



Department for  
Communities and  
Local Government

Mr David Hutchison  
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Our ref: APP/G1630/W/16/3154464  
Your ref: 15/01149/OUT

21 December 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY ROBERT HITCHINS LIMITED  
LAND AT TWIGWORTH, GLOUCESTER, GLOUCESTERSHIRE  
APPLICATION REF: 15/01149/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Martin Whitehead LLB BSc(Hons) CEng MICE, who held a conjoined public local inquiry over 7 days from 20 June 2017 into your client's appeal against the decision of Tewkesbury Borough Council to refuse your client's application for planning permission for a mixed use development comprising demolition of existing buildings; up to 725 dwellings and a local centre of 0.33 ha (A1, A2, A3, A4, A5, D1, D2 uses); primary school, open space, landscaping, parking and supporting infrastructure and utilities; and the creation of a new vehicular access from the A38 Tewkesbury Road, in accordance with application ref: 15/01149/OUT, dated 20 October 2015 ("the appeal scheme"). The inquiry also considered an appeal against the failure of Tewkesbury Borough Council to determine an application for planning permission for a mixed use development at land at Innsworth, Innsworth Lane, Gloucester, Gloucestershire GL3 1DU, in accordance with application ref: 15/00749/OUT, dated 6 July 2015 ("the Innsworth appeal"). This appeal is subject to a separate decision letter, also being issued today.
2. On 5 August 2016 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and outline planning permission be granted.

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4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statements which were submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the subsequent addendums (IR11). Having taken account of the Inspector's comments at IR11, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

### **Matters arising since the close of the inquiry**

6. Since the closing of the inquiry, the Inspector for the Cheltenham, Gloucester and Tewkesbury Joint Core Strategy (JCS) published her final report on 26 October 2017 and concluded that, subject to the main modifications and an immediate partial review, the JCS was sound and legally compliant. A list of representations received by the Secretary of State on this matter is at Annex A. As these representations were circulated by the main parties the Secretary of State has not found it necessary to circulate them or reproduce them here. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
7. Following the final report being published, Gloucester City Council adopted the JCS on 23 November 2017, Tewkesbury Borough Council adopted the JCS on 5 December 2017 and Cheltenham Borough Council adopted the JCS on 11 December 2017. The JCS has therefore now been formally adopted.
8. The Secretary of State has had regard to correspondence submitted to him after the close of the inquiry, as listed at Annex A. He has carefully considered and taken into account these representations, but as the issue of flooding was dealt with in detail at the inquiry, and the representations did not introduce new evidence, he is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
9. Following the close of the inquiry, the draft submission of the Down Hatherley, Norton and Twigworth Neighbourhood Plan (NP) has been published and was open to consultation from 3 November 2017 to 15 December 2017. As this NP is still at a very early stage, the Secretary of State has not considered it necessary to refer back to parties on this matter.
10. An application for a partial award of costs was made by Tewkesbury Borough Council against Robert Hitchins Limited. An application for a full or partial award of costs was made by Highways England against Robert Hitchins Limited. An application for a full or partial award of costs was made by Robert Hitchins Limited against Tewkesbury Borough Council (IR2). These applications are the subject of separate decision letters.

## **Policy and statutory considerations**

11. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
12. In this case the development plan consists of the JCS and saved policies of the Tewkesbury Borough Local Plan to 2011 (TBLP), adopted in March 2006. At the time of writing his report, the Inspector considered that the development plan comprised the saved policies of the TBLP. He considered that the saved policies of the TBLP of most relevance to this case were those set out at IR24-27. TBLP Policy GRB1 has now been superseded by JCS Policy SD5. TBLP Policy HOU4 has now been superseded by JCS Policy SP2 and SD10. TBLP Policy HOU13 has now been superseded by JCS Policy SD12. TBLP Policy GNL11 has now been superseded by JCS Policy INF6 and Policy INF3. TBLP Policy TPT1 has now been superseded by JCS Policy INF1. TBLP Policy EVT5 has now been superseded by JCS Policy INF2. TBLP Policy LND4 has now been superseded by JCS Policy SD6.
13. At the time of writing his report, the Inspector considered the JCS policies of most relevance to this case include those set out at IR29. The Secretary of State agrees. However, he notes that in adopting the JCS, some of its policies have been re-numbered, so that JCS Policy INF3 (flood risk management) is now numbered INF2.
14. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Department for Transport Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development' and the Design Manual for Roads and Bridges.
15. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

### *Emerging plan*

16. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
17. The appeal site is located within the Down Hatherley, Norton and Twigworth Neighbourhood Plan (NP) designated area. The NP is at an early stage with draft policies published for consultation under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 (as amended). As such the Secretary of State attaches limited weight to the NP.

## **Main issues**

### *Legal Submissions*

18. The Secretary of State has taken into account the Inspector's analysis of Legal Submissions at IR240-247, and for the reasons set out at IR241 agrees that the imposition of a Grampian condition does not have to meet a 'reasonable prospects' test.
19. He further agrees, for the reasons given by the Inspector at IR242-243, that the appeals should be considered in the light of the five year housing land supply for Tewkesbury Borough Council. He also agrees, however, that this should not prevent the proposed allocation of the appeal sites to meet the needs of Gloucester City Council from being a material consideration in the determination of the appeal proposals.
20. The Secretary of State agrees that in the case of an outline planning application it is up to the LPA to specify what further details would be required to enable it to determine the application. He also agrees that the decision maker is entitled to take into account the material that has been submitted, including parameter plans or masterplans and any other plans that are marked up as 'illustrative' (IR244).

### *Five year housing Land Supply*

21. For the reasons given at IR248, the Secretary of State agrees with the Inspector's conclusion at IR249 that for the purposes of paragraph 49 of the Framework, the Council has demonstrated a five-year supply of deliverable housing sites. He considers that the relevant policies for the supply of housing may be given full weight.
22. The Secretary of State has had regard to the Inspector's analysis at IR299-300. However, he concludes that TBLP policy HOU4 has now been superseded by the JCS. He finds no conflict with JCS policies SP2 and SD10.

### *Highway Safety and the Flow of Traffic*

23. The Secretary of State has given careful consideration to the Inspector's analysis of highway safety and the flow of traffic at IR250-256. For the reasons given at IR250-252, the Secretary of State agrees with the Inspector at IR253 that there is insufficient substantive evidence to show that the proposal would cause any significant harm to safety or the flow of traffic on these roads.
24. The Secretary of State agrees with the Inspector at IR254 that there would be some inconvenience and delays caused by the necessary works during construction and he is satisfied that these would be adequately controlled by planning conditions. For the reasons given at IR255, the Secretary of State agrees with the Inspector that the reliance upon Growth Deal funding does not carry any significant weight against the acceptability of the proposed developments.
25. For the reasons given at IR250-255, the Secretary of State agrees with the Inspector at IR256 that with the imposition of appropriate Grampian conditions together with other planning conditions, the residual cumulative transport impacts of the appeal proposals would not be severe. The Secretary of State agrees with the Inspector at IR256 that as the appellant has demonstrated that the traffic that would be generated, together with that arising from other existing or planned development, would not harm highway safety or the operation of the local and strategic highway network and acceptable means of access

would be provided, the proposals would accord with JCS Policy INF1 and paragraph 32 of the Framework.

### *Risk of Flooding*

26. The Secretary of State has given careful consideration to the analysis of the risk of flooding at IR257-262. The Secretary of State agrees with the Inspector at IR257 that when considering the suitability of the appeal sites for inclusion as allocated sites for residential development in the JCS, the Council has indicated that the drainage and flooding problems would not be insurmountable. He further agrees with the Inspector that it appears that the Council have accepted its Officer's advice that the evidence accompanying the appeal application shows that the site is at a low risk of flooding and would not increase the risk of flooding to third parties and that an appropriate drainage strategy could be secured by condition.
27. The Secretary of State has taken into account at IR258 that the Environment Agency (EA) and the Lead Local Flood Authority (LLFA) have been consulted on both appeal schemes and the EA has agreed a Statement of Common Ground with the appellant. The EA has agreed that the appellant has provided sufficient information to enable it to properly assess matters relating to flood risk for both appeals. The Secretary of State has also taken into account that it has agreed that there are no overriding fluvial and pluvial flood risk grounds relating to the appeal sites that would prevent them being developed. He has also taken into account that it has accepted that the flood risk strategies identified for the appeal sites would ensure that they would not be at risk from flooding and that they would not increase the risk of flooding elsewhere and that all additional flood risk and drainage details could be secured by conditions.
28. The Secretary of State has given careful consideration to the Inspector's analysis at IR259 and agrees with the Inspector that the appellant has demonstrated that the area that would not be developed, which is mainly either side of Hatherley Brook, would be large enough to ensure that the highest of the estimated flows, allowing an appropriate increase for climate change, would not significantly impact upon that development.
29. For the reasons given at IR260, the Secretary of State agrees with the Inspector that in terms of the risk from fluvial flooding, the evidence that has been provided demonstrates that it would be adequately controlled by the use of planning conditions. He further agrees with the Inspector that these conditions would ensure that the Council's requirement for remodelling to be carried out before outline planning permission should be granted would be unnecessary.
30. The Secretary of State has given careful consideration to the Inspector's analysis at IR261 of pluvial flooding. He agrees with the Inspector that the appellant has provided plans showing indicative locations of attenuation ponds which it has shown would have enough capacity to cater for the EA's likely requirements to take account of climate change. He further agrees with the Inspector that based on this, the agreement with the EA and the lack of an objection from the LLFA subject to planning conditions, he is satisfied that there would be workable solutions to pluvial flooding issues. For the reasons given at IR261, the Secretary of State agrees with the Inspector that the use of Grampian conditions, as proposed, would ensure that any risk from pluvial flooding would be minimised.
31. For the reasons given at IR257-262, the Secretary of State agrees with the Inspector's conclusion at IR262 that the appellant has demonstrated that the use of appropriate

planning conditions would ensure that the appeal proposals would not be at risk of flooding or would increase the risk of flooding elsewhere and would accord with JCS Policy INF2.

#### *Whether Acceptable Form of Development*

32. Like the Inspector at IR263, the Secretary of State agrees with the Council that the appeal proposal would not have an unacceptable impact on the settlement of Twigworth, given that it was included as a proposed allocation in the emerging JCS, which has now been adopted. The Secretary of State has taken into account at IR264 that the Council has not objected to the principle of the proposed mixed use development or the amount of development that is proposed on both the appeal sites. The Secretary of State agrees with the appeal Inspector at IR264 that the findings of the JCS Examination Inspector were that the masterplan shows that the allocated sites, which consist of this appeal site and the Innsworth appeal site, would be satisfactorily integrated via green infrastructure.
33. The Secretary of State agrees with the Inspector at IR265 that the land that is identified on the masterplan that would be outside the built development has been shown to be sufficient to allow for the most severe of the predicted flood events without resulting in any significant risk from flooding. He further agrees that this would not be harmful to the integration of the proposed developments and it would result in the efficient use of those areas that are appropriate for built development.
34. For the reasons given by the Inspector at IR266, the Secretary of State concludes that there is no reason to consider that the set parameters would cause sufficient harm to the urban design so as to prevent the proposed development from being acceptable.
35. For the reasons given at IR267, the Secretary of State agrees with the Inspector's conclusion that the indicative masterplans and parameter plan show that the proposals would represent acceptable forms of development and, with conditions to secure the approval of masterplan documents, the proposals would accord with JCS Policy SA1.

#### *Green Belt*

36. The Secretary of State has noted the Inspector's analysis of the Green Belt at IR268-270. Since the Inspector wrote his report, the JCS has been adopted, including boundary changes to the Green Belt to remove the appeal site and the Innsworth appeal site from it.

#### *Heritage Assets*

37. The Secretary of State has given careful consideration to the Inspector's analysis of heritage assets at IR271-274. The Secretary of State agrees with the Inspector at IR272 that the three heritage assets mentioned as being affected by the proposal are the Grade II Listed buildings of Twigworth Court, Twigworth Lawn and a Stable Block. He further agrees that the conclusions reached in the expert assessments in the ES are an accurate reflection of the resulting less than substantial harm to the buildings' significance. The Secretary of State agrees with the Inspector that the assessments indicate that the settings of Twigworth Court and the Stable Block are already affected by the A38 and are more influenced by the rural landscape to the north west that would not be affected than the appeal site and that the setting of Twigworth Lawn has been effectively reduced to its

domestic curtilage. Like the Inspector, the Secretary of State has balanced this harm against the benefits of the proposal, in accordance with paragraph 134 of the Framework.

38. In terms of the heritage balance, like the Inspector at IR273, the Secretary of State has taken account of the economic and social benefits of providing up to 725 dwellings that include some affordable homes. Whilst the Secretary of State, like the Inspector, has attached great weight to the desirability of preserving the heritage asset's significance, the harm would be limited. Therefore, the 'less than substantial' harm that the Secretary of State has found that the appeal proposal would cause to the significance of Twigworth Court, Twigworth Lawn and the Stable Block is outweighed by its public benefits.
39. The Secretary of State agrees with the Inspector at IR274 that the appeal proposal would fail to preserve the setting of the nearby heritage assets of Twigworth Court, Twigworth Lawn and a Stable Block. However, he further agrees that it would accord with the Framework in this regard, as the less than substantial harm that the proposal would cause to the significance of these listed buildings would be outweighed by its public benefits.

#### *Character and Appearance*

40. The Secretary of State has given careful consideration to the Inspector's analysis of character and appearance at IR275-276. He agrees with the Inspector at IR275 that the appeal proposals would result in the intrusion of built environment into countryside that surrounds Twigworth and Innsworth and the loss of the village character of Twigworth. He further agrees at IR276 that whilst there would be harm due to encroachment into the countryside and adverse visual impacts, particularly in views from the Gloucestershire Way, the sites have been allocated for development in the JCS. The Secretary of State agrees with the Inspector at IR276 that there would be harm caused to the character and appearance of the surrounding countryside as a result of encroachment, changes to its rural character and the impact on views, and the appeal proposals would fail to accord with JCS Policy SD6. Like the Inspector, the Secretary of State gives this matter moderate weight, taking account of the proposed mitigation.

#### *Sustainable Means of Transport*

41. For the reasons given at IR277-278, the Secretary of State agrees with the Inspector's conclusion that the appellant has demonstrated that the opportunities for sustainable transport modes have been taken up, in accordance with paragraph 32 of the Framework.

#### *Ecology*

42. For the reasons given at IR279, the Secretary of State agrees with the Inspector that the appeal proposals would not cause any significant harm to ecology and would offer opportunities for biodiversity enhancements.

#### *Agricultural Land*

43. The Secretary of State agrees with the Inspector at IR280 that both appeal proposals would result in the loss of considerable areas of BMV agricultural land. He further agrees that paragraph 112 of the Framework is the basis for assessing this loss. Like the Inspector, the Secretary of State attaches moderate weight to the resulting harm.

### *Air Quality*

44. The Secretary of State has given careful consideration to the Inspector's analysis of air quality at IR281-283. For the reasons given at IR281-282, the Secretary of State agrees with the Inspector at IR282 that the proposed developments would not have any significant adverse impact on air quality. Like the Inspector at IR283, the Secretary of State is satisfied that the Government's final Air Quality Plan published on 26 July 2017 does not affect his conclusions on this matter. The Secretary of State further agrees with the Inspector at IR283 that the impact of the proposals on air quality is potentially harmful and he has attached some weight to it.

### *Affordable Housing, Services and Infrastructure*

45. For the reasons given at IR284-285, the Secretary of State agrees with the Inspector at IR285 that sufficient evidence has not been provided to demonstrate that contributions towards off-site sports facilities would be CIL compliant, but that the on-site sports and play facilities that would be secured by planning obligations would ensure that the appeal proposals would accord with TBLP Policy RCN1. He further agrees that all the other planning obligations would be CIL compliant and should be taken into account in the determination of the appeals to ensure accordance with JCS Policy INF6.

### *Other Matters raised by interested parties*

46. For the reasons given at IR286, the Secretary of State agrees with the Inspector that any harm from noise and vibration would be adequately mitigated by measures that would be secured under planning conditions. He further agrees that other concerns, including pollution and disruption during construction and archaeological remains, would be satisfactorily addressed by appropriate planning conditions.

47. In terms of the NP, the situation has moved on since the Inspector wrote his report. At the time of writing his report, the NP had not been published for consultation. The NP has now been published for consultation. The Secretary of State agrees with the Inspector at IR287 that he affords any conflict with the emerging NP very little weight.

### *Considerations in favour of the developments*

48. For the reasons given at IR291, the Secretary of State agrees with the Inspector that the provision of open market housing to help boost significantly the supply of housing, and the provision of affordable housing to meet an identified need are very important considerations, which the Council has agreed would represent benefits of the appeal proposals. Like the Inspector, the Secretary of State attaches moderate weight to these benefits.

49. For the reasons given at IR292, the Secretary of State agrees with the Inspector that there would be benefits to the economy due to employment. He further agrees that other economic benefits include the expenditure on construction and investment in the local areas and the generation of expenditure in local shops and services. He further agrees that these economic benefits would be great and he therefore affords them considerable weight.

50. For the reasons given at IR293, the Secretary of State agrees with the Inspector that there would be social benefits. Like the Inspector, the Secretary of State gives moderate weight to these social benefits, as most of them are facilities that should be provided to cater for the needs of future residents within the proposed developments.

51. The Secretary of State agrees with the Inspector at IR294 that there would also be potential environmental benefits from new planting and proposed biodiversity enhancements. He further agrees that the sites have been found to be in sustainable and accessible locations for the purposes of the emerging JCS and, as such, would offer opportunities to reduce the need to travel by private car. Like the Inspector, the Secretary of State gives these potential benefits limited weight, as much of the planting and landscape improvements would be carried out as mitigation.

#### *Whether Very Special Circumstances Exist*

52. The Secretary of State has noted the Inspector's analysis at IR295-298. However, given his conclusions on the Green Belt above, he has not taken them into consideration when reaching his decision.

#### **Planning conditions**

53. The Secretary of State has given consideration to the Inspector's analysis at IR222-230, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex B should form part of his decision.

#### **Planning obligations**

54. Having had regard to the Inspector's analysis at IR202-203, IR205, IR207, IR209 and IR211-221, the planning obligation dated 7 July 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR212-231 that the obligation, with the exception of the obligations to secure contributions towards Astroturf and the swimming pool, complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.

#### **Planning balance and overall conclusion**

55. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with JCS policies SP2, INF1, INF2, SA1 and INF6 of the development plan, and while he finds some conflict with policy SD6, he concludes that is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. Against the proposal, the Secretary of State considers that the harm to the character and appearance of the area carries moderate weight. He considers that harm due to loss of BMV agricultural land carries moderate weight; harm to air quality carries a small amount of weight.

56. In favour of the proposal, the Secretary of State considers that the provision of additional market and affordable housing carries moderate weight in favour of the development. He further considers the economic benefits of the proposal carry considerable weight, and that the social benefits carry moderate weight and that any environmental benefits carry limited weight.

57. As such the Secretary of State considers that there are no material considerations justifying determining the appeal other than in accordance with the development plan.

58. The Secretary of State therefore concludes that the appeal should be allowed, and planning permission be granted, subject to conditions.

### **Formal decision**

59. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for a mixed use development comprising demolition of existing buildings; up to 725 dwellings and a local centre of 0.33 ha (A1, A2, A3, A4, A5, D1, D2 uses); primary school, open space, landscaping, parking and supporting infrastructure and utilities; and the creation of a new vehicular access from the A38 Tewkesbury Road, in accordance with application ref: 15/01149/OUT, dated 20 October 2015.

60. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

61. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

62. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

63. A copy of this letter has been sent to Tewksbury Borough Council, Twigworth Parish Council, Highways England and Gloucestershire County Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Philip Barber*

Authorised by Secretary of State to sign in that behalf

## Annex A - Schedule of representations

### General representations

<b>Party</b>	<b>Date</b>
H Ford, Twigworth Parish Council	11 October 2017
D Hutchison, Pegasus Group	13 November 2017, 5 December 2017
P Skelton, Tewkesbury Borough Council	10 November 2017, 27 November 2017, 6 December 2017, 12 December 2017
P Barker	25 July 2017, 3 December 2017
Mr Laurence Robertson MP	6 December 2017

## **Annex B - List of conditions**

- 1) No part of the development hereby permitted shall be begun until details of the access, appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority for that part of the development. The development shall be carried out as approved.
- 2) Application for the approval of the reserved matters for phase 1 as identified by the Phasing Plan required under condition 6 shall be made to the local planning authority before the expiration of 3 years from the date of this permission. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters approved for phase 1, whichever is the later. Application for approval of reserved matters may be submitted for a full phase or part of a phase.
- 3) Application for the approval of reserved matters for the subsequent phases of development as identified by the Phasing Plan required under condition 6 shall be made to the local planning authority before the expiration of 8 years from the date of this permission. The subsequent phases of development hereby permitted shall be begun no later than 2 years from the date of approval of the last of the reserved matters to be approved for that phase. Application for approval of reserved matters may be submitted for a full phase or for a part of a phase.
- 4) No more than 725 dwellings shall be constructed on the site pursuant to this planning permission.
- 5) The total gross retail floorspace available for use by customers (excluding toilets and other ancillary facilities) of all premises falling within Class A1, A2, A3, A4 and A5 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) shall not exceed 1,200 square metres. Only one of the premises to be used for Class A1, A2, A3, A4 or A5 purposes shall have a gross retail floorspace available for use by customers (excluding toilets and other ancillary facilities) exceeding 75 square metres and it shall not exceed 400 square metres.

### ***Phasing***

- 6) Prior to or as part of the first reserved matters application a Phasing Plan for the whole site shall be submitted to the local planning authority for approval in writing. The Phasing Plan shall include details of the approximate number of market and affordable dwellings for each phase of development together with general locations and phasing of key infrastructure, including surface water drainage, green infrastructure, informal and formal public open space, areas of play, access for pedestrians, cyclists, buses and vehicles and proposed public transport infrastructure. The Phasing Plan shall be in general accordance with the design principles of the Indicative Masterplan (Drawing No H.0361\_17D-1), the Parameter Plans (Drawing Nos H.0361\_17D-41, H.0361\_17D-42, H.0361\_17D-43 and H.0361\_17D-44) and the principles and objectives of the Design and Access Statement, October 2015, except where the requirements of other planning conditions require otherwise. Development shall be carried out in accordance with the approved Phasing Plan.

## ***Design***

- 7) Notwithstanding the submitted Indicative Masterplan, a Site Wide Masterplan Document (SWMD) shall be submitted to the local planning authority either prior to or alongside the first application for approval of reserved matters. The SWMD shall be in accordance with the submitted Parameter Plans (Drawing Nos H.0361\_17D-41, H.0361\_17D-42, H.0361\_17D-43 and H.0361\_17D-44) except where other planning conditions specify otherwise and shall include a set of Design Principles including:
- a) the principles for determining the design, form, heights and general arrangement of external architectural features of buildings;
  - b) the principles of the hierarchy for roads and public spaces;
  - c) potential arrangements for car parking;
  - d) the principles for the design of the public realm; and
  - e) the principles for the laying out of the green infrastructure, including the access, location and general arrangements of the sports pitches and play areas.

The SWMD shall include a two-dimensional layout drawing that shows:

- a) the broad arrangement of development blocks including indications of active frontages;
- b) density ranges;
- c) maximum building heights;
- d) character areas;
- e) the location and general extent of public open space, including Play Areas;
- f) existing landscape features to be retained; and
- g) proposed structural planting.

Submissions for the approval of the reserved matters shall accord with the approved SWMD, unless otherwise agreed in writing by the local planning authority.

- 8) The first reserved matters application submitted pursuant to Condition 1 shall be accompanied by details of a recycling strategy for the site. The reserved matters applications for each phase shall include details of waste storage provision for that phase which shall be in general accordance with the approved recycling strategy and the development shall be carried out in accordance with the approved details.

## ***Landscaping***

- 9) The first reserved matters application submitted pursuant to condition 1 shall include the following details:
- a) a plan showing the location of, and allocating a reference number to, all trees on the site which have a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;
  - b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
  - c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
  - d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree; and
  - e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

In this condition 'retained tree' means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above. Development shall be carried out in accordance with the approved details.

- 10) The plans and particulars submitted in accordance with condition 1 shall include details of the size, species, and positions or density of all trees, hedgerows and other landscaping features to be planted, and the proposed time of planting, as well as maintenance schedules. 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 in accordance with details to be submitted to and approved in writing by the local planning authority.

### ***Archaeology***

- 11) No development shall take place within any phase pursuant to condition 6 until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and a programme and methodology of site investigation and recording and the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation. No development within that phase shall take place other than in accordance with the approved Written Scheme of Investigation.

### ***Ecology***

- 12) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall be in accordance with the mitigation and enhancement measures in the submitted Environmental Statement and the related Addendum dated April 2017. The LEMP shall include measures to protect and manage the Innsworth Meadow Site of Special Scientific Interest. It shall include a timetable for implementation, details for monitoring and review and how areas concerned shall be maintained and managed. Development shall be in accordance with the approved details and timetable in the LEMP.

### ***Access and Layout***

- 13) The application for approval of reserved matters for the principal vehicular access on to the A38 made pursuant to condition 1 shall be in general accordance with the junction arrangement shown on Drawing No H452/1 Rev B produced by PFA Consulting Limited.
- 14) No building on the development shall be occupied on any Phase until the associated carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the footway(s) to surface course level.
- 15) No more than 250 dwellings hereby permitted shall be occupied until details of improvements to the public right of way from the south of the site to Innsworth Lane have been submitted to and approved in writing by the local planning authority and completed in accordance with the approved details. The details shall be in general accordance with Drawing No INN.PROW.01.

### ***Highway Mitigation***

- 16) The development hereby permitted shall not commence until a detailed design for a scheme to alter Longford Roundabout (junction of the A40 trunk road and A38) generally in accordance with the scheme shown on Drawing No H451/18 produced by PFA Consulting Limited, dated 9 June 2017, has been submitted to and approved in writing by the local planning authority. The design details shall include flood mitigation/compensation associated with the scheme to avoid any increase in flood risk and be sufficient for the purposes of a Stage 2 Road Safety Audit as defined in Volume 5 Section 2 Part 2 of the Design Manual for Roads and Bridges – Road Safety Audit (HD/15) or any superseding document. Approval shall be defined as meeting the requirements of Volume 5 Section 2 Part 2 of the Design Manual for Roads and Bridges – Road Safety Audit (HD/15) or any superseding document for Stage 2 Road Safety Audits. No more than 150 dwellings and no other building hereby permitted shall be occupied until the approved scheme has been implemented in full to the written approval of the local planning authority.

***Street Maintenance***

- 17) The reserved matters application for each phase submitted pursuant to condition 1 shall include details of the proposed arrangements for future management and maintenance of the proposed streets within that phase or part of a phase. The streets shall thereafter be managed and maintained in accordance with the approved details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established for each phase or part of a phase.

***Construction***

- 18) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) wheel washing facilities;
  - v) measures to control the emission of dust and dirt during construction;
  - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
  - vii) details of the site access/routeing strategy/signage during the construction period.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

***Travel Plan***

- 19) Prior to the first occupation of the Primary School hereby permitted a Travel Plan in accordance with the approved framework shall be submitted to and approved in writing by the local planning authority, setting out:
- a) objectives and targets for promoting sustainable travel;
  - b) appointment and funding of a travel plan coordinator;
  - c) details of an annual monitoring and review process;
  - d) means of funding of the travel plan; and
  - e) an implementation timetable, including the responsible body for each action.

The approved Travel Plan shall be implemented in accordance with the details and timetable therein, and shall be continued thereafter.

### **Levels**

- 20) The reserved matters application for each phase submitted pursuant to condition 1 shall include details of existing and proposed ground levels and ground floor slab levels relative to Ordnance Datum of the buildings within that phase or part of a phase. The development shall be carried out in accordance with the approved details.

### **Flooding and Drainage**

- 21) No development hereby permitted shall commence until a detailed surface water drainage strategy for the entire site has been submitted to and approved in writing by the local planning authority. The details shall be based on the Flood Risk Assessment dated 3 September 2015 included within the Environmental Statement and the Addendum dated April 2017. The submitted details shall:
- a) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, details of existing and proposed overland flow routes, and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - b) provide details of compensatory pluvial flood storage capacity within the site;
  - c) provide details of any necessary easements (including those related to the Cox's Brook Catchment);
  - d) provide a health and safety risk assessment for the attenuation ponds and incorporate any recommended safety measures;
  - e) include details of the phasing for its implementation; and
  - f) provide a 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.

No building hereby permitted within each phase of the development, as defined under detail e) above, shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority as part of the reserved matters applications and which accord with the approved site wide drainage strategy for that phase or part of a phase.

- 22) No dwelling hereby permitted shall be located outside Flood Zone 1. All dwellings hereby permitted shall be located above the modelled 1:1,000 flood level (as a proxy to the 1:100 + 70% climate change event), as identified in the Phoenix Design Partnership Flood Risk Assessment and Drainage Strategy dated 29 June 2015 (Capita modelled 1:1,000 flood extent as shown on Drawing No FZ-001 included in Appendix E of the Flood Risk Assessment).
- 23) The floor levels of all buildings hereby permitted shall be set at least 750mm above the modelled 1:1,000 flood level (as a proxy to the 1:100 + 70% climate change event), as identified in the Phoenix Design Partnership Flood Risk Assessment and Drainage Strategy dated 3 September 2015 (Capita modelled 1:1,000 flood extent as shown on Drawing No FZ-001 included in Appendix E of the Flood Risk Assessment).

### **Energy Efficiency**

- 24) Prior to first occupation, each dwelling hereby permitted shall be provided with an outside electrical socket to enable ease of installation of an electric vehicle charging point. All sockets shall comply with BS1363 (or other document which may replace or modify it), and shall be provided with a lockable weatherproof cover if located externally to the building.
- 25) Electric vehicle charging points shall be installed in a minimum of 10% of the allocated parking spaces at all commercial properties within the development hereby permitted. All charging points shall comply with BS7671 and the sockets with BS1363 (or other document which may replace or modify them). Each charging point shall be provided with a lockable weatherproof cover if located externally to the building.

**Noise**

- 26) Each reserved matters application submitted pursuant to condition 1 which includes any dwellings shall be accompanied by a noise survey to identify any dwellings that would be likely to be affected by road noise from the A38 Tewkesbury Road. The survey shall have been undertaken by a competent person, shall include periods for daytime as 0700 to 2300 hours and night-time as 2300 to 0700 hours, and shall identify those dwellings which require noise mitigation measures. All dwellings requiring noise mitigation shall thereafter be designed so as not to exceed the noise criteria based on current figures by the World Health Authority Community Noise Guideline Values/BS8233 'good' conditions given below:
- Dwellings indoors in daytime: 35 dB LAeq,16 hours
  - Outdoor living area in day time: 55 dB LAeq,16 hours
  - Inside bedrooms at night-time: 30 dB LAeq,8 hours (45 dB LAmax)
  - Outside bedrooms at night-time: 45 dB LAeq,8 hours (60 dB LAmax)
- No dwelling requiring noise mitigation measures shall be occupied until those noise mitigation measures have been implemented and they shall be maintained as approved thereafter.
- 27) Any reserved matters application submitted pursuant to condition 1 including non-residential buildings shall include details of any extraction, ventilation, cooling and refrigeration equipment to be installed on or in any building. The rated noise level from any extraction, ventilation, cooling and refrigeration equipment to be installed within the application site shall be no more than 5dB LAeq above the night-time background noise level measured at the nearest noise sensitive receptors. The method of assessment shall be carried out in accordance with BS4142:1997: Rating industrial noise affecting mixed residential and industrial areas (or other document which may replace or modify the method of assessment). All approved equipment shall be installed in accordance with the approved details on or in the building prior to occupation and shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

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# **Report to the Secretary of State for Communities and Local Government**

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date: 31 August 2017**

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## **Town and Country Planning Act 1990**

**Tewkesbury Borough Council**

**Appeals by**

**Robert Hitchens Limited**

Inquiry opened on 20 June 2017

Land at Twigworth and Land at Innsworth, Gloucester, Gloucestershire

File Refs: APP/G1630/W/16/3154464 and APP/G1630/W/16/3164033

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**Appeal A Ref: APP/G1630/W/16/3154464**  
**Land at Twigworth, Gloucester, Gloucestershire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Robert Hitchins Limited against the decision of Tewkesbury Borough Council.
- The application Ref 15/01149/OUT, dated 20 October 2015, was refused by notice dated 19 January 2016.
- The development proposed is a mixed use development comprising demolition of existing buildings; up to 725 dwellings and a local centre of 0.33 ha (A1, A2, A3, A4, A5, D1, D2 uses); primary school, open space, landscaping, parking and supporting infrastructure and utilities; and the creation of a new vehicular access from the A38 Tewkesbury Road.

**Summary of Recommendation: That the appeal is allowed and that outline planning permission be granted.**

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**Appeal B Ref: APP/G1630/W/16/3164033**  
**Land at Innsworth, Innsworth Lane, Gloucester, Gloucestershire GL3 1DU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Robert Hitchins Limited against Tewkesbury Borough Council.
- The application Ref 15/00749/OUT is dated 6 July 2015.
- The development proposed is a mixed use development comprising demolition of existing buildings; up to 1,300 dwellings and 8.31 hectares of land for employment generating uses comprising a neighbourhood centre of 4.23 ha (A1, A2, A3, A4, A5, D1, D2, B1), office park of 1.31 ha (B1) and business park of 2.77 ha (B1 and B8 uses); primary school, open space, landscaping, parking and supporting infrastructure and utilities; and the creation of new vehicular accesses from the A40 Gloucester Northern Bypass, Innsworth Lane and Frogfurlong Lane.

**Summary of Recommendation: That the appeal is allowed and that outline planning permission be granted.**

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**1 Procedural and Preliminary Matters**

1. Both the applications were submitted in outline form with all matters of detail reserved for subsequent consideration. A series of parameter plans and an indicative masterplan were submitted with both the applications. I have based my conclusions and recommendations on the details shown on the submitted plans, using those on the indicative masterplans for illustrative purposes only but taking account of the location of the proposed main accesses.
2. At the Inquiry applications for costs were made by Highways England (HE) against the appellant, the appellant against Tewkesbury Borough Council (the Council) and the Council against the appellant. These applications are the subject of separate Reports.
3. A Pre-Inquiry Meeting (PIM) was held at The Council Offices, Gloucester Road, Tewkesbury, GL20 5TT on Tuesday 28 March 2017 to discuss procedural matters relating to the Inquiry in order to make best and most effective use of inquiry time. There was no discussion of the merits of the proposals or of the

cases for any parties. Notes of the meeting<sup>1</sup> were circulated to all known prospective inquiry participants.

