



## Appeal Decision

Inquiry Held on 8, 9, 10 and 11 October 2019

Site visits made on 10 and 11 October 2019

**by Harold Stephens BA MPhil DipTP MRTPI FRSA**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 November 2019**

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**Appeal Ref: APP/G1630/W/19/3229581**

**Land at Stoke Road, Bishop's Cleeve GL52 7DG**

- 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 Gladman Developments Ltd against Tewkesbury Borough Council.
  - The application Ref 18/00249/OUT, is dated 8 March 2018.
  - The development proposed is an outline planning application for the erection of up to 215 dwellings, up to 2.24ha of commercial use (B1 and B8), up to 0.2ha of retail uses (A1), with public open space, landscaping and sustainable urban drainage system including associated works and two vehicular access points from Stoke Road. All matters reserved except for means of access.
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### Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for the erection of up to 215 dwellings, up to 2.24 ha of commercial use (B1 and B8), up to 0.2ha of retail uses (A1), with public open space, landscaping and sustainable urban drainage system including associated works and two vehicular access points from Stoke Road. All matters reserved except for means of access in accordance with the terms of the application, Ref 18/00249/OUT, dated 8 March 2018, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

### Procedural Matters

2. The appeal was lodged on 24 May 2019 against the non-determination of the planning application and considered by the Council's Planning Committee on 16 July 2019. The Council's six putative Reasons for Refusal (RfR) are contained within the Council's Statement of Case. In summary these are: (i) the proposal would be exposed to unacceptable odours from the nearby strategic Wingmoor Farm Integrated Waste Management Facility; (ii) failure to provide good connectivity (iii) insufficient information to demonstrate safe and suitable access to the site; (iv) failure to comply with the sequential test for the retail element; (v) absence of a planning obligation for affordable housing and (vi) absence of a planning obligation for public transport improvements, open space, outdoor recreation and sports, and recycling and waste bins.

3. The application was submitted in outline with all matters except access reserved for subsequent approval. It was agreed that the plans on which the appeal should be determined are:

- A Location Plan - Drawing Number 2013-076-100
- An Access Plan - Drawing Number 4746-34-03H

It was also agreed that the following two plans were submitted for illustrative purposes:

- A Development Framework Plan Drawing Number 6335-L-02\_M
- An Illustrative Master Plan Drawing Number 6335-L-03\_D

4. Due to the scheme's nature, scale and location, the proposed development constitutes 'EIA development' under the EIA Regulations.<sup>1</sup> The proposed development falls within Schedule 2, Category 10 'Infrastructure Projects', Subsection (b) Urban Development Projects. An Environmental Statement (ES) accompanied the planning application following a formal Scoping Opinion issued by the Council on 18 July 2017. The environmental topics that were identified through the scoping process as requiring further assessment as part of the EIA included: Archaeology and Heritage; Landscape and Visual; Water Environment, Drainage and Flood Risk, Transport and Access; Air Quality, Dust and Odour; and Noise and Vibration. Cumulative effects associated with committed developments were also considered. I have had regard to all the environmental information submitted to the Inquiry and particularly that contained within the ES.

5. In addition to the ES, the application was supported by a number of reports and technical information. Details of these documents are set out in a Planning Statement<sup>2</sup> and include a Design and Access Statement (DAS), an Ecological Appraisal, an Arboricultural Assessment, a Phase 1 Preliminary Risk Assessment, a Foul Drainage Analysis Report, a Utilities Appraisal, a Statement of Community Involvement, a Socio-Economic Report, a Retail Assessment and a Ground Gas Risk Assessment.

6. I held a Case Management Conference (CMC) on 8 August 2019. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry and timings. It was agreed that matters relating to noise and flood risk were matters raised by interested persons but not by the Council. In the weeks following the CMC both main parties continued discussions on the appeal to ensure that matters of dispute were clear and that all matters of agreement (non-disputed matters) were documented in either Statements of Common Ground or in draft Planning Conditions such that time on these matters were minimised at the Inquiry. The Statements of Common Ground (SoCG)<sup>3</sup> in this case are:

- General Technical and Policy SoCG – 16 August 2019
- Five Year Housing Land Supply SoCG - 25 July 2019
- Highways SoCG – 10 September 2019

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<sup>1</sup> The Town and Country Planning (Environmental Impact Assessment) (England) Regulations 2011 and the 2015 amendment

<sup>2</sup> CD1.18 paragraph 3.2.3

<sup>3</sup> INQ3

7. The SoCGs have helped to narrow the issues and allowed the parties to focus on the particular matters in dispute. The Council accepts that it does not have a five year housing land supply. Both parties are agreed that the position for this Inquiry is set at 4.33 years and paragraph 11 of the NPPF is engaged on the tilted balance basis.<sup>4</sup> It is also agreed between the parties that the transport matters referred to in RfR 3 and RfR 6 have been addressed.<sup>5</sup> In addition, both parties are agreed that RfR 4 can be addressed by means of a planning condition limiting the floorspace of the proposed retail unit within the development to 280sqm.<sup>6</sup> Finally, there is agreement between the parties that an appropriately worded s106 Agreement will resolve the dispute on RfR 5.<sup>7</sup> It follows that RfR 3-6 and are no longer matters of dispute between the parties.
8. At the Inquiry, two s106 Planning Obligations were submitted. The first Planning Obligation is made by an Agreement between the Appellant and Tewkesbury Borough Council (TBC).<sup>8</sup> The second Planning Obligation is a made by a tripartite Agreement between the Appellant, Gloucestershire County Council (GCC) and TBC.<sup>9</sup> Both Agreements address all of the matters sought by the Borough and County Councils in connection with the provision of community and other services arising from the proposed development. The Planning Obligations are both signed and dated 5 November 2019. They are both material considerations in this case. A combined Statement of Community Infrastructure Levy (CIL) Compliance was submitted in support of both Planning Obligations.<sup>10</sup> I return to these Planning Obligations later in this decision.

### **Main Issues**

9. In the light of the above I consider the main issues are:
  - Whether the proposal would provide an appropriate site for development having regard to the most important and up-to-date policies in the development plan and national guidance;
  - Whether the proposed development would be exposed to an unacceptable risk from pollution, in particular air quality issues arising from the nearby strategic Wingmoor Farm Integrated Waste Management Facility; and
  - Whether the proposal would demonstrate adequate connectivity to existing services and facilities within Bishop's Cleeve.

### **Reasons**

#### *The proposed development and appeal site*

10. The proposed development seeks to provide up to 215 dwellings; up to 2.24 hectares of commercial use (B1 and B8); up to 0.2 hectares of land for 300 square metres of retail use; two vehicular access routes off Stoke Road;

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<sup>4</sup> INQ3(ii) paragraph 3.3

<sup>5</sup> INQ3(iii) paragraphs 3.4 and 4.2

<sup>6</sup> INQ(i) paragraph 4.15.1

<sup>7</sup> INQ(i) paragraph 4.4.2

<sup>8</sup> INQ4

<sup>9</sup> INQ5

<sup>10</sup> INQ6

green infrastructure including open space to include open space for play; an equipped play area; landscaping and an attenuation basin.

