



CLOSING STATEMENT

COTSWOLDS CONSERVATION BOARD

Town and County Planning Act 1990

Section 78 Appeal

Planning appeal by: JJ Gallagher and Mr Richard Cook

Location: Land off Ashmead Drive, Cobblers Close, Gotherington, Cheltenham, Gloucestershire

Proposal: Outline planning application with means of access from Ashmead Drive to be determined (all other matters reserved for subsequent approval), for the erection of up to 50 dwellings (Class C3); earthworks; drainage works; structural landscaping; formal and informal open space; car parking; site remediation; and all other ancillary and enabling works

Tewkesbury Borough Council Reference: 19/01071/OUT

Planning Inspectorate Reference: APP/G1630/W/20/3256319

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1.0 INTRODUCTION

- 1.1 The Cotswolds Conservation Board ('the Board') is participating in this planning appeal inquiry as a Rule 6 party, objecting to the proposed development of 50 dwellings at Land off Ashmead Drive, Gotherington.
- 1.2 The site of the proposed development is located in the setting of the Cotswolds Area of Outstanding Natural Beauty (AONB), approximately 450m from the AONB boundary. As with all AONBs, the Cotswolds is an area whose distinctive character and natural beauty are so outstanding that it is in the nation's interest to safeguard it.
- 1.3 The Board is an independent statutory body whose statutory purposes are:
- To conserve and enhance the natural beauty of the Cotswolds AONB.
 - To increase the understanding and enjoyment of the special qualities of the AONB.
- 1.4 As such, the Board's main interest in development proposals in the AONB and its setting is the extent to which such proposals would be consistent with – or adversely affect – these purposes.
- 1.5 In this instance, we consider that the proposed development would have a significant adverse impact on the natural beauty of the Cotswolds AONB. In particular, we consider that the proposed development would have:
1. A significant adverse impact on views from Nottingham Hill.
 2. A significant adverse impact on views from the proposed development site towards the AONB.
 3. A moderate adverse impact on views from Cleeve Hill.
- 1.6 The Board therefore supports Tewkesbury Borough Council's reason for refusal 2 in the council's decision notice dated 16 June 2020.
- 1.7 The Board's reasons for objecting to the proposed development - and the supporting arguments - have been well documented in our:
- Original objection letter.
 - Statement of Case.
 - Proof of Evidence.
 - Opening Statement (Inquiry).
 - Evidence in Chief (Inquiry).
- 1.8 These reasons have also been scrutinised under cross-examination at the inquiry.

2.0 KEY THEMES

- 2.1 Given that the Board's reasons for objecting – and the supporting arguments - have been well documented, I do not intend to repeat these in detail as per the Proof of Evidence, for example. Instead, this Closing Statement reflects on the Board's sustained objection to the proposed development in the context of evidence heard at the inquiry.
- 2.2 The inquiry has flagged up a number of recurring themes relating to the appellant's assertions regarding the proposed development. Therefore, this statement frames the Board's case around these recurring themes. These themes are the appellant's assertions that:

1. Nothing has changed since the previous planning appeal decision.
2. Paragraph 172 of the National Planning Policy Framework (NPPF) does not apply.
3. The tilted balance is engaged (i.e. because some Local Plan policies are out of date, there is a presumption in favour of granting planning permission).
4. The proposed development would not have an adverse effect the on Cotswolds AONB, both in relation to views from the AONB and views from the site towards the AONB.

2.3 Please bear in mind that this is a list of the appellant's assertions, not the Board's opinions.

2.4 Another recurring theme is the appellant's extensive reliance on previous opinions expressed by other parties, with little new evidence being provided to support their case in relation to landscape and visual effect.

2.5 Appellant Assertion 1 - Nothing has changed

2.5.1 During the inquiry and in their evidence base, the appellant's representatives have made the assertion that there have been no material changes in the circumstances relating to the proposed development since the previous appeal decision¹ in April 2018.

2.5.2 The Board accepts that the site itself will not have changed significantly in the intervening time period and that the current proposal is very similar to the proposal that was the subject of the previous planning appeal. However, we consider that a number of relevant and significant changes have taken place during the intervening time period, both on-the-ground and at a local and national policy level.

2.5.3 On-the-ground changes

2.5.4 Bishop's Cleeve has extended northwards and the gap between Bishop's Cleeve and Gotherington has decreased. This change is clearly visible when viewed from Nottingham Hill, from where the expansion of the recent Cleavelands development is particularly noticeable (as shown on Figure 3 in my Proof of Evidence).

2.5.5 These changes were anticipated as site allocations at the time of the previous appeal. However, actually seeing these changes on the ground, from the elevated views on the Cotswold escarpment, such as Nottingham Hill, is much more striking and compelling than seeing them as 2D images on maps and plans.

