

## **ADDITIONAL REPRESENTATIONS SHEET**

Date: 21 July 2020

The following is a list of the additional representations received since the Planning Committee Agenda was published and includes background papers received up to and including the Monday before the meeting.

A general indication of the content is given but it may be necessary to elaborate at the meeting.

<b>Item No</b>	
5b	<p><b>20/00453/FUL</b></p> <p><b>The Pavilion, Cold Pool Lane, Badgeworth</b></p> <p>The site notice expired on 9 July 2020 and no public representations were received.</p>
5d	<p><b>19/01098/FUL</b></p> <p><b>Land To The East Of Horsbere Drive, Longford</b></p> <p><b>A letter has recently been received from the agent on behalf of the applicant, Gloucester City Homes, which outlines their concerns with a number of items in the Committee report. This was also sent direct to the Planning Committee. The letter is attached in full.</b></p> <p><u>Landscape</u></p> <p>As set out in the Committee report, comments from both the Council's Landscape Officer and Tree Officer have been sought in respect to the acceptability of the proposed landscaping of the site. The Council's Tree Officer has confirmed that more tree planting should be incorporated within the scheme to soften the impact of the development to the existing houses at Whitefield Crescent and to give a visually more attractive appearance from Longford Land and Clocktower Road. Further, tree planting would also encourage wildlife to the small open spaces around the site and would give welcome shade to parked cars and add interest. A schedule detailing sizes and numbers/densities of all proposed trees/plants and specification for operations associated with plant establishment and maintenance that are compliant with best practice will be required, as would planting pit details to ensure the survival of any trees in car parking areas. Should permission be granted, these details could be secured by condition.</p>

	<p><u>Impact upon Residential Amenity</u></p> <p>As previously detailed in the Committee report, concerns have been raised by local residents over potential odour issues from the proposed bin stores upon neighbouring amenity. Following further consultation, the Council's Environmental Health Officer has confirmed that, provided there is adequate bin provision and that all bins are the self-closing type and are collected/emptied regularly, there is unlikely to be an odour concern associated with the proposed bin stores. With regard to the bin provision, in accordance with the guidance set out in the Council's Waste and Recycling Guidance for Developers, both the proposed bin stores would need to be slightly larger to accommodate the number of bins required to be stored. Given there would be scope within the site to accommodate the additional bin space required, Officers consider the development could provide adequate bin provision, subject to satisfactory amendments.</p>
5f	<p><b>16/00904/OUT</b></p> <p><b>Land to The Rear of Chestnut Tree Farm, Tewkesbury Road, Twigworth,</b></p> <p><b>Publicity and Representations</b></p> <p>An additional letter of objection has been received and is <b>attached in full</b>.</p>



17 July 2020

To all Planning Committee Members, Tewkesbury Borough Council

[issued by email only]

Dear Councillor

**Horsbere Drive, Longford  
Full Planning Application for the construction of 2No. apartment blocks  
comprising 33 dwellings and associated parking and landscaping.**

On behalf of Gloucester City Homes (GCH) I am writing to you with regard to application ref. 19/01098/FUL to address a number of matters missing from the officer report, and with regard to specific areas there is sadly clear potential for members to be misdirected by the report as drafted. I hope you will therefore find this letter helpful in order to allow for a more balanced and reasoned debate next Tuesday.

Background

GCH has been successful over the last few years in developing 205 new affordable homes across the County. However, the need to provide more affordable homes remains acute: at the time of writing there are 128 households registered as waiting for a 1-bed property and 90 households waiting for a 2-bed property in Longford alone.

Your Housing Officer and Homes England have approved this proposal and have allocated £1.89million of grant with GCH ring-fencing a further £3.4million of investment within their Business Plan.

What is completely absent from the committee report is that this application started life as a 2No. 4 storey apartments blocks containing 36 apartments. This proposal received a generally positive response from planning officers at the pre-application stage (initiated in August 2019) and, on the basis of being able to move forward with a positive recommendation, the council entered into a Planning Performance Agreement (PPA) on 21 November 2019 to get the application to committee in February 2020– for which GCH paid a further £8,000 on top of the planning fee.

The application was then allocated to a different planning officer to the officer who completed the pre-application discussions. Despite several amendments to the proposals in accordance with and beyond the pre-application advice, the new and current planning officer has in our view 'moved the goal posts' by raising of new concerns over design and scale. These matters were not mentioned as fundamental issues during our pre-application discussions, and did not form part of the PPA process which should have led to an original committee date of February 2020.

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REGISTERED NO: ENGLAND 06114677

It is our understanding that the council would not have entered into a PPA if the timescales were not achievable and/or if there were fundamental issues with the application. We have pointed this out to officers but have not received a satisfactory response to explain this matter.

