

TR010063

M5 Junction Improvement Scheme

Representations submitted on behalf of
Bloor Homes Limited

March 2024



PLANNING
LIMITED

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Executive Summary

1. The Scheme is advanced by the Applicant on the basis that it is necessary to facilitate the delivery of the Safeguarded Land identified in the Joint Core Strategy. There are two areas of Safeguarded Land identified in the JCS at Cheltenham; one of which is to the north of the A4019. The Applicant's submissions are that the development of this area of Safeguarded Land will be enabled by the Scheme of Works and as such is a dependent development.
2. The Scheme of Works does not in fact result in an access being constructed to the Safeguarded Lane sufficient to enable its future development. What is in fact proposed as the northern arm of Works 4f is a single carriageway that consolidates existing agricultural access. This falls a long way short of an access associated with development of the Safeguarded Land which is contemplated by policy and the Scheme objectives.
3. Not only does this fail to facilitate development of the Safeguarded Land but it also compromises the ability of the developer of the Safeguarded Land to deliver a suitable access. At present, the Safeguarded Land abuts Tewkesbury Road and benefits from a long frontage providing plenty of scope for an access to be constructed. However, post Scheme, the new junction terminates on land owned by the Applicant. This raises the unsatisfactory spectre of a further length of road being required to be constructed across land owned by the Applicant to access the vast majority of the Safeguarded Land. The consequence of this is that it creates uncertainty, and potentially an impediment, to delivery of a development access.
4. It will also bestow upon the Applicant, as landowner, a commercial advantage over the developer of the Safeguarded Land who will be dependent on the Applicant making its land available for the access. Indeed, in engaging with the Applicant on this point, Bloor Homes has been led to believe by representatives of the Applicant that they will, in due course, seek to extract a commercial ransom because of this situation where they can. It is difficult to understand how the Applicant can justify use of compulsory acquisition powers to so position itself. Such conduct by a public body, in receipt of public funds to deliver infrastructure to facilitate necessary development, is at odds with the statutory and policy framework in which the DCO application has been made.
5. The injustice created by the above is further compounded by the fact that the developer of the Safeguarded Land will be required to contribute to the funding of the overall Scheme (see paragraph 3.2 of the Funding Statement (APP-036)).

6. Moreover, the junction proposed by the Scheme is neither safe nor suitable for the existing farm operations on the Safeguarded Land it purports to accommodate due to the conflict between road users and farm vehicles at peak harvest times.

1 Introduction

- 1.1. These representations are submitted on behalf of Bloor Homes Limited ("Bloor Homes") pursuant to the Section 56 notice dated the 9th February 2024 issued by Gloucestershire County Council (the "Applicant").
- 1.2. The Applicant is seeking a Development Consent Order ("DCO") for the M5 Junction 10 Improvement Scheme ("the Scheme").
- 1.3. In summary, the Scheme comprises (a) works to create an all-movements junction at M5 Junction 10; (b) a new Link Road east of junction 10 from the A4019 to the B4634 to provide the means of access to the Joint Core Strategy's ("JCS") Strategic Allocation at West Cheltenham; and (c) widening of the A4019 to the east of junction 10, including a bus lane on the A4019 eastbound carriageway from the West Cheltenham Fire Station to the Gallagher Junction. As part of the second element a new road is proposed to be formed as access to the JCS's Safeguarded Land at North West Cheltenham ("the Safeguarded Land").
- 1.4. Bloor Homes has a legal interest in [part] of the Safeguarded Land ("the Option Land") by virtue of a number of agreements including option agreements dated 30 June 2006, 12 January 2007 and 11 February 2011 held in the name of Bloor Homes and J S Bloor (Tewkesbury) Limited ("the Option Agreements"). Parts of the Option Land are required for the Scheme and the DCO provides powers for the Applicant to compulsorily acquire it.
- 1.5. The Scheme's objectives, set out in The Introduction to the Application (APP-001) and elsewhere, include facilitating the delivery of future development land that includes the Safeguarded Land. Indeed, the Applicant's Funding Statement relies upon monies from development of the Safeguarded Land contributing to the identified shortfall between the Scheme's cost and the Housing Infrastructure Fund ("HIF") afforded to them. For this reason, the works package that achieves the delivery of the Safeguarded Land is significant to Bloor Homes.
- 1.6. Bloor Homes considers that, contrary to the case advanced by the Applicant the works package proposed will fetter, not facilitate, delivery of the Safeguarded Land. As such, a key objective of the Scheme will not be achieved, and the Scheme will not support economic growth or facilitate growth in jobs and housing by providing improved transport network connections in west and north west Cheltenham in the terms suggested by the Applicant.

