



## Appeal Decision

Inquiry Held on 22 January 2019

Site visit made on 1 March 2019

by **S R G Baird BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14<sup>th</sup> May 2019

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### **Appeal Ref: APP/P0119/W/17/3189592**

### **Land south of Gloucester Road, Thornbury, Gloucestershire BS35 1LH.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Bovis Homes Limited, Mr J D Fear and Mr M D Fear against South Gloucestershire Council.
  - The application Ref. PT17/2006/O is dated 13 April 2017.
  - The development proposed is the demolition of existing agricultural shed buildings, residential development of up to 370 dwellings (Use Class C3); a flexible use building (floorspace circa 460 sq. m.) falling within Use Class D1; public open space; accesses onto Gloucester Road and associated infrastructure.
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### **Preliminary Matters**

1. The inquiry was closed in writing on Friday 8 March.
2. The agricultural sheds have been removed. I shall deal with the appeal based on a failure to give notice within the prescribed period of a decision on an application for outline planning permission for residential development of up to 370 dwellings (Class C3); a flexible use building (Class D1 - circa 460 sq. m.); public open space; accesses onto Gloucester Road and associated infrastructure.
3. The application was submitted in outline with all matters other than means of access reserved. The local planning authority (lpa) indicated that the application would have been refused for 13 reasons<sup>1</sup>. Following the submission of, further information, the lpa confirmed that putative reasons for refusal (RfR) 4 and 5 and 9 to 13 had been addressed. The lpa's remaining concerns are: conflict with the adopted spatial strategy (RfR 1); adverse impacts on heritage assets (RfRs 6 & 7); adverse impacts on landscape character and visual amenity (RfRs 1 & 8); prejudice to the emerging West of England Joint Spatial Plan (eJSP) (RfR 2) and the appropriateness of the lengths of pedestrian routes to local facilities (RfR 3).
4. A completed S106 Agreement provides for: £30,000 and land for a turning head to prevent/discourage traffic from using Crossways Lane; £71,000 for footpath works, £2,000 for town centre cycle parking; £145,734 for junction improvements; £4,000 for traffic calming; £375 per dwelling to implement a Travel Plan; £715,00 for the provision of a bus service; £890,212 for off-site outdoor sports facilities; the provision of car-club parking bays and car-club membership for each household. The Agreement also provides for; on-site open space; 35% of the dwellings to be affordable houses and 5% of the total number of dwellings to be available as self-build and custom house building plots. The

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<sup>1</sup> Annex 2.

contents of the Agreement accord with Community Infrastructure Regulations 122 and 123 and are accounted for in coming to my conclusion.

5. In March 2019, the Office for National Statistics (ONS) published updated annual affordability ratios, a component of the standard method for calculating Local Housing Need (LHN) covering 2018. The parties had an opportunity to comment on the implications of the revised ratios.

### **Decision**

6. The appeal is dismissed and planning permission for residential development of up to 370 dwellings (Use Class C3); a flexible use building Use Class D1 (circa 460 sq. m.); public open space; accesses onto Gloucester Road and associated infrastructure is refused.

### **Main Issues**

7. Whether the lpa can show a 5-year supply of land for housing; the effect on heritage assets (HA); the effect on the character and appearance of the area; the acceptability of the proposed pedestrian links to local services/facilities; and whether the proposal would be premature to and predetermine provisions central to the emerging JSP.

### **Reasons**

#### ***Housing Land Supply***

8. Following the ONS update, the lpa has produced a HLS statement containing 4 Scenarios. Scenario 1 is based on Household Projections (HHP) for the period 2018 to 2028 and the affordability ratio (AR) for 2017 and is the basis on which evidence at the inquiry was tested. Scenarios 2 and 3 use HHPs for the period 2018 to 2028 and ARs for 2017 and 2018 respectively. Scenario 4 uses HHPs for 2019 to 2029 and the AR for 2018.
9. The lpa's reason for producing Scenario 4 is found in Planning Policy Guidance (PPG). This says that when calculating average annual growth over a 10-year period, the current year should be used as the starting point<sup>2</sup>. Whilst the lpa's Scenario 4 is technically correct it does not allow for a like-for-like assessment of the position thoroughly tested at the inquiry (Scenario 1). For reasons of consistency, I have discounted Scenario 4. As neither parties' case is materially affected by the updated ARs, it is reasonable and proportionate to assess this issue based on Scenario 1 and use Scenarios 2 and 3 as sensitivity tests.
10. The Framework requires the lpa to provide a minimum 5-years' worth of housing against the housing requirement set out in either adopted strategic policies or against its LHN using the standard methodology where the strategic policies are more than 5 years old unless they have been reviewed and are found not to require updating. The DP is more than 5 years old and the lpa has calculated its Housing Land Supply (HLS) position based on LHN using the standard methodology.
11. The lpa calculates that it has a deliverable supply amounting to some 6.21-years. The appellants say that, at worst, the lpa has a marginal deliverable supply of some 5.04-years and at best some 5.49-years. Other than the appellants' Scenario 3, which shows a marginal dip below 5 years, the above figures are not far off the outcomes of Scenarios 2 and 3. This suggests that the results of Scenario 1 can be treated with confidence.

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<sup>2</sup> Paragraph 004 Reference ID: 2a-004-20190220.