11. The appeal site is located to the west of Bishop's Cleeve. It is situated north of Stoke Road, which provides access to Bishop's Cleeve and links to the A435 providing connectivity to Cheltenham, some 3.5km to the south and Gloucester some 11km to the south west.
12. The site includes 13.56 hectares of agricultural land comprising four fields. A hedgerow with a number of semi-mature trees line the western and northern boundaries. There are two dwellings located to the south-western corner outside the site boundary.
13. The southern boundary of the site is defined by Stoke Road and a hedgerow which runs parallel to the carriageway with occasional mature hedgerow trees. Beyond this lies the Cheltenham North Rugby Football Club and the Wingmoor Farm Integrated Waste Management Facility. The site's eastern boundary is shared with the Malvern View Business Park and existing residential development that backs onto the site. This is screened in places by vegetation and maturing woodland on unused portions of the business park.
14. To the north, the boundary is marked by a hedgerow beyond which is agricultural land and the "Clevelands" residential development, much of which is now completed, located in the far north-east corner. To the west, the site boundary is contained by hedgerows, maintained at a variety of heights and reinforced by numerous trees, with open countryside beyond.
15. Vehicular and pedestrian access to the site is proposed from Stoke Road, with two separate accesses serving the employment area and residential development. Access is included for consideration at this stage. The planning history of the site is set out in the SoCG.<sup>11</sup>

#### *Planning policy*

16. The statutory development plan includes the following documents:
  - (i) The Gloucestershire, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS) (adopted December 2017);
  - (ii) The Saved policies of the Tewkesbury Borough Local Plan to 2011 (2006) (saved March 2009) (TBLP) and
  - (iii) The Gloucestershire Waste Core Strategy (GWCS) (November 2012).
17. The parties are agreed that the planning policies which are most relevant to this appeal are set out at Section 3 in the General SoCG<sup>12</sup> and are not repeated here.
18. The Council is in the course of preparing a new Local Plan. The Emerging Tewkesbury Borough Plan 2011-31 (ELP) was subject to consultation on Preferred Options in October 2018. On 30 July 2019 the Council approved a Pre-Submission Tewkesbury Borough Plan for publication, and it is anticipated that a publication version will be submitted to the Planning Inspectorate before the end of 2019. Given its stage of preparation and in the light of the

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<sup>11</sup> INQ3 paragraph 2.4.1

<sup>12</sup> INQ3 paragraphs 3.1 – 3.6.2

guidance at paragraph 48(a) of the NPPF, I consider that the policies in the ELP can only be given limited weight in the context of this appeal.

19. The ELP makes clear that it does not seek to cover strategic issues that are addressed by the JCS or any subsequent review of the JCS. The ELP includes at Policy EMP1 an allocation of the whole appeal site as a Major Employment Site. This is adjacent to the existing Malvern View Business Park, which is covered by Policy EMP1 as an Existing Major Employment Site. There is an unresolved objection to the application of this policy to the appeal site, from the Appellant, which reduces the weight that can be attached to Policy EMP1 in determining this appeal, in line with the advice in paragraph 48 of the NPPF. In my view, while there is conflict with the ELP in that respect, the ELP can only be afforded limited weight.
20. Following the adoption of the JCS in December 2017, the three authorities (Tewkesbury, Gloucester and Cheltenham) began work on a review. This work is still at an early stage – an Issues and Options consultation took place in late 2018/early 2019 but no full version of the Review has been published. The document, which is meant to address the 2,400 dwelling shortfall that arose at the end of the adoption process, can be given very limited weight.
21. Bishop’s Cleeve Parish Council applied to designate a neighbourhood area for the preparation of a Neighbourhood Plan, which was validated on 1 March 2017. The appeal site is within the designated area. The Neighbourhood Plan appears to have made little progress. It too is in its very early stages and draft policies have not yet been published so no weight can be attached to the Neighbourhood Plan.

***First Issue - Whether the proposal would provide an appropriate site for development having regard to the most important and up-to-date policies in the development plan and national guidance.***

22. The Bishop’s Cleeve Parish Council and other interested persons object to the proposal for several reasons. It is argued that the cumulative impact of development in the village is unsustainable and would have an adverse impact on community cohesion and social well-being. Further, it is claimed that Bishop’s Cleeve has already fulfilled the allocated numbers of new homes identified in the recently adopted JCS, to be provided by 2031. It is said that there is no need for further housing in the village.
23. However, it is noteworthy that given the five year housing supply shortfall, the Council does not pursue a RfR that claims harm to the spatial distribution policies of the JCS. Moreover, paragraph 6.4 of the Committee Report informs that housing on the appeal site would be broadly consistent with the JCS spatial strategy. The Council alleges no breach of policy regarding the quantum of housing directed to Bishop’s Cleeve and no harm arising from the scale of development proposed when considered alongside other delivered and proposed developments. The Council does not consider the proposed development would have a significant and demonstrable unacceptable impact on the social and cohesion of Bishop’s Cleeve.<sup>13</sup>
24. As I perceive it, Bishop’s Cleeve is one of two Rural Service Centres in the Borough, along with Winchcombe. Those Rural Service Centres are envisaged,

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<sup>13</sup> Paragraph 10.5 of Committee Report dated 16 July 2019 attached to LPA’s Statement of Case

in Policy SP2 of the JCS to accommodate “in the order of” 1860 new homes in addition to existing commitments, to be secured through allocations in a DPD which was to follow. No such DPD has yet been adopted. Policy SP2 is not cited against the scheme by the Council, nor could it be, as the proposal cannot breach the policy. Bishop’s Cleeve is plainly a location for new development in addition to the dwellings recently built and approved to be built in Bishop’s Cleeve.

25. I accept that the proposed development may be in breach of Policy SD10 of the JCS, because the site is located outside the settlement limits. However, those settlement limits were plainly intended to operate in the context of adopted allocations which meet the housing need set out in the JCS. Policy SD10 has no full role to play as a development management tool in advance of the proposed allocations being made.
26. Further, as there is an agreed lack of a five year housing land supply, the Council accepts that Policy SD10 is out of date and deserves only limited weight. Mr Muston explained that is why it is not cited in any putative RfR. In my view that concession must be correct, because adherence to the settlement limits in Policy SD10 would not allow a five year supply to be achieved. Those settlement limits restrain housing delivery.
27. In terms of the settlement strategy of the JCS, the appeal site is an appropriate location for development. Nor is there any reason to think that Bishop’s Cleeve lacks physical, environmental or social capacity to accommodate the appeal scheme. The Council plainly has no difficulty with the appeal site being developed, as it is proposed as a major employment site in the ELP. Nor is there any evidence that any infrastructure demands created by the appeal scheme need go unmet with the appropriate provision of justified contributions in a planning obligation or through the substantial CIL payment to which the site’s development would be liable.
28. Leaving the pollution and connectivity issues aside for separate consideration, I conclude on the first issue that the appeal site is an appropriate location for development.

***Second Issue - Whether the proposed development would be exposed to an unacceptable risk from pollution, in particular air quality issues arising from the nearby strategic Wingmoor Farm Integrated Waste Management Facility.***

29. The Council, supported by representations from local residents and Grundon Waste Management Ltd, objects to the appeal proposal on grounds of pollution risks. It is alleged that the Appellant has failed to demonstrate that the proposed development would not be at significant risk from air quality issues arising from the nearby allocated Wingmoor Farm Integrated Waste Management Facility (IWMF) which is safeguarded in the adopted Waste Core Strategy, nor that the existing and proposed waste management operations would be put at risk due to the proximity of the residential properties. On that basis the Council considers the proposal does not comprise suitable development in land use planning terms and as such the proposed development would be contrary to advice in the NPPF, Policy WCS11 of the GWCS and Policies SD4 and SD14 of the JCS.

30. From the evidence that is before me, it is clear that the only air quality issue is in relation to odour. Despite the Wingmoor Farm IWMF being a large site with many activities, it is evident that the Council only has concerns relating to one part of the non-hazardous landfilling operation at Wingmoor Quarry, which relates to the filling of Cell 9b. Although the risk of odour from the Materials Recycling Facility (MRF) was not scoped out of the odour assessment, the Council now accepts that there is no material risk of materially adverse impacts from that operation.
31. The Council argues that future residents of the proposed development would be significantly impacted by odour pollution. It says that odours from waste facilities are something people react to particularly strongly and that in all the circumstances here the detriment to the amenity of future residents from the odour impact would be unacceptable. In other words, the worst fears from locating housing so close to an active strategic waste site are likely to be realised.
32. Mr Stoaling, the Appellant's air quality and odour specialist, carried out an Odour Impact Assessment (OIA) for the proposed development and he also completed the OIA for the ES.<sup>14</sup> The methodology was agreed by the Council. Mr Stoaling's assessment of the likely odour effects is unchallenged by the Council. Nor did Grundon's consultant dispute the outcome.
33. The OIA was carried out using the IAQM 2018 guidance, recommending a combination of modelling and professional judgment using the so-called FIDOL factors – Frequency, Intensity, Duration, Offensiveness and Location. Although it is neither issued or endorsed by the Government, both principal parties consider it to be a useful piece of work deserving of weight and Mr Stoaling explained it is industry standard and has been taken into account approvingly by decision makers.
34. The OIA proceeds on the basis that Cell 9b would be filled or raised in around 2029 for around 12-18 months. The date comes from the terms of the decision notice granting Grundon the latest planning permission and from Grundon's latest information given at the site visit. The period assumes the most intense impact and is thus worst case.
35. The OIA is plainly very robust. Its scope was agreed by the Council and Grundon were given a chance to comment on it too. That robustness is clear, not just from the lack of challenge to it, but also from an analysis of the assumptions upon which it was based. The conservative and robust nature of the assessment is demonstrated by the following matters:
  - (a) The assumption that Cell 9b would be filled with waste with a proportion of putrescible waste derived from figures which, whilst the latest available, are actually based on data which is over ten years old. This is likely to overstate the emissions of odour from waste now, given the drive to remove biodegradable waste from landfill which the Government has pursued for some time. Assuming that the waste entering Cell 9b in about 2029 has the same putrescible component also ignores Government policy to work to eliminate all biodegradable waste going to

