



Department for
Communities and
Local Government

Our Ref: APP/G1630/W/15/3135824

David Hutchison
Pegasus Planning Group
Pegasus House
Querns Business Centre,
Whitworth Road
Cirencester
GL7 1RT

12 September 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY ROBERT HITCHINS LIMITED
LAND OFF ASTON FIELDS LANE, ASHCHURCH, GLOUCESTERSHIRE
APPLICATION REF: 14/01245/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of S R G Baird BA (Hons) MRTPI, who held a public local inquiry between 8-11 March 2016, into a failure by Tewkesbury Borough Council to give notice within the prescribed period of a decision on your application for outline planning permission for residential development of up to 550 dwellings, the potential site for a primary school, ancillary facilities, open space and landscaping, and the construction of a vehicular access from Aston Fields Lane, in accordance with application ref: 14/01245/OUT dated 16 December 2014.
2. On 29 February 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 150 units or on sites over 5ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and outline planning permission be refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation and dismisses the appeal and refuses outline planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Department for Communities and Local Government
Maria Stasiak, Decision officer
Planning Casework
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 1624
Email: PCC@communities.gsi.gov.uk

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR1.10, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal

Matters arising since the close of the inquiry

6. An application for an award of costs was made by Tewkesbury Borough Council and Gloucestershire Country Council against Robert Hitchins Limited (IR1.2). This application is the subject of a separate decision letter.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan comprises saved policies in the Tewkesbury Borough Local Plan to 2011 adopted in March 2006 (LP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR4.2-4.4.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
10. An emerging plan is also in preparation. Tewkesbury Borough Council is collaborating with Gloucester City Council and Cheltenham Borough Council to prepare a Joint Core Strategy (JCS) to guide development up to 2031. The JCS was submitted for examination in November 2014. The Interim Inspector's Report was issued on 31 May 2016, and the JCS Authorities are currently considering the modifications necessary to the JCS. The Secretary of State considers that the emerging policies of most relevance to this case include those set out at IR4.6-4.14.

Main issues

11. The Secretary of State agrees with the Inspector that the main issues are those set out at IR11.1.

Policy Context

12. For the reasons given by the Inspector at IR11.2-11.3, and at IR11.40, the Secretary of State agrees that the appeal proposal is in conflict with LP Policy HOU4, but that this policy should only be accorded limited weight as LP policies for the supply of housing are time-expired and out-of-date and the Council cannot demonstrate a 5-year supply of deliverable housing land.

13. For the reasons given at IR11.4-11.6, and at IR11.44, and taking into account the Interim Inspector's Report which was issued after the inquiry, the Secretary of State agrees with the Inspector's conclusion at IR11.6 and IR11.44 that significant weight can be attached to emerging JCS Policy SA1.

Strategic Road Network

14. The Secretary of State agrees, for the reasons given by the Inspector at IR11.7, that this proposal would not have an unacceptable impact on the safety and free flow of traffic on the Strategic Road Network.

Character and appearance

15. For the reasons given at IR11.8-11.10, the Secretary of State agrees with the Inspector that, with mitigation, the proposal would not have an unacceptable impact on the character and appearance of the area. He also agrees that the proposal would not have an unacceptably adverse effect on the setting or scenic beauty of the Cotswold AONB (IR11.10 and IR11.41).

Highways, the Strategic Allocation and sustainability

16. The Secretary of State agrees, for the reasons given by the Inspector at IR11.11-11.12, that due to poor forward visibility at various points and its narrow width, and even with the improvements proposed by the appellant, Aston Fields Lane would be unsuitable to accommodate the level of traffic that would be generated by the appeal scheme. For the reasons given at IR11.13-11.14, and notwithstanding the points raised at IR11.15, he further agrees with the Inspector that the effect on highway safety at the Aston Fields Lane/Bredon Road junction would be unacceptable (IR11.14). He therefore agrees with the Inspector's assessment at IR11.42 that the proposed development conflicts with the objectives of LP Policy TPT1. He considers that this carries significant weight against the proposal.

17. The Secretary of State agrees with the Inspector that because the appeal site forms part of a strategic site intended to make a major contribution to the housing and employment needs of the JCS area and Tewkesbury in particular, development on the appeal site should not be considered in isolation (IR11.16 and IR11.45). He agrees with the Inspector at IR11.23 that there is a pressing and early need to produce an access strategy for the A8 Site, and that it is vitally important that a comprehensive masterplan and infrastructure delivery plan is in place to guide this development. He further agrees that the putative masterplan provided by the appellant is only the first step and is deficient, and to proceed on this basis would conflict with the objectives of the emerging development plan and the Framework (IR11.23).

18. For the reasons given at IR11.17-11.24 and IR11.45-46, the Secretary of State agrees with the Inspector at IR11.24 that whilst the development of the appeal site does not prevent the development of the remainder of the A8 Site, what it does do is dictate the overall access strategy, and would result in a form of development, particularly in relation to access, that would prejudice the development of the whole of the Strategic Allocation in line with the objectives of JCS Policy SA1 and paragraph 58 of the Framework. He considers that this carries significant weight against the proposal.

19. He further agrees that the adverse effects the proposal would have on highway safety and the free flow of traffic on Aston Fields Land and the junction with Bredon Road now

and in the future would be severe and the absence of a comprehensive Masterplan that provides for an access strategy and infrastructure delivery would result in significant unacceptable harm to and conflict with the objectives of the emerging JCS and the Framework as a whole (IR11.48).

Other matters

20. The Secretary of State agrees with the Inspector that through the imposition of appropriate planning conditions, the impact on the ecology of the area could be acceptably mitigated (IR11.25).
21. For the reasons given at IR11.47, the Secretary of State agrees with the Inspector that the appeal proposal would make a meaningful contribution to meeting the need for market housing and the pressing need for affordable housing. He considers that this carries significant weight in favour of the proposal. He further agrees that it would result in significant economic benefits to the immediate area and the district as a whole, and that this also carries significant weight in favour of the proposal.

Planning conditions

22. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.9 and IR11.26-11.27, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing this planning and dismissing this appeal.

Planning obligations

23. The Secretary of State has considered the Inspector's analysis at IR10.10-10.25 and at IR11.28-11.39, the planning obligations submitted as part of the appeal, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended. For the reasons given at IR11.32-11.36, the Secretary of State agrees that Item 1 (Tewkesbury Library), Item 3 (Community Buildings), Item 4 (bins/signage for dog waste), Item 5 (Primary Care facilities), Item 7 (waste/recycling facilities), and Item 8 (Tewkesbury Sports Centre), do not comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework, and therefore he has not attached weight to these matters in coming to his conclusion.
24. The Secretary of State agrees that the remainder of the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligations overcome his reasons for deciding that the appeal should be dismissed and planning permission should be refused.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the application is not in accordance with development plan policies LP Policy HOU4 (housing) or LP Policy TPT1 (traffic/transport). LP Policy HOU4 is out-of-date, and carries limited weight. However, he attaches significant weight to the policy conflict with LP Policy TPT1, and

considers that the appeal proposal is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

26. Given that policies for the supply of housing are time-expired and out of date, and the Council cannot demonstrate a 5-year supply of deliverable housing land, the Secretary of State considers that paragraph 14 of the Framework is engaged. He has therefore considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.
27. The Secretary of State considers that the contribution to meeting the need for market and affordable housing carries significant weight in favour of the proposal, and also considers that the economic benefits carry significant weight in favour of the proposal.
28. The Secretary of State considers that the proposal would have severe adverse effects on highway safety and the free flow of traffic on Aston Fields Lane and the junction with Bredon Road now and in the future. It would conflict with the Framework in this respect, and he considers that this carries significant weight against the proposal. He further considers that it would prejudice the development of the whole of Allocation Site A8 in line with the objectives of emerging JCS Policy SA1 (which carries significant weight) and the Framework. In the absence of a comprehensive Masterplan that provides for an access strategy and infrastructure delivery, the proposal would result in significant unacceptable harm to and conflict with the objectives of the emerging JCS and the Framework as a whole. He considers that this carries significant weight against the proposal. The proposal is also in conflict with development plan LP Policy HOU4. However, this policy is out-of-date, and the Secretary of State therefore attaches limited weight to this policy conflict.
29. Overall the Secretary of State concludes that the proposal would not represent sustainable development and that the harm arising from this scheme would significantly and demonstrably outweigh the acknowledged benefits.
30. Having taken into account all the material considerations, he has concluded that overall the material considerations do not indicate that the appeal should be determined other than in accordance with the development plan.

Formal decision

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for residential development of up to 550 dwellings, the potential site for a primary school, ancillary facilities, open space and landscaping, and the construction of a vehicular access from Aston Fields Lane, in accordance with application ref: 14/01245/OUT dated 16 December 2014.

Right to challenge the decision

32. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for

leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

33. A copy of this letter has been sent to Tewkesbury Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by S R G Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 8 June 2016

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY

ROBERT HITCHINS LIMITED

TEWKESBURY BOROUGH COUNCIL

Inquiry held on 8 March 2016

File Ref: APP/G1630/W/15/3135824

CONTENTS

1.	Preliminary Matters	01
2	The Proposal	03
3	The Site and Surroundings	05
4	Planning Policy and Other Relevant Guidance	07
5	The Case for Robert Hitchins Limited	10
6	The Case for Tewkesbury Borough Council	16
7	The Case for Network Rail	27
8.	The Cases for Interested Persons	29
9.	Written Representations & Consultations	32
10.	Conditions & S106 Unilateral Undertakings	37
11.	Inspector's Conclusions and Recommendation	43
	Annex A – Putative Reasons for Refusal	54
	Annex B - Suggested Planning Conditions	56
	Annex C – Appearances and Documents	62

GLOSSARY

AH	Affordable Housing
CD	Core Document
DMRB	Design Manual for Roads & Bridges
EI	Examining Inspector
ES	Environmental Statement
ha	Hectare(s)
HA	Highway Authority
HE	Highways England
JCS	Joint Core Strategy
LP	Local Plan
lpa	Local Planning Authority
MfS 2	Manual for Streets 2
NR	National Rail
RfR	Reason(s) for Refusal
SoS	Secretary of State
SRN	Strategic Road Network
SSD	Site Stopping Distance
SUDs	Sustainable Drainage System
TA	Transport Assessment

File Ref: APP/G1630/W/15/3135824

Land off Aston Fields Lane, Ashchurch, 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 Robert Hitchins Limited against Tewkesbury Borough Council.
- The application Ref 14/01245/OUT is dated 16 December 2014.
- The development proposed is residential development of up to 550 dwellings, the potential site for a primary school, ancillary facilities, open space and landscaping. The construction of a vehicular access from Aston Fields Lane.

Summary of Recommendation: The appeal is dismissed.

1. Preliminary Matters

- 1.1 The Secretary of State (SoS) in exercise of his powers under S79 and paragraph 3 of Schedule 6 of the above Act directed¹ that he would determine this appeal. The reason for the direction is that the appeal involves proposals for residential development of over 150 units or on sites over 5ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- 1.2 At the inquiry, a joint application for an award of costs was made by Tewkesbury Borough Council and Gloucestershire County Council against Robert Hitchins Limited. This application is the subject of a separate report.
- 1.3 The application was submitted in outline with all matters other than access reserved for a subsequent application. The local planning authority (lpa) and the appellant confirmed that the application plans comprised Drawing Nos. ASH-14-07 - Location Plan and H510/4 Rev A - Access Arrangements accompanied by illustrative plans. The illustrative drawings are: Drawing Nos. H.0445_2_1F - Indicative Masterplan²; H.0445-03-1D - Land Use Parameter; H.0445-05-1D - Green Infrastructure Parameter; E5; H.0445-05-1D - Building Heights Parameter; H.0445-06-1B - Access and Movement Parameter; 510/1 Rev A - Proposed Highway Improvements to Grange Road and H510/2 - Aston Fields Lane Potential Improvements.
- 1.4 Following the submission of the appeal, the lpa considered the application on the 24 November 2015 and resolved that it would have refused planning permission for 10 reasons (CD B6). The putative reasons for refusal (RfR) are set out at Annex A.
- 1.5 Putative RfR 2 refers to a potentially unacceptable impact on the Strategic Road Network (SRN). Highways England (HE) at the time of writing its evidence³ considered that the appellant's Transport Assessment (TA) was incomplete, and did not demonstrate that the development could be accommodated on the SRN or that the proposed scheme of highways

¹ 29 February 2016.

² This plan supersedes Drawing No. H.0445_2_1D submitted with the application.

³ Documents 48, 49, 50 & 51.

mitigation was effective (Docs 50 & 51). At that time, HE concluded that the residual safety and congestion impacts would be severe.

- 1.6 The appellant submitted additional traffic modelling reports directly to HE for review (CD F21). The modelling identifies that a mitigation scheme involving the widening of the A46 (T) approach to the M5 junction 9, and delivering a 3-lane entry to the roundabout circulatory and 3 lanes on the circulatory at the M5 Junction 9, would be required to make the development acceptable in planning terms. HE is content that the mitigation proposed is suitable in principle to address the traffic impacts of the development on the SRN.
- 1.7 Whilst the proposed mitigation scheme has been agreed in principle, it has not yet been shown that the scheme is deliverable in accordance with Design Manual for Roads and Bridges (DMRB). In these circumstances, HE agrees that it would be appropriate for Grampian conditions to be imposed. Following agreement with the appellant on appropriate conditions, HE did not present any further evidence to the inquiry.
- 1.8 The Ipa confirmed that following discussions and agreement with the appellant, that putative RfRs 1, 2 and 10 would not be pursued. Putative RfRs 7, 8 and 9 are the subject of signed Unilateral Undertakings (UU), which were the subject of a round table discussion at the inquiry. I deal with the UUs in Section 11 of this report.
- 1.9 Following the round table session on S106 contributions, the Ipa were given the opportunity to clarify its justification for some of the contributions sought. The further information provided by the Ipa and the appellant's response are contained in Documents 59 to 62. Following receipt of these responses the inquiry was closed in writing.
- 1.10 Regard has been had to an Environmental Statement (ES) dated November 2014 and submitted under The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended). The ES complies with the requirement of the Regulations.
- 1.11 As part of my post-inquiry site visit, I was requested to view the site and surrounding area from public viewpoints on Bredon Hill. An accompanied site visit was carried out on the morning of Friday 11 March 2016. However, because of poor visibility I was unable to obtain views from Bredon Hill and this part of the site visit was aborted. Although I returned unaccompanied to the area much later in the day, visibility still remained poor. That said, I consider I am able to assess the potential effect of the proposal on views from Bredon Hill based on my unaccompanied visit to the site and its surroundings on Monday 7 March 2016, when visibility was excellent.

2. The Proposal

- 2.1 The application is submitted in outline with all matters other than access reserved for residential development of up to 550 dwellings, including a potential site for a primary school, ancillary facilities, open space and landscaping (Plans A & B). Access to the site would be from Aston Fields Lane, which would be widened in one section with the proposed new access road replacing an existing section of Aston Fields Lane (Plan B).
- 2.2 The section of Aston Fields Lane from the Northway Level Crossing into the site would be widened to 6.75m with a 2m footway running along the southern edge of the carriageway. The main access would continue into the site with 2m footways to both sides with priority junctions providing access to the proposed development via 5.5m wide access roads with 2m footways on both sides. Whilst access to land holdings served off the lane would be maintained the section of Aston Fields Lane to be replaced would be closed to through vehicular traffic.
- 2.3 Off-site improvements and highway mitigation works include:
- the widening of the A 46 (T) approach to the M5 junction 9; a 3-lane entry to the roundabout and 3-lanes on the circulatory;
 - improvements to the Shannon Way/A438 junction;
 - improvements to Grange Road (Plan H);
 - improvements to Aston Fields Lane and its junction with Bredon Road (Plan I);
 - upgrading of the Northway Level Crossing to a Manually Controlled Barrier with Obstacle Detection (MCB-OD);
 - improvements to the existing footbridge over the railway in the south-west corner of the site;
 - footpath and cycleway improvements on Northway.
- 2.4 The application is accompanied by an Indicative Masterplan and Parameter Plans showing how the site could accommodate the scale of development proposed (Plans C to G). The Indicative Masterplan shows potential links to the adjoining land to the south (Plan C).
- 2.5 It is envisaged that the site would provide for a mix of house types and sizes. Up to 40% of the dwellings would be provided as affordable housing (AH), with the remaining units provided as open market dwellings. Building heights would be a mix of 2 and 3-storey properties.
- 2.6 The Indicative Masterplan identifies land for a possible one-form entry primary school, with the potential to expand to a 2-form entry school. A series of children's play areas, recreational spaces and green infrastructure are proposed throughout the site. Sports pitches are shown indicatively along the western boundary of the site. These facilities would be located between the railway line to the west and the existing hedgerow running north-south through the site and existing woodland planting along the

southern boundary. Other boundary planting would be retained. To facilitate the proposed sports pitches the existing Public Right of Way (PROW) running north–south towards the western boundary would be diverted to the east following the line of the existing hedgerow forming the eastern boundary of the proposed sports pitches. The diverted path would link to the PROW to the north and south of the site.

- 2.7 The development would include a sustainable drainage system (SUDs) to manage flood risk and run off. The SUDs system would include retention of the existing field ditch along the northern boundary of the site as well as the retention and enhancement of the ditch along the retained hedgerow between the built development and sports pitches. A sustainable drainage pond would be provided in the south-west corner of the site to provide storm water attenuation discharging to the existing watercourse.

3. The Site and Surroundings

- 3.1 The site extends to some 21.5ha comprising 2 arable fields with associated boundary hedgerows and vegetation. The land is generally flat although falls from the north to the south-west by approximately 2m (Doc 42 Appendix LA.1 Figure 1 & CD D4).
- 3.2 The site is located to the north-west of the 81ha Ministry of Defence (MoD) - Ashchurch Depot. Declared surplus to requirements in 2013, the MoD site is occupied by numerous large storage buildings, various ancillary buildings/structures and extensive areas of hardstanding. The central and eastern part of the site is dominated by large buildings with the western part comprising large areas of grassland and mature trees.
- 3.3 The appeal site is bounded to the west by the Bristol to Birmingham mainline railway line, beyond which lies the Northway residential area. To the north, the site is bounded by Aston Fields Lane with agricultural land beyond. The southern boundary is formed by an area of woodland and the Northway Brook beyond which lies agricultural land and the village of Ashchurch as well as a disused railway line that served the MoD site. To the east, the site is adjoined by agricultural land. Some 3km to the east is The Cotswold Area of Outstanding Natural Beauty (AONB).
- 3.4 The boundaries of the site are defined by mature hedgerows to the north, east and west and by a belt of mature woodland planting along the southern boundary. A hedgerow runs in a north-south direction through the site approximately 80m from the western boundary. A PROW runs in a north-south direction from Aston Fields Lane at the north-west corner of the site southwards along the site's western boundary before gently curving east and continuing to extend south across the adjoining agricultural land and disused railway line and across the A46 (T). In the south-west corner of the site is a pedestrian footbridge that links to Northway Lane. To the north, the PROW, Footpath 21, continues north-eastwards.
- 3.5 Aston Fields Lane is part of National Cycle Network Route 41 and links Bredon Road (B4079) to the east with the Northway residential area to the west. Aston Fields Lane between the level crossing and its junction with Bredon Road is an unlit single track road varying in width between 3m and 4m with 2 sets of Z-bends (Doc D6 page 21 Photograph 3.3 & page 29 Photograph 3.7). There are several short sections along the lane where the edge of the carriageway has a shoulder of crushed stone that allows vehicles to pass each other (Doc D6 page 30 Photograph 3.8). At the north-western corner of the site is the Northway Level Crossing, an automatic half-barrier crossing (AHB) that controls access across the Bristol to Birmingham railway line (Doc D6 page 29 Photograph 3.9). The railway line is twin track with a line speed of 100mph and caters for some 150 train movements daily. Some 800m to the south and accessed off Northway Lane is Ashchurch Railway Station.
- 3.6 Beyond to the west is Grange Road, which is in 2 parts. The western end comprises a single carriageway with a width of 6m and a footway with a width of 1.8m on the north side and a footway with a width of 2m on the south side (Doc D6 page 28 Photograph 3.6) . This part of the road is approximately 95m long between the junction with Hardwick Bank Road and

the truncated section of Grange Road that leads to the south. The second part is the eastern end where the road comprises a single carriageway with a width of between 5m and 5.5m with a footway on the southern side with a width of 1.8m to a point approximately 70m west of the Northway Level Crossing.

