

# Cheltenham Borough Council

**Council - 15<sup>th</sup> December 2025**

## **Delegation to Gloucestershire County Council to act as designated county planning authority responsible for deciding on the Requirements contained in Parts 1 and 2 of Schedule 2 of the M5 Junction 10 Development Consent Order**

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**Accountable member:**

Cabinet Member Planning & Building Control, Cllr Mike Collins

**Accountable officer:**

Tracey Birkinshaw, Director Planning & Building Control

**Ward(s) affected:**

All

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**Key Decision:** Yes

**Executive summary:**

The Development Consent Order (DCO) for the M5 Junction 10 Improvements Scheme was granted on 4 June 2025 by the Secretary of State for Transport. This marked the formal approval for Gloucestershire County Council to proceed with the project, which includes:

- Upgrades to Junction 10 on the M5
- A new link road to west Cheltenham
- Widening of the A4019

- New footways and cycle lanes.

A DCO is a type of planning permission required for Nationally Significant Infrastructure Projects (NSIPs) in the UK, such as major roads, railways, energy facilities, and water infrastructure.

This report seeks Council authorisation to delegate to Gloucestershire County Council, in their jurisdiction as county planning authority to discharge decision making in respect of approval of a range of conditions for the details of the M5 Junction 10 Scheme. The DCO for the M5 Junction 10 scheme refers to these conditions as “the Requirements” and they are contained in Parts 1 and 2 of Schedule 2 of the DCO and appended to this report. This delegation would be subject to an underpinning agreement to be entered into between the relevant Councils as regards this proposal, including confirmation that Cheltenham Borough Council and Tewkesbury Borough Council, will continue to be afforded opportunity for consultation and representations.

The DCO was granted consent by the Secretary of State for Transport (‘the Secretary of State’) on 4<sup>th</sup> June 2025. Following review, Gloucestershire County Council, with support from Cheltenham and Tewkesbury Borough Councils (together referred to as ‘the Joint Councils’) applied to the Secretary of State seeking correction of the DCO by request dated 11 July 2025, as there was concern as regards ambiguity created by the insertion of the definition of ‘*the relevant planning authority*’ as the designated authority responsible for deciding on discharge of the Requirements. National Highways also raised concern on this issue and both parties separately had applied for correction. [By Notice dated 29 October 2025](#), the Secretary of State advised that she did not consider this issue to constitute a correctable error, despite granting correction on other issues by Correction Order dated 3 November 2025.

The scheme is now in its post decision phase, with preparations underway to support discharge of the Requirements, ahead of commencement of the main works. There is a need to proceed expeditiously, so as to avoid delays (to contain programme and costs). In support of this objective and to assist with efficiencies in the discharge of functions, approval is sought to endorse the recommendations contained in this report.

This report is a procedural item to ensure we meet our constitutional responsibilities in respect of decision making. The delegation sought is not an executive function and therefore requires the approval of Full Council.

### **Recommendations:**

1. Council notes the updates in this report relating to the Development Consent Order for the M5 Junction 10 Improvements Scheme.
2. Council approves the delegation of planning powers to Gloucestershire County Council under Section 101 of the Local Government Act 1972 and Section 9D of the Local Government Act 2000 to act as designated county planning authority responsible for deciding on the Requirements contained in Parts 1 and 2 of Schedule 2 of the Development Consent Order (see appendix 3 - Schedule of Requirements Register).

3. The Director of Planning & Building Control, in consultation with the Monitoring Officer, be authorised to finalise and enter into a formal delegation agreement with Gloucestershire County Council, setting out the arrangements and coordination between the Joint Councils (Cheltenham and Tewkesbury Borough Councils) regarding the discharge of the Requirements contained in Parts 1 and 2 of Schedule 2 of the Development Consent Order.
  4. The arrangement be reviewed annually by the Director Planning & Building Control (Cheltenham Borough Council) and Director of Growth (Tewkesbury Borough Council) and Assistant Director: Planning and Economic Development (Gloucestershire County Council) to ensure effectiveness and continued alignment with strategic planning and land management objectives. Should any necessary adjustments be necessary these will be agreed with the Councils' Monitoring Officer and the Cabinet Member for Planning and Building Control.
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## **1. Implications**

### **1.1 Financial, Property and Asset implications**

Gloucestershire County Council have advised that the responsibilities as set out in this report will be absorbed by Gloucestershire County Planning Authority, this recognises the strategic importance of the delivery of the scheme.

From a Cheltenham perspective efficiencies will be achieved as the local planning authority will be acting in a consultee capacity. Resources will be focussed consultee activities and on monitoring and performance these will be absorbed within the activities of the relevant teams with no additional budget requested.

