



## Hearing Transcript

<b>Project:</b>	M5 Junction 10 Improvements Scheme
<b>Hearing:</b>	Issue Specific Hearing 3 (ISH3) – Session 4
<b>Date:</b>	13 August 2024

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# M5J10\_ISH3\_SESSION4\_13082024

00:05

Okay, so we'll move now on to the next agenda item, which is funding. I think if we can start off by hearing the applicant's explanation is how they foresee the funding being delivered and over what time frame to meet the gap between what homes England funding is offering and the cost of the proposed development, if we can start there, and then we'll move on from that.

00:33

Thanks. Andrew Tate for the applicant. To my right is Chris Beatty, who's the project manager, and to his right, Nathan drover, who is the developer interface manager and as well as Mr. Pierce. And so I'm going to ask Mr. Chris Beatty to deal with this in the first instance.

00:55

Thank you, sir, Chris Beatty, for the applicant, the HIF funding is to be utilized first, on the basis of current projections, this would be fully drawn by summer 2027 ahead of the current funding availability period, we envisage the residual funding being secured via section 106 contributions from dependent developments and as identified in letters of support from relevant developers, we are continuing to refine the approach being taken to secure the section 106 funds. The relevant developers have indicated commencement of their developments during early 2025 and as late as financial year, 2728 we note that it is possible that insufficient levels of section 106 funding are secured by the planned works commencement date, which is currently quarter 320, 25 and at this stage, the applicant considers that commencement of works would be delayed until such time that all of the necessary funding arrangements were secured to enable full delivery of the works, this position would not change the intent for us to progress land assembly at the earliest opportunity, On the basis of the current methodology, approximately 38% of the funding gap is associated with JCS policy a four, the North West Cheltenham allocation. 29% of the funding gap is associated with West Cheltenham policy, a seven, leaving 33% of the identified funding gap being associated with the safeguarded land. Whilst the applicant considers the funding could be secured ahead of conclusion of the SLP process, we are minded that it may be necessary to reply rely upon funding secured from developments which are anticipated to come forward under the emerging SLP. The SLP is anticipated to make a regulation 22 submission to the Secretary of State in april 2026

03:15

alongside work to develop the contribution methodology and secure the necessary section 106 funding the applic the applicant, continues to work with our ECI contractor and other partners to identify opportunities to refine or value engineer the scheme on the basis that a less costly scheme would have a lesser funding gap to resolve. To date, a substantial number of opportunities have been identified, and the applicant is actively working to bring forward these opportunities, which are collectively anticipated to reduce scheme costs by approximately 15 million pounds. The

04:08

Okay, so can I just clarify then with you? At the moment, the current forecast cost is in accordance with the papers you've submitted, there's an 81 million pound deficit. And is it that 81 million that you're seeking to apportion 38% to a 420, 9% to allocation a seven and 33% of the safeguarded land?

04:41

Yes, it is okay,

04:42

and and how have you come to that calculation, that assessment to to those proportions or those ratios?

04:51

The current methodology in that which we've consulted with the relevant developers on is associated. With relative benefit, defined from the scheme once in operation at the design year, specifically looking at the use of the dependent traffic on the slip roads of the improved m5 junction 10 and m5 junction 11, noting that m5 junction 11 is relieved by implementation of junction 10.

05:29

So this is a methodology that's been out to consultation earlier this year that is not yet agreed. Where does this methodology fit in the local plan process? What I'm trying to understand is, what status does it have in planning terms, or is it just something that you see as a tool to try and apportion what you consider to be a fair distribution of benefit.

06:04

So the policy basis make reference to policy inf seven, which enables us to seek section 106 contributions towards delivery of the scheme. The methodology in terms of apportionment is something that we consider is a fair way to distribute between three independent housing sites.

06:30

I appreciate you consider it might be fair, but at the moment, I don't know what the view is of the other parties, and I still don't understand what status this negotiation document consultation document has and what weight we can reasonably attribute to it in our consideration of the examination of this application. So how would you recommend we consider that position?

07:04

Thank you, sir. It's Nathan drover for the applicant. We've the local planning authorities have currently got applications for 7000 houses in total, and I think it's about 130,000 square meters of employment so far, and that's across seven applications. So the transport assessments for those applications are seeking to determine their site specific severe impacts, or effectively the equivalent of the dead weight which the DCO modeling determined. So if I reminded DCO modeling was 1700 units, and in terms of the tests, that causes some challenges, because not all the sites would have that specific level of dead weight depending on where they are, what type of development they are, and what vision led approach. So we are working with the developers. We met with them on the 24th of July. We're meeting them

again on the 21st of August to try and to try and revisit the principles of the test to see if we can find more equitable approach. So at the moment the I'll just recount how we got to where we were. The first methodology was trip rates at the front door. The second methodology we looked at was vehicle kilometers traveled on the improved network elements, one, two and three, and the third one, which we preferred, because it met the in our opinion, it met the tests better because it apportioned the costs amongst the benefits, or the degree to which the respective sites benefited. Was the was the impact on junctions 10 and 11 slip roads. With hindsight, what we're actually doing is we're apportioning the benefits on external trips from Cheltenham. There is a case that perhaps we should have based it on the severe impacts on the local road network, although our provisional assessment is that's broadly going to be the same as the external impacts on the network. So turning to the local impacts, the 1700 dead weight is the local road network tips over quite early on the a 14 Princess Elizabeth way with the bridge lane and old Gloucester road and and essentially what we're trying. What we're trying to do is determine whether or not there was a more compliant approach by determining their site specific serious, severe impacts, and then apportioning the cost gap on that basis. But in refining it, we might actually create more. Division some, some of the developers actually prefer a flat trip rate approach as being more equitable.

