

Planning Committee

Date	19 December 2023
Case Officer	Sarah Smith
Application No.	23/00661/FUL
Site Location	Lunn Cottage Aston Cross Tewkesbury
Proposal	Erection of 10 dwellings, garages, construction of internal estate road, formation of parking areas and gardens/amenity space.
Ward	Isbourne
Parish	Ashchurch Rural
Appendices	Site location plan Site layout plan House Type 1 Elevations House Type 2 Elevations House Type 3 Elevations House Type 4 Elevations Proposed Visualisation Plots 1-4 Proposed Visualisation Plots 5-10
Reason for Referral to Committee	Full or outline application for the erection of 10 or more residential units.
Recommendation	Delegated Permit

Site Location



1. The Proposal

Full application details are available to view online at:

<http://publicaccess.tewkesbury.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=RY17MDQDIX600>

- 1.1 Members may recall that an almost identical scheme was brought before Planning Committee in March 2023 -planning reference 21/01013/FUL where it was resolved to refuse Planning Permission in accordance with the Officer's recommendation. That application was refused 21st March 2023 and the decision has recently been taken to appeal by the applicant.
- 1.2 The previous planning application was refused for the following reasons:
 1. The proposed development conflicts with policies SP1, SP2 and SD10 of the adopted Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 - 2031 (December 2017) and Policies RES1, RES2, RES3 and RES4 of adopted Tewkesbury Borough Plan 2011-2031 (June 2022) for reason the proposed development does not meet the strategy for the distribution of new development in Tewkesbury Borough and the application site is not an appropriate location for new residential development. The proposal does not meet the criteria for Housing in Rural Areas according to Policy H1 of the Ashchurch Rural Parish Neighbourhood Development Plan 2020-2031.
 2. The proposed development does not demonstrate how it would adequately provide for housing that would be available to households who cannot afford to rent or buy houses available on the existing housing market contrary to Policy SD12 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 (December 2017) and the National Planning Policy Framework.
 3. The proposed development does not demonstrate how it would adequately provide for education school places contrary to Policies INF4, INF6 and INF7 of the JCS of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 - 2031 (December 2017) and the National Planning Policy Framework.
- 1.3 The planning application seeks full permission for the construction of 10 no. dwellings, linked to the existing development to the west, via an extension of the approved estate road and footpath (Queen's Close). The development would include garages, formation of parking areas and gardens/amenity space. Existing boundary trees and hedgerow would be retained, and also existing trees within the area of public open space.
- 1.4 There would be:-
 - 2 x 2 bed semidetached(Plots 1&2)
 - 2 x 3 bed semidetached (Plots 3&4)
 - 6 x 4 bed link detached (Plots 5-10)
- 1.5 Plots 1 & 2 would have parking for one car each. The other plots would have dedicated parking for at least 2 cars.
- 1.6 Lunn Cottage would be retained although the access arrangements are to be altered. Currently, there is a domestic access from the A46 which is to be closed off. Instead it is proposed to use the extension to Queen's Head Close to form a rear access to Lunn Cottage.

1.7 It is proposed that 4 of the dwellings will be 'affordable dwellings' although a planning obligation would be required to secure this.

2. Site Description

2.1 The application site is situated immediately south of the A46 and to the east of the B4079 in Aston Cross, adjacent to residential development on Queens Head Close, the latter approved under ref 16/00665/FUL. The application site of 0.7 hectares extends as far as Tirl Brook to the south and into the associated flood zone 2/3, though only the area outside of the flood zone would be developed for housing. The flood zone area would be public open space or garden land.

2.2 Lunn Cottage and its small enclosed domestic curtilage is within the application site and is to be retained. The remainder of the site is currently rough pasture, partially wooded to the south and bounded by hedgerow.

3. Relevant Planning History

Application Number	Proposal	Decision	Decision Date
16/00665/FUL (Adjacent site)	Erection of 12 No. dwellinghouses, garages and internal estate road together with vehicular and pedestrian accesses; formation of parking areas and gardens/amenity space	PER	11.08.2017
21/01013/FUL	Erection of 10 no. dwellings, garages, construction of internal estate road, formation of parking areas and gardens/amenity space.	REF	19.04.2023

4. Consultation Responses

Full copies of all the consultation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

4.1 **Ashchurch Parish Council** – Object on the following grounds:-

- Traffic issues on A46
- Inadequate access through existing development
- Highway safety issues during construction
- Flood risk issues
- Conflicts with Policy H1 of the Neighbourhood Plan

4.2 **Gloucester County Council Highways**- no objection subject to conditions
The Highway Authority has undertaken a robust assessment of the planning application. Based on the analysis of the information submitted the Highway Authority concludes that there would not be an unacceptable impact on Highway Safety or a severe impact on congestion. There are no justifiable grounds on which an objection could be maintained.

4.3 **Severn Trent Water**- no objection subject to conditions

- 4.4 Gloucestershire County Lead Local Flood Authority-** no objection subject to conditions
- 4.5 Environmental Health-** no objections subject to conditions
- 4.6 Ecology-** no objections subject to conditions
- 4.7 Housing Enabling Officer-** no objection in principle
The proposal for 4no. Affordable Housing units on this scheme is supported by Housing Services. The preference would be to deliver Social Rent tenures for these properties.
- 4.8 GCC Development contributions Investment Team-** no contributions requested
The number of dwellings would be expected to generate an additional demand for 3.85 primary places but the County Council is not currently seeking a primary contribution from this development. There is currently surplus capacity for additional secondary school age pupils. The proposed number of dwellings falls below the number that constitutes a library requirement.
- 4.9 Minerals and Waste Policy Officer-** no objections
- 4.10 Gloucestershire Wildlife Trust-** need for the management of the orchard for biodiversity enhancement to be incorporated within any permission. The ecological survey work should be updated and if recommended for consent conditions should be imposed on a management plan for the orchard and a lighting strategy submitted.
- 4.11 Community Infrastructure-** Recommend that offsite POS/play contribution and community centre contributions should be sought.