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<sup>14</sup> See Appendix 11.2 Folder 3 CD1.08

landfill by 2030.<sup>15</sup> In reality, the waste may well have a significantly lower putrescible component than has been modelled;

- (b) The model assumes that, for the whole year, that Cell 9b is being filled at the northern end, closest to the appeal site, with daily cover to the south of the tipping face and intermediate cover further south still. Clearly, the filling would be a dynamic operation and the most odorous activity would not take place closest to the appeal site all year; and
  - (c) The modelling uses the 98th percentile of the hourly average odour levels throughout a year, producing 8,760 results. The hourly average which appears 98% of the way up the list from lowest to highest was used to produce the modelled results. That means that the modelled levels, or ones worse than them, would only exist for 2% of the hours of the year, namely 175 hours.
36. The OIA results are presented on page 16 and Figure 7.1 of Mr Stooling's proof of evidence. The modelling software presents the key in a scientific format. For clarity the isopleths (contours of odour concentration) shown on the drawing are 10, 5, 3 and 1.5 ouE/m<sup>3</sup>. These may be compared with Table 6 of the IAQM (2018) guidance which is reproduced on page 11 paragraph 2.24 of his proof of evidence.
37. It can be seen from that drawing that:
- (a) Commercial users are receptors of medium sensitivity. The small crescent shaped part of the commercial area of the appeal site lies within the 5-10 C<sub>98</sub>ouE/m<sup>3</sup> contour and the area north of that within the 3-5 contour. Both produce impacts of moderate significance. The outer contour shown produces an impact of slight significance for a medium sensitivity receptor, which is agreed not to be significant for EIA purposes; and
  - (b) Residential users are high sensitivity receptors. The very south eastern corner of the residential area lies within the 1.5 to 3 contours, producing an impact of moderate significance. There is no issue that that would affect about 26 dwellings on the appeal site. The potential impact would occur for 175 hours in one year.
38. It is important to note that the highest impact at a commercial receptor within the appeal site would therefore be 'moderate adverse', which is 'significant'. The report to the Planning Committee, included within the Council's Statement of Case, states<sup>16</sup> that the impact would be 'substantial adverse' which is not correct. The highest impact at a residential receptor within the appeal site affecting some 26 dwellings would therefore also be 'moderate adverse', which is 'significant'.
39. An impact of moderate significance is "significant" for EIA purposes, but the significance threshold must not be equated with a limit of acceptability.<sup>17</sup> Such an impact is something to be considered as material to the decision. Mr

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<sup>15</sup> See CD9.01 page 17 the third strategic ambition and the box on page 20

<sup>16</sup> Paragraph 12.7 on page 18

<sup>17</sup> A point explicitly made on page 13 of the IAQM (2018) guidance



Stoaling explained that an impact of ‘substantial significance’ would usually be regarded as an overriding matter, in other words that it would amount to an objection powerful enough to refuse permission, which is why the Council’s error in paragraph 12.7 of the Committee Report is important. There would be no such substantial impact in this case and so no conflict with the relevant development plan policies.

40. Based on the above outputs from the model it seems to me that the Council has not properly considered the outcome of Mr Stoaling’s OIA. It pays too much attention to the mere existence of an adverse effect without putting that adverse impact into its proper context. The Council’s evidence does not acknowledge any aspect of the OIA’s robust assumptions. It does not acknowledge that the modelled impact would occur only for 175 hours during one year of the long life of the appeal development. If filling Cell 9b took longer, Mr Stoaling’s unchallenged evidence is that the impact would be less significant. All of the points in paragraph 6.4 of Mr Buchanan’s proof are allowed for in Mr Stoaling’s OIA. Importantly, Mr Buchanan does not expressly consider the FIDOL factors of Frequency, Intensity and Duration anywhere in his evidence in even the most superficial way.
41. The Council argues that the odour impact on future residents would lead to unacceptable detriment to their amenity and could cause complaints which could be justified, and that TBC might take action to abate a statutory nuisance. However, TBC can only enforce an abatement notice under the Environmental Protection Act 1990 in relation to a site with an Environmental Permit with the consent of the Secretary of State. The Inquiry has no evidence of (i) TBC’s willingness or propensity to seek such consent, or (ii) the likelihood of the Secretary of State giving such consent or the criteria he would use to make such a decision. The usual regulator in such matters is the Environment Agency who do not object to the appeal proposals.
42. It is important when considering the likelihood of complaint to test that matter in the appropriate context. It was agreed that social and psychological factors such as the attitude of the person affected by the odour to the status quo is relevant, a point expressly raised in the left hand side of the flow diagram on page 9, Figure 1 of the IAQM (2018) guidance.<sup>18</sup> Any impact from Cell 9b would, on the evidence, occur when the landfill operations were coming to their end. The MRF would have closed and been removed. Cell 9b is the last part of the landfill operation, required primarily to achieve appropriate completed contours on site. It would be relatively brief.
43. I am aware that Grundon is a very reputable operator. Its activities, as opposed to others at the IWMF, have never caused any verified complaint to any relevant regulator. It would be perfectly possible, through a modest campaign of public awareness raising, for Grundon or the Council to make local people aware of the filling of Cell 9b as a final phase of operations. I recognise that people, perceiving odour in those circumstances, would have a reduced propensity to complain compared to people affected by odour from an early stage in the long life of a landfill site, with no end in sight. Even if there were complaints, the Council accepted that the temporary nature of the operations at the end of a site’s life would require a different approach.

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<sup>18</sup> CD10.01

44. Turning to the alleged conflict with development plan policies it was agreed that such policies do not require *any* adverse effect to be avoided. Policy SD4 of the JCS seeks to avoid or mitigate amenity impacts including from smells and a more detailed development management approach is prescribed in Policy SD14. Mr Buchanan eschewed any reliance upon part 1 of the policy, relating to health effects. Mr Muston's attempt to link potential odour effects to mental health issues, but this argument was undermined by the lack of support from the Council's Environmental Health Officer, Mr Buchanan. Part 2 of the policy seeks to prevent "unacceptable" harm to amenity and "unacceptable" levels of odour. That plainly does not prohibit any adverse effect but requires a judgment about the effect, in the light of all relevant information and circumstances. Only Mr Stoaling has carried out appropriate modelling and assessment.
45. Policy WCS11 of the GWCS also forms part of the development plan. I note that in this case the Waste Planning Authority was consulted and, importantly, does not object. Nor was there an objection from the Environment Agency. Although I accept there is some ambiguity in the wording of the Policy WCS11, I note that all of the witnesses agreed that inherent in the decision as to whether there is conflict with the policy is a judgment about the degree of the adverse effect. Neither Mr Buchanan nor Mr Muston consider that Policy WCS11 prohibits any adverse effect. Both accept it requires a judgment to be formed about the acceptability of that adverse effect. I agree.
46. The Council cited various paragraphs of the NPPF in support of its case. However, there is nothing in the NPPF which prohibits any level of adverse effect. Paragraph 182 of the NPPF expressly refers to significant adverse impacts and even then, does not equate them with unacceptability, as it turns its attention to the ability to mitigate such impacts.
47. When the odour evidence is looked at in its full context and the robust and conservative basis upon which the modelling has been carried out is fully considered, it is clear that the potential odour impacts do not amount to a cogent reason to refuse planning permission. I conclude on the second issue that the proposed development would not be exposed to an unacceptable risk from pollution, in particular air quality issues arising from the nearby IWMF.

