



Ministry of Housing,
Communities &
Local Government

Our ref: APP/G1630/W/18/3210903

Rob Riding
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22 January 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY ROBERT HITCHINS LTD
LAND AT FIDDINGTON, ASHCHURCH NEAR TEWKESBURY
APPLICATION REF: 17/00520/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Philip J G Ware BSc DipTP MRTPI who held a public local inquiry on 11 June 2019 into your client's appeal against the non-determination by Tewkesbury Borough Council of your application for planning permission for a residential development (up to 850 dwellings), a primary school, local centre (comprising up to 2,000 m² gross internal floor area) (A1, A2, A3, A4, A5 and D1 uses) with no single A1 comparison unit exceeding 500 m² gross internal floor area, supporting infrastructure, utilities, ancillary facilities, open space, landscaping, play areas, recreational facilities (including changing facilities and parking), demolition of existing buildings, new access to the A46(T) and Fiddington Lane in accordance with application ref: 17/00520/OUT dated 12 May 2017.
2. On 17 September 2018, this 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 planning permission be granted.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to allow the appeal and grant permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Procedural matters

5. The Secretary of State has received post inquiry correspondence from two members of the public regarding concerns about flood risk and attenuation ponds. However, the Secretary of State does not consider that this correspondence raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

Policy and statutory considerations

6. 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.
7. In this case the development plan consists of saved policies from the Tewkesbury Borough Local Plan to 2011 (adopted 2006) (BLP), and the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017) (JCS). The most important policies in relation to the appeal are identified and set out in section 7 of the Planning Statement of Common Ground, copies of which can be made available on request to the address given at the foot of page 1 of this letter.
8. 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'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework. The Secretary of State has also taken account of Supplementary Planning Guidance documents prepared by the Council, the most directly relevant of which is that dealing with Affordable Housing.
9. 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.
10. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

11. Work has begun on an emerging Tewkesbury Local Plan. Since the close of the Inquiry into this appeal, a pre-submission version of the plan was consulted on between October and November 2019, but it is yet to undergo Examination. The Secretary of State notes that the area was designated as a Neighbourhood Plan area in 2013, and that there was a Regulation 14 draft consultation in 2018. All parties agree that this should not be afforded any weight at this stage, and there is no 'made' Neighbourhood Plan covering the site.
12. When adopted, the intention was that the JCS was to be the subject of an immediate review, and a consultation on an Issues and Options paper ran to January 2019. There is currently no further timetable for the review.
13. Paragraph 48 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. Given its relatively early stage of development, the Secretary of State concludes that the emerging Tewkesbury Local Plan attracts only limited weight at present, and the JCS review attracts no weight.

Main issues

The plan led approach

14. The Secretary of State has carefully considered the Inspectors assessment of the proposal's impact on the plan led approach at IR48-58 and he notes that the site is not identified for any purpose in either part of the development plan (the BLP or JCS) and is classified as countryside in policy terms. He further notes the Inspector's consideration at IR48 that given the size of the site and the scale of the development proposed, it would normally be appropriate for the site to be identified as a strategic site in the JCS. He also notes that the Council agree that there will be a need to review boundaries within the emerging Local Plan due to the housing requirement (IR48).
15. The Secretary of State agrees with the Inspector's view at IR49 that the proposal would be classed as a strategic site, but was not included in the final adopted version of the JCS due to highways issues which have now been resolved. He agrees with the Inspector's conclusion that the proposal is in conflict with policies SP2(8), REV 1 and SD10 of the JCS (IR50).
16. The Secretary of State also agrees with the Inspector's consideration at IR52-53 that there is a serious housing shortfall, as agreed between the parties, and he considers that, given the substantial shortfall in housing land supply, the tilted balance outlined in paragraph 11 of the Framework applies.
17. The Secretary of State agrees with the Inspector's view that appeal site only failed to be in the JCS as a strategic site due to the now resolved highways issues and that the site is available and is deliverable at least in part during the next five year period (IR57). Given the lack of progress on the JCS review and the limited weight to be attached to the emerging Local Plan, and the lack of any objection from the Council, the Secretary of State agrees with the Inspector that it cannot be concluded that the development would undermine the plan making process (IR55), and that the appeal would not prejudice the

plan led approach to the delivery of housing, but would in fact make a major contribution towards addressing the deficit (IR58).

Landscape Character

18. The Secretary of State has considered the Inspector's analysis at IR59-66, regarding the impact on landscape character. He agrees with the Inspector at IR63 that it is inevitable that any greenfield development intended to address the pressing need for housing will result in landscape impacts, and he notes that the site is not subject to any local or national landscape designations and that parties agree that the sensitivity of the area is medium/low (IR63). The Secretary of State agrees with the Inspector at IR64 that given the proposed intrusion into the rural landscape, it is relevant to consider opportunities for minimising the impact. Having had regard to IR65, the Secretary of State agrees with the Inspector that the revised landscape mitigation plan suggests a form of development compatible with its setting. He agrees with the Inspector's conclusion at IR66 that the proposal complies with JCS policies SD4 and SD6. The Secretary of State considers that the harm that will be caused by the loss of an area of countryside should carry only limited weight against the proposal.

Highways impact

19. The Secretary of State has taken into account the Inspector's analysis of the potential impacts of the proposal on the highways network (IR67-71). He notes that the site was not designated as a strategic site in the JCS due to concerns regarding the potential impacts on the highways network. He further notes the Inspector's view at IR69 that agreement has been reached on all matters relating to highways and agrees that the proposal would not conflict with JCS policy INF4. The Secretary of State notes that the County Council does not consider that additional funding for traffic calming measures on minor roads and lanes is necessary. However, he agrees with the Inspector at IR71 that there is sufficient evidence, albeit anecdotal, to indicate that the Mitigation Works Fund is necessary, and he agrees with the Inspector that the funding should be made available and considers that this issue is neutral in the planning balance. In reaching this view, the Secretary of state has taken account of the drafting of the Highways Mitigation Obligation, which requires that justification for any proposed mitigation works be provided before any sums can be drawn down.

Affordable housing

20. The Secretary of State notes at IR72 that the only matter between the appellant and the Council is the amount of affordable housing which the scheme should deliver. While the Council seek 40% affordable housing, the appellant proposes 35%. He also notes that the JCS states that 35% affordable housing will be sought if the site is a Strategic Allocation, and 40% elsewhere. The Secretary of State agrees with the Inspector's view that the only reason the site is not a Strategic Allocation is the concerns regarding the effect of the proposal on the strategic and local highway network (IR67), which have now been resolved. He notes the Inspector's consideration of this issue at IR72-78 and agrees with Inspector's conclusion that it is fair and reasonable to regard the site in the same light as a Strategic Allocation, and to allow the lower level of affordable housing. The Secretary of State agrees with the Inspector, and further considers that the provision of affordable housing in an area with a serious shortfall would be of significant benefit and attracts substantial weight in favour of the proposal.

Other matters

21. The Secretary of State notes the Inspector's analysis at IR79-82 that there are a number of listed buildings outside the application site and notes that in all cases the effect on the significance of the setting of the assets has been agreed to be negligible. He agrees with the Inspector at IR82, that any harm to these assets would be less than substantial, and would be considerably outweighed by the considerable housing and other benefits of the proposal, thereby satisfying the requirements of paragraph 196 of the Framework.
22. The Secretary of State also notes the Inspector's consideration at IR83 regarding the loss of a small amount of Best and Most Versatile agricultural land. He agrees with the Inspector that this is not a significant issue, and that it has not been raised by any interested party.

Planning conditions

23. The Secretary of State has given consideration to the Inspector's analysis at IR84-97, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 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 55 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning obligations

24. Having had regard to the Inspector's analysis at IR98-104, the planning obligations dated 14 June 2019, paragraph 56 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 IR99 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with Policies SD4, SD6 and INF4 of the development plan. He has found the proposal to be in conflict with policies SP2(8), REV 1 and SD10 of the JCS, but given that the partial review of the JCS is at a very early stage at best, he considers that the weight to be attached to those conflicts must be reduced. The Secretary of State therefore considers that the scheme 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.
26. As the Council cannot demonstrate a five year housing land supply, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
27. The Secretary of State considers that the harm to the plan led approach, the loss of an area of countryside and the very limited harm to heritage assets all attract limited weight against the proposal.

28. The Secretary of State considers that the substantial amount of open market and affordable housing to be provided attracts substantial weight in favour of the proposal. In addition, he considers that the construction, investment and employment opportunities of the proposal should attract moderate weight, and the provision of a Local Centre, primary school, community hall and sports facilities all attract limited weight in favour of the proposal, as would on-site and off-site expenditure in relation to flood risk and biodiversity, and highways matters.
29. The Secretary of State has concluded at paragraph 20 of this decision letter in relation to heritage assets that there are no protective policies which provide a clear reason for refusing the development proposed and considers that the substantial benefits of granting permission would significantly and demonstrably outweigh the limited harms.
30. The Secretary of State concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
31. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted.

Formal decision

32. 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 A of this decision letter for a residential development (up to 850 dwellings) including 35% affordable housing, a primary school, local centre (comprising up to 2,000 m² gross internal floor area) (A1, A2, A3, A4, A5 and D1 uses) with no single A1 comparison unit exceeding 500 m² gross internal floor area, supporting infrastructure, utilities, ancillary facilities, open space, landscaping, play areas, recreational facilities (including changing facilities and parking), demolition of existing buildings, new access to the A46(T) and Fiddington Lane in accordance with application ref: 17/00520/OUT dated 12 May 2017.
33. 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

34. 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.
35. 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.
36. A copy of this letter has been sent to Tewkesbury District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Authorised by the Secretary of State to sign in that behalf

Annex A - SCHEDULE OF REPRESENTATIONS

General representations

Simon Hopkins	13 January 2020
Lyn Taylor	15 January 2020

Annex B – List of Conditions

Reserved matters and time limits

- 1) No part of the development hereby permitted shall be begun until details of the access (with the exception of those details approved pursuant to Conditions 17, 19 and 20), 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 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.
- 3) 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.
- 4) No more than 850 dwellings shall be constructed on the site pursuant to this planning permission.
- 5) The total gross retail/commercial floorspace available for use by customers (excluding toilets and other ancillary facilities) of all premises falling within Class A1, A2, A3, A4, A5 and D1 (not including the primary school) 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 2,000 square metres in total and no single A1 unit shall comprise more than 500 square metres.
- 6) The size of the primary school hereby permitted shall not exceed a single form of entry.

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 submitted Parameter Plans (Drawing Nos H.0543_04 Rev K, H.0543_05 Rev J, H.0543_06 Rev P and H.0543_07 Rev H) by the revised Landscape Mitigation Plan (ref.18095.002 Rev.D), the principles and objectives of the Design and Access Statement, April 2017, except where the requirements of other planning conditions require otherwise. Development shall be carried out in accordance with the approved Phasing Plan or any subsequent revisions thereto.

