



GLOUCESTER CITY PLAN EXAMINATION

INSPECTOR'S MATTERS, ISSUES, AND QUESTIONS FOR DISCUSSION AT THE EXAMINATION HEARINGS

VERSION 1

MATTER 10:

THE DELIVERY OF THE PLAN

ON BEHALF OF: ROBERT HITCHINS LTD

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Whether the proposed development is sufficiently viable to enable the delivery and implementation of the spatial requirements of the JCS?

77. Is there appropriate certainty, and evidence that infrastructure provision will be provided at an appropriate quantum, in a timely fashion, and at appropriate suitably accessible locations, so as to support the delivery of the growth proposed within the GCP and the JCS?

77.1 Paragraph 5.7.2 of the JCS identifies that infrastructure requirements are determined by the Infrastructure Delivery Plan 2014 which accompanied and underpinned the JCS, namely that of 2014. The IDP was tested at the JCS examination as required by numerous sections of the PPG.

77.2 The reference to the IDP in Policy INF6 is necessary to accord with paragraph 34 of the NPPF as this provides a clear policy requirement including setting out the levels of infrastructure required which does not undermine the deliverability of the Development Plan.

77.3 These levels of infrastructure were considered as part of the CIL Charging Schedule in which it was identified that numerous forms of infrastructure (including education) would be funded through CIL.

77.4 Providing Policy INF6 and the CIL Charging Schedule continue to be applied, infrastructure will continue to be delivered at an appropriate scale in support of development.

77.5 However, the Council now depart from both Policy INF6 and the CIL Charging Schedule by applying a new formulaic approach to determining educational infrastructure requirements which is not set out in the Development Plan contrary to the NPPF, and which has not been tested contrary to numerous sections of the PPG. The new formulaic approach does not accord with numerous parts of the relevant guidance and the use of this would undermine numerous policies of the JCS. For example, the new formulaic approach assumes that twice as many children will arise in every home than assumed in the IDP. Many of these additional children will form households in the

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- remainder of the plan period and as such there will be a greater need for housing than assumed in Policy SP1.
- 77.6 Similarly, the Council now depart from the CIL Charging Schedule and seek the entirety of educational infrastructure to be funded through s106 rather than CIL where this is viable. Where this is not viable, as will be the case on virtually every site, the Council require a viability assessment to be undertaken which even if the new formulaic approach was viable and could be introduced without reviewing all of the affected policies in the JCS, will delay the delivery of sites.
- 78. Should affordable housing be promoted ahead of other forms of infrastructure or policy requirements as referenced in paragraph 3.7.30 of the GCP?**
- 78.1 Where the combined cost burdens being imposed upon development through infrastructure and other policy requirements are such that these threaten viability then, as CIL charges cannot flex and other policy requirements are set in response to specific mitigation requirements necessitated by the delivery of new housing (as opposed to Affordable Housing the requirement for which is not informed by a formulaic approach based on a mitigation need invoked directly by the provision of the additional homes), then Affordable Housing proportions will have to be reduced.
- 78.2 It is less a case of 'should' it and more a case of Affordable Housing 'cannot be' promoted ahead of other forms of infrastructure or policy requirements as the latter two will either be required by law (CIL) or as mitigation to make a development acceptable in planning terms.
- 79. Does the evidence demonstrate that the level of development proposed within Gloucester, and defined within the JCS, will be viable and deliverable given the wider policy requirements of the GCP, such as ensuring developments are in keeping with the historic city, and the specific policy requirements which have been the subject of specific viability testing? Are these specific policy requirements and costs broadly consistent with those set out within the JCS? If not, what is the justification for any divergence between the two?**
- 79.1 No – the evidence does not demonstrate that the level of development proposed within Gloucester will be viable and deliverable in the context of the wider policy requirements of the GCP. Please see the Matter 8 Hearing

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Statement and Appendix 1 to that Statement submitted on behalf of Robert Hitchins Ltd ("HS8") which responds on the new evidence within VIA002 and the Reg-19 Pre-submission representations responses and Attachment A ("Reg-19 submission") prepared by Pioneer Property Services Ltd and submitted in conjunction with Pegasus in December 2019 which respond on VIA001. These responses set out concerns regarding the viability evidence, many of which remain unaddressed in VIA002.

