds AONB Management Plan 2018-2023 (Core Document J1) and the NPPG guidance which states that AONBs ‘are unlikely to be suitable areas for accommodating unmet needs from adjoining (non-designated) areas’ (Core Document D2, specifically <https://www.gov.uk/guidance/natural-environment#landscape> - paragraph 041).

- 5.1.3 It is worth noting that, during the inquiry, Mr Stacey acknowledged that his affordable housing need evidence does not specifically assess the affordable housing need arising within the Cheltenham Borough section of the Cotswolds AONB.
- 5.1.4 During the inquiry, Mr Stacey acknowledged that his evidence doesn't provide a comparison of the shortfall in affordable housing provision in Cheltenham and the JCS area with shortfalls in other parts of the country. On the back of this, Mr Stacey also acknowledged that his evidence doesn't demonstrate that the situation in Cheltenham and the JCS area is any worse than any other areas in the country. This is an important consideration in terms of deciding whether exceptional circumstances apply (under paragraph 177 of the NPPF). I will address the topic of exceptional circumstance later in this Closing Statement.
- 5.1.5 Mr Stacey also acknowledged that households on the Homeseeker Plus register could potentially express a preference for up to three different locations, with these locations potentially being in any of the participating local authority areas. Obviously, a household that expresses a preference for three locations would only actually need to be housed in one of these locations. As such, there is a risk of triple counting the actual need.
- 5.1.6 Furthermore, Mr Stacey acknowledged that his evidence doesn't differentiate between how many households are within each band of the Homeseeker Plus scheme (in other words, the Emergency, Gold, Silver and Bronze bands). As such, it is perfectly possible that the majority of the households on the Homeseeker Plus register are in the relatively low priority Bronze band.
- 5.1.7 Based on the points outlined above, we do not consider that Mr Stacey's evidence demonstrates exceptional need or over-riding public interest, in the context of paragraph 177a of the NPPF or in the context of the NPPG.

6.0 HIGHWAY SAFETY MATTERS

6.1 Percentage increase in traffic movements

- 6.1.1 During the inquiry, I cross-examined Mr Eves, the appellant's transport expert witness, on the issue of traffic movements associated with the proposed development. This was in the context of the potential adverse effects of these traffic movements on the relative tranquillity of the Cotswolds AONB, with this relative tranquillity being one of the 'special qualities' of the AONB.
- 6.1.2 Although this isn't directly a 'highway safety' matter, it does relate to the evidence provided by Mr Eves. As such, it does merit inclusion under this topic heading. However, it also relates directly to 'landscape matters'.
- 6.1.3 In his Evidence in Chief, Mr Eves, made the assertion that the percentage increase in vehicle trips on local roads resulting from the proposed development would need to be above 30% in order for the increase to be considered significant. This assertion was based on the 'rule of thumb' that is set out in the appellant's Environmental Statement,²⁴ which, in turn, is based on guidance published by the Institute of Environmental Management and Assessment (IEMA).

²⁴ Core Document A36 – A. Paragraph 9.2.2. As explained in our Proof of Evidence, further information on this topic is provided in Section 4.5 of the Board's Tranquillity Position Statement (Core Document J19).

- 6.1.4 However, as we outlined in our Proof of Evidence, the IEMA guidance also sets out a 10% rule of thumb threshold that applies to 'sensitive areas'.²⁵ Given that AONBs are classed as 'sensitive areas' in the Environmental Impact Assessments (EIA) regulations, we consider that the 10% threshold, rather than the 30% threshold, should be applied in relation to the Oakley Farm proposal. In particular, we consider that increases in vehicle trips of 10% or more would potentially have a significant adverse effect on the relative tranquillity of the Cotswolds AONB.
- 6.1.5 We acknowledge that the section of Harp Hill road to the west of the proposed site entrance is directly adjacent to the AONB, rather than within it. However, as I explained during the inquiry, we consider that the 10% threshold is still applicable to this section of Harp Hill. For example, significant increases in traffic movements directly adjacent to the AONB boundary would still adversely affect the 'sensitive area' of the AONB.
- 6.1.6 In effect, the traffic movements on the western section of Harp Hill arising from the proposed development would be in the setting of the AONB. Therefore, our position on this issue would be compatible with Policy SD7 of the JCS, for example, *which states that 'all development proposals in or within the setting of the Cotswolds AONB will be required to conserve and, where appropriate, enhance its ... special qualities'* (underlining added for emphasis).
- 6.1.7 The total number of additional vehicle trips generated by the proposed development, into and out of the AONB, would be 123 vehicle trips per hour in morning and afternoon peak hours, with 105 of these vehicle trips being on the section of Harp Hill to the west of the site entrance.
- 6.1.8 In his Evidence in Chief, Mr Eves, explained that this would result in a 21% increase in vehicle trips per hour in morning (am) peak hour²⁶ and a 27% increase during afternoon (pm) peak hour²⁷ on this western section of Harp Hill.
- 6.1.9 These increases are more than double the 10% threshold and, in the case of the pm peak hour, almost three times larger. We consider this to be very significant in terms of adverse effects on the relative tranquillity of the Cotswolds AONB.
- 6.1.10 Even if the 30% threshold figure is applied, the 27% increase during am peak hour comes very close to this so is still of concern.
- 6.1.11 When the total of 123 additional vehicle trips into and out of the AONB, via Harp Hill, is compared to the current Harp Hill baseline, there would be a 24%²⁸ increase in morning peak hour and a 32%²⁹ increase in pm peak hour. This pm peak hour increase even exceeds the 30% threshold.

