



Department for  
Communities and  
Local Government

Our ref: APP/P1615/A/14/2218921RD

Paul Fong  
Hunter Page Planning  
Thornbury House  
18 High Street  
Cheltenham  
Gloucestershire  
GL50 1DZ

07 November 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY ALLASTON DEVELOPMENTS LTD  
LAND OFF DRIFFIELD ROAD, ALLASTON ROAD AND COURT ROAD, LYDNEY,  
GLOUCESTERSHIRE  
APPLICATION REF: P1284/13/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David M H Rose BA (Hons) MRTPI, who held a public local inquiry on 25 April 2017 which was adjourned and resumed on 4 May 2017 and sat for 2 days into your client's appeal against the decision of Forest of Dean District Council to refuse planning permission for the delivery of up to 200 dwellings, including up to 20 serviced self-build plots and up to 37 retirement apartments, community building (up to 2,000 sq ft) comprising flexible A1/D2 ancillary space and new public open space, in accordance with application ref: P1284/13/OUT, dated 22 August 2013.
2. On 18 November 2014, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.
3. The Secretary of State initially issued his decision in respect of the above appeal by way of his letter dated 21 December 2015. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 9 June 2016. The appeal has therefore been re-determined by the Secretary of State, following a re-opened inquiry into this matter. Details of the original inquiry are set out in the 21 December 2015 decision letter.

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

4. The Inspector recommended that the appeal be allowed and outline planning permission be granted.

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5. For the reasons given below, the Secretary of State agrees with Inspector Rose's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal and grant planning permission. A copy of Inspector Rose's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural matters**

6. The Secretary of State notes that a revised illustrative masterplan rev B was submitted during the course of the original inquiry (IR1.11). As confirmed previously in his decision dated 21 December 2015, the Secretary of State has determined this appeal on the basis of the revised illustrative masterplan rev B (IR1.15).
7. The appellant and Stop Allaston Developments (SAD) agreed that the previous Inspector's report for the first inquiry remained germane in the reporting of the case save for any necessary corrections or clarification and updated evidence prepared for the reopened inquiry. Like the Inspector, the Secretary of State has adopted paragraphs 19 to 156 inclusive of the previous report by Inspector Pope (IR1.20), which is enclosed to this letter.
8. The Secretary of State notes the revised description of the development and has determined the appeal on the basis of this revised description (IR1.43).

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

9. The Secretary of State has had regard to correspondence submitted to him after the Inquiry, as set out in Annex A to this letter. He has carefully considered and taken into account these representations but he does not consider that they raise new planning issues that would affect his decision or require him to refer back to parties. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

### **Policy and statutory considerations**

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the Core Strategy (CS) 2012, the saved policies within the Forest of Dean Local Plan Review (2005) which were not replaced by the CS; and the Lydney Neighbourhood Development Plan (NP) 2016. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR1.22-1.23.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'); Planning Practice Guidance on Self-build and custom housebuilding (April 2016); and the Written Ministerial Statement on Neighbourhood Planning (made on 12 December 2016).

*Emerging plan*

13. The emerging plan comprises the Forest of Dean Allocations Plan (AP). Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State notes that the Main Modifications to the AP are open to public consultation from 23 October 2017 to 18 December 2017. The Secretary of State considers that the AP is still at a relatively early stage, that there are significant unresolved objections to relevant policies in the AP and that, at this stage, the relevant policies in the emerging AP do not appear to contain obvious inconsistencies with the Framework. Overall, the Secretary of State considers that the AP carries limited weight.

**Main issues**

14. The Secretary of State agrees with the Inspector that the main issues are those set out at IR6.3.

*The development plan*

15. The Secretary of State has given careful consideration to the Inspector's analysis of the development plan at IR6.14-6.34. For the reasons given at IR6.15-6.23, the Secretary of State agrees with the Inspector that the proposal would be in conflict with CS policies CSP.1, which deals with environmental protection; CSP.4 which deals with development at settlements and settlement boundaries; CSP.5 which sets out the number of new homes to be built in various settlements by 2026; and CSP.12 which includes a new residential neighbourhood at land East of Lydney. The Secretary of State therefore agrees with the Inspector at IR6.24 that the proposal would be in conflict with the CS when read as a whole.

16. For the reasons given at IR6.25, the Secretary of State agrees with the Inspector that the proposal would be in conflict with Policies LYD ENV1 and LYD ENV2 in the NP, which deal with the location of development and environmental protection respectively. Overall, the Secretary of State further agrees with the Inspector at IR6.29 that the proposal is in conflict with the NP when read as a whole.

17. The Secretary of State agrees with the Inspector at IR6.30 that the Council cannot demonstrate a five-year supply of housing land and that the uncontested position is of a supply of less than three years. Therefore he agrees with the Inspector that this renders the relevant policies for the supply of housing in both the CS and the NP out of date.

18. For the reasons given at IR6.33, the Secretary of State agrees with the Inspector at IR6.33 that NP policy LYD ENV2 should not be regarded as out of date and remains capable of attracting full weight.

*Paragraph 109 of the Framework – valued landscape*

19. For the reasons given at IR6.35-6.42, the Secretary of State agrees with the Inspector's conclusion at IR6.43 that the appeal site is not regarded to be a valued landscape within paragraph 109 of the Framework; and the tilted balance of paragraph 14 remains intact.

*The effect of the proposal on the character and appearance of the area*

20. The Secretary of State has given careful consideration to the Inspector's analysis at IR6.44-6.51 of the effect of the proposal on the character and appearance of the area. He agrees with the Inspector at IR6.48 that the arrangement of the site, in pockets of development, would minimise the impact on the character of the area, both by containment and by scale. He also agrees that, while the physical characteristics of the site would be transformed, such change would not cause significant harm to the key characteristics of the Allaston Ridge Landscape Character Area and the character of the area as a whole. He agrees with the Inspector at IR6.50 that the visual amenity of the rights of way would suffer significant harm, by the closer presence of buildings, by being set within managed grounds, and through the material diminution of views. However, for the reasons given at IR6.51 he agrees that this harm would merit moderate weight in the planning balance.

*Traffic conditions, travel by car and highway safety*

21. The Secretary of State has given careful consideration to the Inspector's analysis at IR6.52-6.63 of traffic conditions, travel by car and highway safety. He notes at IR6.58 that the highway authority and the local planning authority are content with the sustainability credentials of the scheme. Like the Inspector at IR6.62, the Secretary of State recognises the limitations on immediately available public transport. However, he agrees with the Inspector that Lydney is to be favoured as a sustainable location for housing growth and there is no evidence of a better placed site to deliver the additional housing numbers that the district requires. He also agrees (IR6.63) that there would be no material conflict with NP policy LYD TRAN1.

*Benefits and delivery*

22. For the reasons given at IR6.64-6.76, the Secretary of State agrees with the Inspector at IR6.76 that the grant of planning permission would offer a worthwhile contribution to boosting the supply of housing; a significantly greater choice; and a boost to the local economy.

23. For the reasons given at IR6.67-6.69, IR6.84-6.88 and IR6.99-6.100, the Secretary of State agrees with the Inspector that the overall ethos of the Local Approach, and the opportunities which that would provide, is a strong material consideration (IR6.99). He considers that the benefits to be secured through the Local Approach carry moderate weight. In reaching this conclusion, he has not given any weight to the Housing White Paper, given that the relevant proposals are at an early stage. He agrees with the Inspector at IR6.100, that even if the benefits of the Local Approach are not taken into account, the pressing need for the delivery of new homes, and in particular those which would be affordable, would continue to provide strong justification for the development of the appeal site.

24. For the reasons given at IR6.64-6.67, the Secretary of State agrees with the Inspector at IR6.77 that there is nothing of material substance relating to delivery which would justify the refusal of planning permission.

**Planning conditions**

25. The Secretary of State has given careful consideration to the Inspector's analysis at IR5.1-5.5 and IR6.78-6.81, the recommended conditions set out at the end of the IR and

the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex B should form part of his decision.

### **Planning obligations**

26. Having had regard to the Inspector's analysis at IR5.6-5.13 and IR6.82-6.90, the planning obligations with Gloucestershire County Council, dated 18 November 2014 and Forest of Dean District Council, dated 5 February 2015 and the unilateral undertaking, dated 5 February 2015, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given that these obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.
27. The Secretary of State notes that Inspector Pope found the unilateral undertaking not to be necessary to make the proposal acceptable in planning terms (IR6.83). However, he notes that house building in Lydney has a history of being stalled (IR6.64) and agrees with Inspector Rose that the Local Approach document could address this as it provides confidence of a well thought out proposition between two landowners, both of whom have considerable experience of delivering development (IR6.68). He further agrees with Inspector Rose at IR6.87 that given the manner in which the housing market has operated in Lydney, under the control of major builders with little output and seemingly little optimism, there is justification to conclude that an entirely different approach is necessary to maximise the potential for housebuilding, avoid direct competition with stalled sites and to make this development acceptable in planning terms. For the reasons given at IR6.88, the Secretary of State agrees with the Inspector that the use of local labour and local procurement would be necessary to make the development acceptable in planning terms. He further agrees that there would be a direct relationship with the project; and the identified percentages would be fairly and reasonably related in scale and kind. For the reasons given at IR6.89, the Secretary of State agrees with the Inspector that the provision of a community building meets the relevant policy and statutory tests. He further agrees with the Inspector at IR6.90 that the founding of a development framework and a means of ensuring services to the self-build plots would be an essential pre-condition to this element of development; and this obligation also meets the relevant policy and statutory tests. Overall, the Secretary of State therefore concludes, in agreement with the planning judgment of Inspector Rose that the unilateral undertaking complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework. For avoidance of doubt, even if the Secretary of State had concluded that the unilateral undertaking does not comply with the relevant tests, he considers that planning permission should still be granted for the reasons set out in the IR and this letter.

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

28. For the reasons given above, the Secretary of State considers that the proposal is not in accordance with CS policies CSP.1, CSP.4, CSP.5 and CSP.12 and NP policies LYD ENV1 and LYD ENV2 of the development plan, and is not in accordance with the development plan overall. However, as set out above, the Secretary of State considers that these policies are out of date, and given the significant housing shortfall, he gives them limited weight. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

29. In the absence of a 5-year supply of housing land, paragraph 14 of the Framework states that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted.
30. The Secretary of State considers that the harm to the character and appearance of the area, with particular reference to the loss of open countryside and the amenity of public footpaths carries moderate weight. He considers that harm to traffic conditions and harm to air quality carry limited weight.
31. He considers that the likely car usage is neutral in the planning balance.
32. He considers that the provision of the diverse mix of homes carries significant weight, and the provision of a new community building and employment during the construction stage carry moderate weight. He considers that the benefits arising from the Local Approach also carry moderate weight.
33. The Secretary of State considers that there are no specific policies in the Framework which indicate that this development should be restricted. He further considers that the adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits. Overall he concludes that there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
34. The Secretary of State therefore concludes that the appeal should be allowed, and outline planning permission granted, subject to conditions.

### **Formal decision**

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission subject to the conditions set out in Annex B of this decision letter for the application as revised for erection of up to 200 dwellings including 40 serviced self-build plots and up to 37 retirement apartments, affordable housing, community building (up to 186 square metres) comprising flexible A1/D2 ancillary space, new public open space and new access road' in accordance with the revised version of application ref: P1284/13/OUT, dated 22 August 2013.
36. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

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

37. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
38. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or

if the Local Planning Authority fail to give notice of their decision within the prescribed period.

39. A copy of this letter has been sent to Forest of Dean District Council and Stop Allaston Development (Rule 6 Party), and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Merita Lumley*

Authorised by Secretary of State to sign in that behalf

**Annex A: Schedule of representations**

| <b>Party</b>                    | <b>Date</b>                             |
|---------------------------------|---|
| Forest of Dean District Council | 7 September 2017                        |
| C Stickler                      | 9 July 2017, 17 July 2017, 18 July 2017 |



## **Annex B: List of conditions**

### **Commencement of development, relevant plans and reserved matters**

1. The development hereby permitted shall not be commenced until detailed plans showing the layout, scale, appearance and landscaping of the site (referred to as 'the reserved matters') have been submitted to and approved in writing by the Local Planning Authority.
2. No dwelling shall commence until a phasing plan for the phasing of the building of the development in phases is submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved plans. The phasing plan shall include no less than 3 phases of development.
3. Application for the approval of the reserved matters for the first phase of the development shall be made not later than the expiration of one year beginning with the date of this permission or one year from the final conclusion of any subsequent claim or challenge under section 288 of the Town and Country Planning Act 1990, whichever is the later.
4. The development hereby permitted shall be begun before the expiration of two years from the date of the approval of the last of the reserved matters for the first phase of development, as defined by the approved phasing plan.
5. The development hereby permitted shall be carried out in accordance with the following approved plans: 1:2,500 scale site location plan (Ref. P001 A); revised illustrative masterplan rev B, dated October 2014 and; 1:500 scale proposed accesses (ref. SK09); but only in respect of those matters not reserved for later approval.

### **Ground modelling and levels**

6. No development shall commence until details of the existing site levels; proposed floor slab levels and proposed ridge heights; proposed earthworks, grading and mounding of land areas, including the levels and contours to be formed, showing the relationship of proposed contours and heights of buildings to the surrounding land; and sections through the site for the first phase of the development, at a scale not less than 1:500, have been submitted to and approved in writing by the Local Planning Authority. Development on subsequent phases shall not commence until equivalent details have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

### **Drainage**

7. No development shall commence until foul water drainage details for the first phase of development of the site and a programme of implementation has been submitted to and agreed in writing by the Local Planning Authority. Development on subsequent phases shall not commence until equivalent details have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details/programme. Unless otherwise agreed in writing, surface water shall be drained separately from foul water.
8. No development shall commence until details of surface water drainage for the site, including a sustainable drainage scheme (SUDS) and details for the implementation, maintenance and management of the SUDS have been submitted to and approved in writing by the Local Planning Authority. The details/scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. These details shall include:-

- (i) a timetable for its implementation, and;
- (ii) a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the SUDS throughout its lifetime.

**Vehicle parking, roads, footways and cycleways**

9. No development shall commence until details of properly consolidated and surfaced vehicle parking and manoeuvring facilities (including provision for the disabled) for the first phase of development have been submitted to and approved in writing by the Local Planning Authority. Development on subsequent phases shall not commence until equivalent details have been submitted to and approved in writing by the Local Planning Authority. The works and facilities shall be provided in accordance with the approved details and prior to the dwellings and community/retail building served by them being occupied/brought into use and shall be kept permanently available for such purposes with the vehicle parking spaces retained for parking only and the manoeuvring facilities for manoeuvring of vehicles.
10. No works shall commence on site (other than those required by this condition) on the development hereby permitted until the first 20 metres of one of the approved access roads, including the junction with the existing public road and associated visibility splays, has been completed to at least binder course level.
11. No dwelling or retail/community building on the site shall be occupied/brought into use, until the carriageway (including surface water drainage/disposal, vehicular turning heads and street lighting) providing access from the nearest public highway to that dwelling and /or retail/community building, have been completed to at least binder course level and the footways to surface course level.
12. No works shall commence on the development hereby permitted until details of the shared footways/cycleways for the first phase of development have been submitted to and approved in writing by the Local Planning Authority. Development on subsequent phases shall not commence until equivalent details have been submitted to and approved in writing by the Local Planning Authority. The approved shared footways/cycleways in each of the phases of the development shall be provided prior to the occupation of any of the buildings in that phase.
13. No development shall commence on site until details of the proposed arrangements for future management and maintenance of the proposed streets within the site have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details and the streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.
14. No building shall be constructed on site until a scheme has been submitted to and agreed in writing by the Local Planning Authority for the provision of fire hydrants (served by mains water supply) and no building shall be occupied until the hydrant serving that property has been provided.

**Construction Method Statement**

15. No development shall take place on site, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall:

- (i) specify the type and number of vehicles;
- (ii) provide for the parking of vehicles of site operatives and visitors;
- (iii) provide for the loading and unloading of plant and materials;
- (iv) provide for the storage of plant and materials used in constructing the development;
- (v) provide for wheel washing facilities;
- (vi) specify the intended hours of construction operations; and
- (vii) specify measures to control the emission of dust and dirt during construction.

**Landscaping**

16. The landscaping details required by condition 1 above shall include:- measures for protecting existing trees and hedgerows within the site during the construction phase; a timetable for planting trees, hedgerows and shrubs; details for undertaking replacement planting in the event of any trees, shrubs or hedges being removed, damaged or dying within five years of planting; those measures set out in section 5.5 (Landscape Strategy) of the Landscape & Visual Assessment dated January 2014 by Davies Landscape Architects and submitted in support of the application; the reinforcement of existing boundary hedges with indigenous species and; details for maintaining those hedgerows that are to be retained.

**Waste Minimisation Strategy**

17. No development shall commence until a Waste Minimisation Statement (WMS) has been submitted to and approved in writing by the Local Planning Authority. The WMS shall include:
- (i) details of the types and volumes of construction waste likely to be generated including measures to minimise re-use and recycle that waste and minimise the use of raw materials;
  - (ii) measures for re-using construction waste on site unless it can be demonstrated that this is not the most sustainable option;
  - (iii) measures for the disposal of any waste that cannot be re-used on site;
  - (iv) provision of 'on-site' storage receptacles for recycling a range of materials; and
  - (v) access arrangements for recycling/waste collection vehicles.

The development shall be undertaken in accordance with the approved WMS.

**Low Carbon Energy and Services**

18. Prior to the commencement of the development, a scheme for generating low carbon energy (as defined in the technologies outlined in the Local Planning Authority's Good Practice Guide) or thermal improvement of the building fabric, equivalent to 15% of the carbon dioxide emissions arising from the use of each dwelling unit in phase one of the development, shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented and commissioned within three months of occupation or use of the development and thereafter retained for a period of not less than 10 years. A scheme for generating low carbon energy (as defined in the technologies outlined in the Local Planning Authority's Good Practice Guide) or thermal improvement of the building fabric, equivalent to 15% of the carbon dioxide emissions arising from the use of each dwelling unit for the remaining phases of the development, shall be submitted to and approved in writing by the Local Planning

Authority. The scheme as approved shall be implemented and commissioned within three months of occupation or use of the development and thereafter retained for a period of not less than 10 years.

19. All services required to be connected to the development hereby approved shall be laid underground and each property shall be provided with an electric vehicle charging point and isolation switch prior to first occupation.

**Archaeology**

20. No development shall take place within the site until a scheme for the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been submitted to and approved in writing by the Local Planning Authority; and the programme shall be undertaken as approved.

**Ecology**

21. No development shall take place, including ground works and site clearance, until a method statement (MS) for badgers has been submitted to and approved in writing by the Local Planning Authority. The MS shall be based on the measures outlined in Badger Appendix 1.5 -1.11 by Ecological Solutions dated August 2013 and submitted in support of the application. The MS shall also include:
- (i) requirements for additional survey work;
  - (ii) risk assessment of potentially damaging construction activities;
  - (iii) identification of 'biodiversity protection zones';
  - (iv) practical measures (both physical and sensitive working practices) to avoid or reduce impacts during construction;
  - (v) extent and location of proposed works shown on scaled maps and plans;
  - (vi) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
  - (vii) persons responsible for implementing the works; and
  - (viii) initial aftercare and long-term maintenance (where relevant).

The works shall be carried out in accordance with the approved MS and shall be retained in that manner thereafter.

22. No development shall take place, including ground works and site clearance, until a conservation and enhancement plan for bats has been submitted to and approved in writing by the Local Planning Authority. The plan shall be based on the measures outlined in the Ecological Addendum report, Section 4 dated November 2013 by Ecological Solutions and submitted in support of the application. It shall include:-
- (i) the retention of flight lines, foraging areas and dark corridors;
  - (ii) re-assessment of trees with identified bat potential including any necessary survey work;
  - (iii) compensation for the loss of hedgerows;
  - (iv) enhancement of hedgerows to secure foraging opportunities and connectivity to off-site habitats;
  - (v) bat boxes in trees and in suitable locations within some of the new buildings;

- (vi) a risk assessment of potentially damaging construction activities;
- (vii) identification of 'biodiversity protection zones' (such as hedgerows);
- (viii) practical measures (both physical and sensitive working practices) to avoid or reduce impacts during construction;
- (ix) the extent and location of proposed works shown on scaled maps and plans;
- (x) a timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- (xi) identifying persons responsible for implementing the works; and
- (xii) initial aftercare and long-term maintenance (where relevant).

The works shall be carried out in accordance with the approved plan and shall be retained in that manner thereafter.

23. No development shall take place until a lighting design strategy for biodiversity covering bat flight lines, new and retained hedgerows and open space areas, and other foraging areas have been submitted to and approved in writing by the Local Planning Authority. The strategy shall:-

- (i) identify those areas/features on site that are particularly sensitive for bats and badgers and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging, and;
- (ii) show how and where external lighting would be installed (through the provision of lighting contour plans and technical specifications) so that it could be demonstrated that areas to be lit would not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the approved strategy, and these shall be retained thereafter in accordance with the strategy. No other external lighting shall be installed without the Local Planning Authority's prior permission.

24. No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The LEMP shall draw together all aspects of management including the bat conservation plan, barn owl mitigation and hydrology (SUDS scheme) and the mitigation/enhancement measures outlined in Section 5 of the Ecological Assessment by Ecological Solutions dated August 2013. The content of the LEMP shall include the following:

- (i) a description and evaluation of features to be managed;
- (ii) ecological trends and constraints on site that might influence management;
- (iii) aims and objectives of the management;
- (iv) appropriate management options for achieving aims and objectives;
- (v) prescriptions for management actions;
- (vi) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- (vii) details of the body or organization responsible for implementation of the LEMP;

- (viii) on-going monitoring and remedial measures;
- (ix) details of the legal and funding mechanism(s) by which the long-term implementation of the LEMP would be secured with the management body (ies) responsible for its delivery; and
- (x) contingencies and/or remedial action for addressing the results from monitoring where these reveal that the conservation aims and objectives of the LEMP are not being met.

The LEMP shall be implemented in accordance with the approved details.

25. No vegetation on the site (including ivy) shall be removed between 1 March and 31 August inclusive, unless a suitably qualified ecologist has undertaken a detailed check of vegetation for active birds' nests immediately before the vegetation is removed and has provided written confirmation that no birds would be harmed and/or that there are appropriate measures in place to protect nesting bird interest on the site. Any such written confirmation shall be submitted to the Local Planning Authority for approval and then implemented as approved.
26. Throughout the duration of works, including site clearance and construction, the following shall be undertaken:
  - (i) construction materials will be stored only on existing hard-standing areas or other areas permitted for storage and will be raised off the ground on pallets or similar;
  - (ii) any loose materials (e.g. stone or soil) stored on site will be within sacks, bags or will be compressed to avoid gaps being accessible to newts; and
  - (iii) excavations will be covered overnight to prevent newts or badgers becoming trapped, or will be provided with ramps to allow newts and badgers to escape.

Should Great Crested Newts be found within the construction area, all works to that area shall cease until advice from Natural England has been sought and followed.

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

**by David M H Rose BA (Hons) MRTPI**

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

**Date: 2 August 2017**

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## **Town and Country Planning Act 1990**

### **Appeal by Allaston Developments Ltd**

**Land off Driffield Road, Allaston Road and Court Road,  
Lydney, Gloucestershire**

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- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission with all matters, other than access, reserved for later approval.
- The appeal is made by Allaston Developments Ltd against the decision of Forest of Dean District Council.
- The application, reference P1284/13/OUT, dated 22 August 2013, was refused by notice dated 22 January 2014.
- The development proposed was described as:- 'the delivery of up to 200 dwellings, including up to 20 serviced self-build plots and up to 37 retirement apartments, community building (up to 2,000 sq ft) comprising flexible A1/D2 ancillary space and new public open space'.<sup>1</sup>

**Summary of Recommendation: The appeal be allowed subject to the conditions recommended in the schedule to this report (Annex C).**

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## **1. Introduction**

### **Procedural matters**

- 1.1 The Secretary of State's decision on the above appeal, dated 21 December 2015, was quashed by Order of the High Court in June 2016.<sup>2</sup>
- 1.2 Having invited and considered further representations, the Secretary of State, by letter dated 23 September 2016, gave notice, in accordance with Rule 19(1)(c) of the Inquiry Procedure Rules, his intention to reopen the inquiry to consider further the following matters:-
  - (a) *'having regard to the terms of the Consent Order ..... the implications of this on the evidence that was before the Inspector and before the Secretary of State;*
  - (b) *the current state of play with regard to the preparation of the Forest of Dean Allocations Plan and any implications for the further consideration of this appeal;*
  - (c) *the status of the Lydney Neighbourhood development plan and relevant policies therein;*
  - (d) *any other material change in circumstances, fact or policy, that may have arisen since his decision of 21 December 2015 was issued and which the parties consider to be material to his further consideration of this appeal'.*

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<sup>1</sup> See paragraph 1.43 below for revised description

<sup>2</sup> Claim No CO/476/2016 – Consent Order dated 9 June 2016

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- 1.3 The inquiry was reopened on 25 April 2017. It dealt with preliminary matters but was adjourned as a result of the unforeseen illness of the witness representing Stop Allaston Development (S.A.D.) who appeared as a Rule 6 party.
- 1.4 The inquiry resumed on 4 May 2017 and sat for two days. Following the agreement of the parties, and having regard to the anticipated handing down by the Supreme Court of its judgement on Suffolk Coastal and Richborough Estates,<sup>3</sup> relating to the interpretation of '*policies for the supply of housing*', closing submissions were made in writing in accordance with a set timetable. I closed the inquiry in writing on 13 June 2017.
- 1.5 I made unaccompanied visits to the site, which is crossed by various public rights of way, and its surroundings on 25 and 26 April 2017. The parties agreed that an accompanied site visit was unnecessary.

### **Chronology**

- 1.6 The application for planning permission was refused by notice dated 22 January 2014 for the following reasons:-
01. *The site is part of the open countryside outside the defined settlement boundary for Lydney. The proposed development would consolidate unacceptably existing built development to the north, west and south of the site eroding the rural character and appearance of the area being on the edge of the town with its fragmented and dispersed development pattern. It would also be harmful to the defined landscape characteristics of the area contained in the Council's Landscape Character Assessment and to the users of the public footpaths that criss-cross the site as well as resulting in a loss of a large area of grade 3a agricultural land. The proposal is therefore considered to be contrary to Core Strategy Policies CSP.1 and CSP.4 and the National Planning Policy Framework particularly Sections 7 and 11.*
  02. *It is considered that the proposal could be prejudicial to potential archaeological remains on the site owing to the lack of a proper field evaluation. The proposal would therefore be contrary to Core Strategy Policy CSP.1 and Section 12 of the National Planning Policy Framework as well as the advice in the PPS5 Planning for the Historic Environment Planning Practice Guide, failing to demonstrate suitable conservation and enhancement of the historic environment.*
  03. *The proposal would represent a density of development (14 dwellings per hectare) way below that advised in Core Strategy Policy CSP.5 (30 dwellings per hectare) and is considered to be an inefficient use of land. It would be difficult to resist a higher density scheme coming forward in the future and further housing development extending eastwards towards Driffield Road. This consolidation would inevitably alter and significantly harm the fragmented character of the area and be contrary to Core Strategy Policies CSP.1 and CSP.4 and Sections 7 and 11 of the National Planning Policy Framework.*

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<sup>3</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) – Judgement given on 10 May 2017

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04. *As submitted, the proposal fails to secure necessary contributions and the delivery of affordable housing as a completed Section 106/Planning Obligation has not been submitted, accordingly the proposal is contrary to Policies CSP.4, CSP.5 and CSP.9 of the Core Strategy, Sections 6 and 10 of the National Planning Policy Framework, the Council's Play Area SPG and the Council's Affordable Housing SPP.'*

1.7 In October 2014 the Council issued a position statement which confirmed:-

*'..... The Council's current position is that a robust 5 year land supply cannot be demonstrated in accordance with the NPPF paragraph 47 and footnote 11 requirement. Paragraph 49 therefore applies which means Core Strategy policies CSP.4, CSP.5 and CSP.12 that are considered to be relevant to the consideration of the appellant's proposals cannot be considered up to date. There is therefore a presumption in favour of sustainable development and in terms of the decision taking section of Paragraph 14 permission should be granted if relevant policies of the development plan are out of date unless material considerations indicate otherwise or where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole or where specific policies in the NPPF indicate development should be restricted eg: AONBs.*

*The Council has reviewed the four reasons for refusal in the decision notice dated 22 January 2014.*

*It is considered that reason 02 relating to archaeology has now been addressed through a field evaluation being undertaken and the County Archaeologist now being satisfied with the proposal subject to a suitable condition .....*

*In terms of reason 04 the appellant has agreed in principle to the requirements of the District Council and County Council in regard to necessary CIL compliant financial contributions, affordable housing provisions and open space management arrangements for the site being secured through a s106 agreement/obligation. The reason is therefore capable of being resolved .....*

*In terms of reason 03, this is not now considered to be an overriding reason on the basis of the appellant's willingness to enter into a s106 agreement that will ensure that the open space areas will remain open and be appropriately managed thus preventing further housing development encroaching onto these areas. The overhead electricity line and pylons also act as a constraint. Further potential development to the east would have to be assessed on its merits.*

*In terms of reason 01 the Council considers that although some adverse impact would occur to the landscape and there would be a resultant loss of grade 3a agricultural land, it is not considered in terms of paragraph 14 of the NPPF, that the harm would significantly and demonstrably outweigh the benefits of providing more housing and affordable housing with the resultant economic and social benefits .....*

*The Council has therefore reluctantly decided that it cannot support its refusal of permission ..... owing to the onerous requirements of the NPPF in relation to land supply and the limited weight that can be put on the draft Allocations Plan and the examiner's version of the Neighbourhood Plan .....*

1.8 On 18 November 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because 'the

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*appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority or where a neighbourhood plan has been made'.*

- 1.9 A public local inquiry was held on 19, 20, 25, 26 November 2014 and 4, 5, 6 and 10 February 2015. S.A.D. appeared as a Rule 6 party.
- 1.10 Statements of Common Ground (SoCG) were submitted as follows:-
- (a) SoCG, dated August 2014, setting out matters of agreement between the appellant and the local planning authority (LPA);
  - (b) SoCG, dated October 2014, between the appellant and Gloucestershire County Council (GCC) as highway authority (HA);
  - (c) Addendum SoCG, dated November 2014, between the appellant and the LPA regarding the Lydney Neighbourhood Development Plan 2014-2024 Examiner's Version (LNDP);
  - (d) SoCG, dated November 2014, between the appellant and S.A.D.;
  - (e) Supplementary SoCG, dated January 2015, between the appellant and the HA; and
  - (f) SoCG, dated February 2015, between the appellant and S.A.D., relating to transport issues.
- 1.11 A Revised Illustrative Masterplan rev B was submitted during the course of the inquiry and was subject to a process of consultation and consideration at the inquiry. The description of development was also amended to *'proposed residential development of up to 200 dwellings including 40 self-build plots and 37 retirement apartments, affordable housing, community building (186 square metres) comprising flexible A1/D2 ancillary space, new public open space and new access roads'*.<sup>4</sup>
- 1.12 The Inspector (Inspector Pope), who conducted the original inquiry, records the following planning obligations:-<sup>5</sup>
- (a) an agreement with GCC relating to highways (including a residential Travel Plan), education (pre-school) and library contributions;
  - (b) an agreement with the LPA relating to affordable housing, adult recreation and air quality management; and
  - (c) a unilateral undertaking for the delivery of the appeal scheme by developers with a registered office in the administrative area of the Forest of Dean.
- 1.13 The Inspector, in a report dated 13 April 2015, recommended that the appeal be allowed. Whilst the report should be read as a whole, the Inspector's *'Planning Balance/Overall Conclusion'* (in relation to Revised Illustrative Masterplan rev B) stated:-<sup>6</sup>

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<sup>4</sup> See paragraph 1.43 below

<sup>5</sup> IR/153 - IR/156

<sup>6</sup> IR/214 - IR/216

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*'The proposed development would result in some adverse impact upon the character and appearance of the area, including the loss of some views from public footpaths across the site which would erode the amenity for users of these paths. There would also be a small adverse effect on existing peak hour congestion in the town centre and a minor adverse effect upon air quality in the Lydney AQMA.<sup>7</sup> When these matters are considered with the proposed public open space provision, new tree and hedgerow planting and enhancements to biodiversity I find, on balance, that the scheme would satisfy the environmental dimension to sustainable development. Given also my findings in respect of the economic and social benefits of the scheme, the proposal would, in the context of 'the Framework' comprise sustainable development. The presumption in favour of such development therefore applies.*

*The harmful impacts and the conflict with aspects of the development plan, including elements of CS policy CSP.1, the settlement boundary for Lydney and the out-of-date policies for the supply of housing, as well as the conflict with some policies in the LDNP, carry medium weight.*

*I have also found that the scheme would accord with other provisions of the development plan, including elements of CS policy CSP.1. Furthermore, given the very real and pressing need to deliver the market and affordable housing that is required to meet the needs of residents of the district and when weighed with the other social, economic and environmental matters that I have identified above, the totality of harm falls short of the requirement to significantly and demonstrably outweigh the benefits of the scheme. The proposals would accord with the provisions of 'the Framework'. This is an important material consideration that outweighs the conflict with the development plan. There is also merit in the appellant's contention that the proposal would be a local housing solution to a local housing problem. Given all of the above, there is greater weight in the arguments for granting planning permission'.*

- 1.14 Inspector Pope also dealt with the loss of agricultural land in light of the first reason for refusal:-<sup>8</sup>

*'I note the concerns of some interested parties over the loss of agricultural land. However, there is no cogent evidence to refute the findings of the appellant's agricultural expert<sup>9</sup> that the scheme would not result in the loss of a significant area of the best and most versatile agricultural land. Moreover, given the generally high quality agricultural land around Lydney the appeal site represents the poorest quality land available for development. The proposals would be consistent with the agricultural provisions of 'the Framework'. Having reviewed its case the LPA decided not to defend its previously identified concerns relating to the loss of grade 3a agricultural land'.*

- 1.15 The Secretary of State, in his decision dated 21 December 2015, confirmed that the appeal would be determined on the basis of the Revised Illustrative Masterplan rev B.

- 1.16 He also recorded that, following the close of the inquiry, the local planning authority had submitted the Allocations Plan Submission Draft August 2015 (AP), supported by a revised objectively assessed need, for independent

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<sup>7</sup> Air Quality Management Area

<sup>8</sup> IR/199

<sup>9</sup> Proof 2014 (Fong) Appendix 6

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examination. The Secretary of State afforded the plan moderate weight. In addition, the Independent Examiner's report into the Lydney Neighbourhood Development Plan (LDNP) was published on 23 September 2015, recommending to the Council that the plan should proceed to referendum, subject to modifications set out in the report. The Secretary of State also gave moderate weight to the emerging Neighbourhood Plan.

1.17 In his decision the Secretary of State concluded:-<sup>10</sup>

*' ..... the Secretary of State considers that the proposal is not in accordance with the development plan as a whole ..... the lack of a 5 yr HLS and the contributions that the appeal proposal would make to increasing the supply of market and affordable housing weigh substantively in favour of the appeal. Also weighing in favour of the appeal are the social, economic and environmental benefits ..... However, weighing against the appeal ..... is the conflict with the emerging AP and the emerging LDNP, to which he gives moderate weight; and the adverse impact on landscape and character to which he also gives moderate weight. He also gives limited weight to traffic impacts and the adverse effect upon air quality in Lydney AQMA. Overall ..... he considers that the adverse impacts of the appeal proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. He therefore concludes that there are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan.*

*..... the Secretary of State disagrees with the Inspector's recommendation and hereby dismisses your client's appeal and refuses outline planning permission .....'*

1.18 However, the above conclusion did not expressly draw on the Secretary of State's consideration of the loss of agricultural land:-<sup>11</sup>

*'..... while the Secretary of State agrees with the Inspector's conclusion that the scheme would not result in the loss of a significant area of the best and most versatile agricultural land and that the proposals would be consistent with the agricultural provisions of the Framework, he nevertheless gives moderate weight to the fact that there would be some loss .....'*

1.19 The Secretary of State's decision was subject to a statutory challenge made pursuant to section 288 of the Town and Country Planning Act 1990. A Consent Order was made on 9 June 2016 as *'The First Defendant [The Secretary of State] considers that he erred in not giving more detailed reasons for why he gave the benefits of the proposal less weight than the Inspector did and considers that it is appropriate to make an Order quashing the Decision Letter and remitting the decision for redetermination'*.

## **The reopened inquiry**

### **Introduction**

1.20 The effect of a successful challenge under section 288 is that the decision is quashed and that the quashed decision is treated as if it had not been made. However, the appellant and S.A.D. agreed that the Inspector's report remained germane in the reporting of the cases save for any

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<sup>10</sup> SoS/33

<sup>11</sup> SoS/27

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necessary corrections or clarification and updated evidence prepared for the reopened inquiry. On this basis, other than up-dating the section on planning policy and other documents, and reporting the gist of the new material before me, I have adopted paragraphs 19 to 156 inclusive of the previous report.

- 1.21 In this regard, I confirmed that I would also adopt the main consideration identified by Inspector Pope, namely:-<sup>12</sup>

*'Whether, in the absence of a five-year housing land supply within the district, any adverse impacts of the proposed development, having particular regard to the effect on the character and appearance of the area; and traffic conditions (including any undue reliance on travel by car) and highway safety along the local road network, would significantly and demonstrably outweigh the benefits of the scheme'.*

It is implicit that the starting point for considering the above is whether or not the proposal would be in accordance with the development plan as a whole.

**The development plan**

- 1.22 The development plan continues to include the Core Strategy (2012) and those saved policies within the Forest of Dean Local Plan Review (2005) which were not replaced by the Core Strategy. Policies referred to include CSP.1: Design and environmental protection; CSP.4: Development at Settlements; CSP.5: Housing; CSP.9: Recreational and amenity land; and CSP.12 which includes a new residential neighbourhood at land East of Lydney.
- 1.23 The Lydney Neighbourhood Development Plan has been formally made following a referendum on 18 February 2016 and it now forms part of the development plan. Policies referred to include:- LYD ENV1 – Location of New Development; LYD ENV2 – Protecting the Natural Environment; LYD HOUS1 – Housing for Elderly People; LYD TRAN1 – Improvements to the Highway Infrastructure; LYD TRAN3 – Public Rights of Way and Wildlife Corridors.
- 1.24 The appeal site is shown to be outside the settlement boundary for Lydney. LYD ENV1 confirms that development proposals outside the settlement boundary will be considered against the principles set out in the Core Strategy in general, and policy CSP.4 in particular. LYD ENV1 also confirms that development proposals will be supported within the identified settlement boundary subject to other policies in both the Core Strategy and the Neighbourhood Plan. No specific sites are identified for housing development other than a site within the town which is shown to be suitable for housing for elderly people.