#### The committee report

More worryingly relative to the veracity of the committee report is the fact that the architectural design concerns in front of you are **not** held by the council's own expert on design – the Urban Design Officer (UDO). The report before you is highly selective on which parts of the UDO's comments to report. It has picked out only part of the UDO's comments on the original 4 storey proposal, and has completely failed to report the UDO's comments on the amended 3 storey proposal. I have attached both sets of comments at Appendices A and B, and I have highlighted the relevant parts. You will see that the council's own expert on design has no objection to the layout and design of the proposal.

Furthermore, the committee report seeks to give you the impression that the context of the application site is mainly two storeys or lower, and where there are three storey buildings these are described as being in less prominent locations. I would urge you to visit the site and wider housing estate to the north west in advance of the meeting for yourselves. You will see that there are numerous three storey buildings on the wider housing estate, including those shown in the presentation photographs of the site, with many in 'gateway' locations or where there is a need to emphasise corners. Indeed, as the application site is a prominent 'gateway' location (with two principal corners) compared to those within the estate (with a wide road and open car park in front of it), all design guidance points to the fact that this should be emphasised with a taller building to mark the destination and sustainable location.

The National Design Guide is clear at paragraph 69 that taller buildings can play a positive urban design role in the built form, acting as landmarks, emphasising important places. This is precisely the case here – it is a highly sustainable location with shops opposite and a bus stop just outside the site, coupled with the wide road and expanse of parking opposite it is crying out for a greater level of enclosure to make a positive contribution to views and the skyline.

There are also a number of completely new matters in the committee report which have not been discussed with us at all despite the existence of a PPA. For example, the matters of landscaping, odour, and car parking are all issues not previously mentioned to us despite the application being submitted back in November 2019.

I expect landscaping and odour are both matters capable of being dealt with through suitably worded planning conditions. However, in respect of car parking, the comments in the officer report are again disingenuous at best. Just so that you are clear, our transport consultant agreed the car parking methodology with Gloucestershire County Council (GCC) during pre-application discussions, which was subsequently agreed through the planning application process. The former Head of Highways at GCC praised the work of our transport consultant in determining a suitable methodology for car parking provision. GCC agreed that the ward that the application site is in is not representative of site's location, and therefore GCC agreed that a different ward would be more appropriate. This has not been reported to you as this was not discussed with us prior to the report being written.

The car parking provision is based on expected car ownership levels, in full accordance with paragraph 105 of the NPPF. The car parking standards in the NDP do not appear to be based on local car ownership data and therefore are in direct conflict with guidance contained within the NPPF. Furthermore, the NDP standards are only to be applied 'where possible', not without question. It should be noted that GCC actually advised at the pre-application stage that the car parking numbers were an over-provision and requested that numbers were reduced, which we did not agree to.

The adjacent ward of Kingsholm has been utilised, which is more representative of the suburban nature of Longford. This indicates that 57%, 38% and 5% of one bed dwellings have no car, one car and two cars respectively. In the case of two bed dwellings 36%, 56% and 8% have no car, one car and two cars respectively. Taking into consideration the level of car ownership within the Kingsholm ward, it is possible to calculate a weighted average for a development of 33 affordable flats on a pro-rata basis.

The Census review suggests that 13 flats will not own a car, 17 will own one car and three will own two cars. Based on the Census review a total of 23 car parking spaces will be required to serve the application site. In addition, visitor car parking is provided at a rate of 0.33 spaces per dwelling, this equates to 10 spaces. Based on the Census data a total of 23 spaces are required with an additional 10 visitor spaces provided for a total of 33 dwellings across the application site.

A sensitivity test has also been undertaken using the Census data for all of Gloucestershire. This indicates that 54%, 40%, 5% and 1% of one bed shared ownership; rented and living rent free flats have no car, one car, two cars and three cars respectively. In the case of two bed dwellings 40%, 47%, 12% and 1% of two bed shared ownership; rented and living rent free flats have no car, one car, two cars and three cars respectively. Based on a development of 33 affordable flats in Gloucestershire this review suggests that 14 flats would not have a car, 15 flats would own one car and four flats would own two cars. Based on the Census review a total of 23 spaces would be required, with a total of 33 spaces provided across the application site, visitor spaces would be provided at a rate of 0.33 spaces per dwelling. The validation based on the whole of Gloucestershire provides a similar breakdown and overall number of spaces required based on the ward Census data.

