

AtkinsRéalis



## **Joint Councils Deadline 7 Submission**

Gloucestershire County Council, Cheltenham  
Borough Council, Tewkesbury Borough Council

30 October 2024

# **M5 JUNCTION 10 IMPROVEMENTS SCHEME DCO**

**Joint Councils Written Submission of case put orally  
at the Hearings held the week commencing 14  
October 2024**



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# 1. Introduction

1.1.1 This document summarises the submissions made by Gloucestershire County Council (GCC), including GCC in its role as the Local Highway Authority, Cheltenham Borough Council (CBC) and Tewkesbury Borough Council (TBC) as Local Planning Authorities (LPAs) (together ‘the Joint Councils’) at the Hearings held on the week commencing 14 October 2024 in relation to the GCC Major Projects Team (‘the Applicant’) M5 Junction 10 Improvements Scheme Development Consent Order (DCO) (‘the Scheme’). The Joint Councils are the three host authorities for the Scheme.

1.1.2 The Joint Councils were represented at the Hearings by the following persons:

- Catherine Knight (CK), Director – Legal at DWF Law LLP;
- Ben Watts (BW), Joint Councils’ Lead at GCC;
- Tracey Birkinshaw (TB), Joint Councils’ representative at CBC;
- Nick Bryant (NB), Joint Councils’ representative at TBC;
- Andrew Padden (AP), Principal Project Manager at AtkinsRéalis for the Joint Councils’ involvement in the DCO Examination for the Scheme, Highways Lead;
- James Jackson (JJ), Associate Director and Transportation Lead at AtkinsRéalis;
- Rob Sewell (RS2), Associate Consultant and Flood Risk Specialist at AtkinsRéalis.

## 2. Issue Specific Hearing 4 (ISH4)

### 2.1 Agenda item 1 – Welcome, introductions and arrangements for the Hearing

2.1.1 No questions or comments of an introductory or preliminary nature were raised by the Joint Councils on this agenda item.

### 2.2 Agenda item 2 – Purpose of the Issue Specific Hearing

**Agenda item 2a – The ExA will seek views of all parties on the approach to be taken for any future hearings and consideration of whether these could be undertaken virtually as a consequence of the Change Request No.1.**

2.2.1 The ExA invited the Applicants and IPs to express their views on the arrangements for the next stage of hearings and Examination. CK stated that the Joint Councils are content with any future hearings to be undertaken virtually.



## **Agenda item 2b – The ExA will seek clarification from the Applicant on the situation with regard to the Change Requests**

2.2.2 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during ISH4, the Joint Councils have no further comments to make.

## **2.3 Agenda item 3 – Traffic and Transport**

### **Agenda item 3(i) – The ExA will explore with National Highways (NH) and the Applicant their consideration of current respective positions with the adequacy of the transport modelling**

2.3.1 The ExA asked the Applicant, the Joint Councils and NH whether there is agreement between the parties that the transport modelling is fit for purpose and appropriate for decision-making. JJ stated that the Joint Councils are continuing to review the transport modelling and are not putting forward further comments during ISH4. The Joint Councils have not identified any issues on the transport modelling that has been submitted to Examination. The Joint Councils have identified the changes to the modelling that have been provided by the Applicant and are looking at the changes in light of the ongoing additional information that is coming through.

2.3.2 The ExA queried the Applicant if there is anything in the Transport Modelling Sensitivity Tests [AS-078] that put doubt on any of the air quality or noise assessments that have been submitted to Examination using the DCO base year model. The Applicant stated that the changes are all well below the thresholds that would trigger any change in the submitted air quality or noise assessments. The ExA then asked if the Applicant's view regarding the adequacy of the sensitivity tests is shared by the Joint Councils and NH. AP confirmed that the Joint Councils agree with the Applicant's view.

### **Agenda item 3(ii) – The ExA will explore with the Applicant the consequential effects of the sensitivity testing of the SATURN Modelling.**

2.3.3 The Joint Councils offered no comments on this agenda item. The Joint Councils acknowledge the modelling that has been provided and will continue to review the detail of the modelling. Following a review of the evidence presented during ISH4, the Joint Councils have no further comments to make.

### **Agenda item 3(iii) – The ExA will seek an explanation from the Applicant on the Active Travel Provision within the Scheme and the views of the Joint Councils on their conformity or otherwise with Local Plan policy in line with NPSNN paragraph 5.211.**

2.3.4 The ExA clarified with the Applicant and the Joint Councils their respective positions on item 1.2 of the Statement of Common Ground (SoCG) Joint Councils [REP4-022], being mindful that the purpose of the Active Travel Provision plans [REP5-030] is to respond to issues raised in item 1.2 of the SoCG. The ExA queried if there has been a dispute about the approach taken with regard to sustainable travel provision within the Scheme where the provision should have been considered up front during the design evolution process. CK confirmed that the Joint Councils are looking for the Applicant to respond to this particular point.

2.3.5 The ExA also queried the Joint Councils their position on item 4.2 of the SoCG Joint Councils [REP4-022]. JJ explained that the original comment of the Joint Councils was that there should be a separate chapter within the Environmental Statement (ES) on Transport. Whilst a Transport chapter is not included as part of the ES, a lot of the information requested by the Joint Councils have subsequently been provided by the Applicant in a different manner.

2.3.6 The ExA then asked the Joint Councils if there is any issue with regard to the timing that the assessment of sustainable transport provision has only been provided in Deadline 5 of the Examination in REP5-030. The ExA also queried if this raises any concern over the sustainable transport provision within the Scheme. JJ confirmed that the elements within the Order Limits of the



Scheme conform to the relevant local plan policies. There are still some missing links outside of the Order Limits, which the Joint Councils will continue to explore with the Applicant to understand how these can be delivered outside of the DCO for the Scheme to gain surety around their deliverability and funding availability.