5. Third Party Comments/Observations

Full copies of all the representation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

5.1 Five objections have been received on the following grounds:

- Risk of flooding
- Inadequate access and parking for construction vehicles
- Queens Head Close is a private road and permission has not been granted to use it for access to the development.
- Developer has not complied with conditions on the original Queens Head Close development in terms of maintenance of tree planting and provision of visitor parking spaces
- Highway safety issues
- Increased traffic
- Impacts on wildlife
- Impact on local character
- Previously refused
- Lack of amenities in the area
- Bus stop not in use
- Dangerous road to access railway station
- Not compliant with Policy H1 of the Neighbourhood Plan
- Sewers and drains designed for existing development

6. Relevant Planning Policies and Considerations

6.1 Statutory Duty

Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The following planning guidance and policies are relevant to the consideration of this application:

6.2 National guidance

National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG)

6.3 Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) – Adopted 11 December 2017

Policy SP1 (The Need for New Development)
Policy SP2 (The Distribution of New Development)
Policy SD4 (Design Requirements)
Policy SD6 (Landscape)
Policy SD9 (Biodiversity and Geodiversity)
Policy SD10 (Residential Development)
Policy SD14 (Health and Environmental Quality)
Policy INF1 (Transport Network)
Policy INF2 (Flood Risk Management)
Policy INF3 (Green Infrastructure)

6.4 Tewkesbury Borough Local Plan to 2011-2031 (TBLP) – Adopted 8 June 2022

Policy RES1 (Housing Site Allocations)
Policy RES2 (Settlement Boundaries)
Policy RES3 (New Housing Outside Settlement Boundaries)
Policy RES5 (New Housing Development)
Policy LAN2 (Landscape Character)
Policy NAT1 (Biodiversity, Geodiversity and Important Natural Features)
Policy ENV2 (Flood Risk and Water Management)
Policy TRAC9 (Parking Provision)
Policy DES1 (Housing Space Standards)

6.5 Ashchurch Rural Parish Neighbourhood Development Plan 2020-2031 (2022)

Policy H1: Housing in Rural Areas

7. Policy Context

7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the Development Plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.

8. Evaluation

Principle of development

- 8.1** As set out in the NPPF planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 8.2** The NPPF at Chapter 5 seeks to deliver a sufficient supply of homes. Paras 78-80 deal with rural housing.
- 8.3** Policy SP1 (The Need for New Development) of the JCS states that provision will be made for 35,175 new homes, within existing urban areas through District Plans, existing commitments, urban extensions, and strategic allocations. Policy SP2 (Distribution of New Development) amongst other requirements, states that dwellings will be provided through existing commitments, development at Tewkesbury town, in line with its role as a market town, smaller scale development meeting local needs at Rural Service Centres and Service Villages. In the remainder of the rural area Policy SD10 (Residential Development) will apply for proposals for residential development.
- 8.4** Policy SD10 of the JCS states that new housing will be planned in order to deliver the scale and distribution of development set out in Policies SP1 and SP2. Para 4. of SD10 is relevant to this application where, since being in a rural area, housing development on other sites will only be permitted where:
- It is for affordable housing on a rural exception site in accordance with Policy SD12, or;
 - It is infilling within the existing built up areas of the City of Gloucester, the Principal Urban Area of Cheltenham or Tewkesbury Borough's towns and villages except where otherwise restricted by policies within District plans, or;
 - It is brought forward through Community Right to Build Orders, or;
 - There are other specific exceptions / circumstances defined in district or neighbourhood.
- 8.5** In terms of JCS requirements, the proposed development does not meet any of the exception criteria of SD10 and is therefore also contrary to the requirements of policies SP1 and SP2.
- 8.6** Policy RES1 of the adopted TBP sets out allocated sites for residential (and mixed use) development.
- 8.7** Policies RES2 and RES3 set out policy requirements in relation to settlement boundaries. According to the proposals map of the TBP, the settlement boundary for Tewkesbury Town Area extends up to the western edge of B4079 in Aston Cross. The application site is to the east of the B4079, outside of the settlement boundary. However the existing development of Queen's Head Close which consists of 12 dwellings is situated immediately to the east of the B4079 and has been relatively recently constructed. Yet the application site does not fall within a Rural Service Centre, Service Village, or Urban Fringe Settlement. RES3 sets out where exceptions may apply to the presumption against development outside settlement boundaries:

- The reuse of a redundant or disused permanent building (subject to Policy RES7)
- The sub-division of an existing dwelling into two or more self-contained residential units (subject to Policy RES8)
- Very small-scale development at rural settlements in accordance with Policy RES4
- A replacement dwelling (subject to Policy RES9)
- A rural exception site for affordable housing (subject to Policy RES6)
- Dwellings essential for rural workers to live permanently at or near their place of work in the countryside (subject to Policy AGR3)
- A site that has been allocated through the Development Plan or involves development through local initiatives including Community Right to Build Orders and Neighbourhood Development Orders

8.8 The application site is not allocated for development and does not meet the exception criteria for development outside of settlement boundaries. The location of the proposed development is therefore in principle contrary to policies SP1, SP2, SD10 of the adopted Joint Core Strategy, and policies RES1, RES2, and RES3 of the adopted Tewkesbury Borough Local Plan.