10:14

Again, I don't want to get dragged into what individual planning applications might be negotiating one way or the other. My concern, our concern is certainty of funding for the delivery of this project. And what you're saying to me is that there isn't an agreed formula as it stands for being able to calculate relative contributions. And that gives us a difficulty, because you're saying to us, there's a significant shortfall. Okay, my next question really, can I just take us back to costs in the first instance, the costs that you've initially indicated, saying was an 81 million shortfall. Can I just come to national highways? Because you've queried that figure in your relevant representation, and the applicant has come back in their response to written questions explaining how they've come to the figure that they have and why they still consider it's robust despite recent inflation and so on. Are you still of the view that it's not a robust figure or and what evidence could you provide to us to support that assertion, if that's still the case,

11:43

thank you, sir. Sophie Stuart for national highways, based on the additional information that came in at d3 national highways have been able to reconcile a number of aspects on the applicant's cost estimate. Um, however, there still remains differences um between us in so far as um, whilst the indices for inflation particularly are used but are the same used by national highways and the applicant there appears to be different starting points. So national highways start their cost assessment from q1, 2019, which is based on actual data they have in terms of being able to draw on other major infrastructure highway schemes that national highways deliver, and then, in order to compare that date with the applicants, based date of q2, 2022, national highways had applied the implied output price index data so the i, o, p, i, b, I, C, S, i, o, p, i, so, and then both parties have applied the BCIs index for future inflation once we've got to q2 2022 which is the applicant base date that they've started from, with Their cost assessment. However, there are still some some differences. There are some funding pressures that if national highways were costing a scheme, they would include that on the information we've seen from the applicant. At the moment, we are not sure whether they have been accounted for in the

scheme costs or not. So whilst we are trying to work towards being able to reconcile the two, to say that we think it's a robust cost estimate, we would actually ask the applicant to continue to work with us and provide some more information so that we can understand how they've got to their cost estimate, because it still does differ significantly that if national highways were costing the scheme, the number that they would reach, which is still significantly higher,

14:13

you able to share with us what funding pressures you are referring to at Hand, or what the cost differential is that you consider there would be

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so for example, sir, national highways price for some risks and uncertainty that we can't see the applicants priced for around land and associated compensation costs national highways also price for biodiversity, net gain and carbon reduction costs that we can't see in the applicants cost estimate. We're also not sure how. Vats being treated national highways treat their VAT as a separate line, accepting that GCC may be subject to different VAT rules to national highways. But at the moment, that remains unclear. And I think once you feed all of these in, obviously the inflation number, even using the same indices, comes out very differently. Because we're not we're not sure, based on the data that national highways holds, based on the costs of its own schemes, that it has delivered, that the numbers that are being included by the applicant at the moment, can be supported as reflective of what national highways would expect to pay, accepting that there will have been a separate procurement exercise, and you know, there will always be some differential in rates. This seems to be a significant difference just to the base cost, which then, once you apply inflation to obviously compounds the different bottom line number that falls out.

16:13

Have you shared with the applicant your specific concerns

16:22

at Sir, not yet. The document I'm looking at has only been received this morning. Sorry, sir. However, I do understand that national highways finance team and the project team have been asking the applicant to provide further information to enable us to try and reconcile the two national highways costing and the applicants costing.

16:51

Okay, can I just then seek clarification from the applicant on your view on national highways position and what timing we might get, clarity of both parties positions,

17:15

the speedy on behalf of the applicant, obviously, we'd like to take away the information the national highway has been supplied to us, and are happy to provide a written spend response into d4 on some of the specific points raised. I think the estimate adequately covers the points. Maybe it's a lack of visibility, and happy to talk that through. For instance, our risk register and the allowance determined for risk coverage. Some of the points that were raised, the biodiversity net gain is priced in through the

landscaping works and the carbon reduction efforts on the schema, principally around reduction of earthworks, pavement scope and the like. So there, in fact, cost saving exercises.

18:07

I think at this stage, we need you to carry on having that conversation, but having at the back of your mind if the position is not going to get to an agreed position, absolute clarity of why you're saying what you're saying, so that we can understand the distinction and what evidence supports that distinction, so we can obviously sensibly make a recommendation to Secretary of State on that side of things. It obviously is fairly fundamental, because it leads into how much money you are going to be seeking from section 106 contributions. And at the moment, the only thing that I've seen in support of your argument for the likely quantum that might be forthcoming is the one planning permission that was granted for I'm going to get the number wrong now, 126 dwellings. I think that's probably wrong. 260 dwellings. And there is a section 106 with a contribution towards m5 junction 10, and that seems to be your basis for saying you believe that that gives you confidence that the total quantum of development will give you sufficient funds to fill the gap. Is that a fair summary