- 2.3.7 The ExA followed up with the Joint Councils on their position regarding the sustainable transport elements of the Scheme relative to the test in the National Policy Statement for National Networks (NPSNN). CK explained that connectivity to the surrounding sustainable transport network shall be fully provided by the Scheme to meet the NPSNN policy test and local plan policies. The Joint Councils' position as of ISH4 was that the NPSNN test on local plan policies has not been fully met. The Joint Councils will continue the discussion with the Applicant on this outstanding matter in the SoCG.
- 2.3.8 The ExA quoted paragraph 5.211 of the NPSNN (December 2014), which states that the ExA and the Secretary of State (SoS) should give due consideration to impacts on local transport networks and policies set out in local plans. The ExA requested the Applicant to provide by Deadline 7 of the varied Examination timetable a written note that signposts how specific active travel provisions of the Scheme align with local plan policies requirements thus meeting the test set out in NPSNN paragraph 5.211. This action is captured in point 2 of the list of Action Points arising from ISH4 [EV10-002]. The Joint Councils look forward to the Applicant's submission at Deadline 7 and will continue the discussion with the Applicant on this matter.
- 2.3.9 Following from ISH4, the Joint Councils have provided a follow-up response to this agenda item and would like to submit an Active Travel Masterplan to Examination. This is presented in paragraphs 2.8.25 and 2.8.26 of this written submission.

**Agenda item 3(iv) – The ExA will seek an explanation of the slip road diversion assessment from the Applicant.**

- 2.3.10 During the discussion of this agenda item, the ExA invited the Joint Councils to comment on the slip road diversion assessment [AS-080] submitted by the Applicant. AP explained that the assessment was issued a week before ISH4 and the Joint Councils will continue to review the assessment. The Joint Councils agreed with the ExA that some of the diverted traffic will not actually follow the sign-posted diversion routes. For example, the southbound M5 traffic is unlikely to leave the M5 at Junction 11 if they are going to the north of Cheltenham as they would potentially use Junction 9 as their diversion route rather than travelling south and then going north.

**Agenda item 3(v) – The ExA will seek clarification from NH on their views following receipt of the Deadline 5 response [REP5-039] on the assessment of alternatives and the need for the Scheme as designed.**

- 2.3.11 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during ISH4, the Joint Councils have no further comments to make.

**Agenda item 3(vi) – The ExA will seek views from the Applicant and Interested Parties (IPs) on access to sites with and without the scheme for existing and future uses.**

- 2.3.12 A number of IPs made representations on this agenda item during ISH4. The first IP was Bloor Homes, the developer of the safeguarded land at the North West Cheltenham allocation. Bloor Homes made representations about the existing access to their site for the existing agricultural use and the replacement access the Scheme proposes. The ExA invited the Joint Councils as the Local Highway Authority to comment on the representations made by Bloor Homes. CK stated that the Joint Councils offered no comments on the IP's representations.



- 2.3.13 The second IP was Mr Hadley, who made representations about the future access provision to his site which adjoins the B4634 Old Gloucester Road for the existing agricultural uses and any future uses. The ExA asked the Joint Councils as the Local Highway Authority to comment on the appropriateness and safety credentials of all replacement agricultural accesses along the B4634, given the size of vehicles and the frequency of users which they would accommodate. Regarding access to Mr Hadley's site, AP commented that the Joint Councils agree with the Applicant that the traffic signals at the Link Road/B4634 junction will provide sufficient gaps within the traffic flow along the B4634 to allow any agricultural vehicles to turn into the replacement agricultural access to Mr Hadley's site. AP also remarked that GCC Highways Development Management (HDM) team provided a pre-application advice to Mr Hadley on 7<sup>th</sup> June 2024, which concluded that the HDM team does not support the access directly off the B4634 to Mr Hadley's site. Instead, the HDM team would prefer an access to Mr Hadley's site from Hayden Lane to the south.
- 2.3.14 The third IP was Mrs Bruton, whose agent made representations about the access arrangements for her site which adjoins the A4019 Tewkesbury Road. The ExA queried the Joint Councils as the Local Highway Authority if they have any concerns on the adequacy of the Scheme's proposed agricultural access to Mrs Bruton's site and adjacent land plots in terms of potential safety issues and possible congestion effects on the A4019. AP stated that the Joint Councils will review the issue and provide a response in writing at Deadline 7. This action is captured in item 25 of the Action Point list [EV10-002].
- 2.3.15 Following a review of the evidence presented during ISH4, the Joint Councils have provided a response to Action Point item 25. This is presented in paragraphs 2.8.11 to 2.8.13 of this written submission.

## 2.4 Agenda item 4 – Funding

### **Agenda item 4(i) – The Applicant to provide an explanation of the build programme in the event of a positive decision to grant the DCO from the SoS including the timing of the delivery of each element of the project and the funding availability to deliver it.**

- 2.4.1 The ExA asked the Applicant to explain the timeline of the build programme and the signing off of any required licences and additional permissions in the event that the SoS makes a positive decision to grant the DCO in June 2025. The ExA also requested the Applicant to explain the funding availability to deliver each element within their timeline. The ExA then invited the IPs to comment on whether the timeline set out by the Applicant is a realistic proposition. CK stated that the Joint Councils have no comment on the timeline for the delivery of the Scheme. The Joint Councils would like to reiterate their support for the Scheme, as demonstrated in their letter dated 2<sup>nd</sup> October 2024 [AS-081] which has been submitted to Examination. The Joint Councils would also like to remind the Applicant that funding coming from section 106 contributions are dependent on when developments are brought forward. This means that the timing of their availability is usually at the commencement of the developments, which might not align with the Applicant's build programme.
- 2.4.2 CK added that the Joint Councils also noted from the Applicant's Response to ExA's Second Written Questions (ExQ2) [REP5-027] that the Applicant is considering a funding option to seek a loan from the UK Infrastructure Bank. CK stressed that the loan is a matter between the Bank and the Applicant and should by no means include the Joint Councils' Local Planning Authorities (LPAs) as parties to the loan. Section 106 contributions are subject to statutory tests and the Joint Councils do not believe that the contributions could be used to pay for a loan of a third party outside of a section 106 agreement between the LPA and the developer. The Joint Councils invite the Applicant to have a discussion with the Joint Councils' LPAs on the relationship between the UK Infrastructure Bank loan and funding from section 106 contributions. The Joint Councils also request a reassurance from the Applicant that the Joint Councils' LPAs will not be included as parties to the loan.