8.9 The Ashchurch Rural Parish Neighbourhood Development Plan (Made version) 2020-2031 sets out its approach to Housing in Rural Areas. Policy H1, Paragraphs A and E are relevant to the proposal. Paragraph A states that new residential development in the countryside will be supported where it is infill, an extension/modification/conversion, or within the garden of an existing dwellinghouse. The proposal does not meet these requirements and therefore conflicts with Policy H1. Paragraph E states development will only be allowed where local infrastructure can meet the impact of the development. There is no evidence of conflict with Paragraph E.

Five Year Housing Land Supply

8.10 The Council published an updated Five-Year Housing Land Supply Statement (October 2023) on 17th October 2023 which sets out the position on the five-year housing land supply for Tewkesbury Borough as of 31st March 2023 and covers the five-year period between 1st April 2023 and 31st March 2028. This demonstrates that, when set against local housing need plus a 5% buffer, Tewkesbury Borough Council can only demonstrate a 3.23 years' supply of housing land.

8.11 While the policies for the delivery of housing are out of date they nevertheless still remain part of the development plan albeit with reduced weight. Paragraph 11(d) of the NPPF therefore applies and states that where policies which are most important for determining the application are out of date, permission should be granted unless: i) the application of policies in the Framework that protect assets of particular importance provides a clear reason for refusing the development; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Status of The Ashchurch Rural Parish Neighbourhood Development Plan 2020-2031 (2022) (ARNDP)

- 8.12** Paragraph 14 of the Framework states that in situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:
- i. the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
 - ii. the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
 - iii. the local planning authority has at least a three-year supply of deliverable housing sites (against its five-year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and
 - iv. the local planning authority's housing delivery was at least 45% of that required over the previous three years.
- 8.13** Whilst ARNDP was adopted within the last two years (27th September 2022), the plan does not contain allocations to meet its identified housing requirement. Consequently, it does not benefit from the protection that would have been afforded by paragraph 14 of the Framework. However, ARNP remains an integral component of the adopted development plan and decision makers should continue to have full regard to it in determining planning applications.

Conclusion on Principle of Development

- 8.14** Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- 8.15** The application conflicts with Policy SD10 of the JCS, Policies RES1, RES2 and RES3 of the TBP and Policy H1 of ARNDP, therefore the starting point is that the proposal should be refused in accordance with the development plan unless other material planning considerations indicate otherwise.
- 8.16** However, as set out above, the Council cannot at this time demonstrate a five year supply of deliverable housing land and therefore the most important policies for determining the application are deemed out of date in accordance with footnote 8 of the NPPF. On that basis the application must be determined in accordance with paragraph 11(d)(ii) of the NPPF (the tilted balance), i.e. planning permission should be granted unless any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF as a whole.

Other Material Considerations

Character, Appearance and Visual Impact

- 8.17** The NPPF at Chapter 12 seeks to achieve well-designed places and significant emphasis is placed on well-designed places through the National Design Guide and national Model Design Code. Policy SD4 of the JCS seeks to ensure design principles are incorporated into development, in terms of context, character, sense of place, legibility and identity. RES5 of the TBC seeks to ensure proposals are of a design and layout which respect the character, appearance and amenity of the surrounding area. Further, Policy DES1 of the TBP sets out the requirements of Housing Space Standards.
- 8.18** In terms of visual impact, the development as a whole is not considered to have significant impacts. Given the proximity of the existing development at Queens Head Close, the additional visual impact over and above that development would not be excessive. The development would be well screened from public view points, other than a short road frontage adjacent to the A46 on the northern boundary and the design of the dwellings in this location would have an agricultural styling.
- 8.19** Floor areas range from 110sqm for 2 bedroom units, up to 135sqm for 4 bedroom units. These figures exceed requirements according to the nationally described space standard, and according to TBP Policy DES1.
- 8.20** Visualisations of the proposed scheme have been provided with the application. Some concerns are raised with the design concept of dwellings, which could be perceived as 'box shaped'. However, the concept and general layout of similar development has been considered acceptable during determination of 16/00665/FUL. The Urban Design officer has not raised concerns in terms of the overall design approach. With respect to the proposed cladding materials the number has been simplified from the previous application to reflect the rural edge so that the white painted finish and vertical tiles previously used at Queen's Head Close have been removed. The applicant has agreed to use the Redland Mini Stone Wold tile in terracotta instead of the proposed vertical tiles that were used on the built scheme. Broadly it is considered that the opportunity can be taken to seek a betterment in the quality of materials through the discharge of conditions route.
- 8.21** Given that the materials are capable of resolution through condition it is not considered that this is a matter which would give grounds for a recommendation of refusal.

Ecology, trees, landscaping and open space

- 8.22** Approximately half of the application site is proposed public open space within Flood Zones 2 and 3. Therefore this area may be flooded some of the time and therefore not accessible all year round. Although undesirable, the Flood Risk Management Engineer has previously confirmed that land at risk of flooding, where also used as public open space is acceptable.

