

Town & Country Planning Act 1990 s.78

LAND PARCEL 0088, WILLOW BANK ROAD, ALDERTON, GLOUCESTERSHIRE

APP/G1630/W/20/3259637

CLOSING SUBMISSIONS

On behalf of the Local Planning Authority

9 July 2021

1. These closing submissions are necessarily a summary of the key points of the Council's case. They do not rehearse all of the evidence, address every point of controversy, or descend to the level of detail that at times the evidence did.
2. The obvious starting point is that these proposals are contrary to the development plan and unless you identify sufficient material considerations to justify a grant of permission, they must be refused.
3. Perhaps the primary such consideration is the tilted balance. If you find that the harms do not significantly and demonstrably outweigh the benefits here, judged against the policies of the Framework, then it is common ground that you should allow the appeal and grant planning permission.
4. The LPA say that is not the conclusion you should reach:
 - a. The proposals cause obvious and significant harm to landscape character and have a harmful visual impact; they are clearly contrary to the development plan in this respect, and are also contrary to the NPPF;
 - b. In addition they would cause harm to social cohesion in the village of Alderton, *including* because they would amount to a disproportionate expansion of the village when considered cumulatively with other recent development there, but also because of their relationship with the spatial strategy of the development plan, in particular the Alderton Neighbourhood Plan;
 - c. They cause harm by being contrary to the plan-led system; and
 - d. There is further, albeit modest, harm caused by the proposed mix of housing, which when understood in context provides the wrong mix given local needs.
5. Accepting entirely that you will give at least significant weight to the housing land supply shortfall in Tewkesbury (more, if you agree with the Appellant that the shortfall is larger than that described by Ms Millman's evidence), and that the proposals would bring other benefits as largely agreed between the parties, nonetheless those harms

do significantly and demonstrably outweigh the benefits, and permission should be refused.

Landscape and visual harm

6. It is common ground that the proposals cause landscape and visual harm. The controversy is the extent of it. As Mr Ryder set out in the Round Table session, the harms are:
 - i. The proposals cause harm to an identified feature of importance within the Special Landscape Area;
 - ii. They cause harm to the southern setting of the village;
 - iii. They cause harm to the character of Willow Bank Road;
 - iv. They harm views from the B4077 to the village, which views are identified as being of importance by those who live in the area; and
 - v. There is some harm to the views of the southern AONB as one leaves the village on Willow Bank Road.

7. I take each, briefly, in turn.

8. Firstly, it makes sense to take the first and second points together. The SLA policy (LND2) requires special attention to be paid to the protection and enhancement of its character; the emerging TBP policy (to which moderate weight should be attached) focuses on significant features of the area. This point really comes down to this:
 - In the Toby Jones study of landscape character, the author identifies the appeal site as a component of area ALD-01, and says in landscape terms that “*the openness between the settlement edge and the small stream remains an important characteristic¹”*;

¹ Internal page 70

- In the decision about Fletcher's Close to the north², Inspector Manning repeated that observation, and said (correctly) that that scheme would retain that openness, reducing its harm³;
- It is self-evident that this scheme would not retain that openness, despite Mr Harris insisting that it would. You will no doubt reach a common sense conclusion on this.

9. Mr Ryder's assessment is at §7.3-7.10 and is obviously balanced, and sensible.

10. In terms of the southern setting of the village, the same decision is central:

- Inspector Manning also said that that development would '*in essence, square off the village*', thereby reducing its harm. Again, this development would not – it would extend the built form substantially further down Willow Bank Road to the south.
- In the same context, Mr Harris was keen to point out that these proposals would 'resolve' the presently 'harsh' edge to the Fletcher's Close development. Two points: first, it is unattractive to say the least to rely on an unsatisfactory detail of a development carried out by these very developers⁴, in seeking to justify the proposals at hand; second, the edge to Alderton provided by Fletchers Close has not yet had time to mature and as such it is too soon to judge it: for contrast, even on Mr Harris' best case, it will 8 years before this scheme's landscape mitigation has its desired softening effect. Fletcher's Close has not had that time. It also appears not to have had the full benefit of its proposed landscaping measures being implemented⁵.