- 79.2 The GCP seeks to introduce new policies which result in costs that are additional to those in the JCS – this is demonstrated by VIA001 and VIA002 which add policy layers on top of existing JCS policy costs in the modelling undertaken.
- 79.3 In addition to the GCP additional policy costs are significant additional s106 costs resulting from the County Council education s106 new formulaic approach which are being routinely applied despite its lack of Plan policy status. VIA002, notwithstanding its unaddressed flaws, demonstrates that these costs cannot be borne by the majority of sites in conjunction with the GCP emerging policies and Affordable Housing at 25% (lower Affordable Housing proportions are not tested in VIA002 alongside the increased s106 cost sensitivity testing). Please see Appendix 1 to HS8 where the VIA002 outcomes are considered in more detail.
- 79.4 The additional County Council education s106 costs are not identified as a policy requirement within the GCP or within the existing JCS and so in this sense are not a GCP policy that is divergent from the JCS. However, the routine application of these costs outside Plan policy is resulting in a cost impact on development that is significantly divergent from that sought through the JCS.
- 79.5 The National Planning Policy Guidance section on Viability considers how and when plan makers and site promoters should ensure that policy requirements for contributions from development are deliverable:

"The role for viability assessment is primarily at the plan making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total

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cumulative cost of all relevant policies will not undermine deliverability of the plan.

It is the responsibility of plan makers in collaboration with the local community, developers and other stakeholders, to create realistic, deliverable policies. Drafting of plan policies should be iterative and informed by engagement with developers, landowners, and infrastructure and affordable housing providers.

Policy requirements, particularly for affordable housing, should be set at a level that takes account of affordable housing and infrastructure needs and allows for the planned types of sites and development to be deliverable, without the need for further viability assessment at the decision making stage."

(Paragraph: 002 Reference ID: 10-002-20190509, NPPG)

This makes it clear that the onus is on plan makers to engage fully with developers, landowners and infrastructure / affordable housing providers to avoid site by site viability testing and delays to the planning process.

- 79.6 It is requested that Gloucester City Council's position on this matter is made absolutely clear as part of this Examination process so that: the full extent of burdens on development are taken into account when assessing the soundness of the emerging City Plan, and that it is made explicit whether the Local Plan policies will, or will not, be imposed in conjunction with the new County s106 education formula.
- 79.7 The publication of the Statement of Common Ground between Gloucestershire County Council and Gloucester City Council on Education (22nd March 2021 – SoCG6) and INF003 (Infrastructure and Viability Background Paper) do not resolve this lack of clarity.
- 79.8 Paragraph 5b) of the SoCG6 states that the Council do not wish to proceed on the basis of site by site testing, and yet in paragraph 5c) the Council then make the following contradictory statement: "*where there is limited viability*

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available in a scheme, priority will be given to the delivery of the policy requirements of the GCP”.

79.9 There are various concerns with the Council’s position in SoCG6 and INF003 including a) to assess ‘limited’ viability will require site by site testing, b) if the education contributions are necessary for mitigation they cannot flex and Affordable Housing will have to, and c) no evidence has been presented justifying the very high education contributions / Pupil Product Yields referred to in these documents.

79.10 Thus, soCG6 and INF003 highlight that confusion prevails; confirming on the one hand that the levels of County education s106 being sought are unviable, but failing to confirm on the other hand that the Council will not support the County seeking these levels of s106 where it is considered by the County to be necessary mitigation (see Appendix 1).