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<sup>12</sup> IR/160

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- 1.25 In terms of the Forest of Dean Allocations Plan, which is currently under preparation, the plan is intended to identify specific areas of land for development within the district up to 2026. It is based on a full review of the objectively assessed need for housing within the district. The plan was submitted to the Secretary of State for independent examination on 28 August 2015; and a series of hearings took place in January and February 2016.<sup>13</sup>
- 1.26 The appointed Inspector issued interim findings in June 2016.<sup>14</sup> He concluded that the duty to co-operate had been met and that the preparation of the plan appeared to have followed correct procedures and to be legally compliant. He also found the apportionment of development between categories of settlements to be sufficiently reflective of the adopted Core Strategy distribution; but this would need review following revision of the housing requirement; and if that were to prove to be substantially greater than the Core Strategy figure, the sustainability of adhering to the established distribution would need re-appraisal.<sup>15</sup>
- 1.27 His conclusion on objectively assessed need (OAN) was:-<sup>16</sup>
- 'Drawing together the above matters, I conclude that in order to establish a robust OAN for housing the Council needs to do further work on the potential influence of economic growth, and that this and all other assumptions underpinning the OAN should be tested at the scale of the complete HMA<sup>17</sup> in the light of the most recent information and with due allowance for any effect of translating figures to a 2026 end date. At present, I consider that the evidence does not adequately justify an OAN of less than 340 dpa'.<sup>18</sup>*
- 1.28 In terms of housing supply, the Inspector confirmed:-<sup>19</sup>
- 'To conclude on this issue, the Council should, following re-assessment of the housing requirement, address the overall adequacy of the housing supply and in particular the deliverable 5 year supply. The Council should consider the need for further MMs<sup>20</sup> to propose allocation of additional sites to ensure the requirement would be met and that sufficient flexibility would be allowed to provide an ongoing deliverable supply. The anticipated delivery of development should be set out in a clear trajectory covering the years of the remaining plan period'.*
- 1.29 The Council, in response, produced an update on housing need and land supply (September 2016) which included an OAN below the minimum indicated by the Inspector. The Inspector's reply, dated 11 October, included:-
- 'The Council's response to the interim findings represents considerable progress on the path to the adoption of a sound plan. However, the matters I have outlined*

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<sup>13</sup> At the time of the original inquiry, the plan included an allocation of 25 dwellings on land off Augustus Way (within the appeal site). However, the planning authority resolved to delete this draft allocation in February 2015

<sup>14</sup> APP/6 – Appendix 2

<sup>15</sup> APP/6 - Appendix 2 paragraphs 10, 11, 17 & 18

<sup>16</sup> APP/6 - Appendix 2 paragraph 64

<sup>17</sup> Housing Market Area

<sup>18</sup> dwellings per annum

<sup>19</sup> APP/6 - Appendix 2 paragraph 111

<sup>20</sup> Main Modifications



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*above indicate continuing areas of uncertainty about the soundness of the Allocations Plan and of the scope and effectiveness of potential Main Modifications in addressing those concerns.*

*Therefore, I find it necessary for the Council to re-consider its proposed amendment to the OAN and the housing requirement, and then to check the effect of that on the overall supply of housing and on the deliverable 5 year supply. When that has been satisfactorily achieved, the revised housing proposals ..... will need to be subject of a focussed public consultation ..... The consultation material should provide evidence to justify the policy approach. The consultation returns and the Council's response to them will influence the decision on the final form of necessary Main Modifications'.*

- 1.30 In November 2016 the Council wrote to the Inspector seeking to spread the backlog of houses required in the district over the remaining plan period rather than within the first five-year period.
- 1.31 Main modifications to the plan were prepared in draft in October 2016 and submitted for public consultation (Allocations Plan Further Changes December 2016) ending on 13 February 2017. The further changes included a new draft allocation of land (Policy FC 4) on approximately 6.5 hectares of land off Augustus Way and Court Road, Lydney for approximately 120 new dwellings, to include a mixture of house types and for associated open space. This land is within the appeal site comprising its lower south facing slopes.<sup>21</sup>
- 1.32 The Inspector, having considered the representations to the further changes has decided that additional hearings are required and it is anticipated that these will be held in early July 2017.

**Other published documents post-dating the Secretary of State's decision**

- 1.33 On 1 April 2016 Planning Practice Guidance on Self-build and custom housebuilding was issued setting out the requirement for 'relevant authorities' to keep a self-build and custom housebuilding register.
- 1.34 A Written Ministerial Statement on Neighbourhood Planning (made on 12 December 2016) confirms:-

*'Neighbourhood planning was introduced by the Localism Act 2011, and is an important part of the Government's manifesto commitment to let local people have more say on local planning ..... The Government confirms that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted ..... where communities plan for housing in their area in a neighbourhood plan, those plans should not be deemed to be out-of-date unless there is a significant lack of land supply for housing in the wider local authority area ..... This means that relevant policies for the supply of housing in a neighbourhood plan, that is part of the development plan, should not be deemed to be 'out-of-date' under paragraph 49 of the National Planning Policy Framework where all of the following circumstances arise at the time the decision is made:-*

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<sup>21</sup> APP/6 – Appendix 3; DLA Drawing Figures (2014) Appendix 1 Tab 4 identified as 'Lower Field' and 'Middle Field'

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- 
- *This written ministerial statement is less than 2 years old, or the neighbourhood plan has been part of the development plan for 2 years or less;*
  - *The neighbourhood plan allocates sites for housing; and*
  - *The local planning authority can demonstrate a three-year supply of deliverable housing sites'.*

1.35 The Housing White Paper: Fixing our Broken Housing Market was published in February 2017. It sets out the Government's plans to reform the housing market and boost the supply of new homes in England. It identifies the problem as threefold:- *'not enough local authorities planning for the homes they need; house building that is simply too slow; and a construction industry that is too reliant on a small number of big players'.*

**Updated statements of common ground**

**(a) Allaston Developments Ltd and Stop Allaston Development**

1.36 The parties agree:-

- (a) the most sensitive parts of the site with the most far reaching views lie in the higher ground;
- (b) suitable access can be achieved to the site (albeit S.A.D. does not agree with access being taken from Windsor Drive);
- (c) the Allocations Plan is not yet adopted but it is in an advanced state of preparation;
- (d) the Council cannot currently demonstrate a five-year housing land supply; additional housing sites will need to be found; and the local planning authority is trying to provide a deliverable supply of housing through the emerging Allocations Plan;
- (e) the proposed allocation FC 4 amounts to about half of the appeal site; and S.A.D. is of the view that if the higher part of the area proposed for allocation were to be left as public open space and new housing restricted to the lower area, then it could be made acceptable; and
- (f) although the Lydney Neighbourhood Development Plan is a made plan which sits alongside the Core Strategy, the former is based on the housing provisions of the Core Strategy and related policies in both plans are out of date.

**(b) Allaston Developments Ltd and Lydney Town Council**

1.37 The parties agree:-

- (a) the Inspector's interim findings on the Allocations Plan suggest that further housing allocations in the district will need to be made;
- (b) Lydney could have a further role to play in providing a sustainable supply of housing in that it is the largest and most sustainable settlement in the district;
- (c) if additional housing is needed, the appeal proposal could have a role to play in providing that housing in a sustainable manner; and
- (d) the form of housing proposed (local builders/self-build/mix of housing) would ensure the early deliverability of the site.

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**(c) Allaston Developments Ltd and Forest of Dean District Council**

1.38 The statement includes agreement on:-

- (a) more housing is needed in the district to meet the Council's housing land supply and particularly the five-year land supply;
- (b) the Council cannot currently demonstrate a five-year housing land supply;
- (c) Lydney has a further role to play in providing additional sustainable housing within the district;
- (d) irrespective of this the Allocations Plan is not yet adopted and does not form part of the development plan at present; and
- (e) the Lydney Neighbourhood Development Plan is out of date with regard to the supply of land for housing and that further housing outside the identified settlement boundary, as it was proposed in the submitted Allocations Plan, is likely to need to be allocated in Lydney to provide a sustainable amount of housing for the district.

**(d) Allaston Developments Ltd and Gloucestershire County Council (highways)<sup>22</sup>**

1.39 It is common ground that:-

- (a) the overall conclusions of the Statement of Common Ground (October 2014) and the Supplementary Statement of Common Ground (January 2015) hold true;
- (b) the general arrangement of internal routes is appropriate;
- (c) the trip forecasts provide reasonable estimates and the sensitivity test provides a reasonable robust case;
- (d) the previously agreed section 106 obligations towards the Lydney Highway Strategy and Lydney Transport Strategy remain appropriate ;
- (e) current public transport provision and other non-car travel infrastructure offers an appropriate choice of travel to and from the appeal site;
- (f) there is no material highway safety pattern or problem and the appeal proposal will not have a material impact on highway safety or operation of the local highway network;
- (g) the proposed residential Travel Plan approach remains appropriate;
- (h) there are no material changes to transport policy and guidance which would materially affect the appropriateness of the appeal scheme in transport terms; and
- (i) there are no areas of dispute.

**(e) Allaston Developments Ltd and Stop Allaston Development<sup>23</sup>**

1.40 At my request the above parties provided an agreed statement to identify areas of agreement and disagreement between the wireframe photomontages produced by the respective parties.

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<sup>22</sup> APP/1 - Appendix CMR/J

<sup>23</sup> INQ/7

**Other inquiry documents**

- 1.41 An update to air quality (April 2017) was provided by the appellant<sup>24</sup> which states: - *'the overall operational air quality effects of the development are judged to be 'not significant'*. This conclusion, which takes account of the uncertainties in future projections, in particular for nitrogen dioxide, is based on the assessment being worst case, with concentrations remaining below the objectives and impacts being negligible at most receptors (slight adverse at one receptor on High Street, Lydney and moderate adverse at one receptor on Hill Street, Lydney in the worst-case sensitivity test). The document was not challenged.
- 1.42 An ecology addendum technical note (30 March 2017)<sup>25</sup> follows an update of a desk study undertaken in 2013 and an update Extended Phase 1 habitat survey of the site (October 2016). No significant change to the baseline for designated sites of nature conservation value was identified; no significant habitat changes were noted or constraints identified; no update Phase 2 surveys were considered to be necessary; and the earlier studies relating to great crested newts, badgers, dormice and bats remain relevant. The addendum was not disputed.

**Description of development**

- 1.43 For the avoidance of doubt the revised description of development considered at the previous inquiry and which remains the basis on which the proposal is to be decided is: - *'erection of up to 200 dwellings including 40 serviced self-build plots and up to 37 retirement apartments, affordable housing, community building (up to 186 square metres) comprising flexible A1/D2 ancillary space, new public open space and new access road'*.

**Appearances and evidence**

- 1.44 In common with the original inquiry, the local planning authority did not call any evidence.
- 1.45 Supplementary proofs of evidence, on behalf of the appellant, relating to overall housing need in the district and affordable housing were not in dispute and the authors were not called to give evidence.<sup>26</sup> The assessment on housing land supply was similarly uncontested.<sup>27</sup>
- 1.46 The proof of evidence – update on transport issues, prepared on behalf of S.A.D.,<sup>28</sup> was tendered as a written statement.
- 1.47 Proofs of evidence are included as Inquiry documents; but their content may have been affected by oral evidence, concessions and corrections. The written closing submissions are also included.

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<sup>24</sup> APP/8

<sup>25</sup> APP/7

<sup>26</sup> APP/3; APP/4

<sup>27</sup> APP/6 - Appendix 1 (Tab 2)

<sup>28</sup> R6/2

## 2. The Case for Allaston Developments Ltd

### Introduction

- 2.1 The appellant invites the Secretary of State to take into account the appellant's original closing submissions<sup>29</sup> and to adopt the report and conclusion and recommendation of Inspector Pope subject to the submissions below. The new inspector is free to adopt Inspector Pope's conclusions, subject to consideration of the matters raised at the reopened inquiry.
- 2.2 The proposal has as its rationale a genuine local development by local people for local people. It would, in summary, provide:-
- (a) work for a small local building firm based in Lydney, who have been unable to complete houses for the last seven years, whilst the main allocation in the town (and district) lies undeveloped because of viability concerns on the part of the developers;
  - (b) forty self-build plots;
  - (c) infrastructure for the self-build plots to be installed under the terms of a development framework to be agreed by the Council;
  - (d) eighty affordable housing units for the benefit of local people in housing need in Lydney and the Forest of Dean;<sup>30</sup>
  - (e) up to 37 retirement apartments with the potential to free up family housing;
  - (f) 6.6 hectares of public open space secured by planning agreement;
  - (g) a local community building to be built at the developers expense to a standard to be agreed by the local planning authority;
  - (h) a local builders clause, secured by the unilateral undertaking, requiring the market houses to be built only by local firms;
  - (i) a local labour force clause, set out in the unilateral undertaking, requiring 50% of the total workforce on the site to be resident in the Forest of Dean District Council's administrative area; and
  - (j) a local procurement clause, provided by the unilateral undertaking, requiring a proportion of goods and services to be secured locally.
- 2.3 The proposal chimes with Government policy. It finds particular support through the Housing White Paper (February 2017) with its very active support for small and medium sized builders, self-build housing, affordable housing and housing for the elderly. In particular, in the list of proposals, Step 3 seeks to diversify the market by, amongst other things:- *'backing small and medium-sized builders to grow .....; and supporting custom-build homes with greater access to land .....'*<sup>31</sup>

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<sup>29</sup> Document 57

<sup>30</sup> 65 on site and a financial contribution to 15 units off site

<sup>31</sup> Step 3 – page 19

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- 2.4 It also sets out the advantage of making land ownership and interests more transparent:- *'..... local communities are unable to know who stands to benefit fully from a planning permission. They could also inhibit competition because SMEs [small and medium sized enterprises] and other new entrants find it harder to acquire land. There is the additional risk that this land may sit in a 'land bank' once an option has been acquired without the prospect of development'*.<sup>32</sup>
- 2.5 Every aspect of this development would be local. Allaston Developments Ltd comprises F and W Johnson Developments (two brothers who run a small local house building firm) and ORB Developments (a local development company involved in renewable energy which wishes to break into the house building industry).
- 2.6 The House of Commons Communities and Local Government Committee, in its recent report on the 'Capacity in the homebuilding industry', made clear the Government needs to make progress on issues like self-build:- *'We are therefore disappointed at the lack of progress in the five years since the Committee's [2012] report, and call for a more proactive role to support custom and self-build .....'*.<sup>33</sup>
- 2.7 In particular, it records:- *'The country's homebuilding market is dominated by the volume builders, whose output is determined by their assessment of risk and uncertainty ..... small and medium sized builders have an important role to play in boosting the number of homes built and lessening the dominance of volume housebuilders .....'*. Also, in relation to custom and self-build:- *'The National Custom and Self-Build association argue that there is evidence of unmet demand for people who want to custom or self build .....'*.<sup>34</sup>
- 2.8 'The Local Approach' document,<sup>35</sup> which supports the proposal, explains the thinking behind the scheme:- the proposal is not the usual planning application for 200 houses in a main settlement in that it seeks to provide a wide diversity of housing focused on precisely what Ministers seek to encourage. It is a local housing solution to what is a local housing problem.
- 2.9 The main sites proposed for housing and planned strategic growth in Lydney (land East of Lydney), despite allocation for many years, have not come forward and even now the response remains both sluggish and far behind initial expectations. Very few of the planned 1,900 homes have been built or have planning permission; there is very little interest in Lydney from national house builders; and the delivery of affordable homes has been very poor.
- 2.10 No one doubts the need to support the growth of Lydney, which is the only town in the Forest of Dean with a railway station (serving Gloucester and Cardiff). The issue is how best to achieve that growth in light of the circumstances outlined above.

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<sup>32</sup> Page 24 – paragraph 1.19

<sup>33</sup> INQ/6 – see in particular pages 13 – 18 (extracts from paragraphs 25, 26 & 126)

<sup>34</sup> INQ/6 – paragraphs 25, 26 & 120

<sup>35</sup> To be found in the main (first purple) file

## **The development plan**

### **Introduction**

- 2.11 The starting point for the determination of this appeal is the development plan which now comprises the Forest of Dean Core Strategy (the Core Strategy) adopted in February 2012; the saved policies of the Forest of Dean Local Plan Review (the Local Plan Review) adopted in 2005; and the Lydney Neighbourhood Development Plan (the Neighbourhood Plan) which was made following a referendum in February 2016.
- 2.12 Inspector Pope dealt with the relevant policies in detail in his report, which the appellant accepts and adopts. In policy terms the only real change in circumstances relates to the Lydney Neighbourhood Development Plan.

### **Conclusions of Inspector Pope on the relevant policies**

- 2.13 Inspector Pope acknowledged the proposal was in conflict with CSP.5 - Housing (Strategy); LYD ENV 2 – Protecting the Natural Environment; and LYD TRAN3 – Public Rights of Way and Wildlife Corridors.
- 2.14 He also accepted a degree of conflict with elements of CSP.1 - Design and environmental protection; CSP.4 - Developments at Settlements; and CSP.12 - which concerned the provision of 1,900 new dwellings East of Lydney. On the latter, he found the proposal would not undermine the provisions of this policy.<sup>36</sup>
- 2.15 At the same time, Inspector Pope found there to be conformity with that part of CSP.4 which seeks to focus new housing development on Lydney and CSP.1.<sup>37</sup>
- 2.16 He did not find conflict with CSP.9, as he did not consider it to be engaged as the site *'is not identified as being of recreational or amenity value under CS Policy CSP.9'*.<sup>38</sup>
- 2.17 Although S.A.D. contends that the Inspector failed to reach a direct conclusion as to whether or not the appeal proposal complied with the development plan as a whole, it would be difficult to read his report and come to the view that the proposal was in conformity with the development plan as a whole. Moreover, the appellant has always accepted there would be conflict with some relevant policies and the proposal would not be in conformity with the development plan as a whole.

### **Lydney Neighbourhood Development Plan**

- 2.18 The Neighbourhood Plan carries full statutory force.<sup>39</sup> However, in circumstances where the local planning authority is unable to demonstrate

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<sup>36</sup> IR/169

<sup>37</sup> IR/169; IR/216

<sup>38</sup> IR/176

<sup>39</sup> As the Secretary of State confirmed in *Woodcock Holdings v SCLG* [2015] EWHC 1173 (Admin):- paragraph 198 of the NPPF does not dislodge the statutory test. Paragraph 21 of the *Woodcock* Judgment reads as follows:-

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a five-year supply of housing land, the policies for the supply of housing in a Neighbourhood Plan will not be up-to-date (in the same way as policies in a local plan or in a core strategy will not be up-to-date).

**Written Ministerial Statement (WMS)**

- 2.19 On 12 December 2016, the Secretary of State issued a statement relieving local planning authorities of the need to demonstrate a five-year supply of housing land in areas where there was a made Neighbourhood Plan and substituting a three-year requirement. There was no consultation on this issue; and the statement is subject to six grounds of challenge by Judicial Review.
- 2.20 In any event, the Written Ministerial Statement does not apply to this case as the Neighborhood Plan does not make specific housing allocations and the only housing policy, LYD HOUS 1, is nothing more than an aspiration to use land for housing for elderly people.
- 2.21 Even if LYD HOUS 1 is judged to be a housing allocation, it is a single allocation (the Written Ministerial Statement relates to '*housing allocations*' in the plural); and the allocation of just one small site for elderly accommodation cannot be said to be in the spirit of positive planning for the main town in the district. Moreover, the appellant's uncontested evidence demonstrates a housing land supply which is below the three-year threshold.
- 2.22 It is therefore clear that the Written Ministerial Statement (whether it is ultimately found to be unlawful or not) does not apply in this case.

**The Allocations Development Plan Document**

- 2.23 Although the Council is making progress on its Allocations Plan, it is still some distance from adoption. It is to be noted that some 120 houses are proposed on part of the appeal site which is significantly more than the 25 houses proposed by the Council at the time of the last inquiry. This is yet further support for this development.

**Supreme Court Judgment: Suffolk Coastal DC v Hopkins<sup>40</sup>**

- 2.24 The Judgment of the Supreme Court confirms:-
- (a) decision makers should respect the primacy of the development plan;
  - (b) the Framework is a material consideration, and no more than that;
  - (c) the phrase '*relevant policies for the supply of housing*' relates only to '*the policies by which acceptable housing sites are to be identified and the five-years supply target is to be achieved*';

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"So where a local planning authority cannot demonstrate a five-year supply of housing land, policies "for the supply of housing" are treated as being out of date, so that the presumption in favour of sustainable development in paragraph 14 is engaged. Mr. Honey for the Secretary of State accepted that the trigger in paragraph 49 applies just as much to "housing supply policies" in a neighbourhood plan which has been "made" (i.e. formally adopted) as to other types of statutory development plan. In my judgment that must be correct."

<sup>40</sup> Suffolk Coastal v Hopkins and SSCLG and Richborough v Cheshire East and SSCLG [2017] UKSC 37



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- (d) it is not necessary for the decision maker to have to categorize any other development plan policies: the important thing is to establish if there is a five-year supply of housing land;
  - (e) a lack of a five-year housing land supply triggers the presumption – '*The shortfall is enough to trigger the operation of the second part of paragraph 14*';
  - (f) that means planning permission should be granted unless the proposal fails the tilted balance test or the last sentence (the last dagger point) of paragraph 14 of the Framework applies;
  - (g) a decision maker is fully entitled to conclude that the weight to be given to restrictive policies (settlement boundary, countryside and gap policies) should be reduced to the extent that they are derived from settlement boundary policies that in turn reflect out of date housing requirements;
  - (h) decision makers should look at what might be causing the local planning authority's failure to demonstrate a five-year supply of housing land and to contribute to the national housing requirement - the rigid enforcement of restrictive policies may be the reason; and (most significantly in the context of this case)
  - (i) if the policies of the development plan fail to meet the objectives set out in paragraph 47 of the Framework, the decision maker should rightly regard the policies as out of date for the purpose of paragraph 14 of the Framework. In this case, as the annual housing requirement is contained in the adopted Core Strategy (which pre-dates the Framework), the decision maker should treat the presumption as automatically engaged in order to meet the objectives set out in paragraph 47 of the Framework.

**Assessment of the conflict with development plan policy**

2.25 The balancing exercise to be carried out either under S38(6) of the Planning and Compulsory Purchase Act 2004, or the presumption in favour of sustainable development (derived from paragraph 14 of the Framework), requires one to weigh not only material considerations but also development plan policies. The appellant's position on this, in light of the Supreme Court Judgement, is set out below.<sup>41</sup>

**Core Strategy**

2.26 **CSP.1: Design, environmental protection and enhancement:-** Inspector Pope found the proposal to be in conflict with this policy.<sup>42</sup> Whilst the policy includes a series of development management measures, it also seeks consideration of the effect of a proposal on the landscape. It is accepted that the proposal would have some degree of negative impact on the landscape; but, as Inspector Pope also concluded, there are parts of the policy with which the proposal would comply.<sup>43</sup>

2.27 **CSP.4: Developments at Settlements:-** it is arguable whether there would be any conflict with this policy as it admits that not all development will

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<sup>41</sup> The assessment in APP/6 predates the Supreme Court Judgement

<sup>42</sup> IR/181; IR/215

<sup>43</sup> For example see IR/179; IR/195; IR/208

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occur within the settlement boundary. Even if there were a degree of conflict, the weight given to this policy should be reduced because it is based on out of date housing requirements.<sup>44</sup>

2.28 **CSP.5: Housing (Strategy):-** Inspector Pope identified conflict with this policy but found it to be out of date:- as the Council cannot demonstrate a five-year supply of housing land, paragraph 49 of the Framework is engaged; in any event the policy is out of date as it based on an out of date housing requirement.

2.29 **CSP.12: East of Lydney:-** Inspector Pope found the proposal conflicted with this policy but, like CSP.5, it was similarly out of date. Even so, the proposal would not undermine the East of Lydney allocations and it would serve to enhance the town.

**Lydney Neighbourhood Development Plan**

2.30 **LYD ENV 1 – Location of New Development:-** This policy adopts the same settlement boundary as the Core Strategy. Inspector Pope found the proposal conflicted with this policy in its previous draft form; and gave the policy limited weight.<sup>45</sup> The policy is out of date in it being parasitic on Core Strategy policy CSP.4.

2.31 **LYD ENV 2- Protecting the Natural Environment:-** The proposal would conflict with this policy as new housing on a greenfield site would be inconsistent with the protection of the natural environment.<sup>46</sup> However, the proposal seeks to respect aspects of the natural environment by:- the retention of the most visible field free from development; the provision of public open space; the enhancement of hedgerows; and other land management measures. In addition, the policy acts to inhibit the Council's ability to meet its five-year housing supply and it should be regarded to be a restrictive policy attracting only little or moderate weight.

2.32 **LYD HOUS 1: Housing for Elderly People:-** This is a positive policy seeking the development of one small site for elderly persons housing; in seeking to provide housing for the elderly on the appeal site, the proposal would not be in conflict with this policy; and as a policy for the supply of housing it is automatically out of date.

2.33 **LYD TRAN 1: Improvements to the Highways Infrastructure:-** Inspector Pope found there was no conflict with the policy, albeit the wording has changed to a degree. S.A.D. offered an updated written statement; and the appellant provided confirmation of its position which S.A.D. chose not to test. It would be genuinely difficult to identify a sound basis for preferring the evidence of S.A.D. especially given the clear conclusions of Inspector Pope on the highway and sustainability issues.

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<sup>44</sup> IR/162

<sup>45</sup> IR/167; IR/168

<sup>46</sup> IR/181

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- 2.34 **LYD TRAN 3 – Public Rights of Way and Wildlife Corridors:-** although Inspector Pope found conflict with this policy,<sup>47</sup> the extent to which existing public rights of way would overlap estate roads would be minimal and impossible to avoid.
- 2.35 In reality, there would be very little conflict with the Neighbourhood Plan as made; and the decision maker should carefully consider whether paragraph 198 of the Framework is really intended to mean that any conflict with a Neighbourhood Plan is likely to lead to the refusal of planning permission.
- 2.36 In addition, whilst guidance indicates that '*where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted*', the position in the Forest of Dean is far from normal. In this regard, the norm cannot be considered to embrace the lack of a five-year supply of housing land; a development plan based on an out of date housing requirement; and a plan which is not Framework compliant in terms of housing needs. On the contrary, the Framework requires local planning authorities to have an up-to-date development plan, addressing the housing needs for the area and with a continuous five-year supply of specific deliverable housing sites.

**The presumption in favour of sustainable development**

- 2.37 It is evident that as the relevant policies in the development plan are out of date, irrespective of the housing supply position, the presumption, of paragraph 14 of the Framework, in favour of sustainable development applies. Moreover, it is the appellant's uncontested evidence that there is also no five-year housing land supply which would also engage the presumption in favour of sustainable development. Additionally, the Written Ministerial Statement, in relation to Neighbourhood Planning, does not apply as the supply is less than three years.
- 2.38 However, S.A.D. claims that the presumption does not apply as the proposal is on land protected from development by policy CSP.9; and the site should be judged to be a valued landscape engaging paragraph 109 of the Framework.

**CSP.9: Protection of amenity land**

- 2.39 The Framework does not contain any protection for '*amenity land*'. The appeal site is not designated as open space; it is clearly regarded as '*..... an enclave of farmland*';<sup>48</sup> and the Framework only gives outright protection to agricultural land within a narrow band of designations (e.g. Green Belt and valued landscapes).<sup>49</sup>

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<sup>47</sup> IR/181

<sup>48</sup> IR/95

<sup>49</sup> Gilbert J has made clear in *Cawrey v SSCLG and Hinckley and Bosworth BC* [2016] EWHC 1198 (Admin), (paragraph 49) there must be a degree of protection in the countryside which is not designated - But to imagine that extends to outright protection from development would be misplaced

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- 2.40 CSP.9 covers a range of matters and for that reason one can see how Inspector Pope saw it as being '*broadly consistent*' with section 8 of the Framework 'Promoting Healthy Communities'.<sup>50</sup> The outright protection for amenity land, as set out in CSP.9 is difficult to reconcile with the Framework which does provide protection from development for existing open space, sports and recreational buildings and land.<sup>51</sup> Nonetheless, S.A.D. does not suggest the appeal site falls within this category.
- 2.41 The land is not designated by reference to the Local Development Framework Proposals Map (2012)<sup>52</sup> as sports or recreational space; and, whilst it has footpaths crossing it, Inspector Pope observed '*any walkers deviating from the footpaths across the site are not authorized to do so by the landowner*'.<sup>53</sup> It would be wrong to view this land as qualifying for protection from paragraph 74 of the Framework.
- 2.42 Thus, CSP.9 is not consistent with the Framework; it is not a footnote 9 policy; and it does not dislodge the presumption in favour of sustainable development. Although it is alleged that Inspector Pope did not properly deal with this policy, the nub of S.A.D.'s complaint is a quarrel with the Inspector's clear conclusion that policy CSP.9 does not apply to this site.
- 2.43 It is agreed that the wording of policy CSP.9 is not as clear as it might be; but the policy is to be read as written. Whilst one might express a view on how its clarity might be improved, it is inappropriate to add words or change its punctuation.
- 2.44 CSP.9 clearly protects forest waste (as defined in the glossary of the Core Strategy) whether it is so identified or not; but this is not the basis of S.A.D.'s claim. It also protects land which is identified as amenity land. However, the necessary identification of such sites should take place, in an objective way, through the development plan process rather than in direct response to a development project. The site is not identified in the Local Plan, the Core Strategy or even the recent Neighbourhood Plan.
- 2.45 The draft version of the Neighbourhood Plan, which was before Inspector Pope,<sup>54</sup> sought to make all land outside the settlement boundary of Lydney open space. However, the draft policy did not survive in its original form.
- 2.46 Overall, the appeal site cannot be considered to be amenity land within the meaning of CSP.9. Moreover, whilst S.A.D. claimed that the Council, in the officer report, considered the proposal to be in conflict with the policy,<sup>55</sup> this did not form any part of the analysis of the merits of the proposal; and the formal reasons for refusal show that the alleged breach only related to the absence (at that time) of agreed planning contributions. That position pre-dated the present arrangements for the extensive provision of open space secured by obligation.

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<sup>50</sup> IR/162

<sup>51</sup> National Planning Policy Framework paragraph 74

<sup>52</sup> INQ/12 – updating extant policies from inter alia the Local Plan (2005)

<sup>53</sup> IR/176

<sup>54</sup> Examiners Version, March 2014; IR/176

<sup>55</sup> Officer's Report CD2/25

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**Valued landscape (paragraph 109 of the Framework)**

- 2.47 The attempt to categorise the appeal site as a valued landscape is an important part of S.A.D.'s case. The issue was raised in its original evidence; but there is nothing to show that Inspector Pope ignored this as alleged. The concept of a valued landscape is frequently raised by objectors as a qualifying basis for the Framework's footnote 9 exceptions and in an attempt to dislodge the presumption in favour of sustainable development, set out in paragraph 14 of the Framework.
- 2.48 It is to be noted that Inspector Pope recorded:- *'In cross examination the Rule 6 party's landscape/planning witness accepted that: none of the constraints to which footnote 9 of 'the Framework' relate applied'*.<sup>56</sup> In addition, S.A.D.'s original closing submissions did not make any such claim to value.<sup>57</sup> This is entirely consistent with Inspector Pope's conclusion where he accepted the appellant's view that the site was not part of a valued landscape, and he also recorded that no such claims were made by the local planning authority.<sup>58</sup> It is also wrong to characterise Inspector Pope's rejection of the site as a valued landscape as simply being determined by the fact it is not designated. His approach was more than that.
- 2.49 The justification for S.A.D. raising the matter again flows from later High Court Judgments on the issue. However, these only serve to demonstrate that a valued landscape must be more than just a landscape valued by local residents.<sup>59</sup> Moreover, as the Supreme Court has confirmed and reiterated, such judgements are ultimately matters of planning judgement for Planning Inspectors, whose judgement in these matters should be respected as a specialist tribunal.
- 2.50 The appeal site does not possess demonstrable physical attributes which take it out of the ordinary. It is also difficult to see the site as part of a valued landscape when it sits on the edge of the town of Lydney. As Inspector Pope observed, certainly from the south, the site appears as part of the settlement.<sup>60</sup> In this regard, the site is but part of a wider landscape which contains the town of Lydney. The presence of the urban area severely limits the value of the surrounding land as a landscape, and the site's immediate proximity to the urban area, with built development (especially to the north, west and south) limits its scope to form part of some wider landscape.

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<sup>56</sup> IR/112

<sup>57</sup> Document 56

<sup>58</sup> IR/176

<sup>59</sup> In *Stroud DC v SSCLG and Gladman* [2015] EWHC 488 (Admin), the Court upheld the approach adopted by the Inspector in that case, finding acceptable his approach of requiring the land to have some demonstrable physical attribute rather than just popularity. The point was reinforced by the High Court in *Forest of Dean DC v SSCLG and Gladman* [2016] EWHC 2429 (Admin). Higginbottom J (as he then was) applied the Stroud judgment and held that a landscape was "valued" if it has physical attributes taking it out of the ordinary. The point was confirmed a third time by Patterson J in *Cheshire East v SSCLG and Harlequin* [2016] EWHC 694 (Admin) where an Inspector had found the site in question had no special quality.

<sup>60</sup> IR/179

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- 2.51 In short, the wider landscape is not a valued landscape and the site itself does not have physical attributes which take it out of the ordinary. It should also be noted that the local planning authority in refusing planning permission did not take this position.
- 2.52 Although it is claimed that the appellant's landscape witness did not apply the range of factors that can help in the identification of valued landscapes,<sup>61</sup> this does not establish that the issue was ignored. Indeed, the determinant of what is a valued landscape is not solely down to a Box 5.1 ticking exercise in so far as attention is initially directed towards Landscape Character Assessments, planning policies and or landscape strategies.<sup>62</sup> In this regard, the appellant had an appropriate evidence base through the Forest of Dean Landscape Character Assessment and Landscape Strategy; and neither the site nor any of the Allaston Ridges Landscape Character Types are supported by landscape conservation strategies.
- 2.53 Whilst the appellant's landscape and visual assessment predated the third edition of the guidelines, no request was made by the local planning authority to undertake new survey work and analysis.
- 2.54 Moreover, the appellant has looked at a range of landscape issues, including landscape and scenic quality and representativeness; with a clear conclusion that the appeal site is not strongly representative of the landscape character area and landscape character type.<sup>63</sup> Having evaluated the evidence in a far more robust way than S.A.D., the appellant concludes that the site is not to be seen as a valued landscape.<sup>64</sup> However, those features which positively contribute to its character would be retained and enhanced.

**Five-year supply of housing land**

- 2.55 It is common ground that the Council cannot demonstrate a five-year supply of housing land. The appellant is the only party who has provided evidence on the extent of the shortfall.
- 2.56 The Core Strategy's annual requirement figure pre-dates the Framework; it is out of date and should not be relied up on. The appellant draws on the uncontested evidence of its consultant on the most appropriate objectively assessed need figure for the Forest of Dean.<sup>65</sup>
- 2.57 In this regard, two key objectively assessed need figures are identified for the district, namely 340 and 350 dwellings per annum. The first is the figure set out by the Inspector examining the emerging Allocations Plan; and the second is the appellant's position on full objectively assessed need.<sup>66</sup>

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<sup>61</sup> INQ/11 - Extract from GLVIA3 - Box 5.1 (page 84)

<sup>62</sup> GLVIA3 - paragraph 5.27

<sup>63</sup> CD2/10 - paragraphs 3.4 & 3.5; Proof (Davies) - Table 1 (page 10)

<sup>64</sup> CD2/10 - paragraph 5.6.10

<sup>65</sup> The ability to rely on the evidence of consultants acting for an appellant in a planning appeal has been confirmed by the High Court in *West Berkshire BC v SSCLG and HDD* [2016] EWHC 267 (Admin)

<sup>66</sup> APP/3 - paragraphs 4.5, 4.36, 4.38, 6.1 - 6.12

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- 2.58 The appellant is also alone in having carried out a detailed assessment of the Council's housing land supply.<sup>67</sup> This identified a deliverable supply of specific sites of 1,391 dwellings;<sup>68</sup> and whether or not one prefers an objectively assessed need of 340 or 350 dwellings per annum, or the application of the Sedgefield or Liverpool method to deal with the backlog, the outcome is a supply of less than three years (assuming a 20% buffer for persistent under-delivery).<sup>69</sup> Again, this is not contested. Even on the Council's preferred annual requirement of 330 dwellings per annum, the supply would be 2.67 years (Sedgefield) or 3.03 years (Liverpool).<sup>70</sup>
- 2.59 Uncontested evidence should be adopted by the decision maker unless concerns about it are raised openly. That has not been the case here; and with a requirement of 350 dpa; the use of the Sedgefield method; the imposition of a 20% buffer; and a supply of 1,381 dwellings, the appellant's uncontested stance is a supply of just 2.3 years.<sup>71</sup>
- 2.60 No solace can be taken from the claim that the lack of a five-year supply of housing land is a temporary problem prior to the adoption of the Allocations Plan. The suggestion that the supply will be as high as 6.9 years at that time fails to recognise the appellant's uncontested evidence which undermines the Council's assessment; and the fact that neither the housing requirement nor the supply of sites in the emerging plan has been settled and further hearings are due to take place.
- 2.61 Even where there is an adopted development plan, it cannot be assumed, at the time of a section 78 inquiry, that a five-year supply of specific deliverable sites is available.<sup>72</sup> If the Secretary of State fails to issue a timely decision in this case, such that it post-dates the adoption of the emerging Forest of Dean Allocations Plan, the appellant would be forced to seek the reopening of the inquiry in order to test any claims as to whether a five-year supply exists in the district.

**Delivery of the scheme**

- 2.62 There is no foundation to question the delivery of houses from the site within a five-year period. There is in truth a house builder who wants to secure planning permission and to build houses. However, the holding costs on the planning application and appeal process are now very significant, such that there is an understandable desire to sell part of the site to other builders.

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<sup>67</sup> APP/6 - Appendix 1 (Tab 2)

<sup>68</sup> APP/6 - paragraph 5.20

<sup>69</sup> APP/6 - Table 3 (page 25)

<sup>70</sup> APP/6 - paragraph 4.2, Table 2 (page 24)

<sup>71</sup> APP/6 Tables 2 and 3 show the 5-year supply as 1,391 and 1,381 respectively. Nothing appears to turn on this discrepancy. In APP/6 (Tab 3) the total line in the table and the summary repeat the error

<sup>72</sup> The point featured in the Suffolk Coastal case, where the Suffolk Coastal District CS was adopted, but it was concluded at the s.78 appeal that there was no 5YS of housing land. Having reviewed paragraphs 47-49 of the Framework, Lord Gill observed at paragraph 76 of the Judgment:- "These requirements, and the insistence on the provision of "deliverable" sites sufficient to provide the five years' worth of housing, reflect the futility of authorities relying in development plans on the allocation of sites that have no realistic prospect of being developed within the five-year period."

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- 2.63 The relevant clauses in the unilateral undertaking would ensure that the builders concerned would be small and medium sized builders in the local area. There is nothing inappropriate about having such clauses, especially given the local circumstances in Lydney, where most of the allocated sites are held by firms which are not local to the area.
- 2.64 There plainly is an appetite for self-build homes, with evidence from local people who attended the inquiry; and the Council has a register of those interested in self-build. Claims about the difficulties associated with financing self-build amount to little more than assertion. Given that the Government has committed to providing funding for self-build, and it has championed the role of self-build through the Housing White Paper, it would be very odd if permission were to be refused for this reason.
- 2.65 It is common knowledge that building one's own home costs a lot less than buying from a major housebuilder. Whilst self-build plots require the provision of infrastructure (to at least the edge of the respective plots) the appellant is committed to doing so; that is evident in The Local Approach document; and the appellant (through ORB Developments), has the ability to finance the site infrastructure.
- 2.66 There is a clear need for more affordable housing in the Forest of Dean. Lydney is the main town in the district and an eminently sensible location for new affordable housing. The claims from Councillor Bevan, relating to recently completed affordable homes in the town, that '*people have been bused in from Birmingham*' were unsubstantiated.
- 2.67 At 1 April 2016, over 1,900 households were on the Housing Register in need of an affordable home in the district; with approximately 280 households requiring an affordable home in Lydney against a previous annual turnover of 92 social housing lettings in the town. Over the last 15 years, the average affordable housing delivery in the district has been 41 units per annum (19 per annum in Lydney). The delivery of approximately 80 affordable homes from the site should be given very significant weight.<sup>73</sup>
- 2.68 There is also an enthusiasm for housing for the elderly, as the Neighbourhood Plan seeks to encourage this through its only housing proposal.
- 2.69 The claims the development will not take place, or will not take place in the next five years, are completely baseless.

