

**APPEAL BY CALA HOMES (MIDLANDS) LIMITED**

**LAND PARCEL 0088, WILLOW BANK ROAD,  
ALDERTON, TEWKESBURY, GLOUCESTERSHIRE**

**DEVELOPMENT OF UP TO 28 DWELLINGS,  
INCLUDING MEANS OF ACCESS AND LANDSCAPING**

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**CLOSING SUBMISSIONS ON BEHALF OF  
THE APPELLANT**

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1. These closing submissions address the 4 main issues that have been identified for determination in this appeal<sup>1</sup>. They also address the outcome of the planning balance.
  
2. There is no dispute as to the planning balance to be applied in this case. All parties agree that the appeal is to be determined by reference to the tilted balance at §11(d) of the Framework<sup>2</sup>. Accordingly, the appeal should be allowed and planning permission granted

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<sup>1</sup> as set out at §10 of the note of the CMC.

<sup>2</sup> as set out in Mr Hutchison's proof, and as confirmed by Mr Instone (in XX).

unless any harm generated by the proposals significantly and demonstrably outweigh the Appeal Scheme's benefits<sup>3</sup>.

3. The Council accepts that the tilted balance is engaged in this case because it is unable to demonstrate an adequate supply of land for housing<sup>4</sup>. On either main party's case (Appellant – 2.08 years, Council – 4.35 years), there is a shortfall. That shortfall is substantial. The inspector and Secretary of State described that level of shortfall as substantial when considering an appeal proposal in Fiddington<sup>5</sup>. There is no reason why any other description should be applied to that level of shortfall now.
4. The requirement to demonstrate a 5YHLS in accordance with §73 of the Framework is the central development management tool for meeting the Government's policy for achieving a significant boost in the supply of land for housing<sup>6</sup>.
5. Given the well-recognised and persistent housing crisis, the need to achieve a significant boost in the supply of land for housing remains at the heart of Government policy.
6. 3 additional points fall to be made at this stage.

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<sup>3</sup> In the cross-examination of Mr Hutchison, the Council was keen to make the point that the Appellant accepts that the Appeal Scheme conflicts with the Development Plan when read as a whole (there is an accepted breach of SD10, and SP2 insofar as the Appeal Site is not allocated and falls outside a settlement boundary). However, given that Mr Instone accepts that the tilted balance is determinative of the appeal, the simple fact of policy breach does not take the Council anywhere. We address the weight attaching to that policy breach as part of the tilted balance below.

<sup>4</sup> In addition, the Appellant contends that the tilted balance is engaged because some of the most important policies for determining the appeal are out of date in their own right. Mr Hutchison sets those reasons out in respect of Policy SD10 in his proof including, in particular, at page 17 where he makes the point that the Council has still not made any allocations in order to meet its housing requirement some 3.5 years after adoption of the JCS, and that the existing settlement boundaries were carried forward from the 2006 Local Plan and were never designed to accommodate a requirement of circa 9,900 dwellings.

<sup>5</sup> CD I8. In that case housing land supply was assessed at 2.77 years (appellant), and 4.3 years (council). The inspector recorded that both parties (i.e. including the Council) agreed that the shortfall is substantial (§53 of the inspector's report). The SoS agreed with that assessment (§16 of the SoS's decision letter). We address the weight attaching to the provision of housing against that assessment of shortfall in the Fiddington decision below.

<sup>6</sup> at §59 of the Framework.

7. First, there is no support in policy (or elsewhere) for delaying the achievement of an adequate supply of land for housing whilst a local planning authority pursues an emerging development plan.
8. Secondly, and related to that point, in the absence of an adequate supply of land for housing, the triggering of the tilted balance<sup>7</sup> is designed to achieve the release of sites that would not otherwise achieve a consent (e.g. because they are not allocated in a development plan). As a matter of generality, the operation of the tilted balance (because there is no 5YHLS) will almost certainly mean that unallocated sites are granted planning permission. That does not mean to say that the development of those sites is unsustainable nor does it mean that any unallocated site should receive consent. As long as harm does not significantly and demonstrably outweigh benefits, then such schemes are sustainable and acceptable.
9. Thirdly, the operation of the tilted balance in accordance with paragraph 11 and footnote 7 of the Framework is clear. In circumstances where there is no 5YHLS the most important policies for determination of the application are deemed out of date. As is set out below, Mr Instone's evidence proceeded on an erroneous basis that "housing policies" are deemed out of date as a result of the Framework's provisions<sup>8</sup>. He accepted (in XX) that proper application of the Framework means that all of the most important policies to the appeal are deemed out of date.
10. For the avoidance of any doubt, that does not mean that such policies are rendered irrelevant. They remain relevant, and the task of attributing weight to them (and any conflict with them) has to be determined. However, as recognised by the Supreme Court in the Hopkins Homes judgment<sup>9</sup>, in circumstances where there is an inadequate supply of land for housing, application of restrictive policies with full rigour (i.e. "full" weight) risks frustration of the objective to significantly boost the supply of land for housing.