***Third Issue - Whether the proposal would demonstrate adequate connectivity to existing services and facilities within Bishop's Cleeve.***

48. Although it is accepted that matters relating to design and layout are reserved for future consideration, the Council considers that the proposed development would fail to provide good connectivity and ease of movement through its boundaries to the existing built development of Bishop's Cleeve. It is claimed that the proposed development would not positively contribute to making places better for people and would not achieve inclusive design having regard to the wider area. For this reason, it is said, the development would not constitute good design. I disagree for a number of reasons.
49. First, it is clear from the putative reason for refusal that the Council's concerns only refer to the absence of points of connection through its boundaries but does not go on to allege that that causes any difficulty with accessing the remainder of Bishop's Cleeve. The Council's evidence does not say anything about walk or cycle distances or allege that any service or

facility to which occupants of the appeal site would wish to access does not lie within a suitable distance. I note that within the appeal site itself there would be a convenience store, employment opportunities and areas of open space. Outside the site the majority of facilities listed in Mr Weeks' proof of evidence<sup>19</sup> are within reasonable walking distance as defined by Manual for Streets.<sup>20</sup> It is true that residents in the north-east corner of the site would have the furthest to walk or cycle to places, but the distances they would have to travel are acceptable and would not discourage movement by sustainable modes.

50. Secondly, the Council objects to the appeal proposal because it has one point of access. This is alleged to be "bad design". But the evidence is that that is exactly what would be the position if the site was developed for entirely employment uses, as the Council proposes in the ELP. There is no evidence that any additional points of access would be available for an employment use. Mr Muston maintained that an access to Cleavelands is not likely to happen because of the nature and purpose of the open space next to the appeal site. That point has nothing to do with residential use of the appeal site and would apply equally to employment use. Nor is there any reason to think that access to the small development site at the north eastern corner of the appeal site would be available to an employment user when it is not available to the Appellant. The appeal site is not isolated and there is no rational reason why the Council's connectivity case shows that the residential proposal is "bad design" but an employment use would be "good design" when the connectivity would be the same.
51. Thirdly, given the acceptance that people could move around and within Bishop's Cleeve by a choice of modes and access the village's extensive facilities, I consider that the appeal scheme would demonstrate adequate connectivity to the rest of Bishop's Cleeve. Moreover, the appeal scheme would provide scope for enhancing pedestrian and cycle links along Stoke Road, notwithstanding that Stoke Road is already a promoted cycle route. The appeal scheme would adjoin open fields on the western edge of the settlement, but it would also be contiguous with existing development. It is also noteworthy that the design principles set out in the DAS and the Illustrative Masterplan seek to provide streets and routes that are direct, well connected and which would deliver a legible environment.<sup>21</sup>
52. Fourthly, the appeal site benefits from good connectivity to destinations further afield. A good range of facilities and services lie within cycling distance. It is a relatively short journey to Cheltenham Spa railway station, allowing longer distance strategic journeys to be undertaken in a sustainable way, even if the initial journey to the station were to be undertaken by car. The appeal site provides good access to a good range of bus services, as Mr Weeks sets out, and which would be further enhanced by the increased frequency of the 'T' service and the introduction of stops between the two accesses proposed as part of the appeal scheme. Further, and most obviously, the appeal scheme comprises a mixed use development, providing a mixture of residential, employment and retail uses, providing opportunities for linked trips and uses within the site itself.

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<sup>19</sup> Page 6 and Figure 1

<sup>20</sup> Manual for Streets CD8.01page 45 paragraph 4.4 The walkable neighbourhood

<sup>21</sup> CD1.09 pages 40-41

53. Fifthly, the new National Design Guide (NDG) does not detract from the merit of the appeal scheme. It adds little to the application of the already detailed Policy SD4 in the JCS. The NDG does not provide any reason for the Council to make good its claim that whilst accessibility is acceptable, connectivity is not. The Council relies upon principle vii of Policy SD4 in the JCS, which relates to movement and connectivity. The title of this principle demonstrates that connectivity and movement are closely linked. If appropriate movement around an area is achieved, as the Council accepts is the case, then that also leads to the conclusion that it is appropriately connected.
54. The first bullet of principle vii also refers to integration, not in some abstract sense, but with the movement network within and beyond the development. Such integration within the site is within the scope of reserved matters and the Council does not say an appropriate level of integration of uses and buildings and spaces within the site could not be achieved. The appeal scheme also provides integration with the movement network beyond the site itself. It does not matter that that takes place through one access. As for the second bullet of principle vii, the appeal scheme would provide safe and legible connections to the existing, walking, cycling and public transport networks and would enhance them. The Council does not argue otherwise. The appeal proposal accords with the principles of Policy SD4 with which the Council alleges conflict.
55. From all of the above I conclude on the third issue that the appeal proposal would demonstrate adequate connectivity to existing services and facilities within Bishop's Cleeve.

### **Other Matters**

56. I have taken into account all other matters raised including the concerns raised by Bishop's Cleeve Parish Council, Stoke Orchard Parish Council, MJCA, Ridge and Partners LLP and the CPRE. I have already dealt with points raised by Bishop's Cleeve Parish Council and MJCA under the main issues.
57. A number of concerns related to highway safety matters and traffic impact. I note that the proposal was supported by a Transport Assessment (TA) and Framework Travel Plans which complement the TA. The TA confirms that access to the required design standards is proposed with separate access points for both residential and employment uses. The site is well located to allow travel by more sustainable modes and the level of public transport would be enhanced via public transport contributions. There are no material traffic impacts or road safety issues associated with the proposal. Highways England offers no objections to the proposal in terms of the strategic road network and Gloucestershire County Council as Local Highway Authority agrees that there is no material or severe traffic impacts associated with the proposed development subject to conditions. I agree.
58. Concerns are raised about the lack of infrastructure to accommodate the proposed development. It is claimed that there is a need for additional shops schools, employment and open space to cater for new development. However, I note that the proposal is supported by a planning obligation which provides for financial contributions to local services and facilities where required. An on-site retail unit would ensure day to day shopping could be achieved locally and the proposal includes a significant level of open space containing an

equipped play area. The proposal would also provide a significant level of new employment opportunities.

59. Concerns have been raised by the local community regarding potential flood risk. Stoke Orchard Parish Council objects to the proposal on account of the effect the appeal proposal would have on storm water flow levels in Dean Brook and the detrimental effect on the Parish and residents' properties. However, I note the conclusions set out in the ES, which have been accepted by all relevant consultees,<sup>22</sup> state that the assessment has shown that no cumulative impacts or residual effects would affect areas local to the site in relation to flood risk, drainage or water quality. Furthermore, Dr Hardwick gave unchallenged evidence to the Inquiry that in relation to Dean Brook the SuDS was operating as intended, storing site derived storm water for later release; and the development infrastructure and its residents were elevated above the flood plain and clearly at no risk at all from flooding.
60. Concerns have been raised regarding the potential impact of the existing noise generating uses close to the appeal site, in particular from the existing Wingmoor Farm IWMF and the Malvern View Business Park. The main concern is centred around the integration of the residential use and whether this would then result in unreasonable restrictions placed on the existing businesses. A Noise and Vibration Assessment was submitted as part of the ES to consider the potential effects of the existing and future noise and vibration climates on the proposed development and the potential effect of the development on noise sensitive receptors within the vicinity of the site. The existing noise climate comprises vehicle related noise along Stoke Road and noise associated with vehicles accessing Wingmoor Farm IWMF and operational activities at Elliott Aggregates which is intermittently audible.
61. The Assessment concluded that construction works would have the potential to impact sensitive receptors in close proximity to the site. However, adverse effects would be reduced through the use of best working practices on site. These measures would ensure that construction noise and vibration disturbance to local residents would be temporary and limited such that the overall effect would be minor to moderate adverse. In the long term, the noise associated with the development generated vehicles would not adversely affect existing sensitive receptors and as such the effect would be considered negligible. The noise associated with the existing uses and uses within the vicinity of the site are anticipated to be negligible following the implementation of embedded mitigation measures such as less sensitive uses being located at the site's frontage and appropriate building façade layout and design. No significant effects are anticipated during the operational phases of development, subject to implementation of the identified mitigation measures.
62. Mr Dawson gave unchallenged evidence to the Inquiry that any potential future noise from the currently undeveloped employment land immediately to the north of Malvern View Business Park would be controlled by a condition attached to the outline planning permission for commercial development. However, if required, noise mitigation could be designed into the appeal site at reserved matters stage. It is likely that this would take the form of acoustic fencing between the commercial and residential areas and possibly façade mitigation to dwellings as recommended for the area of the appeal site

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<sup>22</sup> Including the Environment Agency, Gloucestershire County Council as Lead Local Flood Authority and Severn Trent Water

immediately adjacent to the existing business park. The footprint of a fence would be negligible and therefore the impact on the developable area of either site would not be a material consideration. Noise from the Wingmoor Farm IWMF would be within acceptable levels at all residential areas of the appeal site. Overall, I consider that there is no reason to withhold permission on noise grounds.

