

Cheltenham Borough Council  
Local Plan 2011-2031  
**EXAMINATION**

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**Examination into the soundness of the Cheltenham Plan (CP) 2011-2031**

**Post Hearing Advice**

Introduction

1. At this stage I consider that the CP is a Plan which could be found sound subject to main modifications (MMs). However I have reached no final conclusions at this time. The MMs will be subject to consultation and I will reach my final conclusions taking any representations into account.
2. During the hearing sessions a number of potential MMs were discussed and a list has been maintained by the Council. In addition I indicated at the hearings that there were matters on which I would need to deliberate before I would be in a position to advise the Councils as to whether any additional work or further MMs should be considered. This letter provides my views on these matters. It also sets out the administrative arrangements relating to all potential main modifications.
3. I am not inviting any comments about the contents of this letter, although I am seeking the Council's response on the matters raised. I will detail my full reasoning on these issues in my final report on the CP.

Further potential main modifications

*Leckhampton School Site (MD5)*

4. Overall I consider that adequate work has been undertaken of the potential environmental impacts of the school site proposed within the MD5 allocation to meet the requirements for sustainability assessment. The site has also been subject to public consultation at the pre-submission stage; and the results of that consultation are before my examination.
5. However, the NPPF requires proposals to be deliverable. The allocated site is within the control of Miller Homes and is not currently available for Gloucestershire County Council (GCC) as education authority to purchase. GCC has undertaken further work into the need for a school site and concluded that a smaller site would be suitable [M3-1321 paras 14-15]. There is land owned by GCC immediately south of the MD5 proposal, which currently forms a part of the proposed Leckhampton Fields Local Green Space (LGS). I deal with the issue of the LGS designations below. I make no comment on the suitability of the alternative site for the school.
6. With the opposition to acquisition from Miller Homes, and the potential availability of an alternative site in GCC's ownership, it is uncertain that GCC could successfully use CPO powers to purchase the school site as allocated within MD5. In these circumstances it is not certain that the allocation of the school site as currently proposed within Policy MD5 is capable of being delivered.
7. There is an agreement between GCC and Cheltenham Borough Council that a new secondary school is required in the Leckhampton/Warden Hill area. In addition, the NPPF para 72 requires LPAs to take a proactive, positive and collaborative approach to meeting the requirements for new school places to ensure there is a sufficient choice to meet needs. In these circumstances it is appropriate that the Council seek to make provision for the identified need in the emerging CP.
8. It is for the Council to consider the modification which should be brought forward to ensure that provision is made in the CP for the new school. There are two options which the Council might pursue to modify the CP and provide for a new school at Leckhampton, both of which were raised in discussion at the hearings.
9. GCC has indicated that a total site area of 5.9ha is required for the School, rather than the 7ha which was originally identified. On this basis, the area required for the school within the MD5 allocation

could be reduced. Consideration may also be given to restricting the MD5 land to the accommodation of the main school buildings alone, with the playing fields and car parking located within the GCC owned land south of the allocation. Having reduced the area of land within the MD5 allocation which is required for education purposes, an assessment should also be made of the extent to which the school is required to meet future needs arising from the new housing proposed at MD5. Provided there is a demonstrable link, changes can be made to Policy MD5 to require that the school site is provided prior to the completion of all or part of the residential development of MD5. Such a modification to the Policy (provided it can be justified) would ensure that an agreement can be reached between the current landowners and GCC.

10. The other option is to allocate the land already owned by GCC as the site for the school. GCC has submitted substantial evidence to demonstrate the impacts on the landscape of a school development in this location, and detailed assessments have been carried out of traffic and other environmental impacts. The Council should give careful thought to the evidence as submitted in order to reach a view as to whether a modification to allocate this site and remove the school from MD5 should be pursued.

11. Through the reduction in size or relocation of the school, land would be released within MD5 for alternative use. I deal with housing and Local Green Space (LGS) later in this note. The land which is released could be considered for an increase in housing numbers, for the provision of LGS to serve the new housing within MD5, or a combination of both.