- 8.23** Chapter 15 of the NPPF seeks to conserve and enhance the natural environment. Policy SD9 (Biodiversity and Geodiversity) of the adopted JCS states that biodiversity will be protected and enhanced in order to establish and reinforce ecological networks. Any development that has the potential to have a likely significant effect on an international site will be subject to a Habitats Regulations Assessment (HRA). TBP Policy NAT1 (Biodiversity, Geodiversity and Important Natural Features), states that proposals that are likely to have a significant effect on a European or internationally designated habitats site (either alone or in combination with other plans or projects) will not be permitted unless a Habitats Regulations Assessment has concluded that the proposal will not adversely affect the integrity of the habitats site.
- 8.24** The southern half of the application site is currently unmanaged, though formerly was an orchard. According to the submitted ecology assessment, most of the apple trees have died, though some remain along with three pear trees.
- 8.25** A Shadow HRA has also been submitted and considered and the development would have no impact on the statutory designated Dixton Wood SAC and Bredon Hill SAC NNR. The site supports potentially suitable terrestrial habitat for amphibians and reptiles. However the southern part of the site falls within a flood zone and the site is mostly surrounded by arable land so that does limit its potential for reptiles.
- 8.26** A number of ecological enhancements are proposed in the PEA and the Design and Access Statement (DAS) as part of the development, including the installation of bird and bat boxes, at least two hedgehog houses, a reptile refuge / hibernaculum, habitat management of the orchard, new tree and hedge planting, enhancement of existing hedgerows, and landscaping around the new houses, including the creation of small areas of wildflower meadow.
- 8.27** A Biodiversity Net Gain (BNG) assessment has been provided which demonstrates how the development would achieve the required minimum 10% BNG (it shows a predicted BNG of 18%)
- 8.28** According to the submitted tree survey, none are proposed for removal although a *Leylandii* hedge has been removed since this 2021 Tree survey. There is one Category B fir tree which is to be retained. It is located between Plots 2 and 3 which are to be positioned outside of its root protection area.
- 8.29** Two Category C willow trees are on the eastern boundary and are described as previously reduced as part of the hedge. Plots 8 and 9 are positioned outside of their root protection areas. There is not considered to be any conflict with Chapter 15 of the NPPF, Policy SD9 of the adopted JCS and NAT1 of the adopted TBP.

Drainage and Flood Risk

- 8.30** The NPPF at Chapter 14 (in part) seeks to meet the challenge of climate change and flooding. Policy INF1 of the adopted JCS and Policy NAT2 of the TBP seek to manage flood risk. The application is accompanied by a Flood Risk Assessment, and consultations have taken place with Gloucestershire County Council (as the Lead Local Flood Authority), and Severn Trent Water.

- 8.31** A number of local residents have raised concerns over the age of the hydraulic modelling information submitted and other flood risk matters. The agent has responded to the individual points and states that the FRA demonstrates that the proposed development will not be adversely affected by flooding and will not increase flood risk elsewhere. In terms of surface water, the LLFA has confirmed that the FRA is acceptable and there is no objection to the proposed means of surface water disposal. The development is proposed to connect to a mains foul water disposal connection to which no objection is raised by STW. However a number of flood risk/ drainage conditions are recommended by consultees.
- 8.32** There is therefore no conflict with the NPPF, Policies INF1 of the JCS, or NAT2 of the TBP.

Highways and Access

- 8.33** The application as submitted was supported by a Transport Statement (TS) which concluded additional impacts over and above the existing Queens Head Close development were not significant.
- 8.34** County Highways note the application is similar to that which was previously assessed by the Highway Authority in February this year (in respect of application 21/01013) where many of the parameters for the site were explored and resolved as part of that former application. That recommendation was considered against the backdrop of other residential applications in Ashchurch which have received approval. The Transport Statement at that time addressed the previous concerns raised and these were therefore resolved and relate to this application. This application proposes the closure of the access to Lunn Cottage off the A46 which is considered a highway safety benefit. County Highways are satisfied there are a number of consented developments in Ashchurch within reasonable walking and cycling distances of everyday services and facilities. It is still acknowledged that local bus services are limited, though in their view, this shortfall is not sufficient to sustain an objection.
- 8.35** Based on the analysis of the information submitted the Highway Authority concludes that there would not be an unacceptable impact on Highway Safety or a severe impact on congestion and there are no justifiable grounds on which an objection could be maintained.
- 8.36** A number of conditions are proposed in the event planning permission is granted. Accordingly, there is no conflict with Policy INF1 of the adopted JCS.

Residential Amenity

- 8.37** Officers have considered the relationship of the proposed dwellings with the existing dwellings at Queen's Head Close. In view of the separation distances with the proposed intervening open space and access it is not considered that there would be any adverse impact on the outlook and amenity of the existing residents.
- 8.38** Whilst the introduction of 10 new dwellings and a revised access to the rear for Lunn cottage will inevitably mean more vehicular trips through the existing development than currently experienced it is not considered that these would cause a highway safety issue as advised by the County Highways Officer or such an adverse loss in amenity for the existing properties that there would be grounds for recommending refusal on this matter.

- 8.39** The existing residents would have access to the orchard element of the site that is to be retained and managed as part of the managed orchard area for the wider site.

