

**Item No 01:-**

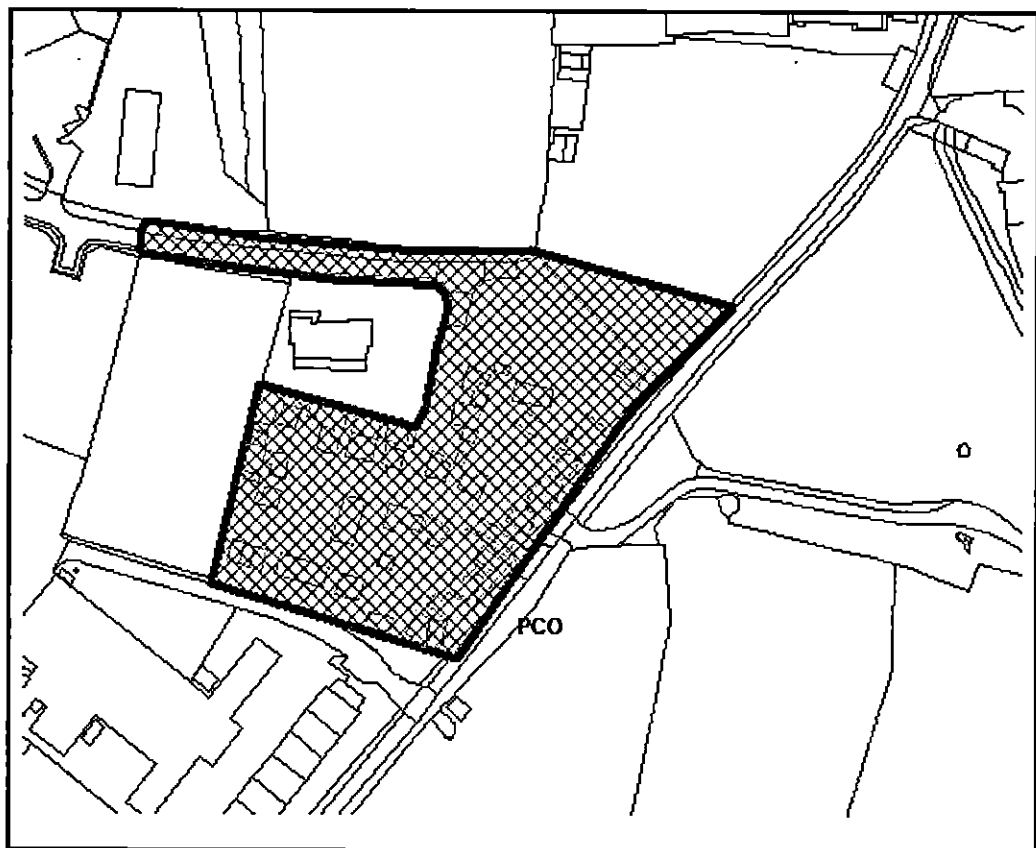
**16/00216/FUL (CT.5864/P)**

**Quercus Park  
Quercus Road  
Tetbury  
Gloucestershire**

**Item No 01:-**

**Removal of condition 18 of outline planning permission 13/03363/OUT for the  
provision of a pedestrian footway along Cirencester Road at  
Quercus Park  
Quercus Road Tetbury**

<b>Full Application 16/00216/FUL (CT.5864/P)</b>	
<b>Applicant:</b>	Bovis Homes Ltd
<b>Agent:</b>	N/A
<b>Case Officer:</b>	Andrew Moody
<b>Ward Member(s):</b>	Councillor Maggie Heaven
<b>Committee Date:</b>	11th May 2016

**Site Plan**

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**RECOMMENDATION: REFUSE**

**Main Issues:**

- (a) Background to the Development
- (b) Removal of Condition 18

**Reasons for Referral:**

This application has been referred to the Planning Committee for the determination at the request of the Councillor Hirst, and having regard to comments made by Planning Committee when determining reserved matters application 14/03567/REM.

**1. Site Description:**

This application relates to a 1.9 ha site located at the eastern end of Quercus Road, with a frontage to the western side of Cirencester Road. The site is to the north-east of Tetbury, and the development of the site for the erection of 50 dwellings is ongoing with some dwellings already occupied.

