

M5 Junction 10 Improvements Scheme

List of matters not agreed where Statement of
Common Ground cannot be finalised (tracked)

TR010063 – APP 9.96

Rules 8 (k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

December 2024



Gloucestershire
COUNTY COUNCIL

Infrastructure Planning Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

M5 Junction 10 Improvements Scheme Development Consent Order 202[x]

List of Matters not agreed where Statement of Common Ground could not be finalised

Rule Number:	Rule 8 (k)
Planning Inspectorate Scheme Reference	TR010063
Application Document Reference	TR010063/APP/9.96
Author:	M5 Junction 10 Improvements Scheme Project Team

Version	Date	Status of Version
Rev 0	November 2024	Deadline 10
Rev 1	December 2024	Deadline 11
Rev 2	December 2024	Close of Examination

Contents

Chapter	Page
1. Introduction	4
1.1. Purpose of document	4
Tables	
Table 1-1 – List of Parties entered into an SoCG with the Applicant	4
Table 1-2 – List of Matters not agreed	5

1. Introduction

1.1. Purpose of document

1.1.1. This document provides the updated List of Matters not agreed where a Statement of Common Ground (SoCG) cannot be finalised. .

1.1.2. The Applicant has prepared SoCGs with the following parties:

Table 1-1 – List of Parties who have entered into an SoCG with the Applicant

Party
Local Authorities (as defined under section 42 (1)(b) of the Planning Act 2008)
<ul style="list-style-type: none">The “Joint Councils” – comprising Gloucestershire County Council, Cheltenham Borough Council, and Tewkesbury Borough Council.
Prescribed Consultees (as defined under section 42 (1)(a) of the Planning Act 2008)
<ul style="list-style-type: none">National HighwaysEnvironment AgencyNatural EnglandHistoric England
Other Interested Parties
<ul style="list-style-type: none">North West Cheltenham (Elms Park) – Bloor Homes and Persimmon HomesSafeguarded Site adjacent to M5 Junction 10 – Bloor HomesWest Cheltenham (Golden Valley) – Midlands Land Portfolio Limited (“MLPL”) and HBD

1.1.3. Table 2.1 summarises the matters that not been agreed e.g. matters that are still under discussion, with the relevant Interested Parties at the close of the Examination and outlines the action to resolve the matter.

Table 1-2 – List of Matters not agreed

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
National Highways (no outstanding matters not agreed)				
Joint Councils				
21.1	Funding Methodology	<p>The Joint Councils are in active engagement with the Applicant in respect of developer contributions. CBC and TBC made joint responses on the M5 J10 proposed S106 methodology on 19th October 2023 and 18th December 2023. A further meeting was held between the Joint Councils and the Applicant on 12th June 2024 and a revised methodology is anticipated by the end of June. The methodology is needed to support and help justify that any contribution sought;</p> <p>Meets the S106 tests, and</p> <p>Meets the severity tests.</p> <p>Key to the representations submitted to the Applicant on this matter by the Joint Councils is viability, taking full account of the whole demands for S106/CIL arising from development, not just those subject to Joint Core Strategy policy INF7. As the determining local planning authorities, Cheltenham and Tewkesbury will need to ensure that the developer contribution package negotiated appropriately mitigates across developments as a whole to enable sustainable and vibrant communities.</p> <p>The Joint Councils will await to review the</p>	<p>The Applicant acknowledges that the funding methodology for developer contributions is yet to be agreed. This will continue to be discussed among relevant interested parties.</p>	<p>Discussions will continue between the Applicant and Joint Councils regarding the funding methodology with the view that this matter will be resolved.</p>

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
		revised methodology once received from the Applicant.		
21.2	Funding	The Joint Councils reiterate their support for the purpose of the Order and concur with the Applicant that works enabled by the Order will assist to unlock the development of additional housing in the Strategic Site Allocations and Safeguarded Land. Our position remains as set out in the JC's Planning Statements submitted to the ExA at Deadline 4 [REP4-048b] and attached for ease of reference. In summary, the main points from the JC's Planning Statement and comments on the Applicant's Updated Funding Statement [REP6-005] and the Funding Technical Note [REP4-043] are that:	See Applicant position below.	
		1. The three tests in Regulation 122[2] of the Community Infrastructure Levy [CIL] Regulations 2010 are solely for the LPA to determine. This determination includes whether or not the LPA are satisfied and whether it would be appropriate for a contribution to be made, after taking account other requirements, representations from the various consultees including GCC as Local Highway Authority, and any impact on the viability of the Scheme.	The Applicant agrees to this statement.	Joint Councils to confirm this can be moved to matters agreed.
		2. CIL Funding determinations are a decision for the CIL Joint Committee in keeping with the CIL Regulations and the CIL Prioritisation Framework.	The Applicant agrees to this statement.	Joint Councils to confirm this can be moved to matters agreed.

