



Appeal Decision

Inquiry held on 1-4 and 8 February 2022

Site visit made on 9 February 2022

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2022

Appeal Ref: APP/G1630/W/21/3283839

Land to the North West of Fiddington, Ashchurch, Tewkesbury

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Robert Hitchens Limited against Tewkesbury Borough Council.
 - The application Ref 21/00451/OUT, is dated 30 March 2021.
 - The development proposed is up to 460 dwellings, a primary school, associated works, ancillary facilities and infrastructure, open space, recreation facilities and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for up to 460 dwellings, a primary school, associated works, ancillary facilities and infrastructure, open space, recreation facilities and landscaping at Land to the North West of Fiddington, Ashchurch, Tewkesbury in accordance with the terms of the application, Ref 21/00451/OUT, dated 30 March 2021, subject to the conditions contained in the attached Schedule.

Preliminary Matters

2. The application was submitted in outline with all matters (access, appearance, landscaping, layout and scale) reserved for subsequent consideration. It was indicated that the site would be accessed from the A46 and Fiddington Lane. This is the basis on which I have considered the appeal.
3. The application is accompanied by an Environmental Statement (ES) prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations), including technical appendices and a non-technical summary. It covers a range of relevant topics, informed by a Scoping Opinion from the Council. I am satisfied that the totality of the information provided is sufficient to meet the requirements of Schedule 4 of the EIA Regulations and this information has been taken into account in reaching a decision.
4. The Council did not issue a formal decision in this case, being an appeal against non-determination, but confirmed in its statement of case that it would have refused planning permission for five reasons, had it been empowered to do so. These included concerns surrounding the location of the proposed development and associated policy conflict; character and appearance; highway impacts on the strategic road network; and a failure to secure suitable and necessary planning obligations.

5. Prior to the inquiry, National Highways confirmed it was satisfied, subject to suitable planning conditions being imposed, that the strategic road network would not be adversely affected by the development. On this basis, the Council was satisfied that this issue had been overcome. It also opted not to pursue the character and appearance element of its first putative reason for refusal. In addition, a range of planning obligations were agreed between the parties. As such, all but one of the putative issues raised by the Council had been overcome or were not being defended by the time of the Inquiry.

Main Issue

6. The main issue is whether the site is a suitable location for the proposed residential development, having regard to planning policy.

Reasons

7. The development plan, so far as it is relevant to this appeal, comprises the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (Adopted December 2017) (JCS) and the Tewkesbury Borough Local Plan to 2011 (adopted March 2006) (LP).
8. Policy SP1 of the JCS identifies the need for new development in the plan area and specifies a housing requirement for Tewkesbury of at least 9,899 new homes during the plan period. The policy identifies how the expected development is to be delivered, including the provision of Strategic Allocations at Ashchurch.
9. JCS Policy SP2 deals with the distribution of new development across the plan area. So far as this relates to Tewkesbury, the majority of housing is to be provided through existing commitments, development at Tewkesbury town in line with its role as a market town, smaller-scale development meeting local needs at Rural Service Centres and Service Villages, and sites covered by any Memoranda of Agreement. The identification of any additional urban extensions to help meet the unmet needs of a Local Planning Authority must be undertaken through a review of the plan.
10. As a site in the rural area, JCS Policy SD10 applies. It states that housing development will be permitted at sites allocated for housing through the development plan, including Strategic Allocations and allocations in district and neighbourhood plans. On sites that are not allocated, a range of specific circumstances where housing development will be permitted are identified.
11. It is common ground between the parties that the proposed development would be in conflict with policies SP2 and SD10 as it would not fall within the listed criteria and would constitute an urban extension that has not been identified through the plan making process. It is necessary to consider the weight that should be attached to the conflict with these policies in the context of all material considerations.
12. There is no dispute that the most important development plan policies for determining this application are out of date, including policies SP2 and SD10. The Council cannot currently demonstrate a deliverable five-year housing land supply and so the National Planning Policy Framework's (the Framework) presumption in favour of sustainable development, the so-called tilted balance, applies.

13. Policy REV1 of the JCS requires that a partial review of the plan for Tewkesbury commence immediately upon adoption of the JCS. This is in recognition of a housing supply shortfall amounting to 2,455 dwellings against the plan requirement on adoption, and the critical need to address this over the plan period. The JCS was found sound subject to this partial review.
14. Although the Council commenced the partial review, it subsequently opted not to progress it in favour of a comprehensive review of the JCS, which is not anticipated to conclude for some time. The parties agree that the comprehensive review of the JCS is at a very early stage of preparation and that at present its content can be afforded no weight. As a consequence, there remains no firm plan or timetable to address the plan period shortfall.
15. Whilst much of the identified plan period shortfall has been made up by good levels of housing delivery in the early part of the plan period, the Council always anticipated that delivery would begin to wane, as demonstrated by the JCS trajectories. That has begun to materialise, and the Council can no longer demonstrate a deliverable five-year housing land supply. Even on the most optimistic basis put to me, only 3.83 years of supply is currently available, and the appellant suggests a much smaller figure. A plan period shortfall of at least 543 dwellings also remains, with no certainty about if or where this can be made up during the plan period.

