CLOSING SUBMISISONS
GLOUCESTERSHIRE COUNTY COUNCIL

Introduction

1. In this appeal, Robert Hitchins 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") appeared 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, capable of justifying refusal of the scheme. 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;

4. Furthermore, if (but only if) he decides to give permission for the scheme, it will be necessary for the Inspector to determine the appropriate amount of the education contribution, alternative amounts having been suggested by the parties, based on their assessments of the educational impact of the scheme and the ability of the existing and already planned educational provision to accommodate the demand.

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

Traffic Impact

Policy

6. Paragraph 111of the NPPF 2021 sets out the circumstances in which applications may be refused on highways grounds 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."*

7. However, the NPPF, for all its importance, is just guidance. It is well-settled law that the existence of guidance such as the NPPF does not detract from the statutory force of paragraph 38 (6) which sets out that decisions on planning applications must be determined in accordance with the development plan unless material considerations

indicate otherwise. Accordingly, the primary point of reference is to the development plan and it is important to have full regard to the relevant policies of that development plan.

8. For present purposes, the relevant development plan policy is policy INF1 of the JCS, which provides, so far as material, as follows:

"1. .....

2. Planning permission will be granted ***only*** *where the impact of development is not considered to be severe. Where severe impacts that are attributable to the development are considered likely, including as a consequence of cumulative impact, they must be mitigated to the satisfaction of the Local Planning Authority in consultation with the Highway Authorities… (*emphasis added)

3. …"

9. It is clear on its face that the development plan policy suggests that not a development which has severe residual impact "may" be refused but instead that it "must" be refused. A development which can only be given permission in certain circumstances must, by extension, be refused if those circumstances do not exist. Accordingly, if the development has severe impacts, the development plan suggests that it should be refused. It was accepted by Eves XX AFU that this was indeed the suggestion of development plan policy.

10. It cannot be suggested, furthermore, that such an interpretation would render development plan policy inconsistent with the NPPF. The NPPF sets out that applications may only be turned down if the residual traffic impact is severe. That essential requirement – that the effects must be severe if an application is to be turned

down on highway grounds – is complied with by a policy which requires that once the impact are severe, the application must be turned down. A policy is only inconsistent with the NPPF if it cannot exist alongside the policy requirements of the NPPF. Clearly, JCS policy INF 1 sits entirely comfortably next to the provisions of the NPPF. Accordingly, it must be given full weight.

The results of the transport assessment

11. 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.

12. The outcome of that 2031 appraisal suggests – on the Appellant's own assessment - 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 (as shown on plan ref: H628/04 Rev C – Potential widening to Harp Hill approach to B4075 Priors Road/Harp Hill Roundabout).

13. The evidence is contained in Hawley App E, as explained in EIC, which is reproduced here for ease of reference:

			Without Development				With Development				Difference			
			Queue (PCU	Queue (M)	Delay (Sec	RFC	Queue (PCU	Queue (M)	Delay (Sec	RFC	Queue (PCU	Queue (M	Delay (Sec)	
B4075 Priors Road / Harp Hill Mini Roundabout (east roundabout)														
	AM	B4075 Priors Road	37.20	213.90	144.19	1.01	49.40	284.05	186.27	1.03	12.20	70.15	42.08	
	PM	B4075 Hales Road	2.20	12.65	10.89	0.69	12.60	72.45	62.08	0.97	10.40	59.80	51.19	
	PM	Hewlett Road	1.50	8.63	9.83	0.60	8.20	47.15	56.40	0.93	6.70	38.53	46.57	
B4075 Priors Road / Bouncers Lane Priority Junction														
	PM	Priors Road (South) to Priors Road (No	33.80	194.35	140.55	1.01	48.20	277.15	196.84	1.03	14.40	82.80	56.29	
B4632 Prestbury Road / B4075 Tatchley Lane / Deep Street / Blacksmiths Lane / Bouncers Lane Double Mini-Roundabout														
	AM	East Mini Roundabout Bouncers Lane	19.50	112.13	186.48	1.00	35.10	201.83	310.78	1.06	15.60	89.70	124.30	
A40 London Road / A40 Old Bath Road / B4075 Hales Road Traffic Signals														
	AM	A40 London Road	61.40	353.05	265.70	110.80	69.40	399.05	311.50	113.80	8.00	46.00	45.80	
		A40 Old Bath Road	67.00	385.25	252.20	110.50	72.50	416.88	275.20	112.10	5.50	31.63	23.00	
		A435 London Road	44.70	257.03	234.00	108.00	52.40	301.30	289.10	111.70	7.70	44.28	55.10	
		B4075 Hales Road	46.60	267.95	255.20	109.20	61.80	355.35	330.10	114.40	15.20	87.40	74.90	
	PM	A40 London Road	68.60	394.45	273.70	111.60	76.50	439.88	313.90	114.30	7.90	45.43	40.20	
		A40 Old Bath Road	78.50	451.38	304.50	114.00	87.70	504.28	333.50	116.10	9.20	52.90	29.00	
		A435 London Road	58.20	334.65	284.80	111.60	67.70	389.28	343.40	115.60	9.50	54.63	58.60	
		B4075 Hales Road	42.50	244.38	281.70	110.30	52.50	301.88	348.00	114.90	10.00	57.50	66.30	

14. Moreover, these figures are based on modelling which cannot even take into account the additional disruption from over-capacity junctions interacting with one another, (especially as he explained in Hawley EIC, the interaction of junction 1 backing up junction 2) 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.