12. Based on the definition of a deliverable site contained in Annex 2 to the Framework and the guidance in PPG, the appellants dispute the contribution from 8 sites totalling some 1,229 dwellings. Whilst I appreciate the lpa is reliant on information provided by others, the Framework places the onus on the lpa to provide, "...clear evidence that housing completions will begin on site within five years." On the information provided, the discussions at the housing round table session and having regard to the severe physical constraints affecting some sites (0021C and 0135a) and the nature of the evidence relating to the planning and ownership status of other sites, I consider the lpa's submissions fall well short of the clear evidence required by the Framework to justify the inclusion of these sites within the HLS. Accordingly, whilst the lpa cannot sustain a submission that it has a 6.21-year supply of land for housing, the available evidence shows that the lpa has a 5-year supply of land for housing.

### ***Effect on Heritage Assets***

13. Consistent with Framework paragraph 184, Development Plan<sup>3</sup> (DP) Policies CS9 and PSP17 recognise that HAs are irreplaceable resources to be conserved in a manner appropriate to their significance. The lpa's concern relates to the impact on the significance of 4 Listed Buildings (LB) and the hamlet of Upper Morton, a non-designated HA from development within their settings. In concluding on the potential effect on the significance of each these HAs, I am conscious that setting itself is not a HA or that it is a heritage designation, rather it is what it contributes to an asset's significance or the ability to appreciate that significance. Regarding Morton Grange (MG) and Yew Tree Farmhouse (YTF), the parties agree that any harm that would result would fall within the category of less than substantial. The difference between the parties turns on where within the spectrum of less than substantial harm the effect would fall and whether there would be any harm to the significance of Malt Cottage/Old Malthouse (MC/OM) and Manor Farmhouse (MF).
14. Although the lpa's evidence on and testing of the appellants' case was based on where within the category of less than substantial harm the harm lay, its closing submissions refer to the Shimbles judgement<sup>4</sup>, suggesting that the undertaking of such an exercise is questionable. The Shimbles judgement has a narrow focus concentrating on whether it was necessary for the decision maker to explicitly determine where on a spectrum the degree of harm lay. It does not, in my view, preclude the decision maker from undertaking such an exercise. Whilst at times the exercise of identifying the degree of harm within the category of less than substantial harm can appear like trying to count how many angels can dance on the head of a pin, it does have value when applying the statutory duty and Framework paragraphs 193, 194 and 196.

### ***Morton Grange***

15. MG, a Grade 2\* LB, is an imposing property sitting in substantial grounds, that has its origins in the 15<sup>th</sup> century as a high-status hall house. The building has been extended and altered over the intervening years with each reflecting the period vernacular. Framework paragraph 194 (b) recognises that Grade 2\* LBs are assets of the highest significance. Whilst the significance of MG is principally architectural, derived from the evidential, aesthetic and illustrative value of its built form, the site had a historic, functional relationship with MG. As such, the site makes a positive contribution to the significance of MG by providing a rural context for the significance of the building.

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<sup>3</sup> South Gloucestershire Local Plan: Core Strategy 2006 to 2027 adopted in December 2013 and the Policies, Sites and Places Plan adopted in November 2017.

<sup>4</sup> R (Simon Shimbles) & City of Bradford Metropolitan District Council [2018] EWHC 195 (Admin).

16. Whilst MG is seen in views from the north/south public footpaths that cross the appeal site (OTH/88/10 & OTH/80/10) these views are filtered by boundary planting. In these views, the viewer obtains a limited impression of the historic functional relationship. Key views and an appreciation of the significance of MG are obtained from Gloucester Road to the north and north-east, the road to the west and public footpath OTH/81/10 that runs diagonally across the western part of the appeal site. In views from Gloucester Road and the road to the west the ability to appreciate the significance of MG would be unchanged. From the public footpath the rural setting of MG, which has been compromised by the Thornbury Fields development, would be further compromised by the development, albeit the proposed open-space to the east and north of MG would provide some limited mitigation. I consider the proposal would result in less than substantial harm in the middle of the lower end of that scale.

*Yew Tree Farmhouse*

17. YTF, a Grade 2 LB, is a mid to late 18<sup>th</sup> century stone-built farmhouse immediately to the north of Gloucester Road whose significance is principally derived from the evidential, aesthetic and illustrative (architectural) value of its built form. The appeal site has a historic and existing functional relationship with the building. As with MG, the site, by providing a rural context for the significance of the building, makes a positive and material contribution to the significance of YTF.
18. Views of YTF are obtained largely from Gloucester Road and public footpaths that run across the appeal site (OTH/88/10; OTH/80/10 & OTH/86/30). Because of topography and planting within the site and YTF, views from the land to the south are restricted to the northern and central parts of the site. The relationship of YTF to the open land to the south and the separation from the built-up area is particularly apparent from elevated view-points to the north-east. In this context, the agricultural landscape to the south of Gloucester Road contributes materially to the significance of YTF as a distinct farmstead separate from the built-up area of Thornbury.
19. The development would obscure the main views from public footpaths OTH/86/30 and OTH/88/10. Whilst public footpath OTH/88/10 would be contained within a green corridor, the sense of agrarian openness would be significantly reduced. Views from along Gloucester Road would include filtered views of new development set back from the road. The loss of a fundamental part of the setting of YTF would be particularly noticeable from the elevated viewpoints to the north-east. Whilst the development would not materially impair the ability to appreciate or understand YTF as a historic building, the loss of the rural hinterland to the south and the separation from the built-up area would have a significant adverse effect on its setting. The effect would not fall at the lower end of the scale of less than substantial harm, rather it would be in the middle of that scale.