12. Any proposal to modify Policy MD5 and/or the site of the school may require a review of the SA. The Council will also need to make changes to the site map (currently p84) and the Policies Map to identify the area to be allocated for the school site. As part of the work on the modification to the Plan the Council, in consultation with GCC as highway authority, will need to be satisfied that the traffic impact from a new school site can be accommodated together with the traffic impact from the new and proposed residential development within the area.

#### *Employment*

13. In view of the Environment Agency comments on site E4 Land at Chelt Walk, it would not be appropriate to include any residential development within the site. A MM should be made to the text in para 3.25 to reflect the findings of the Level 2 Strategic Flood Risk Assessment (SFRA) and delete the reference to residential development within any future scheme.

14. It is not clear whether the sites listed as "new" employment allocations in Policy EM3 have been previously included within the 63ha of employment land referred to in JCS paragraph 3.2.21. I have not yet had the results of the work requested at the hearings on this matter.

15. To the extent that Policy EM3 may identify previous allocations and extant permissions which have been included in the figure of 63ha referred to in the JCS, it is not appropriate for such sites to be included in the CP as "New employment allocations" in Policy EM3. Policy EM1 deals with safeguarding key existing employment land and buildings. In the interests of clarity and to avoid any potential for double counting, sites listed in Policy EM3 which are included within the 63ha referred to in the JCS should be transferred to Policy EM1. If Policy EM3 is to be retained, it should only include sites which were not identified within the 63ha and which are clearly a new employment designation.

#### *Housing*

16. There is no date provided in Table 2 to indicate the base date for the housing figures in the Plan. Table 2 should be updated to the Council's latest monitoring point, with the base date included within the updated table. Similarly, the housing trajectory provides no base date for the assessment provided for the delivery of housing sites. The trajectory should also be updated to the latest available monitoring point, and the Council should consult with landowners, agents and or developers to clarify the potential delivery of each of the sites within the trajectory using the monitoring point as the base date.

17. When updating the housing figures in Table 2 and in the housing trajectory, changes to the figures which arise from my comments on Sites MD1, MD5, and HD4 will need to be taken into account

#### *Site MD1*

18. This site is in active commercial use and has been recently refurbished. Although the landowner raises no objection to the allocation for housing, this is not a reliable indication that a change in the use would be forthcoming. Although it may be appropriate to retain site MD1 as a potential housing site, unless there is evidence to demonstrate that the site will be brought forward before 2031, I consider it should not be counted as contributing to the supply of housing within the Plan period.

*Site MD5*

19. With any modification to the size or location of the school site proposed for Leckhampton, there is potential for an increase in the housing numbers above 250 dwellings within the allocation, together with the possible provision of LGS to serve the new housing. I look to the Council to identify and agree a satisfactory uplift in the housing numbers for the site. The Council, in consultation with the GCC as highways authority, will need to be satisfied that the traffic impact of any increase in the scale of housing, in addition to the traffic from a potential school site and the housing development at Farm Lane, can be accommodated in accord with Government policy.

*Site HD4*

20. The site is allocated for some 29 dwellings, and the Council has refused planning permission for a development of 69 houses. I note the position of Historic England (HistE) which raises issues relating to potential impact on the settings of the Grade II\* listed Ashley Manor and the Grade II listed Charlton Manor. However, the views of HistE are disputed by expert evidence which I have taken into account in my consideration of the potential for development of the site. I visited the site on the 5 March 2019.

21. Historic England proposes amendments to the wording of Policy HD4. These would restrict new housing to the west of the site behind the existing tree belt and require improvements to be secured to the Ice House which lies between Charlton Manor and Ashley Manor. However, having reviewed the evidence and visited the site, I consider that the reduction in the area of the development recommended by HistE is not justified. Nevertheless, there is good reason to amend the boundaries of the development area from that currently proposed in the CP, and to require new tree planting around the east and south boundaries to safeguard the settings of both listed buildings.

22. New housing should be located away from the setting of the west elevation of Ashley Manor. This could be achieved through the amendment to the southern boundary of the allocation site so that it continues in a straight line westwards from the rear of the northernmost school building. In addition, to provide an undeveloped buffer between the rear garden boundary of Charlton Manor and the new development, the eastern boundary of the site should be repositioned at least 30 metres west of the rear boundary with Charlton Manor. The Ice House would remain within the confines of the site, but its future could be secured through the inclusion of the requirement put forward by Historic England as bullet point 2.