Severe impact

15. It is common ground that there is no definition in the NPPF or elsewhere of "severe" in this context. However, Mr Hawley set out a sensible and practicable definition of severe, upon which he had based his judgement. He accepted (see proof para 5.37) that the severe impact test is "*a high bar*" and then set out a range of sensible factors to consider, namely to length, delay, overall RFC, implications for public transport, air quality implications and user perception.

16. In considering that these impacts, it is important to note that, as accepted by Eves XX AFU, predictions based upon AM and PM peaks, which of themselves contain varying peaks and troughs which cannot be accurately predicted by models, are, as further accepted by Eves XX AFU, the "usual standard peaks" which are used in modelling. This was also the case at the time of the drafting of the NPPF and so it can be safely taken here that the calculations of the AM and PM peaks are a good metric to use in the consideration of whether or not a cumulative residual impact is severe.

17. In the context of that series of factors, the information set out above indicates that there will indeed be a severe residual impact on the network caused by the development.

18. Part of the Appellant's approach was to pour scorn upon Mr Hawley's assessment in that the figures illustrated above represented a "severe" impact. In reality, Mr Hawley's judgement on that matter is entirely vindicated. It is important to note that journeys at AM and PM peaks are likely to contain a considerable number of short distance trips where there would be a driver expectation of a short duration of travel, and where additional delays are readily perceived.

19. Furthermore, the absolute increase in queue lengths and queue times are, at a number of the junctions, very considerable. The details are within Hawley Appendix E as set out above, but by way of highlight:

    a. B4632 Prestbury Road / B4075 Tatchley Lane / Deep Street / Blacksmiths Lane / Bouncers Lane Double Mini-Roundabout. (Junction 5 on the agreed plan)

       <u>East Mini Roundabout Bouncers Lane – AM</u>

90m additional queue (to nearest metre), 2 minutes additional delay (124 sec)

b. A40 London Road / A40 Old Bath Road / B4075 Hales Road Traffic Signals (Junction 6)

<u>All arms AM and PM</u>

The junction is worsened in all scenarios and a significant number of road users will be impacted as a result, as this is in any event a very busy junction. It is already over capacity, and small changes in RFC result in additional queues up to 87m and 75 seconds of additional delay.

c. B4075 Priors Road / Harp Hill Mini Roundabout (east roundabout) (junction 1)

<u>B4075 Priors Road – AM</u>

70m additional queue and 42 seconds delay, and, in addition, potential to block back and impact on the Red Marley Road signal controlled junction. As such, the functioning of this junction also erodes the capacity of the surrounding junctions too.

This will all be very noticeable to members of the public and on junctions that are already operating over theoretical capacity.

20. Moreover, users of public transport using these junctions would also be impacted by the additional delay and queue length. It is also perfectly reasonable to assume that there would be an adverse impact on air quality. Mr Hawley was criticised in Hawley XX Tucker for not providing specific empirical information on this factor. However, in the next breath he was invited to agree, again without empirical evidence, that it was "self-evident" that there would be a road safety benefit from the installation of a

footpath along Harp Hill. In the same way as a commonsense basis can be applied to the matter of the footpath, it is self-evident that an increase in stationery, queueing vehicles, will produce an adverse impact on air quality.

21. By contrast to the sensible and robust approach taken by Mr Hawley, Mr Eves struggled in the Eves XX AFU to come up with a coherent set of test against which the issue of severity the could be defined. Although it may be difficult at this distance from hearing the evidence to recall the precise demeanour of witnesses, the extraordinary pause and apparent lack of previous thought about this matter by Mr Eves when the question was put to him in XX remains very notable. Furthermore, the only basis which he was able to come up with, namely that on a 20-minute journey a 10 or more minutes additional delay would be necessary to achieve severity was as extraordinary as his apparent lack of consideration of this fundamental matter.

22. Accordingly, on the basis of the agreed the traffic assessment through to 2031, there is a severe residual impact on the network which would, in accordance with policy INF1 point to a refusal of the scheme.

Undermining the Transport Assessment

23. Aside from down-playing the severity of the impacts projected by the updated Transport Assessment, the Appellant in its evidence to the inquiry sought to introduce various criticisms of the output of the assessments and/or suggestions that its approach was not supported by empirical evidence. This was despite having agreed the methodology of the updated Transport Assessment with the Highway Authority.