- 3.7 Grange Road joins Hardwick Bank Road (Doc D6 page 25 Photograph 3.5). Hardwick Bank Road has a carriageway width of 6m and is a bus route. The road is subject to traffic calming in the form of speed cushions. Hardwick Bank Road links to Northway Lane (Doc D6 page 23 Photograph 3.4). Northway Lane is a district distributor road with a carriageway width of 7.3m; it is a bus route and is subject to traffic calming including sections of priority working. On-street parking occurs along much of its length. Off Northway Lane opposite the junction with Grange Court is a local centre that includes a supermarket, a post office, a pharmacy and a public house. Further to the south, accessed from Steward Road and Lee Road is a small terrace of shops, which includes a general store and hot-food takeaway. Off Virginia Road and Hardwick Bank Road are 2 primary schools.
- 3.8 To the south, Northway Lane links to the A46 (T) Ashchurch Road, which links to the M5 at Junction 9. To the west, Northway Lane crosses the M5 and links to the A438 Ashchurch Road to the east of Tewkesbury town centre. From the junction with the A46 (T) Northway Lane passes through an industrial estate and then passes over a disused stretch of railway. The railway bridge has been narrowed to a single track and traffic is controlled by traffic lights. Beyond, the road enters the Northway residential area.

4. Planning Policy and Other Relevant Guidance

Development Plan

- 4.1 The development plan comprises saved policies in the *Tewkesbury Borough Local Plan to 2011* adopted in March 2006 (LP) (CD A1).
- 4.2 The site does not lie within a settlement. Outside settlement boundaries Policy HOU4 says that new residential development will only be permitted where it is essential for agriculture or forestry, the conversion of an existing building or the provision of affordable housing (AH). Policy HOU13 says that on sites of more than 15 dwellings the lpa will seek the provision of affordable housing (AH).
- 4.3 Policy LND4 seeks to protect the rural landscape and Policy LND7 requires a high quality landscape scheme as an integral part of the development. Policy RCN1 sets out the requirements for outdoor sport and play provision. Policy GNL11 seeks to ensure that the necessary infrastructure and public services available or are capable of being made available.
- 4.4 Policy TPT1 indicates that development will be permitted where: (a) provision is made for safe and convenient access by pedestrians and cyclists; (b) an appropriate level of public transport service and infrastructure is available, or can be made available; (c) the traffic generated by the development, together with that arising from other existing or planned development, would not impair the safety or satisfactory operation of the highway network, and (d) highway access can be provided to a standard that would not adversely affect the safety or satisfactory operation of the highway network.

Emerging Development Plan

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy November 2014

- 4.5 Tewkesbury Borough Council is collaborating with Gloucester City Council and Cheltenham Borough Council to prepare a Joint Core Strategy (JCS) to guide development up to 2031 (CD A3). The JCS was submitted for examination in November 2014 and is still under examination.
- 4.6 Whilst JCS Policy SP1 identifies a need for some 30,500 homes this figure is the subject of dispute as part of the examination process. JCS Policy SP2 highlights that Tewkesbury's housing requirement will be met in part through a Strategic Allocation at Ashchurch.
- 4.7 JCS Policy SA1 identifies Strategic Allocations across plan area and Strategic Allocation A8, MoD Site, Ashchurch includes the appeal site. JCS Policy SA1 identifies the spatial extent of the A8 Site and provides an indicative site layout (CD A3 page 156). Site A8 is listed as providing some 2,725 houses and 20ha of employment land.
- 4.8 JCS Policy SA1 (3) and (6) says that proposals must be accompanied by a comprehensive masterplan and where appropriate an Infrastructure Delivery Plan. This is to show how new development would integrate with and complement its surroundings. Proposals should enable a comprehensive scheme to be delivered across the developable area. Developers must

engage with the relevant infrastructure regulators and providers to ensure implementation of the Infrastructure Delivery Plan or provision of other necessary infrastructure in accordance with JCS Policies INF7 and INF8. Developers must ensure that Strategic Allocations provide an appropriate scale and mix of uses so as to create sustainable urban extensions that support and complement the role of existing settlements and communities. In December 2015, the Examining Inspector (EI) issued preliminary findings indicating that the A8 Site allocation is sound (CD A16).

- 4.9 JCS Policy SD5 requires where appropriate, that development proposals, are accompanied by a masterplan and design brief so as to demonstrate that various design principles have been addressed. The objective is to ensure that development makes a positive contribution to providing better places for communities. JCS Policy SD7 requires development to protect the landscape, and have regard to local distinctiveness and historic character of the landscape as well as considering landscape and visual sensitivity. JCS Policy SD10 seeks to protect biodiversity and geodiversity resources in the area.
- 4.10 JCS Policy SD12 requires that developments provide an appropriate mix of housing, including AH. On sites of 10 or more dwellings, JCS Policy SD13 seeks the provision of 40% AH.
- 4.11 In February 2016, the JCS authorities submitted proposed revisions to JCS Policy SD 13. The revised policy seeks to reflect the differing viability scenarios of different scales of development and locations in the JCS area (Doc 58). On the Strategic Allocation sites, the revised policy seeks 35% AH with proposals being accompanied by detailed viability evidence to determine the right balance of AH and infrastructure contributions. The policy indicates that some sites may enable additional levels of affordable housing to be delivered above the policy requirement. Negotiations will take place to find an appropriate balance between the delivery of AH and infrastructure needs.
- 4.12 The supporting text notes that the latest viability work indicates that for all the Strategic Allocation sites a 35% AH contribution would be viable and allow for infrastructure contributions. However, it notes that some sites will have deliverability and viability challenges and a balance between AH and infrastructure provision would have to be struck. Some sites may be able to deliver more than 35% AH whilst others may require greater focus on infrastructure provision to ensure delivery of the site.
- 4.13 JCS Policies INF1 and INF2 seek to ensure that developments provide safe and accessible connections to the transport network to enable travel choice for residents and commuters. All proposals should ensure there is safe vehicular access to the highway network and that any increase in traffic does not result in a severe impact. Permission will only be granted where the development impact is not severe or where a severe impact can be acceptably mitigated.
- 4.14 JCS Policy INF4 refers to green infrastructure and amongst other things seeks to ensure that development of the Strategic Allocations deliver connectivity through the site linking urban areas with the wider rural hinterland. JCS INF5 indicates that where development adds to the need for community facilities it should be met fully on-site or as a contribution to off-site facilities. JCS INF 7

seeks to ensure that new development will be served by adequate on and off-site infrastructure and services and permission will only be granted where sufficient provision has been made for infrastructure and services. JCS Policy INF 8 indicates that arrangements for the direct provision or financial contributions towards the provision of infrastructure and services will be negotiated with developers. Where there is concern that the provision of infrastructure and services has an adverse impact on the delivery of the development an independent viability assessment will be required.

5. The Case Robert Hitchens

The material points are: -

Introduction

- 5.1 The inquiry started with 10 putative RfR. However, examination highlighted their lack of substance and at the close only the residue of 3 RfR were left.

Issues

- 5.2 These are:

- (1). the implications for highway and pedestrian safety on the strategic and local road network;
- (2). the effect on the character and appearance of the area; and
- (3). the effect on the strategic development site SA8 in the emerging JCS.

Highway and Pedestrian Safety

- 5.3 This issue has 3 parts: (i) the rail issue; (ii) the strategic road network; and (iii) the local road network.

The Rail Issue

- 5.4 Network Rail (NR) says that the scheme is objectionable because it would give rise to a serious risk of danger to the public. Whilst NR raises concerns about safety and performance, it accepts that safety is the primary consideration and that performance is subordinate. Indeed, the performance issue is not mentioned in any of the representations submitted by NR in opposition to the scheme.
- 5.5 NR accepts⁴ that the All Level Crossing Risk Model (ALCRM) provides an independent and objective method for providing a quantitative assessment of safety. ALCRM provides a scale by which changes in the operation of a crossing can be objectively assessed in order to ascertain their impact on safety. That impact can be positive or negative and as NR explains, "*This helps to guide decision making.*" (Doc 45 paragraph 4.5.3).
- 5.6 The ALCRM has a value for individual risk (a letter) and a value for collective risk (a number) so that an overall judgment can be formed about all the potential implications for safety. Once the ALCRM scale is understood, the safety implications of a development may be easily understood. It is simply a question of providing an ALCRM value to the revised arrangements and then comparing that to the previous scores to ascertain if safety has been improved or harmed. Here, everything is agreed and nothing is disputed.
- 5.7 The present ALCRM rating for the Northway Level Crossing is D2 (Doc 55 paragraph 3.9). This is a mid-range score derived, in part, from the fact that

⁴ X-Examination of Mr Mayo.

the crossing is currently controlled by an Automatic Half Barrier (AHB). An AHB is an insecure barrier that provides the public with only limited protection. A manually controlled barrier with obstacle detection (MCB-OD) is far safer and provides significant safety enhancements over an AHB.

- 5.8 The appellant and NR have agreed that the development should fund an upgrade of the crossing from an AHB to a MCB-OD (Doc 12 Second Schedule paragraph 6 & Doc 55 paragraph 3.18). A condition to require the installation of the MCB-OD after the successful completion of the statutory formalities is agreed and NR has signed a SoCG which contains the following assurance: "... *should the Inspector recommend and the Secretary of State agrees to allow the appeal, Network Rail will assist the implementation of an upgrade ...*" (Doc 28 Condition 31 & Doc 55 paragraph 5.1). The SoS can confidently impose the condition on the basis that it would lead to the early upgrade of the Northway Level Crossing.
- 5.9 It is also agreed that the introduction of a MCB-OD would improve the safety of the operation of the Northway Level Crossing (Doc 55 paragraph 3.19). The ALCRM safety rating would move from D2 to G3. This is an important piece of evidence that demonstrates that all parties accept, without any controversy, that permission for this scheme would lead to a material enhancement of the safety of the operation of Northway Level Crossing. However, this is the very opposite of the complaint made by NR in its objection to the appeal scheme. The agreed evidence shows that NR's initial objection is wrong and all parties at the inquiry welcome the improvement in safety as a recognised benefit of the scheme.
- 5.10 It is also agreed that 150 units in the south-west part of the appeal site may be occupied before the works to upgrade the Northway Level Crossing are carried out. This is because the trip generation which would derive from 150 houses would not bring the ALCRM safety rating of D2 into any other band. The effect of that level of trip generation would be broadly neutral and so the restriction of development is only justifiable above that number.
- 5.11 As to "*Performance*", NR accepts this is a second order issue. In the first place, there is always a balance to be struck between safety and performance and any enhancement in the former is bound to affect the latter. This consideration should therefore only operate to restrict the grant of permission if there is something particular to the Northway Level Crossing that calls for exceptional treatment. NR agrees⁵ there is nothing particular about the Northway Level Crossing that distinguishes it from any other crossing point where a MCB-OD has been deployed. The performance question is therefore reduced to a generic and theoretical concern which applies everywhere. This heavily dilutes its significance as a consideration in the determination of this appeal. If an unproven theoretical possibility of delay were sufficient to prevent development it would undermine the Government's ambition to expand significantly the supply of housing land. The absence of any empirical analysis or data to support the theoretical concern about performance is a decisive blow to this as a consideration against the grant of permission.

⁵ X-Examination of Mr Mayo.

5.12 Despite agreeing all of these matters, NR persists in a demand that permission should be refused because it prefers to see the crossing point closed altogether. The problem with this argument is that it cuts across the whole approach adopted in the JCS. The EI has been made aware of the circumstances of the environment around Strategic Allocation A8 and has declared the draft policy sound (CD A16). No one has suggested to the EI that the crossing point should be closed. This includes NR who has participated in the JCS Examination and whose representations made no reference to this matter (Docs 5 & 6). Further, as the appellant explained⁶, there were very good reasons to resist any proposed closure of the Northway Level Crossing because that would require all east-west traffic to cross the railway line at a single point on a trunk road which should not, in principle, carry local traffic.

5.13 On this matter the appellant submits that there is no rail-related reason to withhold planning permission and invites the SoS to impose the conditions suggested, which would allow an early and welcome improvement to safety.

The Strategic Road Network (SRN)

5.14 The effect of the proposal on the SRN is the subject of comprehensive SoCG between the appellant and HE (Doc 56). HE accepts that the impact of development traffic on the SRN could be acceptably mitigated by a scheme to expand the capacity of the westbound approach of the A46 (T) towards the M5 junction 9 together with other minor adjustments on the circulatory between the A46 (T) westbound arm and the southbound entry to the M5. Subject to the imposition of 2 conditions relating to implementation of the proposed works and a cap on development until the works have been completed HE has withdrawn its objection (Doc 28 Conditions 29 & 30). As a result the lpa no longer pursues RfR 2.

Local Road Network

5.15 The lpa opposes the grant of planning on transportation grounds but in none of its evidence has it shown any appreciation of the high policy threshold which applies to this issue. The Court of Appeal⁷ recognises that Framework paragraph 32 has introduced a new and hitherto unknown test in policy. Framework paragraph 32 is deliberately intended to restrict the circumstances in which permission is refused on transportation grounds. It is first necessary to understand the full extent of the mitigation measures proposed to offset the highway impacts. This leaves the "*residual*" effects. These must then be assessed as "*severe*" in order to potentially justify the refusal of planning permission. Potentially is highlighted because even if the residual effects were found to be severe, that finding takes its place as an "*adverse impact*" to be balanced against other matters in under the test set out in Framework paragraph 14.

⁶ Mr Finlayson.

⁷ Redhill

- 5.16 The appellant submits⁸ that the access arrangements shown on Drawing No. H510/4 Rev A are safe. The important point to note here is that the proposal realigns Aston Fields Lane so as to remove 2 right angle bends (Plan B). This is a significant safety improvement in a context where the Ipa has complained about unsatisfactory forward visibility on that road. Aston Fields Lane would be improved by localised widening at various locations which reflect the de-facto operation of that road as revealed by car tracks overrunning the shoulder of the road in various places. There is a balance to be struck between improving the road enough to safely accommodate the development traffic and not improving it too much so as to attract additional traffic with no need to access the appeal site. The works proposed strike the right balance (Plan I). These works could all be carried out on highway land or on land controlled by the appellant and may be imposed by condition. The mitigation works also include the upgrade costs, circa £1.5m, to the Northway Level Crossing to full obstacle detection, which would be met in full by the scheme.
- 5.17 In light of the above, what is the residual harm and is it severe? Whilst traffic on Aston Fields Lane would increase by 45%, the percentage increase is meaningless where the discussion concerns small sums and the absolute numbers must be considered. The 2-way flow in the peak hour would increase by 32 vehicles. One additional vehicle every 2 minutes would have a negligible impact on the operation of Aston Fields Lane to the point of it being immeasurable. Such impact as this may have is more than outweighed by the beneficial effects of the proposed improvements and there are no "residual" effects on Aston Fields Lane.
- 5.18 The Ipa complain about the lack of safety at the junction with Bredon Road. Bredon Road junction is both existing and operational and the relevant standard for junction visibility is set out in Manual for Streets (MfS) 2. A speed survey on Bredon Road shows the 85th percentile traffic speed as 47.9mph. A forward visibility envelope is available for a distance of some 102m from the junction (Doc 15 paragraphs 7.45 – 7.50 & Doc 16 Appendix PF5). The appropriate forward visibility provision for a speed of 47.9mph is 90.3m. This is within the available visibility of 102m and confirms the minimum requirements for forward visibility are met.
- 5.19 Junction visibility for traffic on a minor road joining a major road has 2 components. The x-distance is the distance back along the minor road from where visibility, the y-distance, along the major road is measured; this is the speed-related SSD. To the right the visibility splay available has a y-distance of 94.7m from an x-distance of 2.4m. The required y-distance for the speed of traffic is 88m confirming that the minimum visibility requirement is met (Doc 16 Appendix PF5). The visibility provision to the left is 130m and in excess of the minimum requirements for a speed limit of 60mph. Thus the junction is appropriate for the speed of traffic on Bredon Road.
- 5.20 The Ipa's case depends on the strict application of abstract design guidance derived from DMRB⁹. MfS 2 indicates that most of its advice can be applied

⁸ Mr Finlayson

⁹ Design Manual for Roads and Bridges.

to a highway regardless of the speed limit and says that for a scheme affecting non-trunk roads designers should start with MfS 2 (Doc 16 PF3). It goes on to say that DMRB is only used where the guidance in MfS is not sufficient or where particular evidence leads a designer to conclude that MfS 2 is not applicable. Where there is doubt as to which guidance is used speed measurements should be undertaken to determine which is the most appropriate. Here, traffic speeds and the available visibility do not suggest a need to apply DMRB.

- 5.21 The contest between DMRB and MfS 2 may be a valuable exercise in a situation where it is proposed to create a new access point onto a fast trunk road. The SoS does not have to speculate on how the Bredon Road junction might operate with the development traffic. That is answered by the operational history of the junction over the last 15 years. There is no accident record and the operation of the junction is safe. There is no evidence to suggest that the addition of 32 trips in the peak hour would make any difference to the operation of the junction. Furthermore, if the Highway Authority (HA) considers there may be a problem in the future they could solve it by lowering the speed limit on Bredon Road. If resort is to be had to standards then the flexible approach invited by MfS 2 should be preferred because this reflects the known reality of the operation of the junction. It is agreed that if MfS 2 is applied then visibility in both directions is satisfactory.
- 5.22 It is clear that the policy advice in Framework paragraph 32 has not been correctly understood and applied by the lpa. When the residual effects of the proposed development are correctly understood there is no sensible way in which they can be described as severe. If that submission is accepted then the highways RfR provides no basis to withhold planning permission.
- 5.23 The lpa submits that permission should be refused because of a failure to take adequate measures to promote sustainable transport. The lpa were shown the detailed and thoughtful letter from Stagecoach and they dismissed it as having no weight (Doc 16 PF8). The lpa were shown the Travel Plan supported by S106 contribution of £104,000. They dismissed this as irrelevant. The lpa were shown the footbridge and the improvement fund of £10,000 and they dismissed this as unspecified and complain that a small section of the population may find the bridge difficult to negotiate. There is, in short, no pleasing the lpa and a judgment is required. This judgement should take into account the existing locational advantages of the appeal site together with the improvements offered in the scheme.

Character and Appearance

- 5.24 The appellant and the lpa agree that the principles illustrated and described in Drawing 15145.101 would adequately mitigate the impact of the proposals (Doc 54 Appendix A). A scheme that follows those principles can be secured by condition and all relevant parties agree that the second main issue is resolved in favour of the grant of permission. (Doc 58 paragraph 4.1.7).

Strategic Allocation SA8.