The site is within both the Tetbury Development Boundary and an Area of Outstanding Natural Beauty.

**2. Relevant Planning History:**

08/01610/OUT: Development of 2.21 hectares of land for a mixed employment scheme to include B1, B2, B8 uses and a builders' merchants. Granted 19.12.2008.

08/03611/REM: Reserved Matters application for boundary landscaping of entire site and planting masterplan, landscaping within plot D, External appearance of proposals within Plot D, siting of buildings within Plot D, design of building within Plot D, bicycle parking details and vehicle parking and manoeuvring within Plot D and sewage treatment works. Granted 02.03.2009.

11/05483/OUT: Original applications 08/01610/OUT (Development of 2.21 hectares of land for a mixed employment scheme to include B1, B2, B8 uses and a builders' merchants) and 08/03611/REM (Reserved Matters application for boundary landscaping of entire site and planting masterplan, landscaping within plot D, External appearance of proposals within Plot D, siting of buildings within Plot D, design of building within Plot D, bicycle parking details and vehicle parking and manoeuvring within Plot D and sewage treatment works). Extension of time for 5 years to allow additional time for the plots to be developed. Granted 24.07.2012.

13/03363/OUT: Residential development and associated works. Refused 14.11.2013. Appeal allowed 29.4.2014.

13/04899/OUT: Residential development and associated works. Withdrawn 13.6.2014

14/03567/REM: Reserved matters application for the appearance, landscaping, layout and scale of 50 dwellings. Granted 11.02.2015

**3. Planning Policies:**

NPPF National Planning Policy Framework  
LPR38 Accessibility to & within New Development

**4. Observations of Consultees:**

County Highways Officer: No objection

## 5. View of Town/Parish Council:

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Views of Town/Parish Council:

Tetbury Town Council - Does not support the removal of condition 18.

## 6. Other Representations:

17 letters of representation have been received, the main issues raised being: -

- Footpath clearly needed for residents to get into town
- This is the most direct route to the surgery, post office and all local shops other than Tesco
- Condition of the grass verge shows how people already walk along the roadside
- The ditch can be retained
- We should be encouraging people to walk and cycle into town and giving them safe access to do so
- The applicants are wrongly claiming that hedge and culvert would have to be removed to construct the path
- Cirencester Road is a shorter, safer and far more pleasant route to the centre of Tetbury

In addition, a petition with 41 signatories has been received, opposing the removal of the condition.

## 7. Applicant's Supporting Information:

Supporting Statement

### (a) Background to the Development

This application seeks the removal of condition 18 of the outline planning permission, 13/03363/OUT, which was allowed on appeal. This condition required the following: -

"No works shall commence on site on the development hereby permitted until details of a pedestrian footway to be provided along Cirencester Road between the site access and the existing footway provision to the south-west of the site access, have been submitted to and agreed in writing by the local planning authority, and the footway shall then be constructed in accordance with those agreed details before any of the dwellings hereby permitted are occupied."

Whilst the Inspector did not give a reason for the condition in the decision letter, that provided by the Highway Authority referred to reducing potential conflict between vehicular and pedestrian traffic, and to provide a safe and suitable access, in accordance with Paragraph 32 of the NPPF.

It should be noted that works have progressed without such details being provided for consideration.

### (b) Removal of Condition 18

The Highway Authority's consultation response with regard to application 13/03363/OUT, whilst raising no objection to the development and recommending conditions, made no reference to the provision of a footway along Cirencester Road.

Following deferral for a Site Inspection Briefing, Members of the Planning Committee refused outline planning permission in November 2013. The applicants lodged an appeal with regard to that decision, whilst also submitting a new outline planning application 13/04899/OUT, which provided greater information with regard to the marketing of the land (it was allocated for employment use), which sought to address the reason for refusal.

The requirement for a condition providing a footpath along the Cirencester Road first appeared in the Highway Authority's consultation response with regard to this second planning application and, following a discussion between the case officer and the representative of the Highway Authority, this condition was included within the list of suggested condition sent to the Planning Inspectorate.

