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Tewkesbury Borough Council
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Tewkesbury
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By email only to: victoria.stone@teewkesbury.gov.uk

9 February 2022

Dear Victoria,

APPLICATION NO: 21/01286/OUT

DESCRIPTION: Residential development comprising up to 57 dwellings (50% will be affordable housing, 10% self/custom build) and associated engineering works. All matters are reserved except for vehicular access

LOCATION: Land South Of Badgeworth Lane And West Of Shurdington Road, Shurdington, Cheltenham

Thank you for consulting the Cotswolds Conservation Board ('the Board') on this proposed development, which would be located in the setting of the Cotswolds National Landscape.¹

The Board acknowledges both the current shortfall in the provision of market and affordable housing in Tewkesbury Borough and that the Borough is relatively constrained in terms of suitable areas for new housing, not least due to landscape and Green Belt designations. The Board also supports the provision of housing, including market, affordable and self-build, when it is delivered in a way that is compatible with the purpose of conserving and enhancing the natural beauty of the Cotswolds National Landscape.

However, after having reviewed the information submitted by the applicant, the Board wishes to make a **holding objection** to this application as we consider that the potential impacts of the proposal on the Cotswolds National Landscape have not been adequately assessed. As explained in the Annex accompanying this response, this objection therefore requests further information and clarification to be submitted by the applicant to allow the Board to fully assess any potential adverse impacts of the proposal, particularly in views to and from the Cotswold escarpment, which are one of the 'special qualities' of the Cotswolds National Landscape, those being the features of the AONB that makes the area so outstanding that it is in the nation's interest to safeguard it.

In particular, the Board would request that the applicant provides further information relating to the following:

- The Board requests that the applicant provides visualisations of the development such as photomontages or wireframes from a representative number of viewpoints outlined in their Landscape and Visual Appraisal (LVA, Tyler Grange, October 2021), in particular photoviewpoints 3, 4 and 5;

Cotswolds Conservation Board

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The Cotswolds National Landscape is a designated Area of Outstanding Natural Beauty (AONB), managed and looked after by the Cotswolds Conservation Board.

cotswoldsaonb.org.uk

Chairman:
Brendan McCarthy
Vice Chair:
Rebecca Charley

- A response to the Board's observations that the applicant's submission potentially downplays the status of the Cotswolds AONB and the potential adverse landscape and visual impacts on the AONB of this development located within its setting; and
- An assessment of the cumulative highways impacts in relation to the tranquillity of the AONB. This would include the proposed development and other proposals that have been recently consented, are the subject of applications currently awaiting determination or are sites allocated within Development Plan Documents.

The Board will be happy to provide a definitive opinion on likely effects once this information has been submitted by the applicant.

Please don't hesitate to contact me if you wish to discuss this response further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Joyce', with a small dot at the end.

Simon Joyce

Planning Officer

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ANNEX 1 COTSWOLDS NATIONAL LANDSCAPE CONSULTATION RESPONSE IN RELATION TO PLANNING APPLICATION 21/01286/OUT

Planning Policy Background

In reaching its planning decision, the local planning authority (LPA) has a statutory duty to have regard to the purpose of conserving and enhancing the natural beauty of the National Landscape.² The Board recommends that, in fulfilling this ‘duty of regard’, the LPA should: (i) ensure that planning decisions are consistent with relevant national and local planning policy and guidance; and (ii) take into account the following Board publications:

- Cotswolds Area of Outstanding Natural Beauty (AONB) Management Plan 2018-2023 ([link](#));
- Cotswolds AONB Landscape Character Assessment ([link](#)) particularly, in this instance, with regards to Landscape Character Types (LCTs) 18 Settled Unwooded Vale, 2 Escarpment and 7 High Wold;
- Cotswolds AONB Landscape Strategy and Guidelines ([link](#)) particularly, in this instance, with regards to LCT 18 ([link](#)), including Sections 18.1, LCT 2 ([link](#)) including Section 2.1 and LCT 7 ([link](#)) including Section 7.1;
- Cotswolds AONB Local Distinctiveness and Landscape Change ([link](#));
- Cotswolds Conservation Board Position Statements ([link](#)) particularly, in this instance, with regards to Housing Position Statement ([link](#)), Development in the Setting of the AONB ([link](#)), Tranquillity ([link](#)) and Landscape-Led Development ([link](#)).