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 for its written approval. The SWMD shall be in accordance with the submitted Parameter Plans (Drawing Nos H.0543_04 Rev K, H.0543_05 Rev J, H.0543_06 Rev P and H.0543_07 Rev H) the revised Landscape Mitigation Plan (ref.18095.002 Rev.D) 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:

- f) the broad arrangement of development blocks around a street hierarchy including indications of active frontages;
- g) density ranges;
- h) maximum building heights;
- i) character areas;
- j) the location and general extent of public open space, including formal recreational areas, Play Areas, Allotments, drainage features access and car parking;
- k) existing landscape features to be retained and/or enhanced;
- l) proposed structural planting;
- m) the location and general extent of the local centre/neighbourhood area, including the school, community facility and associated access and car parking;
- n) the location of existing and proposed public rights of way;

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

Waste and recycling

- 9) 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

- 10) The first reserved matters application for any given phase submitted pursuant to Condition 1 shall include the following details in respect of that phase:
- 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 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

- 12) No development shall take place within any phase or part of a phase pursuant to Condition 7 until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority for that phase or part of a phase. 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. The development shall be carried out in accordance with the approved Written Scheme of Investigation.

Ecology

13) No development or site clearance shall take place until a strategic Ecological Constraints and Opportunities Plan (ECOP) for the application site has been submitted to and agreed in writing with the Local Planning Authority. The Plan shall be based upon the submitted Environmental Statement (May 2017) and Environmental Statement Addendum (May 2019), the Green Infrastructure Parameter Plan (ref.H.0543.04 Rev.K) and the revised Landscape Mitigation Plan (ref. ref.18095.002 Rev.D). The Plan shall additionally, but not exclusively, include the following

- a) strategic dark corridors requirements;
- b) skylark nesting habitats requirements;
- c) integrated amphibian and reptiles habitats and corridors requirements; and
- d) an ecological and connection strategy for the Tirlle Brook including geomorphological factors, fish, riparian habitats and Otters.

Development shall be carried out in accordance with the approved ECOP thereafter unless otherwise agreed in writing with the Local Planning Authority.

14) Prior to the commencement of development of each phase (or part phase) of development identified in the phasing plan (Condition 7) a Green Infrastructure and Biodiversity delivery scheme for that phase shall be submitted to and agreed in writing by the Local Planning Authority. The delivery scheme shall be in general accordance with the strategy as set out in Chapter 4 (Ecology) of the Environmental Statement, the Green Infrastructure Parameter Plan (ref.H.0543.04 rev.K) the revised Landscape Mitigation Plan (ref. ref.18095.002 Rev.D) and the ECOP (Condition 13), and shall include, but not exclusively, the following:

- a) risk assessment of potentially damaging construction activities;
- b) identification of "biodiversity protection zones" and their purpose/function;
- c) updated ecological survey's and assessments where required;
- d) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- e) the locations and timing of works to avoid harm to biodiversity features and provide effective mitigation and enhancement;
- f) the times during construction when specialist ecological or environmental practitioners need to be present on site to oversee works;
- g) responsible persons and lines of communication;
- h) the role and responsibilities on site of an ecological clerk of works or similar person;
- i) use of protective fences, exclusion barriers and warning signs; and
- j) detailed ecological enhancement implementation measures relevant to the pre development ecological site characteristics and opportunities

Development for that phase (or part phase) shall be carried out in accordance with the approved delivery scheme thereafter unless otherwise agreed in writing with the Local Planning Authority.

- 15) No dwelling in any given phase pursuant to Condition 7 shall be occupied until a Landscape and Ecological Management Plan (LEMP) for that phase has been submitted to, and be approved in writing by, the local planning authority. The LEMP for each phase shall, but not exclusively, include the following:
- a) description and evaluation of features to be managed in relation to the open spaces defined in the Environmental Statement, the ECOP (Condition 13) and Green Infrastructure and Biodiversity delivery scheme appropriate to the phase;
 - b) ecological trends and constraints on site that might influence management;
 - c) aims and objectives of management including, but not exclusively, those in relation to farmland birds, amphibians, reptiles and bats;
 - d) appropriate management options for achieving aims and objectives including appropriate enhancement measures;
 - e) prescriptions for management actions;
 - f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) details of the body or organization responsible for implementation of the plan; and
 - h) ongoing monitoring and remedial measures

The LEMP shall also identify the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details

- 16) Prior to the occupation of the first dwelling, in each phase (Condition 7), a lighting scheme demonstrating that strategic dark corridors safeguarding in accordance with the ECOP (Condition 13) is achieved shall be agreed in writing with the LPA and thereafter development carried out in accordance with the approved scheme.

Access and layout

- 17) Notwithstanding Condition 1, the vehicle, cycle and pedestrian access points and associated link road and pedestrian crossing points as shown on drawing no. H556/11 Rev C shall be constructed in accordance with the approved plans before any building hereby permitted is first occupied.
- 18) Notwithstanding the approved plans and Condition 17 above, the southern access arm of roundabout R1 as shown on drawing No. H556/11 Rev C shall be constructed in accordance with revised details to be submitted to and agreed in writing by the Local Planning Authority.

- 19) Prior to the occupation of any part of the development hereby approved, the works to improve the Northway Lane / Fiddington Lane junction with the A46 as generally shown on PFA Drawing No. H556/15 Rev A (subject to detailed design and road safety audit) shall be complete and open to traffic.
- 20) Prior to the commencement of any part of the development hereby approved, the works to improve the Alexandra Way junction with the A46 as generally shown on PFA Drawing No. H556/14 Rev A (subject to detailed design and road safety audit) shall be complete and open to traffic.
- 21) No above ground works comprising the erection of a building shall commence on site until a scheme has been submitted to and agreed in writing by the Local Planning Authority, for the provision of fire hydrants (served by mains water supply) and no dwelling shall be occupied until the hydrant serving that property has been provided to the satisfaction of the Local Planning Authority.
- 22) Notwithstanding the approved plans no more than 300 dwellings shall be occupied until a bus/emergency access has been provided to Fiddington Lane in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority.
- 23) The details to be submitted for the approval of reserved matters for each phase (or part phase) of development pursuant to Condition 1 shall include vehicular parking and turning and loading/ unloading facilities within the phase (or part phase). Thereafter, no building hereby approved shall be occupied until those facilities and carriageways (including surface water drainage/disposal and street lighting) serving that building and providing access from the nearest public highway to that building have been completed to at least binder course level and the footways to surface course level. The facilities shall be maintained available for those purposes for the duration of the development.

Strategic highway mitigation

- 24) Prior to the occupation of any part of the development hereby approved, the works to improve M5 junction 9 as generally shown on PFA Drawing No. H556/12 Rev D (subject to detailed design and road safety audit) shall be complete and open to traffic.
- 25) Prior to the occupation of any part of the development hereby approved, a scheme to widen the A438 exit from M5 Junction 9 as generally shown on PFA Drawing No. H556/12 Rev D (subject to detailed design and road safety audit) shall be complete and open to traffic.

Street maintenance

- 26) 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

- 27) No development shall take place in a phase or part of a phase, including any works of demolition, until a Construction Method Statement which accords with the Green Infrastructure and Biodiversity Delivery Scheme for that phase has been submitted to and approved in writing by the local planning authority for that phase or part of a phase. The document shall contain details for community engagement measures and to control the following:
- a) the 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) wheel washing facilities;
 - e) measures to control the emission of dust and dirt during construction;
 - f) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - g) details of the site access/routeing strategy/signage during the construction period.
 - h) hours of working;
 - i) site boundaries/hoardings;
 - j) site activities;
 - k) Construction Traffic:
 - i.volumes;
 - ii.routes;
 - iii.holding areas;
 - iv.parking;
 - v.cleaning;
 - l) oversize loads;
 - m) temporary fuel storage.

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

Levels

- 28) The reserved matters application for each phase or part of a phase that includes buildings 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 or part of a phase. The development shall be carried out in accordance with the approved details.
- 29) Notwithstanding the approved plans/details, a detailed surface water drainage strategy for the entire development hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to, or accompanying, the first reserved matters application submitted pursuant to Condition 1. All subsequent reserved matters submitted pursuant to Condition 1 shall incorporate the approved surface water drainage strategy and the development shall be carried out only in accordance with the approved surface water drainage strategy. The details shall be based on the Flood Risk Assessment & Drainage Strategy (Revision A, dated February 2017), as amended by drawing 256-220-C 'Drainage Strategy (Appendix O of the Flood Risk Assessment &

Drainage Strategy), included within the Environmental Statement. 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;
 - 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.
- 30) No building hereby permitted within each phase or part of a phase of the development, as defined under Condition 29 section e) above, shall be occupied until surface water drainage works have been implemented in accordance with details that have first 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.
- 31) No development approved by this permission for a phase or part of a phase within the floodplain, as defined by the 1:100 + 35% climate change flood extent as shown on drawing 256-230 'Tirle Brook Modelling 2016' (Appendix K of the Flood Risk Assessment & Drainage Strategy), shall be commenced until a scheme for the provision and implementation of compensatory flood storage works, based on the details submitted to the Environment Agency on 22nd February 2018, has been submitted to and approved in writing by the Local Planning Authority for that phase or part of a phase. The scheme shall include details of any phasing of the approved works and shall be implemented in accordance with the approved programme and details.
- 32) No development shall be put in to use/occupied until a SUDS maintenance plan for all SuDS/attenuation features and associated pipework has been submitted to and approved in writing by the Local Planning Authority. The approved SUDS maintenance plan shall be implemented in full in accordance with the agreed plan.
- 33) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of any watercourses, inside or along the boundary of the site, unless agreed otherwise in writing by the Local Planning Authority.
- 34) Floor levels should be set at a minimum of 600mm above the appropriate modelled 1% flood level including a 35% allowance for climate change as set out on Page 21 of Appendix K of the Flood Risk Assessment & Drainage Strategy (Revision A, dated February 2017).

Noise

- 35) 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 BS4142:2014: 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.
- 36) Noise levels within the dwellings hereby approved shall not exceed those set out in BS4142:2014 "Sound Insulation and Noise Reduction for Buildings". Noise levels measured from enclosed outdoor private amenity areas (gardens) should attain the 50dB(A) desirable criteria (Considered by WRS to be the LOAEL) and not exceed the upper limit recommended within BS4142:2014 being 55dB(A) (Considered by WRS to be the SOAEL)**.

To verify the above requirements for each phase (or part phase) 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 LOAEL.

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 so 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 limits set out in BS4142:2014 are exceeded within dwellings and/ or the upper limit of 55dB(A) 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.

** Section 3 WRS Application to Support NPSE Aims – Worcestershire Regulatory Services Noise Technical Guide 2nd edition 2015.