Affordable Housing and Other Planning Obligations

- 8.40** The application proposes on site provision of four affordable homes, these being 2 x two bedroom and 2 x three bedroom dwellings and the Council's Housing Enabling Officer has stated a preference for social rent tenures for these properties although shared ownership for one of the properties is accepted. At the time of writing the applicant has offered a mix of shared ownership/ social rent which would need to be secured with a completed Section 106 Agreement.
- 8.41** The Community Infrastructure Levy (CIL) Regulations allow local authorities to raise funds from developers undertaking new building projects in their area. Whilst the Council does have a CIL in place, infrastructure requirements specifically related to the impact of the development will continue to be secured via a Section 106 legal agreement. The CIL regulations stipulate that, where planning obligations do not meet the tests, it is 'unlawful' for those obligations to be taken into account when determining an application.

These tests are as follows:

- a) necessary to make the development acceptable in planning terms.
 - b) directly related to the development; and
 - c) fairly and reasonable related in scale and kind to the development.
- 8.42** JCS Policy INF6 relates directly to infrastructure delivery and states that any infrastructure requirements generated as a result of individual site proposals and/or having regard to the cumulative impacts, should be served and supported by adequate and appropriate on/off-site infrastructure and services. The Local Planning Authority will seek to secure appropriate infrastructure which is necessary, directly related, and fairly and reasonably related to the scale and kind of the development proposal. Policy INF4 of the JCS requires appropriate social and community infrastructure to be delivered where development creates a need for it. JCS Policy INF7 states the arrangements for direct implementation or financial contributions towards the provision of infrastructure and services should be negotiated with developers before the grant of planning permission. Financial contributions will be sought through S106 and CIL mechanisms as appropriate.
- 8.43** Previously with the application considered earlier this year the GCC Development Contributions investment team requested contributions to education school places provision. However based on the most up to date analysis this is no longer required.
- 8.44** Requests have been made by consultees to secure the following contributions:
- The Community Infrastructure team have requested offsite POS/play contribution of £9,660 and community centre contribution of £4,547 be sought. This would have to be secured through the completion of a Section 106 Agreement.

9. Conclusion

- 9.1** Section 38(6) of the Town and Country Planning Act 1990 provides that, if regard is to be had to the development plan, the determination must be made in accordance with the development plan unless other material circumstances indicate otherwise. Section 70 (2) of the Act provides that the local planning authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- 9.2** The proposal would be contrary to Policy SD10 of the JCS and Policies RES1, RES2 and RES3 of the TBP as it would not be acceptable in principle due to the application site not being within a settlement boundary or meet any relevant criteria of development outside a settlement boundary. The site is not previously developed land within the built-up areas of a service village; is not a rural exception scheme; and does not represent 'infilling'. It has not been brought forward for development through a Community Right to Build Order and there are no policies in the existing TBP which allow for the type of development proposed here. The proposal therefore conflicts with the spatial strategy and Policies SP2 and SD10 of the JCS, Policy RES3 and RES4 and Policy H1 of TLPNDP.
- 9.3** As set out in paragraphs 1.1 and 1.2 an almost identical application was refused Planning Permission by Planning Committee after considering the officer recommendation to refuse in March 2023. However, Members will be aware that the Council's position in relation to the 5 year housing land supply has changed and as detailed this must be considered in relation to the advice set out in the NPPF.
- 9.4** The Council cannot at this time demonstrate a five-year supply of deliverable housing land, and therefore the Council's policies for the supply of housing are out of date. In accordance with Paragraph 11 of the NPPF, the presumption in favour of sustainable development indicates that permission should be granted unless policies for protecting areas of assets of particular importance in the NPPF provide a clear reason for refusing the development proposed, or any adverse impacts of permitting the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.
- 9.5** As set out throughout the analysis section of the report, there would be no clear reasons for refusal arising from NPPF policies for the protection of areas or assets of particular importance in this case and therefore, it is clear that the decision-making process for the determination of this application is to assess whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

Benefits

- 9.6** The development would contribute towards the supply of housing to help meet the housing need which attracts significant weight in favour of granting permission in light of the Council's housing land supply position.
- 9.7** The scale of development, its relationship with and proximity to the Tewkesbury Town area and the existing built-up area, is a benefit that, in the light of the Council's housing land supply position, would attract considerable weight in favour of granting permission.

- 9.8** In addition, in economic and social terms a number of benefits would flow from this development if permitted, including during the construction process. There would also be economic and social benefits arising from spend from future residents which would help sustain local services and facilities, which is considered a moderate benefit.
- 9.9** As discussed in the highway section, the site is considered to be in a relatively sustainable location within reasonable cycling and walking distance of everyday services and facilities.
- 9.10** In addition the development would provide 4 affordable houses which are considered to be a considerable benefit of the scheme given the identified need within the Borough.
- 9.11** As detailed within the ecology section approximately half of the site would be left undeveloped with a number of ecological enhancements proposed in the PEA and the Design and Access Statement (DAS) as part of the development. A Biodiversity Net Gain (BNG) assessment has been provided which demonstrates how the development would achieve the required minimum 10% BNG (it shows a predicted BNG of 18%). In environmental terms the redevelopment of the site would allow the opportunity for new planting and biodiversity net gain which would be a significant benefit.

Harms

- 9.12** Harm arises from the conflict with development plan policies and the spatial strategy relating to housing, particularly Policies SP2 and SD10 of the JCS and Policies RES1, RES2 and RES3 of the TBP, although it is accepted that the Council's housing policies must now be considered in the light of the tilted balance. Local bus services are limited.

Neutral

- 9.13** In design terms, notwithstanding the final materials details, the design and layout are considered to be acceptable given the constraints of the site. The proposal also does not raise any residential amenity issues in terms of a loss of light, outlook and privacy. The development would not be at an unacceptable risk of flooding and appropriate drainage infrastructure can be provided via conditions. The proposal is considered acceptable in regard to highway safety and accessibility. The proposal could achieve an acceptable housing standard and ecological mitigation.