- 1.7. These representations explain, by reference to the application documents, the deficiencies in the Scheme and the extent to which the Applicant has failed to justify the Scheme or the powers and consents sought in the DCO. It also sets out the measures proposed by Bloor Homes to enable the Scheme to achieve its stated objectives.

2 Scheme objectives

- 2.1 The Introduction to the Application (APP-001) describes the Scheme's objectives at Table 2-1. The first objective is to:

“Support economic growth and facilitate growth in jobs and housing by providing improved transport network connections in west and north-west Cheltenham”

- 2.2 This is explained by reference to an evidence metric that corresponds to new housing and employment development at the strategic allocations in the JCS at North West Cheltenham and West Cheltenham and the future development of the Safeguarded Land.

- 2.3 This is explained further at paragraph 3.2.1 of the Planning Statement and Schedule of Accordance with National Policy Statement (APP-135), which lists the three development locations:

“Significant population and household growth is expected to take place in the area over the next 10-15 years. The JCS adopted in December 2017 includes two Strategic Allocations, and one area of land which is safeguarded for development:

- Policy A4 ‘Land at North West Cheltenham’ – allocated land for 4,285 new homes, 10ha for office, and 13 ha for employment generating land.***
- Policy A7 ‘Land at West Cheltenham’ – allocated land for 1,100 homes, 45ha of B class led employment land.***
- JCS Policy SD5 ‘Area of Restraint Safeguarded Area’ – safeguards land directly east of M5 Junction 10 and north of the A4019 to meet longer term development needs”***

- 2.4 At Appendix A of Funding Statement (APP-036), the Safeguarded Land is referred to as “Site A” and is attributed 2,258 dwellings and 30 hectares of employment use. This is described as part of the growth which the Scheme is said to relate to and facilitate, and what the Applicant deems the ***“dependent developments”***.

- 2.5 The Applicant characterises the predicted effects of trips anticipated from the ***“dependent developments”*** at paragraph 3.2.3 of the Planning Statement and Schedule of Accordance with National Policy Statement (APP-135) as ***“significant challenges”***. Even allowing for changes in travel behaviours the Applicant states that pressures on the M5 junction 10 and the A4019 are ***“unlikely to diminish”***. In their opinion ***“road improvements are essential to respond to future development and to accommodate the extra journeys that new residential and commercial developments will create”***.

- 2.6 The Applicant continues at paragraph 3.2.4 that ***“the ability of the [local authorities] to deliver their planned housing and economic growth is part contingent upon finding solutions to facilitate the smooth flow of traffic through this area”***.
- 2.7 The Applicant then concludes at paragraph 3.2.6 that the Scheme is needed to support planned housing and economic growth around Cheltenham as the current highway provision would not be able to accommodate the additional journeys. However, in the case of the North West Cheltenham Safeguarded Land the modelling undertaken is based on a concept that is not part of the development plan. Without a definition of what development will be allocated, when it will be delivered and what alternative highway mitigation is in place it cannot be said with certainty that the Safeguarded Land is contingent on the Scheme.

3 Scheme works

3.1 The Introduction to the Application (APP-001) describes the various components of the Scheme works for which the DCO is sought ("the Works").

3.2 At paragraph 2.3.11 it states:

“The A4019 junction will provide access to JCS safeguarded development sites to the north, Cheltenham to the east and Junction 10 to the west.”

3.3 A similar expression is used in the Statement of Reasons (APP-035) paragraph 2.3.1:

“In order to deliver the Scheme, it will be necessary to carry out the following works comprising.....At the A4019 a four-arm signalised junction with the northern arm providing access to the new developments north of the A4019”

3.4 What is termed “***safeguarded development sites to the north***” or “***developments north of the A4019***” corresponds to the land to the north of the A4019 that is identified in the Cheltenham Gloucester Tewkesbury JCS at Policy SD7(ii) as “safeguarded land at North West Cheltenham” and is shown on its associated Policies Map.

3.5 The JCS is a strategic level development plan covering these three administrative areas; it was adopted by the constituent authorities in December 2017 and covers the period until 2031. Tewkesbury Borough Council adopted its Borough Plan in 2022; that does not alter the status of the Safeguarded Land in the JCS.