Sustainable travel

- 37) The approved Residential Travel Plan, H556-DOC07 TP Issue 2, dated 30 May 2018, shall be implemented in accordance with the submitted details and timetable therein (except for the developer to take on the role of co-ordinator and providing funding), and shall be continued thereafter, unless otherwise agreed in writing by the Planning Authority.
- 38) Prior to first occupation of any dwelling hereby approved, appropriate cabling and an outside electrical socket must be supplied for that dwelling to enable ease of installation of an electric vehicle charging point (houses with dedicated parking). For those parts of the development with unallocated parking i.e. flats/apartments 1 EV charging point per 10 spaces (as a minimum) should be provided to be operational at first occupation of the relevant dwelling. The charging point must comply with BS7671. The socket should comply with BS1363, and must be provided with a locking weatherproof cover if located externally to the building.
- 39) Electric charging points shall be installed in 10% (minimum) of the allocated parking spaces at the development. This may be phased with 5% of spaces operational initially and a further 5% made EV charging ready (i.e. incorporating appropriate cabling) to allow additional provision to meet future demand. The charging points shall comply with BS7671 and the sockets with BS 1363 which must be provided with a locking weatherproof cover if located externally to the building.
- 40) Applications submitted pursuant to Condition 1 shall include details for secure cycle parking facilities. The details shall include the location, type of rack, spacing, numbers, method of installation and access to cycle parking. The approved cycle parking measures shall be fully installed prior to the first occupation of the building to which it relates.

Contamination

- 41) 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 and where remediation is necessary a remediation scheme shall be prepared in accordance with requirement, 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.

Housing mix

- 42) The first reserved matters application for any given phase (or part phase) submitted pursuant to Condition 1 shall include the submission of a Housing Mix Statement to the Local Planning Authority for its written approval setting out, in respect of that phase, how an appropriate mix of dwelling sizes, types and tenures will be provided in order to contribute to a mixed and balanced housing market to address the needs of the local area, including the needs of older people, as set out in the local housing evidence base, including the most

up-to-date Strategic Housing Market Assessment for the area at the time of the submission of the relevant reserved matters. The development shall be implemented in accordance with the approved Housing Mix Statement for that phase (or part phase).

Approved plans

- 43) The development hereby permitted shall be carried out in accordance with the following approved plans unless other conditions in this planning permission specify otherwise:-
- a) Site Location Plan ref. FN.00.003 rev. D
 - b) Green Infrastructure Parameter Plan ref.H.0543.04 rev. K
 - c) Land Use Parameter Plan ref. H.0543.05 rev. J
 - d) Access and Movement Parameter Plan ref. H.0543.06 rev. P
 - e) Building Heights Parameter Plan ref.H.0543.07 rev. H
 - f) Plan Showing Primary Access Arrangements ref.H556/11 rev. C
 - g) Proposed Improvements to M5 Junction 9 ref.H556/12 rev. D
 - h) Western Access ref.H556/14 rev.A
 - i) Eastern Access ref. H556/15 rev.A
 - j) Landscape Mitigation Strategy Plan ref. 18095.002 rev.D
 - k) Drainage Strategy Drawing ref. 256-220 rev. C



The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 10 September 2019

TOWN AND COUNTRY PLANNING ACT 1990

TEWKESBURY BOROUGH COUNCIL

LAND AT FIDDINGTON, ASHCHURCH, NR TEWKESBURY

APPEAL BY ROBERT HITCHINS LIMITED

Inquiry held on 11 June 2019

Land at Fiddington, Ashchurch, Nr Tewkesbury

File Ref: APP/G1630/W/18/3210903

<https://www.gov.uk/planning-inspectorate>

File Ref: APP/G1630/W/18/3210903

Land at Fiddington, Ashchurch, Nr Tewkesbury

- 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 17/00520/OUT is dated 12 May 2017.
- The proposal is residential development (up to 850 dwellings), a primary school, local centre (comprising up to 2,000 m² gross internal floor area)(A1, A2, A3, A4, A5 and D1 uses) with no single A1 comparison unit exceeding 500 m² gross internal floor area, supporting infrastructure, utilities, ancillary facilities, open space, landscaping, play areas, recreational facilities (including changing facilities and parking), demolition of existing buildings, new access to the A46(T) and Fiddington Lane.

Summary of Recommendation: The appeal be allowed and planning permission be granted.

Procedural matters and background

1. The application was submitted in outline with all matters reserved. A range of other material, including an illustrative Masterplan and a series of Parameter Plans, were also submitted. The appeal has been considered on this basis.
2. On 17 September 2018 the Secretary of State recovered jurisdiction in respect of the appeal. The reason was that the appeal raises policy issues related to residential development of 150 or more dwellings 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.
3. An unaccompanied site visit was undertaken, from public land, on the day before the Inquiry. Both parties agreed that, given the nature of the issues there would be no benefit from a further visit after the close of the Inquiry.
4. After the appeal was lodged, the Council resolved (18 December 2018) on a number of putative reasons for refusal¹. These related to the strategy for residential development, the effect on the area and landscape, impact on local and strategic roads, the provision of community and educational facilities, and the provision of affordable housing.
5. However, before the Inquiry the Council withdrew all objections to the proposal and recommended that permission should be granted. This will be reflected below in the summary of the Council's case. The Council did not call any witnesses and the appellant, in the light of the changed position, only called one planning witness.

The site and surroundings

6. The appeal site is around 55 hectares in extent and is gently sloping agricultural land including field boundary hedgerows and trees. It includes an area of highway land and is located immediately to the south of Ashchurch and around 2k east of Tewkesbury.
7. It is bounded to the west by the M5, to the east by Fiddington Lane with open countryside beyond, and to the south by open fields. There is an area of open land between the site

¹ Core Documents (CD) A31 and A32

and the A46 trunk road to the north, and this area is allocated for development in the development plan and has an outline permission for a garden centre and a retail outlet centre². If implemented, this would obviously significantly change the context of the appeal site.

8. The local highway network comprises the M5, which is accessed at Junction 9 from the A46 at Ashchurch. Both are trunk roads administered by Highways England. There are three public rights of way running across the site, and a bridleway beyond the southern boundary.
9. The site is not within or adjacent to any national or local landscape designations, nor is it within the Green Belt. The Cotswold Area of Outstanding Natural Beauty is around 3km to the east. There are no designated heritage assets within or adjoining the site, though there are some beyond the boundary. Most of the site is within Flood Zone 1, though there is other land within Zones 2 and 3.

Planning policy

10. The development plan comprises the saved policies of the Tewkesbury Borough Local Plan to 2011 (BLP) (2006)³ and the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) (2017)⁴.
11. The JCS covers the period to 2031 and is the most up to date component of the development plan, replacing most of the strategic policies of the BLP. A full list of the JCS policies which the parties agree are of most importance to this appeal is set out in the Planning Statement of Common Ground (SOCG)⁵. When adopted, the intention was that the JCS was to be the subject of an immediate review due to the housing shortfall, and an Issues and Options paper has been produced with this in mind. There is no timetable for the review.
12. The BLP was intended to cover the period to 2011. The appeal site is not affected by any allocation or designation in the BLP.
13. Work has begun on the emerging Tewkesbury Local Plan, which will provide locally specific policies and allocations within the strategic framework of the JCS. However this is at a very early stage and the parties agree that no weight should be accorded to it.
14. There is no 'made' Neighbourhood Plan covering the site. The area was designated as a Neighbourhood Plan area in 2013 and there was a Regulation 14 draft consultation in 2018⁶. The parties agreed that this should not be afforded any weight at this stage.
15. The Council has prepared a number of Supplementary Planning Guidance documents. That dealing with Affordable Housing is the most directly relevant to the issues in this appeal.

² Document 14 Paragraph 6.1

³ CD D11

⁴ CD D1

⁵ Document 14 Paragraph 11

⁶ CD D9

16. The site lies within an area which has been awarded Garden Town Status⁷. The parties agree that this inclusion does not prejudice or prejudge the normal operation of the planning system.

The proposal and planning history

17. The application plans and supporting documents are listed in the Planning SOCG⁸.

18. As shown on the Parameter Plans the proposal includes up to 850 dwellings, with a mix of house types and 35% affordable housing. The dwellings would be generally two storeys in height.

19. The proposal includes a local centre with a range of small units intended to serve the day to day needs of the residents. It is indicated as being centrally located on the main access corridor. A primary school, initially with a single form entry, is proposed. This could accommodate up to 210 pupils.

20. The illustrative Masterplan shows various types of green infrastructure, including general amenity space as well as formal and informal recreation areas. A more substantial area of open space is shown in the north-western part of the site, including sports pitches and changing facilities.

21. Although access is a reserved matter, the illustrative Masterplan shows that the proposed primary vehicular access would pass through the approved garden centre and retail outlet centre and thence onto the A46. The primary access would be the modified A46/Alexandra Way junction. The scheme would also deliver other highway improvement works⁹.

22. Both the appeal site and the commercial land to the north are under the control of the appellant, and the access arrangements can be delivered regardless of progress on the commercial scheme. The parties agree that the provision of access could be the subject of conditions.

23. The only history related to this site is a scheme, dismissed on appeal in 1993, for a mixed-use development.

Statements of Common Ground

24. Three SOCGs have been submitted:

- A planning SOCG (7 June 2019) between the appellants and the Council¹⁰.
- A highways SOCG (16 April 2019) between the appellants and Highways England¹¹.
- A SOCG between the appellants and Ashchurch Rural Parish Council¹².

⁷ CD D14 summarises

⁸ Document 14 Section 4

⁹ Summarised at Document 14 Paragraph 37

¹⁰ Document 14

¹¹ Document 15

¹² Document 13

The planning SOCG with the Council

25. The key elements of this SOCG are:

- Both parties agree that the appeal should be allowed and would represent sustainable development.
- The site is in an accessible and sustainable location and is capable of access to nearby employment, shops, facilities, schools and other services.
- The revised Landscape Mitigation Plan sets out the expectations for the detailed landscape and layout design, in a manner acceptable to both parties. These matters are points of clarification rather than amendments to the scheme. A condition would require the submission of a site-wide Masterplan.
- At the time of the adoption of the JCS, there was a shortfall of 2,455 homes required to meet the housing requirement for Tewkesbury Borough.
- JCS Policy REV1 set out a requirement for an immediate partial review of the JCS, and the JCS authorities published a Local Development Scheme in October 2017. However this did not include a timetable and it is unclear whether this is to be a full or partial review. The parties agreed that no weight can be attached to the JCS review at this stage.
- Using the approach to housing land supply adopted in the Highnam decision¹³ and using the Council's figures there is a 2.77 year supply. The Council does not accept the Secretary of State's approach in Highnam, but even on their figures there is only a 4.33 year supply. For the purposes of this appeal, both parties agree that the shortfall is "substantial" and that if new sources of deliverable housing are not identified the position will worsen.
- Both parties agree that the 'tilted balance' in paragraph 11 of the Framework is therefore engaged.
- The proposal will make a timely and deliverable contribution to the housing shortfall, and can incorporate high quality design.
- The proposal is commensurate with the Garden Town status of the area and would not be premature for this or any other reason.
- The saved policies of the BLP should be accorded weight to the extent that they are consistent with the Framework.
- As the appeal site is not allocated for any purpose in the BLP, it is open countryside in policy terms. However the parties agree that the boundaries were not reviewed as part of the JCS and will need to be reviewed as part of the emerging Local Plan to accommodate the development requirements of the JCS.

