



Appeal Decision

Inquiry Held on 31 October 2023 – 2 November 2023

Site visit made on 2 November 2023

by Y Wright BSc (Hons) DipTP MSc DMS MRTPI

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

Decision date: 12th December 2023

Appeal Ref: APP/G1630/W/23/3324253

Parcel 5558, Road from Natton to Homedowns, Ashchurch, Tewkesbury

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Robert Hitchens Ltd against Tewkesbury Borough Council.
 - The application Ref 22/01320/OUT, is dated 25 November 2022.
 - The development proposed is Residential Development (up to 120 dwellings), associated works including infrastructure, open space and landscaping. Vehicular access from Fiddington Lane.
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Decision

1. The appeal is allowed and planning permission is granted for residential development (up to 120 dwellings), associated works including infrastructure, open space and landscaping with vehicular access from Fiddington Lane at Parcel 5558, Road from Natton to Homedowns, Ashchurch, Tewkesbury, in accordance with the terms of the application, Ref 22/01320/OUT, dated 25 November 2022, subject to the conditions contained in the attached Schedule.

Preliminary Matters

2. The appeal site address is different on the appeal form when compared to that set out on the original planning application form. As confirmed in the Planning Statement of Common Ground, the address on the appeal form is that agreed between the Appellant and the Council. Accordingly, I use this address within my decision.
3. The application was submitted in outline with all matters (access, appearance, landscaping, layout and scale) reserved for subsequent consideration. The description of the proposed development includes reference to access being from Fiddington Lane. An illustrative masterplan was submitted with the planning application, showing an indicative layout and access point. This is the basis on which I have considered the appeal.
4. The Council did not issue a formal decision in this case, being an appeal against non-determination, but confirmed in its statement of case (dated 18 August 2023) that it would have refused planning permission for eight reasons, had it been empowered to do so. These included concerns surrounding the suitability of the location in terms of the development plan's spatial strategy; character and appearance particularly in relation to landscape and the rural character of

- the countryside; living conditions for future residents; impacts on the adjacent Homedown railway level crossing; and a failure to secure suitable and necessary planning obligations including the provision of affordable housing, open space, outdoor recreation facilities, waste and recycling facilities, and contributions towards travel planning and libraries.
5. Since then, and in response to an appeal decision issued on 11 September 2023, the Council now confirms within the Planning Statement of Common Ground (dated 26 September 2023), that it is unable to demonstrate a five-year supply of deliverable housing sites and that the shortfall is significant. The Council identifies, for the purposes of this appeal, that the supply is at best 3.39 years. Accordingly, the Council states that paragraph 11d) of the National Planning Policy Framework (the Framework) now applies. Based on the evidence before me and the main parties' agreed position in this regard, I determine the appeal on this basis.
 6. Due to the updated housing land supply position, the Council has reassessed the putative reasons for refusal. The Council now considers that the harms identified from the proposed development (conflict with the strategy for the distribution of development and harm to landscape and the rural character of the countryside), would not significantly and demonstrably outweigh the benefits of the development, when assessed against the Framework as a whole. In addition, based on new evidence and information, the Council also states that it is satisfied that concerns relating to living conditions for future residents could be addressed via appropriate conditions, and that relevant planning obligations would be secured through the submitted planning agreements.
 7. Accordingly, prior to the start of the Inquiry, the Council confirmed that the only outstanding issue related to the Homedown level crossing, based on Network Rail submissions on the planning application. In this regard the Council relied on Network Rail's evidence at the Inquiry. As such, the Council did not defend any of the putative reasons for refusal and did not therefore, call any witnesses.
 8. Two further Statements of Common Ground were also submitted prior to the start of the Inquiry. The first sets out the areas of agreement between the Council and Appellant on landscape matters and confirms there are no areas of disagreement in this regard. The second sets out the areas of agreement and disagreement between the Appellant and Network Rail on the issue of the level crossing.
 9. Following the close of the Inquiry, and as agreed, dated and signed planning obligations in the form of agreements pursuant to section 106 of the Town and Country Planning Act 1990 (S106), have been submitted. One is agreed between the Appellant and the Borough Council and another between the Appellant and Gloucestershire County Council. I deal with the contents of these legal agreements later in my decision.
 10. Notwithstanding the above, and the change in the Council's position on some of the putative reasons for refusal for this appeal, it is necessary for me to consider all relevant issues, not least as a number of concerns have been raised by interested parties.

Main Issues

11. I consider the main issues are:

- The effect of the proposed development on the character and appearance of the site and surrounding area particularly in relation to landscape and rural character;
- Whether the proposed development would be in a suitable location having regard to the development plan's spatial strategy; and
- The effect of the proposal on the Homedown level crossing in relation to public safety.

