

Appeal Decision

Inquiry held on 16-19 June 2015

Site visits made on 15, 17, 18 and 19 June 2015

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 3 August 2015

Appeal Ref: APP/P1805/A/14/2225584

Land at Whitford Road, Bromsgrove, Worcestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Catesby Estates Ltd & Miller Homes Ltd against the decision of Bromsgrove District Council.
 - The application Ref 13/0479, dated 21 June 2013, was refused by notice dated 21 August 2014.
 - The development proposed is residential development, comprising up to 490 dwellings, together with class A1 retail shop, two new accesses onto Whitford Road, public open space, landscaping and sustainable urban drainage system.
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Decision

1. The appeal is dismissed.

Costs application

2. At the inquiry an application for costs was made by the appellants against the Council. That application is the subject of a separate Decision.

Preliminary matters

3. The application sought outline planning permission with all matters reserved except for access. The proposed access arrangements are shown on drawing No 461451-D-017. The application was also accompanied by a master plan, with two alternative options for the internal site layout. It was agreed at the inquiry that, with regard to all matters except access, the master plan should be treated as purely illustrative, but if necessary, other elements of it could be secured by conditions.
4. The application was accompanied by an Environmental Statement¹, submitted to the Council in June 2013, and revised in November 2013.
5. Initially the Council's notice of refusal of planning permission contained two refusal reasons (RRs). RR1, relating to traffic impacts within the new development, was withdrawn on 20 April 2015. RR2, which relates to other traffic impacts, remains to be considered, as do the issues raised by other objectors.
6. The objectors who appeared at the inquiry include Whitford Vale Voice (WVV), a local residents' group.

¹ Under the Town and Country Planning (Environmental Impact Assessment) (England) Regulations 2011

7. The appeal is accompanied by a unilateral legal undertaking, executed on 18 June 2015. The Council confirmed at the inquiry that it was broadly content with the obligations set out therein. The terms of the undertaking are discussed further elsewhere in this decision.

The appeal site

8. The appeal site lies on the western side of Bromsgrove. Its eastern boundary is formed by Whitford Road, a well-used but unclassified local road. Between Whitford Road and the town centre are mainly urban land uses, including the Deansway² and Millfield housing areas, and Sanders Park, a large area of public open space.
9. To the south, the site adjoins further housing around Sunningdale Road. To the north is Timberhonger Lane, a minor country lane, where there are also two existing dwellings and a pumping station. To the west, there is open countryside and the M5 motorway.
10. The site itself comprises about 24 ha of agricultural land. The topography is pleasantly undulating, and the site is visually contained by the ridgeline on its western boundary. There are some established hedgerows, including one that crosses the site from east to west, but no other features of note. A public footpath runs from Sunningdale Road, along the site's southern boundary, and gives views over the site.
11. To the north, Whitford Road joins the main highway network at Kidderminster Road (the A448), forming an uncontrolled staggered cross-roads with Perryfields Road. To the south, Whitford Road becomes Fox Lane, which reaches the main network at Rock Hill (B4091), in an uncontrolled T-junction. Throughout this decision, these are referred to as 'the Kidderminster Road junction' and 'the Fox Lane junction' respectively.
12. Whitford Road and Fox Lane, together with Perryfields Road, function as an informal secondary distributor route around the west side of the Bromsgrove urban area.

Planning background

The adopted Local Plan

13. The development plan for the area comprises the saved policies of the Bromsgrove Local Plan (the BLP). The BLP was adopted in 2004, but with a notional plan period that had already expired in 2001.
14. Under Policy BROM5F, the appeal site is excluded from the green belt, and is identified as an Area of Development Restraint (ADR). Policy DS8 states that the ADRs are areas where development might be considered in the future. For the duration of the plan period, the ADRs were to be treated in the same way as green belt, but that period has now passed. The policy also states that any permission for permanent development should only be granted after a local plan review.
15. Policy DS13, 'sustainable development', requires all developments to avoid compromising the ability of future generations to meet their own needs and to enjoy a high quality environment. Policy S7 sets out general requirements for

² Also known as the Friarscroft estate

residential development. These include that developments should not have unacceptable traffic implications or perpetuate a traffic hazard. Policy TR11 requires safe means of access and egress, appropriate to the nature of the local highway network.

The emerging District Plan

16. The draft Bromsgrove District Plan (the BDP), was published for pre-submission consultation in September 2013, and was submitted for examination in February 2014. The Public Examination opened in June 2014 and is still on-going.
17. The present appeal site is one of three which are identified as proposed Town Expansion Sites (TESs), which together are to form a balanced, mixed-use urban extension to Bromsgrove. The appeal site is designated as site BROM3. Policy BDP5A.6 states that BROM3 is to include a minimum of 490 dwellings and associated community infrastructure, including public open space, play facilities, and small scale local retail provision.
18. The other proposed TESs at Bromsgrove are BROM2 at Perryfields Road, just to the north of the appeal site, which is allocated for 1,300 dwellings and 5 ha of employment and a local centre; and BROM1 at Norton Farm, to the north-east of the town, which is allocated for 316 dwellings.
19. With regard to all the TESs, Policy BDP5A.7 sets out various requirements for their development. Requirement (c) states that an overall transport strategy will be developed to maximise walking and cycling opportunities, and requirement (d) seeks significant improvements in passenger transport, including integrated and regular bus services connecting the new and existing residential areas with the town. Requirement (e) states that it will be necessary to manage the cumulative traffic impact generated by the developments, with proposals being subject to appropriate appraisal in consultation with Worcestershire County Council (WCC) as highway authority, and taking full account of the impact on the wider transport network.
20. In the supporting text, paragraph 8.44 identifies the need for joint working between the three TESs, including on infrastructure and transport studies, and states that it is essential that such matters are addressed in a holistic manner, to ensure the right amount of infrastructure to meet the District's needs.
21. Although the BDP proposals for the appeal site attracted some objections, these were few in number and none is fundamental in nature. Most are said to have been resolved by minor changes to the plan's text. The single remaining adverse representation is a general comment regarding all three of the TESs. Although this has not been formally resolved, the Examining Inspector has not asked the Council for any specific response to it, and no further sessions relating to the TESs are programmed or anticipated.
22. As far as I can see, the BDP provisions relating to the appeal site are broadly consistent with national policy. Given its advanced stage, and all the relevant circumstances, I agree with the Council and the appellant that the relevant policies in the emerging plan should have substantial weight in this appeal.

The Infrastructure Delivery Plan

23. The evidence base presented to the BDP Examination includes the Bromsgrove Infrastructure Delivery Plan (the IDP), prepared in September 2013 and updated in February 2014, which identifies the highway works and other transport measures required to support the proposed development strategy. The IDP utilises basic traffic modelling based on a spreadsheet-based programme developed for this purpose by WCC, known as the Bromsgrove Development Traffic Model (the BDTM).
24. Of particular relevance to the present appeal, the IDP proposes that both of the Kidderminster Road and Fox Lane junctions should be converted from priority junctions to traffic signals.

The National Planning Policy Framework (the NPPF)

25. The NPPF seeks to promote sustainable development. The achievement of this aim requires consideration of the inter-linked social, economic and environmental dimensions. Pursuing sustainable development involves seeking positive improvements in the quality of the built environment and in the quality of life; this includes improving the conditions in which people live, work and travel, and also widening the choice of homes (paragraphs 6-9).
26. There is also a presumption in favour of sustainable development. Amongst other things, this means that where the development plan is out of date, permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits (paragraph 14).
27. With regard to transport, paragraph 32 states that all developments that generate significant amounts of movement should be supported by a transport statement or transport assessment. Plans and decisions should take account of opportunities for sustainable transport modes; safe and suitable access for all; and cost-effective improvements to the transport network, to limit significant impacts. However, permission should only be refused on transport grounds where the cumulative residual impacts are severe.
28. In relation to housing, the aim is to boost the supply significantly. Housing applications should be considered in the context of the presumption in favour of sustainable development. Where the local authority cannot demonstrate a five-year supply of deliverable sites, relevant policies for the supply of housing should not be considered up to date (paragraphs 47 and 49).
29. Paragraph 64 states that permission should be refused for development of poor design, which fails to take opportunities for improving the quality of an area and the way it functions.