*Malt Cottage/Old Malthouse/ & Manor Farmhouse*

20. MC/OM dates from the late 17<sup>th</sup> century and MF has its origins in the late 16<sup>th</sup> century. These are Grade 2 LBs located within the hamlet of Upper Morton and their significance derives largely from the evidential, aesthetic and illustrative value of their architecture. Their location within the hamlet makes a positive contribution to their significance through historic illustrative value.
21. MC/OM are enclosed by the hamlet and there is no functional, historic or visual relationship with the site. Although the curtilage of MF is visible from a narrow

part of the north-western corner of the site this extensively altered building is well screened by mature planting. There is no historic or existing functional connection between MF and the site. Given the agrarian setting of Upper Morton contributes to the significance of these assets, the development would result in less than substantial harm at the lowest end of that scale. In the same context, the rural and undeveloped backdrop contributes to the significance of Upper Morton as a non-designated heritage asset, the loss of which would result in less than substantial harm at the lowest end of the scale.

### **Character and Appearance**

22. The site and surrounding land do not have any statutory or non-statutory landscape designations. The site is not listed in the DP as being of particular value for recreation, amenity or green infrastructure resulting in any policy protection. It is acknowledged that the site is not a "valued landscape".
23. Policies CS1 and CS9 seek to ensure that development conserves and enhances the character, quality, distinctiveness and amenity of the landscape. Policy PSP2 says that development proposals will be acceptable where they conserve and where appropriate enhance the quality, distinctiveness and special character of the landscape as defined by the Landscape Character Assessment<sup>5</sup>. Where development would result in harm to the landscape for it to be permitted it must be clearly demonstrated that the benefits outweigh the harm and any landscape harm is minimised and mitigated.
24. Thornbury is located within the Severn Ridges Landscape Character Area (LCA), where the town and site sit within the "Thornbury Bowl", a low-lying area encircled to the north and south-east by rising scarps. The Bowl is the flatter heart of the LCA with gently sloping ground dominated by farmland of medium to large, regular shaped fields defined by low hedges and intermittent trees. The Bowl landform is extensive extending out eastwards to the M5 and includes the site and the site of the proposed Buckover Garden Village (BGV).
25. Inevitably the development of some 370 houses would materially alter the character of the site and result in major/moderate harm to the landscape. That said, although the Thornbury Bowl is an extensive area, views of the site are limited to the rising scarp to the north and north-east (Photomontages B & C), higher ground at Buckover/Milbury Heath (Photomontage E) and from Crossways Lane/Gloucester Road. In this context, the harm to landscape character would be localised and the overriding characteristics of the Severn Ridges LCA would still be apparent and dominate the relevant views, particularly from the areas around the viewpoints used for Photomontages B, C and E. In terms of visual impact, this would be limited to the users of public footpaths through the site, from Crossways Lane and Gloucester Road. Again, whilst there would be major/moderate harm, the visual impact harm would be localised.

### **Pedestrian Links**

26. The lpa's concern is that the site is in an unsustainable location because walking distances to key services and facilities would be too far, contrary to Policy PSP11 (3) and would encourage unsustainable travel behaviour contrary to Policy CS8 (1) and Framework policy. Policy PSP11 (3) indicates that residential development will be acceptable where it is located on "...walking and, or cycling routes, that are an appropriate distance to key services and facilities and where some key services and facilities are not accessible by walking and cycling are

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<sup>5</sup> South Gloucestershire Landscape Character Assessment – 2015.

*located on safe, useable walking routes that are an appropriate distance to a suitable bus stop served by appropriate public transport services that connect to destinations containing the remaining key services and facilities".* The supporting text to Policy PSP11 lists, as a starting point, appropriate walking and cycling distances measured as a straight-line to key services and facilities.

27. The DP and Framework requires that accessibility is assessed in the round. Opportunities to promote walking, cycling and public transport use should be identified and pursued, significant developments should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
28. Most of the key services and facilities within Thornbury fall outside the walking distances listed in PSP11. However, the supporting text makes it clear that the distances listed are not a pass or fail criteria and a failure to meet PSP11 (3) does not mean that a development would be unacceptable. Any breach is to be considered in the balance with other DP/Framework objectives along with the degree of harm arising. Moreover, the supporting text recognises that dedicated walking and cycling routes may facilitate access to key services and facilities beyond the walking distances listed and in applying the policy consideration should be given to the distances as travelled.
29. Manual for Streets indicates that walking offers the greatest potential to replace short car trips particularly under 2km, a walk time of some 25 minutes. On this measure there are a significant number of facilities and services that would provide for the day-to-day needs of residents within the 25-minute isochrone. Whilst the town centre is beyond that, a walk time of some 30 to 35 minutes, the routes did not strike me as an unacceptable walk for some types of trip. Moreover, most key services and facilities are within an acceptable cycling distance/time of the development.
30. The development would meet the full cost of widening and improving pedestrian and cycle connections. There are existing bus services on Gloucester Road and Morton Way, some of which are already programmed for improvement. The scheme provides for improvements to the existing bus stops on Gloucester Road and the provision of a new bus service that would penetrate the development. Within the development, bus stops would be within acceptable walking distances of the residential areas. The service would have a 30-minute frequency between 0700 to 1900 hours Monday to Saturday and connect the development to Thornbury, Aztec West, Bristol Parkway and Filton Abbeywood railway stations or the University of the West of England and Bristol Business Park. A comprehensive Residential Travel Plan<sup>7</sup> would be agreed with and implemented by the highway authority. These measures would result in a material modal shift.
31. The scheme would provide residents with a comprehensive range of appropriate and realistic travel options to access key services and facilities by sustainable transport modes including reasonable and acceptable walking/cycling routes. The proposal would not be car dependent or encourage unsustainable travel behaviour contrary to the objectives of DP Policies CS8 (1), PSP11 and the Framework.