²⁵ Core Document C18 – A. Section 9.5.

²⁶ An additional 105 vehicle trips per hour on top of the current baseline of 507 vehicle trips per hour in AM peak hour.

²⁷ An additional 105 vehicle trips per hour on top of the current baseline of 398 vehicle trips per hour in PM peak hour.

²⁸ An additional 123 vehicle trips per hour on top of the current baseline of 507 vehicle trips per hour in AM peak hour.

²⁹ An additional 123 vehicle trips per hour on top of the current baseline of 398 vehicle trips per hour in AM peak hour.

6.2 Access road – embankments and cuttings

- 6.2.1 During the inquiry, the issue of the access road became a significant topic of discussion. This included discussion of the potential height and extent of the associated embankments and the depth and extent of the associated cuttings.
- 6.2.2 During my cross-examination of Mr Eves, I referred to the appellant's 'Indicative Long View' document³⁰, particular the Plan View shown in the bottom left-hand corner of this document. I highlighted that this Plan View shows that the initial section of the access road would be elevated, on an embankment, up to 2.6 metres above the natural landform. I then questioned Mr Eves on the extent to which the height and steepness of this embankment would affect the accessibility of the paths that would cross the access road.
- 6.2.3 Mr Eves responded that these matters would be addressed at the 'reserved matters' planning application stage.
- 6.2.4 This, again, highlights the issue that I have raised in relation to landscape and heritage matters regarding the implications of leaving all details to the reserved matters stage. For example, the height and extent of the embankments (and the depth and extent of the cuttings) associated with the access road could fundamentally alter the potential adverse landscape, visual and recreational effects of the scheme and the extent to which these effects are moderated.

7.0 PLANNING POLICY AND PLANNING BALANCE

7.1 Local Planning Policy

7.1.1 Joint Core Strategy - Policy SD7

7.1.1.1 A key policy in the Joint Core Strategy (JCS)³¹ relating to this appeal is Policy SD7 (The Cotswolds AONB).

7.1.1.2 The first sentence in this policy states that:

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

7.1.1.3 Mr Hutchison's Proof of Evidence states that the requirement in Policy SD7 to 'conserve and, where appropriate, enhance' implies that there should be no harm (underlining added for emphasis).³² As Mr Hutchison confirmed under cross-examination during the inquiry, this is one of the reasons why the appellant considers that little to no weight should be given to any breach of Policy SD7.³³

7.1.1.4 However, as I indicated during the inquiry, it is possible for a development to have both adverse and beneficial effects and that, depending on the balance of these effects, there could be a net-adverse effect or a net-beneficial effect. As such, it is possible for a

³⁰ Core Document A34.

³¹ Core Document E1.

³² Core Document C15 – Appellant L – Planning PoE final. Paragraph 7.59.

³³ Core Document C15 – Appellant L – Planning PoE final. Paragraph 7.61.

development to both cause harm and, where there is a net beneficial effect, 'conserve and enhance'.

7.1.1.5 This principle is embedded in the concept of biodiversity net-gain, for example. Under cross-examination, Mr Hutchison acknowledged biodiversity net-gain would result in biodiversity being conserved and enhanced.

7.1.1.6 Therefore, we consider that the appellant's assertion is invalid. On this basis, the weight given to Policy SD7 should not be reduced.

7.1.1.7 It is important to note, in this context, that we consider the Oakley Farm proposal to have a significant net-adverse effect on the Cotswolds AONB.

7.1.1.8 Another reason given by Mr Hutchison for suggesting that little to no weight should be given to any breach of SD7 (as stated in his Proof of Evidence³⁴ and confirmed under cross examination) was that the requirement in Policy SD7 to 'conserve and, where appropriate, enhance' is materially different to the policy in the NPPF at paragraph 176-177.

7.1.1.9 However, as I indicated during the inquiry, the 'Monkhill' Court of Appeal decision³⁵ has stated that (and I quote):

- *To speak of a breach of the policy [i.e. what is now paragraphs 176 and 177 of the NPPF] when the development would harm the AONB, or of a conflict with the policy in those circumstances seems entirely reasonable.*³⁶
- *This ... is plain on a straightforward reading of [what is now paragraphs 176 and 177] in its context, having regard to its obvious purpose. The policy is not actually expressed in terms of an expectation that the decision will be in favour of the protection of the 'landscape and scenic beauty' of the AONB, or against harm to that interest. But that, in effect, is the real sense of it.*³⁷

7.1.1.10 As such, we do not consider that Policy SD7 is materially different to the policy in the NPPF at paragraph 176-177.

7.1.1.11 Another of the reasons given by Mr Hutchison for suggesting that little to no weight should be given to any breach of SD7 (as stated in his Proof of Evidence³⁸ and confirmed under cross examination) was that Policy SD7 does not include the exceptional circumstances test for major development in the AONB.

7.1.1.12 However, as I indicated during the inquiry, paragraph 16(f) of the NPPF states that plans should avoid unnecessary duplication of policies that apply to a particular area (including policies in the NPPF). Under cross examination, Mr Hutchison acknowledged that:

- the NPPF specifically discourages duplication between the NPPF and the Development Plan; and

³⁴ Core Document C15 – Appellant L – Planning PoE final. Paragraph 7.61.