24. Hence:

a. It was suggested, on the basis of figures in the Local Transport Plan Implementation report 2019/20 (CD I6) at pages 32/33, that there had in fact been flat traffic growth in the first 2 years of the assessment period and that such an outcome would materially affect the accuracy of a TEMPRO growth assessment spread over 10 years. However, this data, which was available in March 2021, before the production of the updated Transport Assessment, that was never suggested that to the Highways Authority as undermining the validity of the updated Transport Assessment. This is hardly surprising, as it is county-wide data and thus of limited application in a transport assessment related solely to a development in Cheltenham.

b. Likewise, reference was made (see Eves proof para 6.12) to data in the Local Transport Plan (CD I5) at page 94, para 3.5.4 and which was suggested to show a speeding up of minutes travel per kilometre. However, the aggregate figures are county-wide and an examination of the individual routes in the accompanying Figure PD4(A) (the location of the routes not being identified in the inquiry evidence) indicated a variety of the different responses, with as many journey times increasing as those which were decreasing. Once again, therefore, reliance on this evidence in an attempt to undermine the findings of the updated Transport Assessment was misplaced.

c. It was also suggested that the Arup study [CD I 7/8] which formed part of the Local Plan evidence base, which had assessed some of the junctions affected by

this development and had not found a significant adverse effect on those junctions. However, as noted by Hawley Re-X, the Arup study is a high-level document prepared for Local Plan preparation purposes, and which, by definition, deals only with allocated sites. It cannot sensibly be used as a basis for contradicting the detailed results of the updated Transport Assessment prepared specifically for this development, which is not an allocated site.

d. Reference was made to NPPG guidance at paragraphs 014 and 015 of the Travel Plans, Transport Assessments and Statements Section, which sets out that other committed development should be included in a transport assessment only where there was a reasonable degree of certainty that the development would proceed within the next 3 years. On this basis it was sought to be suggested that there was something inappropriate about including those committed developments which might reasonably be expected to come forward within the 10 year period of the assessment but beyond the three-year period specified in NPPG guidance. It is accepted, of course, that those are the words contained in the guidance. However, as accepted by Eves XX AFU, the inevitable effect of applying those words unthinkingly in every case is that, as in the current case, development which would actually be coming forward within the assessment period would simply be excluded from the assessment. This cannot be a proper approach, as the whole purpose of a transport assessment is to honestly and fairly assess what the traffic situation on the network is reasonably likely to be. To apply words of what is, after all, only guidance so as to distort the overall position would do violence to the very purpose of undertaking a transport assessment.

e. Finally, suggestions were made concerning the fact that the Covid pandemic would alter the traffic environment on a permanent basis and the fact that alternative transport means such as E scooters had not been taken account of. Each of these suggestions was fallacious. Hawley gave unchallenged evidence that the traffic levels within Gloucestershire had already recovered almost to pre-pandemic levels and that at no change to government policy was suggested as a result of the temporary decline in traffic during the pandemic period. With respect to E-scooters, that there is no evidence to suggest that they will have any material effect on traffic levels.

25. As noted above, these criticisms of the Transport Assessment were never raised with the Highways Authority when agreeing the methodology. They emerged for the first time in the Appellant's proofs of evidence. They are not only opportunistic but also misguided and the Inspector should afford them no weight at all.

TEMPRO growth factor reduction

26. The central aspect of the Appellants challenge to the updated Transport Assessment was to suggest that, because of the fact that certain of the housing allocations which were expected to come forward in the methodology of the updated Transport Assessment have been delayed, the TEMPRO factor for traffic growth should be reduced by 1/3 (see Eves proof para 6.11). On that basis, it was claimed the traffic flow through the development network would be so much lower that the additional traffic produced by the development could not possibly be said to give rise to a severe residual impact.

27. However, this is an entirely inappropriate approach. As accepted Eves XX AFU, it was simply an arithmetical calculation based upon the fact that the delivery of housing over the plan period was expected to be 1/3 less than the numbers allocated. It had never been discussed with the Highways Authority and no other assumptions were factored into the calculation.

28. Accordingly, it took no account of the fact that the development which was not coming forward within the plan period would nevertheless come forward (a fact confirmed in the housing session Tiley XX AFU). As noted above, an attempt was made by the Appellant to rely upon the words of NPPG guidance to suggest that unless development would come forward within 3 years it should be excluded from the Transport Assessment. For the reasons set out above, this is entirely inappropriate in this case.

29. Most importantly, however, it is simply inappropriate to assume that a 1/3 reduction in development coming forward will result in a 1/3 reduction in the TEMPRO factor. As accepted by Eves XX AFU, the TEMPRO program is a proprietary program which is not available for manipulation by individual consultants and it contains, as again accepted by Eves XX AFU factors such as:

- Census data,
- ONS projections
- dwellings projections using local plan data
- employment projections
- data as to the distribution of employment of workers on a regional basis
- data from the National Car Ownership Model

- trip rates re-estimated from the National Travel Survey

30. Accordingly, it simply cannot be assumed that there is a direct correlation between a reduction in housing development coming forward and a reduction in traffic generation. It is simply impossible to know what, if any, reduction there would be.

31. Although the appellant will no doubt seek to rely upon the acceptance in Hawley XX Tucker that the "*Appellant's temporary reduction may be appropriate*", the apparent concession does nothing more than flag up the inherent uncertainty in the approach adopted by the appellant, given the position set out above with respect to TEMPRO.