**Signed off by:** Ela Jankowska – Finance Business Partner, [ela.jankowska@cheltenham.gov.uk](mailto:ela.jankowska@cheltenham.gov.uk)

### **1.2 Legal implications**

It is noted that by decision letter dated 29 October 2025, the Secretary of State advised she did not agree to make the Joint Councils requested correction to Schedule 2 of the DCO, nor the request from National Highways. Instead, she directed that the proposals to vary the definition and associated drafting would be most appropriately addressed by a change application. If this were to be pursued, compliance would be needed with the requirements of Schedule 6 of the Planning Act 2008 and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011.

Section 101(1) of the Local Government Act 1972 ('the 1972 Act') permits that a local authority may arrange for the discharge of any of their functions—

- (a) by a committee, a sub-committee or an officer of the authority; or
- (b) by any other local authority.

This is subject to adhering to the various requirements imposed by the provisions of Section 101 of the 1972 Act and in this respect, it is noted that Section 101 (12) confirms that references in the section to 'the discharge of any of the functions of a local authority include references to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of those functions'. Similarly, section 111 of the 1972 Act also grants a local authority power to do anything which is 'calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions'.

It is a well-established principle that local authorities must ensure a proper separation in the exercise of their statutory powers and must not permit one role to influence decisions taken pursuant to a different role, nor for fetter to arise. It is acknowledged that Gloucestershire will be acting in separate capacities in respect of the DCO and the recommended actions from this report relate solely to Schedule 2 where they will act in their capacity as county planning authority in respect of approvals. Furthermore, Cheltenham will maintain their opportunity to be consulted and make representations, ensuring compliance with its legal and fiduciary duties.

Noting the above and the desire to proceed expeditiously, on the basis that arrangements will be underpinned by agreement between the Joint Councils, the Council may rely on its powers contained in Sections 101 and 111 respectively of the 1972 Act, so as to authorise the proposals in this report. This being on the basis that this option has been chosen to facilitate the discharge of its functions.

The delegation sought is not an executive function and therefore requires the approval of Full Council.

**Signed off by:** Charlotte Lockwood, Locum Senior Lawyer, [legalservices@onelegal.org.uk](mailto:legalservices@onelegal.org.uk),

### **1.3 Environmental and climate change implications**

The Environmental Statement (ES) supporting the DCO provides an assessment of climate effects. It identifies the potential for the M5 Junction 10 scheme to impact on the climate and the levels of greenhouse gas emissions during the construction and operational phases. This was fully tested by the M5 Junction 10 Improvements Scheme examination.

It also sets out the vulnerability of the M5 Junction 10 scheme to climate change, including the impacts of extreme weather during construction and operational phases, and adaptation to mitigate the effects of these impacts. The ES confirms that the assessment of potential impacts of climate change has been undertaken using United Kingdom Climate Projections 2018 which provide the most up-to-date data available. The DCO Inspector's report concludes that the effects of the M5 Junction 10 scheme with regard to climate change adaption and carbon emissions did not weigh against the DCO Order being approved.

In approving the DCO the Inspector's report also had considered air quality, biodiversity and ecology, noise and vibration, landscape and visual impact, flood risk, drainage and water environment.

Cheltenham's Climate Supplementary Planning Document will be a material consideration which Gloucestershire County Council will take into account alongside all other relevant

planning policies and wider material considerations.

**Signed off by:** Climate Officer, Maizy McCann, [maizy.mccann@cheltenham.gov.uk](mailto:maizy.mccann@cheltenham.gov.uk)

## 1.4 Corporate Plan Priorities

This report contributes to the following Corporate Plan Priorities: Securing our future

- Quality homes, safe and strong communities
- Reducing carbon, achieving council net zero, creating biodiversity

## 1.5 Equality, Diversity and Inclusion Implications

In line with the Public Sector Equality Duty, an equality impact assessment was carried out in respect of the DCO.

In examining the DCO, the Secretary of State assessed section 149 of the Equality Act 2010, which includes a public sector “general equality duty” setting out the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The Secretary of State in her decision noted that she was satisfied that due regard had been given to the principles of the public sector equality duty, with an Equality Impact Assessment having been prepared and mitigation built into the design of the scheme to accommodate an identified impact to a protected characteristic. She was also content that the Examining Authority, in managing the DCO Examination and coming to its conclusions, also had due regard to the duties under the Equality Act legislation.

The Equality Impact Assessment will continue to be monitored and where necessary, updated, in the discharge of the Schedule 2 Requirements of the DCO.