³⁵ Core Document K29. Monkhill Ltd v Secretary of State for Housing, Communities and Local Government & Anor (Rev 1) [2021] EWCA Civ 74. Court of Appeal decision.

³⁶ Core Document K29. Paragraph 29.

³⁷ Core Document K29. Paragraph 30.

³⁸ Core Document C15 – Appellant L – Planning PoE final. Paragraph 7.61.

- there is, therefore, no need for the Development Plan to duplicate what is said in the NPPF with regards to major development.

7.1.1.13 Overall, we consider that Mr Hutchison’s assertions regarding Policy SD7 are unfounded in every respect. We therefore recommend that *full* weight should be given to the breaches of Policy SD7 that *would* result from the proposed development.

7.1.1.14 The second (and final) sentence of Policy SD7 of the Joint Core Strategy (JCS) states that:

- *Proposals will be required to be consistent with the policies set out in the Cotswolds AONB Management Plan.*

7.1.1.15 During the inquiry Mr Tucker and Mr Hutchison sought to undermine the weight that should be given to the policies of the Cotswolds AONB Management Plan, particularly in the context of Policy SD7. For example, it was inferred that the policy only related to the 2013-2018 version of the AONB Management Plan.

7.1.1.16 However, as Mr Instone, Cheltenham Borough Council’s planning expert witness, stated during cross-examination, the policy intentionally makes no reference to a particular version of the AONB Management Plan. This is because the AONB Management Plan is reviewed and updated on a three-year cycle so there would inevitably be more than version of the Management Plan in place during the lifetime of the JCS.

7.1.1.17 Given the wording of Policy SD7, we consider that it follows that if a proposal is not consistent with the policies set out in the Cotswolds AONB Management Plan then it is also not consistent with Policy SD7.

7.1.1.18 On this basis, we consider that full weight should be given to the policies of the Cotswolds AONB Management Plan and to the second sentence of Policy SD7.

7.1.1.19 Finally, based on the information provided in this Closing Statement, we agree with Cheltenham Borough Council’s assertion that that the proposed development is contrary to Policy SD7 of the JCS.

7.1.2 Joint Core Strategy – other policies

7.1.2.1 We support Cheltenham Borough Council’s assertion that the proposed development conflicts with Policies SP2 and SD10 of the JCS in that the proposed development does not meet the strategy for the distribution of new development within Cheltenham Borough and the application site is not an appropriate location for new development.

7.1.2.2 For example, as outlined earlier in this Closing Statement, we consider that the proposed development would constitute an urban extension to Cheltenham. According to Policy SP2, *‘the identification of any additional urban extensions ... must be undertaken through a review of the plan’*.³⁹ The proposed development does not comply with Policy SP2 in this regard.

7.1.2.3 Given the likely adverse effects of the proposed development, we support the Borough Council’s assertion that it would be contrary to Policies

- SD4 (Design Requirements);
- SD6 (Landscape);

³⁹ Core Document E21. Policy SP2.

- SD7 (Cotswolds AONB); and
- SD8 (Historic Environment).

7.1.3 Cheltenham Plan

7.1.3.1 Given the likely adverse effects of the proposed development, we support the Borough Council's assertion that it would be contrary to Policies L1 (Landscape and Setting) and D1 (Design) of the Cheltenham Plan.

7.1.4 Cotswolds AONB Management Plan

7.1.4.1 Given the likely adverse effects of the proposed development, we support the Borough Council's assertion that it would be contrary to policies CE1, CE3, CE6, CE10 and CE12 of the Cotswolds AONB Management Plan 2018-2023. In addition, we consider that it would be contrary to policies CE4, CE5 and CE11.

7.1.4.2 The comments that we have made regarding the weight to be afforded to the AONB Management Plan, elsewhere in this Closing Statement, should also be taken into consideration

7.2 National Planning Policy Framework⁴⁰

7.2.1 Paragraph 176

7.2.1.1 As outlined earlier in this section of the Closing Statement, if a proposed development would harm the landscape and scenic beauty of an AONB then the development would, in effect, be in breach of paragraph 176. We consider that this would be the case for the Oakley Farm development, which would have a significant adverse effect in this regard. Great weight should be given to this significant adverse effect.

7.2.1.2 Paragraph 176 also requires the scale and extent of development within AONB to be limited. The appellant accepts that the proposed development constitutes major development in the context of paragraph 177. Under cross-examination, Mr Hutchison indicated that the main reason for classifying it as major development was the fact that the development would involve the construction of 250 dwellings. On this basis, we consider that the scale and extent of development is not limited.

7.2.1.3 Overall, we consider that the proposed development is contrary to paragraph 176.

7.2.2 Paragraph 177 - introduction

7.2.2.1 Paragraph 177 of the NPPF states that permission should be refused for major development in AONBs other than in exceptional circumstances and where it can be demonstrated that it would be in the public interest. The following sections discuss the three major development 'tests' that are set out in paragraph 177.

7.2.3 Paragraph 177a - need

7.2.3.1 We recognise that Cheltenham Borough has a housing shortfall, including a shortfall in affordable housing, although the appellant and Cheltenham Borough Council clearly have a difference of opinion on the severity of this shortfall.

⁴⁰ Core Document D1.

7.2.3.2 However, we do not consider this need to be exceptional, particularly in the context of a proposed housing development in the Cheltenham Borough section of the Cotswolds AONB, as outlined earlier in this Closing Statement.