Housing land supply

16. Much time was spent during the inquiry debating the correct housing land supply figure but the dispute between the parties came down to whether the Council's past oversupply should be taken into account. There have been different conclusions from Inspectors and the Secretary of State on this matter, having considered the particular circumstances in each respective appeal. That is not at all surprising given that different evidence will have been put to them and the fast-changing and complex nature of housing land supply calculation. A recent judgement¹ in the High Court also considered the matter, establishing that whether to take account of past oversupply is not prescribed by national policy or guidance and so it is essentially a matter of judgement for the decision maker bearing in mind the circumstances in each individual case.
17. The judgement relates to a narrow issue and does not require overcomplication. I was not persuaded by the appellant's approach in this case to consider a range of factors, from the plan period deficit to the housing land supply shortfall in adjoining authorities, in order to decide whether past over delivery should be included in the calculation. The six factors identified by the appellant are material considerations that should be taken into account in the overall planning balance. This approach allows the decision maker to use their own judgement in ascribing weight to each factor, rather than creating an approach that acts to alter the housing land supply with the potential for mechanistically engaging the Framework's tilted balance. Although the tilted balance is engaged regardless in this case, no circumstances were identified that would make the appellant's approach preferable.
18. There has been a significant oversupply of housing against the annualised requirement during previous years in Tewkesbury. These are actual homes

¹ Tewkesbury Borough Council v SoS for Housing, Communities and Local Government [2021] EWHC 2782 (Admin)

that have been delivered and are meeting the housing needs of local people. I see no reason to ignore these homes in considering the Council's housing land supply position. They exist and so should be deducted from the housing requirement for the purposes of the calculation.

19. These houses have assisted the Council in meeting local housing needs to date and that fact does not change as a result of current circumstances where supply is now more constrained. If the Council is unable to meet its future supply needs, then that is a matter to be considered in the planning balance for applications and appeals (in the absence of a plan led solution) with a view to remedying that situation. It does not indicate that previous oversupply should be ignored or that it should be 'banked' or spread across the plan period. The houses exist now and have already met a proportion of the requirement. As such, they should be credited against the requirement in calculating the housing land supply position, referred to by the parties as the 'reverse Sedgefield' approach.
20. My conclusions on housing land supply support the Council's position in this case but it is nevertheless a poor position. Even taking into account the past oversupply, the Council can currently demonstrate just a 3.83-year supply and there remains a significant plan period shortfall.
21. Although the plan period runs to 2031, the Council should plan to meet the known deficit as soon as possible to ensure that the housing requirement is met. That was clearly the intention of the Inspector that examined the JCS and the urgency with which the matter should be addressed is now arguably greater given that many years have now passed. A plan-led approach to development is desirable, but in circumstances such as this, where there is little prospect of a timely plan led remedy, housing supply from individual planning applications become all the more valuable.
22. The Council suggests that the emerging Tewkesbury Borough Plan (TBP) will restore a deliverable five-year housing land supply imminently, but very little evidence was submitted to support this position. The appellant accepts that some allocations are likely to deliver and indications from the Inspector examining the plan are also favourable, but the Council accepts that, as a part two plan, housing land supply is not a matter of soundness that is to be tested. Furthermore, the evidence that has been presented to the examination is based on a different base date to that applicable in this appeal and relies on dated statements of common ground with landowners outlining delivery trajectories that, in some cases, have already been proved inaccurate by the passage of time.
23. The Council's housing land supply witness accepts that there is insufficient information before the inquiry for me to reach a judgement on the deliverability of the disputed allocations and so I attach very little weight to them, or their potential to boost the Council's housing land supply position if and when the TBP is adopted. For now, the housing land supply situation remains most unsatisfactory.

Other Matters

24. There would be some inevitable harm arising in landscape and visual terms from the building of houses on currently undeveloped fields, but this would be in the context of the large residential scheme already consented to the north,

which is currently under construction. The impacts would be very localised and would be mitigated over time as proposed landscaping matured. The harm would not amount to a conflict with policy SD6 of the JCS and attracts limited weight.

25. Both National Highways and the Local Highway Authority have carefully considered the potential impacts of the development on highway safety and capacity and concluded that the scheme can be accommodated subject to suitable conditions and obligations. There is no evidence before me that leads me to a different conclusion.
26. The Council suggest that there is potential for some harm to heritage assets, namely the Grade II* listed Church of St Nicholas, Ashchurch and the Grade I Abbey Church of St Mary, Tewkesbury. These are landmark buildings with wide reaching settings but the site itself is some distance from both and contributes little to the significance of the buildings as a small element of a vast landscape with intervening buildings and landscape features. The ES concludes that the development would not harm these heritage assets and I am inclined to agree.
27. The application is supported by a detailed ES and various technical reports and assessments covering a range of topics, prepared by suitably qualified professionals. No other issues are identified that would materially indicate against the proposal and that could not be mitigated sufficiently by conditions or obligations. The majority of this evidence is unchallenged and there was no evidence put to me that would draw its conclusions into doubt or lead me to a different view.