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<sup>7</sup> in accordance with footnote 7 within the Framework.

<sup>8</sup> §3.9 of his proof. As a result of his erroneous approach, and by way of example, he proceeded on the basis that the policies of the Neighbourhood Plan were not out of date (see e.g. his §3.11). That is wrong and has undoubtedly affected the weight he has given to relevant policies in his planning balance (including SD10 and SP2 of the JCS, and H1 of the NP).

<sup>9</sup> referenced in the Appellant's opening submissions on p4, footnote 7.

### **Issue 1: Is the Appeal Site an Appropriate Location?**

11. There is an agreed breach of Policies SD10 and SP2 of the JCS.
12. The Appeal Scheme conflicts with those policies because it is located outside of Alderton's settlement boundary, and;
  - Policy SD10 makes provision for only limited categories of development to be permitted on unallocated sites<sup>10</sup>, and,
  - Policy SP2 similarly only makes provision for the housing within the service villages of Tewkesbury to be provided on allocated sites<sup>11</sup>.
13. The Appeal Scheme receives no support from Policy H1 of the Neighbourhood Plan ("NP")<sup>12</sup>.
14. We return to the weight attaching to the agreed conflicts with policy in addressing the planning balance in the concluding section of these submissions.
15. The fact that the Appeal Site is located outside of a settlement boundary does not mean that it is an inappropriate location for new development. If that was the case;
  - (i) it is unlikely that planning permission would ever be granted for housing development on sites outside but adjacent to a settlement boundary even where there is a shortage of housing land, and the tilted balance is engaged, and,
  - (ii) the whole point of the tilted balance (and the central objective of achieving a significant boost in housing land supply) would be frustrated.

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<sup>10</sup> at paragraphs 3, 4, and 5 of the Policy.

<sup>11</sup> at paragraph 5 of the Policy. It also takes the reader back to Policy SD10 (at §6 of SP2) in dealing with development in, "the remainder of the rural area" (i.e. land outside of settlements).

<sup>12</sup> Whilst there is no express prohibition on development outside of the settlement boundary in Policy H1, it is readily apparent that the Policy provides no support for such development.

16. Nor does it mean that the Appeal Scheme is contrary to the spatial strategy of the JCS. In terms of the distribution of development, the JCS states (within Policy SP2, §5) that “in the order of 880 new homes” will be accommodated within the Borough’s service villages.

17. It does not impose a cap.

18. It is apparent that the Council is promoting a position, including through its emerging Borough Plan, whereby the service villages will accommodate over 1,000 dwellings<sup>13</sup>. The Council is satisfied that such an approach is;

- (i) sustainable (in terms of the pattern of development, as well as in all other respects), and,
- (ii) consistent with the spatial strategy of the JCS.

If it was not so satisfied, it would not have promoted the emerging Borough Plan.

19. Mr Instone expressly agreed (in XX), that the addition of 28 dwellings at Alderton would not result in an unsustainable pattern of development.

20. On that basis alone, there is no warrant for a finding that, by reference to the spatial strategy of the JCS, the appeal site is an inappropriate location for development.

21. However, additional points fall to be made by reference to the JCS;

- the 880 figure given in SP2 of the JCS is not a maximum,
- service villages are clearly identified as a suitable location for significant new development in order to contribute the provision of housing in an effort (albeit unsuccessful) to meet the JCS housing requirement,

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<sup>13</sup> including completions, commitments, and draft allocations in the emerging Borough Plan. Within Core Document F7, the figure for service villages delivery is given as 1,088 dwellings (at Table 6).