7.2.3.3 As outlined in our Proof of Evidence⁴¹ and as I re-iterated during the inquiry, the High Court judgement for ‘Mevagissey Parish Council v Cornwall Council’ states that:

- *Even if there were an exceptional need for affordable housing in an area, that would not necessarily equate to exceptional circumstances for a particular development, because there may be alternative sites that are more suitable because development there would result in less harm to the AONB landscape.*⁴²

7.2.3.4 Sir, taking on board this statement in the context of the Oakley Farm proposal, we strongly recommend that, even if you consider there to be an exceptional need, this should *not* be directly equated to exceptional circumstances.

7.2.3.5 As I also outlined in our Proof of Evidence and re-iterated during the inquiry, the High Court judgement for ‘Adverse v Dorset Council’ states that:

- *It was clear from sub-paragraphs (a) – (c) [of what is now paragraph 177 of the NPPF] ... that no permission should be given for major development save to the extent that the development was needed in the public interest, met a need that could not be met elsewhere or in some other way, and met that need in a way that to the extent possible, moderated detrimental effect on the environment, the landscape, and recreational opportunities.*⁴³ (N.B. Underlining added for emphasis).

7.2.3.6 During the inquiry, Mr Tucker asserted that the judge, Mr Justice Swift, was just paraphrasing what is now paragraph 177 and was not providing a legal opinion or judgement on this specific topic. However, I would be very surprised if the judge used his wording loosely or without meaning what he actually said. As indicated in the quoted text, Mr Justice Swift says that ‘it was clear from sub-paragraphs (a)-(c) that no permission should be granted’ except in the stated circumstances. As such, we consider that considerable weight should be given to the wording used in this extract from the Adverse judgement.

7.2.3.7 Sir, in applying this wording to the Oakley Farm proposal, we strongly recommend that you should dismiss the appeal unless you are satisfied that *all* of the specified criteria have been met, not just the issue of exceptional need.

7.2.3.8 In my professional opinion, the wording used in the Adverse judgement adds further weight to our recommendation that if you, Sir, consider there to be exceptional need, this should not be directly equated to exceptional circumstances.

7.2.3.9 Finally, on the issue of need, it is worth noting that, during cross-examination, Mr Hutchison explicitly stated that he had tried to avoid using the word ‘exceptional’ in the context of need. If the *appellant* is reluctant to refer to the need as being exceptional, then I certainly don’t see why you, Sir, should refer to it as being exceptional either.

⁴¹ Core Document C18 – A. Section 9.10, including paragraph 9.10.11.

⁴² Core Document K25. R (Mevagissey Parish Council) v Cornwall Council [2013] EHC 3684. Paragraph 51.

⁴³ Core Document K56. R (Adverse) v Dorset Council v Hallam Land Management Ltd [2020] EWHC 807. Paragraph 35.

7.2.3.10 Overall, we consider that the appellant has failed to adequately address the requirements of paragraph 177a of the NPPF. As such, we also consider that the appellant has failed to demonstrate that exceptional circumstances apply, or that the development would be in the public interest, in this regard.

7.2.4 Paragraph 177b - alternatives

7.2.4.1 Paragraph 117b of the NPPF requires ‘an assessment of ... the cost of, and scope for, developing outside the designated area, or meeting for need for it in some other way’.

7.2.4.2 As I have just outlined, relevant case law judgements state that:

- *No permission should be given for major development save to the extent that the development ... met a need that could not be met elsewhere or in some other way.*⁴⁴ (N.B. Underlining added for emphasis).
- Exceptional need for housing in a particular area ‘*would not necessarily equate to exceptional circumstances for a particular development, because there may be alternative sites that are more suitable because development there would result in less harm to the AONB landscape*’.⁴⁵ (N.B. Underlining added for emphasis).

7.2.4.3 As such, in my professional opinion, it is clear that not only should the appellant identify and assess alternative sites but, also, the appeal should be dismissed if any of the assessed sites could meet the need in a way that would result in less harm to the AONB.

7.2.4.4 Mr Hutchison, in his Proof of Evidence⁴⁶ and under cross-examination, acknowledged that the major development ‘tests’ may involve the consideration of alternative sites. However, Mr Hutchison asserts that there are no alternatives, with one of the main reasons for this being the lack of five year housing land supply.

7.2.4.5 We find it very concerning that the applicant has failed to identify or assess any specific alternative sites or options. We strongly disagree with Mr Hutchison’s justification for this.

7.2.4.6 A key factor in Mr Hutchison’s assertions seems to be the ‘Wealden’ Court of Appeal judgement.⁴⁷ Mr Hutchison’s Proof of Evidence quotes paragraph 66 of this judgement, in which Lord Justice Lindblom refers to comments made by the Inspector in the original appeal decision. In that appeal decision, the Inspector found that other potential sites would ‘*collectively still fall short of the full [objectively assessed need]*’ so they ‘*[did] not amount to an alternative*’.⁴⁸ Lord Justice Lindblom states that this was a matter of planning judgement.

7.2.4.7 It would seem that Mr Hutchison has taken this to mean that a site (or sites, collectively) can only be considered to be an alternative, in the context of paragraph 177b, if they could accommodate not *only* the amount of development being proposed on the appeal site but the *whole* of the housing shortfall for the local authority area.