**Delivery of the Lydney sites allocated in the Core Strategy**

- 2.70 The optimism about future progress on the development of the East of Lydney sites is unfounded in that very little headway has been made on the allocated sites. Redrow is currently undertaking a small development and, for most other sites, developers are simply seeking new permissions to keep the existing approvals alive.<sup>74</sup> This is set out below.

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<sup>73</sup> APP/4 - paragraphs 6.1 - 6.12

<sup>74</sup> APP/6 - Appendix 1 Tabs 2 & 3



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- 2.71 In terms of **Lydney East MMC**, a renewal outline application for new housing and related development (P0201/15/OUT), originating in February 2015, is yet to be determined. A second application, for the erection of 347 residential units and supporting development comprising phase 2 'Higher Lydney Park' (P1881/15/FUL), awaits a formal decision despite a resolution, in November 2016, to grant planning permission. Both applications were submitted without any provision for affordable housing; and planning obligations are yet to be agreed.
- 2.72 At **Lydney East (Phase A)** no further progress has been made since the original inquiry.
- 2.73 The position at **Lydney East (Phase B)** is an outline application for residential development (up to 750 dwellings) and related development (P0361/15/OUT) was approved in March 2016 (as a renewal of an earlier permission). Redrow gained reserved matters approval for 125 dwellings in October 2016 (P0924/16/APP); the access road is under construction; the development will proceed in two phases; and only 18 affordable homes are to be provided. There appears to be no evidence of any developer interest in the remaining plots; and any further delivery in excess of the above is not guaranteed at this stage.
- 2.74 The provision of affordable housing at Lydney A and Lydney B is just 14.1% following an application (P1809/13/PLANOB), supported by a development viability report, which sought to remove the affordable housing contributions originally secured for these sites.

**Other matters**

**The wireline drawings**

- 2.75 Inspector Pope indicated that of the competing wireline drawings, *'those prepared on behalf of the appellant are a more accurate indication of the potential impact of the scheme'*.<sup>75</sup> Prior to the reopening of the inquiry, a statement of common ground was submitted to assist in the understanding of the dispute about the two sets of drawings previously produced. In simple terms, the appellant's are to be considered as more reliable based on accurate site levels and the intention to develop the site on a cut and fill basis to counter existing gradients. While S.A.D. has followed a methodology considered best practice in the physical production of the wirelines, it lacks the accuracy and refinement which the appellant's versions achieve.

**Highway matters and accessibility**

- 2.76 Repeated local concerns about traffic and highway matters were in effect addressed in Inspector Pope's report. The appellant's position, and that of the highway authority, remains unchanged.<sup>76</sup>

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<sup>75</sup> IR/178

<sup>76</sup> IR182 - IR/193; APP/1 - paragraphs 2.5 - 2.6

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- 2.77 Updated personal injury records for the local highway network in the locality of the site continue to indicate that there are no obvious highway safety issues; and parking restrictions have now been implemented at the Primrose Hill bend with Springfield Road.<sup>77</sup>
- 2.78 The mitigation strategy associated with the proposal includes a Travel Plan and financial contributions towards the Lydney Transport Strategy and Lydney Highway Strategy. It has been agreed with the highway authority and has gained support from the previous Inspector.<sup>78</sup>
- 2.79 Inspector Pope found the site *'would be accessible to a range of services, including some employment facilities, a bus station and the railway network ..... occupiers of the scheme would not be unduly reliant on travel by car'*. There have been no material changes to accessibility since the last inquiry.<sup>79</sup>
- 2.80 In terms of access and trip impact, Inspector Pope found no material deficiencies in terms of access to the site and he was content with the veracity of the Transport Assessment despite criticism by others of the omission of traffic data from Windsor Drive.<sup>80</sup>

**Unilateral undertaking**

- 2.81 In response to questions posed by Inspector Rose about aspects of the unilateral undertaking, the appellant drew attention to a decision of the Secretary of State and the related Inspector's report (land off Darnhall School Lane, Winsford, Cheshire). Whilst this concerned the operation of planning conditions, the Secretary of State rejected a number of the recommended planning conditions including those relating to *'local builders'* and *'local procurement'*. That decision is under challenge.<sup>81</sup>

**Benefits of the scheme and the planning balance**

- 2.82 The identified conflict with the development plan represents the harm. In applying the tilted balance, those adverse impacts must significantly and demonstrably outweigh the benefits of the proposal if planning permission is to be refused. This list of benefits associated with this proposal is both diverse and extraordinary. In just three paragraphs, Inspector Pope was able to list 25 ways in which the proposals would deliver sustainable development.<sup>82</sup>
- 2.83 The material considerations which weigh in favour of this proposal are extensive - planning permission should be granted even on the normal statutory test in Section 38(6) of the Planning and Compulsory Purchase Act 2004. Nonetheless, the appellant's case is the presumption in favour of sustainable development should apply with reference to the tilted balance of paragraph 14 of the Framework. In this regard, the decision to grant planning permission should be found to be overwhelming.

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<sup>77</sup> APP/1 - paragraphs 3.1 - 3.5; IR/193

<sup>78</sup> APP/1 - paragraphs 3.6 - 3.11; IR/185, 189 - 190

<sup>79</sup> APP/1 - paragraphs 4.1 - 4.8; IR/182 - 185

<sup>80</sup> APP/1 - paragraphs 5.1 - 5.5; IR/186 - 188

<sup>81</sup> INQ/24 - INQ/27

<sup>82</sup> IR/169 - IR/171

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2.84 For the Secretary of State, the decision should be simple and made easier by asking the question '*does the Government want the housing it advocates in the White Paper or not?*' This proposal would be entirely in-line with the aspirations of Government; and the time has come to focus on housing delivery given the housing crisis in this country.

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### 3. The Case for Stop Allaston Development (S.A.D.) (Rule 6 Party)

#### Introduction

- 3.1 The original and subsequent redetermination appeal have extended over three years and occupied three distinct inquiry sessions. The case for S.A.D. supplements all previous submissions made and seeks primarily to focus on the changes since the last inquiry and particular issues of dispute at the reopened inquiry.
- 3.2 The appellant appears to have taken the view that the successful outcome of this appeal for them is now something of a mere formality, given the previous recommendation of approval by Inspector Pope. However, the original Inspector did not, for example, carry out his own assessment of the landscape value of the appeal site and he did not engage with S.A.D.'s case that the appeal site constituted a valued landscape within the meaning of paragraph 109 of the Framework. He also determined, wrongly in S.A.D.'s view, that policy CSP.9 of the Core Strategy did not apply to the appeal site.
- 3.3 More importantly, since the last inquiry, the Lydney Neighbourhood Development Plan now forms part of the development plan; and the Allocations Plan has progressed significantly compared to the position at the previous inquiry in that it has undergone Examination in Public with an interim report issued by the Inspector in June 2016.<sup>83</sup>
- 3.4 In response to the Inspector's request for further work to be undertaken on housing requirement and supply, the local planning authority has calculated an objectively assessed need of 300 dwellings per annum (dpa) with an addition of 10% to provide scope for the additional delivery of affordable housing which would take the plan requirement to 330 dpa. This figure is markedly less than the position taken by the appellant at the original inquiry (440 dpa). The local planning authority has also identified a margin of 984 dwellings (26%) over the requirement.<sup>84</sup>
- 3.5 Amongst the proposed additional housing allocations is an area of land which forms part of the appeal site (6.2 hectares – approximately 120 dwellings) which, subject to clarification and reassurance, S.A.D. might not necessarily oppose.<sup>85</sup>
- 3.6 The Allocations Plan, once adopted, will address the current deficiency in the Council's five-year housing land supply (the emerging allocation for part of the appeal site is not critical to this being achieved as the Council is intending to over-allocate for the first five years, with a 6.9 year supply being claimed).<sup>86</sup>

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<sup>83</sup> R6/1 - paragraph 2.2

<sup>84</sup> R6/1 - paragraphs 2.3 - 2.6

<sup>85</sup> R6/1 - paragraph 2.9

<sup>86</sup> R6/1 - paragraph 2.12

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- 3.7 Other sites within Lydney, including the large allocation at East of Lydney, are coming forward and are starting to deliver. This is in marked contrast to the factual position at the previous inquiry, where development at East of Lydney had stalled. The Inspector, in his examination of the Allocations Plan, has expressly recognised in his interim report that the allocation at East of Lydney was of strategic importance in achieving the objectives of the Core Strategy:- *'a move away from this approach would be a significant departure from the adopted strategy'*.<sup>87</sup>
- 3.8 The legal position has also changed in that the decision of the Court of Appeal in Suffolk Coastal has firmly re-established the primacy of the development plan and apportioning weight to out of date policies is a matter for the decision maker, having regard to the facts of the particular case. In the recent Judgment of the Supreme Court, the legal correctness of this approach has been affirmed.<sup>88</sup>
- 3.9 In addition, post-dating the previous Inspector's report, the Court has provided guidance on the interpretation of paragraph 109 of the Framework.<sup>89</sup> The issue as to whether the appeal site does properly fall within a valued landscape, at the local level, must be determined afresh.

## **The development plan**

### **Findings of Inspector Pope**

- 3.10 The original Inspector accepted that the proposals would *'be at odds with that part of CS Policy CSP.4 which expects most changes to take place within existing settlement boundaries'* and *'the proposals would also conflict with CS Policies CSP.5 and CSP.12'*.<sup>90</sup>
- 3.11 He went on to find that *'The proposed loss of countryside, diminution of views from some sections of footpaths through the site and the erosion of pleasing unspoilt qualities of the site would detract from the character and appearance of the area. These elements of the scheme would result in some conflict with aspects of CS policy CSP.1. There would also be conflict with LNDP policies LYD ENV2 and LYD TRAN3'*.
- 3.12 However, in his conclusions, the Inspector failed to reach a direct conclusion as to whether the appeal proposal complied with the development plan as a whole;<sup>91</sup> albeit the inference is that it was in conflict with this key test:- *'The proposals would accord with the provisions of 'the Framework'. This is an important material consideration that outweighs conflict with the development plan'*.

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<sup>87</sup> R6/1 - paragraph 4.8

<sup>88</sup> R6/1 - paragraphs 4.2 - 4.6

<sup>89</sup> Stroud District Council v Secretary of State for Communities and Local Government v Gladman Developments Limited [2015] EWHC 488

<sup>90</sup> IR/162

<sup>91</sup> IR/214 - IR/218

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- 3.13 It is notable that the appellant's supplementary proof of evidence, relating to the planning balance, only acknowledges conflict with part of policy CSP.4, policy CSP.5 and policy LYD ENV1.<sup>92</sup> This is difficult to understand given:-
- (a) the clear findings of Inspector Pope and his indication that the appeal proposal did conflict with the development plan as a whole;
  - (b) the appellant's wholesale reliance on the original report;
  - (c) the absence of any change in the effect of the appeal scheme, which would be relevant to these issues;
  - (d) the Neighbourhood Plan now forms part of the development plan; and
  - (e) no explanation is provided as to why the appellant departs from the Inspector on these issues.
- 3.14 By contrast, S.A.D. maintains that the appeal proposal conflicts with all of these policies and, in doing so, draws support from the conclusions of Inspector Pope.
- 3.15 The appellant's failure to recognise the clear conflict between the appeal scheme and policies CSP.1, CSP.12, LYD ENV2 and LYD TRAN3 (as set out by Inspector Pope) directly relates to the overall conclusion as to conflict with the development plan as a whole. This omission renders the appellant's evidence to be seriously flawed in this respect.

**Core Strategy Policy CSP.9**

- 3.16 S.A.D. has consistently argued that policy CSP.9<sup>93</sup> is relevant to the appeal site, and that the appeal scheme conflicts with it. Inspector Pope considered that CSP.9 did not apply because '*The appeal site is not identified as being of recreational or amenity value under CS Policy CSP.9.*'<sup>94</sup>
- 3.17 However, S.A.D. contends that, having regard to the wording of the policy, the appeal site does not have to be specifically '*identified*' for CSP.9 to apply, and the Inspector fell into error in this respect.
- 3.18 Looking in detail, the title to the policy is '*Recreational and amenity land including forest waste - protection and provision (Strategic objective: Providing quality environments)*'. The subsequent text is under three headings: - '*protection of amenity land*'; '*protection of recreational use*'; and '*recreational provision for new development*'.
- 3.19 There is no glossary definition for '*amenity land*', '*recreational use*', or '*recreational land*'. However, '*forest waste*' is defined as '*Land within the statutory forest that is not legally enclosed at any one time, including unplanted areas which are not currently growing trees. Such areas are often important amenity area on the edge of settlements*'.

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<sup>92</sup> APP/6 - paragraphs 4.7 & 4.9

<sup>93</sup> CD3/1 - pages 59 - 61

<sup>94</sup> IR/176

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- 3.20 Insofar as the policy relates to 'Amenity Land', it states: '*Except where allocated in a development plan, land which is identified as being of amenity value and all forest waste whether so identified or not, will be protected from development. This includes land which is part of the forest landscape and other protected areas identified in Development Plan Documents and/or on the proposals map*'.
- 3.21 Whilst it was common ground that the first sentence of the policy was open to interpretation, the appellant's suggestion that it did not apply relied on the construction as '*Except where allocated in a development plan, **for development**, land which is identified as being of amenity value and all forest waste whether so identified or not, will be protected from development*'.
- 3.22 For its part, S.A.D. sees the solution to be a minor grammatical error to be rectified by moving the first comma one word along to read: - '*Except where allocated in a development plan land, which is identified as being of amenity value and all forest waste whether so identified or not, will be protected from development .....*'.
- 3.23 Further, the appellant sought to argue that CSP.9 only applied to land which was identified as '*amenity land*' through the development plan process i.e. it had to be shown on an allocations plan. This argument also proceeded on the basis that the words within the policy '*whether so identified or not*' related only to '*forest waste*' and not to '*amenity land*'.
- 3.24 It is clear that '*amenity land*' is entirely separate from '*forest waste*' with the latter clearly understood by reference to the Glossary; in order for an area to be forest waste it must lie within the '*statutory forest*'; and the area covered by the statutory forest is shown on the key diagram. It follows, that all areas of forest waste are already identified.
- 3.25 S.A.D. holds to the view that:-
- (a) if the words, '*whether so identified or not*' in policy CSP.9 related only to forest waste, they would be superfluous and unnecessary;
  - (b) if '*amenity land*' only includes land of '*amenity value*' which is specifically '*identified*' as part of development plan documents and/or on the proposals map i.e. with an allocation, the second sentence of this part of CSP.9 would be superfluous;
  - (c) if '*identified*' only meant '*identified as part of the development plan documents and/or on the proposals map*', it would not be necessary to make clear that the word '*identified*' included land so allocated as part of a development plan document or on the Core Strategy proposals map;
  - (d) the wording makes clear that '*identified*' is not to be restricted in this way; and
  - (e) the first '*identified*' in the policy plainly allows for '*amenity land*' to be '*identified*' through the development control process.
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- 3.26 Despite the appellant's concern that the policy would not be capable of being applied objectively on a case by case basis, it was conceded that paragraph 6.56 of the explanatory text provided objective criteria against which sites could be judged i.e. *'For such land to be protected it would be expected to be of cultural, historic, visual or functional importance'*.
- 3.27 In addition, the appellant's claim that *'amenity land'*, in CSP.9, had the same meaning as *'important open areas'*, in the outgoing Local Plan, is not borne out on the wording used in either the policy or in the explanatory text and it is a clear indicator that the two terms are separate and distinct. Moreover, although the appellant sought to rely on the key to the Core Strategy proposals map and its reference to *'important open area'*, this does not take the case any further forward in the absence of any suggestion of interchangeability by explicit policy reference.
- 3.28 Further, as noted above, if *'amenity land'* were only intended to include *'important open areas'* shown on the Core Strategy proposals map, the wording of CSP.9 which states:- *'This includes land which is part of the forest landscape and other protected areas identified in Development Plan Documents and/or on the proposals map'* would be meaningless.
- 3.29 S.A.D. takes comfort from the explanatory text, at paragraph 6.56, that *'amenity land, in the form of important open areas, including Forest Waste is protected in the outgoing Local Plan and will continue to be protected by this and then under the LDF, both generally in the Core Strategy and by being identified in subsequent DPDs'*. The grammar is, once again, unfortunate; however, S.A.D. contends that this is a strong indication that CSP.9 applies to areas which are not identified on proposals maps. CSP.9 is intended to afford *'general'* protection to land which falls within the meaning of *'amenity land'*, even where the land in question is not allocated or designated on a proposals map.
- 3.30 The approach of S.A.D. is also consistent with the views of the Council's officers at the time the application for planning permission was refused.<sup>95</sup>
- 3.31 With CSP.9 in mind, it is contended that the appeal site functions as an important countryside buffer, which preserves the character and appearance of this part of Lydney, and as a valuable recreational resource for the public having regard to the well-used public rights of way, which criss-cross the site, and the permissive informal footpaths which serve to provide a circular route to those who use the site for less formal recreation. The experience of using the site for recreational purposes owes much to the wide sweeping panoramic views of the Severn Estuary and the Cotswolds, which can be enjoyed from the site. These views are an important feature of both the local and the wider landscape character.
- 3.32 The visual and functional importance of the appeal site was also recognised by the appellant at the original inquiry as the Inspector records that Mr Davies agreed the site was a *'local asset'*.<sup>96</sup>

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<sup>95</sup> CD2/25 - page 94 states that the proposed development is 'clearly contrary' to CSP.9



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- 3.33 This is entirely consistent with the appeal site falling within the scope of 'amenity land' within policy CSP.9 and the appeal proposal needs to be measured against the policy. Plainly, the proposed development would not 'protect' this amenity land, which is of both functional and visual importance and it would therefore be in conflict with policy CSP.9.
- 3.34 Although the appellant sought to argue there was no support in the Framework for protecting amenity land, paragraph 114 states:- '*Local planning authorities should: set out a strategic approach in the Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure .....*'.
- 3.35 Importantly, it neither prescribes nor prohibits the method which a local planning authority should adopt. There is no suggestion that protecting green infrastructure through a development control process, rather than by designation or allocation, is unacceptable or to be avoided. 'Amenity land', in the sense used by CSP.9, is a policy which sets out a strategic approach for the protection of green infrastructure. It is therefore consistent with the Framework.

**Conflict with the development plan - summary**

- 3.36 Overall, S.A.D. firmly contends that the proposed development would conflict with the development plan when considered as a whole. The degree of conflict with a whole raft of policies would be extensive. The breach of development plan policies would not only be technical but also would result in substantive harm to the environment (CSP.1, CSP.9 and LYD ENV2).
- 3.37 It would also cause harm to the delivery of the strategy which is at the heart of the Core Strategy with respect to growth within Lydney. The imperative of the Core Strategy, in policy CSP.12, is to secure sustainable development to the east of the town. This was acknowledged by Inspector Pope, albeit even when the development to the east of Lydney had stalled. Whilst development is moving forward, the pace has been slow and, now that sites are delivering, care should be taken not to derail their progress and/or undermine the settled strategy for the growth of Lydney.
- 3.38 It follows that granting permission for the appeal site would undermine the adopted strategy for sustainable growth at Lydney; and any departure from this, if required, should be properly addressed through the emerging plan process, rather than through the determination of one-off section 78 appeals. Paragraph 17 of the Framework places reliance on the planning system being '*genuinely plan-led*' which is of particular importance in the context of a recently made Neighbourhood Plan and the conflict with its policies. The conflict with the development plan weighs heavily against the proposal even where the titled balance of the Framework applies.

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## Landscape value and harms

### Landscape value

- 3.39 Consistent with its original case, S.A.D. maintains that the appeal site is a 'valued landscape' as set out within paragraph 109 of the Framework and it is therefore to be protected.
- 3.40 It is notable that Inspector Pope's report failed to note the arguments made by S.A.D. He did, however, record what he considered to be the appellant's case:- *'This 14.16 ha site lacks the scenic quality, cultural, physical and sensory characteristics that would warrant additional designation and protection'*.<sup>97</sup> However, this was nothing more than a direct transposition of the appellant's closing submissions;<sup>98</sup> and is thus based on submission rather than evidence.
- 3.41 Further, the language used by the appellant is in error, by reference to the inclusion of *'additional designation'* since the whole purpose of valued landscapes at the local level is the lack of designation;<sup>99</sup> and it is, thus, possible that the Inspector's conclusions were infected by the same mistake.
- 3.42 Although Inspector Pope, in his conclusions, dealt with the issue of *'valued landscape'* alongside discussion of whether paragraph 74 of the Framework and/or policy CSP.9 applied to the case, he did not determine whether the appeal site had definable physical characteristics which took it out of what could be considered *'mere countryside'*. Whilst he cannot be criticised for that, as the Stroud Judgement post-dated the original inquiry, his conclusions cannot simply be translocated by the decision maker to the present day.<sup>100</sup> The test has changed.
- 3.43 Further, the Inspector's conclusion appears to rest on what he considered to be the appellant's case on this issue:- *'I concur with the appellant that the site does not form part of a 'valued landscape' .....'*.<sup>101</sup> The only analysis which precedes this conclusion is that the appeal site is not designated and many landscapes have value. However, this is insufficient to disqualify the appeal site from falling within the protection of paragraph 109.
- 3.44 Critically, the appellant's evidence as a whole does not address or refer to the issue of landscape value and paragraph 109; and no assessment of landscape value was made in the Landscape and Visual Assessment (Revision A).<sup>102</sup>

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<sup>97</sup> IR/58

<sup>98</sup> Document 57 - page 51 (final bullet point)

<sup>99</sup> having regard to the Court's decision in Stroud

<sup>100</sup> Stroud District Council v Secretary of State for Communities and Local Government v Gladman Developments Limited [2015] EWHC 488

<sup>101</sup> IR/176

<sup>102</sup> CD2/10

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- 3.45 Whilst comment is made that *'The site is not a designated or valued landscape .....'*<sup>103</sup>, this is not underpinned by recognised assessment; it predated the publication of the third edition of The Guidelines for Landscape and Visual Impact Assessment (GLVIA3); and it did not address the *'value'* of the appeal site as an undesignated landscape.
- 3.46 This erroneous approach also appears to be fundamental to the conclusions in the appellant's main landscape proof of evidence:- *'In this context the site is not protected by any landscape designations save its location in open countryside'*.<sup>104</sup> It is also at odds with the appellant's admission that in decision making it is always important to assess the significance of landscape harm; assessing the value of the landscape in question is a key component of the overall assessment of *'significance'* ;<sup>105</sup> it is important for a decision maker to engage with the value of the landscape; and if value is not assessed, or the decision maker gets it wrong, the whole assessment could be undermined.
- 3.47 In assessing the value of an undesignated landscape, GLVIA3 indicates:- *'As a starting point reference to existing Landscape Character Assessments and associated planning policies and/or landscape strategies and guidelines may give an indication of which landscape types or areas, or individual elements or aesthetic or perceptual aspects of the landscape are particularly valued'*.<sup>106</sup>
- 3.48 In this regard, the appeal site falls within the *'Ridges and Valleys'* character area, and then within the *'sub-category 10a, Allaston Ridge'*.<sup>107</sup> Inspector Pope found that the appeal site does *'..... reflect some key characteristics of the Ridges and Valleys LCT'*.<sup>108</sup> The thrust of the Inspector's finding on this factual issue is clear – the site is clearly representative of key characteristics of the landscape character area within which it falls. This denotes that the appeal site represents a landscape type which, in the words of the GLVIA3, is *'particularly valued'*.
- 3.49 Furthermore, unlike Inspector Pope, both the appellant and S.A.D. agree that the appeal site contains *'distinctive rounded ridge profiles rising above the neighbouring vale landscapes'*; and this is highly representative of a further key characteristic of the character area and/or type within which the appeal site is situated. Although the ridge on which the appeal site is located is not *'the highest'* within its character area, this does not devalue the appeal site in relation to the consideration of the key characteristics of the area.<sup>109</sup>
- 3.50 Taken as a whole, the appeal site is highly representative of the landscape character area within which it sits:-

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<sup>103</sup> CD2/10 - paragraph 2.3.14

<sup>104</sup> CD2/10 - paragraph 5.6.10; Proof (Davies) - paragraph 5.1.6

<sup>105</sup> GLVIA3 - page 71 (flow diagram)

<sup>106</sup> GLVIA3 - paragraph 5.27

<sup>107</sup> CD5/1

<sup>108</sup> IR/174

<sup>109</sup> R6/1 - paragraph 2.6

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- (a) it contains a distinctive rounded ridge profile which rises above the neighbouring vale landscape;
  - (b) it forms part of the mosaic of mixed farmland and woodland that cloaks the ridges;
  - (c) it provides for extensive views over the surrounding lowlands;
  - (d) the ridge within the appeal site is open;
  - (e) it affords dramatic and sweeping panoramic views across to the Severn and towards the Cotswolds;
  - (f) it is defined by a network of often overgrown hedgerows;
  - (g) the fields are given over to sheep and cattle pasture; and
  - (h) the steepness of the landform limits arable farming.
- 3.51 S.A.D. firmly contends that the overall representativeness of the appeal site is highly indicative of it being '*particularly valued*' because of its specific physical features. That should be sufficient to conclude the matter.
- 3.52 The appellant also conceded that other definable physical features of the appeal site included its extensive footpath network; its largely unspoilt nature;<sup>110</sup> and its contribution to the character and appearance of this part of Lydney.
- 3.53 Taking all of the above together, it is evident that the appeal site is precisely the type of landscape which should properly fall within the scope and protection of paragraph 109 of the Framework. It contains a variety of definable physical characteristics that are reflective of the key characteristics of the relevant character area. The appeal site is, quite simply, so much more than '*mere countryside*'. It is, in itself, a '*valued landscape*' at the local level.<sup>111</sup>
- 3.54 Whilst the appellant's planning witness sought to suggest that the appeal site could not be a '*valued landscape*' because of its size and/or scale, such sites at the local level are bound to have a limited scale or size which is reflective of its local role. The materially different appeal decision, in which the Inspector indicated '*..... some difficulty in ascribing the term landscape to an appeal site comprising two agricultural fields .....*' and that '*the term 'landscape' denotes a somewhat wider area than the appeal site*',<sup>112</sup> is of no comparative value.
- 3.55 In the case above, the Inspector, when considering valued landscapes, found the appeal site's topography, though representative of the character area, to be '*..... but one feature. The majority of the land in the surrounding area comprises rolling landforms and I do not consider this feature on its own to qualify the site as part of a valued landscape*'.<sup>113</sup> In contrast, the current appeal site contains many of the key features of its landscape character area.

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<sup>110</sup> IR/173

<sup>111</sup> R6/1 - paragraphs 4.11 - 4.16

<sup>112</sup> CD6/44 - paragraph 33

<sup>113</sup> CD6/44 - paragraph 34

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**Visual harm**

- 3.56 S.A.D. maintains its earlier case in full in relation to the scale and adverse impact of visual harm which would be likely to result from the appeal scheme. The main change since the case was before Inspector Pope is that, at the reopened inquiry, the appellant no longer purported to cast doubt on the methodology for creating S.A.D.'s wireline photomontages;<sup>114</sup> and it may be concluded that the allegation of inaccuracy, reported by Inspector Pope has been withdrawn.<sup>115</sup>
- 3.57 In essence, the difference between the parties is that the appellant's wirelines rely on lower slab levels and lower ridge heights. Even so, S.A.D. does not accept that the differences between the wirelines would materially alter its assessment of harm. Whilst lower overall building heights may slightly improve the visual effect from some locations, there would be no effective way to mitigate for the replacement of panoramic open views with built development. The change would be both significant and adverse.<sup>116</sup>
- 3.58 Moreover, it is only S.A.D. who has illustrated the effects on users of the public right of way outside the appeal site.<sup>117</sup> Such matters are best assessed in the round as part of a site visit; and when this is done S.A.D.'s evidence is clear - the visual impact on sensitive receptors, including users of the rights of way within and adjacent to the appeal site, would be extremely harmful.

**Mitigation**

- 3.59 The appellant, in reaching its conclusions about landscape character and visual harm, relies on the design of the appeal scheme being '*landscape-led*', resulting in '*in built*' mitigation with new planting. Even with the expectation of good design, mitigation can only go so far; and, once the landscape attributes of the appeal site have been sacrificed, its value could never be restored. Although the appellant has sought to locate built development in areas of the appeal site which might be said to be potentially visually less sensitive, the alleged measure of mitigation would not overcome the harm to landscape character.
- 3.60 S.A.D. maintains that the proposal would cause significant damage to the value of the landscape and the character of the local area; and that this would be incapable of effective mitigation. In particular, the measures proposed by the appellant would be unable to safeguard important views; and the outstanding panoramic aspect from the upper parts of the site and outlook along the Severn Estuary would be permanently lost.<sup>118</sup> Major harm to sensitive receptors (e.g. users of public rights of way) could not be successfully avoided.

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<sup>114</sup> Appended to Supplementary Proof (Stuart) (January 2015)

<sup>115</sup> IR/69

<sup>116</sup> R6/1 - paragraphs 4.17 - 4.19

<sup>117</sup> Viewpoint 4

<sup>118</sup> Supplementary Proof (Stuart) (January 2015) – paragraph 2.15

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3.61 The importance of the public rights of way network has been highlighted by local residents, the rights of way officer and the local Ramblers Association. The importance of the appeal site, as part of a valued public recreational resource at the local level, is reinforced by published guides which include walks which take in the appeal site.<sup>119</sup>

**Landscape benefits**

3.62 Many of the purported landscape benefits of the scheme<sup>120</sup> would, in reality, be nothing more than mitigation. By way of illustration, whilst it is accepted that the appeal proposal would, if allowed, deliver in excess of the standard requirement for public open space, the additional open space would be a by-product of the requirement to keep the upper eastern field free from built development. Rather than a benefit, it should properly be considered, primarily, as mitigation to avoid additional visual harm.

3.63 Again, although there would be resultant benefits to biodiversity, compared to the baseline position, in many instances these would be secondary effects of necessary scheme features such as sustainable drainage systems. Further, the provision of '*natural play areas*' with '*natural surveillance*' cannot properly be considered a '*benefit*' insofar as they are required by policy consistent with the principles of achieving good design.

3.64 Moreover, despite the claim that the proposal would '*significantly enhance the urban rural edge in this location retaining and reinforcing a strong and defensible boundary to the open countryside to the east*',<sup>121</sup> the development would have the adverse effect of pushing the urban edge eastward, without any meaningful defensible boundary. The same argument could be repeated to justify further development in those adjacent eastern fields (up to the truly defensible boundary of the road). There would be no '*benefit*' to be derived from the scheme in this regard.

3.65 Overall, taking into account mitigation and purported benefits, the residual harm to the landscape, and the character and appearance of the countryside, would remain both significant and adverse.

**Landscape value and harm - summary**

3.66 The appeal site is a valued landscape with an extensive array of definable physical features and/or characteristics which take it out of the category of '*mere countryside*'. The harm to landscape character would be significant and, without effective mitigation, it would weigh heavily against the proposal. The development would also result in significant visual harm to sensitive receptors, including the extensive public rights of way network which criss-crosses the site. Once lost to development, these finite environmental and community resources could not be recovered.

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<sup>119</sup> Lydney Walks (Published by the Lydney Partnership); and Walks around the Forest of Dean (Published by the Forest of Dean Group Ramblers' Association)

<sup>120</sup> Proof (Davies) - section 4.5 & paragraph 5.1.22

<sup>121</sup> Proof (Davies) - paragraph 5.3.5

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3.67 It is acknowledged that in cases where a Council cannot demonstrate a five-year supply of housing land, some countryside may have to be sacrificed to meet the need; but this general proposition does not justify the loss of all greenfield sites to development; and, if it were applicable, it would neutralise the entire purpose of paragraph 109 of the Framework.

**Delivery**

3.68 The appellant's case rests on the deficit in the five-year supply of housing land as justification for the grant of planning permission, albeit on the concession that the proposal must be able to make a material contribution to the supply of housing land within the relevant five-year period. If it could not do so, the weight which a decision maker should afford to the delivery of market and affordable homes must be significantly reduced.

3.69 S.A.D. doubts the deliverability of the appeal scheme; and since the original inquiry was held, the grounds for concern have only increased. In this regard, the appellant accepted that the evidence of interest from house builders, other than Johnson's (who own part of the appeal site), was seriously out of date with the available '*letters of interest*' being some three years old. Although it was suggested that interest from other house builders remained, no written evidence was presented.

3.70 The only sign of direct house builder interest in the site is from Johnson's who are said to have the capacity to build around ten houses a year: - this level of building would fail to make any meaningful contribution to the Council's current deficit. It provides no basis to grant planning permission. This weakness in the appellant's case should not be lightly brushed aside; the absence of any other house builder involvement raises a very real concern about projected delivery rates.

3.71 Further, there is no cogent evidence of any continuing interest in the site from the original Registered Social Landlord;<sup>122</sup> and apart from a last minute '*happy to talk*' email from another party, there is no firm interest or commitment from any registered provider to deliver the affordable housing on the appeal site.<sup>123</sup>

3.72 In terms of the self-build plots, it is unclear as to how quickly these might materialise as the manner in which site infrastructure would be provided (and community building) was, despite reassurance as to the landowner's intentions, unproven. It was also accepted that there was no evidence of any operator for a retail unit within the community building and no third party interest in the retirement flats forming part of the development.

3.73 Moreover, it is of note that the likely demand for self-build in the area is unproven;<sup>124</sup> and there is the hurdle of access to funding and mortgages, which the Government has recognised and intends to take action to

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<sup>122</sup> Proof (Stacey) - Appendix 21; IR/53

<sup>123</sup> INQ/13

<sup>124</sup> APP/6 - paragraph 3.53

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- address. However, at the present time, there is no Government backed funding available; and, given the past track record of initiatives to remove these market barriers, there is no prospect of any such funding becoming available in the short to medium term.<sup>125</sup>
- 3.74 On this basis, it is highly unlikely that any material contribution to the deficit in the Council's five-year supply would be made from the appeal scheme's self-build plots. Although such aspirations may be laudable, the weight to be afforded to them in the planning balance in this case should be minimal at best.
- 3.75 In addition, as multiple parties would be involved in the project, the existence of established local business relationships provides no guarantee to the early conclusion of a development framework agreement apportioning costs and returns to the separate interests given that each party is likely to apply normal business acumen to negotiations.
- 3.76 Whilst, the appellant appeared to suggest that the appeal site could be delivered in discrete sections (with Johnson's delivering the first units on the land owned by them before other developers became involved), delivery would remain slow and piecemeal, extending the overall build out period. This would have knock on consequences for the amenity of adjacent residents and greater landscape impacts during extended construction phases of the development. Delivery in this way would also be contrary to the appellant's much vaunted Local Approach document.<sup>126</sup>
- 3.77 Overall, only minimal weight should be afforded to the contribution which the appeal scheme might make to the Council's five-year supply deficit. The delivery of both market and affordable housing from this scheme, within the relevant five-year period, is highly doubtful; and this would not be remedied by the appellant's willingness to accept shorter time scales for applying for reserved matters and/or commencing development, which could be met without any real delivery of housing occurring within the relevant five-year period. This point significantly damages the appellant's case in respect of the contribution the appeal scheme could make to both the social and economic dimension of sustainable development, and counts heavily against the grant of planning permission.

**Accessibility**

- 3.78 S.A.D.'s position on the poor accessibility credentials of the appeal proposal remains unchanged and reliance is placed on the original highways and transportation evidence.
- 3.79 In summary, S.A.D. considers that the appeal site is not well placed in terms of accessibility as it is located at the edge of Lydney with very limited opportunities for travel by any means other than the private motor car.

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<sup>125</sup> INQ/6 paragraphs 122 & 126

<sup>126</sup> 'The Local Approach' e.g. paragraphs 3.8 - 3.9



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- 3.80 Moreover, there is no public transport which directly serves the appeal site and the appellant has not sought to address this. The dial-a-ride service would be of little use to any commuters wishing to use the railway station; and the gradients between the town centre and the appeal site would be major disincentives to any future residents who might want to walk or cycle; and the retirement flats would not be well-located given the inherent shortcomings on accessibility.
- 3.81 These limitations reinforce the strategy of growth in Lydney being concentrated to the east of the town centre where accessibility is significantly better.
- 3.82 In particular, S.A.D. disagrees with the previous Inspector's conclusion that occupiers would not be unduly reliant on travel by car – on the contrary they would be wholly dependent on such journeys having particular regard to:<sup>127</sup>
- (a) excessive walking distances to bus stops;
  - (b) the dial-a-ride service cannot be considered as being acceptable to provide a commuter service or a main bus service;
  - (c) the gradients and geometry of routes between the town centre and the site would deter incoming residents from walking or cycling;
  - (d) the proposed Travel Plan could not address such shortcomings; and
  - (e) the vehicular trip rates for existing residents of Windsor Drive are a factor of two or three times higher than the trip rates used in the Transport Assessment.
- 3.83 Since the previous inquiry, Gloucestershire County Council has updated its Local Transport Plan (2015-2031) with the overarching strategy and vision for 'a resilient transport network that enables sustainable economic growth by providing door to door travel choices ..... to enable community connectivity; conserve the environment; and improve community health and well-being'. The proposal would be contrary to these objectives. In addition, capital delivery priorities to improve accessibility to the town centre and railway station would not enhance the sustainability of the site due to its remoteness from these locations.<sup>128</sup>

### **The unilateral undertaking**

- 3.84 Inspector Pope found the unilateral undertaking '*would not be necessary to make the proposed development acceptable in planning terms*'.<sup>129</sup> The decision at Darnhall School Lane, Winsford<sup>130</sup> relates to the tests to be applied to planning conditions rather than planning obligations which are subject to the statutory tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).

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<sup>127</sup> R6/2 - paragraphs 2.4 - 2.5

<sup>128</sup> R6/2 - paragraphs 3.1 - 3.5

<sup>129</sup> IR/209

<sup>130</sup> INQ/24 - INQ/27

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- 3.85 In this regard, the facts are materially different and the documents submitted by the appellant are not relevant to whether the unilateral undertaking could be considered to be lawful or otherwise.
- 3.86 Nonetheless, S.A.D. contends that the obligations contained within the undertaking fail to meet the test of 'necessity'. In particular S.A.D. makes reference to the judgment of Gilbart J<sup>131</sup> which considers the relevant test of 'necessity' within the context of Regulation 122.
- 3.87 In that case, the Claimant sought to argue that a section 106 obligation relating to the provision of a Community Hall as part of a development was not 'necessary' to make the development acceptable in planning terms. Gilbart J held that the claim should be dismissed and refused to grant leave for it to proceed.
- 3.88 The following principles flow, in short, from the judgment:-<sup>132</sup>
- (a) prior to the introduction of Regulation 122 (2)(a), there was no legal test of 'necessity' for section 106 obligations;
  - (b) whether a section 106 obligation 'is plainly for a planning purpose' is a separate consideration to the question of whether or not it is 'necessary' - the former falls to be determined under (b) and/or (c) of Regulation 122 (2); and
  - (c) whether an obligation in a section 106 agreement is 'necessary' is a matter of planning judgment having regard to the facts.
- 3.89 On the facts of the case, Gilbart J upheld the decision of the local planning authority that the community benefit realised by the provision of the Community Hall compensated for the fact that there would be an under provision of affordable housing. Gilbart J found:- *'In the sense used in Regulation 122, this section 106 obligation was necessary, because it provided a countervailing benefit to set against the disadvantage of the under provision of affordable housing'*.
- 3.90 In the present case, the appellant has not provided any evidence to show why or how the obligations in the undertaking, which seek to secure the involvement of local builders in the delivery of the development, would be 'necessary' to make the appeal scheme acceptable in planning terms.
- 3.91 The appellant has made no case, and has presented no evidence to the effect that a) this particular section 106 obligation seeks to address any planning harm which must be overcome if permission is to be granted; and/or b) that the obligation in question does, as a matter of fact, overcome any planning harm identified, so as to make its provision 'necessary'. As such it does not comply with the test in Regulation 122 (2)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).

