



## Appeal Decision

Inquiry Held on 22-25 and 30-31 March and 1 and 20-21 April 2021

Site visit made on 19 March 2021

**by P W Clark MA(Oxon) MA(TRP) MRTPI MCMi**

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

**Decision date: 1<sup>st</sup> June 2021**

**Appeal Ref: APP/G1630/W/20/3257625**

**Land off the A38, Coombe Hill, Gloucestershire**

- 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 Bovis Homes Limited & Robert Hitchens Limited against Tewkesbury Borough Council.
- The application Ref 20/00140/OUT, is dated 11 February 2020.
- The development proposed was originally described as residential development (up to 150 dwellings), associated infrastructure, ancillary facilities, open space and landscaping. Construction of a new vehicular and pedestrian access from the A38 and pedestrian access to the A4019.

### Decision

1. The appeal is allowed and outline planning permission is granted for residential development (up to 95 dwellings), associated infrastructure, ancillary facilities, open space, landscaping and construction of a new vehicular and pedestrian access from the A38 and pedestrian access to the A4019 on Land off the A38, Coombe Hill, Gloucestershire in accordance with the terms of the application as amended, Ref 20/00140/OUT, dated 11 February 2020, subject to the twelve conditions appended to this decision.

### Procedural matters

2. Some time before the opening of the Inquiry, the appellant sought to amend the description of the scheme. The description would change, replacing "up to 150 dwellings" by "up to 95 dwellings". The appellant advertised the intention for an appropriate period as widely as the Council had itself consulted on the original application. For that reason, and because the descriptive quantity "up to 95" is contained within the descriptive quantity "up to 150", I am satisfied that nobody would be prejudiced by considering the appeal on the basis of the revised description of development, which is what I have done.

3. The application form states that the application was made in outline with all matters reserved. At the opening of the Inquiry, the appellant advised that the way the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order) defined access had caused confusion and had led to an inaccurate completion of the application form. In the Order, the definition of "access", in relation to reserved matters, means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network. The appellant intended that most details of access to and within the site

should remain as reserved matters but, as part of the submitted Transport Assessment, had included a detailed drawing of one pedestrian and vehicular access from the A38 into the site and had intended that that access should be given detailed consideration at this stage.

4. The Borough Council had not understood that to be the intention of the appellant but acknowledged that, had it correctly inferred the appellant's intention, it would have relied on the advice of the highway authority in coming to a conclusion on the acceptability of the details. The highway authority, which had been consulted by the Borough Council on the application, acknowledged that it had treated the application as though detailed consideration was to be given to the access in question and had given that detailed consideration and advised that the access would be acceptable. From third party comments on file, it appears that members of the public had also considered the application to be made in the way understood by the highway authority and intended by the appellant and have commented accordingly. I therefore take the view that nobody would be prejudiced if I now do the same.

5. No request for an EIA screening opinion was made, nor was any given. Instead the appellant elected to submit an Environmental Statement following a Scoping Opinion sought and issued. The Environmental Statement includes two parameter plans (subsequently amended in accordance with the revised description of development) covering Land Use, Access and Movement and Building Heights. In accordance with decisions of the courts<sup>1</sup> these parameter plans must be applied by condition, if permission is granted, so as to establish an envelope within which the detailed design and discharge of reserved matters can proceed, irrespective of whether or not they would be otherwise required to make the development acceptable (condition 4).

6. The appeal has therefore been considered as an application made in outline with all matters reserved except for details of one access onto the A38. Other details of access, appearance, landscaping, layout and scale remain to be considered at a later date (condition 1).

7. An informal, unaccompanied site visit was made before the Inquiry opened. By agreement at the Inquiry, no further accompanied visit was made.

### **Main Issues**

8. At the time the appeal was made, seven issues could be identified;

Whether the appeal site would be an appropriate location for new residential development of the scale proposed.

- The effect of the quantity of development proposed on the character and appearance of the area.
- The effects of the proposal on the Coombe Hill Canal SSSI and the Severn Estuary SPA (including the adequacy of on-site mitigation and ecological enhancements).
- The effects of the proposal on flooding on and off the site.
- The effects of the proposal on the supply of market and affordable housing.

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<sup>1</sup> R v Rochdale MBC ex parte Tew and Others [1999] 3 PLR 74 and R v Rochdale MBC ex parte Milne [2000] EHCW 650 (Admin)

- The effects of the proposal on the demand for, and provision of, Schools.
- The effects of the proposal on the demand for, and supply of, open space, outdoor recreation, sports and community facilities.

An eighth matter, viability, was identified as a possible issue consequent on the sixth and seventh issues but, in the event, was a matter of little dispute at the Inquiry.

9. By the time the Inquiry had opened, agreement had been reached on the fourth issue (the effects of the proposal on flooding on and off the site) and a believed betterment of the existing position at the site is provided for within a submitted Unilateral Undertaking. A degree of agreement had also been reached on the provision of affordable housing, enshrined in a Unilateral Undertaking and so debate on the fifth issue during the Inquiry concentrated on the degree to which the Council fell short of a five-year housing land supply.

10. Two planning obligations by way of Unilateral Undertakings were submitted during consideration of the appeal. Regulation 122(2) of the Community Infrastructure Regulations (CIL) sets out three tests with which planning obligations must comply. Subject to my certifying compliance with the CIL regulations, the undertakings would provide the County Council with index-linked financial contributions of;

- £32,000 to enlarge the culvert under the A4019 road,
- £18,620 for library facilities in Tewkesbury,
- £107,050 for pre-school facilities,
- £397,980 for primary school provision,
- £224,069 for secondary school provision,
- £38,657 for sixth form provision and
- for the authority's technical charges and monitoring fees.

11. The undertakings would provide the Borough Council with;

- 40% of the number of dwellings as affordable housing, split 60:40 between affordable renting and shared ownership,
- £93 per dwelling for the provision of recycling and waste bins,
- arrangements for the maintenance of public open space,
- £100,000 for the benefit of the Gloucestershire Wildlife Trust's Coombe Hill Canal and Meadows Reserve,
- £4,750 for the preparation and distribution of Household Information Packs and
- £54 per dwelling for one year's membership of the Gloucestershire Wildlife Trust for each dwelling,
- together with the authority's technical charges and monitoring fees.

12. Nevertheless, other than the provisions for dealing with flooding, the Unilateral

Undertakings do not resolve any other issues which were the subject of dispute during the Inquiry. I report upon compliance with the CIL regulations as I consider each issue in turn.

## Reasons

### *Appropriate location*

13. At present, Coombe Hill is a tiny hamlet of about 50 dwellings (some say 42, others say more). Yet it benefits from surprisingly frequent<sup>2</sup> bus services in three directions to Gloucester, Cheltenham and Tewkesbury, all reached within about fifteen minutes. Within the hamlet is a public house and a petrol filling station with convenience store. A well-provisioned farm shop and café is on the northern edge of the hamlet. A little way outside the hamlet is the Knightsbridge Business Centre with further retail facilities amongst other employment uses.

14. Hardly surprising then that the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS), adopted in December 2017, identified Coombe Hill as a Service Village in its Settlement hierarchy (table SP2c). Policy SP2, clauses (4) and (5), assert that at least 7,445 dwellings will be provided to meet the needs of Tewkesbury Borough through existing commitments, development at Tewkesbury Town itself and smaller-scale development at Rural Service Centres and Service Villages and that Service Villages will accommodate in the order of 880 new homes, to be allocated through the Tewkesbury Borough Plan and Neighbourhood Plans. According to JCS policy SP2 (6), policy SD10, referred to in the Borough Council's putative reasons for refusal, would apply in the remainder of the rural area but it does not say "only" so I deduce that JCS policy SD10 is also intended to apply within the Service Villages, as indeed, its internal content implies.

15. The Housing Background Paper to the emerging Tewkesbury Borough Plan 2011 to 2031 disaggregated the 880 new homes to be provided between the twelve defined service villages to suggest an allocation of 22 dwellings at Coombe Hill. But, in addition to that "top down" approach, it also recommended that a "bottom up" process of considering the availability of sustainable sites at each settlement will also be a factor in determining a distribution of development. Two such sites were identified at Coombe Hill. One is a site on the west side of the A38, next to The Swan public house. This has since received planning permission for 25 dwellings and was under construction at the time of my site visit. The other is the appeal site.

16. The Housing Background Paper identified the capacity of the appeal site as between 50 and 80 dwellings. Paragraph 11.12 of the Housing Background Paper suggested that capacity be limited to 50 with significant opportunities for landscaping and open space. That recommendation was carried forward into the emerging Local Plan submitted for examination in May 2020 in which policy RES1 allocates site COO1 (the appeal site) for 50 dwellings.

17. But the policy includes a note to the effect that all site capacities are an approximation and that detailed design proposals may indicate that more or fewer dwellings can be accommodated on a site. Moreover, notwithstanding the provision of emerging policy COO1 that the density of development be relatively low, adopted policy SD10(6) requires residential development to seek to achieve the maximum density compatible with good design, the protection of heritage assets, local amenity, the character and quality of the local environment and the safety and convenience of the local and strategic road network.

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<sup>2</sup> Even when reduced during the pandemic occurring at the time of my site visit

18. There are several representations to the effect that the proposal would be disproportionate to the size and function of the existing village (a criterion in JCS policy SP2(5)) but it is clear from the Borough Council's Housing Background Paper and from emerging policy COO1 that the two sites being allocated in Coombe Hill are intended to create a new character for the settlement. Charming though the hamlet is at present, I do not demur from the analysis of the Housing Background Paper that the village lacks a cohesive form and does not have a well-defined village character.

19. The aim of the settlement boundary (which would result from the two allocations) is to create a well-defined nucleated village and establish a sense of place, rather than exacerbating the already dispersed nature of the village. The combined figure of 75 additional dwellings proposed in the emerging plan would be transformative in the context of an existing settlement of about 50 dwellings. The addition of a further 45 dwellings would break no greater threshold of character change than transformative.