11. Mr Ryder's assessment is at §7.11 to 7.24. Again, it is balanced, and sensible.

² CDI.2

³ Para 38

⁴ And supported by an LVIA from the same practice, Tyler Grange, as the one which supports this scheme, the conclusions of which Mr Harris broadly adopts here.

⁵ Mr Instone's point that the hedge required to run along the southern boundary does not appear to be fully in place.

12. The effect on Willow Bank Road will be obvious for you to judge on your site visit and does not benefit from further description. Mr Ryder is obviously correct to say that a substantial proportion of the presently-rural gateway to the village would be changed by the proposals, not least the removal of 53m of hedgerow in order to facilitate the access. A good impression of the point can be gained from Mr Ryder's viewpoint Ex5.
13. His analysis is at §7.25 to 7.37 and the same description applies.
14. As to views of the village, the ALD-01 parcel of land is identified in the Toby Jones study as being of high visual sensitivity, in large part because of the relationship between the B4077 and the village. The parcel '*provides the foreground setting to the settlement edge*'. Appendix D of the Neighbourhood Plan is a study of what those who live here consider important by way of views. Not only is there strong support for the retention of key views generally, but View G was also the 'key view' most prized by those who responded. There isn't any real doubt about what View G is: Mr Ryder's §6.18 extracts the two representative photographs, and the plan at p.90 of the ANDP indicates (stylistically) where that view is to be taken from. It is across the appeal site. It is one of (if not the key) "*significant views in and out of the settlement*" required to be preserved by ANDP Policy LC2.
15. The appeal proposals would significantly change that view, bringing built form down the hill to the stream. The harm is obvious, and explained by Mr Ryder's proof at §7.38-7.52.
16. Lastly, the harm to the view of the southern AONB. The view to the northern AONB is considered to be no more than moderate/minor, but the harm to views to the south is greater: Mr Ryder addresses this at §7.56 to 7.61. For easily understood reasons, he concludes that the proposals would cause moderate adverse visual change to this view.
17. Overall, Mr Ryder offers the most convincing appraisal of the effects of these proposals. That Mr Harris felt constrained to describe the proposals as somehow

offering a landscape *benefit*, 'greening up' the southern edge of the village, was an indication of how far from the required balance he had allowed himself to drift.

18. If you agree with Mr Ryder, the proposals are in conflict with policy SD6 of the JCS, LND2 of the local plan and LC2 of the ANDP, as well as with LAN1 of the emerging TBP. The harm is significant.

Spatial Strategy

19. The proposals are *additionally* in conflict with the spatial strategy in the development plan, which comprises (for this case) the JCS and the Neighbourhood Plan. That strategy – as described in the JCS – directs proposals such as this one – for market and affordable housing on a greenfield site outwith settlement boundaries – to policy SD10, which it is common ground it cannot satisfy.
20. It is a strategy that was found sound, as a spatial approach to meeting housing needs in Tewkesbury. It was found sound even though one of its component parts was the existence of a 'shortfall' against identified needs, to be 'made up' before the end of the plan period by a review; and another of its component parts was to leave non-strategic land allocations to the District Plans, none of which were adopted at the time, and all of which were expected only at some point in the future. It is crucial context to understand that this was the strategy found sound by the Inspector⁶.
21. It is why it was surprising to hear Mr Hutchison return in xx – in answer to what felt like the majority of my questions – to the fact that the plan has a shortfall within its housing numbers: it does, it always has, and that it did (and does) has not caused either the JCS inspector or the TBP inspector to doubt the soundness of the strategy

⁶ See JCS (CDE.1) at para 1.5

with that feature integral to it. In simple terms, it is not much of a point to dismiss⁷ a spatial strategy that was found sound in December 2017, on the basis that one of its intrinsic features still exists⁸ in 2021.

