

Your Reference

Our Reference
2745292/TAW1



FAO The Examining Authority
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Gowling WLG (UK) LLP
Two Snowhill
Birmingham
B4 6WR

DX 312501 Birmingham 86

1 October 2024

Dear Sirs

Reference TR010063 - Application by Gloucestershire County Council for an Order Granting Development Consent for the M5 Junction 10 Highway Improvements Scheme

Deadline 5 Submissions by Bloor Homes Limited and Persimmon Homes Limited (Interested Party Reference Numbers 20047701 and 20047702) (together the Interested Parties)

Please find enclosed, on behalf of the Interested Parties, our responses to the Second Written Questions.

We confirm that the Interested Parties will participate in the Issue Specific Hearing 4 on 15 and 16 October 2024.

If you require anything further, please let us know.

Yours faithfully

[Redacted signature]

📞 Enquiries please contact: Toni Weston

[Redacted name]

@uk.gowlingwlg.com

Gowling WLG (UK) LLP

Enc.

T +44 (0)370 903 1000
F +44 (0)370 904 1099
gowlingwlg.com

Gowling WLG (UK) LLP is a limited liability partnership registered in England and Wales under registration number OC304378 and is authorised and regulated by the Solicitors Regulation Authority. A list of members may be inspected at 4 More London Riverside, London, SE1 2AU, its registered office.

Gowling WLG (UK) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at www.gowlingwlg.com/legal.

Legal02#111870659v1[TAW1]

REFERENCE TR010063 - APPLICATION BY GLOUCESTERSHIRE COUNTY COUNCIL (THE APPLICANT) FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE M5 JUNCTION 10 HIGHWAY IMPROVEMENTS SCHEME (THE SCHEME)

DEADLINE 5 SUBMISSIONS BY BLOOR HOMES LIMITED AND PERSIMMON HOMES LIMITED (INTERESTED PARTY REFERENCE NUMBERS 20047701 AND 20047702) (TOGETHER THE INTERESTED PARTIES)

INTERESTED PARTIES RESPONSES TO EXA'S SECOND WRITTEN QUESTIONS

NO.	TO	QUESTION	RESPONSE
Q1.2.2	The Applicant, Bloor and Persimmon Homes, Joint Councils, St Modwen and Midlands Land Portfolio	<p>Local Policy</p> <p>The JCS, as adopted, does not stipulate that for individual allocations, each subsequent planning application must not go ahead in advance of any road improvement scheme but to set out how it proposes to ensure the particular scheme would need to address “the provision of infrastructure and services required as a consequence of development,”</p> <p>Paragraph 5.8.7 of the JCS goes on to say “This policy will primarily be delivered through the development management process. Early engagement with the Local Planning Authority at pre-application stage is encouraged. Developers may note in this respect that Gloucestershire County Council has adopted a ‘Local Developer Guide: Infrastructure & Services with New Development’ (February 2013) that relates to infrastructure requirements and associated matters for which it is responsible.” (Our Highlighting)</p> <p>(i) Is it not the case, that even if the ExA were to accept the Applicant’s case that the need for the broad infrastructure</p>	<p>(i) The Interested Parties agree with the points made by the ExA including that the JCS, as adopted, assumes that each individual development will come forward with its own mitigation measures which will be determined and delivered through the development management process. The JCS does not accordingly require or justify the scheme for which the DCO is sought.</p> <p>(ii) The Interested Parties agree with the ExA that it is for the developer of each individual development to propose as part of their development the necessary infrastructure and services required to be delivered to mitigate their development.</p>