23. An MM is required to Policy HD4 to identify the boundaries of the site as suggested above; to identify the level of new housing which could realistically be accommodated within the new site boundary; to identify the need for new tree planting around the east and south boundaries of the site; and to require the improvements to the Ice House in accordance with the views of HistE. Changes will also be required to the Plan of HD4 (currently on page 70) and to the Policies Map.

*Site HD8*

24. The changes put forward by HistE for Policy HD8 should be included as a MM.

*Green Belt (GB) and Green Infrastructure*

*Policy GB2*

25. The test in Policy GB2 Clause d) is potentially too restrictive since any new building is, by definition, harmful to the openness of the GB. I would suggest a MM to Clause d) to ensure that it complies with the wording in the final bullet point of NPPF para 89.

*Local Green Space (LGS)*

26. Having reviewed the Council's assessments for the designation of LGS proposed within the CP, I am concerned that the methodology and overall assessment for LGS designation has not been sufficiently rigorous to comply with national policy and guidance.

27. The NPPF sets a significantly high bar for LGS designation given that paragraphs 76-78 state that it "...will not be appropriate for most green areas or open space"; that on such sites new development is ruled out "other than in very special circumstances" and that they are to be managed in line with Green Belt policy.

28. Care is required to ensure that LGS policies are not misused. Whilst it is a consequence of the successful designation of a site as LGS that it will be protected from future development, that should not be the primary reason for seeking the designation. The aim of the policy is to protect areas of particular importance to local communities and there is nothing in the NPPF which describes their use for the strategic containment of settlements or as a strategic designation to protect the countryside.

29. The Council's LGS Study Report, refers to the "threat of development" as an example of the factors to be considered by communities when assessing possible LGS sites, whereas the primary reason for designation should be that the site is of such demonstrable significance to the local community that it should be protected. The use made of Natural England's Accessible Natural Greenspace Standards (ANGSt) in the LGS Study, and comparisons of the scale of LGS to that of SSSIs are unhelpful since it diverts attention from the criteria set out clearly in National policy and guidance.

30. Many of the proposed LGS areas will be important to local communities. Open spaces will be used by local communities for informal recreational uses including dog walking and relaxation. However these are inevitably commonplace activities, in particular within the rural areas around the urban fringe. Sites may also contain varying levels of wildlife, beauty and tranquillity. Nevertheless the available evidence must sufficiently demonstrate why sites are 'demonstrably special' and of 'particular local significance' to distinguish them from other green areas and open spaces which have similar features in order to reach the high bar necessary for LGS designation.

31. Many of the sites proposed for LGS in the CP have established uses which are subject to other policy protection. Before putting these sites forward as LGS, consideration should be given to whether the additional designation is justified. For example, the designation of sports pitches and playing fields as LGS is useful where the specific facility is intended to be retained in that location and serves a special purpose for the local community. However, if there is a possibility of alternative or better facilities being provided in the future then the LGS designation would be inflexible and para 97 of the NPPF would provide a more appropriate form of protection. The Victoria Cricket Ground is an example of a sports field for which LGS designation is unlikely to be justified.

32. In addition to the 12 sites which were assessed through the LGS study, the Council has identified all the sites allocated as Public Green Space (PGS) in the 2006 Local Plan as LGS without any consideration as to whether the site would meet the high bar for designation set out in the NPPF and in the associated Planning Practice Guidance (PPG). A further 2 sites are added on the basis that they are owned and managed by the Council and are similar to other PGS sites. Whether or not the PGS allocation was a precursor to the LGS designation, given the particular qualities required to support LGS designation, each of the PGS sites needs to be assessed and justified before the new designation is proposed.