### **Planning Obligations**

63. At the Inquiry, two s106 Planning Obligations were submitted by way of Agreements. The first Planning Obligation is made by an Agreement between the Appellant and Tewkesbury Borough Council (TBC).<sup>23</sup> The second Planning Obligation is made by a tripartite Agreement between the Appellant, Gloucestershire County Council (GCC) and TBC.<sup>24</sup> A combined Statement of CIL Compliance was submitted for both Planning Obligations. I have considered these Planning Obligations in the light of the CIL Regulations 2010, as amended, the advice in paragraph 56 of the NPPF and the Government's Planning Practice Guidance (PPG).
64. The JCS partnership of Gloucester City Council, Cheltenham Borough Council and TBC adopted the CIL in October 2018 and the charging schedule, which sets out the levy rates, commenced on 1 January 2019. Regulation 122 of the CIL Regulations and paragraph 56 of the NPPF make clear that Planning Obligations should only be sought where they meet all of the following three tests:
- 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.
65. The Community Infrastructure Levy Amendment Regulations 2019 came into force on 1 September 2019 and made a number of important changes to the operation of the CIL and s106 Planning Obligations. Amongst other matters, Regulation 123 of the CIL Regulations is removed in its entirety. This removes the restriction on pooling of funds for a single infrastructure project from more than five s106 Planning Obligations. It also allows both CIL and contributions secured under s106 for the same infrastructure project, although the tests in Regulation 122 continue to apply.
66. The first Planning Obligation between the Appellant and TBC secures the provision of 40% affordable housing on-site, 70% of which would be affordable rented housing and 30% would be intermediate housing. The provision of affordable housing on-site is necessary to meet an identified need and is a requirement of both national and local planning policy. The provision is directly related to the development and the provision of 40% is fairly and reasonably related in scale and kind to the development.
67. The first Planning Obligation would also secure a playing pitches and changing facilities contribution of £80,000 at the Cheltenham North RFC. Although the Appellant disputes the quantum, I note that the development of 215 dwellings would increase the demands for playing pitches and changing facilities in

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<sup>23</sup> INQ4

<sup>24</sup> INQ5

Bishop's Cleeve. Cheltenham North RFC has provided evidence to support the improvement of their facilities to cope with the extra demand in Bishop's Cleeve.<sup>25</sup> The estimated project cost of the facilities is £80,000 and this would directly relate to the development as Cheltenham North RFC is located directly opposite the appeal site. Policy RCN1 of the TBLP requires the provision of outdoor playing space for sites of 10 dwellings or more. As no provision is to be provided on site, a contribution of £80,000 is necessary towards improving the playing pitches and facilities at Cheltenham North RFC to make the development acceptable in planning terms. I consider this provision would be fairly and reasonably related in scale and kind to the development.

68. The first Planning Obligation would also secure a recycling and waste bins contribution of £73 per dwelling towards the costs of the provision of recycling and waste bins and the associated set up costs for each residential unit. The contribution is necessary because each new dwelling would require adequate measures for the storage and collection of waste. Policies INF6 and INF7 of the JCS support this requirement. These facilities would be for new residents and would directly relate to the increase in the number of dwellings to be provided. I consider this provision would be fairly and reasonably related in scale and kind to the development.
69. The second Planning Obligation between the Appellant, GCC and TBC secures education provision (nursery/preschool, primary and secondary), a library contribution, a public transport contribution, a travel plan contribution (residential) and a travel plan contribution (employment) with GCC. The second Planning Obligation includes the full schedule of contributions requested by GCC for the provision of both education and libraries infrastructure necessary to make the appeal development acceptable in planning terms and directly related to the development. These figures are to be reduced to the extent at certain points in time any CIL funding from CIL receipts received from the appeal development are transferred from TBC to GCC for education and libraries infrastructure to mitigate the needs arising directly from the appeal development.
70. In terms of education provision, a contribution of £746,250 is necessary to provide an additional 50 pre-school places to meet the demand from additional children generated by the development within the community. The primary educational contribution of £1,200,489 is necessary and would be used towards accommodating the anticipated increase of 80 primary school places in a new primary academy in Bishop's Cleeve. The additional pupils would be directly generated by the development. The secondary educational contribution of £989,516 is necessary and would be used towards the expansion of facilities serving Bishop's Cleeve area to accommodate the 43 additional secondary places required by the additional pupils directly generated by the development. Policies INF6 and INF7 of the JCS support this requirement. The financial contributions are calculated on Department for Education multipliers 2019. I consider the provision would be fairly and reasonably related in scale and kind to the development.
71. In terms of library provision, a contribution of £42,140 is necessary to accommodate the additional need for library resources generated as a result of the development and would be used towards Bishop's Cleeve Library

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<sup>25</sup> LPA/2

including capital works, extended opening hours, increased stock, computer resources and new furniture. Policy INF4 of the JCS supports this requirement. The Bishops Cleeve Library is the nearest library to the development and the contribution is based on a calculation of £196 per dwelling multiplied by the number of dwellings.<sup>26</sup> I consider the provision would be fairly and reasonably related in scale and kind to the development.

72. The public transport contribution of £887,200 is necessary towards providing the costs of increasing the frequency of the bus service between Tewkesbury and Bishop's Cleeve currently known as the "T" service. The enhanced bus service would include £187,200 for a 2 hour extension of bus service split equally over 5 years and £700,000 for an increase from an hourly to a half hourly service split equally over 5 years. The existing level of bus service identified in the TA needs to be enhanced to ensure that the site is served by adequate public transport. Paragraph 108 of the NPPF requires the opportunities for sustainable transport to be taken up to reduce the need for major transport infrastructure.
73. The public transport contribution would be used towards upgrading the frequency and extension of operational hours of the services adjacent to the site and therefore relates directly to the development. The contribution has been calculated on estimates of market knowledge and similar bus service contract costs to pay for the additional bus and driver required to provide a regular 30 minute bus frequency and 2 hour extension at the end of the day. I consider the provision would be fairly and reasonably related in scale and kind to the development.
74. The travel plan contribution (residential) of £5,000 is payable towards the costs of monitoring the travel plan for the proposed residential units and the travel plan contribution (employment) of £5,000 is payable towards the costs of monitoring the travel plan for the proposed employment units. Paragraph 111 of the NPPF requires that all developments that will generate significant amounts of movement should be required to provide a travel plan so that the likely impacts of the proposal can be assessed. The appeal proposal includes a travel plan for both the residential and employment components, and these will require to be monitored to ensure implementation. The monitoring fees are directly related to the development. The contributions have been based on the travel plan annual monitoring costs using GCC travel plan guidance. I consider the provision would be fairly and reasonably related in scale and kind to the development.
75. In my view, all of the obligations in the two s106 Planning Obligations are 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. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations and should be taken into account in the decision.

### **Planning Balance**

76. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with

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<sup>26</sup> The library space provision is calculated by reference to the Public Libraries, Archives and New Development: A Standard Charge Approach (May 2010) which sets out library space provision standard of 30sqm per 1000 population which at the time was costed at £105 per person. The current GCC figure of £196 reflects the uplift in costs since 2010.



the development plan, unless material planning considerations indicate otherwise. I find there is no breach of the relevant policies of the TBLP. Given the appropriate planning conditions and justified planning obligations, the proposal is in overall accord with policies in the TBLP. I also find there is no breach of Policy SP2, SD4 and SD14 of the JCS and Policy WCS11 of the GWCS. Indeed, Policy SP2 supports the appeal scheme in that extensions to Bishop's Cleeve are expected. These policies are not out of date in relation to the NPPF.