Summary

79.11 If Local Plan policies are to be imposed in conjunction with the new County s106 education formula then it will be necessary to:

- a) examine the evidential justification for this new formulaic approach
- b) examine its implications on relevant policies of the Development Plan (including on overall housing numbers), and,
- c) examine the viability impacts on development

as part of this current examination.

79.12 If this cost impact is not being taken into account as a policy requirement and tested through this Examination process it is requested that it is made absolutely clear that the GCP policies, if found sound, are found to be so on the basis that the County s106 education cost will not be sought by the City and County Council unless and until it is tested as part of Plan policy through a review of the GCP, the JCS or both.

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79.13 Assurances that the new County formulaic Education s106 cost is not being tested alongside emerging Plan Policy have been provided by a neighbouring JCS local authority, Tewkesbury Borough Council, during a recent EiP Hearing Session on viability. Based on this statement by Tewkesbury Borough Council the requirement was not tested in terms of evidential justification, impacts on Development Plan policies or viability in the Tewkesbury Borough Plan Local Plan examination. Despite this at the same time the contribution is still being sought in practice – please see HS8.

80. Are the assumptions, on which the Gloucester City Plan Viability Report and Addendum⁸ are predicated, transparent? Is there any divergence between the basis on which the CIL charging levels were set and those underpinning the viability assessment (VA) reports? If so, what is the significance of this?

80.1 Please see Attachment A to the Reg-19 submission and Appendix 1 to HS8 for concerns raised in respect of VIA001 and VIA002 assumptions; but in summary, in addition to the other concerns raised in respect of how exactly some of the assumptions are derived, the lack of appraisals underpinning the modelled typologies or identification of the specific Residual Land Values generated by that modelling all add to the lack of transparency.

80.2 The CIL Charging Schedule was examined on the basis that it was assumed that educational infrastructure would be funded through CIL in its entirety. VIA001 reflects this in paragraph 5.49. VIA002 acknowledges that the County Council's 'infrastructure ask' has since changed 'primarily' in respect of education. Thus, the CIL charging levels that are currently applied were set on a different basis to that which currently applies.

80.3 VIA002 professes to test the impact on the emerging GCP policies of this change in Table A7 (VIA001 did not assess this impact). VIA002 Table A7 suggests the significance of the changed underpinning circumstances is that these render the majority of site typologies unviable.

81. How has the amendment to the Community Infrastructure Regulations 2010 affected the Council's approach to the delivery of infrastructure?

⁸ VIA001 and VIA002

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What impact will this have on the timing and viability of the delivery of proposed developments?

- 81.1 The different approach to funding infrastructure requirements (i.e. relying upon s106 rather than CIL to fund educational infrastructure in contrast to the intended operation of the CIL Charging Schedule) is as result of amendments to the CIL Regulations in 2019. The legislative amendments allow s106 payments to be collected in addition to CIL to secure off-site infrastructure.
- 81.2 However, they do not require that s106 pays for the same item of infrastructure twice. The evidence that supported the CIL Charging Schedule was on the basis that education was being wholly funded through CIL. Seeking s106 for education could result in the same item (namely education) being paid for twice – there is no clear evidence of how the flow of CIL monies / s106 contributions will be audited / directed to avoid this. This would not accord with Regulation 122 as it is unnecessary to pay for the same infrastructure twice to make a development acceptable in planning terms. Despite this the new County Council formulaic approach to education contributions is being routinely sought by local authorities across the JCS area, including in Gloucester.
- 81.3 The impacts on viability (and therefore plan deliverability) are apparent in VIA002 Table A7, albeit that other modelling flaws (as set out Appendix 1 to HS8) result in this still providing an optimistic view on viability. As Affordable Housing is one of the single largest costs to development and CIL and infrastructure necessary for mitigation cannot flex it is clear that to accommodate the County education costs Affordable Housing will have to be reduced below 25%, although VIA002 does not assess the reduction that would be needed.
- 82. My understanding is that the viability assumptions set out within the September 2019 Viability Report have been amended in relation to updated Sales Values, Build Costs, S106 contributions, more up to date mitigation costs relating to the Beechwood SAC, and marginal increases in CIL levels. Is this approach justified by evidence? Is the quantum of S106 contributions tested realistic and justified by evidence? Have any changes to benchmark land values been considered? Also, should Tables A5, A6 and A7 be rerun using the 2020 Local Housing Needs Assessment preferred affordable housing tenure mix?**