Reasons

Character and appearance

12. The appeal site is located to the east of Tewkesbury town and south of the industrial and residential areas of Northway and Ashchurch which are within walking distance. It includes an agricultural field currently used for grazing horses. Additional land to the west/north-west of this field is also proposed to provide a pedestrian/cycleway link, as part of the development. The main site is bounded to the north, west and south by existing lanes and to the east by the Birmingham-Bristol mainline railway. The established hedgerows along the field boundaries limit views into and across the site. The unnamed lane to the south of the site leads to the small-scale Homedown Business Park, a residential property and the level crossing. There are also some existing residential properties and small rural hamlets in close proximity. Open countryside lays to the east of the site, beyond the railway line and fields are situated to the south, beyond the existing development.
13. Located immediately to the west of the appeal site, on the other side of Fiddington Lane, is land with consent for the construction of up to 850 dwellings and associated facilities and infrastructure (Council Planning Ref: 17/00520/OUT and also referred to as 'Fiddington 1' at the Inquiry). To the south of this lies further consented development for around 460 dwellings and associated community infrastructure (Council Planning Ref: 21/00451/OUT and referred to as 'Fiddington 2' at the Inquiry).
14. Within a short walking distance to the north of the appeal site is land with consent for retail development. I noted on my site visit that the large garden centre to the west has been built and is open for business. I also saw that a range of other groundworks and infrastructure, including new roads, were either under construction or had been completed. The building of some dwellings on the Fiddington 1 site had also commenced.
15. The appeal site is not located within a nationally or locally designated landscape, does not form part of a 'valued landscape' as defined under paragraph 174 of the Framework, and would not result in harm to the setting of the Cotswolds Area of Outstanding Natural Beauty (National Landscape). I recognise that the site is of some value to local residents for its rural character.
16. The appeal scheme would result in a material change in the character of the site, which is inevitable when a greenfield site is proposed to be developed. However, the site is to a large extent physically and visually contained by the

prominent hedgerow boundaries and adjacent lanes, railway line and other existing development. It is also clear that the landscape character of the locality is evolving at a significant pace, due to the construction of the adjacent development. Furthermore, the Appellant proposes to retain the site's key rural features, namely the boundary hedgerows, except where access would be required. These hedgerows currently restrict some views into the site. The Appellant also proposes to introduce additional hedgerows, open space and other landscaping, which would all assist in maintaining some form of semi-rural character when viewing the development from the adjacent lanes.

17. Whilst I acknowledge that there is a swathe of open countryside beyond the appeal site to the east, the site is physically separated from this by the railway line and therefore would not physically encroach upon it. The fields to the south are separated from the site by the unnamed lane and existing development, so there would be little impact on this rural character. With the retention of the hedgerows, the establishment of suitable mitigation measures and an appropriate design overall, the visual impact of the proposal would only be slightly adverse.
18. When viewed within the context of the site's edge of settlement location and evolving landscape, the harm to the character and appearance of the site and surrounding area would be localised and be of a minor nature. As I find no material harm on the wider landscape character I consider that the proposal would accord with Policy SD6 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (2022) (JCS), which seeks development that protects landscape character.
19. Whilst I conclude that the proposal would be contrary to Policy V1 of the Ashchurch Rural Neighbourhood Development Plan 2020-2031 (2022) (NP) which seeks to protect the intrinsic value of the countryside including rural tranquillity, the local harm identified would be limited.

Suitable location

20. Policy SP2 of the JCS sets out the spatial distribution of new development for the plan period. It states that in dealing with proposals for new development within the rural area, JCS Policy SD10 will apply. This policy provides criteria against residential development is to be determined. The appeal site lies outside of defined settlement boundaries and is therefore within the countryside.
21. Policy RES3 of the Tewkesbury Borough Plan 2011-2031 (2022) (LP) sets out the criteria on which new residential development outside settlement boundaries would be acceptable. Policy H1 of the NP identifies the criteria to be met for housing in rural areas. The main parties agree that the appeal proposal does not meet any of the criteria set out in these policies.
22. It is therefore common ground between the main parties that the appeal proposal conflicts with the above policies, and I concur with this assessment.
23. As set out in my preliminary matters, the Council acknowledges that in the absence of a five year housing land supply, adopted development plan policies relevant to the supply of housing are considered to be out of date and planning decisions on housing development must therefore be made in the context of

paragraph 11 of the Framework. I will come back to this again in my planning balance.

24. Furthermore, as discussed under the previous main issue, the site sits within an evolving landscape, with substantial new development under construction to the north and west of the appeal site. The site is already in an edge of settlement location with significant industrial and residential development and transport infrastructure (including a railway station) within relatively close proximity. Everyday local facilities and services including schools and shops, as well as employment areas, would therefore be readily accessible to future occupiers of the proposed development by sustainable modes of travel.
25. Whilst I therefore conclude overall that the location of the proposed development would be contrary to the adopted spatial strategy and JCS Policies SP2 and SD10, LP Policy RES3 and NP Policy H1, the resultant harm on this issue would be limited.

