



The Planning Inspectorate

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# **Report to Cheltenham Borough Council**

**by Wendy J Burden BA DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date: 17 March 2020**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Cheltenham Plan 2011-2031**

The Plan was submitted for examination on 03 October 2018

The examination hearings were held between 13-15 and 26-28 February 2019

File Ref: PINS/B1605/429/2

## **Abbreviations used in this report**

AA	Appropriate Assessment
ANGst	Accessible Natural Greenspace Standards
AONB	Area of Outstanding Natural Beauty
CBC	Cheltenham Borough Council
CP	Cheltenham Plan
CPO	Compulsory Purchase Order
DtC	Duty to Co-operate
GCC	Gloucestershire County Council
G&T	Gypsies and Travellers
HRA	Habitats Regulations Assessment
IA	Integrated Assessment
JCS	Gloucester, Cheltenham and Tewkesbury Joint Core Strategy
LSE	Likely Significant Effects
LGS	Local Green Space
LP	Local Plan
MM	Main Modification
NPPF	National Planning Policy Framework (2012)
PGS	Public Green Space
PPG	Planning Practice Guidance
PPTS	Planning Policy for Traveller Sites
PUA	Principal Urban Area
SA	Sustainability Appraisal
SALA	Strategic Assessment of Land Availability
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment

## Non-Technical Summary

This report concludes that the Cheltenham Plan (CP) provides an appropriate basis for the planning of the Cheltenham Borough Council (CBC) provided that a number of main modifications [**MMs**] are made to it. CBC has specifically requested that I recommend any MMs necessary to enable the CP to be adopted.

The MMs all concern matters that were discussed at the examination hearings. Following the hearings, the Council prepared schedules of the proposed MMs and carried out sustainability appraisal of them. The MMs were subject to public consultation over a six-week period. In some cases I have amended their detailed wording and/or added consequential modifications where necessary. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Clarification and changes to policies and text to reflect national policy and legislation including development in the Green Belt; proposals affecting the Cotswold AONB; and issues relating to built heritage.
- Changes to the Employment Policies and accompanying text to reflect the evidence and to secure consistency with national policy.
- New policies and amended text to deal with the Cotswold Beechwoods Special Area of Conservation (SAC) in order to avoid any adverse effects on the integrity of the SAC.
- Changes to policies relating to land allocated for housing and mixed development to reflect the evidence and secure an effective and deliverable plan, and consequent changes and updating of housing tables and trajectory.
- Deletion of Policy GT1 to ensure consistency with government policy relating to Gypsies and Travellers.
- Changes to the policy on Local Green Space (LGS) and the Table listing the areas designated in the CP as LGS to bring the policy and allocations in line with national policy.

## Introduction

1. This report contains my assessment of the Cheltenham Plan in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (NPPF) 2012 (paragraph 182) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The revised NPPF was published in July 2018 and amended in April 2019. It includes a transitional arrangement in paragraph 214 which indicates that, for the purpose of examining this Plan, the policies in the 2012 NPPF will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Therefore, unless stated otherwise, references in this report are to the 2012 NPPF and the versions of the PPG which were extant prior to the publication of the 2019 NPPF.
3. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The CP was submitted in October 2018 and is the basis for my examination. It is the same document as that which was published for public consultation from February to April 2018.

## Main Modifications

4. In accordance with section 20(7C) of the 2004 Act CBC requested that I should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearings, are necessary. The MMs are referenced in bold in the report in the form **MM001**, **MM002** etc, and are set out in full in the Appendix.
5. Following the examination hearings, CBC prepared a schedule of proposed MMs and carried out sustainability appraisal of them. The MM schedule was subject to public consultation for six weeks from 4 November to 16 December 2019. I have taken account of the consultation responses in coming to my conclusions in this report. As a result I have made some minor amendments to the detailed wording of some MMs and added consequential modifications where these are necessary for consistency or clarity. None of these amendments significantly alters the content of the MMs as published for consultation or undermines the participatory processes and sustainability appraisal that have been undertaken. Where necessary I have highlighted these amendments in the report.

## Policies Map

6. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Council is required to

provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. In this case, the submission policies map comprises the set of plans identified as the Proposals Map to Cheltenham Plan Pre-Submission (Reg 19) as set out in SD002.

7. The policies map is not defined in statute as a development plan document and so I do not have the power to recommend MMs to it. However, a number of the published MMs to the Plan's policies require further corresponding changes to be made to the policies map.
8. These further changes to the policies map were published for consultation alongside the MMs [ED038c]. In this report I identify any amendments that are needed to those further changes in the light of the consultation responses.
9. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted policies map to include all the changes proposed and the further changes published alongside the MMs incorporating any necessary amendments identified in this report.

### **Sustainability Appraisal**

10. The CP has been the subject of sustainability appraisal (SA) and strategic environmental assessment (SEA) as part of an Integrated Appraisal (IA) [SD017]. The IA incorporates a Health Impact Assessment and Equality Impact Assessment and has been integral to the work on the plan from the beginning of the process. The work has built upon the approach taken in the assessments carried out for the JCS to ensure compatibility and continuity of assessments with more locally specific thresholds and criteria relevant to Cheltenham incorporated into the assessment for the CP.
11. The IA was informed by the best available information and data to deal with the impacts of the policies of the CP as a whole. In those cases where site specific impacts on, for example, biodiversity, flood risk issues and traffic flows would be more appropriately undertaken at planning application stage, MMs have been put forward where required to ensure that these detailed issues will be fully addressed at that stage [**MM004, MM011, MM012, MM014, MM015, MM016, MM017, MM018, MM023**]. I deal with the recommendations for these MMs in detail under the main issues below.
12. Potential site allocation options were investigated, tested through SA and were the subject of the IA Report which accompanied the Preferred Options Plan on consultation. In that way, relevant alternatives have been tested through the IA process in an iterative and ongoing way which has informed the plan making process.
13. A change was made to the emerging CP between the Preferred Options stage and the submission stage in order to introduce the allocation of a site for a secondary school at Leckhampton (Site MD5). The Leckhampton site had been assessed as a site for 350 dwellings in the early SA but following representations from the Gloucestershire County Council (GCC) MD5 was amended to a site for approximately 250 dwellings together with a secondary school allocation in the CP as submitted. The allocation for 250 dwellings

together with a secondary school in Policy MD5 as submitted was not therefore included within the original SA work on preferred options.