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82.1 Please see Attachment A to the Reg-19 submission and Appendix 1 to HS8 both of which review these matters in detail, including in respect of Benchmark Land Values which have been set on an arbitrary basis at the outset in VIA001 and then re-applied without any form of indexation within VIA002. The VIA002 has applied selective amendments to a limited number of assumptions and as such does not provide a reliable updated assessment of viability.

82.2 In terms of the Local Housing Needs Assessment ("LHNA20") suggested tenure mix, Table A8 suggests that this worsens viability outcomes at £7.5k per unit and above compared to outcomes within Table A7. It is unlikely to show an impact in Tables A5 and A6 given that these are all subject to unrealistically low s106 cost assumptions (and below £7.5k per unit). However, in all cases scheme economics will be worsened by the inclusion of Social Rent instead of Affordable Rent given that the revenue achieved on Social Rent will be less than on Affordable Rent as is reflected by the outcomes in VIA002 Table A8 (albeit the VIA001 – paragraph 5.48 - and the VIA002 do not identify the transfer value assumed for Social Rent in the VIA002).

83. What would be the implication on the plan, if the viability evidence clearly demonstrated, on a plan wide basis, that the development proposed in the GCP was not viable?

83.1 Land will not be released for development, the GCP already fragile housing land supply situation will worsen, less Affordable Housing will be provided and the delivery of development plan policies will be undermined contrary to paragraph 34 of the NPPF.

84. What purpose is served by Policy G8 with reference to individual developments and developer contributions?

84.1 Pioneer has no comments to add.

Whether the following proposed site allocations, are justified, based on up-to-date evidence, effective, and consistent with national policy?

85. Taking each of the following proposed site allocations individually:

- **What is the background to the site allocation? How was it identified and which options were considered?**

85.1 Pioneer has no comments to add.

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- **How have the wider transport implications of the proposed development been considered?**

85.2 Pioneer has no comments to add.

- **What is the scale type/mix of uses proposed?**

85.3 Pioneer has no comments to add.

- **What is the basis for this and is it justified?**

85.4 Pioneer has no comments to add.

- **What is the current Planning status of the site in terms of Planning applications, Planning permissions and completions/ construction?**

85.5 Pioneer has no comments to add.

- **What are the benefits that the proposed development would bring?**

85.6 [Pioneer has no comments to add]

- **How does the site relate to nearby uses?**

85.7 Pioneer has no comments to add.

- **What are the potential adverse impacts of developing the sites, including to heritage assets? How could they be mitigated?**

85.8 Pioneer has no comments to add.

- **How is the site affected by flood risk? How has this been taken into account in allocating the site? How have the sequential and, if necessary, exception tests been applied?**

85.9 Pioneer has no comments to add.

- **What are the infrastructure requirements/ costs? How would these be addressed and are they directly related to, necessary and fairly and reasonably related in scale and kind to the development? Are there physical or other constraints to development?**

85.10 Pioneer has no comments to add.

- **Is the site available, realistically viable and deliverable?**

85.11 Pioneer has no comments to add.

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- **What is the expected timescale and rate of development and is this realistic?**

85.12 Pioneer has no comments to add.

- **Is the boundary of the site appropriate? Is there any justification for amending the boundary?**

85.13 Pioneer has no comments to add.

- **Is the terminology used within the relevant site-specific policy consistent and clear?**

85.14 Pioneer has no comments to add.