20. The Council has already resolved to grant planning permission for up to 40 dwellings on a small part of the site (described as Part Parcel 0120). In an e-mail of 19 March 2018 an officer of the Council, having discussed that earlier application with senior colleagues, invited a single application for the whole site in line with the Borough Plan (Housing Background Paper) consideration of 80 dwellings, so as to allow for a village focus and a sense of place which that previous scheme did not deliver. I concur with that view.

21. Nothing in the evidence before me suggests that the figure of 50 dwellings proposed in the emerging Local Plan is arrived at following a feasibility study or detailed analysis of the criteria itemised by JCS policy SD10(6). Rather, the evidence points to the selection of a nominal or even arbitrary figure to be given greater and more refined consideration in a pragmatic way during the consideration of a planning application.

22. During the consideration of this appeal, the emerging Leigh Neighbourhood Plan was passing through its regulation 14 consultation stage. Shortly after the conclusion of the Inquiry, it was approved for submission in accordance with regulation 15. Although the emerging NP is a material consideration, it remains at an early stage in the plan making process. No party sought to place any particular reliance on the emerging Neighbourhood Plan as part of its case in this appeal. In any event, the emerging Neighbourhood Plan anticipates that the site will be allocated for development through the emerging Tewkesbury Local Plan and so I have taken the latter plan into greater account in determining this appeal.

23. The appellant concedes that there is a nominal conflict between the proposal and both JCS policies SP2 and SD10 because no adopted plan has ever been subsequently produced designating non-strategic sites for development in Tewkesbury. Nevertheless, I conclude that the appeal site would be an appropriate location for new residential development in accordance with JCS policy SP2 and that the scale should be determined pragmatically by a consideration of the criteria set out in that policy and in JCS policy SD10(6). These are largely covered by the other issues in this appeal, to which I now turn.

#### *Character and appearance*

24. The Council's case, in relation to this issue, was more a criticism of the supporting Design and Access Statement (DAS), than of the development proposed. Because the proposal is for a number of dwellinghouses greater than ten, it is defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO) as a major development.



25. Article 9 of the DMPO requires an application for major development to be accompanied by a DAS. A DAS is intended;

- to explain the design principles and concepts that have been applied to the development,
- to demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account,
- to explain the policy adopted as to access, and how policies relating to access in relevant local development documents have been taken into account,
- to state what, if any, consultation has been undertaken on issues relating to access to the development and what account has been taken of the outcome of any such consultation and
- to explain how any specific issues which might affect access to the development have been addressed.

26. The application was made in outline as a proposal in principle only. All matters, namely access (except for one pedestrian and vehicular access to the site), appearance, landscaping, layout and scale are reserved, to be submitted later, in the event that outline permission is granted. The Borough Council has powers, under Article 5(2) of the DMPO, to require details to be submitted of any reserved matter, if it considered that the application could not be determined without them. The Borough Council made no such requirements in the present case. The application was validated without details of any reserved matter other than for the main vehicular access.

27. The submitted DAS does not include a design code but there is no requirement in the DMPO, or in adopted JCS policy or emerging Local Plan policy that it should. JCS policy SD4 states that a masterplan and design brief may be required but clause (2) of the policy makes it clear that they are optional and the application was registered and validated without a design brief being required. Nor is the submitted DAS specific to a scheme for a fixed number of dwellings but that is hardly surprising as the number of dwellings is not fixed; as submitted the application was for any number up to 150 dwellings and as amended, it is for any number up to 95 dwellings. Neither of those points impair its validity.

28. Not all outline applications have all matters reserved but, where a matter is reserved, a DAS can do little more in relation to that matter than explain the obvious, namely that the design principles and concepts to be applied to the development have yet to be formulated and will be explained at reserved matters stage. Nevertheless, the submitted DAS does in fact go further than that.

29. A comparison with the requirements of the DMPO shows that an extensive section 2 in the DAS demonstrates the steps taken to appraise the context of the development and how the design of the development will take that context into account. In section 4 it sets out a series of Design Principles and Design Proposals, explaining at paragraphs 4.14, 4.19 and 4.20 the policy adopted as to access, at paragraphs 4.15 and 4.20 how policies relating to access in the government's Manual for Streets (rather than the JCS) have been taken into account and at paragraph 4.17, summarising the consultation which had taken place with the

highway authority and its outcome. I therefore find that the DAS complies with the requirements of the DMPO.

30. Turning from an appraisal of the DAS to an appraisal of the development proposed; the emerging local plan policy COO1 sets requirements, compliance with most of which could only be demonstrated at reserved matters stage. The master plan which accompanies the appeal is illustrative only. Nevertheless, in the next three paragraphs, I consider its provisions in relation to the requirements of emerging policy COO1.

31. The masterplan does demonstrate a continuity of active frontages along the A38 north of the petrol filling station. If followed in the reserved matters application(s) these, in conjunction with the development now under way on the opposite side of the road, would link several of the currently dispersed elements of the settlement to help create a nucleated village in the way described in the Housing Background Paper.

32. As recorded in a later section of this decision, the quantity of open space proposed (which is required to be provided by paragraphs 1.26, 5.2 and Schedule 3 of the Unilateral Undertaking to Tewkesbury Borough Council) would be sufficient to provide for use by the wider community. The Borough Council's contribution to Inquiry Document 17 confirms that the open space could contribute to the wider Green Infrastructure (GI) network envisaged in the supporting text to JCS policy INF3. There is no dispute that biodiversity net gains on the site itself would be delivered (the dispute, which I consider below, relates to residents' recreational effects on biodiversity off site, in relation to the Severn Estuary SPA). A later section of this decision concludes that mitigation of recreational pressure on the SSSI would be achieved. The design requirements for enhanced pedestrian connectivity can also be required by conditions (6(ii)) and (10(ii)).

33. The illustrative masterplan indicates that public open space would address the A4019 frontage and the prominent corner location at the junction of the A38 and A4019 and so demonstrates how a reserved matters application could feature a landmark (albeit not a building) as envisaged by the emerging policy. It shows landscaped open space surrounding the development which demonstrates how the detailed layout could be landscape-led. At about 20 dwellings per hectare, the density of development would be relatively low.

34. Insofar as the Council makes any substantive comment on the character of the development proposed, the Council's urban design officer observes that the illustrative layout shows almost every dwelling to be a terraced property and expresses doubt that that would be in keeping with the character of the area. It is true that terraced properties do not dominate the existing character of the area, although there are some at the Wharf and a pair of semi-detached properties to the north of the graveyard and former chapel. Nevertheless, I note that Leigh Parish Council, in its representations to policy COO1 of the emerging local plan comments that a village survey recorded the need for smaller 2 and 3 bedroomed accommodation and for social housing. It follows that, if the illustrative layout were to be followed in the reserved matters applications then it is likely that an acknowledged deficiency in the character of the settlement would be made good.

35. The Council's evidence to the Inquiry commented on the storey heights implied by the parameters plan, commenting that although there are examples of 2.5 storey dwellings in the settlement, these are few and far between. But in fact, section 2 of the appellant's DAS shows several examples of taller buildings, including Walton

Grange to the north of the site and the former police station at the crossroads. The appellant's Response to the Urban Design Officer's response shows several three storey buildings to be present in Coombe Hill. The Council's evidence also commented on the parameter plan's implication of cut and fill to provide a level building platform but on my site visit, I observed that this was characteristic of existing buildings to the east of the A38 in the hamlet.

36. Without prejudice to consideration of detailed reserved matters applications, I conclude that there is nothing in the material before me to demonstrate that the effect of the quantity of development proposed on the character and appearance of the area need be anything other than acceptable. The proposal would therefore comply with those elements of JCS policy SD10(6) which require compatibility with good design and with the character and quality of the local environment.

*Ecology (the SSSI and the SPA)*

37. There are two parts to this issue. One is concerned with the possible adverse effects of the development proposed upon the integrity and conservation objectives of the Severn Estuary Special Protection Area and Ramsar Site (the SPA) either through hydrological effects in functionally linked watercourses on migratory fish species or through recreational effects on birds using Functionally Linked Land (FLL) in the vicinity of Coombe Hill (which may, or may not, be contiguous with Gloucestershire Wildlife Trust's Coombe Hill Canal and Meadows Reserve). The second is concerned with possible adverse effects upon the Coombe Hill Canal SSSI and on Gloucestershire Wildlife Trust's Coombe Hill Canal and Meadows Reserve in general. I deal with the SPA concern first.

38. The Habitats Regulations 2017 (as revised) require that before any planning permission is given for a project which is likely to have a significant effect on what is known as a European site (in this case the Severn Estuary SPA), an appropriate assessment must be made of the implications of the project in view of the SPA's conservation objectives and that I must ascertain that the project would not adversely affect the integrity of the SPA. I can take account of conditions which may be imposed. This is a two-stage process; first of all establishing a likely significant effect and then secondly making an appropriate assessment of that likely significant effect.

39. The possible effects on fish may be swiftly disposed of. No party contests the findings of the appellant's submitted Environmental Statement that best practice methods and effective engineering solutions to ensure contaminated run-off is prevented from entering the local watercourses would ensure a minor beneficial effect. Natural England, which is the government's adviser on these matters, agrees that adverse effects on water quality in functionally linked watercourses including the Rivers Chelt and Severn are unlikely to occur provided that the proposed sustainable drainage measures are secured by condition. I have no reason to disagree. Condition (8(iv)) requires details of drainage to be submitted, at which point the Council can ensure that they include the matters described in paragraph 3.7 of the Ecology Statement of Common Ground.