- 5.25 The lpa acknowledges¹⁰ that there is a distinction between abstract policy and reality. It accepts that the grant of planning permission for this proposal would not prejudice the development of the wider MoD site "*in reality*". That concession brings an immediate end to this issue and all that remains is a sterile discussion about abstract policy.
- 5.26 The lpa's case comes down to an alleged conflict with emerging JCS Policy SA1 (3) and (6). In the first place there is no conflict as a matter of fact. A masterplan has been produced and that meets the substantive requirements of the policy. There is no suggestion in the policy that the whole site must come forward simultaneously as a single scheme. The policy simply requires that as one parcel comes forward it should enable the development of the balance of the land. The Planning SoCG recognises what is apparent from the masterplan, namely: the appeal site can be developed without causing any impediment or restriction on the development of the balance of the land (Doc 58 paragraph 8.26).
- 5.27 Even if all that is wrong, JCS Policy SA1(3) cannot operate so as to prevent the grant of planning permission because it is not entitled to be treated with any significant weight. There are 2 reasons for this position. Firstly, JCS Policy SA1 is a policy for the supply of housing and as such it is treated as not up-to-date under Framework paragraph 49. Alternatively, this policy is the subject of live and unresolved objection and it must be treated as having reduced weight pursuant to Framework paragraph 216. Either way, it cannot restrict the grant of planning permission.
- 5.28 The lpa refer to Framework paragraph 58 and submits that the appeal scheme should be rejected because it does not "*function well*" or "*optimise the potential of the site*". The lpa accepts¹¹ it is imposing a test which was higher than mere acceptability. The lpa asserts that if the SoS found that the appeal proposal was merely "*acceptable*" then he would be obliged to reject them on the grounds that it was in conflict with Framework paragraph 58. The appellant submits that this is a mistaken understanding of the policy.

Conclusions

- 5.29 All parties agree that the decision falls to be made by applying the presumption in Framework paragraph 14 owing to the absence of a 5-year supply of housing land. The appeal proposal offers significant public benefits in the form of market and affordable housing in an area with a recognised deficiency in both, together with significant safety enhancements in the operation of the rail crossing. The countervailing considerations are either agreed to be resolved or exaggerated out of all proportion. On every index of analysis it must be concluded that the adverse impacts do not significantly and demonstrably outweigh the benefits. For these reasons the appellant invites the SoS to grant planning qualified by conditions and S106 obligations.

¹⁰ X-Examination of Mr Smith.

¹¹ X-Examination of Mr Smith.

6. The Case for Tewkesbury Borough Council

The material points are: -

Introduction

6.1 The putative RfR being defended are:

The proposed development does not provide safe and suitable access for all people, in conflict with the NPPF, Policy TPT1 of the Tewkesbury Borough Local Plan to 2011-March 2006 and Policies INF1 and INF2 of the Joint Core Strategy Submission Version November 2014; and

The proposed development fails to take up opportunities for sustainable transport in conflict with the NPPF, Policy TPT1 of the Tewkesbury Borough Local Plan to 2011-March 2006 and Policy INF1 of the Joint Core Strategy Submission Version November 2014.

Access

Northway Level Crossing

- 6.2 The Ipa, the HA, NR and the Office of Rail Regulator (ORR) all have in principle objection to the use of the Northway Level Crossing as the prime access point to serve 550 dwellings. The level of delay experienced by vehicles, pedestrians and cyclists would result in an unsafe crossing with potentially fatal consequences. NR is fundamentally opposed to this proposition regardless of any proposal to upgrade the Northway Level Crossing. The Ipa adopts the evidence of NR and submits that the use of the Northway Level Crossing as the principal means of access to the development would be unacceptable.
- 6.3 The position reached between NR and the appellant by way of the SoCG is in the Ipa's opinion wholly untenable as a matter of law. Its obvious effect is to act as a fetter on the statutory discretion vested in the SoS for Transport and NR. So far as the Ipa understands it, the SoCG appears to amount to the SoS for Communities and Local Government making a decision on the part of the SoS Transport. If the SoS decides that an upgrade to the level crossing is acceptable in principle, then NR is supposed to make every effort to progress the relevant documentation. However, the fact is that NR has a continuing objection to the use of the Northway Level Crossing as the principal means of access to the development regardless of any upgrade. This SoCG appears to have been drafted without any regard to basic administrative law and is a clear cut case of the fettering of a statutory discretion.
- 6.4 The SoS has not been provided with an evidential basis for making any decision in connection with the Northway Level Crossing. The appellant has not provided expert evidence on the point. The appellant's highways witness accepts¹² he is not an expert in this area. The appellant's methodology is painfully sparse and no more than that of the layman downloading material from the Internet. Accordingly, it is impossible to attach any weight to the

¹² X-Examination of Mr Finlayson.

appellant's submissions on level crossings. The only expert evidence before the SoS is that of NR¹³. Acceptance of the appellant's evidence over that of NR would be inviting the SoS to act on the basis of no evidence.

Aston Fields Lane

- 6.5 Aston Field Lane is a rural Class 4 highway with a speed limit of 60mph. The lane is generally 3m wide, has no street lighting or footways and despite occasional gravel shoulders for the majority of its length 2 cars cannot pass. There is limited forward visibility, which increases the chance for conflict between vehicles, pedestrians and cyclists. Despite the upgrades, Aston Fields Lane to the east would not be of an appropriate standard, to accommodate any significant increased traffic flows. The proposed widening of Aston Fields Lane would only extend the road width to 4.2m in places, with a short section at some 4.6m wide. The majority of Aston Fields Lane would remain at some 3m wide. Thus, much of Aston Fields Lane would be unsuitable for 2 cars to pass, and passing places would be infrequent with limited intervisibility.
- 6.6 The Aston Fields Lane/Bredon Road junction has substandard visibility in both directions. Here, as vehicle speeds on Bredon Road are above 40mph, DMRB parameters for visibility should be used, rather than those in MfS 2. The use of DMRB parameters for calculating SSD demonstrates that visibility from Aston Fields Lane along Bredon Road is severely restricted in both directions. The required visibility y-distance based on the national speed limit (100kph) is 215m (CD F5). The junction is narrow and signed to prohibit uses by vehicles over 7.5t except for access. This junction is not safe and is unsuitable to accommodate any additional traffic.
- 6.7 The TA shows that there would be a significant increase in trips along Aston Fields Lane, of up to 300 daily trips, a 45% increase on existing trips (Doc 33 paragraph 6.9). The Ipa evidence on this point has not been challenged. The Ipa accepts that the extra capacity provided on the A46 (T) by the proposed mitigation would slightly reduce the amount of existing background traffic using Aston Fields Lane in the peak hours. Existing background traffic on Aston Fields Lane would re-assign to the A46, thereby reducing rat running to avoid the A46 (T) in peak periods. However, given that HE has agreed a condition that the A46 (T) works would not be completed until the occupation of 150th dwelling, traffic along Aston Fields Lane would increase in both the peak hours up to 150th dwelling and in the off-peak periods.
- 6.8 Aston Fields Lane is designated as National Cycle Route 41. It provides important access for cyclists between Northway and Tewkesbury and the countryside to the north and east. Any significant increase in vehicle traffic on Aston Fields Lane would reduce both the attractiveness and safety of this route for cyclists. The increase in traffic using Aston Fields Lane, coupled with the lack of footways, street lighting, restricted forward visibility and narrow width would increase the likelihood of conflict between pedestrians and vehicles. The development would increase daily vehicular trips over the

¹³ Mr Mayo.

- existing Northway Level Crossing from 677 to 2,250 vehicles, approximately a 330% increase on existing trips. NR advises that the level crossing is not suitable in its current form or with the proposed upgrades to accommodate this level of traffic increase, both on safety and performance grounds.
- 6.9 The use of the Northway Level Crossing with associated delay as the primary point of access for the development by all modes, with the only alternative vehicular route being a long diversion via the A46 (T) and Aston Fields Lane to the east, is of particular concern for emergency vehicles who would be unable to access the site in a timely and convenient manner (Doc 33 paragraphs 6.15 to 6.19).
- 6.10 The link capacity¹⁴ of Hardwick Bank Road and Northway Lane is not disputed and it is accepted that the upgrade of Grange Road to a 5.5m carriageway would allow 2 large vehicles to pass each other where the carriageway is relatively straight. However, it is likely that such a carriageway would require widening on bends, which should be determined by a swept path analysis.
- 6.11 Notwithstanding the above comments, the residential streets of Grange Road, Hardwick Bank Road and Northway Lane are not appropriate to provide through routes to access 550 dwellings and are unsuitable for construction traffic (Doc 33 paragraphs 6.21 to 6.23; Doc 35 paragraph 6.4 & 6.5). Grange Road, Hardwick Bank Road and Northway Lane are all residential in nature and benefit from traffic calming. A school safety zone extends along Hardwick Bank Road to the junction of Grange Road. The traffic calming is designed to reinforce the residential nature of the area and to prevent rat-running to avoid the A46 (T).
- 6.12 A key principle of good urban and highway design is to consider the hierarchy of streets both in terms of legibility, movement and place. To access the site drivers would travel from a high specification road, the A438 and/or the A46 (T), with a primary movement function along roads with a lower specification, Northway Lane and Shannon Way, and then onto more residential roads with strong place identities, Grange Road and Hardwick Bank Road. The route over the Northway Level Crossing and access into the development is designed to a higher specification, a 6.75m carriageway, to accommodate a public transport route, with movement function suitable to access 550 dwellings. This is incongruous and contrary to good design principles in terms of place and movement hierarchy. It results in streets designed to provide a place function being required to provide a movement function to access the proposed development. A comprehensively designed masterplan with direct access onto the A46 (T) for the Strategic Site A8 would address this issue through the provision of an appropriate street hierarchy.
- 6.13 It is recognised that the site is part of a draft JCS Strategic Allocation (A8). However, development of the appeal site in isolation would not achieve safe and suitable access in line with the guidance contained in Framework paragraph 32. Development of the full A8 site would enable a more comprehensive and appropriate access strategy to be provided.

¹⁴ Doc 16 paragraph 7.36.

Sustainable Transport

- 6.14 The scheme fails to take up opportunities for sustainable transport in conflict with the Framework, LP Policy TPT1 and emerging JCS Policy INF1. Pedestrian/cycle connections between the site and Northway Lane would either be via the Northway Level Crossing or the existing footbridge over the railway line towards the southern corner of the site. Delay at the Northway Level Crossing would reduce the attractiveness of walking, and cycling, as a mode of transport to local facilities. When considering the furthest walking distance to/from the edge of the site, none of the facilities would be within acceptable walking distance (Doc 33 pages 19 & 20). The pedestrian bridge provides stepped access only, is unlit and has a high level of overhanging vegetation. Thus, it is unsuitable for some vulnerable pedestrians and in particular disabled people, people with pushchairs and the elderly. The appellant proposes a contribution of £10,000. However, no details of what improvements this would provide have been put forward.
- 6.15 This scheme does not represent the optimal provision for pedestrian and cycle access to this part of the JCS A8 site. The optimal solution would be to deliver comprehensive development for the full allocation, including sufficient local facilities, with appropriate pedestrian and cycle connections to link to the existing pedestrian and cycle facilities on the A46 (T) so as to minimise the need to walk or cycle over the Northway Level Crossing or use the existing railway bridge.
- 6.16 The nearest bus stops would be outside of the recommended maximum walking distance to a bus stop of 400m (Doc 33 pages 21 & 22). The nearest bus stops are some 500m from the centre of the site and 700m from the furthest part of the site. Delay at the Northway Level Crossing would add 250m to the walking distance to a bus stop. Thus, the Northway Lane bus stops would be located 750m from the centre of the site, and 950m from the likely location of the furthest dwelling. Missing a bus would result in waiting approximately 20 minutes for the next service.

The Principle of Development

- 6.17 There are 2 core components to the appellant's case, both of which are disputed by the lpa. First, that the principle of developing this site is established; and/or, secondly, that the grant of permission to develop this greenfield site is justified in order to make a much needed contribution to the current shortfall in the supply of deliverable housing land.
- 6.18 The lpa acknowledges that it cannot demonstrate a 5-year supply of housing land and in line with Framework paragraph 49 development plan policies relating to the supply of housing land are not up-to-date. Accordingly Framework paragraph 14 is engaged. That said, it does not automatically flow from Framework paragraph 14 that planning permission should be automatically granted. A balance has to be struck and proposals may be refused where the adverse impacts of a proposal would significantly and demonstrably outweigh the benefits.
- 6.19 It is true that the site has a certain status due to the fact that it falls within a proposed strategic allocation within the emerging JCS. The EI has issued

Preliminary Findings, which are subject to the determination of the objectively assessed need upon which has yet to be issued and any relevant evidence to be submitted to the JCS Stage 3 hearings. In 2 short paragraphs within the Preliminary Findings, the EI is minded to find that the JCS A8 Allocation "*sound*." On this basis the appellant¹⁵ states that proposed allocation is a material consideration that should be afforded significant weight. That said, the appellant goes on to say that the "*finer detail*" of JCS Policy SA1 remains the subject of unresolved objections and the EI has yet to issue findings on these. The appellant is forced into this dissection of the draft policy because, of course, this site is not the subject of any formal masterplan for the purposes of JCS Policy SA1 (3) and (6). However, it is not right to describe the balance of policy beyond JCS Policy SA1 (3) as "*finer detail*" because they form operational parts of the draft policy.

- 6.20 JCS Policy SA1 (3) and (6) spell out that policy is based on the masterplan approach and are indispensable to the application of the draft policy. So far as this site is concerned masterplanning is essential to the emergence of the A8 allocation as a whole and the appellant's disaggregated approach would prejudice its delivery in accordance with the objectives of JCS Policy SA1. The Ipa's position on this point of principle is that it is highly likely that this site will come forward, but that it is essential that, first, JCS Policy SA1 is settled in full and then that the site is brought forward on that policy basis. The Ipa's recommendation for refusal is predicated on the basis that the delivery of this site will not be completely precluded, as is often the case, but delayed to the proper time.
- 6.21 The appellant's approach to emerging JCS Policy SA1 appears, at first glance, to be schizophrenic. On the one hand, the appellant¹⁶ seeks to attribute considerable weight to the policy; that is, so long as it supports the contention that the principle of residential development is being established by way of the JCS process. However, when the Ipa pressed the point that one could not, properly, subdivide the policy in that way, the appellant moved away from JCS Policy SA1. This is on the purported basis that it is a policy for the supply of housing land and as such, is trumped by Framework paragraph 49. At this point the appellant's approach is confusing. The reality of the situation is that the appellant recognises that the support which is sought to be derived from JCS Policy SA1 is illusory and does not stand up to examination. Accordingly, the appellant has abandoned that particular approach. Having abandoned JCS Policy SA1, the appellant mounts a somewhat curious argument turning on Framework 49.
- 6.22 According to the appellant, if a local plan policy provides that planning permission will be granted for residential development on all sites over 10ha within a particular area then, because that policy is a policy for the supply of housing, it is then rendered void of all meaning by way of Framework paragraph 49. This is notwithstanding the fact that the policy is an enabling policy which seeks to produce the very result which underpins the Framework in the matter of housing. The Framework paragraph 49 argument is simply

¹⁵ Mr Hutchison, paragraph 7.31 Proof of Evidence.

¹⁶ Mr Hutchison

bizarre. Then we take the argument a step further. Somebody comes along with a site which occupies 11ha. The lpa says "well we know about the policy but your proposal does not meet the 10ha criterion". All of a sudden, the proactive criterion based policy is rendered void because the site does not meet the relevant criteria. If the application of Framework paragraph 49 leads to such a series of wholly illogical outcomes then one has to ask whether or not there is something fundamentally wrong with Framework paragraph 49. There is only one possible outcome for all this debate. Namely, that a criterion based policy which is designed to encourage the release of land for residential development is not rendered ineffective by Framework paragraph 49 as this would defeat the overriding objectives of the Framework itself. This is the lpa's argument¹⁷ and it is right. Framework paragraph 49 has to be construed in context and the bizarre outcome contended in respect of it by the appellant can only be reached by taking the words completely out of context.

- 6.23 The appellant asserts that the lpa has gone wrong because it has chosen to use JCS Policy SA1 as the barrier to the release of a housing site. In fact, the Framework paragraph 49 argument has no bearing on the matter at all. The lpa's case on the point is that the release of this site in advance of the masterplan approach envisaged by JCS Policy SA1 would prejudice the future delivery of the allocated site in accordance with that policy. This is not a constraint on housing point, but a forward planning point. The purpose of the planning system is to plan. The route chosen by the JCS authorities, and endorsed by the EI, is to plan by identifying the strategic allocation sites and then to ensure that they are delivered in a planned way. If the grant of an ad-hoc permission within a proposed allocation site would have the effect of compromising the delivery of that site in the form envisaged, then it is prejudicial to the plan making process and nothing to do with Framework paragraph 49.
- 6.24 The appellant refers to the EI's preliminary finding that the strategic allocations policy is sound. In other words, the principle underlying the policy is inconsistent with the Framework. So here the appellant saying that the policy which has been found to be consistent with the Framework is at the same time also inconsistent with the Framework. This has nothing whatsoever to do with the lpa's objection. The lpa's objection has to do with the integrity of the forward planning process. It has to do with carrying the EI's preliminary finding forward. The grant of planning permission for this site at this time would be prejudicial to the delivery of the JCS allocation site in the way anticipated by the EI.
- 6.25 The appellant has from the outset, argued that JCS Policy SA1 supports the principle of residential development of this site. However, JCS Policy SA1 is a criterion based policy and it is wholly inappropriate to cherry pick those parts of the policy which supports one's case and then to ignore the rest because it is not. The EI's finding that the allocation of the A8 Site is sound is a positive step towards JCS Policy SA1 being adopted.

¹⁷ Mr Smith

- 6.26 JCS Policy SA1 (3), provision of a comprehensive masterplan and (6) delivery of a comprehensive Infrastructure Delivery Plan fully accords with Framework policy. Framework paragraph 58 says that it is important to plan positively to achieve high quality and inclusive design with decisions aiming to ensure development functions well and to optimise the potential of the use to accommodate development. Framework paragraph 61 requires decisions to address the connections between people and places and the integration of new development into the natural, built and historic environment. Framework paragraph 64 directs that permission should be refused for development of poor design that fails to take the opportunity for improving the character and quality of an area and the way it functions. Framework paragraph 70 states that planning policies and decisions should plan positively for the provision and use of shared spaces, community facilities and other local services to enhance the sustainability of communities and to ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.
- 6.27 The formulation of a comprehensive masterplan for the A8 Site would allow the design of segments of the wider allocation including the appeal site to be informed and respond to those of the remainder of the allocation. This would enable the A8 Site to optimise its potential to accommodate significant levels of development.
- 6.28 The appellant does not have a comprehensive masterplan. The best that it comes up with is a document which purports to be a comprehensive masterplan but which is, in fact, something adopted by the appellant and the current owners of the MoD site (Doc 19 Appendix 4). There is nothing wrong with this exercise and, indeed, should be commended. However, the other landowners within the JCS A8 allocation are not parties to this document. Not surprisingly, the masterplan ensures that the appeal site is 100% housing. The draft masterplan deals with green infrastructure by placing a large share of it on the land to the extreme east of the appeal site.
- 6.29 This draft masterplan provides a principal road network which, unsurprisingly, supports the access arrangements put forward at this inquiry. This is notwithstanding the fact that the linkage arrangements between the north and south of the JCS A8 allocation would, in all likelihood, increase traffic flows along Aston Fields Lane and, in particular, increase flows across the Northway Level Crossing; the appellant¹⁸ agreed that this was likely. If that is the case then the ALCRM G3 risk rating, which would be applicable to the MCB-OD arrangement, would have to be revisited. Therefore, on the basis of the appellant's masterplan, any benefit deriving from the upgrade could then be lost. Indeed, it is arguable that the net result of the application of the masterplan could be to drive the risk rating back up.
- 6.30 This masterplan has not been thought through, it has not been endorsed by the lpa and it has not been agreed by all of the landowners within the JCS A8 site. The ES and the Design and Access Statement barely refer to the A8 Site (CDs D5 & D4). Neither document demonstrates that the composition and

¹⁸ Mr Finlayson

disposition of the appeal proposal is a response or reflects this strategic allocation. With these omissions, it cannot be assured that the resultant proposal would ensure that the wider A8 site would function well over its lifetime or that the appeal proposal would not prevent the potential of the remainder of the A8 site being optimised.