22. What is 'critical' (as the JCS says at 7.1.19) is that the shortfall is addressed over the plan period. On adoption, that 'critical' requirement was envisaged to be achieved by a partial review; for perfectly understandable reasons (essentially set out at 2.2 – 2.3 of the Issues and Options paper⁹ which was published in October 2018) that has been subsumed into a wider review of the JCS. Mr Hutchison wishes to describe this as the partial review having been 'abandoned'. The adjective is unimportant: what matters is whether the mechanism will deliver the 'critical' objective of addressing the shortfall in Tewkesbury within the (current) plan period -i.e., by 2031.

23. We cannot *know* that it will, but we can say:

- a. The 'shortfall' (in essence the number of new homes that must be identified and planned for by that review) has already fallen from 2455 on adoption, to 1525 by December 2020¹⁰ and will, on adoption of the TBP, fall yet further – whether to 563 as found by the Inspector, or to 726 contended for by Mr Tiley. The point is that it is falling;
- b. One key contributor to that direction of travel is the success of the Borough Plan process in identifying considerably more land for housing than was envisaged by the JCS: at least 1017 rather than the 315 envisaged; and
- c. Another is the good recent record of delivery, which shows that to date at least, there are positive signs of land being identified (admittedly some only after an appeal) on which new homes can be delivered.

⁷ Mr Hutchison says at 6.45 that it "must give way".

⁸ Not to mention that the feature – the shortfall – is substantially smaller now than on adoption, and likely to shrink substantially more on adoption of the TBP

⁹ CDE.3

¹⁰ See DCF.7 at Table 1

24. There is no magic to this point: you cannot say the ‘critical’ objective will definitely be achieved, but in truth and on balance there is no more reason to doubt it now than there was in December 2017, when the strategy including it was adopted as sound.
25. All of that said, there is *presently* no five year supply of housing land. I deal with the extent of the shortfall later, but it is undeniable (and is not denied) that the absence of such a supply means that the non-conformity of the proposals with the spatial strategy of the plan cannot attract full weight. In simple terms, it helps these proposals that the LPA need more land for housing. The issue is the extent of that help.
26. The right conclusion must be that it attracts moderate weight against the proposals. It remains the strategy of the development plan; only by following it can you achieve plan-led delivery; it was found sound – including with its shortfall – fairly recently; and signs since adoption, in Tewkesbury at least, have been reasonably positive. On the other hand, there is no five year supply and so to meet that aspect of national policy, sites that do not comply with the strategy must be found. This is one – there will no doubt be other candidates – but that observation does not result in the spatial strategy being ‘set to one side’, or disregarded. A breach of it continues to attract weight. The Council says that is moderate weight.

Social Cohesion

27. Much as the Appellant would like this to be a point about numbers, it is not. The spatial strategy in the JCS includes the provision¹¹, in terms, that service villages will be allocated (lower) levels of development which are to be ‘*proportional to their size and function...*’ That is a point about allocations, which come in the Borough Plan and the various neighbourhood plans; and are to be made ‘*taking into account the environmental, economic and social impacts including existing levels of growth over*

¹¹ SP2(5)

the plan period'. The strategy recognises that *disproportionate* growth at service villages is not desirable.

28. It is worth identifying a few straw men thrown up by the Appellant.
29. First, no-one is contending for some kind of adopted 'upper limit' or housing need for Alderton. Instead, Mr Instone patiently made the point that what he was concerned about was whether growth at Alderton – taking into account existing levels of growth there – would be proportional to its size and function.
30. Nor was he contending that with the addition of these 28 new houses, Alderton would become something other than a Service Village; or that the entire spatial strategy would be distorted.
31. The point is this: having identified a level of provision in the service villages overall (880 new homes over the plan period), which was to be delivered via the Borough Plan and neighbourhood plans, the Council set about distributing that total provision across the various service villages. The emerging Borough Plan says – at 3.15 – that much of that proposed growth has already happened – 793 as at April 2019, and 843 by December 2020¹².
32. There is further insight into the process in the Housing Background Paper¹³ - which no-one says is adopted policy, but *is* part of the evidence base for the Borough Plan, and the basis for that plan's approach to distributing planned growth across service villages. It obviously attracts weight as a material consideration here.
33. In line with JCS Policy SP2, that process sought to ensure that planned growth at each service village was *proportionate*. It identified that of all the factors, in fact size was

¹² Mr Instone's proof at 4.9

¹³ CDE.7

the 'critical factor' in determining the character of a service village and was thus given the greatest weight of all the factors affecting distribution.