Housing land supply

30. For the 5 year period January 2015 - December 2019, the Council's published housing land supply report shows a forward supply of 5.3 years. However, the Council's figures rely on a contribution of 958 dwellings from identified sites that have not yet got planning permission, including 224 units at the present appeal site. Without the appeal proposal, it is agreed that the supply calculation falls to 4.86 years.
31. In addition, the sites without planning permission also include 432 units from the BROM2 site at Perryfields Road, which has not yet even reached the stage

of having an outline application. By my calculations, if that site were excluded too, the supply would then drop to around 4.0 years. I have no further information as to the progress of the other 300 or so units in this category, which have not yet received planning permission. But in any event, it is not disputed that, for the District's housing needs to be met, the present appeal site is likely to be needed.

32. On this basis, applying NPPF paragraph 49, the housing supply policies of the adopted BLP can no longer be considered up-to-date; and indeed, having regard to the age of that plan, and its end-date, this proposition could hardly be disputed. In my view, the housing supply policies must include BROM5. The appellants suggest that they also include Policy S7, and the Council does not contest this. However, although that policy clearly does concern housing, it also embraces other matters such as traffic impacts and highway safety. On these issues, Policy S7 seems to me to be broadly consistent with the NPPF, and I therefore give it some continuing weight where relevant.

The appeal proposals

33. The only elements of the proposed development that are fixed by the application are: the maximum number of dwellings, which is 490; the inclusion of a retail unit, of 1,500 sq m; and the location and form of the two proposed access points.
34. As originally submitted, the accesses were to be created by forming two new T-junctions onto Whitford Road, with the priority remaining with the existing road in both cases. In the accompanying transport assessment (TA), dated May 2013, a package of mitigation measures was proposed, which included signalling both the Kidderminster Road and Fox Lane junctions, in accordance with the IDP, together with S.106 contributions and a travel plan.
35. Subsequently, the proposed development was amended by the submission of drawing No 461451-D-017. This proposes to change the priority at each of the two proposed access points, so that traffic on Whitford Road would be diverted through the appeal site, and the existing road would be closed to traffic³. The signalisation proposals are amended to omit the Fox Lane junction. These changes were accompanied by a revised TA, dated September 2013. The Council's decision was based on these revised proposals.
36. The provisions of the legal undertaking which are of particular relevance to the issues in the appeal include financial contributions to highway improvements in Bromsgrove town centre, traffic calming in Millfield and Deansway, enhanced bus services, walking and cycling facilities and signage⁴. The proposals are also accompanied by a travel plan.

Main issues

37. The overall main issue in the appeal relates to the effects of the proposed development on traffic congestion, ease of movement, and highway safety in Bromsgrove. In the light of all the submissions before me, it seems to me that in order to come to a conclusion on this overall issue, I will need to consider in particular the following:

³ The procedural aspects of this closure are discussed later in this decision

⁴ The undertaking's other provisions are outlined later in this decision.

- The effects that the proposed development would have without the proposed mitigation;
- Whether the mitigation proposals have been adequately assessed;
- Whether the proposed measures would adequately mitigate the development's effects on the Fox Lane junction;
- Whether the proposed measures would adequately mitigate the effects on the Millfield area;
- The effects of the mitigation proposals on the emerging planning strategy for Bromsgrove;
- Whether the proposed diversion of Whitford Road would have any secondary effects, and whether these would be beneficial or adverse;
- Whether the Whitford Road diversion could be delivered;
- Whether the proposed retail unit has been adequately taken into account;
- How far the development's impact would be mitigated by the proposed contribution to highway improvements in the town centre; and
- How far the development's impact would be mitigated by the proposed contributions to bus services and walking/cycling routes, and through the implementation of the proposed travel plan.

Inspector's reasoning

The effects of the development without mitigation

38. The starting point that I take for my consideration of the issues is to establish the nature of the traffic-related impacts that the proposed development would have if carried out without any mitigation. In taking this approach, I am fully aware that the proposed scheme includes an extensive package of measures intended to mitigate its impacts, and indeed I have summarised these above. I also entirely appreciate that it is no part of the appellants' case to suggest that mitigation should not be required. However, the case presented by the Council and other objectors focuses on alleged shortcomings in the mitigation that is proposed. In order to fully test the strength of these concerns, it is necessary to have regard for the impacts that would arise in the event that the proposed mitigation could not be relied on.
39. The evidence for the without-mitigation scenario is found in the appellants' two TAs, dated May 2013 and September 2013. The first TA found significant problems with peak-hour capacity at the Kidderminster Road and Fox Lane junctions. Both of these junctions were found to be already overloaded, and the effect of the proposed development, without some form of mitigation, would be to make them significantly worse.
40. The modelled traffic flows, with and without the proposed development, are presented initially in Chapter 8 of the May 2013 TA. At the Kidderminster Road junction, in the year 2020 baseline scenario (Table 8.6), the northbound traffic exiting from Whitford Road in the morning peak hour is predicted to already have a queue length of 74, plus a further 3 seeking to turn right. But adding the appeal scheme (Table 8.7), without mitigation, the corresponding figures for the same year would be 137 vehicles, plus 25 turning right, with increased queuing times of up to 16 minutes. In the afternoon peak, the proposed development is predicted to have little or no effect, but this clearly does not

lessen its significant adverse impact in the mornings. In the September 2013 version of the TA, these figures are produced again, unchanged.

41. At Fox Lane, in the year 2020 baseline scenario (Table 8.12 of the May 2013 TA), the southbound queue length in the morning peak hour is predicted to be 39 vehicles. With the development added (Table 8.13), this would increase to 68, with queuing times of up to around 5 minutes. In the afternoon peak, the same queue would increase from 62 to 91 vehicles, waiting for nearly 8 minutes. The right-turning traffic from Rock Hill would also increase in the afternoons, from 18 to 34 vehicles. This analysis for Fox Lane is not repeated in the revised TA in September 2013, but the figures in the original version remain before the inquiry, and have not been superseded by any later evidence. The development's effects at Fox Lane would be slightly less dramatic than at Kidderminster Road, but would still be substantial.
42. The appellants argue that these results overstate the effects, due to limitations in the 'Picady' modelling software and also in the BDTM, and in this regard I accept that traffic modelling is not an exact science. However, the TAs are the appellants' own documents. And although a substantial amount of other evidence has been produced since, the vast majority of this is concerned with the effects of the proposed mitigation. Nothing has taken the place of the TAs in assessing the 2020 baseline or the without-mitigation scenario. I therefore cannot disregard the evidence in the TAs on these matters.
43. I accept that drivers faced with heavy congestion might try to search for different routes, and this may not be fully reflected in the TAs. However, for vehicles originating within the proposed development, or any of the other nearby residential areas, the options are very limited. Indeed the only alternative route, avoiding the two most congested key junctions, is through the Millfield area. Some of the roads through that area are narrow, without footways, and are used by children attending the Primary School at Swift Close. Any significant increase in traffic through this area would therefore be likely to have adverse impacts on pedestrian safety and residential amenity. Alternatively, some drivers might respond by starting their journeys earlier or later, but this would simply extend the adverse effects over a longer period. Consequently, even if queuing at the two worst-affected junctions were to reduce slightly due to route-switching or peak-spreading, that would not necessarily represent any lessening of the development's overall traffic impact; indeed, in qualitative terms it might be perceived as making it worse.
44. The surveys conducted by Mr Hibbert (for the Council), and by Mr Bailes (for WVV), suggest a higher proportion of traffic heading to or from the south rather than the north, possibly related to changes in employment locations, which are not fully reflected in the BDTM. This would mean that in the TAs the proposed development's effects on the Fox Lane junction may be understated. But this does not affect the conclusion that both key junctions will become overloaded, and that this overloading would be significantly exacerbated by the development.
45. On any basis therefore, the available evidence suggests that, in the absence of mitigation, the proposed development would cause a substantial level of delay and inconvenience to peak hour movements through the Fox Lane and Kidderminster Road junctions. In general terms, I agree that delays to traffic do not necessarily amount to a severe impact; but that does not mean that

they can never do so. In this case the evidence shows that travellers on the Whitford Road route already face substantial congestion. The additional queuing caused by the development would be over and above this, and would add to it significantly. It is clear from the submissions of local residents that such a lengthening of journeys via this route would be perceived by many as an adverse impact on their quality of life. To my mind, this is not a matter to dismiss lightly.