- 6.31 Judged in the context of proper masterplanning, the appellant's proposal would entail the creation of a sub-optimum vehicular access. The optimum access arrangement would be to serve the appeal site from an access onto the A46 (T) via the MoD land to the south or south-east and/or Bredon Road in the area of the MoD site. Such an arrangement is not achievable by the appellant but can be achieved through a comprehensive masterplan for the whole A8 Site and agreement being reached between the appellant and the MoD. Thus, the sustainability of the location of the appeal site is severely compromised by its relatively isolated location in relation to A46 (T).
- 6.32 As to potential links with the remainder of the A8 Site, it is acknowledged that at this outline stage, there would be little to prevent the principle of these links being created. However, the full implications of the creation of such links in terms of land use and alignment of roads upon the appeal site and the wider A8 Site cannot be known until a comprehensive masterplan has been formulated.
- 6.33 Further, the creation of links with the remainder of the A8 Site allied with the creation of the access to Aston Fields Lane would allow residents of the strategic allocation direct access to the lane, the level crossing and the eastern exit. Given the significant concerns the Ipa and NR have regarding the use of Ashton Fields Lane and the Northway Level Crossing, the approval of the appeal proposal would not ensure that the remainder of the A8 Site or that the potential this strategic allocation would be optimised.
- 6.34 It is important that the development of the appeal site in terms of the provision of essential infrastructure is not considered in isolation but rather in conjunction with that of the remainder of the A8 Site. A development of approximately 2,250 dwellings would necessitate new community facilities the planning and optimum location of which is more likely to be achieved successfully by a comprehensive masterplan approach as an integral element of this Strategic Allocation rather than by the incremental planning of segments of the site as the appellant proposes.
- 6.35 Turning to the delivery of housing against the Ipa's shortfall, this is where the appellant's mistakes have crept in. The housing delivery trajectory for this site should be at the forefront of the appellant's case, but it is not. There is a summary table¹⁹ but no explanation of how it was derived. The point is, of course, that a purported contribution to a 5-year shortfall is about how many houses can be delivered within that 5-year period. This is not normally a problem with small sites, but large sites have a longer delivery trajectory. To take an obvious example, they cannot deliver more houses than they can actually sell on an annual basis. The housing market will bear what it will

¹⁹ page 10 of Mr Hutchison's proof

bear within any particular area. Even working from this sparse table the Ipa has difficulty in seeing how this site could contribute more than 100 houses within the 5-year period particularly when the issues in respect of the Northway Level Crossing are taken into account.

Affordable Housing

- 6.36 The appellant's evidence²⁰ sets out that 40% of the proposed dwellings would be provided as affordable units i.e. policy compliant. A SoCG was to be signed off on that basis when the Ipa was advised that the appellant was not now proceeding on this basis. At about the same time, the UU in respect of AH was amended by the appellant to reflect a revised position.
- 6.37 According to the appellant, there has been a change in the emerging JCS policy on the basis that the Strategic Allocation sites would, now, be expected to deliver 35% AH as opposed to the 40% previously promised by the appellant. The appellant's position on this point is based on JCS documentation that has emerged very recently and it is possible that this is simply a misunderstanding upon which the appellant is promoting this stance. The appellant's misconception is based upon 2 JCS documents and the interaction between them.
- 6.38 Draft JCS Policy SD13 is the one which appears to be the cause of this problem. So far as is material this, as submitted for examination, provides: *"The JCS local authorities will seek through negotiation to deliver new affordable housing as follows: on sites of 10 or more dwellings (or covering 0.4 hectares or more of land), 40% affordable housing will be sought".*
- 6.39 In February 2016, the JCS team produced a note "Update on JCS Policy SD 13 - Affordable Housing" for the JCS Inspector – EXAM 178. The note starts by saying that it sets out proposed revisions to JCS Policy SD13 and that these revisions have been made to reflect evidence in a document EXAM 176 entitled "Plan Viability, Community Infrastructure Levy and Affordable Housing Study" (January 2016). The note further states that there still needs to be a review of the level of requirements by the JCS authorities to determine the appropriate balance between AH provision and contributions towards infrastructure needs and there may also be further amendments to the policy following JCS examination session on viability, AH and infrastructure. EXAM 178 then goes on to propose an amendment to JCS Policy SD13 so that paragraph SD13 (1) is amended and a paragraph SD13 (1) (iii) is inserted as follows: *"iii. Within the Strategic Allocation sites 35% affordable housing will be sought Proposals on each site will be accompanied by detailed viability evidence to determine the right balance of affordable housing and infrastructure contributions."* and *"The viability of a site may enable additional levels of affordable housing to be delivered above the requirements set out in this policy. The JCS authorities will negotiate with developers to find an appropriate balance to deliver affordable housing and infrastructure needs."*

²⁰ Mr Hutchinson

6.40 Under this proposal, 35% AH will be sought within Strategic Allocation sites, with paragraph SD13 (1) (iii) in the note being the source of the 35% in discussion. But the proposals on each site would need to be accompanied by detailed viability evidence to determine the right balance of AH and infrastructure contributions. The note also proposes as part of a new paragraph 4.13.7 with the policy explanation text the following wording:

"4.13.7The Strategic Allocations in the JCS present altogether different viability considerations from the rest of the area. The latest viability work evidences that, for all Strategic Allocations, a 35% affordable housing contribution would be viable while still allowing for contributions towards infrastructure. However, it is recognised that each of these allocations will have their own individual deliverability and viability challenges. Therefore there will need to be balance between infrastructure provision and affordable housing in the context of deliverability. Some development proposals on the Strategic Allocations may be able achieve greater than 35% affordable housing while others may require a greater focus on infrastructure provision to deliver the site. Each proposal will be submitted with a detailed viability evidence to determine the appropriate balance."

6.41 An independent study was commissioned by the JCS delivery team to inform not only the AH policy, but also as a viability assessment to inform the assessment of CIL. Viability calculations in respect of sites in the CIL world would have to take into account the percentage of AH to be provided, any other direct delivery costs to be imposed against the potential route of additional or alternative funding towards infrastructure under CIL, and the headroom as to what would otherwise be net development profit.

6.42 One of the main determinants for the quantum of AH on any given site is the net residual value as derived by an appropriate viability assessment. If the net residual value is reduced by a CIL payment then, clearly, there will be less money available for the purposes of AH and vice versa. So, when the proposed amendment to JCS Policy SD13 state that proposals on each site will be accompanied by detailed viability evidence to determine the right balance of affordable housing and infrastructure contributions, it is referring to the balance between AH and infrastructure, including any CIL contributions that may be relevant. However, this appeal application has nothing to do with the CIL world.

6.43 The EI has yet to issue any findings on JCS Policy SD13. Any main modifications which are considered subsequent to those findings will have to be considered by the 3 JCS Councils. The Councils are not, as yet, in the position of considering any modifications. In the meantime, referring to the JCS Policy SD13 note as the emerging JCS policy on AH is a red herring. For the purposes of this appeal, the Ipa's position is that the level of AH should be as the state of policy now.

The Planning Balance

6.44 The benefits of the scheme are substantially outweighed by the harm created by the scheme. The Ipa has given proper weight to the benefits associated with the scheme. The provision of housing is a significant benefit, particularly

when a proportion of that housing would be AH in an area of need. However, it is important to note 2 significant caveats. First, the site's contribution to the acknowledged shortfall in respect of the 5-year supply would not be 550 dwellings. The appellant's best case scenario is that 200 dwellings would be delivered during that 5-year period. Secondly, a refusal of planning permission on this application does not mean that those houses are going to be lost. There would be a delay when set against the appellant's timeline. However, that delay is fully justified, and indeed imperative, so as to allow the site to be brought forward in accordance with the emerging policies in respect of Strategic Allocations.

- 6.45 The harm that would flow from the use of the proposed access conflicts with development plan and Framework policy. The appeal proposal would prejudice the comprehensive planning of the A8 Strategic Allocation of which the appeal site is a significant and integral component. Accordingly, the Ipa asks the SoS to dismiss this appeal.

7. The Case For Network Rail

The material points are: -

- 7.1 NR is the statutory rail undertaker for the Northway Level Crossing and fundamentally opposes this development as proposed (Docs 43, 44 & 45).
- 7.2 In terms of FWI (Fatality & Weighted Injury) and other measures, level crossings are the largest source of public risk. Government and rail industry policy is to use every reasonable opportunity to eliminate level crossing risk by closure as the first preference, with risk mitigation through improvements or upgrades very much second best. The proposal would result in a 4-fold increase in road traffic over the Northway Level Crossing. This increase would reduce public safety and/or rail network performance to unacceptable levels. A change of this magnitude anywhere would be a trigger for closure, or at least a serious study into the prospect of closure. The appellant has not put that to the test.
- 7.3 The application of ALCRM shows significant changes in risk brought about by the proposed development. The appellant does not adduce any evidence to dispute these assessments. Replacing the existing AHB crossing as a full barriers controlled by obstacle detection (MCB-OD) would reduce the risk score to G3. However, this would place it 6th out of the national population of 81 MCB-ODs in terms of FWI/yr and road closure times would increase significantly because of the basic method of operation. A similar crossing on the same line near Cheltenham can be closed for a total of 29 minutes in every hour at peak times, with recently-observed actual times per closure ranging from 3 minutes and 8 seconds to 9 minutes and 23 seconds.
- 7.4 Level crossing risk assessment is not just about quantified modelling, scoring and comparison of traffic numbers. Just as important is taking into account a significant change to a level crossing's environment and the way the public might use/misuse it. Public misbehaviour causes 97 to 98% of all level crossing incidents. No matter how elaborate the level crossing equipment may be, railway operational performance and public safety is jeopardised when incidents occur. These factors drive NR's qualitative judgements and should be accorded weight.
- 7.5 Aston Fields Lane would change to a suburban, cross-community, link road. Unsupervised children and other vulnerable persons would have to use this link to reach schools, shops and other destinations on the western side. While risk modelling calculates average probabilities, it is impossible to predict the behaviour of users at any particular crossing. Here, a projected 4-fold increase in vehicle users and probably a greater increase in pedestrians and cyclists would lead to a significant increase in misuse. This judgement is based on (a) existing known history of misuse, (b) the lack of an alternative route for most journeys, (c) the predicted road closure times and (d) the addition of significant residential development in close proximity which would transform the crossing's environment from an edge-of-village lane to a cross-community link within a built-up area. A major housing scheme such as this should not be allowed to come forward unless it has been designed in such a way that the adverse impacts upon the railway have been minimised as far as is reasonably practicable. That requirement is not met here.

- 7.6 Central to NR's objection is that even with the Northway Level Crossing upgraded the proposal would have an adverse impact on the railway operation, which in turn would lead to a severe impact on public transport. Compared with AHBs, MCB-ODs do improve the safety risk overall. However at full-barrier types including MCB-OD, road user misbehaviour results in a performance risk through interruption to the closure sequence delaying trains because railway signals cannot turn to green in good time. If this development is allowed, incidents would occur sufficiently frequently to cause an unacceptable impact on railway performance.
- 7.7 An unacceptable impact on railway performance is in direct conflict with the Government's policy to support a low carbon future and in particular Framework Section 4 - Promoting Sustainable Transport. The Framework informs that development should be refused on transport grounds where the residual cumulative impacts of development are severe. According appropriate weight to the impact on rail performance and public transport means that this proposal is unacceptable.
- 7.8 A material change to nature of Northway Level Crossing and/or its immediate approaches triggers an obligation on NR to apply to the ORR for a new Order. The process for applying for an Order runs in parallel within the NR's Governance for Railway Investment Projects (GRIP) process which contains a number of specific stages from initial concept/definition to finished works. A scheme for the Northway Level Crossing would require a minimum of 24 months and could well take longer depending on, design iterations, funding, procurement/resource availability and third party matters outwith NR's control. A risk assessment is required to support each Order application. In this case, for the reasons set out, NR is not satisfied that a risk assessment could adequately demonstrate that a new Order would be justified, and so would decline to submit an application.
- 7.9 NR appreciates that Ashchurch is being promoted as a Strategic Allocation. However, development should not be to the detriment of railway safety and performance. If the appeal is allowed it would result a step change of such magnitude to the crossing's environment that it should trigger its closure and not an upgrade. This would preclude development on the A8 Site until a more appropriate scheme that is acceptable in relation to Northway Level Crossing is provided.
- 7.10 The appellant's scheme fails to accord with the development plan and material considerations do not indicate that planning permission should nevertheless be granted. The adverse impacts on railway performance significantly and demonstrably outweigh the benefits of meeting housing supply in this case. The appeal should be dismissed and planning permission for the proposed development refused.

8. The Cases for Interested Persons

The material points are:

- 8.1 *Cllr. MacTiernan.* Aston Fields Lane, a single track road and a traffic "rat run" and the Northway Level Crossing is busy and dangerous. Traffic generated by the development would exacerbate these problems. Until the A8 Site is large enough to support new schools, children from the development would have to use this dangerous level crossing to access the schools in Northway.
- 8.2 This development is premature and in the absence of a comprehensive masterplan for the whole site it would dictate its overall layout and development. This Strategic Allocation is extremely important to the JCS and Tewkesbury and to grant planning permission now would be wrong.
- 8.3 *Cllr Darby OBE* on behalf of the Kemerton Conservation Trust (KCT) objects on the grounds of adverse landscape and ecology effects (Doc 52). The A8 Strategic Allocation sits within the Lower Carrant Valley an area of considerable ecological and landscape importance.
- 8.4 The appeal site is located some 1.25 miles from the Cotswolds AONB and the site sits within the setting of the AONB. From Bredon Hill extensive views are available over the site and its surroundings. JCS Policy SD8, requires, "*all development proposals in or adjacent to the Cotswolds AONB to conserve, and where appropriate, enhance its landscape, scenic beauty, wildlife, cultural heritage and other special qualities. Proposals will be required to be consistent with the policies set out in the Cotswolds AONB Management Plan.*" It is the scenic beauty of the AONB which must be conserved, rather than that of the site itself. KCT submit that this could be achieved by appropriate screening of the whole of the A8 by providing a 60m deep belt of broadleaved woodland along its northern and eastern boundary.
- 8.5 The screening proposed on the appeal site does not take account of what occurs on the other side of Aston Fields Lane which is in different ownership. KCT cannot support the landscaping layout on the northern part of the site without seeing how it fits into the masterplan for the whole of the A8 Site. The proposed inclusion of a new heritage orchard is welcomed, since traditional orchard is a habitat of Principal Importance under Section 41 of the Natural Environment and Rural Communities Act 2006 (NERC). This habitat is one of those for which the Carrant Catchment is particularly important (Doc 52 Appendix 1, Attachment 2, Figs 1 and 2.).
- 8.6 A large part of the valley lies within the Cotswold Scarp Nature Improvement Area. The Carrant Brook lies approximately 615m from the site. Together with its tributary Squitter Brook, it has been designated as a Worcestershire Local Wildlife Site. As such, it is a locally designated site protected under JCS Policy SD10.2.ii, which states, "*this will be achieved by Conserving and enhancing biodiversity and geodiversity on internationally, nationally and locally designated sites.....ensuring that new development both within and outside such sites has no unacceptable adverse impacts.*" DP Policy NCN3, states that for Key Wildlife Sites, which are equivalent to Local Wildlife Sites in Worcestershire, "*planning permission will not be granted for development which has an adverse effect on these regional or local nature conservation or*

geological interests unless the importance of the development outweighs the substantive interests present".

- 8.7 Natural England makes the following standard comment with relation to Worcestershire Local Wildlife Sites: *"If the proposal site is on or adjacent to a local site, e.g. Local Wildlife Site (LWS), Regionally Important Geological/Geomorphological Site (RIGS) or Local Nature Reserve (LNR) the authority should ensure it has sufficient information to fully understand the impact of the proposal on the local site before it determines the application."* In such a case, KCT interprets "adjacent to" to mean close enough to be harmed by the development.
- 8.8 There are several protected species present in the Lower Carrant Valley in close proximity to the appeal site (Doc 52 Appendix 1). A number of species of Principal Importance (as defined under Section 41 of the 2006) are recorded on land immediately to the north of appeal site, as well as within the neighbouring Local Wildlife site.
- 8.9 Of particular concern to KCT are the nationally important populations of lapwing and curlew, which breed and overwinter on farmland neighbouring the appeal site. Between 1987 and 1998 lapwing numbers dropped by 49% in England and Wales and is Red Listed. Without the appropriate mitigation, disturbance as a result of the proposal could have significant harmful effects on breeding success, and threaten the future viability of the Lower Carrant population. It is therefore important that screening woodlands and Green Infrastructure linkages are carefully planned.
- 8.10 The Ipa has a duty to conserve biodiversity under Section 40(1) of the NERC Act 2006. The most effective way to ensure that biodiversity harms are avoided, minimised or mitigated, as required by Framework paragraphs 109 and 118, is through the masterplanning process for the A8 Site as a whole. This would enable a comprehensive assessment of existing and potential components of ecological networks to be undertaken which can then inform detailed design across the whole site for the benefit of future residents and wildlife alike. KCT supports the Ipa's contention that planning permission should be refused on the grounds of prematurity.
- 8.11 *Cllr. Hardman* set out what he considers would be the effects of this development on the road network in Worcestershire (Doc 53). The County boundary is some 400m to the north of the site, and the plan proposes that there would be access on to Bredon Road, which connects Bredon to Cheltenham through the Aston Cross junction with the A46 (T). This traffic would affect a wide range of Bredon Hill residents in the villages of Kinsham, Bredon, Kemerton, Overbury and Beckford.
- 8.12 Access from Bredon Road to the site is totally unsuitable for the amount of traffic the proposal would generate. Visibility at the junction with Aston Fields Lane is deficient. The access to Tewkesbury would be via a level crossing, preventing easy integration and connectivity to the main urban area.
- 8.13 Given the amount of traffic movements this site would generate the eastbound exit on to Bredon Road would carry the most traffic. Due to the traffic lights at Aston Cross and capacity constraints highlighted by

Gloucestershire County Council, some of this traffic would seek to avoid the A46 (T) and the Ashton Cross junction by turning left into Worcestershire.

- 8.14 Traffic would access Tewkesbury and the M5 via Bredon Road through Kinsham and the B4080 in Bredon and then on to the M5 via Hardwick Bank Road. The junction of the B4080 with this road is a well-known accident spot and Kinsham has an issue with traffic speeding through the village. The extra traffic at peak times would affect the amenity of residents in these villages. Some traffic would continue down the B4080 to the A38 junction in Tewkesbury to access the M50 and M5. Some northbound traffic would travel through Eckington and Pershore to the M5 Junctions 6 and 7.
- 8.15 Traffic wishing to travel east would turn left into Worcestershire, and then take Kinsham Lane to Kemerton, and join the C5 to join the A46 (T) to travel east to Evesham. At times of disruption on the A46 (T) the C5 acts as a relief road with large amounts of traffic traveling round the hill to avoid delays in both directions, much to the detriment of the AONB. The Cotswold AONB states in its AONB settings document that "*development individually or cumulatively giving rise to significant increase in traffic flows to and from the AONB, resulting in loss of tranquillity and erosion of the character of rural roads and lanes*". This is an adverse impact on the AONB.
- 8.16 The appellant has given no thought to the wider impacts of the scheme with regard to Worcestershire's highways or its residents and the appeal should be refused. If development is allowed, it should only occur after the development of the MoD site with direct access onto the A46 (T). Without such an access there is concern over "rat running" that would be generated through the south Bredon Hill villages and the AONB.