¹³ CD H4

The highways SOCG with Highways England

26. The key elements of this SOCG are:

- The preliminary highway design was approved as part of the outlet centre, which included the creation/improvement of accesses from the A46.
- The design and layout arrangements¹⁴ currently proposed are an acceptable scheme subject to detailed design and road safety audit. These detailed matters can be secured by conditions.
- There is agreement on a range of matters including traffic generation, trip distribution and traffic growth. Mitigation works to Junction 9 are being worked up and can be secured. The site is to be served by a half hourly bus service to/from the town centre, ensured through the s106 Obligation. The accessibility credentials of the site are agreed.

The SOCG with Ashchurch Rural Parish Council

27. The key elements of this SOCG are:

- These parties agreed that there is a requirement for new housing to meet the shortfall, and that the current proposal would meet some of this need.
- Affordable housing would be a considerable benefit. The Parish would prefer 5% of the dwellings to be bungalows.
- The impact of the Tewkesbury Area Draft Concept Masterplan¹⁵, identifying the area as part of an employment centre, would be considerably greater than that of the appeal scheme, and are unacceptable to the Parish.
- The Illustrative Masterplan represents an appropriate form and distribution of uses.
- If it is concluded that there would be an unacceptable highways impact on Fiddington Lane and elsewhere, then a s106 contribution of £125,000 would address the Parish's highways concerns¹⁶. (However the Highway Authority does not consider this is necessary¹⁷.)
- The parties agreed that there is no scheme for off-line improvements to the A46 and that, were any scheme to be required in future, it would not be dependent on the appeal site.
- The scheme could integrate well with footpaths, which provide opportunities to access facilities including Tewkesbury School.
- The parties agreed that the appeal proposal would provide some community facilities and that other uses could be accommodated within the range of uses sought.

¹⁴ Plan nos. H556/14A and H556/15A

¹⁵ CD D8

¹⁶ Document 1 explains the appellant's position and illustrates the type of measures

¹⁷ Document 5

- The SOCG records that the size and scale of the development and its landscape impact is not agreed.

The case for the appellant

28. The approach to appeals which is encouraged by national guidance is that parties should continue to discuss contentious matters even in the lead up to the Inquiry. This has happened in this case and has led the Council to a position where it is able to withdraw all opposition to the proposal. This is reflected in the Planning SOCG, which confirms the position of both parties - which is that the proposal represents sustainable development, that there are no planning reasons why the appeal should be dismissed, and that the appeal should be allowed
29. The original first reason for refusal related to plan making. However the use of the appeal site for strategic scale housing development is in broad conformity with the development plan. In any case, the Council accepts that it cannot identify a five year supply of housing land and that there is a substantial shortfall. The policies which are most important for determining the application are out-of-date, and the 'tilted balance' is engaged. Given the housing land supply position it is agreed that there is no need to consider other potential routes to the tilted balance.
30. The Council's original putative reason for refusal relating to landscape matters was always misconceived, but discussions with the Council have led to a masterplanning approach which meets the Council's concerns.
31. Highways matters have been the subject of extensive discussions with the highway authorities. The result is a comprehensive agreement including improvement works to the northbound off-slip and gyratory improvements at Junction 9 of the M5, access works to serve the development and changes to the signalisation at the Aston Cross junction¹⁸. Although the Highway Authority does not consider it necessary, the appellant is prepared to place monies aside by way of a planning obligation to mitigate any rat running on local roads¹⁹.
32. The other former putative reasons for refusal concerned contributions to various aspects of infrastructure provision. Agreement has been reached on public open space, outdoor recreation, sports facilities, education and library contributions. Planning obligations have been completed in relation to all these matters and there is no longer an objection on that basis.
33. There remain two areas of objection by the Parish Council concerning the size of the development and its landscape impact. The Parish Council did not attend the Inquiry to address these matters²⁰. There is therefore no clarity as to the nature of the objection related to the scale of the proposal. Nor is there any evidence to counter the conclusion jointly reached on landscape matters between the main parties.
34. The Council is concerned that the scheme should provide 40% affordable housing in place of the 35% incorporated in the scheme. However this is essentially a fairness argument as the proposal is of a strategic scale and, as such, should be considered against the policy related to strategic allocations, which seeks a minimum of 35%. This choice is enshrined in the Obligation, and either 35% or 40% can be selected on an evidential

¹⁸ Document 4

¹⁹ Examples of possible works at Document 1

²⁰ Mr Hargreaves spoke only in relation to highway mitigation matters

basis. In any event, the Council do not press this point such that they recommend dismissing the appeal, whatever conclusion is reached on this matter.

35. There is no contest to the appellant's summary of the benefits arising from the scheme²¹. Nobody is suggesting that any harm (such as it might be) outweighs the benefits to the extent required to warrant a rejection of the appeal.

The case for the Council

36. The first putative reason for refusal, dealing with the strategy for new residential development (related to JCS policies SP1, SP2, SD10 and REV1), was withdrawn by the Council by virtue of an updated position on deliverable housing sites. As a result of this updated position the authority accepts that the 'tilted balance' under paragraph 11 of the Framework is engaged.
37. The second putative reason for refusal related to the character of the site and its surroundings (related to JCS policies SD4 and SD6). The Council no longer contests this matter, following an agreed approach illustrated by a revised Landscape Mitigation Plan. This clarifies the landscape and urban design matters which need to be taken into account at the masterplanning and detailed design stages. The agreed conditions address these matters. The Council is satisfied that a high quality development can be delivered.
38. The third putative reason for refusal related to the impact on the local and strategic road network in relation to JCS policy INF1. This was the subject of additional material submitted by the appellant and, following further work and discussions with Highways England, this reason for refusal was withdrawn.
39. Putative reasons five and six dealt with community and education facilities and open space, outdoor recreation and sports facilities (in the context of BLP policies RCN 1 and GNL11 and JCS policies INF4, INF6 and INF7). The authority accepts that the submitted planning obligations address these matters. The Council and the County Council have submitted CIL Compliance Statements dealing with libraries and education, affordable housing, play and community facilities²².
40. Finally, putative reason for refusal four dealt with the provision of affordable housing, in the context of Policy SD12 of the JCS. One of the obligations deals with the provision of affordable housing, but there remains an issue between the parties as to whether the scheme should provide 35% (the appellant's position) or 40% (the Council's position).
41. CS policy SP12 seeks a minimum of 40% affordable housing outside strategic sites - this applies to the appeal site. The appellant's have not submitted a viability appraisal to justify a lower figure. It is not reasonable to argue that 35% is sought on strategic sites, as this is not such a site. This figure is, in any case, a minimum.
42. Overall, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits.

Written representations and those appearing at the Inquiry

43. Mr Hargreaves appeared for Ashchurch Rural Parish Council. He was content to rely on written submission in the main. However he stressed the highway safety aspects of any

²¹ Summarised at Mr Hutchinson's paragraph 8.63.1

²² Documents 2 and 3

increased use of the lanes – which are well used by walkers, horse riders and cyclists. The safety of these vulnerable road users would be harmed if works to calm traffic were not undertaken. The written submissions by the Parish Council opposed the proposal in relation to its size and scale; the impact on the A46/J9 and Fiddington Lane; landscape impact; and loss of amenity to local residents. The Parish Council suggested, without prejudice, a range of necessary benefits if the scheme were approved.

44. Other written representations²³ raised very similar issues.

Conditions and obligations

45. A set of conditions have been prepared, without prejudice, and agreed between the Council and the appellant. They were discussed and slightly modified at the Inquiry and the final version forms an appendix to this report.

46. Draft Planning Obligations were discussed at the Inquiry. The final obligations (all dated 14 June 2019) were subsequently submitted and the parties were given the opportunity for further comment²⁴. These dealt with Education and Highways; Affordable Housing; Highways and Transportation; Open Space and Communities; and Highways Mitigation. They are dealt with below.

²³ On file

²⁴ Docs 8 - 11

Inspector's conclusions

[Numbers in square brackets denote source paragraphs]

Background and main considerations

47. Despite the Council's position, which is that planning permission should be granted, it is still useful to consider the proposal largely under the headings of the former putative reasons for refusal. The main considerations are therefore:

- Whether the proposal would prejudice the plan led approach to the provision of housing
- Whether the proposal would harm the landscape character of the area
- Whether the proposal would harm highway safety
- The amount of affordable housing which should be provided

The plan led approach

48. The site is not identified for any purpose in either part of the development plan (the BLP and the JCS). Given the size of the site and the scale of the development proposed, it would normally be appropriate for the site to be identified in the JCS as this is a recent element of the development plan and deals with strategic sites [25]. It is not identified as such, and thus is classed as countryside in policy terms. However the Council agree that, as the boundaries were not reviewed as part of the JCS, there will need to be a review within the emerging Local Plan due to the housing requirements [25].
49. There is no dispute that the proposal is of a scale that it would be classed as a strategic site. It was recommended as such by the Inspector during the course of the JCS Examination, but was not included in the final adopted version due to highways issues (which have since been resolved – see below).
50. On the face of it, the proposal is therefore contrary to the development plan. The appeal scheme conflicts with JCS policies SP2(8)), REV 1 and SD10. These support development on allocated sites and within the urban areas, and identify the need for an immediate partial review of the JCS to help meet the housing shortfall.
51. However the JCS was adopted with a considerable deficit in housing provision which, it was anticipated, would be addressed in the short term by a partial review [11, 25]. The overarching approach of the JCS (Strategic Objective 8) is the delivery of a wide choice of quality homes in order to meet housing need. This is reflected by JCS policy SP1 and SP2 which distribute the overall minimum housing requirement amongst the JCS authorities.
52. The current position is that there is a serious housing shortfall as demonstrated by the work on the AMR, and the intended immediate partial review of the JCS is at a very early stage at best. This is an agreed position and only the quantum of the shortfall is not fully agreed between the parties. If the approach adopted by the Secretary of State in the Highnam case is adopted the provision is only 2.77 years, or 4.3 years if the Council's approach is preferred [25].
53. However it is not necessary in determining this appeal to reach a judgement on which approach is preferred, as both parties specifically accept that there is a substantial shortfall. In addition, whatever the level of the current undersupply, the parties agree that it will worsen in coming years [25].

54. Given the substantial shortfall in housing land supply, the proposal falls squarely into the provisions of paragraph 11 of the Framework, in the absence of any harm to assets of particular importance which might provide a clear reason for refusing the development proposed. This is wholly accepted by the Council, and both parties agree that there is no need to consider whether there are any other routes to the so-called 'tilted balance'.
55. The putative reason for refusal stated that the proposal could prejudice the outcome of the plan making process, with reference to the review of the JCS. However the JCS review and the emerging Local Plan are at very early stages and carry little or no weight at this stage. On that basis, and given the lack of any objection from the Council, it cannot be concluded that the development would undermine the plan-making process.
56. In this context the Ashchurch Garden Town is no more than an idea at present and has little status – if pursued, it would have to go through the planning process in its own right. In any event, the parties agree that the current proposal would not prejudice, and would in fact materially assist, the concept [16, 25].
57. Overall, the position is that the appeal scheme is not identified in the development plan and is therefore in the countryside in policy terms and is in conflict with the JCS in this respect. However the situation is unusual in that the JCS stressed the need for housing delivery and was adopted in the knowledge of a housing shortfall. The intended immediate review of this part of the development plan is progressing, at best, very slowly. The appeal site nearly made it into the JCS as a strategic site, and only failed because of highways issues (since resolved). The appeal site is available and the development is deliverable, at least in part, during the next five year period. There is no evidence that the proposal is premature.
58. For all those reasons, in line with the Council's position, it is considered that the appeal would not prejudice the plan led approach to the delivery of housing, but would in fact make a major contribution towards addressing the deficit.