- 2.4.3 The ExA queried Bloor Homes and Persimmon Homes (BH&PH) and the Joint Councils whether there are any outstanding matters other than highways which cause delay to the determination of BH&PH's planning application at the North West Cheltenham allocation. NB stated that highways remain the principal outstanding issue. As part of the process in determining the planning application, viability and any factors relevant to the prioritisation of the section 106 contributions requested by the LPAs are also matters that are currently in consideration. The ExA queried the Joint Councils' LPAs if they have a proposed timeline for when BH&PH's planning application could be taken to their respective Planning Committees. TB stated that ideally the LPAs will be in a position to look at dates for the Planning Committees' meetings towards the end of 2024. TB explained for BH&PH's planning application, the LPAs are still pulling together a finalised section 106 package and are negotiating with BH&PH on affordable housing, hence the application could not be put forward to Planning Committees for determination yet. TB assured the ExA the LPAs are currently working closely with all developers within the Order Limits of this DCO Scheme.
- 2.4.4 The ExA also queried the Joint Councils' LPAs at the point where the planning officers put forward a recommendation to the Planning Committee, whether a section 106 agreement will have been agreed with the developer or whether the agreement is left to continuing negotiations with certain refinements. TB explained for applications which require a lot of detail to work through the actual section 106 agreement, recommendation is normally made subject to a section 106 agreement being signed. This means that if the Planning Committee makes a positive decision on the application, the decision to grant planning permission will be given subsequently once the section 106 agreement is finalised and signed. Planning officers would set out clearly in their recommendation to the Planning Committee the parameters that will be contained in the section 106 agreement including affordable housing, education, highways and more.

#### **Agenda item 4(v) – The ExA will explore with the Applicant the process of gaining a loan from the UK Investment Bank**

- 2.4.5 During the discussion of this agenda item, the ExA requested the Applicant to provide an updated Funding Statement taking in account changes to the proposed funding mechanism of the Scheme, Community Infrastructure Levy (CIL) position and Change Applications 1 and 2. At the conclusion of this agenda item, CK commented that the Joint Councils request sufficient time to review and comment on any revised Funding Statement. The Joint Councils note that this action is encapsulated in item 19 of the Action Point list [EV10-002], which the Applicant is required to provide two versions at Deadline 7 and at the end of Examination. The Joint Councils look forward to the Applicant's submissions and will further review this matter.
- 2.4.6 During the discussion of this agenda item, the Applicant also stated that they have been discussing with the Joint Councils' LPAs the available policy provision for the Applicant to seek section 106 contributions in the event that works for the Scheme has commenced without any signed section 106 agreements in place. At the conclusion of this agenda item, CK confirmed that discussions between the Applicant and the LPAs are still ongoing and there is no agreed position yet. The ExA requested both parties to provide by Deadline 7 a position statement on this matter. This action is captured in item 18 of the Action Point list [EV10-002].
- 2.4.7 Following from ISH4, the Joint Councils have provided a response to Action Point item 18. This is presented in paragraphs 2.8.2 to 2.8.7 of this written submission.

#### **Other agenda items**

- 2.4.8 The Joint Councils offered no comments on the other agenda items and the questions raised on the other agenda items under Agenda item 4 – Funding, namely agenda items 4(ii), 4(iii) and 4(iv). Following a review of the evidence presented during ISH4, the Joint Councils have no further comments to make.





## S106 Funds

### Agenda item (i) – The ExA will seek clarification from the Applicant and IPs as to whether there has been any update on funding via s106 and CIL since ISH3 and D4.