3.6 The JCS refers to the Safeguarded Land in the following terms in the explanatory text:

“The new boundaries identified on the Green Belt map have also taken into account longer-term need by identifying safeguarded land which may be required beyond this plan period to ensure that the Green Belt does not need an early review.”
[paragraph 4.5.24 refers]

3.7 The express purpose of this designation is referred in Policy SD7 as:

“safeguarded for longer-term development need”

3.8 Arising from this is a reasonable and legitimate expectation that the Works will provide a physical access that facilitates and enables the development of the Safeguarded Land following grant of planning permission for housing and employment as contemplated in the Scheme’s objectives.

3.9 However, the General Arrangement Plans for the Scheme (APP-015) which show the proposed improvements to Tewkesbury Road and the formation of the access to the West Cheltenham link road make no provision for such an access.

3.10 Instead, the northern arm of the junction into the Safeguarded Land, provides for only a short section of single carriageway road (approximately 20 metres), before meeting a junction with several farm tracks leading off to the north-west and south-east. The farm tracks combine what are three separate accesses onto Tewkesbury Road into a single shared access.

3.11 The above is reflected also in the description of the Works set out in Schedule 1 of the draft DCO (APP-035) which identifies Work No. 4f as:

“the construction of a signalised junction including access to land north of the A4019 (Tewkesbury Road); pedestrian and cycle crossing points; maintenance bay; and southern access to the new West Cheltenham Link Road”

3.12 The proposed Works consequently fall significantly short of providing the access into the Safeguarded Land which is contemplated by policy and the Scheme objectives.

4 Access to the Safeguarded Land

- 4.1 Having regard to the Scheme's objectives and what is asserted to be dependent nature of the Safeguarded Land, the northern arm of Work No. 4(f) appears to be the access which the Applicant says will facilitate future development of the Safeguarded Land as referred to at paragraph 2.3.11 of The Introduction to the Application (APP-001) and paragraph 2.3.1 of the Statement of Reasons (APP-035).
- 4.2 However, paragraph 2.5.42 of Chapter 3 of the Environmental Statement – Assessment of Alternatives (APP-62) goes on to state that:
- “A4019 - a four-arm signalised junction with the northern arm ultimately providing access to the proposed developments to the north of the A4019, as safeguarded in the JCS (referred to in this ES as the safeguarded land to the north-west of Cheltenham). Within the design of the Scheme, the northern arm provides for field access and the informal Traveller site only. The design of this northern arm to enable access into the safeguarded land will be undertaken by the relevant developer. Pedestrian and cycle access over this junction will be incorporated into the signal phasing for this junction.”***
- 4.3 And paragraph 3.9.13 confirms that the Scheme is not delivering a suitable access to enable development of the Safeguarded Land. It is merely “future-proofing” development of the safeguard land. In other words, the developer of the Safeguarded Land, and not the Applicant, will in fact be responsible for designing and securing all necessary land interests and permissions for construction of that access.
- 4.4 In these terms, the Scheme does not facilitate the development of the Safeguarded Land by providing the required access. This appears to be a conscious decision by the Applicant as previous iterations of the Scheme did provide for a suitable access.
- 4.5 For instance, in 2020, a roundabout was proposed (see Figure 3-5 of Chapter 3 of the Environmental Statement – Assessment of Alternatives (APP-62)). That roundabout, whilst not extending into the Safeguarded Land, would have at least been suitable as an access for development of the Safeguarded Land.
- 4.6 And, again in 2022, a signalised junction onto Tewkesbury Road was proposed which did extend into the Safeguarded Land (see Consultation Brochure page 10¹), improving on the 2020 design (following engagement and meetings with Bloor Homes and the owners of

¹ <https://www.gloucestershire.gov.uk/media/03nfqtaf/m5-junction-10-statutory-public-consultation-brochure-081221-150222.pdf>

the Option Land) to enable both development of the Safeguarded Land whilst continuing into the Option Land.