2.5.6 This change really brings into focus how little undeveloped land is actually left between the two settlements and what an important contribution the proposed development site makes to maintaining this gap.

2.5.7 Recent development in Gotherington is also making Gotherington more prominent in views from the AONB. This prominence would only increase further with the proposed development.

2.5.8 Policy and case law

2.5.9 National Planning Policy Framework (updated in 2019), Paragraph 172:

- Updated text: '*Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural*

¹ APP/G1630/W/17/3175559

Beauty, which have the highest status of protection in relation to these issues’ (my emphasis)

- This addition of the words ‘and enhancing’ recognises the need to not just minimise adverse effects the landscape and scenic beauty of AONBs but to enhance it. As such it sets a higher bar for what should be expected of development proposals in AONBs and their settings than the previous version of the NPPF.

2.5.10 Planning Practice Guidance Natural Environment (paragraph 042) - this paragraph was added to the PPG in July 2020 and provides new guidance on development in the setting of the AONB:

- *‘Land within the setting of these areas often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. This is especially the case where long views from or to the designated landscape are identified as important ... Development within the settings of these areas will therefore need sensitive handling that takes these potential impacts into account.’*
- By introducing this new guidance, the Government’s Planning Practice Guidance has further increased the weight that should be given to the effect of development, in the setting of AONBS, on views from and to the AONB.

2.5.11 Local Plan (Tewkesbury Borough Plan):

- The submitted Local Plan now has more weight than at the time of the previous planning appeal, which pre-dated the Preferred Options consultation (which took place in October 2018). The submitted Local Plan includes a new policy on ‘Strategic Gaps’ (Policy LAN3), which increases the weight that should be given to preventing coalescence between Bishop’s Cleeve and Gotherington.

2.5.12 Cotswolds AONB Management Plan 2018-2023 (adopted in December 2018): Policy CE1 (para 2), page 43, introduces a new policy level requirement:

- *Proposals should ... ensure that views – including those into and out of the AONB – and visual amenity are conserved and enhanced.*
- This increases the weight that should be given to conserving and enhancing views into and out of the AONB.

2.5.13 Monkhill Ltd v Secretary of State for Housing, Communities And Local Government [2019] EWHC 1993 (Admin): This case law clarifies that:

- *‘The first part of paragraph 172 of the NPPF² qualifies as a policy to be applied under limb (i) of paragraph 11(d) of the NPPF; it is also capable of sustaining a freestanding reason for refusal in general development control in AONBs, National Parks and the Broads.’*
- This means that development doesn’t have to be major development within AONBs in order for paragraph 11(d)(i) to apply – it also, in the Board’s opinion, applies to development outside AONBs that could adversely affect landscape and scenic beauty in AONBs.

² It was already common ground that the second part of paragraph 172 of the NPPF qualified as a policy to be applied, so the Monkhill v Secretary of State judgement, clarified that the whole of paragraph 172 qualified.

2.5.14 Cotswolds Conservation Board engagement:

- The Board was not consulted on the previous planning application for this site and, as a result, did not comment on that proposal or engage in the subsequent appeal. However, as demonstrated by our Rule 6 party status in this planning appeal, we are very actively engaged with the current process relating to the proposed development.
- As I mentioned earlier, the Board has a statutory duty to conserve and enhance the natural beauty of the Cotswolds AONB. As such, we are well placed to comment and advise on proposed development, both within the AONB and its setting, in relation to their potential impact on the purpose of AONB designation (including potential effects on landscape and scenic beauty and on the AONB's special qualities).
- We therefore trust that our comments will be treated as an important material consideration, including in the context of the statutory duty on relevant authorities to have regard to the purpose of AONB designation.³

2.6 Appellant Assertion 2: Paragraph 172 of the NPPF doesn't apply in relation to this development

2.6.1 The appellant's planning expert witness, in his Proof of Evidence and under cross-examination, asserted that paragraph 172 of the NPPF does not apply in relation to this proposed development because the development would not be within the AONB. When questioned on this, Mr Sitch was not able to provide any evidence to support this assertion, other than his own interpretation of the text of paragraph 172.

2.6.2 In the Board's opinion, case law⁴ makes it perfectly clear that paragraph 172 *does* cover views from AONBs. In other words, in the context of the proposed development, paragraph 172 does apply and great weight should be given to the effect of the proposed development on views from the AONB.

2.7 Appellant Assertion 3: The tilted balance is engaged.

2.7.1 The appellant's representatives, including Mr Sitch, have asserted that, because some development plan policies are potentially out of date, there should be a presumption in favour of granting planning permission (i.e. the tilted balance should be engaged), in line with paragraph 11(d)(i) of the NPPF.

2.7.2 Given their assertion that paragraph 172 of the NPPF does not apply, they assert that the AONB-related exemptions to the tilted balance also do not apply. However, as outlined above, in the Board's opinion, paragraph 172 (including its coverage of views from AONBs) *does* apply.