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<sup>131</sup> INQ/30 - Working Title Films v Westminster City Council [2016] EWHC 1855 (Admin)

<sup>132</sup> INQ/29; INQ/30

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3.92 As a result of the drafting of the document, the entire agreement fails to comply with Regulation 122; there is no 'blue pen' clause which allows a decision maker to 'save' other obligations in the undertaking which may (in themselves) be in compliance.<sup>133</sup> No weight can be given to the undertaking and this has serious consequences for the appellant's arguments regarding the purported benefits of the scheme.

**The planning balance**

- 3.93 The appeal site is a 'valued landscape' at the local level; and it has protection through paragraph 109 of the Framework. Accordingly, the tilted balance in the second part of paragraph 14 of the Framework does not apply;<sup>134</sup> and the appeal should be determined in accordance with the development plan. It has been demonstrated that the proposal fundamentally conflicts with the development plan and there are, on balance, no material considerations which would weigh in favour of the appeal scheme to outweigh the policy conflict and other substantial harms identified.
- 3.94 Alternatively, even if the tilted balance were to apply, the extensive conflict with the development plan should weigh heavily against the grant of planning permission. The harm caused by policy conflict alone, even where policies could be considered 'out of date' due to the housing supply deficit, would be more than sufficient to outweigh any benefits which might flow from this scheme.
- 3.95 This is particularly so in the context of the Council pressing ahead with its emerging Allocations Plan; the urgency to grant permissions is much reduced compared to the position before Inspector Pope; the large strategic sites to the east of Lydney have begun to deliver housing; and approving the appeal scheme would increase competition and could have potential to destabilise progress on the strategic allocations.
- 3.96 The weight to be afforded to the policies of the development plan is for the decision maker to determine. There are good reasons in the present case why significant weight should be afforded to the conflict between the appeal proposals and the development plan, even in the context of a housing supply deficit.
- 3.97 Once the loss of countryside, harm to the character and appearance of the local area, substantial landscape harm (which would weigh against the scheme even if the site were not considered to be a 'valued landscape'), and the accessibly shortcomings of the proposal are also taken into account, there can be no doubt that any benefits of the appeal scheme would be significantly and demonstrably outweighed by the harms which would flow from the proposed development.

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<sup>133</sup> 'The obligations and covenants ..... shall cease to be of effect and shall not be enforceable to the extent that the Decision letter states that all or any of them are not material considerations in the determination of the Appeal or any of them do not comply with the statutory tests set out in the Community Infrastructure Levy Regulations 2010 (as amended)'

<sup>134</sup> by reason of footnote 9 of the Framework

## 4. The Cases for Interested Persons

### Representations made at the inquiry

#### Lucy Collins and Jonathan Montanana

4.1 Lucy and her partner Jonathan, her sister and her boyfriend, live with parents close to the appeal site. Lucy's father is a builder who works in Bristol as there are no sites locally. Lucy and Jonathan wish to continue to live locally in a home of their own. However, there is no affordable housing or serviced plots in the area and it is impossible to afford homes built by larger builders. The couple speak for many others in a similar predicament. Whilst the environmental issues are acknowledged, it is inconceivable how these could outweigh providing homes for young local people.

#### Councillor James Bevan (speaking as a local resident)

4.2 The Lydney Neighbourhood Development Plan is now adopted; and the Allocations Plan is proceeding. The inclusion of part of the appeal site (policy FC 4) as a proposed additional allocation flies in the face of localism. Sites already allocated in Lydney (since 2005) have yet to be fully built and sales are slow. If there is a significant increase in demand for self-build plots why are there so many single plots for sale on agents' websites and why has affordable housing recently built at Oakdale been occupied by people from Birmingham and Bristol?<sup>135</sup> Other sites have been promoted but have been rejected by the District Council to bolster the case for FC 4. The appeal should not be determined until the Allocations Plan Inspector has held further hearings.

#### Godfrey Lewis

4.3 Speaking as a local resident with a life-time experience in finance, it is unlikely that prospective self-builders would secure finance as lenders are, in the main, reluctant to enter into this type of lending; those seeking a mortgage would need to own a plot outright and monies would be released in stages as building works are completed. This casts doubt on the viability of 40 self-build plots.

#### Maura Gibbs

4.4 Primrose Hill C of E Academy can no longer accommodate the needs of the development; class sizes have reduced from 45 to a maximum of 30; and at least one local child has been refused a place as the school has reached its published admission number. The nearest alternative is 1.5 miles away and not within safe walking distance. Other schools have limited places; and the senior school does not have a sixth form. The development will generate more traffic; there has already been an accident on the bend in Court Road

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<sup>135</sup> Inspector's note – no evidence was provided on either point; Councillor Bevan also made allegations on the internal workings of the Council/member conduct but, as indicated to him, these are not material planning considerations and are not reported here

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(at one of the entrances to the proposed development); there is a lack of public transport; and a local traffic count did not record movements before 0700 hours and after 1900 hours.

**Andrew Darke**

4.5 Green fields once lost rarely return; the Campaign to Protect Rural England has indicated that one million plots could be provided on brownfield sites; brownfield sites exist in the Forest of Dean and consideration should be given to these. Sites with outline planning permission are often sold to other developers; so called affordable housing is often not affordable; and there are recent local examples where developers have negotiated down the level of such provision.

**Walter Owen**

4.6 The debate on housing has become an industry; it serves politicians rather than the needs of people; and there will never be a solution to the problem. Sites have been committed in Lydney but nothing has happened; why waste time in talking about this small pocket rather than solving other sites on the principle of use it or lose it? The appeal site will make no real difference other than moving money into the hands of private buyers who then rent out the houses. Very little is being done in providing houses for people to live in; and will the affordable homes be affordable? Oakdale has been a disaster; car parking has proved inadequate as limited provision has not deterred car ownership; and the Neighbourhood Plan process has proved to be costly with no perceptible achievement.

**Councillor Bill Osborne**

4.7 The site lacks a safe means of vehicular access; the development will lead to injury and possible fatality; and safe access should be provided on to Highfield Hill by using compulsory purchase powers.

**Representations made in writing**

4.8 Additional written representations make the following points:-<sup>136</sup>

- (a) the Secretary of State's original decision should have been the end of the matter;
- (b) it is an insult to democracy for the District Council to ignore the settlement boundary shown in the Neighbourhood Plan;
- (c) Lydney has plenty of houses but little or no work;
- (d) the site is uphill from the town centre; the route lacks footways in part; and cycling would be an unattractive proposition;
- (e) existing access routes (culs-de-sac) were never built with the intention of accommodating the proposed level of traffic safely; and no meaningful improvements could be made to the wider highway network;
- (f) Lydney lacks adequate infrastructure to support the development;

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<sup>136</sup> INQ/23 & red jacket on file

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- (g) the proposal would not be in keeping with the area and it would have a major effect on the privacy/sunlight/daylight of established houses resulting in loss of amenity and value;
  - (h) concerns about drainage and surface water run-off;
  - (i) impact on bat habitats;
  - (j) congestion in the area has worsened; roadside parking is a problem; road surfaces have deteriorated; and alternative access should be investigated;
  - (k) the provision of retirement apartments would be remote from shops, healthcare and friends;
  - (l) unacceptable high density/over development;
  - (m) adverse visual impacts;
  - (n) the national housing shortage should not be used as a lever to secure development;
  - (o) brownfield land should be used before open fields; and
  - (p) a solicitors' letter, hand delivered, in December 2014, to all sixteen properties in Windsor Drive (relating to damage to boundary fencing) set out legal rebuttal costs and notice of pursuit of anyone responsible for the losses through the High Court.

4.9 A petition, with over ninety signatures, supporting the proposal calls for 'Real Houses for real People' with particular reference to new self-build units and affordable housing.<sup>137</sup>

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<sup>137</sup> INQ/23

## 5. Planning Conditions and Obligations

### Planning conditions

- 5.1 The suggested planning conditions<sup>138</sup> repeat most of those recommended by Inspector Pope. The only matters requiring reconsideration are the timing of the submission of reserved matters, phasing and overall building heights.
- 5.2 In view of the various parties likely to be involved in the proposed development, particularly the self-build units, it was apparent that the submission of all reserved matters within a period of one year from the date of any grant of outline planning permission would be unrealistic; and a phasing plan would be a necessary means of securing orderly and co-ordinated development.
- 5.3 On this basis, the one year period would relate to the first phase of the project only; and that period would be deferred in the event of any subsequent proceedings under section 288 of the Town and Country Planning Act 1990. The commencement of development would be no later than two years from the date on which the last of the reserved matters, for the first phase, were approved.
- 5.4 The conditions recommended by Inspector Pope also included a requirement for agreement on site and slab levels and restrictions on the height of buildings above slab level having regard to the sloping nature of the land and to minimise the overall impact of new buildings. S.A.D. sought to secure certainty on slab and ridge levels rather than deferring agreement to reserved matters stage so as to minimise impacts on views of the Severn Estuary from the public footpaths within and close to the site.
- 5.5 The appellant confirmed acceptance of all of the proposed pre-commencement conditions.

### Planning obligations

- 5.6 The planning obligations submitted to the original inquiry remain unchanged.
- 5.7 The agreement between the appellant and other interested parties with the District Council contains obligations which include:-
- (a) the construction of affordable housing on the site equivalent to 40% of the housing units which are not age-restricted; housing mix and tenure; specification; transfer arrangements; timing; nomination rights; and restrictions on disposal;
  - (b) an affordable housing contribution for the provision of affordable housing off-site in lieu of an on-site provision of fifteen units of accommodation;

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<sup>138</sup> INQ/15; INQ32

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- (c) to provide on-site open space; timing of implementation; and arrangements for management and maintenance;
  - (d) an air quality contribution towards the maintenance of the Air Quality monitoring network and implementation of the Air Quality Action Plan; and
  - (e) an adult recreation contribution for off-site sport and recreation provision within the locality.
- 5.8 All of these continue to be required; they are supported by policy; and, where applicable, remain compliant with section 123 (3) of the Community Infrastructure Levy Regulations 2010 (as amended).<sup>139</sup> Inspector Pope found the agreement to be necessary:- to secure affordable housing in an area where there was an acute shortage of such accommodation; to ensure appropriate open space and recreation provision; and mitigate impacts on air quality in the town.<sup>140</sup>
- 5.9 The agreement with the County Council would secure:-
- (a) a pre-school financial contribution for additional pre-school provision in the Lydney area;
  - (b) a financial contribution to the Lydney Highway Strategy (various highway schemes including improvement works for cyclists and pedestrians);
  - (c) a financial contribution to the Lydney Transport Strategy (improvements to public transport);
  - (d) a libraries payment for improved local library facilities; and
  - (e) a residential Travel Plan to encourage modal shift.
- 5.10 Up-to-date correspondence confirms that the circumstances for seeking the contributions remain necessary and compliant.<sup>141</sup> Inspector Pope took account of the agreement in that he found the obligations relating to highways and travel to be necessary mitigation and to ensure modal shift; and endorsed the library and education contributions to avoid undue pressure on resources.<sup>142</sup>
- 5.11 A unilateral undertaking offers:-
- (a) restricting the construction of any residential unit which is not an age-restricted unit, affordable housing unit or a self-build unit to the appellant companies or by a builder or development company within the district;
  - (b) a local training skills and job brokerage strategy for the provision of training skills and employment initiatives for residents in the district;
  - (c) a local procurement strategy including initiatives to identify local procurement opportunities (to reach a 20% target) relating to the construction of the development;

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<sup>139</sup> INQ/19; INQ/21; INQ/22

<sup>140</sup> APP/6 - Appendix 1 paragraph 207

<sup>141</sup> INQ/18; INQ/20

<sup>142</sup> APP/6 - Appendix 1 paragraph 206



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- (d) a community building (to a minimum defined size and agreed specification) with ancillary facilities and arrangements for management and maintenance; and
  - (e) the provision of all available services to the boundary of each self-build plot at a defined stage; the submission of a development framework for the delivery of the self-build plots; and the transfer of the plots and delivery in accordance with the approved development framework.
- 5.12 The obligations and covenants contained in the undertaking would cease to have effect, and would not be enforceable, if the decision on the planning appeal states that any of the matters are not material considerations in the determination of the appeal or any of them do not comply with the statutory tests set out in the Community Infrastructure Levy Regulations 2010 (as amended).
- 5.13 Although the Inspector acknowledged that the undertaking would be helpful in assisting local builders address the housing shortfall in the district, and supportive of the appellant's local approach, he concluded that it was not necessary to make the proposed development acceptable in planning terms and he did not take it into account in making his recommendation.<sup>143</sup>

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<sup>143</sup> IR/209

## 6. Inspector's Conclusions and Recommendation

### Introduction

- 6.1 The references in brackets [x] are to the principal paragraphs in my report of the cases from where my conclusions are drawn.
- 6.2 The reopened inquiry was charged with hearing and reporting on:-
- (a) *the current state of play with regard to the preparation of the Forest of Dean Allocations Plan and any implications for the further consideration of this appeal;*
  - (b) *the status of the Lydney Neighbourhood development plan and relevant policies therein; and*
  - (c) *any other material change in circumstances, fact or policy, that may have arisen since the Secretary of State's decision of 21 December 2015 was issued and which the parties consider to be material to the further consideration of this appeal. [1.2]*
- 6.3 The main consideration remains:- *'Whether, in the absence of a five-year housing land supply within the district, any adverse impacts of the proposed development, having particular regard to the effect on the character and appearance of the area; and traffic conditions (including any undue reliance on travel by car) and highway safety along the local road network, would significantly and demonstrably outweigh the benefits of the scheme'. It is implicit that the starting point for considering the above is whether or not the proposal would be in accordance with the development plan as a whole. [1.21]*

### The Forest of Dean Allocations Plan

- 6.4 The Allocations Plan has made progress insofar as it has been submitted for examination; the appointed Inspector has undertaken a series of hearings in public; and an interim report has been published confirming fulfilment of the duty to co-operate and procedural and legal compliance. **[1.25; 1.26]**
- 6.5 However, whilst the apportionment of housing between categories of settlements was found to be generally consistent with the distribution in the Core Strategy, this conclusion was provisional on settling the revision of the housing requirement. In addition, further work was found to be necessary in relation to establishing a robust objectively assessed need for housing; and once re-assessed it would be necessary for the Council to address the overall adequacy of the housing supply and in particular the deliverable five-year supply. **[1.26 – 1.28]**
- 6.6 The Council has responded with proposed Main Modifications, including a proposed allocation for 120 dwellings on part of the appeal site. However, it is persevering with an objectively assessed need figure below that identified by the Inspector, albeit with further evidence to justify its position. The Inspector has given notice of his intention to hold further hearings. **[1.29 – 1.32; 2.23; 3.5]**

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- 6.7 There is no doubt that the Allocations Plan has made some progress since the original inquiry. Although it was submitted for independent examination in August 2015 the process has become protracted, with the need for further hearings, and seemingly fundamental issues remain to be resolved in terms of settling the overall provision for housing which the Inspector has questioned and, as is evident from the evidence before me, others seek to dispute. It is also apparent that further housing sites will need to be allocated. [1.15; 1.25 – 1.32; 1.37(a)(c); 1.38(a)(e); 2.55 – 2.61; 3.95]
- 6.8 Part of the appeal site has also been proposed for housing development by the Council in order to meet the five-year land supply; but objections remain outstanding. S.A.D. opposes the allocation in principle but acknowledges that its objection might be capable of being overcome. [1.31; 1.36(e); 1.37(a); 2.23; 3.5]
- 6.9 Overall, whilst S.A.D. is of the view that the Allocations Plan has progressed significantly since the original inquiry and it will, in the foreseeable future, provide the remedy to the current material shortfall in housing land supply, its evolution continues to remain the subject of debate and the timescale for its adoption continues to be highly ambiguous. Whilst policies in emerging plans may attract weight, the circumstances here suggest that the Allocations Plan merits no more than continuing very limited weight. [1.36(c)(e); 1.38(d); 2.23; 3.3; 3.4; 3.6; 3.7]

**The Lydney Neighbourhood Development Plan**

- 6.10 The Neighbourhood Plan was submitted to the District Council following the close of the original inquiry and, as recorded in the Secretary of State's quashed decision, the Independent Examiner's report was published on 23 September 2015 recommending that the plan should proceed to referendum, subject to modifications set out in the report. [1.16]
- 6.11 The plan was formally made following a referendum on 18 February 2016 and it now forms part of the development plan. The appeal site lies outside the settlement boundary for Lydney, as identified by policy LYD ENV1, where development proposals will be considered against the principles set out in the adopted Forest of Dean Core Strategy in general, and its policy CSP.4 in particular. Paragraph 198 of the Framework indicates that 'where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted'. [1.23; 1.24]
- 6.12 Further consideration of the proposal, in relation to the Neighbourhood Plan, is set out in paragraphs 6.25 – 6.29 below.

**Other material changes post-dating the Secretary of State's decision of 21 December 2015**

- 6.13 New material considerations include Planning Practice Guidance on Self-build and custom housebuilding (April 2016); the Written Ministerial Statement on Neighbourhood Planning (12 December 2016); and the Housing White Paper: Fixing our Broken Housing Market (February 2017). [1.33 – 1.35; 1.40; 1.41]

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**The main consideration**

**The development plan: the Core Strategy**

- 6.14 Given the cases pursued, and the submissions made before me, it is appropriate for me to revisit the principal policies in dispute. [1.22; 1.23; 3.12]
- 6.15 Inspector Pope found the appeal proposal to be in conflict with some aspects of Core Strategy CSP.1 and to accord with some elements of the policy. I agree in that the loss of greenfields to development, with incidental harm to amenity in its widest sense (including views) would be in conflict with the policy. Whilst the proposal would be consistent with parts of the policy, these appear to be generally consequent to finding the principle of development to be acceptable. There would be material conflict with the policy. [2.14; 2.15; 2.26; 3.11; 3.15; 3.36]
- 6.16 Policy CSP.4 seeks to concentrate most new development at Lydney and Cinderford; most change is expected to take place in settlement boundaries; and areas outside settlement boundaries will generally be treated as part of the open countryside. Again, given that the proposed site is located outside the settlement boundary, there would be partial, but significant, conflict with this policy. [2.14; 2.15; 2.27; 3.10; 3.13; 3.14]
- 6.17 Policy CSP.5 sets out the number of new homes to be built in various settlements by 2026 with priority 'to development on previously developed land and on sites identified for housing in the development plan – no new greenfield sites will be released unless it can be proven that land is not available from other sources and is needed to meet the plan's requirements'. Whilst the policy also contains development management considerations, the proposal would be at odds with the policy. [2.13; 2.28; 3.10; 3.13; 3.14]
- 6.18 Despite the conclusion of Inspector Pope that 'the appeal site is not identified as being of recreational or amenity value under policy CSP.9', the application of this policy was revisited with some fervour and a debate hindered, and extended, by apparent lack of precision in the drafting of the policy. [2.16; 2.39 – 2.46; 3.16 – 3.35]
- 6.19 Plain reading of the first paragraph under the sub-heading 'Protection of Amenity land' indicates to me that the policy relates to the protection of land which is identified as being of amenity value (unless otherwise allocated for development) and all forest waste whether so identified or not. [3.20 – 3.22; 3.25]
- 6.20 The matter of forest waste is neither controversial nor relevant; and the appeal site is not identified as being of amenity value in any part of the development plan. Despite the valiant efforts of forensic analysis, one must not lose sight of the purpose of the policy which is stated to be '..... to protect recreational and amenity land .....'. [2.44; 3.18; 3.24]
- 6.21 Moreover, endeavour was made to construe the policy as if it were criteria based, flowing from paragraph 6.56 of the supporting text, by reference to '.....visual, historical, natural and/or cultural value .....' and the rationale for

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protection expected to be 'cultural, historic, visual or functional importance'. In this regard, I read the former extract as including the sort of characteristics which might have been relevant to the identification of amenity land; and I understand the second to be the attributes which might justify designation through subsequent development plan documents. [2.44; 3.23; 3.26 – 3.29; 3.31; 3.32]

- 6.22 Reading the policy in its entirety, there is no basis to suppose that it was intended to, nor that it does, apply to anything more than recreational and amenity land, including forest waste. As agricultural land, albeit with an incidental recreational purpose arising from the paths that cross it, the appeal site does not fall within the bounds of CSP.9 and I share the conclusion reached by Inspector Pope. [2.40; 2.42; 3.36]
- 6.23 Moving on to policy CSP.12, the aim to enhance the role of Lydney is reflected in the allocation of land East of Lydney consistent with the housing figures in CSP.5. Although the proposal would accord with the principle of locating new homes at Lydney, to provide support to its services and facilities, it would nonetheless be at odds with the emphasis of planned allocation and the protection of greenfield land. [2.14; 2.29; 3.10; 3.15; 3.37]
- 6.24 Given the general strategic role of the above policies, the proposal would be in conflict with the Core Strategy when read as a whole. [2.17; 3.12; 3.36]

**The development plan: the Neighbourhood Plan**

- 6.25 The appeal site is located outside the settlement boundary for Lydney and, having regard to the Core Strategy in general, and CSP.4 in particular, the proposal would be in conflict with LYD ENV1. There would also be conflict with LYD ENV2 insofar as large scale development and respect for the natural environment would be paradoxical. [2.13; 2.30; 2.31; 3.3; 3.11; 3.13 – 3.15; 3.36]
- 6.26 LYD HOUS1 provides support for a housing development for elderly people in a specific location of the town. Whilst Inspector Pope found that the proposed retirement apartments within the appeal scheme would accord with the thrust of the policy, the policy is, to my mind, site specific and it has no application beyond the identified location. No suggestion has been made that the provision of such accommodation within the appeal scheme would preclude the site favoured by LYD HOUS1 coming forward. [2.32]
- 6.27 The assessment of conflict or otherwise with LYD TRAN1 is bound up, in part, with that aspect of the main consideration relating to the effect of the proposal on the wider highway network which I revisit below in light of S.A.D.'s disagreement with Inspector Pope's conclusions on accessibility. [2.33]
- 6.28 LYD TRAN3 seeks to avoid the superimposition of estate roads on existing public rights of way wherever possible. Although a length of estate road would incorporate the existing public footpath leading into the site from Court Road, the overlap would be relatively short and unavoidable and there would be no material conflict with the policy. [2.13; 2.34; 3.11; 3.15]

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- 6.29 Given the scope and content of the Neighbourhood Plan, the identified conflict with LYD ENV1 and LYD ENV2 is sufficient to render the proposal inconsistent with the Neighbourhood Plan when read as a whole. [2.35; 3.36]

**The development plan: overview**

- 6.30 It is common ground that the Council cannot demonstrate a five-year supply of housing land. Although S.A.D. expresses optimism about the progress of the Allocations Plan, the housing requirement for the district and the predicted supply has yet to be ratified. The uncontested position before me was a supply of less than three years. This renders the policies for the supply of housing in both the Core Strategy and the Neighbourhood Plan to be out of date. [1.7; 1.36(d); 1.38(a); 2.23; 2.55 - 2.61; 3.6; 3.7]
- 6.31 In this regard, the policies in the Neighbourhood Plan do not attract the protection afforded by the third bullet of the Written Ministerial Statement on Neighbourhood Planning. This conclusion negates the need to consider whether the plan allocates sites for housing and whether or not the identification of one site for a narrow dedicated purpose would be consistent with that circumstance. [1.34; 2.19 - 2.22]
- 6.32 The effect of this is to significantly reduce the weight to be applied to Core Strategy Policies CSP.4, CSP.5 and CSP.12 which are, in any event, based on out of date housing requirements. Similarly, Neighbourhood Plan policy LYD ENV1 is out of date as it relies on CSP.4. In my view, these policies carry limited weight. [2.18]
- 6.33 Whilst it was claimed that LYD ENV2 could act to inhibit the provision of a five-year supply of housing land, the policy can be seen to be generally aligned with section 11 of the Framework (Conserving and enhancing the natural environment) and as one of the three elements of achieving sustainable development. On this basis, the policy should not be regarded as out of date and it remains capable of attracting full weight. [2.31]
- 6.34 Nonetheless, the effect of other policies being found to be out of date triggers, through paragraph 49 of the Framework, the tilted balance in favour of sustainable development unless specific policies in the Framework indicate development should be restricted through the application of footnote 9 to paragraph 14 and by reference to paragraph 109 of the Framework. [1.7; 2.24; 2.25; 3.8; 3.9]

**Paragraph 109 of the Framework – valued landscape**

- 6.35 It is necessary to revisit this subject in light of the evidence presented by S.A.D. and it contesting Inspector Pope's conclusion that the site did not form part of a valued landscape. [2.47; 2.48; 3.2; 3.39 - 3.46]
- 6.36 The Guidelines for Landscape and Visual Impact Assessment (Third Edition) confirms:- *'The fact that an area of landscape is not designated either nationally or locally does not mean that it does not have value ..... as a starting point reference to existing Landscape Character Assessments and associated planning policies and/or landscape strategies and guidelines may give an indication of which landscape types or areas, or individual elements or aesthetic or perceptual aspects of the landscape are particularly valued .....'* [2.52; 3.45 - 3.47]

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- 6.37 The appeal site lies within Landscape Type 'Ridges and Valleys' and in particular in Character Area 10a 'Allaston Ridge'. The site exhibits a number of key characteristics with the most notable being a distinctive rounded ridge profile and extensive views extending along and across the Severn Estuary and a backdrop of the Cotswolds hills. Although these elements are particularly valued, that is not sufficient to say that the appeal site is a valued landscape and further analysis by reference to Box 5.1 is helpful. *[2.52; 3.48]*
- 6.38 Firstly, in terms of landscape quality (condition), the context of the site comes under the influence of the urban fringe of Lydney. A substantial part of the site is bounded by built development, predominantly in the form of estate housing and to a lesser extent by pockets of linear development to the north-east and south-east. Parts of the site have harsh modern boundaries and limited separation from domestication. The overall effect serves to divorce the site from the wider more distinct open and wooded features of the landscape character area as a whole. *[2.50; 2.54]*
- 6.39 Moving on to scenic quality, the term used to describe landscapes that appeal primarily to the senses, the appeal site itself is pleasant open countryside albeit strongly influenced by the proximity of Lydney. Its inherent scenic quality is very limited and its attraction owes in particular to the panoramic views from the site. However, even these have modern housing as part of their foreground. *[2.54]*
- 6.40 The appeal site does not contain any notable rare elements or features; and whilst it exhibits a number of elements of representativeness none of these can be said to be of particular importance given the context of the site. In addition, it does not possess any particular conservation interests. *[2.54; 3.48 - 3.51]*
- 6.41 The site is valued for recreation, with immediate access to public rights of way within the countryside; wide scenic views; and more than just local usage. However, the context of that value, and the appreciation of the distant countryside and features within it, has an urban setting which diminishes the experience of the landscape. *[2.54; 3.52]*
- 6.42 Perceptually, there can be no claim to wildness or tranquillity on a scale of comparative terms; and the site is lacking in associations which might contribute to perceptions of the natural beauty of the area.
- 6.43 Whether or not the site could be considered to qualify as a valued landscape, given its limited size, becomes entirely academic in the face of it lacking demonstrable qualities which elevate it above mere countryside. On this basis, I do not regard the appeal site to be a valued landscape within paragraph 109 of the Framework; and the tilted balance of paragraph 14 remains intact. *[2.49 -2.51; 3.53 - 3.55; 3.66; 3.93]*

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**The effect of the proposal on the character and appearance of the area**

- 6.44 The starting point is to reflect on the sets of wireline drawings provided to the original inquiry by the appellant and by S.A.D. These are merely a tool to assist evaluation; they are based on an illustrative layout; and they are founded on different assumptions about slab levels and building heights. They might be categorised as illustrative of, in the case of those provided by S.A.D., as worst case; and, for the appellant, as a more likely depiction of development. *[1.40; 2.75; 3.56 - 3.58]*
- 6.45 Even if the latter were to be the resultant outcome, existing panoramic views would be lost or diminished; retained views would be over roof tops and/or glimpses between component buildings; and the context of those views would be from within a predominantly domestic environment. *[3.57]*
- 6.46 In terms of landscape character, in either instance, the proposed development would have a very marked adverse effect on the characteristics of the site with the loss of its greenfields and countryside association; the existing experience, from public rights of way across the site, of being outside the town; and the context of the town being framed by, and subsidiary to, the wider landscape. *[3.11; 3.59; 3.60]*
- 6.47 However, from the illustrative masterplan, there is every indication that the proposed development would be capable of paying particular heed to the essence of its location as required by Core Strategy policy CSP.1. Critical elements would include the retention of the southerly of the two upper fields as open land; the continuing openness and marked presence of the ridge; landscaped corridors and areas accommodating public rights of way; meaningful open areas adjacent to the eastern boundary of the site and the countryside fields immediately beyond; and opportunities for outward views in one form or another. *[2.31; 2.54; 3.59 - 3.61]*
- 6.48 Moreover, arrangement of the site, in clusters or pockets of development, would go a long way to minimising impact on the character of the area, both by containment and by scale. The avoidance of a large amorphous mass of buildings, and proposals for landscaping, would soften the existing edge of Lydney and provide transition into the landscape character area. Whilst the physical characteristics of the appeal site would be transformed, such change would not cause significant harm to the key characteristics of the Allaston Ridge Landscape Character Area and the character of the area as a whole. *[2.31; 2.54; 3.59; 3.60]*
- 6.49 Moving on to appearance, the appeal site is generally well-contained. The majority of views into it are from the immediate, predominantly built-up, locality; and longer views from the town would go largely unchanged with the retention as open land of the southerly of the two upper fields. The second upper field lies beyond the ridge; it falls towards development along Allaston Road and Oak Mead and views from those locations would have the backdrop of the hedgerow lined ridge. *[2.31; 3.59; 3.60]*



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- 6.50 The arrangement of buildings in distinct segments of the site, framed by open areas and/or landscaping, would limit the visual impact of the development; the masterplan indicates good separation from existing dwellings, often by means of landscaped areas; and public rights of way would be retained in open format other than where this is rendered impractical as Court Road extends into the site. However, the visual amenity of the rights of way would suffer significant harm, by the closer presence of buildings; by being set within managed surrounds; and through the material diminution of views. *[2.31; 3.59; 3.60]*
- 6.51 Overall, despite the ethos of the development being 'landscape-led', and acknowledging the potential to achieve high quality design, the proposal would inevitably cause harm to the character and appearance of the area. However, the scale of the harm, taking account all of the factors above, would merit moderate weight in the overall planning balance. This aligns with the conclusion reached by Inspector Pope. *[1.13; 3.59; 3.60]*

**Traffic conditions, travel by car and highway safety**

- 6.52 The evidence presented was little more than an update of the position before Inspector Pope, a re-emphasis of respective stances and S.A.D.'s review of the Inspector's conclusions. There was nothing of substance in relation to traffic conditions and highway safety which I consider would be capable of undermining the previous Inspector's assessment, including trip generation rates, road geometry and accidents. The nub of the issue relates to the accessibility of the site and the extent to which future residents might depend on travel by car. *[2.67; 2.68; 2.80; 3.78; 3.79; 3.82]*
- 6.53 At the 'macro' level, Lydney is identified as the most accessible settlement within the district and with the greatest opportunity to accommodate change. It is unique, within the Forest of Dean, in having railway connection to major urban centres, albeit well-beyond the town centre when travelling from the direction of the appeal site. The town centre provides for bus services; some employment opportunities; a range of facilities and shops; and, in addition, a large supermarket some two kilometres from the site. *[1.37(b); 1.38(c); 2.10; 2.15; 2.23; 2.79; 3.5]*
- 6.54 In this regard, the proposal would be consistent with Core Strategy policy CSP.4 as it would assist in reinforcing the importance of Lydney both in terms of the strategy for growth and as a result of economic support for businesses and public transport. Within the confines of the district, Lydney is to be regarded as the most sustainable location for additional growth. *[1.38(c); 2.10; 2.15]*
- 6.55 At the 'micro' level, the site stands somewhat aloof from the facilities which new residents are likely to use, through a combination of distance; gradients; restricted footways; and meagre local bus services in terms of distance to bus stops and frequency. Like Inspector Pope, I agree that the combination of distance from the town centre and gradient would undoubtedly deter some residents from walking or cycling; and I would go further to say that, in my judgement, it would apply to the overwhelming majority. Similarly, opportunities for taking a bus, either locally or by walking to the interchange, are likely to be few. *[3.80; 3.82; 3.83]*

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- 6.56 The proposed residential Travel Plan, to be secured by planning obligation, would have the aim of delivering a modal shift away from the private car in favour of public transport and other means of travel including walking and cycling. Despite the inherent drawbacks of the location of the site, it would be presumptuous and premature to write off the Travel Plan as of little value. Indeed, the Framework acclaims Travel Plans as a key tool to facilitate the protection and exploitation of opportunities for the use of sustainable transport modes. **[1.39(g); 2.78; ; 3.82; 3.84; 5.9(e); 5.10]**
- 6.57 In addition, the planning obligation with the County Council would provide financial contributions (the Lydney Highway Strategy and the Lydney Transport Strategy) to be used for highway schemes which might aid modal shift and for the delivery of public transport enhancements. **[5.9(b); 5.9(c); 5.10]**
- 6.58 Moreover, the highway authority and the local planning authority are content with the sustainability credentials of the scheme; and one of the proposed Main Modifications to the emerging Allocations Plan is the identification of part of the site for some 60% of the dwellings proposed in the appeal scheme. Whilst this relates to the lower part of the site, the additional elevation of the upper field would not be sufficient to take this land into a category of hostile inaccessibility and it is to be noted that the area to be served from Windsor Drive is either below, or not excessively higher, than the existing cul-de-sac. **[1.31; 1.38; 1.39; 2.23]**
- 6.59 Inspector Pope recorded that '*..... in this part of Lydney, there is no cogent evidence to demonstrate that any other housing site is deliverable or would be any less dependent on travel by car*'. That position seems to have been reinforced by the Council endorsing the development credentials of the site, at least in part. **[1.31; 2.23]**
- 6.60 Drawing together the various threads, the Framework has at its core the principle of sustainable development. One of the core planning principles is to '*actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable*.' Nonetheless, the Framework continues:- '*..... the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas*'.
- 6.61 That said, a small town in a distinctly rural district cannot be expected to offer the same quality of public transport as might be available in larger centres. Further development at Lydney would undoubtedly generate increased car journeys but, with the range of facilities which the town offers, including its rail link, such journeys have the potential to be short. In addition, the planning obligation with the County Council has the prospect of delivering sustainability enhancements for the primary benefit of the development and, as a consequence, to the adjoining residential area. **[5.9; 5.10]**

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- 6.62 In summary, considering accessibility and sustainability as a whole, it cannot be denied that the location of the appeal site, and the limitations on immediately available public transport, indicates that most new residents are likely to have a preference for car usage. However, that is not to say that a gradual step change through the planning obligation could not be achieved as a means of working towards the strategy and vision of the County Council's Local Transport Plan. Moreover, Lydney is to be favoured as a sustainable location for housing growth and there is no evidence of any better placed site to deliver the additional housing numbers which the district requires. *[1.39(e); 3.83]*
- 6.63 Overall, I am satisfied in the particular circumstances of this case that there is an insufficient basis to resist the proposal on the grounds of traffic conditions, propensity to travel by car or highway safety and, having regard to the terms of the planning obligations, there would be no material conflict with Neighbourhood Plan policy LYD TRAN1. *[2.33]*

**Delivery**

- 6.64 Lydney is an area where house building has a history of being stalled; there has been some recent progress; but there appears to be a remaining hindrance to housing delivery. On-going renewals of planning permissions and issues of development viability are pointers to inherent problems. *[2.9; 2.67; 2.70 - 2.74; 3.37]*
- 6.65 The underlying justification for the appeal proposal is that it would represent an entirely different proposition to that provided at land East of Lydney. Development would be in the hands of local builders rather than national or regional firms; self-build provision would be made; the full quantum of affordable housing, expected by policy, would be delivered; and there would be retirement accommodation. *[2.2; 2.8; 2.62]*
- 6.66 Development in the manner proposed would clearly need foundation in a development framework agreement. It is intended that the appellant would retain responsibility for the delivery of common areas and infrastructure in main service areas; one of the two companies comprising the appellant would deliver one discrete area of housing; and sale of land within the site to two other local housebuilders is anticipated. The remaining plots would be sold for self-build. *[2.2; 2.62; 3.75]*
- 6.67 Whilst there must inevitably be a risk of negotiations floundering when multiple parties are involved, and it is accepted that earlier expressions of interest from local builders have not been updated, there is no positive evidence either way as to whether or not delivery of the scheme is likely to be delayed. *[2.69; 3.68 - 3.74; 3.77]*
- 6.68 That said, The Local Approach document, submitted on behalf of the appellant, provides confidence of a well thought out proposition between two landowners both of whom have considerable experience of delivering development. In addition, in a locality where most development is to take place on a single urban extension site controlled by major players, a different offer is clearly perceived to represent a viable proposal which

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- would attract interest from local builders and those wishing to build their own homes. There is nothing to suggest any naivety in approach; and, given the substantial costs and delays incurred by the appellant, the desire to recover some outstanding costs through land sales within the site should provide momentum towards early delivery. *[2.2; 2.8; 2.62; 3.75]*
- 6.69 Moreover, the unilateral undertaking, as a whole, underpins and reinforces the appellant's approach by restricting development to local firms on a minority of plots (i.e. other than age-restricted units, affordable housing and self-build plots); an initiative for a proportion of both local labour and procurement; the submission of a development framework for the delivery of the self-build component of the development; a timetable for providing services to those plots; and a timetable and specification for the construction of the community building. *[2.65; 5.11]*
- 6.70 Conditions requiring the submission of reserved matters and commencement of development within shortened timescales would act as an incentive, but no guarantee, to timely delivery. Whilst that could be true of any planning permission granted, it is evident that the part land-owner/building company could be anticipated to achieve ten completions each year resulting in five or six years to build-out its part of the development following the approval of reserved matters and the commencement of development. *[3.76; 3.70; 5.1 - 5.3]*
- 6.71 It might also be reasonable to assume that other local builders involved in the development might have similar building rates; and that self-build plots would be unlikely to fare any better. Also it is not known at what point each development block would commence. The overall inference is that the appeal scheme, as a whole, would deliver no more than a modest number of dwellings in the first five years and its contribution to the district's housing need would be limited. *[3.71; 3.76]*
- 6.72 In terms of self-build, it may well be true that funds through lending institutions might be more difficult and more expensive to acquire for a tailored as opposed to a conventional mortgage. However, as a factor of self-build, it has to be set against the savings which a self-builder would expect to achieve in overall construction costs. Self-build represents a small component of overall housebuilding activity and whilst financial barriers exist it still remains within the capabilities of some who would prefer to pursue their own project. There is nothing to suggest, despite the absence of Government backed funding, that self-build on the appeal site would be unachievable. *[2.64; 2.65; 3.72; 3.73; 4.1; 4.2; 4.3]*
- 6.73 It is noted that there is no current, proven, underpinning interest in the provision of affordable homes, retirement apartments or the operation of facilities within the community building. Whilst commitments would undoubtedly offer confidence to achieving delivery, there would be no basis to require assurance as a pre-condition to the grant of planning permission. *[2.68; 3.71]*
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- 6.74 On deliverability in general, the grant of planning permissions at East of Lydney has demonstrated that it is ultimately market conditions, in their widest sense, which dictate whether or not houses are actually built. Even where anticipated delivery rates form part of a supporting case, there is no mechanism which could secure a guaranteed outcome. [2.70 – 2.74]
- 6.75 There is no doubt that Lydney requires more houses and that past delivery has failed woefully to meet expectations both in terms of market and affordable homes. Granting more planning permissions is not necessarily the answer as it might result in even more committed land failing to achieve desired objectives and acting in competition with proven difficult sites. [2.9; 2.10; 2.66; 2.67]
- 6.76 Whilst acknowledging that development on the appeal site might be relatively slow and unlikely to be completed within a period of five years, the grant of planning permission would nonetheless offer the prospect of a worthwhile contribution to boosting the supply of housing; a significantly greater choice; and a boost to the local economy. There is no evidence to suggest that it would be likely to materially hinder or undermine the recent impetus to delivery at land East of Lydney. [3.37; 3.38]
- 6.77 Overall, I am satisfied that there is nothing of material substance relating to delivery which would justify the refusal of planning permission. Indeed, the overall principles of the appellant's local approach appear as a beacon ideal, consistent with one aspect of the Government's aspirations to reform the housing market and boost the supply of new homes in England. [1.33; 1.35; 2.6; 2.7; 2.84]

**Planning conditions**

- 6.78 The justification for the recommended planning conditions is largely set out in Inspector Pope's report. Necessary revisions relate to a realistic timescale for the approval of reserved matters and the phasing of the development. Reference to court proceedings, and the potential to delay the submission of reserved matters would be a sensible measure. [5.2; 5.3]
- 6.79 The only matter of dispute, relating to the control of building heights, is hindered by the absence of parameter or other detailed plans. Given that the application is submitted in outline, with all matters (other than access) reserved for subsequent approval, a proportionate level of control could be secured by a condition (amalgamating suggested conditions 6 and 9) requiring, in short, details of existing site levels, proposed floor levels and proposed ridge heights for each building. [5.4]
- 6.80 The imposition of specific slab levels or ridge heights would serve little purpose at this stage given the sloping nature of the site and the fact that the proposed layout is nothing more than illustrative. I am satisfied that an all embracing condition as recommended would provide the local planning authority with sufficient control to enable consideration of each plot in relation to its effect on views of the Severn Estuary in particular.