4. I opened the Inquiry on Tuesday 20 June 2017 and it sat for 7 days at the Council Offices, Gloucester Road, Tewkesbury, Gloucestershire GL20 5TT with a session between 1900 hours and 2030 hours on Thursday 22 June at Innsworth Community Hall, Rookery Road, Innsworth, Gloucestershire GL3 1AU. I closed the Inquiry on Friday 7 July. I undertook an unaccompanied site visit of the area surrounding the sites between about 1730 hours and 1800 hours on 19 June prior to opening the Inquiry, and an accompanied site visit of the site and surrounding highway network between about 1430 hours and 1645 hours on Tuesday 20 June after the Inquiry had opened.
5. Both of the appeals were recovered for the Secretary of State's (SofS's) own determination by letters dated 5 August 2016 for Appeal A and 20 December 2016 for Appeal B. The reason given in both of the letters for this direction is that the appeal involves proposals for residential development of over 150 units or is on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
6. HE applied for Rule 6 status for Appeal A in a letter, dated 5 September 2016, and for Rule 6 status for Appeal B in a letter, dated 7 December 2016. It was granted Rule 6 status for Appeal A in a letter, dated 8 September 2016, and I considered it as a Rule 6 Party for Appeal B. It was represented at the Inquiry. The grounds for objection to Appeal A given in the letter are regarding reason for refusal number 5 and, in relation to both appeals, the impact of the development traffic on the operation of the A40 trunk road. Gloucestershire County Council (GCC), as the Local Highway Authority (LHA), was granted Rule 6 status for Appeal A in a letter, dated 14 September 2017, and also confirmed that it would like to be considered a Rule 6 Party for Appeal B. GCC was represented at the Inquiry.
7. Twigworth Parish Council (TPC) requested Rule 6 status for Appeal A in a letter to the Planning Inspectorate, dated 5 May 2017. The grounds given for its objections to the proposed development were regarding the effect on flood risk, traffic impacts and inappropriate use of, and harm to, the Green Belt.
8. At the Inquiry the appellant requested that the site boundary for Appeal B be amended to omit part of the site that is within Gloucester City boundary and the public highway land. The Council has accepted this amendment to the boundary, which is shown on Drawing No H.0355\_43A-1<sup>2</sup>, it has been subject to public consultation and has been advertised<sup>3</sup>, and no party objected to it at the Inquiry. As such, I am satisfied that the determination of Appeal B based on the site boundary shown on Drawing No H.0355\_43A-1 would not prejudice

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<sup>1</sup> Document A53

<sup>2</sup> Document L13

<sup>3</sup> Documents L11, L14 L15 and L16

any of the relevant parties' interests and I agreed to accept this change to the boundary at the Inquiry.

9. The Appeal A application was refused planning permission by Notice, dated 19 January 2016, for 15 reasons<sup>4</sup>.
10. Although Appeal B is on the basis of non-determination, the Council's Planning Committee considered the application on 14 March 2017 and resolved that it would have been 'minded to refuse' the proposed development had it remained the determining authority for the following putative reasons<sup>5</sup>:

- 1 The proposed development conflicts with saved Policy HOU4 of the Tewkesbury Borough Local Plan to 2011 - March 2006 in that the site lies outside the defined residential development boundary of the settlement in a location where new housing is strictly controlled.*
- 2 The proposed development conflicts with section 9 of the NPPF (Protecting Green Belt land), saved Policy GRB1 of the Tewkesbury Borough Local Plan to 2011 - March 2006 and emerging policy SD6 of the Proposed Main Modifications version of the Joint Core Strategy in that it represents inappropriate development in the Green Belt which would compromise its open character, appearance and function.*
- 3 The proposed development would result in an unwarranted and significant intrusion into the rural landscape which would harm the rural character and appearance of the locality. As such, the proposed development conflicts with the National Planning Policy Framework, saved Policy LND4 of the Tewkesbury Borough Local Plan to 2011 - March 2006 and emerging Policy SD7 of the Proposed Main Modifications version of the Joint Core Strategy.*
- 4 Whilst the proposals are in outline form with all matters reserved, the submitted information does not demonstrate how the site could be developed in an environmentally acceptable way. The submitted proposals do not demonstrate how the site would be developed as part of a comprehensive scheme to be delivered across the developable area within Strategic Allocation A1 as defined in the Proposed Main Modifications version of the Joint Core Strategy, and no comprehensive assessment of the risk of flooding across the strategic allocation has been carried out. The proposals are not accompanied by a comprehensive masterplan for the entire Strategic Allocation and as such it has not been demonstrated how the proposed development would integrate with and complement its surroundings in an appropriate manner, in the interests of proper planning. As such the proposed development conflicts with advice in the National Planning Policy Framework and emerging policies SD5, SA1 and A1 of the Proposed Main Modifications version of the Joint Core Strategy.*

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<sup>4</sup> Document A29

<sup>5</sup> Document I2 paragraphs 5.1 to 5.3

- 5 *The proposals do not provide satisfactory information to show that the operation of the A40 would not be adversely affected by the traffic impacts of the development proposal. As such the application has not demonstrated that there would be an acceptable impact on the strategic road network in conflict with the National Planning Policy Framework, Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 - March 2006 and Policies INF1, INF2, SA1 and A1 of the Main Modifications version of the Joint Core Strategy.*
- 6 *Insufficient information has been submitted to demonstrate that the proposed development has taken up the opportunities for sustainable transport modes to reduce the need for major transport infrastructure. Furthermore the proposals do not demonstrate that safe and suitable access to the site can be achieved for all people or that improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development proposed. As such the proposed development is contrary to section 4 of the National Planning Policy Framework, saved Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 - March 2006 and Policies INF1, INF2, SA1 and A1 of the Proposed Main Modifications version of the Joint Core Strategy.*
- 7 *The proposed development would result in the loss of Best and Most Versatile agricultural land and the loss of this valuable resource is not outweighed by economic or other benefits contrary to paragraph 112 of the National Planning Policy Framework.*
- 8 *The application is not supported by sufficient information to demonstrate that there would be an acceptable cumulative impact on the Innsworth Meadows Site of Special Scientific Interest in the context of other planned development. As such the proposed development conflicts with paragraph 118 of the National Planning Policy Framework and emerging policies SD10 and A1 of the Proposed Main Modifications version of the Joint Core Strategy.*
- 9 *By reason of a lack of a final design for the proposed junction with the A40, the proposals do not demonstrate that the proposed development would have an acceptable impact on air quality, in particular through nitrogen dioxide emissions. As such the proposed development conflicts with the National Planning Policy Framework and emerging Policy SD15 of the Proposed Main Modifications version of the Joint Core Strategy.*
- 10 *Insufficient information has been submitted to fully demonstrate that the proposed development would not be at risk of flooding and would not increase the risk of flooding elsewhere. As such the proposals conflict with the advice in the National Planning Policy Framework, saved Policy EVT5 of the Tewkesbury Borough Local Plan to 2011 (March 2006) and policies INF3 and A1 of the Proposed Main Modifications version of the Joint Core Strategy.*
- 11 *The application does not provide for housing that would be available to households who cannot afford to rent or buy houses available on the existing housing market. As such the proposed development conflicts with saved Policy HOU13 of the Tewkesbury Borough Local Plan to 2011*

*- March 2006 and emerging policies SD12 and SD13 of the Proposed Main Modifications version of the Joint Core strategy.*

- 12 *The application does not make adequate provision for on-site or off-site playing pitches with changing facilities and sports facilities to meet the needs of the proposed community. The application therefore conflicts with saved Policy RCN1 of the Tewkesbury Borough Local Plan to 2011 - March 2006 and section 8 of the NPPF (Promoting healthy communities) and policies INF5, INF7 and SA1 of the Proposed Main Modifications version of the Joint Core Strategy.*
- 13 *The application does not make provision for the delivery of education, health and community infrastructure, library provision, or recycling infrastructure and therefore the proposed development is contrary to saved Policy GNL11 of the Tewkesbury Borough Local Plan to 2011 - March 2006, section 8 of the NPPF (Promoting healthy communities) and emerging policies INF5, INF7 and SA1 of the Proposed Main Modifications version of the Joint Core Strategy.'*
11. Both appeal proposals constitute Environmental Impact Assessment (EIA) Development under the category of 'Urban Infrastructure Projects'<sup>6</sup>. A 'Screening and Scoping Opinion' request was submitted by the appellant for both appeal proposals. The Council confirmed the requirements for an Environmental Statement (ES). The applications were submitted with supporting ESs. Following the examination of the ESs, the SofS notified the appellant in a letter, dated 13 March 2017, pursuant to Regulation 22 of the EIA Regulations that to comply with Schedule 4 of the Regulations (Information for inclusion in ESs) the appellant was required to supply further information. The information required included a cumulative assessment of the potential effects arising from both of the appeal proposals and any other identified projects/plans. Following this, the appellant submitted ES Addendums, dated April 2017, for both appeal proposals<sup>7</sup>.
12. Six Statements of Common Ground (SoCGs) have been submitted. These consist of one for Appeal A and one for Appeal B between the appellant and Tewkesbury Borough Council<sup>8</sup>; one on 'Highways and Transportation-Related Matters' between the appellant and HE<sup>9</sup>; one on 'Highways and Transportation-Related Matters' between the appellant and GCC<sup>10</sup>, which was updated during the Inquiry<sup>11</sup>; one on 'Housing Land Supply' between the appellant and Tewkesbury Borough Council<sup>12</sup>; and one on 'Matters Relating to Drainage and Flooding' between the appellant and the Environment Agency (EA), with GCC as the Lead Local Flood Authority (LLFA) not having signed it<sup>13</sup>.

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<sup>6</sup> Schedule 2, 10b of the EIA Regulations

<sup>7</sup> Documents A31 and B26

<sup>8</sup> Documents I1 and I2

<sup>9</sup> Document I3

<sup>10</sup> Document I4

<sup>11</sup> Document I4A

<sup>12</sup> Document I5

<sup>13</sup> Document I6

13. This Report sets out brief descriptions of the sites and their surroundings, their planning history and the proposed developments, together with an outline of the main national and Development Plan (DP) policy and guidance. It gives the material points made in the cases for the appellant, the Council, the Rule 6 parties, other objectors and those who made written representations at the appeal and application stages, together with my conclusions and recommendations. Lists of those appearing at the Inquiry and of inquiry documents are appended, as are recommended conditions in the event of the SofS granting planning permission and a list of abbreviations and a glossary of terms used in this Report.

## **2 The Sites and Surroundings**

14. The Appeal A site consists of about 32 hectares of land and is located to the north of Gloucester and south of the village of Twigworth, about 1 km from the settlement of Longford to the south east and 1 km from Innsworth to the south. It includes open agricultural fields that are separated by hedges and other field boundaries. It is bounded to the south by Hatherley Brook watercourse, beyond which lies agricultural land, most of which forms the Appeal B site. To the north, it is bounded by Brook Lane, Orchard Park Caravan Park, the A38 Tewkesbury Road and residential properties along the A38 in Twigworth. To the east and west it is bounded by mainly agricultural land.
15. A single public right of way runs through the site, connecting Twigworth with Hatherley Brook. There are a number of designated built heritage assets in the surrounding area, including Twigworth Court, Twigworth Lawn and the Stable Block to the north of Twigworth Court, which are all Grade II Listed buildings on the edge of Twigworth. Twigworth Court and the Stable Block are sited on the opposite side of the A38 to the site and Twigworth Lawn is bounded on two sides by mobile homes adjacent to the site.
16. The Appeal B site consists of about 105.6 hectares of an irregular shaped area of land located about 3.5 km to the north east of Gloucester City Centre. It is generally in agricultural use, divided into a number of fields by hedgerows, trees and other field boundaries. It includes buildings associated with Drymeadow Farm in the western part of the site, off Meadow Lane, some ponds and the Innsworth Meadows Site of Special Scientific Interest (SSSI). It is bounded by Innsworth Lane to the south, beyond which is the residential area of Innsworth, and the grounds and buildings associated with the Ministry of Defence Imjin Barracks to the east, separated from it by Frogfurlong Lane. The western end of the southern boundary adjoins Innsworth Technology Park and the A40 Gloucester Northern Bypass trunk road.
17. To the west, the site adjoins open countryside, including Horsbere Brook, which separates it from the settlement of Longford. Hatherley Brook defines most of the northern boundary, until it steps back away from the Brook to the east. Beyond this Brook is open countryside which separates the site from the village of Twigworth. Much of this open countryside is included in the Appeal A site that adjoins the northern boundary of this appeal site.
18. There are a number of public rights of way across the site, including the Gloucestershire Way, which is a long distance footpath along its northern

boundary. There are bus stops along Innsworth Lane and Gloucester Railway Station is located about 4.5 km from the centre of the site.

19. The highway network in the area of both of the appeal sites comprises the M5 motorway, which runs north to south through Gloucestershire and Junction 11 provides access to the A40, which runs to the north of Gloucester City Centre and to the west of the M5. These form part of the Strategic Road Network (SRN). Leading off the A40 at Longford Roundabout is the A38, Tewkesbury Road, the north part of which passes through Twigworth and east of the Appeal A site. To the east is the Elmbridge Court Roundabout where the A40 intersects with the A417 and B4063.

### **3 Planning History**

20. There are no previous planning applications that are of direct relevance to Appeal A. However, the site does have relevant planning history in terms of it being promoted through the emerging DP and it being included as a potential allocation for housing development in the proposed 'Main Modifications version of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy<sup>14</sup>' (JCS), having been recommended for allocation by the JCS Examination Inspector.
21. The planning history that is relevant to Appeal B is set out in the SoCG<sup>15</sup>. A recent planning application<sup>16</sup> and the appeal<sup>17</sup> that was lodged on the grounds of 'non determination' related to land which included the majority of the site as well as additional land to the west and the north west. The previous appeal was dismissed principally on Green Belt grounds and due to inadequate levels of affordable housing, with additional concerns regarding the effectiveness of the Agreement under Section 106 of the Town and Country Planning Act 1990 (S106) in delivering necessary infrastructure on time<sup>18</sup>. The Appeal B site is now being promoted through the emerging JCS.

### **4 The Proposed Developments**

22. The Appeal A proposal is shown on an indicative masterplan<sup>19</sup>. It would be accessed off the A38 Tewkesbury Road via a new roundabout junction. It would deliver up to 725 dwellings, including affordable housing; a new Local Centre, which would provide a range of facilities including retail, healthcare and community uses; a new primary school; areas of public open space and other green infrastructure, including play areas, playing pitches and natural/semi-natural open space.
23. The Appeal B proposal is shown on an indicative masterplan<sup>20</sup>. Although access is a reserved matter, the masterplan shows that it would be taken off a new junction with the A40 and potentially three new junctions off Innsworth Lane and a single new access off Frogfurlong Lane. Public rights of way would

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<sup>14</sup> Document E35

<sup>15</sup> Document I2 section 6

<sup>16</sup> Application Reference 07/00680/OUT

<sup>17</sup> Appeal Ref APP/G1630/A/09/2097181

<sup>18</sup> Document I2 paragraphs 6.2 to 6.4

<sup>19</sup> Document A5: Drawing No H.0361\_17D-1

<sup>20</sup> Document B5: Drawing No H.0355\_05-1L

be retained and, where necessary, upgraded with additional footpath links also provided. It would deliver up to 1,300 dwellings, including affordable housing; a Neighbourhood Centre, an Office Park and a Business Park; a new primary school; open spaces and green corridors, areas of play, formal open space/sports provision and informal green infrastructure between the proposed new built development areas and the open countryside and the A40. The Innsworth Meadow SSSI would be retained, protected and incorporated as part of the green infrastructure.

## **5 Planning Policy and Guidance**

24. The DP that covers the appeal sites includes Tewkesbury Borough Local Plan to 2011 (TBLP), adopted in March 2006<sup>21</sup>. The TBLP Proposals Map locates both the appeal sites within the Green Belt. Policy GRB1 relates to development within the Green Belt, and identifies the types of development that would be acceptable. It restricts inappropriate development in the Green Belt but does not include the provision where inappropriate development can be allowed in 'Very Special Circumstances' (VSC). As such, it fails to accord with the National Planning Policy Framework (Framework)<sup>22</sup>.
25. TBLP Policy HOU4 imposes a presumption against new residential development outside the defined residential boundaries. However, the TBLP residential boundaries are not up-to-date because they do not allow for housing and other development beyond June 2011<sup>23</sup>. TBLP Policy HOU13 is regarding the provision of affordable housing, Policy RCN1 sets standards for the provision of outdoor playing space and Policy GNL11 seeks to ensure that the infrastructure and public services necessary to enable new development to take place are either available or can be provided.
26. TBLP Policy TPT1 seeks, amongst other things, to ensure that traffic generated by new development, together with that arising from other existing or planned development, would not impair the safety or satisfactory operation of the highway network and highway access could be provided to an appropriate standard.
27. TBLP Policy EVT5 requires new development in high and low to medium flood risk areas to be accompanied by a Flood Risk Assessment (FRA) and it to be demonstrated that the development would meet specified flood protection criteria. TBLP Policy LND4 seeks to ensure that regard will be given to the need to protect the character and appearance of the rural landscape when considering new development. It is consistent with the Framework in terms of the core principle in paragraph 17 of recognising the intrinsic character and beauty of the countryside. A small part of the Appeal B site (Innsworth Meadow SSSI) is covered by an ecology designation.
28. The emerging JCS to combine the areas of Tewkesbury Borough Council, Gloucester City Council and Cheltenham Borough Council and cover the plan period up to 2031 was submitted to the SofS for Examination on 20 November

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<sup>21</sup> Document E1

<sup>22</sup> Documents I1 paragraph 7.11 and Document I2 paragraph 7.11

<sup>23</sup> Documents I1 paragraph 8.33 and Document I2 paragraphs 8.31 and 8.32

2014. The Examination commenced on 19 May 2015 and the Inspector issued Preliminary Findings regarding Green Belt release, Spatial Strategy and Strategic Allocations on 16 December 2015. The Inspector's Interim report was issued on 26 May 2016. The Proposed Main Modifications JCS<sup>24</sup>, prepared in response to the Inspector's findings were consulted upon from 27 February to 10 April 2017 and further hearing sessions are scheduled in July 2017.

29. The most relevant emerging JCS policies are Policy SP1, which identifies the need for new development, including approximately 35,175 new homes; Policy SP2, which specifies the distribution of new development, including at least 9,899 new homes to meet the needs of Tewkesbury Borough; Policy SA1, which identifies the Strategic Allocations, including Innsworth (A1) and Twigworth (A1a), and requires proposals to be accompanied by a comprehensive masterplan for the entire Strategic Allocation to demonstrate how new development would integrate with and complement its surroundings; and Policy A1, which allocates the sites at Innsworth and Twigworth. Policies SP2, SA1 and A1 remain the subject of unresolved objections<sup>25</sup>. Other emerging policies that are relevant to the appeals are Policy INF1, regarding the transport network, and Policy INF3, regarding flood risk management.
30. As part of the emerging JCS, a review of the Green Belt has been undertaken. Paragraph 83 of the Framework indicates that Green Belt boundaries, once established, should only be altered in exceptional circumstances through the preparation or review of the Local Plan. Paragraph 84 of the Framework suggests that when drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development.
31. In terms of Neighbourhood Planning, the Appeal A site is located within the Down Hatherley, Norton and Twigworth Neighbourhood Plan (NP) designated area and the Appeal B site is located within the Churchdown and Innsworth NP Area, designated in June 2013. The Council has agreed that the NPs are still at very early stages and draft policies have yet to be published for consultation<sup>26</sup>.
32. The Department for Transport (DfT) Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development' (Circular 02/2013)<sup>27</sup> sets out the policy of the Secretary of State for Transport (SofST) in respect of the SRN, including development management. Paragraph 9 of Circular 02/2013 reaffirms paragraph 32 of the Framework in that development should only be prevented or refused on transport grounds where its residual cumulative impacts are severe. The Design Manual for Roads and Bridges (DMRB) sets out details of the SofST's requirements for access, design and audit. DMRB TD16/07<sup>28</sup> provides the required standards for the geometric design of roundabouts.

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<sup>24</sup> Document E35

<sup>25</sup> Documents I-LPA1 paragraphs 7.57 and 7.66; T-APP1 paragraph 9.56 and I-APP1 paragraph 9.54

<sup>26</sup> Documents I1 paragraphs 7.36 and 7.37 and I2 paragraph 7.34

<sup>27</sup> Document G1

<sup>28</sup> Document G2.1

## 6 The Case for Robert Hitchins Limited

*I have reported the case on the basis of the closing submissions<sup>29</sup> with additional references to the evidence submitted prior to and during the Inquiry. The material points are:*

### **Legal Submissions**

#### *Use of Grampian Conditions*

33. The Court has held: *'if he [a decision maker] was minded to impose a Grampian condition, he should not do so if there were no prospects at all of it being fulfilled within the time limit imposed by the permission'*<sup>30</sup>. The difference between a 'no prospects at all' test and 'a reasonable prospects' test has been described as the difference between a 1% probability and a 51% probability<sup>31</sup>. However they are described, the two tests are radically different.
34. It is open to the SofS to adopt any policy he chooses to with regard to the policy, as distinct from the legal, test he wants to see applied to the decisions. The National Planning Practice Guidance (NPPG)<sup>32</sup> advice on Grampian Conditions affirms the test as follows<sup>33</sup>: *'Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission'*.

#### *Five Year Housing Land Supply*

35. The Council is wrong in calculating the five-year housing land supply prior to the adoption of the JCS by reference to the administrative area of Tewkesbury. The Courts have held that the relevant needs to be considered were those of the housing market area and not those of the district Council's area<sup>34</sup> and that a strategy of apportionment must be respected in order to give effect to the clear words of the Framework<sup>35</sup>. The contrary approach was rejected as: *'.....rigidly legalistic, failing to reflect adequately the variety of planning circumstances which arise in the real world and for which the NPPF intends to cater'*<sup>36</sup>.
36. With regard to paragraph 47 of the Framework, the Court has held that its relevance to a decision making process depended on a prior finding of fact as to whether the Council was able to demonstrate a five-year supply of deliverable housing land<sup>37</sup>. This recognises the intention of the policy to boost significantly the supply of housing land. In a situation in which the Council has

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<sup>29</sup> Document N61

<sup>30</sup> Document N3b: FCC Environment v Secretary of State for Communities and Local Government and East Riding of Yorkshire Council [2014] EWHC 2035 (Admin)

<sup>31</sup> Evidence given by David Hutchison to the Inquiry on 22 June

<sup>32</sup> Document N13: ID: 21a-009-20140306

<sup>33</sup> Evidence given by David Hutchison to the Inquiry on 22 June

<sup>34</sup> Document H3: St Modwen Developments v Secretary of State for Communities and Local Government and the East Riding of Yorkshire [2016] EWHC 968 (Admin) paragraph 77

<sup>35</sup> Ibid paragraph 78

<sup>36</sup> Ibid paragraph 80

<sup>37</sup> Document N12

a negative supply of housing land the imperative in paragraph 47 serves as a stimulus to expanding supply. In a situation in which the Council has a positive supply, paragraph 47 does not act as a barrier to further expanding supply in sustainable locations.

#### *Scope of an Outline Planning Application*

37. The Town and Country Planning (Development Management Procedure) (England) Order 2010<sup>38</sup> was extremely prescriptive as to the requirements for information which accompanied an outline application. Part 2 Article 4 provided, where material: '*(3) Where layout is a reserved matter, the application for outline planning permission shall state the approximate location of buildings, routes and open spaces included in the development proposed*' and '*(4) Where scale is a reserved matter, the application for outline planning permission shall state the upper and lower limit for the height, width and length of each building included in the development proposed*'.
38. The requirements quoted above were repealed in favour of a more liberal regime which deferred a consideration of detail until a later stage<sup>39</sup>. If however, the Council felt that the development proposals could not be properly considered without this additional level of detail, then it was entitled to ask for it<sup>40</sup>. No such request was made<sup>41</sup>.

#### ***The Planning Case***

39. Both the appeal proposals have been conceived and presented to the SofS as fulfilling the aims and objectives of the emerging JCS with regard to the scale, distribution, location and timing of necessary housing-led mixed use development. In each respect the proposals are entirely congruent with the expectations of the emerging JCS<sup>42</sup>. Further than that, they have been recognised as a necessary condition to a finding of soundness<sup>43</sup>. They therefore underpin a large element of the housing delivery strategy of the emerging JCS and in this way promote the interests of the JCS and, through that, the plan-led system.
40. The strategy of the emerging JCS is to make large incursions into the Green Belt in order to meet housing needs in the most sustainable locations. It has been established through the JCS process of independent examination that there is an acute shortage of available and deliverable housing land in Tewkesbury Borough, Gloucester City and across the JCS area over the plan period, that the shortage is so severe that the problem will persist even when the urban extensions have been fully delivered<sup>44</sup> and there are no more

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<sup>38</sup> Document C7

<sup>39</sup> Document C8: The Town and Country Planning (Development Management Procedure) (England) Order 2015 Article 7(3)

<sup>40</sup> Document C8 Article 5(2)

<sup>41</sup> Documents I1 paragraph 8.4 and I2 paragraph 8.4

<sup>42</sup> Document E35

<sup>43</sup> Documents E21 and E32

<sup>44</sup> Document E35 Table SP2b shows a supply of 31,100 dwellings against a requirement of 35,175 dwellings in Policy SP1

sustainable options for addressing the need than urban extensions around Gloucester and Cheltenham generally and the appeal sites particularly<sup>45</sup>.

41. Whether or not the Council can demonstrate a five-year supply of deliverable housing land, it is acknowledged that the housing needs of the area covered by the emerging JCS are chronically undersupplied and this provides the justification for excluding the land included in the appeal sites from the Green Belt through the plan process and for allowing the appeals.
42. The Council has asserted that there is no impediment which will prevent early delivery of houses upon the appeal sites. Its own implementation strategy anticipates the delivery of 200 units from the appeal sites within the next three years (and commencing next year)<sup>46</sup> which re-affirms its opinion that there is no reason to prevent the immediate delivery of the appeal sites.
43. The question of whether or not to build in the Green Belt has been answered affirmatively through the JCS process. The question in these appeals is whether to allow the Green Belt covered by the appeal sites to come forward for development now.
44. The JCS has engaged in a thorough process of considering all available land in the Green Belt<sup>47</sup> and then a careful evidential comparison has been carried out through the Sustainability Appraisal<sup>48</sup> in which the rival attributes of all alternative possibilities has been assessed. The appeal sites have emerged through that process as the most desirable places in the public interest at which the JCS housing needs may be met. This does not assume there are many alternative sites which have been disregarded and which might come forward in preference to the appeal sites<sup>49</sup>. All of the available Green Belt sites are required and, even then, a shortfall in housing provision still exists.
45. The agreed shortage of available housing land was demonstrated by agreement at the Inquiry<sup>50</sup> that, *'even with contributions from Strategic Allocations within Tewkesbury Borough, there will still be a significant shortfall in supply to meet the needs of Gloucester City'* and *'the JCS is therefore progressing in the context of a very significant housing shortfall over the plan period'*<sup>51</sup>. This is the context within which the VSC test in paragraph 88 of the Framework falls to be applied. Through the plan-led system it has already been adjudged that the appeal sites are areas where the harm to the Green Belt is minimised and the advantage to the public interest is maximised.

#### *Sustainable Transport*

46. Details of existing pedestrian and cyclist facilities were included in the Transport Assessments. Post application discussions have continued leading to agreement over the form and nature of off-site improvements to existing

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<sup>45</sup> Documents E18 and E21

<sup>46</sup> Document F2 Figure 2

<sup>47</sup> Document E10A

<sup>48</sup> Document E26

<sup>49</sup> Evidence given by David Hutchison to the Inquiry on 22 June

<sup>50</sup> Matthew Barker agreed in cross examination on 21 June

<sup>51</sup> Document T&I-APP-5 paragraph 5.6

facilities to ensure that the opportunities for sustainable transport modes have been taken up, in accordance with paragraph 32 of the Framework. Plans showing the proposed walking improvements have been agreed<sup>52</sup>.

47. The proposed enhancements to bus services and bus infrastructure are a means to take up the opportunities for sustainable transport modes in accordance with paragraph 32 of the Framework. The details of the improvements<sup>53</sup> have been agreed and the level of contributions and the means by which the enhancements would be achieved have been agreed to be appropriate and compatible with the Framework and TBLP policies.

*Impact of Traffic on the Strategic and Local Road Network*

48. The appellant's consultants have spent a long time discussing the implications of the appeal proposals for the local and strategic highway networks with the relevant statutory agencies. Those discussions have continued in the context of the proposed allocation in the JCS as well as the appeals. An S-Paramics microsimulation traffic model had been built by the appellant following discussions with GCC and HE concerning the continuing absence of an up-to-date SATURN traffic model. A dynamic model such as S-Paramics was considered the most appropriate way to assess the impacts, and provides a higher level of predictive scrutiny of the likely consequences of developing the appeal sites. That work has been calibrated and assessed to the extent where both GCC and HE have been able to advise the Inquiry that it was accurate<sup>54</sup>.
49. The SATURN model had its limitations<sup>55</sup>; it covered a large area (the whole of the Central Severn Vale extending from Stroud in the south to Tewkesbury in the north), but as a consequence was a coarser model suitable for strategic studies that did not provide the level of detail for testing individual junctions. The flows can be extracted and used in other traffic modelling software. However, the up-to-date SATURN model has only become available in the past couple of months and is being used exclusively for testing the JCS transport strategy. In any event, the Forecast Year of the SATURN model is 2031 whereas the appropriate year for testing the appeal proposals is the year of opening of 2019. HE had used the S-Paramics output to test the Longford Roundabout using the software developed by the Transport and Roads Laboratory known as 'Assessment of Roundabout Capacity and Delay' program (ARCADY). The ARCADY results confirmed the results of the S-Paramics model<sup>56</sup>.
50. Prior to the Inquiry, agreement had been reached that the proposed A40 access for Appeal B was suitable and appropriate. The principle of an access off the A40 had been agreed in May 2009 in connection with the previous appeal<sup>57</sup>, an access is proposed as part of the emerging JCS allocation and a new access formed part of the successful bid for Growth Deal funding. It was

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<sup>52</sup> Document I4A Appendix A Innsworth and Appendix B Twigworth

<sup>53</sup> Document I4A Appendix C Innsworth and Appendix D Twigworth

<sup>54</sup> Documents I3 paragraphs 3.22 to 3.23 and I4A paragraphs 3.23 to 3.24

<sup>55</sup> Evidence given by Peter Finlayson to the Inquiry on 23 June

<sup>56</sup> Document N17 page 3

<sup>57</sup> Document T&I-APP9 paragraph 6.6

agreed there were no safety implications for the surrounding road network. It was further agreed there were no capacity issues with the potential exception of the Longford Roundabout which was an interest shared by both GCC and HE.

51. HE has agreed a condition at the Inquiry that requires the provision of works to increase the capacity of Longford Roundabout which are drawn and described as 'Option 2'. HE has agreed that those works would allow the Longford Roundabout to function in the design year with the development to an acceptable level<sup>58</sup>. GCC accept and agree that its residual concern is now also overcome by the Option 2 works required by the condition and it has withdrawn its objection to the grant of planning permission<sup>59</sup>.
52. At the Inquiry the professional representative for TPC accepted that his concerns were either directed at the JCS process or overcome by the agreements<sup>60</sup>. The only exception to this was his concern about the amenity implications for minor local roads arising from an increase in traffic movements associated with the appeals and, in particular, Frogfurlong Lane and Down Hatherley Lane. However, the S-Paramics model outputs<sup>61</sup> indicate that, with the improvements at Longford Roundabout, traffic movements on these minor roads would either reduce or stay the same.
53. There is a very substantial degree of professional consensus which has now arisen on the question of highway impacts. All agree the appeal proposals would fund works which would improve the existing highways infrastructure so as to alleviate existing problems and accommodate the development traffic. All agree paragraph 32 of the Framework provides the basis for assessing the acceptability of the proposals<sup>62</sup> and no one suggests the highway impacts of the proposals fail the test therein set out. As such this issue is resolved decisively in favour of the proposals and that it does not restrict the grant of planning permission.

#### *Design*

54. The Council's complaint about a lack of detail reflected its failure to notice how the secondary legislation has changed from 2010 to 2015. The Council referred to the following advice from the CABE guidance<sup>63</sup>: *'It is important to recognise at the outset that the masterplans should not be seen as rigid blueprints for development and design. Rather they set the context, within which individual projects come forward. This document is therefore about this strategic stage of thinking; but success will ultimately depend on the delivery of great design at a more detailed level'*<sup>64</sup>.

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<sup>58</sup> Document N17 page 6

<sup>59</sup> Document I4a paragraph 5.1

<sup>60</sup> Patrick Moss in cross examination on 23 June

<sup>61</sup> Document G31 figures 5 and 6 of the Model Forecasting Report

<sup>62</sup> Documents I3 paragraph 3.3 and I-GCC 1 paragraph 5.1

<sup>63</sup> Document I-LPA1 paragraph 6.31

<sup>64</sup> Document: Creating Successful Masterplans- a Guide for Clients (CABE) section 1.1 page 9  
Page 14

55. The indicative masterplan for the 2 appeals has been the product of careful thought over a number of years by a multidisciplinary team of experienced professionals. The masterplan accommodates all known constraints, with particular reference to flooding, it seeks to maximise the utility of the available land resource in the public interest and it shows one way in which the amenity, community, employment and retail facilities might be distributed to maximum advantage. A detailed description of the proposed development and the appellant's justification for the design concept that has been followed is set out in the Design and Access Statement<sup>65</sup>.
56. The Council has agreed that, subject to its concerns being resolved on drainage and flood risk, the following are acceptable with regard to both appeal proposals<sup>66</sup>: the quantum of development; the general extent of the scheme; the proposed mix of non-residential uses; and the general location of the non-residential uses. This is important when deciding whether there is any value or merit in the Council's criticism of the masterplan. The content and structure of the appeal proposals is agreed as acceptable. It is further agreed that the CABE advice requires that flexibility should be preserved and rigidity avoided<sup>67</sup>.
57. The assessment of the JCS Examination Inspector is evidentially valuable because it reveals the response of an independent adjudicator to the same comprehensive masterplan as appears before the Inquiry and it exposes the internally inconsistent approach of the Council to the JCS Inquiry compared to these appeals. That Inspector's findings upon hearing the Council's representations and inspecting the masterplan which appears before these appeals<sup>68</sup> are: *'With respect to integration, a masterplan has been produced for the 750 dwelling development which appears to satisfactorily integrate this Twigworth site with Innsworth via green infrastructure<sup>69</sup> and 'In these circumstances, it seems to me that the primary objections to allocating Twigworth at least for the 750 dwellings, have been overcome<sup>70</sup>.*
58. The Council has been telling the JCS Inspector that the masterplan was acceptable but it has suggested that the comprehensive masterplan that has accompanied the appeals, which is the same as that presented to the JCS Inspector, is unacceptable. The Council has also approved the masterplan for another site<sup>71</sup> which proposed partial development on an allocated site. Furthermore, there is ample scope through the reserved matters process to address any identified deficiencies in the masterplan at that stage. The position here is wholly unlike that at Ashchurch<sup>72</sup> where the appeal proposal related only to a small fraction of the wider allocated site and caused material

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<sup>65</sup> Documents I1 paragraph 3.11

<sup>66</sup> Document I1 paragraph 8.45 and Document I2 paragraph 8.52

<sup>67</sup> Evidence given by David Hutchison to the Inquiry on 22 June: this is especially important with big schemes which are expected to emerge over a period of years

<sup>68</sup> Document I1 page 16

<sup>69</sup> Paragraph 74 of the Inspector's findings

<sup>70</sup> Paragraph 75 of the Inspector's findings

<sup>71</sup> Document I-APP2 Appendix 4

<sup>72</sup> Document I-LPA13 Appendix 1

detriment to the prospects of achieving a successful development of the whole<sup>73</sup>. The appeal proposals are for the vast majority of the allocated site, they include all of the supporting non-residential land uses and the principal points of access and the Council has been unable to identify any prejudice at all to the successful implementation of the whole<sup>74</sup>.