19:42

on behalf of the applicant, the agreement reached in respect to the persimmon development of 266 homes was based on a very similar methodology to that which we're currently working on. Obviously, as my colleagues referred to, there are now 7000 homes per. Applications coming forward shall see a much larger quantum of housing, and therefore a much larger quantum of section 106 could be achieved in respect of that but in essence, the 266 demonstrates that the funding approach through section 106 is feasible, is supported by the planning authority, and has, you know, we have The evidence of the planning determination that demonstrates that, yeah,

21:09

if we set aside the amount of money that you're going to need for the whole project for the time being, do you accept that the section 106 monies are going to be delivered on a phased basis. Because it seems to me that that is what would probably be a fairly normal expectation, that if a planning permission is granted for a large scale scheme, that the developer is not normally expected to pay the entire amount up front. It will be delivered on a phased basis as houses are built out. And it's likely that those housing schemes will be delivered over a 1015, year period. I'm just not trying to get dragged into individual cases, or the details of those but again, I'm just trying to understand how your funding for delivering the scheme, what is the point that use would say you have the confidence that you could start because those monies aren't going to be arriving in your Five year window, there'll be some time afterwards, assuming they arrive in the quantities you need. So what? What is it that's going to give the Secretary State the confidence that you can make a start within five years,

22:39

a speech on behalf of the applicant. As part of the ongoing discussions we're having, we will need to be talking about timing and phasing of those payments. I make reference to the several letters of support we've received from the developers in respect of working towards an agreed position on all of that. Moreover, we would have to reach post DCO, a position, a governance gateway in respect to the

decision to build. We envisage currently that the section 106 agreements would have to be in place. But I'm not able to say anything as regards phasing over a 10 or 15 year period.

23:23

I don't expect there to be agreement on the table today to say what individual developers might sign up to and over. But as a principal, do you do? You agree that it's not likely that you're going to have your 81 million on the day the permissions are granted. It's going to be some time later. And so where's the confidence we can have that you will have sufficient funding in place within five years? If I'm not asking a fair question, by all means, Tell me, but that seems to me fairly crucial. I

24:29

Chris Pete, on behalf of the applicant, I think what's important for us at this stage is to secure the commitment for the funding and to further explore the cash flow position,

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once that commitment has been agreed upon,

24:51

the commitment via section 106 is being signed. Is that what you mean? You. Yes, and so if the current applications progress through, are granted permissions subject to 106 and those 106 is provide you with the assurance that the monies would be come for coming forward over however much time is agreed with the phasing arrangements in those 106 is that would give the county council the applicant, the confidence they could then make a start.

25:41

Chris Beatty, for the applicant, within the timescales of the compulsory acquisition timeline, yes,

25:55

you're still entirely reliant on your How are you bridging the gap, because if the money is coming from housing schemes over a longer period than your your construction period is 30 months.

26:13

Is the county council underwriting this scheme with the expectation or the hope that monies would come forward in due course

26:27

for speech on behalf of the applicant. It's not the position of GCC that we would underwrite the 81 million pounds point in time.

26:37

So take you can see understand where I'm coming from that unless someone tells me that I'm missing something entirely, even setting aside the arguments that the house builders are making, which I think are quite valid about their position, we're not going to know exactly how much money they are going to have to contribute, or even if your calculation that you're making is robust at this stage, but all I'm trying

to do is to say, assuming Everything goes as you wish. How do you ensure that you have sufficient money the the 81 million, so that you can do your scheme when it seems to me that you're accepting that it's unlikely you're going to have that quantity of money within the five year period?

27:40

So my understanding is it's, it's the difference between the commitment to payment at a point and receipt of the payment. And so what if there is commitment, then the county council is content to proceed because it knows that at some point it will be receiving the monies. So the question is, at what point, and what's the position between commitment and receipt? And my understanding is that in those circumstances, I think that's the reference to managing the cash flow position, though, there would need to be consideration of bridging loans or whatever to enable that to be that cash flow position to be managed. That's different from underwriting it at the beginning, because once one says, We do underwriting it, then developers may say, well, then we don't need to contribute a penny piece, because you're going to do that anyway. And that's not the County Council's position. The County Council's position, the applicant's position is, as I've indicated, that it's the commitment. The commitment is clear. IE, there are section 106, agreements in place. Then that is sufficient to press the green button. And then arrangements need to be made to ensure the cash flow position is managed for the thereafter. So

29:24

I have lots of thought bangs around in my head, but I'll give myself some thinking time, and I'll come to national highways to see if that gives you the assurance that you would need, that sufficient clarity on funding is in place to overcome the concern that you've identified in your representations.

29:49

Thank you, sir. Sophie Stewart from national highways, and in short, the answer to that is no, because there is whilst there is a committee. Commitment in a section 106 agreement to pay some monies at some point in the future. That commitment will also have triggers associated with it in terms of delivery of number of units or floor space or otherwise, depending on the nature of the development. And there is still a degree of certainty or uncertainty, even though there is a commitment to pay that those triggers will be met at the point they're expected to met, be met or at any point. And this feeds wholly back into national highways, nervousness around the scheme commencing prior to that funding actually being in place, rather than a commitment to receive the money at some point in the future.

