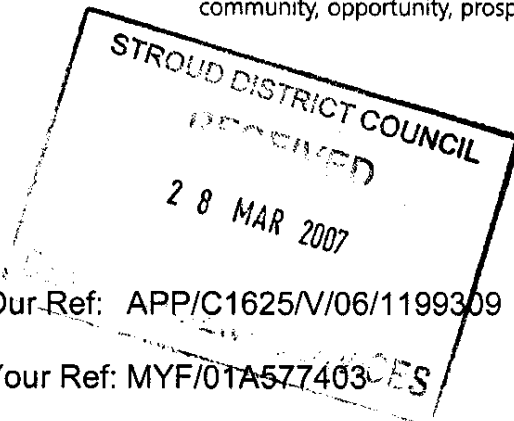


27 March 2007

Mr M Fox  
GVA Grimley  
3 Brindley Place  
Birmingham  
B1 2JB

Our Ref: APP/C1625/V/06/1199309

Your Ref: MYF/01A577403



Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION BY SLOUGH ESTATES PLC  
LAND AT JAVELIN PARK, BATH ROAD, HARESFIELD, STONEHOUSE,  
GLOUCESTERSHIRE GC10 3DP  
APPLICATION REF: S.05/2138/VAR**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, R R Lyon MA CEng MICE MRTPI FIHT, who held a public inquiry between 28 November and 5 December 2006 into your client's application to vary condition 02 on outline consent reference S.01/1191 to extend the prescribed period in which reserved matters applications must be made to 23 August 2006 (subsequently amended - see paragraph 4 below) in accordance with application Ref S.05/2138/VAR dated 3 November 2005.
2. Instead of being dealt with by the relevant planning authority, Stroud District Council, the application was called in for decision by the Secretary of State following a direction issued, in pursuance of section 77 of the Town and Country Planning Act 1990, on 20 June 2006.

**Inspector's recommendation and summary of the decision**

3. The Inspector, whose conclusions are reproduced in the annex to this letter, recommended that the application be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural matters**

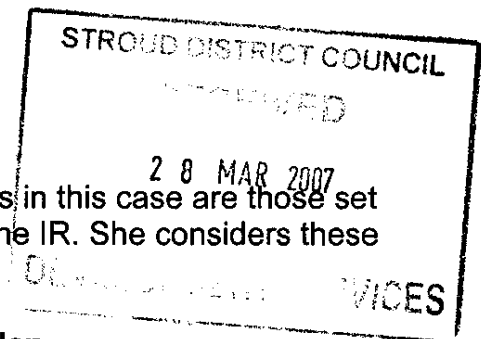
4. The Secretary of State notes (IR1) that, in a letter dated 30 January 2006 to Stroud District Council, the applicant requested that the application be amended such that reserve matters applications should be made "before the expiration of 5 years from the date of this permission", that this amendment was accepted by the District Council and that the Inspector has reported on that basis. Accordingly, the Secretary of State has also made her decision on the basis that, as the original planning permission was granted on 21 November 2002 (IR12), condition 02 would be varied to extend the prescribed period in which reserved matters applications must be made to 20 November 2007.
5. The Secretary of State also notes that Gloucestershire County Council made representations at the Inquiry that the Secretary of State is without jurisdiction in determining this application (IR5-8). However, for the reasons given in IR126-127, the Secretary of State agrees with the Inspector that she does have jurisdiction.

### **Policy considerations**

6. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the Regional Spatial Strategy for the South West (RPG10), the Gloucestershire County Structure Plan Second Review (GSP) (adopted November 1999), the Gloucestershire Waste Local Plan 2002-2012 (GWLP) (adopted October 2004), and the Stroud District Local Plan (SDLP) (adopted November 2005).
7. The Secretary of State has also had regard to the draft Regional Spatial Strategy for the South West (RSS 10) (April 2006); and to the draft Joint Municipal Waste Management Strategy (JMWMS) which is being prepared by the 7 Gloucestershire Councils to provide a framework for the development of waste management services in Gloucestershire to 2020. However, since both these documents could still be subject to change, the Secretary of State affords them only limited weight.
8. Other material considerations that the Secretary of State has taken into account include Planning Policy Guidance 4 (PPG4): *Industrial and Commercial Development and Small Firms*; Planning Policy Statement 10 (PPS10): *Planning for Sustainable Waste Management*; Planning Policy Statement 12 (PPS12): *Local Development Frameworks*; Circular 11/95: *The Use of Conditions in Planning Permission*; Circular 08/2005: *Guidance on Changes to the Development Control System*; *Employment Land Reviews: Guidance Note* published by ODPM in December 2004; and the Town and Country Planning (England) Regulations 1999 (SI 3280/1999).

### **Main issues**

9. The Secretary of State considers that the main issues in this case are those set out in the call in letter and reproduced on page 1 of the IR. She considers these and other relevant matters below.



### **Whether the proposal accords with the Development Plan**

10. The Secretary of State has taken account of the fact (IR157) that the SDLP includes on its proposals map the safeguarded waste allocation at Javelin Park, while indicating the site in its text as an employment commitment (based on the existence of the planning permission which the current proposal seeks to vary). She agrees with the Inspector (IR157) that it is unfortunate that the SDLP did not resolve this apparent conflict. However, she agrees with the Inspector that, for the reasons given in IR159, the SDLP considers the site as an employment allocation and, for the reasons given in IR163-165, she agrees with the Inspector that Javelin Park provides a significant proportion of the B8 land available in the SDLP and that the current application is in accordance with the adopted plan.
11. Nevertheless, for the reasons given in IR151, the Secretary of State agrees with the Inspector that the use of the proposal site for waste management purposes would, in principle, satisfy the location requirements of RSS 10 and the policy of the emerging waste management strategy in JMWMS. She also agrees with the Inspector that Policy 4, with Schedule 1, of the GWLP has the effect of identifying Javelin Park as one of the 5 sites where Strategic Waste Management facilities may be permitted; and that Policy 7 of the GWLP provides that such sites will normally be safeguarded (IR153). Furthermore, the Secretary of State notes (IR154) that Gloucestershire County Council sought to establish at the GWLP Inquiry that Javelin Park is the best of the strategic sites identified, while she also notes that the GWLP has a generous provision of sites in recognition of the fact that some of the safeguarded sites may not come forward because of development pressures.
12. The Secretary of State therefore concludes that support is provided by the development plan both for the current proposal and for the use of the site for a waste management facility. She also agrees with the Inspector's argument in IR161 about the application of Regulations 43 and 44 of the Town and Country Planning (England) Regulations 1999 (SI 3280/1999) to determine which of these allocations should take precedence. However, she considers that, as the issue of conformity with the development plan is so finely balanced, she needs to base her decision on the merits of other material considerations rather than depending solely on this.

### **The relationship of the proposal to PPG4**

13. For the reasons given in IR141, the Secretary of State agrees with the Inspector that, as Javelin Park is a previously developed site with good access to the motorway system, it is a good location for both B8 uses and the waste management uses envisaged by the GWLP (IR141). She therefore agrees with the Inspector that, discounting the complication of a competing bid for the

use of the land in accordance with a different national policy and plan allocation, the current application accords with national planning guidance in PPG4 (IR142).

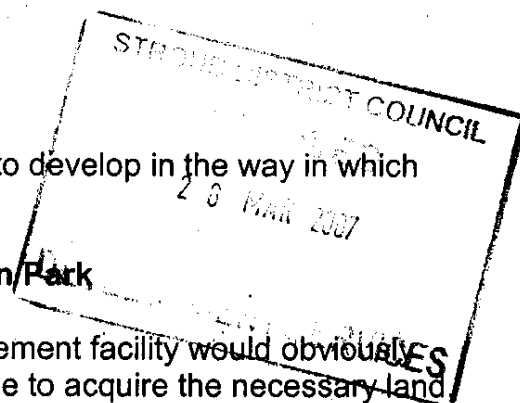
### **The relationship of the proposal to PPS10**

14. The general aim of PPS10 is to support, through the planning process, the Government's overall objective of protecting human health and the environment by producing less waste and by using it as a resource wherever possible. Waste planning authorities are expected to identify sites and areas suitable for new or enhanced waste management facilities for the waste management needs of their areas. In these general terms, the Secretary of State considers that the identification and safeguarding of the Javelin Park site for a waste management facility accords with national policy.
15. She has taken account of the Inspector's point (IR146) that an extant planning permission for B8 uses on this site existed before the GWLP Inquiry closed, but she does not agree with his argument in IR148 that the proper application of the guidance in paragraph 18 of PPS10 should therefore necessarily rule out Javelin Park from being identified for waste management purposes.
16. She considers that the current proposal should be considered on its own merits in the context of the generality of the policy in PPS10, including on avoiding prejudicing the implementation of the waste strategy in the development plan (PPS10, paragraph 33). This expects local planning authorities to consider the likely impact of proposed, non-waste related, development on sites and areas allocated for waste management and, if necessary, to consider how they could be amended to make them acceptable or, where this is not practicable, to refuse planning permission. She also considers relevant the advice in *Employment Land Reviews: Guidance Note* which emphasises the importance of considering in employment land reviews the land requirements waste facilities, in addition to those needs addressed in the scope of the review of general industrial demand.

### **The fallback position**

17. For the reasons given in IR129-131, the Secretary of State agrees with the Inspector that the fallback position of an implemented and extant planning permission for the current site is an important material consideration to which substantial weight should be attached.
18. She agrees with the Inspector (IR131) that, if the current application were to be refused, the balance of probability suggests that the extant planning permission for B8 use would take place. This would consist of a single development across the whole of the site whereas, as the Inspector into the current proposal points out (IR146), the GWLP Inquiry Inspector considered that the large area of the Javelin Park site provided scope for a strategic waste management facility occupying about 5 ha (of the total of 11 ha). Hence, the Secretary of State can see merit in the current Inspector's argument (IR147) that, if the permission currently sought is granted, its implementation will come forward in phases thus

potentially providing an opportunity for the site to develop in the way in which the GWLP Inspector envisaged.



#### **The County Council's position on acquiring Javelin Park**

19. The use of a part of the site for a waste management facility would obviously depend, however, on Gloucestershire being able to acquire the necessary land and the Secretary of State notes the Inspector's comment (IR147) that the Applicant has no wish to accommodate a waste management use in this way. Nevertheless, the Secretary of State has had regard to the fact that the County Council retain an interest in buying Javelin Park (IR132) and, for the reasons given in IR133-136, she agrees on balance with the Inspector that the County Council's position in terms of purchasing Javelin Park on the open market would not be affected by the granting of the planning permission currently being sought (IR137). She agrees with the Inspector (IR137) that this is particularly so given the theoretical possibility considered in the previous paragraph for a partial acquisition to be considered.
20. As regards the likelihood of Gloucestershire pursuing a compulsory purchase order, while the Secretary of State acknowledges that this is a potential course of action open to the County Council, she agrees with the Inspector that, for the reasons given in IR137, little weight should be given to the matter in determining the current planning application.

#### **The extent to which the permission being sought would prejudice achieving a waste management facility**

21. For the reasons given in IR146-147, the Secretary of State agrees with the Inspector that the site is already prejudiced for waste management uses by the extant and implemented planning permission for B8 use. She further agrees that granting planning permission for the current proposal would result in no material additional harm or impact to that already resulting from the extant planning permission enjoyed by the site (IR162). Like the Inspector, the Secretary of State considers that, as the current proposal envisages development of the site in stages, it represents an opportunity for a waste management facility to be accommodated on part of the site, as envisaged by the GWLP Inspector (IR147). Having regard to the fallback position, she considers that this offers a better prospect of providing scope for the County Council to acquire a part of the site than refusing to grant permission.
22. The Secretary of State has no grounds for disagreeing with the Inspector's conclusions that there is a sufficient number and quality of safeguarded sites to provide strategic waste management facilities without resorting to Javelin Park and that there is evidence to suggest that the waste development industry is bringing forward sites in the area for waste management uses providing capacity for the area (IR149). However, while she therefore accepts the Inspector's conclusion that there is no evidence to suggest that, without the site, the delivery of sustainable waste management facilities in Gloucestershire would be fatally affected, she agrees with the views of the County Council (see paragraph 11 above) that Javelin Park represents the best of the strategic sites which they have identified.

## **Conditions and Obligations**

23. The Secretary of State has considered the proposed conditions and national policy as set out in Circular 11/95, along with the Inspector's comments as set out at IR119-121 and IR167. She agrees with all the Inspector's proposed modifications, and that the proposed conditions meet the tests of Circular 11/95. The conditions to which the planning permission granted by this letter will be subject are set out in paragraph 29 below.
24. The Secretary of State considers that the provisions of the Section 106 agreement dated 20 November 2002, taken together with the supplemental agreement dated 27 November 2006, are relevant to the development; and she is satisfied that the agreement complies with the policy tests set out in ODPM Circular 05/2005.

## **Other matters**

25. For the reasons given in IR166, the Secretary of State agrees with the Inspector that there is no material evidence to show that the use of the current site for modern waste management purposes would have any adverse amenity implications for the mixed development at Hunts Grove.

## **Overall Conclusions**

26. The Secretary of State considers this to be a particularly complex planning case, with a number of overlapping policy, legal and practical issues to consider. She considers that both the current proposal and the use of the site for a waste management facility would be in general accordance with the development plan, and so she has taken account of other material considerations in reaching her decision. In particular, given the suitability of the site for a waste management facility, as recognised in the GWLP, she is concerned to provide as much opportunity as possible for the parties to explore the scope for accommodating that on the site.
27. Whether or not the Secretary of State grants permission for the current proposal, the applicant can implement the fallback position whenever he wishes, thereby sterilising the whole site from the point of view of providing a waste management facility unless Gloucestershire County Council can purchase the land, either by agreement or compulsorily. The Secretary of State does not therefore consider that the position of the County Council is rendered any more disadvantageous than at present by the granting of permission for the application currently under consideration.
28. On the other hand, the Secretary of State considers that granting the planning permission currently being sought should provide scope for a more flexible approach if the parties wish to pursue it. The applicants will be able to adopt a phased approach to the implementation of their outline permission, thereby at least opening up the possibility of accommodating a waste management facility on the site in line with national and development plan policies.

### **Formal Decision**

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby grants planning permission for variation of condition 02 on outline consent reference S.01/1191 dated 21 November 2002 to extend the prescribed period in which reserved matters applications must be made to 20 November 2007, subject to the following conditions:

STROUD DISTRICT COUNCIL  
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1. *Before any development is commenced, approval shall be obtained from the local planning authority of the siting, design, external appearance of the building(s), and the landscaping of the site (hereinafter called "the reserved matters").*
2. *Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 5 years from the date of the original permission granted on 21 November 2002<sup>1</sup>.*
3. *The development hereby permitted shall be commenced before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.*
4. *No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building works hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall then only be carried out in accordance with the approved details.*
5. *The development hereby permitted shall not be commenced until details of a scheme of hard and soft landscaping for the site have been submitted to and approved in writing by the local planning authority.*
6. *All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first complete planting and seeding seasons following the occupation of the buildings or the completion of the development to which it relates, whichever is the sooner. Any trees or plants which, within a period of 5 years from the completion of the development, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size or species, unless the local planning authority gives written consent to any variation.*
7. *The development shall be used solely for the use described within Class B8 of the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to the class in any statutory instrument revoking and re-enacting that order and shall not be used for any other purpose including any retailing of goods without the prior permission in writing from the local planning authority.*
8. *The development hereby permitted shall not be commenced until detailed plans have been submitted to and agreed in writing by the local planning authority of the method of disposal of surface water within the curtilage of*

<sup>1</sup> this means before 20 November 2007 - see paragraph 4 above.

*the site. The development shall not be brought into use until that agreed method has been provided and is available for use.*

- 9. The development hereby permitted shall not be brought into use until works for the disposal of sewage have been provided on site to serve the development in accordance with details to be submitted to and approved in writing by the local planning authority.*
- 10. No building shall be erected or any trees planted within 4.0 metres of the rising main that crosses the site. Alternatively, application for relocation of the pumping station and diversion of the rising main may be made in accordance with section 185 of the Water Industry Act 1991.*
- 11. There shall be no other vehicular access to the site other than by way of the roundabout at the site access on Bath Road.*
- 12. The proposed development shall be served by an estate road (or roads) and laid out and constructed in accordance with details, including means of surface water disposal, to be submitted to and approved in writing by the local planning authority.*
- 13. Before the commencement of building operations, the internal roads layout shall be completed to at least base course level.*
- 14. No works shall commence on site until a temporary car parking area for site operatives and construction traffic has been laid out and constructed in the site in accordance with details to be submitted to and approved in writing by the local planning authority, and that area shall remain available for that purpose for the duration of building operations.*
- 15. No building shall be occupied or otherwise used for any purpose until provision has been made within the site for loading and unloading of goods vehicles in accordance with details to be submitted to and approved in writing by the local planning authority, and that provision shall remain available for that purpose for the duration of the use.*
- 16. No works shall commence on site until details of staff and visitor vehicular parking and manoeuvring facilities within the curtilage of the site have been submitted to and approved in writing by the local planning authority. The relevant parking and manoeuvring facilities shall then be completed in all respects in accordance with those details before any part of the development is brought into use and shall be maintained as such thereafter.*
- 17. No part of the development shall be brought into use until space has been laid out within the relevant part of the site for bicycles to be parked in accordance with details to be submitted to and approved in writing by the local planning authority.*
- 18. No works shall commence on site until full engineering and constructional details have been submitted to and approved in writing by the local planning authority. The details shall be generally in accordance with the scheme shown as WSP drawing 233/PREN/99-12-06B contained within the supporting documentation comprising the following elements:*



- a. *Extension of the pedestrian/cycle way from Junction 12 M5 interchange to the site;*
- b. *Provision of bus stopping facilities;*
- c. *Three-armed roundabout junction on B4008 serving the site; and*
- d. *Street lighting, lining, signing, drainage and other engineering works associated with the proposed highway improvement scheme.*

*These details so approved shall be implemented in full prior to the beneficial use of the development hereby authorised.*

19. *The buildings hereby permitted shall not exceed 15.7m in height, measured from existing ground levels.*
30. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
31. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

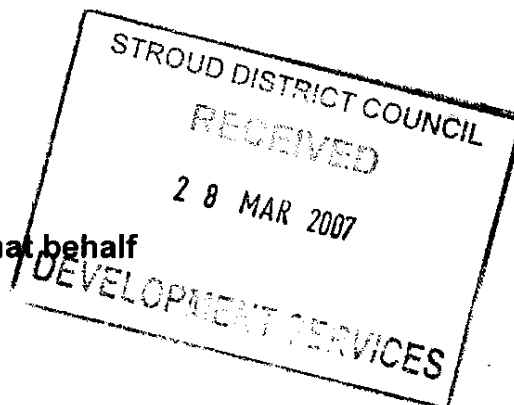
32. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
33. A copy of this letter has been sent to Stroud District Council and other interested parties.