### *Flooding*

59. Flooding is a matter of great concern to the SofS and local residents and it is right that it should be examined in detail. It is clear from the evidence that the response of the appeal proposals for this issue has been exhaustive and meticulous. The FRA which has been prepared for both appeal proposals has considered fluvial and pluvial flows across and in proximity to both sites in detail. The principles of the design have been conceived by a consultant with relevant expertise and the results have been discussed at every relevant stage with the EA and the LLFA. This has created a situation in which both statutory authorities have advised they do not object to the grant of permission subject to conditions<sup>75</sup>.
60. In both cases, the statutory consultees have invited the SofS to impose Grampian conditions in recognition of the fact that it is impracticable to know at this outline stage the final form the design will take<sup>76</sup>.
61. The Council has agreed the following statements as being still applicable with regard to its review of development at Twigworth<sup>77</sup>: *'It is concluded that there are no overriding flooding issues which would prevent the land being allocated for development'<sup>78</sup>; 'The tidal and fluvial flooding risks have been examined and it has not been possible to determine a flood risk which could be technically substantiated therefor there is no overriding flood risk ground not to allocate the Twigworth area'<sup>79</sup>; and 'Similarly the pluvial flood risks have been examined and there are technical solutions to all the pluvial flooding issues therefor there is no overriding pluvial flood risk ground not to allocate the Twigworth area'<sup>80</sup>.*
62. The Council's Officer reported the matter in these terms: *'In light of the above, despite the understandable concerns of the local communities, it is considered that the evidence accompanying the application shows that the site is at a low risk of flooding and would not increase the risk of flooding to third parties in accordance with current national and local planning policies. An appropriate sustainable drainage strategy could be secured by a planning condition'<sup>81</sup>. The Council accepted this advice and therefore did not impose a flooding reason for refusal for the Twigworth (Appeal A) scheme.*

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<sup>73</sup> Ibid paragraph 18 of the SofS's decision letter

<sup>74</sup> Evidence of Alice Goodall in cross examination on 21 June

<sup>75</sup> Documents I6, A35 and B35

<sup>76</sup> Document I6 paragraph 2.13

<sup>77</sup> Michael Thomas in cross examination on 5 July

<sup>78</sup> Document D4 paragraph 1.14

<sup>79</sup> Document D4 paragraph 9.1

<sup>80</sup> Document D4 paragraph 9.12

<sup>81</sup> Document A30 paragraph 13.7

63. The Innsworth (Appeal B) scheme was the subject of a purported flooding related reason for refusal but that was confined to a concern about an absence of information as distinct from an assertion that the proposal was unacceptable for some identified reason. The alleged lack of information is addressed by the EA in these terms: *'It is agreed that the Appellant has provided sufficient information to enable the parties to properly assess matters relating to flood risk for both appeal sites'<sup>82</sup>. The EA also agrees *'There are no overriding fluvial and pluvial flood risk grounds relating to the Twigworth and Innsworth appeal sites that would prevent them from being developed separately, or in combination'<sup>83</sup>.**
64. At the Inquiry, the Council's expert witness accepted the following statements<sup>84</sup>:
- i. *'All matters relating to drainage and flood risk have been agreed with the EA and LLFA, GCC'<sup>85</sup>;*
  - ii. *'Tewkesbury Borough Council's Flood Risk Management Officer has no objection to the appeal sites subject to conditions'<sup>86</sup>;*
  - iii. *'The flood modelling, flood levels and extents used for the FRAs has been agreed with the EA'<sup>87</sup>;*
  - iv. *'A review of flood levels and extents in accordance with the latest climate change guidance has been carried out and agreed with the EA'<sup>88</sup>;*
  - v. *'It is agreed that all dwellings will be located in Flood Zone 1 and that floor levels will be set a minimum of 600mm above the 1:1,000 flood level'<sup>89</sup>;*
  - vi. *'There is no overriding fluvial flood risk ground preventing the approval and development of the Innsworth appeal site'<sup>90</sup>;*
  - vii. *'There is no overriding pluvial flood risk ground preventing the approval and development of the Innsworth site'<sup>91</sup>; and*
  - viii. *'Additional assessments and detail on flood risk management can be secured by condition'<sup>92</sup>.*
65. The Council's expert witness is in agreement with all others to the effect that detailed solutions to the technical matters can be brought forward at the

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<sup>82</sup> Document I6 paragraph 2.10

<sup>83</sup> Ibid paragraph 2.11

<sup>84</sup> Michael Thomas in cross examination on 5 July

<sup>85</sup> Document T&I-APP13 paragraph 8.1

<sup>86</sup> Ibid paragraph 8.2

<sup>87</sup> Ibid paragraph 8.3

<sup>88</sup> Ibid paragraph 8.4

<sup>89</sup> Ibid paragraph 8.5

<sup>90</sup> Ibid paragraph 8.10

<sup>91</sup> Ibid paragraph 8.11

<sup>92</sup> Ibid paragraph 8.12

relevant time<sup>93</sup>. He noticed that the 1:1,000 year flows at 98.6 cumecs in the Capita EA 2009 Review<sup>94</sup> was higher than the figure recorded by the appellant's model and reported in the earlier Capita Review<sup>95</sup>. The dispute as to whether the difference was 12% or 20% does not affect anything as the appellant, in consultation and agreement with the EA, has taken the most extreme area of sterilisation imposed by either model and has applied that to both schemes<sup>96</sup>. That degree of sterilisation caters for all of the statistical output of the models before the Inquiry regardless of which one is applied.

66. The Council's requirement that the appellant should start the process again by modelling a new range of calculations based on the higher figure would make no practical difference to the outcome of the area proposed for residential development<sup>97</sup>. The proposed Grampian conditions would require, by reference to Drawing No FZ-001<sup>98</sup>, the highest degree of sterilisation. In addition, they would require that no dwelling shall be erected outside Flood Zone 1 and that those that are erected shall be at least 600mm above the 1:1,000 year flood event. This would provide a very high degree of restriction in accordance with the precautionary principle. The appellant disagrees with the Council's suggested 750mm height restriction but ultimately this is a judgment for the SofS and the appellant would be content if this were to be imposed<sup>99</sup>. The cost of complying with this form of condition would not impact on the viability of the scheme<sup>100</sup>.
67. In terms of the pluvial flooding issue, two drawings<sup>101</sup> have been provided which describe the number, size, shape, depth and distributions of attenuation ponds. The ponds would have a 35% excess capacity against the EA requirement of 30% increase for climate change. Even if the EA adopted an increase of capacity allowance to 40%, there would still be a 25% excess provided in them<sup>102</sup>. Therefore, the on-site attenuation measures would provide ample capacity to accommodate pluvial flows so far as required on site and ingress of rainwater is concerned.
68. With regard to the egress of pluvial flows, the Council's concern about 'easements' was unsupported by any evidence of land ownerships or legal submissions and most of the relevant land is owned by the appellant or the statutory authority. Therefore, no problem would be likely to arise and easements would not be a problem<sup>103</sup>. Even if easements were to be a problem, there would be other means by which the issue of pluvial flows could

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<sup>93</sup> Michael Thomas in reply to a question by the Inspector on 5 July stated: 'There is a solution'

<sup>94</sup> Documents T-LPA5 and I-LPA17 Table in paragraph 4.13.14

<sup>95</sup> Michael Thomas in cross examination on 5 July

<sup>96</sup> Document B20/A25: Drawing FZ-001

<sup>97</sup> Evidence given by Peter Amies to the Inquiry on 6 July

<sup>98</sup> Document B20/A25

<sup>99</sup> Peter Amies in cross examination on 6 July

<sup>100</sup> Peter Amies in reply to a question by the Inspector on 6 July

<sup>101</sup> Document B20/A25

<sup>102</sup> Evidence given by Peter Amies to the Inquiry on 6 July and Documents T-APP14 paragraph 2.79 and I-APP14 paragraph 2.92

<sup>103</sup> Peter Amies in reply to a question by the Inspector on 6 July

be managed, in particular the statutory right of requisition and the possibility of negotiations with other as yet unidentified landowners<sup>104</sup>. There is therefore no particularity offered in the Council's point about easements and different ways the problem might be addressed even if it would arise.

69. The Council's alleged absence of information only arises because it has been incorrectly advised about the efficacy of Grampian conditions. In each case the Grampian condition restricts the development unless and until some desirable state of affairs has been brought about. If the developer fails to achieve the works required by this condition then development does not proceed. The comprehensive answer to the flooding and drainage issues is provided by the planning conditions that have been agreed with the Council.

*Landscape and Visual Impact*

70. The application sites do not fall under any statutory or non-statutory landscape designations and are areas identified as suitable for development within the emerging JCS. Landscape assessments, carried out as part of the ESs<sup>105</sup>, indicate that the proposed developments would include the retention of most of the existing boundary hedgerows and trees, reinforced with additional planting and that this would limit the effects on the landscape character, which would therefore not be significant. They also suggest that the conversion of arable farmland to natural and semi-natural open spaces, new areas of tree and shrub planting and the creation of new water features in the form of Sustainable Urban Drainage System (SUDS) retention basins would result in a net beneficial impact on landscape features and elements.
71. The only visual amenity effect arising from the two developments which is considered to be significant is that from the public footpath that follows Hatherley Brook, which forms part of the Gloucestershire Way. However, views of the development would be reduced in significance over time as new and existing vegetation would grow and mature. Overall, the ES concludes that there would be no material cumulative effects on landscape character, landscape features and elements or on visual amenity arising from the two proposed developments.

*Heritage Assets- Appeal A*

72. With regard to Appeal A, the appellant accepts that the proposal would have an adverse impact on the settings of some nearby Listed buildings. Those that required assessment have been narrowed down to Twigworth Court, Twigworth Lawn and a stable north of Twigworth Court. The Twigworth Lawn assessment found that, although the appeal site lies adjacent to the building and forms part of its rural backdrop, the degree to which this element of setting contributes to the significance of the Listed building is minimal to negligible. There is no clear direct relationship between the site and the building, emphasised by the low degree of impact on its significance through previous development of an adjacent caravan park. Therefore, although there would be

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<sup>104</sup> Peter Amies in re-examination on 6 July

<sup>105</sup> Documents A26 paragraphs 7.8.21 to 7.9.4 and B21 paragraphs 7.7.1 to 7.7.6

an impact on its setting, the degree to which this would impact would be negligible<sup>106</sup>.

73. The site forms part of the intermediate rural setting of Twigworth Court and Stable Block. The assessments for these buildings suggest that the relationship is purely visual and the most important elements of this rural setting are the fields to the north west which would remain unaltered. Whilst there would be a degree of impact on the intermediate rural setting, the degree to which this would impact on the significance of these Listed buildings would be minimal<sup>107</sup>.
74. The Council has agreed that the level of harm would be 'less than substantial' for the purposes of the Framework and that the test in paragraph 134 is engaged. It has also agreed that the public benefits would outweigh that harm<sup>108</sup>.

#### *Ecology*

75. The ES Ecology and Nature Conservation assessments consider that the majority of habitats which would be lost to the proposed developments are of low ecological value and that their loss would be of negligible significance. The Appeal B site contains Innsworth Meadows SSSI, which has been designated on the basis that it is one of the few remaining unimproved lowland neutral meadows in the Vale of Gloucester. Following discussions with Natural England, measures have been devised to safeguard and enhance this ecologically valuable feature. The mitigation and enhancement measures would result in the overall impacts being positive at the local level and they would ensure that there would be no net loss in biodiversity terms<sup>109</sup>.

#### *Air Quality*

76. The ES Addendum<sup>110</sup>, which covers the impacts of all the relevant cumulative development schemes, has suggested that the updated modelling has generally predicted higher concentrations and greater impacts in the opening year of 2019 than those predicted in the original air quality assessments. However, a sensitivity test using 2030 emission factors has indicated that the actual impacts would be fairly minimal, with just a few adverse impacts and a risk of an objective exceedance at just one existing receptor. As such, the overall impacts of the schemes are not considered to be significantly different to those presented in the 2015 ES<sup>111</sup>, which concludes the operational air quality impacts of the developments are judged to be not significant.

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<sup>106</sup> Document A27 Appendix 13: CgMS Report on the impact on the historic built development of the proposed development paragraph 3.6.3

<sup>107</sup> Document A27 Appendix 13: CgMS Report on the impact on the historic built development of the proposed development paragraph 3.6.4

<sup>108</sup> Document T-APP1 paragraphs 7.31 to 7.33

<sup>109</sup> Documents A26 paragraphs 6.8.1 to 6.8.15 and B21 paragraphs 6.7.1 to 6.7.17

<sup>110</sup> Documents A31 paragraph 2.212 and B26 paragraph 2.208

<sup>111</sup> Documents A26 paragraphs 9.7.3 to 9.7.9 and B21 paragraphs 9.7.3 to 9.7.9

### *The Planning Balance*

77. The planning balance has already been struck in favour of the release of both appeal sites from the Green Belt in order to meet Gloucester City's housing needs through the JCS process. The Council has confirmed that *'It is agreed that there is no objection to the principle of this development in the Green Belt ...'*<sup>112</sup>. This follows the plan-led process in which all the factors for and against releasing the appeal sites from the Green Belt have been carefully balanced and an overall conclusion formed in favour of release. This has involved a careful assessment of all the harm which would arise, all of which has been addressed through the Strategic Environmental Assessment (SEA)<sup>113</sup> process<sup>114</sup>.
78. The JCS Inspector's conclusion in the light of the information provided<sup>115</sup>, which considered the need to achieve a simple and workable plan that promoted the needs of sustainable development, is: *'The primary reason for allocating urban extensions around Gloucester and Cheltenham is to meet the unmet needs of Gloucester and Cheltenham where that need arises. The proposed apportionment would not have fulfilled this aim. Keeping matters simple and allocating Gloucester's strategic allocations to Gloucester, Cheltenham's to Cheltenham, and those in the wider Tewkesbury Town/Ashchurch area to Tewkesbury, is the most logical and effective way forward. This is my recommendation, which the JCS team accepted verbally during the March hearings and which is reflected in the most recent housing trajectory'*<sup>116</sup>.
79. The Council has agreed that the Inspector's findings set out above will be material considerations to be taken into account in the determination of the appeals and should be afforded significant weight<sup>117</sup>. All material considerations which are relevant to the balance in the appeals have been taken into account in reaching those conclusions. Further, the policy context for striking that balance through the JCS process has been the 'exceptional circumstances' test in paragraph 83 of the Framework which, in practical terms, is the same as the VSC test in paragraph 88 of the Framework<sup>118</sup>.
80. The Council confirmed at the Inquiry that it had considered harm to the Green Belt<sup>119</sup>, which is ameliorated by the inevitability of Green Belt release and by the Council accepting that both the appeal sites only make limited contributions to the purposes of the Green Belt<sup>120</sup>. The 'other harm' referred to in the context of paragraph 88 of the Framework is unexceptional and has the character of any impact which would necessarily arise when releasing the proposed amount of land from the Green Belt in order to address housing

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<sup>112</sup> Document I1 paragraph 8.32 and Document I2 paragraph 8.30

<sup>113</sup> Document E26

<sup>114</sup> Evidence given by David Hutchison to the Inquiry on 22 June

<sup>115</sup> Document E21

<sup>116</sup> Document E21 paragraph 54

<sup>117</sup> Document I1 paragraph 7.23 and Document I2 paragraph 7.22

<sup>118</sup> Evidence given by David Hutchison to the Inquiry on 22 June

<sup>119</sup> Paul Smith in answer to a question by the Inspector on 22 June

<sup>120</sup> Document I1 paragraph 8.29 and Document I2 paragraph 8.27

needs. In this regard, the Council has taken into account flooding and drainage considerations together with impacts on the local highway network. The alleged poor quality of the masterplan was also taken into account by the Council, as were concerns over whether the development would satisfactorily address the obligation to provide for sustainable transport. In addition, the Council took into account the impact of the proposals on the character and appearance of the countryside and interests of ecology, Best and Most Versatile (BMV) agricultural land, air quality, heritage and archaeology<sup>121</sup>.

81. The Council has explained that it considered the cumulative effect of harm to the Green Belt and 'other harm' in the context of paragraph 83 of the Framework for the purpose of the JCS, and also under paragraph 88 of the Framework for the purpose of the appeals, and in both cases the Council had concluded the benefit of the development outweighed the accumulated harm to the Green Belt. As such, in the Council's judgment VSC exist to override the test in paragraph 88 of the Framework.

#### *Benefits*

82. The first key benefit of the appeal proposals is that they allow the early adoption of the JCS. The JCS cannot be adjudged sound in the absence of the release of both the Innsworth and Twigworth sites from the Green Belt so as to provide two key urban extensions to meet the future housing needs of Gloucester. The provision of the appeal sites is a necessary condition to a finding of soundness in the emerging DP. Should the SofS dismiss the appeals, it would call into question whether the allocations in the DP are deliverable and the plan may therefore be adjudged unsound as contrary to paragraph 182 of the Framework.
83. The second major benefit concerns the provision of land for housing. The Council has agreed eight matters for both of the appeal proposals which together are capable of amounting to VSC under paragraph 88 of the Framework<sup>122</sup>. The fifth matter is '*The site would assist in meeting significant unmet needs for market and affordable housing in the area*', which is significant in view of the national policy objectives in paragraph 47 of the Framework and the Council's agreement that a chronic shortage of housing land would persist even with the release of the urban extension sites.
84. In terms of the five-year housing land supply, if the 'Tewkesbury Borough Policy Area'<sup>123</sup> is chosen then the Council do have a supply. If any one of three alternative candidates is chosen<sup>124</sup> then they do not have a five-year supply and the Council agreed the scale of shortfall in the negative scenario was 'significant'<sup>125</sup>.

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<sup>121</sup> Paul Smith in answer to a question by the Inspector on 22 June

<sup>122</sup> Document I1 paragraph 8.31 and Document I2 paragraph 8.29

<sup>123</sup> Document I5 paragraph 2.2 (the 'Tewkesbury Borough Policy Area' is referred to in Document T&I-APP-5 paragraph 6.3)

<sup>124</sup> Document I5 paragraph 2.3: refers to the 'Gloucester City Policy Area' (Document T&I-APP-5 paragraph 6.1), 'Tewkesbury Borough administrative area' (Document T&I-APP-5 paragraph 6.5) and 'the JCS area' (Document T&I-APP-5 paragraph 6.7)

<sup>125</sup> Matthew Barker in cross examination on 21 June

85. The choice of the 'Tewkesbury Borough Policy Area' is legally incorrect and excludes the appeal sites. The 'JCS area' accords with and respects the structure of the plan-led approach, which requires the identification of a 'Housing Market Area', (in this case Gloucestershire) and the disaggregation of that area into smaller units. Also, the 'Gloucester City Policy Area' respects the findings of the JCS Examination Inspector which have now been incorporated into the latest draft of the JCS<sup>126</sup> in these terms: '*Under the Duty to Cooperate it is recognised that, regardless of the fact that the majority of the land is within Tewkesbury Borough, the urban extensions are proposed [sic] identified to meet the unmet needs of Gloucester or Cheltenham. Therefore dwellings being delivered on urban extensions to Gloucester or Cheltenham will contribute solely to the needs of the area's respective OANs and land supply contributions*'. For these reasons the Council should be found to have a significant shortfall in housing land supply over the next five years which aggravates the agreed chronic shortage through the rest of the plan period.
86. A further major benefit of the schemes would be the agreed provision of affordable housing in accordance with adopted policy<sup>127</sup>.
87. The appeal proposals would deliver circa 1,430 permanent jobs<sup>128</sup> through new employment provision and other supporting retail and community land uses, including for Appeal B employment at a new Neighbourhood Centre, the Office Park and Business Park. This would be in addition to the temporary jobs created during the construction phase.
88. A list of further ancillary benefits that have been agreed with the Council<sup>129</sup> include the provision of a new Local Centre for Appeal A, which could also enhance local shopping and community facilities for existing residents and for passing trade along the A38 Tewkesbury Road. For Appeal B they include a new Neighbourhood Centre, which also could enhance local shopping and community facilities for existing and new users. In addition, the appeal schemes would generate expenditure in local shops and services and provide new primary schools, on-site public open space, new planting and enhancements to biodiversity and financial contributions towards off-site infrastructure.

### *Conclusions*

89. The Council has agreed that VSC exist, based on the above. There should therefore be no barrier to the grant of planning permission. In terms of the presumption in favour of consent given in paragraph 14 of the Framework, having passed the harsher test in paragraph 88 of the Framework, the appeal proposals should not fail the test in paragraph 14, when considered on the same factual basis. The proposals are agreed to pass the VSC test and permission should therefore be granted.

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<sup>126</sup> Document E35 paragraph 3.2.20

<sup>127</sup> Document I1 paragraph 8.53 and Document I2 paragraph 8.57

<sup>128</sup> Documents T-APP 1 paragraph 9.36 and I-APP 1 paragraph 9.35

<sup>129</sup> Document I1 paragraph 8.81 and Document I2 paragraph 8.83

## **7 The Case for Tewkesbury Borough Council**

*I have reported the case on the basis of the closing submissions<sup>130</sup> with additional references to the evidence submitted prior to and during the Inquiry. The material points are:*

### ***Legal Submissions***

#### *Scope of an Outline Planning Application*

90. The outline application stage serves a very important function. It takes an 'in principle' strategic allocation, and it tests what is proposed to be done with it. Not in fine detail, but broadly and in principle. In so doing, the Local Planning Authority (LPA) is entitled to look at what is put before it in terms of the material setting out the proposals. That includes the parameter plans, which are not marked up as 'illustrative', and it is agreed, are fixed. It also includes masterplans, and any other plans that are marked up as 'illustrative', together with ESs and FRAs and anything else that explains what it is that is planned to do on the site. This very clear proposition of fact and law is regularly demonstrated in appeals and recommendations to the SofS concerning allocations, which are rejected at outline stage.
91. The principle is demonstrated in the case of Crystal Property<sup>131</sup>. This Court of Appeal (CoA) decision does not only apply to the facts before that Court but is of wider application. Paragraph 30 of the Judgment reads: '*How then is one to understand the areas specified in part 10 of the application form as the floorspace for each of the uses..... Are they part of the proposal for which outline planning permission was being sought?*' The Judge advocated caution, because of the following three separate reasons: the previous authorities that the CoA was considering were concerned with the grant of planning permission, whereas the CoA was considering a refused application; some of those previous decisions had been before the concept of 'scale' was added to the definition of reserved matters; and in all of those cases, the Court's decision turned on the particular circumstances of the case in hand, considered under the law, policy and guidance of outline planning permission current at the relevant time.
92. Paragraph 5 of the Crystal Property Judgment reads: '*Since consideration at the approval stages is limited by the terms of the initial permission, it is essential that that permission should not take the form of a blank cheque, and, correspondingly, the authority must be furnished with sufficient information to enable them to form a proper judgment of what is proposed; there can be no question of entertaining propositions which are still in embryo*'. Crystal Property had submitted its illustrative drawings on that basis, and there was no question that they were anything other than illustrative, or that they had done anything other than reserve all matters. The Inspector judged them, however, and found them wanting on the illustrative drawings, and the CoA ruled that he was entirely entitled to do so.

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<sup>130</sup> Document N57

<sup>131</sup> Document N46: Crystal Properties (London) Ltd v Secretary of State for Communities and Local Government and London Borough of Hackney Council [2016] EWCA Civ 1265

93. Similarly, this Inquiry and the SofS are both entitled to, and indeed obliged to, judge the appeal proposals on the material that has been submitted, whether it is indicated to be illustrative or not. The parameter plans, which are not intended to be merely illustrative, are not acceptable to the Council, but the appeals may be judged on more than that, as the above Crystal Property case makes very clear. The SofS had said that that Inspector had done nothing wrong. He had understood that all Crystal Property wanted was to establish acceptable parameters for the development of the site, but that Crystal Property was doing so on the basis of the proposal described in the application and shown in the illustrative drawings. Paragraph 28 of the Judgment confirms that the approach the Inspector took to the proposal before him was faultless, and the CoA agreed.
94. The point of the Crystal Property case is that the Inspector chose to judge the description of development based on the illustrative drawings that he had been given, notwithstanding the reserved status of all matters. In this respect there is no difference between the Crystal Property appeal and the appeals before the Inquiry. In the Crystal property appeal the CoA said that the Inspector *'considered the height of the proposed building, and its "bulk and mass", as Crystal Property clearly intended he should, with the aid of the "indicative" drawings. He was perfectly entitled to do that. He did it not to pre-empt the consideration of "scale" as a reserved matter which would be necessary if he allowed the appeal and granted outline permission. He did it to test the acceptability of the outline proposal itself<sup>132</sup>.*
95. The CoA did not require the Inspector to advance the development to reserved matters stage to get sorted there, which no doubt it could have been. The Inspector, however, had a job to do at outline permission stage. He had to decide whether the proposal before him gave rise to unacceptable issues. He did not have to speculate about whether another proposal, not before him, would do so. He was entitled to judge what he saw. There is no difference from the Inquiry appeals. Just because the JCS Examination Inspector has indicated approval of the allocations, anything and everything complying with the description of the allocations does not have to be acceptable. Some proposals will be acceptable and some not, as the Court clearly said, because otherwise, there would be no point in the outline permission stage.
96. It is at the outline stage that the principles get tested, the worst impacts get scrutinised and the worst fears are put to rest, because there is reassurance that satisfactory technical and design solutions have been identified, and the rest will just be detail. As Crystal Property makes abundantly clear, the outline permission stage is not an excuse for 'design by inquiry' or 'design by reserved matters'. It is the public scrutiny stage. The Inquiry and the SofS take responsibility for the decisions that are made at this stage, and need to know what it is they are deciding about. In the appeal proposals there is nothing much for the public to have a say on, and they are supposed to be reassured

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<sup>132</sup> Document N46: Crystal Properties (London) Ltd v Secretary of State for Communities and Local Government and London Borough of Hackney Council [2016] EWCA Civ 1265 paragraph 36

by a series of assertions, opinions, and confirmations that it will all be sorted out at some unknown day in the future.

97. With regard to the design of drainage and flood mitigation measures, the details have been left to be decided under planning conditions, which would leave the public out and give them no reassurance. All the key decision-making would take place behind closed doors, at the hands of different Council officers, coming under pressure to agree things at different stages, and the hands of different housebuilders, who would inherit the issues and may not like the onerous conditions under which they must labour. Developers who do not like conditions do not always accept them, sometimes they challenge them. That is a complicated situation.
98. The emerging JCS policy<sup>133</sup> requires comprehensive masterplanning at this stage, and that is for a reason. There is no excuse at all to bypass it.

*The Planning Balance*

99. The DP is always the starting point for taking planning decisions, as a matter of law. There is no deviation at all from this principle. Conformity or otherwise of the development with DP policies must always be established, as the baseline from which the correct planning exercise can begin, and the correct amount of weight be attributed to the DP policies and the Framework paragraphs can be determined. These fundamental legal principles are confirmed in paragraphs 11, 12 and 210 of the Framework. DP policies have a statutory basis. The Framework is guidance, which only ever has the status of a material consideration, with weight attributed to it by the decision maker.
100. The balancing exercise is undertaken with the ultimate goal of establishing whether the development under consideration is 'sustainable'. 'Sustainable' is not a benefit to be weighed in the benefits side of the planning scales, and 'unsustainable' is not a harm. These are two labels that we use to describe development proposals that have completed the exercise, and which triumph or fail in the planning balance. The weights in the scales on either side are harms, benefits and other material considerations, if something different. All of this has been put beyond any doubt by the Court Judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council and the Secretary of State for Communities and Local Government* [2017] EWCA Civ 893<sup>134</sup>.
101. Paragraph 49 of the Framework confirms that housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 of the Framework contains the complete and closed definition of 'presumption in favour of sustainable development', which for decision-taking means approving development proposals that accord with the DP without delay. The converse of this proposition is that proposals which do not accord with the DP are not presumed to be sustainable, and will not get granted, unless material considerations indicate otherwise.

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<sup>133</sup> Document E35 Policy SA1

<sup>134</sup> Document N37

102. There are many material considerations in the appeal cases, but key amongst them are the DP policies of the extant DP and the emerging DP, particularly concerning the key issues at play, of comprehensive masterplanning and of flood risk control. The proposals conflict very heavily with those, causing significant harm, and those are key to this planning balance.

*Green Belt*

103. The planning balance is conducted under the umbrella of paragraph 14 of the Framework. Footnote 9 of paragraph 14 applies to the appeals. Where any of the special restrictive policies in footnote 9 apply, the decision-maker 'comes out' of paragraph 14 and goes to the restrictive Framework policy in question, to resolve the issue relating to that specific policy. The test for Green Belt is in paragraph 88 of the Framework. The fact that the Green Belt test refers to harm to the Green Belt and 'any other harm' is not the same as saying that the entire planning balance exercise should be conducted in the Green Belt test. The test is only concerned with the issues of whether to protect the Green Belt. Even the consideration of 'any other harm' is only with a view to deciding whether to protect the Green Belt or not.
104. In the Redhill Aerodrome case<sup>135</sup> the Court stated that: *'It is common ground that excluding non-Green Belt harm from "any other harm" in the second sentence of paragraph 88 of the Framework would make it less difficult for applicants and appellants to obtain planning permission for inappropriate development in the Green Belt because the task of establishing "very special circumstances", while never easy, would be made less difficult. All of the considerations in favour of granting permission would now be weighed against only some, rather than all of the planning harm that would be caused by an inappropriate development'*. In this case the Court was not considering the situation where an LPA might be actively trying to divest itself of its Green Belt in a particular location.
105. Once the test of the individual footnote 9 restrictive policy under consideration has been worked through, and a conclusion reached, the decision maker will either wish to refuse the permission on the basis of that restrictive policy, or not. If not, then the decision maker returns to paragraph 14, to continue the exercise<sup>136</sup>. This might involve looking at the next restrictive policy, and concluding that test in the same way. Once all restrictive policies have been worked through, by this process, the decision maker whittles down the factors that matter and those that do not. The decision maker will know, if the restrictive tests have all been satisfied positively, that the development is still a contender for permission, and s/he will return to paragraph 14 to continue the exercise to the next level.
106. In most cases in the Green Belt, there will be a reason for refusal based on the Green Belt, and it might be possible to conduct the substantial or even entire

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<sup>135</sup> Document N14: Secretary of State for Communities and Local Government, Reigate & Banstead Borough Council and Tandridge District Council v Redhill Aerodrome Limited [2014] EWHC Civ 1386 paragraph 15

<sup>136</sup> Document T-APP2 Appendix 6: Court Order regarding the application of the weighted balance

planning balance in the context of attempting to protect the Green Belt and resisting the proposed development on it in principle. The LPA will usually seek to refuse development in the Green Belt. However, in the appeal cases the LPA does not want to refuse permission for the reason that the sites are in the Green Belt, as it does not wish to retain the Green Belt at the appeal sites, but wants to amend the Green Belt boundary to exclude them. Therefore, the identified harm to the Green Belt of developing it is zero.

107. Paragraph 88 of the Framework says that '*substantial weight is given to any harm to the Green Belt*' for the purposes of justifying a refusal of development in the Green Belt. The Redhill Aerodrome case<sup>137</sup> confirms that where paragraph 88 specifically says the words 'harm to the Green Belt', that is precisely what it means, and 'any other harm', is not referring to harm to the Green Belt. The Council has not given 'substantial weight' as a presumption against development to 'any other harm' in paragraph 88. Harm to the Green Belt includes things that carry little or no significance in any other context, such as preserving openness, harm in principle because of inappropriateness, and the other purposes. These are only relevant to the Green Belt and carry substantial weight in that context, but none or little weight in a general planning balance.
108. Going through the Green Belt test on the above basis, there would be no harm to the Green Belt with respect to the appeal proposals. The next consideration is whether the 'any other harm' is clearly outweighed by other considerations in the context of protecting the Green Belt. The 'other considerations' are that the appeal sites are allocated land, and the LPA does not wish to retain the Green Belt at those locations any more.
109. These 'other considerations' in paragraph 88 outweigh all the harm to the Green Belt/other harm and they are very weighty considerations because they achieve that purpose, and overcome the 'substantial' weight. They carry no weight at all in the overall planning balance because they are only relevant to the Green Belt. They are not benefits of development. They are just very important factors for one reason and one reason only, which is in deciding whether to protect the Green Belt or not. In making that decision, they overcome all sorts of harm, including 'any other harm' in the Green Belt context. They cannot and do not have that effect in the overall planning balance. The benefits and harms should also be looked at in the overall planning balance.
110. Paragraph 87 of the Framework says that development should not be approved except in VSC. It does not say that where there are VSC, the decision maker must go ahead and approve the development.
111. When looking at the normal planning balance (DP policies or outweighed by material considerations) or the tilted balance, (adverse impacts significantly and demonstrably outweighing the benefits), the decision maker should consider all the benefits and all the adverse impacts. The restrictive tests have different criteria and thresholds, because they are aimed at specific purposes.

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<sup>137</sup> Document N14

The weight that would be given to a flood risk in deciding whether to protect the Green Belt is a very different thing from the weight that would be given to a flood risk in deciding what the impact of built development might be on the people down-stream. For these purposes, it does not matter that the flood risk has already been looked at in the context of the Green Belt and it does not matter that it was 'any other harm' rather than harm to the Green Belt specifically; it would still be considered in the context of protecting the Green Belt and it would be given different weight in different contexts.

112. The LPA should not be forced to maintain a Green Belt reason for refusal, just to be able to defend the 'any other harms' on the sites generally when it did not want that part of the Green Belt any more. In this regard, the appeal case of 'Perrybrook'<sup>138</sup> involves very similar circumstances, where the Council accepted the principle of development on the Green Belt, the planning balance exercise was conducted in the above way, and no party contended that it should be conducted in the context of the Green Belt test alone.
113. In the Barwood Judgment<sup>139</sup> the Court stated: '*Any relevant restrictive policy – Lord Carnwath's example was "a recently approved Green Belt policy" – is to be "brought back into paragraph 14 as a specific policy under footnote 9", and "the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles*'. This indicates that Green Belt policy is only one factor in the scales, along with many others. It is by no means determinative of the whole planning balance, and is not the starting point, or the end point.
114. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (S38(6)) takes precedence, even if Green Belt policy under the Framework applies and even if the presumption in paragraph 14 of the Framework applies. Both are capable of being outweighed by S38(6) and, therefore, it cannot be right to attempt to conduct the planning balance exclusively in the context of Green Belt policy in the Framework<sup>140</sup>. In the appeal cases there is no presumption in favour of the development. Even if the proposals are said to have surmounted the Green Belt test, and have demonstrated VSC, it does not confer upon them any kind of presumption in favour of development.
115. The DP is not absent, or silent and relevant policies are not out-of-date and the appellant has not mounted a case on any of these three elements. Therefore, the paragraph 14 presumption is not triggered at all. Consequently, as the appeal proposals are contrary to the DP, the appellant is working against a presumption adverse to the grant of planning permission. In these cases, there are significant material considerations to take into account in the planning balance scales, but the only presumption to be placed in the scales is the presumption against development in accordance with

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<sup>138</sup> Document H1

<sup>139</sup> Document N37 paragraph 22 (4) with reference to the Supreme Court Judgment

<sup>140</sup> Document N37 paragraph 34 with reference to paragraph 136 of Holgate J's Judgment; and paragraph 35 quote (1)

paragraph 12 of the Framework. Green Belt policy under paragraph 88 of the Framework carries with it no presumption.