14. The changes to Policy MD5 were considered within the IA Report in November 2017. The implications of the changes were found to be not significant for the overall findings of the SA, and positive benefits in terms of the provision of educational capacity for existing and new communities were identified. Policy MD5 as submitted was the subject of public consultation at the Regulation 19 stage, and the proposal for 250 dwellings and a secondary school were discussed at the hearings.
15. The process of SA and SEA is an iterative one, and relevant evidence produced throughout the preparation of the CP contributes towards that process. I am satisfied that the work carried out up to and including the 2017 IA Report, together with the detailed appraisal work submitted to support the proposals for Policy MD5 in the submitted CP are sufficient to meet the requirements for the SA of the CP as submitted.
16. Following discussions at the hearings and in response to submissions from GCC, Site MD5 is now subject to **MM024** to provide for 350 houses within the original area of the allocation. The boundaries are extended to include land to the south of Kidnappers Lane which is in the ownership of GCC and which will provide for the new school and its playing fields. I deal with this MM in more detail later in my report.
17. An addendum to the Integrated Sustainability Appraisal to consider all the proposed MMs was published in July 2019 (ED038f) which concludes that they do not result in any significant effect.
18. I have reviewed the addendum and consider that together with the evidence submitted to the examination, including that submitted by GCC and the residential developers of site MD5, the CP as proposed to be modified has been the subject of a comprehensive process of integrated assessment. In that process appropriate reasonable alternatives have been considered and the SA/SEA is suitably comprehensive and legally compliant.

### **Habitats Regulations Assessment**

19. The Habitats Regulations Assessment (HRA) for the submitted plan presents the results of the screening and appropriate assessment (AA) stages of the HRA process.
20. The pre-submission Revised HRA report [SD013] has had regard to the judgement of the Court of Justice of the European Union issued on 12 April 2018 in relation to the screening stage of the HRA. The detailed screening of potential impacts against relevant European Site sensitivities or vulnerabilities was revised and the conclusion was reached that there were some Likely Significant Effects (LSEs) identified and AA was required.
21. AA has subsequently been carried out, and the LSEs in relation to air quality and disturbance from increases in recreational use on the Cotswolds Beechwoods SAC have been investigated. In consideration of the location and relatively small local size of the additional development proposed in the CP (in comparison with the level of development proposed in the JCS), and the

embedded policy mitigation through the JCS and CP, the AA stage of the HRA undertaken on behalf of CBC concluded that significant effects were unlikely since mitigation measures were in place.

22. However, Natural England (NE) raised concerns that there is no strategic understanding of where visitors come from and how they use the Cotswold Beechwoods SAC, no established zone of influence for recreational pressure, and no mitigation plan. Without this information, NE considered that it was not possible to reach a conclusion of no likely significant effects in relation to potential changes in air quality and from increased recreational disturbance on the SAC from the CP – alone or in-combination with other plans and projects. Accordingly, NE was unable to concur with the conclusions of the HRA and the SA/SEA.
23. Collaborative work is ongoing between the JCS authorities and NE in order to provide the information required to develop specific appropriate mitigation measures in relation to the potential for recreational impacts on the Cotswold Beechwoods SAC. Meanwhile NE required an interim policy in the CP to ensure that housing development coming forward as part of the CP meets the requirements of the HRA Regulations. Through new Policy BG1 [**MM011**] all development that leads to a net increase in dwellings is required to contribute to appropriate mitigation or provide information for a bespoke project level HRA.
24. Through the requirements of Policy BG1, significant adverse effects from recreational disturbance, alone or in-combination, from the CP on the Cotswold Beechwoods SAC will be avoided and NE has confirmed that their concerns have been met.
25. In relation to air quality issues, the Cotswold Beechwoods SAC lies within 200m of the A46 that links Cheltenham with Stroud. The HRA and SA/SEA investigated the impact of vehicle emissions through the application of updated guidance and noted that the SAC currently exceeds its critical loads and levels for nitrogen. With the lack of strategic understanding of where visitors come from and how they use the SAC, NE is concerned that there is the potential for increases in atmospheric pollution from vehicle emissions as a result of the proposals in the CP either alone or in-combination with other development plan proposals.
26. An interim safeguarding mechanism has been agreed between CBC and NE through new Policy BG2[**MM012**]. Any development proposal which is likely to generate additional traffic emissions which affect the Cotswold Beechwoods SAC must be investigated through the HRA process. Development proposals that may generate traffic along the A46 will be screened against the Habitats Regulations Assessment Framework in line with NE's guidance '*Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations (NEA001)*'. With this strengthening of embedded mitigation NE is satisfied that there will be no significant adverse effects from changes to air quality, alone or in-combination, from the CP on the Cotswold Beechwoods SAC.
27. I consider whether the implementation of Policies BG1 and BG2 are likely to affect delivery of residential development later in my report.

28. With the introduction of the two new policies through **MM011** & **MM012** I am satisfied that the requirement to undertake an HRA and AA in accordance with the regulations has been met, and that measures are in place to prevent any likely significant effects on the Cotswolds Beechwoods SAC.

## **Assessment of Duty to Co-operate (DtC)**

29. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council has complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
30. Cheltenham Borough Council has a history of cross boundary working having worked jointly with Gloucester City and Tewkesbury Borough Councils to produce the Joint Core Strategy (JCS) for the three Council areas. The JCS was adopted in December 2017. The three Councils have started working jointly on an immediate review of the JCS relating to housing supply and retail issues. Gloucester City and Tewkesbury Borough Councils have submitted a joint letter to indicate that the two Councils are supportive of the Cheltenham Plan.
31. Cooperation and engagement have been ongoing with Gloucestershire County Council and there have been a number of matters on which the two Councils have been working closely. These include the location of the new secondary school at Leckhampton.
32. All the Prescribed Bodies as listed in the Appendix to the Statement of Community Engagement were informed of the pre-submission consultation and representations were submitted. Issues raised in those representations which could potentially affect the soundness of the Plan have been addressed before and during the examination of the Plan.
33. I am satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the DtC has therefore been met.