Although in our view, as previously agreed with the GCC, it is considered that the Kingsholm ward is more representative of the suburban nature of Longford, a sensitivity test has been carried out for the Innsworth and Down Hatherley Ward, given the concerns raised by the committee report. The Census data for the Innsworth and Down Hatherley ward indicates that 57%, 36% and 7% of one bed shared ownership; rented and living rent free flats have no car, one car and two cars respectively. In the case of two bed dwellings 46%, 44% and 20% of two bed shared ownership; rented and living rent free flats have no car, one car and two cars respectively. Based on a development of 33 affordable flats in the Innsworth and Down Hatherley ward this review suggests that nine flats would not have a car, 19 flats would own a car and five flats would own two cars. Based on the Census review, a total of 29 spaces would be required, with a total of 33 spaces provided across the application site, visitor spaces would be provided at a rate of 0.12 spaces per dwelling. The sensitivity test based on the Innsworth and Down Hatherley Ward would require a larger number of spaces to serve the application site with a lower number of visitor spaces.

The larger number of spaces to serve the application site can be provided within the development proposals with a visitor parking provision of 0.12 space per dwelling. Although this is not considered representative of the application site in Longford, it demonstrates that the application site does have sufficient provision including visitor spaces, based on the more rural ward in which it is located.

Finally, in relation to S106 contributions, we respectfully requested on 19 June 2020 that officers report the matter of S106 contributions as 'unresolved' pending:

1. a full response to my letter dated January 2020 (Appendix C),
2. a full response to a legal opinion submitted more recently (Appendix D) and
3. completion of the viability analysis (which was unresolved until earlier this week).

Instead, officers have reported this matter as already resolved. Furthermore, officers have reported at paragraph 8.8 that, *"the applicant is unwilling to enter into a legal agreement to secure a contribution towards education and library provision."* I can confirm that the applicant has never specified as such, rather we have robustly set out our position as information became available and we have been waiting for 5 months for a suitable response that dealt with all the points we have made in order to fully consider our final response.

Unfortunately we still haven't received a response that deals with all our concerns, so to report the application in the way that officers have is untrue, unfair and unjust.

Members should also be aware that the stance of officers on this matter in a wider sense (i.e. seeking S106 contributions for matters that are meant to be covered by a CIL rate for open market housing based on a known requirement for affordable housing) appears to be at odds with the stance of other councils in Gloucestershire, is resulting in applicants having to spend thousands of pounds on viability assessments, has been holding up hundreds of homes from being delivered by well over 6 months now (for example, just the clients of SF Planning currently have hundreds of open market and affordable homes 'stuck' in the system because of this matter), will impact on the deliverability of development at all scales, is having significant impact on the economy at what couldn't be a worse time, and must be damaging the council's ability to demonstrate a 5 year supply of housing.

It has always been our understanding that grant shouldn't be used for S106 funding (i.e. public money being recirculated for a public service). The whole point of the CIL exemption was to stop this happening, and to allow registered providers to benefit from state relief to support *"disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions."* (this is part of the EU State Aid rules).

Officers have unfortunately failed to report any of this to you, and have instead suggested that the applicant should use money that it would have otherwise used to keep social rents low to fund education places that will not be generated by this scheme. This is because the homes here will only go to individuals who are already residents of Gloucestershire on the housing waiting list meaning that any children who occupy the homes will already be in the Gloucestershire school system – they will not be generating additional 'population' for new place requirements at this site as a matter of fact.

All of these points have been made to officers already, so it is even more surprising that you are advised that this is a matter which weighs against the proposal. Our opinion remains that S106 contributions towards education are not lawful for the reasons set out at appendices C and D. In which case, this is a neutral factor as it means that grant money will not be taken away from the ability to keep social rents lower to help disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions

Even if members decide that education contributions are required then a lack of an agreement on this matter should still be considered as a neutral factor relative to the tilted balance given that it will be taking grant money away from the ability to keep social rents lower to help disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions.

I am sorry to be so blunt and direct on this matter but the applicant does feel that this has been very unfairly handled and not appropriately reported.

### Conclusion

Please accept my apologies that I have felt the need to write to you at such length, but I trust that you will understand why. The committee report presents a series of benefits and alleged harms to you. I would be very grateful if you would take some time to consider that you have not been presented with all of the facts with regard to all of the alleged harms:

1. In respect of design, I would urge you to consider that your own expert on design raises no objection to the architectural design. This rather indicates that this isn't a matter that weighs heavily against the application, rather there is clearly a difference of opinion between officers such that this matter alone could not significantly and demonstrably outweigh the benefits.
2. In respect of car parking, the council's expert consultee on this matter raises no objection, and you have not been presented with all the facts. This matter is not capable of being a harm given the sustainable location and level of car ownership by tenants of affordable housing.
3. In respect of S106, in view of the above, this matter is not a harm, it is a neutral matter regardless of whether or not you resolve that education contributions are needed (given that they would have to be paid for from the Homes England grant money).

