



Appeal Decision

Inquiry held on 26-29 November 2024

Site visit made on 25 November 2024

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 2nd January 2025

Appeal Ref: APP/P1615/W/24/3348402

Land At Gloucester Street, Newent, Gloucestershire, GL18 1HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Robert Hitchins Limited against Forest of Dean District Council.
 - The application Ref is P0584/23/OUT.
 - The development proposed is a mixed-use development comprising the following individual, severable and self-contained elements:
 - i) up to 375 residential dwellings.
 - ii) 1 form entry primary school including nursery.
 - iii) employment area (up to 7,800 sqm gross internal floor area within Use Classes E(g), B2, and B8).
 - iv) local centre (up to 865 sqm gross internal floor area within Use Classes E(a), E(b), E(c), E(d), E(e) and hot food takeaway (Sui Generis).Associated works; ancillary facilities and infrastructure; open space; recreation facilities and landscaping. Vehicular accesses from Gloucester Street and Oak Tree Way.
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Decision

1. The appeal is allowed and planning permission is granted for mixed-use development comprising; up to 375 residential dwellings, a 1-form entry primary school including nursery, employment area (up to 7,800m² gross internal floor area within Use Classes E(g), B2, and B8), local centre (up to 865m² gross internal floor area within Use Classes E(a), E(b), E(c), E(d), E(e) and hot food takeaway (Sui Generis), associated works, facilities and infrastructure and landscaping with vehicular accesses from Gloucester Street and Oak Tree Way at land At Gloucester Street, Newent, GL18 1HA in accordance with the terms of the application, Ref P0584/23/OUT, subject to the conditions in the attached schedule.

Preliminary Matters

2. The Inquiry sat for 4 days between 26 and 29 November. The evidence was heard in person on the first two days of the Inquiry with round table discussions on planning obligations and conditions as well as closing submissions being conducted virtually.
3. I undertook an unaccompanied site visit before the Inquiry. With the agreement of the main parties, a formal accompanied site visit after the Inquiry had closed was not deemed necessary.

4. The appeal arises from the Council's failure to determine the application within the prescribed time limit. The Council's Decision Notice¹ and Committee Report² set out five putative reasons for refusal (RfRs), these being the location of the development outside the settlement boundary of Newent (RfR1), the impact on protected species (RfR2), highway impacts (RfR3), living conditions of existing and future occupiers (RfR4) and the effect on local infrastructure and services (RfR5).
5. As confirmed in the Forest of Dean District Council's (the Council) Opening Statement³, RfRs 1, 2, 3, 4 and 5 (save for the matter of the primary education contribution) were all withdrawn before the Inquiry following the submission of further information from the Appellant.
6. Planning⁴, Agriculture⁵, Education⁶, Housing Need⁷, Ecology⁸ and Highway⁹, Statements of Common Ground (SoCGs) have been submitted and I have had regard to these in reaching my decision.
7. A signed and dated agreement under s106 of the Town and Country Planning Act was submitted after the close of the Inquiry in accordance with an agreed timetable. Amongst other things this contains obligations to the Council and Gloucestershire County Council (GCC) in respect of off-site highway works, affordable housing, libraries, policing, health care and primary education contributions. A draft version of the document along with two Unilateral Undertakings (UUs) were discussed at the Inquiry.
8. The revised National Planning Policy Framework (the Framework) was published after the close of the Inquiry. The parties were given the opportunity to comment on the document and in response the Appellant submitted a note which concluded it did not give rise to any new considerations that would necessitate amendments to its case.

Main Issue

9. The main issue is whether the primary education contribution sought by GCC is necessary and reasonable in all respects.

Reasons

10. Regulation 122 of the CIL Regulations and paragraph 58 of the Framework set out policy tests for planning obligations which must be necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development.
11. Schedule 2 of the s106 agreement seeks a financial contribution of £2,711,585.25 towards the provision of 112.5 primary school places within the Newent primary planning area¹⁰. GCC argued that there would be insufficient capacity in local schools to accommodate these pupils and therefore the

¹ CD.E1

² CD.E2

³ ID.1

⁴ CD.C13

⁵ CD.C13.1

⁶ CD.C14

⁷ CD.C15

⁸ CD.C16

⁹ CD.C17

¹⁰ This is based on a rate of 30 places per 100 qualifying dwellings as per the DfE's 'Estimating pupil yield from housing development' August 2023 CD. D1.11

contribution is reasonable and necessary to ensure “*there are enough good new school places to meet local needs*” as set out in the Department for Education’s (DfE) ‘*Securing Developer Contributions for Education*’ (SDC)¹¹.