32. Accordingly, the reduction urged by the appellant simply cannot be relied upon. It is entirely speculative and the better position is simply to rely upon the fact that the updated Transport Assessment that makes allowance for all the development which will eventually come forward. The agreed approach to traffic generation – rather than the approach formulated by the appellant for the purposes of evidence at this inquiry – that should be adopted. When this is done, for the reasons set out above, there is a severe residual impact caused by this development and, in accordance with Policy INF 1, a refusal is indicated by development plan policy.

Gradients on the site

33. As we put it in opening, 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.

34. 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.

35. That overall aim is supported by a range of standards in guidance documents. Hence:

a. In Manual for Streets (2007) at 6.3.27, guidance states that:

"*Longitudinal gradients should ideally be no more than 5%, although topography or other circumstances may make this difficult to achieve."*

b. In Manual for Streets 2 (2010) at 5.2.5, guidance states that

"*The gradient of pedestrian routes should ideally be no more than 5%, although topography or other circumstances may make this difficult to achieve. However, as a general rule, 8% should generally be considered as a maximum, which is the limit for most wheelchair users, as advised in Inclusive Mobility*"

c. Manual for Gloucestershire Streets (July 2020) at page 30 states:

"*Vertical Alignment*
Generally, the maximum and minimum gradients allowable on new developments will be as detailed …. below:

All Streets 1:20 (5%, but consideration give [sic] to 1:12
Where a one in 12 gradient is proposed no length shall exceed 30 m"

d. With respect to cycleways, the DoT guidance Cycle Infrastructure Design (July 2020) that states that:

".5.9.7 … Cycle routes should therefore, where possible, be designed in such a way that the sleekness and maximum length of longitudinal gradients meets the requirements of table 5 – 8
…
Gradient % – 5 Desirable maximum length of gradient (metres) - 30

5.9.10 Where height differences in new build site suggest longer length of gradients in those given in table 5 – 8 earthworks designs should be adjusted or the horizontal alignment adjusted to limit the length or severity of the gradient. Level sections of 5.0 m minimum length can be used between gradients to achieve compliance in table 5 – 8."

36. The appellant seeks to suggest that these documents can be lightly disregarded as (a) they are all guidance documents, not planning policy, (b) that the relevant documents allow for departure from their standards in appropriate cases, and (c) local standards are more rigorous than the national standards.

37. Each of these arguments is incorrect. First, and most importantly, JCS Policy SD 4: Design Requirements provides that:

"Where appropriate, proposals for development… will need to clearly demonstrate how the following principles have been incorporated:

…

vii Movement and Connectivity

New development should …

- *be fully consistent with guidance,… set out in the Manual for Gloucestershire streets and other relevant guidance documents in force at the time*"

38. These provisions make clear that the requirements of guidance, and particularly the Manual for Gloucestershire Streets as are in force at the time (i.e. the time of the application) are imbued with the force of the development plan. The adopted JCS, which has of course been through the normal statutory process of approval by the Secretary of State, places primary reliance upon the Manual for Gloucestershire Street

and necessarily contemplates that it may apply different, perhaps more rigorous, standards to other guidance. This is a simple example of localism working in practice.

39. A failure to comply with the requirements set out in those documents therefore represents a breach of development plan policy. Furthermore, if indeed it be the case that the Manual for Gloucestershire Street requirements are more stringent than those set out in national guidance, the effect of the development plan is quite clear; the requirements of Manual for Gloucestershire Streets must be complied with, even if other, less stringent, requirements may have been complied with.

40. It is suggested by the appellant that the requirements in each of these guidance documents is caveated with the suggestion that they be complied with "where possible" or "where appropriate". Whilst that may be so, there are two observations to make. First, if the footpaths and cycleways in a new development have to be provided in a manner which does not comply with the ordinary requirements of guidance, that is indicative of a site which presents considerable problems in delivering a scheme which effectively promotes pedestrian and cycle usage. To continually rely on exemptions represents bad planning practice, at the very least.

41. Second, and more importantly, the appellant has now asserted, and seeks to demonstrate with the revised illustrative master plan, that it is technically possible to deliver a scheme which is in compliance with the standards in guidance, without having to rely upon any exemption. Accordingly, there can now be no basis for asserting that it is necessary to disapply the normal standards.

42. Against this background, the position concerning the revised illustrative masterplan and the need for a condition can be considered. The Count Council accepts as set out in their note on the revised illustrative masterplan (Inquiry Document 27), that it does appear that a solution can be found to enable compliance with the relevant gradient standards.

43. However, given the topography of the site, it is entirely foreseeable that a design solution might be proposed at the reserved matters stage which, whilst being in general accordance with the revised illustrative masterplan, did not comply with the relevant gradient standards. Without a condition specifically dealing with gradients (the proposed Condition 13) in there would be nothing to guarantee that a scheme which was not complied with gradient standards would be submitted at the reserved matters stage (particularly when it is likely that the site will be sold on to another developer, who will be wholly ignorant of the debate at this inquiry). At that stage it would be impossible for the local planning authority to decline to grant permission based upon gradients, as the principle of development would already have been conceded.

44. Given that compliance with the standards is a requirement of development plan policy, and that, in any event, departure from those standards would represent a poor planning, there is a clear and obvious necessity for the imposition of such a condition. Given that the appellant asserts that they can deliver a scheme which is compliant with such a condition, there is no reason whatever for not imposing the condition.