		<p>improvements has been established through the evidence base for the JCS, the actual policy and supporting paragraphs do not specifically require this proposed development, or specifically justify it in need terms.</p> <p>(ii) Does it not remain the case for the developer to demonstrate to the LPA's satisfaction that the scheme proposed provides the infrastructure and services required as a consequence of the individual developments?</p>	
Q1.3.1	Bloor Homes and Persimmon Homes, St Modwen and Midlands Land Portfolio	<p>Alternatives</p> <p>Noting the evidence provided in support of the applications for allocations A4 and A7 and recognising that it is a decision for the LPA as to whether to grant planning permission for the applications. What is the IPs position on the consideration of alternatives for the delivery of the Proposed Development?</p>	<p>The Interested Parties do not consider that the Applicant has had regard to or considered sufficient alternatives to the proposed scheme. In particular, the Applicant appears to have only considered variations to an all-movements junction 10 scheme, rather than alternatives to a junction 10 scheme.</p> <p>Options that the Applicant should have considered include a limited southbound off-slip signalisation scheme at junction 10, combined with signalisation of junction 11, a mitigation scheme at the A40 Elmbridge Court roundabout (as envisaged by the JCS Infrastructure Delivery Plan) and a series of local road network mitigation schemes. The Interested Parties have tested these options and believe that a package of these works, or similar, could mitigate the impacts of the allocated sites A4 and A7, along with other growth in the JCS, subject to additional mitigation being identified by site A7 as part of its Transport Assessment. The Interested Parties are of the view that this would be considerably more cost-effective and easier to deliver.</p>
Q5.0.1	The Applicant, Joint Councils,	Funding	The Interested Parties note that the scheme has been added or will be added to the infrastructure which could be funded

	<p>Bloor and Persimmon Homes, St Modwen and Midlands Land Portfolio, Cheltenham Borough Council Property and Asset Management</p>	<p>At CAH1 the Joint Councils advised that there had been a change to the Community Infrastructure Levy Funding Statement. Please can all parties explain what implications this has for the funding in respect of Compulsory Acquisition and the obligations under those regulations, and secondly in the Applicant's capacity to fund the construction of the project.</p> <p>In responding, please set out any implications for the timing of the delivery of such funding, and as far as you can the changes to the amount of funding this could ultimately deliver, relative to the sums which might be delivered through s106 alone?</p>	<p>from CIL receipts. The Interested Parties understand that this will have no impact on funding in respect of compulsory acquisition of land for the scheme as the Applicant has indicated that compulsory acquisition costs will be funded from the Homes England grant. The Applicant has however indicated that CIL could be used to fund the shortfall in the scheme's construction costs.</p> <p>The Interested Parties agree that the use of CIL funding towards the scheme is appropriate and, indeed, the Interested Parties have previously indicated to the Applicant that the scheme should be funded from CIL and not from s106 contributions (in this respect, it should be noted also that developments should not be required to pay both CIL and a s106 for the same infrastructure).</p> <p>It is understood from the Applicant's Funding Technical Note [REP4-044] that the LPA currently holds £15m in CIL funds and that it is expected that more than £20m will flow from upcoming developments. The amount of this funding which could be utilised for the scheme (as opposed to the other infrastructure which the LPA has committed to deliver through CIL) is unknown, but it is possible that the monies currently held by the LPA could be used to forward fund the scheme.</p> <p>In addition, funding through CIL rather than s106, could provide greater certainty as to the timing of funding given that payments would be required on commencement of each chargeable development.</p>
--	---	--	---

			The use of CIL would further secure consistency as to the amount of contribution payable towards the scheme by each individual development (not being subject to other factors including, for instance, viability) and would provide consistent methodology for seeking contributions from the safeguarded land or from unknown future growth.
Q5.0.2	The Applicant, Joint Councils, Bloor and Persimmon Homes, St Modwen and Midlands Land Portfolio, Cheltenham Borough Council Property and Asset Management	<p>Funding</p> <p>The ExA understand that the Community Infrastructure Levy Amendment Regulations 2019 removed the restrictions on pooling funds and on funding the same item of infrastructure from both CIL and s106 obligations.</p> <p>Can each party explain the changes that the inclusion of the M5 J10 within the Infrastructure Funding Statement has in respect of the potential to facilitate funding in combination with any s106 money?</p>	<p>The Interested Parties agree with the ExA's understanding of the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019.</p> <p>The Interested Parties agree that inclusion of the scheme within the Infrastructure Funding Statement facilitates the use of CIL to fund the scheme in combination with other funding streams (including potentially s106 contributions). However, where an individual development is contributing to the proposed scheme via a CIL charge then it should not also be subject to a requirement for a s106 contribution (i.e. individual developments should not be charged twice for the same infrastructure).</p>
Q5.0.16	Applicant (i), (iii) and (iv) Bloor Homes (ii), (iii)	<p>Potential Ransom Strip</p> <p>During the CAH, discussions took place around whether there was the potential for a ransom strip to be created by virtue of the DCO proposals.</p> <p>(i) Following receipt of the plans as part of the action points to the CAH, it appears to the ExA the highway boundary is proposed to be contiguous with the land plots that front onto</p>	<p>(i) N/A</p> <p>(ii) Bloor Homes confirms that it remains concerned about the potential for a ransom strip. Whilst it welcomes the Applicant's confirmation that the highway boundary is proposed to be contiguous with the land plots that front onto the north side of the A4019, there remains the potential for a ransom strip from the proposed Tewkesbury Road junction to the boundary of the land in Bloor's control, including in respect of whether it would be of a sufficient width to enable a road to be provided in the future. Confirmation is sought</p>