12. While there is no dispute about the need for an education contribution, the Appellant considers a contribution £201,282.71 towards 8.4 additional places to be reasonable and necessary in all respects. A Deed of Variation to the s106 agreement provides for a different sum to be paid to GCC provided I am satisfied the amount is identified as being compliant with CIL Regulation 122.
13. The disparity between the parties regarding the amount of the contribution can be distilled down into four principal areas of disagreement; 1) the forecast year, 2) baseline adjustments, 3) how to treat places from other developments and 4) the operating margin. Of these, I consider that 2) and 4) are the determinative issues.

Forecast year

14. The dispute whether to use a 2026-27 or 2027-28 forecast year makes little difference, in itself, to the level of contribution required. Although resulting in a smaller surplus than GCC’s preferred 2026-27 assessment year¹², the Appellant argued a 2027-28 assessment year would be more representative of “*the time the development is expected to be built*” and “*being occupied*”¹³. As it was put at the Inquiry, the Appellant was essentially making an argument against itself on this issue.
15. GCC did not suggest the advice in SDC paragraph 74 should not be followed nor that the development would come forward before 2027-28. All the available evidence points to any occupations on the appeal site before 2027-28 being most unlikely.
16. GCC’s reasons for using an earlier forecast year are well understood and are not necessarily unreasonable¹⁴. Nonetheless there is some disconnect between its approach and the wording in the SDC as well as GCC’s own 2024 guidance ‘*Position Statement on Pupil Product Ratios (PPRs) from new housing developments*’¹⁵. This states: “*Forecast data 3 years from the current academic year will be used to ascertain capacity, i.e. in 2023/2024, forecast year 2026/2027 will be used, thus being more reflective of when the development is likely to impact on capacity within schools*”. In my view there can be no ambiguity that three years from the current academic year is 2027-28.
17. Accordingly, I consider that the use of 2027-28 as the forecast year is more consistent with the relevant guidance. The effect of this is that there would be three additional primary school pupils (658) in the system compared to GCC’s base forecast.

¹¹ CD.D1.9 pg 4.

¹² 655 v 658 pupils against a capacity of 741 places.

¹³ SDC para 74.

¹⁴ As explained in Mr Chandler’s Proof (para 6.12) 2026/27 is the last year for which empirical data is available to forecast pupil numbers.

¹⁵ CD.D2.5.

Baseline adjustments

18. As confirmed in the Education SoCG, GCC's baseline forecasts assume that cohort progression and migration rates that have occurred over the last five years will be maintained. It is common ground that the effect of new housing is captured in these rates, albeit the Appellant argued it is a primary component whereas GCC consider it is only one of a range of factors¹⁶. It was further agreed that the rate of new housing across the planning area will slow in coming years¹⁷.
19. On that basis, the Appellant argued that the use of past cohort progression and migration rates together with the inclusion of pupil yields from unmitigated committed developments¹⁸ represents double counting. To remedy this, the Appellant argued that the 69 places from Southend Lane should be removed from GCC's assessment table (reproduced at Table 1 below). This would result in the development being liable for a contribution towards 48.95 rather than 112.50 places.
20. In support of the above approach, the Appellant referenced the DfE's School Capacity (SCAP) Survey 2024¹⁹. While the parties held conflicting views on the applicability of the document, I consider it is of some relevance given that baseline forecasts are an integral part of SCAP as well as s106 forecasts. Page 33 of the guidance explains that SCAP forecasts should only be adjusted upwards to take account of pupils arising from committed developments if the rate of housebuilding is expected to increase as the pupil yield from committed developments will already be captured in the migration or cohort progression rate. In my view, GCC's approach illustrated in Table 1 below is contrary to that general principle.

Table 1– GCC's S106 Contribution Assessment Table (Source: page 23, Chandler PoE)

	Planning Area Schools
Total Capacity	741.00
95%	703.95
Forecast year 2026/27 for school(s)	655.00
Surplus/deficit of places available	48.95
Cumulative yield from existing permitted development	69.000
Surplus/deficit of places available to credit to development	-20.05
Primary Yield from proposed development	112.50
Number of places requested	112.50

21. GCC accepted aspects of the Appellant's case but argued that the rate of housing slowdown would not be sufficient to result in a surplus in school places becoming available to the appeal scheme. The crux of the debate is therefore the extent to which the rates are dependent on, and influenced by, new

¹⁶ Other matters include parental preference, the effect of in-year joiners and excluded pupils.

¹⁷ See Table 7.1 of Mr Tiley's Proof of Evidence.

¹⁸ 69 pupils from the approved development of 230 dwellings at land North of Southend Lane – LPA ref: P1330/18/OUT.