Habitat Regulations Assessment

28. Natural England (NE) was consulted on the application and identifies that the appeal proposal falls within the Severn catchment and is therefore hydrologically linked, via the Tirlle Brook, to the Severn Estuary Special Area of Conservation (SAC) and Ramsar Site. There is potential to affect the interest features of this European protected site, particularly migratory fish, and an Appropriate Assessment is needed.
29. In this case the European eel represents one of the Severn Estuary Ramsar Site and SSSI species and is recorded in the Tirlle Brook, approximately 500m downstream of the application site. These sites are afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations).
30. NE are satisfied, having regard to the submitted Flood Risk Assessment and Drainage Strategy (March 2021) and the proposed mitigation measures relating to water quality and water supply, that the integrity of these designated sites will not be impacted, subject to suitable planning conditions. The Severn Estuary SAC and Ramsar Site partially coincides with the Severn Estuary and Upper Severn Estuary SSSI. Provided the mitigation measures for the Habitats Site are secured as part of any planning approval NE do not anticipate adverse impacts on these SSSI's notified features.
31. Other European sites are located relatively close to the appeal site. The nearest European designation is Dixton Wood SAC that lies approximately 5.5km to the southeast of the appeal site. Bredon Hill SAC lies approximately

6.5km northeast of the appeal site. Neither site has an associated Impact Risk Zone (IRZ) that would suggest a likely risk arising from development at the appeal site and so it is possible to exclude the prospect of a risk based on current scientific evidence. Given the distance between the appeal site and these areas, and the amounts of public open space proposed within the development, there is no realistic prospect of significant recreational pressure or harm arising.

32. Although there is a theoretical potential for significant effects on the Severn Estuary SAC, it can be concluded that, subject to suitable mitigation being secured, the development would not result in adverse effects on the integrity of the SAC or other designated sites.

Garden Town

33. The site is located in an area where the Council aspires to deliver a Garden Town. Some Government funding has been secured to assist the exploration of this concept and the Council has begun some master planning work to consider what a Garden Town in this location might look like. It has also secured planning permission for a bridge, aimed at facilitating a future proposal and facilitating its benefits. However, the Council fully accepts that its Garden Town concept is only an aspiration at the current time, that is has no formal planning policy status and that a great deal more work would be needed before delivery could be expected. Furthermore, it is accepted that the appeal proposal would not prevent the Garden Town from coming forward. It would deliver housing in a location that the Council currently expects to be developed for housing.
34. Nevertheless, it was suggested that the appeal scheme would compromise the potential Garden Town by coming forward ahead of a detailed masterplan, preventing it from being considered comprehensively. However, only two issues were identified in cross examination, first, that a pedestrian link to the west towards Newton would not be completed and would lead to an undeveloped field, and second, that a road connection would not be made to the south.
35. The desirability of either is not yet known given the very early stage of the Garden Town concept, but the scheme would provide the pedestrian link to the west up to its site boundary, which any future development could readily connect to. Provision is specifically made for improvements to this right of way. The opportunity to create a road link to the south, if it were desirable to bring traffic onto this country lane, might be lost but a suitable access would be achievable to the north and the lack of this route would have little impact on the overall quality of a future Garden Town in my view.
36. It is clear from the evidence provided that a suitable and high-quality scheme could be achieved on this site and I see no reason why the Garden Town, should it ever come to fruition, would be materially compromised. I attach only limited weight to this matter. In different circumstances, a plan-led and carefully master planned scheme would be preferable prior to individual planning applications but with little direction currently given by policy on delivering the required housing and the pressing need for housing now, that is a luxury that cannot be afforded, particularly where there is apparently little harm that would arise.

Benefits

37. The Council accepts that there would be benefits arising from the proposed development and these include the delivery of both market and affordable housing in an area where there is a known need for both. There is dispute about whether the proposed scheme would be likely to deliver within five years so as to contribute towards the Council's immediate housing land supply shortfall. From the evidence put to me, there is interest from a large house builder and some prospect that the scheme could deliver a proportion of houses within five years. However, even if it did not deliver until later years, the scheme would still make a valuable contribution towards the plan period deficit. In addition to these benefits, the scheme would also provide an economic boost through spending and jobs, biodiversity enhancements, public open space and land for the future provision of a school. Taken together, these benefits attract very significant weight.

Planning Obligations

38. Three Unilateral Undertakings pursuant to S106 of the Town and Country Planning Act 1990 were submitted by the appellant so as to secure obligations sought and enforceable by, the Council and Gloucestershire County Council (GCC).

39. CIL Compliance Statements were provided by the Council, GCC and Ashchurch Rural Parish Council (the Parish Council) explaining how these obligations are said to comply with CIL Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have had regard to these statements in reaching my conclusions on the various obligations.

Affordable housing

40. In accordance with policy SD12 of the JCS, 40% of the proposed houses would be secured as affordable housing with a range of proposed tenures. There is dispute between the parties regarding the type of rented units to be secured, the appellant preferring a large proportion of affordable rented units and the Council seeking entirely social rented units. Both options are capable of being secured subject to my conclusions, enabled by a 'blue pencil clause'.

41. It is agreed between the parties that both types of rental unit would meet an identified need. However, the Council refers to the Gloucestershire Local Housing Needs Assessment (2020) (LHNA) which is the latest evidence of need available and indicates that a far greater need exists for social rent units. This document is yet to be tested, forming part of the evidence base for the emerging JCS review, but little evidence was put to me at this inquiry that would cast doubt on its conclusions. Homes England regard Tewkesbury Borough as a priority social rent area and this supports the Council's position.

42. Policy SD11 of the JCS requires an appropriate mix of dwelling sizes, types and tenures in order to contribute to mixed and balanced communities and a balanced housing market. Development should address the needs of the local area, as set out in the local housing evidence base including the most up to date Strategic Housing Market Assessment (SHMA). The LHNA is not a SHMA but the latest SHMA dates from 2014/15 and so is somewhat dated. Whilst it provides a basis for affordable housing needs in the area and there remains no

dispute that a general need exists, the LHNA provides a much more recent and useful indication of current tenure needs.