77. Policy SD10 of the JCS says that housing development outside the built-up areas that are not allocated will only be allowed in circumstances that do not relate to the appeal proposals. I accept that the proposed development may be in breach of Policy SD10 of the JCS. However, the Council's own position is that this policy must be treated as being out of date and can only be afforded limited weight. Importantly, the putative reasons for refusal do not refer to Policy SD10. Even with a breach of Policy SD10 I conclude that the appeal scheme accords with the development plan taken as a whole.
78. If a breach of Policy SD10 somehow were to be taken as creating a breach of the development plan as a whole, then it is agreed between the parties that the most important policies are out-of-date due to the lack of a five year housing land supply. The absence of a five year housing land supply is agreed which is significant. Bishop's Cleeve is a suitable location for development of this scale and the appeal site is a suitable location, in strategic terms, for providing development at Bishop's Cleeve. Moreover, the appeal site is accessible to services and facilities by a choice of non-car modes of transport. Furthermore, the appeal scheme is not premature, in the context of the ELP, nor would it cause infrastructure pressures than cannot be accommodated.
79. Accordingly, it is accepted by both parties that the tilted balance set out in the NPPF paragraph 11d would be in play and there are no footnote 6 policies which would provide a clear reason for refusing permission and which would prevent the tilted balance from being applied. The only harm that would need to be weighed in the balance against the appeal scheme is the potential risk of moderate odour impacts on a limited part of the site for a limited period. That is a very modest harm to weigh in the overall balance. Other concerns raised by interested persons have been dealt with and none of the concerns raised amount to objections of any substance. I note that the noise assessments relating to the residential component of the appeal scheme assume that the commercial development is *not* present. Nor do the commercial uses play any role in limiting odour effects on the residential component – the reduction in impact is simply a function of distance and not the presence of intervening development. Safeguarding the future residents' amenity therefore would not depend in any way on the commercial elements of the scheme going ahead.
80. I have examined all the environmental information including the assessments within the EIA of the potential impacts during the construction and operational phases of the proposed development. The assessments within the EIA identified that temporary impacts during construction would range from negligible to moderate-major adverse. The majority of impacts were assessed to be negligible in the long term. Some impacts of development are inevitable, but I conclude that these effects are of limited significance and are clearly outweighed by the benefits of the appeal scheme. In my view none of the potential impacts are considered significant in the long term. I conclude

that there are no reasons, based on my examination of the environmental information and taking due regard to the findings of the EIA, that would preclude the granting of planning permission.

81. There would be a number of benefits of the appeal scheme which are powerful material considerations and they indicate taking a decision otherwise than in accordance with the plan. These benefits were not undermined to any degree during the Inquiry. The following benefits would arise: (a) much needed market housing, when it is common ground that the Council cannot demonstrate a deliverable five year supply. The shortfall is significant; (b) affordable housing at the full, policy compliant, rate in a Borough with unmet need. This is a very significant benefit of the scheme; (c) significant economic benefits from the housing with construction spend (£21.1m), construction job creation (182 FTE jobs per annum over the build period) and spending power of the new residents to the tune of £5.96m per annum, bringing more money to be spent in Bishop's Cleeve, Tewkesbury and the rest of the Borough; important economic benefits through creation of about 468 new FTE jobs in the employment development and around 16 jobs in the retail development.
82. In addition, there would be the benefit of being able to meet some retail need arising from existing and new residents on the site itself, reducing some of the need to travel and keeping some expenditure on site; the improvement to the 'T' bus services would benefit existing residents as well as new ones, bringing a greater choice of journeys through a doubling of the frequency of the service and thus encouraging greater bus use by all along its route; there would be a modest net gain in biodiversity; the improved facilities at the Rugby Club would benefit all users; and there would be the benefit arising from new publicly accessible greenspace.
83. Therefore, even if I had reached a contrary conclusion in terms of the appeal proposals accordance with the development plan, then in the context of paragraph 11(d) of the NPPF, it is common ground that it applies because of the lack of a deliverable five year supply. There are no footnote 6 policies at play. Any harm which might be identified as arising from the appeal proposals comes nowhere near significantly and demonstrably outweighing the many and varied benefits of the appeal proposals. There is no reason to withhold planning permission in this case and I conclude that the appeal should be allowed.

### **Planning Conditions**

84. I have considered the conditions suggested by the Council<sup>27</sup> in the light of the advice in paragraphs 54 and 55 of the NPPF and the Government's PPG on the use of planning conditions. I have made minor adjustments to the conditions in the interests of clarity. Conditions 1-3 are necessary to determine the scope of the application and for the avoidance of doubt. Condition 4 imposes a shorter timescale of two years rather than the normal three years for the residential reserved matters. This is justified given the pressing housing need and the advice in the NPPF and in the PPG.<sup>28</sup>
85. Condition 5 is unnecessary and unreasonable in the light of paragraph 55 of the NPPF. Business parks are generally not developed in the same manner as

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<sup>27</sup> LPA3

<sup>28</sup> Paragraph 76 of the NPPF and Paragraph: 027 Reference ID: 21a-027-20140306 of the PPG

residential sites. They are usually developed in a piecemeal manner in individual plots. The suggestion of linking the construction to the dwellings runs the risk of delaying housing delivery through a break point and cannot be justified. Conditions 6 and 8 are necessary to ensure the development would be carried out in accordance with good urban design principles. Condition 7 is necessary to determine the scope of the application and for the avoidance of doubt. Condition 9, 20, 21 and 37 relating to noise are necessary in the interests of residential amenity.

86. Condition 10, 18 and 19 are necessary in the interests of ecology, safeguarding habitats/species and visual amenity. Condition 11 is required to safeguard heritage assets of archaeological interest. Condition 12 is necessary to ensure the effective implementation of waste minimisation. Conditions 13-17 are required to ensure the development does not cause increased flood risk or increased pollution to the water environment. Conditions 22-26 and 28-31 are required in the interests of highway and pedestrian safety. Condition 27 relating to the provision of fire hydrants is necessary to ensure adequate water infrastructure is made on site for the local fire service to access and tackle any property fire. I have deleted the final clause of this condition as it is discretionary and imprecise. Condition 32 which relates to a Construction Management Plan is necessary to ensure minimal impact on the public highway and residential amenity, but I have deleted the element relating to an HGV vehicle routing strategy as this relates to land outside the site and thus cannot be controlled by condition.
87. Condition 33 which relates to a travel plan is necessary to ensure that the appropriate opportunities to promote sustainable transport modes are taken up. Condition 34 which relates to existing and proposed ground levels and finished floor levels is necessary in the interests of amenity. Condition 35 which relates to housing mix is required to ensure the development provides an appropriate mix of dwelling sizes, types and tenures to contribute to a mixed and balanced community. Condition 36 which relates to materials is necessary to ensure the proposal comprises a high quality design. Condition 38 which relates to the withdrawal of permitted development rights in the interests of residential amenity given the close proximity of the Wingmoor Farm IWMF to part of the site.

### **Conclusion**

88. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

*Harold Stephens*

INSPECTOR

## **SCHEDULE OF PLANNING CONDITIONS**

### **APPROVAL OF DETAILS**

- 1) Save for the details of vehicular accesses into the site from Stoke Road, details of the appearance, landscaping, layout and scale (herein called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced.
- 2) The development shall be carried out in general accordance with the details shown on the Development Framework Plan, drawing no.6335- L-02 M, the Illustrative Masterplan, drawing no.6335-L-03 D and as detailed in the Design and Access Statement – February 2018.
- 3) Access to the residential and retail development from Stoke Road shall be carried out in full accordance with the details shown on the Access Plan 4746-34-03 H before the occupation of the first dwelling on the site. Access to the employment development from Stoke Road shall be carried out in full accordance with the details shown on the Access Plan 4746-34-03 H before the occupation of the first employment unit on the site.