- 2.4.9 The ExA discussed with the Applicant their position on the Joint Councils' letter dated 2<sup>nd</sup> October 2024 [AS-081]. CK reiterated that the Joint Councils' LPAs are unable to predetermine a commitment to CIL and section 106. Decisions on section 106 funds are taken through a recommendation to the LPAs' Planning Committees, while decisions on CIL funds are taken through the CIL Joint Committee. The Joint Committee's first meeting is scheduled on 12<sup>th</sup> November 2024 to determine the CIL allocation mechanism, with a first allocation meeting scheduled in early 2025. CK added that the Joint Councils' LPAs are committed to wider infrastructure growth and quality developments. The LPAs will continue to work with GCC in respect of the section 106 and CIL funding approach to this DCO Scheme. However, in terms of the policy position of the funding approach, the reliance is preferred on the Strategic and Local Plan (SLP), which is currently under preparation by the SLP authorities comprising CBC, TBC and Gloucestershire City Council.
- 2.4.10 The ExA queried the Joint Councils what decisions are likely to be made on the Joint Committee's first meeting. NB explained the intention of the first meeting is to take through some prioritisation criteria, which will then be used to guide and inform the decision-making process around the allocation of CIL in subsequent meetings. The agreed CIL allocation mechanism at the first meeting will be binding on all the LPAs involved in the Joint Committee. The ExA then queried the Joint Councils if the prioritisation criteria provides a hierarchy of the funding expenditure through CIL, which indicates where this DCO scheme ranks within specifically. NB explained the prioritisation criteria only set out the appropriate considerations for the CIL allocation decision-making process. Possible considerations could include unlocking development potential and alignment with Development Plan policies, Corporate Strategy of the SLP authorities and Local Transport Plan. They have not been agreed yet and will be considered at the Joint Committee's first meeting. CK added that the Joint Councils are able to submit the agreed CIL allocation mechanism at the first available deadline after the Joint Committee's meeting on 12<sup>th</sup> November 2024. This action is recorded in item 20 of the Action Point list [EV10-002].
- 2.4.11 The Applicant queried the Joint Councils if the total sum of the pooled CIL is currently £17 million. CK confirmed that the current total sum is approximately £17 million, which will be allocated amongst the CIL Infrastructure List within the Joint Councils Planning Statement [REP4-048b] submitted at Deadline 4. The ExA queried if the £17 million is collected from which scheme or which combination of schemes. NB explained the £17 million is the extant 'pot' that has been collected in the years since CIL has been in operation in the SLP authorities' area. It is not related to CIL contributions from any of the live planning applications within strategic allocations in North West Cheltenham and West Cheltenham. TB added that there will be a CIL contribution from a 260-dwelling development within the North West Cheltenham allocation consented by CBC. There is also a delay policy for CIL so it is not collected immediately once a consent is granted. CK stated that the table on available funding in CIL Infrastructure List within the Joint Councils Planning Statement [REP4-048b] is the latest annual statements from the SLP authorities. The Joint Councils can provide an updated CIL funding figure secured by Deadline 7. This action is captured in item 21 of the Action Point list [EV10-002].
- 2.4.12 The ExA then asked the Joint Councils to explain the process of which CIL monies will be allocated to projects within the CIL Infrastructure List. NB explained the CIL Infrastructure List within the Joint Councils Planning Statement [REP4-048b] is an interim list prepared by the SLP authorities. It lists a number of projects and their value or cost, which greatly exceed the current available CIL funding cumulatively. Therefore, at the first meeting, the SLP authorities will guide members of the Joint Committee through the prioritisation criteria to make sure informed decisions and recommendations are made regarding how the CIL funding is allocated. As part of the SLP plan-making process, the



SLP authorities are also looking to adopt an iterative approach for the CIL Infrastructure List to support future decision-making on prioritisation and inclusion of projects.

- 2.4.13 Following from ISH4, the Joint Councils have provided a response to Action Point item 21. This is presented in paragraph 2.8.9 of this written submission. The Joint Councils will provide an update on Action Point item 20 at the first available deadline after the Joint Committee's first meeting.

**Agenda item (ii) – The ExA will seek clarification from IPs, the Applicant, and the Joint Councils the position following receipt of the 'Letter of In Principle Support' [REP5-031].**

- 2.4.14 The ExA noted that Henry Boot Development (HBD), NEMA Strategic Land (NEMA) and GCC Asset Management and Property Services (GCC AMPS) had not submitted any representations to Examination prior to Deadline 5. The ExA asked the Joint Councils if HBD, NEMA and GCC AMPS are parties to any of the planning applications within strategic allocations in North West Cheltenham and West Cheltenham. TB explained GCC AMPS holds a land interest which forms part of the BH&PH's application in North West Cheltenham strategic allocation. Land interests of HBD, NEMA and St Modwen & Midlands Land Portfolio Limited (SM&MLPL) relate to the West Cheltenham strategic allocation. There are currently four live planning applications within the West Cheltenham strategic allocation: two from HBD, one from NEMA and one from SM&MLPL. The ExA queried the status of the portion of the West Cheltenham strategic allocation immediately to the east of the safeguarded land that is not subject to an application. TB stated there is further private ownership within that land, which should come forward as planning applications. TB confirmed the signatories of the Letter of In Principle Support [REP5-031] all have a land interest in the strategic allocations and are progressing planning applications. TB also stated that the Joint Councils could provide by Deadline 7 a plan that shows the locations of planning applications submitted by the signatories. This action is recorded in item 23 of the Action Points list [EV10-002].
- 2.4.15 The ExA invited the Joint Councils to set out their position following receipt of the Letter of In Principle Support [REP5-031]. NB reiterated that the Joint Councils are clearly not going to predetermine any planning applications, section 106 and CIL decisions. The Joint Councils' position has been clearly set out in the letter dated 2<sup>nd</sup> October 2024 [AS-081] submitted after Deadline 5.
- 2.4.16 Following from ISH4, the Joint Councils have provided a response to Action Point item 23. This is presented in paragraph 2.8.10 and Appendix A of this written submission.

## 2.5 Agenda item 5 – DCO

**Agenda item 5(i) – The ExA will seek views of parties in respect of the Requirements as now drafted in the D5 submission of the draft DCO (dDCO).**

- 2.5.1 The ExA asked the Joint Councils if they have any outstanding concerns on the Requirements set out in the latest iteration of the dDCO [REP5-003]. CK confirmed the Joint Councils have no outstanding concerns in respect of the Requirements as drafted in REP5-003.
- 2.5.2 The ExA directed the Joint Councils to explain their current position on Article 7 Planning permission of the dDCO [REP5-003]. CK stated that the Joint Councils' position is that Articles 7(2) and 7(3) limit the curtails of the planning enforcement powers of the Joint Councils' LPAs in respect of nearby applications within the Order Limits that may be associated with the Scheme. CK added that the Joint Councils have been in discussions with the Applicant on this matter and are looking to resolve the matter or provide an updated position regarding Article 7 by 18<sup>th</sup> October 2024. This action is encapsulated in item 26 of the Action Point list [EV10-002].