43. Affordable rent units may have been accepted by the Council in the past, which is unsurprising given that there was a known need. That does not prevent the Council from seeking to prioritise alternative tenures in light of new housing needs evidence. The fact that a large proportion of affordable rent units have been secured to date makes the need for subsequent permissions to address the lack of social rented units all the more important, particularly where it is viable to do so. No evidence has been submitted to suggest that it would not be viable in this case.
44. Other Inspectors have reached different views, effectively concluding that affordable housing of any tenure that is needed is sufficient to meet policy requirements². However, from the evidence before me, that approach would not secure the mixed and balanced communities sought by the development plan or satisfactorily meet local needs because appellants are likely to select the tenure types that are preferable to them, as opposed to targeting the greatest needs. That is neither a policy compliant or a desirable outcome.
45. For all of these reasons, the tenure mix of the affordable housing units is best calculated on the basis sought by the Council and I have had regard to this obligation in reaching my decision.

Other obligations

46. The remaining obligations are less controversial and are agreed between the parties. These include the provision of public open space, children's play equipment, sports and community facilities in accordance with the development plan and the Council's requirements. The undertakings allow for an area of woodland adjacent to the proposed housing to be offered to the Parish Council as a community asset, along with a commuted sum for its maintenance and management in order that ecological benefits are also secured. Funding for recycling and waste bins is to be provided.
47. GCC has identified a range of highway improvements that would be needed to mitigate the impacts of the proposed development, as well as improvements to public rights of way that would facilitate pedestrian movements and encourage healthy and sustainable transport modes. The funding of such improvements is a requirement of the development plan. A Travel Plan would also be secured to support these objectives.
48. Land would be provided for the future provision of a school to meet education needs arising from the development.
49. All of these obligations are reasonable, proportionate, necessary and otherwise meet the requirements of the CIL Regulations and I have taken them into account in reaching my decision.
50. The only obligation offered but which I have not taken into account, is the 'Mitigation Works Fund' sought by the Parish Council for potential traffic calming and traffic management on quiet lanes. This request arises from work undertaken in preparation of the Ashchurch Rural Parish Neighbourhood Development Plan 2020 -2031, Submission Draft (Draft NP). The Draft NP is at

² Including APP/G1630/W/20/3257625 and APP/A5270/W/21/3268157

a relatively early stage of preparation, has not been tested and can only attract very limited weight at this time. The detailed transport assessment work supporting the application does not identify any likelihood of harmful levels of traffic using the surrounding quiet rural lanes and the Parish Council's representative at the inquiry accepted that there was currently no evidence to suggest otherwise. GCC, as Local Highway Authority, do not support the contribution. In light of these circumstances, I am unable to conclude that the contribution would meet the requisite tests, namely necessity.

Planning Balance

51. The proposed development is in conflict with policies SP2 and SD10 of the JCS. These are very important policies that form part of the plan's spatial strategy for the area, but it is agreed between the parties that they are out of date. No other policy conflict has been identified.
52. The spatial strategy remains incomplete in that the JCS does not currently make provision for sufficient housing to meet identified housing needs. Limited progress has been made in reviewing the JCS in accordance with policy REV1 and so there is no firm plan to address the matter or realistic prospect of the plan period deficit being rectified within a reasonable timeframe. The deficit must be made up sooner rather than later if housing needs are to be met within the plan period. As such, I attach only limited weight to the conflict with policies SP2 and SD10.
53. Few adverse impacts have been identified beyond the harm arising from conflict with the development plan. There would be some landscape and visual harm, but this would be relatively modest and would reduce over time as mitigation matures. A modest amount of agricultural land would also be lost.
54. The site is located close to Tewkesbury, a market town and focus for development in the area, a location accepted to be sustainable in an accessibility sense and where Strategic Allocations were anticipated by the JCS. It is also an area where the Council has aspirations for a Garden Town that would see housing development in this general location.
55. Overall, the site is a suitable location for the proposed development and planning permission should be granted in this case because the adverse impacts of doing so would not significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. To the contrary, the benefits arising from the development would overwhelmingly outweigh the limited harm.
56. Whilst there would be conflict with the development plan, material considerations indicate that permission should be granted nonetheless.

Conditions

57. The parties agreed a range of conditions that would be appropriate if planning permission is granted, though there was disagreement in a number of respects, and I deal with these matters below. Where agreed, I have attached the conditions largely unaltered, other than changes to improve their precision and otherwise ensure compliance with the relevant tests.
58. In addition to the required conditions identifying the reserved matters and timescales for the submission of subsequent applications, I have specified the

maximum number of dwellings to be constructed in accordance with the submitted information and in the interest of certainty. For the same reason, I have specified the approved drawings with which the development must accord.