45. Finally, the County Council note on the illustrative masterplan (Inquiry document 27) makes various comments, particularly relating to the existence of longer straight stretches which are undesirable as encouraging excessive vehicle speeds, as to the

layout of the scheme in the revised incident masterplan. Given that her there is to be general compliance with that masterplan in the reserved matters schemes, these are matters which stand as material disbenefits of the scheme and should be weighed accordingly in the planning balance.

Education Contributions

Introduction

46. The County Council seeks education contributions in the sum of £2,602,127[1]. Such sums would properly form part of a CIL-compliant section 106 agreement[2]. However, the appellant contests the need for such contributions of such amount, offering only £528,180.

47. 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 to accommodate those pupils. Both issues were considered at a recent appeal concerning Land Off the A38, Coombe Hill, Gloucestershire (APP.G1630/W/20/3257625) (referred to by all parties as "Coombe Hill") and, as we predicted in opening, much of the appellant's case appears to depend upon its (mis) interpretation of the Inspector's findings on that occasion.

[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.

48. The evidence at the inquiry on this matter produced a barrage of statistics and arguments, much of it of limited assistance, or even relevance, to the matters which the Inspector has properly to determine. That these closing submissions will seek to focus on the principle evidential matters which are relevant for the Inspector.

49. The exercise which must be gone through to determine the extent of the education contribution which is properly payable by the appellant consists of 3 steps:

    a. Determining the number of children who will be forecast to be in schools from the existing population, already at school who will attend school within the next few years.

    b. Assessing the number of children who will be newly brought into the education system as a result of people moving into the proposed development.

    c. Assessing the capacity of the existing schools to accommodate both the current school population and, most importantly, the new pupils who will be generated by the new development.

50. This exercise must be considered for primary school pupils, secondary school pupils and Sixth-formers.

Base Forecasting

51. The first stage of this process, the so-called "base forecasting" of the number of pupils in the existing school population at each local school in fact produced little real dispute

at the inquiry. On the basis of the extensive material on this matter in Mr Tiley's proof of evidence, this was somewhat surprising. Much of Mr Tiley's calculations appeared to be based upon a wholly unnecessary attempt to comment on the accuracy of the Schools Capacity Survey ("SCAP") forecasting, which is produced for long-range strategic planning purposes for the Department of Education, which includes future known housing developments and commitments as if they were would all come forward immediately. Inevitably, such forecasts will not prove to be accurate, as housing does not come forward in that way.

52. It is for that reason that the County Council does not use such forecasting for the purposes of assessing the need for education contributions. It was surprising that Mr Tiley spilt so much ink trying to challenge the accuracy, in effect, of the SCAP forecasts, not least because he had signed a joint statement at the Coombe Hill inquiry which accepted that this was not an appropriate method of forecasting. In those circumstances, it was unsurprising that it played no major role in the appellant's case.

53. Indeed, there did not appear to be any serious challenge mounted to the base forecasts contained in Mr Chandler's evidence. Again, once the proper basis of the statistics was understood, this was unsurprising. Mr Chandler presented as his appendix 16 an extract of the online Local Authority Scorecard maintained by the Department of Education which records the accuracy of each education authorities base forecasting. From this it could be seen that the County Council fared extremely well in its forecasting accuracy, both in absolute terms and by comparison with other authorities (summarised Chandler proof paras 4.2 – 4.3).

Pupil product ratios

54. As was perfectly fairly pointed out in Chandler XX Tucker, the base forecasts currently available do not extend out beyond 3-years for primary provision. This is simply due to the fact that they have to be based on real-world data and cannot anticipate the educational demands which will be made by children who have not yet been born.

55. It is for that reason that a different method is needed for anticipating the *new* demand which will be created by children living by the new housing. This is the purpose of the pupil product ratios, which simply provide an arithmetical basis for calculating how many children will be produced by a given number of houses on a new development.

56. The history of the use of PPRs by the County Council was extensively rehearsed at the inquiry and need only be briefly summarised here:

    a. The Infrastructure Delivery Plan 2014 (CD E8) ("the IDP"), which was an evidence-based document supporting the JCS set out at page 80 PPR ratios for primary and secondary school places.

    b. The information underlying those figures was recognised to be dated (2007) and the County Council commissioned a study in 2018 by the Cognisant market research company. Thereafter, the PPR numbers produced by the Cognisant study were used by the County Council in calculating education contributions.

    c. A number of developers were dissatisfied with the Cognisant study, believing the PPR figures to be too high. Accordingly, an update to the Cognisant study

was undertaken in 2019. The methodology was agreed between the County Council and the developers and subsequent findings reinforced the 2018 work. It is understood that the developers party to this 2019 review do not like the outcome and have questioned its use at subsequent Local Plan Examinations. This does not change the fact that the Cognisant study was based on an agreed methodology.

d. Further to the Cognisant study, the appellant commissioned NEMS Market Research to undertake further survey work, which was written up by Mr Tiley into the so-called NEMS study. This produced an alternative set of PPR numbers, which were considerably lower than those in the Cognisant study. Mr Tiley states within evidence that this is based on the IDP 2014, however, this is hard to discern from the report itself.

e. Following certain criticisms of the Cognisant study by the Inspector on the Combe Hill appeal (which will be considered in detail below), the County Council embarked on a further study of PPR ratios and, in the interim, produced an Interim Policy Statement (Chandler App 2) to respond to the Inspector's comments and to provide a basis for the assessment of education contributions prior to the full revised study becoming available.

f. It is that IPS upon which the County Council relies in this appeal.

