SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL

LAND SOUTH OF BADMINTON ROAD, OLD SODBURY

APP/PO119/W/22/3303905

OPENING STATEMENT
ON BEHALF OF THE COUNCIL

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1. The present scheme is not in accordance with the development plan and permission should be refused because no material considerations indicate that, notwithstanding that conflict, consent should be granted. The appeal scheme is outside of any settlement boundary and is in the 'open countryside' for policy purposes. It is not a rural exception scheme. It is not, in short, the type of location at which the development plan seeks to bring development forward. On the contrary, the development plan is clear that in such areas "new development will be strictly limited."

2. This position needs to be seen in the context of the development plan's overarching spatial strategy. One of the key planning challenges in this area is to "to accommodate new housing and jobs in a way which enables people to make sustainable transport choices while keeping impacts on the existing natural and built environment to a minimum" (CS para.3.8). With that in mind, the CS states as follows:

> "4.5 […] The Strategy for Development will address these issues by ensuring that new development is concentrated within the Bristol North Fringe and East Fringe urban areas, thereby reducing commuting and the need to travel, accompanied by a package of public transport infrastructure measures giving greater access to public transport, improved frequency and quality of service. This will be supported by similar provision in other community infrastructure,

including green infrastructure. The strategy therefore focuses development in the locations where essential infrastructure is in place or planned. This will be achieved with minimal loss of Green Belt land.

4.6 Outside of the Bristol urban area, development will be provided in Yate/Chipping Sodbury and Thornbury to promote greater self-containment of these settlements. Within villages the focus will be on supporting existing services and facilities and limiting new housing, so as not to conflict with sustainability objectives and in recognition of the limited availability of public transport. The open countryside in the rural area will be protected for its heritage, landscape, biodiversity, economic and recreational value and for food production."

3. These goals are reflected in the "managing future development" (CS p. 21) and the "core strategy objectives" (p. 48) of the CS, and quite plainly reflect the manner in which sustainable development, as conceptualised in the NPPF, is to be achieved in the Council's administrative area. It is notable that when the Inspector examined the CS he noted at [63] that "The Council says it has considered the role of smaller villages in its spatial strategy but concluded that a more dispersed pattern of development is not sustainable. This was a view previously reached in the sustainability appraisal undertaken for the draft RS and one which, in principle, I support."

4. It is notable that at no point in their lengthy and multi-pronged attack on the CS do the appellants suggest that, at the level of principle, the overarching spatial strategy to deliver development in the manner outlined above, and which is given effect through Policy CS5, CS15 (in terms of locations), CS34 and PSP40 (*inter alia*) is unsound or inconsistent with the NPPF or that anything has happened "on the ground" that has in effect overtaken the strategy and rendered it outdated.

5. In that context, this is a case in which, perhaps unsurprisingly, the appellant is at great pains to advance a great many arguments to the effect that the Core Strategy is out of date for various other purely technical reasons, such that the tilted balance in NPPF 11(d) applies. None of these arguments have any merit.

6. **Lack of a 5yr HLS**. The parties disagree on this topic and in opening it is necessary to observe only the following in opening. Much of the debate concerning

deliverability will, as it always does, come back to the question of what kind of evidence is needed to show that a site without full planning permission (a so-called 'category b' site) is deliverable? The appellant will no doubt insist on clear documentary evidence in support of each and every assumption relied upon by the Council for each of the disputed sites. While the PPG does call for "clear evidence", there is no reason why this evidence cannot be given at an inquiry by an experienced public official with significant local knowledge and expertise applying a realistic and common sense approach.

7. Ultimately, we should stand back and ask: based on what we know about all relevant circumstances at the relevant sites, will they begin to deliver completions in the next five years, and if so how many? It is an abdication of this exercise (which is designed to provide a practical framework for assessing likely forward supply, rather than a technocratic zero sum game which would serve no useful purpose whatseoever) to delete all units in category b sites as opposed to doing one's best to assess likely delivery rates. A nil entry is only appropriate where there is no basis on which it can be said that *any* sites will come forward in the 5 year period.

8. **Lack of an early review**. The appellant's argument is that the lack of a timely early review automatically should lead to the CS as a whole being regarded as out of date. This approach entirely fails to grapple with the proper approach to determining whether policies are out of date which, the courts have made clear, involves a careful consideration of all the factual circumstances and a decision as a matter of overall planning judgment as to whether indeed that is the case.

9. It is by now settled case law that "…the exercise required by paragraph 213 of the Framework and the *Bloor Homes* test is not one which is dictated simply by the passage of time, but rather an assessment of consistency of the Framework, and the factual circumstances in which the policy is being applied including, amongst other things, what the inspector characterised as "results on the ground" and that "the question properly understood was whether or not the passage of time had led to the policy being overtaken by events." See per Dove J in Peel Investments North Ltd v SSCLG [2020] PTSR 503.