## **Assessment of Soundness**

### **Background**

34. The CP will form a part of the statutory development plan together with the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS), the Gloucestershire Minerals and Waste Local Plans and any neighbourhood plans which are adopted up to 2031.
35. The JCS identifies the objectively assessed housing need (OAHN) for the three local authorities and identifies the distribution and the provision to be made for housing and employment land throughout the JCS area in Policy SP2. It identifies the strategic sites for development and sets out a suite of strategic development management policies on issues which include design, heritage and the provision of infrastructure, including transportation and flood risk management.
36. Table SP2a identifies the sources of housing supply within each local authority area. This includes the two urban extensions to Cheltenham which are



allocated within the JCS. The JCS identifies the potential for the "Cheltenham Borough Plan" to provide land for some 1,011 new dwellings.

37. As the "second tier" plan the CP must be consistent with and seek to deliver the policies and proposals of the JCS. As stated within the JCS, including at paragraphs 1.5, 3.1.17 and 3.1.18, the purpose of the CP is to provide more detailed and locally specific planning policies to guide decisions on planning applications and to identify local site allocations. Furthermore, the CP is to deliver "the individual district capacities identified through the JCS in accordance with the spatial strategy."
38. However, whilst a figure is given in Table SP2a for potential housing land to be provided in the CP, no such figure is set out in the JCS for the level of provision to be made for employment land in the CP. I return to this matter under Issue 1 below.
39. A number of the policies of the current Cheltenham Borough Plan Second Review (2006) have been replaced by policies within the JCS. The intention is for the remaining saved policies to be replaced by the policies of the CP when adopted, apart from policies which deal with retail development. Nevertheless, in view of my recommendation to delete a number of proposals for Local Green Space (LGS) from the CP, [MM026] CBC will continue to save Policy GE1 relating to Public Green Space pending a review of the CP or the production of a separate Development Plan Document [MM030]. The retail policies are subject to review jointly by the three local authorities rather than by the individual councils.

## **Main Issues**

40. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings, I have identified 5 main issues upon which the soundness of this plan depends. This report deals with these main issues. It does not respond to every point or issue raised by representors. Nor does it refer to every policy, policy criterion or allocation in the Plan.

### **Issue 1 – Whether the CP sets out a positively prepared strategy for employment which is consistent with the provisions of the JCS and national policy?**

#### *Requirement for employment land in the CP*

41. JCS Policy SP2 9 states that the JCS will make provision for at least 192ha of B Class employment land. At least 84ha of this provision is to be delivered on the Strategic Allocation sites identified in Policy SA1 of the JCS, and any further capacity is to be identified in the three District Plans. The level and distribution of residential development between the three JCS Councils is provided in Tables SP2a and SP2b of the JCS. However, there is no equivalent apportionment of the amount of employment land to be provided on non-strategic sites between the 3 JCS Councils.
42. An indication of the capacity of potential employment land supply is identified in para 3.2.21 of the JCS. The findings of the JCS economic update note of 2016 are quoted and an indicative availability of 1 ha is identified for

Cheltenham. In addition, employment related development in "the Principal Urban Area of Cheltenham" (PUA) is supported through JCS Policy SD1.

43. The JCS provides for flexibility in the allocation of employment land in para 7.1.9. It states that if monitoring indicates that delivery problems are emerging or that circumstances are changing in other ways, the JCS authorities will consider implementing measures to bring forward development which includes "*identifying alternative site(s) in general accordance with the distribution strategy of this plan --- which may be delivered through District Plans.*"
44. It is recognised in the JCS that Cheltenham cannot meet its development requirements within its administrative boundaries. Whilst new sites suitable for employment use which are within the PUA could be brought forward under JCS Policy SD1, the primary source of new employment land for businesses in the Cheltenham area is likely to be within the strategic allocations identified in the JCS. Evidence was put forward to the CP examination that there is a shortfall in suitable employment land to serve the Cheltenham market. However, there is no requirement for the CP to allocate land outside the PUA to meet any shortfall in demand for employment land. In the event of any significant shortcomings in employment land provision, I consider that these should be addressed at the strategic level through the review of the JCS.
45. The sites identified in the CP are located within the PUA in accordance with the strategy of the JCS. In the absence of any requirement in the JCS policies for the CP to provide for a specified level of employment land, or for additional land outside the PUA, I consider that the approach taken in the CP as modified to identify the availability of employment sites which lie within the PUA to be consistent with the provisions of the JCS and national policy

*The provision made in the CP for employment development*

46. In the submitted CP, Policy EM1 deals with existing employment land and buildings, whilst Policy EM3 has the title "New Employment Allocations". However, it became clear during the examination that the sites identified as new employment sites include land which has previously been in employment use (E1 and E2) or has a history of planning permission for employment use (E3).
47. In addition, three of the sites identified in EM3 have previously been identified as employment commitments in the Council's non-residential land use monitoring reports. In these circumstances, it is misleading to identify these sites as new employment allocations. Consequently, the plan as submitted would not be justified or effective in this regard and therefore unsound. Through a combination of the two policies, sites which are to be safeguarded as suitable for employment development are brought together under the heading "Employment Land and Buildings" [**MM002 and MM003**]. The new Policy lists the key employment land to be safeguarded and identifies sites as locations for new employment development without any suggestion that they are new allocations. MM002 and MM003 would provide clarity as to the status of the identified sites and avoid repetition. I recommend these modifications in order to ensure the effectiveness of the CP.