Whilst this second outline planning application was considered to be acceptable, it was withdrawn prior to a Section 106 Legal Agreement being signed, as the appeal against the refusal of 13/03363/OUT was allowed on 29 April 2014. This, therefore, included condition 18, the subject of this application. Members should note that the applicant, Bovis Homes Ltd, acquired the site after the appeal had been allowed.

There is an existing footpath along the northern side of Cirencester Road, up to 900mm in width, that ends outside the Tetbury Industrial Estate, approximately 155 metres from the edge of the site for the 50 dwellings. The Highway Authority has indicated that they would wish to see a 2 metre wide path provided and, for the majority of its length, this width is attainable. There is only one short section, towards the eastern entrance into the Industrial Estate, where this narrows to 1.75 metres. The provision of a 2 metre wide footway would affect a ditch and a culvert, however nothing has changed in this respect since the condition was first recommended.

In terms of the need for the footpath, your Officers consider that this was clearly considered to be necessary by the Highway Authority when recommending this be imposed, as indeed would have been the case with the Inspector determining the appeal. For reference, paragraph 206 of the NPPF states that "Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."

When visiting the site, it is noticeable that the grass verge along the northern side of the Cirencester Road, along the frontage to the Industrial Estate, is worn implying that this is used by pedestrians. Photographs are attached as an Appendix to demonstrate this.

Members should also be aware that the entire grass verge along both sides of the Cirencester Road is within the highway, therefore no third party land would be required to allow the construction of the footpath. A plan showing the extent of the highway shaded in blue is also attached as an Appendix.

Notwithstanding this, the Highway Authority has commented, with regard to this application, that: -

"The development provides a viable alternative pedestrian link via Quercus Rd/London Rd which provides a more desirable link to a wider range of goods and services. Therefore it would be envisaged that pedestrian flow using a pedestrian footway on Cirencester Road would be low. Paragraph 32 of the NPPF states that "improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development", we do not believe that this would be the case here as the low flow of pedestrians using a footway on Cirencester Road would not constitute a cost effective improvement.

Furthermore as a result of the viable alternative, it can be said that the condition does not meet the tests of planning conditions stated by Paragraph 206 of the NPPF as the condition is not necessary and is not needed to make the development acceptable in planning terms."

It should be noted, however, that these comments were made in the light of an incorrect assumption that condition 18 was not requested by the highway Authority but was attached by the Inspector in determining the appeal. They have, however, been maintained following clarification of the source of condition 18.

Your Officers have sought independent advice regarding this matter, which concludes that the footpath is necessary and is needed to make the development acceptable in planning terms. There is a general presumption that any new development should maximise sustainable travel

opportunities, with the objectives in paragraph 35 of the NPPF stating that development should be located and designed where practicable to give priority to pedestrian and cycle movements, as well as creating safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians.

It has been calculated that the distance to the town centre via Cirencester Road would be approximately 1200 metres, as opposed to approximately 1700 metres via London Road, for the majority of the new dwellings. The Chartered Institution of Highways and Transportation has published guidelines that identify a preferred maximum acceptable walking distance of 1200 metres, which therefore the Cirencester Road route would meet.

Whilst pedestrian access to the Tesco store can be achieved via the London Road, the town centre, including the majority of the towns shops, post office, in addition to the employment opportunities at the Industrial Estate, are more directly accessed by Cirencester Road. As stated above, there is considered to be clear evidence that the existing grass verge is already used by pedestrians, and the additional residential development is only considered to be likely to increase such usage. It is, therefore, considered that a "safe" pedestrian route is available, and unless this pathway is provided pedestrians will walk wither in the road or along a potentially muddy verge.

At the time of the appeal the alternative pedestrian links which the applicant is relying upon to provide an alternative pedestrian route were already in existence, however the Inspector considered the additional pedestrian link to be necessary.

#### **9. Conclusion:**

In conclusion, whilst the Highway Authority's position is noted, your Officers do not consider that the removal of condition 18 can be justified. There has been no significant change in circumstances since the appeal was allowed in April 2014, the land in question is highway verge, and the route provided would be a far more direct journey into the town centre, and the facilities therein.