34. The key observation is at 4.31: having correctly identified that new development can bring positive and negative impacts, the paragraph continues "*Negative social impacts can however result where the number of dwellings in a settlement is substantially increased without proportionate increases in infrastructure, employment opportunities and other local services. This risks eroding community cohesion.*" It might be observed that this is a statement of the frankly obvious.
35. With that in mind, the outcome of the process was recognition that Alderton could provide at least 53 new homes over the plan period, a 19% increase in its size; but in fact it had already seen 75 new dwellings since the start of the plan period – a 27% increase in its size. It was considered that the limit had been reached, and no allocations were made in Alderton¹⁴. The Neighbourhood Plan essentially followed the same approach, and passed with near-unanimity on a high turnout.
36. These proposals are for a further 28 homes in Alderton: meaning 99 now in the plan period, growth in the size of the village in the order of 36%. The point is, that is beyond the sustainable limit and risks community cohesion, however strong it may be now. The point is not the numbers themselves, but the growth. It is no longer proportionate to the size of Alderton as it existed at the start of the plan period.
37. As Mr Instone sets out at 4.41-4.49, a series of inspectors considering proposals for growth in Alderton have identified this risk. At Beckford Road, it was said the limit was not reached with those 47 homes. At St Margaret's Drive, those 59 new homes were said to be a disproportionate addition (para 35) and refused; at Willow Bank Road West, the proposed 53 homes were said to cause harm to social cohesion as a substantial expansion of the village, attracting a moderate level of harm against the proposal (that it was not 'determinative' is another straw man: it was considered to be harmful,

¹⁴ Albeit that flexibility was built in should further housing be required, by way of a review of the NP

which is what is contended for here too). Willow Bank Road East – only 24 new dwellings – was found to be the other side of the line – harmful, but a smaller expansion. Of course, the 24 at Willow Bank Road East and the 28 proposed here amount to 52, not far short of the ‘disproportionate’ total identified in the two dismissed appeals (albeit accepting Mr Hutchison’s point that not all 52 would be delivered ‘at once’).

38. It is not difficult to have considerable sympathy with the people of Alderton: in appeal after appeal they are told by Inspectors that disproportionate growth risks community cohesion; the village delivers growth well above that indicated by the disaggregation process for the TBP; they produce a neighbourhood plan taking account of that; and yet still the housing proposals come, this one right in the middle of the view they consider the most important to protect, and those promoting it asking ‘*where is the harm*’? This is the second strand of the point: continually seeking to add new housing to the village, in the face of the above, *itself* threatens to harm social cohesion.

39. Ultimately there is a point at which a line is crossed. The Council say that the line would be crossed by a yet further 28 dwellings in Alderton.

40. In answer to the ‘where is the harm’ question, Mr Instone pointed you (as do I) to the evidence of the Parish Council. They feel the limit has been reached. You are entitled to give significant weight to their views and knowledge.

41. If you agree with them (and the Council) this is a further harm to be weighed in the (tilted) balance.

Housing Mix

42. This matter can be very straightforwardly stated. The Reason for Refusal cites policy SD11 of the JCS, in that the mix of homes fails to provide an appropriate mix of

dwelling sizes. There is no allegation of a breach of ANDP Policy H4, and the PSoCG confirms (at §8.40) that the proposals do not breach that policy. That same document confirms (at §8.37) that if considered on the number of bedrooms, there is no policy issue; and (at §8.38) that there is no development plan policy setting limits on the sizes of new houses. The issue relates to the 16 market housing units. There is no issue with the mix of affordable housing units.