¹⁹ CD1.12

- housing and whether downward adjustments should be made to take account of the fact that cohort progression and migration rates will not be maintained.
22. The difficulty in wrestling with this issue is that neither the Appellant nor GCC have been able to provide any meaningful breakdown of the cohort progression and migration rates. Given that GCC are responsible for calculating and applying the rates, the onus falls on them to provide more information when challenged on the matter, as has occurred here. The absence of a breakdown makes any kind of informed assessment difficult and means that one has to exercise a degree of judgement to the issue. Having carefully considered the matter, I consider it more likely than not that new housing is the primary driver behind the cohort progression and migration rates used by GCC.
 23. Even if I am wrong about that, the Appellant pointed out that there is no evidence to suggest the 'multiplicity' of other factors contributing to cohort progression and migration rates will continue to increase in the future. I must say that I find that a persuasive argument. Accordingly, there appears to be no evidential basis on which to conclude that past cohort progression and migration rates will be maintained at past levels whatever the relative contribution of the individual factors might be.
 24. The next matter is what level of downward adjustment to GCC's figures might be necessary to avoid double counting. The only figures before me in this regard are those in the table to paragraph 6.4 of Mr Chandler's Proof of Evidence (PoE). This shows that the effect of the cohort progression and migration rates across the planning area between the current academic year and 2027-28. By comparing the totals on the bottom row, the number of pupils increases from 628 to 658, an increase of 30 pupils²⁰. Given this figure is significantly less than the 69 places arising from the Southend Lane development, I do not consider the Appellant has made out its case that cohort progression and migration rates "*already more than account for other committed developments*"²¹.
 25. It is also worth highlighting that although the Appellant suggests a "*significant downward adjustment should be made*", no calculations or alternative figures have actually been provided in this regard. Therefore, and in light of my earlier findings that new housing is the primary driver behind past cohort progression and migration rates, I consider that a downward adjustment of 20 places (66% of the 30-pupil increase) is justified to avoid the effects of double counting. A two-thirds reduction is also broadly consistent with the data on average housing completions across the planning area²².
 26. The final matter to be addressed is whether GCC's baseline forecasts are already likely to include pupils from the Southend Lane development. GCC's witness confirmed that those pupils that are known about in 2023-24 which I interpret as being by the end of March 2024²³ are likely to be captured in the figures. The question then arises as to how many houses were likely to be completed and occupied by this date?

²⁰ The majority of this increase occurs at the two nearest primary schools to the appeal site.

²¹ I accept there is some ambiguity as to what 'other committed developments' means in para 7.11 and whether it means 69 places at Southend Lane or a lower figure resulting from current levels of occupation.

²² Para 7.9 and Figure 7.1 of Mr Tiley's PoE

²³ Para 3.7 of Mr Chandler's PoE

27. On this point the evidence from neither party was particularly clear. GCC's witness accepted that 94 dwellings had been completed in 2023-24 bringing the total across the site to 222²⁴. I consider it reasonable to assume that 'completed' means occupied. On that basis, the majority of the pupil yield from Southend Lane would already be in the system by the end of March 2024. Even if I were to agree with GCC that some of the completions in 2023-24 might not have made the data collection cut-off date, there seems to be no logical basis for adding the full yield back in, which is what GCC has done in its assessment table.
28. In the absence of any alternative figures from the parties I have taken a conservative approach and assumed that half of the 94 completions²⁵ in 2023-24 (47 dwellings) were unoccupied at the cut-off date. As a result, the 'cumulative yield from permitted development' in Table 1 should be commensurately reduced from 69 to 16.5 places²⁶.

Places from committed developments

29. The dispute is essentially how one should treat school places arising from other committed developments²⁷. On the one hand the Appellant argued the places should be taken into account when assessing school capacity for the appeal scheme, whereas GCC opted to disregard the places on the basis that they were funded to meet the needs arising from those specific developments. Their effect is thus neutral and do not represent a surplus from which this developer should benefit.
30. The issue would be relatively straight-forward were it not for the fact that the education contributions for the three committed developments were secured against now superseded pupil yield rates²⁸. The DfE's current rate of 30 places per 100 dwellings was introduced in August 2023²⁹. The Appellant's case is essentially that if up-to-date pupil yields were retrospectively applied to these three developments, there would be an additional 3.68 places. Put another way, GCC has secured funding for 3.68 places which are over and above that required on current pupil yields.
31. Be that as it may, I do not consider the correct or fair course of action is to permit developers to benefit from any surplus. The education contributions secured by GCC from those developments adhered to the pupil yields that were in force at the time and were entirely appropriate. It seems to me that the principle of retrospectively applying current data to permitted developments would be a proverbial 'slippery slope' and should be resisted, not least because there is no support for it in the DfE guidance.
32. While the matter of repaying contributions to developer's who might in a sense have 'overpaid' was discussed at the Inquiry, I consider this to be a matter for GCC and the relevant developer. Based on the foregoing, I prefer GCC's position on this matter and the Appellant should not benefit from the 3.68 places.