⁴⁴ Core Document K56. R (Advearse) v Dorset Council v Hallam Land Management Ltd [2020] EWHC 807. Paragraph 35.

⁴⁵ Core Document K25. R (Mevagissey Parish Council) v Cornwall Council [2013] EHC 3684. Paragraph 51.

⁴⁶ Core Document C15 – Appellant L – Planning PoE final. Paragraph 7.110.

⁴⁷ Core Document K40. Secretary of State for Communities and Local Government and Knight Developments Ltd v Wealden District Council [2017] EWCA Civ 39 [CD.K40]

⁴⁸ Core Document K40. Paragraph 66. This is how the wording is quoted in paragraph 7.112 of Mr Hutchison’s Proof of Evidence (Core Document C15 – Appellant L – Planning PoE final).

- 7.2.4.8 In my professional opinion, this interpretation completely undermines the level of protection that paragraphs 11, 174, 176 and 177 of the NPPF are intended to provide to AONBs. For example, it would undermine the requirement, in paragraph 176, for the scale and extent of development in AONBs to be limited.
- 7.2.4.9 It is important to note that in the extract that I've referred to from the Wealdon judgement, Lord Justice Lindblom is just acknowledging that the Inspector's opinions are a matter of planning judgement. He is *not*, in my professional opinion, in any way indicating that all planning appeal decisions should or must take the same approach to the issue of alternative sites. In effect, Mr Hutchison's approach to dealing with alternative options is based on the opinion of an Inspector in a different appeal decision, which would have had a different set of circumstances, rather than on a case law judgement.
- 7.2.4.10 The appellant has taken a similarly blunt and basic approach to the assessment of alternative options in their Environmental Statement, which I questioned Mr Hutchison about in cross-examination.⁴⁹ For example, the only alternative options that they have explicitly identified in the Environmental Statement are:
- The 'No Development' Alternative;
 - Alternative Designs.
- 7.2.4.11 We recognise that alternative options should be practicable and reasonable. However, even with this qualification, we consider that a robust assessment of alternatives, both in terms of national planning policy (i.e. paragraph 177b) and relevant legislation (i.e. the EIA regulations), should have covered a wider range of options, including delivering the proposed 250 dwellings through multiple smaller sites within Cheltenham Borough and identifying and assessing specific sites:
- within Cheltenham Borough that are neither in the Green Belt or the AONB;
 - in the Green Belt;
 - further afield (i.e. in adjoining local authority areas).
- 7.4.2.12 We recognise that much of Cheltenham Borough is either built-up or within Green Belt or AONB and that there would potentially be conflicts with the Development Plan with some of these options. However, the Oakley Farm proposal itself conflicts with the Development Plan and there may be other sites that, on balance, would be more compliant with the Development Plan. There may also be other sites that are more suitable because development there would result in less harm to the AONB.
- 7.4.2.13 Overall, we consider that the appellant has failed to adequately address the requirements of paragraph 177b of the NPPF and the requirements of the EIA legislation. As such, we also consider that the appellant has also failed to demonstrate that exceptional circumstances apply, or that the development would be in the public interest, in this regard.
- 7.4.2.14 On a related point, whilst we accept that the Oakley Farm site could potentially be assessed for its suitability of housing in the future review of the JCS, we do *not* consider that it would be a suitable site for the reasons outlined in our evidence and in this Closing Statement.

⁴⁹ Core Document A36 – A. Section 4, particularly paragraph 4.2.2.

7.2.5 Paragraph 177c – detrimental effects

7.2.5.1 Paragraph 177c of the NPPF requires ‘*an assessment of ... any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated*’.

7.2.5.2 As I have just outlined, the High Court judgement for ‘Adverse v Dorset Council’ states that:

- *No permission should be given for major development save to the extent that the development ... met that need in a way that to the extent possible, moderated detrimental effect on the environment, the landscape, and recreational opportunities.*⁵⁰ (N.B. Underlining added for emphasis).

7.2.5.3 In our Proof of Evidence we have identified that the proposed development would have a significant adverse effect on the natural beauty of the Cotswolds AONB.

7.2.5.4 As explained under ‘landscape matters’, there is a great deal of uncertainty about the extent to which these adverse effects would actually be moderated and whether they would be moderated to the extent possible. Indeed, because of this uncertainty, the adverse effects could potentially be even more significant than we have identified. This is because many of the proposed mitigation measures are or just indicative, with all matters of detail only being addressed at the subsequent ‘reserved matters’ planning application stage.

7.2.5.5 Overall, we consider that the appellant has failed to adequately address the requirements of paragraph 177c. As such, we also consider that the appellant has failed to demonstrate that exceptional circumstances apply, or that the development would be in the public interest, in this regard.

7.2.6 Paragraph 177 – public interest

7.2.6.1 We acknowledge that the provision of 250 dwellings would provide some public benefits.

7.2.6.2 However, we consider that these benefits would be far outweighed by the public benefits of leaving this site undeveloped, as a headland of un-eroded natural beauty.

7.2.6.3 In this context, it is worth re-iterating some of the points that we made in our Proof of Evidence regarding the significance of the AONB designation.

- AONBs are areas whose distinctive character and natural beauty are so outstanding that it is in the nation’s interest to safeguard them.⁵¹
- AONBs are ‘*nationally valued landscapes*’.⁵²
- AONBs have the same status of protection as National Parks, with regards to conserving and enhancing landscape and scenic beauty.⁵³

⁵⁰ Core Document K56. R (Advearse) v Dorset Council v Hallam Land Management Ltd [2020] EWHC 807. Paragraph 35.