Overall conclusion

- 9.14** There would be some harm arising from the development, namely harm arising from conflict with development plan policies and the spatial strategy relating to housing.
- 9.15** Significant weight should be given to the provision of housing and this benefit would attract weight in favour of granting permission considering the Council's housing land supply position along with economic and environmental benefits of the scheme.
- 9.16** Taking account of all the material considerations and the weight to be attributed to each one, it is considered that the identified harms would not significantly and demonstrably outweigh the benefits in the overall planning balance.

10. Recommendation

- 10.1** In the absence of policies in the NPPF which would provide a clear reason for refusal, and it is not considered that the harms of the development would significantly and demonstrably outweigh the benefits set out above, **It is recommended that authority be delegated to the Associate Director to permit the application subject to the conditions set out in the report and satisfactory completion of a Section 106 Agreement to secure the affordable housing and community infrastructure with authority to amend the terms/wording of the conditions/S106 Agreement if appropriate to secure the necessary mitigation relevant to the development.'**

11. Conditions

- 1** The works hereby permitted shall be begun before the expiration of three years from the date of this consent.

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Drawings

- 2** The development hereby permitted shall be carried out in accordance with the following documents:

- Site location plan
- Site layout plan
- House Type 1 Floor Plans
- House Type 2 Floor Plans
- House Type 3 Floor Plans
- House Type 3 (Plot 5) Floor Plans
- House Type 1 Elevations
- House Type 2 Elevations
- House Type 3 Elevations
- House Type 4 Elevations
- Car Port Plots 5,6,9 &10 Elevations
- Car Port Plot 7 Elevation
- Car Port Plot 8 Elevation
- Preliminary Ecological Elevation November 2023
- Technical Note October 2023
- Arboricultural Impact Assessment & Method Statement July 2021

Except where these may be modified by any other conditions attached to this permission.

Reason: To ensure that the development is carried out in accordance with the approved plans.

Slab Levels

- 3** Notwithstanding the submitted details, prior to commencement of the development hereby permitted precise details of proposed levels, including floor slab levels and ridge heights of proposed buildings and finished ground levels relative to existing levels on the site and on adjoining land, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented strictly in accordance with the approved details.

Reason: In the interests of residential amenity

Hard and Soft Landscaping

- 4** Notwithstanding the submitted details, no development shall take place until a comprehensive scheme for hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority. The Landscaping Scheme shall include details of all existing trees (including spread and species) and hedgerows on the land, and details of any to be retained, together with measures for their protection during the course of construction. The Landscaping Scheme shall also include details of all proposed planting, including species, density, and the height and spread of trees, and details of the design, position, height and materials of all the proposed boundary treatments including the acoustic fence.

Reason: To ensure that the new development will be visually attractive in the interests of amenity.

Trees

- 5** If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place.

Reason: To ensure that the new development will be visually attractive in the interests of amenity.

Material Samples

- 6** Notwithstanding the submitted plans, no construction works of the dwellings hereby permitted shall commence until samples of the proposed external walling and roofing materials have been submitted to and approved in writing by the Local Planning Authority. Thereafter all such materials used in the development shall conform to the approved samples.

Reason: To ensure that the external appearance of the proposed development will be in keeping with the character of the area in the interests of visual amenity.

Management and Maintenance of Streets

- 7** No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

Reason: To ensure that safe, suitable and secure access is achieved and maintained for all people that minimises the conflict between traffic and cyclists and pedestrians.

Fire Hydrants

- 8** No development shall commence on site until a scheme has been submitted to, and approved in writing by the Local Planning Authority, for the provision of fire hydrants (served by mains water supply) and no dwelling shall be occupied until the fire hydrant serving that property has been provided in accordance with the approved scheme.

Reason: To ensure adequate water infrastructure provision is made on site for the local fire service to tackle any property fire.

Stopping up and Reinstatement of Verge for Redundant Access

- 9** The vehicular access hereby permitted shall not be brought into use until the existing vehicular access to the site (other than that intended to serve the development) has been permanently closed in accordance with details to be submitted to and agreed in writing beforehand by the Local Planning Authority.

Reason: In the interests of highway safety.

Cycle Parking

- 10** The Development hereby approved shall not be occupied until sheltered, secure and accessible bicycle parking has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. The storage area shall be maintained for this purpose thereafter.

Reason: To promote sustainable travel and healthy communities.

Residential Welcome Pack

- 11** The Development hereby approved shall not be occupied until the applicant has submitted to and had approval in writing from the Local Planning Authority a residential welcome pack promoting sustainable forms of access to the development. The pack shall be provided to each resident at the point of the first occupation of the dwelling.

Reason: To reduce vehicle movements and promote sustainable access.