I therefore urge you to consider:

1. the significant weight to be given to the provision of affordable housing,
  2. the moderate weight given to the economic benefits (as set out in the report but could easily be given a high level of weight) and also,
  3. the great weight that paragraph 68 of the NPPF advises you to attach to the benefits of using suitable sites within existing settlements for homes
- alongside the fact that all the alleged 'harms' have serious questions to be answered such that they are unlikely to significantly and demonstrably outweigh the benefits.

We therefore urge you to support this application to enable GCH to make a significant investment in our community and deliver much needed affordable homes.

Yours faithfully,

Mark Godson  
**SF Planning Limited**

cc Victoria Stone – case officer

## **Appendix A**



## **Consultee Comments for Planning Application 19/01098/FUL**

### **Application Summary**

Application Number: 19/01098/FUL

Address: Land To The East Of Horsbere Drive Longford GL2 9BY

Proposal: Construction of 2No. apartment blocks comprising 36 dwellings and associated parking and landscaping.

Case Officer: Victoria Stone

### **Consultee Details**



On Behalf Of: Urban Design Officer

### **Comments**

DC officer: Victoria Stone

Contact: Alice Goodall

Telephone 2033

09.12.2019

URBAN DESIGN OFFICER CONSULTATION RESPONSE

APPLICATION NO: 19/01098/FUL

LOCATION: Land Off Horsebere Drive, Longford, Gloucester

PROPOSAL: Construction of 2No. apartment blocks comprising 36 dwellings and associated parking and landscaping.

### **COMMENTS**

#### **Site Description**

The site is located within the recent residential development at Longford. This land was allocated

in the previously approved application as part of the local centre to provide services and facilities for the new residents.

#### Proposals

Two blocks of 3/4 storey affordable housing with associated car parking.

#### Comments

Its loss as retail, employment or community use would be disappointing and would have a negative effect on the overall quality of the new place that has been created at Longford. Successful communities require a range of local services and the loss of this site would reduce the opportunities for this area to operate as a sustainable mixed use community. Long term this area will see significant residential growth and without the facilities to serve them we risk creating very unsustainable developments where people have to drive to access facilities.

I do not object to an element of residential use on this site to assist viability. For example a mixed use scheme that has smaller retail units on the ground floor with flats above or an element of retail/community use on part of the site and flats on another part of the site. Offices could also be another option on this site that would add to the vitality of this development.

The NPPF requires planning decisions to optimise the potential of a site to accommodate and sustain an appropriate mix of development and support local facilities (para 127. e)

Aside from the principle objection of losing the opportunity for a mix of uses on this new community. I have the following detailed comments on the appearance of the scheme.

The bin and bike store by block b are incongruous in the street scene, these would be better if they could be integrated into the building or behind the building line.

I have no object to the appearance of the blocks generally, but they would benefit from deep set windows and an overhand on the gables as this would give depth and shadow to the elevations.

We can condition the approval of materials but it may be beneficial to agree them before, in which case samples will be necessary. Large concrete tiles with a thick profile will not be acceptable.

#### Policies and Best Practice Guidance

NPPF (2018)

Chapter 8 - Promoting healthy and safe communities

Planning decisions should aim to achieve healthy, inclusive and safe places. Promote social interaction, through mixed use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods and active street frontages.

#### Chapter 9 Promoting sustainable transport

102. e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes and contribute to making high quality places.

#### Chapter 11 Making effective use of land

122. Planning decisions should support development that makes efficient use of land, taking into account: the identified need for different types of housing. The desirability of maintaining an areas prevailing character and setting, or of promoting regeneration and change and the importance of securing well-designed, attractive and healthy places.

#### Chapter 12 Achieving well-designed places

The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. The NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

#### Joint Core Strategy (JCS)

Policy SD4 This policy requires new development to respond positively to and respect the character of the site and its surroundings, enhancing local distinctness and addressing the urban structure and grain of the locality

#### Recommendation

Aside from the loss of an area designate for retail, commercial or community uses, I do not object to the layout or appearance of the scheme aside from the minor comments above.

## **Appendix B**

## Consultee Comments for Planning Application 19/01098/FUL

### Application Summary

Application Number: 19/01098/FUL

Address: Land To The East Of Horsbere Drive Longford GL2 9BY

Proposal: Construction of 2No. apartment blocks comprising 33 dwellings and associated parking and landscaping.