Homedown level crossing

26. The Homedown level crossing is located just to the south east of the appeal site. It comprises a 'User Worked Crossing with Telephones (UWCT)' and a 'Footpath with Wicket gates (FPW)'. Network Rail confirms that the UWCT 'can only be used by a known list of authorised users who have a private right to use the crossing with vehicles.' Both vehicular gates are padlocked with access requiring a key and permission to cross. Dedicated warning signs are in place at the gates. The use of this part of the level crossing is not in dispute as it is strictly controlled. The pedestrian wicket gates are unlocked and provide 24 hour access over the crossing. The lane on either side of the level crossing forms part of a public right of way and the Gloucestershire Way, a long distance walking route.
27. A nine day census of the use of the FPW was conducted in January 2022 by Network Rail, as part of a scheduled level crossing risk assessment. On average the crossing was used 9 times per day during this period. Using its All Level Crossing Risk Model (ALCRM) which measures collective risk and individual risk of fatality, Network Rail identifies that the current risk score for the FPW is C5 and the Fatalities and Weighted Injuries (FWI) figure is 0.000633859. The Appellant's survey carried out in September 2023 resulted in a lower average daily use of 5 trips.
28. There is no standard methodology for forecasting potential pedestrian movements over a level crossing from proposed development. Following completion and occupation of the proposed development, Network Rail suggests there could be an additional 77 additional trips over the crossing on a daily basis. It states this would result in an increased risk score of C3 and an FWI 0.00632154. Network Rail also suggests that the appeal proposal could increase the safety risks at the crossing by increasing the number of vulnerable users and amount of misuse.
29. Overall, Network Rail considers that this level of increase would result in 'a step-change in the quantity and frequency of user and user profile', which would result in a higher risk rating for the level crossing and an 'unacceptable highway safety risk' overall. It therefore seeks mitigation to remove this risk and exactly what this should entail was discussed during the Inquiry. Whilst Network Rail clarified at the Inquiry that it does not object to the principle of

- the proposed development, it confirms in its closing submissions that it seeks a Grampian condition to prevent the occupation of the dwellings, until the Homedown level crossing is closed.
30. I also heard other concerns during the Inquiry from interested parties on the impact the potential loss of the FPW would have on the local community, and on users of the PROW and Gloucestershire Way.
31. Network Rail has used the 2021 findings from the National Travel Survey (NTS), which identifies that the average person takes 235 walking trips in a year. Based on the appeal proposal occupation of around 265 persons Network Rail's calculations finds that this would result in 171 walking trips per day from the development. Network Rail then makes the assumption that all of the 'walking only' trips (45% of total walking trips) would use the FPW, and this is what results in the 77 additional daily movements.
32. I have considered this approach and the concerns raised by the Appellant on the assumptions used in Network Rail's calculations. I am not convinced that all walking trips would likely start directly from the home. I also acknowledge that the NTS advises that care should be taken in interpreting data produced during the COVID-19 pandemic, as walking trips increased significantly during this period. More recent evidence demonstrates a reduction in these rates. I also consider it to be reasonable for the context of the site to be given careful consideration, when considering any impacts on a level crossing.
33. I note that the Appellant's recent assessment uses the pre-pandemic 2019 NTS data. It also uses trip generation and distribution modelling (TRICS trip rate data). The Appellant considers that from the walking trips generated by the proposal only a small number would be likely to use the FWP, from a range of between 4 and 13 additional daily trips.
34. I recognise that the high line-speed of 100mph and high frequency of trains on this railway line are important risk factors and that public safety at level crossings is a key concern for Network Rail. However, in my view, the context of both the proposed development and the level crossing needs to be given due consideration when determining whether there would be any impacts on safety and risk.
35. On using the level crossing myself I saw that there was excellent visibility, in both directions, with clear views along the long and straight stretches of track. Indeed, Network Rail confirms itself that unobstructed sighting is possible for at least 1000m, which is well in excess of the required sighting distance of 368m.
36. The single track lane adjacent to the northern boundary of the appeal site goes under the railway line to the very small hamlet of Natton. I heard at the Inquiry that this is designated a 'quiet lane'. The Appellant proposes to provide a pedestrian link through the development and create direct access to this lane from the appeal site. Whilst the design details would be determined at the reserved matters stage, I see no reason why this should not provide an attractive and accessible route for pedestrian use through the site.
37. The Appellant also considers that this pedestrian link through the site could also be an attractive route for some residents from the adjacent consented development wishing to access the PROW to the east. I consider that with

suitable design this would be likely. Network Rail agreed that a proportion of residents could well use this route.