30:54

So is there a mechanism that you could foresee overcoming that concern? I

31:08

And Sophie Stewart for national highways. National Highway standard position would be that the applicant would put in place a bond for the cost of the works on whether that is a bond for the cost of the whole scheme, or a bond from national highways perspective, simply to the value of the works to the SRN, but that would protect national highways in the event that works would be gone and then ceased because funding was not in place, and national highways would be able to call upon that as security to complete the works of the SRN without calling on its own resources to fund them.



31:54

So what's the applicant's view on whether a bond would be something they'd be willing to sign up to or not.

32:04

We have instead of Chris Beatty for the applicant, we have instead tabled a proposal for national highways to be involved in a notice to proceed and Gateway review under which we would demonstrate full funding security availability. The numbers being discussed by national highways to date in respect of the bond are not commercially achievable in the market, and we've made that position clear to national highways. Do

32:50

so, is there something within the DCO as drafted that would prevent commencement in advance of national highways agreement on this aspect. And again, I'm not certain whether that's appropriate, because you'd be effectively giving consent with one hand and potentially saying no with the other. So whilst I'm posing the question, I'm not sure whether well, see what your your answer is,

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just speech on behalf of the applicant. I don't believe there's anything currently in the draft eco that makes reference apologies as currently drafted. There's nothing within the draft eco that makes reference to opposition. National highways have put forward draft protected provisions, and that's what's currently the

34:09

So as it stands, there isn't anything there that would prevent commencement other than the good sense that we would rely on a highway authority to have Okay,

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and so, so we are proposing by where the side agreement that that matter is with national highways, that that matter is controlled in that way,

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and that would be linked into a protected provision of some sort,

34:49

probably not. It would probably be in a contrast, contractual relationship arrangement with national highway.

34:59

And would. That give you the assurance, or will it very much depend on the agreement assuming it's signed. Safety

35:08

for national highways, it would very much depend upon the final form of the agreement. On the assumption that it's signed, there is a notice to proceed process that's been suggested by the applicant at national highways are considering, but that process of itself does include the potential for the applicant to secure some form of security, which could involve also a bond on a staged basis. So those discussions are ongoing. But as it stands at the moment, national highways is not in a position to confirm that it would proceed on the basis of a notice to proceed mechanism.

35:56

Sorry, sir. I think if national highways were to make a recommendation to approve proceeding on the basis of a notice to approve mechanism. Part of that would require the applicant to demonstrate, in the absence of security, in the absence of putting in place security, that the funding was there in the bank before national highways would give their consent to proceed. And that could be on a works package basis, if that is possible, but it would, it will be a requirement of national highways that there either is funding or there is security in the event of default. Do

36:44

so there is a side agreement in circulation, I think that went to national highways back in May, and so would welcome comments on that. We've made our position very clear on the bond, which is not commercially credible. But there are other ways that we have suggested as acknowledged. I

37:41

Okay, I think I've probably gone as far as I can on the costs side of things, but if we can come on to the funding side and start with homes England, because that's your principal source of funds at the current time, you set out in some of the details of the rules that govern that funding in an additional letter to us, which is as 057, I believe, in the examination library, it was letter dated 10th of May. And we've obviously received a response to written questions from Holmes, England, which gives us further clarity. But if I look at that letter and table, one sets out the contractual milestones that are expected to be met before funding is apportioned or provided. You said at the outset, in your initial response that Holmes England money would be the first to be drawn upon. Can you just explain how that would work in the current scenario, as you see it panning out without perhaps having, at that time, the either full 106 funds available, and therefore a commitment to the various elements that the funding would appear to require you to deliver

39:29

Chris Beatty on behalf of the applicant. So just to clarify the milestones within the gda, do not predicate the drawdown of the funding. The drawdown of the funding happens and the milestones are used to monitor the progress of the project. The the expenditure forecast is routinely updated and agreed with homes England, so there's not necessarily required to meet a milestone by the contracted timescale. To then roll the money down. Homes England have provided or weren't able to be here today, but have provided us with some response, indicating that there is flexibility within the contracted parameters of the gda, or homes England to contemplate changes, for example, changes to milestone dates, and that falls within Holmes, England's delegated authority. In the event that the grant recipient GCC requests a change which would take the project outside of the contracted parameters of the gda, this would need

to be referred to mhclg and HMT for consideration and decision making. So whilst there's a funding agreement in place, our funding is secure and there are mechanisms to review changes.

41:03

When you say the review would need to be considered by mhclg and a what assurance Can you give us that that's going to give you a positive outcome? I

41:39

Chris BC, for the applicant, provider, we stay within the parameters of the gda escalation to hclg and HMT isn't required. The way that homes England have approached delivery of our other schemes within the portfolio is that a commitment is made prior to commencement of the build stage, so the review is undertaken prior to commencing the works. Can use our court as an evidence in relation to that where an agreement was really reached on the funding necessary to deliver the construction contract and that funding was committed to before we awarded to contract and commence the works.