### ***Prematurity***

32. The objection relates solely to the eJSP, which is being prepared jointly with 3 adjacent councils (JAs) to provide, *"...the higher level strategic planning policy framework for each authority's new Local Plan for the period 2016 to 2036"*. Whilst it is not the function of the eJSP to allocate new sites it does identify 12 Strategic Development Locations (SDL). These are shown indicatively on the key

diagram and the plan lists the strategic policy requirements for each one. Policy 7 reiterates that the eJSP does not allocate these areas. Rather it indicates their general extent, the development principles, constraints and infrastructure requirements to be considered. The clear intention is that the SDLs will be brought forward as allocations in Local Plans.

33. Here, 2 SDLs are relevant; BGV and Thornbury. For each, Policies 7.8 and 7.11 list the bespoke requirements that will form the starting point for their detailed assessment through the new Local Plan. The Thornbury SDL is identified as land around the town's north and eastern edge off Butt Lane and Morton Way and lists 6 strategic principles and infrastructure requirements. These include a maximum of 500 dwellings with the new Local Plan establishing an appropriate policy designation to ensure a permanent strategic gap between Thornbury and BGV. The bespoke requirements for BGV include reference to a similar policy designation and the provision of a Green Infrastructure network to ensure a robust landscaped area on the western edge of BGV.
34. Where relevant I have had regard to 2 appeal decisions<sup>6</sup> issued in May and July 2018. Framework paragraphs 49 and 50 set the clear and specific context for considering the timing and limited circumstances when a proposal may be considered premature. Paragraph 49 indicates that prematurity is unlikely to justify a refusal of permission other than where both *"the development is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging plan: and that the emerging plan is at an advanced stage"*. Paragraph 50 says that when permission is refused on prematurity grounds, the lpa is required to demonstrate clearly how granting permission would prejudice the outcome of the plan-making process.

#### *Is the eJSP at an Advanced Stage*

35. There is no definition in the Framework or PPG as to what constitutes "advanced". The eJSP was submitted for examination in April 2018. During their initial assessment, the Examining Inspectors (EIs) identified that further work was necessary, and the examination was paused. This indicates that the additional evidence base work is fundamental to the process particularly as in subsequent correspondence the EIs reminded the JAs of the crucial importance that the additional work, *"...it is carried out with an "open mind" and does not seek simply to justify the approach policies currently set out in the draft plan."*
36. Bearing in mind the repeated references in the eJSP that it is intended to be a high-level strategic plan, the EIs expressed concern that, Policies 7.1 to 7.12 contain specific requirements, which in the absence of defined boundaries for an SDL, suggested there would be difficulty justifying the requirements as formal policy. Following clarification from the JAs, that the requirements in Policies 7.1 to 7.12 are "definitive", the EIs reiterated the potential impacts of this approach and that substantial further evidence would be required to support these policies. Based on the nature of representations they had before them, the EIs cautioned against proceeding this way indicating that *"...a significant amount of examination time..."* would be required.
37. Whilst the additional evidence base work has been done and consulted on, the timetable for responses slipped to early January 2019. The Key Issues report was due by mid-February but at the close of the Inquiry (March) it had not been

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<sup>6</sup> APP/P0119/W/17/3179643 & 3182296.

produced. Thus, at this stage there is no indication what impact the results of this work will have on either the nature/content of the plan or the progress of the examination. The EIs will have to consider the additional work and the responses to determine the issues and matters to be examined. Whilst in August 2018 the EIs acknowledged that the examination timetable, which had examinations starting in May, was realistic, they could not, given the volume and nature of the additional work required and the potential nature of representations, commit to the dates.

38. The eJSP process has moved on since my colleague concluded<sup>7</sup> in July 2018 that the eJSP was not at an advanced stage. However, given: that a Key Issues Report has yet to be published; the EIs concerns regarding the JAs' direction of travel on SDL policy; the potential for a significant number of objections to remain unresolved and for new objections to be made, there are still many hurdles to overcome and I am not confident that the JAs' suggestion that hearings will commence in May is realistic. Accordingly, the eJSP has not reached an advanced stage.