⁵¹ Defra (2017) *Areas of Outstanding Natural Beauty: Landscape Protection and Enhancement* ([link](#)). Page 1 (digital page 2).

⁵² Core Document J17 – GLVIA 3. Paragraph 5.21.

⁵³ Core Document D1 - NPPF. Paragraph 176.

- AONBs are of international (as well as national) significance, being part of a world-wide family of protected areas recognised and classified by the International Union for the Conservation of Nature (IUCN).⁵⁴

7.2.7 Paragraph 177 – conclusion

7.2.7.1 As outlined above, we consider that the appellant has failed to adequately address the requirements of paragraph 177 with regards to the major development ‘tests’ set out in sub-paragraphs (a) to (c). We also consider that the appellant has failed to demonstrate that exceptional circumstances apply, or that, on balance, the development would be in the public interest.

7.2.7.2 On this basis, we agree with Cheltenham Borough Council’s conclusion that the proposed development would be contrary to paragraph 177.

7.2.8 Paragraphs 199, 200 and 202 (heritage assets)

7.2.8.1 As outlined earlier in this Closing Statement, we consider that the Oakley Farm development would have an adverse effect on the heritage assets of Hewlett’s Reservoir and on ridge and furrow. For this reason, we agree with Cheltenham Borough Council’s assertion that the proposed development would be contrary to the policies in Chapter 16 of the NPPF relating to heritage assets, particularly paragraphs 199, 200 and 202.

7.2.9 Paragraph 11 (tilted balance)

7.2.9.1 Where there is a shortfall in housing land supply, paragraph 11d of the NPPF sets a presumption in favour of granting planning permission (known as the ‘tilted balance’). However, as we noted in our Proof of Evidence, paragraph 11d also identifies a number of exemptions to this tilted balance, including (in paragraph 11d(i) and footnote 7 of the NPPF) where the application of policies in the NPPF that protect AONBs and designated heritage assets ‘provides a clear reason for refusing the development proposed’.⁵⁵ In effect, if these policies provide a clear reason for refusal then the development would not be sustainable.

7.2.9.2 In our Proof of Evidence, and during the inquiry, I referred to the ‘Monkhill’ High Court judgement, which concluded that:

- *The first part of paragraph 172 of the NPPF [i.e. what is now paragraph 176] qualifies as a policy to be applied under limb (i) of paragraph 11(d) of the NPPF; it is also capable of sustaining a freestanding reason for refusal in general development control in AONBs.*⁵⁶

7.2.9.3 It is important to note that this judgement states that the first part of paragraph 172 (i.e. what is now paragraph 176) ‘qualifies as a policy’ and that this first part is also capable of sustaining a freestanding reason for refusal, in this regard (N.B. Underlining added for emphasis). It is also worth noting that in the original appeal on which these judgements are

⁵⁴ <https://www.iucn.org/theme/protected-areas/about/protected-area-categories>

⁵⁵ Core Document C18 – A. Section 9.14.

⁵⁶ Core Document K27. Monkhill Ltd v Secretary of State for Housing Communities and Local Government 2019 EWHC 1993 (Admin). Paragraph 63. N.B. This conclusion was subsequently endorsed in a Court of Appeal judgement (Core Document K29. Paragraph 48).

based, it was already common ground that the second part of paragraph 172 (i.e. what is now paragraph 177) qualified as a policy falling within paragraph 11d(i) of the NPPF.⁵⁷

7.2.9.4 In other words, in my professional opinion, it *isn't* the case that one has to consider *all* of the AONB-related (or heritage-related) paragraphs, collectively, as one policy (as was asserted by Mr Tucker and Mr Hutchison during the inquiry). Instead, individual paragraphs of the NPPF, or even sentences within a paragraph, can be considered to be a policy in their own right.

7.2.9.5 We acknowledge that the Monkhill judgements were based on an appeal in which the proposed development was not classed as major development. However, it is worth noting that neither the High Court judgement nor the Court of Appeal judgement qualified the circumstances in which the conclusion of the High Court judgement, regarding paragraph 176, applies. For example, neither judgement indicated that the conclusion would be dis-applied if the proposed development was major development.

7.2.9.6 For this reason, we consider that the conclusion of the Monkhill High Court judgement is still applicable in the context of the proposed major development at Oakley Farm. In other words, we consider that paragraph 176 of the NPPF:

- qualifies as a policy, in its own right, to be applied under limb (i) of paragraph 11d(i); and
- is capable of sustaining a freestanding reasons for refusal.

7.2.9.7 Given the significance of the adverse effects that the Oakley Farm development would have on the landscape and scenic beauty of the AONB and the great weight that should be given to this issue, we consider that the application of paragraph 176 *does* provide a freestanding reason for refusal in this instance.

7.2.9.8 As noted earlier in this Closing Statement, in the context of paragraph 177 of the NPPF, we do not consider that exceptional circumstances apply or that the proposed development would be in the public interest. As such, we consider that the application of paragraph 177 *also* provides an *additional* freestanding reason for refusal in this instance (in line with Cheltenham Borough Council's putative reasons for refusal).