116. Permission cannot be recommended to be granted merely because the Council got the test wrong in accepting that VSC exist, if that is what is concluded has occurred<sup>141</sup>. It is clear what the Council thought it was doing, and that it thought it was doing the right thing, and it was clearly not conceding that all harms have been outweighed on the appeal proposals by withdrawing a Green Belt reason for refusal (1) in Appeal A or putative reason for refusal (2) in Appeal B. If a Green Belt reason for refusal is still needed to give proper weight to 'any other harm' then that is what must be.

*Use of Grampian Conditions*<sup>142</sup>

117. The imposition of Grampian conditions is a matter for the discretion of the decision maker. Likelihood of delivery of the condition is one matter which the decision maker may take into account in accordance with planning judgment, as a material consideration, unless the conclusion is that there is no prospect at all, in which case national guidance precludes reliance upon a Grampian condition.

118. A Grampian condition is not automatically and necessarily unlawful purely because there is no reasonable prospect in a reasonable time of it being complied with, but it may be unacceptable for the same reason, or for that reason in combination with other reasons, or as part of the overall weight in the planning scales. Unacceptable and unlawful are not the same things, and unacceptable is a matter within the discretion of the decision maker. The prospects of implementation may be a relevant material consideration, depending upon the circumstances, when judged against the six tests for conditions. The fact that a Grampian condition may be lawful although there is no reasonable prospect is not the same thing as saying that a Grampian condition must be imposed unless there is no reasonable prospect. The caselaw is not '*clear that the prospects of implementation*' are not relevant. It is a matter for the decision maker.

*Five Year Housing Land Supply*<sup>143</sup>

119. The correct approach to calculating a five-year housing land supply is clear from the caselaw<sup>144</sup>. The five-year housing land supply figure should be the LPA's requirement figure, which for Tewkesbury Borough is 9,899<sup>145</sup>. Any departure from this approach requires a specific justification, as it makes no sense to judge a LPA's housing supply policies as out-of-date if they are yielding enough housing supply for that LPA but the LPA is being required to meet the supply of another LPA. The correct approach for assessing the

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<sup>141</sup> David Hutchison agreed at the Inquiry on 22 June

<sup>142</sup> Documents H15 and N47 paragraphs 28 to 31

<sup>143</sup> Document N47

<sup>144</sup> Cases: *Gallagher Homes Ltd & Anor v Solihull Metropolitan Borough Council* [2014] EWHC 1283 (Admin); and *St Albans City and District Council v (1) Hunstan Properties Limited and (2) Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610

<sup>145</sup> Document E35 Policy SP1(3) page 26

Objectively Assessed Need (OAN) is given in caselaw<sup>146</sup>: *'...it is not for an Inspector on a section 78 appeal to seek to carry out some sort of local plan process as part of determining the appeal so as to arrive at a constrained housing requirement figure'*<sup>147</sup>.

120. In terms of the duty to cooperate, Tewkesbury Borough intends to provide the supply for some of Gloucester City's requirement in the emerging JCS. It does not become part of Tewkesbury Borough's requirement, as it would not meet the needs of its residents. It remains Gloucester City's requirement, which it is unable to meet. For the purposes of the section 78 appeals, it is wrong for Gloucester City Council's requirement to have gone down and Tewkesbury Borough Council's requirement to have gone up, as any planning application falling within Gloucester City would be judged on the reduced housing figure and would not fall under paragraph 49 of the Framework, contrary to the above caselaw. There is no justification in the appeals to expect Tewkesbury Borough Council to meet its own requirement and part of Gloucester City's requirement, but not all of it and none of Cheltenham's requirement.

### ***The Planning Case***

121. The fundamental problem with the appeal proposals is that they are insufficiently planned to have reached the stage that they have. The off-site highways proposals were designed mid-appeal, against the deadline of the end of the Inquiry. The ESs were not good enough, as cumulative impact had not been adequately addressed. The design has not demonstrated comprehensive joined-up planning, but clearly comprises two entirely separate schemes, and much work has still to be done on the FRAs.

### ***Highway Safety and Flow of traffic***

122. These matters have been addressed by the relevant authorities, HE and GCC, and the Council accepts their conclusions. However, the Council has the following two points of concern. Firstly, the transport solutions have now been worked up, to outline permission principle status, in the context of the appeals but they have not been consulted on, and there has been no EIA upon them. Secondly, the Growth Deal funding, for which the sponsor is the Council, for a scheme at Longford Roundabout may not accept the appellant's Option 2 scheme, which is the scheme that HE and GCC want by way of a Grampian condition, as qualifying for growth scheme funding. The appellant's expert stated: *'The scheme funding was to try and bring forward the allocation at Innsworth. Option 2 reflects that scheme so the HE Option 2 is the preferable option. If the funding would not be applied to Option 2 or if a better scheme came forward, a section 73 variation application could be made to vary the condition'*<sup>148</sup>. This demonstrates how much flexibility needs to be given to the proposed Grampian conditions.

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<sup>146</sup> Cases: Stratford on Avon District Council v Secretary of State for Communities and Local Government [2013] EWHC 20174 (Admin); and West Berkshire District Council v Secretary of State for Communities and Local Government and another [2016] EWHC 267 (Admin)

<sup>147</sup> St Albans City and District Council v (1) Hunstan Properties Limited and (2) Secretary of State for Communities and Local Government [2013] EWCA Civ 1610 paragraph 26

<sup>148</sup> Peter Finlayson in reply to a question by the Inspector on 23 June

*Effect on Sustainable Transport*

123. The effect on sustainable transport is not an issue that the Council maintains. It has agreed that the Appeal A proposal would bring some benefits for existing residents at Twigworth with the delivery of a Local Centre, a new primary school and areas of public open space. This would help meet the day to day needs of new residents and would be accessible to existing residents, reducing the need to travel to existing facilities which are located further afield. It has also agreed that there is an existing bus service with bus stops along the A38 Tewkesbury Road within 250m of the site access which could serve the proposed development and Stagecoach, the bus operator, has indicated that Twigworth is probably the only Gloucester Omission Site within Tewkesbury district that is well located to take advantage of public transport<sup>149</sup>.
124. With regard to Appeal B, the Council has agreed that the site adjoins the built up area of Gloucester City and that it is in a sustainable and accessible location where residents would have access to existing local shops, schools, employment opportunities and other facilities. It has also agreed that the appeal proposal would allow for the provision of new facilities on-site, including local shops and facilities in a Neighbourhood Centre, a new primary school and additional employment opportunities and that these would be accessible to both new and existing residents in the area<sup>150</sup>.

*Effect on the Environment, including BMV Agricultural Land, Ecology, Air Quality and Landscape and Visual Impact*

125. The Council has agreed that the resulting loss of BMV agricultural land would be 13.3 hectares for Appeal A and 47.3 hectares for Appeal B, and that this must be balanced against other competing objectives, including the benefits of providing development in the most sustainable locations. As such, the Council has agreed that it will not contest its reason for refusal (12) in Appeal A and its putative reason for refusal (7) in Appeal B regarding this matter<sup>151</sup>.
126. Subject to securing the recommended mitigation through planning conditions, the appeal proposals would not have an unacceptable impact on protected species and habitats within the sites. The Council has agreed that its reason for refusal (14) in Appeal A and its putative reason for refusal (8) in Appeal B regarding this matter can be overcome with the implementation of an SSSI Management Plan<sup>152</sup>.
127. The Council has stated for Appeal A that the ES assumes that the use of cars and other vehicles would diminish over the next five years and, if that did not happen, the overall impact on air quality would be significant, particularly in the Air Quality Management Area within Gloucester<sup>153</sup>. With regard to Appeal B, its concerns are stated as being the impact of vehicle emissions, in

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<sup>149</sup> Document I1 paragraphs 8.34 to 8.36 and 8.50

<sup>150</sup> Document I2 paragraphs 8.42 and 8.43

<sup>151</sup> Document I1 paragraphs 8.70 to 8.75 and Document I2 paragraphs 8.81 and 8.82

<sup>152</sup> Document I1 paragraphs 8.66 to 8.69 and Document I2 paragraphs 8.62 to 8.64

<sup>153</sup> Document J2 paragraphs 14.1 to 14.3

particular Nitrogen Dioxide (NO<sub>2</sub>), resulting from the proposed new junction with the A40<sup>154</sup>. However, it has since agreed that the planning applications included appropriate and robust assessments of the impacts of the proposed developments on air quality and it will not contest its reason for refusal (15) in Appeal A and its putative reason for refusal (9) in Appeal B regarding this matter<sup>155</sup>.

128. The appeal sites are not within or adjacent to any 'Landscape Designation' in the adopted DP and the resulting loss of countryside would be inevitable if the development requirements of the emerging JCS are to be met. In the circumstances where the JCS Examination Inspector supports the allocation of the sites, the proposals would not represent unwarranted intrusions into the countryside. The cumulative effects of large scale development at both Innsworth and Twigworth would have been considered by the JCS Examination Inspector when recommending that both sites be allocated for development. The Council has agreed not to contest its reason for refusal (2) in Appeal A and its putative reason for refusal (3) in Appeal B regarding this matter<sup>156</sup>.

#### *Flooding and Drainage*

129. Flood Risk and Drainage has become a major issue, primarily because the appellant has failed to address it adequately. It is a sensitive and important issue to the appeal sites and is of very particular concern to local people. It is irrelevant that there was no reason for refusal concerning flooding and drainage for Appeal A; the matter has been identified as a main issue on both sites.
130. A FRA is not optional at application stage, it is a requirement to be submitted with the application, to the LPA, for areas at risk of flooding and sites of one hectare or more both of which categories are met with regard to the appeals. These requirements, and the importance of flood risk, are recognised in the national guidance<sup>157</sup> and the approach that the appellant has taken does not accord with this guidance. The submitted FRAs are incomplete and in some instances based on incorrect assumptions or on no data at all.
131. The appellant's reliance on the position of the EA and the LLFA raising no objection is not enough to dispense with the issue. It is entirely possible for statutory consultees to make the wrong judgment call, particularly as the EA and the LLFA have not looked into the specific issues in the same detail as the Council.
132. There are major technical objections. With regard to the Cox's Brook catchment in Appeal A, the appellant had not provided empirical evidence.

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<sup>154</sup> Document J7 paragraphs 10.1 and 10.2

<sup>155</sup> Document I1 paragraphs 8.79 and 8.80 and Document I2 paragraphs 8.70 to 8.76

<sup>156</sup> Document I1 paragraphs 8.38 to 8.43 and Document I2 paragraphs 8.45 to 8.50

<sup>157</sup> National Planning Practice Guidance paragraphs: 029 Reference ID: 7-029-2014030, 030 (Addressing flood risk in individual planning applications - What do developers and applicants need to consider?); 030 Reference ID: 7-030-20140306 (What is a site-specific flood risk assessment?); and 031 Reference ID: 7-031-20140306 (What level of detail is needed in a flood risk assessment?)

The drainage strategy submitted by the appellant sees all the surface water from the Twigworth site draining into the Hatherley Brook. The Council has suggested that ten hectares of the Twigworth site<sup>158</sup> would be in the Cox's Brook catchment and the appellant has suggested that it would be only one hectare<sup>159</sup>. This is a matter capable of empirical resolution. Changing a catchment was agreed to be a relatively rare and unusual thing to do, and potentially quite dramatic in its consequences. Based on the FRAs, the EA had not appreciated that by draining all the water from the Twigworth site to the Hatherley Brook, that this was the effect. Furthermore, it was not modelled and the consequent increased flows that would arrive in Hatherley Brook from the Cox's Brook catchment had not been taken into account<sup>160</sup>. The Council said that the pluvial water needs to be compensated for by storage rather than all transferred into Hatherley Brook levels which may affect down-stream land<sup>161</sup>.

133. The catchment issue, as with so many issues in flood risk matters has a knock-on effect. To resolve it, other people's land would need to be investigated. Of the appellant's three solutions presented to the Inquiry, all involved taking some kind of control over the land of others. It is not impossible, but it is a potential complication that has not been considered. If flows of water are being redirected out of their natural courses, legal issues will arise, concerning the rights of others. Involving other landowners, potentially hostile to the proposed development, whether in the context of easements or in the context of doing deals to acquire other land or affect other land, raises potential issues. The third potential solution suggested was requisitioning a sewer, of which nothing is known about its prospects.
134. No work of any note has been done by the appellant on overland flows<sup>162</sup>. References to 'overland flows' in the FRAs were always in the context of maintaining existing minor watercourses. The passage of water over the surface of the land is a crucial issue to every element of flood risk and drainage. It is only when a clear idea is obtained of how water naturally moves across a site, in rainfall situations and in flood (fluvial and pluvial) situations, that any idea can be gained as to which parts of the site to develop, where to put key infrastructure and features, where connections need to go, and what is to be done with the water that is interrupted or blocked on and off site.
135. No serious masterplanning can be done until the drainage issues are known, of which existing and future catchments are a major element. The illustrative masterplans<sup>163</sup>, FRAs and ESs have been provided by the appellant without having the raw information on any of the above elements.
136. With regard to the modelling of flows for the Hatherley Brook, or assumptions made about the behaviour of the water in the watercourses, during times of

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<sup>158</sup> Evidence given by Michael Thomas to the Inquiry on 5 July

<sup>159</sup> Evidence given by Peter Amies to the Inquiry on 6 July

<sup>160</sup> Peter Amies accepted this in cross examination on 6 July

<sup>161</sup> Evidence given by Michael Thomas to the Inquiry on 5 July

<sup>162</sup> Evidence given by Professor Cluckie and Michael Thomas to the Inquiry on 5 July

<sup>163</sup> Alice Goodall identified the deficiencies in the masterplans in her evidence

flood based upon start levels in the 1:100 and 1:1000 year events, the only modelling that has actually been done of the data gathered during the 2007 floods is the Capita 2009 Review of the EA 2007 model, which Capita undertook at the instigation of the EA. It was agreed that whatever the location, there is a significant difference between the appellant's Capita modelled flows for the appeals and the Capita EA 2009 review of the 2007 flood flows which would lead to an increase in modelled flood levels. The Council advised that the most likely increase in flood level was an average of 150mm<sup>164</sup> and, whilst the appellant thought it would be less<sup>165</sup>, it agreed that the increase in safety margin to 750mm rather than the normal 600mm was acceptable<sup>166</sup>.

137. At the Inquiry, the appellant claimed that the 2009 EA Review data was taken into account in a way in which it was not, and in the FRAs which are presented as if the compensatory storage to be provided would be 'level-for-level'<sup>167</sup>, when the appellant conceded that that could not be the case<sup>168</sup>. The appellant has also asserted that '*various studies*' showed that '*flow is not necessarily the critical factor*'<sup>169</sup>. This transpired to mean its interpretation of the modelling by Halcrow for the JCS Level 2 Strategic FRA and the FRAs themselves, which is less authoritative than might have appeared. The indirect storage that would be available is criticised in the CIRIA Report<sup>170</sup>. There is a general presumption against indirect storage and using it gives rise to problems. The appellant can have no idea as to the costs, maintenance or implications of its proposals, because it has not worked them up.
138. The Council's calculations result in larger areas potentially taken by flood water and by flood attenuation measures. Its concern is that by leaving such critical matters to a later stage it would become 'planning by necessity' and 'no choice', rather than proactive positive planning. This would potentially reduce options for design issues, for connectivity, accessibility and so on, rather than securing the best available options.

*Whether the Appeal Proposals are Acceptable Forms of Development and whether there is an Acceptable Comprehensive Masterplan*

139. In terms of Appeal A, the Council no longer contends that the proposal would have an unacceptable impact on the settlement of Twigworth and agrees that such matters have already been weighed in the balance as part of the JCS plan-making process and in the context of all available alternatives. As such, it no longer contests the reason for refusal (3) based on this matter<sup>171</sup>.
140. With regard to Appeal B, the Council does not contest its putative reason for refusal (1) based on TBLP Policy HOU4 because it has agreed that the defined

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<sup>164</sup> Evidence given by Michael Thomas to the Inquiry on 5 July

<sup>165</sup> Evidence given by Peter Amies to the Inquiry on 6 July

<sup>166</sup> Discussions on planning conditions at the Inquiry on 6 July

<sup>167</sup> Document N40

<sup>168</sup> Peter Amies in cross examination on 6 July

<sup>169</sup> Document T-APP14 paragraph 2.20

<sup>170</sup> Document T-LPA5 Appendix 24: Extract from CIRIA Report Page 168

<sup>171</sup> Document I1 paragraphs 8.48 to 8.50

residential boundaries are not up-to-date<sup>172</sup>. Since the dismissal of a previous appeal<sup>173</sup> involving much of the Appeal B site, there has been a material change in circumstances, including in particular the JCS proposal to remove the appeal site from the Green Belt as part of a formal Green Belt review and its allocation for mixed use development<sup>174</sup>.

141. The appellant has suggested that the design and masterplanning do not need to be considered at this stage. Emerging JCS policy, however, requires proper and comprehensive masterplanning. The design and masterplanning that was provided to the JCS Examination Inspector has been accepted by that Inspector with different considerations in mind. The JCS Examination Inspector would have been looking at the masterplan in relation to the whole allocation area, not in relation to individual sites.
142. The Council is not content with the parameter plans, which would be fixed, or the masterplan, which is based on those parameters. Any future masterplan would also have to be based on the parameters as well and the Council's concerns lie with that fundamental level<sup>175</sup>. A key constraint is flood risk, and if the extent of the flood constraint has not been correctly identified, then that would impact on the masterplanning.
143. The cause of concern could not be dealt with at reserved matters stage, because the parameter plans would be fixing the structure of the layout. The design of the sites has not progressed in terms of how the proposals could and should assimilate with the surrounding built and natural environment but is almost entirely dictated by the flood and other constraints. The extent of the built development on site follows almost slavishly the flood zones. The green infrastructure constitutes only the parts that cannot be built on. Approval of reserved matters would be dealt with in phases and the chances of losing coordination are great, not least because the applicants at that stage would be individual builders, not the appellant. The public consultation has been on the overarching masterplans and parameter plans. To redesign it at reserved matters stage would take away that transparency and scrutiny.
144. The two sites fail to relate to each other and fail to relate to the wider allocation, and the sites surrounding them as well. That is based on what is proposed in the outline applications without even considering the changes that might have to come about as a result of taking into account new constraints, especially flood constraints. The proposals do not allow for positive layout of surrounding sites<sup>176</sup>. The connectivity is not positively planned for, and connections could have to be sacrificed further for more flood attenuation proposals.

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<sup>172</sup> Document I2 paragraphs 8.31 to 8.33

<sup>173</sup> Appeal Ref APP/G1630/A/09/2097181

<sup>174</sup> Document I2 paragraphs 8.34 to 8.40

<sup>175</sup> Evidence given by Alice Goodall to the Inquiry on June 21

<sup>176</sup> Evidence given by Alice Goodall to the Inquiry on June 21

### *Infrastructure*

145. The Council has agreed that the off-site infrastructure requirements of the appeal proposals would be capable of being addressed through S106 planning obligations. As such, subject to a satisfactory S106 Agreement/Unilateral Undertaking (UU), the Council will not contest the reasons for refusal (10 and 11) in Appeal A and putative reasons for refusal (12 and 13) in Appeal B regarding the provision of off-site playing pitches and sports facilities, education, health and community infrastructure, library provision and recycling infrastructure<sup>177</sup>.

### *Heritage Assets*

146. There are no designated heritage assets within the appeal sites and neither of the sites is located within or adjacent to Conservation Areas. With regard to Appeal A, the Council has considered objections received in respect of three Grade II Listed buildings, Twigworth Court, Twigworth Lawn and a stable north of Twigworth Court. In terms of Appeal A, the Council's Conservation Officer has considered the settings of these buildings and has stated that they have been affected to some extent by post-war development along the road corridor and Twigworth Lawn's setting is effectively restricted to its domestic curtilage due to the adjacent mobile home site. However, the proposed introduction of a roundabout on the A38 to the south, compounded by additional lighting and signage would be a fairly major change close to the Listed buildings<sup>178</sup>.
147. The Council has agreed that any harm to the settings of the three Grade II Listed buildings by the proposed development would represent 'less than substantial harm' in terms of the Framework and that the public benefits of the proposal would outweigh this harm in the context of the paragraph 134 test. Therefore, since the Appeal A site has been suggested as an allocation in the emerging JCS, the Council will no longer contest the reason for refusal (13) on this matter<sup>179</sup>.
148. Section 66(1) of the Listed Buildings Act requires that '*special regard is had to the desirability of preserving any listed building and its setting when determining (in accordance with section 38(6) of the 2004 Act) whether material considerations indicate that planning permission should be granted otherwise than in accordance with the development plan*'<sup>180</sup>. This is a statutory duty and, whilst there is no conflict between the parties as to what the outcome of the exercise may be, it is important to adopt the correct approach to the decision making exercise, in order to avoid it being challengeable for that reason.

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<sup>177</sup> Document I1 paragraphs 8.76 and 8.77 and Document I2 paragraphs 8.77 and 8.78

<sup>178</sup> Document A30 paragraph 16.6

<sup>179</sup> Document I1 paragraphs 8.58 to 8.64

<sup>180</sup> *Mordue v Secretary of State for Communities and Local Government and others* [2015] All ER (D) 107 March 2015 paragraph 34

*Planning Balance*

149. The harm from the appeal proposals consists of:

- i. They conflict with TBLP Policy HOU4 in that the sites lie outside the defined residential development boundaries of settlements in locations where new housing is strictly controlled;
- ii. they represent inappropriate development within the Green Belt, which is, by definition, harmful and they would harm the openness of the Green Belt and the purposes of including land within it<sup>181</sup>, in conflict with section 9 of the Framework (Protecting Green Belt land), TBLP Policy GRB1 and emerging JCS Policy SD6;
- iii. they conflict with advice in the Framework and emerging JCS policies SD5, SA1 and A1, as there are no comprehensive schemes to be delivered across the developable area within emerging JCS Strategic Allocation A1, no comprehensive assessment of the risk of flooding across the strategic allocation has been carried out and there are no comprehensive masterplans for the entire Strategic Allocation;
- iv. they conflict with the Framework, TBLP Policy EVT5 and emerging JCS policies INF3 and A1, as insufficient information regarding flood risk has been provided; and
- v. without the suggested obligations towards key infrastructure, they would not be sustainable in conflict with the requirements of emerging JCS policy SA1 and the Framework.

150. On the benefit side of the scales, there is very heavy reliance upon the provision of housing. The benefit of more housing, in and of itself, must be given limited weight<sup>182</sup>. In terms of the aim to '*significantly boost the supply of housing*' given in paragraph 47 of the Framework, the CoA has judged that most of the bullets are pertained exclusively to the Council's plan-making exercise; but that the second bullet goes slightly wider than just plan-making, because it requires a Council to monitor annually its five-year supply, which is not a plan-making exercise. However, the CoA was very clear that, if a Council has established its five-year housing land supply, then paragraph 47 has nothing to do with individual decision making on applications, either by Councils or on appeal<sup>183</sup>. In the case of these appeals, the Council published its 'Tewkesbury Borough Five Year Housing Land Supply Statement' on 15 June

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<sup>181</sup> Documents A30 paragraph 20.1 and B25 paragraph 20.2

<sup>182</sup> Document H12 APP/K3415/A/14/2224354 – Secretary of State appeal decision regarding land and buildings off Watery Lane, Curborough, Lichfield: the Inspector found that the Council did not have a five-year housing land supply, but recommended a refusal of the appeal, but the Secretary of State found that the Council did have a five-year housing land supply but allowed the appeal. Although the Secretary of State gave significant weight to the simple provision of housing, over and above the five-year housing land supply, it is not clear upon what policy or legal basis this was done

<sup>183</sup> Document N12 Gladman Development Ltd v Daventry District Council and Secretary of State for Communities and Local Government [2016] EWCA Civ 1146 paragraph 49

2017 which indicates that there is a five-year housing land supply for Tewkesbury Borough<sup>184</sup>.

151. The only consequence of crossing the five-year housing land supply threshold, or not, is to decide whether paragraph 49 of the Framework is triggered. If the threshold is crossed, and paragraph 49 is not triggered, then there is nothing else in this paragraph that is of relevance to a section 78 appeal. Any increase in housing above the five-year housing land supply is 'boosting' housing. This is something that the CoA says is not relevant to a section 78 appeal, in such a way that it could be given specific weight. It does not stop it from being a material consideration, but it does not attract particular weight. The CoA judgment is sufficient to outweigh the SofS's conclusion in the Curborough appeal<sup>185</sup> that more housing, over and above a five-year housing land supply should be given, in and of itself as an invariable principle, significant weight which outweighs significant and demonstrable adverse impacts. This would entirely defeat the purpose of the test in paragraph 14 of the Framework.
152. In any event, the housing that the appeal proposals would yield would not be lost should they be dismissed, as it would come forward as proposed allocations. The proposals must be deliverable in order to uphold the soundness of the emerging JCS. The Council's position is that housing is deliverable on the appeal sites and it is not unreasonable to conclude that the problems presented by the sites are not insuperable. However, the Council does not have what it would regard as solutions on the table, even in principle, and it is adamant that it needs that much.
153. For the above reasons, the appeals should be dismissed.

## **8 The Case for Highways England (HE)**

*I have reported the case on the basis of the HE Position Statements<sup>186</sup> with additional references to the evidence submitted prior to the Inquiry. The material points are:*

154. The position of HE on the proposed mitigation scheme for the A40 (trunk road)/A38 Longford Roundabout is that the latest S-Paramics and ARCADY analyses by the appellant demonstrate that the Option 2 scheme introduced in the Rebuttal Proof of Evidence<sup>187</sup> and shown on Drawing No 451/18<sup>188</sup> would be sufficient to avert a severe residual impact on the SRN. HE's position on the Option 1 scheme for fully signalling the roundabout is that that scheme would not deliver adequate mitigation to prevent the proposed developments from causing a severe impact on the SRN.
155. The Option 2 scheme would move away from a fully signalised proposal to retention of roundabout control. It would involve both enlargement and slight elongation of the circulating carriageway to the south west, resulting in a

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<sup>184</sup> Document I5 paragraphs 2.1 and 2.2

<sup>185</sup> Document H12

<sup>186</sup> Documents N2 and N17

<sup>187</sup> Document T&I APP-11A

<sup>188</sup> Document N18 Appendix A

roundabout with major and minor diameter axes of 81m and 70m respectively, compared to the existing inscribed circle diameter of 65m. The layout would address in part the issues encountered in improving or correcting the substandard Entry Path Curvature (EPC) on all the existing approaches to the roundabout.

156. A design check that has been undertaken shows that the A40(T) east entry would still require a 'Departure' from the standard in DMRB TD16/07<sup>189</sup> but the deflection achieved would reflect a betterment. The A40(T) west entry, which CRASHMAP data<sup>190</sup> shows to have the highest concentration of accidents over the 5 year period 2012-2016, would be a 'Departure' from standard but would represent a considerable betterment. The A38 south entry would achieve EPC compliance when the existing is substandard, and the A38 north entry would be re-aligned to bring the EPC to a compliant value. Some further 'Departures' in terms of the lane widths used at entry and circulating carriageway width have also been identified but these issues are capable of being addressed as part of the design detailing without affecting the general arrangement and form of what is proposed.
157. In view of the advice given in 'Strategic Road Network- Planning for the Future'<sup>191</sup>, the views of HE's design standards team has been sought to establish whether the principle of the necessary 'Departures' can be agreed to allow permission to be granted. The key points of the response are: *'based on the information provided so far the design does improve the situation considerably and provided that the Departure application can justify why it is not possible/feasible to meet the requirements in TD16- which in this instance is the 100 metre radius on entry then I don't see why Departure Applications could not be approved'* and *'I would say that a Road Safety Audit is necessary on the design as it is an unusual layout and has pedestrian crossing facilities within close proximity of the entry/exits of the roundabout'*<sup>192</sup>.
158. The land necessary to construct the Option 2 scheme is either within the existing public highway or on adjacent land owned by HE. HE would be content to allow the land needed within HE ownership but not currently part of the dedicated highway to be used for highway purposes.
159. Whilst Option 2 may be subject to minor variations as part of the detailed design process, it does demonstrate that a scheme of sufficient scale would be deliverable within the existing public highway or land in HE's ownership. In view of this, and subject to the caveats about the sign-off for 'Departures from Standards' and the 'Road Safety Audit', HE has no objection to the issue of the impact of the appeal proposals on the SRN being dealt with by the imposition of suggested Grampian conditions.

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<sup>189</sup> Document G2.1

<sup>190</sup> Document T&I-HE2 Appendix B

<sup>191</sup> Document G3 paragraph 114

<sup>192</sup> Document N2 Appendix A: E-mail dated 16 June from Matthew Pilsbury, Senior Technical Advisor, Safer Roads - Design Safety, Engineering & Standards, Highways England

## 9 The Case for Gloucestershire County Council (GCC)

*I have reported the case on the basis of the Position Statement, Statement of Common Ground and closing submissions<sup>193</sup> with additional references to the evidence submitted prior to the Inquiry. The material points are:*

160. GCC, as the LHA, is a statutory consultee. It is obliged to assess all planning applications received and to provide appropriate, timely and substantive responses and is under a regulatory duty to cooperate in relation to Local Plan preparation. These responsibilities are undertaken in the context of Government policy and regulation, including the Framework and the Town and Country Planning (Development Management Procedure) (England) Order 2015<sup>194</sup>.
161. GCC has been supportive of both appeal developments, subject to a suitable highways mitigation package being provided. It has taken the position that the proposed developments in isolation or combination would have a severe impact on the local highway network in the absence of suitable mitigation. The work undertaken has shown that such mitigation could be achieved through the delivery of a suitable scheme at Longford Roundabout. Such a scheme would need to both address the capacity impact at the roundabout itself and provide sufficient capacity to draw traffic away from the local road network and onto the SRN.
162. Both the applications were made in outline with means of access reserved for subsequent approval and therefore the LHA needs to be satisfied that a suitable scheme could come forward, rather than to be satisfied with a specific scheme. However, sufficient detail of a specific scheme needs to be progressed to provide confidence that any scheme could be delivered.
163. The initial Option 1 scheme for Longford Roundabout remains discounted due to significant operational concerns and the stated likelihood from HE that such a scheme would not be acceptable to it. The Option 2 scheme<sup>195</sup> enlarges and elongates the roundabout and provides increases to capacity without changing the method of control. AECOM has considered the scheme on behalf of GCC, including analysis of the standalone ARCADY modelling and the S-Paramics microsimulation package for the worst case scenario of the impact of the Appeal A plus the Appeal B proposals.
164. Both the results of the ARCADY modelling and the results of the S-Paramics modelling demonstrate that the Option 2 scheme would provide sufficient capacity to mitigate the Appeal A and Appeal B proposals without resulting in a residual severe cumulative impact on the local highway network. Therefore, GCC has sufficient confidence that a mitigation scheme for Longford Roundabout could be provided to satisfy the LHA, that it could be secured by Grampian conditions and that such a scheme would be likely to be Option 2 or a variation thereof.

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<sup>193</sup> Documents I4A, N17 and N56

<sup>194</sup> Document C8

<sup>195</sup> Document N18 Appendix A

165. GCC has accepted the traffic flows derived from the S-Paramics model produced by the appellant<sup>196</sup>. AECOM has undertaken a review of the standalone models prepared by the appellant for 13 junctions<sup>197</sup>, including a review of the model parameters with reference to best practice guidance to ascertain the suitability of the models, and a review of traffic flow inputs with reference to the traffic flow outputs from the S-Paramics model. AECOM has also reviewed the traffic impact of the development scenarios in relation to the A40/A38 Longford Roundabout<sup>198</sup>. The reviews indicated that the proposed developments in isolation or combination would have a severe impact on the local road network in the absence of suitable mitigation, which could be achieved through delivery of a suitable scheme at Longford Roundabout.
166. On 23 June 2017, following an opportunity for a coding review, GCC was in a position to be able to agree that sufficient information had been provided with respect to the proposed Option 2 scheme to be satisfied that the highways objections could be dealt with by way of a Grampian condition. Therefore, GCC has sufficient confidence that a mitigation scheme for Longford Roundabout, which would need to be approved by the LPA and be compliant with the EIA Regulations, could be provided and secured by Grampian condition.
167. In terms of sustainable transport, taking account of the proposals for walking and cycling and for public transport, GCC agrees that sustainable transport has been taken up to satisfy the Framework, TBLP Policy TPT1 and emerging JCS Policy INF1. In the light of the above, there remain no outstanding matters for agreement between the appellant and LHA.

## **10 The Case for Twigworth Parish Council (Rule 6 Party)**

*I have reported the case on the basis of the oral evidence given at the Inquiry and the closing submissions<sup>199</sup> with additional references to the evidence submitted prior to the Inquiry. The material points are:*

168. The appeal proposals would result in the building of about 2,000 houses, and possibly many more, on land which would have to be raised considerably, resulting in an island suburb. TPC strongly objects to the appeal proposals and the severity and scale of harm they would create for the local population in a highly sensitive environment beside the River Severn. The various impacts of the proposals, including flooding and traffic dispersal, would have a significant knock-on effect for communities of nearby parishes throughout the area. There are widespread and significant concerns about the nature, the severity and the scale of impacts.
169. In addition to TPC, Sandhurst Parish Council, Minsterworth Parish Council, Chaceley Parish Council, Norton Parish Council, Churchdown Parish Council, Down Hatherley Parish Council and, although they did not submit comments, Innsworth Parish Council and Longford Parish Council all object to the

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<sup>196</sup> Document I4A paragraphs 3.23 and 3.24

<sup>197</sup> Document T&I-GCC1 paragraph 4.3: Junctions 2 to 14

<sup>198</sup> Document T&I-GCC1 paragraphs 4.14 to 4.33

<sup>199</sup> Document N55

proposals. These communities know the area floods and appreciate that the area's complex hydrology is highly sensitive. Local farmers also point out that the area has never been developed because it is so flood prone. Laurence Robertson MP has consistently objected to the land being developed and champions the value of the Severn Vale's Green Belt in the area.

### ***Premature relationship to the Emerging JCS***

170. In terms of the JCS context for the proposals, the JCS has further stages to go before its adoption. The land has not been released from the Green Belt and may still remain as Green Belt at the end of the JCS process. The modifications to the JCS are yet to be consulted on and fully examined. Then they need to be further considered by the JCS Examination Inspector and reported back to the councils. Meantime, other housing sites are being promoted and applications submitted across the three councils' areas. All these factors could affect the ultimate political decisions made on the JCS locations. Therefore, little or no weight should be given to the JCS context of the appellant's arguments and the prematurity these involve should be noted.