43. For what it is worth, emerging TBP Policy RES13 also refers to a mix of sizes; and the NPPF requires local policies to address the need for various sizes of houses. It is plainly legitimate to seek to control the mix of house sizes.
44. The relevant development plan policy is thus clear that what is required is a mix of sizes. The LPA accept at once that, in most cases, the question as to size will be answered by the number of bedrooms – it is a convenient rule of thumb because, generally, house size and the number of bedrooms within that house are directly related.
45. Here, as with any rule of thumb, it doesn't apply rigidly, and isn't an answer in every case. Here, as PI sets out at 6.11, the initial planning application¹⁵ included a mix of 4 2-bedroom units, 7 3-bedroom units and 6 4-bedroom units. The LPA indicated that that mix was not acceptable, and did not match the latest evidence on need.
46. The Appellant's response was to 'reclassify' three of the 4-bed units (known as a 'Nessvale' type), by removing an internal partition between two of the 4 bedrooms. This change self-evidently did not change the 'size' of those units.
47. The Appellant insists that the result of that reclassification is to bring the mix into line – it is now 4 2-bedroom units, 10 3-bedroom units and 3 4-bedroom units – see Table 2 on p.26 of Mr Instone's PoE. But it is perfectly obvious that the size of the units remains exactly as it was before that change.

¹⁵ See Officer's Report at §7.41 (CDA.37)

48. Such an approach makes a mockery of the power to control the mix of housing: as PI said, what if a number of enormous 3-bedroom palaces were proposed? The point is that number of bedrooms is a good rule of thumb as to dwelling size, but is only that: a rule of thumb as to size, which is what actually matters. On occasion – and this is one such occasion - it is clear that you have to look beyond the rule of thumb.

49. This isn't a purely technical objection either:

- a. The purpose of the policy in this regard is to address the needs of the local area – see SD11(1)(i);
- b. Local needs were described in the ANDP¹⁶ which notes (at 4.1.28-31) that there was a need to add balance to the housing stock in Alderton with further 2- and 3-bedroom properties particularly, *“for small households wishing to buy into the Parish or existing residents wishing to downsize.”*
- c. The parties agree that the latest assessment of need for Tewkesbury Borough is the Local Housing Needs Assessment 2019 (September 2020) (“LHNA20”), which is CDF.8; and
- d. That document undeniably talks of a particular mix – see the table after §8.36 of the PSoCG – which is expressed in terms of bedroom numbers. It is true that that assessment proceeds as if ‘size’ was no more than a reference to bedroom numbers, but that does not make it true: the policy continues to require a mix of ‘sizes’.

50. The LHNA20 suggests a need for 54.4% 3-bedroom units and 28.9% 4-bedroom units; in the context of this site that translates to c.10 3-bedroom units and c.3 4-bed units;

51. If the ‘rule of thumb’ applies, then this is met; but it has to be acknowledged that such an approach would mean 17 market houses of exactly the same size as the initial proposal, which was considered to fall foul of the policy as to mix, and led to the ‘change’. That would be an odd outcome.

¹⁶ CDE.2

52. Understood in that context, Mr Instone's approach is correct: he says that this aspect of the scheme attracts modest weight against planning permission, which is a balanced and sensible conclusion.

Benefits

53. One of the key (and agreed) benefits of the scheme is its delivery of market and affordable housing. That would be a benefit even if Tewkesbury had a five-year supply, but they do not, so it attracts extra weight.

54. The weight is also affected by the extent of the shortfall, about which the parties disagree. As a first point, keen though the Appellant is to point to previous concessions that the shortfall arising from 4.35 years is "substantial", the adjective isn't really the issue (and can be positively unhelpful). It is perhaps self-evident that the shortfall arising from a 4.35 year housing land supply is, whatever adjective you use, considerably less than one that arises from a 2.08 year supply; and should attract commensurately different weight (again, whatever adjective you use).

55. This is because, although the existence of a shortfall means that there is a need for new housing sites, and the Council fully accept the shortfall is not marginal, or *de minimis*, the need to grant planning permission on greenfield sites to schemes that cause other harm is considerably reduced where the shortfall is less than a year's worth, than if it is almost three years' worth. It is also relevant that the shortfall isn't going to persist: the Borough Plan, on adoption, will produce a five-year supply.