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
		3. The JC's do not intend to bring forward a Supplementary Planning Document [SPD] in respect of the relevant sites, as they are presently progressing a joint Strategic Local Plan [SLP], this would be a more robust approach to future financial obligations relating to the points picked up in the funding statement.	The Applicant agrees to this statement.	Joint Councils to confirm this can be moved to matters agreed.
		4. The JC's cannot at this time confirm the financial value of S106 or CIL.	The Applicant is in agreement that the quantum of s106 or CIL contributions towards the Scheme is unable to be determined at this time and would be subject to the individual planning application processes and determination by the relevant LPAs and/or CIL Charging Authorities.	Joint Councils to confirm this can be moved to matters agreed.
		5. The JC's do not consider s106 contributions would meet the Reg.122 tests in a retrospective situation	The Applicant is in agreement that s106 contributions towards the Scheme would be unlikely to meet the Reg.122 tests in a retrospective situation (post Scheme completion) and in any event would be subject to determination by the relevant LPA.	Joint Councils to confirm this can be moved to matters agreed.
Historic England – no outstanding matters not agreed				
Natural England – no outstanding matters not agreed				
Environment Agency – no outstanding matters not agreed				
West Cheltenham				
2.1	Site Specifics – Link Road	SM&MLPL note that this document provides a high level response to the interested parties associated with the Strategic Allocations and the Safeguarded Land.	The Do Something 6a scenario considered access to the south of the site via M5 Junction 11 and the A40 resulting in significant delays including issues with the M5 mainline.	This is a matter of continued disagreement between the interested party and the Applicant and is unlikely to be resolved.

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
		The response sets out that the initial modelling that set the need for the Scheme, as proposed, was based on the link road within Golden Valley (GV) allocation being open i.e. no bus gate and concluded that a dualled link road between the A4019 and Old Gloucester Road would be required. Since then, a bus gate has been introduced and southbound traffic on the M5 which was travelling to the southern parcel of GV and which could have come off at J10 via the West Link Road is now required to use J11. The need for the West Link Road has never been tested for this scenario (i.e. it has never been justified that M5 J10 + A4019 improvements only are not sufficient with the bus gate in-situ).	Converting junction 10 to an 'All movements' junction and providing access from the A4019 to the West of Cheltenham via a new distributor link road significantly reduces the impact of the site on the local network. In view of the above the Applicant would highlight that the quantum of development proposed by the Golden Valley SPD exceeds that assessed by DS6a Scenario. When considering a 'no link road' world it is highly likely that the issues identified in DS6a would continue to occur.	
North West Cheltenham				
1.1	Scheme Dependence	Bloor Homes and Persimmon Homes, collectively the 'IP', remain of the view that there is no policy basis to differentiate the dependence of Strategic Allocation A4, North West Cheltenham from the other SAs or the wider growth allocated in the JCS. The IP does not agree that there is direct dependence on the DCO scheme by SA A4 beyond a dependence as part of the wider planned for JCS growth, noting that SA A7 is the only SA directly linked to the DCO scheme in the JCS.	The Applicant's position regarding the need for the Scheme remains as has been set out in its Need for the Scheme Technical Note submitted at Deadline 4 (REP4-042). This establishes the need for the Scheme as a result of the cumulative impacts associated with the Strategic Allocations, including those as a result of the North West Cheltenham development.	The Applicant acknowledges the fact that the ultimate determination of the reliance of the Safeguarded Land development on the Scheme rests with the determining authorities through the planning application or local processes.
1.2	Policy	The Applicant states that the Scheme will provide enough capacity to absorb traffic from	The Applicant's position regarding the need for the Scheme remains as has been set out in its	The Applicant acknowledges the fact that the ultimate determination