46. In addition, it seems to me that in this situation it would also be wrong to ignore the potential relationship between congestion and safety. An increase in vehicles does not necessarily mean an increase in accidents. But additional queuing and delays have an obvious link to increased levels of driver stress and frustration. To my mind this is particularly pertinent in the case of the Fox Lane junction, given that this junction is proposed to remain uncontrolled. Although the junction does not have a bad safety record, that does not mean that it is free from danger. With the significant increase in queue length and waiting times at this point, it seems to me that the risk of accidents in the future would be likely to increase.
47. In passing, I note that neither of the TAs assesses the effects on the existing mini-roundabout junction between Whitford Road, Fox Lane, Millfield Road and Sunningdale Road. Since it lies between the appeal site and the Fox Lane/Rock Hill junction, it seems likely that this too would suffer some additional impact. However, in the absence of any specific evidence, I draw no further conclusions on this junction.
48. In any event, it is a matter of record that the appellants' own TA, in its original version, recommends a need for mitigation at both of the two key junctions, Kidderminster Road and Fox Lane. It seems to me that this recommendation embodies a clear, if implicit, recognition that if the development were allowed to proceed without adequate mitigation, its impact would be sufficiently severe as to warrant refusal. This proposition is not disputed by the appellants.
49. From all of the above, I draw the initial conclusion that, unless the scheme would deliver mitigation which can be shown to be both adequate and effective, the proposed development would have significant adverse consequences, in terms of traffic congestion, ease of movement and safety. Together, these effects would in my view amount to a severe cumulative impact on the local transport network.

Whether the mitigation proposals have been adequately assessed

50. The with-mitigation assessment, as originally carried out, was contained in the May 2013 TA. That assessment was based on the original mitigation strategy, which included the signalisation of both the Kidderminster Road and Fox Lane junctions. The scheme at that stage did not involve any diversion of Whitford Road. The draft S.106 package and travel plan as envisaged at that stage were broadly similar to those proposed now. The effects of the proposed mitigation package as a whole were taken into account in the with-mitigation junction modelling in Tables 9.1 - 9.7 of the TA.
51. In the September 2013 version of the TA, the mitigation strategy was changed to omit the signalisation at Fox Lane, and to introduce the proposed Whitford Road diversion. The intention of that proposal was to encourage through traffic

to switch from the Whitford Road-Fox Lane route, onto the A448 and B4091 through Bromsgrove town centre, in order to free-up capacity on Whitford Road for the proposed development. However, no further junction modelling was carried out at that time to incorporate the effects of these revised proposals. Modelling results were presented for the Kidderminster Road junction which were stated to include the proposed mitigation, but that was evidently not correct, because the figures were exactly the same as those for the original proposals. This is not now disputed by the appellants. No with-mitigation modelling of any kind was now presented for the Fox Lane junction, nor was any undertaken for any other junctions. At about the same time, the 'CH2M' report on the Whitford Road diversion⁵ was prepared for WCC, but this contained no modelling, and little by way of any other quantified assessment.

52. In May 2015, the appellants produced their evidence for the appeal, which includes the WSP Diversion Analysis report⁶. That report calculates the proportion of through traffic that would divert to the town centre route, based on the 'Moskowitz diversion curve formula'. On this basis it is suggested that the number of vehicles switching would include 43% of those with an origin or destination to the south-east of Bromsgrove, and 63% of those heading to or from the south west; these figures compare to 10% and 30% at present. But in the interests of robustness, the authors have then adjusted their assumptions downwards, to 30% and 50% respectively. Overall, this would mean about 80 existing trips being diverted away from Whitford Road and Fox Lane in the morning peak, and 140 in the evening. On this basis, it is argued that the traffic generated by the new development would be balanced by the reduction in through traffic, resulting in a broadly neutral impact on the Fox Lane and Kidderminster Road junctions and the corridor as a whole.
53. The WSP report then goes on to consider the consequential effects on the town centre route, and on the Millfield area and Deansway. Based on the same forecast diversion rates, it is calculated that the increase in peak-hour traffic at two of the key town centre junctions would be 8% and 3%, and that little or no additional traffic would be generated through Millfield or Deansway.
54. The main focus of the objectors' criticisms relates to the Moskowitz formula, and in particular whether this methodology is appropriate for the task. That question is a particularly important one, because the Whitford Road diversion is effectively the foundation for the whole of the mitigation strategy as now proposed. I do not doubt that the formula has a respectable pedigree, but it was evidently developed in the 1950s, for use by the California Highways Division. It was therefore clearly designed for use in conditions rather different from those of 21st-century Britain. Although the Council's and WVV's traffic witnesses were familiar with it in principle, neither had ever heard of it being used in a UK-based context, and there is no evidence that it has ever before now been applied in a situation similar to the present appeal. For these purposes therefore, it seems fair to say that the Moskowitz approach is unusual and untested.
55. As the appellants acknowledge, in comparison to more modern traffic modelling programmes, the Moskowitz formula is an unsophisticated and rather one-dimensional tool, designed to look at a single issue in isolation, rather than dealing with the transport network holistically. In particular, it lacks the

⁵ 'Whitford Road Highway Scheme Summary': CH2M Hill, Sept 2013

⁶ 'Whitford Road Diversion Analysis': WSP, May 2015

'iterative' ability of an assignment-type model such as 'Saturn'. This seems to me a significant weakness, because in the present case the alternative route onto which the diverted traffic would have to be channelled is not a free-flowing Californian freeway, but part of an already-saturated urban town centre. Every diverted vehicle would add to the existing congestion on this alternative route, and would thus contribute to making that option less attractive. In Saturn this effect could be built-in, but the Moskowitz formula does not enable it to be taken into account.

56. In the circumstances, my view is that the appellants' choice of methodology for such a crucial task was ill-judged. The method's lack of iterative capability, and its lack of ability to respond to the particular circumstances of the location, means that the results must be regarded with a considerable amount of caution. Given that alternative traffic modelling tools are available which would have been more suitable and more widely accepted, the use of such an unorthodox approach inevitably leaves unanswered questions. I appreciate that Saturn modelling is expensive, but that does not mean that a proper assessment is unnecessary, especially for a large development such as this. I have no doubt that if the assessment had been carried out and submitted at the time when the diversion was first proposed, there would have been time for some of these issues to be explored and resolved. The fact that it was not produced until nearly two years later, simply adds to the objectors' sense of unease, and I have some sympathy with that view.
57. Taking a pragmatic approach, it is possible that the shortcomings of the Moskowitz method may have been compensated for by the WSP report's final adjustment, bringing the diversion rates down from the raw output figures of 43% and 63%, to the more conservative 30% and 50%. But the fact that this adjustment was perceived to be necessary seems to me an acknowledgement that the method itself is flawed. And the unscientific and arbitrary nature of the figures that have been inserted at that stage further undermines any conclusions that might be drawn from them. As the objectors rightly point out, introducing an unsupported assumption in this way begs the question as to what value can be attached to the study that preceded it.
58. Unfortunately, these misgivings about the assessment in the Diversion Analysis report do not stop at the effects on the Whitford Road corridor. The report's conclusions relating to the town centre, Millfield and Deansway are all consequent to, and thus to some degree contingent upon, its earlier findings. My doubts as to the adequacy of the way the diversion effect has been assessed must therefore condition the way that these subsequent conclusions are viewed. In the case of Millfield and Deansway, the report's treatment of these areas is fairly superficial, and it may well be that the same assertions could have been made by the appellants in any event. But the fact is that they were not, and the appellants chose to address these issues only after conducting their Moskowitz calculations. I am left with the unavoidable feeling that there is little in the May 2015 report on which I can rely.
59. Looking beyond that report, there is nothing of any substance in any of the other documents that provides any evidence as to the proposed diversion's effectiveness. For the reasons explained above, neither of the two TAs attempts to do so. The CH2M report provides tentative support for the diversion's aims, but as to the actual effects, that report is largely speculative. WCC evidently supports the diversion, and their view as Highway Authority

carries considerable weight. But that does not change the fact that the quantified evidence for their position is limited, and WCC did not appear at the inquiry. I appreciate that the appellants have relied heavily on WCC's support, but that does not mean that fully quantified evidence is unnecessary. With all due respect to WCC, on the evidence to this inquiry, I find it difficult to see any firm evidence underpinning the case for the diversion strategy.