9. Written Representations and Consultation Responses

Written Representations at the time of the Appeal

- 9.1 *The ORR* is the independent regulator of safety on the railway network. One of ORR's duties is the management of Level Crossing Orders where public roads cross the railway, on behalf of the SoS for Transport. These Orders are location-specific, and instruct railway operators to make a level crossing to a design specified in the Order, with the interests of public safety and convenience in mind.
- 9.2 AHBs are a suitable and convenient for quiet roads with low pedestrian footfall. Where traffic volumes are higher and larger numbers of pedestrians use a crossing, a full barrier crossing with oversight from the controlling signal box is more appropriate. This is to improve protection of vehicle occupants and pedestrians, and also to protect trains which might be derailed by a road vehicle. AHBs have a history of deliberate misuse by drivers, leading to collisions with trains and fatalities. A particular issue is "blocking back", where road vehicles stop on the crossing because the line of traffic comes to a halt, and a train then approaches. At a supervised full-barrier crossing the signal which protects the crossing will not be cleared if this happens, and the train will be stopped. At an AHB there is no means of stopping the approaching train, and a collision is inevitable.
- 9.3 At Northway the increase in numbers of vehicle and pedestrian users could cause ORR to require NR to re-apply for an Order for the crossing. Depending on the traffic levels and the risk identified, ORR might well require the crossing to be upgraded to a full barrier design. The ORR notes that this would have considerably longer barrier down-time than the current AHB, which may have an impact on traffic.
- 9.4 *Interested Persons and Organisations* express concern over prematurity, the poor quality of the existing access via Northway Lane, Grange Road, the Northway Level Crossing and Ashton Fields Lane and the potential for significant adverse highway and safety impacts. Concern is also expressed that the proposal would have an adverse effect on traffic flows on the A46 (T), an adverse effect on views from the AONB, and adverse effects on flooding and ecology.

Written Representations and Consultation Responses at the time of the Application

- 9.5 *Gloucester Constabulary* seeks the implementation of Secure by Design standards.
- 9.6 *Wychavon District Council* objects on the grounds that access to the site from Aston Fields Lane and poor visibility at the junction with Bredon Road would adversely affect highway safety and lead to rat running through the south Bredon Hill villages. Vehicular access to this site should only occur via the redevelopment of the MoD site. The development would be seen from the AONB and there is inadequate landscape mitigation. Regard should be had to the response of KCT on ecological impacts.

- 9.7 *Bredon and Bredon's Norton Parish Council; Northway Parish Council and Ashchurch Parish Council* object on the grounds of: prematurity prior to adoption of the JCS; adverse highway impacts on Aston Fields Lane, the A46 and at M5 junction 9; an adverse impact on views from the AONB and an adverse impact on local ecology. Ashchurch Parish Council expresses particular concerns regarding the location of the playing fields next to the railway line and the potential for flooding.
- 9.8 *The Cotswold Conservation Board* considers the scheme would have a negative impact on the setting of the AONB.
- 9.9 *Bredon Hill Conservation Group* object on the grounds of: prematurity prior to adoption of the JCS; adverse highway impacts on Aston Fields Lane, the A46 and at junction 9 of the M5; adverse impact on views from the AONB, particularly Bredon Hill and an adverse impact on local ecology.
- 9.10 *Cheltenham and Tewkesbury Cycling Campaign* object to the scheme due to its potential impact on the safety of cycling on local roads, particularly Aston Fields Lane, part of the National Cycle Network Route 41.
- 9.11 *Worcester Regulatory Services* agree with the conclusion of the ES regarding the impact on air quality and suggest planning conditions relating to the installation of low emission boilers and the provision of electric vehicle charging points. Conditions are suggested to control construction impacts.
- 9.12 *Natural England* identifies that the site is located some 3km from the Cotswold AONB and the Upham Meadow and Summer Leasow Site of Site of Special Scientific Interest, some 4.5km and 5km from the Bredon Hill and Dixon Wood Special Areas of Conservation. Natural England has no objection having regard to the proximity of the site to these areas. Natural England identifies that some 21ha of the site falls within the category of Best and Most Versatile Agricultural Land.
- 9.13 *Severn Trent Water* has no objection subject to a condition regarding foul and surface water drainage.
- 9.14 *Stagecoach West* objected at the time of the application. Following discussions with the appellant, the objection has been withdrawn objection on the grounds that the proposal would take up opportunities for sustainable transport (Doc 16 Appendix PF8).
- 9.15 *Interested Persons and Organisations* express concern over: prematurity, the poor quality of the existing access via Northway Lane, Grange Road, the Northway Level Crossing and Ashton Fields Lane; the potential for significant adverse highway and safety impacts; adverse effects on the AONB, and adverse effects on flooding and ecology.
- 9.16 The *Defence Infrastructure Organisation (DIO)* supports the principle of the emerging JCS and has no objections to the principle of residential led development at the appeal site. However, the DIO has significant concerns as to the timing of the application on the grounds that it is premature to the comprehensive master-planning of the JCS allocation and would prejudice the outcome of the JCS Examination. The following detailed comments were made at the time of the application and before the appointment of Vinci St

Modwen as the Strategic Development Partner. That said, they are in my view relevant in that they deal with matters of principle.

- 9.17 The application site is greenfield land and allocated on the back of the adjoining strategic brownfield land at MoD Ashchurch to enable the delivery of a comprehensively planned and sustainable community with linkages to Northway. The approach is irrational as the ancillary and landlocked greenfield portion of the strategic allocation is proposed as an initial phase ahead of the brownfield land without any consideration of how the wider allocation will be delivered and without any regard to the strategic infrastructure requirements. This is a piecemeal approach that would prejudice the outcome of the proposed JCS allocation.
- 9.18 The application site is constrained by poor highway connections, and is physically detached from the A46 (T). Access via Grange Road would result in a higher proportion of vulnerable users using the level crossing. It is noted that the location already has reported incidents involving child behaviour. The TA does not adequately assess the level of impact of the development on the local road network in Northway and along Aston Fields Lane as the traffic model results do not reflect the baseline traffic counts or the addition of the development traffic. The assessment of the impact at the level crossing does not take account of longer delays due to future franchising and more stopping trains at Ashchurch for Tewkesbury Station. It is inevitable that such a substantial scheme in this location would have to be served with a direct access to the A46 (T) via the MoD site. Without these linkages to the A46 (T), safe and suitable access to the site cannot be achieved for all people and the residual cumulative impacts of the development would be severe and, therefore, contrary to Framework paragraph 32.
- 9.19 Although not strictly a response to the planning application it is appropriate that the DIO's comments are be read in the context of statements made by VSM, the JCS Authorities and the appellant since June 2015.
- 9.20 As part of the JCS examination VSM has produced a Participant Statement dated June 2015 and a SoCG dated July 2015 with the JCS Authorities, a SoCG dated July 2015 with the appellant and in December 2015 corresponded with the appellant regarding a comprehensive masterplan. As part of the JCS examination the appellant submitted a response relating to the Strategic Allocation Site dated 8 June 1015 and produced a SoCG with the JCS Authorities dated July 2015.
- 9.21 VSM's JCS Participant Statement (CD A20) indicates amongst other things:
- that the masterplanning process is the most appropriate stage for determining the distribution of land uses within the site;
 - the comprehensive masterplan will demonstrate how the development integrates with and complements its surroundings in an appropriate manner;
 - the requirement for a comprehensive masterplan is supported as an appropriate tool for managing the delivery of the allocation once the JCS has been adopted;

- vehicular access can be achieved from the A46 (T) and Bredon Road;
 - it is important that there is a clear understanding of both the on-site and off-site highways infrastructure required, the costs of delivering the infrastructure are known and funding mechanism will be agreed between the parties to ensure the timely delivery of the infrastructure required to support the phased development.
- 9.22 VSM's SoCG with the JCS Authorities (CD A17) indicates:
- the MoD site will become available in 3 main phases;
 - the strategic allocation can be delivered comprehensively through a masterplanning process to identify the most appropriate location for specific uses and how the development integrates with and complements its surroundings;
 - the masterplan will demonstrate how the site could come forward independently of adjoining landownerships without prejudice to achieving comprehensive development;
 - VSM/DIO will engage with landowners and the lpa to progress a comprehensive masterplan. Reference is made to a separate SoCG with the appellant outlining an approach to collaborative working in order to agree an overarching masterplan.
- 9.23 VSM's SoCG with the appellant (Doc 19 Appendix 3) indicates:
- each party's land could come forward independently of the other without prejudice to achieving a comprehensive development;
 - the parties will work collaboratively to agree an overarching masterplan which will enable each to bring forward its part of the allocation independently. The overarching masterplan is the agreed means of addressing the concerns raised by the DIO in its objection to the appellants planning application at Aston Fields.
- 9.24 The appellant's response to the JCS examination (CD A18) indicates:
- a concern that the JCS Policy SA1 requirement that proposals should be accompanied by a comprehensive masterplan could result in a single dissenting landowner preventing delivery of or causing significant delays to the delivery of development;
 - the appellant interprets paragraph 6 to JCS Policy SA1 to say that as long as it can be adequately demonstrated that each part of the development does not prejudice the wider scheme it could be considered in isolation. There is a lack of clarity between paragraphs 6 and 3 of the policy that proposals must be accompanied by a comprehensive masterplan.
- 9.25 The appellant's SoCG with the JCS Authorities (CD A16) indicates:
- subject to the provision of a satisfactory and achievable access, an overall masterplan and appropriate S106 Obligation to ensure timely delivery of

infrastructure this site can come forward independently of other parts of the allocation;

- the appellant's planning application is accompanied by an illustrative masterplan illustrating how the site can deliver the scale of development proposed. The illustrative masterplan is being further refined to pick up on urban design comments and the appellant's collaboration with VSM shows how the development could be laid out to respond to constraints and opportunities on the site. The appellant is collaborating with VSM and reference is made to the SoCG with VSM.

9.26 In December 2015, the appellant supplied VSM with an overarching masterplan (Doc 19 Appendix 4). VSM comments that:

- the layout for the MoD land is consistent with its scheme produced as part of the selection process; the layout is based on sound design principles but has not been the subject of consultation with or input from the lpa or statutory consultees;
- the principle of a future connection between the MoD land and the appeal site is supported though until the masterplan has been developed the location of the highways link cannot be confirmed.
- the comments on the masterplan should not be taken as unequivocal support for the appeal site. VSM does not comment on the lpa's putative reasons for refusal save for the fact that the development proposals for the appeal site should contribute towards the proportionate provision of the infrastructure required.

10. Conditions & S106 Unilateral Undertakings

(Document 28 contains the suggested conditions discussed at the inquiry.)

- 10.1 In line with Planning Policy Guidance²¹ and to provide certainty, *SC 1* lists the plans for which approval is sought now. Development of the site would be phased and *SCs 2 and 3* provide for the submission of a phasing plan dealing with house numbers and types, infrastructure and access in each phase and the design principles on which each phase is to be developed. *SC 4* identifies the design principles on which the design/layout of Phase 1 would be based. *SC 5* provides for the submission of the reserved matters for each phase.
- 10.2 *SC 6* sets a time limit of 2 years from the date of permission for the submission of the reserved matters and implementation before 3 years from the date of permission or 1 year from the date of the approval of the reserved matters for Phase 1. *SC 7* sets a time limit of 4 years from the date of permission for the submission of the reserved matters for subsequent phases of the development and implementation before 2 years from the date of permission or 1 year from the date of the approval of reserved matters.
- 10.3 The lpa's reason for the suggested timescales is to ensure timely commencement and in order to meet the proposed housing trajectory of the emerging JCS and based on schemes submitted by the appellant where there were significant delays in commencement. The appellant objects to the proposed timescales indicating that delays on previous schemes coincided with the economic recession and the collapse of the housing market. There is no reason to assume that similar delays would occur now. For *SC 6* the appellant suggests a time limit of 3 years from the date of permission for the submission of the reserved matters and implementation before 3 years from the date of permission or 2 years from the date of the approval of reserved matters for Phase 1. For *SC 7* the appellant suggests a time limit of 5 years from the date of permission for the submission of the reserved matters for subsequent phases.
- 10.4 To define the permission and ensure compatibility with the ES, *SC 8* places a ceiling of 550 dwellings on the site. To mitigate the flood risk and in the interests of the appearance of the area, *SC 9* requires details of existing ground levels, proposed ground levels and the slab level of dwellings. In the interests of amenity and ecology, *SC10* requires the submission of external lighting. The appellant considers this condition is vague and unclear. In the interests of proper drainage and the mitigation of flooding, *SC 11* requires the submission and implementation of a surface water drainage strategy.
- 10.5 *SC 12* requires with the submission of the reserved matters a scheme identifying existing trees to be retained and measures for their protection during construction requires details. *SCs 13 and 14* requires details of hard and soft landscaping schemes and that a maintenance programme is included with the reserved matters. *SC15* requires that any trees that are lost or die are replaced. *SCs 12, 13, 14 and 15* are requested in the interests of the appearance of the development and the area.

²¹ ID 21a-022-20140306

- 10.6 SC 16 requires the implementation of a programme of archaeological work. To mitigate the impact of development on its surroundings, SC 17 requires the submission of a Construction Environmental Management Plan and SC 18 sets a time limit on the hours of construction. In the interests of the living conditions of future residents, SC 19 requires a scheme to mitigate noise from the railway line. In the interests of ecology, SC 20 provides for the submission of an ecological management plan and subsequent monitoring.
- 10.7 In the interest of highway and pedestrian safety SCs 21, 22, 23 and 24 provide for the provision of the highway works, the provision and surfacing of the access road and the provision of pedestrian improvement works on Northway Lane and Hardwick Bank Road. In the interests of public safety, SC25 provides for the provision of fire hydrants throughout the development.
- 10.8 In the interests of highway and pedestrian safety and the appearance of the area, SCs 26, 27 and 28 require the submission of details of the arrangements for the future management and maintenance of the estate roads, the layout of the internal access roads, associated drainage and street lighting and the provision of car parking and its retention.
- 10.9 In the interests of highway safety and the free flow of traffic on the SRN, SC 29 provides for the submission of details for improvements to the A46 (T)/M5 junction 9. SC 20 provides that no more than 150 dwellings would be occupied until the agreed improvements to the A46 (T)/M5 junction 9. In the interests of highway, pedestrian and railway safety, SC 31 provides that no more than 150 dwellings are occupied until a scheme to improve the Northway Level Crossing has been approved, a Level Crossing Order has been confirmed by the SoS for Transport and the works have been carried out and adopted by the railway undertaker. In the interests of railway safety, SC 32 provides that no more than 150 dwellings are to be provided in the first phase and for a footpath link to the pedestrian bridge over the railway.

S106 Unilateral Undertakings

- 10.10 The appellant submitted 4 signed S106 Unilateral Undertakings (UU) dealing with (i) Highways and Transportation; (ii) Public Open Space and Communities; (iii) Education and Libraries and (iv) Affordable Housing.

Highways and Transportation (Doc 11)

- 10.11 This UU provides:
- (1) £10,000 for the upgrading of the existing footbridge over the railway line to provide improved facilities for residents travelling between the development and Ashchurch Railway Station and facilities located off the A46 (T);
 - (2) £70,000 for a new footpath/cycleway on the east side of Northway Lane to provide improved facilities for residents travelling between the development and Ashchurch Railway Station and facilities located off the A46 (T);
 - (3) on or prior to the first occupation of a the 150th dwelling pay £289,425 to be used towards the cost of the A438/Shannon Way junction

improvement as part of Gloucestershire County Council's Pinch Point Scheme;

- (4) £10,000 to be used towards enhancement of bus stops and/or crossing facilities on Northway Lane and/or Hardwick Bank Road to encourage travel by bus;
- (5) £104,100 for a Residential Travel Plan and co-ordinator.

10.12 Document 30 sets out the Ipa's justification for Items 2, 3, 4 and 5 under CIL R122 and provides information on the number of existing obligations (CIL R123). For Item 1, (pedestrian bridge) the Ipa identified that little detail on what improvements this sum would achieve have been provided and even with the improvements the bridge would be unsuitable for the elderly, the disabled and those with pushchairs.

Public Open Space and Communities (Doc 12)

10.13 This UU provides:

- (1) for changing rooms;
- (2) £15,000 for the future maintenance of the changing rooms;
- (3) £250,089 to be used towards the cost of either (i) providing a new community building on land adjacent to the land or within the Parish of Ashchurch or (ii) extending and/or improving an existing Community Building within the Parish of Ashchurch;
- (4) £4,550 for the provision of dog waste bins and £2,750 for the provision of dog waste/fouling related signs;
- (5) £279,342 to be used towards the new primary care facilities in Tewkesbury;
- (6) pay the full cost of carrying out improvements to provide a full barrier crossing with obstacle detection at the Northway Level Crossing;
- (7) £40,150 towards the provision of recycling facilities and/or scheme including the provision of any bins and any set up costs on or in the vicinity of the land;
- (8) £290,884 to be used for improvements to Tewkesbury Sports Centre Hall and £35,292 to be used for improvements to the astroturf at Tewkesbury Sports Centre;
- (9) with each submission of reserved matters the submission for approval of a scheme for the provision of public open space to include details of how the POS is to be laid out and where applicable equipped as a local area of play, construct the POS, transfer the POS to the Council with a commuted sum or transfer to another public body or set up a Management Company to manage the POS.

10.14 Documents 29 and 59 set out the Ipa's justification for Items 1, 2, 3, 4, 5, 7, 8 and 9 above under CIL R122 and provides information on the number of existing obligations (CIL R123).

- 10.15 In relation to Item 3 (new Community Building) the appellant comments that, other than a passing reference from the Parish Council, no evidence has been presented to show that existing facilities are deficient and no specific project has been identified where the money would be spent. Part of the Ipa's justification refers to "*maintenance, refurbishment and revenue payments*" which are costs not directly related to the development. On Items 4 (bins/signage for dog waste) and 7 (recycling/waste bins) the appellant submits there is insufficient justification for these requests.
- 10.16 In relation to Item 5 (primary care facilities), the appellant submits that there has been inadequate justification for the requested contribution (Doc 18 paragraphs 8.11 to 8.19; Doc 37). The appellant believes that the contribution relates to the Primary Care Centre at Tewkesbury which is already committed and therefore not dependent on funds from the appeal scheme. The appellant submits that Tewkesbury has a surplus of 3.2 General Practitioners (GP) compared to the national average in 2015. The proposed development would generate some 1,265 patients equating to 1 GP²². The committed facility will allow 3 existing practices with 19 GPs to be located within the new building. The building is shown to have 27 consulting rooms indicating that there is ample spare capacity. As such the requested contribution is not necessary or justified.
- 10.17 On Item 8 above (Tewkesbury Sports Centre), the appellant identifies that despite 3 other obligations being received by the Ipa for this facility, the appellant appears to be expected to pay for some 97% of the total cost listed in the Ipa's justification statement. Moreover, there is no information on how the costs were derived and many appear to relate to ongoing maintenance and refurbishment, which are costs not directly related to the development. There is nothing in the Ipa's justification that shows that the proposed works would result in increased capacity. As such the requested contribution not fairly and reasonably related in scale and kind to the development.

Education and Libraries (Doc 13)

- 10.18 This UU provides:
- (1) securing a bond for £107,800 for the purpose of providing new furniture and/or increasing stock and/or computer resources and/or the cost of extending opening hours and/or the cost of capital works at Tewkesbury Library and/or the mobile library service serving Ashchurch;
 - (2) securing a bond for £364,580 for the purposes of meeting the educational needs of future occupiers of the site by the expansion, remodelling and upgrading of capacity and suitability of Northway Infant School and/or Carrant Brook Junior School;
 - (3) until the date of the first occupation of the last residential unit a site of 1.23ha shall be reserved for a Primary School. If prior to the date of the occupation of the last residential unit the Council declares that it does not require the Primary School site the land will revert to residential use.

²² Figure has been rounded up from 0.8.