²⁴ See cell N83 of the Council's Housing Trajectory June 2024 CD.G2

²⁵ Cell M83 CD.G2

²⁶ 47 dwellings + the balance of development (8 dwellings) equals 55 dwellings x 0.3 pupil yield = 16.5 places

²⁷ This amounts to 36.68 places from 3 developments (110 dwellings) that provided education contributions as part of their s106 agreements.

²⁸ 41 pupils per 100 dwellings in the Local Development Guide 2021 and 38.5 per 100 as per the Interim Position Statement

²⁹ CD.D1.11

Operating margin

33. SDC paragraph 82 explains that Basic Need funding provided by the DfE includes a 2% operating margin³⁰ *"to help support parental choice, churn in the pupil population, and the general manageability of the system"*. This does not prevent education authorities from applying a different margin subject to evidence and reasoning to reflect local circumstances. The guidance makes clear that an operating margin is not intended to cover the provision of new housing.
34. GCC argued that a 5% operating margin is appropriate and has previously been accepted by other Inspectors. The Appellant contended that the starting point in national guidance is now 2% and the previous appeal decisions cited by GCC were formulated on the basis of the now defunct 5% 'planning assumption' contained in the 2013 Audit Commission report³¹.
35. The determinative issue in respect of the operating margin is whether there is sufficient evidence and reasoning based on local circumstances to support a 5% figure. In this regard, GCC's evidence was somewhat sketchy. Factors such as new housing, parental choice and influxes of children through resettlement schemes such as Ukraine, Hong Kong and Afghanistan were all cited but not individually quantified. Notwithstanding that the effects of these schemes has abated in recent years, they cannot reasonably be considered as 'local' issues or unknown to the DfE when it set 2% as the starting point for an operating margin. As the Appellant put it, they are generic issues that could apply to any education authority.
36. There was a healthy discussion at the Inquiry about the churn figure, that is the number of pupils coming in and out of Gloucestershire. Here again GCC's evidence was on rocky ground. On the face of it, GCC's preferred 5% figure is supported by the fact that there were 1,301 primary school children who moved into the county in the 2023-24 academic year. The figure was higher still in the preceding year. The result of these figures is that each free space within a 2% margin was allocated the equivalent of 1.3 times to out of county pupils.
37. However, the Appellant highlighted that GCC's figures are based on gross inward levels of migration and take no account of outward migration. I concur with the Appellant that if one wants to properly understand the churn issue, it is more insightful to look at net figures. Once this is done a different picture is painted with 392 net additional pupils in 2022-23 and 375 in 2023-24 which equates to 0.7% of the 53,175 primary school places in the county.
38. I acknowledge the timing point raised by GCC, but in my view it is just as likely that a place would be created before it is needed rather than after. In any event there is more than adequate headroom between the net figures and a 2% operating margin to ensure the general manageability of the system including pupil churn as well as the effects of parental choice. I therefore conclude that 2% is an appropriate operating margin.

³⁰ This equates to 1,063 primary places across the county or an average of approximately 4 places at each of the 244 primary schools.

³¹ CD.H1

Overall conclusions on primary education contribution

39. I consider that a 2027-28 forecast year is to be preferred as it is more consistent with published guidance. This results in 658 pupils. I have reduced the cohort and progression rate by two-thirds to reflect the fact that the rate of housing delivery across the planning area is anticipated to decline sharply in future years. The result of this is that there would be 20 less pupils (638) in the system in the forecast year.
40. I have also found that only 16.5 spaces rather than 69 should be added for the Southend Lane development. For the reasons indicated, I do not consider it appropriate to include 3.68 places from other committed developments. Finally, on the evidence provided, I consider a 2% operating margin is appropriate. The effect of the above findings is reflected in Table 2 below.

Table 2 – Revised Assessment Table incorporating Inspector’s findings

	Planning Area Schools
Total Capacity	741
98% operating margin	726.18
Forecast year 2027-28 for schools	638
Surplus/Deficit available	88.18
Cumulative yield from permitted development	16.5
Surplus/Deficit available to credit development	71.68
Yield from proposed development	112.5
Number of places to be funded	40.82

41. Based on Table 2 above I conclude that a sum of £983,883.64 would be reasonably necessary to mitigate the impact of the proposed development on primary education infrastructure³².