### ***History of Applications***

171. Similar proposals were dismissed by the SofS after a previous Inquiry, and variants of the appeal proposals have been rejected on three separate occasions by the Council. These were at the JCS initial submission stage, by the Council's planning committee in January 2016, and by a significant number of Councillors on 25 October 2016 at the JCS Modifications stage.
172. The Twigworth allocation has had a late inclusion in the JCS Modifications and has not yet been examined in the JCS Examination process. As the main outcome of the 25 October 2016 members' meeting, the Council's officers were asked to source alternative development sites for the JCS which did not include Twigworth. This is something which is still awaited because no alternative locations materialised during the meeting of 31 January 2017. It was suggested that a Twigworth allocation was required for soundness, but the JCS soundness relates to viable numbers making up its housing requirements, not particular prescribed locations. Locations are ultimately political choices, as in the members' vote on 25 October 2016 to find alternatives to Twigworth. The Council's meeting minutes of 31 January 2017<sup>200</sup> are not the full context and no or minimal weight should be given to the JCS background.

### ***Character and Heritage***

173. The proposed large scale development would not be in keeping with the small hamlet of Twigworth. It would engulf the settlement and change its character into that of a suburb. There would be an immediate loss of open rural character of the village and surrounding Green Belt area. It would bring light pollution effects visible for many miles at night. The landscape and its related heritage, along with the Gloucestershire Way, is cherished by the wider and local community and by visitors who use the church, the regionally important

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<sup>200</sup> Document D15

footpaths, and the local pub, and who can sense the area's open undeveloped landscape in Ivor Gurney's poems.

### ***Green Belt***

174. The proposed loss of Green Belt in Tewkesbury Borough would be to serve the housing needs of Gloucester City Council who, within its own development plan, seeks to protect its own green spaces and Green Belt. The Council should not be expected to sacrifice Green Belt in Twigworth to accommodate Gloucester City housing needs. Cheltenham Borough Council is also very protective of its Green Belt, and Tewkesbury Borough Council should not have to sacrifice its precious Green Belt for housing for the convenience of neighbouring councils and their communities.

### ***Gloucester Urban Extension***

175. The appeal proposals cannot be a Gloucester City urban extension, as they are labelled and purport to be. Gloucester City Council has had no input to the Inquiry and has not sought to influence or shape the proposals in any way. Further, the sites cannot possibly relate to Gloucester City in a functional sense because they are on the wrong side of the A40 and travel into Gloucester, especially non-car travel, is a contorted exercise from these locations. Thus there is no link to Gloucester in the proposals.

### ***Cumulative Effects***

176. The eventual scale of development could be larger in order to fund the necessary infrastructure, the complex and extensive flood mitigation measures, and a potential additional link road within the location, which has been debated in the JCS context. It would be very likely that much more development, necessitating almost double the amount of housing, would be required. Land is shown on the Twigworth application plans as 'Safeguarded Land', which indicates future housing next to the appeal site. The appeal proposals would not represent the full extent and scale of the impacts which would be likely to occur from much greater housing numbers and traffic generation. Given the highly sensitive flood risk environment and the sensitive road network, this is a matter of great importance.
177. The cumulative effects relate especially to traffic generation and impacts on the trunk road and on minor narrow rural lanes. For example, the JCS allocation of South Churchdown has not been addressed in the appellant's traffic modelling and this would result in traffic generated from a prospective additional 1,100 houses and employment land using the same part of the A40 and feeding into the rural roads of Innsworth, Twigworth and Down Hatherley.

### ***Transport and Highways***

178. TPC has accepted that the modelling using S-Paramics and ARCADY has demonstrated that 'Option 2' for Longford Roundabout would overcome the issues with regard to that junction, even though the existing modelled queue lengths are surprisingly short. However, other concerns are the effect of the proposals on traffic using Down Hatherley Lane and Frogfurlong Lane, which are not wide enough for vehicles to pass and are signed as a 'Shared Route' with horse riders. There is no realistic way of improving these roads, with

private gateways sometimes being used as passing places. Sandhurst Lane would also be likely to suffer from additional traffic and it is not suitable to take such traffic.

179. The appellant's traffic flow figures do not tally with the material for the JCS<sup>201</sup>, suggesting that 30% of the traffic outlet from the Twigworth side of the appeal site would utilise Down Hatherley Lane. Even if there would be only a modest and immaterial increase in traffic levels on Down Hatherley Lane, it is not a road which should be considered for such a link to the sites because it is unsuited to modern traffic and it is unacceptable to exploit residents' driveways as passing places in a cramped narrow lane.
180. Other concerns regarding the effect of the proposals on the highway network are during construction. The traffic models have not forecast the delays, inconvenience and severance that this would cause.
181. The proposals would be urban extensions associated with Gloucester but the sites do not relate well to that City due to the A40 dividing them from it and the lack of connections. The non-motorised transport network would not be suitable to handle any increased demand and the bus service along the A38 would need to divert into the Twigworth site, to the disbenefit of its users, and there would be over demand for that service. This would add to the traffic if non-car users would not be accommodated. There is no evidence to show that the use of sustainable transport would be encouraged.
182. The Inquiry into the JCS would be considering more development in the area. A link between the A38 and A40 is to be subject to the JCS Inquiry but is not before the appeal Inquiry. There is no guarantee that the Twigworth and Innsworth developments would be included in the final JCS, as matters such as sustainable transport would not support their inclusion. Also, the Growth Fund money is dependent upon the JCS development before the Inquiry being released.

### ***Flood Risk***

183. The Council's adviser recognises that the technical measures and SUDS necessary to mitigate the flood impacts would be at a very high cost. They would need renewing on 25 year cycles and the Council would be drawn into ongoing maintenance commitments. The appellant would have no liabilities to be concerned about on flooding measures. The measures would involve influence, such as through easements and negotiations, on land beyond the appeal sites, and this would not be guaranteed. The appeal proposals cannot be sound for this reason alone.
184. The flood risk of Twigworth and Innsworth are both affected by a combination of two kinds of flooding, fluvial and pluvial. Planning consultation for pluvial flood risk was passed from the EA to GCC in 2015. The appellant's mapping significantly under-represents actual flood events in Twigworth, both on the site and affecting people's houses adjoining it. In July 2007 the A38 from Down Hatherley Lane through to Longford, and a nearby stretch just a mile

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<sup>201</sup> Document N55 Annex 2: JCS Transport Modelling  
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further north at Norton, was cut off by flooding for over 6 days. The road being out of action was an event that affected many thousands of people, not just the immediate residents. On a more regular basis, Frogfurlong Lane experiences regular road closures as the Hatherley Brook overflows due to overcapacity or backflow, and seeps across the lane and surrounding fields and golf course<sup>202</sup>.

185. The procedural role of GCC, in not objecting to the application in 2015, is not to object but impose conditions<sup>203</sup>. The details of such a condition and the appellant's design for flood mitigation remain unclarified. Some of the appellant's observations on the hydrology of the area and analyses, for example the depth of the water table, were shown at the Inquiry to be altogether unsound.
186. It was made evident at the Inquiry that the residents have a more accurate picture of their flood experience than either the appellant or the authorities. Photographs of unmapped flooding presented to the appeal do not represent the full picture of Twigworth's flood experience, as people only remember locations where residents were actually flooded, not all the ponding over the district, and some people who have been flooded do not wish their experience to be public knowledge. Insurers should have a statutory obligation to report to a local authority a householder's claims against flooding so a more detailed picture can emerge, and the data of flood risk maps does not depend on sourcing information from people who do not want to provide it. Moreover the evidence presented is mainly for 2014, a much less severe flood than 2007.
187. Development on the Appeal A site is highly unwise because of the potent combination of fluvial and pluvial flooding and the nature of the clay soil, which can make SUDS unworkable when clogged with clay particulates, and the relatively flat terrain at negligible gradient to water courses close by<sup>204</sup>. The extensive scale of proposed development, with potential for even more development, serves to heighten this risk. H R Wallingford has stated *'...if the site is regularly flooded from river and rainfall, it doesn't sound like a site which should be being considered for development'*<sup>205</sup>.

### **Other Matters**

188. The proposed development access road would use land where there are gas monitoring boreholes required by the Environmental Permit held by the EA in relation to continuous gas monitoring at the adjacent historical landfill site. The removal of the monitoring points would affect the required compliance of the site operator<sup>206</sup>.

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<sup>202</sup> Evidence given by objectors at Innsworth Community Hall on 22 June

<sup>203</sup> Evidence given by Michael Thomas to the Inquiry on 5 July

<sup>204</sup> Evidence given by Professor Ian Cluckie to the Inquiry on 5 July and Document N39

<sup>205</sup> Document N38 page 34: Correspondence from Richard Kellagher, Technical Director, Water Management, H R Wallingford

<sup>206</sup> Document N55 Annex 1: E-mail dated 17 November 2015 from Kathryn Griffiths, Environmental Health Officer, Tewkesbury Borough Council

## **Conclusion**

189. The appeal proposals have the potential to create what would be a planning disaster. The appeals should therefore be dismissed.

### **11 The Cases for Other Interested Parties**

*Oral representations were made at the Inquiry. These are summarised below and some are supported by written statements<sup>207</sup>. The material points made were:*

190. With regard to traffic concerns, Innsworth Parish Council pointed out that when the M5 motorway is closed between Tewkesbury and Gloucester, which happened on Friday 16 June 2017, traffic is diverted locally, including on to the A38 which results in severe delays on many local roads. Also, when Imjin Barracks, which is near to the Appeal B site, is on 'high alert' each vehicle entering the Ministry of Defence facility on the mini-roundabout at the junction of Frogfurlong Lane and Innsworth Lane must be thoroughly inspected, which results in long queues of vehicles waiting to enter the Barracks site and tailbacks on Frogfurlong Lane and Innsworth Lane. The above circumstances should be taken into consideration when assessments are made of the sufficiency of local road infrastructure, including capacity and traffic flows.
191. Local residents have expressed concerns about the length of the queues along the A38 to Longford Roundabout. The queue lengths modelled by the appellant, which are shown to reduce from a maximum of 700m to 500m, are significantly shorter than the 1 mile (1600m) length queues that are regularly experienced in the am and pm peaks. This has resulted in 'rat-running', including using a route through Sandhurst on unsuitable narrow lanes or Down Hatherley Lane, which has no footways along most of it, is too narrow for two vehicles to pass and is used by horses, cyclists and pedestrians. Other concerns expressed included pedestrian safety when crossing the A38 in Twigworth with the proposed increase in traffic and proposed improvements to the A417 which could result in more vehicles using the A40, increasing the risk of queuing.
192. In terms of flood risk, Councillor Phil Awford, as GCC's appointee to the Severn and Wye Regional Flood Defence Committee, advised that, despite 48 models of 3 different flood level scenarios, no suitable mitigation scheme for taking flood water through Gloucester is likely in the near future. Therefore, the flood storage at Twigworth is crucial to protecting surrounding parishes and Gloucester. The loss of the storage on the appeal sites would increase the risks to residents that may not have previously been at risk. Many residents in Twigworth mentioned past problems due to flooding of properties and blocked drains.
193. Councillor Alexander Evans questioned the exceptional circumstances that have been shown to justify the release of the appeal sites from the Green Belt, given that a good alternative that is not Green Belt exists at Brook Thorpe Wadden on the edge of Gloucester. The planned development on this site is for 2,500 dwellings, 500 of which would be within Gloucester City's boundary

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<sup>207</sup> Document N15

that have already received planning permission and the remainder lying within the boundaries of Stroud, who have not been approached.

194. A Parish Councillor stated that the NP for Twigworth, Down Hatherley and Norton is going to public consultation in September to October 2017. It has been prepared over a 4 year period to reflect community ambitions for Green Belt protection and enhancement of the area's valued open rural character. The proposed developments form no part of the NP.

## **12 Written Representations**

195. *Written representations were made at the appeal stage, during consultation following changes to the red line plan for Appeal B<sup>208</sup> and at the application stage<sup>209</sup>, of which the main concerns expressed are similar to those raised at the Inquiry. The material points made include:*
196. Concerns about flooding, loss of Green Belt, highway safety and traffic congestion and its associated noise and air pollution, which are similar to those expressed by TPC. With regard to these matters, additional concerns have been expressed about the resulting increase in Heavy Goods Vehicles (HGVs) that would use the roads in the area of Appeal B due to the increase in employment uses. This would add to the noise and vibration experienced by local residents and the problems that these vehicles have with negotiating the road junctions and narrow lanes.
197. The loss of BMV agricultural land would be contrary to paragraph 112 of the Framework and potentially would be a risk to future food security, with the Ground Investigation Report for Land Adjacent to the A38 Twigworth highlighting that 30.88 hectares of the site was entirely crop covered.
198. Three Grade II Listed buildings are within 50m radius of the Appeal A site and would be severely impacted by the proposed development. The proposed size and height of the Community Centre, adjacent to Twigworth Lawn and opposite Twigworth Court and the Stable Block, would affect the skyline and have the potential to impinge or block distant views of the open countryside. This, and the proposed housing, would overpower the rural character of Twigworth village, resulting in urban sprawl.
199. The primary significance of Twigworth Court lies in its architecture as a Georgian farmhouse. Its wider setting is the rural surroundings, predominantly to the east. The proposed development would block distant views of the open countryside from its east facing windows and the proposed new roundabout off the A38 would dominate the building and its garden and have a detrimental effect on its setting.
200. Archaeological excavations and geophysical surveys have been conducted on the Appeal B site between 2005 and 2006 which show that the site has been occupied from the late Iron Age to early Roman times. Consequently, it

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<sup>208</sup> Document L16

<sup>209</sup> Documents A33 to A50 for Appeal A and B28 to B54 for Appeal B and representations summarised in Document A30: Committee Report for Appeal A and Document B25: Committee Report for Appeal B

contains a number of interesting archaeological features. This should be taken into account in the proposed development.

201. There are currently problems with making an appointment to see a doctor in the area of the Appeal B site. This would be made worse by the additional proposed homes.

### **13 Planning Obligations**

202. Following the close of the Inquiry, the appellant has submitted 3 engrossed S106 Agreements and one completed UU<sup>210</sup> for each of the appeal developments, which include those planning obligations in the draft S106 Agreements and UUs submitted to, and discussed at, the Inquiry<sup>211</sup>. I list the planning obligations below, giving the potential contributions.
203. Appeal A - Twigworth Affordable Housing S106 Agreement with the Council for 35% of the total number of dwellings to be provided on the site to be affordable housing units.
204. Appeal B - Innsworth Affordable Housing S106 Agreement with the Council for 35% of the total number of dwellings to be provided on the site to be affordable housing units.
205. Appeal A - Twigworth Highways and Transportation S106 Agreement with GCC:
- i. Bus Service Enhancements Contribution of £450,000;
  - ii. Bus Stop Contribution of £14,000;
  - iii. Footway Enhancements Contribution of £96,625; and
  - iv. Travel Plan Contribution of £127,050.
206. Appeal B - Innsworth Highways and Transportation S106 Agreement with GCC:
- i. Bus Service Enhancements Contribution of £395,000;
  - ii. Bus Stop Contribution of £7,000;
  - iii. Footway Enhancements Contribution of £105,500;
  - iv. Travel Plan Contribution of £220,200; and
  - v. Contribution to cover the shortfall in paying for the actual cost of the Longford Roundabout works should it exceed the Gloucestershire Local Enterprise Partnership funding amount of £1,134,163 and the amount of the A40 Roundabout Works Contribution allocated to the works.
207. Appeal A - Twigworth Education and Libraries S106 Agreement with GCC:
- i. Library Contribution of £142,100;
  - ii. Off-Site Pre-School/Nursery Contribution of £352,560;
  - iii. Primary Education Contribution of £2,261,982;
  - iv. Secondary Education Contribution of £1,563,755; and
  - v. Sixth Form Contribution of £238,150.
208. Appeal B - Innsworth Education and Libraries S106 Agreement with GCC:
- i. Library Contribution of £254,800;
  - ii. Off-Site Pre-School/Nursery Contribution of £569,520;

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<sup>210</sup> Document N64

<sup>211</sup> Document N28

- iii. Primary Education Contribution of £4,059,018;
  - iv. Secondary Education Contribution of £2,805,848; and
  - v. Sixth Form Contribution of £427,348.
209. Appeal A - Twigworth Public Open Space and Communities S106 UU:
- i. On-site Play Facilities, including two Local Equipped Areas for Play (LEAPs) incorporating a Local Area of Play (LAP) and one floodlit Multi-Use Games Area (MUGA);
  - ii. On-site Playing Pitches and Changing Facilities, including a Community Facility;
  - iii. 'Astroturf' Contribution of £45,946 to be used at Oxstalls;
  - iv. Dog Signage Contribution of £50 per 10 dwellings;
  - v. Dog Waste Bins Contribution of £350 per 45 dwellings;
  - vi. Pool Contribution of £293,695 towards the swimming pool at GL1 Leisure Centre, Gloucester; and
  - vii. Recycling and Refuse Contribution of £73 per dwelling.
210. Appeal B - Innsworth Public Open Space and Communities S106 UU:
- i. On-site Play Facilities, including two LEAPs incorporating a LAP, one Neighbourhood Equipped Area for Play (NEAP), one MUGA and one Skate Park;
  - ii. On-site Playing Pitches and Changing Facilities;
  - iii. 'Astroturf' Contribution of £56,465 to be used at Oxstalls;
  - iv. Bowls Club Contribution of £81,003 towards Mid Gloucestershire Bowls Club;
  - v. Community Facilities Contribution of £150,000;
  - vi. Dog Signage Contribution of £50 per 10 dwellings;
  - vii. Dog Waste Bins Contribution of £350 per 45 dwellings;
  - viii. Pool Contribution of £537,564 towards the swimming pool at GL1 Leisure Centre, Gloucester;
  - ix. Recycling and Refuse Contribution of £73 per dwelling; and
  - x. Sports Hall Contribution of £439,071 towards Oxstalls Sports Hall.
211. I have examined the planning obligations to determine whether they meet the tests in Community Infrastructure Levy Regulations (CIL) Regulation 122. These are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
212. CIL Regulation 123(3) indicates that a planning obligation may not constitute a reason for granting planning permission to the extent that five or more separate planning obligations that relate to planning permissions granted for development within the area of the charging authority and which provide for the funding or provision of that project or type of infrastructure have been previously entered into. I have therefore also examined whether the planning obligations contravene CIL Regulation 123(3).
213. The Council and GCC have provided documents to demonstrate CIL compliance for both the appeal proposals' planning obligations<sup>212</sup>. I have also taken into

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<sup>212</sup> Documents N29, N30, N31, N32, N33 and N34

account the appellant's evidence questioning CIL compliance of planning obligations regarding recycling facilities, dog bins and dog fouling signs, sports facilities and libraries<sup>213</sup>. The obligations to secure 35% of the dwellings to be constructed as part of the developments to be Affordable Housing on both of the appeal sites, with each phase to have between 10% and 50% affordable housing, is necessary to ensure compliance with TBLP Policy HOU13 and help meet the Borough's needs.

214. The obligations to secure phased contributions towards highways and transportation, including bus service enhancements, bus stop improvements, footway enhancements and Travel Plans, would be used towards identified projects to encourage the use of sustainable means of transport and reduce the reliance on the private car by future residents of the development. The money would be targeted towards the infrastructure that would be relatively close to the development and therefore likely to be used by its occupants. An obligation related to Appeal B to secure the necessary funding for highway improvements at the Longford Roundabout junction would be necessary to address the impact of the increase in traffic that would be generated by that development.
215. The obligations to secure contributions towards education facilities, including the proposed on-site primary schools/nurseries, off-site pre-school/nurseries, primary education and secondary education, for both appeal proposals would be necessary as the existing facilities are insufficient to cater for the additional demand from future occupants of the dwellings.
216. The contributions requested by GCC towards libraries would be used towards the expansion and increased capacity at Churchdown Library, based on the formula in the Document 'GCC Local Developer Guide'. GCC has provided evidence to show that this library, which would be relatively near to the appeal sites, is already under-provided against the Museums, Libraries and Archives Council benchmark level. As such, there would be a need for additional library provision as a result of the proposed developments. This provision would contribute towards the expansion of the facilities to enable the library to continue to provide a similar level of service for all users, including those generated by the developments. As such, I am satisfied that the obligations to secure Library contributions would meet the CIL Regulation 122 tests and Regulation 123(3), as the evidence suggests that no contributions through previous planning obligations have been made towards Churchdown Library.
217. The obligations to secure on-site provisions for both of the appeal proposals towards play facilities, playing pitches and changing facilities would be necessary to mitigate increased demand for these facilities that would be generated by the proposed developments and to comply with TBLP Policy RCN1. In terms of the requested contributions towards waste/recycling facilities and bins/signage for dog waste, a previous SofS decision and report<sup>214</sup> considered them to not meet the tests in CIL Regulation 122. However, it appears to me that this was not based on any substantive evidence. In the

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<sup>213</sup> Document N25

<sup>214</sup> Document T&I-LPA13 Appendix 1 Ashchurch Appeal Decision paragraphs 11.33 and 11.34  
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current appeals, I am satisfied that they would be necessary to make the developments acceptable in planning terms to prevent non-compliance with TBLP Policy GNL11 and directly and fairly related to the developments.

218. The obligations to secure monetary contributions towards Oxstalls for Astroturf and the Sports Hall (Appeal B), the swimming pool at GL1 Leisure Centre and the Bowls Club (Appeal B) have not been shown to be necessary in planning terms. No deficits have been identified and, although the contributions have been calculated on forecast demand using Sport England's sport facility calculator, insufficient details of any projects have been provided to ensure that the money would be spent to increase the capacity. As such, the evidence does not show that the obligations would be directly or fairly related to the developments. Furthermore, in relation to Appeal A, TPC has expressed concern that there would be no benefits to the existing local community as the contributions would benefit other areas such as Gloucester City and Brockworth, which is a 40 minute round trip, and would add to the resulting increase in traffic in and out of Twigworth<sup>215</sup>.
219. On 7 July, the Council indicated at the Inquiry that NHS England had made a request for contributions based on the population of the proposed developments towards the new surgery at Churchdown and an existing surgery at Longlevens, which NHS England has suggested are within the catchment area of the developments, as on-site provision would not be appropriate. However, insufficient data has been provided with this late request to show that such contributions would be necessary to make the developments acceptable in planning terms, given that the ES Addendum<sup>216</sup> has identified that there is a surplus of surgeries in the area and that there is existing capacity. Furthermore, the appellant suggested at the Inquiry that there would be nothing to prevent a plot being taken within the proposed scheme(s) should such a need arise. As such, I find that a planning obligation to secure a contribution towards NHS facilities has not been shown to meet the tests in CIL Regulation 122.
220. TPC has suggested that the combined development would require a place of worship and the church of Twigworth requires financial input to underpin the building and be made a safe place to worship<sup>217</sup>. However, I am not satisfied on the evidence provided that such a contribution would be necessary to make the development acceptable in planning terms, particularly as the Council has accepted that the Community Facility for Appeal A would be provided with the on-site changing facilities<sup>218</sup>.
221. Based on the above, I have found that the planning obligations to secure contributions towards Astroturf and the swimming pool for both appeals and towards the Sports Hall and Bowls Club in Appeal B do not meet the tests in CIL Regulation 122 and, apart from the contribution towards the Bowls Club, there is insufficient evidence to show that they meet the test in CIL Regulation

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<sup>215</sup> Document N55

<sup>216</sup> Document B26 paragraphs 2.72 to 2.74

<sup>217</sup> Document N55

<sup>218</sup> Oral evidence given by Tessa Yates, Tewkesbury Borough Council, at the Inquiry on 7 July

123(3). However, I am satisfied that the other planning obligations in the S106 Agreements and UUs meet the tests in CIL Regulations 122 and 123(3) and paragraph 204 of the Framework. I have therefore taken them into account in my conclusions and recommendations.

#### **14 Planning Conditions**

222. Should the SofS be minded to grant planning permission, I recommend that the conditions set out in Appendix C of this report be imposed on the planning permissions. They are based on the conditions suggested by the appellant, Council<sup>219</sup>, HE<sup>220</sup> and the LHA<sup>221</sup> should the appeal be allowed. These conditions have been discussed at the Inquiry and the appellant has submitted documents comparing the suggested conditions following the discussions<sup>222</sup>. I have based my recommended conditions on the conditions in these documents. I am satisfied that they accord with the tests in the NPPG.

##### ***Appeal A***

223. Conditions regarding reserved matters approval and the standard timescales, together with conditions controlling the scale of the development (Conditions 1, 2, 3, 4 and 5) are necessary in the interests of expediency and certainty. The application was submitted in outline form with all matters of detail to be considered at a later date and I have not been given sufficient reasons to justify the Council's suggested reduction in the time scales from those normally imposed, given the number of conditions that would need to be discharged and the complexity of the issues involved.
224. A condition regarding the phasing of the development (Condition 6), a condition to secure the provision of a Site Wide Masterplan Document (SWMD) (Condition 7) and a condition to define the details to be submitted under reserved matters (Condition 8) are necessary to ensure that the development would be carried out in accordance with good urban design principles and would integrate with its surroundings. I find that the conditions suggested by the appellant, with less detail included than those suggested by the Council but referring to the plans, are more appropriate for the outline planning permission. Given that the submitted masterplan is indicative, I consider that a SWMD needs to be approved to provide a greater level of certainty and to accord with Policy SA1 of the emerging JCS. I have, however, based the condition on the wording suggested by the appellant as it requires less detail and would therefore enable greater flexibility than that suggested by the Council.
225. A condition to ensure the development would be carried out in accordance with details to be submitted to protect the trees to be retained (Condition 9) and a condition regarding new planting (Condition 10) are necessary in the interests of visual amenity. A condition regarding archaeological investigation (Condition 11) is necessary for the purposes of historical recording, given the

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<sup>219</sup> Documents N51 and N52

<sup>220</sup> Document N17

<sup>221</sup> Document N19 Appendix E

<sup>222</sup> Documents N62 and N63

findings of the studies in the ES. I have based the condition on the model conditions rather than that suggested by the Council. A condition to ensure compliance with an approved Landscape and Ecological Management Plan (LEMP) (Condition 12) is necessary to conserve and enhance legally protected species.

226. A condition to control the design of the access routes to the development (Condition 13) and a condition, based on that suggested by HE that was accepted at the Inquiry, to control the use of the development before improvements to Longford Roundabout have been completed (Condition 16) are necessary to ensure that there would be no unacceptable impact on the safety and flow of traffic on the highway network. I find that it is necessary to ensure that an acceptable detailed design of the Longford Roundabout would be finalised before any development would commence, as that junction would be critical in preventing a severe transport related residual cumulative impact. It would also be necessary to have an acceptable design in place to secure the necessary funding. In addition, the inclusion of flood mitigation/compensation measures is to prevent any significant increased risk of flooding.
227. Conditions regarding access and public rights of way and future maintenance of them (Conditions 14, 15 and 17) are necessary for reasons of highway safety and to encourage the use of sustainable means of transport. A condition to control the construction works (Condition 18) is necessary in the interests of safety and residential amenity. A condition to secure a Travel Plan (Condition 19) is necessary to encourage the use of sustainable means of transport. A condition regarding existing and proposed levels (Condition 20) is necessary to ensure an acceptable appearance and residential amenity.
228. The flooding and drainage conditions (Conditions 21, 22 and 23) are necessary to ensure that the new development does not increase the risk of flooding to the site or to future and existing developments. In specifying that the floor levels shall be at least 750mm above the modelled 1:1,000 flood level, rather than the appellant's suggested 600mm, I have applied the precautionary principle. I have included the flood mitigation/compensation measures under Condition 16 rather than using a separate condition as suggested by the Council. Overland flows, compensatory pluvial flood storage details and any necessary easements, including Cox's Brook catchment area, are included in Condition 21 and so separate conditions, as suggested by the Council, are not necessary.
229. I am satisfied that conditions to require the provision of electric car charging points (Conditions 24 and 25) are necessary in the interests of sustainability and climate change, given the Government's targets. Conditions regarding noise (Conditions 26 and 27) are necessary to protect residents against unacceptable disturbance.
230. Although a condition to secure the provision of fire hydrants has been agreed by all the parties, I consider that it is unnecessary as this matter would be covered by other legislation. A condition to require the provision of low emission boilers is unnecessary as it would be covered by housing standards. With regard to contamination, the ES has found that there would be no risk to human health due to contamination and therefore, no condition is necessary.

### **Appeal B**

231. Conditions referring to amendments to the red line (Condition 1) and those regarding reserved matters approval, the standard timescales and controlling the scale of the development (Conditions 2, 3, 4, 5 and 6) are necessary in the interests of expediency and certainty. A condition regarding the phasing of the development (Condition 7), a condition to secure the provision of a SWMD (Condition 8) and a condition to define the details to be submitted under reserved matters (Condition 9) are necessary to ensure that the development would be carried out in accordance with good urban design principles and would integrate with its surroundings. My reasoning behind these conditions is similar to that for Appeal A.
232. A condition to ensure that the development would be carried out in accordance with details to be submitted to protect the trees to be retained (Condition 10) and a condition regarding new planting (Condition 11) are necessary in the interests of visual amenity. A condition regarding archaeological investigation (Condition 12), similar to that imposed in Appeal A, is necessary for the purposes of historical recording, given the findings of the studies in the ES. A condition to ensure compliance with an approved LEMP (Condition 13) is necessary to conserve and enhance legally protected species. A condition to deal with contamination on the site (Condition 14) is necessary in the interests of health and safety, given that localised 'affected areas' have been identified in the ES. I have imposed a condition, based on the wording provided by the appellant, to which the Council has not objected.
233. A condition to control the design of the access routes to the development (Condition 15) and conditions, similar to those suggested by HE that have been accepted by the appellant, Council and GCC, to control the use of the development before improvements to Longford Roundabout (Condition 16) and a new access junction from the A40 (Condition 17) have been completed are necessary to ensure that there would be no unacceptable impact on the safety and flow of traffic on the highway network. My reasoning behind the need for a design to have been approved for the Longford Roundabout improvement scheme prior to commencement of development is similar to that for Appeal A. The requirement for the approval of a design for the new A40 junction and link road to the development prior to commencement is for similar reasons, as the provision of this infrastructure would also be critical to prevent severe transport related residual cumulative impacts. The inclusion of flood mitigation/compensation measures in conditions 16 and 17 is to prevent any significant increased risk of flooding.
234. Conditions regarding crossing facilities at the proposed access (Condition 18), improvements to public rights of way (Condition 19), the provision of acceptable walking routes and vehicle turning facilities (Condition 20), similar to that suggested by GCC<sup>223</sup>, and future maintenance of them (Condition 21) are necessary for reasons of highway safety and to encourage the use of sustainable means of transport. A condition to control the construction works (Condition 22) is necessary in the interests of safety and residential amenity.

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<sup>223</sup> Document N19 Appendix E page 5 Condition 2

Conditions to secure Travel Plans for the proposed school and employment uses (Conditions 23 and 24) are necessary to encourage the use of sustainable means of transport.

235. A condition regarding existing and proposed levels (Condition 25) is necessary to ensure an acceptable appearance and residential amenity. The flooding and drainage conditions (Conditions 26, 27, 28 and 29) are necessary to ensure that the new development does not increase the risk of flooding to the site or to future and existing developments. My reasoning behind these conditions is similar to that for Appeal A. Condition 29 to secure the provision of compensatory storage works is linked to the proposed works for the A40 access. Reference to CIRIA Guidance on 'level-for-level' storage, as suggested by the Council, would unnecessarily restrict the scope for alternative schemes, given that the LPA would have to approve any proposals.
236. I am satisfied that conditions to require the provision of electric car charging points (Conditions 30 and 31) are necessary in the interests of sustainability and climate change, given the Government's targets. A condition requiring an Air Quality Impact Assessment (AQIA) and recommended procedures (Condition 32) is necessary to protect existing and future residents against pollution arising from the proposed A40 junction. Conditions regarding noise (Conditions 33 and 34) are necessary to protect existing and future residents against disturbance due to noise.
237. My reasons for not imposing conditions regarding fire hydrants and low emission boilers are similar to those for Appeal A.

## 15 Inspector's Conclusions

*The numbers in square brackets [ ] refer back to earlier paragraph numbers which are relevant to my conclusions.*

238. Following the PIM, I submitted a list of what I considered to be the main issues in both of the appeals<sup>224</sup>, based on the reasons for refusal given for the Appeal A proposal and the putative reasons for refusal given by the Council for the Appeal B proposal. Prior to the Inquiry, the Council, GCC and the appellant agreed that many of these issues have been resolved. However, the appellant has questioned the five-year housing land supply position in its evidence to the Inquiry. Also, although the effect of the Appeal A proposal on flood risk was not given as a reason for refusing that application, the Council added this as a reason for objecting to it at the Inquiry. Based on this, I have considered the remaining main issues in both appeals to be:
- i. the five-year housing land supply position;
  - ii. the effect of the proposals on highway safety and the flow of traffic on the SRN and local highway network, with particular regard to the Longford Roundabout junction at the A40 (trunk road) and A38;
  - iii. the effect of the proposals on the risk of flooding;
  - iv. whether the proposals would represent acceptable forms of development in terms of the masterplan and the emerging JCS; and
  - v. whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations so as to amount to the VSC required to justify the development in the Green Belt.
239. Other matters that I have considered in the overall planning balance which the Council no longer wishes to contest include:
- The effect of the appeal proposals on the Green Belt;
  - the effect of the Appeal A proposal on the significance of heritage assets;
  - the effect of the appeal proposals on the character and appearance of the surrounding area;
  - the effect of the appeal proposals on the use of sustainable means of transport;
  - the effect of the appeal proposals on the ecology of the area, with particular regard to Innsworth Meadows SSSI;
  - the effect of the appeal proposals on BMV agricultural land;
  - the effect of the appeal proposals on air quality, with particular regard to levels of NO<sub>2</sub>; and
  - the effect of the appeal proposals on the provision of affordable housing and on recreational and sports facilities, education, health and community infrastructure, library provision and recycling infrastructure.
240. At the Inquiry, both the appellant and the Council made Legal Submissions which I deal with first, as my conclusions on these matters affect the way that I have dealt with the planning issues in both of the appeals. However, I have also considered the planning issues on the basis of the SofS coming to a different conclusion on the Legal Submissions.