- Alderton is no exception, and it is agreed that the Appeal Site is in a locationally sustainable position<sup>14</sup>,
- similarly, there is no dispute that the services and facilities available within Alderton have sufficient capacity to cope with any additional demand generated by the Appeal Scheme, and,
- the Council agrees that with or without the Appeal Scheme, Alderton would remain within the JCS category of service village.

22. Accordingly, there is no policy or other basis within the Council's JCS (and which contains the spatial strategy) on which it could be concluded that the Appeal Site comprises an inappropriate location for development.

23. In light of that, the Council falls back on an argument that appears to spring from the Housing Background Paper dated October 2019 ("HBP") and produced as part of the evidence base for the emerging Borough Plan<sup>15</sup>. The HBP performs an exercise of disaggregation of development between rural service centres and service villages.

24. In addition, it recognises that the retention of services within those service villages is, in part, linked to the size and distribution of the resident population, and that it is important that the services remain viable<sup>16</sup>. That comment is pertinent to Alderton in light of the fact that;

- Alderton's primary school faces a dangerously low level of pupils (according the Parish Council's own assessment)<sup>17</sup>, and,
- the Council accepts that the Appeal Scheme will generate the potential for additional use of local services<sup>18</sup> (including local spending in the village shop).

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<sup>14</sup> amongst other things, confirmed by the unconditional withdrawal by the Council of its 7<sup>th</sup> reason for refusal, but see also §'s 8.46 and 8.47 of the Planning SoCG.

<sup>15</sup> CD E7.

<sup>16</sup> at §2.12.

<sup>17</sup> and further, without the pupils generated by recent new development (which the Parish Council estimate to be around 15), would have faced a more perilous situation.

<sup>18</sup> §8.66(4) of the Planning SoCG.

25. In any event, the HBP is;

- (i) only the Council's starting point (as part of the Borough Plan process) for distributing development amongst the service villages<sup>19</sup>, and,
- (ii) represents a "top-down" approach to that exercise, recognising that a "bottom-up" process needs to be followed in order to identify sustainable sites within settlements.

26. Accordingly, the 53 dwellings referred to in the context of Alderton within the HBP<sup>20</sup>;

- is not a housing need figure for Alderton. There has been no assessment of Alderton's local housing need in any context,
- is not a policy requirement for housing in Alderton. There is no policy requirement for housing in Alderton, and,
- does not represent a policy or any other sort of cap on the provision of new housing in Alderton.

27. The clear conclusion in respect of the Appeal Site, by reference to the spatial strategy of the Development Plan, and all other relevant factors, is that it comprises an appropriate location for development.

#### **Effect on Alderton's Well-Being/Cohesion, and Mixed and Balanced Communities**

28. The NP confirms that Alderton enjoys a strong sense of community<sup>21</sup>. That state of affairs is confirmed by the Parish Council's own representations to this inquiry.

29. The NP was produced after planning permissions had been granted for development at Beckford Road and Fletcher Close. The position of the Parish Council at the inquiries into those developments was that they would harm social cohesion within the village.

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<sup>19</sup> at §4.7.

<sup>20</sup> At §11.8.

<sup>21</sup> see the Vision Statement at p26.

30. There is no evidence that any such harm has been caused.
31. Similarly, the fact that the community proceeded with the production of the NP demonstrates that those new developments did not undermine efforts to produce that Plan.
32. Accordingly, experience following the new development in the village provides a clear demonstration that social cohesion and well-being in the village is not harmed as a result of that development.
33. There is no evidence to demonstrate that the construction of an additional 28 dwellings on the Appeal Site will generate any other effect.
34. The Council certainly produces no evidence<sup>22</sup>, and the Parish Council's evidence appears to be directed more at the question of lack of enhancement of social cohesion, as opposed to harm to social cohesion. The focus of the Parish Council's case is the complaint that residents of new development are unlikely to engage in community activities to the same extent as residents of existing development<sup>23</sup>.
35. That is not harm.
36. In addition, the Parish Council's position is not that there is no engagement, but that integration takes time. The Parish Council's SoC (at §A31) confirms that it is no part of its case that better integration will not take place, but rather that it takes time.
37. It must be borne in mind that, once constructed, the Appeal Scheme will be present for decades. Much of Alderton is 20<sup>th</sup> century housing (that has now been in place for several decades) and nobody suggests that the residents of that housing have failed to integrate (let alone causing damage to the social cohesion of the village).