40. For birds, the SPA's 1993 citation included six elements or qualifying features;

- An internationally important wintering population of Bewick's swan
- A wetland of international importance supporting in winter over 20,000 waterfowl (wildfowl and waders)
- Supporting in winter internationally important numbers of five species of



migratory waterfowl; European white-fronted goose, shelduck, gadwall, dunlin and redshank

- A nationally important wintering population of ten species; wigeon, teal, pintail, pochard, tufted duck, ringed plover, grey plover, curlew, whimbrel and spotted redshank
- During passage periods, nationally important numbers of ringed plover, dunlin, whimbrel and redshank
- A nationally important breeding population of lesser black-backed gulls

41. A Natura 2000 Standard Data Form for the SPA dated December 2015 includes entries for Bewick's swan, European white-fronted goose, shelduck, gadwall, dunlin and redshank and for a waterfowl assemblage. Advice given by the Countryside Council for Wales and Natural England in June 2009 lists the internationally important assemblage of waterfowl as Bewick's swan, European white-fronted goose, dunlin, redshank, shelduck, gadwall, wigeon, teal, pintail, pochard, tufted duck, ringed plover, grey plover, curlew and whimbrel.

42. The concern that the development proposed on the appeal site might be likely to have a significant effect on the SPA arises from the concept that the residents of the proposed development would use the surrounding countryside for recreational walking. During that recreational activity, particularly if dog walking, they could disturb the birds which represent qualifying features of the SPA when they also use the surrounding countryside in a way which identifies it as Functionally Linked Land (FLL). That could prejudice both the extent and distribution of the habitats of the SPA birds and also their population, the maintenance of which are among the site conservation objectives for the SPA.

43. The concept of Functionally Linked Land is endorsed in paragraph 27 of *RSPB v SofSCLG* [2014] EWHC 1523 (Admin), 2014 WL 1976410; "while no particular legal status attaches to FLL, the fact that land is functionally linked to protected land means that the indirectly adverse effects on a protected site, produced by effects on FLL, are scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself." FLL is defined in a 2016 report NECR207 commissioned by Natural England; *Functional linkage: How areas that are functionally linked to European sites have been considered when they may be affected by plans and projects - a review of authoritative decisions*. It refers to the role or function that land beyond the boundary of the SPA might fulfil in terms of supporting the population for which the SPA was designated.

44. FLL does not include all land which the designated species use; "Sometimes, the mobility of qualifying species is considerable and may extend so far from the key habitat that forms the SAC or SPA that it would be entirely impractical to attempt to designate or classify all of the land or sea that may conceivably be used by the species." Instead, the specific birds which form the population using the SPA have to use the other land in question for it to be identified as functionally linked.

45. Moreover, there is an additional requirement for land to be identified as functionally linked. "In practice, therefore...supporting habitat in areas beyond the boundary of a SAC or SPA which are connected with or "functionally linked" to the life and reproduction of a population for which a site has been designated or classified should be taken into account in a Habitats Regulations Assessment (HRA)." I take this to mean that a simple demonstration that land is used by birds of the

same species as listed in the SPA designation would not justify the identification of FLL; what is needed is a demonstration not only that the land is used by the same individual birds as use the SPA land but also that they use it in away which is necessary to their life and reproduction.

46. For this reason, explored further in the following paragraphs, I am not entirely convinced by the conclusions of the report to Natural England by Link Ecology dated September 2020, entitled "Identification of Land with Proven or Possible Functional Linkages with the Severn Estuary SPA Phase 5 (Gloucestershire and Worcestershire)", (the FLL report) (although endorsed by the advice of Natural England). This states that that ten sites (including land at Coombe Hill) "appear to be or have been Functionally Linked to the Severn Estuary SPA as shown by regular or intermittent movements of individual birds and for identifiable flocks in the past ten years."

47. The report itself immediately qualifies its finding in respect of Coombe Hill and two other sites by stating "The Functional Linkage between this complex of sites and the SPA must therefore be considered, on the basis of evidence to date, to be diminishing for two of the main species and is at best unproven for most other SPA Interest Species that occur within them". In addition to that, the reason for my scepticism is that, with the exception of Black-tailed godwit (which is not a listed SPA species) and curlew (which is a listed SPA species as part of the important assemblage of waterfowl) the conclusions are mostly based upon what appear to be opportunistic uses of the ten sites by SPA birds on occasions when the sites' condition presents an optional alternative to use of the SPA itself, rather than usage essential for the SPA species to complete its life cycle in circumstances where the SPA land itself cannot offer that usage.

48. There are analogies in human life where a location (be it a park, restaurant or music venue) is famed for attracting large numbers of users. The fact that some individuals amongst those users may also attend other locations at other times does not prove that those other venues are functionally linked to the main venue; the other locations are simply used as a matter of choice in parallel with the use of the famed attraction; their use is not essential for the desired experience.

49. But, for the Black-tailed godwits, fattening themselves up for their migration, for which the SPA does not provide enough resource, I accept that the land identified in map 20 of the FLL report, including land in the vicinity of Coombe Hill, does represent FLL although Black-tailed godwits are not an SPA listed species.

50. Likewise for the curlews, needing to breed away from their winter residence on the SPA I accept that the land identified in map 19 of the FLL report, including land in the vicinity of Coombe Hill, represents FLL in that land suitable for breeding is essential for the species to complete its life cycle and thus to maintain its population within the SPA. Curlew as a species is known to be sensitive to disturbance and as a ground-nesting species, its breeding success is known to be sensitive to the presence of dogs. For that reason, I accept that there may be a likely significant effect on the SPA from the development proposed and that an appropriate assessment must be made.

#### *Appropriate assessment*

51. The Conservation Objectives for the Severn Estuary SPA are recently restated by Natural England in a document published in February 2019. They are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining

or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

52. The SPA is also a European marine site for which objectives were stated by Natural England and the Countryside Council for Wales in 2009. For the internationally important assemblage of waterfowl these are to maintain the waterfowl assemblage and its supporting habitats (Intertidal mudflats and sandflats, Saltmarsh and Hard substrate habitats (rocky shores)) in favourable condition, as defined below:

The interest feature waterfowl assemblage will be considered to be in favourable condition when, subject to natural processes (the dynamic physical process within the estuary), each of the following conditions are met:

- (i) the 5 year peak mean population size for the waterfowl assemblage is no less than 68,026 individuals (ie the 5 year peak mean between 1988/9 - 1992/3);
- (ii) the extent of saltmarsh and their associated strandlines is maintained;
- (iii) the extent of intertidal mudflats and sandflats is maintained;
- (iv) the extent of hard substrate habitats is maintained;
- (v) extent of vegetation of 10cm throughout the saltmarsh is maintained;
- (vi) the abundance and macroscale distribution of suitable invertebrates in intertidal mudflats and sandflats is maintained;
- (vii) the abundance and macroscale distribution of suitable invertebrates in hard substrate habitats is maintained;
- (viii) greater than 25% cover of suitable soft leaved herbs and grasses during the winter on saltmarsh areas is maintained;
- (ix) unrestricted bird sightlines of >500m at feeding and roosting sites are maintained;
- (x) waterfowl aggregations at feeding or roosting sites are not subject to significant disturbance.

53. Of these conditions, item (i), the 5-year mean population size for the waterfowl assemblage is the condition at risk from the recreational activity expected from the appeal site. Items (ix) and (x) are relevant to a degree. Restricted bird sightlines may lead to disturbance prejudicial to successful breeding in the vicinity of Coombe Hill and so might affect the maintenance or restoration of the species' population size on the SPA. Nevertheless, the appeal development would make no difference to the extent of bird sightlines at feeding and roosting sites in the vicinity of Coombe Hill, because these are reported to be near the appeal site, not on it. The issue is whether the residents of the development would cause disturbance with the

sightlines as they exist now at Coombe Hill.

54. The population size for the waterfowl assemblage as a whole is large. In the five-year period 1988/9-1992/3 the average peak count was 68,026 (17,502 wildfowl and 50,524 waders). In the 2015 Natura 2000 Standard Data Form, it was reported as 84,317 for the five-year period 1991/2-1995/6. In an SPA review carried out in 2001 it is stated that the area regularly supports 93,986 individual waterfowl in winter.

55. In the 1993 SPA citation 3,096 were reported as curlew. That could be interpreted to mean that the loss of the entire curlew component of the SPA's assemblage would mean an effect of 4.5% on the waterfowl assemblage as a whole but the point of an assemblage is that it comprises a variety of species; the loss of a component of that assemblage would reduce that variety and so could be disproportionately harmful. For that reason, I focus on the population size of the curlew alone in this assessment, rather than on the size of the assemblage overall.

56. All parties accept the FLL report as an authoritative study of the relationship between birds using the SPA and those using various sites in Gloucestershire and Worcestershire. The FLL report records that curlew has experienced a major decrease in numbers in the last twenty or more years across northwest Europe. Karen Colebourne writes in her evidence that between 1995 and 2008 the curlew population in the UK declined by 42%.

57. In contrast, the five-year mean peak for curlew on the Severn estuary had increased from 3096 in 1993 to 3398 by 2014/5-2018/9. Within that five-year mean there has been substantial fluctuation; 3546 in 2013/4, 3696 in 2014/5, peaking at 4203 in 2015/6, reducing to 2993 in 2016/7, increasing to 3411 in 2017/8 and reducing to 2680 in 2018/9, so it is by no means clear that the population of curlew on the SPA is not being maintained or that it requires restoration or that it is not contributing to the conservation objectives of the SPA. Of these numbers, the FLL report records that some 30-35 pairs of curlew (i.e. 60-70 birds) regularly attempt to nest in traditional hay meadows along the entire Severn and Avon river system north of Gloucester (not just at Coombe Hill). Even if all the nesting birds were to come from the SPA, that would represent just about 2% of the numbers of curlew using the SPA. The vast majority breed elsewhere (Scotland, northern England, Wales, Northern Ireland, other parts of the English lowlands, the Netherlands, Lower Rhine, Finland, Sweden and Eastern Poland are all mentioned in the FLL report).

58. The area around Coombe Hill is important as a roost before and after the breeding season but appears to be less important for breeding. Coombe Hill is reported as a strongpoint for breeding curlews but it is only one of many sites (at least thirteen are named in paragraph 4.690 of the FLL report) sharing the 30-35 pairs identified as nesting in the Severn and Avon valleys, so numbers are small at each individual site and at Coombe Hill.