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<sup>224</sup> Document A53 Appendix A

## ***Legal Submissions***

### *Use of Grampian Conditions*

241. It seems to me that the basis of the differences between the Council and appellant with regard to the use of Grampian conditions is regarding the 'no prospects at all' test when such conditions should not be used. These conditions prohibit development authorised by the planning permission or other aspects linked to the planning permission until a specified action has been taken. Such conditions may overcome the harm caused by a development, but should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. Whether a Grampian condition is an acceptable solution in a particular context is a matter of planning judgment on all the evidence. Therefore, it may not be appropriate to impose a Grampian condition when the 'no prospect at all' test is met, but the imposition of such a condition does not have to meet 'a reasonable prospects' test. **[33, 34, 117 and 118]**

### *Five Year Housing Land Supply*

242. The differences between the Council and the appellant with regard to the five-year housing land supply that is most appropriate to be used for the purposes of the appeals is whether it should be based on the Tewkesbury Borough Council housing requirement or the Gloucester City Council housing requirement. The emerging JCS proposes a contribution from Tewkesbury Borough, including from the appeal sites, to help meet the projected shortfall in the housing provision in the Gloucester City area. **[35, 84, 85 and 120]**
243. The five-year housing land supply should be calculated in accordance with paragraph 47 of the Framework. It requires that LPAs should identify a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. The appeal sites are within Tewkesbury Borough and it is that Council who has determined the applications. As such, it should be the five-year housing land supply for Tewkesbury Borough Council that is relevant to the appeals. However, this should not prevent the proposed allocation of the appeal sites to meet the needs of Gloucester City Council from being a material consideration in the determination of the appeal proposals. **[36 and 120]**

### *Scope of an Outline Planning Application*

244. The Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the scope of an outline planning application. This explains that, except in the case of access when the outline application must state the area or areas where access points to the development proposed will be situated, an application for outline planning permission does not need to give details of any reserved matters. It is up to the LPA to specify what further details would be required to enable it to determine the application. However, the LPA or decision maker is entitled to take into account the material that has been submitted, including parameter plans or masterplans, and any other plans that are marked up as 'illustrative'. **[37, 38 and 90 to 98]**

*The Planning Balance and the Green Belt*

245. The differences between the Council and the appellant with regard to the planning balance are related to the importance of the finding of VSC in a Green Belt case. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise in accordance with S38(6) of the Planning and Compulsory Purchase Act 2004. The Framework is only one such material consideration and, even where paragraphs 49 and 14 apply, it remains necessary to conclude against the development plan as a whole in accordance with S38(6). **[99 and 102 to 114]**
246. In terms of footnote 9 of the Framework, it gives examples of specific policies that indicate development should be restricted, including the Green Belt. In the case of harm to the Green Belt, if the balancing exercise in paragraph 88 of the Framework to determine whether or not VSC exist to justify inappropriate development in the Green Belt is not favourable to the proposal, the presumption in favour of sustainable development in paragraph 14 of the Framework does not apply. Where the DP is absent, silent or relevant policies are out-of-date, if the application of the specific policy does not indicate that permission should be refused, it will be necessary to apply the 'tilted balance' and consider whether the adverse impacts of granting permission significantly and demonstrably outweigh the benefits. If the DP is not absent, or silent or relevant policies are not out-of-date, the paragraph 14 presumption in favour of sustainable development is not applicable and the presumption against development in accordance with paragraph 12 of the Framework should be applied. **[103 to 107 and 115]**
247. With regard to the Green Belt, substantial weight should be given to any harm to the Green Belt, in accordance with paragraph 88 of the Framework. I do not agree with the Council that different weights should be attached to 'any other harm' dependent upon the purpose that that harm is being assessed against. As such, the weight to be given to 'any other harm' in determining whether it and harm to the Green Belt is clearly outweighed by other considerations should be the same as that given to it when considering the overall balance under S38(6) or paragraph 14 of the Framework. There is nothing in the Framework, relevant planning law or national guidance to indicate that the weight given should be different in the context of protecting the Green Belt. **[108 to 116]**

***Issue (i)- Five Year Housing Land Supply***

248. The appellant has not contested the findings of the Council's latest Tewkesbury Borough Five Year Housing Land Supply Statement that demonstrates that there is a five-year housing supply to meet the needs of Tewkesbury Borough. As previously explained, I consider this to be the correct approach in paragraph 47 of the Framework, even though the emerging JCS has included the appeal sites as proposed urban extensions in Tewkesbury Borough to meet the unmet needs of Gloucester City. Whilst Gloucester City and the JCS area as a whole has been assessed as not having a five-year housing land supply for the purposes of the emerging JCS, that document has not yet been adopted. Also, the evidence base that has been used to calculate the OAN for

market and affordable housing is using a housing market area for the whole of Gloucestershire, which includes a greater area than that covered by the JCS. Furthermore, the determination of the constrained housing requirement figure should be through the examination of the emerging JCS and not through the appeal process. **[84, 85, 119, 120 and 150]**

249. For the purposes of paragraph 49 of the Framework, the Council has demonstrated a five-year supply of deliverable housing sites. Taking the calculated figures for Tewkesbury Borough, there is nothing before me to show otherwise. Therefore, there is no reason in this regard to consider that relevant policies for the supply of housing are not up-to-date.

***Issue (ii)- Highway Safety and the Flow Of Traffic***

250. The principles have been established for an access from the A38 to serve the Appeal A development and accesses from the A40, Innsworth Lane and Frogfurlong Lane to serve the Appeal B development, which are consistent with the emerging JCS allocations. No significant highway safety issues have been identified as a result of the proposed developments. HE and GCC, as the relevant highway authorities, have indicated that the proposed developments would in isolation or in combination have a severe impact on the local and strategic road networks. However, they have both agreed that the delivery of an acceptable scheme to improve the capacity of Longford Roundabout at the junction of the A38 and A40 trunk road would be capable of providing suitable mitigation. **[22, 23, 48, 50 and 161]**
251. The S-Paramics modelling used to assess the traffic impacts of the developments has been calibrated and assessed by HE and GCC and they have accepted its accuracy. No substantive evidence has been provided to show that the S-Paramics model is unsuitable for this use. Whilst TPC has expressed concern that the modelling has not taken full account of the cumulative effects of other proposed development, and in particular the emerging JCS allocation in South Churchdown, I am satisfied that the appellant has assessed the impact using a scenario for 2019 that takes account of both of the appeal developments, existing and committed development and the remaining allocated development. As such, I find that the modelling used to assess the impacts of the development with the proposed Longford Roundabout improvements has been thorough and includes the worst case scenario. **[48, 177 and 178]**
252. During the course of the Inquiry, the appellant's latest proposed scheme at Longford Roundabout (Option 2) was assessed by HE and GCC. Following this, both have now accepted that the results of the ARCADY and the S-Paramics modelling demonstrate that the Option 2 scheme would provide sufficient capacity to mitigate the Appeal A and Appeal B proposals without resulting in a residual severe cumulative impact on the local highway network. Whilst the proposed scheme would need to be subject to the sign-off for 'Departures from Standards' and a 'Road Safety Audit' and ensure compliance with the EIA Regulations, there is nothing before me to indicate that an acceptable scheme that would provide sufficient additional capacity to mitigate the transport impacts of the proposed developments would not be deliverable within the

existing public highway and/or other available land. **[49, 51, 122, 154 to 159 and 163 to 165]**

253. I have noted the concerns expressed by local residents and TPC that the proposals would result in additional traffic using unsuitable roads in the area of the sites, particularly via Sandhurst, Frogfurlong Lane and Down Hatherley Lane. However, the appellant's S-Paramics model outputs that have been agreed by HE and GCC indicate traffic movements on these routes would either reduce or stay the same, with the improvements at Longford Roundabout. As such, there is insufficient substantive evidence to show that the proposal would cause any significant harm to safety or the flow of traffic on these roads. The traffic figures that have been used for the JCS Examination would be different from those submitted by the appellant, as they would not have taken account of the effect of the proposed improvements to the capacity of Longford Roundabout. **[52, 178 and 179]**
254. There is nothing before me to show that concerns about the impact on local amenity due to an increase in HGVs as a result of the employment uses in the Appeal B proposal would not be able to be addressed by the proposed highway works. Whilst I accept that there would be some inconvenience and delays caused by the necessary works during construction, I am satisfied that these would be adequately controlled by planning conditions, as with other large scale developments. The effects of traffic diverted due to the closure of the motorway or hold-ups due to security at the nearby Imjin Barracks do not have to be considered in the assessments of the impact of the developments as they are one-off events and the proposals would not be expected to address existing problems. **[180, 190, 196, 227 and 234]**
255. In terms of the funding that would be provided for the proposed improvements to Longford Roundabout, the Council has indicated that it would mainly rely upon Growth Deal funding, for which the sponsor is the Council. Whilst there is no guarantee that the Option 2 scheme would be accepted for Growth Deal funding, the details provided have shown that an acceptable scheme would be able to be delivered to mitigate the transport impacts of the proposals and the imposition of a Grampian condition would ensure that the proposed developments would not be carried out without such a scheme being approved. Therefore, I find that this matter does not carry any significant weight against the acceptability of the proposed developments. **[50, 53, 122, 226 and 233]**
256. Based on the above, I am satisfied that, with the imposition of appropriate Grampian conditions to secure the implementation of an acceptable junction improvement scheme at Longford Roundabout, together with other planning conditions to control the provision of the necessary accesses and highway improvements, the residual cumulative transport impacts of the Appeal A and Appeal B proposals would not be severe. As such, they would accord with TBLP Policy TPT1, as the appellant has demonstrated that the traffic that would be generated, together with that arising from other existing or planned development, would not harm highway safety or the operation of the local and strategic highway network and acceptable means of access would be provided. They would also accord with Policy INF1 of the emerging JCS and paragraph 32 of the Framework. **[26, 29, 32, 53, 226, 227, 233 and 234]**

***Issue (iii)- Risk of Flooding***

257. Whilst flooding is one of the main concerns of local residents, due to the existing flooding problems that have been experienced by them in times of heavy rainfall, the Council's concern appears to me to be directed at the level of information that has been provided by the appellant. However, this is on the basis of the appeal proposals being in outline form with all matters of detail for later consideration. Also, when considering the suitability of the appeal sites for inclusion as allocated sites for residential development in the emerging JCS, the Council has indicated that the drainage and flooding problems would not be insurmountable. Furthermore, in not giving a flooding reason for refusal, the Council appears to me to have accepted its Officer's advice that the evidence accompanying the Appeal A application shows that the site is at a low risk of flooding and would not increase the risk of flooding to third parties and that an appropriate drainage strategy could be secured by planning condition. **[59, 62, 63, 64, 121, 129, 168, 169, 186 and 192]**
258. The EA and LLFA have been consulted on both appeal schemes and the EA has agreed a SoCG with the appellant. In this respect the EA has agreed that the appellant has provided sufficient information to enable it to properly assess matters relating to flood risk for both appeals. It has also agreed that there are no overriding fluvial and pluvial flood risk grounds relating to both of the appeal sites that would prevent them from being developed. It has accepted that the flood risk management strategies identified for the appeal sites would ensure that they would not be at risk from flooding and that they would not increase the risk of flooding elsewhere and that all additional flood risk and drainage details required could be secured by conditions. **[59, 60, 63, 69, 130, 131 and 185]**
259. The peak flood water flows have been modelled and FRAs have been carried out by the appellant. Both the appellant and Council have compared the 1:100 year flows and the 1:1,000 year flows, which approximates to 1 in 100 year flows plus 70% climate change levels, for a variety of models that have been used. These include the appellant's model, the Capita model for the EA, the model used for the JCS Strategic FRA and the recently updated Revitalised Flood Hydrograph model. All of these models seem to me to be based on relatively old data and they give a variety of results, partly due to different locations having been used to assess the flows. However, the appellant has demonstrated that the area that would not be developed, which is mainly either side of Hatherley Brook, would be large enough to ensure that the highest of these estimated flows, allowing an appropriate increase for climate change, would not significantly impact upon that development. **[65, 130, 136 and 184]**
260. In terms of the risk from fluvial flooding, I find that the evidence that has been provided demonstrates that it would be adequately controlled by the use of planning conditions. Such conditions would ensure that no dwellings would be erected outside Flood Zone 1 and, as an additional precaution given the age of the data that has been used, all dwellings would be erected at least 750mm above the 1:1,000 year flood event, as suggested by the Council. I am satisfied that these conditions would ensure that the Council's requirement for

remodelling to be carried out before outline planning permission should be granted would be unnecessary. **[66, 136, 228 and 235]**

261. With regard to pluvial flooding, the appellant has provided plans showing indicative locations of attenuation ponds which it has shown would have enough capacity to cater for the EA's likely requirements to take account of climate change. Based on this, the agreement with the EA and the lack of an objection from the LLFA subject to planning conditions, I am satisfied that there would be workable solutions to pluvial flooding issues, including the possibility that easements would be required. Also, the proposals would allow sufficient flexibility as to the location and size of the attenuation ponds to ensure that they would be able to adequately deal with any significant pluvial flooding risk. Furthermore, the Council has accepted for the purposes of allocating the Appeal A site in the emerging JCS, that there are technical solutions to all the pluvial flooding issues. Therefore, I find that the use of Grampian conditions, as proposed, would ensure that any risk from pluvial flooding would be minimised. **[67, 69, 132, 133, 137, 138 and 187]**
262. In conclusion on this main issue, I have found that the appellant has provided sufficient information to satisfy the EA and LLFA regarding drainage and the risks from flooding. Furthermore, the Council has not objected to the proposals on the basis that there would not be solutions to any flooding problems, particularly as it has indicated by including them as allocations in the emerging JCS that there would be acceptable solutions. Therefore, whilst some of the appellant's outline proposals have been criticised, including the proposed compensatory storage not being in accordance with the recommendations in the CIRIA Report, the overland flow paths and the catchments used, I find that any potential flooding and drainage problems would be capable of being addressed by way of planning conditions. As such, I conclude that the appellant has demonstrated that the use of appropriate planning conditions would ensure that neither of the appeal proposals would be at risk of flooding or would increase the risk of flooding elsewhere and they would both accord with TBLP Policy EVT5 and emerging JCS Policy INF3. **[27, 29, 132, 133, 134, 136, 137, 149iv, 183, 185, 228 and 235]**

***Issue (iv)- Whether Acceptable Form of Development***

263. I agree with the Council that the Appeal A proposal would not have an unacceptable impact on the settlement of Twigworth, given that it is included as a proposed allocation in the emerging JCS. The reason for refusal (4) for the Appeal A application and the putative reason for refusal (4) for the Appeal B application are based on whether the information that has been submitted demonstrates how the proposed developments would successfully integrate with their surroundings in terms of the environment and connectivity. In support of this, the Council has referred to CABE guidance and the parameter plans and indicative masterplans for the appeal proposals. **[139 and 141]**
264. The Council has not objected to the principle of the proposed mixed use developments or the amount of development that is proposed on both of the appeal sites. The submitted masterplans include the indicative location of the residential and non-residential uses, supporting land uses and the main points

of access. The appellant's contention that the JCS Examination Inspector has examined the same comprehensive masterplan as that which has been submitted with the appeal proposals has not been disputed. The findings of that Inspector were that the masterplan shows that the allocated sites, much of which consist of the two appeal sites, would be satisfactorily integrated via green infrastructure. **[56, 57 and 58]**

265. I have previously concluded that the land that is identified on the masterplan that would be outside the built development has been shown to be sufficient to allow for the most severe of the predicted flood events without resulting in any significant risk from flooding. Whilst this has dictated to some extent the areas that would be left for open space or green corridors, I do not consider that this would be harmful to the integration of the proposed developments and it would result in the efficient use of those areas that are appropriate for built development. **[142 and 143]**
266. The relatively wide band of open space that is shown would include the Innsworth Meadows SSSI and the route of the Gloucestershire Way long distance footpath, which runs near to Hatherley Brook in that area. The masterplan also shows a link with other green infrastructure in the area and existing and proposed footpaths and cycleways, which in my opinion would provide good links between existing and proposed developments. The indicative plan would also provide a degree of flexibility by not being excessively detailed. The relatively comprehensive Design and Access Statements provide an understanding of the design principles that have been applied and the reserved matters stage for each phase of the developments would enable greater detail to be considered. Given this, the Council has not explained to me in any specific detail how the set parameters would cause sufficient harm to the urban design so as to prevent the proposed development from being acceptable. **[18, 55, 56, 143 and 144]**
267. I have considered the emerging JCS Policy SA1 with regard to it requiring proposed development to be accompanied by a comprehensive masterplan to demonstrate how it would integrate with and complement its surroundings. In this respect, the appeal proposals have been accompanied by a masterplan, which appears to me to have been acceptable to the JCS Examination Inspector when considering allocated sites in the area. Whilst the Council has referred to the Ashworth SofS decision and report in support of the need for a masterplan, the current appeals involve significantly different circumstances, particularly with regard to the relative size of the sites compared to the wider allocation in the area and the effect of the proposals on the allocated development in the wider area. In the case of the current appeal proposals, I conclude on this issue that the indicative masterplans and parameter plans show that the proposals would represent acceptable forms of development and, with conditions to secure the approval of masterplan documents, the proposals would accord with emerging JCS Policy SA1. **[29, 58, 224 and 231]**

***Issue (v)- Green Belt***

268. Both the appeal sites are within the Gloucester and Cheltenham Green Belt. Although the emerging JCS proposes boundary changes to the Green Belt to

remove the sites from it, the grant of planning permission for the proposed developments would not alter the boundary and they would still remain in the Green Belt until such time as the development plan process changes it. As such, I have dealt with the proposals as representing inappropriate development in the Green Belt, which has been accepted by all the parties. In this respect, paragraphs 87 and 88 of the Framework provide the approach to be taken. In taking this approach, I have attached weight to the harm that I have identified, examined and attached weight to those considerations in favour of the proposals and carried out a balancing exercise to establish whether the harm is clearly outweighed by the other considerations.

*Openness and Purposes of the Green Belt*

269. The Framework in paragraph 79 states that the Government attaches great importance to Green Belts and the fundamental aim is to prevent urban sprawl by keeping land permanently open. The appeal proposals would harm the openness of the Green Belt due to the resulting development of potentially over 2,000 homes and over 8 hectares of non-residential uses. They would also result in an encroachment into the countryside by increasing the extent of the built-up areas of Twigworth and Innsworth, effectively merging them with only a band of open space along Hatherley Brook separating them. However, the sites have been examined in the emerging DP process and have been found to be areas where the harm to the Green Belt would be minimised. Furthermore, by provisionally accepting changes to the Green Belt, the JCS Examination Inspector has indicated that the necessary 'exceptional circumstances' have been demonstrated. **[30, 45, 77, 78, 79, 106, 108 and 149ii]**
270. Taking account of the above, I have assessed the harm to the Green Belt. This harm would be through the loss of openness and would be contrary to the purposes of checking the sprawl of built-up areas and safeguarding the countryside from encroachment. The harm to the Green Belt, which includes harm due to inappropriateness, carries substantial weight. **[107]**

*Heritage Assets- Appeal A*

271. Whilst the Council has agreed to no longer contest its reason for refusal based on the effect of the Appeal A proposal on nearby heritage assets, it is a matter of concern that has been raised by other interested parties. There is also a statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a Listed building or its setting or any features of special architectural or historic interest which it possesses. The Framework identifies in paragraph 132 that development within the setting of a heritage asset can harm its significance. **[146, 148, 173 and 198]**
272. The three heritage assets mentioned as being affected by the proposal are the Grade II Listed buildings of Twigworth Court, Twigworth Lawn and a Stable Block. I am satisfied that the conclusions reached in the expert assessments in the ES, which are not disputed by the Council, are an accurate reflection of the resulting less than substantial harm to the buildings' significance. The assessments indicate that the settings of Twigworth Court and the Stable Block are already affected by the A38 and are more influenced by the rural

landscape to the north west that would not be affected than the appeal site, and that the setting of Twigworth Lawn has been effectively reduced to its domestic curtilage. I have balanced this harm against the benefits of the proposal, in accordance with paragraph 134 of the Framework. **[72, 73, 147 and 199]**

273. In terms of the heritage balance, I have taken account of the economic and social benefits of providing up to 725 dwellings that include some affordable homes. Whilst I have attached great weight to the desirability of preserving the heritage asset's significance, the harm would be limited. Therefore, the less than substantial harm that I have found that the Appeal A proposal would cause to the significance of Twigworth Court, Twigworth Lawn and the Stable Block is outweighed by its public benefits. **[74 and 147]**

274. I find that the Appeal A proposal would fail to preserve the setting of the nearby heritage assets of Twigworth Court, Twigworth Lawn and a Stable Block. However, it would accord with the Framework in this regard, as the less than substantial harm that the proposal would cause to the significance of these Listed buildings would be outweighed by its public benefits.

#### *Character and Appearance*

275. The appeal sites do not fall under any statutory or non-statutory landscape designation. The appeal proposals would result in the intrusion of built development into the countryside that surrounds Twigworth and Innsworth and the loss of the village character of Twigworth. The ESs contain the equivalent of Landscape and Visual Impact Assessments and the ES Addendums have assessed the cumulative impacts of both of the developments. **[70, 71, 128]**

276. Whilst there would be harm due to encroachment into the countryside and adverse visual impacts, particularly in views from the Gloucestershire Way, the sites have been allocated for development in the emerging JCS. The ESs describe mitigation measures, including the retention of existing hedgerows and trees and additional planting, which would reduce this level of harm over time. These measures would be secured by planning conditions. The Council has not contested these matters at the Inquiry. However, there would be harm caused to the character and appearance of the surrounding countryside as a result of encroachment, changes to its rural character and the impact on views, and the appeal proposals would fail to accord with TBLP Policy LND4. I have given this matter moderate weight, taking account of the proposed mitigation. **[18, 27, 80, 173, 198, 225 and 232]**

#### *Sustainable Means of Transport*

277. The Council has included a reason for refusal (8) for the Appeal A application and a putative reason for refusal (6) for the Appeal B application based on the lack of information that has been submitted to demonstrate that opportunities for sustainable transport have been taken. However, since those decisions, agreements have been reached with GCC, as the LHA, regarding off-site improvements to walking and cycling facilities and to bus services and bus infrastructure. Contributions towards these improvements and provision of facilities and infrastructure would be secured through planning obligations in a S106 Agreement for each of the appeals. This has resulted in the Council not

maintaining this matter as a reason or putative reason for refusal. **[10, 46, 47, 123, 124, 167, 181, 205 and 206]**

278. Whilst TPC has questioned the evidence to show that the use of sustainable transport would be encouraged, the proposals would secure through planning conditions Travel Plans for the primary schools in both appeal proposals and for the employment uses in Appeal B. Planning conditions would also ensure that works to public transport infrastructure would be carried out for both appeal developments and public rights of way would be improved for the Appeal B development. Furthermore, I agree with the Council that the provision of additional services and facilities on the appeal sites, such as the primary schools, play space, the Local and Neighbourhood Centres and employment would ensure that new residents would not need to travel by private car to access such services and facilities. They would also be available to existing residents in the area, potentially reducing the distances that they would need to travel. As such, I am satisfied that the appellant has demonstrated that the opportunities for sustainable transport modes have been taken up, in accordance with paragraph 32 of the Framework. **[123, 124, 176, 227 and 234]**

#### *Ecology*

279. The appeal sites have been the subject of ecological surveys and assessments as part of the ES. These have concluded that the proposed mitigation and enhancement measures would result in positive impacts on biodiversity. Measures have been agreed with Natural England to protect and enhance Innsworth Meadows SSSI, which would be secured through a LEMP, to be approved under a planning condition. The Council has accepted that such a plan would overcome its reason and putative reason for refusal on these grounds. As such, I am satisfied that the appeal proposals would not cause any significant harm to ecology and would offer opportunities for biodiversity enhancements. **[27, 75, 126, 225 and 232]**

#### *Agricultural Land*

280. Both of the appeal proposals would result in the loss of considerable areas of land that has been classified as being within the definition of BMV agricultural land given in Annex 2 of the Framework. Paragraph 112 of the Framework provides the basis for assessing the loss of BMV agricultural land. Whilst the Council has accepted that the loss of this agricultural land would not be sufficient to contest this matter when balanced against the benefits of the proposed developments, I have attached moderate weight to the resulting harm. **[125 and 197]**

#### *Air Quality*

281. The reason for refusal (15) in Appeal A and putative reason for refusal (9) in Appeal B are regarding the effect of the proposals on air quality. The Officer's report on the Appeal A application, which does not recommend a reason for refusal on these grounds, refers to the ES conclusion. The Council's Statements of Case indicate that the grounds for refusal are based on vehicle emissions, particularly NO<sub>2</sub>, as a result of increases in traffic. In Appeal B this is stated as being in relation to the new junction with the A40. In this respect

the HE has agreed that the approval of the design would be adequately dealt with by planning condition and I have suggested a condition to carry out an AQIA. **[9, 10 and 236]**

282. The ES conclusions for both of the appeal proposals in relation to their operational impacts state that the overall impact on air quality would not be significant and the ES Addendums that consider the cumulative impacts of all relevant development conclude that the overall impacts would not be significantly different from those given in the ES. The Council has agreed that the assessments of the impacts on air quality indicate that these impacts would be acceptable. Based on this, I am satisfied that the proposed developments would not have any significant adverse impact on air quality. **[76, 127, 159 and 196]**
283. After the close of the Inquiry the Government has published its final Air Quality Plan<sup>225</sup> on 26 July 2017. It aims to focus on the most immediate air quality challenge, which is to reduce NO<sub>2</sub> concentrations around roads where the current levels are above legal limits, within the shortest possible timescale. In this respect, I am satisfied that it does not affect my conclusions on this matter. However, the SofS may wish to examine this in more detail. Based on the evidence provided, I have considered the impact of the proposals on air quality as being potentially harmful and I have attached some weight to it.

*Affordable Housing, Services and Infrastructure*

284. In terms of affordable housing provision, the S106 Agreements would ensure that the appeal proposals would provide the required number of affordable housing units over their phased completion. As such, this would address reason for refusal (9) in Appeal A and putative reason for refusal (11) in Appeal B and ensure that the proposals would accord with TBLP Policy HOU3 and policies SD12 and SD13 of the emerging JCS. **[10, 203, 204 and 213]**
285. The Council has accepted that the issues regarding the provision of sports facilities, education, health and community infrastructure, library provision and recycling infrastructure would be able to be satisfactorily addressed by S106 planning obligations. In this respect, I have examined the submitted S106 Agreements and UUs, which have included those requirements that have been agreed with the Council and GCC, to ensure that the planning obligations satisfy CIL Regulations 122 and 123(3). Whilst I have not accepted that sufficient evidence has been provided to demonstrate that contributions towards off-site sports facilities would be CIL compliant, I find that the on-site sports and play facilities that would be secured by planning obligations would ensure that the appeal proposals would accord with TBLP Policy RCN1. I have agreed that all the other planning obligations would be CIL compliant and should be taken into account in the determination of the appeals to ensure accordance with TBLP Policy GNL11. **[145, 149v, 202, 207 to 213 and 215 to 221]**

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<sup>225</sup> UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations- Detailed Plan, Defra/DfT, July 2017

*Other Matters raised by interested parties*

286. The concerns that have been raised by local residents regarding noise and vibration are related to the additional traffic that would be generated both during construction of the developments and after completion. I am satisfied that any harm would be adequately mitigated by measures that would be secured under planning conditions. With such mitigation and control measures in place, potential noise and vibration effects would be reduced to acceptable levels. Other concerns, including pollution and disruption during construction and archaeological remains, would be satisfactorily addressed by appropriate planning conditions. **[196, 200, 225, 229, 232 and 236]**
287. In terms of the NP which has been referred to in relation to the Appeal A proposal, I have not been given any details as to its proposals which I understand from the oral representations made at the Inquiry do not include the appeal sites for development. The SoCG acknowledges that the relevant NPs to the appeal sites are at the early stages of being prepared and have not yet been published for consultation. I have therefore afforded any conflict with the emerging NPs very little weight. **[31 and 194]**
288. I have considered the previous appeal regarding development on much of the Appeal B site. However, there have been significant changes in circumstances since that appeal was dismissed, particularly with regard to its allocation in the emerging JCS and the proposal to remove it from the Green Belt to which the JCS Examination Inspector has indicated her acceptance. Therefore, no direct comparisons can be made and the current appeal should be determined on its own individual planning merits in the light of prevailing policy and guidance. **[21, 140 and 171]**
289. With regard to other concerns, the JCS Examination Inspector has indicated that the exceptional circumstances needed to justify the release of the land from the Green Belt exist so as to include the appeal sites within the allocations. Applications for development on other sites included in the emerging JCS allocations would have to be considered on their own individual merits, taking account of the supporting evidence that is submitted, and should not have to be considered under the current appeal proposals. In terms of the alternative site that has been referred to by a Councillor, which appears to rely on a duty to cooperate with another Council, the limited information that I have been given indicates to me that this would be a matter to be considered at the JCS Examination. It does not appear to me to be currently proposed in the emerging JCS. **[79, 140, 170, 176, and 193]**

*Considerations in favour of the developments*

290. The inclusion of the appeal sites within the allocations put forward in the emerging JCS and the recommendations of the JCS Examination Inspector for inclusion as allocations to contribute towards the area's housing needs weigh strongly in favour of the proposals, particularly as the Council's implementation strategy allows for the delivery of 200 units from the appeal sites within the next three years, commencing in 2018. The appeal sites are both recognised as necessary elements in delivering the required housing for Gloucester City Council in terms of the 'duty to cooperate' under the emerging JCS. Without the appeal sites being released from the Green Belt as part of

the urban extensions, the JCS Examination Inspector has indicated the emerging JCS would be likely to be found unsound. **[42, 44, 82, 85, 120, 152 and 170]**

291. The provision of open market housing to help boost significantly the supply of housing, in accordance with paragraph 47 of the Framework, and the provision of affordable housing to meet an identified need are very important considerations, which the Council has agreed would represent benefits of the appeal proposals. Even though the Council has argued that the weight given should be reduced because the development would be likely to take place whether or not the appeals would be allowed as the sites are included within the emerging JCS, the appeal proposals would provide an earlier delivery of these developments. Furthermore, the Council has agreed that the JCS is progressing in the context of a very significant housing shortfall over the plan period. I therefore attach moderate weight to these benefits. **[45, 83, 86 150 and 152]**
292. There would be benefits to the economy due to employment. New permanent employment opportunities would be provided by the Appeal A proposal at the proposed Local Centre and primary school and by the Appeal B proposal at the new Neighbourhood Centre, the Office Park, the Business Park and primary school. This has been accepted by the Council as being able to deliver about 1,430 jobs. In addition, temporary employment would be available over the relatively long construction periods. Other economic benefits include the expenditure on construction and investment in the local areas and the generation of expenditure in local shops and services. These economic benefits would be great and I have therefore afforded them considerable weight. **[87, 88 and 124]**
293. In addition to the provision of affordable housing, the social benefits include new primary schools, the facilities within the Local Centre for Appeal A and the Neighbourhood Centre for Appeal B and on-site public open space. There would also be contributions through S106 planning obligations towards new off-site infrastructure, including improvements to, and/or new, footways, footpaths, cycleways, bus stops and services. All of these would be available to existing and future residents. I have given moderate weight to these social benefits, as most of them are facilities that should be provided to cater for the needs of future residents within the proposed developments. **[88]**
294. Although the appeal proposals would result in environmental harm due to loss of open countryside and the changes to the landscape, there would also be potential environmental benefits from new planting and proposed biodiversity enhancements. The sites have been found to be in sustainable and accessible locations for the purposes of the emerging JCS and, as such, would offer opportunities to reduce the need to travel by private car. I give these potential benefits limited weight, as much of the planting and landscape improvements would be carried out as mitigation. **[40, 88, 124, 125]**

*Whether Very Special Circumstances Exist*

295. When balancing the harm against other considerations, I have given substantial weight to the harm to the Green Belt by way of inappropriateness, loss of openness and the purposes of including land within it, in accordance

with paragraph 88 of the Framework. In terms of 'any other harm', I am satisfied that the proposals would not cause any significant harm as a result of highway safety or their effect on the flow of traffic, the use of sustainable transport or the risk of flooding, and could potentially provide some benefits. I have found that the Appeal A proposal would result in 'less than substantial harm' to the significance of heritage assets and have attached moderate weight to this harm, which would be to the settings of the relevant Listed buildings, for the reasons that I have previously given. **[107]**

296. Other potential harm that I have considered include the design as indicated on the parameter and masterplans, which I have found to be acceptable; the harm to the character and appearance of the area, to which I have attached moderate weight; the harm due to the loss of BMV agricultural land, to which I have given moderate weight; and the harm to air quality, to which I have given a small amount of weight. I am satisfied that any other potential harm would be adequately mitigated by planning conditions and/or planning obligations.
297. The other considerations that I have found in favour of the proposed developments include the allocation of the appeal sites in the emerging JCS and the acceptance of the JCS Examination Inspector of the need to release them from the Green Belt, which carries very great weight. I have also afforded moderate weight to the provision of additional market and affordable housing, based on the need to deliver the developments within the Council's projected implementation strategy; and considerable weight to the economic benefits of the proposals. In addition, I have given moderate weight to the social benefits and limited weight to any environmental benefits.
298. Taking account of the above, I find that in relation to both of the appeals the other considerations clearly outweigh the harm that I have identified. Looking at the appeals as a whole, I conclude that VSC exist which justify the development in both Appeal A and Appeal B.

### ***Planning Balance and Overall Conclusions***

299. Applying the requirements of S38(6), the harm from the appeal proposals that has been identified by the Council includes conflict with DP policies. In respect of TBLP Policy HOU4, the appeal proposals would represent new residential development outside the defined residential boundaries in conflict with this policy, but the TBLP only covers the period up to 2011 and the emerging JCS has accepted that development would be required outside the defined residential boundaries to provide sufficient housing to meet the housing requirements of the plan period that it covers. Whilst I have concluded that the Council has demonstrated a five-year housing land supply and the relevant DP policies are not to be deemed as out-of-date in this respect, I find that TBLP Policy HOU4 is out-of-date with regard to the period of housing development that it covers. **[24, 25, 140 and 149]**
300. There would be some conflict with TBLP Policy LND4 with regard to the effects of the proposed developments on the character and appearance of the rural landscape. In addition, the appeal proposals would fail to accord with TBLP Policy GRB1 in that they would represent inappropriate development within the

Green Belt. However, this policy does not provide for assessing whether VSC exist. **[24, 27 and 149ii]**

301. In terms of the emerging JCS, although it is in a relatively advanced stage in its progress towards adoption, some of the most relevant policies within the latest Main Modifications Version are the subject of unresolved objections. Therefore, whilst I have given significant weight to the allocation of the appeal sites due to the support expressed by the JCS Examination Inspector and their inclusion in the Main Modifications Version of the emerging JCS, I have attached appropriate weight to each of the policies based on the level of objection and the degree of consistency with policies in the Framework. **[29]**
302. For the reasons given above, I have found that the appeal proposals fail to accord with the DP as a whole. However, my findings that VSC exist to justify the developments in the Green Belt and the inclusion of the appeal sites as allocations in the emerging JCS, with the acceptance of the JCS Examination Inspector, represent material considerations that are sufficient to outweigh the conflict with the DP.
303. Should the SofS find relevant DP policies to be out-of-date either through the lack of a five-year housing land supply under paragraph 49 of the Framework or through being 'time-limited', the 'tilted balance' in paragraph 14 would apply. In this respect, I am satisfied that any adverse impacts of granting permission for either of the proposed developments would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

## **16 Recommendations**

304. I recommend that both Appeal A and Appeal B be allowed, and planning permission be granted subject to the conditions set out in Appendix C. If the SofS is minded to agree, I also recommend that the S106 Agreements and Unilateral Undertakings take effect for both appeal proposals as indicated at paragraph 221.