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6.81 Draft conditions 6 and 9, which repeat provisions to take account of phasing, can be simplified without loss of meaning and for improved clarity in recommended condition 6. **[5.2]**

**Planning obligations**

6.82 I am satisfied, drawing on Inspector Pope's conclusions, and confirmation of no material changes, that the agreements with the District and County Councils meet the policy and statutory tests for planning obligations. **[5.6 – 5.10]**

6.83 The appellant's unilateral undertaking is the same as the one which Inspector Pope found not to be necessary to make the proposed development acceptable in planning terms. **[3.84; 5.11 – 5.13]**

6.84 For my part, whilst the Government's aspirations to fix the broken housing market have not yet been translated into either policy or guidance, they have at their core the aim to boost the supply of housing in common with the Framework's call to boost significantly the supply of housing under the banner '*delivering a wide choice of high quality homes*'. The publication of the Housing White Paper and the Select Committee Report on capacity in the homebuilding industry post-date Inspector Pope's report and may be considered to be new material considerations. **[1.35; 2.3; 2.4; 2.6; 2.7]**

6.85 In turn, the appellant aims to widen choice and to pick up the mantle of diversifying the market through a building project with a local emphasis and under the control of small/medium building firms. The Government recognises the need to admit such ambitions as a means of reviving the contribution that such firms can make to boosting the supply of housing and in their contribution to the local economy; reducing the dominance of major volume builders; and lessening the risk of such firms holding land for long term plans and/or the right market conditions. **[2.2 – 2.4; 2.6; 2.7]**

6.86 Looking at the elements of the undertaking, an obligation in favour of local builders would relate to a modest element of the development insofar as it would exclude the age-restricted units, affordable housing and the self-build units; the local labour strategy would have a 50% target; and local procurement would have a target 20% spend. **[5.11]**

6.87 The former would be entirely consistent with the aims of Government. Moreover, given the manner in which the housing market has operated in Lydney, under the control of major builders with little output and seemingly little optimism, there is justification to conclude that an entirely different approach is necessary to maximise the potential for housebuilding, avoid direct competition with stalled sites and to make this development acceptable in planning terms. The local builders clause would also be directly related to the development; and, given the exclusion of certain units, it would be fairly and reasonably related in scale and kind to the project. **[1.35; 2.3; 2.4; 2.6; 2.7; 2.55; 2.63; 2.64; 2.70 – 2.74]**

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- 6.88 The use of local labour and local procurement, to defined targets, would in general terms be a likely outcome in that local building companies would be expected to source a proportion of materials in the immediate market. The Local Approach is, in effect, presented as a package and, whilst every component of the deed has to meet the policy and statutory tests, I consider that each of these elements is integral to the ethos of the project and provides part of the justification of making the development acceptable in planning terms in order to offset the risk of an unrestricted permission, in the hands of a volume builder, remaining unimplemented or acting against the progress of the land East of Lydney. Again, there would be a direct relationship with the project; and the identified percentages would be fairly and reasonably related in scale and kind. **[3.86 – 3.91]**
- 6.89 Moving on to the provision of a community building with ancillary facilities, the Framework explains that *'the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities ..... decisions should plan positively for the provision and use of shared space, community facilities ..... and other local services to enhance the sustainability of communities and residential environments .....'*. Given the comparative isolation of the site from the facilities within the town centre, such provision would be necessary, proportionate and reasonable. **[5.11(d)]**
- 6.90 Finally, the founding of a development framework and a means of ensuring services to the self-build plots would be an essential pre-condition to this element of the development; and the obligation would meet the relevant policy and statutory tests. **[5.11(e)]**

**The planning balance**

- 6.91 Starting with the development plan, the proposal would be in conflict with Core Strategy policies CSP.1, CSP.4, CSP.5 and CSP.12; and also with Neighbourhood Plan policies LYD ENV1, and LYD ENV2. There would be no material conflict with LYD TRAN1 and LYD TRAN3; and CSP.9 and LYD HOUS1 would not be engaged. Overall, the proposal would be in conflict with each of the two components of the development plan and the development plan when read as a whole. **[2.13 – 2.18; 2.26 – 2.34]**
- 6.92 However, the policies for the supply of housing in the Core Strategy are based on an out of date housing requirement in policy CSP.5 and the local planning authority cannot demonstrate a five-year supply of deliverable sites. Policies CSP.4, CSP.5 and CSP.12 are therefore out of date for the purpose of paragraph 49 of the Framework. **[2.24; 2.27– 2.29]**
- 6.93 The lack of a five-year supply triggers the presumption in favour of sustainable development as set out in paragraph 14 of the Framework and planning permission should be granted for the proposed development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole. **[2.24; 3.93; 3.94]**

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- 6.94 The shortfall in the five-year supply of housing land is significant; measures to address this through the Forest of Dean Allocations Plan have some way to go in the plan making process; and it is known that greenfield sites outside settlement boundaries will be required. Overall, policies CSP.4, CSP.5 and CSP.12 fail to meet the objectives set out in paragraph 47 of the Framework and they therefore merit significantly diminished weight. The same applies to LYD ENV1 insofar as it has its foundation in CSP.4 and CSP.12. Policies CSP.1 and LYD ENV2 retain full weight. *[2.24; 2.55; 3.96]*
- 6.95 The Allocations Plan has not reached a point where it could carry more than limited weight. *[1.25 – 1.32; 2.23; 3.3; 3.95]*
- 6.96 Returning to the balance required by paragraph 14 of the Framework, and looking first at the effect on the character and appearance of the area, the proposal would be located outside the settlement boundary for Lydney and in the open countryside. However, the site is not part of a valued landscape or protected amenity land or recreation land. Nonetheless, the development would cause moderate harm to the character and appearance of the area with particular reference to the loss of open countryside and the amenity of the public footpaths which cross the site and which derive benefit from far reaching views. *[3.97]*
- 6.97 Inspector Pope attributed limited weight to the impact of the proposal on junction capacity and congestion which I repeat. However, there is nothing to suggest that the development would compromise highway safety in general. *[1.13]*
- 6.98 In terms of likely car usage, Lydney is the most sustainable location within the district and the planning obligations offer opportunity for modal shift. In this regard, notwithstanding the distance of the site from local facilities, and the paucity of the immediately available bus service, the likely degree of reliance on travel by car would be offset by the overall sustainable credentials of the town and the admission of the Framework that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. This element is neutral in the planning balance.
- 6.99 Turning to the economic and social roles of sustainable development, very substantial weight applies to the diverse mix of homes which the development proposes, having particular regard to the manner in which long allocated and approved housing sites have failed to deliver anything more than a limited proportion of their potential number of market and much needed affordable homes. The overall ethos of The Local Approach, and the opportunities which that would provide, is a strong material consideration. *[2.66; 2.67; 2.82]*
- 6.100 Although much has been made of the inspiration of The Local Approach as validation for the proposed development, the prevailing climate is one of a very serious housing shortfall in the locality with a particularly acute need for affordable housing. Even if the Secretary of State were to reach the conclusion that the obligations in the unilateral undertaking did not meet
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the test of necessity, and that the consideration of benefits to be secured through The Local Approach ceased to be material, I consider that the pressing need for the delivery of new homes, and in particular those which would be affordable, would continue to provide strong justification for the development of the appeal site. [1.38; 3.84 – 3.92]

- 6.101 In either instance, the proposal would be consistent with focusing new housing at Lydney to support existing services and facilities; and the provision of a community building, as part of the project, would provide opportunities for social interaction and community cohesion. The development would also provide employment during the construction phase and related economic benefits for local firms and the local economy.
- 6.102 As to other claimed benefits, the landscaping of the site, provision of extensive public open space and enhancements to biodiversity would largely be in the nature of mitigation and/or responses to policy expectations, notably Core Strategy policy CSP.1, with very limited residual benefits. [3.62 – 3.65]
- 6.103 Other harms would include a small adverse effect on existing peak hour junction capacity and congestion in the town centre; and a predicted, worst case, minor effect on air quality in part of the Lydney Air Quality Management Area. The financial contributions to the Lydney Highway Strategy and Lydney Transport Strategy; and also towards the maintenance of the Air Quality monitoring network and implementation of the Air Quality Action Plan, would provide a degree of mitigation. These harms are of minor consequence. [1.13; 1.17]
- 6.104 In terms of the loss of grade 3a agricultural land, the evidence points to a need to develop agricultural land to meet the housing needs of the locality and the appeal site represents the poorest quality land available. Even if the proposal amounts to '*significant development of agricultural land*', the need for additional housing sites and a lack of alternatives demonstrates a necessity to use agricultural land and there is no claim to poorer quality land being available. The proposal would therefore be consistent with paragraph 112 of the Framework and it would not result in demonstrable harm. [1.14; 1.18]
- 6.105 Moreover, although Core Strategy policy CSP.1 does not expressly refer to best and most versatile agricultural land, paragraph 6.8 of the accompanying text confirms:- '*The quality of agricultural land in terms of its productive capacity is an important consideration in the assessment of development proposals*'. In light of my explanation above, I find no conflict with the policy.
- 6.106 Whilst the role of land East of Lydney is of strategic importance, in terms of the plan led development of housing land, there is nothing to suggest that the very different composite offer of the appeal proposal would work in direct competition, or undermine, the future progress of that project. This is a neutral factor.

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- 6.107 A number of other matters raised by interested parties were considered by Inspector Pope, some of which were repeated at the reopened inquiry. None of these are of material substance to the main consideration on which the appeal should be determined and I endorse the conclusions reached by Inspector Pope in relation to those matters. *[4.4 - 4.8]*
- 6.108 Drawing these threads together, the proposal would be in conflict with the development plan when read as a whole. However, limited weight applies to the policies for the supply of housing, in light of the shortfall in housing land supply. In addition, relevant policies for the supply of housing cannot be considered to be up-to-date which triggers the tilted balance of paragraph 14 of the Framework. The harm to the character and appearance of the area carries moderate weight, given the characteristics of the site and the influence of the adjoining built-up area. The impact on traffic conditions and air quality would be a factor of minor weight.
- 6.109 When added together, I gauge that the combined harm would not significantly and demonstrably outweigh the benefits of the proposal, irrespective of whether the unilateral undertaking guaranteeing the local approach is taken into consideration, when assessed against the policies in the Framework taken as a whole.
- 6.110 Consequently, the proposal would represent sustainable development as defined in the Framework and this conclusion would warrant a decision being made other than in accordance with the development plan. For all of the reasons given, I recommend that planning permission should be granted subject to the conditions set out in the Schedule at Annex C to this report.

*David MH Rose*

Inspector

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## **ANNEX A: APPEARANCES**

### **FOR THE APPELLANT**

Mr Christopher Young of Counsel                      Instructed by Paul Fong,  
Managing Director, Hunter Page Planning

#### **He called**

Mr C Rawlinson    Managing Director  
Eur.Eng, B.Eng (Hons), C.Eng, MCIHT,  
MIod    Transport Planning Associates

Mr M J Davies    Managing Director  
BA (Hons), DipLA, CMLI                                      Davies Landscape Architects Ltd

Mr Paul J Fong    Managing Director  
BA (Hons), MRTPI    Hunter Page Planning

### **FOR STOP ALLASTON DEVELOPMENT (RULE 6 PARTY)**

Miss Alison Ogley of Counsel                      Instructed by Mr R I Stuart,  
Director, Avoca Planning, Landscape and  
Development Ltd

#### **She called**

Mr R I Stuart     Director, Avoca Planning, Landscape and  
MRTPI, DipTP, DipLA, FRSA                                      Development Ltd

### **INTERESTED PERSONS**

|                         |                           |
|-------------------------|---------------------------|
| Lucy Collins            | Local resident            |
| Jonathan Montanana      | Local resident            |
| Councillor James Bevan  | Local resident            |
| Godfrey Lewis           | Local resident            |
| Maura Gibbs             | Local resident            |
| Walter Owen             | Local resident            |
| Councillor Bill Osborne | Forest of Dean Councillor |

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**ANNEX B: ADDITIONAL INQUIRY DOCUMENTS****Inquiry documents**

|               |   |
|---------------|---|
| <b>INQ/1</b>  | Mr Chris Young opening statement  |
| <b>INQ/2</b>  | Ms Alison Ogleby opening statement  |
| <b>INQ/3</b>  | Miss Lucy Collins and Mr Jonathan Montana statement   |
| <b>INQ/4</b>  | Councillor James Bevan statement  |
| <b>INQ/5</b>  | Ms Maura Gibbs statement and photograph   |
| <b>INQ/6</b>  | House of Commons: Communities and Local Government; Capacity in the homebuilding industry – Tenth Report of Session 2016-17 |
| <b>INQ/7</b>  | Statement of Common Ground between S.A.D. and the appellant with respect to verifiable wire frame views                     |
| <b>INQ/8</b>  | Petition: 'Real Homes for Real People'  |
| <b>INQ/9</b>  | Extract from The Forester newspaper (22nd February 2017)  |
| <b>INQ/10</b> | Extracts from the Budget Policy Paper (16th March 2016)   |
| <b>INQ/11</b> | Extracts from the Guidelines for Landscape and Visual Impact Assessment, third edition 2013                                 |
| <b>INQ/12</b> | Forest of Dean District Council Local Development Framework Proposals Map   |
| <b>INQ/13</b> | Emails from Trevor Rowe, Business Development Manager, Bromford (dated 5th May 2017)  |
| <b>INQ/14</b> | Extract (conditions) from Boorley Green appeal decision (ref. APP/W1715/W/15/3130073)                                       |
| <b>INQ/15</b> | Draft schedule of conditions  |
| <b>INQ/16</b> | Ian Stuart draft condition re infrastructure implementation and maintenance   |
| <b>INQ/17</b> | Notification of further hearings (Forest of Dean Allocations Plan – Further Changes Hearings)                               |
| <b>INQ/18</b> | Confirmation email re S106 contribution (Education)   |
| <b>INQ/19</b> | Confirmation email re S106 contribution (Air Quality)   |
| <b>INQ/20</b> | Confirmation email re S106 contribution (Lydney Transport/Public Transport Strategy)  |
| <b>INQ/21</b> | Confirmation email re S106 contribution (affordable housing)  |
| <b>INQ/22</b> | Confirmation email re S106 contribution (adult recreation)  |
| <b>INQ/23</b> | Letters received during the course of the re-opened inquiry   |

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|               |   |
|---------------|---|
| <b>INQ/24</b> | Land of Darnhall School Lane, Winsford Cheshire – APP/A0665/A/14/2212671 – Secretary of State Decision and Inspector's Report |
| <b>INQ/25</b> | Judicial Review – Amended Statement of Facts and Grounds (Land of Darnhall School Lane, Winsford Cheshire)                    |
| <b>INQ/26</b> | Judicial Review – Permission Order (Land of Darnhall School Lane, Winsford Cheshire)  |
| <b>INQ/27</b> | Judicial Review – Acknowledgement of Service (Land of Darnhall School Lane, Winsford Cheshire)                                |
| <b>INQ/28</b> | Closing submissions on behalf of S.A.D.   |
| <b>INQ/29</b> | Supplementary closing submissions on behalf of S.A.D.   |
| <b>INQ/30</b> | Working Title Films Limited and Westminster City Council – [2016] EWHC 1855 (Admin)   |
| <b>INQ/31</b> | Closing submissions on behalf of the appellant  |
| <b>INQ/32</b> | Revised wording and related correspondence – condition 9  |

**Supplementary Proofs of Evidence**

|              |   |
|--------------|---|
| <b>R6/1</b>  | Ian Stuart Supplementary Proof of Evidence and Appendices (Planning and Landscape) - March 2017     |
| <b>R6/2</b>  | Mark Rayers Proof of Evidence Update (Transport Issues) – 3 April 2017                              |
| <b>APP/1</b> | Supplementary Proof of Evidence and Appendices (Highways and Accessibility) – April 2017            |
| <b>APP/2</b> | Michael Davies Landscape and Visual Proof of Evidence – 4 April 2017                                |
| <b>APP/3</b> | James Donagh Proof of Evidence (Housing Need) – 29 March 2017                                       |
| <b>APP/4</b> | James Stacey Supplemental Planning and Affordable Housing Evidence – April 2017                     |
| <b>APP/5</b> | Paul Fong Supplementary Proof of Evidence and Appendices (Housing Land Supply Matters) - March 2017 |
| <b>APP/6</b> | Paul Fong Supplementary Proof of Evidence and Appendices (Planning Balance) - March 2017            |
| <b>APP/7</b> | Technical Note – Ecology Addendum 30 March 2017   |
| <b>APP/8</b> | Update to Air Quality Assessment – April 2017   |

**ANNEX C: Schedule of recommended planning conditions**

**Commencement of development, relevant plans and reserved matters**

1. The development hereby permitted shall not be commenced until detailed plans showing the layout, scale, appearance and landscaping of the site (referred to as 'the reserved matters') have been submitted to and approved in writing by the Local Planning Authority.
2. No dwelling shall commence until a phasing plan for the phasing of the building of the development in phases is submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved plans. The phasing plan shall include no less than 3 phases of development.
3. Application for the approval of the reserved matters for the first phase of the development shall be made not later than the expiration of one year beginning with the date of this permission or one year from the final conclusion of any subsequent claim or challenge under section 288 of the Town and Country Planning Act 1990, whichever is the later.
4. The development hereby permitted shall be begun before the expiration of two years from the date of the approval of the last of the reserved matters for the first phase of development, as defined by the approved phasing plan.
5. The development hereby permitted shall be carried out in accordance with the following approved plans: 1:2,500 scale site location plan (Ref. P001 A); revised illustrative masterplan rev B, dated October 2014 and; 1:500 scale proposed accesses (ref. SK09); but only in respect of those matters not reserved for later approval.

**Ground modelling and levels**

6. No development shall commence until details of the existing site levels; proposed floor slab levels and proposed ridge heights; proposed earthworks, grading and mounding of land areas, including the levels and contours to be formed, showing the relationship of proposed contours and heights of buildings to the surrounding land; and sections through the site for the first phase of the development, at a scale not less than 1:500, have been submitted to and approved in writing by the Local Planning Authority. Development on subsequent phases shall not commence until equivalent details have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

**Drainage**

7. No development shall commence until foul water drainage details for the first phase of development of the site and a programme of implementation has been submitted to and agreed in writing by the Local Planning Authority. Development on subsequent phases shall not commence until equivalent details have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details/programme. Unless otherwise agreed in writing, surface water shall be drained separately from foul water.

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8. No development shall commence until details of surface water drainage for the site, including a sustainable drainage scheme (SUDS) and details for the implementation, maintenance and management of the SUDS have been submitted to and approved in writing by the Local Planning Authority. The details/scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. These details shall include:-
- (i) a timetable for its implementation, and;
  - (ii) a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the SUDS throughout its lifetime.

**Vehicle parking, roads, footways and cycleways**

9. No development shall commence until details of properly consolidated and surfaced vehicle parking and manoeuvring facilities (including provision for the disabled) for the first phase of development have been submitted to and approved in writing by the Local Planning Authority. Development on subsequent phases shall not commence until equivalent details have been submitted to and approved in writing by the Local Planning Authority. The works and facilities shall be provided in accordance with the approved details and prior to the dwellings and community/retail building served by them being occupied/brought into use and shall be kept permanently available for such purposes with the vehicle parking spaces retained for parking only and the manoeuvring facilities for manoeuvring of vehicles.
10. No works shall commence on site (other than those required by this condition) on the development hereby permitted until the first 20 metres of one of the approved access roads, including the junction with the existing public road and associated visibility splays, has been completed to at least binder course level.
11. No dwelling or retail/community building on the site shall be occupied/brought into use, until the carriageway (including surface water drainage/disposal, vehicular turning heads and street lighting) providing access from the nearest public highway to that dwelling and /or retail/community building, have been completed to at least binder course level and the footways to surface course level.
12. No works shall commence on the development hereby permitted until details of the shared footways/cycleways for the first phase of development have been submitted to and approved in writing by the Local Planning Authority. Development on subsequent phases shall not commence until equivalent details have been submitted to and approved in writing by the Local Planning Authority. The approved shared footways/cycleways in each of the phases of the development shall be provided prior to the occupation of any of the buildings in that phase.
13. No development shall commence on site until details of the proposed arrangements for future management and maintenance of the proposed streets within the site have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with

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the approved details and the streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

14. No building shall be constructed on site until a scheme has been submitted to and agreed in writing by the Local Planning Authority for the provision of fire hydrants (served by mains water supply) and no building shall be occupied until the hydrant serving that property has been provided.

**Construction Method Statement**

15. No development shall take place on site, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall:
- (i) specify the type and number of vehicles;
  - (ii) provide for the parking of vehicles of site operatives and visitors;
  - (iii) provide for the loading and unloading of plant and materials;
  - (iv) provide for the storage of plant and materials used in constructing the development;
  - (v) provide for wheel washing facilities;
  - (vi) specify the intended hours of construction operations; and
  - (vii) specify measures to control the emission of dust and dirt during construction.

**Landscaping**

16. The landscaping details required by condition 1 above shall include:- measures for protecting existing trees and hedgerows within the site during the construction phase; a timetable for planting trees, hedgerows and shrubs; details for undertaking replacement planting in the event of any trees, shrubs or hedges being removed, damaged or dying within five years of planting; those measures set out in section 5.5 (Landscape Strategy) of the Landscape & Visual Assessment dated January 2014 by Davies Landscape Architects and submitted in support of the application; the reinforcement of existing boundary hedges with indigenous species and; details for maintaining those hedgerows that are to be retained.

**Waste Minimisation Strategy**

17. No development shall commence until a Waste Minimisation Statement (WMS) has been submitted to and approved in writing by the Local Planning Authority. The WMS shall include:
- (i) details of the types and volumes of construction waste likely to be generated including measures to minimise re-use and recycle that waste and minimise the use of raw materials;



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- (ii) measures for re-using construction waste on site unless it can be demonstrated that this is not the most sustainable option;
  - (iii) measures for the disposal of any waste that cannot be re-used on site;
  - (iv) provision of 'on-site' storage receptacles for recycling a range of materials; and
  - (v) access arrangements for recycling/waste collection vehicles.

The development shall be undertaken in accordance with the approved WMS.

**Low Carbon Energy and Services**

- 18. Prior to the commencement of the development, a scheme for generating low carbon energy (as defined in the technologies outlined in the Local Planning Authority's Good Practice Guide) or thermal improvement of the building fabric, equivalent to 15% of the carbon dioxide emissions arising from the use of each dwelling unit in phase one of the development, shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented and commissioned within three months of occupation or use of the development and thereafter retained for a period of not less than 10 years. A scheme for generating low carbon energy (as defined in the technologies outlined in the Local Planning Authority's Good Practice Guide) or thermal improvement of the building fabric, equivalent to 15% of the carbon dioxide emissions arising from the use of each dwelling unit for the remaining phases of the development, shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented and commissioned within three months of occupation or use of the development and thereafter retained for a period of not less than 10 years.
- 19. All services required to be connected to the development hereby approved shall be laid underground and each property shall be provided with an electric vehicle charging point and isolation switch prior to first occupation.

**Archaeology**

- 20. No development shall take place within the site until a scheme for the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been submitted to and approved in writing by the Local Planning Authority; and the programme shall be undertaken as approved.

**Ecology**

- 21. No development shall take place, including ground works and site clearance, until a method statement (MS) for badgers has been submitted to and approved in writing by the Local Planning Authority. The MS shall be based on the measures outlined in Badger Appendix 1.5 -1.11 by Ecological Solutions dated August 2013 and submitted in support of the application. The MS shall also include:
  - (i) requirements for additional survey work;
  - (ii) risk assessment of potentially damaging construction activities;

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- (iii) identification of 'biodiversity protection zones';
  - (iv) practical measures (both physical and sensitive working practices) to avoid or reduce impacts during construction;
  - (v) extent and location of proposed works shown on scaled maps and plans;
  - (vi) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
  - (vii) persons responsible for implementing the works; and
  - (viii) initial aftercare and long-term maintenance (where relevant).

The works shall be carried out in accordance with the approved MS and shall be retained in that manner thereafter.

22. No development shall take place, including ground works and site clearance, until a conservation and enhancement plan for bats has been submitted to and approved in writing by the Local Planning Authority. The plan shall be based on the measures outlined in the Ecological Addendum report, Section 4 dated November 2013 by Ecological Solutions and submitted in support of the application. It shall include:-
- (i) the retention of flight lines, foraging areas and dark corridors;
  - (ii) re-assessment of trees with identified bat potential including any necessary survey work;
  - (iii) compensation for the loss of hedgerows;
  - (iv) enhancement of hedgerows to secure foraging opportunities and connectivity to off-site habitats;
  - (v) bat boxes in trees and in suitable locations within some of the new buildings;
  - (vi) a risk assessment of potentially damaging construction activities;
  - (vii) identification of 'biodiversity protection zones' (such as hedgerows);
  - (viii) practical measures (both physical and sensitive working practices) to avoid or reduce impacts during construction;
  - (ix) the extent and location of proposed works shown on scaled maps and plans;
  - (x) a timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
  - (xi) identifying persons responsible for implementing the works; and
  - (xii) initial aftercare and long-term maintenance (where relevant).

The works shall be carried out in accordance with the approved plan and shall be retained in that manner thereafter.

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23. No development shall take place until a lighting design strategy for biodiversity covering bat flight lines, new and retained hedgerows and open space areas, and other foraging areas have been submitted to and approved in writing by the Local Planning Authority. The strategy shall:-
- (i) identify those areas/features on site that are particularly sensitive for bats and badgers and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging, and;
  - (ii) show how and where external lighting would be installed (through the provision of lighting contour plans and technical specifications) so that it could be demonstrated that areas to be lit would not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the approved strategy, and these shall be retained thereafter in accordance with the strategy. No other external lighting shall be installed without the Local Planning Authority's prior permission.

24. No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The LEMP shall draw together all aspects of management including the bat conservation plan, barn owl mitigation and hydrology (SUDS scheme) and the mitigation/enhancement measures outlined in Section 5 of the Ecological Assessment by Ecological Solutions dated August 2013. The content of the LEMP shall include the following:
- (i) a description and evaluation of features to be managed;
  - (ii) ecological trends and constraints on site that might influence management;
  - (iii) aims and objectives of the management;
  - (iv) appropriate management options for achieving aims and objectives;
  - (v) prescriptions for management actions;
  - (vi) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
  - (vii) details of the body or organization responsible for implementation of the LEMP;
  - (viii) on-going monitoring and remedial measures;
  - (ix) details of the legal and funding mechanism(s) by which the long-term implementation of the LEMP would be secured with the management body (ies) responsible for its delivery; and
  - (x) contingencies and/or remedial action for addressing the results from monitoring where these reveal that the conservation aims and objectives of the LEMP are not being met.

The LEMP shall be implemented in accordance with the approved details.

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25. No vegetation on the site (including ivy) shall be removed between 1 March and 31 August inclusive, unless a suitably qualified ecologist has undertaken a detailed check of vegetation for active birds' nests immediately before the vegetation is removed and has provided written confirmation that no birds would be harmed and/or that there are appropriate measures in place to protect nesting bird interest on the site. Any such written confirmation shall be submitted to the Local Planning Authority for approval and then implemented as approved.
26. Throughout the duration of works, including site clearance and construction, the following shall be undertaken:
- (i) construction materials will be stored only on existing hard-standing areas or other areas permitted for storage and will be raised off the ground on pallets or similar;
  - (ii) any loose materials (e.g. stone or soil) stored on site will be within sacks, bags or will be compressed to avoid gaps being accessible to newts; and
  - (iii) excavations will be covered overnight to prevent newts or badgers becoming trapped, or will be provided with ramps to allow newts and badgers to escape.

Should Great Crested Newts be found within the construction area, all works to that area shall cease until advice from Natural England has been sought and followed.

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

by Neil Pope BA (Hons) MRTPI

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

Date: 13 April 2015

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TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

FOREST OF DEAN DISTRICT COUNCIL

APPEAL BY ALLASTON DEVELOPMENTS LTD

Inquiry held on 19, 20, 25, 26 November 2014 and 4, 5, 6 and 10 February 2015  
Site visits undertaken on 18 November 2014 and 3 and 9 February 2015

Land off Driffield Road, Allaston Road and Court Road, Lydney, Gloucestershire.

File Ref: APP/P1615/A/14/2218921

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**File Ref: APP/P1615/A/14/2218921****Land off Driffield Road, Allaston Road and Court Road, Lydney, Gloucestershire.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Allaston Developments Ltd against the decision of Forest of Dean District Council (LPA).
- The application Ref. P1284/13/OUT, dated 22 August 2013, was refused by notice dated 22 January 2014.
- The development proposed is the delivery of up to 200 dwellings, including up to 20 serviced self-build plots and up to 37 retirement apartments, community building (up to 2,000 sq ft) comprising flexible A1/D2 ancillary space and new public open space.

**Summary of Recommendation: the appeal be allowed****Preliminary Matters**

1. Other than the means of access, all other matters of detail have been reserved for subsequent consideration.
2. On 18 November 2014, the Secretary of State issued a Direction recovering the appeal for his own determination. The reason for the Direction was because the appeal involves residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made.
3. Having considered the proposal in accordance with Regulation 12(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824), on 23 July 2014, another Direction was issued on behalf of the Secretary of State stating that the proposal was not EIA development.
4. Stop Allaston Development (SAD) was a Rule 6 party to the appeal.
5. The following Statements of Common Ground (SoCG) have been submitted: i) SoCG dated August 2014, setting out matters of agreement between the appellant and the LPA (*Core Document [CD] CD1/5*); ii) SoCG dated October 2014, between the appellant and Gloucestershire County Council (GCC) as Highway Authority (HA) (*CD1/6*); iii) 'addendum' SoCG dated November 2014, agreed by the appellant and the LPA in respect of the Lydney Neighbourhood Development Plan 2014-2024 Examiner's Version (LNDP) (*Document 12*); iv) SoCG dated November 2014, between the appellant and SAD (*Document 2*); v) supplementary SoCG dated January 2015, agreed by the appellant and the HA (*flagged on the file*) and; vi) SoCG dated February 2015, relating to transport issues, between the appellant and SAD (*Document 37*).
6. Prior to the LPA's determination of the application the appellant submitted a revised masterplan for the development of the site (Fig 02 – Illustrative Masterplan Rev A) (*Appendix 1 Tab 2 to Mr Davies's proof of evidence [PoE]*). This is the illustrative masterplan to which the LPA's decision relates.
7. During the appeal a further amended masterplan (Revised Illustrative Masterplan Rev B) was included as part of the appellant's evidence. (*Appendix 1, Tab 3 to Mr Davies's PoE.*) Amongst other things, this revision shows alterations to the internal access roads and green spaces within the site, as well as the relocation and reconfiguration of some of the proposed dwellings.

8. At the beginning of the Inquiry SAD requested that I make a ruling regarding the admissibility of Revised Illustrative Masterplan Rev B. Having heard from the appellant and the LPA, and mindful of the judgement in Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37], as well as the Interpretation of "access" in Part 1, 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (SI 2010 No. 2184), I ruled that the submission of this amended plan at a late stage in the proceedings could prejudice the delivery of a fair planning system and could result in an adjournment to the proceedings which would be at odds with the delivery of a more efficient planning system. (*Document 19 is the full text of my Ruling.*)
9. On day 4 of the Inquiry and having heard evidence from a number of interested parties, the witnesses appearing on behalf of SAD, as well as the appellant's landscape witness, the appellant requested a ruling in respect of an adjournment. This was sought to allow consultation to be undertaken in respect of Revision B to the masterplan. This was not opposed, in principle, by the other main parties. I therefore ruled that the Inquiry should be adjourned to afford interested parties and SAD an adequate opportunity to consider and comment upon this latest version of the masterplan. (*Document 33 is the full text of my Ruling.*) The Inquiry was adjourned until February 2015.
10. On 28 November 2014, the appellant undertook a process of consultation in respect of Revised Illustrative Masterplan B. Interested parties were given until 29 December 2014<sup>1</sup> to make comments in respect of these revisions. SAD was given until 14 January 2015 to make their representations.
11. On 15 January 2015, the appellant submitted drawings showing the longitudinal sections of the proposed highways (refs. CMR/2, CMR/3 and CMR/4) and swept path assessments (CMR/5 and CMR/6) for large refuse vehicles that would use the proposed highways. On the same day, PINS sent copies of these drawings onto the LPA and SAD. As set out in the supplementary SoCG on transportation issues agreed by the HA and the appellant, the HA has considered these drawings. It has not raised any concerns regarding the proposed development. The LPA and SAD informed me that no party would be likely to be prejudiced if these plans were taken into account in determining the appeal.
12. During the appeal and following a request by the LPA, the appellant agreed to make a financial contribution towards the cost of providing 15 affordable sheltered units of accommodation off-site and in lieu of on-site provision. (This would reduce the number of on-site affordable dwellings to 65.) In addition, the appellant proposed that the number of self-build plots be increased to 40. SAD and the LPA agreed that these changes would be unlikely to cause any prejudice. This was reflected in the amended description of the proposed development<sup>2</sup> during the consultation exercise that commenced in November 2014.
13. The appellant has submitted several planning obligations under the provisions of section 106 of the above Act. These comprise: an agreement with GCC relating to highways (including a residential Travel Plan [TP]), education (pre-school) and

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<sup>1</sup> Following a request from Lydney Town Council (LTC), an extension of time for LTC's comments was given until 16/1/15, to allow for consideration of this matter by LTC's Planning and Highway Committee on 12/1/15.

<sup>2</sup> Proposed residential development of up to 200 dwellings including 40 self-build plots and 37 retirement apartments, affordable housing, community building (186 square metres) comprising flexible A1/D2 ancillary space, new public open space and new access roads.



library contributions (*Document 5*); an agreement with the LPA relating to affordable housing, adult recreation and air quality management (*Document 6*) and; a unilateral undertaking for the delivery of the appeal scheme by developers with a registered office in the administrative area of the Forest of Dean District (*Document 7*).

14. On 8 October 2014, the LPA stated that having reviewed its 5 year housing land supply (HLS) it would not be supporting its reasons for refusal. On 20 October 2014, it issued a Position Statement (*CD1/8*). Amongst other things, this Statement refers to a previous planning appeal within the District (Ref. APP/P1615/A/14/2220590)<sup>3</sup>. The LPA has commented that a robust 5 year HLS cannot be demonstrated in accordance with the National Planning Policy Framework ('the Framework'). Furthermore, it has stated that paragraph 49 of 'the Framework' applies and that Core Strategy (CS) policies CSP.4, CSP.5 and CSP.12 cannot be considered up-to-date. As a consequence, the LPA did not call any witnesses to give evidence at the Inquiry.
15. As neither the LPA nor SAD contested HLS or the need for affordable housing, it was agreed that the appellant's experts<sup>4</sup> who had each prepared detailed PoE on these matters did not need to be called to present their evidence to the Inquiry. This evidence was taken as read and was uncontested.
16. An interested party has drawn attention to The Local Authorities (Functions and Responsibilities) (England) Regulations 2000<sup>5</sup> and requested that the proceedings be adjourned so that allegations concerning the LPA's handling of the application and decision to not defend its reasons for refusal be investigated (*Document 1*). This matter has been passed onto the local constabulary.
17. At the Inquiry and application for an award of costs was made by SAD against the appellant. This application is the subject of a separate Report.
18. Following the submission of Document 59 and with the agreement of the main parties, I closed the Inquiry in writing on 13 February 2015.

### **The Site and Surroundings**

19. The appeal site comprises 14.16 ha of permanent grassland (approximately 11.6 ha is grade 3a agricultural land and the remainder is grade 3b). It is situated on the north eastern edge of the town of Lydney and is approximately 1.7 km north of the town centre<sup>6</sup>. The site comprises six fields of various sizes with established trees and hedgerows. Generally, the land rises from south to north before the northernmost field slopes downwards towards Windsor Drive. The highest part of the site is about 120m Above Ordnance Datum (AOD) and the lowest part is about 80m AOD.
20. The site forms part of the countryside around Lydney. It is adjacent to existing housing and Primrose Hill Church of England Primary School. There is variation in the mix and design of this housing. Windsor Drive and Allaston Road lie to the

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<sup>3</sup> This appeal for up to 110 homes on a site in Sedbury was allowed on 30 October 2014.

<sup>4</sup> Messrs Donagh, Stacey and Read.

<sup>5</sup> SI 2000 No. 2853

<sup>6</sup> Part of the High Street, Hill Street and Newerne Street, as well as sections of Bream Road and Forest Road through the town have been declared an Air Quality Management Area (AQMA) for nitrogen dioxide.

north, Driffield Road is to the east, Oak Meadow and Court Road are situated to the west and Augustus Way and Highfield Lane lie to the south of the site.