59. The FLL report names the hay meadows along the Avon from Tewkesbury to Eckington as the area with the highest number of breeding curlew. It notes that of the 30-35 pairs of curlew nesting in its study area, some 20 pairs nest in hay meadows along the Avon north of Tewkesbury and about 15 pairs nest along the Severn between Gloucester and Worcester (the area which includes Coombe Hill). Again, in contrast to the decline seen across northwest Europe, the FLL report notes that this population seems to have remained stable for the last 40 years. It speculates that this is because there has been little change in farming methods in

the area.

60. No more than three pairs of curlew are reported to use the area around Coombe Hill for nesting (FLL report, paragraph 5.267). That represents less than 0.09% of the curlew using the SPA as part of its winter assemblage of waterfowl. That figure is well within what might be the expected range of annual natural variation and also within the likely range of accuracy of the enumeration methods for counting curlew.

61. Natural England advises (in section B3 of its report NECR207) that "the extent to which an effect might 'undermine the conservation objectives' where it occurs beyond the boundary of the European site will be influenced by the role or function that the area serves and its importance to the maintenance of the population for which the site has been designated, classified or listed" and (in section B1 of the same report) that "assessment will need to determine how critical the area may be to the population of the qualifying species and whether the area is necessary to maintain or restore the favourable conservation status of the species". Even if all three of these pairs of birds were prevented from breeding at Coombe Hill as a result of disturbance caused by residents of the development proposed (as opposed to disturbance caused by pre-existing conditions), whether alone or in combination with other developments in the area, it would have almost no effect on the maintenance of the population for which the SPA has been designated and so there would be no practical effect on the integrity of the SPA or its conservation objectives, let alone any significant effect.

62. Moreover, even that figure of 0.09% exaggerates the effect which the development could have on the integrity of the SPA and its conservation objectives because there is no evidence in the material before me that the curlews nesting at Coombe Hill are successful in breeding. Rather, the evidence points to the opposite. Paragraph 8.17 of Karen Colebourn's evidence on behalf of the Borough Council reiterates without contradiction the information given in the appellant's Information to Inform a Habitats Regulation Assessment; curlew nests were recorded within 35-150m of public footpaths around Coombe Hill in 2013 and 2016 but they did not breed successfully then, nor since. Paragraph 4.688 of the FLL report notes that productivity is low at all the Severn and Avon nesting sites because of habitat change, predation and early hay cutting. The three colour-marked birds which the FLL report notes as clearly demonstrating the links between the SPA and the Severn and Avon sites, normally attempted to breed at Queenhill (outside the report's study area), Haslam Ham and Upham Meadow respectively, not Coombe Hill. One of the three birds surprised observers by moving from Upham Meadow to Coombe Hill in 2019 where it "attempted to breed, almost certainly unsuccessfully" (indicated by its early departure from the breeding area).

63. Existing issues of disturbance to birds in the area around Coombe Hill are noted in paragraphs 5.260 to 5.262 of the FLL report. The canal provides a convenient out and back walk popular with dog-walkers, facilitated by the provision of a car park intended to serve the Gloucestershire Wildlife Trust's reserve but generally available for other users of the unusually intense network of footpaths through the countryside in the vicinity. During my site visit I observed several parties arrive by car and set off with their dogs. I overheard one couple remark that as the canal path was very muddy they would instead let their dogs run in the adjacent fields. It is those adjacent fields, not necessarily within the GWT's reserve, that are used by the curlew during the breeding season as the appellant's plan ECO1 revision B, contained within its Shadow Habitats Regulations Assessment, demonstrates. The FLL report also notes that frequent helicopter overflights are an additional source of



disturbance.

64. For all the above reasons, I doubt that the area around Coombe Hill presently contributes as much to the integrity and objectives of the SPA through maintenance of the population of curlew on the SPA as would be implied by even the minimal numbers of curlew attempting to breed at Coombe Hill. Consequently, the adverse effects of the development proposed, either alone or in combination with other developments, would be even less significant than the minimal extent identified earlier. They would be reduced still further by the offer of alternative dog-walking facilities on site and by publicity for alternative circular walks confined to the east of the A38 and so not affecting curlew breeding areas.

65. But the objectives of the SPA are not just maintenance of populations of wintering waterfowl but also their restoration. Paragraphs 5.263, 5.264 and 5.3 of the FLL report suggest ways in which the area could be enhanced for waterfowl, including more scrapes, the creation of buffer zones, footpath diversion and/or screening, fencing and planting. The Gloucestershire Wildlife Trust has also made suggestions for the enhancement of its reserve, including a warden scheme, which would benefit the wider area, though it would be wrong to confate the GWT's reserve with the wider area within which curlew seek to nest.

66. The burden of seeking to restore the contribution which the Coombe Hill area could make to restoring the integrity and objectives of the SPA does not fall to this appeal development alone. The responsibility lies in combination with other developments in the area whose residents are also likely to make visits to the area and so disturb wildfowl unless their presence is properly managed. But the sum of £100,000 which is offered through the Unilateral Undertaking meets all the requests which the GWT has made and so I conclude that it represents a proportionate contribution to be made from this development.

67. In concluding this appropriate assessment I take into account condition (10(vi)) and the unilateral undertaking to Tewkesbury Borough Council which would require open space provision on site offering an alternative dog-walking facility, a homeowners pack publicising alternative walking routes, and a financial contribution to the GWT. I find that the proposal would have no significant adverse effects upon the integrity and conservation objectives of the Severn Estuary Special Protection Area and Ramsar Site (the SPA) through recreational effects on birds using Functionally Linked Land (FLL) in the vicinity of Coombe Hill. It would have a proportionate beneficial effect through its financial contribution to the management of visitors to the part of the area which is controlled by the GWT. It would therefore comply with CS policy SD9 (2(i)) which requires European and National protected species to be safeguarded in accordance with the law.

#### The SSSI

68. I turn now to the other element of this issue, namely the SSSI. The Coombe Hill SSSI is designated for its nationally rare and scarce invertebrates and nationally scarce plants. The invertebrate interest centres on beetles but flies and a diverse fauna from other invertebrate groups are also present. Several nationally scarce plants such as golden dock, corky-fruited water-dropwort, greater dodder and true fox-sedge are listed in the citation. The citation also mentions that the SSSI is also locally important for its diverse breeding bird assemblage, particularly resident and migrant warblers and waders such as curlew and snipe. None of the material before me expresses any concern about the effects of the development proposed on the nationally rare and scarce invertebrates or on the nationally scarce plants. Paragraph 3.8 of the Ecology Statement of Common Ground asserts that impacts from the scheme are unlikely to give rise to a significant effect on the interest

features for which the Coombe Hill Canal SSSI is currently notified. Only the effects on the locally important breeding bird assemblage is of concern.

69. What is known about the breeding bird assemblage in the area is derived from the authoritative FLL report referred to in an earlier section of this decision. But, care must be taken to recognise that the FLL report covers a much more extensive area than the GWT's Coombe Hill Canal and Meadows Reserve, which is in turn much more extensive than the SSSI and so, comments made in the FLL report do not necessarily apply with equal force to the GWT reserve or to the SSSI.

70. The FLL report notes that in spring the wet fields of riverside meadows traditionally provided nesting sites for waders notably lapwing, curlew, redshank and snipe. In relation to breeding birds at Coombe Hill, the report mentions mallard, shelduck, gadwall, tufted duck (a diving duck rather than a wader; one or two pairs), lapwing, redshank, oystercatcher and curlew, though the site only ranks of high importance in spring to gadwall and mallard and of moderate importance to shoveler, tufted duck, whimbrel and ruff. It notes that in overall terms the success of nesting attempts by all wader species in recent years has been very poor but also records that despite the declining numbers of birds involved, Coombe Hill remains one of the most important sites for breeding waders in the Severn Vale. The SSSI citation is for a breeding bird assemblage, which would occur in springtime. But the FLL report also notes that Coombe Hill has always been an important site for wintering waterbirds such as swans, geese, ducks and some waders like lapwing. Information about wintering birds may be gleaned from Table 1 of the appellant's submitted Information to Inform a Habitats Regulations Assessment which summarises the British Trust for Ornithology's Wetlands Bird Survey wintering bird data (also used in the FLL report) for the period 2013/4 – 2017/8. In order of frequency, the species recorded with a significant presence are wigeon, teal, Canada goose, greylag goose and pintail. None met nationally important threshold numbers. The FLL report also mentions shoveler and lapwings. It records the site's importance in winter as high for shoveler, gadwall, wigeon, mallard, pintail, teal and lapwing.

71. A third category of interest is transitory migratory birds. Notable at Coombe Hill are black-tailed godwit and whimbrel. The FLL report mentions other species in smaller numbers.

72. Not all birds are disturbed by human presence. Although the black-tailed godwit demonstrates a functional link with the SPA (though not an SPA designated species), it is not considered further in Karen Colebourne's evidence for the Borough Council because, as she writes in paragraph 9.4 of her proof, there is "evidence that this species may not be significantly affected if disturbed while feeding." Mallards are also notoriously tolerant of human presence.

73. In recent years, the GWT has deliberately enhanced the meadows for breeding, feeding and roosting wetland birds so as to be more compatible with human visitors, for whom it provides car parking, hides and information boards. Paragraphs 8.18 and 8.19 of Karen Colebourne's evidence and paragraph 5.258, 5.259 and 5.261 of the FLL report describe the works. The northern meadows of the GWT's reserve have been acquired, a circular walk has been laid out and signposted from the canal towpath. Two viewing hides have been provided along with information boards and signage requesting dogs to be kept on leads. Ditches have been deepened to create a no-go area where birds are free from disturbance. Land is managed to cut hay late. The FLL report suggests further

enhancements, such as a mechanism to retain water levels in the scrapes over summer.