### **TIMING OF IMPLEMENTATION**

- 4) Application for approval of reserved matters for all phases of development as identified by the Phasing Plans required under condition 5 shall be made to the Local Planning Authority before the expiration of two years for the residential and retail development and three years for the commercial (B1 and B8) from the date of this permission. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of one year from the date of approval of the last of the reserved matters for that specific phase of development, whichever is the later.

### **PHASING**

- 5) Prior to the first reserved matters application in any of the uses proposed on the Development Framework Plan (6335-L-02 M), a Phasing Plan for each area shall be submitted to the Local Planning Authority for approval in writing. Each phasing plan shall include details of the quantum of development in each phase, whether that is the number of market and affordable dwellings or the number of commercial units, together with general locations and phasing of key infrastructure, including surface water drainage, green infrastructure, public open space/children's play area, access for pedestrians, cyclists and vehicles. All development of the site shall thereafter be undertaken in accordance with the agreed phasing.

### **SCOPE OF THE DEVELOPMENT**

- 6) The development hereby approved shall be for:

No more than 215 dwellings;

No more than 280 square metres of gross retail floor space falling within A1

of the Town and Country Planning (Use Classes) Order 1987 (or in the provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification);

No more than 4,180 square metres of commercial floor space of falling within B1 of the Town and Country Planning (Use Classes) Order 1987 (or in the provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification);

No more than 2,700 square metres of commercial floor space falling within B8 of the Town and Country Planning (Use Classes) Order 1987 (or in the provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

- 7) The height of the buildings hereby permitted shall not exceed:

2.5 storeys for any dwelling;

7.5 metres above the existing ground level for the retail unit;

9 metres above the existing ground level for any B1 and B8 units.

- 8) The retail unit hereby permitted shall not be open to customers outside the following hours:

Monday – Saturday: 07:00 – 23:00 hrs.

For no more than 6 continuous hours between 10:00 – 18:00 hrs on Sundays and Bank Holidays.

Deliveries to, and collections from, the retail unit shall not be made outside of the same hours as above.

The commercial units hereby permitted (B1 and B8) shall not be used/occupied outside the following hours:

Monday – Friday: 07:00 – 19:00 hrs Saturdays: 08:00 – 13:00 hrs.

Deliveries to, and collections from, the B1 and B8 units shall not be made outside of the same hours.

## **LANDSCAPING**

- 9) Any Reserved Matters submitted pursuant to Condition 1 shall provide full details of both hard and soft landscape proposals related to that specific phase of development.

The landscaping scheme, which should be in general accordance with the details shown on the Development Framework Plan, drawing no.6335-L-02 M, the Illustrative Masterplan, drawing no.6335-L-03 D, Design and Access Statement (as referenced at Condition 2), and in accordance with the recommendations set out at Section 5 of the Ecological Appraisal by FPCR Environment and Design Ltd dated November 2017, shall include the following details:

- (a) positions, design, materials and type of boundary treatments to be

- erected;
- (b) hard landscaping materials;
- (c) a plan showing details of all existing trees and hedges on the site. The plan should include, for each tree/hedge, the accurate position, canopy spread and species, together with an indication of any proposals for felling/pruning and any proposed changes in ground level, or other works to be carried out, within the canopy spread;
- (d) a plan showing the layout of proposed tree, hedge, shrub, ornamental planting and grassland/wildflower areas;
- (e) a schedule of proposed planting, noting species, planting sizes and proposed numbers/densities;
- (f) a written specification outlining cultivation and other operations associated with plant and green grass establishment;
- (g) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

All planting and seeding/turfing shall be carried out in accordance with the approved details in the first planting and seeding/turfing seasons following the completion or first occupation/use of the development, whichever is the sooner.

The planting shall be maintained in accordance with the approved schedule of maintenance. Any trees or plants which, within a period of five years from the completion of the planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

No building hereby permitted within each phase pursuant to condition 5 shall be brought into use/occupied until all hard landscaping and boundary treatment for that phase of the site have been completed in accordance with the approved details.

## **ARCHAEOLOGY**

- 10) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Written Scheme of Investigation.

## **WASTE AND RECYCLING**

- 11) No development shall take place until a detailed Site Waste Management Plan has been submitted for each phase and approved in writing by the Local Planning Authority. The Plan shall identify;
  - (a) information on the type and amount of waste likely to be generated prior to and during the construction phase;
  - (b) details of the practical arrangements for managing waste generated during construction in accordance with the principles of waste

- minimisation;
- (c) details of the measures for ensuring the delivery of waste minimisation during the construction phase;
- (d) details of the provision made for facilitating the recycling of waste generated during the occupation phase;

The Site Waste Management Plan shall be fully implemented as approved.

## **SUSTAINABLE DRAINAGE**

- 12) 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 in accordance with the principles set out in the drainage strategy set out in the Enzygo Flood Risk Assessment (December 2017) (Appendix 9.4 of the Environmental Statement).

Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results of the assessment provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, 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 and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- (b) include details of the phasing for its implementation;

No building hereby permitted within each phase, as defined under section (b) above, shall be occupied until surface water drainage works have been implemented for that specific phase in accordance with the approved details.

- 13) No building shall be brought in to use/occupied until a management and maintenance plan for the SuDS for each phase has been submitted to and approved in writing by the Local Planning Authority. The plan should be effective for the lifetime of the development and 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. The approved SuDS maintenance plan shall be implemented in full accordance with the agreed plan.

## **FOUL DRAINAGE**

- 14) No development shall take place until a detailed drainage plan for the disposal of foul water flows for the entire site has been submitted to and approved in writing by the Local Planning Authority.

No building hereby permitted within each phase pursuant to condition 5 shall be occupied until the foul water drainage works have been implemented for that specific phase in accordance with the approved details.

## **FLOOD ALLEVIATION**

- 15) Floor levels should be set at least 600mm above the appropriate 1% AEP (1 in 100 year) modelled flood level including a 35% climate change increase for the appropriate nodes as listed in the supporting table referenced '1D Tabulated Results' (dated 21 March 2019).
- 16) The detailed plans showing layout pursuant to condition 1 shall include a maintenance strip of 8 metres from the top of the bank of the unnamed watercourse to the north of the site as described in the submitted Flood Risk Assessment. No new buildings, permanent structures, fencing, tree planting or raising of ground levels other than hereby permitted shall take place within the approved maintenance strip.

## **ECOLOGY**

- 17) No development or site clearance shall take place until an Ecological Management Plan (EMP) for the entire site has been submitted to and approved in writing by the Local Planning Authority.

The EMP shall be in accordance with the recommendations set out in in Section 5 of the Ecological Appraisal by FPCR Environment and Design Ltd dated November 2017 and shall include measures to enhance the site for wildlife and deliver a measurable biodiversity net gain, a timetable for implementation, details for monitoring and review and how the areas concerned will be maintained and managed.

Development shall be carried out only in accordance with the approved EMP.

No building hereby permitted within each phase pursuant to condition 5 shall be brought into use/occupied until the measures set out in the approved EMP for that specific phase have been implemented in accordance with the approved details.

- 18) Any reserved matters submitted pursuant to condition 1 shall be accompanied by details of external lighting for that specific phase of development.

The external lighting shall be installed and illuminated in accordance with the approved details.

## **NOISE**

- 19) 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 not exceed the noise limits detailed in Table 11.22 of the ES ADDENDUM - CHAPTER 11 NOISE AND VIBRATION measured at the nearest noise sensitive receptors. The method of assessment shall be carried out in accordance with BS4142:2014: 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.

- 20) Noise levels within the dwellings hereby approved shall not exceed the recommended levels set out in BS8233:2014 "Sound Insulation and Noise Reduction for Buildings."

Noise levels measured from enclosed outdoor private amenity areas (gardens) should not exceed the 55dBA upper limit recommended within BS8233:2014.

To verify the above requirements 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 at risk of exceeding the 55dBA upper limit, which would include noise from traffic, noise from Wingmoor Farm Integrated Waste Facility, the commercial units proposed as part of this development and from the existing industrial park to the East of the site, Malvern View Business Park.

The noise survey shall identify those measures necessary to achieve this performance at the affected properties and such measures shall be approved in writing by the Local Planning authority prior to any works above slab level on the identified plots.

The mitigation measures approved shall be completed prior to any dwellings to which they relate being first occupied and post completion testing to verify that the noise level requirements of this condition have been met shall be carried out at sample locations to be agreed by the Local Planning Authority before any of the dwellings hereby approved are first occupied.