Case Officer: [REDACTED]

### Consultee Details

Name: [REDACTED]

Address: tbc, Tewkesbury GL20 5TT

Email: Not Available

On Behalf Of: Urban Design Officer

### Comments

Urban Design comments on amended plans.

The amended plans have addressed some of my previous concerns. I have no objection to the architectural appearance, subject to approval of exact materials. I would reiterate my previous comments regarding the principles of only residential use on this site.

Its loss as retail, employment or community use would be disappointing and would have a negative effect on the overall quality of the new place that has been created at Longford. Successful communities require a range of local services and the loss of this site would reduce the opportunities for this area to operate as a sustainable mixed use community. Long term this area will see significant residential growth and without the facilities to serve them we risk creating very unsustainable developments where people have to drive to access facilities.

I do not object to an element of residential use on this site to assist viability. For example a mixed use scheme that has smaller retail units on the ground floor with flats above or an element of retail/community use on part of the site and flats on another part of the site. Offices could also be another option on this site that would add to the vitality of this development.

The NPPF requires planning decisions to optimise the potential of a site to accommodate and sustain an appropriate mix of development and support local facilities (para 127. e)

The national urban design, states that well designed places have a mix of uses including local services and facilities to support daily life.

## **Appendix C**



24 January 2020

Victoria Stone  
Tewkesbury Borough Council  
Council Offices  
Gloucester Road  
Tewkesbury  
Glos

Dear Victoria

**Education Contributions as it relates to S106 and CIL**

I am responding to the email the you sent me on 21 January 2020 as it relates to application ref. 19/01098/FUL at Horsbere Drive, Longford (see Appendix A).

For the record, I do not want this response to hold up our client's application at Horsbere Drive. Without prejudice to the content of our 'in principle' concerns, Gloucester City Homes (GCH) has engaged a viability consultant for application ref. 19/01098/FUL and GCH wants the application to move forward on this basis. However, there are more fundamental issues with the response from Gloucestershire County Council (GCC) at Appendix A that I cannot let pass. It is probably something that Paul Hardiman needs to address so I have issued a copy of this letter to Paul.

In relation to the application at Horsere Drive therefore, whichever route brings about the quickest solution should be used to determine the application:

1. A conclusion on the matters that this letter queries in favour of no contributions.
2. Viability analysis (to follow next week).

In the first instance the comments at Appendix A do not actually address the fact that the calculations for education contributions (and the document that these calculations are found within) pre-dates CIL. The calculations do not therefore take into account the impact of the JCS wide 'pot' which will provide for education. They are therefore an out of date and unreliable mechanism to assess impact.

Indeed, if correct, some of the comments from GCC at Appendix A must surely undermine the entire basis on which CIL was adopted and found legally compliant (and viable) by the CIL Examiner:

*"GCC is not aware of how CIL rates have been calculated and to what extent allowances have been made for affordable housing"*

*"there is no clear arrangement in place to determine how such CIL monies are to be allocated"*

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The CIL rates were set on what would and wouldn't be viable across the whole JCS area. This has enabled CIL rates to be lower in Gloucester in the knowledge that CIL receipts from Tewkesbury and Cheltenham would allow a pot to be formed for infrastructure across all three council areas. The CIL rates were also set in the knowledge that affordable housing is exempt, allowing the CIL receipts from the private sector housing to 'subsidise' the known affordable housing need in terms of its impact on infrastructure.

In relation to the above, paragraph 33 of the Examiner's Report for the CIL Examination states:

*"With respect to section 106 infrastructure costs, it is assumed for the majority of generic sites that infrastructure requirements are likely to be met off site through CIL. Therefore, section 106/278 infrastructure costs would be significantly scaled back and in many cases would not apply."*

And paragraph 11 confirms:

*"The key categories of infrastructure to which the Councils propose to direct CIL revenue are transport, education, community and culture, flood risk management, healthcare, and green infrastructure."*

It is simply inexcusable for GCC Education to now be seeking *ad hoc* significant education contributions (at full pre-CIL rates) from individual development sites through S106 in the light of the comments of the CIL Examiner, and in the light of the lack of inclusion of CIL receipts in their calculations. It is even more unacceptable for GCC to specify that:

1. GCC isn't aware of how CIL rates have been calculated – surely they were involved in the Examination in order for the Examiner to conclude legal compliance appropriately in her Final Report?
2. There is no clear arrangement in place to determine how much CIL monies are to be allocated – surely they are allocated in accordance with the Evidence Base for the CIL Examination?