As far as adopted Development Plan policy relating to landscape issues is concerned, Policy SD6 of the Cheltenham, Gloucester and Tewkesbury Joint Core Strategy (JCS, 2017) requires development to seek to protect landscape character for its own intrinsic beauty and for its benefit to economic, environmental, and social well-being. This reflects advice in the National Planning Policy Framework that requires policies and decisions to recognise the intrinsic character and beauty of the countryside.

JCS Policy SD7 further requires 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. Proposals are also be required to be consistent with the policies set out in the Cotswolds AONB Management Plan.

The Cotswolds AONB Management Plan 2018-2023, which is a material consideration in planning decision making, identifies the Cotswold escarpment, including views from and to the AONB, as being one of the AONB’s ‘special qualities’. The special qualities of the AONB are those aspects of the area’s natural beauty which make the area distinctive and which are valuable, especially at a national level. They are also the key attributes on which the priorities for the AONB’s conservation, enhancement and management should be based.

CAONB Management Plan Policy CE1 states that proposals that are likely to impact on, or create change in, the landscape of the Cotswolds AONB, should have regard to, be compatible with and reinforce the landscape character of the location, as described by the Board’s Landscape Character Assessment and Landscape Strategy and Guidelines. They should have regard to the scenic quality of the location and its setting and ensure that views – including those into and out of the AONB – and visual amenity are conserved and enhanced.

The Council's Assessment of Site Allocation Impacts on the Setting of the Cotswolds AONB (Toby Jones Associates, April 2019) provides an analysis of the site in respect to the setting of the AONB and the Board's Landscape Strategies and Guidelines. The Board notes that based upon an analysis of the site in views from Crickley Hill, Shurdington Hill and Devil's Chimney, the document concludes that development of the site would be consistent with the policies set out in the CAONB Management Plan but is clear that mitigation such as choice of materials and to address light pollution are important to minimise visual intrusion and assimilate the development.

Notwithstanding the above, given the site lies directly opposite the boundary of the Cotswolds AONB, it is disappointing that neither the applicant's LVIA nor Planning Statement make any mention of paragraph 176 of the National Planning Policy Framework (NPPF). This outlines the 'great weight' to be given to the conservation and enhancement of the landscape and scenic beauty of AONBs. This 'great weight' is relevant in this instance as the site forms part of the AONB's setting and its development could, to some degree, potentially have an adverse impact on its landscape and visual character and quality.

Furthermore, the requirement that development within the setting of AONBs *"should be sensitively located and designed to avoid and minimise adverse impacts on the designated areas"* was also added into paragraph 176 with the publication of the current NPPF in July 2021. The fact that this key paragraph of national planning policy relating to AONBs and the 'great weight' required to be given to their protection is omitted from the submission leads the Board to come to the view that the applicant seeks to underplay the status of the AONB and the proposal's likely impacts upon it. Any adverse effects on the AONB need to be assessed properly and fully taken into account when determining this application, with the appropriate weighting applied.

The Board's Position Statement on Development in the Setting of the AONB referred to above outlines how the surroundings of the Cotswolds National Landscape are important to its landscape character and quality. Development proposals that affect views into and out of the AONB need to be carefully assessed to ensure that they conserve and enhance the natural beauty and landscape character of the AONB.