21. Five public footpaths cross the site (*Appendix 1 Tab 7 to Mr Davies's PoE and CD5/5*). These run between the urban area of Lydney and the surrounding countryside. From sections of some of these public rights of way there are views across the site towards the town, as well as views of the countryside and distant views of the Severn Estuary (*PRV 14-20, and PRV 23-24 in Appendix 3 Tab 1 of Mr Davies's PoE*). The spire of the Church of St. Mary<sup>7</sup> features in some of these views. Parts of the site can be seen from the town and the surrounding countryside (*PRV 1-12 & 25 in Mr Davies's PoE*).
22. Various overhead lines also bisect the site. These include power lines which cross the two northern fields. These are supported by a tall pylon which is immediately alongside the hedgerow that divides these fields.
23. Windsor Drive, which serves about 16 properties, terminates at the northern edge of the appeal site. There are gated accesses from other parts of the site onto Oak Meadow, Court Road, Augustus Way and Highfield Lane.
24. The village of Yorkley is approximately 2km to the north of the site. This settlement occupies higher ground and sits on top of a ridge of land. As I saw during my site visits, views of the Severn Estuary and the Cotswolds can also be experienced from sections of the public rights of way that lead to/from this village. (*PRV 01 in Appendix 3 Tab 1 of Mr Davies's PoE is taken from a section of the footpath that runs to the north of the appeal site and south of Yorkley.*)
25. Photographs of the appeal site and surrounding area comprise Tabs 1 and 2 of Appendix 3 to Mr Davies's PoE and Appendix 6 to Mr Stuart's PoE. These include distant views from the south. Figure CMR/1 to Mr Rawlinson's PoE shows the site in relation to various local services and amenities including bus routes.

### **Planning Policy and Other Documents**

26. The development plan includes the CS (*CD3/1*) which was adopted in February 2012 and those 'saved' policies within the Forest of Dean Local Plan Review 2005 (LP) which were not replaced by the CS. Attention has been drawn to CS policies CSP.1 (design and environmental protection), CSP.4 (development at settlements), CSP.5 (housing), CSP.9 (recreational and amenity land) and CSP.12 (development on land east of Lydney). Pages 76-80 in Section 7 of the CS comprise the objectives and policies for Lydney. In paragraph 3.6 it is accepted that the basic infrastructure is typical of many rural areas. (*Copies of these policies are included within the Appeal Questionnaire and at CD3/1.*)
27. The Allocations Plan Draft (APD) was published by the LPA in mid 2014 (*CD3/4*). This is intended to identify specific areas of land for development within the district up to 2026. One of the proposed allocations (about 25 dwellings) included part of the appeal site (0.85 ha of land off Augustus Way) (*Document 25*). However, at the end of February 2015<sup>8</sup> the LPA resolved to delete this

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<sup>7</sup> This is a Grade I listed building which dates from the 13<sup>th</sup> century. The church spire was rebuilt in the 19<sup>th</sup> century.

<sup>8</sup> Although this occurred after the Inquiry had closed, the Inquiry was informed of the likelihood of this 0.85 ha site being deleted from the Plan.

- allocation and to undertake public consultation prior to the Plan being submitted for Examination. The APD does not currently form part of the development plan.
28. In 2010 the LPA adopted its Affordable Housing Supplementary Planning Document (SPD) (*CD3/6*). Amongst other things, this SPD states that the LPA attaches high priority to the provision of affordable housing in balancing its planning objectives. Affordable housing underpins one of the key priorities in the LPA's Corporate Plan and Housing Strategy Statement. This SPD is based on the 2009 Strategic Housing Market Assessment (SHMA) which revealed a net need for 289 new affordable homes per annum.
  29. The Forest of Dean Residential Design Guide was adopted by the LPA as supplementary planning guidance (SPG) in 1998. It includes guidance in respect of movement, access and development on sloping ground (*CD5/6*).
  30. In April 2014, the LNDP was given to the LPA prior to submission to an Examiner (*CD3/5*). This Plan has been prepared by LTC and a number of local community groups. The Development Strategy is based on the CS. The appeal site is outside the settlement boundary for the town.
  31. Attention has been drawn to LNDP policies LYD ENV 1 (preservation of open space), LYD ENV 2 (protecting the natural environment), LYD HOUS 1 (housing for elderly people), LYD TRAN 1 (improvements to highway infrastructure) and LYD TRAN 3 (public rights of way and wildlife corridors). The LPA has raised concerns with the LTC regarding the adequacy of the Environmental Assessments that have been undertaken during the preparation of this Plan. The LNDP does not currently form part of the development plan.
  32. Although not planning policy, attention has also been drawn to the document 'A Landscape Character Assessment for the Forest of Dean' (LCA) that was undertaken in 2002. Amongst other things, this identifies key environmental features of the landscape. The appeal site lies within the 'Ridges and Valleys' landscape character type (LCT) which is subdivided into four character areas. The site forms part of the 'Allaston Ridge' character area. (*CD5/1*)
  33. In 2004 the 'Forest of Dean District Landscape Strategy' (LS) was produced by Landscape Design Associates. Amongst other things, it identifies the wooded ridgelines of the above noted LCT as being more visually sensitive than the valleys and lower ridge slopes. The landscape strategy for the expansion of existing valley floor settlements includes avoiding siting new built development on visually prominent ridge lines. (*CD5/3*)
  34. In 2007 the LPA adopted its 'Landscape Supplementary Planning Document'. This SPD is intended to ensure that the profile and importance of environmental and landscape issues are given due consideration in planning decisions. This SPD also recognises that compromises will be required in balancing environmental, social and economic objectives in the planning process. (*CD5/2*)
  35. In addition to 'the Framework' the main parties have drawn attention to some other documents. These include various Written Ministerial Statements (WMS), the Government's Planning Practice Guidance and Manual for Streets (MfS) which was published in 2007.

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## Planning History

36. In February 2013, an appeal relating to the provision of a gate to provide field access into part of the appeal site off Windsor Drive was dismissed (Ref. APP/P1615/A/12/2184499) (*Appendix 3 to Mr Stuart's PoE*).

## The Proposals

37. The scheme considered by the LPA in January 2014 is the one described in the last bullet point under the heading on page 2 of this report. Vehicular access into the site would be off Windsor Drive, Court Road and Oak Meadow. The means of accessibility within the site was also shown on masterplan Rev A. This included a road linking two separate areas of development in the northern part of the site and pedestrian and cycle access onto Highfield Lane and Augustus Way. The existing public rights of way through the site would be retained.
38. 40% of the total number of dwellings would be provided as affordable homes and approximately 5.72 ha of public open space/green infrastructure would be provided within the site. No buildings would exceed 2 storeys in height and the proposed community building would be single storey. The gross density of development would be about 14 dwellings per ha (dph). The density net of public open space and road infrastructure would, on average, be about 24.5dph.
39. Further details are contained within the various documents that were submitted in support of the application. This includes the Planning Design & Access Statement (DAS) (*CD2/7*) and the Landscape and Visual Assessment (LVA) (*CD2/10*). As all the appellant's PoE relate to the revisions that were made after the application was determined it is the DAS and LVA which, in essence, set out the justification for the scheme design advanced under masterplan Rev A. (*Other documents, including a detailed Transport Assessment [TA], Flood Risk Assessment [FRA] and an Air Quality Assessment [AQA] were also submitted in support of the application. These can also be found in CD2. Following the determination of the application the appellant submitted an Archaeological Evaluation [AE], a copy of which can be found at CD2/14.*)
40. As noted above, the appellant wishes the appeal to be determined on the basis of the revised proposal/masterplan Rev B. The quantum of proposed housing remains the same, as do the access points into/out of the site<sup>9</sup>. 65 affordable homes would be provided on site with a financial contribution for off-site sheltered affordable housing. The number of self-build homes would increase to 40 and there would be alterations to the means of accessibility within the site. The amount of public open space/green infrastructure would increase to 6.6ha and the average density would be about 27.5dph. (*A summary of the proposed changes is set out in paragraph 4.1.7 of Mr Davies's PoE.*)

## Agreed Matters

41. The above noted SoCG's set out matters of agreement between the main parties, as well as the HA. With the exception of paragraph 12 (weight to be given to the LNDP), SAD agree with the 'addendum' SoCG that was signed by the appellant and the LPA. Amongst other things, this 'addendum' states that the CS policies

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<sup>9</sup> Pedestrian access is still proposed onto Highfield Lane but the tarmac 'link' between the proposed estate road in the lower field and Highfield Lane no longer appears on masterplan Rev B.

in respect of housing land supply (CSP.4 and CSP.5) are not up-to-date, in the absence of a 5 year HLS. It is also agreed that should additional land be required in Lydney it may be necessary to reappraise and redraw the LNDP settlement boundary to accommodate the town's future growth requirement.

**The Case for the Appellant (Allaston Developments Ltd)** (Below is a summary of the appellant's case. The text in italics identifies relevant parts of the written evidence or comprises matters dealt with in cross-examination or are matters upon which I sought clarification.)

42. The proposed development would be truly unique. It is a genuine local development by local people for local people<sup>10</sup>. The proposals would provide: deliverable housing by a small local building firm who have been unable to build any houses for the last 5 years and in an area where the main housing allocation in the town and district has stalled; 40 serviced self-build plots for which there is a demand; a significant number of affordable housing units at no cost to the public purse for the benefit of local people in need of housing; 37 modern retirement apartments which would accord with the age profile of the area and could free-up family housing for others; 6.6ha of new public open space for the benefit of all the people of Lydney; a modern, local community building built entirely at the developers expense and offered to LTC; a local builders clause to provide encouragement to small house builders; a local labour force clause requiring 50% of the workforce to be resident in the district and; a local procurement clause.

#### Housing Supply Matters

43. Statements made by Government Ministers, the Bank of England and reports from some other organisations acknowledge that there is a housing crisis in the country. This causes misery to millions of citizens and is a lost opportunity to create jobs and investment in the UK. There is a clear and pressing requirement to build more homes to meet the significant level of unmet need. Failure to do so presents a risk to the future economic stability of the UK. (*Appendices 2-11 of Mr Stacey's PoE and part of Document 57.*) Evidence to support such concerns also exists in national and regional reports on housing issues<sup>11</sup>.

44. 'The Framework' represents a radical change in planning policy with a pro-growth agenda and a requirement for local planning authorities to approach decision-taking in a positive way, including a responsibility to boost significantly the supply of housing. There is a presumption in favour of sustainable development. If a development plan is not up-to-date there is an onerous test on local planning authorities. Permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits.

45. The starting point for the determination of the appeal is the development plan. Lydney is one of the main towns within the Forest of Dean. The CS was adopted prior to 'the Framework' but identifies Lydney as the most accessible town with the most potential for change. It offers a range of services, including access to the rail network. However, very few of the 1,900 homes on land to the east of the town, provided for under CS policy CSP.12, have been built. There are major

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<sup>10</sup> This is set out in more detail in 'The Local Approach' document which was submitted shortly before the Inquiry opened (*flagged on the file*).

<sup>11</sup> (CD4/2-CD4/7)

viability issues with this strategic housing provision for Lydney. The developer for the land to the east of Lydney has sought<sup>12</sup> to reduce the affordable housing provision to zero and has informed the LPA that there is no interest from a national builder in delivering houses on this land (*Document 23*).

46. The town is not growing as rapidly as intended by the development plan and the LPA does not have 5 years HLS. The housing policies in the CS are therefore out-of-date. The appellant's uncontested assessment of housing provision is that, having regard to 'the Framework', the Planning Practice Guidance and the ruling in Hunston Properties Ltd v Secretary of State for Communities and Local Government [2014] EWHC 2678 (admin), the full objectively assessed housing need (OAN) must therefore be determined. For the Forest of Dean this amounts to 440 dwellings per annum<sup>13</sup>. This quantum of housing would be sufficient to meet projected labour demand and to exert some downward pressure on prices.
47. There has been a persistent undersupply of housing within the district. This requires a 20% buffer to be applied to the supply of housing. The accumulated shortfall of housing within the Forest of Dean equates to 376 dwellings against a constrained CS requirement or 766 dwellings against the OAN. There is no dispute that the 'Sedgefield' approach should be applied in making good this shortfall over the next five years. As a consequence, the five year housing requirement for the district amounts to 3,091 dwellings against the OAN<sup>14</sup> and 2,311 dwellings against the constrained CS figures<sup>15</sup>.
48. The extensive and uncontested evidence of Mr Read reveals that there are pervasive problems and disproportionately slow lead in times for housing delivery within the Forest of Dean, including the LPA's flagship strategic site on land to the east of Lydney. The deliverable supply of housing within the district amounts to only 1344 dwellings. This is a shortfall of nearly 1,000 homes against the constrained CS figure, or 2.9 years HLS. Against the OAN, the shortfall is 1,747 homes or 2.2 years HLS. In both instances, there is a very significant shortfall. The size of the shortfall must be significant and has been highlighted in appeals elsewhere, including those determined by the Secretary of State<sup>16</sup>.
49. The proposed development would meet an identified need for open market housing in a town where major growth is planned. It would be deliverable within five years and would add to the mix and choice of housing within the area. The scheme would also deliver a significant number of serviced self-build plots. This has been proposed in response to local demand for this type of housing and the Government's policy drive<sup>17</sup> to deliver self-build sites and support small scale developers, custom and self-builders. 'The Framework' is also supportive of people wishing to build their own homes. The appellant is not required to demonstrate viability and no tangible documentary evidence was presented by any party to show that the self-build element of the scheme would be unviable.
50. (*In response to my questions, the appellant's planning witness informed me that he was not anticipating any delays in delivering the scheme and the first dwelling*

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<sup>12</sup> APP/P1615/Q/14/2215840 (Appendix 12 to Mr Stacey's PoE)

<sup>13</sup> The CS annual requirement is 310 dwellings/annum.

<sup>14</sup> As set out in the fifth column of Table 3.6 on page 16 of Mr Read's PoE.

<sup>15</sup> As set out in the fourth column of Table 3.6 on page 16 of Mr Read's PoE.

<sup>16</sup> APP/H1705/A/13/2205929. (CD6/14)

<sup>17</sup> 'Right to Build: Supporting Custom Self Build' DCLG October 2014.

*to be built on the site would be expected about 18 months after any outline permission was granted. The build-out period for the development would be 3-5 years. I was also informed that as the development would be undertaken by a small group of local builders who were familiar with the local housing market and there was a pent up demand for housing the dwellings would be provided in a short period of time.)*

51. The appellant's uncontested affordable housing evidence reveals that since 2008/09 there has been a very significant shortfall of 2,652 affordable dwellings within the district. The affordable housing needs of the district are acute and continue to increase. The 2014 Gloucestershire and Districts SHMA identified an annual net need for 814 new affordable homes in the Forest of Dean between 2011 and 2016. The LPA's attempt to reduce this to 67 net affordable dwellings per annum is an unrealistic requirement and would not even come close to reducing the shortfall of need. Over the past 15 years applicants on the Housing Register have increased dramatically from 1,106 in 1999 to 2,377 in 2014. In excess of 400 households have a need for housing in the Parish of Lydney. This is the highest level of need of the 40 settlements on the Housing Register.
52. It is vital that there is a step change in the delivery of affordable housing within the district. Based on the 2014 SHMA, the LPA is only able to demonstrate 0.2 year affordable HLS. It is failing to meet the demonstrated affordable needs across the district. This was recognised in the above noted appeal decision at Sedbury, where considerable weight was given to the chronic crisis in the poor delivery of new affordable homes within the district. Elsewhere<sup>18</sup>, another Inspector found that affordability was at crisis point where the need for affordable dwellings was much lower than that identified in the Forest of Dean.
53. The CS and the 2010 SPD acknowledge that there is a shortage of affordable homes in the district and the provision of such housing is a priority. The proposal would deliver the equivalent of 80 affordable housing units (65 of which would be on-site). This would be 113% of the average annual delivery achieved by the LPA since the adoption of the CS. This would result in significant social benefits in an area where key sites are failing to deliver such housing. A locally based active Registered Provider has already expressed an interest in acquiring the proposed affordable homes (*Appendix 21 to Mr Stacey's PoE*).
54. The proposal would assist in creating inclusive and mixed communities as required by 'the Framework'. The social need for affordable housing is a material planning consideration and making social progress in tackling such needs is an important element of the golden thread of sustainable development running through 'the Framework'. In delivering the optimum affordable housing contribution of 40% the proposal would accord with the provisions of CSP.5 and the 2010 SPD. This element of the scheme can be given very substantial weight. It was not properly evaluated within the LPA's committee report and those who oppose the development have given it little consideration. In reconsideration, the LPA concluded that it could no longer support its refusal of permission.
55. In recognition of the lack of a 5 year HLS within the district, the LPA has recently granted outline permission for up to 110 residential units with associated

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<sup>18</sup> Para 8.125 on page 111 of the Inspector's Report – APP/H1840/A/13/2199085 and 2199426 – Land at Pulley Lane, Droitwich Spa (*Appendix 19 to Mr Stacey's PoE*).

infrastructure on another site in Lydney<sup>19</sup>. This also lies outside the settlement boundary as defined in the CS and LNDP. Additional sites, such as the one that is the subject of this appeal, will have to be released for housing if Lydney is to accommodate necessary growth and to ensure that the housing needs and requirements of the local community are met. The LNDP does not allocate housing sites or engage with the present problems with the CS strategic sites. This Plan has a long way to travel and has only limited weight at this stage.

56. *(In response to my questions the appellant's planning witness informed me that the appeal scheme would conflict with LNDP policy LYD ENV1. This witness also informed me that as the housing provisions of the CS had already been found wanting the appeal scheme would not undermine the development plan. Whilst the appellant was sympathetic to the Government's localism agenda there was a silent majority of people who were desperate for a house or affordable home. Housing problems were becoming more severe in the district. It was argued that the Inquiry had heard clear evidence of the need for additional housing and elsewhere this had been accepted by the Secretary of State as sufficient grounds for granting permission.)*

#### Landscape and Visual Matters

57. The appeal site represents about 0.16% of the Ridges and Valleys LCT and about 0.7% of the Allaston Ridge character area. It is not strongly representative of either the LCT or the character area, which include the whole of north east Lydney. The site is also contained by existing development on three sides. It is not deeply rural or tranquil and is degraded by overhead lines, tall pylons, fly tipping and discordant fences which are typical of urban fringe sites.
58. This 14.16 ha site lacks the scenic quality, cultural, physical and sensory characteristics that would warrant additional designation and protection. It cannot be deemed a valued landscape in terms of 'the Framework'. The LS supports the appellant's case that larger scale development could be successfully integrated into this part of the landscape. *(In cross-examination the appellant's landscape witness informed me that: there are extensive views from the appeal site; the site was a local asset; the site was not highly valuable but would have some value to the local community and; visual amenity was gained from the site. In response to my questions this witness informed me that: although the site was pleasant it was unremarkable and; certain parts made a positive contribution to the character and appearance of the area but it was typical of the urban fringe.)*
59. There are long views from sections of the public rights of way that traverse the site. The most panoramic and sensitive lie in the east upper field. It is not unique in this regard and long panoramic views looking over Lydney and the Severn Estuary occur across extensive parts of the LCT and the character area. These include circular walks identified by the local Ramblers Association and forming part of the Lydney Walks booklet. The most panoramic and open views lie in the more prominent and elevated parts of the ridge around Yorkley. *(Extracts from this booklet are flagged in the blue folder attached to the file and marked "Comments on Masterplan etc.." I was informed that this booklet was produced by the Lydney Area in Partnership.)*

<sup>19</sup> Land at Highfield Road, Lydney (Ref.P1829/13/OUT).



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60. The scheme has been landscape led. The appellant's landscape architect has been instrumental in shaping the illustrative layout to ensure that the proposal would be assimilated into the landscape and landscape and visual harm would be minimised. A key design principle involves taking advantage of the sloping topography and establishing clusters of development separated by strategic open space corridors. In effect, the whole development would not be seen from any one single viewpoint and each development parcel would have its own character. The SPG recognises that development on slopes is a feature of the area. It is a major feature of Lydney.
61. The LVA established that the most elevated and visually conspicuous part of the east upper field would be the most sensitive to change. The illustrative layout was refined to keep much of this area free from development. Another key open space would be established in the lower field. This would act as the heart of the proposal around a criss-cross of existing paths. It would provide for a community facility to facilitate social interaction and building a community.
62. Masterplan Rev A was updated prior to the appeal following the submission of the LNDP and in response to policy LYD TRAN 3. This policy seeks to prevent existing public rights of way being integrated with highway infrastructure. Whilst only illustrative, it was felt important to show how the paths could be accommodated in green corridors separate from the highway corridor. This would be achieved on all but the short stretch of path that would run from the site entrance off Court road past Allaston Court, where it would be unfeasible to accommodate the full width of 6m green corridor once the existing highway had been upgraded. The conflict with LYD TRAN3 would be kept to a minimum.
63. The key benefits of masterplan Rev B compared with Rev A would be: an increase in open space from 5.72 to 6.62 ha and a reduction in the overall development area from 8.26 to 7.6 ha; increased width of green corridor to the southeast of the lower field; increased public open space and the removal of all houses from the east upper field; reduced amount of road and new link from Windsor Drive to Oak Meadow resulting in a reduced landscape impact on existing hedgerows and; increased habitats including a small copse and orchard in the west upper field. *(The appellant's landscape witness informed me that 44 linear metres of existing hedgerow would be lost and 725 linear metres of new hedgerow would be planted.)*
64. The proposal would significantly change the landscape character of the site. However, adverse impacts would be minimised by the proposed comprehensive landscape strategy. Added to which, the proposal would be development on the edge of a main town. The housing crisis is unlikely to be successfully addressed if landscape and visual impact objections win out when greenfield sites are promoted. The presumption in favour of sustainable development means that approach is no longer correct. In other decisions elsewhere, significant landscape harm to an Area of Outstanding Natural Beauty and seriously degrading harm have been outweighed by substantial shortfalls in the 5 year HLS.
65. The proposal would not involve the diversion of any public right of way. The existing paths are not of district value as a resource for walking. If the scheme was permitted the paths would meet the built edge of the town earlier than they do at present. However, by the time the middle field is reached, users would already be well within the influence of suburban development.

66. Some existing views from the middle and lower fields would be permanently lost. However, the degree of harm would be reduced and managed by: developing small blocks of development separated by open spaces and hedgerows; preserving key panoramas from the east upper field and retaining views of the estuary, the Severn Bridge, St. Marys church spire, wooded ridges and the Cotswold hills; providing reduced panoramas towards the estuary and the Cotswolds from the proposed green corridors and looking over the tops of buildings; keeping building heights between 7.5 and 8.3m; reducing building density in the most prominent parts of the site; increasing pedestrian access and permeability offering up new views from proposed open spaces and; creating visual interest within the development by observing the design principles of the SPG and creating a strong sense of place.
67. *(In cross-examination the appellant's landscape witness informed me that framed views would exist from some the footpaths through the site. In response to my questions this witness informed me that the scheme would result in the following impacts: Viewpoint 1 in the LVIA – a sliver of the appeal scheme would be seen by the pylon, there would not be much existing vegetation to filter the view and the viewer would look down on elements of the scheme however, these views would be filtered in time and the scheme would not be intrusive; Viewpoint 3 in the LVIA – there would be no harmful change of view as the development would be over 2km away and the scheme would not be a huge change, there would be a massive change to this view if the development on the land to the east of Lydney came forward; Viewpoint 4 – there would be no harm to an appreciation or understanding of the ridges that form part of the back-drop to the town as the site and the proposal lie below the green crest, the development would not be conspicuous; Viewpoint 15 – under cross-examination it was accepted that there would be a major permanent adverse impact on views from this public footpath and the change would be major, including some loss of view of the river, however there would be no significant harm as views would remain over the top of the buildings and to the sides, a gap between the buildings would afford a view of St. Mary's church spire; Viewpoint 16 – in response to my questions, this witness informed me that the view of the church spire would change but it may be possible to see over the top of the buildings.)*
68. The harm would be limited to the immediate environs and not the wider character area. The scheme would not conflict with CS policy CSP.9 and was not refused on that basis. None of the site is designated as an 'important open area' or any other specified category of open space/recreation land. It is not of considerable visual importance and the proposals would not cause a severe loss of amenity. The Inspector at the LP review commented that development in the lower and middle fields ...*"could be adequately mitigated and would not in itself warrant the exclusion of this site"* (Appendix 1 of Mr Stuart's PoE comprises an extract from the LP Inspector's Report.) *(In response to my questions, the appellant's planning witness informed me that the harm to the character and appearance of the area should be given moderate weight [3 out of 10] in the overall planning balance.)*
69. The proposed cut and fill would not cause material harm and would accord with LNDP policy LYD ENV2. The SPG states that positive outcomes can be achieved through small scale cut and fill to create local distinctiveness and a varied roofscape. Unlike the appellant's detailed wireline drawings, the ones produced by SAD are inaccurate, misleading and unrepresentative. *(SAD's wireline*

*drawings are attached to Mr Stuart's supplementary PoE dated January 2015 and at a larger scale in Document 59. Document 41 is Mr Davies's wireline drawings. Documents 45, 47, 48, 50, 51 and 63 set out the methodology used, details of possible floor heights and ridge heights, as well as comparisons/criticisms of the different approaches.) (Under cross-examination the appellant's landscape witness accepted that: it was necessary to know that an acceptable design could be achieved at outline stage; in assessing visual impact topography was critical and cross-section drawings could be important; whilst floor levels and cross-sections were crucial the appellant had never been asked to produce these; the topography was not that steep and; it was possible to assess visual impact. In response to my questions this witness informed me that: the proposal would be based on good urban design principles and; whilst there would be a loss of grazed fields on the edge of the town there would be no harm to the setting of Lydney.)*

### Highway Matters

70. Lydney is agreed with the HA to be the most accessible of the four towns in the district. It has a wide range of services and facilities. These include schools, shops, a major foodstore, employment and industrial areas, a bus station and the only main line railway station in the district. This is a major advantage and is very significant in the context of this rural district. Rail use is growing and the train station is subject to forthcoming investment. This includes reopening an underpass, extending the car park and a cycle link to the town centre.
71. Lydney could encourage some short car journeys as part of a wider journey by bus or rail. Cycling to the station is eminently possible and driving to the station is very beneficial as most of the journey would be made on public transport. The trains from Lydney take passengers to major employment centres including Gloucester, Cheltenham, Newport and Cardiff. Grammar schools at Gloucester, Cheltenham and Stroud can also be accessed by train.
72. The pedestrian routes between the town centre and the site are reasonable. They can be walked. Those who rely on their car a lot, especially more elderly people may not find it attractive. But that is not everyone, especially those without constant access to a car. Even as a car journey, it is a short distance to travel. People do walk and the local footway gradients are not a significant deterrent for existing residents and school children in the adjacent residential areas. Even some elderly people cycle. There is no reason why this should be any different for the new residents. *(Table 3.1 in the TA sets out the distances/walking times between the site and various services/facilities.)*
73. There is a range of traditional bus services in the town. Some of these pass along Highfield Road which is accessible from the site. These may be more than 400m away but this is not unrealistic for those looking for a good regular commuter service, such as that which exists on Highfield Road. These are supplemented by an extensive (15 buses) and successful dial-a-ride service. These can be booked the day before and deliver residents to their door-steps. *(Figure 2.1 in the TA shows the location of bus stops. Appendix CMR E to Mr Rawlinson's PoE is an extract from the Lydney Dial-A-Ride & Forest Community Transport website. Table 3.2 in the TA is a summary of the local bus services.)*
74. The north east side of Lydney is on an escarpment. People in the town expect to traverse gradients. There is a 100 m level difference between the town centre

- and the site. However, this is not a deterrent. The proportions of modes of travel are not much different from typical TRICS sites and which are flat.
75. The town centre is about 1.6km from the site and is within reasonable walking distance. Cycling from the train station uphill to the site would take about 20 minutes. The proposals include the provision of a robust TP. This would encourage sustainable travel and would be bonded to ensure performance. Travel vouchers would be provided and could be used towards the part-purchase of electric bikes or for rail or bus discounts.
76. The trip impact of the scheme has been critically assessed and agreed as acceptable with the HA. The trip generation would be reflective of a mixed scheme of open market, affordable and retirement homes. As requested by the HA, the appellant has looked at donor sites. The ones selected were agreed with the HA. A sensitivity test was also undertaken. Reliance on TRICS data would not reflect local circumstances. Using the trip rates for the scheme approved at Highfield Road would also be inappropriate. That site is not as well integrated and is not near a primary school. *(The TA identifies that the proposed residential development could generate approximately 63 and 88 two-way vehicular movements in both the AM and PM peak hours. The trip generation from the proposed community building would be 1 additional vehicle in the AM peak and 3 in the PM peak hour.)*
77. The HA is bringing forward various local improvement schemes in the town as part of the Lydney Highway Strategy (LHS). Such works will enhance highway safety and accessibility, as well as reducing congestion. The appeal scheme would benefit from them and the appellant has agreed to provide a commensurate level of contributions. It would be wholly unreasonable to refuse permission until all these works have been undertaken. The contributions are based on all the committed development. The trip assignment shows dispersal on the network and no material impact on the wider highway network. The appellant would have been asked to assess wider junctions when the scoping was agreed if it was concern. This is a matter of professional judgment. The response from the HA states that the development on its own would not affect junctions on High Street. Trip impact in the town centre would be de minimus if the scheme was to come forward by itself, particularly on junctions in the western end of the High Street. *(In response to my questions the appellant's highways witness informed me that the proposals would not result in any perceptible increase in congestion around Primrose Hill Church of England Primary School.)*
78. About 20 vehicles per hour (one every 3 minutes) could be accommodated with no material effect on Driffield Road. This road is subject to a 30mph speed limit and weight restriction. Drivers are aware of the characteristics of this road and give-way. Comparing this road with guidance for the design of new roads would be inappropriate. Local accident records show only one accident. This was in 2009 and is outside of the recognised five year period for assessing accident data. The HA has not sought improvements to this lane but would have done so if necessary. The Highfield Road junction with the A48 does not have a highway safety problem. There have been only two accidents in five years. A construction management plan could suitably control vehicle sizes and times of arrival. The letter from Monmouthshire County Council is not from the highway department. The impact from development in Lydney would be much lower than development

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in Sedbury, which is effectively part of Chepstow. (*Appendix B to the TA contains the accident data in respect of the local road network.*)

79. (*Under cross-examination the appellant's highways witness informed me that the proposals would have a low impact on junction capacity and a small cumulative impact on traffic conditions in the town. The scheme would make a fair share of the overall contribution towards addressing traffic issues in Lydney. The HA had never asked the appellant to provide information on many of the matters raised by SAD. The HA was content with the proposals and there would be no severe residual cumulative impact. The appellant believed the HA to be a competent authority.*)
80. The proposed Traffic Regulation Order (TRO) on Springfield Road could be to enhance safety, but may not be necessarily rectifying an existing problem. In all likelihood, this TRO will be confirmed. The HA did not request double yellow lines as part of the appeal scheme.
81. It is not necessary to look in detail (e.g visibility splays, widths etc..) at the internal access arrangements at this stage. The HA has agreed that the information that has been provided would be safe and appropriate. Gradients on the internal layout would all be within typical maximums. There are many existing properties in and around the town on sloping ground. Fixing accesses within the site at this stage would be unnecessary. The level of highway detail sought by SAD is unjustified as layout is a reserved matter.
82. The appellant and the HA have agreed that the increase in trip movements would not be so severe as to prejudice the amenity of the occupiers of existing residents adjacent to the highway on the surrounding road network (*CD1/6*). The appellant has obtained counsel's opinion which confirms the deliverability of the proposed access onto Windsor Drive (*Appendix 11 to Mr Fong's PoE*).

#### Other Matters

83. The proposed development would involve the loss of some grade 3a and 3b agricultural land. However, as set out in the appellant's agricultural evidence (*Appendix 6 to Mr Fong's PoE*) it would not involve a significant area of the best and most versatile land and would not offend any development plan policy. Moreover, land to the east of Lydney which forms part of the CS strategic requirement is higher quality agricultural land. The appeal site represents the poorest quality land available for residential development.
84. The AQA that was submitted in support of the application makes it clear that a scheme for 250 homes would have a minimal impact upon air quality in the town. The appeal scheme is for a lower quantum of housing. (*CD2/24*) Permission was not refused on air quality grounds and there was no objection from any statutory consultee. No such concerns were set out in the Statement of Case by SAD. (*Under cross-examination the appellant's highways witness informed me that he was not an air quality specialist but accepted that mitigation would be needed to avoid exacerbating existing impacts in the town. Such mitigation had been agreed with the HA as part of the appeal scheme.*)
85. The FRA demonstrates that the proposal would not increase the risk of flooding and could improve local drainage conditions. (*CD2/20*)
86. The proposal would not obtrude on its neighbours nor cause a loss of privacy.

87. The site does not have a significant conservation interest. The scheme would include new planting with native species and hedgerows, drainage ponds, as well as the provision of bat and bird boxes. It would enhance biodiversity. (CD2/17)

#### Conclusion

88. The nature of the development is precisely in line with what Government Ministers have been seeking to encourage. This is a local housing solution to a local housing problem. The proposal would deliver a number of important benefits and it would be extraordinary if the Secretary of State refused permission. The appeal should be allowed. (*Under cross-examination the appellant's planning witness informed me that whilst the loss of some greenfield land weighed against an approval this was outweighed by the package of benefits that would be provided. I was also informed that this was a very difficult balancing exercise.*)

**The Case for the LPA** (*Position Statement flagged on file, Document 15 and e-mail message dated 22/12/14 also flagged on the file. The text in italics below are matters upon which I sought clarification.*)

89. In summary, owing to the onerous requirements of 'the Framework' in relation to HLS and the limited weight that could be attached to the APD and LNDP the LPA, having taken advice from its barrister and officers, has reluctantly decided that it cannot support its refusal of permission. This decision was not taken lightly and it is acknowledged that there is significant local opposition to the scheme.

90. In the context of SI 2000 No. 2853, the decision not to defend the appeal does not constitute a planning decision nor does it stand in place of the original decision of refusal. The LPA has in no way acted illegally.

91. The access details on the revised Masterplan Rev B lack technical specification, level details, gradients, cross sections, detailed surface finishes, street lighting and drainage details. The layout appears over-engineered in places and is not very economical to build. There is no footpath link onto Highfield Lane. There are some reservations over certain aspects of the layout but the details are illustrative at this stage and could be addressed through reserved matters.

92. *The LPA's comments in respect of Masterplan Rev B were made without feedback from the HA. The LPA informed me that: it had not changed its stance and was maintaining its position of not contesting the appeal; there had been no changes regarding the status of the APD or the LNDP during the adjournment of the Inquiry (I have noted above the latest position regarding the APD) and; it had notified and consulted all relevant parties of the planning application.*

**The Case for the Rule 6 Party (SAD)** (Below is a summary of the Rule 6 party's case. The text in italics identifies relevant parts of the written evidence or comprises matters dealt with in cross-examination or are matters upon which I sought clarification.)

93. SAD represent a large group of local residents. The LPA decided not to defend its reasons for refusal at a late stage and is still considering how to meet its 5 year HLS. Whilst the 5 year HLS position is not disputed the proposal would result in significant harms and is not sustainable development. The need for additional housing should not be met at all costs. The proposal would result in development taking place in the wrong place at the wrong time. (*The Rule 6*

*party's landscape/planning witness informed me that SAD represented about 200 people/households.)*

94. In assessing whether the proposals are sustainable it is necessary to consider the benefits and dis-benefits having regard to the three dimensions of sustainable development. The Courts<sup>20</sup> have been consistent that it would be contrary to the fundamental principles of 'the Framework' if the presumption in favour of development applied equally to sustainable and non-sustainable development.

#### Landscape and Visual Matters

95. The appeal site is of very considerable visual importance and recreational value. It is an enclave of farmland that helps to define the urban fringe and maintains continuity with the surrounding countryside. This ridge top location and the extensive views are representative of two key characteristics of the Allaston Ridge landscape character area. The site is of medium to high sensitivity due to its height and differing levels. It is challenging in terms of constraints. Although the site may well contain urbanising influences this does not render it unrepresentative of the landscape character area. The proposals would result in permanent, major, adverse and significant harm to landscape character. This was also the view of the LPA's landscape officer. There would be clear conflict with CS policy CSP.1. *(The Rule 6 party's landscape/planning witness informed me that the appeal scheme would: harm the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> bullet points/key landscape qualities of the Allaston Ridge character area as set out in paragraph 3.3.9 on page 19 of the LVA and; have no material impact upon long distance views towards the site.)*
96. The wireline drawings that have been produced reveal that the scheme would result in major to moderate change on sensitive receptors. There would be significant adverse impacts from some footpaths and a loss of amenity for recreational users. This would not be addressed by mitigation. *(The Rule 6 party's landscape/planning witness informed me that the most harmful landscape and visual impact would be experiences from viewpoint 15 in the LVA. New buildings would appear in front of the viewer blocking out views of the river and the estuary. There would be glimpsed views but the panoramic view would be lost. In cross-examination this witness accepted that those walking the existing footpaths across the site would be aware of urban influences, including the existing housing and pylons. )*
97. The design of the proposed development would be highly related to its visual impact. However, there was no assessment of site levels and sufficient information was needed at this stage to demonstrate that landscape impacts would be acceptable. The appellant's finished floor heights plan provides information for only part of the site. The information available is woefully inadequate. The limited information reveals that ground levels would need to be filled in by 1.67 m to achieve acceptable road levels and there is no explanation of the extent of cut-and-fill. This is a serious omission.
98. There is a mismatch between the information provided by the appellant in respect of road levels and the finished floor level plan. *(Document 47)* The finished floor level assumed by the appellant would be 2.8m lower than the

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<sup>20</sup> Lang J in *William Davis v SoS for DCLG* [2013] EWHC 3058 (Admin) *(Part of Document 57)*

height of the existing access road. There is nothing to show whether this would be achievable or satisfactory. These assumptions undermine the appellant's assessment of the visual impact of the scheme. This has been grossly underestimated. The ridge heights would be substantially higher than shown on the appellant's wireline drawings. The impact on key visual receptors would be greater than predicted by the appellant and would result in a significant landscape impact.