33. There are several proposed LGS which cover large areas of land. These include some of the existing PGS such as the King George V Playing Field (11.70ha), Swindon Village (8.89ha) and Pitville Park (19.51ha). Other large areas are proposed at Leckhampton Fields (39.31ha), the North West Strategic Allocation at Swindon Village (24.5ha) and West Cheltenham Strategic Allocation (18.25ha) which were specifically discussed at the hearings. Although there is no definition of an "extensive tract of land" in national policy or guidance, an LGS should be "local in character". To designate areas of land of this scale as being "local in character" would require a robust justification.

34. Leckhampton Fields is an attractive rural area at the foreground of the Cotswolds AONB, and valued by local residents for its public footpaths, wildlife and tranquillity. However, there is no evidence that the particular features of this area of countryside are so special as to justify its long term protection as an extensive area of LGS. In view of the proposals for large scale residential development

within the Leckhampton area, I agree with the Inspector at the JCS examination that an area of LGS would be justified. However, the boundaries fall to be determined through the CP, and the area selected must accord with national policy and advice. I consider that the area of 39.31ha as currently proposed is not justified, and that a new assessment is required to identify an area which would meet the criteria in the NPPF and PPG. LGS proposed within the Leckhampton area will be needed to serve existing and new residential development.

35. These comments also apply to the proposed area of 24.5ha for LGS at the North West Strategic Allocation. An area was identified through a Statement of Common Ground (SoCG) between the developers, Swindon Parish Council and Save the Countryside in April 2016. The area proposed in the SoCG amounts to some 5.9ha. This remains a significant area for designation as LGS. However, in view of the scale of new and existing development which it would serve and the buffer which would be provided between the existing and new housing, I consider the area to be justified. Detailed boundaries should be agreed with the developer and the allocation within the CP modified accordingly.

36. The Council indicated at the hearings that the LGS proposed for West Cheltenham required review. I therefore make not comment at this stage on the proposal in the CP for LGS at West Cheltenham.

37. The PPG states that landowners should be contacted at an early stage about proposals to designate any part of their land as LGS and have opportunities to make representations. Submissions indicate that a number of landowners were unaware of the potential designation of their land as LGS. The views of landowners should be sought during the the LGS selection process and their comments should be robustly addressed within any assessments.

#### *Further work on LGS*

38. Having regard to the issues I have identified with regard to the methodology adopted in the identification of LGS, and the particular shortcomings in those discussed at the hearings, I suggest that the Council has the following options:

Option 1 – to revisit the assessments for LGS designation of all the sites proposed as LGS in Table 8 of the CP and as shown on the Policies Map having regard to the factors which are highlighted above. Consequential changes may be required to Policy GI1, the supporting text and the Policies Map. This option would require a pause in the examination until all the work is completed, landowners have been contacted and a public consultation has been carried out of the results. It may then be necessary to hear evidence at a further hearing session. Inevitably this would result in a lengthy delay in the examination.

Option 2 – to restrict the new assessment for LGS designation to sites 1-11, 83 & 84 in Table 8 which were not previously designated as PGS in the 2006 Local Plan. The sites to be tested against the factors which are highlighted above, and where amendments are necessary, proposals for LGS to be brought forward as a modification to the CP and as changes to the Policies Map. Consequential changes may be required to Policy GI1 and the supporting text. Those sites previously allocated as PGS (sites 12-82) to be deleted from Table 8 and the Policies Map, pending a separate and fully detailed assessment of each of the PGS sites against National policy and guidance for the designation of LGS. This separate assessment of the PGS sites to be carried out either as a one policy update of the CP, the production of a separate DPD or as part of the 5 year CP review. The PGS policy (GE 1) in the 2006 Local Plan could continue to be saved pending this process. The CP would need to make it clear that these 2006 policies were not being superseded. This option would require a less extensive pause in the examination until the work is completed, and a public consultation has been carried out of the results. It may be necessary to hear evidence at a further hearing session.

Option 3 - to remove all the LGS designations from the Policies Map, delete Table 8 and the accompanying text and make consequential changes to Policy GI1. The Council could then undertake a comprehensive review of the LGS assessment process, either as a one policy update of the CP, the production of a separate DPD or as part of the 5 year CP review. There is the option of continuing to save PGS policy (GE 1) in the 2006 Local Plan pending this process, provided such an approach is made clear in the modification to the CP.