Landscape character

59. The appeal site is gently sloping agricultural land, including hedgerows and trees. It is within the Settled Unwooded Vale character type in the Gloucester Landscape Character Assessment. In the northern and western areas there are strong visual and noise effects from the motorway and the A46, which significantly detract from its rural character, whereas in the south-eastern area the site is more tranquil.
60. The only issue to be decided at this stage is the principle of the development, in outline. However it is quite reasonable to consider the potential landscape effects and approaches towards design and mitigation.
61. A built development on the site, would obviously result in a change to landscape character from open fields to an urban use. As noted in the appellant's Environmental Statement there would be a loss of openness and an expansion of the current urban area. However the Council's position has always been that the site is capable of accommodating some development. This was the position during the JCS process and when officers reported on the current proposal.
62. The Tewkesbury Area Draft Concept Masterplan [27], is not a development plan document as it is part of the evidence base to support work on the review of the JCS. Although as a planning document it carries no weight (nor has it been suggested that it should have weight) it is notable that it envisages the appeal site being developed and the countryside lost (albeit that it is shown for a different use).

63. It is inevitable that any greenfield development intended to address the pressing need for housing will result in similar landscape impacts. But in this case the site is not subject to any local or national landscape designations, and there is no reason to disagree with the parties that the sensitivity of the area is medium/low.
64. Given the proposed intrusion into the rural landscape, it is relevant to consider opportunities for minimising the impact. The concerns of the Council at the application stage related particularly to the effect on the Gloucestershire Way (close to the southern boundary of the site) and the way in which the linkages to other developments in the area would be handled. However these concerns have subsequently been assuaged by the Revised Landscape Mitigation Plan which has been produced and agreed within the SOCG.
65. This Plan does not depart from the submitted parameter plans but indicates the form the development could take, so as to give reassurance that any issues could be resolved at the detailed stage. It shows an area on the eastern side of the site kept clear of buildings, a flexibility zone on the south side of the site to allow for a varied building line, strategic green infrastructure planting along the southern site margin, and potential views retained in the southwestern corner. This addresses the concerns raised by the Council at an earlier stage in the process, and suggests a form of development compatible with its setting.
66. The proposal, insofar as it can be assessed at this stage, complies with JCS policies SD4, which requires a masterplan and a design brief demonstrating how various design principles have been incorporated. These include context, legibility and identity, and the design of landscaped areas. It also complies with JCS policy SD6 which requires that development has regard to landscape setting.

Highways impact

67. The effect of the proposal on the strategic and local highway network was a particular concern to the Council, and was the only matter which led to the appeal site not being designated as a strategic site in the JCS.
68. The preliminary design of the access arrangements was approved as part of the permission for the outlet centre and garden centre to the north [7, 21]. At the time of the Council's putative reasons for refusal, Highways England had a number of outstanding concerns regarding the adequacy of the information.
69. It is not necessary to record the detailed discussions which have since taken place between the appellants and Highways England. Suffice it to say that agreement has been reached on all matters related to the effect on and access to the strategic road network and there is no objection remaining in this regard [26]. Subject to detailed design and safety audit the access arrangements can go ahead in a satisfactory manner in tandem with the permitted development to the north or in isolation. It would not conflict with JCS policy INF4.
70. Related to traffic generation, the intention is that the site would be served by a half hourly bus service to and from the town centre. This would improve the accessibility credentials of the site still further.
71. There remains local concern that there could be 'rat-running' through local roads, though this was not predicted by highway modelling. The appellants have illustrated the location and type of measures which could be introduced [27, 31], subject to consultation with

stakeholders. The Mitigation Works Fund contribution in the relevant Obligation relates to monies for localised traffic calming on minor roads/lanes if this should be required. Although the County Council does not consider that this is necessary, local residents have written and spoken to explain the issues in the local road network and explain their concern that the development could exacerbate the position. It is considered that there is sufficient evidence, albeit anecdotal, to indicate that the Mitigation Works Fund is necessary.

The amount of affordable housing

72. The only matter at issue between the appellants and the Council is the question of the amount of affordable housing which the scheme should deliver. The appellants have put forward 35% whereas the Council seek 40%. Both figures are included in the planning obligation and the decision maker is requested to indicate the appropriate level of provision [34, 41]. However it is noted that, even if the lower figure is preferred, the Council do not oppose the proposal as a whole.
73. The background to this dispute is JCS policy SD12. This provides that the Council will seek to negotiate for affordable housing. In the case of Strategic Allocations a minimum of 35% affordable housing will be sought (this is the appellant's position), and elsewhere a minimum of 40% will be sought (this is the Council's position).
74. The appeal site is not a Strategic Allocation, for reasons described above. Therefore strict compliance with the development plan requires negotiation based on a minimum of 40%.
75. The appellant's position is not based on a viability case (indeed no viability evidence was submitted by any party), but on grounds of fairness. It is considered that there is much to commend this approach.
76. The appeal site and the proposed development are around twice the threshold which the JCS would regard as a strategic site. During the JCS Examination, the Inspector indicated that it was likely to be recommended as it met a wide range of criteria [49]. However it fell at the last hurdle and was not allocated due to highways concerns – the same highways concerns which have now been overcome.
77. The JCS itself recognises that Strategic Allocations will have their own deliverability and viability challenges and that there will need to be a balance between infrastructure provision and affordable housing in the context of deliverability. This is presumably the reason for the lower start point for such sites. Given the very particular background of the appeal site, it is reasonable to regard it in the same light as a Strategic Allocation.
78. For those reasons, although the 35% provision enshrined in the proposal is contrary to JCS policy, there exist material considerations which favour acceptance of that level of affordable housing.

Other considerations

79. There are a number of designated heritage assets identified beyond the application site:
 - The Abbey Church of St Mary in Tewkesbury (Grade I)
 - The Church of St Nicholas in Ashchurch (Grade II)
 - Rectory Farmhouse (Grade II)

80. In all cases the affect on the significance of the setting of the asset has been agreed as negligible. There is no evidence to counter that position.
81. There is also a field barn to the south of the site which Council officers (when reporting on the proposal) considered might be worthy of non-designated asset status. Even if this were the case, and although the setting of the barn would experience moderate harm to significance, this would be to an asset of very low local significance.
82. If it were considered that there were any harm to these assets, it would be less than substantial. This would be considerably outweighed by the considerable housing and other benefits of the proposal.
83. The development would result in the loss of a small area of Best and Most Versatile agricultural land. However this has not been raised as an issue by any party in the context of the land supply in the area.

Conditions

84. Draft conditions were considered during the Inquiry and largely agreed. A schedule of recommended conditions is appended to this report.
85. Condition 1 requires the submission of reserved matters in the usual way. However in relation to Conditions 2 and 3 (approval of reserved matters) the Council requested that the default limits are reduced to 18 months. This is not agreed by the appellant, as there is no good justification for reducing the standard time limits especially given the scale of the development and the time needed to prepare the details. This point is accepted, as adequate time must be allowed for the preparation and submission of reserved matters for such a substantial scheme.
86. The scale of the development needs to be controlled, as this was the basis on which the proposal has been considered (Conditions 4, 5 and 6). For a similar reason the housing mix needs to be controlled (Condition 42). For clarity, the approved plans need to be set out (Condition 43)
87. The parties do not agree the detail of a phasing condition (Condition 7). The key difference is that the appellant suggests that a phasing plan can be submitted prior to or as part of the first reserved matters application, whereas the Council wish it to be submitted prior to the first such application. No persuasive reason has been put forward which demonstrates why the phasing plan could not be submitted concurrently with the first application, and this wording is preferred.
88. The same point is raised in relation to a site-wide masterplan document (Condition 8), and the parties differ as to when this needs to be submitted. As before, although the Council's preference to deal with matter sequentially is understood, it is not considered that there is any particular need for this to be submitted prior to the first reserved matters application.
89. When the first reserved matters application is submitted, it needs to be accompanied by an overall recycling strategy (Condition 9) so as to encourage a sustainable approach to waste, and landscaping details (Conditions 10 and 11) in the interests of the appearance of the development and its relationship with the surrounding area. The latter details can be submitted on a phased basis.

90. There is no current evidence of particular archaeological interest in the site, but a condition (Condition 12) is necessary for heritage reasons to ensure investigation of each phase.
91. In the interests of protecting and encouraging ecology, a suite of conditions is necessary in relation to an Ecological Constraints and Opportunities Plan (Conditions 13 – 16).
92. The details of the highway layout would be submitted as part of the applications for reserved matters. However additional conditions are necessary in the interests of highway safety to control certain matters which are fundamental to the agreement which has been reached between the appellant, the Highways England and the Council. These include local works (Conditions 17 - 23), street maintenance (Condition 26) and strategic highway mitigation (Conditions 24 and 25). There was a discussion at the Inquiry as to whether specific conditions were necessary related to the retiming of signals at Aston Cross. However this can be achieved by other means, and conditions are not necessary.
93. In the interests of the amenity of the occupiers of the surrounding area and of early phases of the development, a Construction Method Statement needs to be submitted and implemented (Condition 27).
94. So as to provide sustainable drainage and minimise flood risk, a series of conditions are necessary (Conditions 28 - 34). These relate to levels and drainage features.
95. In the interests of the amenity of other occupiers of the development, conditions are necessary to control details of noise generating equipment and monitor noise levels (Conditions 35 and 36).
96. Various matters need to be controlled in order to encourage sustainable modes of transport. These include a Residential Travel Plan, electric charging points and cycle parking (Conditions 37 – 40).
97. Although there is no indication of contamination on the site, in the interests of the health of future occupiers it is necessary to ensure that any problems which are encountered are dealt with properly (Condition 41).

Planning obligations

98. Five separate Planning Obligations have been submitted. These deal with a range of matters which were discussed at the Inquiry and which were addressed in evidence and by the CIL Compliance Statements submitted by the Councils. These statements cover libraries and education, infrastructure and play, pitches/changing facilities and community facilities respectively. They clearly set out the basis of the Obligations in respect of policy and guidance. There is no dispute regarding these Obligations, which address key elements of the scheme.
99. Leaving aside two matters discussed below there is no suggestion that the obligations do not comply with the development plan or national policy. The contributions are directly related to the proposal and are necessary to make the development acceptable in planning terms. Therefore it is considered that the Obligations meet the policy in paragraph 56 of the National Planning Policy Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
100. The contents of the Obligations can therefore be given weight in the determination of the appeal – allowing for the fact that some of the provisions are intended to mitigate

the effects of the development (for example elements of the highways works). However the provision of affordable housing is one of the significant benefits of the proposal.