42:30

Okay? I mean the letter that you provided, the final three bullet points, infrastructure works start on site. So do

42:47

I'm just trying to understand how it all hangs together. Are you able to help me any further in terms of bearing mind you don't have the full quantity of money that's needed? How how this works in practice, because you're saying that then the homes England money will be drawn on first. I understand that. But what I'm not clear of is as that doesn't fulfill the entire project, and national highways wouldn't want you to commence on site until you've got commitment that you can do the whole project. I'm struggling to see how the whole machinery works in practice. You

44:27

I speak to on behalf of the applicant, making reference to the response homes England provided under q5, 0.14 limpool, flexibility also extends to time and amounts of ground drawdowns to suit the expenditure forecast profile based on the progress of the scheme through its various stages of design and delivery, effectively an assessment made at a given point in time on what the expenditure for. Asked, requires, enables decision making to be made at that point in time.

45:12

Yeah,

45:18

I'll try and look at it from a in it from a different angle or different direction. Your current timeline is that with a fair wind, you'll get a favorable with a DCO decision June next year, and your you've indicated that you hope to commence in autumn 2025 is that correct? Yes. How, when you don't currently have the money your other developers, which you're relying on getting planning permissions by. Are they all going to get planning permission? Can you have confidence that they would have those planning

permissions by within that time frame? I don't think that is even what the applicants have forecast, or the joint councils forecast for their likely timeframe for determination.

46:32

Chris, PD, for the applicant, make reference to my response to the first point on the agenda where we stated that the applicant currently considers that commencement of works would be delayed until such time that all of the necessary funding secured to enable full delivery of the works was in place. Effectively it would frustrate the notice to proceed process. Okay,

46:58

all right. Thank you. It's clearly we've got a compulsory acquisition hearing in a couple of days time, and there are obviously fundamental legal tests that need to be met on compulsory acquisition. I'm trying to avoid going into those tests today, because I don't think is the time, but we will need to have some pretty compelling answers later in the week. So I'd ask you to have a long, hard think about how you consider this is going to work in practice. Thank you. Applause.

47:58

I'll move on to my next question, because, again, I think it is quite fundamental to how you're saying this is going to be delivered. If I've understood correctly what you're saying that part of your analysis of where the money will come from is reliant on safeguarded land, albeit you recognize that's not currently allocated. It was included in the HIV bid. Now I'm just struggling with that concept because it's not allocated. And the local plan process, I think you're hoping that it will become before colleagues of mine in the inspectorate for examination early 2026 I think that's right, obviously sometime after the Secretary of State's got to put her mind to our report, and we won't know at that time whether you have or not included the safeguarded land in your allocations, and your colleague further down the table also reaffirmed that you should not be prejudicing the consideration of the local plan.

49:15

So

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just explain to me how that works its way through on your funding calculations. So

49:43

I speak to on behalf of the applicant, noting the position that we wouldn't commence works until the funding was secured. We do think it's relevant to consider the SLP coming forward within a useful time scale in relation to. The compulsory acquisition period. We're aware through the SLPs regulation 18 consultation, there's a significant number of developments in the vicinity of junction 10, which would stand to benefit. Effectively, I think what we're the position that we're moving towards, is to acknowledge that the current modeling associated with the safeguarded land is, in fact, a proxy position, and is a proxy position for any other development which may come forward in the area. This would give a degree of flexibility to where the residual funding could be secured.

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I can understand that. But if, in terms of giving us confidence that you can reasonably apportion 33% of your funding to something that is unknown.

51:08

It again gives us pause for thought as to how reliable that your reliance is on it And is that an unfair criticism I'm making? I

51:51

It's PT, on behalf of the applicant, I can understand your concerns. I think it's relevant to step back to the original gda contracting process and to understand the nature of some of the due diligence and the associated funding requirements or conditions associated with the scheme funding. So in undertaking due diligence alongside Holmes England, CBC and TVC, so Charlot Borough Council and shewsbury Borough Council during 2020 as part of that contracting process for the original funding, the applicant made an assessment of the impact of the HIF funding in respect to the viability of the identified developments. The funding agreement included conditions to seek to recover funding from the identified developments, since the HIF funding was considered to result in significant financial surpluses accruing to landowners or developers associated with the identified developments. In essence, it's homes England. Position in awarding the funding that the private sector beneficiaries should be approached for funding to support delivery of housing within the county.

53:13

Okay, that may well be their position, and it may not be an unreasonable one, but it doesn't take us much further down the line in terms of understanding. I'll ask a different question. When the bid was put together, was the funding coming from homes England intended to deliver the whole project?

53:41

For speaking on behalf of the applicant. Substantial majority. There was a 4 million contribution from Gloucestershire county council, so the scheme was fully funded.

53:55

So that that's that was, yeah, that was my understanding from having read so whilst Holmes, England's aspiration was that developers, who would benefit should make a contribution towards that, it doesn't work in practice with how things work its way through, does it? Because the National Planning Policy Framework tests don't apply in that way. And if you've got funding and you're going to deliver an infrastructure scheme.