2.7.3 Combined with the *Monkhill v Secretary of State* case law, outlined above, it is the Board's opinion that the great weight that should be given to the effect of the proposed development on views from the AONB has the potential to provide a clear reason for refusal, under paragraph 11(d)(i) of the NPPF.

2.7.4 The Board considers that the application of the *Stroud DC v Secretary of State* case law and the *Monkhill v Secretary of State* case law are crucial considerations (especially in combination), which could mean that the adverse effects of the proposed development on views from the Cotswolds AONB provide a clear reason for refusal.

³ Countryside and Rights of Way Act (Section 85)

⁴ *Stroud DC v Secretary of State for Communities and Local Government* [2015] EWHC 1940 (Admin)

2.7.5 This may well explain why the applicant's representatives have pushed so hard to assert that neither piece of case law is relevant in relation to the proposed development.

2.8 Appellant Assertion 4a: The proposed development would not have an adverse effect the Cotswolds AONB – views from the Cotswolds AONB

2.8.1 The appellant's representatives have argued that, even though their evidence base has identified that the development would result in a moderate *adverse* effect on a view from the AONB, specifically the view from Nottingham Hill, there would not actually be an adverse effect on the AONB.

2.8.2 Part of their justification for this assertion is that when the effects relating to all of the assessed viewpoints within the AONB are combined the overall effect on the AONB is negligible. In his cross-examination of me as the Rule 6 party representative, Mr Garvey quoted the section of the Guidelines for Landscape and Visual Impact Assessment (GLVIA) relating to '*judging the overall significance of visual effects*' (paragraphs 6.42 of the GLVIA guidance) to support this justification.

2.8.3 However, the inference that this paragraph supports the appellant's justification is completely wrong. The guidance simply recommends combining the '*separate judgements about the sensitivity of the visual receptors and the magnitude of the visual effects ... to allow a final judgement about whether each effect is significant or not*' (own emphasis). This is exactly the process undertaken in the LVA that led to the conclusion that there would be a moderate adverse effect on views from Nottingham Hill (i.e. very high sensitivity + low magnitude of change = moderate *adverse* effect).

2.8.4 As such, the GLVIA guidance provides no indication that the moderate *adverse* effects identified in relation to views from Nottingham Hill are not valid in their own right.

2.8.5 Even if one was to accept some form of 'amalgamation' of all of the visual effects for all of the assessed viewpoints in the AONB, this would not invalidate the fact that a moderate *adverse* effect has been identified for one of these viewpoints.

2.8.6 Mr Connelly, in cross examination, argued that a tabulated approach to assessing landscape and visual effects is overly simplistic and that a narrative is required to provide context. However, rather than weakening the argument that the development would have a moderate *adverse* effect on views from Nottingham Hill, the narrative in the appellant's Landscape and Visual Appraisal actually reinforces it.

2.8.7 For example, the narrative provided in paragraph 7.9 of the LVA makes it crystal clear that the moderate *adverse* effect on views from Nottingham Hill would apply, even after taking account of all the mitigating factors that the LVA identified, including:

- the proposed development would not extend Gotherington southwards into the gap of open countryside between it and with Bishop's Cleeve;
- development would partially fill the indent in the southern settlement edge, with an offset from existing development to the north.

2.8.9 Both Mr Connolly and Mr Sitch, in their Proofs of Evidence and during cross examination, reiterated the following statement from the previous appeal decision:

- *The Council does not claim that the proposal would cause direct visual harm to the AONB. I agree with that position as, viewed from a distance looking towards the AONB, the development would recede into the form of the existing settlement.*

2.8.10 This argument, of no direct visual harm, is fundamentally flawed. This is because, as outlined above, the visual effect of the proposed development on the view from Nottingham Hill was identified as being moderate *adverse* even after the mitigating factor of the development receding into the form of the existing settlement had already been taken into account.

2.8.11 Given the points outlined above, including the point regarding section 6.42 of GLVIA, it is not logical to conclude that the proposal would not cause direct visual harm to the AONB if the evidence base has identified that the development would have a moderate *adverse* effect on a view from within the AONB.

2.8.12 The Board therefore maintains its opinion that the proposed development would have an adverse effect (in our opinion, a significant effect) on:

- The view from Nottingham Hill (and, with a moderate adverse effect, Cleeve Hill).
- The special qualities of the Cotswolds AONB, specifically views from the Cotswold escarpment.
- The key features of the Escarpment and Escarpment Outlier Landscape Character Types, specifically the views from these landscape character types looking out across the vale.
- The landscape and scenic beauty of the Cotswolds AONB.
- The natural beauty of the Cotswolds AONB.