7.2.9.9 During the inquiry, Mr Hutchison acknowledged that paragraph 114 of the NPPF also related to AONBs. As such, given the significant adverse effects of the Oakley Farm scheme, it could be considered that the application of paragraph 114 also provides a freestanding reason for refusal in this instance.

7.2.9.10 As outlined above, we agree with Cheltenham Borough Council that the proposed development would not comply with the relevant, heritage-related policies of the NPPF (i.e. paragraphs 199, 200 and 202). The adverse effects on heritage assets provide *further* freestanding reasons for refusal.

⁵⁷ Core Document K27. Monkhill Ltd v Secretary of State for Housing Communities and Local Government 2019 EWHC 1993 (Admin). Paragraph 33.

7.2.9.11 As I outlined during the inquiry, the Monkhill High Court judgement refers to the way in which the cumulative application of these policies produces a clear reason for refusal.

7.2.9.12 For example, the High Court judgement quotes the Secretary of State's representative, Mr Moules, who states that where two or more footnote 6 (now footnote 7) policies may be engaged:

- *A decision maker is clearly entitled to treat the combined application of those policies as providing a 'clear reason' for refusing planning permission, even if the separate application of each policy would not provide freestanding reasons for refusal.*⁵⁸

7.2.9.13 This approach to the cumulative application of relevant policies was reflected later in the judgment, where Mr Justice Holgate stated that the presumption in favour of sustainable development is overcome *'where the individual or cumulative application of those policies produces a clear reason for refusal'*.⁵⁹

7.2.9.14 On this basis, we ask, Sir, that even if you don't consider the application of the individual policies / paragraphs / sub-paragraphs to provide a freestanding reason for refusal you still consider whether the policies *collectively* provide a clear reason for refusal.

7.2.9.15 Overall, we consider that the application of the AONB and heritage-related policies of the NPPF individually *does* provide freestanding reasons for refusal. We consider that the combined, or cumulative, application of these policies adds further weight to these reasons for refusal.

7.2.9.16 On this basis, Sir, we recommend that you should dis-apply the tilted balance.

7.3 Overall Planning Balance

7.3.1 As we stated in our Proof of Evidence, the decision as to whether the tilted balance should be dis-applied should be taken *before* a decision is reached on the overall planning balance.

7.3.2 This is partly because, as stated in the Monkhill High Court judgement:

- *Limb (i) [of paragraph 11d of the NPPF] is applied by taking into account only those factors which fall within the ambit of the relevant 'Footnote 6' policies. Development plan policies and other policies of the NPPF are not to be taken into account in the application of limb (i).*⁶⁰

7.3.3 As such, the decision regarding the overall planning balance takes into account a wider range of considerations than the preceding step of deciding whether the tilted balance should be dis-applied.

⁵⁸ Core Document K27. Monkhill Ltd v Secretary of State for Housing Communities and Local Government 2019 EWHC 1993 (Admin). Paragraph 30.

⁵⁹ Core Document K27. Monkhill Ltd v Secretary of State for Housing Communities and Local Government 2019 EWHC 1993 (Admin). Paragraph 39, sub-paragraph (7). This was one of 15 points that Mr Justice Holgate set out on the meaning and effect of paragraph 11 of the NPPF.

⁶⁰ Core Document K27. Monkhill Ltd v Secretary of State for Housing Communities and Local Government 2019 EWHC 1993 (Admin). Paragraph 39, sub-paragraph (11). This was one of 15 points that Mr Justice Holgate set out on the meaning and effect of paragraph 11 of the NPPF. We quoted sub-paragraph (11) in our Proof of Evidence (Core Document C18 – A).

- 7.3.4 As outlined above, we consider that the tilted balance *should* be dis-applied. In other words, there should be no presumption in favour of granting planning permission. However, the great weight that is given to conserving and enhancing the landscape and scenic beauty of AONBs (and the highest level of protection that they have in this regard) should still apply.
- 7.3.5 Even if the tilted balance is not dis-applied there may still be other national or local planning policy reasons for dismissing the appeal.
- 7.3.6 As outlined earlier in this Closing Statement, we consider that the proposed development would have a significant adverse effect on the natural beauty of the Cotswolds AONB, including its landscape and scenic beauty. It would also adversely affect the heritage assets of the adjacent Hewlett’s Reservoir (particularly the setting of the Grade II listed pavilion) and the ridge and furrow field patterns which are a special quality of the AONB.
- 7.3.7 We recognise that the provision of 250 dwellings would provide some beneficial social and economic effects, including helping to reduce the housing shortfall in Cheltenham Borough. We also recognise that there would be some beneficial effects for recreation, in terms of providing public access to a site that currently doesn’t have any such access.
- 7.3.8 However, we consider that these beneficial effects are far outweighed by the adverse effects that we have identified and by the beneficial effects of retaining the site as an un-eroded headland of natural beauty.
- 7.3.9 In terms of the potential recreational benefits, these would be offset, to a large degree, by the additional recreational pressure that the development would put on the AONB in this locality and by the adverse visual effects of the scheme for users of the Cotswolds Way National Trail and other public rights of way and access land. They would also be limited by the steep gradient of the site which would limit access.
- 7.3.10 As we noted in our Proof of Evidence, where a development would result in a net beneficial effect for recreation but a net adverse effect for the natural beauty of the AONB, greater weight should be given to the adverse effect on natural beauty.⁶¹
- 7.3.11 Perhaps the most crucial consideration is that, for a major development proposal, it is not simply a matter of weighing all of the considerations in a balance but to refuse planning permission other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest. As indicated in this Closing Statement, we do not consider that such circumstances apply in this case.
- 7.3.12 Sir, based on all of the points outlined in the Closing Statement and in our earlier evidence (including our Proof of Evidence), we recommend that you should dismiss this planning appeal and, in effect, refuse planning permission.