*Predetermination*

39. As submitted, the eJSP identifies that some 44,000 additional dwellings to 2036 need to be planned for. Of these, some 17,100 dwellings (39%) would come via the SDLs and 3,400 dwellings (8%) would come from non-strategic growth. Thus, the importance of SDLs in achieving the objectives of the eJSP is not in doubt.
40. Working on the assumption that the JAs definitive approach to SDL policy passes the examination process and is adopted, i.e. the maximum number of dwellings developed to 2036 as part of the Thornbury SDL would be capped at 500. However, the number of dwellings permitted (some 480) on the north and eastern edge of Thornbury is already close to that figure. Thus, the issue of whether there should be an SDL at Thornbury and its scale/location has effectively been determined. The appeal scheme has, in my view, no relevance to the EIs recommendations on whether there should be an SDL at Thornbury.
41. The lpa acknowledges the appeal scheme would be defined as non-strategic growth and that the location of such growth is a matter for subsequent Local Plans and not the eJSP. Thus, it cannot be said that this scheme would either pre-determine a decision that is central to the eJSP or that it would be so substantial, given that it would be less than 1% of the total number of new dwellings being planned for by the eJSP, as to undermine the plan process.
42. A common feature of eJSP Policies 7.8 and 7.11 is the establishment of a strategic gap between the BGV and Thornbury SDLs as shown on the Concept Diagrams for the 2 SDLs. These diagrams are contained in the Strategic Development Location Templates – November 2017; a report that forms part of the evidence base for the plan and not the submitted plan. The illustrative plans for each of the SDLs shows the appeal site washed over in green and has the notation Strategic Green Gap on one side or the other of a green-dashed line of variable thickness depending on which concept plan is viewed. There is no notation within the plans' key to indicate what the washed over green area is and the lpa could not assist with an explanation. The introduction to the report specifically states that "*...the areas identified on the diagrams are indicative and ...the more precise allocations to be made in Local Plans will depend on further work...*" Moreover, eJSP Policies 7.8 and 7.11 say no more than it will be for. "*...The new Local Plan to establish an*

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<sup>7</sup> APP/P0119/W/17/3179643.



*appropriate policy designation to ensure a permanent strategic gap between BGV and Thornbury.”* The lpa accepted that the granting of planning permission would not make it impossible to establish a strategic green gap. In this context, whilst the protection of a green gap might be one of the key strategic principles of the Thornbury SDL, in the context of the policy as currently promoted, I cannot see how allowing the appeal scheme would undermine the eJSP process.

*Conclusion on Prematurity*

43. The eJSP is not at an advanced stage and the development is not so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the eJSP process by predetermining decisions that are central to the emerging plan.

***Weight to be Attached to the Public Benefits associated with the Scheme***

44. PPG identifies that public benefits can be anything that delivers economic, social or environmental progress and be of a nature or scale to benefit the public at large. I have had regard to 2 appeal decisions<sup>8</sup>, identifying the weight attached to the contribution of housing where there was more than a 5-year HLS.
45. The site would deliver some 240 units of market and 130 units of affordable housing. Although the lpa can demonstrate a 5-year supply, the surplus is marginal. Framework paragraph 59 identifies the Government’s objective to significantly boost the supply of housing and paragraph 73 highlights that an identified 5-years’ worth of housing is only a minimum state. Moreover, the eJSP highlights a critical need to substantially boost the housing supply, particularly affordable housing for which the need across the plan area is acute. Whilst affordable housing is coming forward within the district, the eJSP is seeking to make a “*substantial*” step change in the supply of affordable housing across the plan area. Although the Mere Lane<sup>10</sup> decision, attached moderate weight to the site’s contribution to the HLS, that was in the context of a 10-year HLS. Here, the 5-year HLS is marginal, and as such the position is materially different. On balance, significant weight attaches to the scale and nature of the housing benefits this scheme would provide. This is a conclusion consistent with the Deerlands Road<sup>10</sup> decision.
46. On-site public open space provision would be in excess of DP requirements and would build on that made at Thornbury Fields by extending the country park to Crossways Lane and Gloucester Road. Pedestrians, cyclists and horse riders who currently use Crossways Lane would be able to access the open space from Crossways Lane and access the wider countryside in safe and pleasant surroundings. Accordingly, I attach moderate weight to the wider benefits of the on-site public open space provision. A substantial financial contribution would be made for the provision and subsequent maintenance of outdoor sports facilities at one or more existing sports facilities that would benefit the wider public. I attach moderate weight to these wider benefits.
47. The scheme would contribute towards the promotion of sustainable transport modes through improved bus services and travel plan measures. The bus service improvements would exceed DP requirement and would benefit the wider public. As such, and given the scale of the investment, I attach moderate weight to these wider benefits.

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<sup>8</sup> Mere Lane - APP/R1038/W/17/3192255 & Deerlands Road - APP/F4410/W/17/3169288.

48. There would be wider public benefits arising from the improvements to public rights of way to which I attach limited weight. The development would generate a substantial sum in terms of CIL payments and result in economic benefits. Whilst CIL payments are designed to mitigate the impact of the development, improvements to existing services and facilities would result in some benefit to the wider community. Given the scale of the investment and the economic benefits that would accrue, I attach moderate weight to these wider benefits.