Yours faithfully,

*Jean Nowak*

**Jean Nowak**

**Authorised by the Secretary of State to sign in that behalf**





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DEVELOPMENT SERVICES

## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



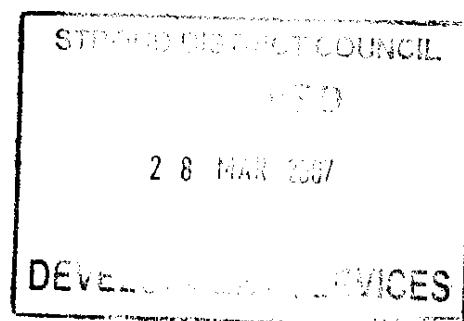
# Report to the Secretary of State for Communities and Local Government

by R R LYON MA CEng MICE MRTPI FIHT

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

The Planning Inspectorate  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ GTN 1371 8000

Date: 12 January 2007



TOWN AND COUNTRY PLANNING ACT 1990

STROUD DISTRICT COUNCIL

APPLICATION

BY

SLOUGH ESTATES PLC

Inspector R R Lyon MA CEng MICE MRTPI FIHT

Inquiry held on 28 November - 1 December, and 5 December 2006

Javelin Park, Bath Road, Haresfield, Stonehouse, Gloucestershire GC10 3DP

File Ref: APP/C1625/V/06/1199309

**File Ref: APP/C1625/V/06/1199309**

**Javelin Park, Bath Road, Haresfield, Stonehouse, Gloucestershire GC10 3DP**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 20 June 2006.
- The application is made by Slough Estates plc to Stroud District Council.
- The application Ref S.05/2138/VAR is dated 3 November 2005.
- The development proposed is variation of condition 02 on outline consent reference S.01/1191 to extend prescribed period in which reserved matters applications must be made to 23 August 2006.
- The reason given for making the direction was that the application raises issues of more than local importance.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of her consideration of the application:
  - (i) whether or not the application complies with the advice in DOE Circular 11/95 on the use of conditions in planning permissions, in particular paragraphs 53 – 59 on time limits, and paragraph 60 on the circumstances under which applications for renewal may be refused;
  - (ii) the extent to which the application accords with government planning policy advice in PPG4: Industrial and Commercial Development and Small Firms, to include consideration of the relative probabilities of either warehousing or alternative development going ahead on the site;
  - (iii) whether or not the application prejudices the delivery of national planning policy in Planning Policy Statement 10: Planning for Sustainable Waste Management for the delivery of sustainable waste management facilities;
  - (iv) whether or not the application prejudices delivery of the emerging Regional Spatial Strategy (RSS) on waste management and the consequences for the Regional Waste Strategy;
  - (v) the extent to which the application is in accordance with, or prejudices the delivery of, development plan policies as set out in the adopted Stroud District Local Plan and the Gloucestershire Waste Local Plan;
  - (vi) any other matters that the Inspector considers relevant.

**Summary of Recommendation: The application be allowed, and planning permission granted subject to conditions.**

---

**Procedural and Preliminary Matters**

1. In a letter to Stroud District Council (SDC) dated 30 January 2006, the Applicant requested that the application be amended such that reserved matters applications should be made "before the expiration of 5 years from the date of this permission". That amendment was accepted, and the Inquiry was held on the basis of that description. This report will also be made on that basis.
2. The Applicant and SDC are at one with regard to this application. A Statement of Common Ground (SOCG) between the two was presented to the Inquiry (Doc3). At my request, Gloucestershire County Council (GCC), which opposes the proposal, produced a document indicating its position in relation to the SOCG (GCC101). With some exceptions as outlined in that document, GCC has little dispute with sections 1 to 7 of that document, but does dispute section 8 which is entitled "Matters Not in Dispute".
3. I have attached all documents and plans submitted to the Inquiry including proofs of evidence. The proofs are as originally submitted, in other words unless expressly stated they do not take account of how the evidence may have been affected by cross-examination or other aspects of the Inquiry. Copies of closing submissions by the advocates have also

been included. Again, these are as originally submitted and, ~~as they~~ expressly stated, they do not take account of additions, amendments and explanations offered by the Applicant during delivery of the submissions.

4. A true copy of the s106 planning agreement in respect of the original planning permission S.01/1191 is included in the documents (Doc4). In the event of a new planning permission being granted, a supplemental agreement between the Applicant, SDC and GCC was submitted which intends to give effect to all the provisions of the original agreement (Doc5).
5. GCC made representations at the Inquiry suggesting that the Secretary of State is without jurisdiction in determining this application. I will deal with the parties' views in reporting the cases and in the body of my report, but the procedural background to the representations is outlined in the next 3 paragraphs.
6. Section 51 (Duration of Permission and Consent) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) inserts a new sub-section 5 into Section 73 of the Town & Country Planning Act 1990 (TCPA). The new sub-section reads:
- "(5) Planning Permission must not be granted under this Section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which:-*
- (a) the development must be started;*
  - (b) an application for approval for reserved matters (within the meaning of Section 92) must be made."*
7. Section 51 was brought into force on 24 August 2005 by the Planning and Compulsory Purchase Act (Commencement No. 5 and Savings) Order 2005 ("the 2005 Order"). Article 4(2) of the 2005 Order, however, provided that *"During the period of one year beginning on 24 August 2005 section 51(3) and (5) shall have no effect in relation to an application to change, vary or discharge a condition subject to which a previous planning permission was granted before that date."*
8. Circular 08/2005: Guidance on Changes to the Development Control System gives further guidance at paragraph 32 which states that *"Where permission or consent was granted prior to 24 August 2005 developers will retain until 23 August 2006 the ability to seek to extend the time limit on the permission or consent."*

### The Site and Surroundings

9. The application site is generally flat, covering some 11ha. It is vacant and contains some areas of hardstanding and rubble from the buildings that were previously on the site. The main access to the site is by way of a roundabout on Bath Road, some 400m from Junction 12 of the M5 motorway. The neighbouring large modern garden centre has a separate access from Bath Road somewhat closer to Junction 12. A secondary access enters the application site at this point. The M5 runs close to the northwestern boundary of the site, with the land to the south and east being open countryside. A single dwelling, "The Lodge", stands to the west of the site on the opposite side of Bath Road.

### Planning Policy

10. The relevant elements of the statutory development plan are as follows:
- (i) Regional Planning Guidance for the South-West (RPG10)(approved 2001);

- (ii) The Gloucestershire County Structure Plan Second Review (GSP) (adopted November 1999);
  - (iii) The Gloucestershire Waste Local Plan 2002-2012 (GWLP) (adopted October 2004);
  - (iv) The Stroud District Local Plan (SDLP) (adopted November 2005).
11. The GWLP identifies Javelin Park as "Industrial Estate, former Norton Valence Airfield", but for the current report I will refer to it as Javelin Park. The SOCG contains a full list of policies that the main parties agree to be relevant (Doc3 Section 6), subject to GCC's comments in document GCC101. I consider that the most significant policies are GWLP policies 4 and 7, and SDLP policies EM1 and EM2. It is also significant that, in the SDLP, the site is indicated on the proposals map as a waste allocation and as a committed employment site at para.4.7.2, table 4.2. The most relevant policies in the GSP are WM2, WM4, E3 and E6

### **Planning History**

12. The site was formerly part of the Ministry of Defence's Moreton Valence airfield, since which time it has had a longstanding use/consent for storage and distribution. The applicant secured outline planning permission, with all matters reserved except for access, on 21 November 2002 for "...redevelopment for up to 45,151 square metres of distribution warehouses (B8), involving provision of new means of access, and demolition of existing warehouses..." (LPA ref. S.01/1191). On 8 April 2003, the applicant secured reserved matters approval for "erection of new warehouse (B8) and construction of new access". The current called-in application refers to condition 2 of the 2002 permission. A full planning history of the site can be found at section 3 of the SOCG (Doc6), which the GCC does not dispute, but adds comments in GCC101.

### **The Proposal**

13. By the close of the Inquiry, all parties agreed that the 2002 permission (S.01/1191) has been implemented (LPA104). Although the Applicant company has this permission for a single large unit, it wishes to develop an alternative scheme of B8 development with several smaller units which could be developed speculatively and marketed in phases.

### **The Case for Gloucestershire County Council (the waste planning authority)**

14. The GWLP allocates (Policy 4) and safeguards (Policy 7) Javelin Park for waste management uses (DP8 pp.99&101). The application is for a non-conforming B8 use. Policy 7 is imperative: "proposed site(s) for waste management use will be safeguarded where...(it makes)...a contribution to a sustainable waste management system...for Gloucestershire. The WPA will normally oppose proposals for development within or in proximity to (Javelin Park) where the proposed development would prevent or prejudice the use of the site for an appropriate waste management development." The policy requires 3 questions to be addressed:

#### **Question 1. Does the "proposed" Javelin Park site for waste management make a contribution to a sustainable waste management system for Gloucestershire?**

15. Section 5 of the GWLP provides the policy framework to consider sites that are needed to develop a sustainable waste management system (DP9 para.5.18). In that framework,

Javelin Park is identified as a strategic site (Policy 4) capable of fulfilling a county-wide waste management role. The fact that the GWLP would not preclude the possibility of a windfall strategic site coming forward on its merits, either under Policy 5 or Policy 6, does not lessen the significant weight to be given to the land use opportunity to provide for strategic waste management uses on the Javelin Park site safeguarded by Policy 7. Thus, under Policy 7, Javelin Park has been specifically identified, after a county-wide site assessment, as one of only 5 sites capable of meeting the need for strategic waste management in Gloucestershire. There is no substantial evidence before the inquiry that any other sites have emerged since the adoption of the GWLP capable of fulfilling a strategic waste management role in the plan period to 2012 and beyond.

16. The pre-eminence of the 5 Schedule 1 sites as strategic sites (DP9 p.36) was recognised by the WLP Inspector who concluded that the preferred sites were "the best selection identified to date, and...a benchmark against which other sites can be judged..." In his opinion "Policy 4 clearly places Schedule 1 sites above others and puts a substantial burden on applicants of excluded sites by virtue of the site selection procedure and consideration during the plan process..." (DP7, letter 6(iii)).
17. This allocation as a strategic site in Policy 4 is not challenged by the Applicant, who acknowledges that ...the site could potentially contribute towards the delivery of waste management policy and that, as it constitutes previously developed land on the edge of /in close proximity to urban areas, it would in principle satisfy the location requirements of RSS Policy W2 (DP12 p.167)(APP1/1 para.5.5).
18. That acknowledgement is well founded for several reasons. With the exception of landfill / landfill with energy recovery (landfill gas), the Javelin Park site could provide for a full range of waste management uses (DP9 Sch.1 p.36). In particular "...the prospect of a large mass of housing near this site makes a waste to energy plant a much more feasible proposition (compared to sites remote from urban areas) because it would be easier to recover the energy for use in the proposed development." (DP7, para.4.25.2). "The site's ready access to the M5 is another very strong point in its favour as a strategic site accepting waste from wider distances over arterial roads. The site is close to Gloucester and the M5 provides links to Stroud, Cheltenham and Tewksbury" (DP7 para.4.25.4).
19. "It could also serve the needs of Stonehouse and Stroud without the requirements of transfer stations in these areas" (DP9 Site Profile p.54). It is also the case that SDC is interested, as a Waste Collection Authority, in Javelin Park as a site for a Waste Transfer Station (WTS). The site meets the requirements of GSP policy (DP7 para.4.25.6 & DP1 Policies WM2 & WM4). The allocation of the site in the GWLP is consistent with subsequent advice in PPS10 (NPG1 paras.17, 20, 21). The allocation would also conform to emerging policy in RSS policy W2 (DP12, p167).

***Javelin Park is the best of the Policy 7 strategic sites***

20. The site is also the best of the identified strategic sites on which to establish the necessary county-wide waste management facilities required. This contention was challenged by the Applicant, pointing out that there is no pecking order in terms of the merits of the GWLP Schedule 1 sites and that GCC itself had promoted and supported all 6 in the local plan process without distinction. However, the WLP Inspector described the Wingmoor and Sudmeadow sites as having "serious shortcomings for strategic waste facilities for the longer term." (DP7, Letter 6(iii)). The shortcomings, mainly Green Belt in the case of the Wingmoor Farm sites and floodplain/landscape at Sudmeadow, are recognised in the

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GWLP (DP9 pp45-46, 48-49 & 51). The Applicant accepts that these shortcomings would be material considerations in the assessment of applications for strategic waste management uses on those sites.

21. PPS10 protects Green Belts but does not exclude the provision of waste management uses in Green Belt (NPG1 para.3.). Emerging policy in the draft RSS (DP12) is that "the provision of waste facilities...would generally be inappropriate in statutory green belts." The Javelin Park Site 4 has none of the shortcomings identified by the WLP Inspector as affecting Sites 1, 2 and 3. GWLP Policy 4 (DP9 p99) indicates "that the facility meets the relevant policies and criteria of this and other parts of the development plan". Therefore, GB sites must be tested against GB policy in the GSP. The WLP Inspector says "to place permanent buildings and uses on a GB site that is designed to be restored and landscaped conflicts with GB objectives ... vsc could include the absence of alternatives suitable" (DP7 para.4.20.10). Therefore a factor to be taken into account is the availability or not of alternative sites. Those difficulties are not found on the Javelin Park site, which must have significant merit although there is no pecking order in the WLP.
22. Sharpness Docks is the most remote of the strategic sites from the strategically significant cities and towns (DP7 para.2.11.2). In addition, the transportation of waste by road must be restricted to ensure the use of sustainable transport modes (DP9 p.56), which is not a constraint affecting Javelin Park. The WLP Inspector said that Sharpness does not suffer from Green Belt constraints like Wingmoor Farm and it is excluded from the Severn estuary flood plain unlike Sudmeadow. Sudmeadow has visual constraints too... (DP7 para.4.26.43). Javelin Park does not 'suffer' from these constraints either, and is better located than Sharpness Docks in terms of the sequential test applied by draft RSS Policy W2 (DP12 p.167).
23. The Applicant says that Javelin Park, lacking a landfill element, could not demonstrate the synergy between waste management and the ultimate disposal of residues to landfill. However, this 'disadvantage' is more apparent than real when considered in the context of the Key Planning Objectives of PPS10 (NPG1 para.3); in particular, "driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option." In-vessel composting (IVC) facilities at Javelin Park would have a high recovery rate producing a compost to be spread on agricultural land; and a residual waste treatment plant converting waste to energy would similarly convert the waste to a resource. Whilst these processes may produce residues that would go to landfill and that landfill would always have a role as the last option, the evidence suggests that it would not have a major role with respect to waste management uses here. The site has, in any event, ready access to the main landfill sites via the M5.

***Javelin Park is land available and not an area of search***

24. The Applicant says that the Wingmoor sites, Sudmeadow and Sharpness Docks (total 283ha) include substantial areas of land available for waste management development (APP1/1 para.3.4.13). In fact the shortcomings of the Wingmoor and Sudmeadow sites led the WLP Inspector to recommend that these three sites (257ha in total) should not be preferred sites but "areas of search" (DP9: 4.20.23, 4.21.11, 4.24.23). That is now their status in the GWLP: where a search may be conducted with all the uncertainty that such searches must entail having regard to the relevant "constraints" identified in the text of the plan. The Applicant points out that, nonetheless, Cory has found sites at Sudmeadow and Wingmoor West; and Grundons a site at Wingmoor South. However, the first is a temporary relocation of an existing facility; the second is held in abeyance and unlikely to



be pursued; and the third an unimplemented permission with an end date of 2009. By contrast, Javelin Park is not a constrained area of search but a specific site area of 11.2ha entirely suitable for the variety of waste management uses identified in Schedule 1 of the GWLP.