The condition was initially recommended by an Officer of the Highway Authority, and was considered to meet the tests for conditions by the Inspector determining the appeal against the refusal of planning application 13/03363/OUT.

The recommendation is for the removal of condition 18 to be refused.

#### **10. Proposed Reason for Refusal:**

Having regard to the need to provide a footpath link along the Cirencester Road to the existing footway, which was considered to meet the relevant tests for the imposition of conditions by the Inspector in allowing the appeal against the refusal of outline planning permission 13/03363/OUT, it is not considered that there has been any material change in circumstances that would justify the removal of this condition. The land required for the construction of the footpath is either highway verge or within the applicant's control, and the footpath would provide a much shorter and sustainable route into Tetbury town centre than the alternative route being proposed, and would promote a safe and secure pedestrian link. The proposal, therefore, is contrary to Policy 38 in the Cotswold District Local Plan and Section 4 of the NPPF.

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## Appeal Decision

Site visit made on 7 April 2014

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 April 2014

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**Appeal Ref: APP/F1610/A/14/2211844**

**Quercus Park, Quercus Road, Tetbury, Gloucestershire GL8 8GX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Blandfield Properties Martock Ltd. against the decision of Cotswold District Council.
  - The application Ref 13/03363/OUT, dated 30 July 2013, was refused by notice dated 14 November 2013.
  - The development proposed is residential development and associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development and associated works at Quercus Park, Quercus Road, Tetbury, Gloucestershire GL8 8GX in accordance with the terms of the application, Ref 13/03363/OUT, dated 30 July 2013, subject to the conditions set out in the Annex attached to this decision.

### Preliminary matters

2. The application is made in outline with all matters other than access reserved for subsequent approval. The application indicates that 50 dwellings are proposed.
3. A unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 has been submitted by the appellants, which sets out arrangements for the provision of affordable housing and the payment of money in respect of various services. I shall refer to this in more detail below.
4. The Government published its Planning Practice Guidance on 6 March 2014. The content of the guidance has been considered but in light of the facts in this case the Planning Practice Guidance does not alter my conclusions.

### Main Issues

5. The main issues are:
  - i) the effect of the proposal on the supply of employment land, and
  - ii) whether adequate arrangements have been made for the provision of affordable housing and services and facilities made necessary by the development.

## Reasons

6. The site forms an open area of land to the north of Tetbury Industrial Estate, on the west side of Cirencester Road. It would be accessed from Quercus Road, which leads off a roundabout on the A433 London Road, as well as from a new access from Cirencester Road. The site is within the Tetbury Development Boundary, where residential development is acceptable in principle. However, the site is allocated for future Class B1 or B2 employment uses by saved Policy TET.3 of the Cotswold District Local Plan (DLP).
7. Saved DLP Policy 24 provides that within or adjacent to Cirencester or principal settlements (of which Tetbury is one) proposals for development that would result in the loss of, amongst other things, land allocated for future employment uses will only be permitted where specific criteria are met. One of these criteria (a) is where the site is not required to meet existing or future employment needs.
8. A significant material consideration in this case is the planning application Ref: 13/04899/OUT, for an identical development on the same site, which the Council resolved to approve on 12 February 2014. This decision was taken after the refusal of the appeal application, and after the submission of the Council's statement of case, and I therefore afford considerable weight to this recent decision and to the views and recommendations of the Council's officers.
9. The Council now accepts that in the light of the evidence put forward by the appellants, which shows that there is a substantial supply of employment land available in Tetbury, and that the site has marketed for employment purposes for 7 years without substantive interest, the proposal could not be resisted in the light of the advice in paragraph 22 of the National Planning Policy Framework (the Framework). That advice indicates that where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits.
10. Although the Council does not specifically say so, it seems to me that the evidence of the ample availability of other employment land in the area, combined with that showing a lack of market interest in the site over a sustained period is sufficient to conclude that criterion (a) of Policy 24 is satisfied, and that the proposal would not conflict with the policy.
11. The Council also accepts that it is unable to demonstrate a 5 year supply of housing land, and that policies for the supply of housing should therefore be considered as being out of date. In such circumstances, paragraph 14 of the Framework applies, which says that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate that development should be restricted.
12. The Council recognises that the appeal site lies in a sustainable location and that the benefits of the proposal significantly outweigh any adverse impact arising from the loss of an employment site. On the basis of the evidence before me, I see no reason to take a different view.