60. Purely as a matter of logic, I readily accept that diverting Whitford Road in the manner proposed should bring about some reduction in traffic volumes on that route. But the question is how much. The Whitford Road route is already stretched. If the diversion were less successful than the appellants suggest, then there is no evidence that the key junctions at Kidderminster Road and Fox Lane would cope. The assessments of these junctions have been run on the basis of signalisation at both ends⁷, but these are now of little value since the Fox Lane signals are no longer proposed. Alternatively, if the effects of the diversion turned out to be greater than expected, there is no way of knowing how this would impact on the town centre route. Both routes are highly susceptible to any such additional impacts, because of their existing congestion.
61. In the light of all these uncertainties, the one thing that can be said with confidence is that the proposed development would increase the demands on the highway network, but it would add little, if any, to the network's existing capacity. The diversion strategy is an attempt to maximise the use of any spare capacity that might exist. But the assessment that has been carried out does not demonstrate that any such capacity exists at all, let alone that there is sufficient to accommodate the development without severe impacts.
62. In this context, I also bear in mind that during the inquiry, the appellants' transport witness agreed that, for the proposed mitigation to succeed, every individual element of the package would have to work as intended⁸. Yet, in the case of the single most important element in that package, the evidence is insufficient.
63. Overall therefore, I find the appellants' case regarding the proposed mitigation strategy unconvincing. The September 2013 TA lacks rigour. The subsequent evidence fails to make up for that failing. There is no persuasive evidence that the diversion of Whitford Road would work as required. Without confidence in this key proposal, there can be no confidence in the mitigation strategy as a whole. And without adequate mitigation, the proposed development's impact would be likely to be severe, for the reasons identified earlier.
64. As such, the development would be contrary to the aims of BLP Policies S7, TR11, and DS13, in that these seek to promote good standards of highway safety and a sustainable high quality environment. It would also conflict with draft Policy BDP5A.7(e) of the emerging BDP, as this seeks to ensure that the cumulative traffic impacts of the proposed strategic developments are appraised and managed with full regard to their effects on the wider transport network. Moreover, it would conflict with paragraph 32 of the NPPF.

⁷ Chapter 9 of the May 2013 TA

⁸ Mr Hutchings in response to cross-examination

The effects on the Fox Lane junction

65. The junction of Fox Lane with Rock Hill is one of the two key junctions that are identified as bearing the proposed development's principal impacts. In presenting the original proposal to install traffic lights here, the May 2013 TA stated that this would enable the junction to operate within its capacity in the morning peak hours, and just over capacity in the afternoons. It also stated that the signalisation would offer considerable benefits in terms of both capacity and safety. However, as already noted, this proposal has now been withdrawn.
66. In the present proposals, no direct mitigation is proposed at the Fox Lane junction itself. Consequently, the prospects of achieving any mitigation here now depend mainly on the effectiveness of the Whitford Road diversion in driving away sufficient existing traffic to offset the effects of the development. For the reasons given earlier, I have found the evidence supporting that strategy inadequate. It is not impossible that the diversion would achieve its aim and reduce the impact at Fox Lane to neutral. But if it failed, the effect on this junction would be likely to be severe. In the absence of any better evidence, the risk of the latter outcome seems to me to be quite high.
67. Again, I appreciate that the Highway Authority takes a different view. But their conclusion on this matter is directly related to their view on the effectiveness of the diversion overall, and I have already explained why I depart from their thinking on that.
68. At the inquiry, there was discussion about the possibility of overcoming the impact at this location by re-configuring the junction, to become a mini-roundabout, and also whether such a solution could or should be achieved by means of a condition. In principle, I see some merit in this suggestion. The testing carried out by Mr Hibbert for the Council, shows that the junction would perform better than the current arrangement. And even if it required some minor compromises in terms of full highway standards, it would be safer than the existing situation. To this extent, it may be a pointer towards a possible solution.
69. But it also has to be acknowledged that the testing to date is limited in nature. It does not show comprehensively how a roundabout junction would perform in combination with all of the other measures proposed, nor whether the network as a whole would work satisfactorily. To my mind therefore, that testing by Mr Hibbert does not make up for the inadequacies of the appellants' own assessments, or for the lack of clear evidence regarding the overall impacts of the proposed development and mitigation strategy. Without having the overall picture, the effects on this particular junction, or any other, cannot properly be judged. I also note that the design produced at the inquiry has not been subjected to any safety audit, and nor have there been any of the usual consultations with relevant statutory bodies or user groups. WCC is also firmly against it. On balance, and notwithstanding Mr Hibbert's fair-minded support for the roundabout solution, I am not persuaded that a condition to this effect would fully overcome the likely harm to traffic conditions and highway safety at the Fox Lane junction.
70. With regard to the original proposal for traffic lights, although there is no suggestion that this would no longer be physically possible, I note that it would apparently require the acquisition of land in another ownership. Consequently,

whilst this would still be the safest and most effective option, it is not one that could be achieved by condition.

71. I conclude that, in the absence of either of these solutions, the lack of mitigation at the Fox Lane junction would be likely to result in the proposed development having a severe impact on that junction. This aspect of the scheme would conflict with the aims of the relevant policies, and in particular BLP Policy S7, draft BDP Policy BDP5A.7(e), and NPPF paragraph 32.

The effects on the Millfield area

72. The appellants' survey shows relatively low numbers of extraneous vehicles rat-running through the Millfield area. This is disputed by WVV, who also refer to survey evidence. But all of these relate only to the present situation.
73. If the proposed diversion of Whitford Road were successful, the traffic flows on Whitford Road and Fox Lane, and at the Fox Lane junction, would be unaffected by the proposed development. In that case, although rat-running through Millfield might increase due to background traffic growth, there is no reason why the development now proposed should make it any worse.
74. But, for the same reasons as set out above, there is no clear evidence that this is what would be likely to happen in reality. If the diversion failed to achieve its aim, then the traffic generated by 490 dwellings on the appeal site would significantly increase the flows on Whitford Road and Fox Lane, and the congestion and queuing at the Fox Lane junction. In those conditions, it seems very likely that rat-running through Millfield would increase.
75. It is true that the narrowness of the streets, the presence of pedestrians, parked cars and other obstacles, the lack of visibility, and the consequent slow speeds, might all limit the attraction of the potential routes through this area. But in conditions where other roads and junctions became blocked, the incentive to find alternatives would be greatly increased. And, as noted earlier, the routes through Millfield are the only ones that offer any realistic alternative to Fox Lane. Consequently, I consider that the proposed development would be likely to lead to an increase in rat-running through this area.
76. Although the appellants contend that no mitigation is necessary for Millfield, the undertaking provides for a contingency sum of £50,000 to provide traffic calming in this area. Given the potential impacts on pedestrian safety and residential amenity, I do consider that some form of additional mitigation would be needed. But even so, given the nature of the streets in question, it seems doubtful whether any additional road narrowings, pavement build-outs, painted markings, or other measures of this type, as suggested by the appellants, would have much effect. There may be scope for some more creative thinking on this, and I do not rule out that a better plan for this area could be devised. But any such further ideas would also be constrained by the amount of money provided in the undertaking. In the absence of anything else, I can only judge what is before me.
77. For these reasons, I conclude that the inadequacy of the mitigation proposals for the Millfield area would be likely to result in the proposed development having a severe adverse impact on traffic and highway safety there. This aspect of the scheme would again be contrary to BLP Policy S7, draft Policy BDP5A.7(e), and NPPF paragraph 32, as above.