Construction, Environmental and Ecological Management Plan (CEEMP)

- 12** Prior to commencement of the development hereby permitted details of a construction management plan shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:
- Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - Advisory routes for construction traffic;
 - Any temporary access to the site;
 - Locations for loading/unloading and storage of plant, waste and construction materials;
 - Dust mitigation including method of preventing mud and dust being carried onto the highway;
 - Noise and Vibration Mitigation (Including whether piling or power floating is required. White noise sounders will be required for plant operating onsite to minimise noise when in operation/moving/ reversing);
 - Mitigation of the impacts of lighting proposed for the construction phase;
 - Measures for controlling leaks and spillages, managing silt and pollutants;
 - Plans for the disposal and recycling of waste;
 - Development shall take place only in accordance with the approved CEMP.
 - Reason: To protect existing and proposed properties from the impacts of short-term exposure to noise, vibration,
 - Arrangements for turning vehicles;
 - Arrangements to receive abnormal loads or unusually large vehicles;
 - Staff/contractor facilities and travel arrangements;
 - Highway Condition survey;
 - Ecological supervision by an Ecologist shall take place during initial site clearance activities.
 - Details of the protection of the orchard habitat to the south of the development site to be excluded from access during the development phase.
 - Methods of communicating the Construction and Environmental Management Plan to staff, visitors and neighbouring residents and businesses.

Development shall take place only in accordance with the approved CEMP.

Reason: To protect existing and proposed properties from the impacts of short-term exposure to noise, vibration, light and dust nuisance, the protection of any wildlife and habitat during construction phase and in the interests of safe operation of the adopted highway in the lead into development both during the demolition and construction phase of the development.

Construction Hours

- 13** During the construction phase (including demolition and preparatory groundworks), no machinery shall be operated, no process shall be carried out and no deliveries shall be taken at or dispatched from the site outside the following times:
Monday-Friday 8.00 am-6.00pm,
Saturday 8.00 am-1.00 pm nor at any time on Sundays, Bank or Public Holidays.

Reason: To protect the noise climate and amenity of local residents.

Heat Pumps – Installation

- 14** Prior to installation, details and technical specifications of the heat pumps proposed to be used shall be submitted to and approved in writing by the Local Planning Authority. The heat pumps shall be implemented in accordance with the approved details before the development is first brought into use.

Reason: To protect the noise climate and amenity of local residents.

Noise - Additional

- 15** The applicant shall implement all the recommended noise mitigation measures as detailed in the Noise Assessment by Walnut Acoustics dated 25th November 2021 prior to occupation of each dwelling.

Reason: To protect the noise climate and amenity of local residents.

Sustainable Drainage Strategy

- 16** No development shall commence on site until a detailed Sustainable Drainage System (SuDS) Strategy document has been submitted to and approved in writing by the Local Planning Authority. This should be in accordance with the proposal set out in the approved submission (Surface Water Drainage Strategy; DR-001-0528-B). The SuDS Strategy must include a detailed design, a timetable for implementation, and a full risk assessment for flooding during the groundworks and building phases with mitigation measures specified for identified flood risks. The SuDS Strategy must also demonstrate the technical feasibility/viability of the drainage system through the use of SuDS to manage the flood risk to the site and elsewhere and the measures taken to manage the water quality for the life time of the development. The approved scheme for the surface water drainage shall be implemented in accordance with the approved details before the development is first occupied.

Reason: To ensure the development is provided with a satisfactory means of drainage and thereby preventing the risk of flooding. It is important that these details are agreed prior to the commencement of development as any works on site could have implications for drainage, flood risk and water quality in the locality.

Sustainable Management and Maintenance Plan

- 17** No dwelling shall be occupied until a SuDS management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime, has been submitted to and approved in writing by the Local Planning Authority. The approved SUDS maintenance plan shall be implemented in full in accordance with the agreed terms and conditions.

Reason: To ensure the continued operation and maintenance of drainage features serving the site and avoid flooding.

Foul and Surface Water Flows

- 18** The development hereby permitted should not commence until drainage plans for the disposal of foul and surface water flows have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

Reason: This is to ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution.

Landscape and Ecology Management Plan (LEMP)

- 19** No development shall take place until a Landscape and Ecology Management Plan (LEMP) expanding upon the measures set out in Section 4.6 the Preliminary Ecological Appraisal dated 28th November 2023 has been submitted to and approved in writing by the Local Planning Authority. It should include the location and specification of ecological enhancement features and details of their implementation including a management strategy for the orchard. Photographs of the bat, bird boxes and hedgehog houses in situ shall be submitted to and approved by the Local Planning Authority prior to the occupation of each dwelling where the measures are provided.

Management should be applicable for a minimum period of five years, though in relation to BNG this should be for 30 years and include a monitoring regime to ensure habitats establish well and that wildlife features remain in good condition. The LEMP should include plans showing locations and extent of all habitats and wildlife features, and a timetable of activities. A Responsible Person / organisation needs to be stated and the method by which the protection of retained, enhanced and created habitats will be secured. The extent and location of removed, retained and newly created habitats presented in the LEMP should match that set out in the BNG assessment. The LEMP should demonstrate that the BNG proposed in the BNG assessment would be achieved.

Reason: In the interests of biodiversity.

- 20** Notwithstanding the submitted details prior to the commencement of development, details of any external lighting should be submitted to and approved in writing by the Local Planning Authority. The details should clearly demonstrate that lighting would not cause excessive light pollution of the orchard and the boundary habitats.

The details should include, but not be limited to, the following:

- i) A drawing showing sensitive areas and/or dark corridor safeguarding areas;
- ii) Description, design or specification of external lighting to be installed including shields, cowls or blinds where appropriate;
- iii) A description of the luminosity of lights and their light colour including a lux contour map;
- iv) A drawing(s) showing the location and where appropriate the elevation of the light fixings; and
- v) Methods to control lighting control (e.g. timer operation, passive infrared sensor (PIR)).