***Safeguarding Javelin Park accords with the need to provide waste management facilities in Gloucestershire***

25. There is at least a need in the period to 2012 for a 77,131 tonnes per annum (tpa) output Municipal Solid Waste (MSW) recovery facility and a 200,000 tpa residual treatment plant (assuming 100% output) (DP 9, App8 pp.12&13). Support for this level of need is provided by the WCS Issues and Options draft (DP17 p.55 Table 21). The table summarises the broad requirements up to 2020 but is generally supportive of the minimum need identified in the GWLP to 2012.
26. Javelin Park could not only meet that need, but is safeguarded to ensure that the opportunity is available. However, the Applicant would exclude the site because it is unavailable and unobtainable, and because there are other sites (including Policy 6 windfall sites) where the need would be or could be met. The first ground is considered below. The second mainly depends upon demonstrating that of the 77 waste management planning permissions/applications that came forward since the adoption of the GWLP, 12 are particularly relevant (APP1/3 Table).
27. The Applicant accepts that 60 or more of the 77 were minor applications, and that the 7 planning permissions identified in APP1/3 had all been taken into account in the existing capacity figures in Table 21 of DP17. Nevertheless, particular focus was placed on 2 planning applications (Cory mechanical biological treatment (MBT) at Wingmoor and Bioganix at Sharpness) as demonstrative of need being met exclusive of any reliance on Javelin Park. However, both are yet to be determined.
28. The Applicant acknowledges that uncertainties regarding the chosen MBT process at Wingmoor means that it was unlikely that the application in abeyance would be further pursued although the expectation is that Cory would continue to pursue a Residual Waste Treatment (RWT) plant at Wingmoor West on site B. The Bioganix application is said to consist of the composting of source separated municipal waste and food waste using an in-vessel system initially designed to handle 25,000 tpa and gradually increasing to 48,000 tpa (APP108). But in response to GCC's request for information (GCC103) concerning the origin of the waste material Bioganix could only say that the plant is "designed" to take source separated garden waste and kitchen waste in addition to waste from the food industry." There have been no negotiations with GCC for a contract to take MSW. At present, therefore, there must be doubt that if the application were granted and the facility built, it would serve MSW waste management in Gloucestershire. The Applicant also relies on Dymock (in Forest of Dean) and the Sunhill resubmission application that was refused on appeal.
29. Whatever the relevance of these applications they neither individually nor combined provide grounds for not safeguarding Javelin Park. While they may or may not, if approved, make in-roads in respect of minimum waste recovery in Gloucestershire in the period of the GWLP and beyond, they do not provide grounds, by themselves, for abandoning the opportunity to allow for strategic waste management developments to come forward on Javelin Park. And in so far as they demonstrate activity on the waste management front they are not alone but part of a bigger picture which includes the actions

of the WDA, which is the statutory authority and a waste contractor for, MSW in Gloucestershire. Its plans and actions for the discharge of its functions in respect of the management of Gloucestershire's MSW are plainly as relevant as the activities of Cory and Biogonix, if not more so, to the issue whether the Javelin Park site should continue to be safeguarded.

30. The conditions set by Defra (in 2003) as part of the Private Finance Initiative (PFI) process, required the "provision of a parcel of land to provide a level playing field for all PFI bidders". To meet that requirement GCC as WDA sought to acquire Javelin Park. In the event, the PFI procurement process was terminated but the WDA's interest in acquiring the site remains (GCC2/1 section 4).
31. The Applicant agrees that, in determining the application, amongst other things regard should be had to the draft Joint Municipal Waste Management Strategy (JMWMS), which is out to consultation until January 2007. It contains a draft Joint Strategic Statement by the 7 Gloucestershire Councils agreed by the Chief Executives, senior officers and elected members. It provides a framework for the development of municipal waste management services in Gloucestershire to 2020 (GCC01 para.3.1), and contains a strategy which "details how municipal waste will be collected and disposed of and draws from the adopted Waste Local Plan (until it is replaced by Waste Development Planning Documents) to determine where these facilities should be placed." (para.3.4.1).
32. The strategy takes into account a number of relevant planning guidance notes including PPS10 and the South West Regional Waste Strategy (para.3.4), with a commitment to investing in collection and waste management facilities (Objective 6). The GCC plans to procure IVC capacity for the treatment of approximately 80,000 tpa of mixed kitchen and garden waste by (among other things) finding and securing sites for IVC plant (para.7.4.3). In addition the County is developing a residual waste management project and intends to publish a residual waste management business case in 2007 which will determine the preferred technology and the preferred location.
33. The JMWMS provides the Secretary of State with cogent and compelling grounds for continuing to safeguard the Javelin Park site from non-conforming development at this time. Although the strategy is in draft and for adoption in 2007, it has the support of professional waste planning officers and its direction is wholly consistent with up to date guidance on waste management for recovery and resource in PPS10. Suitable sites have to be found and secured for IVC and, in the longer term, for RWT, but the GWLP (which runs to 2012 and maybe beyond), anticipates these developments in waste planning and safeguards a suite of sites under Policy 7 to assist in the exercise of finding and securing. The removal of Javelin Park as a potential candidate for waste management uses generally and in particular for the co-location of both IVC and RWT at this juncture would be contrary to the direction of waste planning policy both at national level and at local level and contrary to developing waste management policy as formulated in the draft JMWMS.
34. Waste management sites must meet a number of criteria including low planning risk, commercial independence of waste contractors, affordable and of sufficient size, and it was established in the PFI process that the safeguarded Javelin Park site met all these criteria (GCC2/3 section 5). The low planning risk and size elements of the equation are secured by the allocation (Policy 4) and safeguarding of sites (Policy 7) in the GWLP. In the context of the need for the development of waste management uses on strategic sites, the continued securing of the opportunity presented by Javelin Park is of fundamental importance and is consistent with planning policy and the policy of the emerging waste management strategy.

35. The Cabinet report recommendations should be considered for what they are, namely continued work in progress by the WDA anticipating progress in the JMWMS against the background of an increasingly urgent imperative of the Landfill Allowance Trading Scheme (LATS) to divert waste from landfill. Thus: negotiations to purchase Javelin Park are to continue; work commences on the preparation of a planning application for IVC at Javelin Park; the preferred approach for procuring IVC is developed for future Cabinet approval; the option is developed to consider whether to make a CPO as a contingency if land negotiations are not successful; and funding provision for the purchase of Javelin Park and the waste management facilities is included in the developing Medium Term Financial Strategy.

***Javelin Park is a realistic allocation in the GWLP***

36. In rebutting this contention, the Applicant relied on PPS10 para.18 (NPG1) and the guidance that unrealistic assumptions should be avoided in respect of the prospects of developing waste management facilities on sites having regard in particular to ownership constraints which cannot be readily freed. This has to be considered in the context of PPS10 as a whole. It advises that in searching for suitable sites planning authorities should consider "a broad range of locations including industrial sites, looking for opportunities to co-locate facilities together and with complementary facilities" (para.20), and "give priority to the re-use of previously developed land..." (para.21(ii)). It is explicit that allocated sites would, in many cases, have a planning history and planning permissions involving other uses than waste management. B8 use is not excluded from the "broad range of locations" referred to.
37. Although the GWLP allocation pre-dated PPS10, it was allocated as industrial land in the then local plan at a site on which "further large scale industrial development" could be expected (DP7 para.4.25.5). Thus, the potential for development pressure for an alternative non-conforming use on the site potentially affecting land values was recognised at the outset and was not seen as a reason not to allocate and safeguard the whole site for waste management uses. In addition, the WLP Inspector recognised that the site was suitable for a "range of schemes" and hence the co-location now looked for in PPS10 (DP7 para.4.25.5). These advantages were subsequently recognised in the GWLP Schedule One and Site Profile 4.
38. There are 3 difficulties with the Applicant's position that the site became untenable for waste uses following approval of reserved matters (meaning that it was no longer relatively 'low value' land which was said to be the rationale of the safeguarding policy). Firstly, the GWLP reference to 'relatively low value land' is specifically related to existing waste management sites and not proposed sites (DP9 p.102). Secondly, the value of waste land is rising related to the introduction of Landfill Allowance and Trading Scheme (LATS) penalties.
39. Thirdly, the grant of the B8 planning permission has not put the value of the site beyond the financial reach of the WDA. GCC/WDA had offered over £8m (APP2/4 para.1.3) and a further offer would have been made but for the collapse of the PFI initiative. The purported current market price of £9m+ was not seen as an impediment to continued negotiations. If planning permission is refused, the Applicant would consider any 3<sup>rd</sup> party interest for the unconditional freehold sale of the site based upon the implementation of planning permission thus providing room for further negotiations with GCC/WDA. If a CPO were required, timescales would be longer but advice in C06/2004 paras.17-19 would not exclude a grant

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of an Order where the site is well established in the GWLP for the period to 2012 and possibly beyond.

40. The conclusion on question 1 is that, for the reasons set out, the continued allocation and safeguarding of the Javelin Park site makes a valuable contribution to a sustainable waste management system for Gloucestershire.

**Question 2. Would the “development” proposed in the application prevent or prejudice the use of the site for an appropriate waste management development?**

41. The development proposed in the application is for speculative B8 uses in several 10,000m<sup>2</sup> units. It does not include any sui generis or other waste management uses. Thus, if implemented the development would not provide for any waste management uses on the site. Furthermore, if planning permission were granted on the application, the applicant would develop the site for B8 as proposed and would under no circumstances accept a waste management use on any part of the development (APP2/1 para.5.8, 6.1). It is rightly conceded that if planning permission were granted, it would fail to safeguard the site for a waste management purpose (APP2/1 para.6.7).

**Question 3. Are there any material considerations of sufficient weight to set aside the presumption (“normally”) that the decision making authority will safeguard the site for waste management purposes and refuse the non-conforming application?**

42. A number of material considerations have been put forward by the Applicant and SDC for abandoning the safeguarding of the Javelin Park site under Policy including: safeguarding under policy 7 of the GWLP conflicts with the SDLP and the latter plan should prevail; the loss of B8 employment opportunity of 600 to 900 jobs; the fallback position; and harm to the amenities of Hunts Grove caused by a waste management use of the site.

***Safeguarding under GWLP policy 7***

43. The GWLP is part of the local plan for Stroud District, dealing with the discrete county-wide topic of waste planning at local level which is not the province of local plans. For this reason, there is a requirement in PPS12 App A3 that “District Councils must include on their proposals map, safeguarded areas...and waste allocations when adopted in a ... waste development plan document.” But for that requirement conflicts could arise between WLPs and Local Plans.
44. The SDLP notes the GWLP allocation of the Javelin Park site on its proposals map by hatching and a key “Waste Allocations.” The fact that the site is not allocated for any other purpose in the SDLP, although a 4.8ha B8 permission is identified as an employment commitment in Table 4.2, is consistent with the plan embracing the GWLP allocation as required. The notation directs the reader to the adopted GWLP justification for the allocation. That the B8 application could meet the requirements of the policy EM2 criteria based policy does not override its conflict with the allocation of the site and its safeguarding in the GWLP and the formal recognition of that allocation/safeguarding on the proposals map. If it did, applicants could ride roughshod over GWLP allocations simply by showing that they met criteria based policies. The allocation enjoys no different status to the other allocations.
45. Accordingly there is no conflict between the GWLP and the SDLP. The latter simply adopts and applies the policies of the GWLP by an appropriate notation on the proposals

map in accordance with imperative guidance. There is no need for a justification for that notation to be found in the text. The notation directs the reader to the adopted GWLP.

***The effect on jobs***

46. There are no jobs on the Javelin Park today, and none recently created – because the planning permission for the large unit is unmarketable. Nor is there any substantial evidence that if the application were granted it would create substantial numbers of jobs. The plans for smaller B8 units are speculative; hence the extended period of 5 years asked for in which to submit reserved matters. Whilst a waste management use would be likely to generate less jobs than B8 use, it would still generate employment and there is no apparent need for jobs in Stroud District (unemployment 1.3%) sufficient to warrant setting aside local waste planning allocations.
47. The argument that refusal would be a threat to the SDLP employment strategy is not found in SDC's Rule 6 Statement (Doc7) or in LPA1/1. It does not have the authority of elected members and is not substantiated in evidence; therefore it should carry little weight. SDLP Table 4.2 (DP18 para.4.7.2) does not require the safeguarding of the 4.8ha B8 permission on the site but the commitment to "employment land" that it represents. Nor is the site identified in Policy EM3 as key employment land, which might be expected if the case now made by the SDC had any substance. Thus refusal of the application would not involve the loss of 600-900 jobs.

***The fallback position.***

48. The Applicant company says that if the application is refused it will fall back on the extant permission for the large unit. That is not directly relevant to the continued safeguarding of the site. Nonetheless, preservation of the status quo by refusal of the application would assist in safeguarding the site for waste management uses because all the evidence shows that the fallback permission is unmarketable (Doc6 paras.4.1, 8.6, 8.17 & APP2/2 App1. para.5.1).
49. Graftongate's offer (APP 107) is not evidence of a B8 market but of an interest "to develop this site for industrial and warehouse uses predominantly on a speculative basis." That would need planning permission and would have to demonstrate that other material considerations required a departure from GWLP Policy 7. There is no evidence to suggest that, if Graftongate acquired the site, they would be in any different position to that of the Applicant. At best the offer is some evidence of the value of the site. The thrust of the fallback argument is that the value of the site with B8 permission is beyond the reach of the GCC. However, this is not the case.
50. A variation of the argument has been that if GCC could afford the site there is no reason to refuse planning permission; GCC could make an offer at any time. While theoretically this is true, safeguarding is concerned with resisting development pressures for non-conforming uses on waste sites to allowing them to come forward unfettered by new non-waste permissions giving additional value to land generated by more lucrative uses (DP7 para.5.19.2 and letter 6(iii)). If a CPO were necessary, a recent grant of the application for B8 would undermine any case that might be made. GCC concludes that the fall back carries little weight.

STROUD DISTRICT COUNCIL

28 MAR 2007

JEVALL

PLANNING SERVICES

***The effect of waste management uses at Javelin Park on the amenities of the proposed Hunts Grove mixed use development.***

51. It is no part of the SDC case that the use of the site for waste management purposes would harm the amenities of the Hunts Grove development. The very late email from the developer at Hunts Grove alleges harm (LPA105). That proposal appears to be at the forefront of SDC's planning, but with no suggestion that a Waste Planning facility would adversely affect Hunts Grove. The SDLP followed the GWLP; it identifies the Hunts Grove site and its neighbouring GWLP allocation site without any problem being mentioned (DP18 para.5.8.5a). The alleged concerns are unsupported by any evidence.
52. Amenity arguments in respect of Hunts Grove were raised by objectors in the GWLP inquiry (DP7 para.4.25) but not by SDC. The Inspector dealt with them. He knew the distances to RAF Quedgeley and Hunts Grove (approximately 1.5 km) (APP104) and that the M5 passed between the Javelin Park site and those housing areas. There is no substantial evidence that waste management uses on Javelin Park would have any adverse impacts on the amenities of the proposed Hunts Grove mixed use development.
53. The conclusion on question 3 is that there are no material considerations of sufficient weight to set aside the presumption ("normally") that the Secretary of State will safeguard the Javelin Park site for waste management purposes and refuse the non-conforming application.

**Conflict with the SDLP**

54. The application is for B8 development which does not conform to the allocation of the site on the SDLP proposals map for waste management uses. It was suggested that if GCC had wanted a justification placed in the text for the notation of the waste allocation on the proposals map they could have objected to the SDLP. This suggestion ignores the intended effect of the mandatory requirement to show waste local plan allocations on local plan proposals maps. The position is rather that if SDC had wanted to qualify the effect of the mandatory notation they could have done so in the text of the plan. That was not done.
55. The B8 proposal, if permitted, would prevent and prejudice the use of the site for waste management purposes in conflict with the GWLP and would accordingly, be in conflict with the adoption of the waste local plan policies by the SDLP. As SDC agreed, the Secretary of State cannot ignore the proposals map as irrelevant but must take it into account as part of the adopted local plan for the purposes of Section 38(6) of the 2004 Act. The effect of the allocation as shown is that a waste management use of the site would accord with the SDLP.

**Overall Conclusion**

56. The application is in conflict with the development plan as a whole and is in breach of the waste strategy of the Development Plan, the emerging RSS and PPS10 all of which support safeguarding of waste sites as part of a sustainable waste management system. Paraphrasing the WLP Inspector, the support of local planning authorities, now the Secretary of State, in protecting sites with good potential is essential if waste is to be planned in a sensible way in Gloucestershire (DP7 para.5.19.2). This site has good potential as a sustainable strategic waste management site (DP7 para.4.25.6). It is part of a range of sites that needs to be available and safeguarded for waste purposes for optimum sustainability to be achieved over the whole period to 2012 (DP7 para.5.17.1). Intensive waste core strategy planning (DP17) and waste management planning (GCC01, DP16,

Dp17) are being undertaken in the context of the land use strategy of the GWLP. There is no planning justification for eliminating the Javelin Park site from among the range of allocated strategic sites in the GWLP by the grant of planning permission for a non-conforming speculative B8 use which would fail to safeguard the potential of the site to fulfil a strategic and local waste management use. There are no material considerations which outweigh the conflict with the Development Plan. Section 38(6) therefore requires that the Secretary of State refuses the application.

**The Secretary of State is without jurisdiction to determine the application.**

57. The period of grace described in Article 4(2) of the 2005 Order expired on the 24 August 2006. From that day forward the effect of Section 73(5) of the 1990 Act as amended has been to deprive the Secretary of State of jurisdiction to determine the application. This is because Article 4(2) provides that only during the period of one year beginning on the 24 August 2005 shall Section 51(3) (inserting section 73(5) in the 1990 Act) have no effect in relation to the application (GCC102).