- 2.5.3 **POST-HEARING NOTE:** on 18<sup>th</sup> October 2024, the Joint Councils have reached agreement with the legal teams of the Applicant to remove Articles 7(2) and 7(3) from the dDCO. The Joint Councils look forward to this change being incorporated in the Applicant's next iteration of the dDCO.
- 2.5.4 The ExA also invited the Joint Councils to comment on any consequential effects of the deemed consent provisions in the dDCO on the local road network. CK stated that the Joint Councils are content with the deemed consent provisions as currently drafted in REP5-003. The Joint Councils have no concerns on the procedures set out in the updated protective provisions for NH that would apply to the deemed consent provisions that would apply to the strategic road network. The Joint Councils request to be informed or brought into discussions if there are any amendments to the deemed consent provisions based on the discussions between the Applicant and NH.

**Agenda item 5(ii) – The ExA will seek an understanding of the progress between NH and the Applicant on their positions in respect of Protective Provisions to gain a detailed understanding of the differences between the parties**

- 2.5.5 The Joint Councils offered no comments on this agenda item. Following a review of the evidence presented during ISH4, the Joint Councils have no further comments to make.

## 2.6 Agenda item 6 – Noise

**Agenda item 6(i) – The Joint Councils will be asked for their position with respect to the Applicant's answer to 2<sup>nd</sup> Written Question (ExAQ2) 12.0.1, in that the Noise Policy Statement (March 2010) is complied with on the basis that "measures to avoid, mitigate and minimise noise has been considered".**

- 2.6.1 During the discussion of this agenda item, the Joint Councils noted that the ExA requested the Applicant to provide a written update at Deadline 7 regarding funding and the progress on the implementation of the noise mitigation traffic calming scheme on Stoke Road. This action is captured in item 30 of the Action Point list [EV10-002]. CK added the Joint Councils request that the funding of the mitigation measures on Stoke Road are clearly set out in the Applicant's written update and can be taken into account with the Funding Statement to be updated. The Joint Councils look forward to the Applicant's submission at Deadline 7 and will further review this matter.

### Other agenda items

- 2.6.2 Mr Badham made a representation about the visual appearance and acoustic properties of a proposed acoustic barrier fronting his property Elton Lawn. During which he mentioned that the Conservation Officer at TBC has confirmed that his property should be regarded as a non-designated heritage asset. The ExA queried if Mr Badham has a letter from TBC Conservation Officer confirming the listing. Mr Badham stated that he could provide documentation from another planning application adjacent to his property, which sets out that Elton Lawn, Landean and Post Box Cottage should all be recognised as non-designated heritage assets.
- 2.6.3 The ExA queried the Joint Councils if they had previously raised any issues regarding the non-designated heritage status of Elton Lawn. CK stated that the Joint Councils have only raised an issue on the design of the proposed acoustic barrier regarding the difference between a timber and a vegetated design. The ExA requested the Joint Councils to provide a commentary at Deadline 7 as to whether Elton Lawn and the two adjacent properties have been considered as non-designated heritage assets and the implications from a heritage perspective. This action is captured in item 32 of the Action Point list [EV10-002].
- 2.6.4 Regarding the design of acoustic barriers, the ExA requested the Applicant to confirm by Deadline 7 that there is sufficient space to include vegetation at both sides of each proposed acoustic barrier to accommodate potential design changes arising from the consultation process set out in item LV6 of



the Register of Environmental Actions and Commitments (REAC) [REP4-018]. The ExA also requested the Joint Councils as the Local Highway Authority to confirm if the provision of vegetation at each proposed acoustic barrier is acceptable, given they will ultimately be responsible for the maintenance of the barriers as part of the Local Road Network. The two actions are encapsulated in item 34 of the Action Point list [EV10-002].

- 2.6.5 Following from ISH4, the Joint Councils have provided a response to Action Point items 32 and 34. These are presented in paragraphs 2.8.15 to 2.8.24 of this written submission.

## 2.7 Agenda item 7 – Flooding and the Water Environment

### **Agenda item 7(i) – The Environment Agency (EA) will be asked to provide an updated position with respect to Flood Risk Impacts Technical Note and Flood Risk Assessment (Doc 6.15) submitted at Deadline 5**

- 2.7.1 During the discussion of this agenda item, EA stated that they would consider the Lead Local Flood Authority (LLFA) to advise on flood mitigation measures at Staverton Stream. The ExA invited the Joint Councils to comment on the flood mitigation requirements at Staverton Stream. CK stated that the Joint Councils will provide a response in writing at Deadline 7. This action is encapsulated in item 10 of the Action Point list [EV10-002].
- 2.7.2 RS2 posed a question on the sensitivity testing in the updated Flood Risk Impacts Technical Note [REP5-021] submitted by the Applicant at Deadline 5. RS2 noted that model sensitivity tests have been run on the 1 in 20-year return period rather than the 1 in 100-year return period which is typically used for flood model sensitivity testing. The basis is set out in the Technical Note that the Scheme impacts have been assessed to be greatest for most frequent floods compared to larger less frequent floods. The Joint Councils queried if the Applicant could comment on what confidence level is placed in the conclusion holding that there would still be a relatively lower impact at higher events in the case where the model parameters have been changed.
- 2.7.3 The Applicant explained the reason for using the 1 in 20-year return period is that the previously undertaken modelling demonstrates that the Scheme has greater impacts in the more common, frequently seen events. The Applicant thus decided to run the sensitivity tests on these events. Should there be higher flows, the hydraulic effects would get drowned out. This means that the actual sensitivity of the model to impacts including channel and floodplain roughness and downstream boundary levels will be less at higher flows. The Applicant explained they have attempted to be precautionary by testing the common and frequently seen events.
- 2.7.4 The Joint Councils accept the Applicant's response and have no additional comment on the Flood Risk Impacts Technical Note [REP5-021].
- 2.7.5 Following from ISH4, the Joint Councils have provided a response to Action Point item 10. This is presented in paragraph 2.8.1 of this written submission.