59. I have not attached the Council's requested condition seeking a Site Specific Design Manual as this is rather vague, appears somewhat onerous and seeks to ignore the work already undertaken in producing a Parameters Plan for the site. Its requirements are not necessary for a scheme of this size and would very likely delay the prompt delivery of housing. However, nor am I satisfied that the appellant's preferred alternative, to rely solely on the Parameters Plan, would be sufficient to ensure a high-quality development in line with national and local policy.
60. I have therefore attached a condition broadly consistent with that attached to the adjoining development to the North, in line with the appellant's secondary position. This requires a proportionate level of design detail that can build upon the parameters already defined by the Parameters Plan and will ensure consistent high quality across the wider development.
61. I acknowledge the Council's reservations about the Parameter Plan but the evidence submitted demonstrates that a suitable noise barrier (bund and fence) can be achieved in the space identified and the general parameters shown appear logical and acceptable, including in respect of the sports pitch location, albeit that consideration will need to be given to how to respond to flood risk. On this basis, there is no need for a condition specifying requirements for the detailed design of the bund at this outline stage.
62. In light of the above, subsequent conditions do not refer to the Site Specific Design Manual but the required Site Wide Masterplan Document.
63. Given the wording and requirements of condition 5, the Phasing Plan required by condition 6 does not reference the Parameters Plan and the Design and Access Statement as this becomes unnecessary.
64. A Green Infrastructure Strategy Plan is needed in the interests of good design and ecological enhancement. In addition, a range of conditions are necessary to ensure that the scheme protects and enhances ecological interests.
65. To ensure a sustainable approach to development conditions are required to minimise waste and maximise recycling in accordance with the development plan.
66. Although the landscaping of the development is a reserved matter, it is necessary to secure comprehensive details of existing trees across the site that are to be retained so as to inform subsequent reserved matters proposals and ensure their protection during construction. This is in the interests of good design, the character and appearance of the area and for ecological reasons. However, it is not necessary to seek specific detail of the proposed landscaping as part of this outline permission as this will be the subject of a subsequent reserved matters application, which the Council will have an opportunity to consider and can impose conditions on any approval it grants.
67. I have attached a condition requiring a scheme of investigation and recording given the potential for archaeological interest within the site.

68. Conditions are necessary that ensure safe and suitable vehicular access to the site and each individual dwelling, along with future maintenance arrangements. Bicycle storage and a Travel Plan are needed to support sustainable travel objectives. In addition, electric vehicle charging points are a requirement of the development plan and local guidance. In the interests of precision and certainty, it is necessary to secure details of the specification for these charging points so as to ensure compliance with local guidance, notwithstanding the potential for future Building Regulations to apply.
69. A Construction Method Statement is necessary in the interests of highway safety and convenience and to protect the living conditions of neighbouring occupants.
70. Details of proposed and existing floor levels are required to ensure an appropriate appearance for the development and suitable living conditions for residents.
71. Measures are secured to ensure that the development is not subject to flooding or likely to cause flooding elsewhere and to ensure that water quality is not adversely affected. A condition is also attached to ensure that any unexpected land contamination is suitably remediated in the interests of public health.
72. Given the proximity of the development to the motorway, a condition requiring further noise assessment and the incorporation of any necessary mitigation measures is necessary, to ensure suitable noise conditions for future residents and school pupils.
73. A Housing Mix Statement will be secured to ensure open market dwellings of an appropriate mix of types and sizes are provided that will meet local housing needs in accordance with the development plan.

Conclusion

74. The appeal is allowed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Josef Cannon, Counsel

He called:

Paul Instone MRTPI	Director, Applied Town Planning Ltd
Cristina Howick MA (Oxon) MSc (Econ)	Planning Director, Stantec (UK) Ltd

FOR THE APPELLANT:

Paul Tucker QC
Assisted by Philip Robson

He called:

David Hutchison BSc (Hons) DipTP MRTPI	Executive Director, Pegasus Group
Julian Alexander BA (Hons) MSc MCICHT CMILT	PFA Consulting
Paul Harris BA Dip LA CMLI	Director, MHP Design Ltd
James Stacey BA (Hons) DipTP MRTPI	Director, Tetlow King
Neil Tiley Assoc RPTI	Director, Pegasus Group

* Various other people spoke briefly on behalf of the main parties during the conditions and planning obligations sessions

INTERESTED PERSONS:

Neil Hanson	National Highways
Tony Davies	Ashchurch Rural Parish Council

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Appellant's opening submissions
- 2 Council's opening submissions
- 3 Speaking Note from Neil Hanson, National Highways
- 4 Speaking Note from Tony Davies, Ashchurch Rural Parish Council
- 5 TBC Draft Planning Conditions
- 6 TBC Draft CIL Compliance Statement
- 7 Clean Scott Schedule of Emerging Allocations
- 8 Errata Note and clarification from James Stacey
- 9 TBC CIL Compliance Statement
- 10 GCC CIL Compliance Statement
- 11 ARPC CIL Compliance Statement
- 12 Updated drafts of Unilateral Undertakings
- 13 Updated draft planning conditions
- 14 HRA Briefing Note
- 15 Agreed route for site visit
- 16 Updated draft planning conditions
- 17 National Highways correspondence
- 18 Speaking Note of David Parker
- 19 Council's Closing Submissions
- 20 Appellant's Closing Submissions

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1 Affordable Housing Unilateral Undertaking
- 2 Public Open Space Unilateral Undertaking
- 3 Education, Libraries, Highways etc Unilateral Undertaking
- 4 Final version of proposed planning conditions
- 5 Council's Note on bund detail
- 6 Appellant's Note of bund detail, including section drawing