38. It was confirmed at the Inquiry by Network Rail and the main parties that no robust assessments of the effect of the consented development on the level crossing have been undertaken. There is therefore no way to determine the extent of such use at this time and there is no evidence to confirm what the cumulative impact would be. Due to lack of any evidence on this point, I can only consider the impact of the appeal proposal on the level crossing within my decision.
39. Whilst I acknowledge the concerns raised about flooding on the northern lane I have insufficient evidence to demonstrate that this is so significant that it would prevent use of the route on a regular basis. I also acknowledge the County Council's concerns about encouraging the shared use of pedestrians and vehicles on this lane. Nevertheless, it is designated as a quiet lane and due to there being no footpaths, it is currently a shared route. Furthermore, the existing single track route to the level crossing is also shared between vehicles and pedestrians, as vehicle access to the business park and a property are required. I saw for myself on my site visit that the northern lane provides an alternative route to access the PROW and countryside to the east of the site without needing to cross the railway line.
40. There would be little reason for future residents of the scheme to use the level crossing to access everyday local services, as these are located to the north and west. The proximity of the site to the existing settlement and adjacent development would, in my mind, provide relatively easy access to such facilities as schools, shops, employment areas and the railway station. It would also provide large areas of open space which would be attractive for leisure use. The off-road pedestrian/cycleway link to be provided as part of the scheme, would promote sustainable travel to these destinations.
41. The appeal site's southern boundary hedgerow provides an existing physical barrier between the site and the lane that leads to the level crossing. Whilst layout is a reserved matter, the Appellant has indicated that the design would ensure that this hedgerow would be retained, and other suitable barriers would be provided to prevent residents of the development from accessing the southern lane directly from the appeal site. There was some discussion during the Inquiry on whether a condition could be imposed on this basis and an agreed form of wording has been suggested. I am satisfied that this could be adequately secured by condition, and I attribute weight that there would be no direct access to the southern lane, and consequently to the level crossing, from the development site.
42. There was some discussion at the Inquiry around the potential for the level crossing to be an attractive route for dog walkers residing at the development. Whilst I appreciate there is a likelihood that some dog walkers would wish to access the PROW across open countryside, the assumption that all daily dog walkers would use the level crossing to do this would not, in my view, be reasonable, particularly as an alternative route to the north would be available and there would be no direct access to the southern lane. Furthermore, the large areas of formal and informal open space and dedicated pedestrian footways in the consented development to the north and west would likely form attractive routes for a wide range of walking trips including for dog walkers.

43. I recognise that access to the network of PROW, the Gloucestershire Way and the countryside located to the east of the appeal site would likely attract some future residents from the development. I also acknowledge that the appeal site is within very close proximity to the level crossing. However, for the reasons specified above, namely the presence of an alternative route which is equally close to the site (but to the north) and does not involve crossing the railway line, the provision of measures to prevent direct access to the southern lane from the site, the provision of pedestrian links routes towards the north and west and the proximity of services, facilities, open space and other trip attractors to the north and west, I consider that the appeal scheme would be unlikely to result in a significant increase in the FPW usage, as is envisaged by Network Rail.
44. Taking all the above into account, I am satisfied that there would likely be only a modest increase in usage of the FPW from residents of the proposed appeal scheme. Overall, I therefore conclude that the proposal would not result in unacceptable harm to the public safety of the level crossing. This would therefore accord with both JCS Policy INF1, which seeks a safe and efficient transport network, and the Framework.
45. On this basis it is not necessary for the FPW to be closed nor the Appellant to provide any mitigation measures for the crossing. Accordingly, some of the planning obligations set out in one of the bilateral planning agreements relating to the Homedown level crossing are not necessary. I discuss this further within my section on planning obligations.
46. I have also been directed to other appeals and examples of residential development close to level crossings. I recognise that there are some similarities in some cases, but not in their totality. I also do not have all the details of the examples before me so cannot be sure that the contexts are directly comparable. Furthermore, I must determine this appeal on its own merits. Based on my consideration of all the evidence that is before me, the examples given do not alter my conclusion on this issue.

Other Matters

47. I have carefully considered other concerns raised by interested parties and local residents, including on matters relating to traffic and highway safety, flood risk, and living conditions for existing residents on issues such as noise and outlook. This includes the specific equestrian related concerns that have been raised.
48. The evidence before me demonstrates that the traffic generated by the development would not be materially adverse in terms of highway safety. In this regard I note that neither National Highways nor the Highway Authority object to the proposal, subject to the imposition of suitable conditions and necessary highway improvement works. Based on the evidence, I have no reason to come to a different conclusion.
49. As regards flood risk and drainage, the Lead Local Flood Authority has not objected to the proposal and suitable conditions could be imposed requiring the provision of adequate surface and foul water drainage to protect against flooding. I have no firm evidence that the proposal would materially exacerbate flood risk in the locality. In addition, matters relating to living conditions,

including noise and outlook, could be adequately dealt with by conditions and through the suitable design of the scheme as part of reserved matters.

50. I have also considered other concerns raised, including on light pollution and wildlife. The Appellant proposes to design the scheme to minimise light pollution and provide biodiversity net gain. A concern raised about the potential loss of property value is not a planning matter for my consideration.