Indeed, the Planning Practice Guidance states at paragraph 014 [Reference ID: 25-014-20190901]:

***"What is the role of the county council?"***

*County councils are responsible for the delivery of key strategic infrastructure. Charging authorities must consult and should collaborate with them in setting the levy and should work closely with them in setting priorities for how the levy will be spent in 2-tier areas.*

*Collaborative working between county councils and charging authorities is especially important in relation to the preparation of infrastructure funding statements (see Schedule 2 introduced by the 2019 Regulations) bearing in mind the potential impact on the use of highway agreements by the county council and the timely delivery of schools."*

It goes on to state at Paragraph 170 [Reference ID: 25-170-20190901]:

*"Authorities should set out in an infrastructure funding statement which infrastructure they intend to fund and detail the different sources of funding."*



Whilst noting the above, I am aware that GCC's response at Appendix A about GCC's lack of involvement in the formulation of the CIL rate simply is not true. This is because the Examination website<sup>1</sup> includes an Infrastructure Delivery Plan which includes the very figures GCC is now seeking through S106 to justify the CIL rate (see the second link to the 'Strategic Infrastructure Delivery Plan' below the 'Infrastructure' heading under 'Evidence Base' at footnote 1 to this letter). GCC also took part in the Examination as evidenced by their Matter 10 Statement at Appendix B to this letter. Furthermore, the ARUP JCS Infrastructure Delivery Plan from 2014 also confirms, "*Education forecasts for the purpose of this IDP have been supplied by Gloucester County Council.*" This makes it clear that education contributions formed a very clear part of the CIL rate formulation, but that GCC wanted some reassurances over governance and distribution. The response at Appendix A confirms that these reassurances do not exist despite the fact that they were known back in March 2016.

The GCC response at Appendix A is also revealing in this respect as it also states, "*CIL is currently set at a level which cannot meet the full infrastructure spending gap.*" How do they know this if they don't even know (as they claim at Appendix A, but the evidence on the JCS website suggests otherwise) how the CIL rates have been calculated or how much they will be receiving from CIL receipts (despite all of the requirements as set out above)?

I therefore continue to object to the manner in which GCC (and Tewkesbury Borough Council (TBC) as the charging authority) are apparently (according to GCC's email set out at Appendix A) failing to deal with the above.

This requires urgent clarification as it is affecting a number of applications that we have in at the moment in TBC's area and in Gloucester City. Indeed, from the content of Appendix A this appears to be a dispute between GCC and the charging authority which should have been resolved between the councils; it should not have 'spilled out' such that both the private sector and in this case a Registered Provider of affordable housing (using public grant funding from Homes England) are having to not only unfairly pay viability and other consultants to resolve the dispute, but this is causing potential delay and therefore further unnecessary expense.

I look forward to urgent clarification.

Yours sincerely

Mark Godson **MRTPI**

cc Paul Hardiman, Community Infrastructure Levy Manager

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<sup>1</sup> <https://www.jointcorestrategy.org/examination>

**NOTE** Appendices to this letter have been removed for brevity – please contact Mark Godson at SF Planning if you would like a copy of them – [mark@sfplanning.co.uk](mailto:mark@sfplanning.co.uk)

## **Appendix D**

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OPINION

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1. Tewkesbury Borough Council ("TBC") is seized of planning application 19/01071/FUL submitted by those instructing me. I am instructed to give my opinion on financial contributions requested by Gloucestershire County Council ("GCC") in respect of education and library infrastructure (see its email consultation response dated 8 January 2020) and justified on the basis of their Local Development Guide which is in the process of being 'refreshed' ("LDG") and the Pupil Product Ratios ("PPR") applied by GCC.
2. GCC's email also stated:

"please note that on the potential granting of the application the decision will be made between the LPA and [GCC] as to whether the contributions will be secured via S106 or via CIL."
3. Officers at TBC have considered the GCC "request" and have indicated that they are satisfied that, on the basis of the scheme including a policy-compliant 40% affordable housing, the CIL payment due on the remaining 60% would mean that it would not be viable to require further s106 payments. That would leave TBC (no doubt having sought the views of GCC) to decide how to apply the CIL payment between competing infrastructure projects.
4. However, TBC officers have also indicated that if the development were to be brought forward as a 100% affordable housing scheme, which would be totally CIL exempt, it would be viable to require some s106 contributions to education through a s106 obligation.

