

**Respondent ID:**

**Black Box Planning on behalf of:**

- **The Twigworth Farm Partnership (TWIG014 - Chestnut Tree Farm, Twigworth)**
- **Edward Ware Homes (ALD010 - last west of Willow Bank Road, Alderton)**
- **Redrow Homes (ASHC022 - land at Walton Cardiff, Tewkesbury)**
- **Taylor Wimpey Strategic Land (General interest)**
- **Edenstone Homes (Elms Farm, Minsterworth, plan at Appendix 1)**
- **Tiarks Property Development (Brockridge Business Park, plan at Appendix 2)**

Note: Omission site reference numbers in accordance with EB015c

## **Hearing Statement**

### **Matter 1: Duty to Co-operate and other legal requirements**

1. This statement has been submitted to supplement representations made by Black Box Planning to the Regulation 18 and Regulation 19 consultation stages of the local plan preparation. It does not restate the matters which have already been presented in those representations but does amplify some of the issues with specific reference to the Inspector's List of Matters, Issues and Questions (16 December 2020). This statement also has regard to the Inspector's guidance note regarding the scope and purpose of the TBP examination.
2. The demonstration of the Duty to Co-operate<sup>1</sup> relies heavily on the JCS Duty to Cooperate Statement of June 2015 as evidenced by paragraph 8.1 of CD008. The JCS was adopted in December 2017 and its Duty to Cooperate Statement is now over 5 years old. The JCS was adopted with the requirement for an immediate review, which has failed to materialise to any meaningful stage. The JCS Issues and Options Consultation did not commence until November 2018, 11 months after the JCS adoption, despite the 'issues' of the shortfall being fully known for several months before JCS adoption. In the two-year period that followed the Issues and Options consultation, the JCS immediate review has not progressed.
3. We question therefore if the TBP has adequately demonstrated Duty to Co-operate, when such reliance is placed on a statement which is over 5 years old, and moreover when the strategic policies relating to housing development have been determined to be out of date by the recent appeal decision at Ashmead Drive, Gotherington (APP/G1630/W/20/3256319)<sup>2</sup>. In this context, the Duty to Co-operate on strategic

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<sup>1</sup> As set out in CD008 – TBP Duty to Co-operate Statement (April 2020)

<sup>2</sup> Enclosed as Appendix 3 to this Statement.

matters is a relevant consideration for the scope of the TBP with ongoing delays to the JCS review. The TBP should not rely upon the JCS by way of demonstrating the Duty to Co-operate.

4. It is recognised that the examination of TBP is not considered by the Inspector as an opportunity to revisit the adopted JCS, nor pre-empt the JCS review. However, paragraph 27 of the framework requires authorities to prepare and maintain one or more statements of common ground documenting cross boundary matters. The Memorandum of Understanding for Gloucestershire<sup>3</sup> indicates that bimonthly meetings are held regarding Co-ordination of Local Plans. No further details of the meetings, issues or outcomes are provided. In addition, the statement of common ground with the South Worcestershire authorities only relates to the cross-boundary JCS allocation at Mitton. Paragraph 31 of the Framework states that the preparation of all policies should be underpinned by relevant and up-to-date evidence. In this context, it is questioned whether the TBP demonstrates constructive, active and ongoing dialogue regarding development growth requirements with neighbouring authorities within and beyond Gloucestershire.
5. The same concerns arise in respect of the Duty to Co-operate with Gloucestershire County Council. Section 33A of the Planning and Compulsory Purchase Act 2004 binds county councils to the Duty to Co-operate alongside local planning authorities. The Act requires co-operation to maximise the effectiveness<sup>4</sup> of development plans<sup>5</sup>. The effectiveness of development plans is truly measured by their performance in directing, controlling and most importantly delivering development growth requirements over the duration of the plan period. As detailed below, the lack of co-operation between Gloucestershire County Council and the local planning authorities has resulted in a grave situation whereby the county is presenting an obstacle to housing development delivery. The TLP examination should therefore carefully examine this matter, as it goes to the heart of the development plan being legally compliant and sound.
6. The JCS authorities are CIL charging authorities since 1<sup>st</sup> January 2019 as per the Charging Schedule (October 2018)<sup>6</sup>. The calculation of the Levy for the JCS area included provision of education infrastructure.
7. Notwithstanding that, the County has recently sought to secure educational infrastructure through S.106 planning obligations despite CIL being in place to cater for education provision. There is little evidence in the submission documents to

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<sup>3</sup> See Appendix B of CD008 - TLP Duty to Co-operate Statement (April 2020)

<sup>4</sup> See subsection 1 of Section 33A of the Planning and Compulsory Purchase Act 2004

<sup>5</sup> See subsection 3 of Section 33A of the Planning and Compulsory Purchase Act 2004

<sup>6</sup> As set out in DP007 – Tewkesbury Borough CIL Charging Schedule (October 2018)

demonstrate that constructive, active and ongoing dialogue has been undertaken regarding the strategic infrastructure matter of education provision proportionate to the development growth in the local plan. To the contrary, it is alarming that the submitted Viability Assessment (EB024a) assumes £5,000 per house<sup>7</sup> for S.106 contributions. The reality of recent experience is that planning applications are being met with requests for S.106 contributions in excess of three times this assumption, in addition to CIL. To demonstrate this in practice, recent pre-application responses illustrating the high levels of contributions sought by the County Council are enclosed at Appendix 4. This matter goes to the heart of deliverability of the plan, and it is therefore a wholly relevant matter for the TLP examination. Further evidence of dialogue with the County Council including viability testing on this matter is required to demonstrate the Duty-to-Cooperate has been satisfied.

8. Furthermore, the County's pursuit of S.106 planning obligations in addition to CIL, effectively double charging for education infrastructure, presents a serious viability issue for development. Without this matter being explored, tested and considered through the TBP examination, the plan cannot be considered 'sound' as there can be little confidence regarding deliverability of site allocations. The necessity for confidence of delivery is heightened in the context of Council's housing land supply position. This matter cannot be deferred to the JCS review and subsequent CIL review, as to do so would result in a grave situation of stifled housing delivery when there is already a very substantial shortfall of both supply through allocations and delivery. Furthermore, there can be little confidence in the JCS review being complete within the next two to three years given the track record of the JCS authorities.

9. In respect of planning obligations, the NPPG states;

***"Plan makers should consider the combined total impact of such requests, so they do not undermine the deliverability of the plan."***<sup>8</sup>

10. Paragraph 34 of the Framework also states that policies for development contributions should not undermine the deliverability of the plan.

11. It is clear therefore, that the current situation regarding education contributions in Gloucestershire is a relevant matter for both the planning authority to assess and evidence accordingly, and for the TBP examination to ensure that the plan and proposed allocations are deliverable. As highlighted in paragraph 7 above, the viability

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<sup>7</sup> See paragraph 55 of EB024a – TBP Viability Assessment (September 2019)

<sup>8</sup> Paragraph: 003 Reference ID: 23b-003-20190901

assessment is devoid of reality with regards to the levels of S.106 obligations requests with which planning applications are greeted.

12. In consideration of the submissions above, it is suggested that updated Duty-to-Cooperate statements and supporting evidence including viability testing are necessary to remedy these concerns to ensure the TBP satisfies the legal requirement on Duty to Cooperate.