101. The Highways Mitigation Obligation deals with the likelihood of the minor roads/lanes in the vicinity being used as a 'rat run' as a result of the development. It provides that the owners will hold the sum of £125,000 for a period of 10 years, to be released under certain circumstances for mitigation works.
102. As discussed above, the evidence is limited and anecdotal in this respect. However the lanes in question are narrow and any significant increase in traffic as a result of the development would be prejudicial to highway safety. It is inevitably difficult to predict traffic flows in the future.
103. The Highways Mitigation Obligation is conditional on the Secretary of State not stating that the provisions are irrelevant or not required to grant permission or not compliant with the CIL Regulations, and confirming that it is necessary. This course of action is recommended.
104. The Affordable Housing Obligation provides for 35% affordable housing, but as an alternative for 40% if the Secretary of State states that this is required. For the reasons set out above, this is not considered to be the case and, for the avoidance of doubt, it is recommended that this is explicitly stated.

Planning balance and conclusion

105. The proposal would provide a substantial amount of open market housing, in line with national and local policy and in the context of a substantial local housing shortfall. This is especially important as there is no significant progress towards addressing that shortfall. Substantial weight can be accorded to the provision of general needs housing. The site is accepted to be in a sustainable location and has the support of the Council. It was only not allocated as a strategic allocation in the development plan due to highway concerns which have now been resolved.
106. Similarly the development would produce a 35% level of affordable housing, again in the context of considerable housing need. This is also a substantial benefit from the scheme.
107. It is also considered that the construction and investment expenditure and employment should be accorded significant weight.
108. Limited weight can be accorded to the provision of a Local Centre, primary school, community hall and sports facilities, although these are primarily aimed at addressing the needs of the residents of the new development itself. Similarly, there would be some limited weight to be accorded to on-site and off-site expenditure in relation to flood risk and biodiversity, and highways matters – but again these are largely required to mitigate the effect of the development.
109. It is recognised that there is some conflict with the development plan in terms of the plan led approach, the loss of an area of countryside, and any very limited harm to heritage assets. However there are very substantial benefits to be weighed in the planning balance.
110. It is agreed that the Council cannot demonstrate a five year supply of housing land and that there is a substantial shortfall. Under those circumstances, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the

application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

111. In this case, the benefits of the proposal carry significant weight, and the Council also support the grant of permission.

Recommendations

112. It is recommended that the appeal be allowed and planning permission be granted.

113. It is further recommended that it be stated that an affordable housing contribution of 35% should be made by the scheme.

114. It is further recommended that it be stated that the mitigation works, dealing with rat running in local lanes, is necessary.

P. J. G. Ware

Inspector

**Recommended planning conditions
Land at Fiddington, Ashchurch, Nr Tewkesbury**

Reserved matters and time limits

- 1) No part of the development hereby permitted shall be begun until details of the access (with the exception of those details approved pursuant to Conditions 17, 19 and 20), 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 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.
- 3) 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.
- 4) No more than 850 dwellings shall be constructed on the site pursuant to this planning permission.
- 5) The total gross retail/commercial floorspace available for use by customers (excluding toilets and other ancillary facilities) of all premises falling within Class A1, A2, A3, A4, A5 and D1 (not including the primary school) 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 2,000 square metres in total and no single A1 unit shall comprise more than 500 square metres.
- 6) The size of the primary school hereby permitted shall not exceed a single form of entry.

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 submitted Parameter Plans (Drawing Nos H.0543_04 Rev K, H.0543_05 Rev J, H.0543_06 Rev P and H.0543_07 Rev H) by the revised Landscape Mitigation Plan (ref.18095.002 Rev.D), the principles and objectives of the Design and Access Statement, April 2017, except where the requirements of other planning conditions require otherwise. Development shall be carried out in accordance with the approved Phasing Plan or any subsequent revisions thereto.

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 for its written approval. The SWMD shall be in accordance with the submitted Parameter Plans (Drawing Nos H.0543_04 Rev K, H.0543_05 Rev J, H.0543_06 Rev P and H.0543_07 Rev H) the revised Landscape Mitigation Plan (ref.18095.002 Rev.D) 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:

- f) the broad arrangement of development blocks around a street hierarchy including indications of active frontages;
- g) density ranges;
- h) maximum building heights;
- i) character areas;
- j) the location and general extent of public open space, including formal recreational areas, Play Areas, Allotments, drainage features access and car parking;
- k) existing landscape features to be retained and/or enhanced;
- l) proposed structural planting;
- m) the location and general extent of the local centre/neighbourhood area, including the school, community facility and associated access and car parking;
- n) the location of existing and proposed public rights of way;

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

Waste and recycling

9) 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

- 10) The first reserved matters application for any given phase submitted pursuant to Condition 1 shall include the following details in respect of that phase:
- 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 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

- 12) No development shall take place within any phase or part of a phase pursuant to Condition 7 until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority for that phase or part of a phase. 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. The development shall be carried out in accordance with the approved Written Scheme of Investigation.

Ecology

13) No development or site clearance shall take place until a strategic Ecological Constraints and Opportunities Plan (ECOP) for the application site has been submitted to and agreed in writing with the Local Planning Authority. The Plan shall be based upon the submitted Environmental Statement (May 2017) and Environmental Statement Addendum (May 2019), the Green Infrastructure Parameter Plan (ref.H.0543.04 Rev.K) and the revised Landscape Mitigation Plan (ref. ref.18095.002 Rev.D). The Plan shall additionally, but not exclusively, include the following

- a) strategic dark corridors requirements;
- b) skylark nesting habitats requirements;
- c) integrated amphibian and reptiles habitats and corridors requirements; and
- d) an ecological and connection strategy for the Tirlle Brook including geomorphological factors, fish, riparian habitats and Otters.

Development shall be carried out in accordance with the approved ECOP thereafter unless otherwise agreed in writing with the Local Planning Authority.

14) Prior to the commencement of development of each phase (or part phase) of development identified in the phasing plan (Condition 7) a Green Infrastructure and Biodiversity delivery scheme for that phase shall be submitted to and agreed in writing by the Local Planning Authority. The delivery scheme shall be in general accordance with the strategy as set out in Chapter 4 (Ecology) of the Environmental Statement, the Green Infrastructure Parameter Plan (ref.H.0543.04 rev.K) the revised Landscape Mitigation Plan (ref. ref.18095.002 Rev.D) and the ECOP (Condition 13), and shall include, but not exclusively, the following:

- a) risk assessment of potentially damaging construction activities;
- b) identification of "biodiversity protection zones" and their purpose/function;
- c) updated ecological survey's and assessments where required;
- d) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- e) the locations and timing of works to avoid harm to biodiversity features and provide effective mitigation and enhancement;
- f) the times during construction when specialist ecological or environmental practitioners need to be present on site to oversee works;
- g) responsible persons and lines of communication;
- h) the role and responsibilities on site of an ecological clerk of works or similar person;
- i) use of protective fences, exclusion barriers and warning signs; and
- j) detailed ecological enhancement implementation measures relevant to the pre development ecological site characteristics and opportunities

Development for that phase (or part phase) shall be carried out in accordance with the approved delivery scheme thereafter unless otherwise agreed in writing with the Local Planning Authority.

- 15) No dwelling in any given phase pursuant to Condition 7 shall be occupied until a Landscape and Ecological Management Plan (LEMP) for that phase has been submitted to, and be approved in writing by, the local planning authority. The LEMP for each phase shall, but not exclusively, include the following:
- a) description and evaluation of features to be managed in relation to the open spaces defined in the Environmental Statement, the ECOP (Condition 13) and Green Infrastructure and Biodiversity delivery scheme appropriate to the phase;
 - b) ecological trends and constraints on site that might influence management;
 - c) aims and objectives of management including, but not exclusively, those in relation to farmland birds, amphibians, reptiles and bats;
 - d) appropriate management options for achieving aims and objectives including appropriate enhancement measures;
 - e) prescriptions for management actions;
 - f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) details of the body or organization responsible for implementation of the plan; and
 - h) ongoing monitoring and remedial measures

The LEMP shall also identify the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details

- 16) Prior to the occupation of the first dwelling, in each phase (Condition 7), a lighting scheme demonstrating that strategic dark corridors safeguarding in accordance with the ECOP (Condition 13) is achieved shall be agreed in writing with the LPA and thereafter development carried out in accordance with the approved scheme.

Access and layout

- 17) Notwithstanding Condition 1, the vehicle, cycle and pedestrian access points and associated link road and pedestrian crossing points as shown on drawing no. H556/11 Rev C shall be constructed in accordance with the approved plans before any building hereby permitted is first occupied.
- 18) Notwithstanding the approved plans and Condition 17 above, the southern access arm of roundabout R1 as shown on drawing No. H556/11 Rev C shall be constructed in accordance with revised details to be submitted to and agreed in writing by the Local Planning Authority.
- 19) Prior to the occupation of any part of the development hereby approved, the works to improve the Northway Lane / Fiddington Lane junction with the A46 as generally shown on PFA Drawing No. H556/15 Rev A (subject to detailed design and road safety audit) shall be complete and open to traffic.

- 20) Prior to the commencement of any part of the development hereby approved, the works to improve the Alexandra Way junction with the A46 as generally shown on PFA Drawing No. H556/14 Rev A (subject to detailed design and road safety audit) shall be complete and open to traffic.
- 21) No above ground works comprising the erection of a building shall commence on site until a scheme has been submitted to and agreed in writing by the Local Planning Authority, for the provision of fire hydrants (served by mains water supply) and no dwelling shall be occupied until the hydrant serving that property has been provided to the satisfaction of the Local Planning Authority.
- 22) Notwithstanding the approved plans no more than 300 dwellings shall be occupied until a bus/emergency access has been provided to Fiddington Lane in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority.
- 23) The details to be submitted for the approval of reserved matters for each phase (or part phase) of development pursuant to Condition 1 shall include vehicular parking and turning and loading/ unloading facilities within the phase (or part phase). Thereafter, no building hereby approved shall be occupied until those facilities and carriageways (including surface water drainage/disposal and street lighting) serving that building and providing access from the nearest public highway to that building have been completed to at least binder course level and the footways to surface course level. The facilities shall be maintained available for those purposes for the duration of the development.

Strategic highway mitigation

- 24) Prior to the occupation of any part of the development hereby approved, the works to improve M5 junction 9 as generally shown on PFA Drawing No. H556/12 Rev D (subject to detailed design and road safety audit) shall be complete and open to traffic.
- 25) Prior to the occupation of any part of the development hereby approved, a scheme to widen the A438 exit from M5 Junction 9 as generally shown on PFA Drawing No. H556/12 Rev D (subject to detailed design and road safety audit) shall be complete and open to traffic.