National Planning Policy Guidance (NPPG, 2014) also confirms in relation to the Section 85 duty² that *"The duty is relevant in considering development proposals that are situated outside National Park or Area of Outstanding Natural Beauty boundaries, but which might have an impact on the setting of, and implementation of, the statutory purposes of these protected areas."*

A High Court decision (*Stroud District Council v Secretary of State for Communities and Local Government (Gladman Development Ltd) February 2015*) helps confirm the application of what is now paragraph 176 of the NPPF as far as 'great weight' is concerned. Mr Justice Ouseley stated in this case that paragraph 115 (now paragraph 176) of the NPPF *"certainly covers the impact on the scenic beauty of the land actually within the AONB. It seems to me that it would be unduly restrictive to say that it could not cover the impact of land viewed in conjunction with the AONB from the AONB. But to go so far as to say that it must also cover land from which the AONB can be seen and great weight must be given to the conservation of beauty in the AONB by reference to that impact reads too much into paragraph 115."*

The above decision helps to clarify that there are differing ways of assessing impacts on the setting of the AONB which require the application of different policies and guidance: (i) harm directly to land in the designated AONB itself from views out of the AONB and between parts of the AONB towards new development in its setting (where Paragraph 176 of the NPPF is relevant) and: (ii) as a separate material consideration, harm to land outside the designated AONB, for example views of new development in the context or backdrop of the AONB (where paragraph 176 is not relevant).

Impact of views back towards the AONB, from outside the AONB, may be a separate material consideration and subject to separate policy and guidance, for example paragraph 174 of the NPPF also states that planning decisions should contribute to and enhance the natural environment by protecting and enhancing valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan.

This approach is supported by recent appeal decisions in Tewkesbury Borough, notably Land off Ashmead Drive, Gotherington (appeal ref. APP/G1630/W/20/3256319) where the Inspector states at paragraph 28 of her decision letter that *“Having regard to case law presented, along with the Planning Practice Guidance, in my view, although the proposal is outside the AONB, the effect on views out of the AONB, gained from within the AONB would result in paragraph 172 [now paragraph 176] being relevant”*.

The applicant’s Planning Statement also features a discussion of ‘major development’, paragraphs 7.62 to 7.64 featuring text copied from CAONB Management Plan Policy CE11 and the supporting Appendix 9. For avoidance of doubt, Policy CE11 does not seek to apply a blanket definition of ‘major development’ though it is the Board’s view that this proposal for up to 57 dwellings and associated works on a greenfield, Green Belt site adjacent to an AONB clearly constitutes ‘major development’ in NPPF footnote 60 terms and Policy CE11 is a material consideration. As the site lies within the setting of the AONB, NPPF paragraph 177 is clearly not relevant, though the requirement at paragraph 176 that the development *“should be sensitively located and designed to avoid and minimise adverse impacts on the designated areas”* is relevant.

Landscape and Visual Impact

The site of the proposed development is located directly adjacent to the boundary of the Cotswolds National Landscape and therefore lies within the setting of the AONB. It is visible from multiple viewpoints within the AONB from Public Rights of Way, access land and local roads, including the key viewpoints of Crickley Hill, Shurdington Hill and Devil’s Chimney/Leckhampton Hill. These Public Rights of Way include the nationally significant Cotswold Way National Trail and the regionally important Cheltenham Circular Footpath and Gloucestershire Way.

The Board acknowledges that the proposal, when viewed from the Cotswolds escarpment, would to some extent be viewed as part of a wider panorama. We also recognise that the site is located adjacent to the current village edge, although we would agree with the opinion of the Tewkesbury Local Plan Inspector expressed at paragraph 10 of his Interim Letter to the Council (dated 16 June 2021) following the Local Plan examination hearings that the site has a rural character and Badgeworth Lane forms a strong southern boundary to the village that this development would breach.

Notwithstanding the above, having reviewed the applicant’s LVA, the Board considers that its assessment potentially could underestimate adverse landscape and visual impacts of the proposal on the Cotswolds AONB, which rather than lying ‘in relatively close proximity’ to the site (LVA, paragraph 4.40) is located immediately adjacent on the opposite side of Shurdington Road. Our specific comments and observations in relation to the LVA are as follows:

- There is no mention or consideration of the Cotswolds AONB Landscape Strategy and Guidelines. The site is located in close proximity to three separate Landscape Character Types (LCTs), referred to above, however only one is mentioned in the LVA, this being Settled Unwooded Vale, though in reference to the Landscape Character Assessment for Gloucestershire. These LCTs reflect a number of the ‘special qualities’ for which the Cotswolds are designated as an AONB and are those aspects of the area’s natural beauty

which make it in the nation's interest to safeguard them. These include the views to and from the escarpment. The Cotswolds AONB Landscape Strategy and Guidelines (LS&G) for LCTs 18, 2 and 7 highlight a number of potential adverse landscape implications relating to this development, in particular:

- Erosion of the rural setting of the AONB (Section 18.1, Section 2.1);
 - Loss of landscapes that contribute to the setting of towns and villages (Section 18.1);
 - Intrusion of expanded settlement fringes including urban fringe into the landscape including within the setting of the AONB (Section 18.1, Section 7.1);
 - Degradation of views from and to the Cotswolds Scarp (Section 18.1, Section 2.1);
- As outlined above, the landscape planning policy section makes no mention of NPPF paragraph 176, the great weight to be given to the conservation and enhancement of the landscape and scenic beauty of AONBs or the NPPF's requirements relating to development within the setting of AONBs and provides no assessment of the scheme in relation to these key policy requirements.
 - No demarcation of the site is shown in photoviewpoint 3 from the Devil's Chimney.
 - No visualisations of the proposal such as photomontages or wireframes have been provided within the LVA. Whilst we recognise that the application is being made in outline form with matters of detailed layout and landscaping reserved, it is noted that the applicant's masterplanners have developed 3D perspective views of the indicative layout and included them in the submission. These could be used to generate photomontages or wireframes which would aid in the assessment of the potential impacts of the scheme from viewpoints rather than just rely on panorama photographs which only show the baseline conditions.
 - The LVA (and the applicant's Planning Statement) rely heavily upon the conclusions of the Council's Assessment of Site Allocation Impacts on the Setting of the Cotswolds AONB. This document only considers the visual impact of the site from three (albeit important) viewpoints. There are multiple Public Rights of Way (including the Cotswold Way, Gloucestershire Way, Cheltenham Circular Footpath and areas of common land / access land) where the view could potentially be affected by the development. The LVA should therefore give greater consideration to any potential cumulative effects.
 - The LVA states at paragraph 4.7 that only a small part of the LCTs would be affected and that therefore the scale and potential impact of the proposed development are not significant. The Board's position is that it is not appropriate to compare the extent of the effect with the size of the whole LCT in an attempt to downplay its potential impact, as taking this approach would completely undermine the national planning policies that are put in place to protect, conserve and enhance the natural beauty of AONBs. This position is expanded upon in Appendix 2 of the Board's Landscape-Led Development Position Statement, referenced above.
 - The LVA concludes that the overall level of effect on both landscape character and the landscape receptors, including those within the AONB which would have a 'high' sensitivity (using the LVA's three-point Low-High scale) will be 'neutral', defined as 'the development would create neither an adverse or beneficial change to the ... receptor'. The Board wishes to reserve judgment on this point pending the provision of the further visualisations requested above.

Tranquillity

Tranquillity is another of the 'special qualities' of the Cotswolds National Landscape. In other words, it is one of the features of the Cotswolds that makes the area so outstanding that it is in the nation's interest to safeguard it. The Cotswolds National Landscape has relatively high levels of tranquillity, especially when compared with the surrounding urban areas. However, there is a serious risk that the

tranquillity of the AONB could decline as a result of increasing levels of development, infrastructure, traffic and visitor numbers.

The Board's Tranquillity Position Statement referenced above recommends that proposals that have the potential to impact on the tranquillity of the AONB accord with Policy CE4 of the Cotswolds AONB Management Plan 2018-2023, give great weight to conserving and enhancing the tranquillity of the AONB and assess potential impacts on tranquillity, particularly with regards to noise, vehicle movements and landscape and visual impacts. Cumulative impacts on tranquillity should also be taken into consideration in such assessments and with regard to the impact of the proposed development combined with other existing or proposed developments.