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<sup>22</sup> Instead, the Council falls back onto the Parish Council's evidence, or alternatively maintains that in simple percentage terms, the growth in Alderton is too great. The percentage level of increase in itself says nothing about actual harm. In any event, other service villages have and will be accommodating greater levels of growth than Alderton (see Mr Hutchison's Table 1 on p30).

<sup>23</sup> In fact the Parish Council's evidence shows that there has been some engagement, including the fact that some new residents send their children (around 15 of them) to the local primary school.

38. Reference is made to impact on social cohesion in the 4 previous appeal decisions for development proposals in Alderton (at CD A1-A4). Those 4 appeal decisions were produced in quick succession, and relate to a period where a significant number of new dwellings were being proposed over a short period. Even then;

- (i) the inspector in the Beckford Road appeal (CD I1) devoted a sentence to the issue<sup>24</sup> noting that a substantial increase in dwelling numbers without a proportionate increase in services and infrastructure could risk eroding community cohesion. It is no part of the Council's (or Parish Council's) case that services and infrastructure would be unable to cope with the Appeal Scheme;
- (ii) the inspector in the Willow Bank Road appeals (CD I2 and I3) gave no more than a moderate level of weight to the concern. In the event, and with the benefit of experience following its completion, there is no evidence that the Fletcher Close development has caused harm to the social cohesion and well-being of Alderton, and,
- (iii) the inspector in the St Margarets Drive appeal (CD I4) gave his concern significant weight, including on the basis that the Parish Council's evidence stated that a number of residents would sell up and leave the village<sup>25</sup>. There is no evidence at all that any residents left the village as a result of recent development, and the Parish Council makes no such suggestion in respect of the Appeal Scheme.

39. A much more recent decision (at CD I17) concerning development at Gotherington confirms that gaps between developments of around 3 years allowed for assimilation of new development (and the avoidance of harm)<sup>26</sup>, and in the absence of any evidence showing that infrastructure and services could not cope, there would be no harm to the social well-being of that village. The same applies to Alderton (albeit to a greater extent, given the longer gap between the development at Beckford Road/Fletcher Close and the Appeal Scheme).

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<sup>24</sup> in §76.

<sup>25</sup> §33 of CD A4.

<sup>26</sup> at §49 of the decision letter.

40. In the absence of any tangible evidence of harm, the impact of the Appeal Scheme on social cohesion in and the well-being of the village is (at worst) neutral.

41. As for housing mix, this is an entirely non-point. The Appeal Scheme provides for a range of house types and sizes (in respect of both market and affordable housing). Ultimately, the Council's point has descended to a criticism of 3 of the 3-bedroomed houses that it says are too large. Other 3 bedroomed houses in the Appeal Scheme are smaller. In any event, there is no maximum size for 3 bedroomed houses specified in policy or guidance (insofar as policy refers to size, it requires achievement of minimum sizes<sup>27</sup>). There is no evidence that buyers of the 3 larger 3 bedroomed houses in the Scheme will pursue projects to convert them to 4 bedroomed homes.

#### **Impact on Character and Appearance**

42. In common with most greenfield sites on the edge of settlements, it is acknowledged that the Appeal Site itself contains no built features, and following development will accommodate 28 dwellings along with associated development. At site level, the development of a greenfield site will involve some adverse change.

43. However, the context of the Appeal Site is important. On its northern boundary it adjoins Fletcher Close. That development exerts an influence (in terms of landscape character, and in views) on the Appeal Site. It is recognised that landscaping associated with the Fletcher Close development is immature, but it is confined to a narrow strip (between 2 fences) on the boundary of that site. Although found acceptable by the appeal inspector in 2015, it cannot be described as either comprehensive or effective in creating an appropriately soft transition between settlement edge and the countryside.

44. By contrast, the Appeal Scheme;

- comprises a “landscape-led” design solution that will address the current harsh settlement edge by providing an extensive area of open space containing substantial levels of native tree planting, and,

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<sup>27</sup> SD11, §2.

- will provide an appropriate settlement edge in which views of development are softened and, in some instances, screened by maturing vegetation.