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
	Compliance	<p>A4, A7 and the potential safeguarded land / future development sites "and what is considered reasonable future identifiable needs" but it is unclear what future need the Scheme is seeking to facilitate. The IPs believe it is not justifiable for allocated sites to bear the burden of the costs of delivering a scheme which will serve future development or growth within wider Gloucestershire.</p> <p>The IPs note that the Applicant seeks to rely on the capacity study published as part of the Golden Valley SPD and states that the SPD is a material consideration in the examination of the DCO application as it supplements the information that informed the JCS at the time of its adoption. However, the SPD has never been independently tested or examined, and this should be reflected in the weight given to it. In addition, the SPD states that the upgrade to M5 Junction 10 will merely "support" the JCS allocations at North West and West Cheltenham suggesting that there is no direct link between the Scheme and those allocations.</p> <p>The need for the Scheme to mitigate the transport related effects of North West Cheltenham (A4) should be determined through means of a planning application and associated transport effects. A planning application should be determined against the relevant national and local planning policies. The DCO application is decided upon a different policy framework and</p>	<p>Need for the Scheme Technical Note submitted at Deadline 4 (REP4-042). This establishes the need for the Scheme as a result of the cumulative impacts associated with the Strategic Allocations, including those as a result of the North West Cheltenham development.</p>	<p>of the reliance of the Safeguarded Land development on the Scheme rests with the determining authorities through the planning application or local processes.</p>

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
		<p>the considerations about need cannot be applied to individual planning applications.</p> <p>The IP does not agree that there is direct dependence on the DCO scheme by SA A4 beyond a dependence as part of the wider planned for JCS growth, noting that SA A7 is the only SA directly linked to the DCO scheme in the JCS.</p>		
1.3	Elms Park Dependence	<p>The Applicant indicates that the Scheme is the starting point to development identified in the JCS as key infrastructure requirement. This is incorrect as far as Elms Park is concerned as evident from the stages of the JCS. The Applicant's case is that no development can occur without the Scheme.</p> <p>The IPs have evidenced the contrary in the documents submitted with the Elms Park Application, which provides mitigation and sustainable transport improvement on the local network. The additional highway modelling undertaken by PJA and submitted to National Highways demonstrates alternative mitigation could be delivered on the Strategic Road Network.</p> <p>The IPs, remain of the view that there is no policy basis to differentiate the dependence of Strategic Allocation A4, North West Cheltenham from the other SAs or the wider growth allocated in the JCS.</p>	<p>The Applicant's position regarding the need for the Scheme remains as has been set out in its Need for the Scheme Technical Note submitted at Deadline 4 (REP4-042). This establishes the need for the Scheme as a result of the cumulative impacts associated with the Strategic Allocations, including those as a result of the North West Cheltenham development.</p>	<p>The Applicant acknowledges the fact that the ultimate determination of the reliance of the Safeguarded Land development on the Scheme rests with the determining authorities through the planning application or local processes.</p>

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
1.4	Elms Park Alternatives	The IPs note that the recent modelling undertaken by National Highways supports its assertion that the A4 is not directly dependent on the DCO scheme and that it is the additional unplanned for growth at A7 introduced through the Golden Valley SPD that is the direct cause of potential severe impacts on the LRN and SRN	It remains the Applicant's position that the local highway authority is of the opinion that A4 is directly dependent on the DCO Scheme, this is reflected in their GC3M modelling.	This is a matter of continued disagreement between the interested party and the Applicant and is unlikely to be resolved.
2.1	Allocation reliance on Scheme	The Applicant states that funding is no impediment to the delivery of the Scheme or the payment of compensation to the persons affected by the DCO. The Scheme suggests that the developments in the JCS are reliant on its implementation. This is incorrect as only West Cheltenham is dependent on the Link Road. The IPs do not agree with the funding methodology due to the basis of the dependent developments and the apportionment of costs. The IPs are unlikely to be in a position to agree the methodology during the Examination.	The Applicant has been working with developers since 2023 to determine a methodology for allocating funding contributions. That consultation closed in May 2024 and a meeting was held on 18th July 2024 to take matters forward. The Applicant has been liaising with the respondent and hopes to agree a funding methodology.	The Applicant notes the IPs position and will continue to work with all parties to find an acceptable resolution.
2.2	Section 106	The Applicant's funding comprises of the Housing Infrastructure Fund (HIF) which, as stated in the Funding Statement, amounts to £212.071 million and financial contributions from the developers of what are termed the 'dependent developments'. These contributions will be sought via the Section 106 agreement which imposes planning obligations on the developers. However, these obligations are only justifiable where they meet the tests of the Community Levy Regulations	The Applicant agrees that the £20m funding contribution proposed by Bloor Homes and Persimmon Homes in their letter of 07/10/2024 is a proportionate contribution for the Elms Park development in line with the funding apportionment methodology, subject to the attached conditions being met.	The Applicant will continue to work with all parties to find an acceptable resolution.