If the post completion testing shows that the recommended limits set out in BS8233:2014 are exceeded within dwellings and/or the external upper limit of 55dBA is exceeded when measured from enclosed outdoor amenity areas, details of further mitigation to bring noise levels down to the required limits shall be submitted to and approved in writing by the Local Planning Authority and the proposed further mitigation shall be carried out before the dwellings to which these measures relate are first occupied.

## **HIGHWAYS AND TRANSPORTATION**

- 21) No building/dwelling hereby permitted shall be occupied until details of the following highway works have been submitted to and approved in writing by the Local Planning Authority:

(a) a pedestrian/cycle pathway between the eastern site access and the junction with Stoke Orchard Way within highway land and including appropriate crossing facilities over Stella Way has been completed at general location A on plan FP040/001 and illustrated on plan 4746-34-03 H;

(b) an internal footway and cycle way connection to the pedestrian/cycle pathway scheme A above;

(c) new eastbound and westbound bus stops on Stoke Road in the vicinity of the site frontage with 2m width footway connections from the site accesses and suitable pedestrian crossing over Stoke Road in general location A on plan FP040/001;

(d) junction improvements approved as part of the Homelands (reference: 10/01005/OUT) and Cleavelands (reference: 10/01216/OUT) permissions at the A435/Voxwell Lane/Stoke Orchard Road, A435/Cheltenham Road/Miles Road, and A435/Hyde Lane/Southam Lane junctions broadly in accordance plans/details approved at locations B, C and D on plan FP040/001.

The highway works shall be carried out in accordance with the approved details before the occupation of any building/dwelling.

- 22) Prior to first occupation of any building/dwelling hereby permitted the existing boundary treatment shall be set back to provide visibility splays extending from a point 2.4m back along the centre of the accesses measured from the public road carriageway edge (the X point) to a point on the nearer carriageway edge of the public road 120m in each direction to the nearside carriageway edge (the Y points). The area between the visibility splays and the nearside carriageway edge shall be maintained so as to provide clear visibility between 1.05m and 2.0m at the X point and between 0.26m and 2.0m at the Y points above the adjacent carriageway level.
- 23) No dwelling or building shall be occupied until the highway infrastructure serving that unit has been provided in accordance with the approved details submitted as part of the reserved matters, and the relevant roads and footways finished to at least binder course level between the dwelling and the public highway.
- 24) Parking shall be provided in accordance with approved details as part of the reserved matters application including electric vehicle charging facilities for residential and commercial plot spaces and disabled spaces with parking maintained for this purpose thereafter.
- 25) Cycle parking shall be provided in accordance with approved details as part of the reserved matters application and maintained for this purpose thereafter.
- 26) No above ground works shall commence on site until a scheme has been submitted to and agreed in writing by the Council, for the provision of fire hydrants (served by mains water supply) and no dwelling or unit shall be occupied until the hydrant serving that property or unit has been provided.
- 27) Prior to occupation of any building/dwelling hereby permitted details of the proposed arrangements for future management and maintenance of the proposed streets within the development shall be submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.
- 28) The first 20m of each access road, including the junctions onto existing Stoke

Road shall be completed to at least binder course level prior to occupation of any building/dwelling hereby permitted development using that associated access road.

- 29) Prior to occupation of any building/dwelling hereby permitted a scheme shall be submitted to and approved in writing by the Local Planning Authority to manage overnight parking on-street for the site access and roads associated with the permitted commercial B1 and B8 land uses on site.
- 30) No building/dwelling hereby permitted shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling/building have been completed to at least binder course level and the footway(s) to surface course level.

### **CONSTRUCTION MANAGEMENT PLAN**

- 31) Prior to commencement on site a construction management plan for each phase shall be submitted to and approved in writing by the Local Planning Authority to address the following and then adhered to throughout site construction and demolition:
- (a) parking of vehicles of site operatives and visitors;
  - (b) loading and unloading of plant and materials;
  - (c) storage of plant and materials used in constructing the development;
  - (d) provide for wheel washing facilities
  - (e) provide bound surfacing of the first 20m of construction accesses
  - (f) temporary site access traffic management arrangements.

### **TRAVEL PLAN**

- 32) Prior to occupation of the development hereby permitted a Framework Travel Plan for the residential and employment shall be submitted to and agreed in writing by the Local Planning Authority, setting out;
- (a) objectives and targets for promoting sustainable travel, appointment and funding of a travel plan coordinator,
  - (b) details of an annual monitoring and review process,
  - (c) means of funding of the travel plan, and;
  - (d) 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, unless otherwise agreed in writing by the Local Planning Authority

### **GENERAL**

- 33) Any reserved matters submitted pursuant to condition 1 shall include details of existing and proposed ground levels and finished floor levels of the buildings to be constructed on that specific phase of development relative to Ordnance

Datum Newlyn.

The development shall be carried out in accordance with the approved details.

- 34) The housing mix of the dwellings hereby permitted shall be in broad accordance with the following:
- 1-bed - 4% of total number of homes
  - 2 bed - 28% of total number of homes
  - 3 bed - 43% of total number of homes
  - 4 bed - 22% of total number of homes
  - 5 bed - 3% of total number of homes
- 35) Any reserved matters application relating to appearance shall include details of the materials to be used in the construction of the external surfaces of any building. Development shall be carried out in accordance with the approved details.
- 36) No external construction works, deliveries, external running of plant and equipment or internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1400 on Saturday. There shall be no working on Sundays, Public or Bank Holidays.
- 37) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and/or re-enacting that order with or without modification) any building constructed within the commercial area as identified in the Development Framework Plan, drawing no. 6335-L-02 Rev M, shall only be used for commercial use as defined by Classes B1 and B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and/or re-enacting that order with or without modification) any building constructed within the retail area as identified in the Development Framework Plan, drawing no. 6335-L-02 Rev M, shall only be used for retail use as defined by Class A1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY**

Nina Pindham (of Counsel)                      Instructed by Cheryl Lester, Chief Planning Lawyer, TBC

#### **She called**

Gordon Buchanan BSc (Hons)                  Environmental Health Manager, TBC  
MREHI, MREHIS

Mike Muston BA (Hons) MPhil                 Director, Muston Planning  
MRTPI

### **FOR THE APPELLANT**

Martin Carter (of Counsel)                      Instructed by Gladman Developments Ltd

#### **He called**

Mark Johnson RICS, MRTPI                     Director Johnson Mowat

Nigel Weeks BSc, CEng, ACE                  Director Sterling Maynard

Matt Stoaling BSc (Hons), MSc  
FIAQM, MEnvSci, CEnv                         Director Isopleth

### **FOR GLOUCESTERSHIRE COUNTY COUNCIL**

David Forsdick QC                                 Instructed by the County Council

### **FOR GRUNDON WASTE MANAGEMENT LTD**

Leslie Heasman                                     MJCA Technical Advisers on Environmental Issues

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

INQ1    Notification Letter

INQ2    Letters of representations

INQ3    Statements of Common Ground: (i) General (ii) Housing and (iii) Highways

INQ4    Planning Obligation under s106 Town and Country Planning Act 1990  
between the Appellant and TBC.

INQ5    Planning Obligation under s106 Town and Country Planning Act 1990  
between the Appellant, GCC and TBC.

INQ6    CIL Compliance Statement

### **ADDITIONAL DOCUMENTS SUBMITTED BY THE LPA**

LPA1    Opening Statement on behalf of the Local Planning Authority

LPA2 Note on Cheltenham North RFC building

LPA3 List of Suggested Conditions

LPA4 Closing Submissions on behalf of the Local Planning Authority

**ADDITIONAL DOCUMENTS SUBMITTED BY THE APPELLANT**

APP1 Opening Statement on behalf of the Local Planning Authority

APP2 Appellant's submissions in response to GCC Note on s106 contributions

APP3 Closing Submissions on behalf of the Appellant

**ADDITIONAL DOCUMENTS SUBMITTED BY GLOUCESTER COUNTY COUNCIL**

GCC1 Note from GCC on CIL v Section 106 for Education

**INTERESTED PERSONS' DOCUMENTS**

IP1 Statement by Leslie Heasman