The effects on the emerging planning strategy for Bromsgrove

78. The transport strategy behind the housing and other development proposals in the draft BDP is based on the Bromsgrove IDP. The IDP is intended as an overview of the infrastructure required to support the draft plan, and identifies specific items of infrastructure needed in relation to specific sites. The preamble also makes it clear that the IDP proposals have had regard to the County-wide Infrastructure Strategy of WCC.
79. In the case of the Fox Lane junction, the IDP envisages a signalised solution, which is said to be needed particularly to facilitate movements for vehicles exiting from Fox Lane itself. This work is identified as a requirement for the development of the present appeal site. The need for improvements at the Kidderminster Road junction is also identified. The diversion of Whitford Road through the appeal site is not identified as a requirement, nor is it referred to in any way at all. Nothing in the IDP suggests any intention to change the road's function or to discourage its use by through traffic.
80. The IDP forms part of the evidence base supporting the draft BDP at its examination. As such, it was available for public comment and objection for a considerable time. Although the examination is continuing, the appeal site and the other major housing proposals have been dealt with. In so far as transport issues are concerned, these proposed housing developments have been considered on the basis of the strategy represented by the IDP. No further sessions are planned on any of these topics. The opportunity to comment on these matters has therefore now passed.
81. The appeal proposal is consistent with the BDP in land use terms, in that it proposes development of one of the allocated TES sites, for the uses stated in Policy BDP5A.6. But the proposed mitigation strategy, based on the diversion of Whitford Road, and the lack of provision for signalisation at Fox Lane, both designed to change the role of the Whitford Road-Fox Lane route, do not sit comfortably with the IDP. Indeed these measures seem to me to be, in effect, an attempt to promote a different strategy from that on which the BDP is based.
82. This in itself does not make the appellants' mitigation proposals unacceptable. Local plans are expected to be flexible, and sometimes new ideas emerge which may be judged an improvement. But here, what is missing is any strategic overview as to how the present appeal scheme and its proposed mitigation might affect the other planned major developments, and thus the overall delivery of the BDP's proposals. In particular, it is not clear what effect the appeal scheme would have on the Perryfields development, which is nearby and would potentially make use of much of the same road network. An assessment of the cumulative impact of the appeal scheme together with other draft allocations was included in the original TA, in May 2013, but this was prior to the change to incorporate the Whitford Road diversion. No similar assessment has been carried out since. Neither does it appear that any joint working or holistic thinking has occurred, as envisaged in the BDP text identified earlier.
83. The appellants contend that their proposals conform with what they refer to as the County Council's new strategy and, not unreasonably, they point to WCC's support for this aspect of the appeal proposals in numerous written comments on the application, and in the joint statement prepared for the

inquiry. But there is no evidence that any such new strategy exists, other than as an idea. That does not necessarily make it a bad idea, but in order for it to supplant the IDP, it would need at the very least to be submitted for consideration as part of the BDP process, and also be subjected to some form of public consultation. Evidently, these steps have not been taken. The idea remains no more than that. There may or may not be something in it, but it has not been tested, and this inquiry is not the place to do so, because the potential effects go well beyond this appeal proposal.

84. Again, WCC's view on these matters carries weight by virtue of their statutory role as Highway Authority. But I must consider the appeal in the light of the evidence before me, and in this respect the evidence in support of the appellants' mitigation strategy is again lacking.
85. I conclude that the proposed mitigation strategy for the appeal proposals would conflict with the transport strategy for the emerging draft BDP, and would thus potentially prejudice the delivery of developments which are likely to be needed to fulfil the aims of that plan. In this respect, the proposed development again conflicts with draft Policy BDP5A.7(e).

Secondary effects of the Whitford Road diversion

86. Many of the arguments advanced by all parties at the inquiry revolve around the Whitford Road diversion's side-effects, beyond its primary purpose of enabling the proposed development.
87. The length and other characteristics of the diversion are not fixed by the application, but could be set by conditions. In WSP's Diversion Analysis report, it is suggested that the length of the main distributor road loop within the site should be around 750m in total. For through traffic, this would represent an additional 400m over the existing route. Through a combination of tight curves, adverse priorities, crossing points, calming measures and other obstacles, it is proposed that the speed of vehicles through the site could be reduced to around 20 mph. In this way it is said that the extra 400m could be made to add about 2 minutes onto the overall journey time. These assumptions are used as the basis for the Moskowitz formula calculations.
88. Dealing first with the adverse effects, the most obvious of these would be that, for existing and future users of the Whitford Road-Fox Lane route, journeys would become longer, slower, less fuel-efficient, more polluting and more costly. Although an extra 2 minutes travelling would not be likely to cause hardship, there would also be a cumulative cost to society. In this context I note that the diversion would to some degree affect residents of the new development itself, as well as extraneous traffic; and also that it would equally affect journeys at all times of day, even though the need for mitigation is only during peak hours. These effects on users could be lessened somewhat if the internal road were made shorter, or the obstacles more limited, but this would diminish the diversion strategy's effectiveness. As the appellants acknowledge, causing inconvenience is essential to the diversion's success. Any attempt to make it less so would therefore risk defeating its objectives.
89. Secondly, if the scheme succeeded in diverting traffic onto the town centre route, as intended, it must follow that it would add to the existing congestion

in that area, and to the need for highway improvements and other mitigation measures there. The IDP contains proposals to improve some of the town centre junctions, and the S.106 undertaking provides for a contribution to those measures. But these were already proposed before the Whitford Road diversion, so would presumably be needed anyway. In that case, the present scheme would eat into any reserve capacity that might remain on the town centre route after the planned improvements.

90. Thirdly, the lengthening of journeys on Whitford Road would make it likely that some traffic would rat-run via Deansway. The journey through that area is said to take 90 seconds, and is relatively unobstructed. As such, it is shorter and potentially more inviting than that now envisaged through the appeal site. Deansway is a quiet residential street, not designed for through traffic, and any diversion of extraneous vehicles into this area would be highly undesirable. For the same reasons already discussed, this impact could not be addressed by shortening the route through the appeal site, because that would reduce the effectiveness of the whole diversionary strategy.
91. The S.106 undertaking provides a further sum of £50,000 for traffic calming in Deansway, and the appellants have put forward indicative plans showing the form that such a scheme might take. But these works would have their own adverse impacts for local residents, including loss of on-street parking and general inconvenience. They would also change the street's character, and although the appellants maintain that the amount of money provided would be sufficient, it seems unlikely that it would allow for a high quality scheme in terms of its design and materials. If it were not for the proposed diversion, there would be no need for any alterations to Deansway at all; as the Council put it, the need for such works would amount to 'mitigating against the effects of the other mitigation', rather than against those of the development itself.
92. And fourthly, there would be the diversion's effects on the proposed development itself. Through traffic that continued to use Whitford Road and Fox Lane would be routed through the new neighbourhood. If the appellants' estimates are right, this might still be around 50-70% of the existing flows. I accept that it would not be impossible to design a scheme to accommodate this external traffic, and indeed other examples may be found. But nonetheless, it would not be ideal. In my view this would make it more difficult to achieve a high quality residential environment within the site, and would be likely to result in compromises which would not otherwise need to be made.
93. As to the diversion's suggested benefits, the appellants argue that the removal of through traffic from Whitford Road and Fox Lane would be beneficial in its own right. However, I see no basis for this claim. It is true that Fox Lane has residential frontages and some on-street parking. But Whitford Road, which forms the major part of the route, is of a good standard and has very few properties on it. And in any event, based on the appellants' own case, the proposed diversion does not seek to achieve any net reduction in traffic flows, but only to replace some of the existing with an equal amount from the new development.