48. The emphasis of the CP employment strategy is to safeguard relevant sites and premises from inappropriate changes of use. In view of the constraints to new development within Cheltenham, I find this approach to be justified. However, provision is made in in the replacement policy [MM002] which would avoid the long-term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. An appropriate level of flexibility is included within the criteria against which new development would be assessed and identifies the "*exceptional circumstances*" in which alternative uses might be permitted. In this way I consider that the new Policy would deliver the employment strategy of the CP whilst securing a level of flexibility consistent with national policy as set out in NPPF paragraph 22.
49. Policy EM6 is deleted [MM005] since it replicates policy set out in the JCS and is not necessary to the CP.
50. The need to provide safe and accessible connections to the transport network for any employment development schemes is required through Policy INF1 of the JCS. No further policy requirement in the CP is necessary. For this reason I recommend reference to traffic mitigation measures in Policy MD3 be deleted [MM022].
51. Flooding issues are addressed in the CP as modified through the introduction of site specific requirements for Site E4 as advised by the Environment Agency [MM002, MM004].
52. On the first main issue, with the modifications to the employment policies set out above, I conclude that the CP provides for a positively prepared strategy for employment, reflecting the evidence base and consistent with the JCS and national policy as set out in the NPPF.

## **Issue 2 – Whether the CP makes provision for residential development in accordance with the requirements of the JCS and national policy**

53. Since it is recognised in the JCS that Cheltenham cannot wholly meet its development requirements within its administrative boundaries, collaborative working across local authority boundaries is required to meet the need for housing. In the event of a failure to deliver the five year housing land requirement arising from the policies of the JCS, it is for the review of the JCS to determine the up to date requirement for housing and how it should be met. In these circumstances it is not a matter for the CP to demonstrate the provision of a five year supply of housing land.
54. The provision for housing land in Cheltenham is set out in JCS Policy SP1. This identifies a housing requirement for at least 10,917 new homes over the period 2011 to 2031. JCS Table SP2a identifies the sources of housing supply in the JCS area which would provide some 11,092 dwellings. It lists the level of housing to be provided from completions, commitments, existing Local Plan allocations, a windfall allowance and the supply from strategic allocations, and includes the potential for a further 1,011 new homes to be provided through the CP.
55. Table 2 of the CP identifies the overall supply of housing to meet the requirement in the JCS. The Table in the submitted Plan does not have a base

date. As a modification to the CP it has been updated (now Table 1) to the position as at July 2019 to take account of more recent monitoring data and reflect the changes resulting from modifications to the CP. It includes housing completions at April 2018<sup>1</sup> [**MM013**]. The updated supply for the CP would provide some 11,632 dwellings for the period 2011 to 2031. With the further changes which I have made as a consequence of changing the mixed use allocation MD2 to a housing allocation (HD9), this includes allocations in the CP (as modified) made through Policy H1 for 583 homes [**MM014**], and through Policy H2 for 350 homes [**MM019**].

56. The availability and deliverability of the sites identified for housing in the CP have been tested through the examination process. Both Policy H1 and Policy H2 are modified to address issues relating to deliverability of the allocated sites. The modifications require a robust transport assessment for each of the allocated sites in H1 and H2 at planning application stage and draw attention to sites which require flood risk to be addressed. They also require sewerage infrastructure constraints to be addressed prior to the occupation of any development. In addition, some changes have been made to the level of provision to be made on sites listed under the two policies to reflect up to date information and site-specific modifications [**MM014, MM019, MM027**]. The trajectory for delivery of allocations and commitments (Table 10 in the submitted Plan) is updated [**MM028**] to take account of changes to the site allocation capacity figures and to update planning commitments.
57. For the residential development allocations, site specific requirements to deal with flood risk issues are added to Policies HD7, and MD4. Requirements relating to biodiversity, landscape setting and heritage environment issues are also included within Policies HD3, HD4, HD7, and HD8. [**MMs 015 – 018, MM023**] These MMs are necessary to ensure that the site allocations have been positively prepared and will be deliverable.
58. Policy HD4 provides for some 25 dwellings on land at Oakhurst Rise. **MM016** provides for a restriction to the area of the site to ensure that new development does not impact on the setting of adjacent listed buildings. A recent appeal decision for some 68 dwellings was found, among other issues, to materially alter the character and appearance of the site harmful to the setting of the listed buildings and to result in a loss of protected trees. The appeal was dismissed.
59. An allocation for some 25 dwellings would considerably reduce the potential for the harmful impacts which were identified in the appeal scheme. A more modest development would enable the interrelationships between the listed buildings, the site and the Ice House to be better addressed and to avoid any harmful impact on the setting of the listed buildings. It would also enable the retention of important trees within the site, and I have made a minor change to the wording of modified Policy HD4 to require the protection of mature trees. In view of the location of the site within the built-up area and the need for residential development within Cheltenham, I find that with an appropriate layout and form of development the issues raised as part of the appeal scheme could be satisfactorily addressed and the allocation is sound

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<sup>1</sup> The figures have been corrected following issues raised in response to consultation.