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
		<p>2010 (Regulation 122).</p> <p>The IPs do not agree with the funding methodology due to the basis of the dependent developments and the apportionment of costs. The IPs are unlikely to be in a position to agree the methodology during the Examination.</p> <p>Notwithstanding, the lack of agreement on the funding methodology, the IPs have without prejudice made a commitment to providing a £20m contribution to the funding shortfall, subject to a number of conditions being met.</p>		
3.1	Scheme Overlap	<p>There is an overlap in the proposed highway works in connection with the Elms Park Application and the authorised development comprising the Scheme. However, the difference is that the Scheme only envisages the widening of Tewkesbury Road rather than access and egress to Elms Park.</p> <p>The IPs agree with the Applicant's stated position in relation to the Parameter Plans and draft conditions.</p> <p>The IPs would welcome a commitment from the Applicant to move the access to the Transport Hub to resolve this issue.</p>	<p>The Applicant's understanding of how the overlap between the two planning applications will operate is that the Elms Park planning application is defined by flexible parameter plans accompanied by more detailed access drawings. Therefore, although the Scheme conflicts with the detailed access drawings, it does not conflict with the parameter plans – which is agreed with the local planning authorities and local highway authorities. In the event that Elms Park and the Scheme are permitted and implemented, it is envisaged that the Scheme works on Tewkesbury Road, including the main accesses to Elms Park, would supersede the Elms Park access drawings – this is envisaged in the draft conditions for Elms Park which are under currently discussion.</p> <p>The Applicant notes the request to move the</p>	<p>The Applicant is committed to ongoing discussions at detailed design stage where varying options for access into the transport hub can be considered within the limits of deviation of the DCO.</p>

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
			<p>access to the Transport Hub. It should be noted that the existing access location was developed in consultation with the developer in advance of submission of the DCO application. The Applicant would welcome further discussion on the merits of the proposed location</p>	
Safeguarded Land				
1.1	Scheme Dependence	<p>Bloor Homes the 'IP', remains of the view that there is no policy basis to attribute the dependence of the Safeguarded Land from the SAs or the wider growth allocated in the JCS. The IP does not agree that there is direct dependence on the DCO scheme by the Safeguarded Land as it does not form part of the wider planned for JCS growth, noting that SA A7 is the only SA directly linked to the DCO scheme in the JCS.</p>	<p>The Applicant's position regarding the need for the Scheme remains as has been set out in its Need for the Scheme Technical Note submitted at Deadline 4 (REP4-042). This establishes the need for the Scheme as a result of the cumulative impacts associated with the Strategic Allocations</p> <p>It remains the Applicants position that the local highway authority is of the opinion that, should it come forward, the Safeguarded Land development would also be directly dependent on the DCO Scheme. This is reflected in their GC3M modelling which demonstrates the limitations of the local road network in a 'no DCO scheme world' that limit the quantum of development that might come forward in such a circumstance.</p>	<p>The Applicant acknowledges the fact that the ultimate determination of the reliance of the Safeguarded Land development on the Scheme rests with the determining authorities through the planning application or local processes.</p>
1.2	Scheme Design – A4019 junction	<p>In the proposal, the northern arm of the A4019 junction provides for only a short section of single carriageway road before meeting a junction with several farm tracks leading off to the north-west and south-east. The farm tracks</p>	<p>Whilst the Applicant notes the IPs position it should be noted that any agreement of GCC as local highway authority would be a matter for the Joint Councils and that any collaboration agreement would be a matter for</p>	<p>Any agreement of GCC as local highway authority would be a matter for the Joint Councils and any collaboration agreement would</p>