### **Other Considerations**

49. It is common ground that, with the proposed highway and junction improvements, Gloucester Road would be suitable for use by the pedestrian, vehicular and public transport trips associated with the development. It is also common ground that Crossways Lane is acceptable in principle to serve the pedestrian and cycle trips associated with the development. However, the appellants, acknowledging residents' concerns regarding Crossways Lane, would provide land for a turning head should the highway authority include this within any future traffic calming scheme and a financial contribution to prohibit or discourage traffic from using Crossways Lane. I have no reason to disagree with the conclusion of the highway authority that the impact on the safety and free flow of traffic on the adjoining highway network would be acceptable.
50. There would be 2 junctions onto Gloucester Road to serve the development. The one nearest Apple Tree Cottage would be located opposite the access to the cottage and not the habitable part of the house. This junction would be some 15m back and, given the road would be lit, vehicles leaving the development at night-time would be likely to be using dipped headlights. The relationship of the new junction to the Cottage would not be unusual and there would be no material impact on the living conditions of the residents of the cottage.
51. Objectors refer to existing high levels of traffic noise within properties in Upper Morton and the potential for an adverse increase. However, it is not clear that the readings and calculations provided by the objectors are comparable to those provided by the appellants. Accordingly, I attach greater weight to the appellants' submitted figures, which do not suggest an unacceptably high level of existing traffic noise or the potential for an unacceptable increase.
52. The Council has a CIL charging regime, which is the required method to generate money for infrastructure such as education, primary healthcare and community facilities. The scheme would contribute a significant sum in terms of the CIL. I have no reason to conclude that this contribution would be inadequate or conclude that the proposal would result in unacceptable pressure on existing facilities.

### **Planning Balance & Conclusions**

53. The appellants submit that this is a case where, the "tilted balance" provided for by Framework paragraph 11 applies because the policies that are most important for determining the application, the strategic housing policies, are out-of-date and Framework policies that protect assets of importance do not provide a clear reason for refusing the development.
54. Framework policies that relate to protecting assets of importance are those on designated heritage assets<sup>9</sup>. Framework paragraph 196 requires that where a

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<sup>9</sup> Framework Footnote 6.

development would result in less than substantial harm to the significance of a designated heritage asset that harm is to be weighed against the public benefits of the proposal. Thus, if the harm to the designated heritage asset outweighs the benefits, the tilted balance would not be engaged.

55. The context for undertaking the heritage balance is set by Framework paragraphs 193 and 194 and S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1991, which places a duty on the decision maker to accord considerable weight to the desirability of avoiding harm. Relevant judgements<sup>10</sup> reiterate that a finding of harm to the setting of a Listed Building gives rise to a strong presumption against planning permission being granted.
56. The scheme would result in less than substantial harm at the middle of the lower end of the spectrum to the significance of Morton Grange; at the middle of the spectrum to the significance of Yew Tree Farmhouse and less than substantial harm at the lowest end of the spectrum to the significance of Old Malthouse, Malt Cottage and Manor Farmhouse. Heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance and Grade 2\* Listed Buildings are regarded as assets of the highest significance. The effect of Framework paragraph 193 is that in applying the strong presumption against permission being granted, great weight is to be afforded to the conservation of the Yew Tree Farmhouse, Old Malthouse, Malt Cottage and Manor Farmhouse and even greater weight is to be afforded to Morton Grange as a Grade 2\* Listed Building. Framework paragraph 194 says that any harm to or loss of, the significance of a designated heritage asset from, amongst other things, development within its setting requires clear and convincing justification.
57. A substantial housing development within the rural setting of Morton Grange and Yew Tree Farmhouse would materially and significantly alter the relationship of these buildings with the built-up area of Thornbury to the south and their wider hinterland. The development would further weaken the degree of separation enjoyed by Morton Grange and remove the separation enjoyed by Yew Tree Farmhouse and materially obscure the functional and historic relationship with the wider countryside.
58. I have considered carefully the weight that attaches to the public benefits associated with this development, particularly the weight attached to the provision of market and affordable housing. However, on balance, the weight that attaches to those benefits does not outweigh the strong presumption against permission being granted and the great weight afforded to the conservation of Morton Grange, Yew Tree Farmhouse, Old Malthouse, Malt Cottage and Manor Farmhouse. Thus, as this scheme fails the Framework paragraph 196 test this disengages the paragraph 11d tilted balance. In this context, I consider it is unnecessary to conclude on whether the development plan policies that are most important for determining the application are out-of-date.
59. In light of the above, the nature of the planning balance is that contained at Framework paragraph 2, which requires that applications for planning permission are to be, "*...determined in accordance with the development plan, unless material considerations indicate otherwise.*" Whilst I have concluded that the proposal would not be premature to or predetermine decisions central to the eJSP or conflict with DP Policies CS8 and PSP11, the development would be in the countryside outside the settlement boundary of Thornbury and as such would conflict with DP Policies CS5, CS34 and PSP40. The scheme would result in

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<sup>10</sup> R. (on the application of The Forge Field Society [2014] EWHC 1895 (Admin).

major/moderate landscape and visual harm, albeit that harm would be localised and less than substantial harm to designated heritage assets and less than substantial harm to the non-designated heritage asset of Upper Morton. I acknowledge the proposal would provide public benefits, particularly in the provision of market and affordable housing, to which I attach significant weight. However, having carefully weighed all the benefits they do not outweigh the harm to the landscape and visual harm and, bearing in mind the requirements of S66(1) and Framework policy, the less than substantial harm to designated heritage assets. As such the proposal would conflict with Policies CS1, CS9, PSP2 and PSP17. Accordingly, and having taken all other matters into consideration, I conclude that the proposal would conflict with the development plan taken as a whole and the appeal is dismissed.

*George Baird*

Inspector

## **ANNEX 1**

### **APPEARANCES**

#### *FOR THE APPELLANTS*

Hereward Philpott QC & Charles Streeton of Counsel instructed by Rapleys LLP

They called:

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Mr C Mylchreest BA (Hons), DipLA, CMLI, AIEMA.  
Director, The Environmental Dimension Partnership Ltd.

