

OPENING STATEMENT OF
GLOUCESTERSHIRE COUNTY COUNCIL

Introduction

1. In this appeal, Robert Hitchens Ltd seeks outline planning permission (with all matters reserved) for the erection of up to 250 residential dwellings, associated infrastructure, ancillary facilities, open space and landscape together with the demolition of existing buildings and creation of a new vehicular access from Harp Hill.

2. Gloucestershire County Council (“the County Council”) appears at the inquiry in its capacity as Highway Authority and Education Authority. It is important to note that the County Council does not purport to offer a view to the Inspector as to the overall question of whether or not permission should be granted for this scheme. It does not do so because it is not equipped to, and does not, offer evidence as to the overall balancing of the wide range of issues which the Inspector must weigh up before coming to an overall conclusion.

3. Instead, it presents evidence to the Inspector as to three important matters relating to the scheme and identifies that each of these is a disbenefit of the scheme of very considerable weight. Those three matters are:
 - a. The severe residual traffic impact of the scheme;

 - b. The inability of the scheme, due to the pre-existing gradients on the site, to deliver a network of public footpaths and cycleways to the necessary standards

set out in the Manual for Gloucestershire Streets and LTN 1/20, amongst others to ensure appropriate provision of walking and cycling facilities within and to/from the site;

- c. The refusal of the appellant to provide through a section 106 agreement the necessary contributions to mitigate against the increased demand for school places which the scheme will create.

4. We turn to deal with each of those in turn.

Traffic Impact

5. Paragraph 111 of the NPPF 2021 sets out the circumstances in which applications may be refused on highways grounds (alone) and provides, so far as material, as follows:

“Development should only be prevented or refused on highway grounds if ... the residual cumulative impacts on the road network would be severe.”

6. The initial Transport Assessment for the scheme assessed the impact on 9 junctions in the vicinity of the appeal site but provided an appraisal only for 2024. Following requests from the County Council and a letter pursuant to section 25 of the EIA Regulations from the Secretary of State, an assessment of the cumulative traffic impact to 2031 was eventually provided. This was, at the appellant’s request, based upon the data observed by the appellant in September 2019 (rather than being based upon outputs from the County Council’s Saturn Model) subject to a TEMPRO growth factor being applied.

7. The outcome of that 2031 appraisal suggests that no less than 4 of the 7 junctions assessed will be adversely affected in both AM and PM peaks, with Ratios of Flow to Capacity exceeding as the upper limit of satisfactory junction performance (0.85 or 0.9, where it is a signal controlled junction), additional queuing and unstable or forced flows. No satisfactory mitigation has been offered, the only mitigation being that at one arm of one junction.

8. Moreover, these figures are based on modelling which cannot even take into account the additional disruption from over-capacity junctions interacting with one another, or other adjacent roads feeding into a single junction. The impact of the additional traffic generated by this development will, in addition to the extra queuing and delay, cause delay and unreliability for the local bus network and add to air quality issues. All this indicates that there will indeed be a *severe* residual impact on the network caused by the development.

Gradients on the site

9. This issue, though capable of being shortly stated, is of very considerable importance and is brought about by the natural topographical features of the site, which on any view is steeply sloping for a proposed residential development.

10. It is a vitally important part of good planning that developments be permeable and offer attractive pedestrian and cycle routes that are accessible to all users, as set out in paragraph 112 (a) and (b) of the NPPF. However, the topography of the site is such that whatever design solution may be suggested at the reserved matters stage, the

appellant will be unable to provide footpaths and cycleways of sufficient attractiveness that they could give the necessary priority to pedestrians and cyclists and ensure that the needs of all users can be adequately accommodated. In short, the appellant will be compelled to provide either direct routes which have too severe a gradient as to be attractive (and to meet relevant standards) or routes with an appropriate gradient which are too indirect to be attractive.

11. This is a fundamental constraint of the site and the appellant has given no indication as to how it might be overcome by detailed design at the reserved matters stage. The burden of demonstrating that the site can be appropriately developed is of course at the heart of an appellant's obligations at the outline stage. As such it stands as an objection to the very principle of residential development on this site and thus, as an objection of considerable weight to the grant of outline permission.