- 10.19 Documents 31 and 60 set out the lpa's justification for Item 1 above under CIL R122 and provide information on the number of existing obligations (CIL R123).
- 10.20 In relation to the requested libraries contribution, the appellant submits that there is a lack of precision in what the money to be spent on. Paragraph 1.1 identifies several options expressed in the alternative, which provides no certainty. No breakdown of specified works and costs to be applied to each alternative has been provided.
- 10.21 There are inconsistencies which undermines certainty about what the money is to be spent on. Reference is made to capital works at Tewkesbury Library, presumably expansion, yet the report confirms that there would be no physical expansion. Reference is made to extending the opening hours, which presumably means staffing costs. This is not an infrastructure cost and should be omitted. There is reference to spending to expand mobile library services but no further information on how this is to be achieved and how it directly relates to this development. There is reference to new furniture but it is not explained how this increases library capacity. Whilst the lpa highlights modern expectations for access to IT, this would apply irrespective of whether this development proceeds or not. The fact that it is "*one of the most heavily used libraries*" may be true when it comes to comparing one library against another. However this does not mean that it is operating at capacity.
- 10.22 The Costs Calculator refers to a cost per dwelling figure of £196 but there is no explanation how this figure is arrived at. The evidence provided relies upon an assumption of capital costs for the creation of additional floor space. However, as noted above the money cannot be spent on physical expansion. Therefore this is not a reliable formula for non-floor space items. Accordingly, it is not clear whether the calculator is based on equipped or non-equipped floor space. If it is equipped floor space then there could be double counting of costs. Reference is made to the JCS Infrastructure Delivery Plan. However, this is not an approved document. Furthermore the JCS Examination session dealing with this matter has not taken place and the Delivery Plan is the subject of live objections. Accordingly, it cannot be afforded any significant weight at this stage.

Affordable Housing (Doc 14)

- 10.23 This UU contains 4 schedules relating to the quantum of AH and space standards of the AH (Schedule 1); the AH Matrix relating to the proportion of unit sizes (Schedule 2); the terms and conditions of transfers of the AH land and units to a Registered Provider (Schedule 3) and terms and conditions of sale and transfer of the discounted homes for sale (Schedule 4).
- 10.24 Paragraph 6.1 of Schedule 1 provides that 40% of the total number of dwellings would be AH with the proviso that the percentage may vary within each phase, but not in respect of the land as a whole, from 40% in respect of the number of dwellings in any particular phase by plus or minus 10%.

10.25 Paragraph 6.2 of Schedule 1 indicates that if provision of less than 40% of the total number of dwellings as AH would be in accordance with the most up to date expression of the JCS 2011-2031 AH policy (published as a Proposed Modification to the JCS, or endorsed in an Inspector's Report on the JCS or in the adopted JCS) as at the date of the first submission of an application for reserved matters, to provide such lesser percentage (the Agreed Percentage) of the total number of dwellings with proviso that the percentage vary within each phase, but not in respect of the land as a whole, from 40% in respect of the number of dwellings in any particular phase by plus or minus 10%. Paragraph 6.2 goes on to say that if the SoS or the Inspector states that only the provisions of either paragraphs 6.1 or 6.2 of Schedule 1 apply then the total number of dwellings to be provided as AH shall be as determined by the SoS or by the Inspector. The appellant submits that to reflect the potential change in policy and to keep open all possibilities paragraphs 6.1 and 6.2 are a reasonable stance to take. The Ipa's response is set out earlier in this report at paragraphs 6.23 to 6.30.

11. Inspector's Conclusions and Recommendation

The numbers in [] brackets refer to earlier paragraphs in this report or relevant documents.

Key Matters

- 11.1 These are: (i) the effect on the character and appearance of the area: (ii) the implications for highway and pedestrian safety including the impact on the SRN; (iii) the implications for the development of the JCS Strategic Allocation - Site A8 and (iv) sustainable transport. Other than the effect on the character and appearance of the area and the effect on the SRN, I consider the remaining highway matters, development of the A8 Site and sustainable transport are not discrete matters and I propose to deal with them together.

Policy Context

- 11.2 It is appropriate to deal first with the development plan status of the site and the weight to be attached to relevant development plan and emerging development plan policies. The development plan for the area is the Tewkesbury Local Plan to 2011. The appeal site is outside the settlement boundary and in an area where LP Policy HOU4 says that new residential development will only be permitted where it is essential for, amongst other things, agriculture/forestry or the provision of AH [4.2]. Whilst the scheme would provide AH, the thrust of this proposal is for the provision of market housing. Thus, the appeal proposal is in conflict with LP Policy HOU4.
- 11.3 Noting the conflict with LP Policy HOU4, the lpa and the appellant agree that this policy should only be accorded limited weight. LP policies for the supply of housing are time-expired and out-of-date and the lpa cannot demonstrate a 5-year supply of deliverable housing land [Doc 58 paragraphs 7.10 & 7.11]. I do not disagree with those conclusions.
- 11.4 The emerging JCS is currently being examined. Paragraph 216 of Annex 1 to the Framework indicates that weight may be given to relevant policies in emerging plans. The degree of weight to be attached to an emerging policy depends on; (i) the stage of preparation; (ii) the extent to which there are unresolved objections to relevant policies and (iii) the degree of consistency of the relevant policies to the policies in the Framework.
- 11.5 JCS Policy SP1 identifies the need for some 30,500 new homes and land to support some 28,000 new jobs to be delivered through, amongst others, a Strategic Allocation at Ashchurch. Criterion 3 of JCS Policy SA1 requires proposals involving strategic sites to be accompanied by a comprehensive masterplan and criterion 6 says that development proposals should enable a comprehensive scheme to be delivered across the developable area within each Strategic Allocation and developers should ensure the implementation of the Infrastructure Delivery Plan or provision of other necessary infrastructure.
- 11.6 As I understand it the scale of new housing required is the subject of objections and the EI has yet to identify what is the Objectively Assessed Need. In my experience, and on the balance of probabilities, I consider that the level of housing required is unlikely to fall below that identified by the JCS

authorities. The EI has issued Preliminary Findings and is minded to find that the A8 Strategic Allocation is sound [CD A19]. Whilst the EI has yet to issue a report on the soundness of the JCS as a whole, I consider the JCS is at an advanced stage of preparation and, as I understand it, that relevant objections do not go to the heart of the relevant policies. The detail, which JCS Policy SA1 requires i.e. access arrangements, the disposition of land uses and infrastructure delivery through a comprehensive masterplan would be consistent with the objectives of Framework paragraphs 156 and 157. Moreover, the policy requirement to submit a comprehensive masterplan for a strategic site is wholly consistent with the thrust of Framework paragraph 58, in particular the first and third bullet points. Accordingly, in this case, significant weight can be attached to emerging JCS Policy SA1.

Strategic Road Network

- 11.7 The appellant and HE agree that, subject to improvements to the A46 (T)/M5 Junction 9 junction, the proposal would not have an unacceptable impact on the operation of the SRN [5.15]. The implementation of the necessary works can be controlled by appropriate conditions [10.9, SCs 29 & 30]. Accordingly, this proposal would not have an unacceptable impact on the safety and free flow of traffic on the SRN.

Character and Appearance

- 11.8 This is a greenfield site located on the edge of the built-up area, where the immediate landscape is dominated by the Northway residential area and the extensive MoD depot. As part of the evidence base for the JCS, the Strategic Allocation Sites were the subject of a landscape and visual sensitivity assessment. Regarding the A8 Site, the study concludes that, whilst the the open land immediately to the north of the MoD depot is visible from key receptors within the AONB it has very low amenity value [CD A6].
- 11.9 The lpa and the appellant agree that the landscape and visual impacts arising from the development of the appeal site would be reduced through landscape mitigation and that, subject to the principles of mitigation illustrated in Drawing No. 15145.101 being secured, an acceptable level of landscape mitigation could be achieved [Doc 54 paragraph 4.17 & Appendix 1]. Suggested Condition 4 includes reference to Drawing No. 15145.101 forming part of the Design Principles scheme required as part of the reserved matters.
- 11.10 I recognise that the development would result in a change in the landscape and would have an impact on views obtained from the AONB. However, with landscape mitigation, and in light of the conclusions of the landscape and visual sensitivity study, the immediate context within which the site is located and the degree of separation to the AONB, I consider that, with mitigation, the proposal would not have an unacceptable impact on the character and appearance of the area [Doc 22 Appendix A, Figure 7.18 Photographs 15-20]. As such I also conclude that the proposal would not have an unacceptably adverse effect on the setting or scenic beauty of the Cotswold AONB [8.4, 8.5, 9.6-9.9 & 9.15].

Highways, the Strategic Allocation & Sustainability

- 11.11 In terms of capacity, I have no reason to conclude that Northway Lane, Hardwick Bank Road and the upgraded Grange Road would be unsuitable to accommodate the likely level of traffic generated by the proposal on its own. Similarly, in the context of the appellant's scheme in isolation, I agree, on the evidence before me, that the proposal to replace the AHB crossing with a MCB-OD crossing would materially improve the safety of the Northway Level Crossing [5.9]. That said, the proposed development and the subsequent development of the A8 site would bring about a step change in the immediate environment and context within which the crossing would operate, which NR suggests could have an adverse impact on public safety [7.5]. This is something I will return to later. What is clear is that the proposed upgrade to a MCB-OD crossing would have an impact on the operation of the crossing in particular the length of time the barriers would be closed.
- 11.12 The upgrade to a MCB-OD crossing would result in a delay for drivers [7.3 & 9.3]. I have no reason to dispute NR's evidence that a similar crossing on the same line has resulted in extended closures particularly during the peak hour [7.3]. In this context it strikes me that drivers from the development, particularly those travelling during the peak hours, would seek to find an alternative route to avoid delay. In advance of the development of the remainder of the A8 Site the only alternative would be Ashton Fields Lane to the east. However, due to poor forward visibility at various points and its narrow width, and even with the improvements proposed by the appellant, Aston Fields Lane would be unsuitable to accommodate the level of traffic that would be generated by the appeal scheme [3.5].
- 11.13 Traffic travelling east would use the Aston Fields Lane/Bredon Road junction. There is a fundamental difference between the Ipa and the appellant on the the application of the appropriate standard for assessing visibility. The Ipa submit that DMRB guidance should be used [6.6] and the appellant submits that MfS 2 should be used [5.21]. MfS 2 is the usual starting point for any scheme affecting a non-trunk road i.e. Aston Fields Lane and Bredon Road. Paragraph 1.3.3 indicates "*...that DMRB ...is only used where the guidance contained in MfS is not sufficient or where particular evidence leads a designer to conclude that MfS is not applicable.*" MfS 2 goes on to indicate at paragraph 1.3.6 that, "*where actual speeds are above 40mph for significant periods of the day ...DMRB parameters for SSD are recommended. Where speeds are lower, MfS parameters are recommended. Where there may be some doubt as to which guidance to adopt, actual speed measurements should be undertaken to determine which is the most appropriate.*" Paragraph 1.3.7 says, "*...in rural areas many parts of the highway network are subject to the national speed limit but have traffic speeds significantly below 60mph. ...in these situations where speeds are lower than 40mph MfS SSD parameters are recommended*"
- 11.14 Whilst the choice of whether to apply MfS 2 or DMRB standards is a matter of professional judgement, it is clear that in exercising that judgement one of the key elements in the equation is vehicle speed. Here, a speed survey undertaken by the appellant shows that the 85th percentile traffic speed is

some 47.9mph. Bredon Road rises to the south of the junction for some 80m to the crown of a bridge beyond which there is no visibility of approaching traffic. The combination of the alignment of the road, the distance to the bridge and traffic speed leads me to conclude that, in this case, the visibility standards contained in DMRB are the most appropriate to apply. On this basis, the visibility obtained to the south would be substantially below that required by DMRB and the effect on highway safety would be unacceptable.

- 11.15 I have noted the appellant's submissions on the accident record at this junction and the potential for lowering the speed limit. Whilst the accident record is good, I consider, given the potential increase in traffic, that record does not outweigh the significant deficiency in visibility. As to a potential reduction in the speed limit, a localised reduction either side of the junction would result in a road where there were variations in the speed limit over a relatively short distance. In my experience variations in the speed limit over relatively short stretches of road result in driver confusion and can reduce highway safety.
- 11.16 This site forms part of a strategic site intended to make a major contribution to the housing and employment needs of the JCS area and Tewkesbury in particular. Framework Paragraph 58 indicates that, amongst other things, *"decisions should aim to ensure that developments: function well and add to the overall quality of the area, not just in the short term but over the lifetime of the development; optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses ...and support local facilities and transport networks."* In this context, and given the objectives of the JCS and the importance of the Strategic Allocations to delivery of the plan, development on the appeal site should not be considered in isolation.
- 11.17 The value of a comprehensive masterplan approach is recognised by the appellant and VSM as part of the JCS. The appellant and the JCS authorities submitted a SoCG to the EI, which says, *"Subject to the provision of satisfactory and achievable access, an overall masterplan and appropriate S106 to ensure timely delivery of infrastructure this part of the allocation can come forward independently of other parts of the allocation."* [CD A16]. VSM and the JCS authorities submitted a SoCG to the EI, which, amongst other things, indicates that *"...detailed access arrangements will be determined through the development of a masterplan."* [CD A17 paragraph 3.31].
- 11.18 In an individual submission to the EI, VSM indicates that, *"VSM will work with adjoining landowners, Tewkesbury Borough Council and relevant stakeholders to deliver a comprehensive masterplan for the whole site prior to the submission of a planning application for the MoD part of the site ...the comprehensive masterplan will demonstrate how the development integrates with its surroundings in an appropriate manner. It is only possible to achieve this and provide certainty and confidence in the masterplan if the masterplanning process has the input of the Council, stakeholders and the local community. The Strategic Allocation in the JCS is only the first stage in the process."* [CDA20]. Similarly, the appellant, subject to concern regarding the effect of non-participation by some landowners, in an individual

submission to the EI says, "*The details of the proposed developments including access arrangements can be determined through the master planning process...*" [CD A18]. It is my understanding that none of the parties resile from these submissions.

- 11.19 The appellant's evidence to the inquiry includes a putative masterplan for the whole of the A8 Site and a response from VSM [Doc 19 Appendix 4]. VSM's response makes 3 important points. These are (i) that the putative master plan has not been the subject of consultation or input from the Ipa/statutory undertakers, (ii) that whilst the principle of a connection between the appeal site and the MoD land is supported until a masterplan has been developed the location of the highways link cannot be confirmed, and (iii) that the development proposals for the appeal site should contribute towards the proportionate provision of the infrastructure required to support the increased population and its impacts.
- 11.20 As I see it, the implication of the appellant's proposal for access to the appeal site through the upgrading of Grange Road and the Northway Level Crossing and the new highway to the east is that this road would ultimately link through to the existing Bredon Road junction and through the MoD site to the A46 (T) [Doc 19 Appendix 4]. In this context, Grange Road, the Northway Level Crossing, Aston Fields Lane and the Bredon Road junction would become a principal route serving the A8 Site [6.29].
- 11.21 For the A8 Site, JCS Policy SA1 has an indicative housing total of 2,725 units and the retention of 20ha of employment land. In this context the implication of Grange Road being a principal route serving the A8 site lends significant credence to NR's submission that step changes of such magnitude to should, at a minimum, trigger a study into the closure of the Northway Level Crossing [7.2 & 7.9]. Moreover, I consider there is considerable force in the Ipa's argument that a principal access to/exit from the whole of the A8 Site via the Northway Level Crossing would result in levels of traffic significantly above that which have led to the ALCRM risk score of G3 [6.29]. I consider that, on the balance of probabilities, any benefits arising from the proposed upgrade could be lost and the risk rating increase through road users frustrated by the delays misusing the crossing [7.5].
- 11.22 The upgrade of the Northway Level Crossing to a MCB-OD would result in significant delay for drivers. The putative master plan shows the new road into the appeal site from Grange Road being extended to the east and joining Bredon Road at the existing junction. In this context much greater levels of traffic generated by development beyond the appeal site would use the Northway Lane/Bredon Road junction. Given the traffic speeds on Bredon Road, this level of increased traffic further supports my conclusion to apply DMRB visibility standards to this junction. The visibility obtained at this junction is very significantly below that required and would be unacceptable. A main access/exit onto Bredon Road at this point coupled with the potential for misuse of the Northway Level Crossing would have a severe and adverse effect on highway safety in conflict with the paragraph 32 of the Framework.
- 11.23 Given the above, there is a pressing and early need to produce an access strategy for the A8 Site. Moreover, as the majority of the A8 site comprises

the former MoD site, which given its history of use extent of the storage buildings and hardstanding will be a challenging site to develop, it is vitally important that a comprehensive masterplan and infrastructure delivery plan is in place to guide this development. In this context, the putative masterplan provided by the appellant is only the first step and for the reasons I set out above is deficient. To proceed on this basis would, in my view, conflict with the objectives of the emerging development plan and the Framework. My conclusion, builds on the comments made by the appellant and VSM in their submissions to the EI and VSM's response to the appellant's putative masterplan.

- 11.24 On sustainable transport, limited weight should be attached to the lpa's submissions. These are that the optimal solution would be to deliver a comprehensive development for the full allocation, including sufficient local facilities with appropriate pedestrian and cycle connections to link to the existing pedestrian and cycle facilities on the A46 (T), so as to minimise the need to walk or cycle over the Northway Level Crossing or use the existing railway bridge [6.15]. I agree with the appellant that in JCS Policy SA1 there is no requirement for the whole site to come forward simultaneously as a single scheme [5.26]. On strategic sites of the scale and complexity such as here, it is not unusual for sites to come forward for development before others but that, in my experience, is usually under the umbrella of a comprehensive masterplan/infrastructure delivery plan. In this context, the fact that some dwellings on the appeal site would be beyond the recommended walking distances to a bus stop would be a short term disadvantage and does not, in my view, weigh against the scheme. Whilst I agree that the development of the appeal site does not prevent the development of the remainder of the A8 Site, what it does do is dictate the overall access strategy and would result in form of development, particularly in relation to access, that would prejudice the development of the whole of the Strategic Allocation in line with the objectives of JCS Policy SA1 and paragraph 58 of the Framework [6.26 & 8.1].

Other Matters

- 11.25 I note the submissions of the KCT and the value of the Lower Carrant Valley in ecological terms [8.6-8.10]. On its own this is not a matter that militates against the development and as part of the masterplanning of the A8 site and through the imposition of appropriate planning conditions the impact of development on the ecology of the area could be acceptably mitigated.

Conditions and S106 Unilateral Undertakings

Conditions

- 11.26 The conditions attached at Appendix B reflect the suite of conditions discussed with the lpa and the applicant. If the appeal scheme is allowed they should be imposed for the reasons set out in Document 28 and at paragraphs 10.1 to 10.9 above. Where necessary, in the interests of precision and enforceability I have amended the suggested conditions.
- 11.27 I have amended SCs 6 to reflect the timescales suggested by the appellant. I note the lpa's reasoning for reducing the time for the submission of reserved

matters for Phase 1 [SC 6]. However, given that the commencement of this phase of the development would require the approval of schemes relating to significant works, and for the reasons given by the appellant [10.2], I have inserted the timescale proposed by the appellant. In relation to SC 7, the timescale for the submission of reserved matters for subsequent phases of the development, I consider the appellant's suggested condition is flawed in that it whilst it provides an end date for the submission of reserved matters it does not provide a timetable for the commencement of development. As such following the approval of reserved matters the permission would be open-ended and would, in my view, conflict with national guidance regarding the imposition of conditions. Accordingly, I have adopted the suggested condition produced by the lpa. I have amended SC 10 to clarify that the details of external lighting relate to street lighting and the lighting of publically accessible areas. The reworded condition is included in Annex B as Condition 26.

S106 Unilateral Undertakings

- 11.28 Framework paragraph 204 and CIL Regulation 122 say that Planning Obligations should only be sought and weight attached to their provisions where they meet all of the following tests: (1) necessary to make the development acceptable in planning terms; (2) directly related to the development; and (3) fairly and reasonably related in scale and kind to the development.