Schedule of Conditions

- 1) No part of the development hereby permitted shall be begun until details of the access, appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority for that part of the development. The development shall be carried out as approved.
- 2) Application for the approval of the reserved matters for phase 1, as identified by the Phasing Plan required under condition 6, shall be made to the local planning authority before the expiration of 2 years from the date of this permission. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters approved for phase 1, whichever is the later. Application for approval of reserved matters may be submitted for a full phase or part of a phase.
- 3) Application for the approval of reserved matters for the subsequent phases of development, as identified by the Phasing Plan required under condition 6, shall be made to the local planning authority before the expiration of 4 years from the date of this permission. The subsequent phases of development hereby permitted shall be begun no later than 2 years from the date of approval of the last of the reserved matters to be approved for that phase. An application for approval of reserved matters may be submitted for a full phase or for a part of a phase.
- 4) No more than 460 dwellings shall be constructed on the site pursuant to this planning permission.
- 5) Notwithstanding the submitted Indicative Masterplan, a Site Wide Masterplan Document (SWMD) shall be submitted to the local planning authority either prior to or alongside the first application for approval of reserved matters for its written approval. The SWMD shall be in accordance with the submitted Parameter Plan (P20-1160_02 Rev.G) except where other planning conditions specify otherwise and shall include a set of Design Principles including:
 - a) the principles for determining the design, form, heights and general arrangement of external architectural features of buildings;
 - b) the principles of the hierarchy for roads and public spaces;
 - c) potential arrangements for car parking;
 - d) the principles for the design of the public realm; and
 - e) the principles for the laying out of the green infrastructure, including the access, location and general arrangements of the sports pitches and play areas.The SWMD shall include a two-dimensional layout drawing that shows:
 - f) the broad arrangement of development blocks around a street hierarchy including indications of active frontages;
 - g) density ranges;
 - h) maximum building heights;

- i) character areas;
- j) the location and general extent of public open space, including formal recreational areas, Play Areas, Allotments, drainage features, access and car parking;
- k) existing landscape features to be retained and/or enhanced;
- l) proposed structural planting;
- m) the location and general extent of any local centre/neighbourhood area, including the school land, community facilities and associated access and car parking;
- n) the location of existing and proposed public rights of way;

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

- 6) Prior to or as part of the first reserved matters application a Phasing Plan for the whole site shall be submitted to the local planning authority for approval in writing. The Phasing Plan shall include details of the approximate number of market and affordable dwellings for each phase of development together with general locations and phasing of key infrastructure, including surface water drainage, green infrastructure, informal and formal public open space, areas of play, access for pedestrians, cyclists, buses and vehicles and proposed public transport infrastructure. Development shall be carried out in accordance with the approved Phasing Plan or any subsequent revisions thereto.
- 7) Prior to or as part of the first reserved matters application a Green Infrastructure Strategy Plan shall be submitted to and approved in writing by the local planning authority. Submissions for approval of Reserved Matters shall accord with the approved Green Infrastructure Strategy Plan.
- 8) The first reserved matters application submitted pursuant to condition 1 shall be accompanied by a detailed Site Waste Management Plan (SWMP) (incorporating material resource efficiency measures) for approval in writing by the local planning authority. The SWMP must identify the type and amount of waste materials expected to be generated from the residential development during the construction phase and set out what specific measures will be employed for dealing with this material so as to:
 - i) Minimise its creation;
 - ii) Maximise the amount of re-use and recycling on-site;
 - iii) Maximise the amount of off-site recycling of any generated waste that is unusable on-site; and
 - iv) Reduce the amount of all wastes sent to landfill.

In addition, the SWMP must clearly set out the proportion of recycled content to be used in construction materials and how such a level will be secured.

The reserved matters applications for each phase (or part phase) shall demonstrate compliance with the approved SWMP for that phase and the development shall be carried out in accordance with the approved details.

- 9) The first reserved matters application submitted pursuant to condition 1 shall be accompanied by details of a recycling strategy for the site for approval in writing by the Local Planning Authority. The reserved matters applications for each phase (or part phase) shall include details of waste storage provision for that phase which shall be in general accordance with the approved recycling strategy and the development shall be carried out in accordance with the approved details.
- 10) The first reserved matters application for any given phase submitted pursuant to condition 1 shall include the following details in respect of that phase:
- a) a plan showing the location of, and allocating a reference number to, all trees on the site which have a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;
 - b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
 - c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
 - d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree; and
 - e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

In this condition 'retained tree' means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above. Development shall be carried out in accordance with the approved details.

- 11) No development shall take place within any phase or part of a phase until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority for that phase or part of a phase. The scheme shall include an assessment of significance and a programme and methodology of site investigation and recording and the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation. The development shall be carried out in accordance with the approved Written Scheme of Investigation.
- 12) No development or site clearance shall take place until a strategic Ecological Constraints and Opportunities Plan (ECOP) for the site has been submitted to and approved in writing by the Local Planning Authority. The Plan shall be based upon Chapter 6 (Ecology) of the submitted Environmental Statement (March 2021) and the approved Green Infrastructure Strategy. The Plan shall additionally, but not exclusively, include the following:

- a) Strategic dark corridors requirements;
- b) Skylark nesting habitats requirements;
- c) Integrated amphibian and reptiles habitats and corridors requirements; and
- d) An ecological and connection strategy for the Tirlle Brook including geomorphological factors, fish, riparian habitats and Otters.