Other Matters*Heritage assets*

42. The duty under Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
43. The nearest heritage asset to the appeal site is the Church of St Mary (Grade I) and Nellfields Farmhouse (Grade II). The Council and Appellant agree that the impact on the setting of these buildings, that is the surroundings in which they are experienced, would be ‘minimal’ on account of the extent of physical separation and intervening built form³³. Having seen the location of these assets as well as the Newent Conservation Area, I concur with the Council and

³² As set out in para 9 of the ‘Agreed Note Concerning S.106 Agreement’ the amount per place is £24,102.98

³³ Planning SoCG para 8.48

Appellant that the harm would be towards the very lower end of the less than substantial scale.

44. Paragraph 215 of the Framework requires that a balancing exercise is undertaken to weigh the harm against the public benefits of the proposal. I undertake this balance in the context of the guidance in paragraph 212 of the Framework, which makes it clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Nonetheless, I am satisfied that the scale of the public benefits arising from the proposed development (set out in paragraphs 7.27-7.44 of Ms Parsons' PoE) are sufficient to outweigh the identified harm to the assets. The proposal therefore passes the "paragraph 215" test.

Appropriate Assessment

45. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) as competent authority I am required to undertake an Appropriate Assessment of the development on the basis of its Likely Significant Effects on the Wye Valley and Forest of Dean Bat Special Area of Conservation (SAC) as a European Site. Natural England nor the Council have objected to the information provided by the Appellant to support the Appropriate Assessment³⁴.
46. Having reviewed all the available ecological evidence, I am satisfied that the relevant potential pathways for significant effects to arise on the SAC have been appropriately assessed. The Council accepts its concerns are addressed by changes to the red-line boundary as well as a mitigation scheme which could be secured by condition.
47. Based on the information provided by the Appellant, and in the absence of any submissions to the contrary, I am satisfied that no harm would be caused to the integrity of the SAC either alone or taken in combination with other residential development. Accordingly, I consider the development would be acceptable under the tests of the Habitats Regulations and there would be no conflict with paragraph 195 of the Framework.
48. Although there is no evidence of Great Crested Newts being present on the appeal site, conditions have been agreed between the parties to ensure the Appellant takes the necessary steps should they subsequently be discovered³⁵.

Planning Obligations and Conditions

49. CIL compliance statements have been submitted by the Council and GCC. Additional information was also submitted by the Council after the close of the Inquiry in relation to the police and health contributions. The information provided sets out the detailed background and justification for each of the obligations. I am satisfied from the evidence before me that the obligations are necessary, directly related to the proposal and fair and reasonable in scale and kind to the appeal scheme. As a result, I have taken the obligations into account as part of my overall conclusion that the appeal should be allowed.

³⁴ CD.A.13, CD.I.14

³⁵ Para 7 of the Council's Opening Statement ID.1

50. The parties produced a list of suggested planning conditions³⁶ which were discussed at the Inquiry. A final set of conditions was submitted after the Inquiry in accordance with an agreed timetable. I have considered these against advice in the Planning Practice Guidance (PPG). In some instances, I have amended the conditions in the interests of brevity, to avoid repetition or to ensure compliance with the PPG.
51. To provide certainty, I have imposed standard conditions for outline permissions covering time limits, the Reserved Matters and the approved plans [Conditions 1-4]. A phasing plan is necessary to ensure the development is brought forward in a coordinated and planned way [5]. I consider details relating to bin storage would be picked up in the usual manner at the Reserved Matters stage, a separate condition is thus unnecessary.
52. Conditions regarding Great Crested Newts, reptile and bat mitigation is necessary to ensure the development does not harm protected species or habitats [6-8]. In all cases the precise nature of the mitigation must be agreed with the Council. I have therefore made various amendments to the conditions to simplify them and to avoid duplication. I am satisfied there is sufficient control within condition 7 to ensure compliance with District Licencing regime and therefore I have omitted a number of the other suggested ecology conditions. I have also simplified the bat mitigation conditions as a number of the suggested requirements are already included in the Appellant's Ecological Addendum³⁷.
53. A Biodiversity Construction Environmental Management Plan, Ecological Design Strategy and Landscape Ecological Management Plan are all necessary to protect and enhance the ecological value of the site [9-11]. I have however deleted several requirements which I do not consider meet the test of necessity. A tree protection plan is necessary to safeguard the health of trees and hedgerows on the appeal site [12]. A land contamination condition is necessary to ensure the land is suitable for a residential use [13]. A scheme to protect future occupiers from noise is necessary in the interests of residential amenity [14]. An archaeology condition is necessary to protect any archaeological assets that may be present [15].
54. A construction management plan is necessary to protect local residents from adverse environmental effects during the construction phase [16]. I have included a requirement relating to waste management and omitted a separate condition covering this matter. A school travel plan is necessary to encourage sustainable modes of travel [17]. Highway conditions are necessary in the interests of highway safety and to ensure the satisfactory layout of the development [18-25]. A drainage condition is necessary to ensure satisfactory drainage and future maintenance of the site in the interests of flood prevention [26].
55. With regard to Section 100ZA of the Town and Country Planning Act 1990 (as amended), conditions 6-16 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions were agreed between the main parties and address matters that are of an importance or effect and need to be resolved before construction begins.