8.0 CONCLUSION

- 8.1 In conclusion, I would like to quickly recap on the following key points:
- a) the Oakley Farm site is a headland of un-eroded natural beauty which is visually, functionally and ecologically contiguous with the rest of the AONB;
 - b) the Oakley farm site currently merits its AONB status;

⁶¹ Core Document C18-A. Section 9.9.

- c) the proposed major development of 250 dwellings would have significant adverse effects on the natural beauty of the Cotswolds AONB, including its landscape and scenic beauty and special qualities;
- d) the proposed development would have adverse effects on the designated heritage assets at Hewlett's Reservoir, particularly the setting of the Grade II listed pavilion, and would result in the loss of a sizeable area of medieval 'ridge and furrow';
- e) if the development is permitted, the site would no longer merit its AONB status and the site would, in effect, become an urban extension of Cheltenham;
- f) the development would be contrary to national and local planning policy and guidance;
- g) we would question whether an outline planning application for major development in an AONB is appropriate, both in principle and specifically in relation to the Oakley Farm proposal, as there is insufficient binding detail to demonstrate compliance with the requirements of the National Planning Policy Framework (NPPF);
- h) the appellant has failed to adequately address the major development 'tests' specified in paragraph 177 of the NPPF;
- i) exceptional circumstances do not apply and the development would not be in the public interest;
- j) the application of the AONB and heritage related policies of the NPPF provide clear reasons for refusal, both individually and collectively;
- k) the tilted balance, in favour of granting planning permission, should be dis-applied;
- l) the adverse effects of the development, combined with the benefits of keeping the site undeveloped, outweigh the potential benefits of providing 250 dwellings, particularly when great weight is given to conserving and enhancing the landscape and scenic beauty of the AONB and conserving the designated heritage assets at Hewlett's Reservoir;
- m) the appeal should be dismissed and planning permission refused.

APPENDIX 1. The issues of relevance to the Board that have been addressed in the Oakley Farm planning appeal inquiry

Topic	Main Issues Identified by the Planning Inspector	Cheltenham Borough Council's Reasons for Refusal (Summary)	Appellant's Main Issues
Landscape matters.	2: The effect on the landscape, including the AONB.	2: Major development within Cotswolds AONB – would fail to conserve and enhance landscape and scenic beauty; would result in significant harm; mitigation measures inadequate; fails to demonstrate the required exceptional circumstances or public interest.	3: Whether there are exceptional circumstances which justify major development within the AONB and whether it would be in the public interest.
Heritage matters.	4: The effect on heritage assets.	4: Would have an unacceptable harmful impact on the setting of the heritage assets within Hewlett's Reservoir.	<i>Not identified as a main issue by the appellant.</i>
Housing land supply.	1: Whether the site should be developed, having regard to development plan policy regarding development on unallocated sites outside the principal urban area of Cheltenham (this will involve a discussion of housing land supply). 5: The need to provide affordable housing.	1: Doesn't meet the strategy for distribution of new development and is not an appropriate location. 5: Does not adequately provide for affordable housing requirements, schemes/strategies for play space provision and site management maintenance. 2: Major development within Cotswolds AONB – fails to demonstrate the required exceptional circumstances or public interest.	1: Housing Land Supply. 2: The Principle of Development. 3: Whether there are exceptional circumstances which justify major development within the AONB and whether it would be in the public interest.
Affordable housing.	1: Whether the site should be developed, having regard to development plan policy regarding development on unallocated sites outside the principal urban area of Cheltenham (this will involve a discussion of housing land supply). 5: The need to provide affordable housing.	1: Doesn't meet the strategy for distribution of new development and is not an appropriate location. 5: Doesn't adequately provide for affordable housing requirements, schemes/strategies for play space provision and site management maintenance. 2: Major development within Cotswolds AONB – fails to demonstrate the required exceptional circumstances or public interest.	1: Housing Land Supply. 2: The Principle of Development. 3: Whether there are exceptional circumstances which justify major development within the AONB and whether it would be in the public interest.
Highway safety matters.	3: The effect on highway safety. 7: The requirement /mechanism for securing highway improvement	3: Would result in a severe impact on the highway network and fail to provide a safe and suitable access for all users. 7: No agreement has been completed to secure the provision of necessary	4: Traffic and Transportation.

Topic	Main Issues Identified by the Planning Inspector	Cheltenham Borough Council's Reasons for Refusal (Summary)	Appellant's Main Issues
	works/a residential travel plan.	highway improvements works and the funding and implementation of the Residential Travel Plan.	
Planning policy and planning balance.	1: Whether the site should be developed, having regard to development plan policy regarding development on unallocated sites outside the principal urban area of Cheltenham (this will involve a discussion of housing land supply).	1: Doesn't meet the strategy for distribution of new development and is not an appropriate location. 2: Major development within Cotswolds AONB – fails to demonstrate the required exceptional circumstances or public interest.	2: The Principle of Development. 3: Whether there are exceptional circumstances which justify major development within the AONB and whether it would be in the public interest.