5. In fact, the scheme has, from a very early stage, been promoted as a 100% affordable housing project. The 'mix' of apartment sizes was agreed with TBC's Housing Enabling Officer and Homes England has agreed to provide a grant on that basis.
6. My advice is sought on whether GCC's request for contributions based on the PRR set out in the LDG is lawful?
7. CIL reg 122(2) sets out the well-known tests which must be satisfied to make a planning obligation lawful:  
  
    "(a) necessary to make the development acceptable in planning terms;  
    (b) directly related to the development; and  
    (c) fairly and reasonably related in scale and kind to the development."
8. As I set out in my Opinion dated 26 May 2020 which those instructing me have submitted to GCC as part of their consultation response (and which TBC has been provided with a copy), the proposed LDG is unlawful. Those instructing me and others have also submitted consultation responses casting doubt on the planning merits and evidence behind the LDG. Indeed, TBC, which was also a consultee, may well also have done so – it is known that some LPA have done so even if TBC has not.
9. GCC is under a legal duty to consider carefully all consultation responses with an open mind and the product of consultation must be conscientiously taken into account in finalising any proposals (see *R v North and East Devon HA Ex p. Coughlan* [2001] Q.B. 213). Given the weight and content of the objections submitted in the consultation process which have yet to be considered by GCC, the content of the LDG ought to be approached with extreme caution by TBC at this stage. TBC will doubtless be familiar with the analogous situation concerning the weight to be given to emerging development plan documents in determining planning applications set out at ¶48 of the NPPF. In my opinion it ought

to apply the same principles to the LDG when it comes to determine this planning application.

10. GCC's approach to calculating pupil generation by residential development and the costs of education infrastructure per pupil are both in dispute. GCC has been given detailed evidential rebuttal of its approach on both matters. There are thus considerable and significant "unresolved objections" (see NPPF ¶48).
11. There is also the matter of 'double dipping' to consider given that the development will attract a CIL payment to TBC of £207.46 per square metre on the 'market housing' elements of the development. TBC will be aware that when the CIL rate was set (and independently examined by an inspector), education contributions made up a significant element of the CIL sum. To seek a s106 contribution from development for impacts that are already being mitigated by CIL would be 'double dipping' and could not be justified in the context of the three tests set out in Reg 122(2) (see above).
12. TBC will be aware that the NPPF and PPG expect policies regarding infrastructure contributions to be set out in local plans (see my opinion of 26 May 2020). I am aware that TBC has submitted (18 May 2020) the emerging Tewkesbury Borough Plan 2011-31 to the Secretary of State for independent examination and is currently consulting alongside Cheltenham and Gloucester City council on a revision to the JCS. This is the obvious place to bring forward any changes to TBC's existing policy or practice.
13. In addition, while the 2019 amendments to the CIL Regulations removed Reg 123, they introduced a requirement (Reg 121A) for a infrastructure funding statement ("IFS") to be prepared by 31 December 2020.
14. PPG advise:

"What should an infrastructure funding statement say about future spending priorities?

The infrastructure funding statement should set out future spending priorities on infrastructure and affordable housing in line with up-to-date or emerging plan policies. This should provide clarity and transparency for communities and developers on the infrastructure and affordable housing that is expected to be delivered. Infrastructure funding statements should set out the infrastructure projects or types of infrastructure that the authority intends to fund, either wholly or partly, by the levy or planning obligations. This will not dictate how funds must be spent but will set out the local authority's intentions.

This should be in the form of a written narrative that demonstrates how developer contributions will be used to deliver relevant strategic policies in the plan, including any infrastructure projects or types of infrastructure that will be delivered, when, and where.

Paragraph: 177 Reference ID: 25-177-20190901"

15. Again, the preparation of the IFS would appear to be a further appropriate place to make any changes to existing practice. No doubt TBC will seek to engage stakeholders, including GCC and developers, in the drawing up of its IFS.
16. I am not aware that TBC has yet published an IFS. Until it does, as PPG on Planning Obligations makes clear (see ID-23b ¶003 and 006), TBC cannot combine s106 contributions with CIL receipts to fund particular infrastructure. For the moment, CIL receipts are used to fund education and library infrastructure in the Borough of Tewkesbury.
17. GCC also apparently now takes the view that pupil generation should be considered from both market and affordable housing elements of the development and financial contributions sought in respect of both of them. This would, I am instructed, be a departure from the clearly established custom and practice adopted by TBC in respect of affordable housing. TBC, I am instructed, does not do so on the basis that affordable housing already attracts public subsidy, and so any contributions would simply amount to one 'pot' of public subsidy funding

another. Such a custom and practice can give rise to a legitimate expectation (see *Bhatt Murphy v Independent Assessor* [2008] EWCA Civ 755 per Laws LJ at [28]). In my opinion dated 26 May 2020 at ¶17+ I set out the law on when a legitimate expectation can be frustrated. In summary TBC would have to show a sufficient public interest and adduce evidence to explain and justify its new approach (see *Paponette & Ors v Attorney General of Trinidad and Tobago* [2010] UKPC 32). TBC would therefore be well advised to consider very carefully any change to its current established practice.