*M J Whitehead*

INSPECTOR

## APPENDIX A: APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Sarah Clover	of Counsel, instructed by Sara Freckleton, Borough Solicitor Tewkesbury Borough Council
She called	
Matthew Barker BSc(Hons) MA MRTPI	Planning Policy Manager, Tewkesbury Borough Council
Alice Goodall BSc(Hons) MA MRTPI	Urban Design Officer, Tewkesbury Borough Council
Paul Smith BA(Hons) BSc(Hons) DipDesBltEnvnt MRTPI	Planning Consultant
Michael Thomas BSc(Hons) CEng CWEM MICE MCIWEM	Thomas Consulting

### FOR THE APPELLANT:

Anthony Crean	QC, instructed by David Hutchison of Pegasus Planning Group
He called	
Neil Tiley Assoc RTPI	Associate, Pegasus Planning Group
David Hutchison BSc(Hons) DipTP MTPI	Executive Director, Pegasus Planning Group
Peter Finlayson BSc CEng MICE MCIHT MCIWEM	PFA Consulting plc
Peter Amies BSc(Hons)	Director, Phoenix Design Partnership

### FOR HIGHWAYS ENGLAND:

Jeremy Burns	of Counsel, instructed by Highways England
<i>For site visit and discussion on planning conditions-</i>	
David Lear HNC BSc(Hons) IEng FIHE	Associate Director, CH2M Highways Consultancy

### FOR GLOUCESTERSHIRE COUNTY COUNCIL (LOCAL HIGHWAY AUTHORITY):

Leanne Buckley-Thomson	of Counsel, instructed by Gloucestershire County Council
<i>For site visit and discussion on planning conditions-</i>	
Jamie Mattock EngTech MIHE	Team Leader, Highways Development Management, Gloucestershire County Council

### FOR TWIGWORTH PARISH COUNCIL:

Helen Ford	Chair, Twigworth Parish Council
Patrick Moss	Highways Consultant
George Sharpley	Twigworth Parish Councillor
Professor Ian Cluckie FEng AcadCAE FRSA	Emeritus Professor of Engineering, Swansea University

*For site visit and/or cross examination only*

Richard Minter	Down Hatherley Parish Councillor
David Evans	Chair, Down Hatherley Parish Council
Sarah Yates	Twigworth resident

INTERESTED PERSONS:

Ruth Warne	Clerk, Innsworth Parish Council
Councillor Phil Awford	Councillor, Tewkesbury Borough Council and Gloucestershire County Councillor
Councillor Graham Bocking	Councillor, Tewkesbury Borough Council
Councillor Alexander Evans	Councillor, Tewkesbury Borough Council
David Evans	Chair, Down Hatherley Parish Council
Helen Ford	Chair, Twigworth Parish Council
Hilary Earl	Twigworth resident
George Sharpley	Twigworth Parish Councillor
James Miller	Twigworth resident
Andrew Seccombe	Twigworth Court resident
Stephen Norgate	Norton Parish Councillor
Chris Stevens	Down Hatherley resident
Steve King	Innsworth Parish Councillor
Ellie Stevenson	Down Hatherley resident
Julie Evans	Churchdown Parish Councillor
Richard Minter	Down Hatherley Parish Councillor
Councillor Mark Williams	Councillor, Tewkesbury Borough Council
Paul Gay	Twigworth resident
Dave Doughty	Innsworth resident
Ken Watson	Twigworth Parish Councillor
Colin McLean	Innsworth resident
Sarah Yates	Twigworth resident

## **APPENDIX B: DOCUMENTS**

### **A Twigworth (Appeal A) Application Documents**

A1	Application forms
A2	Notices to Owners and Tenants
A3	Covering letter with application
A4	Site Location Plan - TW.SLP.01 Rev A
A5	Indicative Masterplan - H.0361_17D-1
A6	Green Infrastructure Parameter Plan - H.0361_17D-43
A7	Movement and Access Parameter Plan - H.0361_17D-41
A8	Land Use Parameter Plan - H.0361_17D-44
A9	Building Heights Parameter Plan - H.0361_17D-42
A10	A38 Proposed Access Arrangements - H452/1 Rev B (Transport Assessment, Appendix P)
A11	Site Survey (Sheet 1 of 4) - 1191/01A
A12	Site Survey (Sheet 2 of 4) - 1191/02
A13	Site Survey (Sheet 3 of 4) - 1191/03A
A14	Site Survey (Sheet 4 of 4) - 1191/04
A15	Planning Statement (including draft Heads of Terms and Affordable Housing Statement), dated October 2015, prepared by Pegasus
A16	Design and Access Statement, dated October 2015, prepared by Pegasus Urban Design
A17	Statement of Community Involvement, dated October 2015, prepared by Pegasus
A18	Sustainability Statement, dated October 2015, prepared by Pegasus
A19	Waste Management Statement, dated October 2015, prepared by Pegasus
A20	Retail Statement, dated October 2015, prepared by Pegasus
A21	Transport Assessment – Main Text (reference: H452-DOC03 TA) dated October 2015, prepared by PFA Consulting Limited
A22	Transport Assessment – Figures and Appendices (reference: H452-DOC03 TA), dated October 2015, prepared by PFA Consulting Limited
A23	Residential Travel Plan (reference; H452-DOC04 TP), dated October 2015, prepared by PFA Consulting Limited
A24	Utilities Statement (reference: TWIG/US/01), dated October 2015, prepared by Robert Hitchins Limited
A25	Flood Risk Assessment (included within the Environmental Statement Technical Appendices).
A26	Environmental Statement Volume 1 – Main Text, dated October 2015
A27	Environmental Statement Volume 2 – Technical Appendices, dated October 2015
A28	Environmental Statement: Non-Technical Summary, dated October 2015
A29	Decision Notice (19 January 2016)
A30	Officer Committee Report

### **Additional Documentation**

- A31 Environmental Statement Addendum April 2017
- A32 Environmental Statement Non-Technical Summary April 2017

### **Application Consultation Responses**

- A33 Highways England 19 November 2015
- A34 Gloucestershire County Council - Highways
- A35 Local Lead Flood Authority January 2016
- A36 Environment Agency September 2016
- A37 Natural England
- A38 Historic England
- A39 Gloucestershire County Council Archaeology
- A40 Gloucestershire County Council S106
- A41 Tewkesbury Borough Council Housing Enabling and Policy Officer
- A42 Tewkesbury Borough Council Landscape Officer
- A43 Tewkesbury Borough Council Environmental Health
- A44 Chaceley Parish Council
- A45 Churchdown Parish Council
- A46 Down Hatherley Parish Council
- A47 Sandhurst Parish Council
- A48 Twigworth Parish Council
- A49 Minsterworth Parish Council
- A50 Severn Trent Water

### **Correspondence and Documents Associated with the Appeal**

- A51 *Not Used*
- A52 *Not Used*
- A53 Pre-Inquiry Meeting Notes for the Inspector (28 March 2017)

### **B Innsworth (Appeal B) Application Documents**

- B1 Application forms 8 December 2015
- B2 Notices to Owners and Tenants 8 December 2015
- B3 Covering letter with application 8 December 2015
- B4 Site Location Plan H.0355\_43-1
- B5 Indicative Masterplan H.0355\_05-1L
- B6 Land Use Parameter Plan H.0355\_29A-1
- B7 Building Height Parameter Plan H.0355\_29A-2
- B8 Movement and Access Parameter Plan H.0355\_29A-3
- B9 Green Infrastructure Parameter Plan H.0355\_29A-4
- B10 Planning Statement, dated June 2015, prepared by Pegasus
- B11 Design and Access Statement, dated June 2015, prepared by Pegasus Urban Design
- B12 Statement of Community Involvement, dated June 2015, prepared by Pegasus
- B13 Sustainability Statement, dated June 2015, prepared by Pegasus
- B14 Retail Impact Assessment, dated July 2015, prepared by Pegasus
- B15 Waste Management Statement, dated June 2015, prepared by Pegasus
- B16 Utilities Statement, dated June 2015, prepared by Robert Hitchins Ltd
- B17 Transport Assessment – Main Text, (reference: H451) dated June 2015, prepared by PFA Consulting Limited

- B18 Transport Assessment – Figures and Appendices (reference: H451), dated June 2015, prepared by PFA Consulting Limited
- B19 Framework Travel Plan, reference H451-DOC05 FTP, dated June 2015, prepared by PFA Consulting Limited
- B20 Flood Risk Assessment (*included within the Environmental Statement Technical Appendices*)
- B21 Environmental Statement Volume 1 – Main Text, dated June 2015
- B22 Environmental Statement Volume 2 – Technical Appendix, dated June 2015
- B23 Environmental Statement: Non-Technical Summary, dated June 2015
- B24 Additional Ecology- Letter % January 2016 by Ecology Solutions
- B25 Committee Report
- Additional Documentation**
- B26 Environmental Statement Addendum April 2017
- B27 Environmental Statement Non-Technical Summary April 2017
- Application Consultation Responses**
- B28.1 Highways England dated 24 August 2015
- B28.2 Highways England dated 24 February 2016
- B28.3 Highways England dated 22 August 2016
- B29 Natural England dated 1 September 2015
- B30 Historic England 21 August 2015
- B31 Environment Agency 1 June 2016
- B32 Public Health England 15 December 2015
- B33.1 Severn Trent – Foul Water 14 August 2015
- B33.2 Severn Trent – Foul Water 7 October 2015
- B34 Gloucestershire County Council Education 12 August 2016
- B35 Gloucestershire County Council Lead Flood Authority 20 August 2015
- B36 Gloucestershire County Council Archaeology 4 August 2015
- B37 Gloucestershire Wildlife Trust 14 April 2016
- B38 Gloucester City Council 3 December 2015
- B39 Tewkesbury Borough Council Urban Design 10 July 2015
- B40 Tewkesbury Borough Council Landscape Officer 11 November 2015
- B41 Tewkesbury Borough Council Environmental Health – Air Quality
- B42 Tewkesbury Borough Council Environmental Health – Noise
- B43 Tewkesbury Borough Council Environmental Health – Lighting
- B44 Tewkesbury Borough Council Environmental Health – Landfill Gas 17 November 2015
- B45 Tewkesbury Borough Council Environmental Health – Ground Conditions 11 September 2015
- B46 Tewkesbury Borough Council Housing Officer 9 October 2015
- B47 Tewkesbury Borough Council Planning Policy – Gypsy & Travellers 31 December 2015
- B48 Innsforth Parish Council 3 May 2016
- B49 Churchdown Parish Council November 2015
- B50.1 Down Hatherley Parish Council August 2015
- B50.2 Down Hatherley Parish Council September 2015
- B50.3 Down Hatherley Parish Council

- B51 Neighbourhood Plans Tree/Orchard Officer 9 November 2015
- B52 Friends of Churchdown Park 11 November 2015
- B53 Councillor Bocking 9 November 2015
- B54 Councillors James, Porter & Williams 5 January 2016

**C National Planning Policy and Guidance**

- C1 National Planning Policy Framework (NPPF) 2012
- C2 National Planning Practice Guide
- C3 Written Ministerial Statement by Gavin Barwell- Minister of State for Housing and Planning for London, 12 December 2016 (HCW5346)
- C4 Department for Communities and Local Government White Paper 'Fixing our broken housing market' February 2017
- C5 Community Infrastructure Levy Regulations
- C6 Letter from Brandon Lewis MP to Simon Ridley (Chief Executive of the Planning Inspectorate) 27 March 2015
- C7 The Town and Country Planning (Development Management Procedure) (England) Order 2010, submitted to the Inquiry by the appellant on 20 June
- C8 The Town and Country Planning (Development Management Procedure) (England) Order 2015, submitted to the Inquiry by the appellant on 20 June

**D Flood Risk Documents**

- D1 Tewkesbury Borough Council Strategic Flood Risk Assessment Level 1 September 2008
- D2 Joint Core Strategy Strategic Flood Risk Assessment Level 2 October 2011
- D3 Joint Core Strategy Strategic Flood Risk Assessment Level 2 Additional Sites December 2016
- D4 Thomas Consulting Report – Review of Flood Risk Information Relating to Land at Twigworth for the Joint Core Strategy
- D5 Capita - Innsworth and Twigworth: Climate Change Assessment Technical Note 4 August 2016
- D6 Phoenix Design Partnership letter to the Environment Agency – Innsworth 16 October 2016
- D7 Phoenix Design Partnership letter to the Environment Agency – Innsworth 13 January 2017 (with enclosures)
- D8 Environment Agency Letter to The Planning Inspectorate – Twigworth 16 September 2016
- D9 Phoenix Design Partnership letter to The Planning Inspectorate – Twigworth 14 October 2016
- D10 Phoenix Design Partnership letter to the Environment Agency – Twigworth 19 January 2017 (with enclosures)
- D11 Environment Agency Guidance – Flood Risk assessments: Climate Change Allowances 19 February 2016, updated 3 February 2017
- D12 Letter from Environment Agency to LPA 25 May 2017

- D13 Letter from Environment Agency to PINS 2 June 2017
- D14 Emails between Appellant and Lead Local Flood Authority June 2017
- D15 Tewkesbury Borough Council Minutes of Extraordinary Meeting, 31 January 2017, submitted to the Inquiry by the appellant on 20 June

**E Tewkesbury Borough Council Local Planning Policies and Guidance and other relevant Local Policy Documents and studies**

- E1 Tewkesbury Borough Local Plan to 2011, March 2006
- E2 Tewkesbury Borough Local Plan – Saving Direction Letter, 25 March 2009
- E3 *Not used*
- E4 Tewkesbury Borough Council – Affordable Housing SPD
- E5 Tewkesbury Borough Council – Local Development Scheme, April 2013
- E6 *Not used*
- E7 Tewkesbury Borough Council – Green Infrastructure Strategy, June 2014
- E8 The Draft Regional Spatial Strategy for the South West, June 2006
- E9 The Draft Revised Regional Spatial Strategy for the South West incorporating the Secretary of State’s Proposed Changes, July 2008
- E10 Green Belt Review, September 2011
- E11 Joint Core Strategy Broad Locations Report, October 2011
- E12 Joint Core Strategy Landscape and Visual Sensitivity and Urban Design Report, October 2012
- E13 Joint Core Strategy Allocations Report, October 2013
- E14 Joint Core Strategy, Consultation, October 2013
- E15 Joint Core Strategy, Submission Draft, November 2014
- E16 RHL response to Joint Core Strategy Matter 8: Strategic Allocations, dated June 2015
- E17 *Not used*
- E18 Inspector’s Preliminary Findings on Green Belt Release, Spatial Strategy and Strategic Allocations, December 2015
- E19 *Not used*
- E20 Green Belt Paper, Green Belt Sensitivity Maps, December 2015
- E21 JCS Inspector’s Interim Report, May 2016
- E22 Stroud District Council’s Response to the Inspector’s Interim Report, July 2016
- E23 JCS Inspector’s Note of Recommendations, July 2016
- E24 JCS Inspector’s Response to EXAM263, September 2016
- E25 JCS Transport Evidence Base, October 2016
- E26 Appraisal Addendum Report, October 2016
- E27 Report to the Extraordinary Meeting of Tewkesbury Borough Council, 25 October 2016
- E28 Minutes of an Extraordinary Meeting of Tewkesbury Borough Council, 25 October 2016

- E29 Minutes of the Special Meeting of Gloucester City Council, 24 October 2016
- E30 Minutes of the Extraordinary Meeting of Cheltenham Borough Council, 18 October 2016
- E31 JCS Letter to Inspector from Leaders, September 2016
- E32 JCS Inspector's Response to the JCS Letter to Inspector, October 2016
- E33 Joint Core Strategy Table of Main Modifications, February 2017
- E34 Representations to Main Modifications prepared on behalf of the Appellant, April 2017
- E35 Joint Core Strategy Proposed Main Modifications, February 2017, submitted to the Inquiry by the appellant on 20 June

**F Housing Land Availability**

- F1 Gloucestershire Strategy Housing Market Assessment (SHMA) 2014
- F2 Joint Core Strategy Housing Implementation Strategy, January 2017
- F3 Tewkesbury Borough Council Five Year Housing Land Supply Calculation Report, March 2017
- F4 Local Plans Expert Group – Local Plans Report to Government, March 2016, Appendix 13
- F5 Joint Core Strategy Proposed Modifications - Response of Wychavon District Council to PMM128, 10 April 2017
- F6 Report to Malvern Hills District Council Worcester City Council and Wychavon District Council, 4 February 2016
- F7 Report to Daventry District, Northampton Borough and South Northamptonshire Councils, 2 October 2014
- F8 South Worcestershire Development Plan, February 2016 - Extract
- F9 Tewkesbury Borough Council Monitoring Report 2016/17
- F10 Tewkesbury Borough Five Year Housing Land Supply Statement, June 2017

**G Transport**

- G1 Department for Transport Circular 02/2013 'The Strategic Road Network and the delivery of sustainable development.'
- G2.1 Design Manual for Roads and Bridges (DMRB) TD 16/07 'Geometric Design of Roundabouts'
- G2.2 DMRB TD 50/04 'The Geometric Layout of signal controlled junctions and signalised roundabouts'
- G2.3 DMRB TA 78/97 'Design of road markings at roundabouts'
- G3 Highways England: The Strategic Road Network: Planning for the Future, September 2015
- G4 Highways Agency & The Planning Application Process: A Protocol 2014
- G5 Manual for Streets 1, March 2007
- G6 Manual for Streets 2, September 2010
- G7 Manual for Gloucestershire Streets 3<sup>rd</sup> Edition, June 2013
- G8 *Not used*

G9	<i>Not used</i>
G10	<i>Not used</i>
G11	Gloucestershire Local Transport Plan – <i>Extracts</i>
G12	<i>Not used</i>
G13	CIHT Providing for Journeys on Foot, 2000
G14	CIHT Providing for Public Transport in Developments
G15	<i>Not used</i>
G16	<i>Not used</i>
G17	<i>Not used</i>
G18	<i>Not used</i>
G19	<i>Not used</i>
G20	JCS Transport Mitigation Strategy, 10 July 2015
G21	JCS Strategic Allocation Testing – DS1 and DS2 Results for AM and PM Peak Hours, 15 October 2014
G22	JCS DS3 Final Strategy Results, 24 December 2014 (EXAM 86)
G23	Technical Note – DS3a Test [Second Issue] 2 June 2015 (EXAM 71)
G24	A40(T) Site Access Roundabout - RSA1, 19 April 2017
G25	A40(T) Site Access Roundabout - Design Team Response to RSA1, 27 April 2017
G26	Longford Roundabout Full Signalisation Improvement Scheme - RSA1, 12 May 2017
G27	Longford Roundabout Full Signalisation Improvement Scheme: Design Team Response to RSA1, 16 May 2017
G28	Drawing no. H451/11 Revision C 'The A40 Site Access serving the Innsworth Strategic Allocation'
G29a	Drawing no. H451/15 Revision A 'Longford Roundabout Full Signalisation Improvement Scheme'
G29b	Drawing no. H451/15 Revision B 'Longford Roundabout Full Signalisation Improvement Scheme'
G30	S-Paramics Traffic Model Development & Validation Report – Issue 2 by PFA Consulting, 20 February 2017
G31	S-Paramics Model Forecasting and Junction Assessment Report – Issue 2 by PFA Consulting, 27 April 2017
G32	Technical Memorandum: 'Forecast S-Paramics and Junction Modelling Review' by CH2M, 26 April 2017
G33	PFA Consulting's File Note dealing with the CH2M review of S-Paramics model forecasting and junction modelling (H451-FN30) supplied on 5 May 2017
G34	Technical Memorandum: 'Second stage Forecast Modelling Review' by CH2M, 18 May 2017
G35	Highways England Licence

## **H Relevant Appeal Decisions, Planning Applications and Legal Judgments**

H1	APP/G1630/V/14/2229497 - Secretary of State's decision regarding Land at Perrybrook, North of Brockworth (March 2016)
H2	Suffolk Coastal District Council v Hopkins Homes Ltd, and Richborough Estates Partnership LLP and Cheshire East Borough

- H3 Council Supreme Court Judgement (2017)  
St Modwen Developments v Secretary of State for Communities  
and Local Government and the East Riding of Yorkshire [2016]  
EWHC 968 (Admin)
- H4 Cotswold District Council vs Secretary of State [2013] EWHC  
3719 (Admin)
- H5 Wainhomes (South West) Holdings Limited and the Secretary of  
State [2013] EWHC 597 (Admin)
- H6 APP/C3105/A/13/2201339 Land North of Gaveston Gardens and  
Rear of Manor Farm, Banbury Road, Deddington 18 December  
2013
- H7 APP/P1615/A/14/2228466 Land off Chartist Way, Staunton 3 July  
2015
- H8 APP/D3125/W/3139687 Land west of Shilton Road, Burford  
17 January 2017
- H9 APP/G5180/W/16/3144248 Land to the rear of former Dylon  
International Premises, Station Approach, Lower Sydenham  
2 August 2016
- H10 APP/W0530/A/13/2207961 Land to the west of Cody Road,  
Waterbeach 25 June 2014
- H11 APP/G1630/A/3133376 - Proof of Evidence of Mr Baker  
(Tewkesbury Borough Council) for the Land at Stoke Road,  
Bishops Cleeve Public Inquiry
- H12 APP/K3415/A/14/2224354 – Secretary of State decision  
regarding Land and buildings off Watery Lane, Curborough,  
Lichfield 13 February 2017
- H13 Appeal Ref: APP/F1610/16/W/3151754 - Land South of Love  
Lane, Cirencester 13 June 2017
- H14 Legal Note on Grampian Conditions Test prepared by Anthony  
Crean QC
- H15 Tewkesbury Borough Council Note on the Grampian Condition  
Test

## **I Statements of Common Ground**

- I1 Twigworth Statement of Common Ground between the appellant  
and Tewkesbury Borough Council 4 June 2017
- I2 Innsworth Statement of Common Ground between the appellant  
and Tewkesbury Borough Council 4 June 2017
- I3 Statement of Common Ground on Highways and Transportation-  
Related Matters concerning the Strategic Road Network between  
the appellant and Highways England 5 June 2017
- I4 Statement of Common Ground on Highways and Transportation-  
Related Matters between the appellant and Gloucestershire  
County Council 13 June 2017
- I4A Statement of Common Ground on Highways and Transportation-  
Related Matters between the appellant and Gloucestershire  
County Council 29 June 2017, submitted at the Inquiry by the  
appellant on 7 July
- I5 Statement of Common Ground on Housing Land Supply between

- I6 the appellant and Tewkesbury Borough Council, submitted at the Inquiry by the appellant on 20 June  
Statement of Common Ground on Matters Relating to Drainage and Flooding between the appellant, Environment Agency and Gloucestershire County Council, submitted at the Inquiry by the appellant on 5 July

## **J Statements of Case**

### **Appeal A - Twigworth**

- J1 Appellant - Planning Statement of Case, 17 July 2016  
J2 Tewkesbury Borough Council Statement of Case, undated  
J3 Highways England Statement of Case, October 2016  
J4 Gloucestershire County Council Statement of Case, undated  
J5 Twigworth Parish Council, May 2017

### **Appeal B - Innsworth**

- J6 Appellant - Planning Statement of Case, 25 November 2016  
J7 Tewkesbury Borough Council Statement of Case, undated  
J8 Highways England Statement of Case, March 2017  
J9 Gloucestershire County Council Statement of Case, undated

## **K Draft Planning Obligations and Plans**

- K-T1 Twigworth Draft S106 – Affordable Housing  
K-T2 Twigworth Draft S106 – Education and Libraries  
K-T3 Twigworth Draft S106 – Highways and Transportation  
K-T4 Twigworth Draft S106 – Public Open Space  
K-I1 Innsworth Draft S106 – Affordable Housing  
K-I2 Innsworth Draft S106 – Education and Libraries  
K-I3 Innsworth Draft S106 – Highways and Transportation  
K-I4 Innsworth Draft S106 – Public Open Space

## **L Other Inquiry Documents**

- L1 Email from David Hutchison to PINS – setting out the boundary matter including attached maps 16 May 2016 10:22  
L2 Email from Paul Skelton to PINS 16 May 2017 11:36  
L3 Email from David Hutchison to Paul Skelton– setting out the Appellants position 17 May 2017 14:51  
L4 Email from Paul Skelton to PINS – requesting clarification 18 May 2017 07:14  
L5 Email from David Hutchison to PINS – setting out the appellants position 18 May 2016 11:19  
L6 Email from Paul Skelton to PINS – requesting clarification 18 May 2017 16:41  
L7 Email from David Hutchison to PINS) – response to Paul Skelton 18 May 2017 23:26  
L8 Email from Paul Skelton to PINS – requesting clarification 19 May 2017 08:20  
L9 Email from PINS to Appellants and LPA - requesting position in respect of red line 19 May 2017 11:09

- L10 Email from David Hutchison to PINS – setting out Appellants position and consultations to be undertaken 19 May 2017 16:47
- L11 Appellant Letter to LPA outlining consultations 24 May 2017
- L12 Innsworth Proposed Revision to Application Boundary H.0355\_47
- L13 Innsworth Site Location Plan H.0355\_43-1
- L14 Copy of leaflet distributed
- L15 Copy of Newspaper Advert
- L16 Responses to the Planning Inspectorate following the appellant's consultations, submitted to the Inquiry by the appellant on 20 June

**M Correspondence re Adjournment of Public Inquiry**

- M1 Letter from Highways England to the Planning Inspectorate, dated 21 April 2017
- M2 Appellant Letter to Planning Inspectorate re Highways England request for adjournment, dated 25 April 2017
- M3 Letter from Gloucestershire County Council to Planning Inspectorate, dated 27 April 2017
- M4 Appellant Letter to Planning Inspectorate re Gloucestershire County Council request for adjournment, dated 27 April 2017
- M5 Letter from Gloucestershire County Council to Planning Inspectorate, dated 3 May 2017
- M6 Appellant Letter to Planning Inspectorate re Gloucestershire County Council request for adjournment, dated 3 May 2017

**N Other Inquiry Documents**

- N1 Natural England Email, May 2017, submitted to the Inquiry by the appellant on 20 June
- N2 Highways England Position Statement 19 June 2017, submitted at the Inquiry by Highways England on 20 June
- N3a Summary of FCC Environment v Secretary of State for Communities and Local Government and East Riding of Yorkshire Council [2014] EWHC 2035 (Admin), submitted at the Inquiry by Highways England on 20 June
- N3b High Court Decision - FCC Environment v Secretary of State for Communities and Local Government and East Riding of Yorkshire Council [2014] EWHC 2035 (Admin), submitted at the Inquiry by the appellant on 22 June
- N4 Opening Submissions on behalf of the appellant, submitted at the Inquiry by the appellant on 20 June
- N5 Opening on behalf of Tewkesbury Borough Council, submitted at the Inquiry by the Council on 20 June
- N6 Opening Submissions on behalf of the local highway authority Gloucestershire County Council, submitted at the Inquiry by Gloucestershire County Council on 20 June
- N7 Copy of Twigworth Parish Council Opening Speech, submitted by Twigworth Parish Council on 22 June
- N8 Site Visit Note and Plan, submitted at the Inquiry by the appellant on 20 June

- N9 Gloucester City Housing Land Supply Note prepared by Neil Tiley, submitted at the Inquiry by the appellant on 21 June
- N10 High Court Decision – Gallagher Homes and Lioncourt Homes v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin), submitted at the Inquiry by the Council on 21 June
- N11 High Court Decision - Gladman Development Ltd and Secretary of State for Communities and Local Government v Daventry District Council [2015] EWHC 3459 (Admin), submitted at the Inquiry by the Council on 21 June
- N12 Court of Appeal Decision – Gladman Development Ltd v Daventry District Council and Secretary of State for Communities and Local Government [2016] EWCA Civ 1146, submitted at the Inquiry by the Council on 21 June
- N13 Extract from National Planning Practice Guidance on Conditions paragraph 008 Ref ID: 21a-008-20140306 (6.3.2014), submitted at the Inquiry by the appellant on 22 June
- N14 Court of Appeal Decision – Secretary of State for Communities and Local Government, Reigate & Banstead Borough Council and Tandridge District Council v Redhill Aerodrome Limited [2014] EWHC Civ 1386, submitted at the Inquiry by the appellant on 22 June
- N15 Written Statements from the public arising from the session at Innsworth Community Hall starting at 1900 hours on 22 June 2017
- N16 Gloucestershire County Council Position Statement dated 22 June 2017, submitted at the Inquiry by Gloucestershire County Council on 23 June
- N17 Highways England Position Statement dated 23 June 2017, submitted at the Inquiry by Highways England on 23 June
- N18 PFA Consulting File Note 39 'S-Paramics model outputs for Scenario 6B', submitted at the Inquiry by the appellant on 23 June
- N19 Revised Statement of Common Ground between Gloucestershire County Council and the appellant (unsigned), submitted at the Inquiry by the appellant on 23 June
- N20 Appellant's Draft conditions (initial) - Innsworth, submitted at the Inquiry by the appellant on 23 June
- N21 Appellant's Draft conditions (initial) - Twigworth, submitted at the Inquiry by the appellant on 23 June
- N22 Tewkesbury Borough Council – Draft conditions (initial) - Innsworth and Twigworth, submitted at the Inquiry by the Council on 23 June
- N23 Tewkesbury Borough Council CIL Compliance Note - Innsworth, submitted by the Council on 23 June
- N24 Tewkesbury Borough Council CIL Compliance Note - Twigworth, submitted by the Council on 23 June
- N25 Appellant's S106 Planning Obligations CIL Compliance Note, submitted at the Inquiry by the appellant on 23 June
- N26 S106 Planning Obligations Summary Note, submitted at the Inquiry by the appellant on 23 June
- N27 Appellant's File Note 43 - Dwellings, submitted at the Inquiry by

- the appellant on 23 June
- N28 Draft S106 Agreements and Unilateral Undertakings, submitted at the Inquiry by the appellant on 23 June
- N29 Planning Obligations - CIL Compliance Statement Land at Twigworth, submitted by the Council on 26 June
- N30 Planning Obligations - CIL Compliance Statement Land North of Innsworth, submitted by the Council on 26 June
- N31 Gloucestershire County Council - Planning Obligations (Libraries and Education Infrastructure) CIL Compliance Statement, submitted by Gloucestershire County Council on 26 June
- N32 Gloucestershire County Council Planning Obligations - CIL Compliance Statement, submitted by Gloucestershire County Council on 26 June
- N33 Gloucestershire's Local Transport Plan 2015-2031 Policy Document PD6-Thinktravel, submitted by Gloucestershire County Council on 26 June
- N34 Gloucestershire County Council Advice Sheet No 7 Residential Travel Plans Rev 3, 13 December 2010, submitted by Gloucestershire County Council on 26 June
- N35 Costs application by Highways England against Robert Hitchins Limited, submitted by Highways England on 27 June
- N36 Appellant's response to the application for costs from Highways England, submitted by the appellant on 3 July
- N37 Court Decision – Barwood Strategic Land II LLP v East Staffordshire Borough Council and Secretary of State for Communities and Local Government [2017] EWCA Civ 893, submitted by the appellant at the Inquiry on 5 July
- N38 Twigworth Parish Council Flood Threats Presentation Document by George Sharpley, submitted at the Inquiry by Twigworth Parish Council on 5 July
- N39 Twigworth Parish Council Notes on aspects of Flood Risk by Professor Ian Cluckie, submitted at the Inquiry by Twigworth Parish Council on 5 July
- N40 Appellant's Statement on Flooding and Drainage by Peter Amies, submitted at the Inquiry by the appellant on 5 July
- N41 Tewkesbury Borough Council Updated CIL Compliance Note - Twigworth, submitted by the Council on 5 July
- N42 Tewkesbury Borough Council Updated CIL Compliance Note - Innsworth, submitted by the Council on 5 July
- N43 Letter, dated 3 July 2017 from Pegasus Group to Tewkesbury Borough Council requesting a concession on the case regarding flooding, submitted by the appellant at the Inquiry on 5 July
- N44 Letter, dated 4 July from Tewkesbury Borough Council in response to the request for a concession on the case regarding flooding, submitted by the appellant at the Inquiry on 5 July
- N45 Appellant's application for costs against Tewkesbury Borough Council, submitted by the appellant at the Inquiry on 5 July
- N46 Court of Appeal Decision - Crystal Properties (London) Ltd v Secretary of State for Communities and Local Government and London Borough of Hackney Council [2016] EWCA Civ 1265, submitted by the Council at the Inquiry on 5 July

- N47 Tewkesbury Borough Council Application for Costs, submitted by the Council at the Inquiry on 5 July
- N48 High Court decision – St Modwen Developments Limited v Secretary of State for Communities and Local Government, East Riding of Yorkshire Council and Save Our Ferriby Action Group [2016] EWHC 968 (Admin), submitted by the Council at the Inquiry on 5 July
- N49 Twigworth draft Conditions, submitted by the Council at the Inquiry on 5 July
- N50 Innsworth draft Conditions, submitted by the Council at the Inquiry on 5 July
- N51 Twigworth updated draft Conditions, submitted by the Council at the Inquiry on 6 July
- N52 Innsworth updated draft Conditions, submitted by the Council at the Inquiry on 6 July
- N53 Appellant’s Response to Council’s Cost Claim Application, submitted by the appellant at the Inquiry on 6 July
- N54 Appellant’s Response to Crystal Properties, submitted by the appellant at the Inquiry on 6 July
- N55 Twigworth Parish Council Closing Statement for the Public Inquiry, submitted by Twigworth Parish Council at the Inquiry on 7 July
- N56 Closing submissions on behalf of the Local Highway Authority Gloucestershire County Council, submitted by the Council at the Inquiry on 7 July
- N57 Closing on behalf of Tewkesbury Borough Council, submitted by the Council at the Inquiry on 7 July
- N58 Twigworth final draft Conditions, submitted by the Council at the Inquiry on 7 July
- N59 Innsworth final draft Conditions, submitted by the Council at the Inquiry on 7 July
- N60 Costs Response on behalf of Tewkesbury Borough Council, submitted by the Council at the Inquiry on 7 July
- N61 Closing submissions on behalf of the Appellant, submitted by the appellant at the Inquiry on 7 July
- N62 Twigworth Draft Conditions submitted by the appellant on 7 July
- N63 Innsworth Draft Conditions submitted by the appellant on 7 July
- N64 Certified copies of S106 Agreements and Unilateral Undertakings, submitted by the appellant on 12 July

## **Appeal A – Twigworth Proofs of Evidence**

### **The Appellant Proofs of Evidence**

- T-APP1 Appellant’s Proof of Evidence on Planning Matters – David Hutchison
- T-APP2 Appellant’s Appendices to Proof of Evidence on Planning – David Hutchison
- T-APP3 Appellant’s Summary Proof of Evidence on Planning Matters – David Hutchison
- T-APP4 Appellant’s Rebuttal on Planning Matters – David Hutchison
- T-APP5 Appellant’s Proof of Evidence on Housing Land Supply – Neil Tiley\*

- T-APP6 Appellant's Appendices to Proof of Evidence on Housing Land Supply – Neil Tiley\*
- T-APP7 Appellant's Summary Proof of Evidence on Housing Land Supply – Neil Tiley\*
- T-APP9 Appellant's Proof of Evidence on Transport Matters – Peter Finlayson\*
- T-APP10 Appellant's Appendices to Proof of Evidence on Transport Matters – Peter Finlayson\*
- T-APP11a Appellant's Rebuttal to Highways England on Transport Matters – Peter Finlayson
- T-APP11b Appellant's Rebuttal to Gloucestershire County Council on Transport Matters – Peter Finlayson
- T-APP12 Appellant's Appendices to Rebuttal on Transport Matters – Peter Finlayson
- T-APP13 Appellant's Proof of Evidence, Appendices and Summary on Flood Risk and Drainage Matters – Peter Amies\*
- T-APP14 Appellant's Rebuttal on Flood Risk and Drainage Matters – Peter Amies

#### **Tewkesbury Borough Council Proofs of Evidence**

- T-LPA1 Tewkesbury Borough Council Proof of evidence – Planning – Paul Smith
- T-LPA5 Tewkesbury Borough Council Proof of evidence and Appendices– Flooding Issues – Michael Thomas
- T-LPA6 Tewkesbury Borough Council Rebuttal to Appellant– Flooding Issues – Michael Thomas\*
- T-LPA9 Tewkesbury Borough Council Proof of evidence – Housing Land Supply – Matt Barker\*
- T-LPA13 Tewkesbury Borough Council Proof of evidence and Appendices – Urban Design – Alice Goodall\*

#### **Rule 6 Parties Proofs of Evidence**

- T-HE1 Highways England Proof of evidence – David Lear\*
- T-HE2 Highways England Appendices Proof of evidence – David Lear\*
- T-HE3 Highways England Summary Proof of evidence – David Lear\*
- T-HE4 Highways England Rebuttal to Appellant– David Lear\*
- T-GCC1 Gloucestershire County Council Proof of evidence – Chris Carter\*
- T-GCC2 Gloucestershire County Council Appendices Proof of evidence – Chris Carter\*
- T-TPC1 Twigworth Parish Council Proof of evidence & Appendices – Ian Cluckie and Patrick Moss

#### **Appeal B – Innsworth Proofs of Evidence**

##### **The Appellant Proofs of Evidence**

- I-APP1 Appellant's Proof of Evidence on Planning Matters – David Hutchison
- I-APP2 Appellant's Appendices to Proof of Evidence on Planning – David Hutchison
- I-APP3 Appellant's Summary Proof of Evidence on Planning Matters – David Hutchison
- I-APP4 Appellant's Rebuttal on Planning Matters – David Hutchison

- I-APP5 Appellant's Proof of Evidence on Housing Land Supply – Neil Tiley\*
- I-APP6 Appellant's Appendices to Proof of Evidence on Housing Land Supply – Neil Tiley\*
- I-APP7 Appellant's Summary Proof of Evidence on Housing Land Supply – Neil Tiley\*
- I-APP9 Appellant's Proof of Evidence on Transport Matters – Peter Finlayson\*
- I-APP10 Appellant's Appendices to Proof of Evidence on Transport Matters – Peter Finlayson\*
- I-APP11a Appellants Rebuttal to Highway England on Transport Matters – Peter Finlayson
- I-APP11b Appellant's Rebuttal to Gloucestershire County Council on Transport Matters – Peter Finlayson
- I-APP12 Appellant's Appendices to Rebuttal on Transport Matters – Peter Finlayson
- I-APP13 Appellant's Proof of Evidence, Appendices and Summary on Flood Risk and Drainage Matters – Peter Amies\*
- I-APP14 Appellant's Rebuttal on Flood Risk and Drainage Matters – Peter Amies

**Tewkesbury Borough Council Proofs of Evidence**

- I-LPA1 Tewkesbury Borough Council Proof of evidence – Planning – Paul Smith
- I-LPA9 Tewkesbury Borough Council Proof of evidence – Housing Land Supply – Matt Barker\*
- I-LPA13 Tewkesbury Borough Council Proof of evidence and Appendices – Urban Design – Alice Goodall\*
- I-LPA17 Tewkesbury Borough Council Proof of evidence and Appendices – Flooding Issues – Michael Thomas
- I-LPA18 Tewkesbury Borough Council Rebuttal to appellant – Flooding Issues – Michael Thomas\*

**Rule 6 Parties Proofs of Evidence**

- I-HE1 Highways England Proof of evidence – David Lear\*
- I-HE2 Highways England Appendices Proof of evidence – David Lear\*
- I-HE3 Highways England Summary Proof of evidence – David Lear\*
- I-HE4* Highways England Rebuttal to Appellant – David Lear\*
- I-GC1 Gloucestershire County Council Proof of evidence – Chris Carter\*
- I-GC2 Gloucestershire County Council Appendices Proof of evidence – Chris Carter\*

NOTE: \* denotes a single report covering both Appeal A and Appeal B which is provided once.