57. In understanding the correct approach to the PPRs, it is imperative correctly to understand the Combe Hill decision (CD K2). The pertinent findings (with respect the PPRs; submissions as to capacity will be made below) are as follows:

a. The IDP pupil yield factors were based upon data from a 2007 assessment and are no longer the most up-to-date evidence. It is no longer appropriate to use them as a basis for estimates (paragraph 101).

b. The Cognisant study had certain problematic aspects, which the inspector dealt with in detail at paragraph 102 to 108. It was therefore likely that the PPR has had been exaggerated by the Cognisant study. However, it was "*the best and most recent evidence available*" (para 103).

c. The Inspector was not convinced by the County Council's calculation and "*found 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*." (Para 109)

d. Nevertheless, for the purposes of ensuring robustness, the consideration of whether or not capacity would be available would be measured against Cognisant study figures. (Para 109).

e. Given the Inspector's subsequent findings on capacity (which will be considered in detail below) the Inspector determined that, even using the Cognisant study figures, there was sufficient capacity such that no education contribution in that case was required.

58. It appears now to be the appellant's case that the Inspector in the Combe Hill case endorsed the use of the original IDP figures as the correct basis of calculating PPR's. This is a very odd submission, given that the Inspector explicitly said "*it is no longer appropriate to use them as a basis for estimates.*" It is accepted that both parties to that inquiry understood that the appellant's case at that inquiry was that the IDP figures should be used. However, there is no explicit finding by the inspector that the IDP figures should be used. Instead, he came to the somewhat delphic conclusion that he "*found Mr Tiley's calculations more convincing*". There is no indication in that phrase as to precisely what "calculations" of Mr Tiley were being referred to; it was certainly observable through this inquiry that Mr Tiley is a man prone to making many, many calculations.

59. It would be expected that if the Inspector was really saying that, notwithstanding that he had already dismissed the use of the IDP figures as inappropriate, he was nevertheless reverting to using them, he would have said something explicit to that effect; in fact he expressly stated he was using the Cognisant figures. In the absence of such an explicit statement pertaining to the IDP figures, the only safe conclusion is that the Inspector did not endorse the use of figures he had just found to be inappropriate.

60. Accordingly, the notion that the Combe Hill Inspector endorsed the use of the IDP is wholly incorrect. However, as well as relying upon that decision, the appellant sought to argue that there were policy reasons why the Inspector was compelled to rely upon the IDP figures.

61. In assessing those alleged reasons, it is important to bear in mind throughout that, as accepted by Tiley XX AFU, the Inspector is being asked in 2022 to rely upon figures which had been collected in 2007 and had been explicitly found in the 2021 Coombe Hill decision to be so dated as to be inappropriate to use at this stage. In effect, the appellant is asking the inspector to rely upon figures which he knows to be out of date and which another inspector has already said are inappropriate to use.

62. It is against this fundamental fact that the appellant's arguments need to be addressed. The appellant relied upon NPPG guidance relating to section 106 contributions and viability. The appellant's approach can be summarised by reference to, in particular, its reliance on para 004 in the Planning Obligations section of NPPG, which suggests that policies for planning obligations should be set out in plans and should be clear so that they can be accurately accounted for in the price paid for land. Furthermore, the guidance deprecates setting out "*new formulaic approaches*" in supplementary planning documents "*or supporting evidence base documents*".

63. Whilst these phrases are in government guidance are acknowledged, the appellant's reliance upon them is misplaced. First, the approach of setting out the need for education contributions in development plan policy and then setting out the relevant PPRs in a supporting evidence-based document (the IDP, initially) was the approach taken through the development plan process, a process which obviously culminated in the Examination of the JCS and its approval by the Secretary of State. Given that the IDP itself was only ever a supporting evidence base documents, the Secretary of State himself approved of a method of assessing contributions which was (on the appellant's case) contrary to the guidance.

64. Second, it is incorrect to describe the approach adopted by the Council as a "*new formulaic approach*". The approach adopted by the Council – that of requiring education contributions through development plan policy and setting out the relevant PPR in a subsidiary document - is the approach adopted throughout the development plan process and subsequently. There is nothing new about what has happened with the Cognisant study and thereafter the IPS.