94. In this context, the appellants seek to characterise the through traffic on Whitford Road and Fox Lane as rat-running. But in my view that term is more appropriate for streets that are purely residential, like Deansway or those in the Millfield area. In contrast, Whitford Road and Fox Lane form an important secondary route, and indeed for through traffic heading to or from the north-west, they are the only realistic alternative to the town centre route. To my mind, there are some advantages in ensuring that at least one such alternative should continue to be available. I acknowledge that one of the aims of planning policy, including draft Policy BDP5A.7, is to encourage more sustainable transport modes. But there is no policy that advocates that this should be achieved by making travel more difficult, or by making existing networks less flexible and resilient.
95. Finally, it is also contended that the diversion would avoid keeping what might otherwise become a barrier between the new development and the existing town. But in my view the volume of traffic on Whitford Road at most times of day is not so great as to have that effect. If necessary, speeds on the old road could be controlled and crossings provided, in just the same way as on any other urban road. This point therefore seems to contain little substance.
96. None of these matters changes the fact that, if the diversion were judged capable of mitigating the development's impact, and thereby overcoming the principal obstacle to the provision of housing on the site, that would be a significant benefit. But beyond this, it seems to me that the diversion's other consequences would be mainly negative. These impacts would not be inconsequential; they would reduce the quality of life in Bromsgrove, contrary to NPPF aims.
97. Together these secondary effects make this element of the proposed mitigation strategy a singularly unattractive prospect. To my mind, these aspects of the proposed development conflict with the NPPF's aims for the creation of high quality places and a good quality of life.

Whether the Whitford Road diversion could be delivered

98. As acknowledged by all parties, the implementation of the Whitford Road diversion scheme would require the use of legal powers outside those available within the planning process. Whilst the configuration of the new access roads into the site, as now proposed, would give priority to traffic entering or leaving the development, this alone would not change the status of the existing Whitford Road carriageway, as a public highway with full vehicular rights. On its own therefore, the development could not prevent through traffic from continuing to use the existing road. By definition, the existing route would be shorter and more convenient than the new one to be provided through the new development. To become effective therefore, the diversion would depend on some form of actual severance or other physical or legal restriction on the 'old' route. The appellants suggest that this could be achieved by means of a road closure or Traffic Regulation Order under highways legislation⁹.

⁹ The appellants suggest a Prohibition of Driving Order under the Road Traffic Regulation Act 1984, allowing continued use by pedestrians, cyclists and buses

99. The authority with the power to grant such an Order would be the Highway Authority. Given that Authority's stated position on the appeal, it is reasonable to suppose that in principle they would wish to support this approach. But the Authority would have to follow the statutory procedures for public and other consultations. The response to that process cannot be predicted, and it would not be right to attempt to do so, but it would not be surprising if a traffic order drew objections. Some of those who would be affected might well be people from outside the area, who could not be expected to be acquainted with the appeal proposals. Whatever position the Highway Authority may have taken previously, objectors would have the right to have their views considered fully and fairly. The Authority's formal decision can therefore not be pre-judged.
100. Allied to this, there would need to be a planning condition. Such a condition would need to be drafted so as to allow the development to start before any Traffic Order was in place, because it is likely that without the new road being actually available, the Order could not be granted. But the condition would also need to prevent the development from proceeding beyond a given threshold¹⁰ until the closure of the old route had actually taken place. That requirement would be outside the developer's control, and thus the condition would only be lawful where there was a reasonable prospect of being fulfilled. I have some doubts as to how the Courts would judge the lawfulness of such a condition here.
101. In any event, imposing a condition could not guarantee that a Traffic Order would be granted. In the event that the Order were to fail, after the development had started, it is difficult to see how the condition would then be enforceable. In that case, there would be nothing to stop the development from continuing, but without the diversion of Whitford Road; and thus without the very mitigation that the scheme relies on. That is not to say that I consider this scenario inevitable, but equally it is more than just an outside possibility. In the event that I were minded to grant planning permission, I can see nothing that I could do in my decision to prevent this kind of outcome.
102. In time, all of these matters might very well be resolved, but this appeal must be determined on the basis of the situation that exists now. At the present time, there is no certainty that the necessary Traffic Order would come to fruition. If it did not, the proposed mitigation strategy would be rendered largely ineffective.
103. I conclude that the Whitford Road diversion cannot be guaranteed to be delivered. This reinforces my view that it has not been demonstrated that the proposed development's severe traffic impacts would be effectively mitigated.

The proposed retail unit

104. The appellants' assessments in the TAs and elsewhere do not include any vehicular trips generated by the proposed 1,500 sq m retail unit. This is due to an assumption on their part that all or most trips to or from this unit during the peak hours would be 'pass-by' trips, and are therefore accounted

¹⁰ 200 dwellings is the threshold suggested by the appellants

for elsewhere in the figures. Support for this proposition is drawn from a 1998 journal article by Ghezawi and others¹¹.

105. The Ghezawi paper may have some relevance. But, rather like the Moskowitz formula, it does relate to a study undertaken in very different conditions, being again set in the USA, from some years ago, and in this case it appears to be based on convenience stores associated with petrol stations. To my mind therefore its relevance to the present proposal is limited. But in any event, its main finding was only that, over a whole day, the average proportion of pass-by trips was 72%. That is not a sound evidential basis for the proposition which the appellants now seek to make, which is that here the proportion would be zero.
106. I also note the authors' final comment is that further testing and refinement of their model was needed. Clearly some time has elapsed since then, but the evidence to this inquiry does not contain any details of any such further work. This reinforces my view that little weight can be attached to this evidence.
107. I accept that many potential customers, if they have an unfettered choice of shopping times, might well seek to avoid the peak hours. But not all customers are likely to be in that position. And some of those who do have the choice might still have other reasons for choosing to shop at those times. Consequently in my view, the appellants' unsupported assumption on this point is not well-founded.
108. And even though many of the vehicles that would call at the retail unit in the peak hours might already be on the network, that does not necessarily mean that they would be on this particular part of the network. If a vehicle were to divert from a journey along Kidderminster Road, for example, to call at the proposed unit and then re-join its former route, that would add to the number of vehicles on Whitford Road. This seems to me a not unlikely occurrence for a retail unit in this location.
109. It is asserted by the appellants that the retail store would only serve the immediate area, and would not be a destination for external trips. I see no basis for this. A store of the size proposed would be large enough for a variety of different types of retail goods. There is no identified operator at this stage. A convenience store might well have a significant catchment area and traffic generation. Although Mr Hibbert, for the purposes of testing, assumes only 10 peak hour trips, he describes this as extremely conservative. I concur with that view.
110. I conclude that the proposed retail unit has not been properly taken into account in the appellants' assessments of traffic impact. This further undermines my confidence in the results, and conflicts with Policy BDP5A.7(e).

How far the development's impact would be mitigated by the contribution to highway improvements in the town centre

111. The legal undertaking provides for a contribution of just over £296,000 towards off-site highways improvements. This is a substantial sum.

¹¹ 'Convenience Store Trip Generation': Razmi S. Ghezawi et al

However, the amount has not changed since before the time when the Whitford Road diversion was first introduced. The whole purpose of the diversion is to send more traffic through the town centre. This therefore must have the effect of increasing the development's impact on that area. No clear explanation has been given as to why the same contribution is still appropriate. The County Council does not query the amount, and I give due weight to their view, but this is not conclusive.