45. In addition;

- Alderton will remain separate from the B4077 (both on plan, and as perceived in all relevant views), and similarly,
- all dwellings will respect a significant set back from the un-named stream running along the southern boundary of the Site (thereby acknowledging one of the character sensitivities referred to in the Toby Jones Study in respect of the wider area (Ald-01) of which the Appeal Site is part<sup>28</sup>.

46. In any event, not all parts of the Ald-01 study area are of the same sensitivity (either in landscape character or visual terms). The Toby Jones study makes the point that the key sensitivity in respect of Ald-01 in terms of views, is the preservation of views to the historic village core and church, and the protection of the visual relationship between the historic village core and the slopes down to the stream and visual link to the B4077.

47. That key sensitivity is unaffected by the Appeal Scheme. Given its position at the western end of Ald-01, it does not enjoy a significant visual relationship with the village's historic core and church. That conclusion accords entirely with the assessment of the inspector who determined the Fletcher Close appeal<sup>29</sup>.

48. Consistent with the Toby Jones Study, the NP (in its Appendix D) records one of a series of "Key Views" as, "From B4077 to the southern flank of the village with attractive grouping of houses around church from the Winchcombe Way LDP, in particular views of church and Grade 2 listed cottages from field south of Church Road."<sup>30</sup> Whilst the NP then

<sup>28</sup> It is noted that that part of the Toby Jones study also states that, "The influence of the existing 20<sup>th</sup> century settlement edge does offer some precedent and mitigation for new residential development...".

<sup>29</sup> At §39 of his decision (CD I2), he concluded that, "Given the location of the appeal site on the far western part of identified area Ald-01, the proposal would not harm the views of the village core or the church when viewed from the south and east."

<sup>30</sup> at p83 of the NP (CD E2).

shows a series of photographs taken from the South of the village (on pp88-89) the view shown from the junction between the B4077 and Willow Bank road does not include the church and nearby listed cottages. In addition, the view shown in the NP has now changed with the construction of the Fletcher Close development (addressed above).

49. Other concerns advanced by the Council (and Parish Council) concerning;

- the character of Willow Bank Road, and,
- the fact that the extent of development on the 2 sides of Willow Bank Road will not align,

are over-stated.

50. First, the character of Willow Bank Road will be largely unaffected. Save at the access itself, any hedgerow removed for the creation of a visibility splay will be the subject of re-planting (behind the splay). The road will still be bordered by a long grass verge and hedge (as it is along other sections of Willow Bank Road). The access itself is in the north-west corner of the Site, close to existing development at Fletcher Close.

51. Secondly, there is no compelling requirement in terms of the settlement pattern at Alderton for the southern extent of development to be the same on both sides of Willow Bank Road. That was not the case before the construction of Fletcher Drive and it is not the case on other roads (e.g. Beckford Road). The perception of Alderton as a village within a rural landscape will not change as a result of the Appeal Scheme, albeit, the settlement edge in this part of the village would be considerably improved.

52. There is no material effect on views into or out of the AONB (whether looking north or south)<sup>31</sup>.

53. Whilst the Appeal Scheme generates a localised and minor short term adverse impact on the character and appearance of the area, in the long term, its effects will be beneficial.

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<sup>31</sup> and therefore no question of conflict with §172 of the Framework.

The SLA in which the Appeal Scheme is located (and which washes over Alderton) suffers no material harm, and no policy breach is generated whether by reference to SD6 of the JCS, LND2 of the Local Plan (insofar as it is consistent with the Framework), or LC2 of the NP.

### **Safe and Suitable Means of Access by Non-Car Modes**

54. The Council accepts that;

- (i) in light of the proximity of the Appeal Site to services and facilities in the village<sup>32</sup>,
- (ii) and the recognition that the Appeal Scheme includes a footway linking to the existing footway to the north<sup>33</sup>,

the Appeal Site enjoys safe and suitable means of access to the village's services and facilities (including its bus stops) by non-modes.

55. The Parish Council (through Mr Kettle) also appear to accept that proposition whilst still advancing a concern about overall levels of accessibility to services and facilities from the Site. That concern is not supported by the Council or County Council, and fails to recognise;

- (i) the acknowledgement in national policy that rural settlements will necessarily not enjoy the same levels of accessibility (e.g. by public transport) as more urban locations, and,
- (ii) the status of Alderton as a service village, and the fact that service villages are recognised in the JCS as enjoying services and facilities such that they are, in principle, suitable locations for new development.