Ms C Grierson BA (Hons), AM MRTPI.  
Associate Director, The Environmental Dimension Partnership Ltd.

Mr C Rawlinson Eur. Ing, B.Eng. (Hons), C.Eng., MCIHT, CMILT.  
Director, RPS Transport and Engineering.

Mr T Clements BA (Hons), MCD, MRTPI.  
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#### *FOR THE LOCAL PLANNING AUTHORITY*

Suzanne Ornsby QC & Alexander Greaves of Counsel, instructed by T Meers,  
South Gloucestershire Council

They called:

Ms D Whinham BSc (Hons), MA, MRTPI.  
Strategic Major Sites Manager, South Gloucestershire Council.

Mrs J Jarvis BSc (Hons), Dip LD, MA, CML.  
Principal, SLR Consulting.

Mr P Conroy BA (Hons), MSc, MRTPI.  
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Mr T Murphy IHBC MCIfA.  
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#### *FOR THE TORTWORTH ESTATE*

Rupert Warren QC & Matthew Fraser of Counsel instructed by Ridge & Partners LLP.

They called:

Ms G Stoten, BA (Hons), MCIfA, FSA.  
Regional Director (Heritage), Pegasus Group.

Mr C Lewis Dip TP, MRTPI.  
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*INTERESTED PERSONS*

Cllr. Tyrell.  
Mr Gardner.  
Mr Alford.  
Mr Forrest.  
Mr Pitman.  
Cllr. Fardell.  
Mrs Sears.  
Mr Acton.  
Mr Woosnam.  
Mr Hall.  
Mrs Dunkley.  
Mr Pemberton.

**DOCUMENTS SUBMITTED AT THE INQUIRY**

Doc 1 List of suggested planning conditions and reasons.  
Doc 2 Certified copy of a S106 Agreement.  
Doc 3 Summarised contents of the S106 Agreement.  
Doc 4 CIL Compliance Statement.  
Doc 5 Letter dated 18/1/2019 - substitution of lpa's Heritage witness.  
Doc 6 Agreed 5-year Housing Land Supply position.  
Doc 7 Housing Delivery Test: 2018 Measurement.  
Doc 8 Email exchange between lpa and English Heritage June 2017.  
Doc 9 Bundle of documents re housing sites 21c, 36a, 133a, 134c & 134bb.  
Doc 10 Agreed interface distances between Thornbury Fields and appeal site.  
Doc 11 Agreed distances - hedgerow lengths retained, removed and replanted.  
Doc 12 Appellants' Technical Note on TRAPP'D's objections.  
Doc 13 Buckover Garden Village Summary Report on Workshop 2/7/2018.  
Doc 14 Cleve Park High Court Judgement, [2019] EWHC 181 (Admin).  
Doc 15 Extract from opening & closing submissions, Barratt Homes, Charfield.  
Doc 16 South Gloucestershire Local Plan 2018-2036 Prospectus January 2017.  
Doc 17 Email dated 13 February 2019 re farming regime at Yewtree Farm.  
Doc 18 Draft Joint Local Transport Plan 4 2019-2036, January 2019.  
Doc 19 SD14J Topic Paper 6; Affordable Housing.  
Doc 20 Agreed Affordable Housing Note.  
Doc 21 Additional Landscape photographs.  
Doc 22 Historic land ownership details - Morton Grange.  
Doc 23 Supplementary Statement of Common Ground on Transportation Issues.  
Doc 24 Statement of Common Ground Version 2.  
Doc 25 Note on Appeal Decision APP/F4410/W/17/3169288.  
Doc 26 Appeal Decision APP/F4410/W/17/3169288.  
Doc 27 Note on Appeal Decisions APP/P1425/W/15/3119171; 3133436 & 3145053.  
Doc 28 Bundle of Appeal Decisions APP/P1425/W/15/3119171; 3133436 & 3145053.  
Doc 29 Appellants' note - Most Important Development Plan Policies.  
Doc 30 Note from Cllr. Tyrell.  
Doc 31 Note from Cllr. Fardell.  
Doc 32 Note from Mr Gardner.  
Doc 33 Note from Mr Alford.  
Doc 34 Note from Mr Forrest.  
Doc 35 Note from Mr Pitman.  
Doc 36 Note from Mrs Sears.  
Doc 37 Note from Mr Acton.  
Doc 38 Note from Mr & Mrs Woosnam.

- Doc 39 Note from Mr Hall.
- Doc 40 Note from Mrs Dunkley.
- Doc 41 Note from Mr Pemberton.
- Doc 42 Note from Mr & Mrs Brady.
- Doc 43 Note from Mr Muecher.
- Doc 44 Note from Mr & Mrs Young.
- Doc 45 Note from Ms Gumb.
- Doc 46 Note from Mr Perrin.
- Doc 47 Note from Mrs Sayce & Mr Butcher.
- Doc 48 Note from the Bartlett Family.

**DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED**

- Doc 49 Note on Updated Affordability Ratios & Alternative Local Housing Need Calculations – South Gloucestershire Council.
- Doc 50 Note on Updated Affordability Ratios & Alternative Local Housing Need Calculations – Appellants.