Planning Obligations

51. The two S106 planning agreements include a range of contributions that would be provided were the appeal to be allowed. The agreements set out details of what the obligations would provide including the various monetary contributions.
52. The bilateral agreement between the Appellant and Tewkesbury Borough Council includes the provision of 40% affordable housing and on-site open space. It also includes a refuse and recycling contribution, which would be used for the provision of refuse and recycling bins within the development. A monitoring fee would be used by the Borough Council to monitor compliance with the agreement.
53. The bilateral agreement between the Appellant and Gloucestershire County Council includes a library contribution which would go towards improving customer access to services at Tewkesbury library. In addition, a travel plan contribution would enable the County Council to monitor both the implementation of the travel plan for the site and sustainable travel use.
54. Both the Borough Council and County Council have provided evidence within their submissions that justifies the above requirements and the amounts sought. It is clear from the information provided that these contributions are necessary to make the development acceptable in planning terms, that they are directly related to the development, and are fairly and reasonably related in scale and kind to the development proposed, which satisfies the tests in the Framework and Regulation 122 of the Community Infrastructure Levy 2010 (CIL). I therefore take the above planning obligations into consideration within my decision.
55. As highlighted in my main issue on the Homedown level crossing, the planning agreement between the County Council and the Appellant also includes other planning obligations. These provide for a level crossing closure/diversion contribution of £30,000; a permissive path on land to the south of the appeal site (within the Appellant's control) to provide an alternative footpath route over the railway line; and a lanes contribution of £50,000 which would be used to reduce the speed limit on Fiddington Lane and for designating the lane leading from Fiddington Lane toward the area known as Claydon as a 'Quiet Lane'.
56. I have determined that the appeal scheme would not result in material harm to the public safety of the level crossing. Accordingly, the above three provisions are not necessary to make the development acceptable and neither are they fairly and reasonably related in scale and kind to the development proposal. They therefore do not meet the statutory tests under CIL Regulation 122. I therefore have not taken these provisions into consideration in reaching my decision and the Appellant is not legally required to provide them.

Planning Balance

57. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the development plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework.
58. It is agreed that the Council is unable to demonstrate a five-year housing land supply. Accordingly, development plan policies which are most important for determining this appeal are out-of-date and paragraph 11 d) of the Framework applies. This presumption in favour of sustainable development states that permission should be granted unless one of the circumstances listed in sub sections i or ii of the paragraph is met.
59. Section d) i states that the presumption should not be applied if specific policies in the Framework indicate development should be restricted. None apply in this case.
60. Therefore, I must now turn to paragraph 11 d) ii. This requires a balance to be undertaken whereby permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
61. I have concluded that the appeal scheme would not materially impact the Homedown level crossing. The Framework aims to significantly boost the supply of housing and the proposal would make an important contribution to both market and affordable housing supply for the Borough. I give both these benefits significant weight.
62. I recognise that it would also be likely to boost the local economy by providing construction jobs and supporting local building trades, albeit that this would be for a temporary period. I also acknowledge that the future occupants of the development would be likely to support local businesses and facilities. Environmentally the site would be designed to retain the existing boundary hedgerows as far as possible and provide further native tree and shrub planting within the site, which would enhance biodiversity. I consider overall that these benefits would weigh moderately in support of the appeal.
63. I recognise that there would be a conflict with the spatial strategy and distribution of development, but for the reasons given I have determined that this would result in only limited harm. I therefore give this only limited weight within my planning balance.
64. I have also found that there would be some limited harm to the character and appearance of the area in relation to impact on the countryside and local landscape. I give this harm limited weight.
65. I have given careful consideration to other matters, but I have found, based on the evidence before me, that there would be no material harm arising from the proposal in these regards.
66. Overall, I conclude that the harm I have identified does not significantly and demonstrably outweigh the benefits of the proposal. Therefore, overall, subject to the provision of those S106 planning obligations that meet the statutory tests and the conditions set out in the attached schedule, the appeal scheme would be compliant with the Framework when read as a whole and would therefore be sustainable development.

Conditions

67. The Council and Appellant have submitted an agreed list of suggested conditions that they consider would be appropriate if planning permission was granted. There was disagreement on the necessity of one landscaping condition and I deal with this below. There was also some discussion during the Inquiry on whether any conditions were necessary relating to the level crossing. I also deal with these below.
68. I have considered the conditions in light of the advice given in the Planning Practice Guidance (PPG). As such, I impose these largely unaltered, only amending wording where necessary in the interests of precision and to ensure compliance with the tests. I have included pre-commencement conditions on matters including the construction environmental management plan, construction management plan, tree and hedgerow protection measures, surface water drainage and assessment of the need for anti-vibration treatment of the foundations, as these are fundamental to ensuring that the development is satisfactory. I am satisfied that the conditions set out in my decision meet the tests within the PPG.
69. In addition to the required conditions identifying the reserved matters and timescales for the submission of subsequent applications, I have specified the maximum number of dwellings to be constructed in accordance with the submitted information and in the interest of certainty. For the same reason I have specified the approved plans.
70. Conditions requiring ecological mitigation measures, ecological surveys, and the production of a lighting design strategy, a Landscape and Ecological Management Plan and a Construction Environmental Management Plan, are necessary in the interests of biodiversity protection and ecological enhancement.
71. Although landscaping is a reserved matter, it is necessary to secure the protection of existing trees/hedgerows during construction. This is in the interests of good design and for ecological reasons. However, it is not necessary to include a condition setting out the specific details of the proposed landscaping as part of this outline permission as this will be the subject of a subsequent reserved matters application.
72. Conditions requiring safe and suitable visibility splays, highway improvement works and a construction management plan, are imposed to ensure highway safety. Additional conditions are required to secure turning and loading/unloading facilities and vehicle and cycle parking, for the benefit of future occupiers of the development. In relation to the highway improvements condition I have added reference to the Transport Statement as this is where the drawing listed in the condition can be found. This provides certainty. A separate condition securing the implementation and monitoring of the travel plan is also necessary to promote sustainable travel.
73. To safeguard the living conditions of future residents of the development, noise, vibration, contamination and waste management conditions are required. A recycling strategy is necessary to ensure a sustainable approach to the development.