56. In terms of safety;

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<sup>32</sup> all addressed in Mr Tucker's proof.

<sup>33</sup> That recognition appears to have come late in the day as far as the County Council is concerned.

- the Appeal Scheme has been the subject of a road safety audit, and,
- Mr Tucker has analysed relevant accident data, and conducted his own review of the safety of the Proposals.

57. There is no competing technical evidence before the inquiry demonstrating that the access proposals (and the Scheme generally) are anything other than safe.

58. For completeness, we note that the Parish Council raised a question about congestion on the wider network during the course of the inquiry. There is no evidence that the Appeal Scheme will generate any unacceptable impact on any part of the network, no objection from the local highway authority to that effect, and a clear finding by Mr Tucker that there is no question of any impact meeting the threshold of severe (in accordance with the Framework).

### **Ecology**

59. The Appeal Scheme is supported by an ecological appraisal (CD A8A) that was the subject of consideration by the Council's ecologist before determination of the application. The Council's ecologist sought further information in respect of impact on specific designated sites. That information was provided. The Council accept that the ecological impacts of the Appeal Scheme are acceptable.

60. Similarly, Natural England raises no objection to the proposals on ecological grounds.

61. The Parish Council has queried the ecological impact of the Scheme, but provides no evidence of any risk of harm. As for their queries;

- (i) in respect of the un-named stream along the Site's southern boundary, it was considered within the Appellant's ecological survey, and in light of its condition and the extensive buffer between it and proposed houses, no risk of unacceptable impact was identified, and,

- (ii) in respect of 2 off-site ponds to the north west and north east of the Site, the Appellant's ecologist has addressed the likelihood of them forming suitable habitat for Great Crested Newts, and importantly, has considered the degree of likelihood of there being any significant connectivity between those ponds and the Appeal Site as well as the suitability of the Appeal Site itself as habitat for Great Crested Newts. The clear conclusion is that there is no real likelihood of the Appeal Scheme posing a threat to any Great Crested Newt. Accordingly, no survey of the ponds is required, and a proposed planning condition (that deals with ecological management during construction) provides an adequate and proportionate response.

### **Drainage/Flooding**

62. Likewise, all statutory consultees are satisfied that the Appeal Scheme's drainage arrangements are acceptable. The Environment Agency was content to leave detailed consideration of the Appeal Scheme to the Lead Local Flood Authority ("the LLFA"). The LLFA is satisfied that no dwelling is proposed within Flood Zones 2 and 3, and none of the SUDS measures are in Flood Zone 3. That conclusion was reached by reference to the EA's flood mapping information. The Appellant's more detailed flood modelling simply endorses that conclusion.

63. Again, there is no actual evidence of any risk of harm.

### **The Planning Balance**

64. Having addressed each of the 4 mains issues (as well as the issues of ecology and drainage/flooding), we turn to the planning balance.

65. The benefits generated by the Appeal Scheme are considerable;

- (i) the provision of market and affordable housing in circumstances where there is a pressing need for both given the agreed lack of a 5YHLS,
- (ii) expenditure on construction,
- (iii) the generation of jobs,

- (iv) the potential generation of new pupils for the primary school,
- (v) the generation of economically active new residents who will provide revenue to local services and facilities,
- (vi) on-site public open space that will be available to all residents,
- (vii) financial contributions for off-site infrastructure that will benefit all residents,
- (viii) an enhancement to the settlement edge of benefit to the character and appearance of the area.

66. The most important benefits amongst that list are the provision of market and affordable housing. Those benefits should attract substantial weight in accordance with the finding of the inspector and Secretary of State in the Fiddington decision (CD I8)<sup>34</sup>. It is notable that the finding of substantial weight applied to the provision of housing in that case by reference to a housing land supply of 2.77 years or 4.3 years. On both assessments, the Council agreed (then) that the shortfall was substantial, and on the basis of both assessments, the SoS and Inspector gave substantial weight to the provision of new housing.

67. There is no rational reason to adopt any other approach in this case.

68. Notwithstanding that clear position, there is a dispute in this case between the Appellant and the Council as to the level of supply (as there was in the Fiddington appeal). Neither planning witness for the main parties contends that the different levels of assessment affects the outcome of the planning balance. In the event that the same view is reached by the Inspector, then, as in the case of the Fiddington decision, there is no obvious need to resolve the dispute between the parties on the level of housing land supply.