Section 4.5 of the Tranquillity Position Statement outlines how The Institute of Environmental Assessment's 'Guidelines for the Environmental Assessment of Road Traffic' recommends using two 'rules of thumb' for identifying the scale at which increases in traffic movements should be considered in an Environmental Impact Assessment (EIA):

- Rule 1: Where traffic flows will increase by more than 30% (or the number of heavy goods vehicles (HGVs) will increase by more than 30%).
- Rule 2: Any other sensitive areas where traffic flows have increased by 10% or more.

AONBs are specifically identified as 'sensitive areas' in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. As such, Rule 2 should be applied in the Cotswolds AONB and should relate to both traffic flows. On this basis, it can be argued that an increase in traffic flows of more than 10% from a development proposal or in combination with other proposals is likely to be significant and have an adverse impact on the tranquillity of the Cotswolds AONB.

However, the Transport Assessment submitted in support of the application does not consider the potential impact of traffic generated by the development on the AONB and its tranquillity especially in relation to the cumulative impact of this and the other developments recently consented or allocated in close proximity to the A46, both within Tewkesbury and Cheltenham Boroughs.

Other matters

In addition to its location adjacent to the AONB boundary, the site is located within the Green Belt. The Board agrees with the applicant that, in terms of paragraphs 147 to 149 of the NPPF, the proposal constitutes inappropriate development within the Green Belt and as such, a demonstration of 'very special circumstances' is required. The Board also notes that the site was included as a draft allocation (SHU1) in the Tewkesbury Local Plan, which is currently at an advanced stage in its preparation, until the Local Plan Inspector requested its removal in his letter (dated 16 June 2021) following the examination hearings. He was not convinced that the 'exceptional circumstances' existed to justify the removal of the site from the Green Belt and that the Borough's identified development needs can be better met elsewhere, including through the allocation of two alternative sites in Shurdington (sites SHU2 and SHU3).

Whilst the Board does not wish to comment further on the status of the site in relation to its Green Belt status, we would wish to make two observations. Firstly, it is recognised that the demonstration of 'very special circumstances' to justify inappropriate development in the Green Belt is a more onerous and demanding test than the 'exceptional circumstances' required for a site to be removed from the Green Belt through a Local Plan⁴ and that the examiner concluded such 'exceptional circumstances' did not exist eight months ago. This first point leads to our second observation regarding the proposed allocations in the Tewkesbury Local Plan; from the perspective of minimising any adverse impacts on the AONB in line with paragraph 176 of the NPPF, we consider that the

development of sites SHU2 and SHU3 would likely better conserve and enhance the landscape and scenic beauty of the Cotswolds National Landscape.

NOTES:

- 1) Cotswolds National Landscape is the new name for the Cotswolds Areas of Outstanding Natural Beauty (AONB). The new name takes forward one of the proposals of the Government-commissioned 'Landscapes Review' to rename AONBs as 'National Landscapes'. This change reflects the national importance of AONBs and the fact that they are safeguarded, in the national interest, for nature, people, business and culture.
- 2) Section 85 of the Countryside and Rights of Way Act 2000.
www.legislation.gov.uk/ukpga/2000/37/section/85
- 3) The documents referred to in our response can be located on the Cotswolds National Landscape website under the following sections
 - a. Cotswolds Area of Outstanding Natural Beauty (AONB) Management Plan 2018-2023
www.cotswoldsaonb.org.uk/management-plan
 - b. Cotswolds AONB Landscape Character Assessment
www.cotswoldsaonb.org.uk/lca
 - c. Cotswolds AONB Landscape Strategy and Guidelines
www.cotswoldsaonb.org.uk/lsg
 - d. Cotswolds AONB Local Distinctiveness and Landscape Change
www.cotswoldsaonb.org.uk/ldlc
 - e. Cotswolds Conservation Board Position Statements
www.cotswoldsaonb.org.uk/ps1
www.cotswoldsaonb.org.uk/ps2
- 4) R (on the application of Luton Borough Council) v. Central Bedfordshire Council [2015] EWCA Civ 537; Compton Parish Council v. Guildford Borough Council [2019] EWHC 3242 (Admin)