**The Case for Stroud District Council (the local planning authority)**

**Jurisdiction point**

58. Doubt is expressed about whether any applications for changing or varying a condition to extend the time limit of a permission/renewal may be granted after 23 August 2006. The new Section 73(5) of the TCPA must be read in the context of all relevant documents, including Circular 8/05 at para.32. It appears that Parliament intended developers to have a one year period of grace in which to lodge an application to vary a time-limit condition. The words in the Circular suggests that in that period they have the "ability to seek" to vary the condition and therefore suggests that so long as the application to vary was lodged before 24 August 2006, that application is within the jurisdiction of the Local Planning Authority (LPA) (and the Secretary of State) to determine. It is understood that that is the view of the DCLG.
59. Furthermore, if the provision meant that a renewal application had to be determined by the LPA by 23 August 2006, then it would have put developers around the country on an unequal footing. Some LPAs determine applications faster than others depending, amongst other things, on their workload. That interpretation of section 73 would take the onus from a developer to submit an application to vary before 24 August 2006 and put the onus onto the LPA to determine all such applications before 24 August 2006. That would lead to an inequitable situation. Thus, decision makers have power to determine applications to extend time limit conditions if they were lodged prior to 24 August 2006.

**Legal Tests to Apply**

60. There are two legal tests derived from case law to bear in mind in this case. Regarding the fallback position, the decision maker must be satisfied that the prospects of Slough Estates or their successors in title pressing ahead with the extant planning permission for a single warehouse are real and not merely theoretical *Brentwood Borough Council v. S/S for the Environment* [1996] 72 P &CR 6 (Ency. 2-3286). On the evidence, there is a realistic prospect of that occurring. Substantial weight should be attached to that evidence and the planning application considered in the light of that strong probability.

61. Secondly, it is necessary to consider a test derived from the House of Lords case *City of Westminster v. British Waterways Board* (1985) JPL 102 where Lord Bridge said " In a contest between the planning merits of two competing uses, to justify a refusal of permission for use B on the sole ground that use A ought to be preserved , it must in my view, be necessary at least to show a balance of probability that, if permission is refused for use B, the land in dispute will effectively be put to use A."
62. The balance of probability is that if this planning application is refused, the extant planning permission for B8 use would take place. The likelihood of this land being used for waste purposes is extremely low – certainly less than 50% and more likely around 1%. This 'test' is not one which should usurp the wide statutory discretion found in s.70 of the 1990 Act but it serves to emphasise just how important it is for GCC to prove that they could secure the site for waste purposes.

#### **Application of the Planning and Compulsory Purchase Act 2004 s.38**

63. This is a complicated case in respect of the application of s.38. It is a clear objective of RSS, SDLP and GSP that the range and choice of B1, B2 and B8 sites should not be limited. The draft October 2006 Employment Land Availability Study shows that this site provides 74% of the land in the whole of the District on which a B8 operator looking for a new site could find a site. The sites listed in LPA101 are B8 sites which to the best of the LPA's knowledge were available in October 2006 for B8 operators looking to locate in the District (LPA101). The number of sites in total is only 7 (including Javelin Park). The areas of the other sites come nowhere near to providing the type of opportunity for a B8 operator that Javelin Park does.
64. The site is a unique opportunity and one that SDC needs to hold onto in order to maintain a reasonable range and choice of sites in the District. Graftongate Developments Limited are clearly an extremely experienced operator in this niche market and are prepared to buy the site with its existing permission for a single large warehouse (APP107). Furthermore, logic dictates that Javelin Park being situated on the M5 is likely to be attractive to a business which needs a distribution warehouse for Wales, the South west peninsula, the north west and the M4 corridor up to London. It was previously used for warehousing and distribution.
65. The number of jobs that Javelin Park could potentially create is a very weighty material consideration. It was uppermost in the mind of Committee members who had the legal opinion written on behalf of Slough Estates estimating the number of jobs potentially created if planning permission was granted as 600-900. GCC does not dispute the 600-900 job estimate or the 600 job estimate for the extant planning permission. These numbers are therefore strong evidence of the benefit that would flow to the District if planning permission was granted. Whilst a waste management facility may generate employment, it would not bring significant job opportunities (as few as 6 on the evidence). Moreover any waste jobs that might come are many years away.

#### **Importance of jobs to the District**

66. Cheltenham, Bristol and Gloucester attract commuting workers from across the District leading to a lessening of the self containment of the District. Travel to work patterns from the 2001 Census indicate that only 64% and 51% of trips remained in the Stroud Valleys and the South Vale. GCC did not dispute that there has been relatively little new recent employment provision in the District. Out-commuting to alternative employment locations outside the District remains a problem in delivering sustainable communities (DP18



para.4.3.4). The plan expressly identifies a need to provide a greater choice of sites to the market if the Stroud economy is to continue to flourish (DP18 para.4.6.3).

67. SDLP Table 4.2 (DP18 p.23) is in error in citing Javelin Park as 4.8 hectares when there are 11.2 hectares there with planning permission. It is a committed employment site for B8 and it is on that basis that the Local Plan formulated its needs for land to be allocated for B uses and sui generis industrial uses in policy EM5. It is not only the quantity of allocations that was arrived at on the basis of the committed sites but also the quality of sites: "The allocations, in combination with existing sites and commitments, provide a wide range of opportunities in both scale and nature." (DP18 para.4.8.1). It is clear that the delivery of Javelin Park is integral to the objectives of the plan to create jobs in the District and to provide a choice and variety of sites. The site is only about 6 miles from Stroud or about 15 minutes by car.

#### The weight to give to the SDLP Proposals Map and its legend

68. PPS12 was published in September 2004. SDLP was in draft then and not adopted until November 2005. Annex A of PPS12 Annex A para.A3 gives district councils no choice but to "include on their adopted proposal map, safeguarded areas..... and any minerals and waste allocations when adopted in a county minerals and waste development plan document." This is what the SDLP proposals map does. Javelin Park is not a waste allocation for the purposes of the SDLP – if it was it would have had to have been a plan proposal which was open to objection and consequent inquiry. There were no objections to it as a committed B8 employment site, and there were no threats to it as a future B8 site within the Stroud Plan itself.

#### GLWP

69. Regarding GWLP Policy 7, this planning application would not prevent or prejudice the site from coming forward for such use. It is already prevented from doing that by the extant B8 permission (now to be given added weight by the offer from Graftongate Developments). GCC were well aware that reserved matters had been granted on the site (LPA 202). Further, this application does not prejudice the use of the site for an appropriate waste management development for the same reason. Nor did GCC call on marketing expertise to show that there was no market. In SDC's judgment, the application is not in fact in conflict with the GWLP and is in accordance with the GWLP, the RSS, the GSP and the SDLP. There are no material considerations that indicate other than that the application should be granted.
70. If the Secretary of State concludes to the contrary, then there is on the face of it conflict with policy 7 and Table 4.2/ para.4.7.2/ Chapter 4 of the SDLP. Applying Regulation 43 of the Town and Country Planning (Development Plan)(England) Regulations 1999 (Doc7 para.2.4.5) (the 1999 Regulations), the provisions of the SDLP should prevail over the GWLP as it is more recently adopted. This is also reiterated in s.38(5) of the PCPA 2004 which reads "If to any extent a policy contained in a development plan for any area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be)."
71. However, the development plan comprises a number of elements, and it is clear that overall the employment objectives and policies in the RSS, the GSP and the SDLP dominate the development plan so that it is possible to say that this planning application is in accordance

with the terms of the development plan overall. (see the approach in *R (Cummins) v. Camden LBC* [2001] EWHC Admin.1116 (appendix to LPA106).

### **Other Material Considerations**

***The weight to be given to GCC's evidence that Javelin Park is the best site for a waste management facility.***

72. It is clear that GCC needed to bolster its case for this inquiry by at least identifying one waste use for the site and some indication that they might resort to CPO powers. A report was taken to GCC Cabinet as recently as 17 October 2006 (GCC02), expressly referring to the inquiry – evidence had to be submitted by 31 October 2006. There was no comparative analysis between (at least) the strategic sites in the GWLP for the Cabinet to see (given the size of them, that could include some local sites). The Cabinet could not have made an informed decision that Javelin Park is the best for IVC when it did not receive a formal analysis.
73. To make such a decision, what would be needed at the very least would be a county wide diagram indicating municipal waste arisings by tonnage (with projections), a complete understanding of where all WTSs are (including where the refuse lorries finish their rounds) and where all landfill sites and composting facilities are and may be in the future (taking into account planning applications). A plan which in effect shows desirable catchment areas. All these would enable a decision maker to decide where the most sustainable sites would be for waste management facilities, based on the proximity principle so that HGV movements are, so far as possible, minimised and achieved. The information falls a lot short of taking that big step to deciding that Javelin Park is the appropriate site. If there is a need for GCC to buy its own site, then its evidence fails to establish that Javelin Park is the optimal site for waste management purposes.
74. The oral evidence is that GCC clearly wants Javelin Park, as opposed to the other strategic sites, because there are no other waste operators who currently own the land – this was not stated in written evidence. All in all, there has been no convincing evidence to show that in order to attract a waste operator to a site it is necessary for the CC to own that site.

***Whether the procedures and potential difficulties in getting a CPO of the site were set out for members of the Cabinet***

75. The GCC witness, apparently the author of the cabinet report, conceded that he did not know in detail what was involved in obtaining a CPO. For CPO purposes, one would need to know the end-use of a site one is trying to acquire – it would not suffice to say at Inquiry that an 11.2 hectare site would be for an IVC and residual waste purposes. The Cabinet was told that the report has no human rights implications when it clearly contemplates a breach of Article 1 of Protocol 1 of the Human Rights Act – interference with private property. It would be very difficult to convince the District Auditor that GCC has to spend £9.75million to buy its own site where there has been no full comparative analysis of the sites available in the GWLP.
76. The Waste Collection arm of SDC has expressed to GCC an interest in Javelin Park as a location for a depot and WTS, but the Council has no misconceptions about the likelihood of the site coming forward for waste uses. The SDC letter of April 2003 (LPA 102) is clear that other sites for waste need to be looked at by GCC. The open market price of the land at around £9.75m has not to date been offered by GCC even though it is aware of that figure.

A CPO is highly unlikely to be confirmed by the Secretary of State. SDC continues to support its contractors in their search for a suitable depot/WTS site.

77. The Applicant's evidence is that in the 2 years since adoption of the GWLP, considerable additional capacity for processing waste has been granted and applied for. That evidence was tested in cross examination, and the facts underlying the Applicant's view stand – that view being that in the period up to 2012 (end date for the WLP) there would be waste management facilities (of the type that would reduce waste going to landfill) sufficient to provide for more than a doubling of the calculated requirement.

**The matters raised in the Secretary of State's Call-in Letter**

78. Most of the matters required by the Secretary of State have been answered above, but the following paragraphs set out the questions and short answers

**(i): Whether or not the application complies with advice in Circular 11/95**

79. None of the 3 criteria in Circular 11/95 is applicable to the application (GC1 para.60). Criterion a. – the adoption of the GWLP was a material change in circumstances since the original planning permission was granted, but the fallback position is an extremely weighty material consideration which should outweigh Policy 7 which is a discretionary policy. Granting this application would not worsen the situation beyond the current fallback position. Criterion b. – There has not been a continued failure to commence development on the site because Slough Estates has implemented the outline permission (S.01/1198). This planning application would provide more certainty about the site's future, not less. Criterion c. – as the period for submission of reserved matters has expired, arguments about prematurity cannot be sustained.
80. It is appropriate to use longer time limits than the standard periods if the authority considers it appropriate on planning grounds. SDC considers that the envisaged phased development of warehouse units should be allowed a 5 year period for the submission of reserved matters applications.

**(ii): the extent to which the application accords with advice in PPG4**

81. This site represents one of the most important and commercially attractive B8 sites in the District for road based distribution and storage. Allowing the planning application would give more certainty as to the end use and is likely to realise jobs in a shorter timescale than would waste development; and in much higher numbers. It is highly probable that warehousing would occur on the site.

**(iii) the effect on delivery of national planning policy in PPS10**

82. Granting the application would not make any difference to the delivery of national planning policy in PPS10. There are a sufficient number and quality of safeguarded sites to provide strategic waste management facilities without resorting to Javelin Park.

**(iv): the effect on delivery of the emerging RSS and the consequences for the Regional Waste Strategy**

83. GCC could implement an effective waste management strategy without using this site for waste management purposes. There would be no prejudice to the emerging RSS or the Regional Waste Strategy.

**(v): the effect of the application on the SDLP & GWLP**

84. This has been dealt with above. Even if planning permission were granted, it would not prevent GCC pursuing a CPO if it still thought it was in the public interest to do so.

**Summary**

85. Granting this application would not make any material difference to the GCC's ability to secure Javelin Park for waste purposes. The only difference that could have perhaps been pleaded was that this planning permission would increase the value of the land, and thereby remove the land from its financial envelope. GCC has not put their case on that basis and therefore there would be no harm flowing from granting this planning application. However, harm would occur if planning permission were withheld. Fewer jobs are likely to be provided if the single warehouse unit is built – as many as 300 fewer jobs. Overall, the policies and guidance point to a grant of planning permission in this case being in accordance with the development plan.

**The Case for Applicant**

**The 2005 Order**

86. In this case, the outline planning permission was issued in November 2002. The application to extend the time for the submission of reserved matters was submitted on 3 November 2005 which was within the one year period starting from 24 August 2005 as referred to in Article 4(2) of the 2005 Order – it is therefore an application in respect of which Section 51(5) “shall have no effect”.
87. On this basis it is clear that there is no “cut off” for the determination of applications such as the Applicant's application, which was made before 24 August 2006, and that such applications may be determined by the relevant decision maker after that date. If this were not the case then an applicant would be unfairly penalised if a local authority failed to determine a renewal application before 24 August 2006 and would also potentially lose the right of appeal if the application was refused. As a result, such a “cut off” would be contrary to the principles of natural justice.
88. Any other interpretation of the 2005 Order deprives the Applicant and others any “period of grace” which the interim provisions were clearly intended to afford. This would be especially unfortunate for this Applicant as the planning authority resolved to grant planning permission on 14 March 2006 and it is only the call-in which has created the opportunity for GCC to raise the issue. A representative of the DCLG has confirmed the Department's view reflects that of the Applicant (APP101), and the Planning Inspectorate shares the same view (APP106). GCC's interpretation of the 2005 Order is simply wrong.

**Factual issues:**

***Outline planning permission and its implementation***

89. GCC's suggestion that the outline planning permission has not been lawfully implemented was raised in its written evidence. SDC has always confirmed that the permission has been lawfully implemented and this has been formally confirmed by letter (LPA104). The consequence is of fundamental importance. The presence of an implemented and extant planning permission is a clear example of a fallback position that is a vitally material

consideration where the Applicant can wait for as long as it wishes before building the building for which it has permission (Doc6 paras.7.1-3). It also means that the "protection" offered by GWLP Policy 7 is entirely illusory so far as Javelin Park is concerned, because the site already enjoys the benefit of the financial uplift that reflects an implemented B8 consent.

DEVELOPMENT SERVICES

90. The planning permission was approved by SDC on 8 January 2002 and the Inspector closed the GWLP Inquiry on 9 January 2002 (Doc3 App12). He was not told that there was no longer "... the large area of the site remaining for development (which) provides considerable scope for a range of schemes appropriate for a strategic facility. Five Ha is said to be ample for this." (DP7 para.4.25.5). The plan accompanying the outline planning permission shows the whole site would be taken up by the building (Doc3 App5).
91. GCC received the Inspector's Report in August 2002 (Doc3 App12) by which time it knew the factual basis for the Inspector's expectation no longer existed. The issue of availability of land was put beyond doubt when the reserved matters approval was issued on 8 April 2003 which shows the whole site would be taken up by the building and car parking.
92. There is no satisfactory explanation as to why the GWLP was not modified to reflect this fact at either first modification stage in October 2003 or second stage in July 2004. GCC suggested that if this planning permission were granted, Javelin Park would be lost to waste management: if that analysis is correct, Javelin Park was already lost before the GWLP was adopted. The suggestion that the modifications relate to the Inspector's recommendations only is contradicted by the text supporting the First Proposed Modifications which make clear that they were also intended to update on factual matters (DP8 introduction para.5).
93. GCC therefore knew when it adopted the plan that the Javelin Park allocation was not realistic, the land was in the hands of a developer who had no intention of making any part of it available for waste uses, the land values were not protected by Policy 7 but reflected B8 land values, and the developer was committed to (and had planning permission for) a B8 development which effectively took up the whole site and ruled out any potential for waste use on the site.

***The outline planning permission and its effects on the WLP, the WCS and CPO***

94. GCC's unwillingness to accept the consequences of the implemented permission persists in its preparation of its WCS. PPS10 para.18 (properly interpreted) should rule out sites such as Javelin Park which are not available other than by CPO.
95. The published consultation material does not however expressly rely on Javelin Park: the WCS Issues and Options Report Part A expressly keeps open the question of more or less sites (DP16 p.23). Further, the Preferred Options will not be consulted upon until Spring 2007 and the Independent Examination is not until Autumn 2008 (DP16 p.5). Similarly, the WMS expressly keeps open the selection of site or sites for composting or RWT for a future date (GCC01 pp33&34). It also keeps open the technologies to be relied upon.
96. GCC's Cabinet Report on the potential CPO of the site is not at all satisfactory (GCC02). The GCC witness admitted that he had no experience of CPO nor did GCC for waste treatment purposes, no valuation/compensation advice had been obtained, there is no commitment to a sum, only in-house legal advice had been received, he had not recently read the WLP, and the Report was not sent to officers at SDC although it was accepted that it should have been.