	<p>the north side of the A4019. Can the Applicant confirm how this arrangement is secured in the DCO?</p> <p>(ii) Can Bloor advise whether this overcomes the concern they have set out?</p> <p>(iii) The ExA understands that GCC as a landowner has the same rights as other landowners and should not be disadvantaged, however it also appears that it should not be disproportionately advantaged by virtue of any CA and the choice of access proposed by the Applicant.</p> <p>In [REP3-044] Item 15.8 the Applicant recognises that the design currently offered achieves a ransom situation.</p> <p>“GCC, as landowner, is seeking recognition of the value of its land over which the access will be built, on the basis that this land is required to facilitate future development. It could be provided as part of a landowner equalisation agreement.”</p> <p>Do reasonable alternatives exist to access the land to the north to allow for the development of the safeguarded land should it be allocated as they appear to do at present? (This would appear to be the inference in the Applicant’s response to ExQ1.1.8)</p> <p>(iv) Should the ransom situation arise can the Applicant explain how this might be regarded as meeting the tests in the PA2008 and the CA Regulations.</p>	<p>from the Applicant as to how these concerns will be addressed and how a commitment will be secured from the Applicant to ensure that, post making of the DCO, the Applicant does not create a ransom strip and the landowner will not be placed in a worse position than it currently enjoys.</p> <p>(iii) Notwithstanding the Applicant's response to ExQ1.1.8, it is unclear how the landowner will be in the same position as currently i.e. where a future planning application could include an improved access onto the A4019 within the section of frontage within their control. It is not known to what extent, if any, the Applicant has tested this, given that if the scheme is delivered then the highway arrangement and traffic usage along the A4019 will be materially different to as it is currently. Bloor Homes would welcome clarity on this from the Applicant.</p> <p>Given the above, Bloor Homes has undertaken its own work and believes that an alternative access scheme could be capable of being implemented to provide access to the safeguarded land post construction of the scheme (see appended plan). This alternative access scheme was submitted to the Applicant, as highway authority, for pre-application consultation. It was indicated at the hearings in August that a response to the submission would be provided by the end of August but, as yet, no response has been received. It is not clear whether in responding to ExQ1.1.8 the Applicant is referring to this scheme or to another scheme.</p> <p>(iv) N/A</p>
--	--	--

Q5.0.17	The Applicant and Bloor Homes	<p>Potential Ransom Strip</p> <p>(i) In the event that a ransom strip was created where one does not currently exist, would the landowner be entitled to compensation taking into consideration the current status of the land, and that it is specified as 'safeguarded' in the JCS?</p> <p>(ii) If this is the case with regard to future funding for the Proposed Development – would the relative amount payable be any different, or would it be split to be paid pro rata by the beneficiaries?</p> <p>(iii) Has the Applicant's assurance that there is sufficient funding in place for CA included for this eventuality should it exist?</p>	<p>(i) Bloor Homes and the landowner would welcome confirmation from the Applicant as to the basis of compensation payable to ensure that equivalence is achieved.</p> <p>(ii) Bloor Homes and the landowner would again welcome a response from the Applicant on this point.</p> <p>(iii) N/A</p>
---------	-------------------------------	--	--