99. Details should have been provided regarding likely level changes within the site. These would be necessary to assess landscape impact. The proposal would involve substantial level changes across the site with existing levels having to be lowered to accommodate the buildings and achieve the required road gradients. As a consequence of these changes the scheme would offend LNDP policy LYD ENV2. Landscape harm would be significant and unacceptable. The proposal would be at odds with the environmental dimension of sustainable development. This weighs heavily in the planning balance. *(The Rule 6 party's landscape/planning witness informed me that in meeting the housing needs and requirements of the district it was inevitable that some greenfield land would need to be released and that this would result in some harm.)*

#### Highway Matters

100. The LP Inspector's comments regarding the accessibility of the site remain true. *(Appendix 1 to Mr Stuart's PoE)* The site is not well served by facilities. Most services, facilities and employment are in the centre or to the south of the town. Unlike the appeal site these are not 80-100m above sea level. A return journey on foot or bicycle to these services and facilities from the site would entail a stiff climb. This would be a disincentive.
101. Survey data of Windsor Drive *(Table 2 page 11 of Mr Rayers's PoE)* reveals very high car usage by existing residents. There is a pervasive use of cars which is supported in the representations from local residents. The site is poorly served by public transport and no improvements are proposed. Whilst some residents may use the bus, they would have to traverse steep inclines. This would act as a disincentive. The dial-a-ride service would do little to address this. Modal shift would not be achieved and future residents would be heavily reliant on the use of the private motor car. The site is in the wrong place to make best use of sustainable transport modes. The proposals are contrary to paragraph 34 of 'the Framework'.
102. *In cross-examination the Rule 6 party's highways witness accepted that: the appeal site was closer to the town centre supermarkets than housing in villages in the Forest of Dean; the appeal site was exceedingly well located to a primary school and that most settlements in the Forest of Dean do not have a secondary school; some children living at the site would cycle to the secondary school; there was no community building in this part of the town at present; the proposed pedestrian accesses would be closer to the town centre than the vehicular accesses; it would be appropriate to have a TP; Gloucester provided a main source of jobs and there were good high frequency bus services from Lydney; there was an increase in use of train services in Lydney and it was a quick journey to Gloucester; there were also regular services to Newport and Cardiff; the site was highly permeable with footpath links and people could walk through the development to access bus stops. In response to my questions this*



*witness informed me that in transport terms Windsor Drive was not in a sustainable location.*

103. The appeal scheme would increase emissions of nitrogen dioxide in the Lydney AQMA, as well as congestion on the B4231. The LPA's Environmental Health Officer has referred to congestion on this road and the proforma for the Lydney Transport Strategy refers to excessive traffic at peak times which results in elevated levels of nitrogen dioxide concentrations. There is no prospect of effective mitigation over the next five years. The proposal would make a poor environmental situation worse. This would be contrary to the principles of sustainable development.
104. The appellant has not assessed the impact of the scheme upon junctions that are already congested in Lydney town centre, including those along Highfield Road, Newerne Street, Hill Street and High Street. This is a serious omission. With or without committed development the appeal scheme would increase traffic movements at key junctions which are already at capacity. This increase could have a serious effect. *(In cross-examination the Rule 6 party's highways witness informed me that traffic using the junction of the A48 Lydney bypass and Highfield Road would be unacceptable. The appeal scheme would make queuing at this junction slightly worse. This witness also informed me that the Driffield Road junction was a concern and that in highway terms the proposal would not breach any CS or LP policies.)*
105. The appellant has considerably underestimated the proposed number of trips that would be generated by the development. As a consequence, the impact on junction capacity has been underestimated as well as the highway safety implications along Primrose Hill/Springfield Road and Driffield Road. The TRO proposed by the HA for Springfield Road indicates that the operation of this road is a safety concern at the present time. The proposal would increase traffic along this street and there is no certainty the TRO would take effect. Local residents who frequently use this road have identified their road safety concerns.
106. *(In cross-examination the Rule 6 party's highways witness acknowledged that; the HA had accepted the appellant's traffic generation figures; sensitivity testing had been undertaken by the appellant's highways witness; there would probably be lower trip rates for the retirement flats than private housing but this would be higher than the trip rates for affordable housing; the appellant had used a larger data set than those who just relied upon Windsor Drive for predicting trip rates.)*
107. The appellant has not used the traffic data from Windsor Drive in calculating trip rates. Some of the data that has been used is unfeasibly low. This has reduced the average trip rate. The appellant has also applied very low trip rates for the proposed 'retirement flats'. Those living in the flats may not have retired and are just as likely to drive. They are more likely to rely on cars due to the gradient and the distance from services and facilities. There is no sound basis for the low trip rates applied by the appellant. In contrast, SAD's evidence does not rely on the worst case scenario. Without a full assessment of the local highway network it is not possible to fully understand the likely impacts of the proposals.
108. The impact upon Driffield Road would be unacceptable due to the deficiencies in this road, including its sub-standard geometry. The proposal would have a significant and severe impact upon highway safety. *(In cross-examination the Rule 6 party's highways witness informed me that he did not know how many*

*residents would use Driffield Road. In response to my question this witness informed me that Driffield Road had not got a poor record for road safety injuries.)*

109. Access is not reserved and care must therefore be taken to ensure that the details being considered are sufficient. The proposal must provide suitable and safe for vehicles, cycles and pedestrians. Given the definition of 'access' in SI 2010 No. 2184, the absence of necessary information cannot be left to reserved matters. There can be overlap between the issues of layout and access. It was open to the appellant to reserve only part of access and it is common practice for descriptions of development to limit approval to main access points only. This has not been done in this case. Significant information, such as gradients of internal roads, road safety audits, visibility splays for internal roads, remain unspecified. There is material risk that should permission be granted an approval would exist for a detailed scheme which has not been properly examined.
110. *In cross-examination the Rule 6 party's highways witness informed me that: the HA had not been as robust in their assessment of the scheme as they should have been; the position of routes within the scheme was a reserved matter and layout includes routes; no road safety audit had been requested by the HA. In response to my questions, this witness informed me that he could not say that the HA were not a competent authority.*

#### Planning Policy/Balance

111. The appellant has argued that the landscape and highways harm are not significant and do not outweigh the benefits. However, there would be a breach of CS policies CSP.1 and CSP.9. These are not policies for the supply of housing and they should be given full weight. The site has amenity value and should be protected. The quality of views from the site would be lost if permission was granted. The loss of the site to the local community would be a harm in the context of the social dimension to sustainable development. This has significant weight. The proposals also conflict with LNDP policies LYD TRAN3, LYD ENV1 and LYD ENV2. This adds further weight to the case for withholding permission. Whilst CS policies CSP.4 and LYD ENV1 are policies for the supply of housing the scheme would be in conflict with them. This can also be afforded weight. The recent decision at Malmesbury (Ref. APP/Y3940/A/13/2200503) and the WMS of 10/7/14 underline the importance the SoS attaches to neighbourhood planning.
112. *In cross-examination the Rule 6 party's landscape/planning witness accepted that: none of the constraints to which footnote 9 of 'the Framework' related applied; his evidence did not set out the benefits of the scheme or undertake the overall planning balance; the shortfall in HLS could be given substantial weight; increasing housing supply was a benefit to be weighed in the balance; substantial weight could be given to the affordable housing benefits of the scheme; a substantial area of green space and hedgerows would remain and would be a benefit as green infrastructure; if delivery of the community building could be guaranteed it should be given substantial weight; the proposed retirement flats were a benefit; the proposals would deliver economic benefits; it was not disputed that the infrastructure could be provided; the LPA had not questioned the deliverability of the scheme; in principle the self-build element of the scheme was innovative and sensible; the proposal was a novel and innovative scheme; the delivery of housing in the LNDP was heavily reliant on the CS strategic*

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*allocations; permission had been granted for another housing scheme on land not allocated for housing in the LNDP and SAD had not objected to this.*

113. *The Rule 6 party's landscape/planning witness also informed me that: the lack of a five year HLS was a material consideration that overrides development plan policies for the supply of housing; the proposal would not conflict with CS policy CSP.5; the ADP could be given limited weight; having regard to Ministerial Statements and recent appeal decisions the LNDP could be given considerable weight; a referendum on the LNDP was likely towards the end of 2015.*

114. For the claimed benefits to be given significant weight they must be delivered. The appellant's evidence on this is limited. No viability information has been provided. A layout without dwellings on one side of the roads is commercially suspect and is unlikely to be viable. The Local Approach document relied on by the appellant is aspirational and can only be afforded limited weight. There are no agreements in place to deliver the housing within the next five years. The reserved matters would be complex and it is unrealistic to expect these matters to be resolved within 18 months.

115. The housing market in Lydney is depressed. There is no reason why local builders would offer higher prices than national house builders. The proposal is also for a scheme for up to 200 dwellings. There is no certainty this would be the final number or that all of the self-build units would be delivered. If the numbers of dwellings reduces it would reduce the weight that can be afforded to both the self-build and affordable housing elements. This would change the planning balance. No material weight should be given to the self-build units coming forward within five years.

116. If the market and affordable housing come forward within five years this would be in accordance with the social and economic dimension of sustainability. However, this would not outweigh the conflict with the development plan, the loss of the site to the local community and the significant landscape and traffic related harm. The scheme would not amount to sustainable development. Permission should not be granted.

**The Case for Lydney Town Council** (*Documents 9 and 35 and letter dated 18 July 2014 in the red folder attached to the file*)

117. In summary, the development would be outside the defined settlement boundary and would be contrary to the CS, the APD and the LDNP. Access to the site is wholly inappropriate and there is insufficient capacity on the local highway network. The proposed access off Windsor Drive was considered in a previous appeal and is now the subject of enforcement action. The appellant does not hold the title to a ransom strip off Windsor Drive.

118. The development would increase surface water discharge from the site and this would need to be controlled to avoid any adverse impact on neighbouring areas.

119. Adequate housing has already been allocated for Lydney. The housing figures for the town indicate a 26.2% increase above the CS. If the appeal scheme were permitted this would increase to 38.3% above the base figure. Whilst the TC is pro-growth this must be balanced with local investment in social and environmental infrastructure. The proposal is purely speculative and would not

benefit the local community. The appellant has no prior history of bringing forward developments of this type

120. The Secretary of State (SoS) has recently stated that the 5 year land supply should not be the overriding factor when making planning decisions. The proposal flies in the face of legislation, policy and common sense. Much time and effort has been spent in producing the LNDP. The SoS has advised that such plans should be considered as part of the planning process even before adoption.
121. LTC's concerns have previously been conveyed to the SoS and The Hon. Ms Justice Lang QC. *(A copy of the letter dated 5 November 2014 to The Hon. Ms Justice Lang QC is attached to Cllr Preest's Statement.)*
122. LTC maintains its stance in respect of the revised Masterplan Revision B. It reserves its right to comment further when the final number of dwellings is known. The LNDP was pro-growth for the right kind of development. LTC is willing to negotiate with the appellant if the appeal is allowed.
123. *In cross-examination LTC's witness accepted that the appellant comprised local people who had built houses in Lydney and the Forest of Dean. In addition, the proposed affordable housing would be welcomed and in principle, was a benefit of the scheme, although not in this location. It was accepted that the LPA was not able to demonstrate a five year HLS and there were problems in releasing housing sites in the CS. The appeal site had development around it and was suitable for housing but fell outside the development boundary. The self-build plots were welcomed and the scheme would provide some local employment. These were relevant considerations. The proposed community building, public rights of way and open space provision were broadly in accordance with the LNDP. Lydney was an appropriate location for growth.*
124. *LTC's witness also informed me that if the LPA did not have a 5 year HLS brownfield sites could be used, although no specific site could be identified. I was informed that the LPA had not addressed the LNDP in a timely manner.*

### **The Case for Councillor A Preest** *(Document 8)*

125. In summary, although the LPA's decision was lawful it appeared to be worthless. A vast number of people who represent Lydney were deeply unhappy about the development. The Localism Bill 2011 appeared to make the planning system more democratic and effective by placing more influence in the hands of local people and reducing red tape. Communities would also be able to set policies for the development and use of land in their neighbourhoods. However, this appears to have been frustrated by 'the Framework'.
126. In 2012, the Prime Minister pledged to protect the countryside from large housing estates by allowing local communities to decide where building should go. In addition, the local MP has stated that the appeal site should not be developed. The LNDP was submitted in good faith to the LPA but had yet to be ratified. This delay had denied a stronger democracy. On highway issues GCC appeared to work on a tick box exercise. However, GCC was prepared to work with the LNDP as it stands.
127. Rural Britain does not hold the key to housing policy but is an easy means of profit for developers. It is not selfish or nimbysm to defend rural Britain and our heritage, identity, landscape and amenity. There are countless existing

opportunities in the district to develop brownfield sites. Only when all these have been developed should future development be considered on greenfields.

128. *In response to my questions Cllr Preest informed me that the appeal scheme would not provide any benefits.*

#### **The Case for Mr Timbrell (Document 1)**

129. In summary, the LPA's decision-making process was illegal and in conflict with the provisions of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000. The rug had been pulled from under the local community and the proceedings should be halted whilst the matter was passed to the police for investigation. It was alleged that the LPA was run in a corrupt manner.

#### **The Case for Mr Bevan (Documents 36 and 38)**

130. In summary, the development would exacerbate traffic problems along the local road network. There was very limited visibility at the access junctions, including those on Highfield Lane and Driffield Road. Accidents occur every day along Driffield Road which is a very sub-standard highway. The proposals would increase pedestrian and cycle traffic along Highfield Lane and Driffield Road.
131. Due to the gradient of the highways children do not cycle to school along Allaston Road or Primrose Hill. Only one person is known to regularly cycle along these roads. Negotiating these highways is like a slalom course with parked vehicles effectively making them single track roads. There is no space to pass pedestrians or cyclists. The journey to the bottom of the hill is stressful. There is limited public transport and people mainly use the car not the bus. People would use Driffield Road as an alternative means of accessing the A48.
132. At present, stormwater from the site is absorbed into the ground. During excessive rainfall water runs off the site into a gully in Centurion Road. This is only a small drain and the development could increase the risk of flooding.
133. It was argued there would be an adverse impact on Mr Bevan's living conditions.
134. *In cross-examination it was accepted that neither the LPA nor the Environment Agency had objected on land drainage grounds and there was no objection from the HA. The LPA was considering deleting the proposed housing allocation off Augustus Way in the ADP but this had first to be considered by a meeting of the LPA's Cabinet and then the Full Council. These meetings were due to be held on 26/2/15.*

#### **The Case for Mr Williamson**

135. In summary, the proposal would result in an increase in on-street car parking and exacerbate traffic problems along the local highway network.

#### **The Case for Mrs Parry (Document 20)**

136. In summary, Driffield Road is just a lane. It is very narrow with a gradient. There have been numerous accidents along this road, some of which have resulted in emergency vehicles being called to the road traffic incidents. The proposal would increase traffic along this road with drivers making their way to Gloucester. There is a risk of a fatality. The road has also suffered a partial

collapse in the past. When cars park along the highways they obstruct traffic flows. Driffield Road is extremely dangerous and incoming residents would not be aware of the problems.

### **The Case for Mr Lewis**

137. In summary, Highfield Lane is already dangerous. It is a single track road with a blind corner. The walls either side of the lane are frequently damaged by traffic and the proposed increased use of this lane would be likely to result in a serious accident. Service vehicles already have difficulty negotiating the lane and the proposal would exacerbate existing problems. There are very many objectors to the scheme including LTC, the local MP and the CPRE. There should be democracy for local people.

### **The Case for Mr W L Owen**

138. In summary, the site is outside the settlement and housing allocation boundary. The only way to guarantee a 5 year housing supply is for the LPA to use its compulsory purchase powers. There is no necessity to change the boundary. The benefits put forward by the appellant amount to utopia. It is an attempt to please all people and will not work. Common sense has to be applied. Drainage in the area is also inadequate. The scheme does not amount to sustainable development. There would be harmful consequences of the scheme and there are already sites with planning permission for housing, including affordable housing. The scheme is not a viable commercial venture. Common sense had to be used in considering and interpreting the evidence of experts.

### **The Case for Mr Kear** (*See also Documents 22, 28 and 29*)

139. In summary, sections of the local road network are hazardous, including Primrose Hill, Springfield Road and Albert Street. The traffic implications of the scheme have not considered the recreation area along Primrose Hill or the community rooms which are used by children and the elderly. The development would result in a loss of open space, good agricultural land and Green Belt. Glimpsed views over the roofs of the proposed buildings would be inadequate. The CPRE were concerned over the loss of green land. There are many homes for sale and rent in Lydney but there are few jobs and there is a severe shortage of employment. Young people commute to Gloucester or Bristol and additional housing should be provided near these areas to reduce carbon footprints. The local community and its elected representatives at all levels had opposed the scheme. Votes seem to count for nothing and democracy was being eroded.

### **The Case for Cllr Davis** (*Document 34*)

140. In summary, whilst it is important to support local industry and enterprise, having considered the views of the majority of the electorate, officers and LTC permission should be withheld. The proposals do not accord with the CS, LNDP or the ADP and would have a detrimental impact on the community and infrastructure. It is completely unsustainable. It would increase traffic problems and air quality issues in the town. There would also be flooding issues. There are already an agreed number of housing developments in Lydney and any more schemes would be a disaster for the town. There is strong local opposition.

**The Case for Mrs Stickler** (*Written representations are included amongst the bundle of interested party representations on the file. Below is a summary of Mrs Stickler's oral evidence.*)

141. On 23/1/15, a lorry negotiating the junction of Primrose Hill and Court Road hit overhead power lines causing live cables to fall onto the highway. The police were called. If the appeal scheme was permitted it would be a disaster. The appellant had objected to a planning application for a dwelling on land owned by me and adjacent to the appeal site.
142. *In cross-examination, it was accepted that the DAS (Document 39) submitted in support of Mrs Stickler's planning application described that site as being in a sustainable location.*

**The Case for Mr S Edwards** (*Document 42*)

143. In summary, the proposal would continue to allow many walks and fields to be enjoyed. It would also provide self-build plots in Lydney, including family-sized plots. The scheme would afford an opportunity for Mr Edwards to reside near his family. (*In response to my question, Mr Edwards informed me that it took him between 8-9 months to complete a self-build dwelling on a site at Chepstow.*)

**The Case for M F Freeman**

144. In summary, this building company employs approximately 100 people and provides work for a number of sub-contractors. It has worked with the appellant over a number of years and is excited by the plans for developing the appeal site and providing housing in Lydney. It would be a major project for the company and would involve employment for local people. The development would also have spin-offs for the local economy by increasing buying power within the town.

**Written Representations** (*Those contained in the red folder in the file were in response to the LPA's notification of the appeal. The representations in the separate blue folder, marked by the PINS case officer as "Comments on Masterplan etc..." are in response to the notification that was undertaken between November 2014 and December 2014 in respect of the masterplan rev B. The Appeal Questionnaire includes the representations that were made at application stage - the HA comments are flagged.*)

145. Many representations and a petition objecting to the proposals were made when the LPA considered the application. (Pages 86-87 of the officer's report to committee, which is included as part of the Appeal Questionnaire, states that 452 individual letters of representation were received at that time and a petition with 1124 signatures. The officer's report also summarises the representations made.) Over 90 representations were made following the LPA's notification of the appeal and a larger number, including a petition objecting to the scheme, were made following the notification that took place in November 2014. The majority of representations are made in opposition to the proposals. However, there are some letters of support.
146. This report would be extremely lengthy if the individual written representations that were made at appeal stage were summarised here. The following are additional matters to those set out in pages 86-87 of the officer's report to committee: i) the LPA ignored the England and Wales cross-border protocol and Ministerial agreement in respect of local healthcare services and failed to consult

the appropriate Health Authority, as a consequence, its decision is flawed; ii) the proposal could increase congestion and have an adverse effect on the Chepstow AQMA (*Document 44*); iii) there would be a loss of agricultural land; iv) the proposals would be contrary to the Government's localism agenda; v) there would be a loss of important community open space; vi) water mains traverse the site; vii) there is a demand for self-build housing.

### **Suggested Planning Conditions**

147. Section 6 of the SoCG agreed by the appellant and the LPA (*CD1/5*) includes a number of suggested planning conditions in the event of the appeal being allowed. These and other conditions, including one relating to a sustainable urban drainage scheme (SUDS) (*Document 55*) and the highway conditions suggested by SAD (*Document 54*) were all discussed at the Inquiry.
148. The appellant informed me that a condition requiring an application for the approval of the reserved matters within one year of outline permission being granted would be necessary to ensure the expeditious delivery of the development for the purpose of addressing the exceptional shortfall in the 5 year HLS and the need for affordable housing.
149. The LPA and the appellant agreed that it would be necessary to modify suggested condition 2 to require details of site levels/sections at a scale of not less than 1:500. It was also agreed that conditions specifying the maximum heights of the buildings and the inclusion of the condition set out in Document 55 (drainage) as part of/in lieu of suggested condition 4 would also be necessary.
150. There was agreement amongst the main parties that a condition would be necessary specifying the approved plans. The LPA and appellant consider that it would not be necessary to include the longitudinal sections of the highways that were submitted in January 2015 but neither party had an objection to these plans being specified if this was deemed necessary.
151. The LPA and the appellant agreed that the conditions suggested in respect of play areas and open spaces within the site (Nos. 14 and 15) duplicated the provisions of the section 106 Agreement with the LPA and would therefore be unnecessary. These main parties also agreed that the figure specified in condition 17 (low carbon energy) should be 15%. All three main parties agreed that as separate legislation exists to address any obstructions to the public rights of way within the site suggested condition 21 would be unnecessary.
152. The appellant and the LPA agreed that a condition requiring the provision of the proposed access onto Windsor Drive would be unnecessary. Those representing SAD pointed out that access was not a reserved matter and commented that there could be safety issues if all construction traffic to this part of the site had to use the proposed road link between the self-build plots and Oak Meadow. The LPA and SAD argued that a condition would be necessary specifying the width of this road link.

### **Planning Obligations**

153. The LPA and the appellant agreed that the above noted planning obligations were in accordance with paragraph 204 of 'the Framework' and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.



154. The Note prepared by the LPA (Document 53) identifies the supporting evidence in respect of the various financial contributions sought by the LPA and GCC. The LPA and the appellant agreed that there was a shortfall in the supply of affordable housing within the district and that a TP would be necessary to help secure a modal shift in travel by occupiers of the proposed housing.
155. The LPA and appellant informed me that the air quality contribution was calculated on the basis of £100/dwelling or £44/bedspace. I was also informed that the off-site contribution for affordable sheltered housing was sought by the LPA as it would be more effective to provide this type of accommodation on another site elsewhere within the district.
156. Although the LPA queried whether the unilateral undertaking would be enforceable or necessary it did not argue against the provisions of this undertaking. The appellant informed me that a search of Companies House would reveal where a house builder had its registered office and it was argued that such an undertaking would ensure local builders benefitted from the scheme.

## **Inspector's Conclusions**

The numbers in brackets [] below refer to preceding paragraphs in this report.

### Preliminary Matters

157. The adjournment of the Inquiry towards the end of November 2014 allowed for adequate consultation/notification to be undertaken in respect of the access details shown on masterplan Rev B and the amended description of the development set out in footnote 2 above. No party is therefore likely to be prejudiced if the appeal was to be determined on the basis of the revised details. However, if the Secretary of State was to disagree and consider that the appeal should be determined on the basis of the drawings to which the LPA's decision notice relates (masterplan Rev A) the text in *italics* below comprise my conclusions in respect of masterplan Rev A where these differ from those in respect of masterplan Rev B. [8, 9, 10, 11]
158. Having heard from the LPA, the appellant and SAD, I concurred with the main parties that on the basis of the information before the Inquiry there were no grounds for adjourning the proceedings to consider allegations regarding the LPA's decision to not contest the appeal. Any unlawful conduct or maladministration by the LPA would be separate matters for others. [16, 90, 129]
159. The appellant is not required to demonstrate the viability of the scheme. The LPA and the appellant agree that the development could be deliverable within five years. There is no cogent evidence to refute this. [5(i), 42, 49, 50, 112, 114, 119, 138]

### Main Issue

160. Given all of the above, I consider the main issue is whether, in the absence of a five year HLS within the district, any adverse impacts of the proposed development, having particular regard to the effect upon: the character and appearance of the area and; traffic conditions (including any undue reliance on travel by car) and highway safety along the local road network, would significantly and demonstrably outweigh the benefits of the scheme.

### Planning Policy and Other Documents

161. The development plan is the starting point for the determination of the appeal. However, in this instance, there are no provisions within the LP that are determinative to the outcome of this appeal. [26, 45, 145]
162. The site lies outside the settlement boundary defined in the development plan. As a consequence, the proposals would be at odds with that part of CS policy CSP.4 which expects most changes to take place within existing settlement boundaries. However, in recognition of the lack of 5 years HLS within the district, the LPA has already granted permission for housing development beyond the settlement boundary. This demonstrates that the LPA has shown some flexibility in its approach to the settlement boundary for Lydney. I have approached this appeal in the same manner. The proposals would also conflict with CS policies CSP.5 and CSP.12 for the supply of housing. Given the HLS position within the district, these policies cannot be considered up-to-date. The

- provisions of paragraph 49 of 'the Framework' are therefore engaged. Although adopted prior to the publication of 'the Framework', CS policies CSP.1, CSP.4 and CSP.9 are broadly consistent with sections 11, 1 and 8 respectively of 'the Framework'. [5, 14, 26, 41, 46, 48, 55, 89, 93, 111, 117, 138, 140]
163. The APD has not reached an advanced stage towards adoption. Much could change as a result of the public consultation exercise. It is very far from certain that this Plan would provide 5 years HLS and be found sound following its Examination. The Plan is not relied upon by the LPA and can only be given very limited weight in the determination of this appeal. [5(i), 27, 48, 51, 52, 92, 113]
164. The district continues to experience a shortfall in the provision of affordable housing and 'the Framework' recognises the importance of delivering affordable housing and inclusive and mixed communities. Nevertheless, the 2010 SPD is based on an earlier SHMA and is somewhat dated. As a consequence, it can only be given moderate weight. The 2007 landscape SPD is broadly consistent with 'the Framework' and can also be given moderate weight. [28, 34, 52, 53]
165. The SPG pre-dates 'the Framework', MfS and the development plan. Although it contains some helpful advice regarding the design of new residential development it is of limited weight in determining this appeal. [29, 60]
166. The Government attaches great importance to neighbourhood plans and the extent to which they reflect the needs and priorities of local communities. However, responsibility comes in putting power back in the hands of communities: a responsibility to meet their needs for development and growth and to deal quickly and effectively with proposals that will deliver homes, jobs and facilities. Whilst much local effort and resources have already been put into preparing the LNDP it is evident that more work needs to be undertaken before it can progress towards a referendum. [5(iii), 30, 31, 55, 120]
167. The LNDP is based upon the housing provisions of the CS. As with the CS, the lack of 5 years HLS within the district also renders those policies for the supply of housing within the LNDP out-of-date. This includes LYD HOUS 1, which has limited weight. Policies LYD ENV 2, LYD TRAN 1 and LYD TRAN 3 are broadly consistent with sections 11, 4 and 8 of 'the Framework' and can be given moderate weight in determining the appeal. [5, 41, 55, 89, 112, 113, 123]
168. The settlement boundary in the LNDP is the same as the one defined in the CS. It is based upon the housing provisions of the development plan and does not reflect the scheme permitted on land off Highfield Road. It would be surprising therefore if this boundary was not reappraised/redrawn as part of the LNDP to meet the housing needs of the local community. The proposal would conflict with LNDP policy LYD ENV 1. This weighs against an approval. However, if permission was withheld because of this conflict it would frustrate necessary growth. [41, 55, 56, 112, 117, 126, 138, 145]

#### Benefits

169. The proposed development would assist in addressing the considerable shortfall in HLS within the Forest of Dean and in a part of the district where major growth is envisaged but has stalled. It would also make an important and valuable contribution towards meeting the needs of those who are unable to access the local housing market. There is an acute shortage of affordable

housing within Lydney and the developer of the main strategic housing site is unable to deliver the quantum of affordable housing originally envisaged. The proposals would not undermine the provisions of CS policy CSP.12 and would add to the mix and choice of housing within the town, including the provision of a sizeable number of self-build plots in an area where there is a demand for such housing. This would be consistent with the Government's efforts to stimulate this sector of the house building industry. The development would also emphasise the role and importance of Lydney as required by CS policy CSP.4 and accord with the provisions of 'the Framework' that are aimed at creating inclusive and mixed communities, as well as boosting significantly the supply of housing. It would be consistent with the affordable housing provisions of CS policy CSP.5 and the 2010 SPD. The proposed retirement apartments would also accord with the thrust of LNDP policy LYD HOUS 1. A new community building would also be provided which would allow for interaction between the residents. The proposals would satisfy the social dimension to sustainable development. These matters weigh substantially in favour of an approval. [5(ii) and (iii), 14, 15, 40, 43-45, 48, 49, 51-54, 56, 89, 94, 113, 114, 116, 117, 124, 143, 146]

170. The development would create employment during the construction phase and incoming residents would provide some support for local services and facilities. The proposals would help strengthen the local economy. The scheme would satisfy the economic dimension to sustainable development. This can be given moderate weight in the overall planning balance. [39, 42, 43, 114, 144, 145]

171. The proposed 3.81 ha of public open space and the opportunities for footpath and cycle links would benefit existing residents and occupiers of the proposed dwellings. In addition, there would be a net increase in the length of hedgerow provision within the site. New landscape planting would be undertaken, including restocking and increasing the depth of hedgerows, planting with indigenous trees and a range of connected SUDS features. These areas would also be managed. This would provide environmental benefits and enhance biodiversity interests in and around the site. These aspects of the scheme would contribute to the environmental dimension to sustainable development. They can be given moderate-high weight in the overall planning balance. *Fewer environmental benefits would be derived under the scheme that was advanced under masterplan Rev A. They could be given moderate weight.* [38-40, 42, 63, 88, 112]

172. The range of social, economic and environmental benefits that would be derived from the appeal scheme can be given very considerable weight. *This would be considerable weight for the scheme advanced under masterplan Rev A.*

#### Character and Appearance

173. The appeal site adjoins the built-up edge of Lydney and its character, in part, is influenced by the neighbouring residential development. Notwithstanding this and the pylons/overhead lines, the largely unspoilt open qualities of this 14.16 ha of countryside, including the hedgerows within and around the site, make a pleasing contribution to the character and appearance of this part of Lydney. [19, 20, 22, 23, 57, 58, 96, 145]

174. From some sections of the footpaths that cross the site there are attractive views to the south west across the town. These include views of the spire of the Church of St. Mary, the Severn Estuary and the Cotswolds. There are also other

- views across the countryside to the north and east. Whilst not a ridge top location, the gradient of the site, the pattern of hedgerows and the above noted extensive views reflect some key characteristics of the Ridges and Valleys LCT. [21, 24, 25, 32, 57, 59, 95]
175. From the evidence and what I saw during my site visits, the footpaths that cross the site are well used. A local booklet of walks extols the scenic qualities that are available from some sections of these public rights of way. When viewed from the wider surroundings, including land to the south of the town, the appeal site appears as part of the settlement with development around the edges and against the back-drop of a green ridge. [21, 25, 57, 59, 145]
176. The appeal site does not form part of any designated landscape but its countryside qualities and the views afforded from the footpaths across the site are of value to some residents. However, all landscapes have value and very many public rights of way offer opportunities for recreation and/or an appreciation of visual amenity. I concur with the appellant that the site does not form part of a "valued landscape" to which the first bullet point of paragraph 109 of 'the Framework' applies or "open space" to which paragraph 74 of 'the Framework' applies. No such claims were made by the LPA. Moreover, the LNDP is 'silent' on the landscape qualities of the site as well as the Allaston Ridge character area. Any walkers deviating from the footpaths across the site are not authorised to do so by the landowner. LNDP policy ENV 1 treats all land outside the settlement boundary as 'Open Space'. If this was synonymous with the definition in 'the Framework' it would have the unintentional effect of conveying recreational and/or amenity value on all of the countryside around Lydney, including the land off Highfield Road. The appeal site is not identified as being of recreational or amenity value under CS policy CSP.9. It is of medium sensitivity to residential development. [30, 31, 33, 58, 68, 95, 111, 145, 146]
177. The scheme has been landscape-led. The illustrative layout indicates that the proposed residential development could comprise small, low density blocks of dwellings separated by landscape corridors. These could be designed to reflect local distinctiveness. The majority of the uppermost field would be retained and made available for use as public open space. There would also be considerable new landscape and hedgerow planting. The density of the proposed development would strike an appropriate balance between securing the most efficient use of land and the need to safeguard the quality of the environment. [38, 40, 60, 63]
178. Some neighbouring properties have been built on sloping ground. Whilst noting the arguments regarding the likely change in levels to accommodate the appeal scheme and the adequacy of the information submitted in support of the proposals, including the accuracy of the wireline drawings, layout has been reserved. Moreover, details regarding levels were not requested by the LPA and the wireline drawings are only a tool to aid decision-making. Although my recommendation does not turn on this matter, given the resources available to the appellant and having studied the wirelines on site, those prepared on behalf of the appellant are a more accurate indication of the potential impact of the scheme. [1, 69, 70, 97-99]
179. The proposal would avoid housing development in the most visually sensitive upper field. From this part of the site pleasing views would be retained across the Severn Estuary. From some other sections of the footpaths there would be

glimpsed views between and around the new buildings in the lower fields. These buildings would be limited in height and would be set into the slope of the land to reflect the advice in the SPG. When looking back at the site from the south and west of the town, the proposed buildings would not be unduly prominent or project above the top of the ridgeline. The development would not harm the setting of Lydney and would accord with the 2004 LS. It would be designed to take into account the most important characteristics of the site as required by CS policy CSP.1. [26, 29, 33, 60, 61, 66, 67, 96]

180. Notwithstanding the above, the proposals would entail the loss of several fields and the removal of some hedgerows. The new buildings, roads and other infrastructure would considerably change the character and appearance of the site. Some cut-and-fill would be undertaken and, in places, there would be a marked change in levels, including the access onto Windsor Drive. These changes would be readily apparent from the existing properties alongside as well as the public footpaths through the site. The proposals would detract from the pleasing attributes of the site and would erode the quality of views from the footpaths, including the loss of some views of the church spire, Severn Estuary and the Cotswolds. This would diminish the amenity of these public rights of way. In addition, a section of one of the footpaths across the site would be integrated into one of the proposed internal roads further detracting from the attractiveness of this path. [19, 39, 62, 64, 66, 67, 96, 139, 140, 146] (*The scheme advanced under masterplan Rev A would involve the loss of more greenfield land, and more footpaths would be included as part of the proposed internal roads.*)

181. The proposed loss of countryside, diminution of views from some sections of footpaths through the site and the erosion of the pleasing unspoilt qualities of the site would detract from the character and appearance of the area. These elements of the scheme would result in some conflict with aspects of CS policy CSP.1. There would also be conflict with LNDP policies LYD ENV 2 and LYD TRAN 3. This weighs against an approval. However, the loss of some greenfield land/countryside and the ensuing harm is an almost inevitable consequence of accommodating necessary housing in the district and where 5 years HLS cannot be demonstrated. Moreover, panoramic views across Lydney towards the Severn Estuary and Cotswolds would remain from some sections of the network of local footpaths. The proposal would also be located away from the wooded ridgeline and would be clearly separated from neighbouring settlements. It would be unlikely to cause any significant harm to the key landscape qualities of the 'Ridges and Valleys' LCT or the 'Allaston Ridge' character area. In the circumstances, the adverse impact upon the qualities of the area should be given moderate weight in the overall planning balance. *This would be moderate-high weight in respect of masterplan Rev A.* [26, 31, 41, 62, 64, 67, 68, 96, 99, 111]

#### Traffic Conditions

182. The proposed development would enlarge the sustainable settlement of Lydney. This is identified in the development plan as the most accessible town in the district and with the greatest opportunity for change. The proposals would be accessible to a range of services, including some employment facilities, a bus station and the railway network. The CS recognises that these services can be supported and improved by new housing. The appeal scheme would be

consistent with the broad thrust of the growth/sustainability objectives for Lydney. [5, 26, 41, 45, 70]

183. The proposed access arrangements would ensure that the scheme was permeable and the new housing would relate well to the existing network of roads and footpaths, including bus stops. Although there are infrequent bus services along Primrose Hill/Allaston Road and an hourly service along Highfield Road, an established and extensive dial-a-ride service also operates in the area. These bus services are likely to be used by some occupiers of the proposed scheme and for some people would be an alternative to the car. Adequate car parking could be provided and congestion along the estate roads is unlikely. The scheme would accord with LNDP policy LYD TRAN 1. [5, 31, 41, 72-74, 102]
184. A combination of distance from the town centre and gradient would undoubtedly deter some incoming residents from walking or cycling. Nevertheless, pedestrians and cyclists living in Lydney expect to traverse footways and carriageways with gradients. In this regard, the HA recognises that gradients are not a significant deterrent for local residents who walk to and from existing shops. Whilst many incoming residents, especially those undertaking bulky shopping trips, would be likely to travel by car, others could choose to walk or cycle, including those intending to take advantage of the good rail links/services and the planned improvements to the footpath/cycle route near the train station. A choice of transport modes would be available to incoming residents. [5(ii), 72, 75, 76, 100, 101, 131]
185. Although mindful of the LP Inspector's findings in 2005 in respect of 'Omission Sites' in this part of Lydney, there is no cogent evidence to demonstrate that any other housing site is deliverable or would be any less dependent on travel by car. Moreover, the CS which post-dates the LP, states in paragraph 3.6 that the CS must be realistic in accepting the basic infrastructure as typical of many rural areas. In addition, the proposed TP would include measures to encourage a modal shift away from the private car. The section 106 agreement with GCC incorporates a substantial financial deposit to achieve this objective. The proposed development would accord with established national and local policies that are aimed at focusing development in locations which are or can be made sustainable. The HA is content with the sustainability credentials of the scheme and the LPA did not identify any such concerns when it refused permission. Occupiers of the scheme would not be unduly reliant on travel by car. [13, 26, 76, 101, 125, 143]
186. The proposed development would increase the volume of traffic on the local highway network. I have given careful consideration to the concerns of interested parties (many of whom are very familiar with local traffic conditions) in respect of the perceived impact upon the safety and free-flow of traffic in and around Lydney. During my visits I walked and drove along various sections of the highway network, including Allaston Road, Primrose Hill Road, Springfield Road, Driffield Road, Oak Meadow, Court Road and Highfield Road. I noted the width and alignment of these highways and experienced traffic negotiating parked vehicles along some sections of the roads. I would expect there to be a greater incidence of on-street parking during the late evening and early morning when residents are more likely to be at home. From what I saw, in many instances, the on-street parking had the effect of reducing traffic speeds. [5(ii), 39, 117, 130-131, 136-138, 140-142, 145-146]

187. The TA was prepared following discussions with the HA. It includes a forecast of trip generation derived from bespoke surveys of cul-de-sacs adjacent to the site but does not include the survey data from Windsor Drive. Whilst the Trip Rate Information Computer System (TRICS) national database for developments is widely used in assessing the highway impact of schemes, in all probability, the survey data from Lydney is likely to be more representative of trip rates that could reasonably be expected from the appeal scheme. This approach and the decision not to use the data from Windsor Drive was agreed with the HA. No criticisms were raised by the LPA and there is nothing of substance to support the inferences of some interested parties that the HA is not a competent authority. No two schemes are exactly the same and it would be surprising if there was not some variation between the survey data and the actual trip generation from the appeal scheme. However, the appellant's sensitivity test indicates that the local data provides a sound basis against which to consider the proposals. [39, 76, 101, 106-107, 110, 126, 135, 145-146]
188. With consideration to traffic growth factors and committed development elsewhere within Lydney, the TA reveals that the appeal scheme would have a small impact on the local highway network and the Allaston Road/Windsor Drive junction would operate within capacity. The appellant was not required by the HA to assess the capacities of other junctions. The HA and its officers are familiar with the operation of the local highway network. It is therefore reasonable to assume that if the proposals would be likely to have a significant effect upon other junctions the HA would have required the appellant to undertake further analysis/assessment. [5(ii), 77, 79, 104-106, 145-146]
189. In Lydney access is generally good although the main road through the centre of the town is often congested at peak times. To alleviate this new highway works and environmental improvements form part of the LHS. New development is expected to contribute to the LHS with the key elements intended to be delivered as part of the strategic housing and employment development to the east of the town. [26, 70-71, 78, 146]
190. The appeal scheme would contribute to queuing at some junctions in Lydney, including the A48/Highfield Road, and would add to the existing peak hour congestion in the town centre. This weighs against granting planning permission. However, the limited additional traffic generated by the proposals would be likely to have only a very small effect on overall traffic flows through the town. The HA has estimated increases of between 1-9% at some junctions. The section 106 agreement with GCC includes financial contributions aimed at addressing this. Whilst the delivery of the strategic development to the east of the town has stalled, the appeal scheme includes a proportionate contribution towards the cost of undertaking identified highway improvement works in Lydney. If the HA had considered the scheme would result in a more significant impact there is no doubt in my mind that it would either have recommended refusal or sought a greater contribution from the appellant. I attach limited weight to the impact upon junction capacity and congestion. [5(i), 5(ii), 13, 78, 105, 106, 146]
191. The HA has confirmed that safe and suitable access would be provided to serve the proposed development from the accesses off Windsor Drive, Court Road and Oak Meadow. The existing highway infrastructure including road junctions are appropriate to accommodate existing trips and the forecast trips by all modes of travel associated with the development. The HA has also confirmed that: the



longitudinal sections of the proposed highways and the swept path assessments for a large refuse vehicle would be suitable; the masterplan is appropriate for assessing the highway implications of the scheme and; it is satisfied that Road Safety Audits are not required at this stage. The appellant and SAD agree that the access strategy for the appeal scheme would be appropriate in terms of safety and operation. [5(ii), 5(v), 5(vi), 145]