## 2.8 The Joint Councils' responses following ISH4

### The Joint Councils' responses to the Action Points arising from ISH4

#### Action Point 10 – The Joint Councils to confirm the LLFA's position regarding flood mitigation requirements at Staverton Stream

2.8.1 As a follow-up action of the discussion under agenda item 7(i) (see paragraph 2.7.1), the Joint Councils have engaged with GCC LLFA to understand their position regarding the need for flood mitigation measures at Staverton Stream. GCC LLFA confirmed that the Flood Risk Assessment [REP5-008 and REP5-010] and modelling show that the increases in flood depths and flood extents would be minimal and the approach taken elsewhere in the Scheme to discuss and get approval from the landowners would be sufficient to manage the increases.

#### Action Point 18 – The Applicant and the Joint Councils to provide a position statement regarding the ability of section 106 monies to be sought for a highway scheme that has already commenced

2.8.2 As a follow-up action of the discussion under agenda item 4(v) (see paragraph 2.4.6), the Joint Councils would like to provide the following response to Action Point item 18.

2.8.3 Regulation 122 of the Community Infrastructure Levy Regulations 2010 provides that a section 106 obligation is only lawful and able to be taken into account as a reason for granting planning permission where it meets the tests – (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development.

2.8.4 The Government's 'Planning Obligations: good practice advice' dated 26 April 2023 provides assistance as to whether any financial contribution provided through a planning obligation meets the tests and sets out the following:

- *“the relevant development plan policy or policies, and the relevant sections of any supplementary planning document or supplementary planning guidance;*
- *quantified evidence of the additional demands on facilities or infrastructure which are likely to arise from the proposed development;*
- *details of existing facilities or infrastructure, and up-to-date, quantified evidence of the extent to which they are able or unable to meet those additional demands;*
- *the methodology for calculating any financial contribution necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet the additional demands; and*
- *details of the facilities or infrastructure on which any financial contribution will be spent.”*

2.8.5 In respect of relevant policy, the NPPF sets out at Policy 57.3 the policy tests which mirror the test in the CIL Regulations. Policy INF7 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) deals with the Councils' collection of section 106 contributions from developers. The Policy states that arrangements for financial contributions towards the provision of infrastructure required as a consequence of development will be negotiated with developers before the grant of planning permission, and that financial contributions will be sought through the section 106 mechanism as appropriate.



2.8.6 Generally speaking, infrastructure to be funded by CIL should also not be secured through section 106 obligations. The CIL Regulations put into legislation the tests previously set out in guidance as to what constitutes a lawful obligation (Regulation 122); and limit the type and number of section 106 contributions which can be secured towards infrastructure (the pooling restriction in Regulation 123). Additionally, a section 106 payment is not able to be made to public bodies other than the LPA.

2.8.7 In summary, section 106 contributions must 1) met the tests in the CIL Regulations and 2) must comply with relevant Local Plan policy. When considering a section 106 obligation the LPA should consider the government guidance which includes – i) necessity to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet the additional demands, and ii) additional demands on facilities or infrastructure which are likely to arise from the proposed development, and iii) the extent to which existing facilities or infrastructure are able or unable to meet those additional demands. If the M5 Junction 10 Scheme is already built out then the Scheme is considered as ‘existing infrastructure’.

**Action Point 20 – The Joint Councils to submit CIL Funding Policy agreed once the relevant Joint Committee meeting has taken place 12<sup>th</sup> November 2024**

2.8.8 As a follow-up action of the discussion under agenda item (i) of the Agenda item – S106 Funds (see paragraphs 2.4.9 and 2.4.10), the Joint Councils are committed to provide an update on this Action Point item the first available deadline after the Joint Committee’s meeting on 12<sup>th</sup> November 2024. However, the Joint Councils would like to remind the ExA that the CIL allocation mechanism to be agreed by the Joint Committee is not a policy in planning terms. It merely aims to guide members of the Joint Committee on the decision-making process around the allocation of CIL.

**Action Point 21 – The Joint Councils to provide updated CIL funding figure secured.**

2.8.9 As a follow-up action of the discussion under agenda item (i) of the Agenda item – S106 Funds (see paragraph 2.4.11), the following table sets out the updated CIL funding figure secured to date by the SLP authorities.

Authority		Reg 61 - Admin	Reg 59A - Parish Neighbourhood	Reg 59F - District Neighbourhood	Reg 59(i) - Infrastructure	Total Inc	Total Exp	Total Bal
Cheltenham	Income	£205,701.17	£358,966.49	£188,422.93	£3,297,655.35	£4,050,745.94	£171,628.08	£3,879,117.86
	Expenditure/To Pool	£0.00	£148,630.61	£44,628.08	£127,000.00			
	Balance	£57,070.56	£314,338.41	£61,422.93	£3,297,655.35			
Gloucester	Income	£117,996.01	£189,963.22	£163,937.31	£1,888,023.74	£2,359,920.28	£109,800.80	£2,250,119.48
	Expenditure/To Pool	£20,076.04	£82,795.50	£19,724.76	£70,000.00			
	Balance	£15,124.47	£170,238.46	£93,937.31	£1,888,023.74			
Tewkesbury	Income	£760,081.97	£2,707,265.40		£11,735,539.09	£15,202,886.46	£69,082.38	£15,133,804.08
	Expenditure/To Pool	£0.00	£636,291.37	£69,082.38	£0.00			
	Balance	£123,790.60	£2,638,183.02		£11,735,539.09			
Total Inc		£1,083,779.15	£3,256,195.12	£352,360.24	£16,921,218.17	£21,613,552.68		
Total Exp		£20,076.04	£867,717.48	£133,435.22	£197,000.00	£0.00	£350,511.26	
Total Bal		£195,985.63	£3,122,759.90	£155,360.24	£16,921,218.17			£21,263,041.42
Pooled R61	Income	£889,327.46			£16,921,218.17	TOTALS	Income	£21,613,552.68
	Expenditure	£845,918.30			£0.00		Expenditure	£1,196,429.56
	Balance	£43,409.16			£16,921,218.17		Balance	£20,417,123.12
			Pooled R59(i)					