- 21** All external lighting should be installed in accordance with the specifications and locations set out in the approved details. These should be maintained thereafter in accordance with these details. No additional external lighting shall be installed without the agreement in writing by the Local Planning Authority.

Reason: In the interests of biodiversity, residential amenity and the minimisation of light pollution.

12. Informatives

- 1** In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing the to the Council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.
- 2** The application will require Building Regulations approval. Please contact Cheltenham and Tewkesbury Building Control on 01242 264321 for further information.
- 3** The Lead Local Flood Authority (LLFA) will give consideration to how the proposed sustainable drainage system can incorporate measures to help protect water quality, however pollution control is the responsibility of the Environment Agency
- 4** Severn Trent Water advise that there may be a public sewer located within the application site. Although their statutory sewer records do not show any public sewers within the area specified, there may be sewers that have been recently adopted under the Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and contact must be made with Severn Trent Water to discuss the proposals. Severn Trent will seek to assist in obtaining a solution which protects both the public sewer and the building.
- 5** Please note that there is no guarantee that the developer will be able to build over or close to any Severn Trent sewers, and where diversion is required there is no guarantee that the developer will be able to undertake those works on a self-lay basis. Every approach to build near to or divert Severn Trent assets has to be assessed on its own merit and the decision of what is or isn't permissible is taken based on the risk to the asset and the wider catchment it serves. It is vital therefore that the developer contacts Severn Trent at the earliest opportunity to discuss the implications of their assets crossing the site. Failure to do so could significantly affect the costs and timescales of the project if it transpires diversionary works need to be carried out by Severn Trent.

Severn Trent would not permit a surface water discharge into the public foul sewer, and recommend the developer seeks alternative arrangements.

Works on the Public Highway

- 6** The development hereby approved includes the carrying out of work on the adopted highway. The developer is advised that before undertaking work on the adopted highway a highway agreement must be entered into under Section 278 of the Highways Act 1980 with the County Council, which would specify the works and the terms and conditions under which they are to be carried out. Contact the Highway Authority's Legal Agreements Development Management Team at highwaylegalagreements@gloucestershire.gov.uk allowing sufficient time for the preparation and signing of the Agreement. The developer will be required to pay fees to cover the Councils costs in undertaking the following actions:
- Drafting the Agreement, A Monitoring Fee, Approving the highway details, Inspecting the highway works. Planning permission is not permission to work in the highway. A Highway Agreement under Section 278 of the Highways Act 1980 must be completed, the bond secured and the Highway Authority's technical approval and inspection fees paid before any drawings will be considered and approved.

Private Road

- 7** The developer is advised that as a result of the proposed layout and construction of the internal access road, the internal access road will not be accepted for adoption by the Highway Authority under Section 38 of the Highways Act 1980. The development will be bound by Sections 219 to 225 (the Advance Payments Code) of the Highways Act 1980, unless and until you agree to exempt the access road. The exemption from adoption will be held as a Land Charge against all properties within the application boundary.

Highway to be adopted

- 8** The development hereby approved includes the construction of new highway. To be considered for adoption and ongoing maintenance at the public expense it must be constructed to the Highway Authority's standards and terms for the phasing of the development. The developer is advised that a highway agreement must be entered into under Section 38 of the Highways Act 1980. The development will be bound by Sections 219 to 225 (the Advance Payments Code) of the Highways Act 1980. Contact the Highway Authority's Legal Agreements Development Management Team at highwaylegalagreements@gloucestershire.gov.uk. The developer will be required to pay fees to cover the Councils cost's in undertaking the following actions:
- Drafting the Agreement
 - Set up costs
 - Approving the highway details
 - Inspecting the highway works
- 9** The developer should enter into discussions with statutory undertakers as soon as possible to co-ordinate the laying of services under any new highways to be adopted by the Highway Authority. The Highway Authority's technical approval inspection fees must be paid before any drawings will be considered and approved. Once technical approval has been granted a Highway Agreement under Section 38 of the Highways Act 1980 must be completed and the bond secured.

Impact on the highway network during construction

- 10** The development hereby approved and any associated highway works required, is likely to impact on the operation of the highway network during its construction (and any demolition required). The developer is advised to contact the Highway Authorities Network Management Team at Network&TrafficManagement@gloucestershire.gov.uk before undertaking any work, to discuss any temporary traffic management measures required, such as footway, Public Right of Way, carriageway closures or temporary parking restrictions a minimum of eight weeks prior to any activity on site to enable Temporary Traffic Regulation Orders to be prepared and a programme of Temporary Traffic Management measures to be agreed.

Construction Environmental and Ecological Management Plan (CEEMP)

- 11** It is expected that contractors are registered with the Considerate Constructors scheme and comply with the code of conduct in full, but particularly reference is made to “respecting the community” this says:
Constructors should give utmost consideration to their impact on neighbours and the public
- Informing, respecting and showing courtesy to those affected by the work;
 - Minimising the impact of deliveries, parking and work on the public highway;
 - Contributing to and supporting the local community and economy; and
 - Working to create a positive and enduring impression, and promoting the Code.
- The CEEMP should clearly identify how the principal contractor will engage with the local community; this should be tailored to local circumstances. Contractors should also confirm how they will manage any local concerns and complaints and provide an agreed Service Level Agreement for responding to said issues.
Contractors should ensure that courtesy boards are provided, and information shared with the local community relating to the timing of operations and contact details for the site coordinator in the event of any difficulties. This does not offer any relief to obligations under existing Legislation.

No Drainage to Discharge to Highway

- 12** Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.