97. Worse still, the Cabinet Report fails to compare the merits of the Javelin Park site with any of the other Schedule 1 sites or any of the Schedule 2 sites, in the absence of which there could be no robust case that CPO was in the public interest. There is no proof that only Javelin Park could help GCC avoid LATS penalties (in fact other Schedule 1 sites are likely to become available earlier precisely because of delays occasioned by the CPO process). Nor is there any GCC policy document justifying the need for an IVC facility of 60,000t capacity by 2009. The Report also disdains the consultation process which awaits the WCS and the JMWMS (see DP16 p.23 & GCC01 para.7.4.3).
98. The Cabinet Report attempts to generate a false sense of the importance of the Javelin Park allocation, promoting it above other Schedule 1 sites when the GWLP makes no distinction. Any fair-minded report would have acknowledged the existence of the implemented B8 consent, its financial consequences and comparison with the cost of acquiring other sites which do not have B8 consents. Nor does the resolution confirm that the necessary funds would actually be available, especially in the absence of any advice on valuation.
99. "The JMWMS does not set policy to determine where ... facilities should be sited ...[but] how municipal waste should be collected and disposed of ..." (GCC01 para.3.4.1). Therefore, it is not correct for GCC to say that allowing this application would prejudice the strategy.

**Other factors:**

***Lifespan of GWLP and timescale for WCS***

100. The GWLP is "saved" until October 2007. If GCC make the progress expected in DP16 the GWLP may extend beyond that date. However, the Independent Examination is expected in Autumn 2008, well within the period covered by the GWLP to 2012. It follows that there is sufficient time to address the targets of the GWLP (and the WCS), if necessary by identification of new site(s).

***CPO timescale and realism***

101. GCC refuses to disclose the financial details which allegedly justify the commitment of public money to land acquisition; little weight should be afforded to uncorroborated assertion. However, it is known that GCC has responded to rejection of offers in the past by submitting reduced bids (APP2/4). The question also remains unanswered as to why it would be better use of public money to buy Javelin Park, with its implemented B8 consent than any other site. GCC suggests that CPO could be used where there is backing from the local community, but here there is no such backing as SDC and the promoter of the proposals at Hunts Grove object to the scheme.

***Development industry activity***

102. GCC's case is not supported by any evidence that the waste development industry is failing to bring forward sites to meet WLP targets and WCS targets – the opposite is the case (APP1/3, GCC103). Indeed the Biogonix and Cory applications would be capable of diverting/treating more material than any IVC proposal at Javelin Park, within a considerably shorter a timescale (even allowing for a reconfiguration of the Cory proposals).

***Planning application at Javelin Park***

103. Over 2½ years ago GCC, were being invited to submit a planning application on the site or consider CPO (LPA102), but the consideration of CPO awaited the immediate run up to this Inquiry (GCC02). Nothing has been done about submitting a planning application, yet GCC knows the form of treatment it wants on site (IVC), and GCC's offers are contingent on grant of planning permission it has not yet even applied for (APP2/4).

**The matters raised in the Secretary of State's Call-in Letter**

**(i): Whether or not the application complies with advice in Circular 11/95**

104. The Applicant's case is set out in APP2/1 at paras.6.7-6.17. Circular 11/95 para.60 refers to 3 criteria. Prematurity is not relevant, so criterion c. does not apply. However, there are a number of critical elements in support of the case to renew the planning permission with regard to criterion a. The existing outline planning permission has been implemented, and the existence of a fallback is an important material consideration. The fallback is real because Slough Estates can wait for an occupier as long as it wishes, and because there is a recent unconditional bid for the site by Graftongate, a company which is experienced in this form of development (APP107).

105. Grant of a new planning permission would not make GCC's position any worse, and there is no evidence that a new permission would add value to the site or make acquisition by GCC more difficult for any other reasons. GCC's Rule 6 objection is based simply on the alleged breach of Policy 7 (Doc8): it does not explain what harm would come from a new permission. Having defended the GWLP and all the Schedule 1 sites at the WLP Inquiry, GCC now seeks to afford some spurious pre-eminence to Javelin Park and to question the suitability of other sites to accommodate waste uses.

106. Regarding criterion b., that the permission is implemented is vitally important; there is no guarantee (or even probability) that GCC would obtain the site for waste purposes, or that it would get the planning permission it requires (especially having regard to the effect that would have on the SDLP - see below).

**(ii): the extent to which the application accords with advice in PPG4**

107. The Applicant's full case is at APP2/1 paras.6.18-6.27. This site is very important to SDC's employment land portfolio. Over 74% of SDC's available B8 employment land is available at just one site: Javelin Park (LPA101). With an employment profile of 600-900 people it would be the second largest employer in SDC and the tenth largest in Gloucestershire, whereas an IVC use at Javelin Park would employ 6-8 people. The Local Plan intends to provide a complete portfolio of sites (DP18 paras.4.7.2, 4.8.1&2). Javelin Park is an ideal location for the form of development that has been permitted, i.e. B8 warehousing adjacent to the motorway. The Secretary of State wishes to know the relative probability of waste use or B8 use. The Applicant refers to the offers for the site (from Graftongate (APP107) and the board is aware of 2 other companies that have expressed an interest), which show that a CPO would be hopeless; there is no application put in, there are no waste developers interested in Javelin Park. So the overwhelming probability is B8 over a waste use.

**(iii) the effect on delivery of national planning policy in PPS10**

108. The Applicant's full case is at APP2/1 paras.6.28-6.29 and APP1/1 paras.3.1.1.-3.1.10 & 5.1 to 5.6. The central issue here is GCC's failure to accept the practical consequences of the outline planning permission and the implemented consent on the GWLP allocation. In

particular, its pursuit of Javelin Park based on a CPO if necessary is contrary to PPS10 para.18. It is unrealistic not only because of non-availability but also because of the poor value for money that Javelin Park would represent when other sites are allocated as suitable for the period up to 2012. PPS12 para.2.33 also emphasises the importance of realism as to the prospect of likely usage in the plan period. And if that is not likely, para.3.33 suggests the allocation should be removed. If it is still necessary to do so; that will happen to this site in 2008.

**(iv): the effect on delivery of the emerging RSS and the consequences for the Regional Waste Strategy**

109. The Applicant's full case is at APP2/1 paras.6.30-6.32 and APP1/1 paras.3.2.1-3.2.3. A number of important points emerge. There is no evidence that the Schedule 1 and 2 sites cannot meet the GWLP needs up to 2012. The waste development industry activity shows that good inroads are likely to be made into the WCS targets for 2020 (APP1/3). GCC has still to decide which forms of waste treatment it will pursue (GCC01 p.35 first indent). The RSS will have to be addressed in the WCS which will be examined in 2008 and will be subject to at least two further 5 yearly reviews before 2020. Grant of planning permission in this case would have no additional adverse impact on RSS/Regional Waste Strategy than the existing implemented outline planning permission. Arguably it would be better for GCC because it would theoretically make part of the site available to GCC if the site were to be sub-divided.

**(v): the effect of the application on the SDLP & GWLP**

110. The Applicant's full case is at APP2/1 paras.6.33-6.45 and APP1/1 paras.5.1-5.6. The GWLP is only part of the development plan, which must be considered as a whole. There is no "pecking order" amongst the Schedule 1 sites in the GWLP, which has built in "slack" where "sites may not come forward because of development pressures". (DP8 p.288, DP7 p.ii paras.6(ii)&(iii)). Despite GCC's assertion otherwise, Policy 7 is agreed to be a discretionary policy (indeed, the WLP Inspector reports that 'the policy gives discretion to the WPA' (DP7 para.5.19.2&3)). It is appropriate to have regard to the purposes of the policy (especially the safeguarding and protection of lower value land (DP9 para.5.32)) when deciding how the discretion should be exercised.

111. Javelin Park was counted against the GSP 100ha requirement: its loss would result in both a quantitative and qualitative deficit in terms of employment land. The site is a very important element of SDLP's employment land portfolio, both in terms of its area and potential jobs, where the B8 use offers a high multiple, compared to waste related employment. The SDLP is concerned about out-migration of its workforce (DP18 para.4.7.1) – a matter that also concerns the RSS, where policies SR1 & SR14 expressly encourage growth of employment in Stroud to create more balanced, sustainable communities. (DP12 pp55&70 & para.4.2.45, APP2/1 para.4.7).

112. The proposals map simply records what the GWLP intended: it does not resolve the conflict that would arise if the largest B8 site were no longer available for that purpose. Further, any application for a waste use at Javelin Park should be regarded as a departure from the SDLP because of the effect on Stroud's employment land portfolio and employment levels. In the case of a conflict between SDLP and GWLP the last adopted plan prevails (Regulation 43 of the 1999 Regulations (Doc7 para.2.4.5)). Regulation 44 confirms that in a conflict between the text of a DP and a plan, the text prevails, so the commitment of Javelin Park to B8 uses should prevail over the GWLP notation.



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113. This proposal enjoys support from RPG, RSS, GSP (see also Policies E3 and E6) and SDLP (EM1 and 2, Tables 4.1 and 4.2, paras 4.53, 4.63, 4.71 and 4.8.1/2). The "loss" of GWLP Policy 7 is minimal because the implemented planning permission means Javelin Park is no longer safeguarded. The targets in the final "summary" page in the GWLP are likely to be met without Javelin Park, and emphatically it is these figures that should be used (DP9 last page). The application should not have been regarded as a "departure" as grant of planning permission for it would not "severely prejudice" the WLP: GCC has shown no harm beyond the effect of the existing permission that the new permission would have. In fact, protection of the site by Policy 7 would severely prejudice the SDLP for the reasons set out above.

### Overall conclusions

114. The Applicant and SDC agree that the proposal accords with the development plan taken as a whole. (Doc3 para.8.1(v)) The SOCG also establishes a joint case between SDC and the Applicant on all of the Secretary of State's issues. GCC's objection to this proposal has been shown to be doctrinaire and it has been unable to identify any additional "harm" that would flow in terms of GWLP policy should the new permission be granted. GCC's attempts to undermine its own WLP and the other WLP allocations has been surprising given that the Plan was adopted in October 2004 without any distinction being made between the Schedule 1 sites. Further, the GWLP makes clear that "these figures and assumptions in Appendix 8 form the basis of the allocations in Chapter 4" (DP9 para.3.25). It is simply not open to GCC to allege the allocations are not adequate.

115. Javelin Park is not an ideal waste treatment site for a number of reasons. It does not enjoy the synergy with existing waste uses that nearly all of the existing Schedule 1 and 2 sites enjoy. It is owned by the Applicant who does not want to put it to waste uses. It is an ideal B8 site that SDLP relies upon as part of its employment land portfolio, with an implemented planning permission for a B8 use which would take up the whole site. SDC objects to the loss of employment that refusal of planning permission would entail (Doc3. App.17). In terms of development control, the development of waste uses at the site is in doubt given previous objections from SDC on grounds of impact on the AONB, SLA and potentially upon Hunts Grove housing allocation.

116. If the view were to be taken that there is a theoretical breach of Policy 7, that does not mean that there is a conflict with the development plan because the opportunity to object is discretionary. On the evidence in this case, there is no sensible justification for maintaining an objection under Policy 7, especially given the importance of Javelin Park to the SDC employment land portfolio.

117. Even if breach of Policy 7 were to be regarded as a breach of a development plan policy, that does not mean that the proposal is not in accordance with the development plan overall. It would be necessary to weigh the effects of the loss of a large B8 employment area with potential for 600-900 employees against the "loss" of one of 6 Schedule 1 sites. The "loss" is theoretical because the site is already not available and the new permission is not alleged to have any greater adverse effect. Logic and the evidence in this case suggest that the development plan overall supports grant of this planning permission and would not justify refusal.

### Written Representations

118. One late written representation was received, on the day the Inquiry closed, on behalf of the developer of strategic mixed use allocation at Hunts Grove. It indicates that provision of a

strategic waste management facility has the potential to cause a high degree of nuisance to neighbouring occupiers, and Javelin Park would not be far enough away from Hunts Grove for there to be confidence that there would be no adverse consequences from waste management use on the site.

### Conditions and Obligations

119. The conditions discussed at the Inquiry were those contained in the SOCG and found at Doc3 p.15 & Annex5; the latter being the conditions attached to the original planning permission reference S.01/1191. Before discussion started I made the overall point that I would recommend to the Secretary of State that references to third parties and individual post holders should be removed from conditions.
120. Proposed amendments to conditions 2 and 3 are at Doc3 p. 15: the amendment to **condition 2** is the subject of this Inquiry, and **condition 3** would require a consequential amendment because development has commenced. The other conditions are at Doc3 Annex5. **Condition 7** lacks the word "other" should be inserted between "any" and "purpose". The last 6 words in **condition 9** result in a tautology. The parties agreed that **Condition 11** is intended to ensure that, for highway safety purposes, the only vehicular access to the site is by way of the roundabout on Bath Road. The condition should be amended to achieve that purpose, rather than be prescriptive on how it is done. **Condition 14** is discharged and should be deleted.
121. The words "which have been submitted" in **condition 16** should be replaced by "to be submitted". The parties agreed that **Conditions 18 and 20** should be deleted as the transport plan and transportation matter are dealt with in the s106 agreement. Although it is clear that much the works referred to in **condition 21** are well under way, if not substantially complete, the parties were unable to tell me whether the details have been implemented in full in accordance with the condition. Although the height of the buildings mentioned in **condition 22** was not discussed at Inquiry, I was told that the height of the buildings was negotiated at some length with the local planning authority.
122. The Applicant submits a s106 planning agreement between the Applicant, SDC and GCC intended to give effect to all the provisions of the s106 planning agreement linked to the extant planning permission.

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## Conclusions

123. The following discussion takes account of all the evidence before me, the representations made and my inspection of the site and its surroundings. The numbers in square brackets [n] are references to preceding paragraphs in this report.
124. No account has been taken in these conclusions of anything which might have occurred as a result of any policy changes or Ministerial Statements since the close of the Inquiry.
125. This report is approached with section 38(6) of the PCPA 2004 in mind. This indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
126. The period of grace described in Article 4(2) of the 2005 Order expired on the 24 August 2006. GCC asserts that from 24 August 2004, the effect of Section 73(5) of the 1990 Act as amended has been to deprive the Secretary of State of jurisdiction to determine the application. I outline the procedural background to the representations in paragraphs 6 to 8 above. Simply put, Circular 08/2005 para.32 indicates that where permission was granted prior to 24 August 2005 (as in this case), developers have until 23 August 2006 in which to seek to extend the time limit on a permission. In this case, the application to extend the time for the submission of reserved matters was submitted on 3 November 2005, that is before 23 August 2006. It follows that, from Article 4(2) of the 2005 Order that the new sub-section 51(5) of the TCPA "shall have no effect". [5-8,56,58,86]
127. This is a matter of law, but in my view the legislation does not prescribe 23 August 2006 as the cut-off date for jurisdiction as suggested by GCC; 3 scenarios in particular demonstrate why this is could not be so. Firstly, it would not be possible for a LPA to process and determine a developer's application for an extension if it were close to the deadline of 23 August 2006. Secondly, depending on work load and other factors, LPAs deal with applications at different speeds. Thus, from the same start date, one authority may meet such a deadline and another may not, thereby placing some developers at a disadvantage; which would be unjust. Thirdly, as in this case, such an interpretation would leave little or no room for a decision on appeal, which must be contrary to natural justice. It follows that, in my view, the Secretary of State does have jurisdiction in this case. [59,87,88]
128. Before turning to the matters raised by the Secretary of State, I will address two matters that are of considerable importance in determining this application: the Applicant's fallback position; and the GCC's position on purchasing Javelin Park or obtaining a CPO on the site.