Street maintenance

- 26) 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

- 27) No development shall take place in a phase or part of a phase, including any works of demolition, until a Construction Method Statement which accords with the Green Infrastructure and Biodiversity Delivery Scheme for that phase has been submitted to and approved in writing by the local planning authority for that phase or part of a phase. The document shall contain details for community engagement measures and to control the following:
- a) the 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) wheel washing facilities;
 - e) measures to control the emission of dust and dirt during construction;
 - f) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - g) details of the site access/routeing strategy/signage during the construction period.
 - h) hours of working;
 - i) site boundaries/hoardings;
 - j) site activities;
 - k) Construction Traffic:
 - i.volumes;
 - ii.routes;
 - iii.holding areas;
 - iv.parking;
 - v.cleaning;
 - l) oversize loads;
 - m) temporary fuel storage.

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

Levels

- 28) The reserved matters application for each phase or part of a phase that includes buildings 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 or part of a phase. The development shall be carried out in accordance with the approved details.
- 29) Notwithstanding the approved plans/details, a detailed surface water drainage strategy for the entire development hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to, or accompanying, the first reserved matters application submitted pursuant to Condition 1. All subsequent reserved matters submitted pursuant to Condition 1 shall incorporate the approved surface water drainage strategy and the development shall be carried out only in accordance with the approved surface water drainage strategy. The details shall be based on the Flood Risk Assessment & Drainage Strategy (Revision A, dated February 2017), as amended by drawing 256-220-C 'Drainage Strategy (Appendix O of the Flood Risk Assessment & Drainage Strategy), included within the Environmental Statement. 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;
 - 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.
- 30) No building hereby permitted within each phase or part of a phase of the development, as defined under Condition 29 section e) above, shall be occupied until surface water drainage works have been implemented in accordance with details that have first 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.
- 31) No development approved by this permission for a phase or part of a phase within the floodplain, as defined by the 1:100 + 35% climate change flood extent as shown on drawing 256-230 'Tirle Brook Modelling 2016' (Appendix K of the Flood Risk Assessment & Drainage Strategy), shall be commenced until a scheme for the provision and implementation of compensatory flood storage works, based on the details submitted to the Environment Agency on 22nd February 2018, has been submitted to and approved in writing by the Local Planning Authority for that phase or part of a phase. The scheme shall include details of any phasing of the approved works and shall be implemented in accordance with the approved programme and details.
- 32) No development shall be put in to use/occupied until a SUDS maintenance plan for all SuDS/attenuation features and associated pipework has been submitted to and approved in writing by the Local Planning Authority. The approved SUDS maintenance plan shall be implemented in full in accordance with the agreed plan.
- 33) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of any watercourses, inside or along the boundary of the site, unless agreed otherwise in writing by the Local Planning Authority.
- 34) Floor levels should be set at a minimum of 600mm above the appropriate modelled 1% flood level including a 35% allowance for climate change as set out on Page 21 of Appendix K of the Flood Risk Assessment & Drainage Strategy (Revision A, dated February 2017).

Noise

- 35) 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 BS4142:2014: 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.

- 36) Noise levels within the dwellings hereby approved shall not exceed those set out in BS4142:2014 "Sound Insulation and Noise Reduction for Buildings". Noise levels measured from enclosed outdoor private amenity areas (gardens) should attain the 50dB(A) desirable criteria (Considered by WRS to be the LOAEL) and not exceed the upper limit recommended within BS4142:2014 being 55dB(A) (Considered by WRS to be the SOAEL)**.

To verify the above requirements for each phase (or part phase) 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 LOAEL.

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 so 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 limits set out in BS4142:2014 are exceeded within dwellings and/ or the upper limit of 55dB(A) 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.

** Section 3 WRS Application to Support NPSE Aims – Worcestershire Regulatory Services Noise Technical Guide 2nd edition 2015.

Sustainable travel

- 37) The approved Residential Travel Plan, H556-DOC07 TP Issue 2, dated 30 May 2018, shall be implemented in accordance with the submitted details and timetable therein (except for the developer to take on the role of co-ordinator and providing funding), and shall be continued thereafter, unless otherwise agreed in writing by the Planning Authority.
- 38) Prior to first occupation of any dwelling hereby approved, appropriate cabling and an outside electrical socket must be supplied for that dwelling to enable ease of

installation of an electric vehicle charging point (houses with dedicated parking). For those parts of the development with unallocated parking i.e. flats/apartments 1 EV charging point per 10 spaces (as a minimum) should be provided to be operational at first occupation of the relevant dwelling. The charging point must comply with BS7671. The socket should comply with BS1363, and must be provided with a locking weatherproof cover if located externally to the building.

- 39) Electric charging points shall be installed in 10% (minimum) of the allocated parking spaces at the development. This may be phased with 5% of spaces operational initially and a further 5% made EV charging ready (i.e. incorporating appropriate cabling) to allow additional provision to meet future demand. The charging points shall comply with BS7671 and the sockets with BS 1363 which must be provided with a locking weatherproof cover if located externally to the building.
- 40) Applications submitted pursuant to Condition 1 shall include details for secure cycle parking facilities. The details shall include the location, type of rack, spacing, numbers, method of installation and access to cycle parking. The approved cycle parking measures shall be fully installed prior to the first occupation of the building to which it relates.

Contamination

- 41) 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 and where remediation is necessary a remediation scheme shall be prepared in accordance with requirement, 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.

Housing mix

- 42) The first reserved matters application for any given phase (or part phase) submitted pursuant to Condition 1 shall include the submission of a Housing Mix Statement to the Local Planning Authority for its written approval setting out, in respect of that phase, how an appropriate mix of dwelling sizes, types and tenures will be provided in order to contribute to a mixed and balanced housing market to address the needs of the local area, including the needs of older people, as set out in the local housing evidence base, including the most up-to-date Strategic Housing Market Assessment for the area at the time of the submission of the relevant reserved matters. The development shall be implemented in accordance with the approved Housing Mix Statement for that phase (or part phase).

Approved plans

- 43) The development hereby permitted shall be carried out in accordance with the following approved plans unless other conditions in this planning permission specify otherwise:-
- a) Site Location Plan ref. FN.00.003 rev. D

- b) Green Infrastructure Parameter Plan ref.H.0543.04 rev. K
- c) Land Use Parameter Plan ref. H.0543.05 rev. J
- d) Access and Movement Parameter Plan ref. H.0543.06 rev. P
- e) Building Heights Parameter Plan ref.H.0543.07 rev. H
- f) Plan Showing Primary Access Arrangements ref.H556/11 rev. C
- g) Proposed Improvements to M5 Junction 9 ref.H556/12 rev. D
- h) Western Access ref.H556/14 rev.A
- i) Eastern Access ref. H556/15 rev.A
- j) Landscape Mitigation Strategy Plan ref. 18095.002 rev.D
- k) Drainage Strategy Drawing ref. 256-220 rev. C

****End of Conditions****

APPEARANCES**FOR THE LOCAL PLANNING AUTHORITY:**

Miss S Reid of Counsel instructed by the Borough Solicitor

Affordable housing, planning conditions and 106:

P Smith MRTPI	Sole planning practitioner
C Ashby MRTPI	Development Management Team Leader
M Barker MRTPI	Planning Policy Manager (Housing)
G Spence	Planning solicitor

FOR THE APPELLANT:

Mr A Crean QC, instructed by Mr D Hutchinson, Pegasus Planning

He called

D Hutchinson BSc(Hons) DipTP MRTPI	Planning consultant, Pegasus Group
Affordable housing, discussion on planning conditions and s106:	
Andrew Hill	Land and Planning Director at Robert Hitchins Limited
Robyn Evans	Robert Hitchins Limited Legal Department
Peter Finlayson,	Chairman of PFA Consulting Ltd

INTERESTED PERSON:

J Hargreaves	Ashchurch Rural Parish Council
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INQUIRY DOCUMENTS

1	Appellant's note on Traffic Calming Measures on Fiddington Lane
2	CIL Compliance Statement – Libraries and education
3	CIL Compliance Statement – affordable housing, play facilities, community facilities
4	Appellant's note on Aston Cross Junction Improvement
5	Correspondence regarding Mitigation Works Fund
6	Council's opening and closing submissions
7	Appellant's closing submissions
8	Planning Obligation dated 14 June 2019 related to Education and Highways
9	Planning Obligation dated 14 June 2019 related to Affordable Housing
10	Planning Obligation dated 14 June 2019 related to Highways and Transportation
11	Planning Obligation dated 14 June 2019 related to Open Space and Communities
12	Planning Obligation dated 14 June 2019 related to Highways Mitigation
13	Statement of Common Ground with Ashchurch Rural Parish Council
14	Statement of Common Ground (Planning)
15	Statement of Common Ground (Highways)

CORE DOCUMENTS

	<i>Planning Application</i>
A1	A1 Covering Letter to LPA, dated 12th May 2017
A2	A2 Application Forms (including relevant Certificate of Ownership and Agricultural Holdings Declarations), dated 12th May 2017
A3	Affordable Housing Statement, dated 8th March 2017, prepared by Pioneer Property Services Ltd
A4	Built Heritage Statement (included within Environmental Statement Part 4, Chapter 8), dated December 2016, prepared by RPS CgMs
A5	Design and Access Statement, dated April 2017, doc ref: H.0543_11, prepared by Pegasus Design
A6	Flood Risk Assessment and Drainage Strategy (included within the Environmental Statement Part 4, Chapter 1), dated February 2017, prepared by Phoenix Design; and later supplemented by updated Drainage Strategy dwg ref. 256-220 rev. C, Flood Compensation Banding and Link Road Flood Compensation Summary submitted February 2018
A7	Planning Statement (including Draft Heads of Terms), dated May 2017, prepared by RPS CgMs
A8	Residential Travel Plan, dated April 2017, Issue 1, prepared by PFA Consulting
A9	Sustainability Statement, dated March 2017, prepared by RPS CgMs
A10	Statement of Community Involvement, dated April 2017, prepared by RPS CgMs
A11	Transport Assessment – Main Text, dated April 2017, Issue 1, prepared by PFA Consulting
A12	Transport Assessment – Figures, dated April 2017, Issue 1, prepared by PFA Consulting
A13	Transport Assessment – Appendices, dated April 2017, Issue 1, prepared by PFA Consulting