112. The undertaking specifies that the contribution may only be applied towards three identified schemes. One of these is the A448/B4091 (Kidderminster Road/St John Street/Hanover Street) junction. The need for improvements at this junction is identified in the IDP, with an estimated cost of £1.12m. There is no dispute that these works are important to the development of the present appeal site, because the junction causes a significant bottleneck on the town centre route that would need to be used by traffic diverted from the Whitford Road. Without this improvement, the incentive to take the town centre route would be diminished. But the present appeal proposal would only provide, at most, about a quarter of the overall cost. As a percentage share, that may seem reasonable, but it leaves a question mark over how and when the remainder of the cost would be found. It is said that the balance is expected to come from the Perryfields development, but this is yet to be seen. There is therefore some uncertainty over the delivery of this important piece of off-site highway infrastructure, which is needed to enable the appeal scheme's proposed mitigation strategy to work as planned.
113. The other two schemes specified in the undertaking are the A38 Worcester Road/Redditch Road junction, to the south of the town, and the Stoke Road junction on the A38, to the east of the town centre. Neither of these junctions are located on the route that traffic diverted from Whitford Road would be likely to use. Consequently, in terms of mitigating the proposed development's impact, these particular highway schemes have little relevance. It is said that in practice it is unlikely that WCC would wish to use more than a small proportion of the proposed contribution on these schemes, because the A448/B4091 junction is likely to be the main priority. But there is no guarantee of this. Given the terms of the obligation, WCC would be within its rights to spend the entire contribution on the two A38 junctions.
114. I appreciate that, now that the undertaking has been entered into, the appellants have little control over how WCC chooses to spend this money. But the undertaking is unilateral. The appellants therefore did have control over what went into it, and it was for them to ensure that it was drafted so as to secure the mitigation that would be needed for their proposed scheme. As it is, the undertaking leaves open the possibility that the development could go ahead without any part of the highway contribution finding its way to the works that would be necessary to mitigate the impact on the town centre route. Given the way that the appeal proposals have been designed, with the specific aim of pushing additional traffic onto that route, over and above the traffic generated by the development itself, it seems to me essential that whatever funding is provided for highway improvements should be used in a way that would help to mitigate this impact, without the possibility of being diluted into other works. In this respect the submitted undertaking falls short of what is required.

115. I conclude that, despite the highway contribution, and the view of the Highway Authority, there is no certainty, either in the undertaking or through any other means, that the proposed development's traffic impact on Bromsgrove town centre would be adequately mitigated. In this respect, the proposals conflict again with Policy BDP5A.7(e).

How far the impact would be mitigated by the contributions to bus services and walking/cycling routes, and by the travel plan

116. The public transport contribution provided in the undertaking would be just under £219,000. The appellants state that this would enable enhancements to the existing service No 98, from Whitford Road to the town centre, including an extension of the operating hours to 12 hours a day; an increase in frequency to half-hourly in the peak hours and hourly at other times; and the route to be extended to the railway station during peak hours. If these enhancements were achieved, I agree that they would provide a reasonable level of service for future residents of the development, though no more than that. The enhancements would also benefit existing residents.
117. Although the proposed enhancements are said to be financially self-supporting, and the outline of a business plan is presented, there is no evidence of support from any operator, and indeed it was admitted that there has been no recent contact with operators. I also note that the financial projections have not been updated since 2013. But nonetheless, the amount of the contribution has been agreed with WCC.
118. It is argued that, with the new distributor road in place, buses would be routed through the appeal site, bringing the service within 250m of every new dwelling. Certainly it would appear that they could be, and this would be an added advantage to future residents, but whether this option would be commercially attractive to an operator is unknown. In this context, I note that under the legislation that would be used to promote the Traffic Order for the Whitford Road diversion, bus operators are given specific statutory rights, over and above those of other objectors. If the buses continued to use the existing road, some parts of the new development would be much further from the nearest stop, and the benefit of the enhanced service would be reduced.
119. In addition, the undertaking provides for a walking and cycling contribution of just under £270,000, towards the provision of new or improved pedestrian and cycle links to the town centre, and also a further contribution of £23,000 towards signage on those links. Together these amount to a substantial sum, and I note that this money would be used primarily to provide new and upgraded routes through the Sanders Park area. I appreciate that the park, or parts of it, are closed after dark. And even if this were to change, and lighting were installed, there would still be issues of safety and security to be addressed. But nonetheless, it seems to me that the aspiration to improve connectivity through this area is a worthwhile one, and that the proposed contribution would be likely to enable substantial improvements to be made, benefitting existing residents as well as those of the new development.
120. Putting all of these together, and setting aside for the moment any doubts about deliverability, the enhanced bus services and proposed pedestrian and cycling facilities add up to a substantial package. Assuming these were

delivered as intended, they would offer significantly improved opportunities for sustainable modes of travel.

121. However, this alone does not guarantee that the proposed measures would have a significant effect on actual travel patterns. In pointing this out, I do not mean in any way to undermine the case for their inclusion in the scheme. Indeed, I consider all of these measures not just beneficial, but entirely necessary, in terms of providing a good quality residential environment for the widest possible range of occupiers. But there is no evidence that they would have any significant effect on the number of car trips generated. And, to the extent that they might have some effect, this is likely to be already reflected in the assumptions adopted in the TAs, since these are said to be based on comparable recent developments. For this reason, I think it unlikely that the proposed provisions with regard to buses, walking and cycling would have any significant further mitigatory effects on the development's traffic impact, over and above those already considered.
122. My concerns that I have referred to above, regarding the deliverability of the bus service enhancements, further reinforce this conclusion.
123. The travel plan is designed to encourage the take-up of the opportunities for sustainable travel, through an on-site travel plan co-ordinator, giving information packs and personalised travel advice to new occupiers. Travel plans are encouraged in national policy, and these proposals are therefore to be welcomed. But again, in terms of actual mitigation, there is no evidence that the effect of this would be substantial.
124. The travel plan also provides for a penalty payment of £48,000 if a target of 15% modal shift is not met after 10 years. However, it is acknowledged that this target figure is purely aspirational; it is not intended as a prediction or a forecast. There is no evidence that it is likely to be met. If the penalty were paid, the terms of the undertaking require it to be used to promote sustainable transport and to reduce vehicular movements. But there is no indication as to how this effect could be achieved; if any such further measures were identifiable, it would have been preferable to have seen them in the travel plan itself. Taking everything into account, I consider that it would be unrealistic to give much weight to either the 15% target figure or the penalty payment.
125. Overall, despite the undoubted merits of some of the measures proposed for sustainable travel, I conclude that in this particular case none of these can be relied on to provide any significant additional mitigation for the proposed development's traffic impact.

Other matters relating to traffic impacts

126. At the inquiry, the appellants suggested that in the event that the Whitford Road diversion were unsuccessful in diverting sufficient traffic away from the area, this could be remedied by adjusting the timings at the proposed Kidderminster Road signals, to give shorter or fewer 'green' phases, thus creating an added disincentive to through traffic. I appreciate that the 'MOVA' system envisaged would enable fine adjustments to be made, and the signals could be programmed to respond to changing traffic conditions. However, this option has not been tested as to its effects on traffic patterns, nor its effects on the junction's safety. It seems likely that, in order to have

the desired effect, it would have to make the queuing at Kidderminster Road even worse than already forecast. And in any event, it would not overcome my reservations about the merits of attempting to redirect traffic away from the Whitford Road route in this way.

Conclusions on traffic impact

127. Without effective mitigation, the appellants' own evidence shows that the proposed development would have a severe traffic impact. It is therefore for the appellants to show that the impact could be mitigated, and that such mitigation could be delivered.
128. However, the evidence fails to show this. The method used to demonstrate the effectiveness of the Whitford Road diversion is unconvincing. Without that key element being adequately justified, the evidence as to the development's impacts on the most vulnerable locations, such as the Fox Lane junction and Millfield, or indeed any other part of the network, cannot be relied on.
129. The Whitford Road diversion would have its own adverse consequences for existing users, and the town centre route, and for residents of Deansway, and for the development itself. These would not be offset by any beneficial side-effects. The diversion does not accord with the infrastructure proposals that formed the basis for the BDP strategy, and there has been no assessment of the effects on the delivery of the BDP's other strategic sites. And in any event, there is uncertainty as to the diversion's deliverability, due to the need for a Traffic Order.
130. The appellants' assessment also fails to properly consider the impact of the proposed retail outlet.
131. Although the development would provide valuable and necessary contributions to other transport measures, there is no evidence that these would materially reduce the development's impacts.
132. In the light of all the above matters, and giving due weight to the views of WCC as Highway Authority, I conclude that the proposed development's effects would not be adequately mitigated by the present proposals. As a result, the development would be likely to have a severe residual cumulative impact on traffic congestion, ease of movement and highway safety, contrary to the policies that I have identified.