### The fallback position

129. By the close of the Inquiry, all parties agreed that the 2002 permission (S.01/1191) had been lawfully implemented. The presence of an implemented and extant planning permission is a clear example of a fallback position that is an important material consideration. No party disputes that the fallback position exists, but GCC concludes that it carries little weight mainly because, it says, all the evidence shows that the fallback permission is unmarketable, although it did not call on marketing expertise to address this assertion. [13,48,50,69,89]
130. An unconditional bid for the site with the current planning permission has been made by the development company Graftongate. GCC points out that the company wishes to develop this site for industrial and warehouse uses predominantly on a speculative basis, and that would need planning permission; thus it is not evidence of a B8 market, and there is no

evidence that the company would be in any different position to the Applicant. I believe that this misses the point. There is an extant permission on the site, a site that has a value; the Applicant could wait as long as it wishes to build the site out, or it could sell the interest for some other developer to await the market and/or try some other tack while it waits. In addition, the Inquiry was told that the Applicant's board was aware of interest from 2 other developers. [49,89,104]

131. Leaving aside those 2 developers and any other that may show interest, on the evidence, Graftongate and the Applicant are companies that are experienced in this form of development. I am satisfied that, on the balance of probability, if this application were to be refused, the extant planning permission for B8 use would take place: either the Applicant will develop it or some other developer will. Substantial weight should be attached to the fallback position. [60,62,104]

**GCC's position on the purchase of Javelin Park or obtaining a CPO on the site**

132. GCC, as the WDA, previously tried to buy the site by agreement as part of the now terminated PFI procurement process. It indicates that, under the imperative to divert waste from landfill, it retains that interest. Shortly before the Inquiry, it produced a Cabinet report recommending, among other things, that: negotiations to purchase Javelin Park should continue; the option is developed to consider whether to make a CPO as a contingency if land negotiations are not successful; and funding provision for the purchase of Javelin Park and the waste management facilities is included in the developing Medium Term Financial Strategy. [30,35,72]
133. It would appear that the Cabinet report was produced with the Inquiry into this planning application very much in mind. It has a number of shortcomings. In promoting the Javelin Park site, it makes no reference to any of the other strategic sites identified in the GWLP, or any other site without an implemented B8 planning permission by way of a value for money comparison in particular; one would assume that to be one of the basic pre-requisites to justify a CPO. [72,75,96-98]
134. Whilst disregarding the other GWLP sites, the Cabinet report promotes an IVC use on the Javelin Park. The tenor of the Cabinet report is that Javelin Park is viewed as an opportunity, indeed it contains the heading "A Strategic Opportunity", but restricts all that information to a separate confidential report not available to the Inquiry. However, the public consultation on the WCS options will not take place until Spring 2007 and the public examination will not be until Autumn 2008. Whilst acknowledging the difficulties that the WDA may have in balancing its operational and regulatory roles, the prejudgment of GCC in giving primacy to the Javelin Park site and the IVC process that goes into it would appear to devalue the WCS process. [95,97]
135. The report indicates that "based on a number of assumptions, it appears that the whole of Javelin Park could be cost effectively purchased under the IVC strategy. More importantly, the site has sufficient benefits for it to be utilised as a strategic waste management site." However, it does not commit itself to a sum or confirm that the necessary funds would be available. The financial detail is again contained in the confidential report that was not available to the Inquiry. I must assume that the economic justification leans on the requirement to reduce LATS penalties, but the report does not explain why Javelin Park would be unique, or even the best site, to assist GCC in avoiding such penalties. [35,96-99]
136. Whilst the Applicant would not accept a waste management use on part of its site, I believe that it would consider offers at the market price for the whole site, including offers from

GCC. However, GCC has not offered what is asserted to be the current market price of about £9.75 million, even though it is aware of that figure. Most of the concerns of the previous paragraphs go to the GCC's position in the open market. However, leaving those concerns aside, GCC did not put forward any evidence to suggest that granting this application would raise the value of the land, which already has a planning permission for B8 use (although this may be the case). Thus, it would appear to be the case that with or without the approval for this application, its position on the open market would not change to a material degree. It is noteworthy that GCC says that the market value has not put the site beyond the WDA's reach. [39,41,49,76,85]

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137. I conclude that GCC's position in terms of purchasing Javelin Park on the open market would not be affected by the granting of a planning permission in this case. This is particularly so given the theoretical possibility under the intended revised scheme for a partial acquisition to be considered [109]. As regards the likelihood of the GCC pursuing a CPO, I consider that the Cabinet report is opaque, and that GCC's position on the matter is far from clear. There is a lack of evidence and much of the essential information is either lacking or uncorroborated. I recommend that little weight is given to this matter.

#### **The matters raised by the Secretary of State**

**(i) whether or not the application complies with the advice in DOE Circular 11/95 on the use of conditions in planning permissions, in particular paragraphs 53 – 59 on time limits, and paragraph 60 on the circumstances under which applications for renewal may be refused**

138. The Secretary of State will be aware that paragraphs 54-60 of Circular 11/95 have been revoked by paragraphs 19 to 32 of Circular 08/2005. Paragraph 56 indicates that if the authority considers it appropriate on planning grounds, the standard time limits may be varied. The flexibility of a five year period for the submission of reserved matters applications would appear to be an appropriate approach in this envisaged phased development of warehouse units. [80]

139. Paragraph 60 of the Circular presents 3 criteria where renewal of permissions before the expiry of time limits should, as a general rule, be refused. Regarding criterion a.: the adoption of the GWLP was a material change in circumstances. However, substantial weight should be attached to the fallback position. GCC's position in terms of purchasing Javelin Park on the open market would not be materially affected by the granting of a planning permission in this case – a new permission would not cause material harm, and little weight should be given to the effect of GCC pursuing a CPO. [79,104,105,131,137]

140. As to criterion b.: the permission is implemented, so the criterion is not brought into play. There is no question about prematurity, so criterion c. is not brought into play. As far as the paragraphs are relevant to this application, the evidence is that the application complies with the advice in Circular 11/95, in particular with the advice in paragraphs 53-60. [79,106]

**(ii) the extent to which the application accords with government planning policy advice in PPG4: Industrial and Commercial Development and Small Firms, to include consideration of the relative probabilities of either warehousing or alternative development going ahead on the site**

141. Javelin Park is a previously-developed site with good access to the motorway system for lorries, via the nearby junction 12 of the M5 to the populated areas of Gloucestershire and to wider locations and markets. Consequently it provides a good location for B8 use in

accordance with PPG4, as it does for the waste uses envisaged in the WLP. Out-commuting to employment locations outside the District remains a problem in delivering sustainable communities. The plan expressly identifies a need to provide a greater choice of sites to the market if the Stroud economy is to continue to flourish. PPG4 paragraph 10 encourages new development in locations that minimise the length and number of trips by car. The proposal is envisaged to generate 600-900 jobs that would help to reduce out-commuting and further the aims of PPG4. [9,17,64,66,81,107]

142. Currently, there are 7 sites, including Javelin Park, available for B8 operators looking to locate in Stroud District. Javelin Park is overwhelmingly the largest for B8 use, comprising 74% of the available land in the whole district. Javelin Park is clearly part of the SDLP strategy to create jobs in the District and to provide a variety and choice of sites. In this regard, it accords with the Guidance in PPG4 paragraph 6. From the foregoing, I consider that the application accords with the government planning advice in PPG4. [63,67,107]

143. I turn now to the relative probabilities of warehousing or other development going ahead on the site. Much of the argument here is contained in the previous sections of my conclusions under "the fallback position" and "GCC's position on the purchase of Javelin Park or obtaining a CPO on the site". [129-131, 132-137]

144. In brief, Javelin Park is a committed employment site with an implemented and extant planning permission and with at least one developer interested in purchasing the site. GCC believes that little weight should be given to the fallback position, but I conclude that it should carry substantial weight. GCC considers that it could purchase the site on the open market, or by way of CPO. Whilst I consider that GCC's position in the open market would not be materially affected by the grant of planning permission, I consider that the likelihood of GCC obtaining the site through a CPO should be given little weight. If the Secretary of State accepts these arguments, it is clear that there is a very high probability that a B8 development will take place on Javelin Park rather than any other use. [11,67,81,107,129-137]

**(iii) whether or not the application prejudices the delivery of national planning policy in Planning Policy Statement 10: Planning for Sustainable Waste Management for the delivery of sustainable waste management facilities**

145. The draft JMWMS is due for adoption in 2007. I have no reason to disagree with GCC's expressed opinion that its direction is consistent with up to date guidance on waste management for recovery and resource in PPS10. Nor do I doubt that it has considered a broad range of locations, including industrial sites, and given priority to the re-use of previously developed land. [33,36]

146. GCC says that the WLP Inspector referred in his report to further large scale development on the Javelin Park site. As a consequence, it says that the potential for development pressure for an alternative non-conforming use on the site potentially affecting land values was recognised at the outset and was not seen as a reason not to allocate and safeguard the whole site for waste management uses. However, in the paragraph from which GCC quotes, that Inspector refers to the conspicuous hangars on the site and says that "[the site] is allocated as industrial land so further large scale development on the site can be expected". He was clearly of the opinion that the large area of the site provided the scope for a strategic facility occupying about 5ha. However, the outline planning permission for B8 use on Javelin Park was granted on 8 January 2002, the day before the WLP Inquiry closed. [37,90]

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147. That outline planning permission took up the whole of the site – resulting in something more than the development pressure mentioned by GCC; it plainly meant that the 5ha that the Inspector envisaged on a large industrial site was not available. In writing what he did, he could have been not aware of the outline planning permission, otherwise it is unlikely that he could have written what he did in the way that he did. I have discussed the fallback position above, pointing out that the Applicant company could wait as long as it wished to build out the outline permission. Thus, I consider that the site is already prejudiced for waste management uses by the extant planning permission for B8 use. The current proposal would not make that position any worse. Indeed, as the proposal envisages the site as coming forward in phases, it could be said to represent an opportunity for the site to develop in the way that the WLP Inspector envisaged, notwithstanding that the Applicant has no wish to accommodate a waste management use on part of the site. [13,93,109,129-131]
148. The guidance in PPS10 para.18 is to avoid unrealistic assumptions in respect of the prospects of developing waste management facilities on sites having regard in particular to ownership constraints which cannot be readily freed, other than through the use of CPOs. The WLP Inspector's report was received by GCC in August 2002, and the reserved matters approval on Javelin Park was issued on 8 April 2003, some considerable time before even the First Proposed Modifications to the draft GWLP in October 2003. Yet the approval did not affect the adopted version of the GWLP. The consequences of the implemented permission persists in the preparation of the WCS. Despite GCC's conclusions in advising that PPS10 should be read as a whole, I consider that proper application of PPS10 para.18 should rule out Javelin Park from being identified for waste management purposes. [36,90-94,108]
149. GCC stresses what it perceives as the shortcomings of other strategic sites as compared to Javelin Park, but there is no evidence to suggest that without the site the delivery of sustainable waste management facilities in Gloucestershire would be fatally affected. Indeed, I would have been surprised if such a case had been put as the WLP Inspector had recommended that the excess of capacity of sites should remain in the plan. I consider that there is a sufficient number and quality of safeguarded sites to provide strategic waste management facilities without resorting to Javelin Park. In addition, the evidence suggests that the waste development industry is bringing forward sites in the area for waste management uses providing capacity for the area. Further, the consultations currently under way regarding the JMWMS and WCS are designed to address the targets of the GWLP. [20-23,77,82,95,100,102]
150. Having regard to the national planning policy advice in PPS10, I consider that the application would not prejudice the delivery of sustainable waste management facilities.
- (iv) whether or not the application prejudices delivery of the emerging RSS on waste management and the consequences for the Regional Waste Strategy**
151. The emerging JMWMS will provide a framework for the development of municipal waste management services in Gloucestershire to 2020, taking account of a number of relevant planning guidance notes including the Regional Waste Strategy. The GCC is developing a residual waste management project and intends to publish a business case in 2007 which will determine the preferred technology and the preferred location. Although the Applicant asserts that Javelin Park is not an ideal site for waste management use, there can be little doubt from the evidence available in the GWLP that it would in principle satisfy the location requirements of RSS. If it were available, its use for waste management purposes would be consistent with planning policy and the policy of the emerging waste management strategy. [17-19,31-34]

152. The assessment for topic (iv). follows similar lines to that for topic (iii). GCC asserts that continued securing of what it describes as the opportunity presented by Javelin Park is of fundamental importance. However, for reasons already rehearsed, the timing of the WLP Inspector's report and the granting of outline planning permission by SDC for B8 use on the site place grave doubt that the site was ever actually secured for such use. Essentially, the site is already prejudiced by the extant planning permission for B8 use, and the Applicant company may wait as long as it wishes to build out the implemented planning permission. Thus, the site is unlikely to become available in the foreseeable future for waste management use unless GCC purchase it on the open market. Further, there is no convincing evidence to suggest that the Schedule 1 and 2 sites could not meet the GWLP needs up to 2012 and that GCC could not implement an effective waste management strategy without using this site for waste management purposes. Granting of planning permission in relation to the current application would result in no material additional impact to that already arising from the extant outline planning permission. I conclude that there would be no prejudice to the emerging RSS or the Regional Waste Strategy. [34,83,109,137,146,147]

**(v) the extent to which the application is in accordance with, or prejudices the delivery of, development plan policies as set out in the adopted Stroud District Local Plan and the Gloucestershire Waste Local Plan**

153. No party disputes that GWLP Policy 4, with Schedule 1 of the GWLP, has the effect of identifying Javelin Park as one of 5 sites where Strategic Waste Management Facilities (processing more than 50,000 tpa) may be permitted. Policy 7 safeguards sites in permanent waste treatment use (Schedule 1 and 2 as well as "other proposed sites that may be considered appropriate"). Policy 7 says that the WPA will normally oppose proposals for development within or in proximity to these sites. So saying, there is an element of discretion about the policy, as noted by the WLP Inspector; it is not imperative as GCC insists. [14,15,17,79,110]

154. The WLP Inspector identified the characteristics, including advantages and shortcomings, of the strategic sites put forward by GCC as part of the WLP process. He did not establish any preference of one site over another. Despite supporting all the sites at the WLP Inquiry, GCC sought to establish that Javelin Park is the best of the strategic sites identified. For its part, the Applicant sought to present it as a site that is not ideal for waste treatment. However, any shortcomings (and strengths) of individual sites would be material considerations in the assessment of applications for strategic waste management uses on those sites, and judgment on sites and processes will be part of the outcome of the public consultation on the WCS in Spring 2007 and the ensuing public examination in Autumn 2008. In the meantime, the GWLP has a generous provision in recognition of the fact that sites may not come forward because of development pressures. [20-24,110,115,134]

155. It is this last mentioned point that appears to be particularly relevant to the Javelin Park site, again for reasons previously discussed relating principally to the fallback position, the timing of the WLP Inspector's report and the granting of planning permission by SDC for B8 use on the site, and because proper application of PPS10 para.18 should rule out Javelin Park from being identified for waste management purposes. Thus, the granting of planning permission in relation to the current application would result in no material additional impact to that already resulting from the extant outline planning permission enjoyed by the site. [69,89,113,148,152]



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156. I conclude that the proposed would not materially harm the policies of the GWLP it would not prevent or prejudice the use of the site for waste management development; any prejudice that there may have been is the result of the extant planning permission. To the extent that that proper application of PPS10 para.18 should rule out Javelin Park from being identified for waste management purposes, I conclude that the application is in accordance with the GWLP. If the Secretary of State disagrees with me on the application of PPS10 para.18, I would conclude that the fact that there is an extant implemented planning permission on Javelin Park would render any conflict between the proposal and the GWLP minimal.
157. In accordance with the requirement of PPS12, the SDLP includes on its proposals map the safeguarded waste allocation at Javelin Park. The body of the SDLP includes the site as being an employment commitment (SDC points out that the relevant table errs in recording Javelin Park at 4.8ha when the whole site of 11.2ha has planning permission). There is clearly conflict between the proposals map and the text of SDLP. GCC suggests that if SDC had wanted to qualify the effect of the mandatory notation they could have done so in the text of the plan. That was not done; the SDLP does not resolve the conflict and it would appear to be unfortunate that the matter is not addressed. [43,44,55,56,67,68,112]
158. GCC asserts that there is no conflict between the GWLP and the SDLP because the latter simply adopts and applies the policies of the GWLP by an appropriate notation on the proposals map; there is no need for a justification for that notation to be found in the text. GCC takes as a fact that the site is not allocated for any other purpose than that contained in the proposals map in the SDLP. However, the text of the document clearly takes the employment commitment as a given. [44,45]
159. The relevant table refers to "sites with planning permission for employment use", and the text says they are "shown below as employment commitments". The section within which the table is found is to do with Employment Land Protection. The SDLP clearly believes that it has a number of employment commitments 'in the bank' as at 1 April 2004, and goes on to develop its policies to protect what it identifies as key employment land. The plain language interpretation is that the employment commitments that include Javelin Park are pre-existing commitments to employment use by those who hold the planning permissions, not some aspiration by the SDLP as GCC seems to suggest. The SDLP is reporting the status quo and develops the policies from that. Thus, there is no need to allocate the site within the body of the SDLP, the fact is that the site has a B8 planning permission and is a committed use. I conclude that the SDLP clearly considers that Javelin Park is an employment commitment, but fails to explain the anomalous depiction of the site as a WLP allocation. [47]
160. The view of GCC appears to be that the requirement to include a WLP waste allocation on a local plan proposals map means that the local plan automatically absorbs the relevant portion of WLP, thus conflict does not arise; the WLP prevails. I will not comment on the generality of that statement but, in the circumstances of this case, I believe that it does not hold true. This returns again to the reasons previously discussed relating principally to the fallback position and the timing of the WLP Inspector's report and the granting of planning permission by SDC for B8 use on the site. What is also clear is that there were no objections to Javelin Park as a committed B8 employment site in the SDLP, and there were no threats to its future B8 use in the plan itself. [43,68,152]
161. If the Secretary of State disagrees with me on this, it would appear that the provisions of the 1999 Regulations should apply. Thereby, under Regulation 43, in the case of a conflict

between SDLP and GWLP the last adopted plan prevails; which is to say the SDLP would prevail over the GWLP. Under Regulation 44, in a conflict between the text of the SDLP and a plan (that is the proposals map), the text will prevail. It follows that the commitment of Javelin Park to B8 uses should prevail over the GWLP notation in the proposals map. [70,112]

162. What this means for the proposal under discussion has already been discussed: the granting of planning permission would result in no material additional harm or impact to that already resulting from the extant outline planning permission enjoyed by the site. [139,152,155]
163. GCC suggests that there is no apparent need for jobs created by B8 use on the site because of the low unemployment in Stroud District. However, as there is a high level of out-commuting from the District, the SDLP expressly identifies a need to provide a greater choice of sites to the market if the Stroud economy is to continue to flourish. The SDLP addresses both the quantity and quality of sites to provide a wide range of opportunities in both scale and nature. The delivery of Javelin Park, close to Stroud, is integral to the objectives of the plan to create jobs in the District and to provide a choice and variety of sites. Javelin Park provides 74% of the land in the whole District on which a B8 operator looking for a new site could find a site. Its loss would plainly result in both a quantitative and qualitative deficit in terms of employment land and the jobs that land might support. [44,46,63,66,67,111,141,142].
164. There are no jobs on the Javelin Park today, and none recently created. The extant planning permission is estimated as having the potential for creating about 600 jobs, and the current proposal about 600-900 jobs. A waste management use was estimated at providing about 6-8 jobs. As has been previously concluded, the granting of planning permission in relation to the current application would result in no material additional impact to that already arising from the extant outline planning permission. If the proposal were not granted planning permission, there would be harm caused as the difference between the potential for 600 jobs and 600-900 jobs would be lost. [46,65,85,107,117,152]
165. As GCC points out, the argument that refusal would be a threat to the SDLP employment strategy is not found in SDC's written evidence; it suggests that the argument should carry little weight. I consider that the discussion of the effect of a waste use prevailing over the B8 use would be bound to be raised at Inquiry. In view of the size of Javelin Park as a proportion of B8 land available in the plan, its non-availability would have a significant effect. I consider that significant weight should be given to this factor. However, even if no weight were given to it, in my judgment, it would not affect the balance in favour of granting planning permission in this case. I conclude that the application is in accordance with the adopted SDLP. [47]