A14	Utilities Statement, dated May 2017, Rev B, prepared by Robert Hitchins Limited
A15	Waste Minimisation Statement, dated March 2017, Rev 1, prepared by WSP
A16	Email dated 22nd February 2018 from Phoenix Design attaching an update to the Drainage Strategy, drawing ref. 256-220 Rev C, prepared by Phoenix Design and accompanying details concerning: i. Flood Compensation Banding details; and ii. Link Road Flood Compensation Summary
	<i>Drawings</i>
A17	Site Location Plan – drawing ref: FN.00.003.D
A18	Illustrative Masterplan – drawing ref: H.0543.02M
A19	Green Infrastructure Parameter Plan – drawing ref: H.0543.04K
A20	Land Use Parameter Plan – drawing ref: H.0543.05.J
A21	Access and Movement Plan – drawing ref: H.0543.06.P
A22	Building Heights Parameter Plan – drawing ref: H.0543.07.H
A23	Western Access – drawing ref: H556/14 A24 Eastern Access – drawing ref: H556/15
	<i>Environmental Statement</i>
A25	Environmental Statement Part 1 – Non-Technical Summary, dated May 2017
A26	Environmental Statement Part 2 – Project Information, dated May 2017
A27	Environmental Statement Part 3 – Reports, dated May 2017
A28	Environmental Statement Part 4 – Figures and Appendices, dated May 2017
A29	Environmental Statement Addendum, dated May 2019, prepared by Pegasus Group
A30	Environmental Statement Addendum – Non-Technical Summary, dated May 2019, prepared by Pegasus Group
	<i>Committee Report</i>
A31	Officer Report to Planning Committee, dated 18th December 2018
A32	Minutes of the 18th December 2018 Planning Committee meeting
	<i>Correspondence with LPA</i>
A33	Letter from LPA issuing a Notice under Article 5(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requiring details of Access to be included in the application as a Reserved Matter, dated 9th May 2017
A34	Email from RPS CgMs to the LPA submitting an amended Site Location Plan, dated 20th June 2017
A35	Email from RPS CgMs to the LPA submitting plans showing Access Details, dated 6th July 2017
A36	Email correspondence between the LPA and RPS CgMs regarding the description of development and the withdrawal of the Article 5(2) Notice, dated 21st July 2017
A37	Email correspondence between the LPA and RPS CgMs regarding agreement to extending the determination period of the application by two weeks, dated 26th July 2017
A38	Letter from the LPA confirming validation of the planning application, dated 26th July 2017
A39	Email correspondence between Phoenix Design and the LPA regarding the submission of additional drainage details in response to comments from the Environment Agency, dated 22nd February 2018

A40	Email correspondence between the LPA and RPS CgMs regarding agreement to extending the determination period of the application until 30th April 2018, dated 29th March 2018
	<i>Consultation Responses</i>
A41	Ashchurch Rural Parish Council, dated 25th August 2017 and 26th August 2017
A42	Environment Agency, dated 10th October 2017 and 23rd April 2018
A43	Ecological Officer, dated 26th October 2017 and 4th May 2018
A44	Environmental Health Officer, dated 1st December 2017
A45	Highways England, dated 31st August 2017, 16th February 2018, 22nd May 2018, 22nd December 2018 and 16th April 2019
A46	Highways Officer, dated 25th October 2018 and 7th May 2019
A47	Housing Strategy Officer, dated 22nd November 2017
A48	Landscape Officer, dated 3rd May 2018
A49	Lead Local Flood Authority, dated 6th September 2017
A50	Minerals and Waste Officer, dated 31st August 2017
A51	Natural England, dated 1st September 2017
A52	Planning Policy Officer, undated
A53	Public Rights of Way Officer, dated 5th October 2018
A54	A54S106 Officer, dated 17th May 2018
A55	Severn Trent, dated 17th August 2017
A56	Stoke Orchard & Tredington Parish Council, both undated
A57	Tewkesbury Town Council, undated A58 Urban Design Officer, dated 22nd September 2017
A58	Urban Design Officer, dated 22nd September 2017
A59	Wales & West Utilities, both undated
A60	Wychavon District Council, undated
	<i>Appeal administration</i>
B1	Planning Appeal Form, dated 6th September 2018
B2	Bespoke Timetable Statements of Case
B3	Appellant Pre Inquiry Statement of Case, dated 6th September 2018
	B4 Tewkesbury Borough Council Rule 6 Statement, undated Draft Planning Obligation
B5	Draft S106 Documentation: a) Affordable Housing S106 which has been agreed with Tewkesbury Borough Council; b) Public Open Space Unilateral Undertaking which is currently being negotiated with Tewkesbury Borough Council; c) Annex 2 of the Public Open Space Unilateral Undertaking; d) Education/Libraries S106 which is currently being negotiated with Gloucestershire County Council; e) Illustrative Masterplan to be attached to the Education/Libraries S106 f) Highways/Transport S106 which is currently being negotiated with Gloucestershire County Council; g) S106 Plan to be attached to all documents h) Plan showing the land ownership to be attached to all documents Statements of Common Ground
B6	Draft Statement of Common Ground, dated 10th August 2018
B7	Agreed Statement of Common Ground with Highways England, Version 4, dated 16th April 2019
B8	Agreed Statement of Common Ground with Ashchurch Rural Parish Council, dated 29th and 30th April 2019
B9	Agreed Planning Statement of Common Ground

B10	Agreed Housing Land Supply Statement of Common Ground
B11	Agreed Highways Statement of Common Ground with Tewkesbury Borough Council
	<i>National Planning Policy and Guidance</i>
C1	National Planning Policy Framework 2 (Revised February 2019)
C2	National Planning Practice Guide
	<i>Local Planning Policy and Guidance</i>
D1	Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031, adopted December 2017
D2	Gloucester, Cheltenham and Tewkesbury Joint Core Strategy – Inspectors Final Report on the Examination, dated 26th October 2017
D3	Gloucester, Cheltenham and Tewkesbury Joint Core Strategy – Inspectors Interim Report on the Examination, dated 26th May 2016
D4	Joint Core Strategy Review – Issues and Options Consultation, dated October 2018
D5	Tewkesbury Borough Plan 2011-2031 Preferred Options Consultation, dated October 2018
D6	Tewkesbury Borough Council Local Development Scheme – Note for the Inspector, dated 9th June 2015
D7	Tewkesbury Borough Council Community Infrastructure Levy Charging Schedule – adopted October 2018
D8	Tewkesbury Area Draft Concept Masterplan – Concept Masterplan Report, dated January 2018, prepared by BDP on behalf of Tewkesbury Borough Council
D9	Ashchurch Neighbourhood Development Plan – Regulation 14 Draft 2016
D10	Representations on behalf of the Appellant to the Tewkesbury Area Draft Concept Masterplan, dated January 2019, prepared by Pegasus Group
D11	Tewkesbury Local Plan to 2011 (Adopted March 2006), Policy RCN1 – Outdoor Playing Space
D12	Additional Strategic Sites Report, Addendum to the Plan viability, Community Infrastructure Levy and affordable housing study, Gloucester, Cheltenham and Tewkesbury Joint Core Strategy, report prepared by PBA on behalf of the JCS Authorities, dated September 2016
D13	MHCLG Garden Towns Press Release, dated 25th March 2019
D14	Report to Tewkesbury Borough Council full council committee meeting – Garden Community Programme (Garden Town Status for Tewkesbury at Ashchurch), dated 28th May 2019
	<i>Housing Needs and Land Supply</i>
E1	MHCLG Technical Consultation on Updates to National Planning Policy and Guidance, dated October 2018.
E2	South Worcestershire Development Plan, adopted February 2016
E3	South Worcestershire Development Plan Review – Issues and Options Consultation, dated November 2018
E4	Extracts from Appendix 2 (Detailed Trajectory Workbook) of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy Housing Implementation Strategy, dated January 2017

E5	Bredon Parish Neighbourhood Plan 2016-2030, dated July 2017 E6 Tewkesbury Borough Five Year Housing Land Supply Statement, dated March 2019
	<i>Transport</i>
F1	Plan Showing Primary Access Arrangements – drawing ref: H556/11 Rev C
	F2 Application Plan Western Access – drawing ref: H556/14 Rev A
F3	Application Plan Eastern Access – drawing ref: H556/15 Rev A
F4	Proposed Improvements to M5 Junction 9 – drawing ref: H556/12 Rev D
F5	Residential Travel Plan (Issue 2), dated May 2018, prepared by PFA Consulting
F6	Ashchurch S-Paramics Traffic Model 2016 Revalidation Report (Issue 3), dated February 2018, prepared by PFA Consulting
F7	Ashchurch S-Paramics Traffic Model Forecasting Report, dated March 2019, prepared by PFA Consulting
F8	Walking, Cycling & Horse-Riding Assessment Report, dated June 2018, prepared by PFA Consulting
F9	Junction Capacity Assessment Report, dated March 2019, prepared by PFA Consulting
F10	Local Highway Network Impact Assessment – S-Paramics Modelled Queue Lengths and Link Times, dated August 2018, prepared by PFA Consulting
F11	DfT Circular 02/2013 – The Strategic Road Network and the Delivery of Sustainable Development
F12	The Strategic Road Network: Planning for the Future, dated September 2015, published by Highways England
	<i>Landscape, Urban Design & Masterplanning</i>
G1	Creating Successful Masterplans: A guide for clients, dated 2004, published by CABE
G2	Garden Communities, dated August 2018, published by MHCLG
	<i>Relevant appeal decisions and legal judgements</i>
H1	Appeal decision APP/P0240/W/17/3190584 – 59 Shefford Road, Meppershall Shefford, dated 22nd May 2018
H2	High Court Judgement CO/4792/2014 – Phides Estates (Overseas) Limited vs SoS for DCLG, Shepway District Council and David Plumstead, dated 26th March 2015
H3	Court of Appeal Judgement C1/2015/0583 and C1/2015/0894 – Suffolk Coastal District Council vs Hopkins Homes Limited and SoS for DCLG and Richborough Estates Partnership LLP vs Cheshire East Borough Council and SoS for DCLG, dated 17th March 2016
H4	SoS Appeal Decision APP/G1630/W/3184272 – Land South of Oakridge, Highnam, Gloucestershire, dated 20th December 2018
H5	SoS Appeal decision APP/K3415/A/14/2224354 – Land and Buildings off Watery Lane, Curborough, Lichfield, dated 13th February 2017
H6	High Court Judgement CO/1429/2017 – Lichfield District Council vs SoS for DCLG, dated 28th July 2017
H7	Appeal Decision APP/G1630/W/17/3175559 – Land off Ashmead Drive, Gotherington, dated 27th April 2018
H8	Appeal Decision APP/G1630/W/17/3171926 – Land off Kidderminster Road, Winchcombe, dated 5th October 2017

H9	Appeal Decision, APP/G1630/W/17/3174525 - Land to the North of 15 Bloxhams Orchard, Ashleworth, dated 23rd August 2017
H10	Appeal Decision, APP/G1630/W/17/3167141 - Land at Trumans Farm, Gotherington, dated 15th August 2017
H11	Appeal Decision, APP/G1630/W/16/3165534 - Land rear of Dormans, Mill Lane, Prestbury, dated 15th August 2017
H12	SoS Appeal Decision APP/G1630/W/16/3164033 - Land at Innsworth, Innsworth Lane, Gloucester, Gloucestershire, dated 21st December 2017
H13	SoS Appeal Decision APP/G1630/W/16/3154464 - Land at Twigworth, Gloucester, Gloucestershire, dated 21st December 2017
H14	SoS Appeal Decision APP/J0405/V/16/3151297 - Land West of Castlemilk, Moreton Road, Buckingham, dated 19th July 2017
H15	Appeal Decision, APP/Z2830/W/18/3206346 - Land South of Kislingbury Road, Rothersthorpe, dated 17th May 2019



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

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.