13. I therefore conclude on the first main issue that the proposal would not harm the supply of employment land or conflict with LP Policy 24.

*Affordable housing and contributions*

14. Saved LP Policy 21 seeks up to 50% of affordable housing to be provided as part of the development of any significant site in Tetbury and other named towns. The Council has identified 156 households on the waiting list for affordable housing in the wider Tetbury area. Although recent planning permissions include provision for a total of 175 affordable dwellings, none of these has yet come forward, and there can be no certainty as to if or when they may be delivered.
15. The unilateral undertaking submitted by the appellants makes provision for 50% of the proposed dwellings to be affordable, with 35% to be rented and the remaining 15% to be in shared ownership or intermediate housing. I consider that this satisfies the requirements of Policy 21, and is necessary to allow the development to proceed.
16. The obligation also makes provision for a payment of £137,208 towards the provision of primary school places. Whilst there is currently spare capacity in the local schools, this will be utilised by new residential development already coming forward. I therefore consider the payment to be justified. The obligation also includes a payment of £9800 to be used towards new computers, stock, furniture, opening hours or capital works at Tetbury Library. The sum sought arises from the need to ensure that the library maintains adequate standards, quantified by the number of items and computers per 1000 head of population. I consider that this payment is also justified.
17. Gloucestershire County Council expressed a concern that the payments to be provided under the obligation should be bonded, to protect against default. However, the County Council's requirement for a bond was subsequently withdrawn, and I am satisfied that a bond is not justified in this case because of the relatively low value of the payments involved and the scale of the proposal. The circumstances regarding obligations accepted by the Highway Authority on another similar scheme reinforce my view on this matter.
18. In the light of the evidence before me I consider that the payment proposed are justified and that the obligation as a whole satisfies the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.
19. I therefore conclude on this issue that the proposal makes adequate arrangements for the provision of affordable housing and services and facilities made necessary by the development, and complies with LP Policy 21.

**Conditions**

20. The Council has suggested a number of conditions which I have assessed in the light of national advice. A condition to require the access to be carried out in accordance with the approved plans is necessary in the interests of good planning and for the avoidance of doubt. Conditions relating to ground contamination and noise insulation are needed to protect the health and living conditions of future occupiers. The submission of drainage details are needed to ensure that the site is adequately drained and to promote sustainability. A condition relating to great crested newts and reptiles is necessary to conserve biodiversity. Measures for the protection of trees (including restrictions on

burning on site) and the provision of site levels are needed in the interests of appearance. Conditions relating to the provision of visibility splays, construction access, the provision of a footway and the standard of access for occupied dwellings are all needed in the interests of highway safety.

21. The suggested condition regarding arrangements for future maintenance of the roads is potentially onerous, and in the absence of evidence of a particular problem which the condition needs to address, I consider that it is unnecessary.