60. In relation to the sites allocated for mixed use development, there is some doubt as to the availability of site MD1 for residential development during the Plan period. Policy MD1 is therefore modified to allow for employment led regeneration which may include residential development, but the site is deleted from the housing trajectory since there is no certainty that it will contribute to the housing supply during the Plan period. **[MM020, MM028]**
61. It has become clear as a result of representations made to the MMs, that there is no reason to retain the reference to retail, healthcare and community facilities in Policy MD2. With no justification for this requirement, I am deleting its inclusion in the policy as modified **[MM021]**. Without this requirement, the site would be an allocation for residential rather than mixed use development. I therefore recommend changing the site to Policy HD9 and including the site under Policy H1. I make consequential modifications to Policy H2, to the subsequent site reference numbers **[MM014, MM019, MM022-028]** and to the figures in Table 1 as modified **[MM013]**. The modification will require a change to the annotation of the site at North Place and Portland Street and of the sites renumbered as MD2-4 on the Policies Map which can be done by the Council on adoption of the Plan.
62. The North Street and Portland Place site is identified in Policy HD9 (as modified) to accommodate approximately 143 dwellings. This level of housing appears to be the result of an earlier planning permission for 143 dwellings together with a large supermarket. However, the site comprises 2 ha of land within the Central Conservation Area and subject to careful design there may be scope for an increase in the number of houses in order to make full use of the site. As submitted, the policy does not restrict the level of housing to a figure of 143 dwellings. The final number of dwellings to be accommodated on the site can be a matter for negotiation at planning application stage and therefore I make no change to the Policy in this respect.
63. Turning to Policy MD5 Leckhampton, in my assessment of the SA and SEA of the CP (above) I have referred to the changes made to the site during the preparation, examination and subsequent modification of the CP. Leckhampton was initially identified for a strategic housing allocation in the JCS as submitted for examination. The strategic site for some 1,124 dwellings included land in Cheltenham and Tewkesbury, with some 764 within CBC. Planning permission was granted by Tewkesbury Borough Council for the land west of Farm Lane before the completion of the JCS examination and that development is now under construction. With regard to the land east of Farm Lane, within CBC, the Inspector considered that it should be removed from the JCS as a strategic site primarily in view of its proximity to the AONB and its landscape and visual sensitivity.
64. In her final report on the JCS the Inspector indicated that a reduced local allocation could be brought forward in the CP together with an area of Local Green Space (LGS) in Leckhampton. I address the allocation of LGS below. For the residential component, the JCS Inspector stated in her interim report that an allocation in the order of 200 dwellings might be reasonable. However, she did go on to state in her final report that this was *"only an approximation and intended to indicate a scale below the strategic threshold for the JCS. The final figures should be based on a full assessment of the area to provide the evidence base to underpin an appropriate allocation."*

65. At the preferred options stage of the CP the site was proposed for the development of 350 dwellings. This level of development within the original area of site MD5 was subject to full SA at that stage. Before the CP progressed to the submission version, representations were submitted from GCC concerning the need for a secondary school in the area. CBC amended the proposals for Site MD5 to accommodate a reduced level of housing (some 250 dwellings) together with a site for a new secondary school. This amended proposal for MD5 was subject to Regulation 19 public consultation and included within the CP as submitted for examination.
66. In the course of the examination it became clear that there was no certainty that a secondary school within the original MD5 allocation could be delivered. The allocated site is within the control of Miller Homes, who oppose its development as a school. The site is not therefore available for GCC as education authority to acquire without the use of Compulsory Purchase Order (CPO) powers. The option of using CPO powers has been considered, but GCC owns land immediately to the south of the MD5 proposal which could provide an alternative location for the school.
67. With the combination of opposition to the acquisition of the land from Miller Homes and the availability of a potential alternative site in GCC's ownership, it is unlikely that an application for CPO powers to purchase the school site within MD5 as allocated in the submitted CP would be successful. The NPPF requires proposals in Local Plans to be deliverable. Since there is no certainty that the school site in Policy MD5 as submitted could be delivered, Policy MD5 as submitted is not effective or justified and would be unsound.
68. There is an agreement between GCC and CBC that a new secondary school is required in the Leckhampton/Warden Hill area. The NPPF para 72 requires local planning authorities to take a proactive, positive and collaborative approach to meeting the requirements for new school places to ensure there is sufficient choice to meet needs. To ensure that the CP is positively prepared and meets objectively assessed infrastructure requirements I asked the Council to identify an alternative site which would be suitable and deliverable to meet the need.
69. The land owned by GCC south of Kidnappers Lane has been subject to an updated SA, it is suitably located, available and deliverable. The allocation of the land for a secondary school ensures that the CP has been positively prepared and is sound [**MM024**].
70. Through the relocation of the school to land south of Kidnappers Lane, land is released within the original Policy MD5 allocation for alternative use. It is proposed through **MM024** to increase the level of residential provision back to the figure of 350 dwellings which was considered at the Preferred Options stage and tested through SA at that time.
71. The provision of 350 dwellings within the original Policy MD5 site together with an extension to the south to provide a site for a secondary school has been the subject of full public consultation as part of the MMs consultation. It has also been the subject of further sustainability appraisal. I have considered the many representations made concerning the increase in housing numbers and the location of the new secondary school proposed at Leckhampton.

72. The level of housing as now proposed is less than 50% of the site for 764 dwellings considered by the Inspector at the JCS examination. The impact on the landscape and natural environment has been the subject of considerable evidence from both the developers of the housing site and from GCC. I accept that there would be a significant change in the character of the area in the vicinity of the proposals. However, residential development would be primarily concentrated in the area which both I and the JCS Inspector consider to be most able to accommodate it, and careful siting of the school buildings and playing fields south of Kidnappers Lane would ensure that its impact is mitigated through careful design and landscape treatment.
73. Transport issues are clearly a concern for local residents, but these have also been addressed by the developers and the GCC. In any event, any application for development of site MD5 must satisfy JCS Policy INF1 and CP Policy H2 as modified [**MM019**] which requires traffic impacts to be fully assessed at planning application stage.
74. The NPPF seeks to boost significantly the supply of housing. The importance of meeting the need for educational facilities and providing a choice of school facilities is also stated in the NPPF. In the circumstances of the CP, I consider that the proposed modification to Policy MD5 in **MM024** is fully justified and would ensure that the plan complies with national and JCS policies in these respects.
75. In conclusion on this housing issue, having regard to the modifications proposed to Policies H1 and H2, and the changes to be made to site specific policies to address detailed issues relating to the deliverability and criteria for the development of individual allocations, I am satisfied that the CP as modified identifies a supply of housing land in accordance with the requirements of JCS Policy SP1 and is sound.