- 4.7 By contrast with these earlier proposals, the Scheme now includes a much smaller signalised junction onto Tewkesbury Road extending only as far as a narrow access track which is to be formed parallel to Tewkesbury Road (see General Arrangement Plans – Part 2 (APP-015 Sheet 12)), providing notably inferior access to the land farmed there.
- 4.8 Not only does this fail to facilitate development of the Safeguarded Land but it also compromises the ability of the developer of the Safeguarded Land to a suitable access. At present, the Safeguarded Land abuts Tewkesbury Road and benefits from a long frontage providing plenty of scope for an access to be constructed. However, post Scheme, the new junction terminates on land owned by the Applicant and stops short of the boundary of the Safeguarded Land. This raises the unsatisfactory spectre of a further length of road being required to be constructed across land owned by the Applicant to access the vast majority of the Safeguarded Land. The consequence of this is that it creates uncertainty, and potentially an impediment, to delivery of a development access.
- 4.9 It will also bestow upon the Applicant, as landowner, a commercial advantage over the developer of the Safeguarded Land who will be dependent on the Applicant making its land available for the access. Indeed, in engaging with the Applicant on this point, Bloor Homes has been told by representatives of the Applicant that they will, in due course, seek to extract a commercial ransom because of this situation where they can. It is difficult to understand how the Applicant can justify use of compulsory acquisition powers to so position itself. Such conduct by a public body, in receipt of public funds to deliver infrastructure to facilitate necessary development, is at odds with the statutory and policy framework in which the DCO application has been made.
- 4.10 The injustice created by the above is further compounded by the fact that the developer of the Safeguarded Land will be required to contribute to the funding of the overall Scheme (see paragraph 3.2 of the Funding Statement (APP-036)). Bloor Homes has engaged with the Applicant and made its concerns known. It has also indicated that it would be willing to enter into an agreement with the Applicant to transfer the land interests necessary to deliver the Scheme to the Applicant on terms which would not prejudice delivery of an access for development of the Safeguarded Land and/or to contribute to the funding necessary to deliver an access into the Safeguarded Land which would achieve the Scheme's objectives. The Applicant has failed to fully respond to these concerns or offers. Given that the Applicant is required to explore all alternatives to compulsory purchase, it is both surprising and disappointing that the Applicant has failed to properly engage with

Bloor Homes and the owners of the Option Land with a view to acquiring the land for the Scheme by agreement.

- 4.11 Consideration should further be given to that, if the Scheme proceeds in its current form, then there will inevitably need to be another highway improvement scheme in due course to provide access to the Safeguarded Land. The unnecessary and significant disruption, the environmental implications and impacts on the local community and road users arising from that second scheme shortly after the Scheme is completed, should be taken into account.
- 4.12 Lastly, it should be noted that, even if the Scheme was not intended to facilitate development of the Safeguarded Land, the junction proposed by the Scheme is neither safe nor suitable for the existing farm operations it is intended to enable due to the conflict between road users and farm vehicles at peak harvest times.
- 4.13 For the above reasons, the proposed new access to the Safeguarded Land as proposed by Work No. 4f is not appropriate. It fails to provide a satisfactory means of access for the existing land use. It further fails to facilitate access to development of the Safeguarded Land and creates uncertainty and doubt as to the deliverability of the development access. The Scheme's objectives to realise future economic and housing development will consequently not be achieved.

5 Funding

- 5.1 The Applicant's Funding Statement (APP-036) describes the funding arrangements for the Scheme. The Applicant's contention is that funding ***"is no impediment to the delivery of the Scheme or the payment of compensation to the persons affected by the compulsory acquisition, temporary possession, or a blight claim"*** (paragraph 1.1.2).
- 5.2 The Applicant's approach to funding the Scheme comprises two elements - the HIF, which, amounts to £212,071 million (paragraph 3.13) and financial contributions from the developers of what are termed "dependent developments" (paragraph 3.2.1).
- 5.3 The financial contributions referred to above are said to be required to meet the shortfall in funding between the HIF monies secured and the Scheme's cost. In effect, as the cost of the Scheme has risen, ***"this has created the need for additional funding"*** which the Applicant consider the dependent developments are liable for. The Applicant proposes that it will utilise the JCS policy to ***"secure section 106 agreements for the making of contributions towards delivery of the Scheme"*** from dependent developments (paragraph 1.2.5).
- 5.4 The availability of section 106 funding is however far from certain which the Applicant acknowledges at paragraph 3.4 of its Funding Statement (APP-036) where it states that it will not issue the notice to proceed unless and until it has secured sufficient amounts of developer contributions to fully support delivery of the Scheme. It is difficult to see therefore how the Applicant can meet the requirement to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition or the Scheme generally required to enable the Secretary of State to grant the DCO.
- 5.5 In particular, the Applicant fails to identify in its application the quantum of financial contributions required or how they will be calculated. In the case of the Safeguarded Land, it is also unclear how a contribution could be secured given that there is no planning application before Tewkesbury Borough Council which could be determined to capture the funding sought.
- 5.6 In addition to the above, the Applicant appears to have given no consideration to how the Community Infrastructure Levy for which development across the JCS is liable, could contribute to funding the Scheme. The JCS website describes the areas' CIL as:

"[funds] used to provide a wide range of infrastructure that is needed to support new development. It does not replace Section 106 planning obligations which continue to be used for affordable housing provision and site-specific mitigation measures which are necessary to make a planning application acceptable in planning terms."