74. These measures already taken by the GWT help to secure their reserve against the effects of disturbance which, as the FLL report notes, is a problem at Coombe Hill because of the number of footpaths and the popularity of the canal as an out and back walk for dogs. Earlier passages of this decision record my on-site observations of the effects of the GWT's car park in facilitating this activity.

75. A letter from the GWT to the Borough Council dated 14 December 2020 records that its membership recruiters who have been stationed at Coombe Hill when permissible during 2020 report 50 visitor groups a day in autumn, with the car park being full for most of the day during good weather. Visitors included a mix of demographics. Around one-third were dog walkers. They included locals as well as residents from Gloucester, Tewkesbury and Cheltenham.

76. It is therefore clearly not the case that the Reserve is managed so as to exclude or even to deter visitors, with or without dogs, or to restrict them to locals only, or to accredited ornithologists. It is open to all, including dogwalkers, and that sets a context within which any potential impact of the development needs to be measured so that it can be managed and mitigated. Although the GWT's letter warns that it would reluctantly have to consider closing its reserve to the public in order to protect its biodiversity features if necessary, that clearly is not its intention. Rather, what is sought is adequate mitigation, including measures to divert recreational demand.

77. In order to establish the effects of the development, it is not necessary to have carried out a visitor survey of the existing use of the SSSI or the GWT's reserve. Knowledge of the patterns of usage of visitors to the reserve from the wider area in general and the distance they have travelled may well be of use to the GWT in deciding how to promote to the public and manage the reserve for the future. But that knowledge is not necessary in order to ascertain the likely recreational demand from residents of the appeal site and to judge how likely that recreational demand is to be met by facilities provided on the appeal site as opposed to on the GWT's reserve.

78. The information needed to assess the scheme is provided in paragraphs 4.29 and 4.30 of the appellants' Shadow Habitats Regulations Assessment. This estimates that the development would generate between 23 and 46 dog walking trips per day. If all were to be walked on the GWT reserve (crossing the A38 road and descending and ascending a narrow, shared surface country lane to and from the Wharf) to the exclusion of all other options, then something approximating a doubling of dog walking on the reserve would ensue. In my view, that degree of use would be unlikely given the greater convenience of a dog walking route to be provided on site. On the other hand, I do accept that the dog walking route to be provided on the appeal site would be unlikely to draw existing users away from the GWT's reserve as it would be on the wrong side of the A38 for most existing residents of the hamlet.

79. The mitigation measures proposed would publicise alternative circular walks, at least one of which involves no crossing of any main road and gives fine, eastward views. The attractions and detractions of these alternatives are fairly stated in paragraph 10.23 of Karen Colebourne's proof, except that I did not find the footpath along the wide verge of the A38 in front of Walton Grange Farm to be narrow (though it is somewhat overgrown). Nor is the footway narrow alongside the A4019

from Knightsbridge.

80. In combination, I consider that the provision of the dog walking route on site as proposed, together with the publicity given to other alternative walking routes on the development's side of the A38 would go a considerable way towards dissuading residents of the development from walking their dogs on the GWT reserve. Nevertheless, there would inevitably be some residual increase in use.

81. The GWT has put forward proposals to deal with this, in an e-mail of 4 January 2021, including setting up a volunteer warden scheme at a cost of £7,900 pa for five years and identifying some infrastructure changes that would better define public rights of way and restrict access to the most sensitive bird habitat at a cost of around £50,000, using volunteers and spreading the work over five years, all of which seem to me to be reasonable and likely to be effective. In its unilateral undertaking, the appellant has agreed to fund the GWT to a degree commensurate with the estimated costs of the measures which the GWT seeks to put in place. That all seems both necessary and reasonable and compliant with the CIL regulations.

82. Taking that into account, I conclude that the effects of the proposal on the Coombe Hill Canal SSSI would be acceptable. The proposal would comply with JCS policy SD9 (2(i)) which requires European and National protected species to be safeguarded in accordance with the law and with JCS policy SD9 (2(iv)) which encourages the creation, restoration and beneficial management of priority landscapes, habitats and populations of priority species, for example by securing improvements to Strategic Nature Areas as set out on the Gloucester Nature Map.

#### *Flooding*

83. A few weeks before the opening of this Inquiry, the parties (in this instance, the appellants and the County Council as Lead Local Flood Authority) agreed a Statement of Common Ground on matters relating to Drainage and Flooding.

84. Essentially, the site drains to a ditch on its east side, which in turn flows through a 300mm diameter culvert underneath the A4019. From time to time the limited capacity of the culvert causes water to back up the ditch, extend over adjoining land (including the lowest part of the site and an adjoining dwelling known as The Bellows) and flood over the A4019.

85. As the appeal proposal was applied for in outline, drainage details are not supplied. Condition (8(iv)) would require their submission. The appellant's Flood Risk Assessment and Flood Risk Assessment Addendum have now convinced the Lead Local Flood Authority that it would be possible to design a drainage system with an attenuation pond unaffected by flood levels which would attenuate peak run-off from the development so as to be 20% less than in its undeveloped state. In consequence, flood levels would be at least 20mm lower than if the site were to remain undeveloped, even if no alterations were made to the culvert under the A4019.

86. As originally submitted, no improvement works or increasing capacity to the existing pipe under the A4019 was envisaged so as to ensure that flood risk downstream of the development would not be increased. But further study showed that enlargement of the culvert to reduce flooding at the Bellows and on the lowest part of the site still further would not increase downstream flooding because it would simply mean that peak flows of water in extreme events would flow through the culvert rather than over the road. The attenuation measures envisaged for the on-site drainage would reduce peak flows in any event and so reduce downstream

flood risk slightly.

87. The provision of drainage details for subsequent approval can be required by condition (8(iv)). The unilateral agreement makes provision for a financial contribution towards the cost of enlarging the culvert. These arrangements appear to be both necessary and reasonable and would comply with the CIL regulations.

88. With these arrangements in place I am satisfied that the effects of the proposal on flooding on and off the site would be beneficial. The proposal would comply with JCS policy INF2 which, amongst other matters, requires development proposals not to increase the level of risk to the safety of occupants of a site, the local community or the wider environment and, where possible, to contribute to a reduction in existing flood risk.

#### *Housing*

89. There was a putative reason for refusal concerning the absence of a commitment to provide affordable housing in the proposal as submitted but that could have been resolved by a condition requiring the submission of a scheme of affordable housing had permission been granted. In the current appeal, a Unilateral Undertaking provides for 40% of the number of dwellings as affordable housing, split 60:40 between affordable renting and shared ownership. The undertaking would be necessary to ensure compliance with JCS policy SD12(1(ii)) which requires a minimum of 40% affordable housing. It complies with the CIL regulations and so I have taken it into account.

90. The Borough Council would have preferred the rented element to have comprised social renting rather than affordable renting based upon its Local Housing Needs Assessment of September 2020. But although that shows a greater need for the former rather than the latter, it does not show that the latter is not needed. Consequently, the provisions of the Undertaking would still serve to satisfy local affordable housing needs.

91. The Borough Council also had concerns about accessibility standards applied to both market and affordable housing but JCS policies SD4(vi) and SD11(2(ii)) which require new development to provide access for all potential users, including people with disabilities, and for housing to be accessible and adaptable will continue to apply to any reserved matters application which may be made. There is nothing to suggest that the current outline application which is before me would contravene any of those policies.

92. The point at issue during this Inquiry does not arise from any putative reason for refusal but from a dispute about the significance of the benefit which would arise from the provision of housing. The government seeks to boost the supply of housing, so any housing proposal must be regarded as providing a degree of benefit to set against any harm which the development may cause. The significance of the benefit is judged by reference to the Borough's housing need and its performance in meeting that need.

93. At its simplest, the provision of up to 95 dwellings would represent approximately 19% of the annual average housing requirement ascribed to Tewkesbury by the JCS, or nearly 4% of its averaged five-year requirement, or just under 1% of the total housing requirement for Tewkesbury for the plan period. At typical roll-out figures, the development would probably be developed over two years, so it would contribute about 10% of Tewkesbury's annual average requirement for each year of a two-year period, which in turn represents about 10% of the JCS plan period. In straightforward



numerical terms, whichever way it is looked at, that is a significant contribution to the supply of housing in Tewkesbury and therefore a significant benefit.

94. The courts have held that greater significance should be given to the benefits of housing provision, in proportion to the size of shortfalls in housing supply. In this case, both parties are agreed that there is both a plan period shortfall of allocated sites and also that the Council cannot demonstrate a five-year housing supply. In a statement of common ground on housing need and supply the parties agree that there was a plan period shortfall of 2455 homes on adoption of the JCS (25% of the requirement for Tewkesbury) which is currently a plan period shortfall of 1525 dwellings (15% of the requirement for Tewkesbury). Hopes of closing that gap through the emerging local plan and a review of the Joint Core Strategy can only be aspirational at the current time and depend in part on approval being given to the allocation and development of the current appeal site. For the purposes of the appeal there remains a substantial shortfall in the identified housing land supply for the plan period. This adds significantly to the significant benefit which has already been identified as accruing to the appeal proposal.

95. The parties differ over the size of the shortfall in the five-year housing land supply. The calculation of a five-year supply is made by reference to an averaging of the plan period requirement. But, that does not reflect a reality in which supply can fluctuate wildly year by year. Thus, the trajectory for Tewkesbury contained within paragraph 7.1.36 of the JCS predicted a cumulative shortfall in delivery for the first four years of the plan period. This shortfall would be erased by year five (thus demonstrating an anticipated 6.3-year supply, on adoption, as stated in paragraph 7.1.19). Subsequently, there would be a considerable cumulative surplus in supply lasting until 2024-25. Thereafter, a cumulative shortfall would arise requiring ever more demanding annual requirements if the housing requirement for the plan period were to be met.