74. Conditions requiring details of existing and proposed ground levels, slab levels, floor levels and ridge levels provide certainty, and ensure the development has an acceptable appearance and suitable living conditions for future residents. Conditions are also imposed on surface and foul water drainage and the storage of materials, to protect against flooding and to minimise pollution.
75. A Housing Mix Statement is necessary to ensure open market dwellings are of an appropriate mix of types and sizes in accordance with Council policy.
76. I have found no adverse impacts on the issue of the Homedown level crossing, subject to a condition that restricts access from the site to the lane on the southern boundary of the site and provides details of the boundary treatment along this stretch. I impose such a condition, though for completeness and to ensure it would be enforceable I add requirements for details to be submitted to the local planning authority for its written approval and for the development to be implemented accordingly. The other suggested conditions restricting occupation of the development until the Homedown level crossing is stopped up or until a diversion is in place, are unnecessary and I do not include them.

Conclusion

77. For the reasons given above, I conclude that the appeal should be allowed.

Yvonne Wright
INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green of Counsel, Cornerstone Chambers

Instructed by One Legal on behalf of Tewkesbury Borough Council

No witnesses were called. Other persons:

Mr Paul Instone BSc(Hons) DipTP MRTPI – Director, Applied Town Planning Ltd

Mr Gary Spencer LLB(Hons) – Locum Solicitor for One Legal on behalf of Tewkesbury Borough Council

FOR THE RULE 6 PARTY (NETWORK RAIL):

Mr Richard Turney of Counsel, Landmark Chambers

Instructed by Dentons UK and Middle East LLP

He called:

Mr Chris Williams, BSc (Hons), Level Crossing Manager (North Cotswolds), Network Rail Infrastructure Limited

Ms Lisa Bullock, BA(Hons) MA MRTPI, Senior Town Planner (Western Route), Network Rail Infrastructure Limited

Other persons:

Ms Megan Forbes, Associate, Dentons UK and Middle East LLP

FOR THE APPELLANT:

Mr Paul Tucker KC, and Mr John Barrett, Barrister, Kings Chambers

Instructed by David Hutchison, Pegasus Group

Witnesses called:

Mr Graham Eves, BSc CEng MICE MCIHT, Transport Consultant, PFA Consulting Ltd

Other persons:

- Mr Michael Ruddock, MRTPI, Principal Planner, Pegasus Group
- Ms Rachel Hill, Solicitor, Robert Hitchins Ltd
- Mr Paul Harris, CMLI, Director, MHP Design Ltd

INTERESTED PERSONS:

Gloucestershire County Council:

- Mr Krysztof Kwiatkowski – Legal Advisor, Association of Legal Executives
- Mr Nathan Drover, Chartered Engineer, Member of CIHT, Member of Association for Project Safety - Highway Development Management Manager

Save Our Lanes Community Association:

- Ms Susan Mitchell
- Mr David Garnett

Ashchurch Rural Parish Council:

- Parish Cllr Ian Parker

Richborough

DOCUMENTS SUBMITTED DURING THE INQUIRY

- ID1 Council's opening statement
- ID2 Appellant's opening statement
- ID3 Save Our Lanes statement
- ID4 Ministry of Housing, Communities and Local Government letter on 'Shared space schemes' dated 28 September 2018
- ID5 Gloucestershire County Council Manual for Gloucestershire Streets (July 2020)
- ID6 Royal Academy of Engineering Statement of Ethical Principles for the engineering profession (July 2017)
- ID7 Extract from the Tewkesbury Borough Plan 2011-2031
- ID8 Extract from the Cycle Infrastructure Design Local Transport Note 1/20 (2020), Department of Transport
- ID9 Extract from Gloucestershire's Local Transport Plan 2020-2041
- ID10 Ashchurch Rural Parish Council statement
- ID11 CIL Compliance Statement – Gloucestershire County Council dated 17 October 2023
- ID12 CIL Compliance Statement Summary – Gloucestershire County Council dated 17 October 2023
- ID13 Proposed condition no. 29 regarding the Homedown railway level crossing and restrictions on occupation of the dwellings
- ID14 Proposed condition no. 30 regarding the southern boundary of the site and restricting highway access
- ID15 Network Rail's closing submissions
- ID16 Council's Closing Submissions
- ID17 Appellant's Closing Submissions

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- ID18 S106 Agreement between the Appellant and Tewkesbury Borough Council (signed and dated 14 November 2023)
- ID19 S106 Agreement between the Appellant and Gloucestershire County Council (signed and dated 16 November 2023)
- ID20 Gloucestershire County Council Updated Planning Obligations (Libraries, Education Infrastructure and Transport Infrastructure) CIL Compliance Statement