Table 2-1 Updated CIL funding figure secured to date

**Action Point 23 – The Joint Councils to provide plan(s) showing location of planning applications submitted by signatures of ‘Letter of In Principle Support’ [REP5-031]**

2.8.10 As a follow-up action of the discussion under agenda item (ii) of the Agenda item – S106 Funds (see paragraph 2.4.14), the Joint Councils are submitting a plan (our ref.: GCCM5J10-ATK-ECU-ZZ-GS-GI-000004) that shows the location of planning applications submitted by signatures of ‘Letter of In Principle Support’ [REP5-031]. The plan also complements the Joint Councils’ representations on



this agenda item during ISH4 as set out in paragraph 2.4.14. The plan is attached to Appendix A of this written submission.

**Action Point 25 – The Joint Councils as the Local Highway Authority to consider the ability of the Scheme’s agricultural access proposal into Bruton / Counsell (and adjacent land plots) to provide safe and suitable access (including possible congestion effects on A4019)**

- 2.8.11 As a follow-up action of the discussion under agenda item 3(vi) (see paragraph 2.3.13), the Joint Councils have engaged with GCC HDM team and would like to provide the following response to Action Point item 25.
- 2.8.12 The Highway Authority considers that the existing proposal does provide safe and suitable access for agricultural vehicles up to the gated private access. The northern signalised road access is proposed to be in excess of 8m wide at the signal stop line and swept path assessments have confirmed unrestricted two-way movements. It is not considered necessary to maintain this width beyond the initial link because it is understood that the public highway will be constructed with a 5m carriageway, a 1m reinforced verge construction and a further 2m soft verge proposed to be provided to both sides.
- 2.8.13 This layout is considered adequate to permit two agricultural vehicles to pass without dictating any priority, although to ensure a negligible chance of delays on the left turn movement it is suggested that the hard verge areas could be formalised as over run carriageway areas with a nominal <50mm chamfer kerb to define the carriageway and standard 125mm check forming segregation to the footway but only within the extent of future adoption.

**Action Point 26 – The Joint Councils and Applicant to provide updated position regarding Article 7**

- 2.8.14 As set out in paragraph 2.5.3, the Joint Councils have reached agreement with the legal teams of the Applicant on 18<sup>th</sup> October 2024 to remove Articles 7(2) and 7(3) from the dDCO. The Joint Councils look forward to this change being incorporated in the Applicant’s next iteration of the dDCO.

**Action Point 32 – The Joint Councils to provide an update on whether Mr Badham’s property is considered as a non-designated heritage asset and what are the implications of this**

- 2.8.15 As a follow-up action from the discussion under ‘Other agenda items’ (Agenda item 6 - see paragraphs 2.6.2 and 2.6.3), the Joint Councils would like to provide the following response to Action Point item 32.
- 2.8.16 The Joint Councils confirm that Elton Lawn is currently not shown on Gloucestershire’s Historic Environment Record or on any TBC’s publicly available Local List. However, following Mr Badham’s representations at ISH4 the Joint Councils checked directly with TBC’s Conservation Specialist, who has confirmed that Post Box Cottage, Landean and Elton Lawn are identified as non-designated Heritage Assets.
- 2.8.17 Following this new information, it is understood that the applicant will assess, as appropriate, the impact of the scheme on the significance of the Non-Designated Heritage Assets identified and update the Heritage chapter of the ES. The Joint Councils will reserve their opinion until receipt of this additional assessment has been undertaken and submitted into Examination.
- 2.8.18 The following are planning policy considerations relevant to a non-designated heritage asset status.
- 2.8.19 A non-designated site is described in the Government’s Planning Practice Guidance on ‘Historic Environment’ dated 23<sup>rd</sup> July 2019 as:



*“Non-designated heritage assets are buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions, but which do not meet the criteria for designated heritage assets.”*

2.8.20 The effect of a property being identified as a non-designated site is set out in the NPPF at paragraph 209 which states:

*“209. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*

2.8.21 Of additional relevance is Policy SD8 of the JCS which is attached for ease of reference and in particular states that:

*“Designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance, and for their important contribution to local character, distinctiveness and sense of place. Consideration will also be given to the contribution made by heritage assets to supporting sustainable communities and the local economy. Development should aim to sustain and enhance the significance of heritage assets and put them to viable uses consistent with their conservation whilst improving accessibility where appropriate;”*

**Action Point 34 – The Applicant and the Joint Councils to provide position regarding ability to include vegetation on acoustic barriers (both sides) within space available. The Joint Councils as the Local Highway Authority to consider whether this provision would be acceptable to the Local Highway Authority including maintenance etc**

2.8.22 As a follow-up action from the discussion under ‘Other agenda items’ (Agenda item 6 – see paragraph 2.6.4), the Joint Councils have engaged with GCC HDM team and would like to provide the following response to Action Point item 34.

2.8.23 The ability to include vegetation on the acoustic barriers will be subject to the detail design process to find materials and species that would not reduce the expected lifespan of the barrier. The verge areas surrounding the acoustic barriers will be subject to periodic maintenance and therefore the provision of appropriate vegetative cover should not require significant additional management above that already expected.