54:43

How does

54:45

they're not directly related one to the other, so how does, how do you square that circle? I. Do you see what I'm saying? You've designed a scheme which seems to me to be an in many ways, exactly what you should be doing, you know, but it isn't responding to the tests in the national planning policy framework for what a housing developer needs to do in responding to their developments and the

impacts that they have. And I think it's the point I made at the first hearing in that you've got the national policy statement for national networks testing against one thing. You've got the National Planning Policy Framework dealing with housing schemes, and they don't quite align in terms of financial delivery. And so you've gone ahead quite reasonably, it seems to me, to get funding from homes England, which, on the face of it, at the time you did it was funding the entire project, apart from the 4 million contribution from the county council. It is only then future circumstances, whether it's inflation or whatever this is now giving you this hole in the budget so that you see that they're not aligning in terms of what you're now going to say to the developers about the contributions you believe they should be making, the tests aren't, aren't the same. So I'm struggling again to see how you're bringing it together, to say to us that the house builders out there are going to fill the gap that you've identified you

57:03

So my understanding position so Holmes, England, obviously being alive to the gap, have made it clear that so far as the externalities imposed on the network by those developers Who will then benefit from the scheme that that shortfall is reasonable to anticipate that shortfall should be addressed by the beneficiaries. Clearly the need that underpinning the scheme is to address the severe impacts applying the mppf test from the strategic allocations, but also to allow to take a reasonable view about what is likely to come forward under the next local plan process, which is anticipated for submission in 2026 and in that context a judgment, it's reasonable to make a judgment about what is likely to be coming forward over the next couple of years, aligning with that 2026 submission, and the judgment has been reached that the site that's specifically been removed from the Green Belt under the last process can reasonably be regarded as a front runner, albeit not assured. Hence the proxy argument. But it's difficult to envisage that there won't be further development, not least given the increase in housing targets after 2031 identified for this and it's also not unreasonable to us to assume, from our understanding that over the next two years, there will be clarity about the applications that are coming forward, in particular in relation to the north west Cheltenham safeguarded land, and a judgment has been reached which underpins the approach to including the development flows from that development in the model. Albeit as indicated, the scheme has been designed principally simply to deal with sa the strategic allocations four and seven, but that's the position as to why we would say it's reasonable to anticipate that over the next two years, in alignment with the emerging local plan, something probably is. The safeguarded land at North West Cheltenham will be coming forward with a potential mechanism to capture a contribution from them and from them, and inf seven under the JS JCS anticipates arrangements will be made by negotiation with developers. And so I think the methodology that's emerged is really just a joined up arrangement which is seeking to capture on a consistent basis the fair contributions that can reasonably be expected from more than just one developer. I

1:00:47

Okay, I think before I move on to sort of the next subheading, just invite. Are there any other parties who wish to say anything having heard what they have so far? Mr. Garvey,

1:01:04

I'm very grateful. Says briefly, I'll preface the submissions by making the point that we're not seeking to draw you in to discussions about any particular planning application. In fact, we're seeking to do exactly the opposite, because in the funding shortfall, it was being suggested that 38% of the funding shortfall

will come from the north west Cheltenham allocation. And as you'll be aware, there is a planning application that is pending determination there are significant gaps between the parties on that where my client's position is that they don't require junction 10, and therefore it wouldn't be still compliant to provide funding towards it. The county obviously take the opposite view, and are seeking in the region of 31 million. Opposition is it's not for this arena to try and resolve that. That's for a decision maker making a determination on whether the till test is met there, whether that be locally or on appeal. And the simple point from for the purpose of this arena is there's no certainty as to what a decision maker might say on that question, this not being the arena to ultimately determine it, because, for the obvious reason, that if a decision was taken here, that it was justified, it's obviously open to a different decision maker to decide it's not. And therefore where that takes us is that, is that that there can be net you asked the question earlier, what weight can we afford to this funding strategy? And we would say negligible, because at the moment, if it relies on funding from section 106 agreements, where there is no agreement at all, then there can be no assumption as to what might eventually come to fruition on those contributions, whether we're right on the side of the table or the county, no assumptions can be made on that point, which means that that funding shortfall exists and what bearing that has on your ultimate decision. I don't wish to make submissions on simply that. We invite you to make no assumption or judgment on that we think that can be the only appropriate way to deal with that. It was also suggested that policy inf seven gives added weight to the contributions that the county are seeking policy inf seven of the JCS, for the avoidance of doubt, that policy is a generic policy which justifies developer contributions on any site where it's appropriate, and it would apply universally to any site, ie, it doesn't lend favor towards an allocated site or a non allocated site. The text of the policy doesn't say anything of the sort, so that that doesn't give any more weight or less weight to any sought contribution. And the final point on safeguarded land is it was suggested that 33% of the shortfall will be made up from section 106 agreements related to the safeguarded land. Well, it can't be that the county have it both ways. You either are reliant on money from the safeguarded land, in which case you've got to facilitate or at least not prejudice the delivery of the safeguarded land and. Whether there is prejudice the delivery of the safeguard land. Circles back to the discussion we were having earlier today in the plans that will be produced. So it's either that you don't prejudice and therefore you can rely on the funds, or if you do prejudice the delivery of the safeguarded land because of a ransom situation, then plainly, you can't rely make any assumptions about what money might come to fruition. So we say you can't have it both ways, which, again, I think that turns on the discussion we're having earlier. But just to make sure that point's clear, nothing further. Thank you.

1:05:36

Do the joint councils have anything they would wish to say at this point?