96. That prediction of a wildly fluctuating supply seems to have turned out in practice. The expected cumulative shortfall for 2024-5, is now expected to occur a year later than anticipated, according to the Council's December 2020 Housing Land Supply Position Statement. It is reflected in the Council's calculation of its five-year supply. The Council's claim of a 4.35-year supply would have been even lower had it looked only to the future and not taken account of past performance exceeding the annual average of the plan's requirement. That seems to me to be a just approach, because it reflects reality, not a theoretical formula applied without consideration of actual outturns. Nevertheless, it should not blind one to the pressing need to identify land for housing for the remainder of the plan period.

97. As is usual in these matters, the appellant seeks to throw doubt on the accuracy of the Council's calculation of its five-year supply by challenging the delivery programme of two of its component sites. The evidence for the deliverability of these two sites is contradictory but, in truth, it matters little. Whether the Council has an identified supply of 4.35 years or a lesser figure if the two sites in contention are discounted, the fact is that it simply does not have a five-year supply now. Unless further sites for development are identified, either through emerging local plans or through the development management process, it is likely to have an even lower identified supply in future.

98. Consequently, in addition to enhancing the value which is placed on the benefit of providing housing, the shortfall means that paragraph 11(d) of the NPPF applies. This deems the policies which are most relevant for determining the application as

out of date. It applies the presumption in favour of sustainable development. This means granting permission unless NPPF policies to protect areas or assets of particular importance provide a clear reason for refusal or unless any adverse effects of so doing would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. This NPPF paragraph is not disapplied by NPPF paragraph 177 because the appropriate assessment carried out earlier has concluded that the project would not adversely affect the integrity of the Severn Estuary SPA.

#### *Schools*

99. It is accepted by both parties that the effect of the proposal on the demand for and provision of schools should be ascertained with reference to Department for Education guidance, *Securing developer contributions for Education* (November 2019).<sup>3</sup> Paragraph 3 of this guidance advises that it is important that the impacts of development are adequately mitigated, requiring an understanding of:

- The education needs arising from development, based on an up-to-date pupil yield factor;
- The capacity of existing schools that will serve development, taking account of pupil migration across planning areas and local authority boundaries;
- Available sources of funding to increase capacity where required; and
- The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time.

100. Pupil yield factors (also known as pupil product ratios) are used to estimate the numbers of children that would arise from a development. They should be based on up-to-date evidence from recent housing developments. In Gloucestershire the most up to date evidence from recent housing developments is to be found in what is known as the Cognisant Study of 2019, examining 8690 dwellings at seven settlements.

101. JCS policy INF6 requires that, in identifying infrastructure requirements, development proposals will also demonstrate that full regard has been given, where appropriate, to implementing the requirements of the JCS Infrastructure Delivery Plan (the IDP) of 2014. As the IDP pupil yield factors are based on a 2007 assessment, they are no longer the most up to date evidence from recent housing developments and so it is no longer appropriate to use them as a basis for estimates of the effects of development on the demand for and provision of schools.

102. However, the use of Cognisant Study is itself problematic and has been opposed, although not technically challenged, by some of the very bodies which commissioned its production. It has produced results which are startlingly high when compared with previous figures for the area and with other local authority areas. The reasons remain not fully explained.

103. The Cognisant Study appears to be based on survey results weighted to correct the balance of participating returns so as to correspond with actual mix of dwellings of different sizes on the developments surveyed. The survey was by face to face interviews with residents who agreed to participate, so was self-selecting. There is no report of any check on whether participants were representative of those who

<sup>3</sup> By following this advice, I have no need to come to a view on the allegation of the adoption by the County Council of a "new formulaic approach" denounced in national Planning Practice Guidance.

chose not to participate (perhaps because they had no children and so would not have been interested in a survey intended to establish child product ratios) nor any consequent weighting. Nor, as Mr Tiley points out, was any adjustment made for second homes or vacant dwellings. It would be wrong to presume that new developments are immune from the vicissitudes of life which cause dwellings to become vacant. For both these reasons, the child product ratio identified by the Cognisant Study will have been exaggerated. Nevertheless, it is the best and most recent evidence available.

104. In translating its child product ratios into pupil product ratios, the advice of paragraph 13 of the DfE advice is relevant. It does not require their moderation with regard to their effects on the viability of a development but it does observe that; "All education contributions are based on an assessment of probability and averages, recognising that the precise mix of age groups and school forces cannot be known before a development is built."

105. By contrast, the County Council's pupil product ratios take a fail-safe approach (or worst case scenario as the County Council's advocate described it in paragraphs 52, 56 and 57 of his closing submissions) of seeking to ensure provision for all contingencies rather than an assessment of probability and averages.

106. Consequently, as Mr Tiley points out, no allowance is made for parents who may choose to have their children educated outside of the state sector<sup>4</sup>. Paragraph 102 of the County Council's previously adopted Local Developer Guide noted that child yield was reduced to take account of these factors but the emerging Local Developer Guide (now adopted) does not. This omission contributes to exaggerate further the pupil product ratios used by the County Council<sup>5</sup>.

107. This particular cause of exaggeration would apply forcefully to early years calculations where, although local authorities have a duty to ensure early years childcare provision within the terms set out in the Childcare Acts and the DfE has scaled up state funding of early-year places, many early years settings fall within the private, voluntary and independent (PVI) sector, as paragraph 9 of the DfE advice points out. But the exaggeration also applies, to a lesser degree, to the primary and secondary sectors.

108. Finally, as Mr Tiley correctly points out, the County Council's calculations of pupil product ratios take no account of the fact that most house moves take place over short distances with the result that many prospective child residents are already in attendance at Gloucestershire schools and would not be new to the system. The County's view that such house moves would be backfilled by new residents with equal demands on the school system is mistaken because, as is well known, average household sizes nationally are falling as a result of the fragmentation of families, delays in family formation and the greater longevity of elderly households whose children have left home. Gloucestershire is not exempt from these phenomena.

109. For all the above reasons, together with the County Council's record of overestimation of numbers of pupils in its forecasts<sup>6</sup>, I am not convinced by the County Council's calculations of the pupil demand likely to arise from the proposal. I

<sup>4</sup> Although Mr Chandler, at paragraph 6.12 of his evidence, asserts that the Cognisant study only took account of pupils educated in state schools.

<sup>5</sup> I do not need to consider arguments about the status of the County Council's Local Developer Guide. What matters are the pupil product ratios themselves, not the vehicle in which they travel.

<sup>6</sup> Demonstrated in amended figures 10.3 and 10.4 of Mr Tyler's evidence

find Mr Tiley's calculations more convincing, supported as they are by the "sense check" of the NEMS Market Research survey and by comparisons with other Local Education Authority areas. Nevertheless, in case I am mistaken, and to ensure the robustness of my decision, for the purposes of the remainder of this section of my decision, I use the "worst case scenario" of the County Council's figures, as does the appellant's expert, Mr Tiley; 28.5 pre-school places, 39 primary school places, 19 secondary school places and 6.5 post-16 places.<sup>7</sup>

110. The second bullet point of the DfE advice is to examine the capacity of existing schools that would serve the development. There is further DfE advice on how this is to be done in the form of its *School Capacity Survey 2019 Guide to forecasting pupil numbers in school place planning*. Projections of pupil numbers are to be made for primary years (reception to year 6) and for secondary years (years 7 to 11 (or 13 where schools have sixth forms)) using one set of planning areas for the primary projections and a second set for secondary years.

111. The planning areas should be mutually exclusive groups of schools that represent admissions patterns and reasonable alternatives to one another. National Planning Practice Guidance similarly refers to a need to consider school capacity within the relevant school place planning areas. There is no suggestion that the examination of capacity should be limited to only one primary and one secondary school to serve the development, yet this is what the County Council has done in basing its attitude towards the development on the view that Norton Primary School and All Saints Academy secondary school lack the capacity to serve the development.

112. In fact, in the current case, even to base an assessment on school planning areas rather than individual schools may be unrealistic because the site is located on the cusp of three primary school planning areas (Churchdown/Innsworth school planning area D35, Tewkesbury school planning area D10 and Hesters Way Cheltenham school planning area D32) and two secondary school planning areas (Tewkesbury D48 and Cheltenham D53). It lies within but close to the edges of Churchdown/Innsworth primary school planning area and Tewkesbury secondary school planning area.

113. The County Council seeks to justify its choice of examining capacity in a more limited way with reference to the distance to be travelled (incurring less public expenditure on transport costs) and the desirability, in terms of social cohesion, of accommodating all the pupils deriving from the development at a single school. I am not persuaded by these arguments for the following reasons.

114. Firstly, they do not appear to take account of parental choice. Secondly, in terms of social cohesion, there is no evidence to suggest that all present child residents of Coombe Hill attend the same primary and secondary schools together. Not all parents would support such attempts at social engineering in any event. Thirdly, Norton, at a distance of 2.9 miles from the appeal site may be the closest primary school to the appeal site but that is still at a distance which primary school children are unlikely to walk (although a footpath is provided the full length of the A38, it is not continuously on the same side of the road and so would require crossing the main road twice between Coombe Hill and Norton, an implausible proposition for unaccompanied children of primary school age) and so motorised transport is likely. If transported by car, the differences in distances involved (3 miles to Tredington, 3.2 miles to the other options) are unlikely to figure largely in

<sup>7</sup> Paragraph 7.5 of Mr Chandler's proof of evidence

parents' choices. If transported by public transport, the greater frequency of bus service to John Moore Primary School, even with a five minute walk to and from the bus stop, is likely to make an accompanied round trip more convenient than using the less frequent service to Norton. Fourthly, the difference in travel times and distances between the two secondary schools in contention; All Saints Academy (3.2 miles) and Tewkesbury School (4.7 miles) is again unlikely to be determinative of parental choice.

115. For all the above reasons, I am persuaded more by the appellant's approach to analysis of school capacity available to serve the development than by the County Council's analysis. There is a further dispute between the parties as to whether capacity means 100% occupancy of a school or (as the County Council argues) 95%. I accept the advice given in the Audit Commission's publication *Trading Place: the Supply and Allocation of School Places* that a sensible approach would be to plan for a 95% occupancy rate at schools and accept some variation, say plus or minus 10% around this target. That is to say that capacity means a figure of between 85 and 105% occupancy. In practice, it does not make any difference to the outcome in this case, when assessed across school planning areas or groups of proximate schools.