#### **Other matters**

166. The developer of a strategic mixed use allocation at Hunts Grove suggests that Javelin Park would not be far enough away from Hunts Grove for there to be confidence that there would be no adverse consequences from waste management use on the site. A similar complaint was made by objectors at the GWLP Inquiry, and the WLP Inspector dealt with them. The SDLP identifies the Hunts Grove site and its neighbouring GWLP allocation site without any problem being mentioned. The complaint is general and non-specific and is not backed by evidence. At my site inspection, I observed that the Hunts Grove would be some distance away from Javelin Park, with the M5 and its junction 12 intervening. I consider there is no material evidence to show that the use of the Javelin Park site for modern waste

management uses would have any adverse amenity implications for the mixed development at Hunts Grove [51,52,101,118]

### Conditions

167. The discussion on conditions was essentially a tidying up process related to the extant conditions, and I recommend the changes mentioned in paragraphs 120-121 above. It should be noted that deletion of conditions 14, 18 and 20 has resulted in a renumbering of conditions after No. 13 – the remainder of this paragraph refers to numbers of the extant outline planning permission. Regarding condition 21, the parties were unable to tell me whether the details have been implemented in full in accordance with the condition. The condition also lacks a few words regarding submission and approval of the engineering scheme referred to, which should be added – I recommend that the condition be imposed on any new permission to ensure full implementation. I consider that condition 21 (regarding the height of the buildings on site) is necessary and appropriate in view of the negotiations between the Applicant and the LPA, and from my site inspection judging from the impact of the neighbouring buildings at the garden centre. Annex 1 to this report contains the recommended conditions. [119,120,121]

### Planning obligation

168. It is my opinion that the planning obligations would achieve their purpose, being for planning purposes and founded on development plan policies. [4,122]

### Recommendation

169. I recommend that the application be allowed and planning permission be granted subject to conditions.

*RR Lyon*

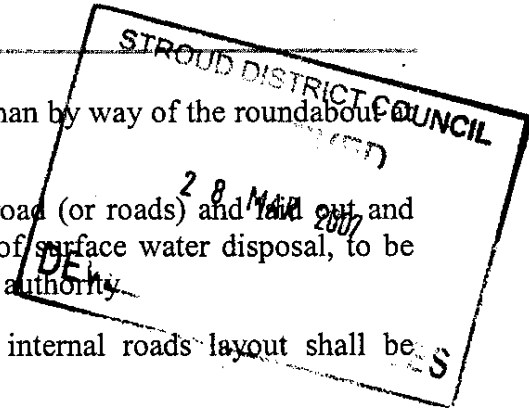
Inspector

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**Conditions recommended in the event of the appeal being allowed and planning permission granted**

**Reserved Matters**

1. Before any development is commenced, approval shall be obtained from the local planning authority of the siting, design, external appearance of the building(s), and the landscaping of the site (hereinafter called "the reserved matters").
2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 5 years from the date of this permission.
3. The development hereby permitted shall be commenced before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.
4. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building works hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall then only be carried out in accordance with the approved details.
5. The development hereby permitted shall not be commenced until details of a scheme of hard and soft landscaping for the site have been submitted to and approved in writing by the local planning authority.
6. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first complete planting and seeding seasons following the occupation of the buildings or the completion of the development to which it relates, whichever is the sooner. Any trees or plants which, within a period of 5 years from the completion of the development, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size or species, unless the local planning authority gives written consent to any variation.
7. The development shall be used solely for the use described within Class B8 of the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to the class in any statutory instrument revoking and re-enacting that order and shall not be used for any other purpose including any retailing of goods without the prior permission in writing from the local planning authority.
8. The development hereby permitted shall not be commenced until detailed plans have been submitted to and agreed in writing by the local planning authority of the method of disposal of surface water within the curtilage of the site. The development shall not be brought into use until that agreed method has been provided and is available for use.
9. The development hereby permitted shall not be brought into use until works for the disposal of sewage have been provided on site to serve the development in accordance with details to be submitted to and approved in writing by the local planning authority.
10. No building shall be erected or any trees planted within 4.0 metres of the rising main that crosses the site. Alternatively, application for relocation of the pumping station and diversion of the rising main may be made in accordance with section 185 of the Water Industry Act 1991.

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11. There shall be no other vehicular access to the site other than by way of the roundabout and the site access on Bath Road.
  12. The proposed development shall be served by an estate road (or roads) and laid out, and constructed in accordance with details, including means of surface water disposal, to be submitted to and approved in writing by the local planning authority.
  13. Before the commencement of building operations, the internal roads layout shall be completed to at least base course level.
  14. No works shall commence on site until a temporary car parking area for site operatives and construction traffic has been laid out and constructed in the site in accordance with details to be submitted to and approved in writing by the local planning authority, and that area shall remain available for that purpose for the duration of building operations.
  15. No building shall be occupied or otherwise used for any purpose until provision has been made within the site for loading and unloading of goods vehicles in accordance with details in accordance with details to be submitted to and approved in writing by the local planning authority, and that provision shall remain available for that purpose for the duration of the use.
  16. No works shall commence on site until details of staff and visitor vehicular parking and manoeuvring facilities within the curtilage of the site have been submitted to and approved in writing by the local planning authority. The relevant parking and manoeuvring facilities shall then be completed in all respects in accordance with those details before any part of the development is brought into use and shall be maintained as such thereafter.
  17. No part of the development shall be brought into use until space has been laid out within the relevant part of the site for bicycles to be parked in accordance with details to be submitted to and approved in writing by the local planning authority.
  18. No works shall commence on site until full engineering and constructional details have been submitted to and approved in writing by the local planning authority. The details shall be generally in accordance with the scheme shown as WSP drawing 233/PREN/99-12-06B contained within the supporting documentation comprising the following elements:
    - a. Extension of the pedestrian/cycle way from Junction 12 M5 interchange to the site;
    - b. Provision of bus stopping facilities;
    - c. Three-armed roundabout junction on B4008 serving the site; and
    - d. Street lighting, lining, signing, drainage and other engineering works associated with the proposed highway improvement scheme.

These details so approved shall be implemented in full prior to the beneficial use of the development hereby authorised.

19. The buildings hereby permitted shall not exceed 15.7m in height, measured from existing ground levels.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Miss M Thomas

Barrister. Instructed by Mr C Spencer, Solicitor and interim head of Legal Services, SDC.

She called

Mr D J Rogers BA(Hons) BTP Principal Planning Officer  
MRTPI

### FOR THE APPLICANT:

Mr J Cahill QC

Instructed by GVA Grimley

He called

Mr G Jenkins BA(Hons) Regional Director, White Young Green Planning  
MRTPI MIQ

Mr S J Hollowood BSc(Hons) Partner GVA Grimley  
DipTP MRTPI MBEng

### FOR GLOUCESTERSHIRE COUNTY COUNCIL:

Mr T Comyn

Barrister. Instructed by Ms G Parkinson, Solicitor to GCC

He called

Mr K Phillips BSc(Hons) BTP Team Leader, Minerals & Waste Planning Policy  
MRTPI

Mr M Williams BSc MSc Head of Waste Management  
MBA CChem MCIWM CEnv

## DOCUMENTS

- Doc1 Attendance lists
- Doc2 Letter of notification and list of persons notified
- Doc3 Statement of Common Ground between the Applicant and Stroud District Council
- Doc4 True copy of the s106 agreement on the original planning permission
- Doc5 Supplemental s106 agreement
- Doc6 Applicant's Rule 6 statement
- Doc7 Stroud District Council's Rule 6 statement
- Doc8 Gloucestershire County Council's Rule 6 statement

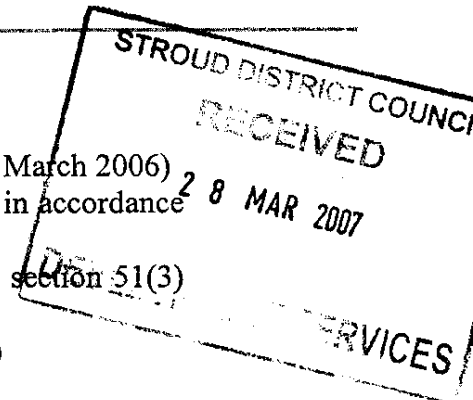
## APPLICANT'S DOCUMENTS

- APP1/1 Mr Jenkins' proof of evidence and appendices
- APP1/2 Mr Jenkins' summary
- APP1/3 Mr Jenkins' supplementary evidence
- APP2/1 Mr Hollowood's proof of evidence
- APP2/2 Mr Hollowood's appendices
- APP2/3 Mr Hollowood's summary
- APP2/4 Mr Hollowood's supplementary evidence

### **Applicant's documents handed in at the Inquiry**

- APP101 Bundle relating to the lifespan of planning permissions

- APP102 Opening statement  
APP103 Letter GVA Grimley to GCC (19 October 2006)  
APP104 Letter SDC to Government Office for the South West (20 March 2006)  
APP105 Extract from Planning Encyclopaedia "Development not in accordance with the development plan"  
APP106 Exchange of emails regarding the "period of grace" and section 51(3) of the Planning and Compulsory Purchase Act 2004  
APP107 Letter Graftongate to Slough Estates (30 November 2006)  
APP108 Extract from planning application by Bioganix Ltd  
APP109 Clarification of the volumes of the principal waste streams, existing waste capacity, and the capacity of sites identified in the Waste Local Plan which might meet the identified requirements.  
APP110 Closing Statement



#### **LOCAL PLANNING AUTHORITY'S DOCUMENTS**

- LPA1/1 Mr Rogers' proof of evidence

#### **Local Planning Authority's documents handed in at the Inquiry**

- LPA101 Sites with B1/B2/B8 use planning applications  
LPA102 Letter SDC to GCC (16 March 2003)  
LPA103 Extract from Planning Encyclopaedia on proposals maps  
LPA104 Letter SDC to GVA Grimley re discharge of conditions on outline permission S.01/1191 (1 December 2006)  
LPA105 Letter from RPS Planning on behalf of Crest Projects Ltd (4 December 2006)  
LPA106 Closing statement

#### **GLOUCESTERSHIRE COUNTY COUNCIL'S DOCUMENTS**

- GCC1/1 Mr Phillips' proof of evidence  
GCC1/2 Mr Phillips' summary  
GCC2/1 Mr Williams' proof of evidence  
GCC2/2 Mr Williams' appendices  
GCC2/3 Mr Williams' summary

#### **Gloucestershire County Council's documents handed in at the Inquiry**

- GCC101 GCC's position on Statement of Common Ground  
GCC102 Submission on "period of grace" (28 November 2006)  
GCC103 Letter from RPS Planning to GCC on Bioganix proposal (17 October 2006)  
GCC104 Plan showing "Hunts Grove" development  
GCC105 GCC's proposed amendments to document APP109  
GCC106 Closing statement

#### **CORE DOCUMENTS**

##### **National Policy Guidance**

- NPG1 PPS10: Planning for Sustainable Waste Management  
NPG2 Waste Strategy 2000: England and Wales (Part 1)  
NPG3 Waste Strategy 2000: England and Wales (Part 2)  
NPG4 PPG4: Industrial and Commercial Development and Small Firms

**Government Circulars and Guidance**

- GC1 Circular 11/95: The use of conditions in planning permissions
- GC2 Companion Guide to PPS10 (June 2006)
- GC3 Circular 06/2004 Compulsory Purchase and The Crichel Down Rules
- GC4 Circular 08/2005: Guidance to changes to the development control system

**Development plan and associated documents**

- DP1 Gloucestershire Structure Plan Second Review adopted plan (November 1999)
- DP2 Gloucestershire Structure Plan Third Alteration Deposit Draft (Nov 2002)
- DP3 Gloucestershire Structure Plan Third Alteration – pre-Examination in Public changes (June 2003)
- DP4 Gloucestershire Structure Plan Third Alteration – Examination in Public Nov-Dec 2003. Report of the Panel (March 2004)
- DP5 Gloucestershire Structure Plan Third Alteration – proposed modifications (July 2004)
- DP6 Gloucestershire Structure Plan Third Alteration – proposed second modifications (Jan 2005)
- DP7 Gloucestershire Waste Local Plan – Inspector’s Report (Aug 2002)
- DP8 Gloucestershire Waste Local Plan – Waste Planning Authority’s consideration of the Inspector’s Report and proposed modifications (Oct 2003)
- DP9 Gloucestershire Waste Local Plan 2002-2012 (Oct 2004)
- DP10 From Rubbish to Resource – the Regional Waste Strategy for the South West 2004-2020 (2004)
- DP11 The Draft Regional Spatial Strategy – Executive Summary
- DP12 The Draft Regional Strategy for the South West
- DP13 The Draft Regional Strategy for the South West –Implementation Plan
- DP14 The Draft Regional Strategy for the South West – Pre-submission consultation document
- DP15 The Draft Regional Strategy for the South West – Strategic Sustainability Assessment
- DP16 Gloucestershire County Council Waste Core Strategy – summary version for public consultation (Part A) (pub. 3 July 2006)
- DP17 Gloucestershire County Council Waste Core Strategy – Issues and options for the waste core strategy (Part B explanatory paper)
- DP18 Stroud District Local Plan (Nov 2005)

**Gloucestershire County Council documents**

- GCC01 Draft Joint Municipal Waste Management Strategy 2006-2020 (Gloucestershire Waste Partnership)
- GCC02 Cabinet Report to approve the In-Vessel Composting and Land Strategy (17 Oct 2006)

**PLANS**

**Plans approved as part of original application**

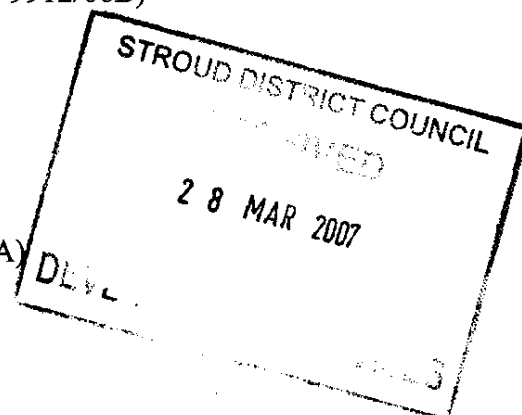
- A Site location plan (no drawing reference)



- B Preliminary layout of potential access roundabout (PR EN 9912/06B)
- C Proposed highway improvements (PR EN 9912/07A)

**Illustrative plans**

- D Preliminary building plan (2965-44)
- E Car park lighting layout (no drawing reference)
- F Office floor plans (2965-45)
- G Indicative site layout plan indicating single unit (2965-26A)
- H Indicative site layout plan indicating 2 units (2965-27A)
- I Indicative elevations unit B, 2 unit scheme (2965-28A)
- J Indicative elevations unit A, 2 unit scheme (2965-29A)
- K Indicative site section single unit scheme (2965-31A)





# Stroud District Council

## Town and Country Planning Act, 1990 (As amended)

**Approval of Reserved  
Matters**

Under the above Act the District Council as Local Planning Authority HEREBY APPROVES the details of the development described below in accordance with the submitted application and accompanying plan(s) but subject to the conditions stated:

**Agent:**

GVA Grimley LLP  
3 Brindley Place  
Birmingham  
B1 2JB

**Applicant:**

Graftongate Developments And  
Consi Investments Ltd  
C/O GVA Grimley LLP

Planning Ref:S.07/2468/REM

Application Date: 16/11/2007

Site No: 19751

Dated: 16/04/2008

**Description of Land**

Javelin Park, Haresfield, Stonehouse, Gloucestershire

**Description of Development**

Erection of 2 storage and distribution warehouses (34,754 sqm), including landscaping works and internal access and parking. [Application pursuant to Outline planning permission S.05/2138]  
Haresfield Parish Council 380097 210513

**Conditions attached to permission and reasons therefor:**

1. Prior to the commencement of the development hereby permitted further details as to the design, size and construction of the proposed gatehouses indicated on drawing number 15220/A1/100 Rev.C shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approve details.

**Reason:**

These matters require further consideration in the interests of the visual amenity of the area in accordance with Policy BE2 of the adopted Stroud District Local Plan, November 2005.

**Informatives:**

1. For the purposes of Article 22 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003, the following reasons for the Council's decision are summarised below together with a summary of the Policies and Proposals contained within the Development Plan which are relevant to this decision:

The proposal will provide an acceptable form of development which reflects the scale and character of development envisaged by outline permission S.05/2138/VAR. The buildings will be of a simple functional design, located so as to provide a satisfactory form of access and circulation space, with provision made for car, lorry and cycle parking in accordance with adopted standards. The development will not result in an intrusion into the open countryside and will not cause harm to residential amenity or protected species. In addition the design and external appearance of the buildings will safeguard long distances views from the Cotswold Area of Outstanding Natural Beauty with further controls imposed by conditions attached to outline permission S.05/2138/VAR. In this manner the proposal accords with Policies EM2, EM7, GE1, GE5, NE4, NE8 and TR1 of the adopted Stroud District Local Plan, November 2005.