1:05:40

So we do miss night for the joint councils. So the joint councils are concerned and agree with the submissions just made, that the pre planning applications cannot be predetermined, and would be hesitant to say that they would agree to any such pre determination taking place. And the same with the local plan and the local plan time frames. Understand that aiming for 2026 as we know, and as you're well aware, the planning applications in this case are likely to be made by planning committee, so that places the hands right outside this arena in respect to section 106 agreements. So with all due respect, I do remind you that the statutory test to be made met with section 106 agreements. I'm joined by the

director of planning from Cheltenham and Tewksbury Borough Councils, and they assure me that the planning applications are coming through, but they have to make sure they meet the statutory tests. There are other other infrastructure to be considered when they look at development, and that includes primary schools. So I would also like to wind back to the very beginning of your discussion in respect of the section 106 methodology. I understand the joint councils were consulted, and I have seen their correspondence back to the applicant. In this regard, however, they have not agreed to the section 106 methodology. And in light of the statutory tests and in light of other considerations on the site, such as we go back to the primary school and other infrastructure which must be delivered, their agreement to the section 106 methodology, we say is actually imperative. So my final point and listening to the discussions is, if there is a gateway discussion with with the national highways, and that funding involves funds which may come from the local authorities, particularly in LPA, funds, then we also consider it imperative that the local authorities, particularly the LPAs, have the opportunity to not only agree, but approve such agreement before it goes through, because there will be reliance, I assume, and I could be wrong. It could be totally private funding in which that the agreement is based, but if it is reliant upon any funding that's coming from the LPA, the LPA need approval, not consultation. I have nothing further, unless my friends beside me do, or you have any questions of them, I have Tracy Bucha and Shaw, who's the Director of Community and Economic Development, Economic Development, and Nick Bryant, who's the associate director of tanig. Thank you, sir,

1:08:29

thank you. I've not got any questions at the moment. Thank you, but that's helpful contribution national. Howard, do you wish to add anything further at this time?

1:08:54

I don't think so this time. Thank you, sir.

1:08:58

Okay, thank you. So if I can just come back to the applicant, is there anything further you would wish to set out to us on this particular aspect to sort of close off this agenda item,

1:09:12

not At present. Thank you, sir.

1:09:15

Okay, thank you.

1:09:21

So I think that then takes me to again, linking into the costing and how you've calculated your costing. We did pose a written question on this, and it was just in light of what you said today, how things might get delayed. Does your current cost estimates take into account that possibility and the future forecasts running forward of the. The consequences of those delays.

1:10:09



Chris Beatty, on behalf of the applicant, the applicant hasn't contemplated alternate timescales within the cost estimating work done to date. I Yes,

1:10:23

I think it may be appropriate to do so, even if it's just to give us greater reassurance that your current estimates are robust and could deal with possibly cost overruns or further inflation or whatever it happens to be, but equally, you can hopefully give us greater clarity on the savings that you've identified, so that we're looking at both sides of the equation, and obviously in light of the ongoing conversations you'll have with national highways about how those two elements are viewed by them as well, so that again, we can have as much certainty as we can as to how you've sought to ensure appropriate fundings in place to match the cost forecast,

1:11:24

yep, Okay.

1:11:40

Now the next part of agenda was really focused on section 106, but I think we've probably touched on that to a greater degree already, and so I think what, in light of the consultation that's ongoing with this methodology that you're seeking to adopt in terms of a time frame that you're working to are we likely to be in a scenario where that will be concluded prior to the end of the examination? Do

1:12:23

Yes. Nathan drova, for the applicant, yes, I'm expected to be resolved in September. The that there's the letters of support you would have seen deal with a range of issues, the compliance with the tests, casting the net a bit further to capture other developers. There's that should be resolved in September.

1:12:52

I wonder if other parties agree with that time frame, as far as they understand it.

1:12:59

Joe Aldridge, for broad homes and persimmon homes. I won't say it is capable of being resolved by the end of the examination. It's not to say that it will be, because there are some significant differences still.

1:13:15

Okay, well, we'll see what progress materializes. But, yeah, hopefully people will be beavering away in the background, and we'll see what comes of it. Thank you. You

1:13:48

without getting dragged too much into the specifics of your scheme, as I understand it, there is a material difference between what you consider to be necessary for your proposal to be delivered with what the applicant is designing as the proposed development before us?

1:14:13

That's correct. Yes, okay, so

1:14:15

as a broad question of principle, then, without knowing what the eventual outcome of that eventual local authority decision is, if Lord persimmon position is accepted that potentially gives a further risk to the quantum of funding you might achieve. Um, so has that been considered as a risk to the scheme? And again, it may well be something that you want to respond to in writing, rather than me throwing at it at you this afternoon. But again, it just seems to me that because we don't have an agreed position. Population, and there may well be a material difference in what Blore and persimmon consider might be necessary for highway mitigation and what your scheme is proposing. Again, what? What does that do for your funding strategy?