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

- 13) Prior to the commencement of development of each phase (or part phase) of development identified in the approved Phasing Plan a Green Infrastructure and Biodiversity Delivery Scheme for that phase shall be submitted to and approved in writing by the Local Planning Authority. The delivery scheme shall be in general accordance with the strategy as set out in Chapter 6 (Ecology) of the Environmental Statement, the approved Green Infrastructure Strategy and the approved Ecological Constraints and Opportunities Plan, and shall include, but not be limited to, the following:
- a) Risk assessment of potentially damaging construction activities;
 - b) Identification of "biodiversity protection zones" and their purpose/function;
 - c) Updated ecological surveys and assessments where required;
 - d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction, to include precautionary working method statements for reptiles (grass snake), Great Crested Newts, Bats, Hedgehogs, Badgers, Nesting Birds and Otters;
 - e) The locations and timing of works to avoid harm to biodiversity features and provide effective mitigation and enhancement;
 - f) The times during construction when specialist ecological or environmental practitioners need to be present on site to oversee works;
 - g) Responsible persons and lines of communication;
 - h) The role and responsibilities on site of an ecological clerk of works or similar person;
 - i) Use of protective fences, exclusion barriers and warning signs;
 - j) Detailed ecological enhancement implementation measures relevant to the pre development ecological site characteristics and opportunities;
 - k) A bat sensitive lighting plan to show types of lighting and proposed lux levels; and
 - l) Protection measures for ecological habitat features to include hedgerows, trees, wet ditches and the Tirlle Brook.

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

- 14) No dwelling in any given phase shall be occupied until a Landscape and Ecological Management Plan (LEMP) for that phase has been submitted to and approved in writing by the local planning authority. The LEMP for each phase shall, but not exclusively, include the following:
- a) Description and evaluation of features to be managed in relation to the open spaces defined in the Environmental Statement, the approved Ecological Constraints and Opportunities Plan and approved Green Infrastructure and Biodiversity Management Plan appropriate to the phase to ensure the predicted biodiversity net gain is achieved;
 - b) Ecological trends and constraints on site that might influence management;
 - c) Aims and objectives of management including, but not exclusively, those in relation to farmland birds, amphibians, reptiles, bats, otters and hedgehogs (including hedgehog passes cut into fencing);
 - d) Appropriate management options for achieving aims and objectives including appropriate enhancement measures;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) Details of the body or organisation responsible for implementation of the plan;
 - h) Ongoing monitoring, maintenance and remedial measures of habitats, animal shelters and wildlife features.

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

- 15) Prior to the occupation of the first dwelling in each phase, a lighting scheme demonstrating that strategic dark corridors safeguarding in accordance with the approved Ecological Constraints and Opportunities Plan can be achieved shall be approved in writing with the Local Planning Authority and thereafter development carried out in accordance with the approved scheme.
- 16) The details to be submitted for the approval of reserved matters for each phase (or part phase) of development pursuant to Condition 1 shall include vehicular parking and turning and loading/unloading facilities within the phase (or part phase). Thereafter, no building hereby approved shall be occupied until those facilities and carriageways

(including surface water drainage/disposal and street lighting) serving that building and providing access from the public highway to that building have been completed to at least binder course level and the footways to surface course level. The facilities shall be maintained available for those purposes for the duration of the development.

- 17) No dwelling hereby permitted shall be first occupied until that dwelling has been provided with an electric vehicle charging point. For developments with unallocated parking i.e. flats/apartments, 1 electric vehicle charging point per 10 spaces (as a minimum) should be provided and operational prior to first occupation.

The first reserved matters application submitted pursuant to condition 1 shall be accompanied by details of the electric vehicle charging points specification for the site for approval in writing by the Local Planning Authority. The reserved matters applications for each phase (or part phase) shall be in accordance with the approved specification and the development shall be carried out in accordance with the approved details.

The electric vehicle charging points shall be retained for the duration of the development unless they need to be replaced in which case the replacement charging points shall be of the same specification or a higher specification in terms of charging performance.

- 18) No dwelling hereby approved shall be occupied until sheltered, secure and accessible bicycle parking for that dwelling has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority.
- 19) The Residential Travel Plan hereby approved, prepared by PFA Consulting, dated March 2021, shall be implemented and monitored in accordance with the regime contained within the Plan.
- 20) The school hereby approved shall not be brought into use until a Travel Plan has been submitted in writing to the Local Planning Authority that promotes sustainable forms of travel to the development site and this has been approved in writing by the Local Planning Authority. The submitted details shall use Modeshift STARS to carry out this process and include mechanisms for monitoring and review over the life of the development and timescales for implementation. The approved Travel Plan shall be implemented, monitored and reviewed in accordance with the approved details.
- 21) The development hereby approved shall not be occupied, unless or until the improvement schemes identified for M5 Junction 9 and the adjoining A46(T) corridor, as shown in PFA Consulting's 'Proposed Improvements to M5 Junction 9' drawing Ref: H556/12 Rev D, and the 'Site Access Arrangements off A46(T) – General Arrangement' drawing Ref: H556/03 Rev B, have been completed to the satisfaction of the Local Planning Authority and are open to traffic.
- 22) The reserved matters application for each phase submitted pursuant to condition 1 shall include details of the proposed arrangements for future management and maintenance of the proposed streets within that phase or part of a phase. The streets shall thereafter be managed and maintained in accordance with the approved details until such time as either a dedication agreement has been entered into or a private

management and maintenance company has been established for each phase or part of a phase.