65. Third, the IDP itself recognises that the information contained within it will be subject to constant evolution throughout the plan period. Thus:

    a. In the Executive Summary on page 1, fifth bullet, it is explicitly stated: "*Infrastructure delivery planning is a live process and it is expected that the figures in this report will change over time.…"*

    b. At page 4, under Infrastructure Requirements, second paragraph, it is stated: "*It is strongly recommended that the JCS authorities commit to infrastructure delivery planning as an iterative process… This IDP is the starting point for an ongoing process and regular updates of the project information underlying the IDP will be required*"

66. Fourth, the concerns expressed in the NPPG guidance concerning viability and the ability of developers to accurately "price in" the requirements for contributions when purchasing land are of no application in this case. The appellant is not bringing forward an allocated site (in respect of which local plan viability calculations would have been made) and is not making any viability case in any event. Furthermore, the IPS is clear

as to the PPRs which would be applied in making education contribution calculations and that information can perfectly well be factored into any calculations as to land value (as earlier studies also provided for).

67. In the light of those matters, it cannot sensibly be argued that the Inspector is *compelled* to knowingly rely upon information which is well known to be out of date and inappropriate.

68. Accordingly, all that remains is to consider the appropriateness of the PPR ratio suggested in the IPS itself. The origin of the IPS must therefore be considered. The Coombe Hill Inspector concluded that the Cognisant study was the best and most recent study available but that it suffered from certain identified problems. As set out in paragraphs 103 to 108, these were:

    - A failure to allow for those children who are home educated.
    - A failure to allow for those children who were independently educated
    - A failure to allow for the existence of vacant homes or second homes
    - A failure to allow for the fact that some of the houses on the new development would be occupied by families freeing up existing housing stock in the area, such that it could not be assumed that they would actually be adding to the demand for education places.

69. As emerges from an examination of the IPS itself (Chandler App 2), all of these matters were considered by the IPS and appropriate adjustments made. It is accepted that the

final issue, that of "backfilling" is extremely difficult to assess. Nevertheless, certain census data was used in the IPS to attempt to wrestle with this issue.

70. The difficulty of dealing with the backfilling issue formed the centrepiece of Mr Tiley's case on this matter. However, his approach was simplistic, to say the least. At his Table 7.2 (proof para 7.39) Mr Tiley sought to demonstrate that, based on a single figure for the number of house-moves which did not release a property of occupation by another household, the figures in IPS were triple the amount that could be justified. However, he accepted Tiley XX AFU, that the whole calculation was based upon a single figure from the NEMS survey and that even a small variation in the accuracy of that figure would radically affect the eventual outcome of his calculations.

71. Furthermore, Mr Tiley's approach to this whole issue appear to be based upon some extremely questionable assumptions as to the likely behaviour of new house buyers; for example, it was remarkable that Tiley XX AFU he was unwilling to accept the general proposition that many people would move to a new house for the purpose of beginning a family. The questionable statistic basis for his calculations, together with a somewhat extraordinary view of human behaviour brings into question his entire approach to the accuracy of the IPS figures.

72. Finally, it is appropriate to consider the IPS figures in the context of the figures used by other local planning authorities, and of the apparent outturn of pupils from schools being established in the Borough.

73. First, whereas the Coombe Hill Inspector concluded that the Cognisant study numbers were out of line with those used by other local authorities, that is clearly no longer the case when considering the IPS numbers. The County Council collected a considerable number of figures from other local authorities setting out their PPRs. This information, which was unchallenged as to its basic factual accuracy by the appellant, was subjected to a variety of presentations and some complicated statistical disputes (see CD G30 and G31). It is unnecessary for the purposes of the "sense check" that these figures provide to delve back into that those extensive disputes. However, the basic pattern is clear as follows:

    a. For those authorities which use a single PPR ratio, Gloucestershire may be in the higher quadrant of relevant authorities but is in no way out of line.

    b. For those authorities which use a PPR for each separate house type, once the exercise of averaging is carried out, a similar pattern emerges, with Gloucestershire being in the higher sectors, but by no means out of line.

    c. A strong correlation existed between the date at which the PPR's were assessed and the extent of those PPRs; the more recent the assessment, the higher the PPR. Again, this is unsurprising. As Mr Chandler EIC explained, the general increase in house prices has tended to mean that families have an ever-decreasing ability to buy extra space in their houses; accordingly those which have children tend to produce higher numbers of children for a given house size. Furthermore, as a greater proportion of houses on each estate become affordable

houses, the well-known correlation that affordable houses tend to produce higher numbers of children, also has the effect of raising overall PPRs.

74. The general reliability of the suggested PPRs can also be "sense checked" by considering the outcomes in schools in the vicinity which are affected by new development. Numbers on Roll data from January 2021 (CD G24) was presented in tabular form. Whilst the data shows some of the variations one would naturally expect in a real-world situation and making appropriate allowance for the fact that this is all new children, rather than the children who are *newly* coming forward from the new developments, it is clear that the general trend is such as generally to support, by way of sense check, the level of PPR suggested in the IPS.

75. Accordingly, the IPS provides a robust and defensible basis for assessing the PPR and the number of new pupils who will be generated by this development. It should be preferred to the appellant's suggestion that the Inspector knowingly use out of date information to arrive at that figure.

Capacity

76. The final issue for determination is that of whether the existing schools in the area are capable of accommodating the likely new demand produced by the new development without expansion. That such expansion would fall to be funded by the appellant through the section 106 agreement.

77. The Inspector may recall from the opening day of the inquiry, local residents making statements (unfortunately not supported by a written version) commenting on the lack

of school places within the local schools, resulting in their children having to travel further afield for schooling.