## **ANNEX 2**

### PUTATIVE REASONS FOR REFUSAL

1. The proposed development is located in the open countryside outside the defined settlement boundary, and the development of this site would be contrary to the strategic objectives of the Core Strategy, which seeks to locate development at more sustainable locations, contrary to policies CS5, CS34 and PSP40.
2. The proposed development is premature and will undermine the co-ordinated growth of Thornbury and Buckover Garden Village envisaged by policies 7.11 and 7.8 of the draft Joint Spatial Plan. The location of the site within close proximity to Buckover Garden Village and its size comprising an additional 370 dwellings will have an effect that is so substantial that to grant permission for a housing scheme at this stage will undermine the plan making process and will predetermine decisions about the scale and location of development together with accompanying social and physical infrastructure in Thornbury and at Buckover which are central to the draft Joint Spatial Plan. The proposal has the potential to predetermine and prejudice future sustainable development at Thornbury and Buckover Garden Village and therefore undermine the sustainability of two of the strategic development locations identified in, and central to, the Joint Spatial Plan contrary to Paragraph 14-21b of the NPPG and the plan-led core planning principle set out in paragraph 17 of the NPPF.
3. The location of the site is not sustainable in that it is too distant to the majority of services and facilities within Thornbury and will not enable the need to travel to be minimised and the use of sustainable transport modes to be maximised. The proposal will be car reliant with limited opportunity for future residents to utilise sustainable modes of travel in particular walking and cycling and will have limited access to public transport. The proposal is therefore contrary to paragraphs 32, 34, 61 of the NPPF, Policies CS1 of the Core Strategy and Policy PSP11 of the Policies Sites and Places DPD.
4. The proposal has failed to demonstrate that appropriate, safe, accessible, convenient and attractive accesses can be provided, contrary to PSP11 and NPPF paragraph 32.
5. An appropriate Transport Assessment has not been provided which adequately assesses the impact of the transport implications of the development taking into consideration the location of the site and the limited access to public transport and other sustainable transport options. Insufficient information has been submitted to demonstrate that the traffic generated by the proposed development does not result in a residual cumulative severe impact on the local highway network and does not have an unacceptable effect on highway safety contrary to PSP11 and NPPF paragraph 32.
6. The proposed development would have a serious adverse impact upon the character of the landscape which makes an important contribution to the setting and significance of the Grade II\* listed Morton Grange. The proposed development would also result in the urbanisation of the setting of the Grade II listed Yew Tree Farmhouse when the existing open fields directly to the south can be considered to make an important contribution both to its setting and in turn significance. The proposed development would impact on the wider setting of Malt Cottage and Manor Farmhouse. By failing to preserve the setting of listed buildings and in turn their significance, the proposed scheme is considered to have a serious adverse effect upon designated heritage assets which is not outweighed by the public benefits of the proposal and under paragraph 14 of the NPPF permission should be refused. The proposal is also contrary to policies CS9 and PSP17.



7. By reason of its scale and siting, the proposed development would subsume the hamlet of Upper Morton, which is a non-designated heritage asset. The erosion, if not total loss, of the hamlet as a separate identifiable entity would be harmful to its existing character and identity contrary to the provisions of the NPPF and Policies CS1 and CS9 and PSP17.
8. The proposed development, by creating a change in character from agricultural land to suburban landscape together with the substantial loss of hedgerows, fails to preserve the quality, amenity, distinctiveness and special character of the landscape and its natural beauty. The proposed development fails to conserve and enhance the character, quality, distinctiveness and amenity of the landscape and would have an adverse impact on visual amenity. The proposed removal of hedges from the western and central portions of the site would also fail to safeguard and enhance features of landscape value contrary to Policies CS1, CS9 and Policy PSP2.
9. An appropriate drainage strategy has not been submitted or agreed with the Lead Local Flood Authority, Wessex Water and the Developer to provide a positive outfall for the west catchment area and evidence has not been presented that positive outfall can be provided, contrary to Policy PSP21, Policies CS1 and CS9.
10. In the absence of a Section 106 legal agreement to secure the following:
  - a. On-site public open space and a contribution towards off-site sports facilities
  - b. The delivery of self-build or custom plots
  - c. Affordable housing of a suitable tenure mix and unit types
  - d. Highway works and travel plan
  - e. Public rights of way.

For reasons that the proposal fails to provide sufficient mitigation to address the impact of then development and is contrary to Policy T12 of the South Gloucestershire Local Plan (adopted) January 2006; and policies CS1, CS6, CS8, CS18, CS20 and CS24 of the South Gloucestershire Local Plan Core Strategy adopted 2013, the Affordable Housing and Extra Care SPD 2014.

11. The information submitted provides insufficient information detailing how carbon emissions will be reduced, how energy will be conserved, and how at least 20% of residual energy demand will be generated via renewable and/or low carbon energy sources. The application therefore does not comply with the requirements of Policy PSP6 and paragraphs 17 and 96 of the NPPF.
12. The archaeological information submitted as part of the Environmental Statement provides insufficient information. There is a requirement to provide a full Desk-Based Assessment of the site, along with the results of a geophysical survey (which has already been undertaken) and a LiDAR assessment of the site, including full visualisations, in line with Policy PSP 17.
13. Appropriate provision or contribution to Sports Facilities, as outlined by the requirements of Sport England has not been provided, contrary to the provisions of the NPPF Paragraph 73.