**Conclusion**

22. For the reasons given above, I conclude that the appeal should be allowed.

*JP Roberts*

INSPECTOR

## ANNEX

- 1) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development shall not be started before approval of the details relating to appearance, layout, scale and landscaping has been given in writing by the local planning authority.
- 4) The development hereby approved shall be implemented in accordance with the following drawing numbers: P001; RSLHT-9021-P-1020 Rev. 02; RSLHT-9021-P-1021 Rev. 02 and RSLHT-9021-P-1027 Rev. 01.
- 5) A detailed plan showing the levels of the existing site and the precise floor slab levels of the new dwellings, relative to the existing development on the boundary of the site, shall be submitted to and approved in writing by the local planning authority as part of the reserved matters prior to the commencement of the development.
- 6) No development shall take place until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the local planning authority. This assessment shall consider any contamination on the site, whether or not it originates on the site. Moreover, it shall include:
  - (i) A 'desk study' report documenting the site history, environmental setting and character, related to an initial conceptual model of potential pollutant linkages;
  - (ii) A site investigation, establishing the ground conditions of the site, a survey of the extent, scale and nature of contamination;
  - (iii) A 'developed conceptual model' of the potential pollutant linkages with an assessment of the potential risks to:-
    - human health;
    - property (existing or proposed) including buildings, and service lines and pipes;
    - adjoining land;
    - groundwaters and surface waters;
    - ecological systems.
- 7) No development shall take place until a detailed Remediation Scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural environment has been submitted to and approved in writing by the local planning authority. The Scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The Scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- 8) The Remediation Scheme, as agreed in writing by the local planning authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the local planning authority in advance of works being undertaken. On completion of the works the developer shall submit to the local planning authority written confirmation that all works were completed in accordance with the agreed details.
- 9) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing within 2 days to the local planning authority and development must be halted on the part of the site affected by the unexpected contamination. An assessment must be undertaken in accordance with the requirements of Condition 7, and where remediation is necessary a remediation scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the local planning authority in accordance with the requirements of Condition 8.
- 10) The measures in the approved remediation scheme must then be implemented in accordance with the approved timetable. Following completion of measures identified in the approved remediation scheme written confirmation that all works were completed must be submitted to and approved in writing by the local planning authority in accordance with Condition 8.
- 11) The development shall be carried out in strict accordance with the recommendations set out in the Acoustics Report A606/R01, prepared by Ion Acoustics and dated 9th July 2013. No dwelling shall be brought into use or occupied until the required attenuation works for that dwelling have been carried out.
- 12) Development shall not begin until foul and surface water drainage details, incorporating sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, have been submitted to and approved in writing by the local planning authority and the scheme shall subsequently be implemented in accordance with the approved details before the development is first brought into use/occupied.
- 13) No development, or site works, shall take place until a precautionary working method statement for great crested newts and reptiles and a 10 year landscape and ecological management plan for the site, based upon the recommendations of the Bat Activity (July 2013) and the Ecological Appraisal (April 2013) prepared by Keystone, has been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to occupation of the buildings being brought into use and/or if outlined in the management plan, following commencement of use.
- 14) Prior to the commencement of any works on site (including demolition and site clearance), a Tree Protection Plan (TPP) shall be submitted to and approved in writing by the local planning authority. The TPP shall be a scaled drawing prepared by an arboriculturalist showing the finalised layout proposals, tree retention, tree/landscape protection measures and

Construction Exclusion Zones (CEZs) - all in accordance with BS5837:2012 'Trees in relation to design, demolition and construction - recommendations'. Tree protection measures shown on the TPP must be put in place prior to the commencement of any works on site (including demolition and site clearance) and shall not be removed without the written approval of the local planning authority.

- 15) Fires on sites should be avoided if possible. Where they are unavoidable, they should not be lit in a position where heat could affect foliage or branches. The potential size of the fire and the wind direction should be taken into account when determining its location, and it should be attended at all times until safe enough to leave. Existing ground levels must remain the same within CEZs and no building materials or surplus soil shall be stored therein. All service runs shall fall outside CEZs unless otherwise approved by the local planning authority.
- 16) The proposed vehicular access taken from Cirencester Road shall not be brought into use until the existing frontage boundaries either side of the vehicular access have been lowered to provide visibility splays extending from a point of 2.4 metres back from the carriageway edge along the access centre line to a point on the nearside carriageway edge 120 metres distant in each direction. Any new boundary, fence or other enclosure shall be erected on or behind the splay lines so defined, with the area in advance maintained permanently clear of obstructions to visibility to a height not exceeding 0.9 metres above the adjacent carriageway level.
- 17) No works shall commence on site (other than those required by this condition) on the development hereby permitted until the first 10m of the proposed access road taken from Cirencester Road, including the junction with the existing public road and associated visibility splays, has been completed to at least binder course level.
- 18) No works shall commence on site on the development hereby permitted until details of a pedestrian footway to be provided along Cirencester Road between the site access and the existing footway provision to the south-west of the site access, have been submitted to and agreed in writing by the local planning authority, and the footway shall then be constructed in accordance with those agreed details before any of the dwellings hereby permitted are occupied.
- 19) No dwelling on the development shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the footway(s) to surface course level.

