18. In addition, TBC will be aware that social housing attracts exemption or relief from CIL under Reg 49/49A of the CIL Regulations. This is a clear expression of government intent. It would be perverse, in my opinion, if the exemption/relief from CIL for obvious public policy reasons was to be frustrated by (re)imposing a similar liability under a s106 obligation.
19. So, in respect of the correct approach to the calculation of education contributions my opinion is:
  - a. It is for TBC to decide what any contribution should be. GCC is a consultee, not the decision-taker.
  - b. In doing so, TBC should understand that GCC's methodology and evidence base is disputed and the dispute is unresolved in respect of both the PPR (ie the number of pupils that will be generated by the development) and the 'cost per pupil' of mitigating infrastructure.
  - c. TBC has a well established custom and practice in not seeking s106 contributions (education and libraries) from affordable housing development which gives rise to a legitimate expectation that it will continue unless TBC shows a sufficient public interest and adduces evidence to explain and justify a new approach.



20. For the moment, nothing further occurs. If those instructing me would like to discuss this matter further, then they should not hesitate to contact me by email. I am happy for this Opinion to be disclosed to the Council should those instructing me wish to do so.

Hugh Richards  
No 5 Chambers  
Birmingham – London – Bristol – Leicester

19 June 2020

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IN THE MATTER OF PLANNING APPLICATION  
REF 19/01098/FUL FOR PERMISSION TO  
DEVELOP LAND OFF HORSBERE DRIVE,  
LONFORD, GL2 9BY

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OPINION

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Ref:

Hugh Richards  
19 June 2020  
Ref: 786045

## Comments for Planning Application 16/00904/OUT

### Application Summary

Application Number: 16/00904/OUT

Address: Land To The Rear Of Chestnut Tree Farm Tewkesbury Road Twigworth Gloucester Gloucestershire

Proposal: Outline proposal for up to 100 dwellings, together with associated public open space and equipped children's play space, landscaping, access and associated infrastructure. All matters reserved except for access.

Case Officer: Miss Lisa Dixon

### Customer Details

[REDACTED]

[REDACTED]

### Comment Details

Commenter Type: Members of the Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: We continue to strongly object to this application and now that the Neighbourhood Development Plan for the area has been adopted this is even more of a significant objection on the following grounds.

The objectives of the Neighbourhood Development Plan is in keeping the needs, nature, character and rural identity of the parishes, this will not be the case if this is allowed to progress any further especially with the additional 725 houses that have already been allowed. Twigworth has lost a significant amount of Green belt and open space already without losing further.

Objective 2 - The open rural character to be maintained with views of the vale landscape, Norton Hill, Wallsworth Hall and May Hill to remain for all to enjoy. With a development of this nature these views will be lost forever. The views of the cathedral have already been taken away from the village without the loss of these further views which need to remain for all.

Objective 3 - No undue traffic impact and congestion - Adding to the traffic issues that Twigworth already encounter and adding a further 100 dwellings along with the 725 already allowed, not taking into consideration the 74 new dwellings planned for Yew Tree Farm this will add significant additional traffic to an already overloaded A38 and lanes in the area. These lanes are shared by farm machinery, bikers, cyclists and horse riders making for a more dangerous outlook for all and increased pressure on the A38.

The NDP states that the 3 parishes including Twigworth should have protected the rural and agricultural character and identity and this should remain. Twigworth has already lost a significant amount of prime agricultural land and also an ancient ridge and furrow field without losing another significant area of agricultural rich land on the doorstep.

This development will increase the flood risk within the area. With the field itself being on the River

Severn side of the A38 adding more pressure to the fields and the drainage will increase surface water flooding and if not river flooding . the whole area is a flood disaster waiting to happen and although the new properties will be protected who will ensure the protection of the existing properties.

We must protect the remaining openness of parts of Twigworth and the A38 corridor allowing the appreciation of our heritage and to build close to heritage building and listed buildings will be detrimental to the area. We must take on board the NDP in keeping a sense of undeveloped and rural character in the area and this will be an un-duly harmful encroachment into the countryside with Twigworth and Sandhurst losing their rural identities as is happening with Twigworth and Innsworth. Please do not allow any more development in Twigworth as this is causing undue stress and anxiety to the residents of Twigworth and we do not need any more stress anxiety and feeling like we are not being listened to. The area cannot cope with any more housing, the infrastructure cannot cope with any more housing and we already fear for our existing properties and how our houses will cope with added flood water and our lives will be come a congested rat run of vehicles losing any rural outlook we ever had in the area.