78. The principal issue with respect to capacity is as to the very meaning of the term "capacity". The County Council contends that for the purposes of planning school places (i.e. the development management process), capacity should be regarded as being reached when the school is at 95% of its Permitted Admission Numbers (PAN). By contrast, the appellant suggests that a school may reach no less than 105% of its PAN before it reaches capacity.

79. There is no definition or guidance in planning policy as to the meaning of that term. Instead, the Inspector can only look (in the same way the Coombe Hill Inspector did) to certain policy documents issued by the Department of Education which seek to give meaning to that term. Thus, in the Audit commission paper "*Trading Places – the supply and allocation of school places*" (Dec 1996) (CD G 27) at paragraph 9, guidance is as follows:

"*It is unrealistic and probably undesirable to aim for a perfect match at each school; a sensible approach would be to* ***plan for a 95% occupancy rate*** *in schools and accept some variation, is a plus or -10%, around this target*" (emphasis added)

80. In the Department of Education/National Audit Office paper "*Capital Funding for New School Places*" (March 2013) (Chandler appendix 7), guidance is as follows:

"*1.16 … It [was] considered that on average 5% was the bare minimum needed for authorities to meet their statutory duty with operational flexibility, while enabling parents to have some choice of schools.*

…

1.17 … Although the Department issued guidance in June 2009 that it was reasonable for authorities to aim for between 5 and 10% primary surplus to allow them some

opportunity to respond to parental choice, it did not subsequently communicate authorities in September 2010 figure of a minimum of 5% surplus. This is because this was a planning assumption, rather than a target it expected authorities to meet. The Department recognises that it needs to undertake work to identify whether its assumption realistically enables parental choice"

81. Both of these passages of guidance point strongly in favour of using the figure of 95% as a capacity figure for planning purposes. The 1996 guidance suggests that one should "*plan for*" 95%. The 2013 guidance refers to a "*planning assumption*". Whilst it is accepted that the "planning" referred to in these documents is planning in a general sense, rather than Town & Country Planning, the point is nevertheless well-made.

82. As explained in Chandler EIC (evidence which Tiley XX AFU accepted he was not qualified to dispute), operating at, near or over 100% of PAN is inherently undesirable. It reduces the opportunities for in year transfers and reduces parental choice. The importance of parental choice to the Department of Education is clearly made out in both of these pieces of guidance. Indeed, the 2013 document tends to suggest that the department was unconvinced that even a 5% surplus was enough to allow for adequate parental choice. That emphasis on parental choice sits ill with the assertion by Tiley XX AFU that an adverse effect on the scope for parental choice was not a matter which could be regarded as being related to the development (in CIL compliance terms) but remains an important factor for the County Council in their statutory duty as the Local Education Authority.

83. The primary response of the appellant to these documents is to point to the findings of the Coombe Hill Inspector and suggested he had found in favour of the interpretation

that capacity could extend up to 105% of PAN. However, once again, such an assertion bears careful examination. Hence:

a. The primary basis upon which the Inspector concluded that there was capacity because he chose to analyse capacity issues on the basis of Place Planning Areas rather than by way of access to individual schools. (See paragraphs 111 to 114 and the first sentence of 115)

b. He mentions that capacity means a figure of between 85 and 105% occupancy but goes on to say that in practice it makes no difference in that case (paragraph 115)

c. When actually considering school capacity figures in paragraph 117 he concludes that one school that could accommodate all the children without exceeding 95% occupancy and notes that across the primary school planning area the occupancy rate resulting from the new development would be between 89.8% and 96.7%.

d. Accordingly, when actually deciding the case he makes no endorsement of a situation in which occupancy of 100%, let alone 105% actually occurs. The indication that capacity means between 85 and 105% must be seen in that light.

84. It is in that context, therefore, that the evidence as to demand and capacity must be approached. Chandler proof para 6.5 and following sets out the capacity which is available. Partly in response to the approach of the Combe Hill Inspector, that evidence is presented 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.

85. Those tables are commended to the inquiry. They reveal quite clearly that when the correct figure of 95% for capacity is taken, and whatever basis of comparison is taken, there is no capacity within existing provision to accommodate the children which will be produced by the development.

86. 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.

87. The evidence revealed that the expansion of Oakwood had in part been funded directly by section 106 contributions from other developers and had in part been forward funded. The basis upon which pupils come forward for Oakwood and other local schools is found in the list of developments coming forward set out in Fitzgerald proof para 6.57.

88. The forward funding was contingent upon the expectation that the places would be in due course paid for by section 106 contributions from developments which would bring forward children to fill the places created. This is entirely in line with the policy position in the Department of Education document "*Securing developer contributions for education*" (November 2019) (CD G2) at paragraph 6.

89. In that context, 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.

90. 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.

91. It is evident that there is both statistically and, from the evidence of local residents, practically, an issue with the provision of school places in this area that this development, if approved, will only exacerbate if appropriate contributions are not received to mitigate against that impact.

92. Accordingly, the full contribution ought to be payable. The Inspector has Ms Boucher's agreed table as to the relationship of the various outcomes with the differing blue pencil amounts.

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