## **APPENDIX C: RECOMMENDED CONDITIONS**

### **Appeal A Ref: APP/G1630/W/16/3154464**

- 1) No part of the development hereby permitted shall be begun until details of the access, appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority for that part of the development. The development shall be carried out as approved.
- 2) Application for the approval of the reserved matters for phase 1 as identified by the Phasing Plan required under condition 6 shall be made to the local planning authority before the expiration of 3 years from the date of this permission. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters approved for phase 1, whichever is the later. Application for approval of reserved matters may be submitted for a full phase or part of a phase.
- 3) Application for the approval of reserved matters for the subsequent phases of development as identified by the Phasing Plan required under condition 6 shall be made to the local planning authority before the expiration of 8 years from the date of this permission. The subsequent phases of development hereby permitted shall be begun no later than 2 years from the date of approval of the last of the reserved matters to be approved for that phase. Application for approval of reserved matters may be submitted for a full phase or for a part of a phase.
- 4) No more than 725 dwellings shall be constructed on the site pursuant to this planning permission.
- 5) The total gross retail floorspace available for use by customers (excluding toilets and other ancillary facilities) of all premises falling within Class A1, A2, A3, A4 and A5 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) shall not exceed 1,200 square metres. Only one of the premises to be used for Class A1, A2, A3, A4 or A5 purposes shall have a gross retail floorspace available for use by customers (excluding toilets and other ancillary facilities) exceeding 75 square metres and it shall not exceed 400 square metres.

#### ***Phasing***

- 6) Prior to or as part of the first reserved matters application a Phasing Plan for the whole site shall be submitted to the local planning authority for approval in writing. The Phasing Plan shall include details of the approximate number of market and affordable dwellings for each phase of development together with general locations and phasing of key infrastructure, including surface water drainage, green infrastructure, informal and formal public open space, areas of play, access for pedestrians, cyclists, buses and vehicles and proposed public transport infrastructure. The Phasing Plan shall be in general accordance with the design principles of the Indicative Masterplan (Drawing No H.0361\_17D-1), the Parameter Plans (Drawing Nos H.0361\_17D-41,

H.0361\_17D-42, H.0361\_17D-43 and H.0361\_17D-44) and the principles and objectives of the Design and Access Statement, October 2015, except where the requirements of other planning conditions require otherwise.

Development shall be carried out in accordance with the approved Phasing Plan.

***Design***

- 7) Notwithstanding the submitted Indicative Masterplan, a Site Wide Masterplan Document (SWMD) shall be submitted to the local planning authority either prior to or alongside the first application for approval of reserved matters. The SWMD shall be in accordance with the submitted Parameter Plans (Drawing Nos H.0361\_17D-41, H.0361\_17D-42, H.0361\_17D-43 and H.0361\_17D-44) except where other planning conditions specify otherwise and shall include a set of Design Principles including:
- a) the principles for determining the design, form, heights and general arrangement of external architectural features of buildings;
  - b) the principles of the hierarchy for roads and public spaces;
  - c) potential arrangements for car parking;
  - d) the principles for the design of the public realm; and
  - e) the principles for the laying out of the green infrastructure, including the access, location and general arrangements of the sports pitches and play areas.

The SWMD shall include a two-dimensional layout drawing that shows:

- a) the broad arrangement of development blocks including indications of active frontages;
- b) density ranges;
- c) maximum building heights;
- d) character areas;
- e) the location and general extent of public open space, including Play Areas;
- f) existing landscape features to be retained; and
- g) proposed structural planting.

Submissions for the approval of the reserved matters shall accord with the approved SWMD, unless otherwise agreed in writing by the local planning authority.

- 8) The first reserved matters application submitted pursuant to Condition 1 shall be accompanied by details of a recycling strategy for the site. The reserved matters applications for each phase shall include details of waste storage provision for that phase which shall be in general accordance with the approved recycling strategy and the development shall be carried out in accordance with the approved details.

***Landscaping***

- 9) The first reserved matters application submitted pursuant to condition 1 shall include the following details:
- a) a plan showing the location of, and allocating a reference number to, all trees on the site which have a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;

- b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
- c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
- d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree; and
- e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

In this condition 'retained tree' means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above. Development shall be carried out in accordance with the approved details.

- 10) The plans and particulars submitted in accordance with condition 1 shall include details of the size, species, and positions or density of all trees, hedgerows and other landscaping features to be planted, and the proposed time of planting, as well as maintenance schedules. 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 in accordance with details to be submitted to and approved in writing by the local planning authority.

***Archaeology***

- 11) No development shall take place within any phase pursuant to condition 6 until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and a programme and methodology of site investigation and recording and the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation. No development within that phase shall take place other than in accordance with the approved Written Scheme of Investigation.

***Ecology***

- 12) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall be in accordance with the mitigation and enhancement measures in the submitted Environmental Statement and the related Addendum dated April 2017. The LEMP shall include measures to protect and manage the Innsworth Meadow Site of Special Scientific Interest. It shall include a timetable for implementation, details for monitoring and review and how areas concerned shall be maintained and managed. Development shall be in accordance with the approved details and timetable in the LEMP.

***Access and Layout***

- 13) The application for approval of reserved matters for the principal vehicular access on to the A38 made pursuant to condition 1 shall be in general accordance with the junction arrangement shown on Drawing No H452/1 Rev B produced by PFA Consulting Limited.
- 14) No building on the development shall be occupied on any Phase until the associated carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the footway(s) to surface course level.
- 15) No more than 250 dwellings hereby permitted shall be occupied until details of improvements to the public right of way from the south of the site to Innsworth Lane have been submitted to and approved in writing by the local planning authority and completed in accordance with the approved details. The details shall be in general accordance with Drawing No INN.PROW.01.

***Highway Mitigation***

- 16) The development hereby permitted shall not commence until a detailed design for a scheme to alter Longford Roundabout (junction of the A40 trunk road and A38) generally in accordance with the scheme shown on Drawing No H451/18 produced by PFA Consulting Limited, dated 9 June 2017, has been submitted to and approved in writing by the local planning authority. The design details shall include flood mitigation/compensation associated with the scheme to avoid any increase in flood risk and be sufficient for the purposes of a Stage 2 Road Safety Audit as defined in Volume 5 Section 2 Part 2 of the Design Manual for Roads and Bridges – Road Safety Audit (HD/15) or any superseding document. Approval shall be defined as meeting the requirements of Volume 5 Section 2 Part 2 of the Design Manual for Roads and Bridges – Road Safety Audit (HD/15) or any superseding document for Stage 2 Road Safety Audits. No more than 150 dwellings and no other building hereby permitted shall be occupied until the approved scheme has been implemented in full to the written approval of the local planning authority.

***Street Maintenance***

- 17) The reserved matters application for each phase submitted pursuant to condition 1 shall include details of the proposed arrangements for future management and maintenance of the proposed streets within that phase or part of a phase. The streets shall thereafter be managed and maintained in accordance with the approved details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established for each phase or part of a phase.

***Construction***

- 18) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;

- iii) storage of plant and materials used in constructing the development;
- iv) wheel washing facilities;
- v) measures to control the emission of dust and dirt during construction;
- vi) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- vii) details of the site access/routeing strategy/signage during the construction period.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

#### ***Travel Plan***

- 19) Prior to the first occupation of the Primary School hereby permitted a Travel Plan in accordance with the approved framework shall be submitted to and approved in writing by the local planning authority, setting out:
- a) objectives and targets for promoting sustainable travel;
  - b) appointment and funding of a travel plan coordinator;
  - c) details of an annual monitoring and review process;
  - d) means of funding of the travel plan; and
  - e) an implementation timetable, including the responsible body for each action.

The approved Travel Plan shall be implemented in accordance with the details and timetable therein, and shall be continued thereafter.

#### ***Levels***

- 20) The reserved matters application for each phase submitted pursuant to condition 1 shall include details of existing and proposed ground levels and ground floor slab levels relative to Ordnance Datum of the buildings within that phase or part of a phase. The development shall be carried out in accordance with the approved details.

#### ***Flooding and Drainage***

- 21) No development hereby permitted shall commence until a detailed surface water drainage strategy for the entire site has been submitted to and approved in writing by the local planning authority. The details shall be based on the Flood Risk Assessment dated 3 September 2015 included within the Environmental Statement and the Addendum dated April 2017. The submitted details shall:
- a) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, details of existing and proposed overland flow routes, and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - b) provide details of compensatory pluvial flood storage capacity within the site;
  - c) provide details of any necessary easements (including those related to the Cox's Brook Catchment);

- d) provide a health and safety risk assessment for the attenuation ponds and incorporate any recommended safety measures;
- e) include details of the phasing for its implementation; and
- f) provide a 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.

No building hereby permitted within each phase of the development, as defined under detail e) above, shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority as part of the reserved matters applications and which accord with the approved site wide drainage strategy for that phase or part of a phase.

- 22) No dwelling hereby permitted shall be located outside Flood Zone 1. All dwellings hereby permitted shall be located above the modelled 1:1,000 flood level (as a proxy to the 1:100 + 70% climate change event), as identified in the Phoenix Design Partnership Flood Risk Assessment and Drainage Strategy dated 29 June 2015 (Capita modelled 1:1,000 flood extent as shown on Drawing No FZ-001 included in Appendix E of the Flood Risk Assessment).
- 23) The floor levels of all buildings hereby permitted shall be set at least 750mm above the modelled 1:1,000 flood level (as a proxy to the 1:100 + 70% climate change event), as identified in the Phoenix Design Partnership Flood Risk Assessment and Drainage Strategy dated 3 September 2015 (Capita modelled 1:1,000 flood extent as shown on Drawing No FZ-001 included in Appendix E of the Flood Risk Assessment).

#### ***Energy Efficiency***

- 24) Prior to first occupation, each dwelling hereby permitted shall be provided with an outside electrical socket to enable ease of installation of an electric vehicle charging point. All sockets shall comply with BS1363 (or other document which may replace or modify it), and shall be provided with a lockable weatherproof cover if located externally to the building.
- 25) Electric vehicle charging points shall be installed in a minimum of 10% of the allocated parking spaces at all commercial properties within the development hereby permitted. All charging points shall comply with BS7671 and the sockets with BS1363 (or other document which may replace or modify them). Each charging point shall be provided with a lockable weatherproof cover if located externally to the building.

#### ***Noise***

- 26) Each reserved matters application submitted pursuant to condition 1 which includes any dwellings shall be accompanied by a noise survey to identify any dwellings that would be likely to be affected by road noise from the A38 Tewkesbury Road. The survey shall have been undertaken by a competent person, shall include periods for daytime as 0700 to 2300 hours and night-time as 2300 to 0700 hours, and shall identify those dwellings which require noise mitigation measures. All dwellings requiring noise mitigation shall thereafter be designed so as not to exceed the noise criteria based on current

figures by the World Health Authority Community Noise Guideline Values/BS8233 'good' conditions given below:

- Dwellings indoors in daytime: 35 dB LAeq,16 hours
- Outdoor living area in day time: 55 dB LAeq,16 hours
- Inside bedrooms at night-time: 30 dB LAeq,8 hours (45 dB LAmax)
- Outside bedrooms at night-time: 45 dB LAeq,8 hours (60 dB LAmax)

No dwelling requiring noise mitigation measures shall be occupied until those noise mitigation measures have been implemented and they shall be maintained as approved thereafter.

- 27) Any reserved matters application submitted pursuant to condition 1 including non-residential buildings shall include details of any extraction, ventilation, cooling and refrigeration equipment to be installed on or in any building. The rated noise level from any extraction, ventilation, cooling and refrigeration equipment to be installed within the application site shall be no more than 5dB LAeq above the night-time background noise level measured at the nearest noise sensitive receptors. The method of assessment shall be carried out in accordance with BS4142:1997: Rating industrial noise affecting mixed residential and industrial areas (or other document which may replace or modify the method of assessment). All approved equipment shall be installed in accordance with the approved details on or in the building prior to occupation and shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

**Appeal B Ref: APP/G1630/W/16/3164033**

- 1) The outline planning permission hereby granted shall relate solely to the land outlined in red on Drawing No H.0355\_43A-1 and excluding the Public Highway land indicated on Drawing No H.0355\_47 as being removed from the original application land.
- 2) No part of the development hereby permitted shall be begun until details of the access, appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority for that phase of the development. The development shall be carried out as approved.
- 3) Application for the approval of the reserved matters for phase 1 as identified by the Phasing Plan required under condition 7 shall be made to the local planning authority before the expiration of 3 years from the date of this permission. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters approved for phase 1, whichever is the later. Application for approval of reserved matters may be submitted for a full phase or part of a phase.
- 4) Application for the approval of reserved matters for the subsequent phases of development as identified by the Phasing Plan required under condition 7 shall be made to the local planning authority before the expiration of 10 years from the date of this permission. The subsequent phases of development hereby permitted shall be begun no later than 2 years from the date of approval of the last of the reserved matters to be approved for that phase.

Application for approval of reserved matters may be submitted for a full phase or for a part of a phase.

- 5) No more than 1,300 dwellings shall be constructed on the site pursuant to this planning permission.
- 6) The total gross retail floorspace available for use by customers (excluding toilets and other ancillary facilities) of all premises falling within Class A1, A2, A3, A4 and A5 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) shall not exceed 2,500 square metres. Only one of the premises to be used for Class A1, A2, A3 or A5 purposes shall have a gross retail floorspace available for use by customers (excluding toilets and other ancillary facilities) exceeding 75sqm and it shall not exceed 2,000 square metres. The total gross internal floorspace, including manager's flat/office, for premises falling within Class A4 shall not exceed 700 square metres.

### ***Phasing***

- 7) Prior to or as part of the first reserved matters application a Phasing Plan for the whole site shall be submitted to the local planning authority for approval in writing. The Phasing Plan shall include details of the approximate number of market and affordable dwellings for each phase of development together with general locations and phasing of key infrastructure, including surface water drainage, green infrastructure, informal and formal public open space, areas of play, access for pedestrians, cyclists, buses and vehicles and proposed public transport infrastructure. The Phasing Plan shall be in general accordance with the design principles of the Indicative Masterplan (Drawing H.0355\_05-1L), the Parameter Plans (Drawing Nos. H.0355-29A-1, H.0355-29A-2, H.0355-29A-3 and H.0355-29A-4) and the principles and objectives of the Design and Access Statement, June 2015, except where the requirements of other planning conditions require otherwise. Development shall be carried out in accordance with the approved Phasing Plan.

### ***Design***

- 8) Notwithstanding the submitted Indicative Masterplan, a Site Wide Masterplan Document (SWMD) shall be submitted to the local planning authority either prior to or alongside the first application for approval of reserved matters. The SWMD shall be in accordance with the submitted Parameter Plans (Drawing Nos H.0355-29A-1, H.0355-29A-2, H.0355-29A-3 and H.0355-29A-4) except where other planning conditions specify otherwise and shall include a set of Design Principles including:
  - a) the principles for determining the design, form, heights and general arrangement of external architectural features of buildings;
  - b) the principles of the hierarchy for roads and public spaces;
  - c) potential arrangements for car parking;
  - d) the principles for the design of the public realm; and
  - e) the principles for the laying out of the green infrastructure including the access, location and general arrangements of the sports pitches and play areas.

The SWMD shall include a two-dimensional layout drawing that shows:

- a) the broad arrangement of development blocks including indications of active frontages;
- b) density ranges;
- c) maximum building heights;
- d) character areas;
- e) the location and general extent of public open space, including Play Areas;
- f) existing landscape features to be retained; and
- g) proposed structural planting.

Submissions for the approval of the reserved matters shall accord with the approved SWMD, unless otherwise agreed in writing by the local planning authority.

- 9) The first reserved matters application submitted pursuant to condition 2 shall be accompanied by details of a recycling strategy for the site. The reserved matters applications for each phase shall include details of waste storage provision for that phase which shall be in general accordance with the approved recycling strategy and the development shall be carried out in accordance with the approved details.

***Landscaping***

- 10) The first reserved matters application submitted pursuant to condition 2 shall include the following details:
- a) a plan showing the location of, and allocating a reference number to, all trees on the site which have a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;
  - b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
  - c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
  - d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree; and
  - e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

In this condition 'retained tree' means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above. Development shall be carried out in accordance with the approved details.

- 11) The plans and particulars submitted in accordance with condition 2 shall include details of the size, species, and positions or density of all trees, hedgerows and other landscaping features to be planted, and the proposed time of planting, as well as maintenance schedules. 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 in accordance with details to be submitted to and approved in writing by the local planning authority.

**Archaeology**

- 12) No development shall take place within any phase pursuant to condition 7 until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and a programme and methodology of site investigation and recording and the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation. No development within that phase shall take place other than in accordance with the approved Written Scheme of Investigation.

**Ecology**

- 13) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall be in accordance with the mitigation and enhancement measures in the submitted Environmental Statement and the related Addendum dated April 2017. The LEMP shall include measures to protect and manage the Innsworth Meadow Site of Special Scientific Interest. It shall include a timetable for implementation, details for monitoring and review and how areas concerned shall be maintained and managed. Development shall be in accordance with the approved details and timetable in the LEMP.

**Contamination**

- 14) Prior to the commencement of the development hereby permitted there shall be submitted to and approved in writing by the local planning authority a plan identifying the areas of the site that have the potential to require decontamination and remediation (referred herein as the 'Affected Areas') which is based on the findings of Chapter 12 of the Environmental Statement (Ground Conditions) dated June 2015. No development shall take place within the 'Affected Areas' other than that required to be carried out as part of an approved scheme of remediation until requirements 1 to 4 (below) have been complied with for those areas. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until requirement 4 has been complied with in relation to that contamination. The requirements are the following:
1. Site Characterisation  
An investigation and risk assessment, in addition to any assessment provided with the planning application, shall be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The scope of the assessment shall be submitted to and approved in writing by the local planning authority. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be produced. The written report shall be subject to the approval in writing of the local planning authority. The report of the findings shall include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health,
  - property (existing or proposed), including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land,
  - groundwaters and surface waters,
  - ecological systems and
  - archeological sites and ancient monuments; and
- (iii) an appraisal of remedial options, and proposal of the preferred option(s). This shall be conducted in accordance with Defra and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

#### 2. Submission of Remediation Scheme

A detailed remediation scheme to bring the 'Affected Areas' to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared, and shall be subject to the approval in writing of the local planning authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

#### 3. Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development in the 'Affected Areas' other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be produced, and shall be subject to the approval in writing of the local planning authority.

#### 4. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken in accordance with the requirements of requirement 1, and where remediation is necessary a remediation scheme shall be prepared in accordance with requirement 2, which shall be subject to the approval in writing of the local planning authority.

Following completion of measures identified in the approved remediation scheme a verification report shall be prepared, which shall be subject to the approval in writing of the local planning authority in accordance with requirement 3.

#### ***Access and Layout***

- 15) No building on the development shall be occupied on any phase until the associated carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the

nearest public highway to that dwelling have been completed to at least binder course level and the footway(s) to surface course level.

**Highway Mitigation**

- 16) The development hereby permitted shall not commence until a detailed design for a scheme to alter Longford Roundabout (junction of the A40 trunk road and A38) generally in accordance with the scheme shown on Drawing No H451/18 produced by PFA Consulting Limited, dated 9 June 2017, has been submitted to and approved in writing by the local planning authority. The design details shall include flood mitigation/compensation associated with the scheme to avoid any increase in flood risk and be sufficient for the purposes of a Stage 2 Road Safety Audit as defined in Volume 5 Section 2 Part 2 of the Design Manual for Roads and Bridges – Road Safety Audit (HD/15) or any superseding document. Approval shall be defined as meeting the requirements of Volume 5 Section 2 Part 2 of the Design Manual for Roads and Bridges – Road Safety Audit (HD/15) or any superseding document for Stage 2 Road Safety Audits. No more than 300 dwellings and no other building hereby permitted shall be occupied until the approved scheme has been implemented in full to the written approval of the local planning authority.
- 17) The development hereby permitted shall not commence until a detailed design for a new access junction on the A40 (trunk road) generally in accordance with the scheme shown on Drawing No H451/11 Revision C produced by PFA Consulting Limited, dated 15 May 2017 has been submitted to and approved in writing by the local planning authority. The design details shall include flood mitigation/compensation associated with the new access junction to avoid any increase in flood risk and be sufficient for the purposes of a Stage 2 Road Safety Audit as defined in Volume 5 Section 2 Part 2 of the Design Manual for Roads and Bridges – Road Safety Audit (HD/15) or any superseding document. Approval shall be defined as meeting the requirements of Volume 5 Section 2 Part 2 of the Design Manual for Roads and Bridges – Road Safety Audit (HD/15) or any superseding document for Stage 2 Road Safety Audits. Vehicle access to the development hereby permitted shall not be taken from the A40 (trunk road) until the approved scheme has been implemented in full to the written approval of the local planning authority. No more than 300 dwellings and no other building hereby permitted shall be occupied until the approved access junction together with a connecting highway and junction to Innsworth Lane have been implemented in full and are available for public use.
- 18) No building hereby permitted shall be occupied until the two proposed crossing facilities associated with the proposed site accesses onto Innsworth Lane in the general locations shown on Drawing No H451/Figure IL\_2.ai and Drawing No H451/Figure IL\_4.ai have been completed in all respects in accordance with details which have first been submitted to and approved in writing by the local planning authority.
- 19) No more than 300 dwellings hereby permitted shall be occupied until improvements to the public right of way identified on the indicative masterplan Ref H.0355\_05-1L as 'public right of way to be upgraded' linking from Innsworth Lane to the north western boundary of the site have been

completed in all respects in accordance with details which shall first be submitted to and approved in writing by the local planning authority.

- 20) Prior to the commencement of any phase or a part of a phase of the development hereby permitted details of public transport infrastructure within 400 metres walking distance of any dwelling along with turning facilities prior to the link road being open between Innsworth Lane and the A40 and a timetable for the implementation of these works shall be submitted to and approved in writing by the local planning authority and the works shall be provided in accordance with the approved details and implementation timetable.

### ***Street Maintenance***

- 21) The reserved matters application for each phase submitted pursuant to condition 2 shall include details of the proposed arrangements for future management and maintenance of the proposed streets within that phase or part of a phase. The streets shall thereafter be managed and maintained in accordance with the approved details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established for each phase or part of a phase.

### ***Construction***

- 22) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) wheel washing facilities;
  - v) measures to control the emission of dust and dirt during construction;
  - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
  - vii) details of the site access/routing strategy/signage during the construction period.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

### ***Travel Plans***

- 23) Prior to the first occupation of the Primary School hereby permitted a Travel Plan in accordance with the approved framework Travel Plan Ref H451-DOC05 FTP shall be submitted to and approved in writing by the local planning authority, setting out:
- a) objectives and targets for promoting sustainable travel;
  - b) appointment and funding of a travel plan coordinator;
  - c) details of an annual monitoring and review process;
  - d) means of funding of the travel plan; and
  - e) an implementation timetable, including the responsible body for each action.

The approved Travel Plan shall be implemented in accordance with the details and timetable therein, and shall be continued thereafter.

- 24) Prior to the occupation of each employment use hereby permitted a Travel Plan Ref H451-DOC05 FTP in accordance with the approved framework shall be submitted to and approved in writing by the local planning authority, setting out:

- a) objectives and targets for promoting sustainable travel;
- b) appointment and funding of a travel plan coordinator;
- c) details of an annual monitoring and review process;
- d) means of funding of the travel plan; and
- e) an implementation timetable, including the responsible body for each action.

The approved Travel Plan shall be implemented in accordance with the details and timetable therein, and shall be continued thereafter.

### ***Levels***

- 25) The reserved matters application for each phase submitted pursuant to condition 2 shall include details of existing and proposed ground levels and ground floor slab levels relative to Ordnance Datum of the buildings within that phase or part of a phase. The development shall be carried out in accordance with the approved details.

### ***Flooding and Drainage***

- 26) No development hereby permitted shall commence until a detailed surface water drainage strategy for the entire site has been submitted to and approved in writing by the local planning authority. The details shall be based on the Flood Risk Assessment dated 29 June 2015 included within the Environmental Statement and the Addendum dated April 2017. The submitted details shall:

- a) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, details of existing and proposed overland flow routes, and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- b) provide details of compensatory pluvial flood storage capacity within the site;
- c) provide details of any necessary easements;
- d) provide a health and safety risk assessment for the attenuation ponds and incorporate any recommended safety measures;
- e) include details of the phasing for its implementation; and
- f) provide a 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.

No building hereby permitted within each phase of the development, as defined under section e) above, shall be occupied until surface water drainage works have been implemented in accordance with details that have been

submitted to and approved in writing by the local planning authority as part of the reserved matters applications for that phase or part of a phase.

- 27) No dwelling hereby permitted shall be located outside Flood Zone 1. All dwellings hereby permitted shall be located above the modelled 1:1,000 flood level (as a proxy to the 1:100 + 70% climate change event), as identified in the Phoenix Design Partnership Flood Risk Assessment and Drainage Strategy dated 29 June 2015 (Capita modelled 1:1,000 flood extent as shown on Drawing No FZ-001 included in Appendix E of the Flood Risk Assessment).
- 28) The floor levels of all buildings hereby permitted shall be set at least 750mm above the modelled 1:1,000 flood level (as a proxy to the 1:100 + 70% climate change event), as identified in the Phoenix Design Partnership Flood Risk Assessment and Drainage Strategy dated 29 June 2015 (Capita modelled 1:1,000 flood extent as shown on Drawing No FZ-001 included in Appendix E of the Flood Risk Assessment).
- 29) A scheme for the provision and implementation of compensatory flood storage works shall be submitted to and approved in writing by the local planning authority prior to the construction of the A40 access and development of the employment land to the west of the Innsworth Technology Park. The scheme shall be implemented in accordance with the approved programme and details.

#### ***Energy Efficiency***

- 30) Prior to first occupation, each dwelling hereby permitted shall be provided with an outside electrical socket to enable ease of installation of an electric vehicle charging point. All sockets shall comply with BS1363 (or other document which may replace or modify it), and shall be provided with a lockable weatherproof cover if located externally to the building.
- 31) Electric vehicle charging points shall be installed in a minimum of 10% of the allocated parking spaces at all commercial properties within the development hereby permitted. All charging points shall comply with BS7671 and the sockets with BS1363 (or other document which may replace or modify them). Each charging point shall be provided with a lockable weatherproof cover if located externally to the building.

#### ***Air Quality***

- 32) Prior to commencement of the development, an Air Quality Impact Assessment (AQIA) to specifically assess the impacts arising from the new A40 junction, as shown on Drawing No H451/11 Revision C produced by PFA Consulting Limited and dated 15 May 2017, shall be submitted and approved in writing by the local planning authority. The AQIA shall take into account the impact of the development on existing local air quality, and shall also take into account the impact of existing air quality on the development and shall make recommendations on how the development should be carried out. The AQIA shall be prepared in accordance with the Land-Use Planning & Development Control: Planning for Air Quality guidance from Environmental Protection UK and the Institute of Air Quality Management for the consideration of air quality within the land-use planning and development control processes, January 2017'. The development shall be carried out in accordance with the recommendations arising from the AQIA.

**Noise**

- 33) Each reserved matters application submitted pursuant to condition 2 which includes any dwellings shall be accompanied by a noise survey to identify any dwellings that would be likely to be affected by road noise from Innsworth Lane. The survey shall have been undertaken by a competent person, shall include periods for daytime as 0700 to 2300 hours and night-time as 2300 to 0700 hours, and shall identify those dwellings which require noise mitigation measures. All dwellings requiring noise mitigation shall thereafter be designed so as not to exceed the noise criteria based on current figures by the World Health Authority Community Noise Guideline Values/BS8233 'good' conditions given below:
- Dwellings indoors in daytime: 35 dB LAeq,16 hours
  - Outdoor living area in day time: 55 dB LAeq,16 hours
  - Inside bedrooms at night-time: 30 dB LAeq,8 hours (45 dB LAmax)
  - Outside bedrooms at night-time: 45 dB LAeq,8 hours (60 dB LAmax)
- No dwelling requiring noise mitigation measures shall be occupied until those noise mitigation measures have been implemented and they shall be maintained as approved thereafter.
- 34) Any reserved matters application submitted pursuant to condition 2 including non-residential buildings shall include details of any extraction, ventilation, cooling and refrigeration equipment to be installed on or in any building. The rated noise level from any extraction, ventilation, cooling and refrigeration equipment to be installed within the application site shall be no more than 5dB LAeq above the night-time background noise level measured at the nearest noise sensitive receptors. The method of assessment shall be carried out in accordance with BS4142:1997: Rating industrial noise affecting mixed residential and industrial areas (or other document which may replace or modify the method of assessment). All approved equipment shall be installed in accordance with the approved details on or in the building prior to occupation and shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

## **APPENDIX D: ABBREVIATIONS & GLOSSARY**

Appellant	Robert Hitchins Limited
AQIA	Air Quality Impact Assessment
ARCADY	Assessment of Roundabout Capacity and Delay computer program
BMV	Best and Most Versatile with reference to agricultural land in Annex 2: Glossary of the National Planning Policy Framework
CIL	Community Infrastructure Levy Regulations 2010
CIRIA	the Construction Industry Research and Information Association
CoA	Court of Appeal
(the) Council	Tewkesbury Borough Council
cumecs	cubic metres per second (rate of flow of water)
Defra	Department for the Environment, Food and Rural Affairs
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
DP	Development Plan
EA	Environment Agency
EIA	Environmental Impact Assessment
EPC	Entry Path Curvature in terms of roundabout design
ES	Environmental Statement
FRA	Flood Risk Assessment
Framework	National Planning Policy Framework (also referred to as NPPF)
GCC	Gloucestershire County Council
HE	Highways England
HGV(s)	Heavy Goods Vehicle(s)
JCS	Gloucester, Cheltenham and Tewkesbury Joint Core Strategy
km	kilometres
LAP	Local Area of Play
LEAP(s)	Local Equipped Area(s) for Play
LEMP	Landscape and Ecological Management Plan
LHA	Local Highway Authority
LLFA	Lead Local Flood Authority
LPA	Local Planning Authority
m	metres
MUGA	Multi-Use Games Area
NEAP	Neighbourhood Equipped Area for Play

NHS	National Health Service
NO <sub>2</sub>	Nitrogen Dioxide
NP	Neighbourhood Plan
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
OAN	Objectively Assessed Need in terms of housing
PIM	Pre-Inquiry Meeting
SATURN	'Simulation and Assignment of Traffic to Urban Road' computer traffic model
SEA	Strategic Environmental Assessment
SoCG(s)	Statement(s) of Common Ground
SofS	Secretary of State for Communities and Local Government
SofST	Secretary of State for Transport
S-Paramics	Traffic microsimulation computer software
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SUDS	Sustainable Urban Drainage System
SWMD	Site Wide Masterplan Document
S38(6)	Section 38(6) of the Planning and Compulsory Purchase Act 2004
S106	Section 106 of the Town and Country Planning Act 1990
TBLP	Tewkesbury Borough Local Plan to 2011
TPC	Twigworth Parish Council (Rule 6 Party)
UU	Unilateral Undertaking
VSC	Very Special Circumstances in terms of paragraphs 87 and 88 of the National Planning Policy Framework



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.