### **Issue 3 – Do the policies of the Cheltenham Plan in relation to the Green Belt and to the allocation of Local Green Space comply with national policy?**

#### *Green Belt*

76. As submitted, Policies GB1 and GB2 do not fully accord with the NPPF's approach to the Green Belt. In order to rectify this, it is necessary to delete the reference in Policy GB1 to named locations and replace it with a description of the type of locations in which limited residential infilling would be permitted in order to ensure that a consistent approach is adopted across the plan area. **MM006** would do this and so I recommend it for consistency with national policy and for effectiveness.
77. I also recommend that Policy GB2 criteria d) be modified to ensure that it is realistic in its requirements and complies with the NPPF [**MM007**].

#### *Local Green Space (LGS)*

78. In my post hearing advice note I set out my concern that the CBC's methodology and overall assessment for LGS designation in the submitted CP was not sufficiently rigorous to comply with the criteria set out in national policy and guidance.

79. The NPPF sets a significantly high bar for LGS designation given that paragraphs 76-78 state that it "...will not be appropriate for most green areas or open space"; that on such sites new development is ruled out "other than in very special circumstances" and that they are to be managed in line with Green Belt policy.
80. Care is required to ensure that LGS policies are not misused. Whilst it is a consequence of the successful designation of a site as LGS that it will be protected from future development, that should not be the primary reason for seeking the designation. The aim of the policy is to protect areas of particular importance to local communities and there is nothing in the NPPF which describes their use for the strategic containment of settlements or as a strategic designation to protect the countryside.
81. The Council's LGS Study Report, refers to the "threat of development" as an example of the factors to be considered by communities when assessing possible LGS sites, whereas the primary reason for designation should be that the site is of such demonstrable significance to the local community that it should be protected. The use made of Natural England's Accessible Natural Greenspace Standards (ANGSt) in the LGS Study, and comparisons of the scale of LGS to that of SSSIs depart from the criteria set out clearly in national policy and guidance.
82. In the CP as submitted, there is much in the approach to LGS designation which fails to meet the tests of soundness. The wholesale inclusion of former Public Green Space (PGS) in the 2006 Local Plan (LP) without any consideration as to whether every PGS would meet the high bar for designation as LGS set out in the NPPF and in the associated PPG is neither justified nor consistent with national policy.
83. Given the particular qualities required to support LGS designation, each of the PGS sites needs to be assessed before the new designation can be justified. To avoid delay in the examination of the CP, CBC has indicated in modified paragraph 16.15 [**MM026**] that Policy GE1 of the 2006 LP will continue to be saved [**MM030**] such that PGS sites which have not been individually assessed and justified against LGS criteria will retain the protection of that policy. A full assessment of the remaining PGS sites is intended to be undertaken in the review of the CP. Existing PGS which have been deleted as LGS designations include sites 12 – 61, 63, and 66-82 in submitted Table 8. PGS sites for which LGS designation has been justified include Table 8 sites 62, 64 and 65 [sites **12**, **13** and **14** in **MM026**].
84. There are sites proposed for LGS in the submitted CP which have established uses which are subject to other policy protection. Before putting these sites forward as LGS, consideration should be given to whether the additional designation is justified. For example, the designation of sports pitches and playing fields as LGS is useful where the specific facility is intended to be retained in that location and serves a special purpose for the local community. However, if there is a possibility of alternative or better facilities being provided in the future then the LGS designation would be inflexible and para 97 of the NPPF would provide a more appropriate form of protection. The Victoria Cricket Ground (submitted Table 8 site 9) is an example of a sports



field where designation as LGS is not justified and I recommend its deletion from the list [**MM026**].

85. Other proposed designations which have been removed include sites 10, 83, 84 and 86 in the submitted Table 8 since there is insufficient evidence to justify the designation of these sites as LGS.
86. Site 86 in submitted Table 8 is a proposal for 18.25 ha of LGS on land adjoining the West Cheltenham Strategic Allocation. However the masterplan and development strategy are not yet complete, and CBC has indicated that it wishes to delete the designation from the CP. JCS Policy A7 indicates that the provision of LGS will be included within the masterplan and development strategy for West Cheltenham. Since there is no requirement for the LGS to be designated in the CP for the CP to be consistent with the JCS, I recommend the deletion of the designation.
87. In the submitted CP, Site 1 Leckhampton Fields includes some 39.31ha and the Site 8 adjacent to the North West Strategic Allocation and to Swindon Village includes some 24.5ha. NPPF Paragraph 77 sets out criteria which should be applied to green areas considered for designation as LGS. These include a requirement that the area is "*local in character*" and "*not an extensive tract of land*". There is no definition of either of these requirements in national policy or guidance, but I consider that the two proposals are both substantial in area.
88. To designate areas of land of this scale as being "*local in character*" does require a robust justification in order to be sound. In view of my concerns as to the methodology adopted in the assessment of LGS sites, I asked for a review of the scale and locations of these two LGS designations to be carried out.
89. I have considered a further report on LGS (ED038g) which CBC has produced and I have also considered all the representations submitted for and against the designation of LGS in these locations. For the reasons which I set out below, I recommend modifications to reduce the scale of the LGS at Leckhampton to 26.4ha, and the Swindon Village LGS to 21.6ha. The reduction in the scale of the Leckhampton site is largely a result of the removal of the site for the secondary school from the LGS as submitted. These designations are sites 15 and 16 in the modified Table 7 [**MM026**].
90. I have considered all the evidence provided in support of LGS of this scale for each of the two locations and I consider **MM026** to be justified for the following reasons.
91. Both areas were considered by the Inspector at the JCS examination to be appropriate for designation as LGS in the context of the provision of a substantial level of housing on adjacent land. Nevertheless, the boundaries for the LGS fall to be determined through the CP, and the area selected must accord with national policy and advice.
92. The designation at Leckhampton as modified forms a large part of the undeveloped area which would remain between the land allocated for 350 new dwellings and the secondary school in Policy MD5 as modified, the residential development which is currently under construction west of Farm Lane, and the

existing built up area. As the remaining area of fields and meadows to the south and east of the enlarged site MD5 and the housing west of Farm Lane it would form a green wedge into the built up area on the fringes of south west Cheltenham.