Highways and Transportation [Doc 11]

- 11.29 I consider the contributions relating to improvements to the footbridge, the provision of a new footpath/cycleway on Northway Lane, improvements to the A438/Shannon Way Junction, the improvement of the bus stops and/or crossing facilities on Northway Lane and/or Hardwick Bank Road and the implementation of a Residential Travel Plan satisfy the requirements of Framework paragraph 204 and CIL R122 and I have taken them into account in coming to my decision [10.11 to 10.12].
- 11.30 I have noted the lpa's comments in relation to the pedestrian footbridge that the nature of the works are not specified in detail and the improvements referred to would not enable the bridge to be used by the most vulnerable groups in society. In my view, the sum offered would provide for improvements that would enhance the attractiveness of the bridge in the short term for the majority of residents on the development site and contribute to the objective of encouraging the use sustainable transport modes i.e. the railway and bus services. In the longer term as the remainder of the A8 Site is developed, I consider there would be opportunities to provide a bridge that was accessible to all as part of the infrastructure provision of the wider development.

Public Open Space and Communities [Doc 12]

- 11.31 I consider the contributions relating to, the provision of open space (Item 9), changing facilities and their maintenance (Items 1 & 2) and the carrying out of improvements to the Northway Level Crossing (Item 6) satisfy the

requirements Framework paragraph 204 and CIL R122 and I have taken them into account in coming to my decision [10.13 to 10.17].

11.32 Regarding Item 3 (Community Building), in the absence of objective evidence as to the capacity of existing facilities and the absence of a specific scheme, I consider the evidence provided by the lpa does not support a conclusion that this contribution is necessary to make the development acceptable in planning terms and is fairly related in scale and kind to the development. Accordingly, I have not attached weight to it in coming to my conclusion.

11.33 On Item 4 (bins/signage for dog waste), whilst the objective of the lpa's request is laudable, I consider the request does not meet the test of being necessary to make the development acceptable in planning terms. Regarding Item 5 (Primary Care facilities), in light of the evidence produced by the appellant regarding existing committed provision the evidence provided by the lpa does not support a conclusion that this contribution is necessary to make the development acceptable in planning terms and is fairly related in scale and kind to the development [10.16]. Accordingly, I have not attached weight to these matters in coming to my conclusion.

11.34 On Item 7 (waste/recycling facilities), the fact that in this area waste/recycling bins are not provided free of charge and that either the developer or the future resident has to purchase the bins is not a matter that is necessary to make the development acceptable in planning terms. Regarding Item 8 (Tewkesbury Sport Centre). In light of the response by the appellant, I consider the requested contribution fails the test of being shown to fairly relate in scale and kind to the development [10.17]. Accordingly, I have not attached weight to these matters in coming to my conclusion.

11.35 Education and Libraries [Doc 13]

11.36 Regarding Item 1 (Tewkesbury Library), having regard to the appellant's comments [10.20-10.22] and a lack of precision in the lpa's submissions, I consider the evidence produced fails to support a conclusion that the requested contribution is fairly and reasonably related in scale and kind to the development. Accordingly, I have not attached weight to this matter in coming to my conclusion. On Items 2 and 3 (Education), I consider these matters satisfy the requirements of Framework paragraph 204 and CIL R122 and I have taken them into account in coming to my decision.

Affordable Housing [Doc 14]

11.37 LP Policy HOU13 indicates that on sites of more than 15 dwellings the lpa will seek to negotiate the scale of AH [CD A1]. The emerging JCS at Policy SD13 indicates that on sites of 10 or more dwellings the lpa will seek the provision of 40% AH [CD A3]. The appellant's evidence identifies that the "*proposal will make provision for ...new affordable homes (policy compliant at 40%..)*." (Doc 18 paragraph 7.77).

11.38 In February 2016, a note was provided to the JCS Examination regarding an "Update on JCS Policy SD13 – Affordable Housing" [Doc 58]. This note sets out proposed revisions to JCS Policy SD13 which indicates that "*The JCS authorities will seek through negotiation, for new development to deliver new*

affordable housing on a sliding scale approach as set out below: (iii) within Strategic Allocation sites 35% affordable housing will be sought. Proposals on each site will be accompanied by detailed viability evidence to determine the right balance of affordable housing and infrastructure contributions".

11.39 I consider an undertaking to provide AH would satisfy the requirements of Framework paragraph 204 and CIL R122 and I have taken it into account in coming to my decision. The submission by the JCS authorities of a proposed modification regarding the provision of AH on the Strategic Allocations indicates that the JCS authorities' stance is in a state of flux. In this situation, it strikes me that the obligations set out in paragraphs 6.1 and 6.2 of the AH UU [Doc 14] reflects that state of flux and given they are written in the alternative i.e. there is an "or" at the end of paragraph 6.1, I consider that both paragraphs are relevant to the undertaking and provides sufficient flexibility to achieve the objectives of whatever variant of the policy is adopted. Accordingly, I have attached weight to these matters in coming to my conclusion.

Overall Conclusion

11.40 The appeal site is located outside the settlement boundary and development would conflict with the provisions of LP Policy HOU4. However, development plan policies for the supply of housing are time-expired and out-of-date and the lpa cannot demonstrate a 5-year supply of deliverable housing land [Doc 58 paragraphs 7.10 & 7.11]. Therefore, further to the guidance at Framework paragraph 49, I attach limited weight to this policy conflict.

11.41 The proposed development would result in a change in the landscape and would have an impact on views obtained from the AONB and elsewhere. However, I conclude that the impact could be acceptably mitigated and the proposal would not have an unacceptably adverse effect on the setting or scenic beauty of the Cotswold AONB.

11.42 Subject to the implementation of improvements to the A46 (T)/M5 Junction the proposal would not have an unacceptable impact on the SRN. Whilst the upgrading of the Northway Level Crossing would result in an improvement in its safety, delays to traffic would result in additional traffic using Aston Fields Lane and its junction with Bredon Road. Even with the improvements proposed, Aston Fields Lane would be unsuitable for the level of traffic that is likely to be generated and visibility at the junction with Bredon Road would be unacceptable. Accordingly, the proposed development conflict with the objectives of LP Policy TPT1.

11.43 In the planning balance, the absence of harm to the character and appearance of the area and the SRN are neutral considerations. The harm I have identified in relation the unacceptable impact on Aston Fields Lane and the Bredon Road junction weighs against the proposal.

11.44 JCS Policy SA1 of the emerging development plan allocates the appeal site along with a substantial area of land to the south and east as a Strategic Allocation for housing and employment. Whilst the JCS is still under examination, the EI has issued Preliminary Findings on several matters and, amongst other things, is minded to find that here the Strategic Allocation is

sound. The details which JCS Policy SA1 would require i.e. access arrangements, the disposition of land uses and infrastructure delivery through a comprehensive masterplan are consistent with Framework paragraphs 156 and 157. Moreover, I consider the requirement to submit a comprehensive masterplan for a strategic site is consistent with the thrust of Framework paragraph 58. Accordingly, having regard to the guidance contained at paragraph 216 of Annex 1 to the Framework I consider significant weight can be attached to JCS Policy SA1 and its objectives.

- 11.45 The appeal site forms part of the A8 strategic site which is intended to make a major contribution to the housing and employment needs of Tewkesbury and the JCS area. Framework policy seeks that development decisions should aim to ensure that developments function well and add to the overall quality of the area, not just in the short term but over the lifetime of the development. Thus, the development of the appeal site cannot be considered in isolation. The value of a comprehensive masterplan approach is recognised by the appellant and VSM as part of their submissions to the JCS. Given its nature and history, the A8 Site will require careful and detailed assessment in terms of an access strategy and infrastructure delivery. Whilst the appellant has developed a putative master plan it has not been the subject of wider consultation nor does it provide a strategy for delivering the requisite infrastructure to support the increased population and its impacts.
- 11.46 The implication of the appellant's access proposals and the putative master plan would mean that Grange Road, the Northway Level Crossing, and the Bredon Road junction would become one of the principal routes in and out of the A8 Site. Such a scenario would have a severe impact and have unacceptable implications for the safety and operation of the Northway Level Crossing and the junction with Bredon Road. In essence, the access strategy for the whole of the A8 Site would be dictated by the unsatisfactory access arrangements proposed by the appellant. In my view to proceed on this basis would fundamentally conflict with the objectives of the emerging JCS and the Framework. I attach significant weight to this conclusion.
- 11.47 The lpa does not have a 5-year supply of housing land. Therefore, the appeal proposal would make meaningful contribution to meeting the need for market housing and the pressing need for AH. The proposal would result in significant economic benefits to the immediate area and the district as a whole. I attach significant weight to all these factors in the planning balance.
- 11.48 Framework paragraph 14 indicates that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. I recognise that the appeal site is located in a sustainable location. However, the Framework is to be read as a whole and paragraph 6 indicates that paragraphs 18 to 219 constitute the Government's view of what sustainable development means. Here, I consider the adverse effects the proposal would have on highway safety and the free flow of traffic on Aston Fields Lane and the junction with Bredon Lane now and in the future would be severe and the absence of a comprehensive masterplan that provides for an access strategy and infrastructure delivery would result in

significant unacceptable harm to and conflict with the objectives of the emerging JCS and the Framework as a whole. As such, I consider this proposal would not represent sustainable development and that the immediate and prospective harm arising from this scheme would significantly and demonstrably outweigh the acknowledged benefits.

Recommendation

11.49 I recommend that the appeal be dismissed. Should the Secretary of State disagree with my conclusion and grant outline planning permission, that permission should be subject to the planning conditions set out at Annex C and weight attached to the relevant sections of the submitted S106 Unilateral Undertakings for the reasons set out in Section 10 of this report and my conclusions.

George Baird

Inspector

ANNEX A

PUTATIVE REASONS FOR REFUSAL

1. Whilst all matters relating to design, layout and landscaping are reserved for future consideration, the proposal would result in a conspicuous and severely harmful encroachment into the open countryside. The carrying out of the development would result in a stark, highly visible urban edge that would be unsympathetic to the surrounding open countryside and views from the north and east. The proposed development would therefore be contrary to the core principles of land-use planning set out at paragraph 17 of the NPPF, Section 11 (Conserving and enhancing the natural environment) of the NPPF, Policies LND4 and LND7 of the Tewkesbury Borough Local Plan to 2011 – March 2006 and emerging policies SD7 and INF4 of the Joint Core Strategy Submission Version November 2014.
2. The application fails to provide satisfactory information to show that the operation of the A46 (T) and the M5 would not be adversely affected by the traffic impacts of the development proposal and that the proposed development would not have a severe impact on the highway network in conflict with the NPPF, Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 – March 2006 and Policies INF1 and INF2 of the Joint Core Strategy Submission Version November 2014.
3. The proposed development does not provide safe and suitable access for all people, in conflict with the NPPF, Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 – March 2006 and Policies INF1 and INF2 of the Joint Core Strategy Submission Version November 2014.
4. The proposed development fails to take up opportunities for sustainable transport contrary to the NPPF, Policy TPT1 of the Tewkesbury Local Borough Local Plan to 2011 – March 2006 and Policy INF1 of the Joint Core Strategy Submission Version November 2014.
5. The proposed development would prejudice the delivery of the wider strategic allocation at MOD Ashchurch (A8) as proposed in the emerging JCS including the necessary infrastructure to achieve a high quality development in conflict with the NPPF and Policy SA1 of the Joint Core Strategy Submission Version November 2014.
6. For Reasons 1 to 5, the proposal does not represent sustainable development within the context of paragraph 7 of the NPPF. For the purposes of the “planning balance” in paragraph 14 of the NPPF, the identified harms of the development would significantly and demonstrably outweigh the benefits of the proposal. The proposed development would be contrary to the core principles of land use planning set out in paragraph 17 of the NPPF, sections 4 (Promoting sustainable transport) and 11 (Conserving and enhancing the natural environment) of the NPPF, Policies TPT1, LND4 and LND7 of the Tewkesbury Borough Local Plan to 2011 – March 2006 and emerging Policies INF1, INF2, SP2, SD5, SD7 and SD15 of the Joint Core Strategy Submission Version November 2014.
7. In the absence of an appropriate planning obligation, the application does not provide housing that would be available to households who cannot afford to rent

- or buy houses available on the existing housing market. As such the proposed development conflicts with Policy 3rd March 2016 HOU13 of the Tewkesbury Local Plan to 2011 – March 2006 and Policies SD12 and SD13 of the Joint Core Strategy Submission Version November 2014.
8. In the absence of an appropriate planning obligation, the application does not make adequate provision for onsite or off-site playing pitches with changing facilities and sports facilities to meet the needs of the proposed community. The application therefore conflicts with Policy RCN1 of the Tewkesbury Local Plan to 2011 – March 2006 and section 8 of the NPPF (promoting healthy communities) and policies INF5 and INF7 of the Joint Core Strategy Submission Version November 2014. In any event, the approval of these proposals would prejudice infrastructure delivery in relation to open space and sports provision associated with the wider strategic development.
 9. In the absence of an appropriate planning obligation, the application does not make provision for the delivery of education, health and community infrastructure and library provision and therefore the proposed development is contrary to Policy GNL11 of the Tewkesbury Borough Local Plan to 2011 – March 2006 and section 8 of the NPPF (Promoting healthy communities) and policies INF5 and INF7 of the Joint Core Strategy Submission Version November 2014.
 10. In the absence of an appropriate planning obligation, the application does not make provision for on-site or off-site gypsy, traveller and travelling showpeople pitches/plots in conflicts [sic] with the NPPF, PPTS and Policies SD14 and SA1 of the Joint Core Strategy Submission Version November 2014.

ANNEX B

SUGGESTED PLANNING CONDITIONS

Approved Drawings

1. For those matters not reserved for later approval (the "Reserved Matters), the development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Drawing No: ASH-14-07 and Access Arrangements, Drawing No. H510/4 Rev A

Phasing

2. As part of the first reserved matters application a Phasing Plan for the whole site shall be submitted to the local planning authority for approval in writing. The Phasing Plan shall include details of the intended number of market and affordable dwellings for each phase of development together with general locations and phasing of key infrastructure, including surface water drainage, green infrastructure and access for pedestrians, cyclists, buses and vehicles.
3. The Phasing Plan shall be based on the design principles of the Indicative Masterplan (Drawing No. H.0445_2-1F); the Parameters Plans (Drawing Nos. H.0445_03-1D, H.0445_05-1D, H.0445_06-1B), Green Infrastructure Plan ref. 15145-101 and the principles and objectives of the Design and Access Statement (H.0445_26_1D dated November 2014) except where other planning conditions specify otherwise. The development shall be carried out in accordance with the approved Phasing Plan.

Design Principles

4. As part of the reserved matters application for Phase 1 submitted pursuant to condition 5, a document setting out the Design Principles for the development hereby approved shall be submitted to the local planning authority for approval in writing. The Design Principles shall accord with the Parameters Plans, Drawing Nos. H.0445_03-1D, H.0445_05-1D, H.0445_06-1B; the Green Infrastructure Plan Drawing No. 15145-101; the principles and objectives of the Design and Access Statement (November 2014) and the Illustrative Masterplan (Drawing No. H.0045_2-1F), except where other planning conditions specify otherwise. The Design Principles shall include the following matters:
 - (i) the principles for determining the design, form, heights and general arrangement of external architectural features of buildings including the roofs, chimneys, porches and fenestration;
 - (ii) the principles of the hierarchy for roads and public spaces;
 - (iii) the principles for determining the colour, texture and quality of external materials and facings for the walls and roofing of buildings and structures;
 - (iv) the principles for the design of the public realm to include the colour, texture and quality of surfacing of footpaths, cycleways, streets, parking areas, courtyards and other shared surfaces;
 - (v) the principles for the design and layout of street furniture and level of external illumination;

- (vi) the principles for the laying out of the green infrastructure including the access, location and general arrangements of the sports pitches and play areas.

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

Reserved Matters

- 5. The development of each phase shall not be begun before detailed plans thereof showing the layout, scale and external appearance of the buildings and landscaping (hereinafter referred to as "the reserved matters") of that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out as approved.
- 6. Application for the approval of the reserved matters for Phase 1 as identified by the phasing plan shall be made to the local planning authority before the expiration of 3 years from the date of this permission. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the reserved matters for phase 1, whichever is the later.
- 7. Application for the approval of reserved matters for the subsequent phases of development as identified by the phasing plan shall be made to the local planning authority before the expiration of 4 years from the date of this permission. The subsequent phases of the development hereby permitted shall be begun either before the expiration of 5 years from the date of this permission, or before the expiration of one year from the date of approval of the last of the reserved matters to be approved whichever is the later.

Defining the Planning Permission

- 8. No more than 550 dwellings shall be constructed on the site pursuant to this planning permission.

Other Information Requirements

- 9. No development comprising the erection of buildings shall take place in any given phase of the development until details of existing and proposed ground levels and ground floor slab levels of the buildings relative to Ordnance Datum Newlyn in that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10. Applications for the approval of reserved matters for any given phase shall include details of street lighting and the lighting of other publicly accessible areas if applicable to that phase. Development shall be carried out in accordance with the approved details.

Drainage and Flooding

- 11. The first reserved matters application submitted pursuant to Condition 5 shall be accompanied by details of the Surface Water Drainage Strategy for the whole development hereby approved, incorporating sustainable drainage principles

and a Management and Maintenance Plan. All subsequent reserved matters submitted pursuant to Condition 5 shall accord with the approved surface water drainage strategy and the development shall be carried out only in accordance with the approved Surface Water Drainage Strategy. The details shall be based on the Flood Risk Assessment (December 2014). No building shall be occupied until the sustainable drainage scheme for the relevant phase has been completed in accordance with the submitted details. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed Management and Maintenance Plan.

Trees and Landscaping

12. For each phase of development, the plans and particulars submitted in accordance with condition 5 above shall include:
 - (i) a plan showing the location of, and allocating a reference number to, all trees on the site which have a stem with a diameter, measured over the bark at a point 1.5m above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;
 - (ii) details of the species, diameter (measured in accordance with paragraph (i) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (iii) and (iv) below apply;
 - (iii) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
 - (iv) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree;
 - (v) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the plan referred to in paragraph (i) above.

13. The plans and particulars submitted in accordance with condition 12 above shall also include details of the size, species, and positions or density of all trees, hedgerows and other landscaping features to be planted, and the proposed time of planting, as well as maintenance schedules.
14. For each phase of development the reserved matters application submitted pursuant to condition 5 shall be accompanied by full details of hard landscape proposals. These details shall include, as appropriate:
 - (i) positions, design, materials and type of boundary treatment to be erected;
 - (ii) hard surfacing materials;
 - (iii) the equipment and surfacing for the children's play areas; and
 - (iv) minor artefacts and structures (e.g. street furniture, refuse or other storage units and signs).
15. If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or

dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place.

Archaeology

16. No development shall take place within any given phase until the applicant, or their agents or successors in title, has secured and implemented a programme of archaeological work in accordance with a written scheme of investigation for that phase, which shall have been first submitted to and approved in writing by the local planning authority.

Construction Method Statement

17. No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the local planning authority and the CEMP shall be fully implemented and shall include:
 - (i) specific noise level targets and vibration levels at existing residential properties;
 - (ii) the type of machinery to be used to meet the noise and vibration levels;
 - (iii) hours of operation;
 - (iv) methods of construction;
 - (v) traffic routes and signage for construction traffic and site staff traffic;
 - (vi) provision for wheel washing facilities;
 - (vii) measures to control the emission of dust and dirt during construction;
 - (viii) measures for monitoring and maintaining the condition of the Northway Level Crossing during the construction phase.

Noise

18. No external construction works, deliveries, external running of plant and equipment or internal works audible outside the site boundary shall take place on the site other than between the hours of 07:30 to 18:00 hours on Monday to Friday and 08:00 to 14:00 hours on Saturday. There shall be no such working on Sundays, Public or Bank Holidays without the prior written permission of the local planning authority.
19. No development shall commence until a scheme to mitigate noise impacts arising from the railway beyond the western boundary of the site has been submitted to and approved in writing by the local planning authority. The scheme shall identify the properties that require noise mitigation and shall include details of what those measures will include to ensure that noise levels at all dwellings internally and within gardens should not exceed those set out in BS8233:2014 (Sound Insulation and Noise Reduction for Buildings). No dwelling identified as requiring noise mitigation measures shall be occupied until the required noise mitigation for that dwelling has been fully implemented. The approved noise mitigation shall be maintained and shall not be altered without the prior written approval of the local planning authority.