³⁶ ID.4

³⁷ CD.I.1

56. I have also omitted several conditions and requirements which required post-construction/occupation verification reports to be submitted to demonstrate compliance with details that would already have been approved by the Council. In all cases, I do not consider verification reports meet the test of necessity.

Conclusion

57. The appeal scheme as with any greenfield development, would result in some limited short-term visual and landscape harm. However, the level of this harm would not be at a level to bring it into conflict with the relevant development plan policies. There would also be very limited heritage harm to the setting of nearby heritage assets albeit outweighed by the public benefits of the scheme. Collectively these harms attract limited weight against the proposed development. I am satisfied that all other matters weighing against the proposal could be addressed by conditions and/or obligations.

58. The benefits of the scheme set out in paragraphs 7.27-7.44 of Ms Parsons' PoE are accepted by the Council. The most significant of these is the provision of up to 375 dwellings (40% of which would be affordable) in an area of need where the local authority is unable to demonstrate a five-year supply of housing. I also accept the stated economic and environmental benefits, and the weighting applied to them by the Appellant.

59. Collectively the benefits of the scheme would clearly outweigh the identified harm. There would be no conflict with the Development Plan when read as a whole and the appeal scheme would represent sustainable development.

60. For the reasons given above the appeal should be allowed.

D M Young

INSPECTOR

APPEARANCES

Forest of Dean District Council

Peter Wadsley of Counsel

Gloucestershire County Council

Andrew Fraser-Urquhart KC, he called:

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Appellant

Killian Garvey of Counsel, he called:

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Edward Vandyck BSc

Senior Environmental
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Interested Parties

Cllr Gill Moseley

Town, District and County
Councillor for Newent Ward

INQUIRY DOCUMENTS

Ref.	Document
ID.1	LPA Opening Statement
ID.2	Appellant's Opening Statement
ID.3	GCC's Opening Statement
ID.4	Schedule of Conditions
ID.5	Appellant's List of Appearances
ID.6	GCC's Closing Submissions
ID.7	Appellant's Closing Submission
ID.8	Appellant's Response to GCC's Closing Submissions

SCHEDULE OF PLANNING CONDITIONS

- 1) Details of the access (internal circulation routes only), appearance, landscaping, layout, and scale (hereinafter called "the Reserved Matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) The first application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than the expiration of 3 years from the date of this permission and the last application for approval of Reserved Matters shall be made not later than 5 years from the date of this permission.
- 3) The development hereby permitted shall be begun no later than the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.
- 4) The development shall be carried out in accordance with the site location plan ref: 355.P.2 Rev D.
- 5) Prior to or concurrent with the submission of the first Reserved Matters application a plan indicating the proposed phases within the development and any severable elements shall be submitted to and approved by the Local Planning Authority. All subsequent submissions in accordance with this permission will clearly identify which of the approved phases (or part thereof) the submission relates to.
- 6) Prior to the commencement of the development of any particular phase, a scheme for the avoidance of harm to Great Crested Newts (GCN) shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall take account of the presence of GCNs elsewhere on the development site if that is necessary for the provision of a proper mitigation scheme. The scheme shall include either a bespoke mitigation or confirmation that the developer has entered into and complied with measures and requirements of the District Licensing scheme. The development shall be implemented in accordance with the approved details.
- 7) Prior to the commencement of the development of any particular phase, an overarching Reptile and Amphibian Strategy, shall be submitted to and approved in writing by the Local Planning Authority. Prior to the commencement of any development of a particular phase a detailed reptile and amphibian strategy for that phase, which is compliant with the overarching strategy, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
- 8) Prior to the commencement of the development of any particular phase, an overarching bat mitigation plan and lighting strategy in general compliance with the Ecological Addendum dated October 2024, must be submitted to and agreed in writing by the Local Planning Authority. The plan shall include details of management and maintenance of the buffer areas. Prior to the commencement of any development of a particular phase a detailed bat mitigation plan and lighting strategy for that phase, which is compliant with the overarching plan and strategy, shall be submitted to and approved in writing by the Local Planning Authority.