69. In light of the position of each of the planning witnesses (set out above), the dispute on housing land supply is addressed in brief terms.

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<sup>34</sup>

At §28 of the SoS's decision letter, and at §105 of the Inspector's report.

70. The central point of difference between the parties is the treatment of claimed over-supply from previous years when identifying the 5 year requirement for housing before calculating the 5YHLS position.

71. The Appellant and Council agree<sup>35</sup> that national policy and guidance contains no express provision on that question, and that it is a matter of planning judgment.

72. The Council accepts (XX of Ms Millman) that the judgment is between 3 options;

- (i) deduct all claimed over-supply from the annualised 5 year requirement,
- (ii) deduct all claimed over-supply from the annualised requirement for the remainder of the Plan period, and,
- (iii) make no deduction for claimed over-supply.

73. The Council adopts option (i), and the Appellant, option (iii).

74. During the course of her evidence, Ms Millman agreed that particular factors may be relevant to the exercise of planning judgment on this issue.

75. First, it is agreed that the persistent national housing crisis, and the Framework's response (to achieve a significant boost in the supply of land for housing) may be a relevant factor.

76. That factor was considered by an inspector dealing with an appeal in South Northamptonshire (CD I11), who concluded that no deduction should be made for claimed over-supply.

77. Secondly, it is agreed that the fact that all housing requirements (contained in development plans) are minimum requirements may be a relevant factor.

78. That factor was considered by an inspector dealing with an appeal in Wendover (CD I23), who concluded that no deduction should be made for claimed over-supply.

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<sup>35</sup>

§2.7 of the Housing SoCG.

79. Those 2 factors are of general application. In this case, there are, in addition, specific local factors that are relevant to the question of whether or not claimed over-supply from previous years should be deducted from the 5YHLS requirement looking forward.

80. The first of those local factors is the housing land supply position across the wider area, namely, the JCS area. It is relevant to look at that wider area because it all forms part of the same housing market area. Mr Tiley shows that within the JCS area, past delivery demonstrates a position of significant under-supply rather than over-supply<sup>36</sup>.

81. The second of the local factors is the fact that there is no provision for meeting the Plan's housing requirement over the Plan period. There was a substantial shortfall at the point of adoption of the JCS (for Tewkesbury, around 2,500 dwellings). Ms Millam accepted in XX that there is a substantial shortfall now (on the Council's assessment, over 1,500 dwellings), and even following the adoption of the emerging Borough Plan Ms Millman accepted (in XX) that there will remain a significant shortfall (over 500 dwellings, again, on the Council's assessment<sup>37</sup>).

82. The JCS answer to this shortfall in provision was to require an immediate partial review of Tewkesbury's housing land supply following adoption of the JCS<sup>38</sup>. That did not occur. Instead a full review of the JCS is being pursued. It has so far managed an issues and options stage. Adoption remains (even on the Council's optimistic expectations) well over 2 years away. The JCS Review attracts no weight in the determination of this appeal, and will set its own (new) requirement for housing for a new Plan period. It is neither the answer to addressing the current Plan period shortfall against the current requirement, nor an exercise that complies with Policy REV1 of the JCS. At the time of adoption of the JCS, it cannot have been envisaged that the JCS immediate partial review exercise required by Policy REV1 would replace the current JCS in its entirety (rather than being a partial review) nor that it would take 6 years to complete.

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<sup>36</sup> Mr Tiley's proof, p16.

<sup>37</sup> That assessment assumes that allocations will make it into the adopted Borough Plan, that planning permissions will be granted and completions delivered all in accordance with the Council's expectations.

<sup>38</sup> contained in policy REV1 that was inserted as a main modification at the behest of the JCS inspector in order to render the JCS sound.

83. The third local factor relevant to the treatment of claimed over-supply in the 5YHLS assessment is the clear direction of travel for the housing requirement in Tewkesbury.