SCHEDULE OF CONDITIONS

- 1) No part of the development hereby permitted shall be begun until details of the access, appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority for that part of the development. The development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority before the expiration of 2 years from the date of this permission. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 3) No more than 120 dwellings shall be constructed on the site pursuant to this planning permission.
- 4) The development shall proceed in strict accordance with the Mitigation Measures identified in Chapter 6 of the Environmental Statement relating to Biodiversity and the related Technical Appendix prepared by Ecology Solutions dated October 2022.
- 5) Prior to the submission of reserved matters, a walk over survey and species-specific presence/likely absence surveys will be undertaken as required, in particular for great crested newt presence/likely absence surveys/eDNA surveys should be undertaken, to confirm/note any changes in habitats or identify any new ecological constraints. The results of the survey along with any additional proposed mitigation measures shall be submitted to the Local Planning Authority for approval in writing. The development shall be implemented in accordance with the approved details.
- 6) A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the occupation of the development. The LEMP shall be written in accordance with BS42020. The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details. The LEMP is also to include ecological enhancement plan detailing location and specification of the ecological enhancements. The LEMP will include details of any updates to

the BNG metric, what the condition of habitats (where applicable) will be and how they will be met and identify how the habitats will be managed for a term of 30 years.

- 7) Prior to any works comprising the erection of a building hereby permitted above slab level a "lighting design strategy for biodiversity" shall be submitted to and approved in writing by the local planning authority. The strategy shall:
- a. Identify those areas/features on site that are particularly sensitive for bats, including the boundary areas, and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
 - b. Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior written consent from the local planning authority.

- 8) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall be written in accordance with BS42020, including mitigation details on bats, badger, birds, great crested newt, reptiles and hedgehog, as well as any pollution prevention measures. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
- 9) No development including demolition, site clearance, materials delivery or erection of site buildings, shall start on the site until measures to protect trees/hedgerows on and adjacent to the site have been installed in accordance with details that have been submitted to and approved in writing by the local planning authority. These measures shall include:
- a. Temporary fencing for the protection of all retained trees/hedgerows on and adjacent to the site whose Root Protection Areas (RPA) fall within the site to be erected in accordance with BS 5837(2012) or subsequent revisions (Trees in Relation to Design, Demolition and Construction). Any alternative fencing type or position not strictly in

accordance with BS 5837 (2012) shall be agreed in writing by the local planning authority prior to the start of development. The RPA is defined in BS5837(2012).

- b. Construction Exclusion Zone (CEZ): The area around trees and hedgerows enclosed on site by protective fencing shall be deemed the CEZ. Excavations of any kind, alterations in soil levels, storage of any materials, soil, equipment, fuel, machinery or plant, site compounds, cabins or other temporary buildings, vehicle parking and delivery areas, fires and any other activities liable to be harmful to trees and hedgerows are prohibited within the CEZ, unless agreed in writing with the local planning authority.

The approved tree protection measures shall remain in place until the completion of development or unless otherwise agreed in writing with the local planning authority.

- 10) The Development hereby approved shall not be occupied until visibility splays are provided from a point 0.6m above carriageway level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 69 metres to the north and 60 metres to the south measured along the nearside edge of the adjoining carriageway. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.
- 11) The Development hereby approved shall not be occupied until details of the highway improvements works, identified in the PFA Consulting Transport Assessment (September 2022) comprising:
 - a. Segregated footway/cycleway on west side of Fiddington Lane as shown on drawing H689/03 RevB
 - b. Pedestrian and cyclist crossing on Fiddington Lane as shown on drawing H689/03 Rev B
 - c. Traffic calming/speed reduction measures as shown on drawing H689/03 Rev B

have been submitted to and approved in writing by the Local Planning Authority; and no building shall be occupied until those works have been constructed in accordance with the approved details.

- 12) The details to be submitted for the approval of reserved matters pursuant to Condition 1 shall include vehicular parking and turning and loading/unloading facilities within that part of the development. Thereafter, no building hereby approved shall be occupied until those facilities and carriageways (including surface water drainage/disposal and street lighting) serving that building and

providing access from the public highway to that building have been completed to at least binder course level and the footways to surface course level. The facilities shall be maintained available for those purposes for the duration of the development.

- 13) Vehicle and cycle parking shall be provided prior to first occupation of each dwelling in accordance with details to be contained within the approval of any reserved matters approval.
- 14) Prior to the commencement of the development hereby permitted details of a construction management plan shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:
 - a. Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - b. Advisory routes for construction traffic;
 - c. Any temporary access to the site;
 - d. Locations for loading/unloading and storage of plant, waste and construction materials;
 - e. materials;
 - f. Method of preventing mud and dust being carried onto the highway;
 - g. Arrangements for turning vehicles;
 - h. Arrangements to receive abnormal loads or unusually large vehicles;
 - i. Highway Condition survey;
 - j. Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.
- 15) The Residential Travel Plan hereby approved, dated September 2022, shall be implemented and monitored in accordance with the regime contained within the Plan.
- 16) The first reserved matters application submitted pursuant to condition 1 shall be accompanied by a detailed Site Waste Management Plan (SWMP) (incorporating material resource efficiency measures) for approval in writing by the local planning authority. The SWMP must accord with the principles of the Waste Minimisation and Management Plan under reference: 345.WMP.01, dated February 2021. The SWMP must identify the type and amount of waste materials expected to be generated from the residential development during

the construction phase and set out what specific measures will be employed for dealing with this material so as to:

- a. Minimise its creation;
- b. Maximise the amount of re-use and recycling on-site;
- c. Maximise the amount of off-site recycling of any generated waste that is unusable on-site; and Reduce the amount of all wastes sent to landfill.