Other matters

The undertaking – compliance with CIL Regulations

133. With regard to the proposed contributions to traffic calming, highway improvements, bus services, walking and cycling and signage, for the reasons given earlier, although these would not fully mitigate the proposed development's effects, I nevertheless consider that if planning permission were granted, these contributions would all be necessary. All of them are also directly related to the development and not excessive in scale or kind.
134. The undertaking's other main provisions make commitments to provide 6.82ha of public open space within the site, including a play area, 40% affordable housing, and contributions to off-site play and sports facilities,

education, community facilities, and a further specific sum for enhancements to Sanders Park, over and above those referred to above. Evidence in support of these has been tabled by both the Council and WCC. None are objected to by any party. Like the transport-related contributions, I consider all of these further provisions to meet the relevant tests under Regulation 122 of the CIL Regulations¹².

135. The Council also confirmed at the inquiry that all of the contributions comply with Regulation 123 of the same. This again is not disputed by anyone, and I see no reason to doubt it.

Benefits of the development

136. The principal benefit arising from the proposed development would be the provision of 490 dwellings, which would make an important contribution to meeting local housing needs and making good the current shortfall in the five-year land supply. In addition, 196 of the proposed dwellings would be affordable, and there is evidence of a particularly pressing need for such housing in the district.
137. For the reasons discussed above, the contributions to bus services, walking/cycling and signage would provide benefits to existing residents over and above simply mitigating the development's own impacts. It is right that these should be given some weight. The other financial contributions are required to mitigate identified impacts, and as far as I am aware their net effect would be neutral.
138. The provision of on-site open space and a play area would have some collateral benefits, but the effect of these would be limited, since the new facilities would be well away from existing housing areas.
139. The development would also have significant benefits for the local and national economy, in terms of new investment and employment, and the consequent stimulus to supply-chain industries.

Overall conclusions

140. For the reasons set out above, I find that the proposed development would have a severe residual cumulative impact on traffic congestion, movement and highway safety. Because of this, it would conflict with the aims of the three most relevant saved policies in the adopted BLP, namely DS13, S7, and TR11. In these respects, the appeal proposal is contrary to the development plan. Even though that plan is out of date with regard to housing provision, these policies have continuing force. In any event, for the same reasons the proposed scheme conflicts with paragraph 32 of the NPPF.
141. On the other hand, the proposed development would provide a substantial amount of housing, in a district where there is a shortfall in the 5-year housing land supply. The scheme would therefore help to meet housing needs, including a substantial contribution to affordable housing. The appeal site is a proposed housing allocation under draft Policy BDP5A.7 in the emerging District Plan, which is well advanced towards adoption. As such, it is one of the preferred locations for future development, and an important

¹² The Community Infrastructure Levy Regulations 2010

component of the Council's housing strategy. The NPPF places great weight on the need to maintain the 5-year land supply, and on the need to boost housing supply on suitable sites. These are powerful considerations in favour of granting permission.

142. However, the relevant policies do not seek simply to provide housing at any cost. Policy BDP5A.7 makes clear the need to manage cumulative traffic impact and to take full account of the impact on the wider transport network. The NPPF does not support schemes that would have severe transport impacts, nor those whose impacts have not been fully assessed. In its present form, the appeal scheme and its mitigation proposals do not strike an acceptable balance between the need for housing and the need to provide adequate transport infrastructure, including reasonable standards of safety and ease of movement, for both future and existing residents. To my mind, this does not match the aims of either the BDP or the NPPF with regard to sustainable development.
143. Refusing permission would delay the delivery of the emerging BDP housing strategy. But equally, granting permission on the basis now sought would run the risk of frustrating the BDP's strategy, by effectively limiting highway capacity in an area where other major developments are planned. In this respect, the scheme would be contrary to the only recognised infrastructure plan that currently exists, the IDP. In all the circumstances, I come to the conclusion that the proposed development would not meet the aims of draft BDP Policy BDP5A.7.
144. In coming to this conclusion, I have given considerable weight to the stated views of WCC as Highway Authority, who strongly support the proposed development and its mitigation strategy, but on the balance of the evidence, I find this consideration outweighed.
145. In addition to housing, the scheme would also have the other benefits identified above, including transport contributions, open space and as a stimulus to the economy. But these do not tip the balance. Having regard to NPPF paragraph 14, I conclude that the proposed development's benefits are significantly and demonstrably outweighed by the harm that it would cause in terms of added traffic congestion and the related issues of movement and safety. As such, it would not constitute sustainable development.
146. I have taken into account all the other matters raised, but none alters this conclusion. The appeal is therefore dismissed.

John Felgate

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Sarah Clover, of Counsel	Instructed by Tracy Lovejoy, Solicitor to the Council
She called:	
Mr Michael Dunphy, BA(Hons) DipTP	Strategic Planning Manager
Mr Michael Hibbert, MSc MCIT MILT MIOd DipEng	The Traffic, Transport and Highways Consultancy

FOR THE APPELLANT:

Mr Rupert Warren QC	Instructed by Framptons
He called:	
Mr Richard Hutchings (Eur Ing), BSc CEng MICE FIHT CMILT MAPM	WSP Parsons Brinckerhoff
Mr Gregory Mitchell, BA(Hons) DipTP MRTPI	Framptons Town Planning

OTHER INTERESTED PERSONS:

Cllr Luke Mallett	Bromsgrove DC and Worcs CC member
Cllr Peter Whittaker	Vice-Chairman of Planning Committee, Bromsgrove DC
Mr Ron Skidmore	The Bromsgrove Society
Mr Roy Dixon	'Whitford Vale Voice' (Chairman)
Mr Alan Bailes, TPP DipGeog, MSc FCILT FCIHT	The Transportation Consultancy (on behalf of 'Whitford Vale Voice')

DOCUMENTS TABLED AT THE INQUIRY

- 1 The appellants' opening submissions
- 2 'Highways key document references' (tabled by the appellants)
- 3 Note of the Council's appearances and timings
- 4 Opening submissions on behalf of the Council
- 5 Core document list
- 6 Whitford Vale Voice: 'Summary of objections, concerns and observations'
- 7 Statement of Common Ground
- 8 Bromsgrove Infrastructure Delivery Plan, Sept 2013 version
- 9 5-year housing land supply table, excluding the appeal site (tabled by Mr Dunphy, at inspector's request)
- 10 Bromsgrove District Plan – Transport Network Analysis and Mitigation report (Halcrow for WCC, May 2013)
- 11 Draft conditions (as at 16 June 2015)
- 12 Mr Hibbert – additional table forming part of Appendix 12.5
- 13 Emails from Mr Stephen Hawley of WCC Highways, dated 3 June and 15 June 2015
- 14 Bernard Wheatcroft Ltd v SoS, 1980
- 15 R v Warwickshire CC ex parte Powergen PLC, 1997
- 16 Representations on the draft Bromsgrove District Plan, relating to the appeal site
- 17 Email from Mr Hawley, dated 17 June 2015
- 18 CIL Regs 122/123 compliance schedule
- 19 Education contribution justification: email from Sarah Smith, WCC Children's Services
- 20 Transport contributions justification
- 21 Bromsgrove Infrastructure Delivery Plan, Feb 2014 version
- 22 Email from Mr Hawley, dated 12 June 2015, re pooled contributions
- 23 Mr Bailes' presentation, including added commentary
- 24 Traffic count data for Millfield area, tabled by Mr Bailes
- 25 Traffic count data for Rock Hill junction, tabled by Mr Bailes
- 26 Executed unilateral undertaking, dated 18 June 2015
- 27 Map of walking routes, tabled by the appellants
- 28 Draft conditions list, updated to 19 June 2015
- 29 Draft condition re Fox Lane junction
- 30 Closing submissions on behalf of the Council
- 31 Note on traffic calming works and consultation requirements (tabled by the Council)
- 32 Closing submissions on behalf of the appellants
- 33 Costs application on behalf of the appellants
- 34 Council's submissions on costs application