Ecology and Water Environment

20. No development shall take place until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the local planning authority. The EMP shall be in accordance with the mitigation and enhancement measures in the submitted Environmental Statement. It shall include a timetable for implementation, details for monitoring and review and how the areas concerned will be maintained and managed. Development shall be in accordance with the approved details and timetable in the EMP.

Highways/Sustainable Transport

21. No development shall commence until the highway works shown on Drawing No. H510/1A have been completed in all respects, the works shall be maintained as such thereafter unless and until adopted as highway maintainable at public expense.
22. No development shall commence until the proposed access to the site from Grange Road extending in a easterly direction to the existing section of Aston Fields Lane, together with the first 20m of the eastern access to the site from Aston Fields Lane, have been surfaced, in accordance with details to be submitted to and approved in writing by the local planning authority, and shall be maintained as such thereafter for the duration of construction.
23. Prior to first occupation of any dwelling, the highway works shown on Drawings Nos. H510/2A and H510/4A shall be completed in all respects. The works shall be maintained as such thereafter unless and until adopted as highway maintainable at public expense.
24. No works shall commence on site until details of the following pedestrian improvement works: (i) a crossing point over Northway Lane to improve pedestrian safety for the route to/from Northway Infant School; and (ii) a crossing point over Hardwick Bank Road to improve pedestrian safety for the route to/from Carrant Brook Junior School have been submitted to and agreed in writing by the local planning authority. No part of the development shall be occupied until the approved works have been completed. The works shall be maintained as such thereafter unless and until adopted as highway maintainable at public expense.
25. No development comprising the erection of buildings in any given phase shall commence on site until a scheme has been submitted to, and agreed in writing by the local planning authority, for the provision of fire hydrants served by mains water supply in that phase and no dwelling shall be occupied until the hydrant serving that property has been provided in accordance with the approved scheme.
26. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the local planning authority. This information may be submitted to and approved by the local planning authority on a phased basis in accordance with the phasing plan approved under condition 3. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such

time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

27. Details of the layout and internal access roads within the site together with a road safety audit and non-motorised user's audit shall be submitted to and approved in writing by the local planning authority, for any given phase, before any development in that phase begins and the development shall be carried out in accordance with the approved plans. No dwelling on the development shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the footway(s) to surface course level.
28. The car parking, vehicular loading and turning, and cycle parking arrangements agreed as part of the reserved matters application shall be provided prior to occupation of the dwelling to which they relate and shall be maintained thereafter.
29. No development hereby approved shall commence until a detailed scheme designed in accordance with the Design Manual for Roads and Bridges for the improvement of the A46 (T) Trunk Road at M5 Junction 9 has been submitted to and agreed in writing by the local planning authority. The scheme shall include the provision of a 3-lane wide approach to M5 Junction 9 on the A46 (T) westbound arm and 3-lanes on the circulatory between the A46 (T) westbound arm and the M5 southbound entry.
30. No more than 150 dwellings shall be occupied until the highways works agreed under condition 29 above have been implemented in full.

Railway crossing

31. No more than 150 dwellings hereby approved shall be occupied until:
 - full details for provision of the improved Northway Level Crossing have been submitted to and approved in writing by the local planning authority;
 - a Level Crossing Order has been confirmed by the Secretary of State for Transport in respect of the improved Northway Level Crossing;
 - the Northway Level Crossing has been improved in accordance with the approved details and the Level Crossing Order; and
 - the works of improvement have been adopted by the railway undertaker.
32. Notwithstanding conditions 2 and 3, the first phase of residential development which shall comprise no more than 150 dwellings which shall be located within the general location defined on plan ref. ASH.PH1.01 and shall include a footpath link to the AAS22 railway bridge. The footpath link shall be installed and available for use prior to the first residential occupation of any dwelling.

ANNEX C

APPEARANCES

FOR THE APPELLANT

Anthony Crean QC, instructed by the Pegasus Group.

He called:

Mr P L S Finlayson BSc, Eng, MICE, MCIHT, MCIWEM.
Chairman, PFA Consulting Limited.

Mr D Hutchison BSc (Hons), Dip TP, MRTPI.
Planning Consultant and Executive Director, Pegasus Group.

Conditions and S106 Round Table Session

Ms Evans.
Solicitor, R H Hitchins Limited.

FOR THE LOCAL PLANNING AUTHORITY

Tom Graham, Planning Advocate, Tewkesbury Borough Council.

He called:

Mr M Glaze LLB (Hons), EngTech, MIHE.
Principal Development Co-ordinator, Gloucestershire County Council.

Mr P Smith BA (Hons), BSc (Hons), Dip. DesBltENVt, MRTPI.
Planning Consultant.

Conditions and S106 Round Table Session

Ms Desmond.
Senior Planning Officer Tewkesbury Borough Council.

Mr P Skelton.
Development Manager, Tewkesbury Borough Council.

Mr Medlin.
S106 Officer, Gloucestershire County Council.

FOR NETWORK RAIL

Mr Mayo MIRO, AMIRSE.
Western Route Level Crossing Manager, Network Rail Infrastructure Limited.

Ms Bullock BA (Hons), MPlan, MRTPI.
Town Planner, Network Rail Infrastructure Limited.

For Highways England

Jenny Wigley of Counsel instructed by Highways England.

INTERESTED PERSONS

Cllr. A Darby.

South Bredon Hill Ward, Wychavon District Council; Kemerton Parish Council & Kemerton Conservation Trust.

Cllr. A Hardman.

Bredon Division, Worcestershire County Council.

Cllr McTiernan.

Northway Ward, Tewkesbury Borough Council.

DOCUMENTS

DOCUMENTS SUBMITTED BY THE APPELLANT

- Doc 1 - Opening Submissions.
- Doc 2 - Closing Submissions.
- Doc 3 - Response to the Ipa's application for costs.
- Doc 4 - Northway Level Crossing suggested condition.
- Doc 5 - Network Rail submission to Joint Core Strategy Examination ID 2335.
- Doc 6 - Network Rail submission to Joint Core Strategy Examination ID 2333
- Doc 7 - Extract from Joint Core Strategy Transport Mitigation Strategy, Summary Report 10 July 2015.
- Doc 8 - Email bundle, Northway Level Crossing.
- Doc 9 - Extract from Network Rail Level Crossing Risk Management Toolkit.
- Doc 10 - S106 Unilateral Undertakings Summary.
- Doc 11 - S106 Unilateral Undertaking, Highways & Transportation.
- Doc 12 - S106 Unilateral Undertaking, Public Open Space & Communities.
- Doc 13 - S106 Unilateral Undertaking, Education & Libraries.
- Doc 14 - S106 Unilateral Undertaking, Affordable Housing.
- Doc 15 - Proof of Evidence of Mr Finlayson.
- Doc 16 - Appendices PF1 to PF8 to the Proof of Evidence of Mr Finlayson.
- Doc 17 - Summary Proof of Evidence of Mr Hutchinson.
- Doc 18 - Proof of Evidence of Mr Hutchinson.
- Doc 19 - Appendices 1 to 4 to the Proof of Evidence of Mr Hutchinson.
- Doc 20 - Summary Proof of Evidence of Mr Harris.
- Doc 21 - Proof of Evidence of Mr Harris.
- Doc 22 - Appendices A to G to the Proof of Evidence of Mr Harris.

DOCUMENTS SUBMITTED BY THE LOCAL PLANNING AUTHORITY

- Doc 23 - Opening Submissions.
- Doc 24 - Closing Submissions.
- Doc 25 - Application for Costs against appellant.
- Doc 26 - Copy of the letter of notification and list of persons notified.
- Doc 27 - Highways Classification Plan extract from Highway Records.
- Doc 28 - List of suggested planning conditions.
- Doc 29 - CIL Compliance Statement, Tewkesbury Borough Council.
- Doc 30 - CIL Compliance Statement (Highways), Gloucestershire County Council.
- Doc 31 - CIL Compliance Statement (Education & Libraries), Gloucestershire County Council.
- Doc 32 - Summary Proof of Evidence of Mr Glaze.
- Doc 33 - Proof of Evidence of Mr Glaze.

- Doc 34 - Appendices 1 to 27 to the Proof of Evidence of Mr Glaze.
- Doc 35 - Rebuttal Proof of Mr Glaze.
- Doc 36 - Proof of Evidence of Mr Smith.
- Doc 37 - Appendix 1 to the Proof of Evidence of Mr Smith.
- Doc 38 - Proof of Evidence of Mr Moger.
- Doc 39 - Appendices AM1 & AM2 to the Proof of Evidence of Mr Moger.
- Doc 40 - Supplemental Proof of Evidence of Mr Moger.
- Doc 41 - Summary Proof of Evidence of Mr Jones.
- Doc 42 - Proof of Evidence of Mr Jones and Appendices LA.1 & LA.2.

DOCUMENTS SUBMITTED BY NETWORK RAIL

- Doc 43 - Opening Submissions
- Doc 44 - Closing Submissions
- Doc 45 - Proof of Evidence of Mr Mayo.
- Doc 46 - Appendices A to E to the Proof of Evidence of Mr Mayo.
- Doc 47 - Proof of Evidence of Ms Bullock.

DOCUMENTS SUBMITTED BY HIGHWAYS ENGLAND

- Doc 48 - Summary Proof of Evidence of Mr. White.
- Doc 49 - Proof of Evidence of Mr White
- Doc 50 - Summary Proof of Evidence of Ms Howell.
- Doc 51 - Proof of Evidence of Ms Howell and Appendices 1 to 4.

DOCUMENTS SUBMITTED BY INTERESTED PERSONS

- Doc 52 - Statement by Cllr Darby.
- Doc 53 - Statement by Cllr. Hardman.

STATEMENTS OF COMMON GROUND

- Doc 54 - Landscape and Visual Matters, Appellant & Tewkesbury Borough Council.
- Doc 55 - Railways Related Matters, Appellant & Network Rail.
- Doc 56 - Highways and Transportation (Strategic Road Network) Matters, Appellant & Highways England.
- Doc 57 - Highways and Transportation- Related Matters, Appellant, Gloucestershire County Council & Highways England.
- Doc 58 - Planning Matters.

DOCUMENTS RECEIVED FOLLOWING THE ADJOURNMENT OF THE INQUIRY AND BEFORE THE INQUIRY WAS CLOSED IN WRITING

- Doc 59 - Revised CIL Compliance Schedule, Tewkesbury Borough Council.
- Doc 60 - Planning Obligations CIL Compliance & Further Justification Statement, Gloucestershire County Council.
- Doc 61 - Copy of email dated 10 March 2016 regarding revision to education contribution.
- Doc 62 - Appellant's response dated 17 March 2016 to the Revised CIL Compliance Schedule and Planning Obligations CIL Compliance & Further Justification Statement.

PLANS

Application Plans

- Plan A - Drawing No. ASH-14-07, Location Plan.
- Plan B - Drawing No. H510/4 Rev A, Access Arrangements.

Illustrative Supporting Plans

- Plan C - Drawing No. H.0445_2_1F, Indicative Masterplan.
- Plan D - Drawing No. H.0445-03-1D, Land Use Parameter.
- Plan E - Drawing No. H.0445-04-1D, Green Infrastructure Parameter.
- Plan F - Drawing No. H.0445-05-1D, Building Heights Parameter.
- Plan G - Drawing No. H.0445-06-1B, Access and Movement Parameter,
- Plan H - Drawing No. 510/1 Rev A, Highway Improvements to Grange Road.
- Plan I - Drawing No. H510/2, Aston Fields Lane Potential Improvements.

CORE DOCUMENTS

Local Policy and Evidence Base Documents

- A1 Tewkesbury Borough Local Plan to 2011(March 2006).
- A2 Tewkesbury Borough Local Plan – Saving Direction Letter (25/03/2009).
- A3 Submission Gloucester, Cheltenham and Tewkesbury JCS (November 2014).
- A4 JCS Development Plan Examination – Matter 8: Strategic Allocations. Written Statement by Gloucestershire City, Cheltenham and Tewkesbury Borough Councils.
- A5 JCS Strategic Allocations Report (October 2013).
- A6 JCS Landscape and Visual Sensitivity and Urban Design Report (October 2012).
- A7 Tewkesbury Affordable Housing SPD.
- A8 Tewkesbury Borough Local Development Scheme (April 2013).
- A9 Tewkesbury Borough Council 2013/14 Assessment of Land Availability. [Ashchurch Extracts] (March 2015).
- A10 Green Infrastructure Strategy (June 2014).
- A11 Gloucestershire Strategic Housing Market Assessment (SHMA) 2014.
- A12 Letter from Brandon Lewis MP to Simon Ridley (Chief Executive of the Planning Inspectorate) (27 March 2015).
- A13 Community Infrastructure Levy Regulations.
- A14 Joint Core Strategy Viability Assessment Study Stage 2 (March 2015).
- A15 National Planning Policy Framework.
- A16 JCS Examination Statement of Common Ground between JCS and RHL July 2015.
- A17 JCS Examination Statement of Common Ground between JCS and Savills on behalf of VSM and DIO August 2015.
- A18 RHL response to JCS Matter 8: Strategic Allocations dated June 2015.
- A19 JCS Inspectors Preliminary Findings on Green Belt Release, Spatial Strategy and Strategic Allocations (16 December 2015).
- A20 Savills response to JCS Matter 8: Strategic Allocations on behalf of MOD. Ashchurch 24 June 2015 and MOD Ashchurch Site Update: October 2015.
- A21 JCS Broad Locations Report. October 2011.

Application and Appeal Documents

- B1 Appeal Timetable.
- B2 Appeal Questionnaire.

- B3 Planning Statement of Common Ground.
- B4 Transport Statement of Common Ground.
- B5 Landscape Statement of Common Ground.
- B6 Planning Committee Report including Council's Putative Reasons for Refusal.
- B7 Appellant's Statement of Case.
- B8 LPA Statement of Case.
- B9 Network Rail Statement of Case.
- B10 Highways England Statement of Case.
- B11 Third Party Responses to Appeal.
- B12 Blank.
- B13 Railway Related Statement of Common Ground.

Appeal Decisions and Court Judgements

- C1 Blank
- C2 Blank

Application Documents

- D1 Planning Application Form and Certificates of Ownership dated 16/12/14).
- D2 Draft Heads of Terms (December 2014).
- D3 Planning Statement inc. Affordable Housing Statement (November 2014).
- D4 Design and Access Statement (December 2014).
- D5 Environmental Statement (November 2014).
- D6 Transport Assessment (8 December 2014).
- D7 Residential Travel Plan (8 December 2014).
- D8 Summary of Pre-Application Consultation (November 2014).
- D9 Sustainability Statement (November 2014).
- D10 Utility Statement (November 2014).
- D11 Waste Management Statement (November 2014).
- D12 Email correspondence chain between RHL and TBC with Comprehensive Masterplan (attached to email 26-08-15) and Revised Illustrative Masterplan and Annotated version (attached to email dated 22-07-15).

Application Plans

- E1 ASH-14-07, Location Plan.
- E2 H.0445-02-1D, Illustrative Masterplan.
- E3 H.0445-03-1D, Land Use Parameter.
- E4 H.0445-05-1D, Green Infrastructure Parameter.
- E5 H.0445-05-1D, Building Heights Parameter.
- E6 H.0445-06-1B, Access and Movement Parameter.
- E7 510/1 Rev A, Proposed Highway Improvements to Grange Road.
- E8 H510/2, Aston Fields Lane Potential Improvements .
- E9 H510/4 Rev A, Access Arrangements.
- E10 H510/09, Proposed Three Lane Entry Roundabout Arrangement.

Highways Documents

- F1 Planning Practice Guidance ID reference 42 Paragraphs 001-015 Travel plans, transport assessments and statements in decision-taking, Transport ID reference 54 paragraphs 001-012, Transport evidence bases in plan making and decision taking.

- F2 Department for Transport Circular 02/13, The Strategic Road Network and the Delivery of Sustainable Development, September 2013.
- F3 Transport evidence base related to the JCS Submission Version.
- F4 The Draft Site Options and Site Options Draft of the Tewkesbury Borough Plan – February 2015.
- F5 Design Manual for Roads and Bridges (DMRB) TD 42/95 Geometric Design of Major/Minor priority junctions.
- F6 Manual for Streets published March 2007.
- F7 Manual for Streets 2 published September 2010.
- F8 CIHT 'Providing for Journeys on Foot' published by Institution of Highways and Transportation 2000.
- F9 CIHT, Planning for Public Transport in Developments, Institution of Highways and Transportation.
- F10 The Strategic Road Network; Planning for the Future, Highways England (September 2015).
- F11 The Highways Agency and the Planning Application Process: A Protocol (2014).
- F12 Documents and correspondence submitted directly to Highways England prior to submission of planning application.
- F13 Documents and correspondence submitted directly to Highways England during determination of application period.
- F14 Documents and correspondence submitted directly to Highways England since planning appeal was lodged. (Not Supplied)
- F15 Advice and technical guidance provided to the appellants by Highways England (and formerly the Highways Agency) in relation to the development proposals. (Not Supplied)
- F16 Documents and advice provided by third party consultees (including Gloucestershire County Council and Network Rail) in response to the planning application and in respect of the appeal.
- F17 Proposed Garden Centre and Retail Outlet Centre at Ashchurch: S-Paramics Micro Simulation Traffic Models. Model Development and Validation Report (Sept 2013).
- F18 File Note on Traffic Generation and Distribution for use in Ashchurch S-Paramics Traffic Model October 2014
- F19 Emails, correspondence between GCC/PFA/RHL/NR/Stagecoach. Additional information provided the appellant during the planning application and appeal process.
- F20 Manual for Gloucestershire Streets 3rd Edition June 2013.
- F21 The following are the documents supplied by the appellants during the consideration of the application and after the appeal was lodged:
File Note FN08: File Note dealing with the additional information requested by the Highways Agency February 2015; File Note FN14: Additional S-Paramics Traffic Modelling December 2015; File Note FN16: S-Paramics Traffic Modelling - 2016 scenarios January 2016; File Note FN17: Sensitivity test representing additional delay at Northway Level Crossing January 2016; File Note FN18: S-Paramics Modelling Scenarios January 2016.
- F22 Letter to Gloucestershire County Council 6 January 2016 with enclosures setting out response to 19 issues raised in GCC consultation response 11 November 2015.
- F23 TAL 02/04-Rural Traffic Calming: Bird Lane, Essex.
- F24 Design Manual for Roads and Bridges Hd 19/03 Standards for Highways
- F25 Highways England Licence April 2015.

Railways Documents

- G1 ORR Statement on Level Crossings 10 January 2015.

- G2 ORR Level Crossings Policy January 2015.
- G3 ORR Managing Risks at Level Crossings April 2014.
- G4 RCCB Annual Safety Performance Report 2014/15 – extract Appendix 5, Level Crossing Types.
- G5 Safety at Level Crossings: Eleventh Report of Session 2013-14 House of Commons Transport Committee.
- G6 ORR Level Crossings: A Guide for Managers, Designers and Operators Railway Safety, 7 December 2011.
- G7 British Railways Northway Level Crossing Order dated 24 April 1986.
- G8 Operations manual Risk Assessing Level Crossings, Network Rail December 2014.
- G9 Provision Risk Assessment and Review of Level Crossings Network Rail June 2008.
- G10 Signalling Design: Module X21 – Level Crossings: Manually Controlled Barriers with Obstacle Detector published by Network Rail June 2012.
- G11 Risk Assessments obtained from Network Rail's website December 2013 and January 2015.

Other Documents

- H1 Creating Successful Masterplans: A Guide for Clients, CABE 2008.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.