192. Whilst access is not a reserved matter, the HA, which is very familiar with assessing development proposals, having considered the concerns expressed by SAD, remains content with the scheme. When considering the application the LPA also felt no need to require the submission of further access details. There is some scope for overlap between access and layout and, as a consequence, when considering the reserved matters the LPA and HA would be able to request details regarding gradients of the internal roads, visibility splays for internal roads, as well as any road safety audits if these were not provided at that time. Requiring the submission of such details at this stage would be unnecessary and could pre-determine the eventual layout. [1, 5(v), 81, 145]

193. Some existing residents have witnessed road traffic accidents and/or near misses along sections of the local road network. I also understand that some others have experienced other traffic hazards with drivers having to negotiate on-street parking along Primrose Hill. Whilst these are genuine concerns no development or highway is free from risk. Moreover, the recorded personal injury accidents do not indicate that there is a poor road safety record along the local highway network. The HA has examined these records and has satisfied itself that there is no existing highway safety problem. Within its consultation response, the HA advised that the cumulative impact of the residual additional vehicle movements generated by the proposed development would not be severe and the impact would not justify a recommendation of refusal. Furthermore, if implemented, the proposed TRO along Primrose Hill could alleviate parking issues on a bend in this section of the road. Whilst the drivers of some vehicles could choose to travel along Driffield Road, there is no cogent evidence to demonstrate that this would pose a serious risk to highway safety interests. There is greater force in the appellant's arguments on these matters. [5(ii), 78-80, 105, 108, 131, 135-141, 145-146]

#### Other Matters

194. The appellant's Ecological Assessment (including the Appendix in respect of badgers) and Addendum reveal that the proposed development would not harm the integrity of any site designated for nature conservation purposes or habitat of ecological importance. Moreover, protected species are unlikely to be harmed and the proposed planting and mitigation measures would enhance the biodiversity of the site. Following the submission of the Addendum, Natural England withdrew its objection. The LPA's Biodiversity and Countryside Officer did not object to the proposals and permission was not withheld on ecological grounds. The LPA, appellant and SAD agree that ecological matters could be dealt with by way of appropriate planning conditions. The scheme would accord with the provisions of CS policy CSP.1 that are aimed at avoiding harm to protected sites and the Government's objective of providing net gains in biodiversity. [5(i), 5(iv), 26, 39, 87, 145]

195. Whilst noting the concerns of some interested parties regarding drainage, there is no technical or cogent evidence to refute the contents of the FRA that was submitted in support of the scheme. This Assessment concluded that the proposed development, which would include a sustainable drainage scheme and the foul water connection to the existing public sewer, would not increase the risk of flooding within the locality. The Environment Agency did not object to the scheme and the LPA and the appellant agree that surface and foul water drainage could be satisfactorily addressed by way of appropriate planning conditions. The scheme would accord with the land drainage provisions of CS policy CSP.1. [5(i), 26, 39, 118, 132, 138, 140, 145, 149]
196. The increase in town centre congestion during the peak hours would add to the motor vehicle emissions within the AQMA. At its highest, and for a development of around 250 dwellings, this has been assessed as likely to result in a 'slight adverse' or 'minor adverse' effect upon air quality. This weighs against granting planning permission. However, having reviewed the appellant's AQA the LPA's Environmental Protection Officer recommended mitigation, including financial contributions towards the maintenance of the air quality monitoring network and the implementation of Air Quality Action Plan measures. The LPA did not withhold permission on air quality grounds and, as noted above, the section 106 agreement with the LPA includes some mitigation as required by CSP policy CSP.1. I attach limited weight to the impact upon the Lydney AQMA. There is no cogent evidence to demonstrate that the proposal would have any significant effect upon the Chepstow AQMA. [13, 19, 39, 84, 103, 140, 145-146]
197. The appellant's AE reveals that the proposed development would be unlikely to disturb any important archaeological remains. No evidence of the putative former Roman Road ('Dean Road') was found within the site and following the submission of this Evaluation the LPA chose not to defend its second reason for refusal. I concur with the appellant, the LPA and SAD that archaeological interests could be adequately safeguarded by way of an appropriate planning condition. [5(i), 5(ii), 39, 145, 147]
198. The proposed development would change the outlook from some neighbouring properties. In some instances this could obstruct private views across the town and towards the Severn Estuary. However, layout has yet to be determined and the illustrative masterplan and the proposed restriction on building heights strongly suggests that the proposed buildings could be sited and designed so as not to result in any overbearing impact upon neighbouring properties or any serious loss of outlook or privacy for existing residents. The additional vehicular traffic that would pass alongside some adjacent properties would result in some noise and disturbance for neighbouring residents, especially during the construction phase. Whilst I note the findings of the Inspector who withheld permission for a field access off Windsor Drive in 2013, the scheme that I have been asked to report upon would result in residential traffic rather than "large and noisy farm vehicles" using this residential street. I concur with the appellant and the HA that the impact would not prejudice the amenity of neighbouring residents. I note that the LPA did not withhold permission on the basis of any harm to the living conditions of those already living alongside. [1, 5(ii), 38, 86, 98, 117, 133, 145, 149]
199. I note the concerns of some interested parties over the loss of agricultural land. However, there is no cogent evidence to refute the findings of the

appellant's agricultural expert that the scheme would not result in the loss of a significant area of the best and most versatile agricultural land. Moreover, given the generally high quality agricultural land around Lydney the appeal site represents the poorest quality land available for development. The proposals would be consistent with the agricultural provisions of 'the Framework'. Having reviewed its case the LPA decided not to defend its previously identified concerns relating to the loss of grade 3a agricultural land. [14, 19, 83, 139, 145-146]

200. Whilst I understand that an England and Wales cross border protocol/Ministerial agreement exists in respect of healthcare, the LPA has informed me that all necessary consultations were undertaken when it processed the application. Lydney is considerably further from the Welsh border than Tutshill and there is no cogent evidence to demonstrate that the appeal scheme would place undue pressure on existing healthcare services. The planning agreements submitted in support of the appeal include adequate provision for other necessary infrastructure and Severn Trent Water did not express any concerns. [13, 92, 119, 140, 145-146]
201. I note the comments of some interested parties regarding the ability to access the site from Windsor Drive. However, counsel's opinion, obtained on behalf of the appellant, indicates that accessing the site from this road would be deliverable. There is no contrary legal opinion or cogent evidence to support the remarks that access via Windsor Drive could not be achieved. [82, 117, 145]
202. There is no evidence to demonstrate that the appeal site is of significance to the setting of the Church of St. Mary or any other listed building. There is also no evidence to show that the proposals would harm the setting of any heritage asset. Views of the church spire were a matter that I raised with the main parties following my unaccompanied site inspection on 18/11/14. [21, 145]
203. There is much public interest in the proposals and representations have been made by some elected representatives, including the local MP. I have given this very careful consideration. Amongst other things, 'the Framework' aims to allow people and communities back into planning but it is also about positive growth. The Inquiry was held in the local area and during the 8 sitting days there was plenty of opportunity for interested parties to present their cases. Nevertheless, public opposition or support is not by itself sufficient grounds for refusing or granting planning permission. Furthermore, many of the representations do not reveal that all matters have been properly weighed and the necessary planning balance undertaken. Having reviewed its position, the LPA chose not to contest the appeal. The proposals have also been promoted as a 'local development by local people for local people'. With the evidence now tested, if the scheme was found to be sustainable development it would not undermine the Government's reforms to the planning system. [14, 42, 88, 92-146]
204. The CD include some appeal decisions from elsewhere. I note the findings made by Inspectors and the SoS. However, each case must be determined on its own planning merits. The circumstances of these other schemes are different to the one proposed in Lydney and do not set a precedent which must be followed.

#### S106 Planning Obligations

205. I am not a lawyer and am unable to report on the legality of the obligations. As the transition period under which CIL Regulation 123(3) (as amended) ended

on 6 April 2015 and after the Inquiry had closed, if the Secretary of State is minded to grant permission he may need to clarify with the LPA whether or not the 'five-obligation limit' has been exhausted.

206. The agreement with GCC would be necessary to ensure that the proposals, in combination with other housing schemes, would include reasonable contributions towards the cost of necessary mitigation along the local highway network. In particular, the implementation of the LHS and the Lydney Transport Strategy. The proposed TP would also be necessary to secure a modal shift in transport by occupiers of the proposed dwellings. The separate financial contributions towards education and libraries would be necessary to avoid undue pressure on scarce educational and library resources. In all instances, the level of contributions would be reasonably related in scale and kind to the proposals. This agreement accords with the provisions of paragraph 204 of 'the Framework' and the CIL Regulations. I have therefore taken it into account in making my recommendation. [5, 13, 76, 78, 155, 156]
207. The agreement with the LPA would be necessary to secure the provision of affordable housing, including an off-site contribution, in an area where there is an acute shortage of such accommodation. The amount of affordable housing to be provided (including the financial contribution) accords with the provisions of CS policy CSP.5 and the SPD. It would also be necessary to secure financial contributions towards the cost of meeting the increased pressure on adult recreational facilities and to mitigate the impact on air quality in the town. This agreement accords with the provisions of paragraph 204 of 'the Framework' and the CIL Regulations. I have also taken it into account. [5, 13, 26, 28, 51, 53, 54, 85, 156]
208. The infrastructure provisions contained within the above agreements would be consistent with the requirements of CS policy CSP.1.
209. The unilateral undertaking completed by the appellant would be helpful in assisting local builders address the housing shortfall in the Forest of Dean. It supports the appellant's argument that the appeal scheme would be a 'local approach' to housing supply problems in the district. However, it would not be necessary to make the proposed development acceptable in planning terms. It therefore fails one of the tests for a planning obligation as set out in paragraph 204 of 'the Framework'. I have not therefore taken it into account in making my recommendation. [13, 42, 49, 157]

#### Planning Conditions

210. The Schedule below sets out those conditions that would be necessary if the appeal was allowed and planning permission was to be granted.
211. Having regard to the provisions of section 92 of the above Act and the appellant's argument for the expeditious delivery of the proposals, conditions would be necessary requiring the commencement of development and the submission of reserved matters within one year of an outline permission. [148]
212. For the avoidance of doubt and in the interests of proper planning a condition would be necessary specifying the approved plans. This would require the development to be carried out in accordance with the approved details. As the submitted plans include access onto Windsor Drive and the masterplan is scaled,

it would be unnecessary to attach conditions regarding the provision of the access works or the width of the carriageways. As the technical highway drawings are at a level of detail not normally required for securing outline planning permission it would be unnecessary to include them. [150, 152]

213. Other conditions in the Schedule below would be necessary for those reasons set out in the list that was agreed by the appellant and LPA. [147, 149, 151]

#### Planning Balance/Overall Conclusion

214. The proposed development would result in some adverse impact upon the character and appearance of the area, including the loss of some views from public footpaths across the site which would erode the amenity for users of these paths. There would also be a small adverse effect on existing peak hour congestion in the town centre and a minor adverse effect upon air quality in the Lydney AQMA. When these matters are considered with the proposed public open space provision, new tree and hedgerow planting and enhancements to biodiversity I find, on balance, that the scheme would satisfy the environmental dimension to sustainable development. Given also my findings in respect of the economic and social benefits of the scheme, the proposal would, in the context of 'the Framework' comprise sustainable development. The presumption in favour of such development therefore applies. *(If the appeal was determined on the basis of masterplan Rev A, the environmental dimension would not be achieved and the presumption would not apply.)*
215. The harmful impacts and the conflict with aspects of the development plan, including elements of CS policy CSP.1, the settlement boundary for Lydney and the out-of-date policies for the supply of housing, as well as the conflict with some policies in the LNDP, carry medium weight. *(This weight would be high if the appeal was determined on the basis of masterplan Rev A.)*
216. I have also found that the scheme would accord with other provisions of the development plan, including elements of CS policy CSP.1. Furthermore, given the very real and pressing need to deliver the market and affordable housing that is required to meet the needs of the residents of the district and when weighed with the other social, economic and environmental matters that I have identified above, the totality of harm falls short of the requirement to significantly and demonstrably outweigh the benefits of the scheme. *(For the scheme advanced under masterplan Rev A, the benefits of the scheme would, on balance, outweigh the harm.)* The proposals would accord with the provisions of 'the Framework'. This is an important material consideration that outweighs the conflict with the development plan. There is also merit in the appellant's contention that the proposal would be a local housing solution to a local housing problem. Given all of the above, there is greater weight in the arguments for granting permission.
217. Whilst I recognise that my findings will disappoint many residents, the evidence has not revealed the existence of other more suitable sites which are capable of delivering housing (and urgently needed affordable housing) within the next five years. As recognised in the 2007 SPD, when balancing environmental, social and economic objectives compromises will be required.

### **Inspector's Recommendation**

218. The appeal be allowed and outline planning permission be granted for residential development of up to 200 dwellings including 40 self-build plots and 37 retirement apartments, affordable housing, community building (186 square metres) comprising flexible A1/D2 ancillary space, new public open space and new access roads. The permission should be subject to the planning conditions set out in the Schedule below.

*Neil Pope*  
Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|  |                            |
|--|----------------------------|
| Mr M Hillier DipTP, MRTPI,<br>CMS, MCFI                | Principal Planning Officer |
| <i>Mrs L Weaver (attended part of<br/>the Inquiry)</i> | <i>Solicitor</i>           |

### RULE 6 PARTY (SAD)

|                         |   |
|-------------------------|---|
| Miss A Ogley of Counsel | Instructed by Mr R I Stuart, Director, Avoca<br>Planning, Landscape and Development Ltd |
| She called              |   |

|             |                              |
|-------------|------------------------------|
| Mr R Rayers | Director, BSP Consulting Ltd |
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| Mr R I Stuart MRTPI, DipTP,<br>DipLA, FRSA | Avoca Planning, Landscape and Development Ltd |
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### FOR THE APPELLANT:

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| Mr C Young of Counsel | Instructed by Mr B G Read, Associate Planner,<br>Hunter Page Planning |
| He called             |   |

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| Mr M J Davies BA (Hons),<br>DipLA, CMLI | Managing Director, Davies Landscape Architects<br>Ltd |
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| Mr C Rawlinson Eur.Eng,<br>B.Eng (Hons), C.Eng, MCIHT,<br>MIod | Managing Director, Transport Planning Associates |
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| Mr P J Fong BA (Hons), MRTPI | Managing Director, Hunter Page Planning |
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| <i>Mr B G Read BSc, MA, MRTPI<br/>(Spoke during the discussions<br/>in respect of the S106<br/>planning obligations and the<br/>suggested planning conditions)</i> | <i>Associate Planner, Hunter Page Planning</i> |
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### INTERESTED PERSONS:

|   |                                       |
|---|---------------------------------------|
| Mr J Timbrell   | Local Resident                        |
| Cllr A Preest   | Lydney Division GCC and member of LTC |
| Cllr B Pearman  | LTC                                   |
| Mr Bevan ( <i>member of LTC and<br/>the LPA, but appeared as a<br/>resident</i> ) | Local Resident                        |
| Mr Williamson   | Local Resident                        |

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| Mrs C Parry   | Local Resident                                |
| Mr Lewis  | Local Resident                                |
| Mr W L Owen   | Local Resident                                |
| Mr Kear   | Local Resident                                |
| Cllr Judy Davis ( <i>unwilling to be cross-examined</i> ) | Member of the LPA (Lydney North Ward)         |
| Mrs C Stickler  | Local Resident                                |
| Mr S Edwards  | Local Resident                                |
| Mr T Bluff  | Senior Planning and Land Manager, M F Freeman |

DOCUMENTS SUBMITTED AT THE INQUIRY:

|             |   |
|-------------|---|
| Document 1  | Mr Timbrell's Statement   |
| Document 2  | SoCG agreed by the appellant and SAD  |
| Document 3  | The appellant's Opening Submissions   |
| Document 4  | SAD's Opening Submissions   |
| Document 5  | S106 Planning Agreement with GCC  |
| Document 6  | S106 Planning Agreement with the LPA  |
| Document 7  | S106 Unilateral Undertaking   |
| Document 8  | Cllr Preest's Statement and copy of letter from LTC to The Hon. Ms Justice Lang QC                    |
| Document 9  | Cllr Pearman's Statement  |
| Document 10 | E-mail exchange between appellant and the HA  |
| Document 11 | Gloucestershire Local Transport Body: Major Scheme Suggestion Proforma and Scheme Assessment Proforma |
| Document 12 | SoCG agreed by the appellant and LPA in respect of the LNDP   |
| Document 13 | E-mail exchange between the appellant and the LPA (air quality)                                       |
| Document 14 | WMS by Nick Boles MP 10 July 2014 – Neighbourhood Planning  |
| Document 15 | Further Position Statement from the LPA   |
| Document 16 | Letter from Mark Harper MP dated 14 November 2014 to Ms Cheryl Stickler                               |
| Document 17 | Extract from PINS Procedure Guide – 'Called-in planning applications – England'                       |
| Document 18 | Photograph of Stagecoach bus/coach in Allaston Road   |
| Document 19 | Inspector's Ruling – revised masterplan   |
| Document 20 | Note from Mrs Parry   |
| Document 21 | Letter from Carol Gorf  |
| Document 22 | Letter from Mr B Kear   |
| Document 23 | E-mail exchange between the LPA and Robert Hitchins   |
| Document 24 | Letter from Mr Mudway, The Byre, Allaston Court Farm  |
| Document 25 | Plan showing appeal site/area allocated for housing in the APD  |
| Document 26 | Appellant's request for a ruling/adjournment of the Inquiry   |
| Document 27 | Policy LYDNDP2/1 from the draft LNDP  |
| Document 28 | Statement/Notes from Mr Kear  |
| Document 29 | Letters from Mr and Mrs Kear  |
| Document 30 | Letter from Mark Harper MP to Mr Gorf   |
| Document 31 | E-mail from Tina Watkins  |
| Document 32 | Note from the LPA in respect of highway contributions/issues  |
| Document 33 | Inspector's Ruling – request for an adjournment of the Inquiry  |
| Document 34 | Cllr Davis's Statement  |
| Document 35 | Additional Statement from Cllr Pearman  |
| Document 36 | Additional Statement from Mr Bevan  |
| Document 37 | SoCG (Transportation Issues) agreed by the appellant and SAD  |



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| Document 38 | Mr Bevan's photographs   |
| Document 39 | DAS submitted in support of a planning application for a single dwelling on behalf of Mrs Stickler   |
| Document 40 | Extract from TRO on GCC website  |
| Document 41 | Wireline drawings submitted by Mr Davies   |
| Document 42 | Mr Edwards's Statement   |
| Document 43 | Letter from TPA to the LPA in respect of a housing scheme off Highfield Road, Lydney   |
| Document 44 | Letter from Monmouthshire CC to the LPA in respect of the APD  |
| Document 45 | Methodology for SAD's wirelines  |
| Document 46 | Letter from C L Johnson in respect of Mr Stickler's planning application   |
| Document 47 | Appellant's finished floor heights and ridge levels plan   |
| Document 48 | Appellant's methodology for wirelines and Note of differences between SAD's wirelines and the appellant's wirelines  |
| Document 49 | Note from Mr Channon in respect of Lydney employers  |
| Document 50 | Comparison of slab heights produced by Mr Stuart   |
| Document 51 | Appellant's response to comparison slab heights  |
| Document 52 | Plan showing location of the Highfield Road planning permission  |
| Document 53 | LPA's Note in respect of S106 contributions  |
| Document 54 | SAD's suggested highway conditions   |
| Document 55 | Inspector's suggested condition in respect of SUDS   |
| Document 56 | Closing Submissions on behalf of SAD   |
| Document 57 | Closing Submissions on behalf of the appellant, including various judgements and the debate in Westminster Hall on Planning and Housing Supply on 24/10/13 |
| Document 58 | Costs application on behalf of SAD   |
| Document 59 | Mr Stuart's larger scale wireline drawings   |
| Document 60 | The appellant's response to the costs application  |
| Document 61 | SAD's response to the appellant's costs response   |
| Document 62 | Extract from SNH publication in respect of image sizes   |
| Document 63 | Mr Davies's response to SAD's larger scale wireline drawings   |

### Core Documents List

| DOC NO                           | DESCRIPTION  |
|----------------------------------|--|
| <b>APPEAL DOCUMENTS</b>          |  |
| <b>Planning Appeal Documents</b> |  |
| CD1/1                            | Appeal Forms   |
| CD1/2                            | Appellant Statement of Case                            |
| CD1/3                            | LPA Statement of Case                                  |
| CD1/4                            | Third Party Rule 6 Statement of Case                   |
| CD1/5                            | Statement of Common Ground                             |
| CD1/6                            | Highways and Transportation Statement of Common Ground |
| CD1/7                            | LPA Email, dated 8 <sup>th</sup> October 2014          |
| CD1/8                            | LPA Position Statement                                 |
| CD1/9                            | Revised Illustrative Layout (Rev C)                    |

| <b>APPLICATION DOCUMENTS</b>                        |  |
|---|--|
| CD2/1   | Application Forms  |
| CD2/2   | Decision Notice  |
| CD2/3   | Site Location Plan   |
| CD2/4   | Illustrative Site Layout (Rev B)   |
| CD2/5   | Illustrative Street Scenes   |
| CD2/6   | Existing Site Plan   |
| CD2/7   | Planning, Design and Access Statement  |
| CD2/8   | Heads of Terms   |
| CD2/9   | Screening Opinion  |
| CD2/10  | Landscape Visual Impact Assessment Rev A   |
| CD2/11  | Framework Travel Plan  |
| CD2/12  | Heritage Assessment  |
| CD2/13  | Geophysical Survey   |
| CD2/14  | Archaeological Field Investigation (June 2014) – post determination                      |
| CD2/15  | Transport Assessment   |
| CD2/16  | Framework Travel Plan  |
| CD2/17  | Ecological Assessment  |
| CD2/18  | Confidential Badger Appendix   |
| CD2/19  | Ecological Assessment Addendum   |
| CD2/20  | Flood Risk Assessment  |
| CD2/21  | Flood Risk Assessment Appendices   |
| CD2/22  | Tree Survey  |
| CD2/23  | Statement of Community Involvement   |
| CD2/24  | Air Quality Assessment   |
| CD2/25  | Committee Report, January 2014   |
| CD2/26  | Late Pages to Committee  |
| <b>NATIONAL AND LOCAL PLANNING POLICY DOCUMENTS</b> |  |
| CD3/1   | Forest of Dean Core Strategy (Feb 2012)  |
| CD3/2   | National Planning Policy Framework   |
| CD3/3   | National Planning Practice Guidance  |
| CD3/4   | Draft Site Allocations DPD   |
| CD3/5   | Lydney Neighbourhood Plan – Examiner’s Version (March 2014)                              |
| CD3/6   | Affordable Housing SPD (2010)  |
| CD3/7   | District Local Plan Review Play Area Provision SPG (July 2000)                           |
| CD3/8   | Draft Allocations Cabinet Report (April 2013)  |
| <b>PLANNING DOCUMENTS AND EVIDENCE BASE</b>         |  |
| CD4/1   | Laying the Foundations – A Housing Strategy for England (2011)                           |
| CD4/2   | Building the Homes We Need, KPMG and Shelter (2014)                                      |
| CD4/3   | Housing Britain: Building New Homes for Growth (2014)                                    |
| CD4/4   | Home Truths South West (2013/14)   |
| CD4/5   | CBRE Regional Development Land Report (2014)   |
| CD4/6   | The Clipped Wing Generation: Analysis of Adults Living at Home with their Parents (2014) |
| CD4/7   | Home Truths 2014/15: Broken Market Broken Dreams (2014)                                  |
| CD4/8   | Sustainable Communities Plan 2008-2020   |
| CD4/9   | Forest of Dean Homelessness Prevention Strategy 2012-2017                                |
| CD4/10  | Forest of Dean Corporate Plan 2013-2017  |
| CD4/11  | Gloucestershire and Districts Affordable Housing Site Viability Study (2008)             |
| CD4/12  | Gloucestershire and Districts Strategic Housing Market Assessment (2009)                 |
| CD4/13  | Estimating Housing Need and Demand in Gloucestershire (2009)                             |

|        |  |
|--------|--|
| CD4/14 | Finalising the Gloucestershire and Districts Strategic Housing Market Assessment Management Summary (2009)             |
| CD4/15 | Gloucestershire and Districts Strategic Housing Market Assessment Update (2010)  |
| CD4/16 | Strategic Housing Market Assessment Update (2014)  |
| CD4/17 | The Forest of Dean Story (2006)  |
| CD4/18 | Inspector's Report on the Examination into the Forest of Dean Core Strategy Development Plan Document (December 2011)  |
| CD4/19 | Housing Implementation and Delivery Strategy and Trajectory 2013   |
| CD4/20 | Home Truths South West 2014/15   |
|        | <b>LANDSCAPE DOCUMENTS</b>   |
| CD5/1  | Forest of Dean Landscape Character Assessment (November 2002)  |
| CD5/2  | Forest of Dean Landscape SPD 2007  |
| CD5/3  | Forest of Dean Landscape Strategy, Final Report (June 2004)  |
| CD5/4  | Photography and Photomontage in Landscape Visual Impact Assessment _ Landscape Institute Advice Note 01/11             |
| CD5/5  | PROW extract from Gloucestershire County Council   |
| CD5/6  | Forest of Dean Residential Design Guide  |
|        | <b>APPEAL AND SECRETARY OF STATE DECISIONS, AND COURT JUDGEMENTS</b>   |
| CD6/1  | The Stratford Judgement [2013] EWHC 20174 (Admin)  |
| CD6/2  | Hunston Court of Appeal Judgement [2013] EWCA CiV 1610   |
| CD6/3  | Land between Leasowes Road and Laurels Road, Offenham (APP/H1840/A/2203924)  |
| CD6/4  | SoS Decision, Droitwich Spa (APP/H1840/A/13/2199085 and 426)   |
| CD6/5  | Fairford Appeal Decision (APP/F160/A/14/2213318)   |
| CD6/6  | Solihull High Court Judgement [2014] EWHC 1283 (Admin)   |
| CD6/7  | Manchester Road/Crossings Road, Chapel-en-le-Frith, High Peak (APP/H1033/A/11/2159038)                                 |
| CD6/8  | Former Pontin's Holiday Centre, Wall Road, Brixham (APP/X1165/A/11/2145178)  |
| CD6/9  | Land at Hassall Road, Alsagar, Stoke on Trent (APP/R0660/A/12/2188001)   |
| CD6/10 | Land at Hind Heath Road, Sandbach (APP/R0660/A/14/2212922)   |
| CD6/11 | Foley Road, Newent Appeal (ref: APP/P1615/A/12/2177029)  |
| CD6/12 | Reddings Lane, Staunton (Ref: APP/P1615/A/13/2204158)  |
| CD6/13 | Land east of Butts Road, Higher Ridgeway, Ottery St. Mary, Devon (APP/U1105/A/12/2180060)                              |
| CD6/14 | SoS Decision: Land at Razors Farm, Chineham, Basingstoke (Ref: APP/H1705/A/13/2205929)                                 |
| CD6/15 | SoS Decision: Land at Highfield Farm, Tetbury (ref: APP/F1610/11/2165778)  |
| CD6/16 | Land North of Upper Chapel, Launceston (ref: APP/D0840/A/13/2209757)   |
| CD6/17 | Land at Green Hedges, Claphill Lane, Rushwick (ref: APP/J1860/A/12/2187934)  |
| CD6/18 | Land off Elmwood Avenue, Essington (ref: APP/C3430/A/12/2189442)   |
| CD6/19 | Land east of Springwell Lane, Whetstone, Leicestershire (ref: APP/T2405/A/13/2193758)                                  |
| CD6/20 | SoS Decision, Homelands Farm and Deans Farm, Bishop's Cleeve (refs: APP/G1630/A/11/2146206 and APP/G1630/A/11/2148635) |
| CD6/21 | Land at Gaydons Road, Bishops Itchington, Southam (ref: APP/J3720/A/13/2202961)  |

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**SCHEDULE OF PLANNING CONDITIONS**

1. The development hereby permitted shall not be commenced until detailed plans showing the layout, scale, appearance and landscaping of the site (referred to as "the reserved matters") have been submitted to and approved in writing by the Local Planning Authority.
2. Application for the approval of the reserved matters shall be made not later than the expiration of one year beginning with the date of this permission.
3. The development hereby permitted shall be begun before the expiration of two years from the date of the approval of the last of the reserved matters.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: 1:2,500 scale site location plan (Ref. P001 A); revised illustrative masterplan Rev B, dated October 2014 and; 1:500 scale proposed accesses (ref. SK09); but only in respect of those matters not reserved for later approval. *(If the Secretary of State considers that the appeal should be determined on the basis of the plans upon which the LPA's decision notice relates the relevant masterplan would be Rev A dated December 2013, rather than Rev B above.)*
5. No development shall commence until details of the existing and proposed site and floor levels and sections through the site at a scale not less than 1:500 have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
6. No development shall commence until foul water drainage details for the site and a programme of implementation has been submitted to and agreed in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details/programme. Unless otherwise agreed in writing, surface water shall be drained separately from foul water.
7. No development shall commence until details of surface water drainage for the site, including a sustainable drainage scheme (SUDS) and details for the implementation, maintenance and management of the SUDS have been submitted to and approved in writing by the Local Planning Authority. The details/scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. These details shall include: i) a timetable for its implementation, and; ii) a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the SUDS throughout its lifetime.
8. No dwelling/apartment/flat on the site shall exceed 8.3 metres above slab level and the community building shall be no higher than 6.2m above slab level.
9. No development shall commence until details of properly consolidated and surfaced vehicle parking and manoeuvring facilities (including provision for the disabled) within the site have been submitted to and approved in writing by the Local Planning Authority. Such facilities shall be provided in accordance with the approved details and prior to the dwellings and community/retail building served

by them being occupied/brought into use and shall be kept permanently available for such purposes with the vehicle parking spaces retained for parking only and the manoeuvring facilities for manoeuvring of vehicles.

10. No works shall commence on site (other than those required by this condition) on the development hereby permitted until the first 20m of one of the approved access roads, including the junction with the existing public road and associated visibility splays, has been completed to at least binder course level.
11. No dwelling or retail/community building on the site shall be occupied/brought into use, until the carriageway (including surface water drainage/disposal, vehicular turning heads and street lighting) providing access from the nearest public highway to that dwelling and /or retail/community building, have been completed to at least binder course level and the footways to surface course level.
12. No works shall commence on the development hereby permitted until details of the shared footways/cycleways have been submitted to and approved in writing by the Local Planning Authority. The approved shared footways/cycleways shall be provided prior to the occupation of any of the buildings.
13. No development shall commence on site until details of the proposed arrangements for future management and maintenance of the proposed streets within the site have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details and the streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.
14. No building shall be constructed on site until a scheme has been submitted to and agreed in writing by the Local Planning Authority for the provision of fire hydrants (served by mains water supply) and no building shall be occupied until the hydrant serving that property has been provided.
15. No development shall take place on site, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall:
  - i. specify the type and number of vehicles;
  - ii. provide for the parking of vehicles of site operatives and visitors;
  - iii. provide for the loading and unloading of plant and materials;
  - iv. provide for the storage of plant and materials used in constructing the development;
  - v. provide for wheel washing facilities;
  - vi. specify the intended hours of construction operations;
  - vii. specify measures to control the emission of dust and dirt during construction.
16. The landscaping details required by condition 1 above shall include: measures for protecting existing trees and hedgerows within the site during the construction phase; a timetable for planting trees, hedgerows and shrubs; details for undertaking replacement planting in the event of any trees, shrubs or

hedges being removed, damaged or dying within five years of planting; those measures set out in section 5.5 (Landscape Strategy) of the Landscape & Visual Assessment dated January 2014 by Davies Landscape Architects and submitted in support of the application; the reinforcement of existing boundary hedges with indigenous species and; details for maintaining those hedgerows that are to be retained.

17. No development shall commence until a Waste Minimisation Statement (WMS) has been submitted to and approved in writing by the Local Planning authority. The WMS shall include:
- i) details of the types and volumes of construction waste likely to be generated including measures to minimise re-use and recycle that waste and minimise the use of raw materials;
  - ii) measures for re-using construction waste on site unless it can be demonstrated that this is not the most sustainable option;
  - iii) measures for the disposal of any waste that cannot be re-used on site;
  - iv) provision of 'on-site' storage receptacles for recycling a range of materials;
  - v) access arrangements for recycling/waste collection vehicles.
- The development shall be undertaken in accordance with the approved WMS.
18. Prior to the commencement of the development, a scheme for generating low carbon energy (as defined in the technologies outlined in the Local Planning Authority's [LPA] Good Practice Guide) or thermal improvement of the building fabric, equivalent to 15% of the carbon dioxide emissions arising from the use of each dwelling unit on site, shall be submitted to and approved in writing by the LPA. The scheme as approved shall be implemented and commissioned within three months of occupation or use of the development and thereafter retained for a period of not less than 10years.
19. All services required to be connected to the development hereby approved shall be laid underground and each property shall be provided with an electric vehicle charging point and isolation switch prior to first occupation.
20. No development shall take place within the site until the appellant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
21. No development shall take place, including ground works and site clearance, until a method statement (MS) for badgers has been submitted to and approved in writing by the Local Planning Authority. The MS shall be based on the measures outlined in Badger Appendix 1.5 -1.11 by Ecological Solutions dated August 2013 and submitted in support of the application. The MS shall also include:
- i) requirements for additional survey work;
  - ii) risk assessment of potentially damaging construction activities;
  - iii) identification of and "biodiversity protection zones";
  - iv) practical measures (both physical and sensitive working practices) to avoid or reduce impacts during construction;
  - v) extent and location of proposed works shown on scaled maps and plans;
  - vi) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
  - vii) persons responsible for implementing the works;

viii) initial aftercare and long-term maintenance (where relevant).  
The works shall be carried out in accordance with the approved MS and shall be retained in that manner thereafter.

22. No development shall take place, including ground works and site clearance, until a conservation and enhancement plan for bats has been submitted to and approved in writing by the Local Planning Authority. The plan shall be based on the measures outlined in the Ecological Addendum report, Section 4 dated November 2013 by Ecological Solutions and submitted in support of the application. It shall include:

- i) the retention of flight lines, foraging areas and dark corridors;
- ii) re-assessment of trees with identified bat potential including any necessary survey work;
- iii) compensation for the loss of hedgerows;
- iv) enhancement of hedgerows to secure foraging opportunities and connectivity to off-site habitats;
- v) bat boxes in trees and in suitable locations within some of the new buildings;
- vi) a risk assessment of potentially damaging construction activities;
- vii) identification of 'biodiversity protection zones' (such as hedgerows);
- viii) practical measures (both physical and sensitive working practices) to avoid or reduce impacts during construction;
- ix) the extent and location of proposed works shown on scaled maps and plans;
- x) a timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- xi) identifying persons responsible for implementing the works, and;
- xii) initial aftercare and long-term maintenance (where relevant).

The works shall be carried out in accordance with the approved plan and shall be retained in that manner thereafter.

23. No development shall take place until a lighting design strategy for biodiversity covering bat flight lines, new and retained hedgerows and open space areas, and other foraging areas have been submitted to and approved in writing by the Local Planning Authority (LPA). The strategy shall:

- i) identify those areas/features on site that are particularly sensitive for bats and badgers and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging, and;
- ii) show how and where external lighting would be installed (through the provision of lighting contour plans and technical specifications) so that it could be demonstrated that areas to be lit would not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the approved strategy, and these shall be retained thereafter in accordance with the strategy. No other external lighting shall be installed without prior consent of the LPA.

24. No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The LEMP should draw together all aspects of management including the bat conservation plan, barn owl mitigation and hydrology (SUDS scheme) and the mitigation/enhancement measures outlined in Section 5 of the Ecological Assessment by Ecological Solutions dated August 2013. The content

of the LEMP shall include the following:

- i) a description and evaluation of features to be managed;
- ii) ecological trends and constraints on site that might influence management;
- iii) aims and objectives of the management;
- iv) appropriate management options for achieving aims and objectives;
- v) prescriptions for management actions;
- vi) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- vii) details of the body or organization responsible for implementation of the LEMP;
- viii) on-going monitoring and remedial measures;
- ix) details of the legal and funding mechanism(s) by which the long-term implementation of the LEMP would be secured with the management body (ies) responsible for its delivery;
- x) contingencies and/or remedial action for addressing the results from monitoring where these reveal that the conservation aims and objectives of the LEMP are not being met.

The LEMP shall be implemented in accordance with the approved details.

25. No vegetation on the site (including ivy) shall be removed between 1 March and 31 August inclusive, unless a suitably qualified ecologist has undertaken a detailed check of vegetation for active birds' nests immediately before the vegetation is removed and has provided written confirmation that no birds would be harmed and/or that there are appropriate measures in place to protect nesting bird interest on the site. Any such written confirmation shall be submitted to the Local Planning Authority for approval and then implemented as approved.
26. Throughout the duration of works, including site clearance and construction, the following shall be undertaken:
- i) construction materials will be stored only on existing hard-standing areas or other areas permitted for storage and will be raised off the ground on pallets or similar;
  - ii) any loose materials (e.g. stone or soil) stored on site will be within sacks, bags or will be compressed to avoid gaps being accessible to newts;
  - iii) excavations will be covered overnight to prevent newts or badgers becoming trapped, or will be provided with ramps to allow newts and badgers to escape.

Should Great Crested Newts be found within the construction area, all works to that area shall cease until advice from Natural England has been sought and followed.



## **LIST OF ABBREVIATIONS USED IN THIS REPORT**

AE – Archaeological Evaluation

AOD – Above Ordnance Datum

APD – Allocations Plan Draft

AQA – Air Quality Assessment

AQMA – Air Quality Management Area

CD – Core Document

CIL – Community Infrastructure Levy

CS – Core Strategy

DAS – Design & Access Statement

DPH – Dwellings Per Hectare

FRA – Flood Risk Assessment

GCC – Gloucestershire County Council

HA - Highway Authority

HLS – Housing Land Supply

LCT – Landscape Character Type

LHS – Lydney Highway Strategy

LNDP – Lydney Neighbourhood Development Plan

LP – Local Plan

LPA – Local Planning Authority

LS – Landscape Strategy

LTC – Lydney Town Council

LVA – Landscape and Visual Assessment

MfS – Manual for Streets

OAN – Objectively Assessed Need

PINS – The Planning Inspectorate

PoE – Proof of Evidence

SAD – Stop Allaston Development

SHMA – Strategic Housing Market Assessment

SoCG – Statement of Common Ground

SoS – Secretary of State

SPD – Supplementary Planning Document

SPG – Supplementary Planning Guidance

TA – Transport Assessment

The Framework – The National Planning Policy Framework

TP – Travel Plan

TRO – Traffic Regulation Order

WMS – Written Ministerial Statement



## Department for Communities and Local Government

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

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

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

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

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

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

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

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

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

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

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

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

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

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