Thereafter the development shall be carried out and maintained in accordance with the approved details.

- 9) Prior to commencement of the development (including, all ground works (including archaeological investigations and vegetation clearance) an overarching Construction Environmental Management Plan - Biodiversity (CEMP-B) for the whole site shall be submitted to and approved in writing by the local planning authority. Prior to the commencement of any development of a particular phase or site clearance of a particular phase (including any archaeological investigations) a phase specific CEMP-B compliant with the overarching CEMP-B shall be submitted to and approved in writing by the Local Planning Authority. The CEMP-Bs shall include, but not necessarily be limited to, the following:
- i. Risk assessment of potentially damaging construction activities;
 - ii. Identification of 'biodiversity protection zones';
 - iii. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (a number of method statements are required including for but not limited to badgers, dormice, bats, great crested newts, water vole, otter, reptiles, breeding birds, and include pre-commencement surveys);
 - iv. The location and timing of sensitive works to avoid harm to biodiversity features (e.g. daylight working hours only starting one hour after sunrise and ceasing one hour before sunset);
 - v. Use of protective fences, exclusion barriers and warning signs, including advanced installation and maintenance during the construction period;
 - vi. A non-native invasive species protocol (e.g. for Japanese knotweed);
 - vii. The times during construction when specialist ecologists need to be present on site to oversee works;
 - viii. Responsible persons and lines of communication;
 - ix. The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person(s), and
 - x. Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMPs shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 10) Prior to the commencement of the development, an overarching Ecological Design Strategy (EDS) addressing mitigation, compensation, enhancement and restoration measures shall be submitted to and approved in writing by the local planning authority. Prior to the commencement of the any development of a particular phase, a detailed EDS addressing mitigation, compensation, enhancement and restoration measures for that phase shall be submitted to and approved in writing by the local planning authority. The EDSs shall include the following:
- i. Purpose and conservation objectives for the proposed works;
 - ii. Review of site potential and constraints;

- iii. Detailed design(s) and/or working method(s) to achieve stated objectives;
- iv. Extent and location/area of proposed works on appropriate scale maps and plans;
- v. Type and source of materials to be used where appropriate, e.g. native species of local provenance;
- vi. Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- vii. Persons responsible for implementing the works;
- viii. Details of initial aftercare and long-term maintenance (typically the first 5-year period);
- ix. Details for monitoring and remedial measures; and
- x. Details for disposal of any wastes arising from the works.

The EDSs shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 11) Prior to commencement of the development an overarching Landscape, Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority. Prior to the commencement of any development of a particular phase a detailed LEMP for that phase which is compliant with the overarching LEMP shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMPs shall include, but not limited to the following:
- i. Description and evaluation of features to be managed;
 - ii. Landscape and ecological trends and constraints on site that might influence management;
 - iii. Aims and objectives of management (including those related to species);
 - iv. Appropriate management options for achieving aims and objectives, including appropriate enhancement measures;
 - v. Prescriptions for management actions;
 - vi. Details of the body or organisation responsible for implementation of the plan, and
 - vii. Legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer.
- 12) Prior to the commencement of any phase, an arboricultural method statement including a tree protection plan in accordance with BS 5837:2012, shall be submitted to, and approved in writing by, the Local Planning Authority. The development thereafter shall be implemented in strict accordance with the approved details for that phase.
- 13) No development shall take place until a site investigation of the nature and extent of contamination has been carried out for each phase in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation for each phase shall be made available to the local planning authority before any development begins. If any significant contamination is found during the site investigation, a Remediation Scheme specifying the measures to be taken to remediate each phase of the site to render it suitable for the development hereby permitted shall

be submitted to and approved in writing by the local planning authority before any development begins.

The Remediation Scheme for each phase, as agreed in writing by the Local Planning Authority, shall be fully implemented in accordance with the approved timetable of works and before each phase of the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the Local Planning Authority in advance of works being undertaken. On completion of the works the developer shall submit to the Local Planning Authority a Verification Report with evidence confirming that all works for each phase were completed in accordance with the agreed details.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 14) Prior to works commencing for the construction of any dwelling alongside Gloucester Street or the Newent Business Park and concurrent with the Reserved Matters submissions for that phase, a further assessment of the noise levels and, if necessary, a scheme for protecting that part of the development within that phase from noise, shall be submitted to and approved in writing by the Local Planning Authority. All works, which form part of the scheme, shall be implemented before each dwelling within that phase so affected is occupied and thereafter retained.
- 15) No development shall take place within the application site until a programme of archaeological work in accordance with a written scheme of investigation has been submitted to and been approved in writing by the Local Planning Authority.