2. The attention of the applicant is drawn to the conditions attached to outline permission S.05/2138/VAR which will require compliance prior to the commencement of the development.

**IMPORTANT NOTES –SEE OVERLEAF**

**Philip Skill  
Head of Planning**

Duly Authorised in that behalf

### **NOTES**

1. If the applicant is aggrieved by the decision of the District Council as Local Planning Authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act, 1990, within three months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Service Unit, Temple Quay, 2 The Square, Temple Quay, Bristol, BS1 6PN. When lodging an appeal a copy must also be sent to the Head of Development Services, Council Offices, Ebley Mill, Westward Road, Ebley, Stroud, GL5 4UB.) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the District Council as Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.

The Planning Inspectorate have introduced an online appeals service which you can use to make your appeal online. You can find the service through the Appeals area of the Planning Portal – see [www.planningportal.gov.uk/pes](http://www.planningportal.gov.uk/pes). The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

2. If the permission to develop land is granted subject to conditions, whether by the District Council as Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District council a purchase notice requiring the District Council to purchase his interest in the land in accordance with the provisions of Sections 137-144 of the Town and Country Planning Act, 1990.
3. In certain circumstances, a claim may be made against the District Council as Local Planning Authority for compensation, where permission is granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act, 1990.
4. This permission relates to planning control only. Any other statutory consent necessary must be obtained from the appropriate authority. Building Regulations consent for the development may be necessary and you should approach the Building Control Department at the District Council for information.
5. If the work authorised by this permission involves the alteration to an access or the crossing of the highway verge or kerb, you are requested to consult the County Divisional Surveyor before commencing such work. The address of the Divisional Surveyor may be obtained from the County Surveyor, Shire Hall, Gloucester, GL1 2TH.
6. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of this decision. Failure to do so may result in a delay in the provision of these services.
7. Attention is drawn to the fact that any failure to adhere to the details of approved plans or to comply with conditions attached to this permission constitutes a contravention of the provisions of the Town and Country Planning Act, 1990 in respect of which enforcement action may be taken. Development begun after five years from the date of this permission is unauthorised development in respect of which enforcement action may also be taken.
8. Any further information concerning this decision can be obtained from the Head of Development Services, Council Offices, Ebley Mill, Westward Road, Ebley, Stroud, GL5 4UB. Please quote the Reference Number on this permission in any correspondence.



# Stroud District Council

## Town and Country Planning Act, 1990 (As amended)

**Approval of Reserved Matters**

Under the above Act the District Council as Local Planning Authority HEREBY APPROVES the details of the development described below in accordance with the submitted application and accompanying plan(s) but subject to the conditions stated:

**Agent:**

GVA Grimley LLP  
3 Brindley Place  
Birmingham  
B1 2JB

**Applicant:**

Graftongate Developments And  
Consi Investments Ltd  
C/o GVA Grimley LLP

Planning Ref:S.07/2471/REM

Application Date: 16/11/2007

Site No: .19751

Dated: 16/04/2008

**Description of Land**

Javelin Park, Haresfield, Stonehouse, Gloucestershire

**Description of Development**

Erection of 3 storage and distribution warehouses (34,747 sqm), including landscaping works and internal access and parking arrangements. [Application pursuant to Outline planning permission S.05/2138]  
Haresfield Parish Council 380097 210513

**Conditions attached to permission and reasons therefor:**

1. Prior to the commencement of the development hereby permitted further details as to the design, size and construction of the proposed gatehouses indicated on drawing number 15220/A1/200 Rev.C shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

**Reason:**

These matters require further consideration in the interests of the visual amenity of the area in accordance with Policy BE2 of the adopted Stroud District Local Plan, November 2005.

**Informatives:**

1. For the purposes of Article 22 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003, the following reasons for the Council's decision are summarised below together with a summary of the Policies and Proposals contained within the Development Plan which are relevant to this decision:

The proposal will provide an acceptable form of development which reflects the scale and character of development envisaged by outline permission S.05/2138/VAR. The buildings will be of a simple functional design, located so as to provide a satisfactory form of access and circulation space, with provision made for car, lorry and cycle parking in accordance with adopted standards. The development will not result in an intrusion into the open countryside and will not cause harm to residential amenity or protected species. In addition the design and external appearance of the buildings will safeguard long distances views from the Cotswold Area of Outstanding Natural Beauty with further controls imposed by conditions attached to outline permission S.05/2138/VAR. In this manner the proposal accords with Policies EM2, EM7, GE1, GE5, NE4, NE8 and TR1 of the adopted Stroud District Local Plan, November 2005.

2. The attention of the applicant is drawn to the conditions attached to outline permission S.05/2138/VAR which will require compliance prior to the commencement of the development.

**IMPORTANT NOTES –SEE OVERLEAF**

**Philip Skill**  
**Head of Planning**

Duly Authorised in that behalf

### **NOTES**

1. If the applicant is aggrieved by the decision of the District Council as Local Planning Authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act, 1990, within three months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Service Unit, Temple Quay, 2 The Square, Temple Quay, Bristol, BS1 6PN. When lodging an appeal a copy must also be sent to the Head of Development Services, Council Offices, Ebley Mill, Westward Road, Ebley, Stroud, GL5 4UB.) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the District Council as Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.

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2. If the permission to develop land is granted subject to conditions, whether by the District Council as Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council a purchase notice requiring the District Council to purchase his interest in the land in accordance with the provisions of Sections 137-144 of the Town and Country Planning Act, 1990.
3. In certain circumstances, a claim may be made against the District Council as Local Planning Authority for compensation, where permission is granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act, 1990.
4. This permission relates to planning control only. Any other statutory consent necessary must be obtained from the appropriate authority. Building Regulations consent for the development may be necessary and you should approach the Building Control Department at the District Council for information.
5. If the work authorised by this permission involves the alteration to an access or the crossing of the highway verge or kerb, you are requested to consult the County Divisional Surveyor before commencing such work. The address of the Divisional Surveyor may be obtained from the County Surveyor, Shire Hall, Gloucester, GL1 2TH.
6. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of this decision. Failure to do so may result in a delay in the provision of these services.
7. Attention is drawn to the fact that any failure to adhere to the details of approved plans or to comply with conditions attached to this permission constitutes a contravention of the provisions of the Town and Country Planning Act, 1990 in respect of which enforcement action may be taken. Development begun after five years from the date of this permission is unauthorised development in respect of which enforcement action may also be taken.
8. Any further information concerning this decision can be obtained from the Head of Development Services, Council Offices, Ebley Mill, Westward Road, Ebley, Stroud, GL5 4UB. Please quote the Reference Number on this permission in any correspondence.



# Stroud District Council

## Town and Country Planning Act, 1990 (As amended)

**Approval of Reserved Matters**

Under the above Act the District Council as Local Planning Authority HEREBY APPROVES the details of the development described below in accordance with the submitted application and accompanying plan(s) but subject to the conditions stated:

**Agent:**

GVA Grimley LLP  
3 Brindley Place  
Birmingham  
B1 2JB

**Applicant:**

Graftongate Developments And  
Consi Investments Ltd  
C/o GVA Grimley LLP

Planning Ref:S.07/2472/REM

Application Date: 16/11/2007

Site No: 19751

Dated: 18/04/2008

**Description of Land**

Javelin Park, Haresfield, Stonehouse, Gloucestershire

**Description of Development**

Erection of storage and distribution warehouse (11,188 sqm), including landscaping works and internal access and parking.

[Application pursuant to Outline planning permission S.05/2138]

Haresfield Parish Council 380097 210513

**Conditions attached to permission and reasons therefor:**

1. Prior to the commencement of the development hereby permitted further details as to the design, size and construction of the proposed gatehouses indicated on drawing number 15220/A1/300 Rev.B shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

**Reason:**

These matters require further consideration in the interests of the visual amenity of the area in accordance with Policy BE2 of the adopted Stroud District Local Plan, November 2005.

**Informatives:**

1. For the purposes of Article 22 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003, the following reasons for the Council's decision are summarised below together with a summary of the Policies and Proposals contained within the Development Plan which are relevant to this decision:

The proposal will provide an acceptable form of development which reflects the scale and character of development envisaged by outline permission S.05/2138/VAR. The buildings will be of a simple functional design, located so as to provide a satisfactory form of access and circulation space, with provision made for car, lorry and cycle parking in accordance with adopted standards. The development will not result in an intrusion into the open countryside and will not cause harm to residential amenity or protected species. In addition the design and external appearance of the buildings will safeguard long distances views from the Cotswold Area of Outstanding Natural Beauty with further controls imposed by conditions attached to outline permission S.05/2138/VAR. In this manner the proposal accords with Policies EM2, EM7, GE1, GE5, NE4, NE8 and TR1 of the adopted Stroud District Local Plan, November 2005.

2. The attention of the applicant is drawn to the conditions attached to outline permission S.05/2138/VAR which will require compliance prior to the commencement of the development.

**IMPORTANT NOTES –SEE OVERLEAF**

**Philip Skill**  
**Head of Planning**

Duly Authorised in that behalf



### **NOTES**

1. If the applicant is aggrieved by the decision of the District Council as Local Planning Authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act, 1990, within three months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Service Unit, Temple Quay, 2 The Square, Temple Quay, Bristol, BS1 6PN. When lodging an appeal a copy must also be sent to the Head of Development Services, Council Offices, Ebley Mill, Westward Road, Ebley, Stroud, GL5 4UB.) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the District Council as Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.

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2. If the permission to develop land is granted subject to conditions, whether by the District Council as Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District council a purchase notice requiring the District Council to purchase his interest in the land in accordance with the provisions of Sections 137-144 of the Town and Country Planning Act, 1990.
3. In certain circumstances, a claim may be made against the District Council as Local Planning Authority for compensation, where permission is granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act, 1990.
4. This permission relates to planning control only. Any other statutory consent necessary must be obtained from the appropriate authority. Building Regulations consent for the development may be necessary and you should approach the Building Control Department at the District Council for information.
5. If the work authorised by this permission involves the alteration to an access or the crossing of the highway verge or kerb, you are requested to consult the County Divisional Surveyor before commencing such work. The address of the Divisional Surveyor may be obtained from the County Surveyor, Shire Hall, Gloucester, GL1 2TH.
6. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of this decision. Failure to do so may result in a delay in the provision of these services.
7. Attention is drawn to the fact that any failure to adhere to the details of approved plans or to comply with conditions attached to this permission constitutes a contravention of the provisions of the Town and Country Planning Act, 1990 in respect of which enforcement action may be taken. Development begun after five years from the date of this permission is unauthorised development in respect of which enforcement action may also be taken.
8. Any further information concerning this decision can be obtained from the Head of Development Services, Council Offices, Ebley Mill, Westward Road, Ebley, Stroud, GL5 4UB. Please quote the Reference Number on this permission in any correspondence.



# Stroud District Council

## Town and Country Planning Act, 1990 (As amended)

**Approval of Reserved Matters**

Under the above Act the District Council as Local Planning Authority HEREBY APPROVES the details of the development described below in accordance with the submitted application and accompanying plan(s) but subject to the conditions stated:

**Agent:**

GVA Grimley LLP  
3 Brindley Place  
Birmingham  
B1 2JB

**Applicant:**

Graftongate Developments LLP  
C/O GVA Grimley

Planning Ref: S.07/2473/REM

Application Date: 16/11/2007

Site No: 19751

Dated: 18/04/2008

**Description of Land**

Javelin Park, Haresfield, Stonehouse, Gloucestershire

**Description of Development**

Erection of storage and distribution warehouse (9,916 sqm), including landscaping works and internal access and parking arrangements. [Application pursuant to Outline planning permission S.05/2138]  
Haresfield Parish Council 380097 210513

**Conditions attached to permission and reasons therefor:**

1. Prior to the commencement of the development hereby permitted further details as to the design, size and construction of the proposed gatehouses / security huts indicated on drawing number 15220/A1/400 Rev.B shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

**Reason:**

These matters require further consideration in the interests of the visual amenity of the area in accordance with Policy BE2 of the adopted Stroud District Local Plan, November 2005.

**Informatives:**

1. For the purposes of Article 22 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003, the following reasons for the Council's decision are summarised below together with a summary of the Policies and Proposals contained within the Development Plan which are relevant to this decision:

The proposal will provide an acceptable form of development which reflects the scale and character of development envisaged by outline permission S.05/2138/VAR. The buildings will be of a simple functional design, located so as to provide a satisfactory form of access and circulation space, with provision made for car, lorry and cycle parking in accordance with adopted standards. The development will not result in an intrusion into the open countryside and will not cause harm to residential amenity or protected species. In addition the design and external appearance of the buildings will safeguard long distances views from the Cotswold Area of Outstanding Natural Beauty with further controls imposed by conditions attached to outline permission S.05/2138/VAR. In this manner the proposal accords with Policies EM2, EM7, GE1, GE5, NE4, NE8 and TR1 of the adopted Stroud District Local Plan, November 2005.

2. The attention of the applicant is drawn to the conditions attached to outline permission S.05/2138/VAR which will require compliance prior to the commencement of the development.

**IMPORTANT NOTES –SEE OVERLEAF**

**Philip Skill**  
**Head of Planning**

Duly Authorised in that behalf



### **NOTES**

1. If the applicant is aggrieved by the decision of the District Council as Local Planning Authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act, 1990, within three months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Service Unit, Temple Quay, 2 The Square, Temple Quay, Bristol, BS1 6PN. When lodging an appeal a copy must also be sent to the Head of Development Services, Council Offices, Ebley Mill, Westward Road, Ebley, Stroud, GL5 4UB.) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the District Council as Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.

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2. If the permission to develop land is granted subject to conditions, whether by the District Council as Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District council a purchase notice requiring the District Council to purchase his interest in the land in accordance with the provisions of Sections 137-144 of the Town and Country Planning Act, 1990.
3. In certain circumstances, a claim may be made against the District Council as Local Planning Authority for compensation, where permission is granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act, 1990.
4. This permission relates to planning control only. Any other statutory consent necessary must be obtained from the appropriate authority. Building Regulations consent for the development may be necessary and you should approach the Building Control Department at the District Council for information.
5. If the work authorised by this permission involves the alteration to an access or the crossing of the highway verge or kerb, you are requested to consult the County Divisional Surveyor before commencing such work. The address of the Divisional Surveyor may be obtained from the County Surveyor, Shire Hall, Gloucester, GL1 2TH.
6. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of this decision. Failure to do so may result in a delay in the provision of these services.
7. Attention is drawn to the fact that any failure to adhere to the details of approved plans or to comply with conditions attached to this permission constitutes a contravention of the provisions of the Town and Country Planning Act, 1990 in respect of which enforcement action may be taken. Development begun after five years from the date of this permission is unauthorised development in respect of which enforcement action may also be taken.
8. Any further information concerning this decision can be obtained from the Head of Development Services, Council Offices, Ebley Mill, Westward Road, Ebley, Stroud, GL5 4UB. Please quote the Reference Number on this permission in any correspondence.



# Stroud District Council

## Town and Country Planning Act, 1990 (As amended)

**Approval of Reserved Matters**

Under the above Act the District Council as Local Planning Authority HEREBY APPROVES the details of the development described below in accordance with the submitted application and accompanying plan(s) but subject to the conditions stated:

**Agent:**

GVA Grimley LLP  
3 Brindley Place  
Birmingham  
B1 2JB

**Applicant:**

Graftongate Developments And  
Consi Investments Ltd  
C/o GVA Grimley

Planning Ref:S.07/2474/REM

Application Date: 16/11/2007

Site No: 19751

Dated: 18/04/2008

**Description of Land**

Javelin Park, Haresfield, Stonehouse, Gloucestershire

**Description of Development**

Erection of storage and distribution warehouse (24,891sqm), including landscaping works and internal access and parking arrangements. [Application pursuant to Outline planning permission S.05/2138]  
Haresfield Parish Council 380097 210513

**Conditions attached to permission and reasons therefor:**

1. Prior to the commencement of the development hereby permitted further details as to the design, size and construction of the proposed gatehouses indicated on drawing number 15220/A1/500 Rev.C shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

**Reason:**

These matters require further consideration in the interests of the visual amenity of the area in accordance with Policy BE2 of the adopted Stroud District Local Plan, November 2005.

**Informatives:**

1. For the purposes of Article 22 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003, the following reasons for the Council's decision are summarised below together with a summary of the Policies and Proposals contained within the Development Plan which are relevant to this decision:

The proposal will provide an acceptable form of development which reflects the scale and character of development envisaged by outline permission S.05/2138/VAR. The building will be of a simple functional design, located so as to provide a satisfactory form of access and circulation space, with provision made for car, lorry and cycle parking in accordance with adopted standards. The development will not result in an intrusion into the open countryside and will not cause harm to residential amenity or protected species. In addition the design and external appearance of the building will safeguard long distances views from the Cotswold Area of Outstanding Natural Beauty with further controls imposed by conditions attached to outline permission S.05/2138/VAR. In this manner the proposal accords with Policies EM2, EM7, GE1, GE5, NE4, NE8 and TR1 of the adopted Stroud District Local Plan, November 2005.

2. The attention of the applicant is drawn to the conditions attached to outline permission S.05/2138/VAR which will require compliance prior to the commencement of the development.

**IMPORTANT NOTES –SEE OVERLEAF**

**Philip Skill**  
**Head of Planning**

Duly Authorised in that behalf

### **NOTES**

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