2.8.24 The possibility of extending the barrier beyond the current extent of coverage on Elton Lawn may require the minor realignment of the service road and northern footway. The Highway Authority does not have any objection to the investigation of this request as part of the detail design process.

## **The Joint Councils’ follow-up responses to agenda item 3(iii)**

2.8.25 Joint Councils, through GCC’s Highways Development Team (representing the Local Highway Authority) have been provided with an overarching Active Travel Masterplan, this drawing provides an indicative indication of the proposed active travel routes arising from the developments at West Cheltenham and Northwest Cheltenham and how they interact with the DCO scheme. The Active Travel Masterplan is attached to Appendix A of this written submission.

2.8.26 The Joint Councils accept that the DCO scheme provides compliance with Local Plan Policy and NPSNN paragraph 5.211. The Joint Councils need to be reassured that at the ends of the DCO scheme connections are provided to the existing Active Travel network beyond the end of the scheme. The Active Travel Routes plan shows connections from the Strategic Allocation sites to the





East along the A4019 corridor beyond Gallagher Business Park, to the north along an on-road quiet lane (Stoke Road) route starting at the Gloucester Old Spot public house, and along the B4634 corridor as far as the land owned by Mr Hadley, but does not show a connection to the recently completed Active Travel network on the B4063. It is the view of the Joint Councils that individual planning applications as they come forward will fulfil the remaining provision in consultation with the Local Highway Authority and with Active Travel England.



# APPENDICES



Gloucestershire  
COUNTY COUNCIL



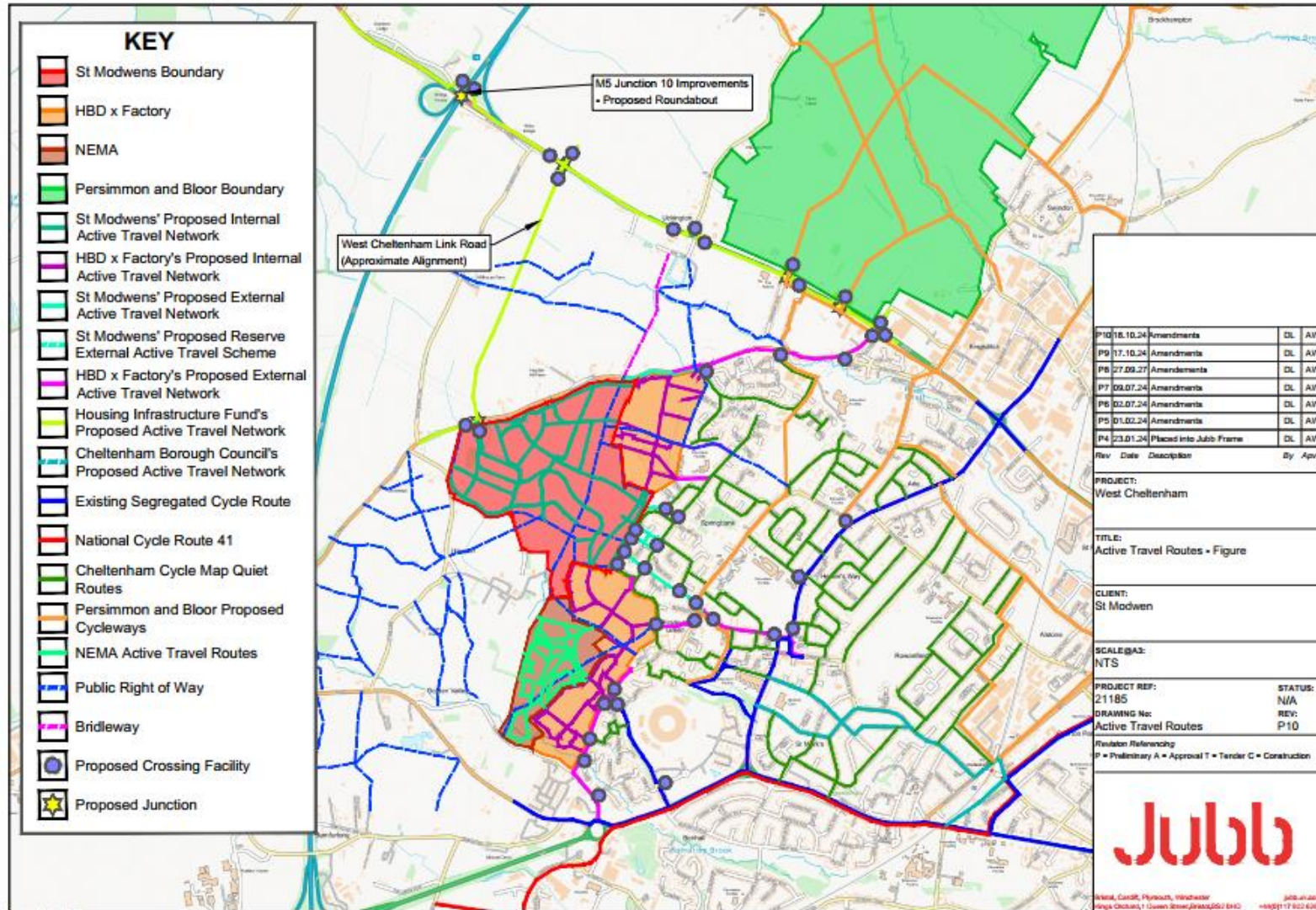
CHELTEMHAM  
BOROUGH COUNCIL



Tewkesbury  
Borough Council

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TR010063 Joint Councils Written Submission of case put orally  
at the Hearings held the week commencing 14 October 2024

# Appendix A. Active Travel Masterplan



AtkinsRéalis



Planning, Environmental Consenting and Communities

**AtkinsRéalis**

Nova North

11 Bressenden Place

Westminster

London

SW1E 5BY

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