2.9 Appellant Assertion 4b: The proposed development would not have an adverse effect the Cotswolds AONB – views from the site towards the Cotswolds AONB

2.9.1 The appellant’s evidence asserts that the proposed development would have a moderate but neutral effect on views from the site. In other words, the adverse effects on views resulting from the proposed development would be balanced by potential beneficial effects. The main basis of this assertion is that the proposed open space will enable views to be experienced by the public in locations that are not currently accessible to the public.

2.9.2 The Board considers that this assertion is deeply flawed. As indicated in our evidence, we consider that the site currently provides magnificent views towards the Cotswolds AONB, with key views to Nottingham Hill and Cleeve Hill being across open countryside and relatively unfettered by built development. The proposed development would introduce housing in very close proximity to key viewpoints and significantly reduce the quality of these views.

2.9.3 The Board considers that these adverse effects would significantly outweigh the potential benefits of the proposed open space.

2.9.4 The appellant’s evidence base indicates that the views from the site are just of local significance. However, there a number of factors that, both individually and collectively, that increase the significance of these views and the significance of any adverse effects:

- There are multiple, well used public rights of way and informal footpaths on the site.
- There are spectacular views from these rights of way / footpaths with a 180 degree panorama of the Cotswolds AONB extending from Crane Hill in the north to Leckhampton Hill in the south, with the view towards Nottingham Hill and Cleeve Hill being particularly impressive.

- Views across the site towards the AONB are identified as being locally significant in the Gotherington Neighbourhood Development Plan (NDP), with policies in the NDP seeking to protect these views.⁵
- The NDP identifies that the views from the site towards the AONB, particularly the views towards Nottingham Hill and Cleeve Hill, are highly valued by local residents.⁶
- Views to the Cotswold AONB / escarpment are a special quality of the Cotswolds AONB.
- The new planning practice guidance (PPG) relating to development in the setting of AONBs (published in July 2019) increases the weight that should be given to views from and to AONBs (my emphasis).⁷ It is important to note that this guidance gives particular weight to such views that are identified as important.
- Given that views across the site, towards the AONB, are identified as being locally significant in the NDP, the Board would consider these views to be important in the context of the new guidance in the PPG.
- Finally, it is worth noting that the current version of the Cotswolds AONB Management Plan (adopted in December 2019) introduced a new requirement that development proposals should conserve and enhance views to the AONB.⁸

2.9.5 The Board recognises that minor, localised, adverse effects cannot preclude development in principle. However, we consider that the factors outlined above raise the significance of the adverse effects of this particular development proposal well above the level of minor, localised, adverse effects that would be experienced by any proposal to extend built form into the open countryside.

2.10 Reliance on previous opinions

2.10.1 In their evidence and during the inquiry, the appellant's representatives have repeatedly relied on and referred to the previous opinions of other parties. For example, Mr Connolly's Proof of Evidence primarily relies on such opinions. Very little new evidence has been provided to support their case, in relation to landscape and visual impact considerations.

2.10.2 A particular example of this is the repeated reference, in the appellant's evidence and during the inquiry, to the Landscape and Visual Sensitivity Study (LVSS) undertaken by Toby Jones Associates in 2014. This study is the root of many of the key arguments, made by the appellant and in previous opinions, that the proposed development would be acceptable.

2.10.3 However, a key consideration with regards to this study, which the appellant's evidence fails to mention, is that, by its own admission, the study was never intended to provide a definitive judgement on the suitability of sites for development.⁹

2.10.4 The appellant's evidence also fails to mention the statements in the LVSS that:

- unsympathetic or inappropriate development will be inappropriate in a land parcel, even if an area is deemed to have a low sensitivity;¹⁰

⁵ Gotherington Neighbourhood Development Plan, Policy GNDP10 and Appendix 3.

⁶ Gotherington Neighbourhood Development Plan, Appendix 2.

⁷ Planning Practice Guidance – Natural Environment – paragraph 042.

⁸ Cotswolds AONB Management Plan 2018-2023, Policy CE1.

⁹ Section 1.2 of the LVSS.

¹⁰ Sections 2.1 and 2.5 of the LVSS.

- a key visual sensitivity remains in this parcel to protect the visual gap between Gotherington and Bishops Cleeve.¹¹

2.10.5 It is therefore evident that the LVSS, itself, potentially undermines the assertions made by the appellant and in previous opinions.

3.0 CONCLUSION

3.1 As indicated in the introduction to this closing statement, the Board objected to the proposed development because we considered that it would have a significant adverse impact on the purpose of AONB designation, which is to conserve and enhance the natural beauty of the Cotswolds AONB.

3.2 Having read and listened to the appellant's evidence and cross examined the appellant's witnesses, we do not consider that their arguments and assertions justify any change in the Board's position.

3.3 As such, we maintain our objection and recommend that the tilted balance should not apply, planning permission should be refused and that the appeal should be dismissed.

¹¹ Section 'Goth 04 – Visual Summary' of the LVSS.