- 23) No development shall take place in a phase or part of a phase, until a Construction Method Statement which accords with the Green Infrastructure and Biodiversity Delivery Scheme for that phase has been submitted to and approved in writing by the local planning authority for that phase or part of a phase. The document shall contain details for community engagement measures and to control the following:
- a) the parking of vehicles of site operatives and visitors;
 - b) for loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) wheel washing facilities;
 - e) measures to control the emission of dust and dirt during construction, including being carried onto the highway;
 - f) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - g) arrangements for turning vehicles;
 - h) arrangements to receive abnormal loads or unusually large vehicles;
 - i) highway condition survey;
 - j) details of the site access/routeing strategy/signage during the construction period;
 - k) hours of working;
 - l) site boundaries/hoardings;
 - m) site activities;
 - n) Construction traffic (volumes, routes, parking, cleaning, holding areas and permitted arrival and departure times);
 - o) temporary fuel storage;
 - p) method of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.
- The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 24) The reserved matters application for each phase or part of a phase that includes buildings submitted pursuant to condition 1 shall include details of existing and proposed ground levels and ground floor slab levels relative to Ordnance Datum of the buildings within that phase or part of a phase. The development shall be carried out in accordance with the approved details.
- 25) Notwithstanding the approved plans/details, a detailed surface water drainage strategy for the entire development hereby approved shall be submitted to the Local Planning Authority prior to, or accompanying the first reserved matters application submitted pursuant to Condition 1, for approval in writing. All subsequent reserved matters submitted pursuant to Condition 1 shall incorporate the approved surface water drainage strategy and the development shall be carried out only in accordance

with the approved surface water drainage strategy. The details shall be based on the Flood Risk Assessment & Drainage Strategy (Revision A, dated March 2021) included within the Environmental Statement. The submitted details shall:

- a) provide information about the design storm period and intensity and ensure that the design accommodates the 1 in 100 year plus climate change critical storm event, the method employed to delay and control the surface water discharged from the site to limit the rate and quantity of runoff and improve the quality of any runoff before it leaves the site, details of existing and proposed overland flow routes demonstrating that the buildings will be safe from flooding in the event of blockage or exceedance of the drainage system, and the measures taken to prevent pollution of the receiving groundwater and/or surface water;
- b) provide details of compensatory pluvial flood storage capacity within the site;
- c) provide details of any necessary easements;
- d) provide a health and safety risk assessment for the attenuation ponds and incorporate any recommended safety measures;
- e) include details of the phasing for its implementation;
- f) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for its adoption/ownership which may include adoption by any public authority or statutory undertaker, and any other arrangements to secure the maintenance and operation of the scheme throughout its lifetime.

No building hereby permitted within each phase or part of a phase of the development, as defined under section e) above, shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority as part of the reserved matters applications for that phase or part of a phase.

- 26) Floor levels should be set at least 600mm above the 1% Annual Exceedance Probability flood level (including an allowance for climate change) based on the detailed results of the hydraulic modelling work submitted in Appendix I of the Flood Risk Assessment prepared by Phoenix Designs, dated March 2021.
- 27) Each reserved matters application submitted pursuant to Condition 1, which includes any dwellings/school building, shall be accompanied by a revised noise assessment to identify any dwellings/school that would be at risk of exceeding the following limits.

A scheme of noise mitigation will be required where the façade noise level exceeds:

- 50 dB LAeq,16hr daytime, and/or
- 45 dB LAeq,8hr night-time and/or
- 60 dB LAFmax between 23:00 – 07:00

The scheme of mitigation shall be designed to ensure internal noise levels do not exceed:

- the criteria provided in Section 7.7.2 of BS 8233, and
- no more than 5% of the LAFmax values between 23:00 – 07:00 exceed 45 dB

Internal noise levels shall be calculated using the methods provided in BS8233:2014 and/or BS EN 12354:3.

Within gardens or balconies the steady noise level shall not exceed 55dB LAeq,16hr and in unoccupied school playgrounds, playing fields and other outdoor areas should not exceed 55 dB LAeq,30min and there should be at least one area suitable for outdoor teaching activities where noise levels are below 50 dB LAeq,30min.

The mitigation measures so approved shall be completed prior to any dwellings/school to which they relate being first occupied and post completion testing to verify that the noise level requirements of this condition have been met shall be carried out. Prior to post completion noise testing being undertaken the developer shall submit for the written approval of the local planning authority a noise testing methodology.

If the post completion testing shows that the limits set out above are exceeded, details of further mitigation to bring noise levels down to the required limits shall be submitted to and approved in writing by the Local Planning Authority and the further mitigation shall be carried out before the buildings to which these measures relate are first occupied.

- 28) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared, which shall be subject to the approval in writing of the local planning authority.
- Following completion of measures identified in the approved remediation scheme a verification report shall be prepared, which shall be subject to the approval in writing of the local planning authority.
- 29) The first reserved matters application for any given phase (or part phase) submitted pursuant to condition 1 shall include the submission of a Housing Mix Statement for the open market housing to the local planning authority for its written approval. It will set out, in respect of that phase, how an appropriate mix of dwelling sizes and types will be provided in order to contribute to a mixed and balanced housing market to address the needs of the local area, including the needs of older people, as set out in the local housing evidence base, including the most up-to-date Strategic Housing Market Assessment for the area at the time of the submission of the relevant reserved matters. The development shall be implemented in accordance with the approved Housing Mix Statement for that phase (or part phase).
- 30) The development hereby permitted shall be carried out in accordance with the following approved plans unless other conditions in this planning permission specify otherwise: Site Location Plan ref. 349.P.3 REV C and Parameter Plan ref.P20-1160_02 Rev.G.