93. Located in the foreground of the North Cotswolds AONB there are attractive views into and out of the AONB from Leckhampton Fields. The area provides for informal recreational activity through its network of public footpaths which combine walking loops with the opportunity for the enjoyment of nature and views towards the AONB. For both existing and future residents it would provide an attractive green space between the development sites, existing housing and the AONB south of Church Road.
94. As the remaining area of land which is not proposed for development in this location, I can understand that it is of particular significance to the local community both for its attractive rural character on the edge of the AONB and for its opportunities for informal recreation. The designation as LGS would secure for existing residents the benefits of having this accessible and undeveloped area of land immediately adjacent to their community. Whilst the character of much of the proposed designation is typical of undeveloped land located within the urban fringe, any reduction of the area into discrete chunks of LGS would undermine the continuity and quality of the recreational experience.
95. In the particular circumstances of Leckhampton, I consider that an LGS designation of this scale as modified by **MM026** is justified since it is located within the remaining area of undeveloped land immediately adjacent to and visible from the AONB, it is accessible to the local community for informal recreation and has been demonstrated to be of particular significance to the local community.
96. The North West Cheltenham strategic allocation is identified in the JCS for in excess of 4000 new homes under Policy A4. That policy requires a green infrastructure network of approximately 100ha to be included within the allocated site. The indicative site layout for North West Cheltenham as shown on the adopted Policies Map, also identifies the "*Swindon Village Green Buffer/Indicative Local Green Space area for allocation in the Cheltenham Plan*" This lies outside the boundaries of the strategic allocation, and is largely reproduced for designation as LGS in the submitted CP.
97. In my post hearing advice note I raised concerns that the area proposed as LGS in the submitted Plan would constitute an extensive area of land which would not be in accordance with national policy unless there is a robust justification for its designation. I advised the Council to consider a reduction in the scale of the LGS to that area of 7.2ha which was subject to an earlier agreement between Swindon Village Parish Council, Save the Countryside and Bloor and Persimmon homes. In response, CBC has carried out a detailed assessment of the various component parts of the original proposal and put forward an amended area of some 21.6ha.
98. There is clearly a requirement in the JCS to maintain a green space between the strategic allocation at North West Cheltenham and Swindon Village, the indicative location of which is shown on the JCS Proposals Map. Apart from the

designation of LGS, there is no indication on the Map as to how the green buffer might otherwise be secured. The importance of providing for an area of protected open space is reinforced by Policy INF3 of the JCS which refers to the delivery of a series of "linked green corridors" across the JCS area including sports fields and other forms of open space such as LGS.

99. Swindon Village is a historic settlement originally defined by its setting within a rural, agricultural area. The designation of the LGS as amended would maintain the green setting of the village to the west, north and east and include examples of the ridge and furrow fields which reflect the agricultural heritage of the area. It would provide an important green area easily accessible for informal recreation, as well as an area of tranquillity with views out towards the Cotswolds and Malvern Hills. It would secure an area for informal recreational and amenity for the existing community and ensure that the character and identity of the village is not lost as a result of the large area of new development allocated at North West Cheltenham.
100. In view of the extensive area proposed for development at North West Cheltenham, the designation of a significant area of LGS would be consistent with sustainable development in the area and would complement the investment in sufficient homes. Although the 21.6ha area proposed for LGS is a large area of land, it is demonstrably special to the existing local community, and holds a particular local significance in providing a green buffer between Swindon Village and the development of 4000 new homes to the north west. In all these circumstances I consider that the designation of the area through **MM026** is consistent with the JCS and justified.
101. The PPG states that landowners should be contacted at an early stage about proposals to designate any part of their land as LGS and have opportunities to make representations. Submissions indicate that a number of landowners were unaware of the potential designation of their land as LGS. However, as a result of the examination process, landowners have now had an opportunity to make their views known and I have taken them into account in reaching my conclusions.
102. With the modifications to Policies GB1 and GB2, together with the modifications to the LGS designations through **MM026** I find that with the CP would be consistent with the JCS and with national policy in relation to the Green Belt and to the allocation of Local Green Space.

#### **Issue 4– Whether the policies of the CP which deal with the natural and built environment comply with national and JCS policies**

##### *Biodiversity*

103. The CP has been subject to HRA and AA in addition to SEA. Issues have been identified by NE relating to LSEs on the Cotswold Beechwoods SAC arising from the proposals in the CP in combination with other development plan proposals. I have set these out in the section on HRA above. NE is satisfied that the issues concerning impacts from recreational pressures and increases in vehicle emissions are addressed through new policies BG1 [**MM011**] and BG2 [**MM012**].

104. New Policy BG1, [**MM011**] is inserted in the modified CP as a safeguarding mechanism and interim policy. This will ensure that proposals for housing development in CBC meet HRA requirements whilst a mitigation and implementation strategy is being developed by the relevant partner authorities. Each proposal for housing development will be required to make an assessment of the potential for recreational impacts on the Cotswolds Beechwoods SAC and where any LSE is identified, proposals for mitigation will be required to enable the development to proceed. Once the mitigation and implementation strategy is in place, the Policy will require new development to contribute to the mitigation which is specified in that strategy.
105. With regard to traffic levels and pollution, new Policy BG2 [**MM012**] provides a safeguarding mechanism whereby development proposals that may generate traffic along the A46 will be screened against the Habitats Regulations Assessment Framework in line with NE's guidance '*Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations (NEA001)*'. Where any LSE is identified, measures will be required to mitigate any harmful effects.
106. With Policies BG1 and BG2 in place, provision is made for the residential allocations in the CP to be delivered in advance of the further work which is currently being carried out by the relevant group of Local Authorities to produce a comprehensive mitigation strategy. This will enable residential development to be delivered while the collaborative work is being undertaken.
107. With regard to the HRA and the AA of the CP, the advice of NE has been followed in regard to the modifications which address the potential for LSEs on the Cotswold Beechwood SAC. The modifications put in place under **MM011** and **MM012** meet the requirements of NE and I am satisfied that they provide appropriate and effective measures to secure the safeguarding of the Cotswold Beechwoods SAC in terms of recreational impacts and increases in traffic pollution without compromising the delivery of residential development.