Education Contributions

12. The County Council seeks education contributions in the sum of £2,602,127¹. Such sums would properly form part of a CIL-compliant section 106 agreement². However, the appellant contests the need for such contributions of such amount, offering only £528,180.

13. Two principal issues divide the parties. The first is the number of pupils which will be generated. The second is the capacity of local schools to provide places accommodate those pupils. Both issues were considered at a recent appeal concerning Land Off the

¹ Or £2,352,323 based on the appellant's current intention to include 24 1-bed units in the scheme

² In previous cases, this appellant has asserted (unsuccessfully) that s106 contributions for education could not properly be sought where a CIL charging regime was in existence. It makes no such assertion here but an introductory finding that such contributions are properly sought through s106 contributions should nevertheless be made.

A38, Coombe Hill, Gloucestershire (APP.G1630/W/20/3257625) (referred to by all parties as “Coombe Hill”) and much of the appellant’s case appears to depend upon its (mis) interpretation of the Inspector’s findings on that occasion.

14. In considering the first issue, the correct Pupil Product Ratio, whilst the Coombe Hill Inspector did cast doubt upon the survey-based figures (the “Cognisant” study”) upon which the County Council relied in making its case to that inquiry, he did not endorse the figures which the appellant relied on then and relies on again in this appeal. Those figures (the so-called “NEMS” survey) were based upon a developer funded survey, the results of which have never been made available to the County Council for proper scrutiny and which have been disseminated only in the form of a short-form interpretive document.

15. By contrast, the County Council has responded to the concerns expressed about the Pupil Product Ratios in its then Guidance for Developers by developing an Interim Policy Statement (“IPS”) which has considered all the criticisms made by the Coombe Hill Inspector and made appropriate, robust adjustments. The County Council’s evidence will demonstrate that the IPS provides a fair and robust policy and statistical basis for assessing the demand for school places which the development will provide. By contrast, the appellant’s case will be shown to depend on a confused and opaque approach to both policy and statistics.

16. Turning to the second issue, the capacity of schools to accommodate the increased demand, the County Council’s evidence will show that there will not be capacity to accommodate this demand without the provision of additional school places within the relevant Place Planning Areas which the contributions sought would fund

17. The County Council's approach is predicated upon the correct understanding of the meaning of "capacity". The Council will invite the Inspector to decide this matter in accordance with relevant central government advice which suggests that capacity is to be regarded as being reached when it is **planned** that 95% of all possible available places are taken up. The remaining places should be left open to take account of natural fluctuations and matters, for example, such as in-year moves between schools. By contrast, the appellant suggests that it is appropriate to allow development to proceed without making contributions in circumstances where the places needed can only be found by making use of the margin between 95% and 105% which is reserved for the foreseeable contingencies already referred to.

18. Following on from observations made by the Coombe Hill Inspector, the County Council presents evidence to this inquiry based on a consideration of both the availability of places in the two affected Primary Place Planning Areas, Whaddon and Charlton Kings, and on a school-by-school basis.

19. This evidence reveals that when considering the Primary Planning Areas as a whole, they exceed 95% capacity and as such there are insufficient places available without contributions. The one school which currently has a sizeable number of available places, Oakwood primary school, has so only because it has recently been expanded – on the basis of s106 contributions from other developers – to accommodate future demand from other forthcoming developments. It is both highly unattractive and bad planning for the appellant to seek to avoid paying its fair amount of education contributions by relying on apparently available spaces which will in fact be occupied by pupils generated by other developments which have made proper contributions.

20. Similarly, in assessing the Cheltenham Secondary Place Planning Area, both as a whole and individually, the schools have occupancy in excess of 95%, with the overall Place Planning Area at 100% occupancy. It is clear that there are no residual spaces to accommodate this development without contributions being made.

21. Accordingly, County Council's case will reveal that there are three significant objections to this development to which Inspector should afford significant weight in his overall determination of this appeal.

ANDREW FRASER-URQUHART QC

**Francis Taylor Building
Inner Temple
LONDON EC4Y 7BY**

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