10. In Gladman DevelopmentsLtd v SSHCLG [2019] PTSR 1302 Dove J also held that "The acid test in relation to whether or not a policy is out-of- date is, it will be recalled, the extent to which it is consistent with the Framework…This reinforces the need when arguments arise as to whether or not a policy is out-of- date to carefully apply paragraph 215, and examine the circumstances of the particular policy and the evidence pertaining to it to determine the extent to which it is consistent with the Framework."

11. The appellant, notably, does not contend that the 'basket' of most important policies for determining the appeal (a) inconsistent with the NPPF or (b) have been overtaken by events 'on the ground'. They simply rely on the lack of an early review, but have failed to take the analysis (such as it is) a step further and ask whether this leads to any substantive inconstency with the NPPF (it does not) or whether the lack of an early review has led to the policies being overtaken by events (it has not). It is material in this context that the Inspector examining the CS did seek to identify an NPPF-compliant OAN for the district's housing need. The early review he required was due to the uncertainty surrounding the figure he alighted upon, rather than due to that figure not representing a true NPPF-compliant OAN.

12. Events, such as they were, did not overtake this figure. The Standard Method figures are lower than the Inspector's OAN, and vindicated his judgment to that extent. And contrary to the appellant's protestations, which amount in substance to an invitation to determine this appeal on an entirely counter-factual basis (see notably MK para. 3.48), Bristol does not have an "unmet need" as such since they have not yet determined a) what their LHN is, b) how much will be met within Bristol and c) how much will be exported to its neighbouring authorities of which the Council is only one. Given that, as MK himself acknowledges at para. 4.23, "no one can currently say" what the position is, it would be perverse to say that the CS has been overtaken by hypothetical events which have not yet materialised and lie some distance upstream.

13. **Granting permissions in spite of the development plan not because of it**. This is a deeply unsound argument which has been rejected in Daventry District Council v SSCLG [2016] EWCA Civ 1146 and as well as Gladman Developments Ltd v SSHCLG [2019] PTSR 1302. The fact that the Council has applied national policy and the presumption in favour of development (which in any event is *part* of the CS and not

extraneous to it, as Mr. Kendrick appears to not have realised) in situations where they had been unable to demonstrate a 5yr HLS does not mean that the plan is inconsistent with the NPPF or that it has been overtaken by events, if there is a 5yr HLS at the point of a decision. This is in effect an argument to perpetuate para. 11(d) of the NPPF through the back door, i.e. to say that if an authority has previously had less than a 5yr HLS such that it has granted permission for sites that would not otherwise have been permitted, then its plan is out of date in perpetuity. This makes absolutely no sense.

14. The better approach is to say that the basket of most important policies for this appeal, which include PSP11 and CS8 (which no one is seriously suggesting are out of date), remains up to date and that the normal s.38(6)/NPPF para. 12 balancing exercise applies.

15. PSP11 and CS8, notably, would be breached. The terms of CS8 could not be clearer: "Developments which are car dependent or promote unsustainable travel behaviour will not be supported." This would undoubtedly be such a development. It is a paltry answer to this point for Mr. Tingay to say, at para. 2.8 of his proof, that "While the distances may be too far for some people to walk/cycle, there are not too far for everyone."

16. The following factors, *inter alia*, are relevant in the context of PSP11/CS8:
    a. a majority of the "key services and facilities" as defined in PSP11 would be beyond the appropriate distances set out in the policy (this cannot credibly be disputed);
    b. the cycling routes are not safe for all cyclists, and the walking routes are substandard. There are recent (within last five years) road traffic collisions - historically this stretch of road has had significant numbers of collisions - speed reduction formed part of this.
    c. there are significant traffic levels with a high HGV mix on the A432. There is no cycling infrastructure and only confident/experienced cyclist, are likely to cycle on this road.
    d. the footways are narrow, variable in surfacing, require on-going vegetation maintenance in areas, and require crossing the A432 to get to the majority of the few local amenities, as well as to walk the significant

distance west to Chipping Sodbury. There are areas of unlit footway which are both narrow and in parts next to the carriageway.

17. In this context the appellant relies heavily on the bus service which, admittedly, does meet what PSP11 itself says is a "minimum", though PSP11 is also very clear that "Provision 3 (ii) is explicit that public transport access to key services and facilities is suitable to access "some", e.g. just major employment opportunities or supermarket facilities, rather than the majority or all of the key services and facilities" and that "It is intended that greater weight will be given to the requirement for accessibility by walking and cycling." PSP11 also is clear that "The larger the development proposal and, or the larger the reliance on public transport to access key facilities and services, the more frequent and extensive a bus service will be required, in order to avoid a reliance on private car journeys." This would be a major development generating c. 200 vehicular movements a day and this is why, as Mr. Kidd explains, more than just the minimum is needed here to comply with PSP11.

18. Naturally, more issues than discussed in opening will be dealt with in detailed evidence and submissions. The Council will in due course invite you to dismiss the appeal for the above reasons as well as the detailed reasons which the inquiry will explore. For the avoidance of doubt, the sustainability credentials (or lack thereof), and the fact (and it must, in reality, be a fact) that it would be largely car-reliant, of this scheme are such that even applying the tilted balance permission should be refused.

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