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
		<p>combine three separate accesses onto Tewkesbury Road into a single shared access.</p> <p>As such, the works effectively does not provide access into the Safeguarded Land as it is stated in their objectives.</p> <p>Subject to the formal agreement by GCC of with and without DCO scheme secondary accesses, or GCC Estates department entering into a Landowner Collaboration Agreement, then the issue of access to the Safeguarded Land will be resolved.</p>	<p>GCC AMPS.</p> <p>As such the Applicant is unable to offer the assurances sought.</p>	<p>be a matter for GCC AMPS.</p> <p>The adequacy and acceptability of any future access into the Safeguarded Land would be subject to the development management process, something which the Applicant and / or the Local Highway Authority would be unable to pre-determine.</p>
2.2	Access	<p>The northern arm of the A4019 junction only provides for field access and the informal Traveller site. The Safeguarded Land abuts Tewksbury Road and benefits from a long frontage providing plenty of scope for an access to be constructed. If the Scheme comes forward, it will not only fail to facilitate development of the land but also compromises the ability of the developer to build a suitable access.</p> <p>Bloor Homes believe that the Applicant should be required to amend its application to either:</p> <p>a) Redesign the northern arm of the A4109 junction as to provide the necessary access to the Safeguarded land, providing public highway up to the existing legal ownership; or</p> <p>b) Make a commitment that it will not impede future development of the Safeguarded Land.</p> <p>Subject to the formal agreement by GCC of with</p>	<p>In relation to how the Scheme enables the Safeguarded site to come forward it should be noted that whilst the Scheme is unable to predetermine the outcome of any planning process by providing an access it does provide capacity within the local and strategic road network that would allow for the Safeguarded land, or other future development proposal in proximity of the junction, to come forward without the need to further improve the road network capacity themselves.</p> <p>The Applicant has set out a response outlining the detail of the proposed replacements for the existing accesses A-G in response to REP4-043.</p> <p>Whilst the Applicant notes the IPs position it should be noted that any agreement of GCC as local highway authority would be a matter for the Joint Councils and that any</p>	<p>Any agreement of GCC as local highway authority would be a matter for the Joint Councils and any collaboration agreement would be a matter for GCC AMPS.</p> <p>The adequacy and acceptability of any future access into the Safeguarded Land would be subject to the development management process, something which the Applicant and / or the Local Highway Authority would be unable to pre-determine.</p>

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
		and without DCO scheme secondary accesses, or GCC Estates department entering into a Landowner Collaboration Agreement, then the issue of access to the Safeguarded Land will be resolved.	collaboration agreement would be a matter for GCC AMPS. As such the Applicant is unable to offer the assurances sought.	
2.3	Safety and suitability of existing Farm Access	<p>This matter is to be resolved with existing farming landowner not with Bloor Homes.</p> <p>The IP understands that the landowner maintains that the tracked turns into the access track will cause conflicts for passing farm machinery and there is a lack of clarity from the Application over who will own, control, maintain and approve future changes to the access if needed.</p>	<p>The Applicants position remains as set out in the response outlining the detail of the proposed replacements for the existing accesses A-G in response to REP4-043.</p> <p>The Applicant considers that the proposed design does not cause operational or safety issues that would require access via a north-south route.</p>	The Applicant will continue to work with all parties to find an acceptable resolution.
3.1	Funding methodology	<p>As noted in the correspondence dated 30/07/24 and 07/10/24, the IP does not agree to the Funding Methodology, but subject to conditions and without prejudice, does agree with the emerging Funding Strategy.</p> <p>The IP has confirmed that subject to the achievement of an outline planning permission, and the conditions relating to either Landowner Agreement or secondary access being met, then proportionate financial contributions to the shortfall funding are agreed in principle.</p>	The Applicant notes the IPs position and will continue to work with all parties to find an acceptable resolution.	The Applicant will continue to work with all parties to find an acceptable resolution.
3.2	Compulsory Acquisition	The 'Guidance related to procedures for the compulsory acquisition of land' (DCLG September 2013) provides that an applicant must demonstrate how its scheme will be funded and how any funding shortfalls will be addressed	The Applicant considers that its indication for how the shortfall in funding is to be met is sufficiently set out in its Funding Technical Note (REP4-043) to meet the tests required of it under guidance and which would be relevant	The IP and Applicant agree that this matter is for the ExA to determine.

SoCG ref	Issue	Interested Party Position at Deadline 11	Applicant Position at Close of Examination	What is required to resolve this matter?
		<p>(paragraph 17). The timing of the availability of funding is also a relevant factor (paragraph 18). The Applicant has failed to satisfy these requirements.</p> <p>The uncertainty as to the funding for the Scheme (including that no reliance can be placed on the Applicant receiving a developer contribution from North West Cheltenham (A4) and the Safeguarded Land) will need to be taken into account by the Examining Authority in determining whether there is a compelling case in the public interest for the compulsory acquisition of land to enable the Scheme to proceed.</p>	<p>to the Examining Authority in determining whether there is a compelling case in the public interest for the compulsory acquisition of land.</p>	



AtkinsRéalis

5th Floor, Block 5
Shire Hall
Bearland
Gloucester
GL1 2TH

Tel: +44 (0) 8000 514 514