1:15:28

Nathan drova, for the applicant, yeah, inf one, six and seven all refer to cumulative assessment. So I don't see that the LPA will be supporting a consent for an individual developer bringing forward their development without strategic mitigation. And I think the other point, and I know not getting into the detail of it, cumulatively, you have GC 3m in front of you with that new assessment from the host, and that just reaffirms the position of the dead weight and and the impacts on the local network. So cumulative impacts on local network, and I don't see the LPA would be able to advance, well, they would be up to advance in isolation, but it wouldn't comply with the JCS policy on the cumulative assessment. So

1:16:23

I'm not sure that's quite answering the question I've posed. I think that even if there does need to be a cumulative assessment, the argument that's being presented to us is that your scheme goes above and beyond what Lauren persimmon believe is necessary for the delivery of their scheme. So taking that in its simplest terms, the cost of road improvements they see will be less than the cost of the road improvements you're designing. And so there is, at the moment, your figure was 38% of the 81 million, and it could well be less than that, if their calculations are correct. So I don't know what the answer is going to be. Don't really need to know, but it just seems to me, there is another possible gap in your funding. So if that scenario pans out through each of your different proposals that are coming through on the allocations, again, we're left with the difficulty, because there's a substance, there might be a significant shortfall, and I'm thinking that we're not going to know what the answers to those are, because any decisions on those individual applications are going to be made sometime after the examination closes. So what I really need from you is, again, that the confidence that your funding stream is dealing with these different eventualities, because we're not going to know when we report to the Secretary of State, what with any certainty? And Mr. Garvey is saying we should make no assumptions that you know. So we've got quite diametrically opposed positions, but ultimately I'm left with you need to explain to me, how you envisage the confidence that you can deliver this scheme?

1:18:54

Nathan drove up for the applicant. I think we'll probably make written representations on the detail of it. I would like to draw your attention to one point on the on the letters of support. So the blars persimmon letter of support for the funding methodology says it differs from the other letters of support. It says, subject to reviewing the revised shortfall funding methodology, we will consider whether it can be

supported, noting that we do not object to the TCO scheme in principle agreement to the supporting, supporting the funding methodology. And this is a point I'd like to make, or making any alternative funding provision or works in kind will be subject to the following. And then they set out their caveat. So I'll take you back to the point we where it's reasonably to expect funding to drip drip over the course of land parcels. That's not always the case. Where the infrastructure is essential to make the development acceptable, they will bring it forward. So if you have, for example, a development with a call for a secondary school, a train station. And strategic road infrastructure. Quite often the strategic road infrastructure is brought forward because it forms part of the access to the site. In the case of the blows persimmons, a 401 line does form part of the access to the site. And I think that's probably why the reference to works in kind is made in that letter of support. So the likely outcome is could be a hybrid of direct delivery and advanced funding from other developers when it's deemed that piece of infrastructure is necessary to make their development acceptable.

1:20:42

Yeah, I think the the tension that we've been grappling with, perhaps directly and indirectly all afternoon, is we just need confidence that the total funding gap between the hip monies and the cost of the scheme is is fulfilled with appropriate monies. And to go back to what Mr. Mond was reflecting on before the NPPF test, which obviously is front and center of all of the planning applications, future and current for the housing has a test in it specific for transport mitigation, and that's a very clear one. Is to cost effectively mitigate any significant impacts. The severity test only kicks in as a measure to basically withhold or refuse planning permission after the applicants have cost effectively mitigated their significant impacts. Now if what I'm saying is is taken to be correct, then I think we just need some kind of help getting to the position that the 81 million pounds or thereabouts, whatever it may be once, once we've had that, you've had a discussion with national highways, is effectively aligned with that, with that NPPF test of cost effectively mitigating significant impacts, because if it isn't, there is a greater disparity between your secured section 106 funds and what is needed to deliver the scheme. And I think it's it's really just that. It's that equation that we really need some help with. Thank you,

1:22:33

rather than sorry. Rather than respond further, at this stage, we will Take that away and give you a full response. You

1:23:28

we start with clear heads tomorrow on sort of the environmental matters. So I think looking at the specific questions we had identified in the agenda, I think we've had answers to the majority of those as we've gone round. So the only thing I'm I think I'm left with, and I'm not sure any representatives of St moduin are here, but I'll pose the question to the room, because they they responded to question five oh 12 in suggesting that the funding issue could be kept alive by an appropriate worded requirement. Now I'm not certain that that's necessarily correct, but I would, just as it was put into relevant representations. I would just be interested on views of other parties on that. And if you're not able to respond now, then that's fine, but perhaps, if you can think about it as a another way forward again. Would be interested to hear people's views. So do people wish to respond now?

1:24:53

Yes, the joint councils, I'll need to take instructions.

1:24:59

Okay? Thank you. Thank you.

1:25:08

Or perhaps it's something you can reflect on, and if we start tomorrow with that any answers you might have. Or if, if, if you just want to reserve it to a written response for deadline four. That might be simple for everybody, so you're not all squirreling away panicking. It's the last thing I would want to do. So could we

1:25:30

reserve for a written response at deadline four?

1:25:35

I'll say the same for everybody. Be interested to hear what people's submissions are and whether that might be a way forward. Okay, thank you. So before I close, are there any outstanding matters on funding that anyone wished to raise? Having heard the quite interesting debate and the various points submitted. No, okay. Well, thank you very much for your contributions. I'll close this part of the hearing now it's just coming up to 25 past five. So thank you everybody for your helpful input. Thank you. Thank.