#### *Flooding*

39. Version 2 of the Level 2 SFRA has been reviewed by the Environment Agency (EA). In their letter

to CBC dated 20 February 2019, the EA has set out requests for amendments to the policy wording of the following sites: site EM3, MD4, HD8, HD7 and HD3. In addition, Severn Trent Water (STW) has identified local infrastructure constraints for a number of sites. I agree that site specific policy wording is required for sites highlighted amber or red in the STW email of the 1 February 2019. I look to the Council to produce MMs to meet the requirements of the EA and of STW.

#### *Historic and Built Environment*

40. The Council acknowledge that the CP does not provide the statutory framework within which to carry out a review of the Borough's Conservation areas. Paragraphs 9.22 to 9.30 together with Table 1 should be deleted from the CP as a MM.

#### *Natural Environment*

41. JCS Policy SD7 provides adequate protection for the Cotswolds AONB and its setting from the harmful effects of new development. Paragraph 8.5 of the CP is not necessary or justified and should be deleted through a MM.

#### *Gypsy, traveller and travelling showpeople*

42. The site proposed to be allocated through Policy GT1 is located within the AONB outside any settlement and conflicts with Government policy as set out in "Planning policy for traveller sites". The site should be deleted from the CP.

43. The current need for traveller sites is met as a result of the temporary planning permission on the site proposed for allocation. A permanent solution to this and any future need should be met in the 5 year review of the CP, through the allocation of a site which complies with Government policy. Meanwhile, the criteria based Policy SD13 in the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) will provide the basis for the determination of future planning applications.

#### Next Steps

44. The Council should now consider its options in relation to

- An amended school site to meet the need for the Leckhampton/Warden Hill area;
- The deletion of MD1 from the housing supply;
- A modification to the Policy wording of MD5, to the scale of housing development for the allocation and the possible inclusion of an area of LGS;
- the scale of housing development for Oakhurst Rise site HD4;
- the alternative approaches set out above for the review of the LGS designations.

45. Details of the work which the Council intends to undertake, together with the timescales for the work, should be clearly set out in a programme to be submitted to the Programme Officer by April 26 2019.

46. The additional MMs which will be required as a consequence of the issues raised in this note will need to be incorporated into a consolidated schedule of all the potential MMs. The Councils should also consider the need for any consequential changes to the CP and to the Policies Map that might be required in connection with any potential MMs. All changes to the submission Policies Map must be made available for comment alongside the MMs.

47. I will need to see the draft schedule of MMs and changes to the Policies Map and may have further comments on it. I will also need to agree the final version of the schedule before it is made available for public consultation. For clarity and to avoid an excessive number of MMs, it is best to group all the changes to a single policy together and to include any consequential changes to the explanatory text of that policy as one MM.

48. The Council should also satisfy itself that it has met the requirements for sustainability appraisal by producing an addendum to the Sustainability Appraisal of the submitted plan in relation to the potential

MMs, as appropriate. I will need to see a draft of the addendum and may have comments on it. The addendum should be published as part of the future MMs public consultation.

49. The Council may also produce a list of proposed additional modifications (AMs). The AMs are a matter solely for the Council and are not before me to examine. If the Council intends to publicise or consult on them it should be made clear that such changes are not a matter for the Inspector.

50. Advice on main modifications and sustainability appraisal, including on consultation, is provided in "Examining Local Plans Procedural Practice". Amongst other things this states that the scope and length of the consultation should reflect the consultation at the Regulation 19 stage (usually at least 6 weeks). It should be made clear that the consultation is only about the proposed main modifications and not about other aspects of the plan and that the main modifications are put forward without prejudice to the Inspector's final conclusions.

51. The Procedural Practice also states that the general expectation is that issues raised on the consultation of the draft main modifications will be considered through the written representations process and further hearing sessions will only be scheduled exceptionally.

52. I look forward to hearing from the Council by the 26 April 2019, with its work programme and decision as to which approach it wishes to pursue to review the LGS designations. If there are any queries or matters that require clarification please contact me through the Programme Officer.

*Wendy Burden*

Inspector