56. On that point, it is no answer to look beyond that into the future and seek to predict what will happen: speculation beyond that, to use of the Standard Method, and to predicted positions in the future, is not of much assistance here. It becomes increasingly uncertain as the variables change. What matters is the position now, when this appeal is to be determined.

57. In any event, some perspective is required:

- a. This is a scheme for up to 28 units, all of which are said to be deliverable before¹⁷ the end of the five-year period we are concerned with; granting planning permission can therefore have no effect at all on the supply beyond 2025;
- b. The fact that it is 28, and not (for example) the 95 at Coombe Hill, must affect the weight to be attached to it; and
- c. The site is in Tewkesbury, so granting planning permission cannot assist in the housing land supply situations in Cheltenham, or Gloucester, or indeed anywhere else. They are not really relevant to this appeal.

58. The material¹⁸ controversy between the parties relates to the treatment of past 'oversupply'. That matter is due to be considered by the High Court later in July, but the matter is briefly addressed here:

- (1) "Over-supply" in this context is describing¹⁹ the (agreed) fact that in Tewkesbury 5579 homes have been delivered since the start of the plan period, whereas at 495 a year (the annualised expression of the total requirement) there would have been 4455. That is an 'oversupply' of 1,124²⁰.
- (2) It can be expressed as Tewkesbury having met 56% of the total plan period requirement of 9899, after only 45%²¹ of the plan period; needs have been met earlier than if delivery had run at 495 a year;
- (3) There is no express policy either requiring, or prohibiting, over-supply as arises here being taken into account; you must exercise your judgment as to how to treat it;

¹⁷ DH said in the RTS on social cohesion that they would be delivered by the end of 2024

¹⁸ Mr Tiley seemed to agree that there is no material difference between 3.82 and 4.3 here

¹⁹ HSoCG at 2.6

²⁰ See Table at p.9 of Ms Millman's proof, at the first three rows

²¹ 9 of the 20

- (4) It should be remembered that the task is to demonstrate a five-year supply *“against the housing requirement set out in adopted strategic policies”* (NPPF§73). That housing requirement is 9899 dwellings by 2031. No strategic policy talks of ‘495 a year’;
- (5) That requirement is itself an expression of the delicate balance in planning, between the need for new housing, and the need to protect areas of environmental and other value from harm. It represents a compromise of that tension;
- (6) It would also, if it is met, represent²² a *‘significant boost to the supply of housing’* – that is what NPPF requires – an objective assessment of needs arising and planning to meet them – here, the requirement is designed to meet more than the demographic need, as explained by Ms Millman at 3.3;
- (7) Thus the point of the requirement to maintain a five-year supply is to ensure that delivery of that figure stays on track: to minimise the harmful outcome of 2031 arriving and fewer than 9899 homes having been delivered;
- (8) That 9899 is a minimum is nothing to the point here: what the planning system intends with this requirement to demonstrate a five-year supply is ensure that the minimum is met. It does not contain any imperative to *exceed* that minimum, or any sanction for doing so if that can be done sustainably – what matters is that it is not undershot. That follows from my observation about it being the expression of a compromise between competing interests; and is also borne out in the requirement to add a buffer – not extra homes above the 9899, but *“moved forward from later in the plan period”*²³;
- (9) In that context, Tewkesbury simply wish to recognise that, in the exercise intended to ensure that the requirement of 9899 is ultimately met, they are well ahead of the rate; more than a thousand more homes have been delivered than the annual average delivery rate would indicate; the needs of more than a thousand households in need of a new home have been met early;

²² Accepted by DH and NT in xx

²³ NPPF§73

(10) More strikingly, only 44%²⁴ of that total is left to be delivered in the remaining eleven years of the plan, and if that is achieved, the minimum will have been met – that is not to say it is a maximum, or absolute target, but **it is to recognise that this exercise is about ensuring that minimum is not undershot**. Mr Tiley’s answers when this numerical truth was put to him descended into the obscure: his attempt to explain when he would, and would not, take account of the effect of past oversupply was entirely opaque.