In addition, the SWMP must clearly set out the proportion of recycled content to be used in construction materials and how such a level will be secured. The reserved matters applications shall demonstrate compliance with the approved SWMP for that phase and the development shall be carried out in accordance with the approved details.

- 17) The first reserved matters application submitted pursuant to condition 1 shall be accompanied by details of a recycling strategy for the site for approval in writing by the Local Planning Authority. The reserved matters applications shall include details of waste storage provision for that part of the development which shall be in general accordance with the approved recycling strategy and the development shall be carried out in accordance with the approved details.
- 18) Any reserved matters application that includes buildings submitted pursuant to condition 1 shall include details of existing and proposed ground levels, ground floor slab levels, ridge levels relative to features outside the site including the railway line, all with reference to Ordnance Datum. The development shall be carried out in accordance with the approved details.
- 19) No building works hereby approved shall be commenced until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. The information shall be in accordance with the principles set out in the Flood Risk and Drainage Strategy prepared by Phoenix Design dated October 2022. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results of the assessment provided to the local planning authority. The submitted details shall:
 - a. provide information about the design storm period and intensity and ensure that the method employed to delay and control the surface water discharged from the site to and the measures taken to prevent pollution of the receiving groundwater and/or surface water; include details of the phasing for its implementation; and

- b. provide a full risk assessment for flooding during the groundworks and building phases with mitigation measures specified for identified flood risks; and
 - c. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for its adoption by any public authority or statutory undertaker, and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 20) Prior to any works comprising the erection of a building above slab level plans for the disposal of foul and surface water flows and a programme for any phased implementation shall be submitted to and approved by the Local Planning Authority, and the scheme shall be implemented in accordance with the approved details.
- 21) Floor levels should be set at least 600mm above the Design Flood Level of 16.04 metres above Ordnance Datum.
- 22) There shall be no storage of any materials including soil or raising of ground levels within that part of the site liable to flood as defined by the purple dashed line on drawing No. 559-010 Rev A in Appendix E of the Flood Risk Assessment prepared by Phoenix Design dated October 2022.
- 23) Noise levels within the dwellings hereby approved shall not exceed those set out in BS8233:2014 "Sound Insulation and Noise Reduction for Buildings". Private rear garden and balcony amenity spaces shall be shielded from noise from the M5 and railway noise and achieve 55dB LAeq(16hrs).

Each reserved matters application submitted pursuant to Condition 1 which includes dwellings, shall be accompanied by a noise survey to identify any dwellings that would be at risk of exceeding these limits. The noise survey shall identify those measures necessary to achieve the noise levels set out in this condition at the affected properties, and such measures shall be approved in writing by the Local Planning Authority prior to any works.

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

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

- 24) Prior to the commencement of development, an assessment shall be submitted and approved in writing by the Local Planning Authority to determine whether a scheme for anti-vibration treatment of the foundations is required. If a scheme for anti-vibration treatment of the foundation is required for some or all of the dwellings, a scheme for anti-vibration treatment of those foundations shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out strictly in accordance with the scheme so approved prior to first occupation of the affected dwellings, and it shall be maintained as such thereafter, and no change from the approved Scheme shall take place. The approved Scheme shall demonstrate that internal vibration levels within dwellings shall not exceed the category of "low probability of adverse comment" from BS 6472:2008" that being >0.4 m/sec-1.75 (Daytime) and >0.2 m/sec-1.75 (night-time).
- 25) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared, which shall be subject to the approval in writing of the local planning authority.

Following completion of measures identified in the approved contamination remediation scheme a verification report shall be prepared, which shall be subject to the approval in writing of the local planning authority.

- 26) The first reserved matters application submitted pursuant to condition 1 shall include the submission of a Housing Mix Statement for the open market housing to the local planning authority for its written approval. It will set out, in respect of that phase, how an appropriate mix of dwelling sizes and types will be provided in order to contribute to a mixed and balanced housing market to address the needs of the local area, including the needs of older people, as set out in the local housing evidence base, including the most up-to-date Strategic Housing Market Assessment for the area at the time of the submission of the relevant reserved matters. The development shall be implemented in accordance with the approved Housing Mix Statement.
- 27) The development hereby permitted shall be carried out in accordance with the following approved plans unless other conditions in this planning permission specify otherwise: Site Location Plan ref. 345.UD.05 REV.E and Parameter Plan ref. 345.UD.06 REV.R.
- 28) No access of any form will be provided from the site to the highway along the southern boundary of the site unless and until the Homedown Level Crossing is closed. The first reserved matters application submitted pursuant to Condition 1 shall include details of the boundary treatment which shall be designed to restrict any access from the development onto the highway along

the southern boundary of the site. This shall be submitted to the local planning authority for its written approval and be implemented in accordance with the approved details.

Richborough