The Community Infrastructure Levy charge applies to most new residential buildings and can be used to fund a wide variety of infrastructure that will support development, including...Transport schemes”.

- 5.7 Taken together, it is difficult to see how the Applicant can demonstrate that there is adequate funding or funding mechanisms in place to enable the Scheme to proceed. Nor can the Applicant demonstrate that there is a compelling case in the public interest for compulsory acquisition.

6 Conclusion

- 6.1 One of the Scheme objectives is to **"support economic growth and facilitate growth in jobs and housing by providing improved transport network connections in west and north-west Cheltenham"**. The Applicant states that an underpinning evidence metric to this objective is that the Scheme will directly unlock the potential development of 7,203 housing units. The Safeguarded Land, in which Bloor Homes has an interest, is stated to be part of that potential development. Bloor Homes does not agree with the Applicant, however, that development of the Safeguarded Land is dependent on delivery of the Scheme.
- 6.2 The West Cheltenham Link Road will be provided as part of the Scheme. It includes the proposed A4109 junction which the Applicant states will **"provide access to JCS safeguarded development sites to the north, Cheltenham to the east and Junction 10 to the west"**. Schedule 1 of the draft DCO (APP-031) identifies these as Work No. 4(f):
- "the construction of a signalised junction including access to land north of the A4019 (Tewkesbury Road); pedestrian and cycle crossing points; maintenance bay; and southern access to the new West Cheltenham Link Road"**
- 6.3 It is the northern arm of the junction which the Applicant intends will provide access to the Safeguarded Land.
- 6.4 However, Bloor Homes does not agree with the Applicant that Work No. 4(f) will deliver an access which is appropriate to enable development of the Safeguarded Land in the way envisaged by the Scheme objectives. The access appears only to provide for a field access which is insufficient for development access. Without doubt, future works and upgrading of this junction will be required to make it fit for purpose to serve as a satisfactory access for traffic associated with development of the Safeguarded Land. This is a fact the Applicant readily accepts in its material (APP-062 paragraph 3.9.19)
- 6.5 Consequently, the practical effect of the Scheme should it proceed is that it will be necessary in due course for there to be a separate and different planning permission for construction of a much larger junction, with greater capacity both for vehicular traffic, public transport and walking and cycling to achieve the development of the Safeguarded Land. This means that, as well as failing to achieve its objectives, an opportunity is being missed to futureproof and provide resilience on the network.
- 6.6 Moreover, the Applicant has indicated to the Bloor Homes that, should the opportunity arise following compulsory acquisition of the land required for the Scheme, then it will seek to

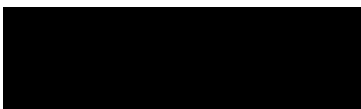
create an advantageous position for itself in future negotiations as to the delivery of the Safeguarded Land. Future developers will need to reach a commercial agreement with the Applicant to extend and enlarge the substandard junction to serve the Safeguarded Land. Such conduct by a public body is at odds with the statutory and policy framework in which the DCO application has been made, and surprising given the Scheme's stated objectives to facilitate not impede future housing and employment development.

- 6.7 Bloor Homes and the owners of the Option Land have sought to engage with the Applicant to address this issue, but the Applicant has to date failed to meaningfully engage. Notwithstanding this, they remain willing to engage with the Applicant to secure a redesign of the northern arm of the A4109 junction to deliver the necessary access for development of the Safeguarded Land and/or an agreement for the necessary land interests in the Option Land required for the Scheme to be granted to the Applicant in a way which does not prejudice the delivery of that access.
- 6.8 Alternatively, the Applicant should be required to amend its application to either:
- (a) Redesign the northern arm of the A4109 junction providing a higher capacity and so that it delivers the necessary access to the Safeguarded Land and provides public highway up to the existing legal ownership to ensure the landowners retain the ability to provide a suitable development access; or
 - (b) Make a commitment that it will not impede future development of the Safeguarded Land and, in particular, that it (i) will not seek any ransom payment from future developers of the Safeguarded Land; (ii) will dedicate land between the A4019 to the boundary of its legal ownership for use as a public highway; and (iii) will afford step in rights to the adjoining landowner that permit highway works on that land.

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