59. No decision on this aspect is binding upon you: in truth there have been inspectors that have gone either way, both in this Borough and elsewhere in the country. Nor has the High Court given any indication (yet) on what the proper approach should be. The best that can be said in this regard is that the JCS Inspector, the Borough Plan Inspector, and the latest decision in *Tewkesbury*²⁵, all accept the Council’s approach.

60. None of Mr Tiley’s points in favour of leaving this oversupply out of account, and proceeding as if in fact 495 a year had been delivered since 2011, really convince:

- a. His approach asks you to treat the housing land supply position in this borough in *exactly* the same way as if instead of 5579 homes delivered to date, only 4455 had been delivered; that can’t be right;
- b. Indeed the logic of his approach means that you would treat as the same a scenario in which 9899 (i.e. all) of the housing requirement had been delivered to date – that is obviously absurd; a point he appeared to recognise in trying to explain why that would *not* be his approach for 9899, or (possibly) 9500. It was not clear where, for him, the line might be drawn;
- c. That the Standard Method incorporates reference to the annual average delivery rate when addressing the ‘cap’ is nothing to the point at all;
- d. Nor is the fact that the Housing Delivery Test uses annual average requirements to determine pass or fail over past years – in fact (for what it is

²⁴ 4320 of 9899

²⁵ At *Coombe Hill*, having had the benefit of Mr Tiley’s expertise on the issue

worth, this being a very different exercise) the HDT *does* take account of past over-supply because the three-year total is cumulative;

- e. The oversupply is not 'notional' in the way he describes: *all* housing land supply calculations are notional in that needs do not arise at an even rate, people do not confine themselves to one district, or area, or housing market area, or even country. The whole exercise has an unavoidable element of the theoretical about it, but that does not mean we can avoid its implications, or should ignore the reality on the ground – here, against Tewkesbury's identified need, significantly more than half of the total homes have been delivered, well *before* the half-way point of the plan period – there is nothing notional about that;
- f. Taking account of that reality does not affect future delivery in this borough: it affects how much weight to be attributed to *this scheme's* contribution of 28 houses. That is literally all. The forum for considering how it might affect future delivery is the plan process, and we know what approach to this issue has been taken there;
- g. The approach does not risk missing the target: on the contrary, it is all about meeting the target and not falling below it, which is what is actually required. If Tewkesbury saw delivery at 495 dwellings a year every year until year 20 of the period, and then only 494, the target would be undershot. That is just the nature of targets. No-one is asking to stop delivering once 495 dwellings in a year has been met; Tewkesbury simply ask that you recognise they have delivered ahead of schedule, which is relevant to the risk of missing the 2031 target, when considering this appeal and the value of its contribution of 28 houses;

61. Although I said that no inspector decision is binding, and there are decisions pointing both ways, I commend in particular the reasoning of the Middleton Cheney inspector²⁶ as to the approach here – in particular her observations that to continue to 'require' 495 a year even where fewer than that is in fact required because of past over-supply

²⁶ CDI-25

would be to ‘artificially inflate’ the housing requirement – it would do exactly that – and requiring extra delivery in this way can be harmful, recognising the point that the minimum requirement is a delicate compromise reached in the proper planning process.

62. If you agree, the Council can demonstrate between 3.82²⁷ and 4.35 years of housing land supply: a shortfall, a significant one, and one justifying significant weight to be attached to the proposed delivery of 28 homes. It is, though, considerably less serious/substantial/urgent than the 2.08 year supply contended for by the Appellant.

63. There is no real dispute about the remaining benefits: what is left is the weight to attach to them, which is probably not assisted by submissions. What seems to be clear is that you should not double count any of them (by treating them as reducing a counterpart ‘harm’); and the fact that some harms and benefits would be common to any housing proposals in Tewkesbury is relevant, but does not negate the issue.

The planning balance

64. Once you have assessed the harms, and weighed them against the benefits, we hope you will agree that in this case those harms do significantly and demonstrably outweigh the undoubted benefits of the scheme. If you do, you will dismiss the appeal and refuse planning permission.

Josef Cannon

9 July 2021

Counsel for the LPA

²⁷ The Council’s case, minus Mr Tiley’s adjustments for delivery rates etc (which are not accepted, but do not seem to make a material difference)