84. In less than 18 months time (by December 2022), the JCS will be 5 years old, and the housing requirement for the 5YHLS assessment will be a local housing need figure determined by reference to the standard method in accordance with §73 of the Framework. At the moment, that would generate a requirement of 557 dwellings per year (without any buffer)<sup>39</sup>. That represents a doubling of the requirement that the Council currently uses to calculate 5YHLS (having deducted previous years over-supply<sup>40</sup>). The agreed direction of travel for this Council is towards a significantly increased housing requirement.

85. Accordingly, even if following the adoption of the Borough Plan, the Council gets back to a 5YHLS<sup>41</sup>, that position will be short-lived.

86. All of those factors (national and local) are relevant to the exercise of planning judgment when it comes to determining the treatment of over-supply in setting the requirement for the 5YHLS assessment. All of those factors point to the conclusion that no discount should be made to that requirement.

87. On the supply side of the equation, the Appellant raises doubts about the anticipated delivery timescales on 2 sites each with outline consent. There is no clear and robust evidence to support the Council's position (as effectively conceded by Ms Millman), and we suggest that Mr Tiley's assessment is to be preferred.

88. Accordingly, insofar as it is necessary to determine the dispute between the parties on the level of housing land supply, the Appellant contends that a finding of 2.08 years is to be endorsed.

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<sup>39</sup> Mr Tiley's §7.62.

<sup>40</sup> 272 dwellings per year.

<sup>41</sup> assuming that it continues to discount for previous years over-supply, and all of its expectations as to future supply are right including for example, delivery from an unallocated site at Mitton (in Wychavon) that is subject to a planning application that is in breach of the development plan, and is the subject of objection.

89. In any event, a finding of substantial weight attaching to the provision of new housing in this case is further supported by reference to the fact that the Council is not only unable to demonstrate a 5YHLS, but is still unable to demonstrate that it has made provision for the JCS housing requirement for the Plan period (addressed above).
90. As recently as the beginning of last month, the Inspector in the Coombe Hill decision (CD 15B) found that factor to add significantly to the already significant benefit generated by that appeal scheme<sup>42</sup>.
91. Any suggestion that the review of the JCS, that is not anticipated for adoption until the end of 2023, somehow diminishes the level of weight attaching to the provision of new housing (against a backdrop of there being no 5YHLS, and a failure to meet the current JCS requirement) is without merit. The JCS Review does not provide an answer to the current, pressing need for housing, its adoption is well over 2 years away, and it should attract no weight in the determination of this appeal. As stated at the outset of these submissions, there is no support in national policy for an approach that effectively puts off the provision of an adequate supply of land for housing until a local planning authority gets its development plan in order.
92. Economic benefits (in this case in the form of construction investment) are recognised by national policy as attracting significant weight, and whilst those benefits (together with the generation of jobs) are not unique to the Appeal Scheme, that does not diminish their importance. If investment and jobs are not generated in connection with the Appeal Scheme, then those benefits (that arise out of the Appeal Scheme) will be lost.
93. By contrast to the significant package of benefits delivered by the Appeal Scheme, adverse impacts are limited.
94. Conflict with policies SD10 and SP2 of the JCS as well as the lack of support from Policy H1 of the NP attract limited weight. All of those policies are deemed out of date as a result of operation of the Framework, but more importantly, they attract reduced weight

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<sup>42</sup> at §94.

because to apply them with “full rigour”<sup>43</sup> will mean the Government’s central policy objective of achieving a significant boost in housing land supply will be put at risk.

95. The only possible way of addressing the Council’s current shortfall in housing land supply (and meeting the JCS’s requirement for housing over the Plan period) must necessarily include the release for development of unallocated sites outside of settlement boundaries. On that basis, the weight attaching to restrictive policies (in SD10, SP2 and H1) that are deemed out of date by operation of the Framework must be reduced.

96. There is no harm to the well-being of or social cohesion in Alderton.

97. Harm to the character and appearance of the area is short term and minor. In the long term, effects are beneficial.

98. There is no harm to the safe operation of the local highway network (whether by reference to access to services and facilities by non-car forms of transport or in any other respect).

99. There is no evidence of significant harm to ecological or drainage interests.

100. In terms of the outcome of the tilted balance, this is a case in which benefits firmly outweigh harm as opposed to harm significantly and demonstrably outweighing benefits. Accordingly we request that the appeal is allowed.

Ian Ponter,

9 July 2021.

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<sup>43</sup>

in the words of Lord Gill in the Hopkins Homes Supreme Court judgment.