*Natural Environment and Cotswolds Area of Outstanding Natural Beauty (AONB)*

108. In reference to the natural environment in the Theme C Objectives of the CP, there is no reference to the important local characteristics of the Borough, including the Cotswolds AONB. To ensure that the CP is positively prepared to reflect the quality and character of the natural environment of Cheltenham and its rural surroundings, I recommend **MM001** to modify paragraph 2.9b of the Theme C Objectives of the CP.
109. JCS Policy SD7 provides for the management of development within the AONB. The CP as submitted refers back to the NPPF and to this policy and then seeks to provide a limit to any increase in the size of dwellings in the AONB to that permitted by the *Town and Country Planning (General Permitted Development) (England) Order 2015* (GPDO). This requirement is in the text (para 8.4-8.5) of the CP rather than in a policy, but it does imply a restriction on residential development in excess of that set out in the GPDO. Without robust justification for such an additional level of restraint, the text requires modification in order to be consistent with national policy. **MM008** modifies the text to ensure that it accords with national and JCS policies.

### *Heritage Assets*

110. Buildings of local importance and non-designated heritage assets are subject to Policy HE1 in the CP. **MM009** modifies the policy to ensure that it accords with paragraph 135 of the NPPF.
111. As submitted the CP identifies proposed changes to the Conservation Areas in the Borough, and proposals for new Conservation Areas. However, the Conservation Area Character Appraisals and Management Plans have not been finalised to support these proposals. CBC now intends to pursue the various proposals identified in the CP through separate procedures, with the production of a Supplementary Planning Document (SPD). In the absence of evidence to justify the review of Conservation Areas in the CP, I recommend **MM010** to modify paragraph 9.21 and delete paragraphs 9.22-9.30 and Table 1 which deal with this matter.
112. With the modifications which I have identified, I consider that the policies of the CP which deal with the natural and built environment comply with national and JCS policies and are sound.

### **Issue 5 – Whether there are any other matters which require modification in order for the CP to comply with Government Policy.**

#### *Gypsies and Travellers*

113. In the submitted CP, it is proposed to meet the future needs of gypsies, travellers, and travelling showpeople through the allocation of a site for 3 pitches at Castle Dream Stud (Policy GT1). The site was granted a temporary and personal retrospective planning permission as a Gypsy and Traveller (G&T) site on appeal<sup>2</sup> in 2011. The CBC has renewed the temporary and personal permission for this use, most recently in 2017.
114. The site is in an attractive rural location outside any settlement and within the Cotswolds AONB. In reaching the decision in the appeal, the Inspector stated that the change of use to a G&T site had already resulted in and would cause further visual harm to the AONB contrary to local and national policies. The appeal was allowed because there was no alternative provision and because of the appellants' personal circumstances.
115. National policy is set out in "Planning Policy for Traveller Sites" August 2015 (PPTS). The allocation of private traveller provision such as Castle Dream Stud in local plans is encouraged, but the need for the provision must be balanced against the requirement to conserve the landscape and scenic beauty of the AONB as stated in paragraph 115 of the NPPF. Furthermore, the site is poorly related to education and other services since there are very few bus services in the area and access can only be gained along a winding and narrow unlit country lane.
116. In the absence of any alternative and more appropriate provision, it may be reasonable to allow the temporary and personal use of the site by its current

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<sup>2</sup> APP/B1605/C/11/2149170 and 171, APP/B1605/C/11/2149172 and 173, APP/B1605/A/11/2149169

occupants, but in view of its very harmful location and poor relation to services and infrastructure, it should only remain in such use until less harmful sites may be identified through the development plan process.

117. The Council has indicated that no suitable alternative sites were put forward as a result of their Strategic Assessment of Land Availability (SALA). However, I am not convinced that the Council has been sufficiently proactive in its search for sites to conclude that there is no alternative to Castle Dream Stud.
118. The current need for traveller sites is met on a temporary basis and this provides the opportunity for CBC to take a proactive approach to seeking a long term solution, having regard to the policy set out in the PPTS. Meanwhile the criteria based Policy SD13 in the JCS will provide the basis for the determination of future planning applications.
119. I recommend that Policy GT1 is deleted and the supplementary text is changed through **MM025** in order to be consistent with national policy and for the CP to be sound.

#### *Delivery, Monitoring and Review*

120. No target was included for the first objective in Table 14 of the submitted CP. In order to ensure that achievements against the objective can be effectively measured, Table 14 is amended to Table 13 and **MM029** introduces a target for monitoring.
121. With my recommended modifications as set out under Issue 5, the CP is consistent with JCS and national policies.

## **Assessment of Legal Compliance**

122. My examination of the legal compliance of the Plan is summarised below.
123. The Local Plan has been prepared in accordance with the Council's Local Development Scheme.
124. Consultation on the Local Plan and the MMs was carried out in compliance with the Council's Statement of Community Involvement.
125. Sustainability Appraisal has been carried out and is adequate.
126. The Regulation 19 Habitats Regulations Appropriate Assessment Screening Report November 2017 was revised in July 2018 and an AA was carried out. It was found that the CP may have some negative impact which requires mitigation and this mitigation has been secured through MMs to the CP [**MM011 and MM012**].
127. Together with the policies of the JCS, the CP will ensure that the development and use of land in the local planning authority's area will contribute to the mitigation of, and adaptation to, climate change.
128. The Local Plan complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

129. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has included my consideration of several matters during the examination including the provision of traveller sites to meet need. I agree the findings of the screening assessment that found the CP is unlikely to have negative effects on protected characteristics or persons identified under the Equality Act 2010.

## **Overall Conclusion and Recommendation**

130. The Council has requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that with the recommended main modifications set out in the attached Appendix the Cheltenham Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*Wendy Burden*

Inspector

This report is accompanied by an Appendix containing the Main Modifications.