116. For pre-school provision, I note that paragraph 2.23 of the Statement of Common Ground on Educational Contributions acknowledges that "capacity may be available to meet demand." Nothing that I subsequently heard during the Inquiry causes me to reach a different conclusion. The SOG notes that the utilisation of that capacity must be funded but that is an ongoing revenue cost. It is incurred whether the capacity is used by residents of existing or new development. Insofar as it is publicly funded, it is publicly funded from the taxes or rates of both new and existing residents as a revenue cost. There should not be an expectation of any capital contribution from new development on that account.

117. For primary schools, even using the County Council's exaggerated pupil product ratios, there would be sufficient capacity in 2023 within the Churchdown/Innsworth primary school planning area in which the appeal site lies to absorb the demand arising from the development without the need for expanding accommodation (between 92 and 203 spaces available, 39 required, resulting in 89.8-96.7% occupancy). Alternatively, looking across primary school planning areas to the nearest primary schools to the appeal site, there would be sufficient capacity to absorb the demand arising from the development without the need to expand accommodation. Indeed, one school (Queen Margaret Primary School) could accommodate all the children arising from the development without exceeding 95% occupancy.

118. Similarly, for secondary schools and sixth form demand, even using the County Council's exaggerated pupil product ratios, there would be sufficient capacity within the Tewkesbury Secondary School planning area in which the appeal site lies to accommodate the demand arising both from the development and from other committed developments, without any need for expanded premises. Tewkesbury School itself is forecast to have a surplus capacity of at least 373 places in 2024/5, more than sufficient to accommodate pupils expected to arise from other committed developments (161.5) as well as those which the Council expects to arise from the appeal proposal (19).

119. The Council argues that the capacity should be reserved for other allocations in its emerging Local Plan but there is no guarantee that they would be found sound or come forward, nor any reason why capacity should be reserved for those



prospective developments rather than for the appeal in hand. Appraisals of the consequences of demand arising from new development are usually made on the basis of actual proposals as applications are made, together with committed permissions. On that basis, there would be no shortfall requiring the appeal proposal to contribute to an expansion of capacity.

120. I therefore conclude that the effects of the proposal on the demand for and provision of schools would be acceptable without the need for any provision of expanded facilities. The appeal proposal would comply with Policy GNL11 of the Tewkesbury Borough Local Plan to 2011 (adopted March 2006) and Policies INF4, INF6 and INF7 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031. Amongst other matters, these require that planning permission will not be given unless the infrastructure and public services necessary to enable the development to take place are available.

121. It follows that I do not need to consider the third and fourth bullet points of the DfE advice on securing developer contributions for Education. It also follows that the provisions of the Unilateral Undertaking for financial contributions to be made in respect of Education contributions (the pre-school years contribution, the primary education contribution, the secondary education contribution and the sixth form education contribution) are unnecessary and so, do not meet the statutory tests of the CIL regulations. I have therefore taken no account of them in reaching my decision.

122. It also follows that I do not need to opine on a matter which took a considerable amount of inquiry time. That issue was the propriety and reasonableness of levying a CIL charge (apparently introduced and originally justified on the basis of raising money to be spent on the provision of education but subsequently the subject of a decision to divert the revenue to other causes) whilst simultaneously seeking contributions to education capital expenditure through planning obligations.

*Open space, outdoor recreation, sports and community facilities*

123. The County's case for seeking a financial contribution towards the provision of additional or improved library facilities in Tewkesbury to serve the development was not contested and appears to be well-founded. The inclusion of a financial contribution for this purpose within the Unilateral Undertaking would satisfy the need to make such a contribution towards the provision of that particular community facility. It appears to be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to its scale and kind and so it would comply with the CIL regulations.

124. Paragraphs 1.26 and 5.2 and Schedule 3 of the Unilateral Undertaking to the Borough Council commit the developer to provide no less than 2.4ha of public open space on site, designed in such a manner as to encourage recreation activity to be diverted away from the Coombe Hill Canal SSSI, including a Locally Equipped Area for Play (LEAP) and laid out prior to the first occupation of any dwelling on site.

125. The undertaking also makes provision for future maintenance of the open space. These arrangements would exceed the requirements of policy RCN1 of the Tewkesbury Local Plan to 2011 adopted in March 2006, which specifies a quantity of open space to be provided on site in proportion to the expected population, amounting to a total of 0.28 ha in this case. The proposals would comply with policies INF4, INF6 and INF7 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031. Amongst other matters, these require that planning

permission will not be given unless the infrastructure and public services necessary to enable the development to take place are available.

126. The quantity of open space proposed would also be adequate to serve the site under development adjacent to the Swan public house at Coombe Hill and so the arrangements would also comply with policy COO1 of the emerging local plan which would require accessible open space to be provided on site for use by the wider community, contribute to the wider green infrastructure network envisaged by the JCS, deliver biodiversity net gains and mitigate against increased recreational pressures on the Coombe Hill Canal SSSI.

127. These arrangements set out in the Unilateral Undertaking would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related to it in scale and kind. They would therefore comply with the CIL regulations and so I have taken them into account in making this decision.

#### *Other matters*

128. A built heritage statement submitted with the application identifies a minor degree of harm to be caused to a Grade 2 listed building, Grange Farm Barn at Walton Grange Farm, to the north of the site. This might be thought to trigger the statutory duty set out at s66 of the Planning (Listed Buildings and Conservation Areas Act 1990) to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

129. There is no suggestion that the development would have any effect on the preservation of the listed building but its setting does need to be considered. The barn can be seen across the site from the A4019 but, in that view, it can be seen that the barn is set within a huddle of buildings which comprise the farm complex and which is itself a part of the group of buildings which comprises the northernmost element of the scattered Coombe Hill settlement.

130. I do not demur from the opinion expressed in the appellant's built heritage statement that the primary experience of the listed building is in the immediate setting of its surrounding farm complex. Although the appeal site currently makes a minor positive contribution as a small part of the wider agricultural landscape which surrounds the hamlet of which the barn and farm buildings are a part, the essential character of the barn is that it is set within that hamlet and is not free-standing within the countryside.

131. Similarly, I concur with the conclusion of the built heritage statement that overall, the proposed development will likely result in a minor degree of harm to the significance of the Barn through a change to the wider setting of the heritage asset and the erosion of part of the wider agricultural context. Nobody other than the appellants' own consultant has commented on this matter and so I conclude that the harm would be so much less than substantial as to be practically imperceptible. Nevertheless, it is a harm to be weighed against the public benefits of the proposal which I do in the concluding section of this decision.

#### *Planning balance*

132. As it turns out, subject to some of the Unilateral Undertakings and with the conditions attached to this permission, the planning balance is almost entirely one-sided. The site is an entirely appropriate location for new development of the scale proposed. There is nothing in the material before me to demonstrate that the effect of the quantity of development proposed on the character and appearance of the

area need be anything other than acceptable. There would be an almost imperceptible degree of harm to the setting of a listed building. The proposal would have no significant adverse effects upon the integrity and conservation objectives of the Severn Estuary Special Protection Area and Ramsar Site. The effects of the proposal on the Coombe Hill Canal SSSI would be acceptable.

133. The proposal would not increase the level of risk to the safety of occupants of the site, the local community or the wider environment and would contribute to a reduction in existing flood risk. The housing to be provided would make a significant contribution to the supply of housing in Tewkesbury. Its benefit would be enhanced when considerations of both the inadequacy of supply inherent in the local plan and shortfalls in the current five-year housing land supply are taken into account. The effects of the proposal on the demand for and provision of schools would be acceptable without the need for any provision of expanded facilities. Provision for open space, outdoor recreation, sports and community facilities would meet and exceed development plan requirements. Overall, the public benefits of the proposal would clearly outweigh any minor harm to the setting of the nearby listed building and so the appeal should be allowed.

#### *Conditions*

134. The parties suggested thirty-six conditions which they felt might be necessary in the event of my allowing the appeal. I have considered these in the light of national guidance and the tests set out in the NPPF, preferring where appropriate the model wording of the annex to the otherwise superseded circular 11/95, *the use of conditions in planning permissions*.

135. The first three conditions are required by law. The fourth applies the decisions of the courts in respect of parameter plans and is necessary to give effect to the appellants' request for the access to the site to be considered in detail. Condition (5) is necessary because the effects of the development have been considered in relation to a maximum number of dwellings.

136. Conditions (6), (7) and (8) are pre-commencement conditions necessary to secure details (or the implementation of details) of matters which would not necessarily be included in reserved matters. Some of these requirements (e.g. condition 8(ii)) are recommended by the appellants' consultants. Other requirements of these conditions are necessary to comply with an aspect of development plan policy.

137. Conditions (9) and (10) are likewise intended to secure details (or the implementation of details) of matters which would not necessarily be included in reserved matters but which do not need to be pre-commencement conditions.

138. Condition 11 is necessary because Coombe Hill currently has no street lighting and the Parish Council is anxious to retain that rural characteristic; the condition would allow the Borough Council to give careful consideration to the characteristics of any lighting scheme proposed.

139. I have not included a requirement for the submission of a design principles document because I have found the previously submitted DAS to be adequate in establishing principles of design. JCS Policies SD3, SD4 and SD6, which apply design considerations, will continue to apply to reserved matters applications and to applications for the discharge of conditions; approval of this outline application does not override the need to comply with those policies when detailed applications are made.

140. Nor have I included a requirement for the submission of precise details or samples of external facing, roofing or hard surfacing materials because appearance is a reserved matter, details of which are anyway required by condition (1). The definition of appearance in the DMPO includes architecture, materials, decoration, lighting, colour and texture.