The written scheme of Investigation shall include details of the future management of the archaeological preservation in situ areas as identified on Illustrative Masterplan 2 (drawing number 355.P.3.4.2 Rev A).

The development shall thereafter be implemented in accordance with the approved details.

- 16) No development shall take place for any phase, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall provide for:
- i. Hours of operation;
 - ii. Parking and turning of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - iii. Routes for construction traffic including any temporary traffic management measures;
 - iv. Details of how construction waste will be handled;
 - v. Locations for loading/unloading and storage of plant, waste and construction materials;
 - vi. Method of preventing mud being carried onto the highway;

- vii. The proposals to address any conflict with Public Right of Ways, and
- viii. Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses including a 24-hour emergency contact number.

The approved plan/statement shall be adhered to throughout the demolition/construction period.

- 17) Prior to occupation of the primary school hereby permitted a School Travel Plan shall be submitted to and agreed in writing by the Local Planning Authority, setting out;

- objectives and targets for promoting sustainable travel,
- role of travel plan coordinator,
- details of monitoring and review process, and;
- action plan identifying measures to encourage sustainable travel.

The approved School Travel Plan shall be implemented in accordance with the details and timetable therein and shall be continued thereafter.

- 18) The details to be submitted for the approval of Reserved Matters pursuant to Condition 1 shall include the layout and internal access roads within the site, and the development shall be carried out in accordance with the approved plans.
- 19) No building shall be occupied until the carriageways providing access from the nearest public highway to that building have been completed to at least binder course level and the footways to surface course level.
- 20) The parking and turning facilities for each dwelling shall be provided prior to first occupation and shall be kept permanently available for such use.
- 21) Alongside or prior to the submission of a Reserved Matters application for any phase, details of secure and covered cycle parking to serve the local centre, primary school, football pitch, employment development and all residential dwellings for that phase shall be submitted to the Local Planning Authority and approved in writing. Thereafter the cycle parking shall be fully implemented in accordance with the approved details and retained thereafter.
- 22) The development hereby approved shall be implemented in accordance with the detailed drawings of the highway improvements works to the Gloucester Street/B4215 junction, as shown on Drawing H702/2-Rev B, and no more than 150 dwellings shall be occupied until those works have been constructed in accordance with the approved details.
- 23) The development hereby approved shall be implemented in accordance with the detailed drawings of the proposed vehicle accesses on Gloucester Street as shown on Drawing H702/10-Rev D, and Oak Tree Way, as shown on Drawing H702/11 Rev A, and no building shall be occupied on that part of the development served by each access until those works have been constructed in accordance with the approved details.

24) The development hereby approved shall be implemented in accordance with the detailed drawings of the off-site pedestrian/cycle improvements shown on Drawing H702/05 comprising:

- Refresh of 'slow' road markings on approach to Newent community school;
- measures to improve environment for pedestrians at Bury Bar Lane/Foley Road;
- Uncontrolled crossing points with tactile paving on Meek Road and Onslow Road;
- tactile paving across junction with Church Way on Gloucester Street; and
- improved crossing to connect alternating footway either side of Gloucester Street;

No more than 100 dwellings shall be occupied until the works have been constructed in accordance with the approved details.

25) The development hereby approved shall be implemented in accordance with the detailed drawings of the proposed new bus stops on Gloucester Street, as shown on Drawing H702/10 Rev D; and proposed upgrade to the bus stops on the B4215 at Hooks Lane, as shown on Drawing H702/12 Rev A, and no more than 100 dwellings on that part of the development served from the Gloucester Street vehicular access, shall be occupied until those works have been constructed in accordance with the approved details.

26) Alongside or prior to the submission of the first Reserved Matters application for the development hereby approved, details of a site wide surface water drainage scheme, in accordance with the principles set out in the approved drainage strategy (reference Phoenix Design, Rev B dated 2 February 2024) shall be submitted to and approved in writing by the Local Planning Authority.

Prior to the submission of these details 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 for written approval. Where a sustainable drainage scheme is to be provided, the submitted details shall include:

- i. Information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. A timetable for its implementation;
- iii. A full risk assessment for flooding during the groundworks and building phases with mitigation measures specified for identified flood risks; and
- iv. A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other

arrangements to secure the operation of the scheme throughout its lifetime.

The approved site wide drainage scheme shall be carried out in accordance with the details and timetable approved and be maintained for the lifetime of the development.

Pursuant to the above, no development on any parcel or sub-parcel shall take place until the final design of the drainage scheme for that phase or sub-phase is submitted to and approved in writing by the Local Planning Authority. Thereafter the approved details for each phase or sub-phase shall be fully implemented and be maintained for the duration of the development.

Richborough