141. Likewise, I have not included a condition requiring the submission of details of boundary treatment because landscaping is also a reserved matter defined in the DMPO as including screening by fences, walls or other means. For similar reasons, other than the imposition of condition (7) applying the tree protection recommendations of the appellants' consultant, I have not included the suite of suggested conditions relating to landscaping and landscaping management plans because landscaping is a reserved matter, detailed submissions of which are required anyway by condition (1) and which may obviate the necessity of the additional conditions suggested. If the detailed submissions give rise to the need for further conditions, they can be applied at that stage.

142. I have not included conditions requiring a survey of visitors to the Coombe Hill Canal and Meadows nature reserve for reasons explained earlier or for the preparation of a visitor management plan because that is best left to the discretion of the Gloucestershire Wildlife Trust. I have not included conditions requiring the provision of open space because that is required by the Unilateral Undertaking given to the Borough Council. The provision of a LEAP is shown on plan 2 attached to the Undertaking, forming part of the definition of On-site Open Space in paragraph 1.26 of the obligation.

143. I have included condition 10(vi) because I am not entirely satisfied that the provisions of the Unilateral Undertaking to Tewkesbury Borough Council which would provide the Council with money to be used towards the preparation and provision of household information packs for each dwelling would necessarily ensure that each household would receive the packs containing the appropriate material as intended. Much of the intended content of the packs would need to be derived from material contained within the appellants' consultants' documentation and it would be the appellants who would have knowledge of the intended first occupation dates of each dwelling, so I do not think it would be sufficient simply to devolve responsibility to the Council by means of a payment.

*P. W. Clark*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Meyric Lewis	Of counsel, instructed by Jeremy Patterson of Tewkesbury Borough Council
He called	
Karen Colebourn	Director and Principal Ecological Consultant at Ecological Planning & Research Ltd (EPR)
BSc(Hons) FCIEEM	
Alice Goodall BSc MA	Urban Design Officer, Tewkesbury Borough Council
MRTPI	
Hannah Millman	Joint Core Strategy Planning Policy Manager
B.Sc.(Hons), MSc, MRTPI	
Paul Hardiman	Community Infrastructure Levy (CIL) Manager for the three Joint Core Strategy (JCS) Councils of Cheltenham Borough, Gloucester City and Tewkesbury Borough
LLB(Hons), PG Dip, MBA, MSc, CMILT, MRTPI	

Rachel Hill and Gary Spencer took part in the discussion on obligations and conditions

### FOR THE COUNTY COUNCIL:

Douglas Edwards QC	instructed by Bridgette Boucher, Senior Lawyer, Gloucestershire County Council
He called	
Stephen Chandler	Place Planning Manager, Gloucestershire County Council
BSc(Hons)	
Liz Fitzgerald BA(Hons)	Barker Parry Town Planning
DipTP MRTPI	

Bridgette Boucher and Stephen Hawley took part in the discussion on obligations and conditions

### FOR THE APPELLANT:

Paul G Tucker QC	Assisted by Constanze Bell, of Counsel, instructed by David Hutchison of Pegasus Group
He called	
Tim Goodwin BSc(Hons)	Director, Ecology Solutions
MSc MEnvSc MCIEEM	
Neil Tiley BSc(Hons)	Director, Pegasus Group
AssocRTPI	
Paul Harris BA DipLA	Director, MHP Design Ltd
CMLI	
David Hutchison	Executive Planning Director, Pegasus Group
BSc(Hons) DipTP MRTPI	

Robyn Evans took part in the discussion on obligations and conditions



INTERESTED PERSONS:

Colin Withers  
John Arkell  
Mike Smart  
Andy Eagle

Coordinator of Leigh Parish Neighbourhood Plan  
Leigh Parish Council  
Ornithologist  
Local resident

Original Appeal Decision with paragraph numbers added by Pegasus Group

### **Additional DOCUMENTS submitted during the Inquiry**

- 1 Notification letters of date, time and nature of Inquiry
- 2 Ecology Statement of Common Ground
- 3 Statement of Common Ground on Educational Contributions
- 4 Statement of Common Ground on Housing Need and Supply
- 5 Statement of Common Ground on Matters relating to Drainage and Flooding
- 6 Planning Statement of Common Ground
- 7 Pre-Action Protocol letter from Robert Hitchins Group dated 15 March 2021 re Gloucestershire CC Local Development Guide
- 8 Response dated 22 March 2021 from Gloucestershire CC to Pre-Action Protocol letter
- 9 Mike Smart; Comments on ecological issues
- 10 Letter dated 23 March from Dr Gareth Parry of Gloucestershire Wildlife Trust
- 11 Gloucester County Council CIL Compliance Statement dated 9 February 2021 (150 unit scheme)
- 12 Submission from Andy Eagle dated 24 March 2021
- 13 Natural England clarification of differences between editions of the Functionally Linked Land report
- 14 Gloucestershire County Council CIL Compliance Statement dated 24 March 2021 (95 unit scheme)
- 15 Natural England email confirming no material changes relating to Curlew or to Coombe Hill between editions of Functionally Linked Land report
- 16 Tewkesbury School Capacity
- 17 Borough Council CIL Compliance Statement
- 18 Report and Appendix B to Gloucestershire County Council Cabinet 24 March 2021 recommending adoption of revised Local Development Guide
- 19 Joint Statement of Mr Gandler and Mr Tiley
- 20 Technical Note: Drainage and Flood Risk
- 21 E-mail dated 16 April 2021 attaching Pioneer Property Services Briefing Paper: Affordable Housing Proposal
- 22 E-mail dated 16 April 2021 from Liz Fitzgerald confirming GCC's no comment on Technical Note: Drainage and Flood Risk
- 23 Inquiry Note; The potential regional park
- 24 JCS Green Infrastructure Strategy June 2014
- 25 E-mail from Borough Council concerning contaminated land
- 26 Appellant's response to e-mail concerning contaminated land
- 27 Completed Unilateral Undertaking to Tewkesbury Borough Council
- 28 Completed Unilateral Undertaking to Gloucestershire County Council

## CONDITIONS

- 1) Details of access (other than that approved in condition (4) below), appearance, landscaping, layout, and scale of each phase of development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development of the relevant phase takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan reference 100.P.1.2, Land Use, Access & Movement Parameters Plan reference P20-1585\_03 REV: A, Building Heights Parameters Plan reference P20-1585\_04 and unnumbered drawing included at Appendix D of the submitted Transport Assessment by Wood Environment & Infrastructure Solutions UK Limited entitled Access Junction and Visibility Splays.
- 5) The development hereby permitted shall provide no more than 95 dwellings.
- 6) No development shall take place until details of the following have been submitted to and approved in writing by the local planning authority;
  - (i) the phasing of development and the numbers of dwellings of each size and type to be provided within each phase of development.
  - (ii) off-site highway works, namely; widening of footway to 2m on A38; bus stop improvements on A38; bus stop signage and marking improvements and; informal crossing of A38.
  - (iii) a Construction Management Plan and Construction Waste Management Plan and Construction Ecological Management Plan.
  - (iv) notwithstanding the submitted archaeological evaluation report by Worcestershire Archaeology, a programme of archaeological work in accordance with a written scheme of investigation which has been previously submitted to and approved in writing by the local planning authority.

The development shall be carried out in accordance with the approved details.
- 7) No development on any phase of development shall take place until the tree protection measures detailed in the arboricultural impact assessment and tree protection plan, drawing number 19228.502, relevant to the phase in question, included as Appendix 4 of the submitted Arboricultural Survey, Impact Assessment and Protection Plan by MHP arboricultural consultants have been put in place. The tree protection measures shall be retained in place until the completion of the relevant phase of development.

- 8) No development on a phase of development shall take place until details of the following in relation to that phase have been submitted to and approved in writing by the local planning authority;
- (i) existing and proposed ground levels and finished floor levels above ordnance survey datum.
  - (ii) mitigation measures to achieve compliance with BS8233:2014 recommended internal and external noise levels.
  - (iii) notwithstanding the findings of the submitted Preliminary Geotechnical Design Report, any remedial measures which may be identified following an examination (in accordance with a methodology previously submitted to and approved in writing by the local planning authority) of potential contamination (a) by polycyclic aromatic hydrocarbons migrating from the adjacent petrol filling station and (b) from two septic tank locations identified in the submitted Preliminary Geotechnical Design Report.
  - (iv) Foul and surface water drainage.
  - (v) Construction and loading capacity of the highways.
- The development shall be carried out in accordance with the approved details.
- 9) No development above ground on a phase of development shall take place until details of the following, in relation to the relevant phase, have been submitted to and approved in writing by the local planning authority;
- (i) Facilities for the storage of waste, refuse and recycling materials for each dwelling.
  - (ii) Secure and covered cycle storage facilities for each dwelling.
- The development shall be carried out in accordance with the approved details, which shall hereafter be retained for their intended use.
- 10) No dwelling shall be first occupied until the completion and bringing into use of the following;
- (i) The off-site highway works referred to in condition 6 (ii).
  - (ii) Its means of access for vehicles, cycles and pedestrians.
  - (iii) Its associated vehicle parking.
  - (iv) An associated electrical vehicle charging point.
  - (v) A full Travel Plan which shall have been previously prepared, submitted to and approved in writing by the local planning authority.
  - (vi) A scheme of providing each dwelling with a Homeowner Information Pack detailing the location and sensitivities of the Coombe Hill Canal SSSI and the GWT's Coombe Hill Canal and Meadows Nature Reserve and alternative dog walking and recreational facilities.
- 11) No street lighting or other external lighting shall be installed without the prior submission of details to, and written approval of, the local planning authority. The development shall be carried out in accordance with the approved details.

- 12) No more than 40 dwellings of the development hereby permitted shall be occupied until the approved (as shown in PFA Consulting drawing ref H605-0101D General Arrangement), or approved alternative, scheme for the A40 Longford Roundabout has been implemented and is open to traffic.

Original Appeal Decision with paragraph numbers added by Pegasus Group