### 1.5 Performance management – monitoring and review

Should Council support the delegation as recommended by this report a joint review will be conducted annually by the Director Planning & Building Control (Cheltenham Borough Council) and Director of Growth (Tewkesbury Borough Council) and Assistant Director: Planning and Economic Development (Gloucestershire County Council) to assess the effectiveness of the delegation arrangement by the Joint Councils and identify any necessary adjustments.

In addition, an operational officer group will be established which meets as a minimum on a quarterly basis to ensure ongoing monitoring and performance of the delegation.

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## 2 Background

2.1 The DCO application relating to the M5 Junction 10 Improvements Scheme was granted consent by the [Secretary of State by decision dated 4 June 2025](#), which came into force on 25 June 2025.

2.2 The DCO grants Gloucestershire County Council (in their capacity as the applicant and undertaker for the project) consent pursuant to the Planning Act 2008 for the authorised

development, enabling:

- the alteration of the existing Junction 10 of the M5,
- to provide a new grade separated roundabout junction with new slip roads northbound and southbound,
- to realign the existing A4019 and B4634,
- to construct a new West Cheltenham Link Road, so as to improve traffic flows and network connections across Cheltenham as well as supporting economic growth for the wider area, and
- new footways and cycleways.

The affected local authorities are Gloucestershire County Council, Cheltenham and Tewkesbury Borough Councils.

2.3 Schedule 2 of the DCO deals with 'Requirements' connected to the authorised development, which apply to the carrying out and operation of the authorised development and reflect the processes and procedures to be followed for Requirements (Part 1) and Procedure for Discharge of Requirements (Part 2) concerning planning and highways issues. It is these requirements that will be dealt with by the delegation of planning powers. The schedule of requirements register was signed off as part of the extensive documentation during the DCO process. Appendix 3 references the requirements relevant to the proposed delegation of powers and relate to the relevant requirements and conditions from commencement to completion of development. This may include details which may need to be approved in writing with the relevant planning authority for matters such as landscaping, environmental protections, heritage, design etc. together with relevant procedures to discharge requirements.

2.4 The Secretary of State in her decision concerning the DCO directed that 'the relevant planning authority' will govern the approval regime for obligations under Schedule 2, (instead of the Secretary of State). This change creates ambiguity in decision making, as regards Gloucestershire County Councils remit and also the interplay between the Joint Councils. Particularly, as Schedule 2 of the DCO defines the 'relevant planning authority' as the 'local planning authority' and in practice, this would mean that decisions would be split between differing planning authority boundaries.

2.5 Following review, Gloucestershire County Council, with support from Cheltenham and Tewkesbury Borough Councils applied to the Secretary of State seeking correction of the DCO by request dated 11 July 2025. National Highways similarly raised concern on this issue and also applied for correction. Both parties argued that the definition inserted by the Secretary of State leads to unintended outcomes or reflects a misconstrued rationale and there are also concerns regarding resource pressures. The Leader Cheltenham Borough Council made a [key decision on 11<sup>th</sup> July 2025](#) to support the application by Gloucestershire County Council for a correction order pursuant to Section 119 Planning Act 2008 to M5 Junction 10 Development Consent Order.

- 2.6 By Notice and Correction Order on 29 October and 3 November 2025 respectively, the Secretary of State advised that she did not consider this issue to constitute a correctable error and made reference to the proposal for a 'change application' under Schedule 6 to the Planning Act 2008. This means that the ambiguity around determination of the Requirements remains, with the possibility of decisions needing to be split across local planning authorities.
- 2.7 The scheme is now in its post decision phase, with preparations underway to support discharge of the Requirements, ahead of commencement of works. Whilst seeking a formal change application in respect of the DCO is a possibility (subject to compliance with legislative and process requirements), there is pressure on timing and concern as to impact on costs and programme. Therefore, as a pragmatic measure and to aid efficiencies, it is recommended that Gloucestershire County Council in its capacity as county planning authority is treated as the 'relevant planning authority' concerning decisions in Schedule 2 of the DCO, contained to the following paragraphs of Parts 1 and Parts 2 as set out in appendix 3 of this report.

### **3 Delegations**

- 3.1 This report therefore seeks delegation of the relevant planning powers to Gloucestershire County Council under Section 101 and 111 of the Local Government Act 1972 and Section 9D of the Local Government Act 2000 to act as designated relevant planning authority responsible for deciding on the Requirements contained in Parts 1 and 2 of Schedule 2 of the Development Consent Order.
- 3.2. If the proposal is accepted, Gloucestershire County Council, in their capacity as county planning authority will determine applicable approvals and matters contained in Schedule 2, rather than the district level local planning authorities. This proposal in no way affects or fetters the Joint Councils functions and indeed, the opportunity for consultation will be retained, as is set out in the granted DCO.
- 3.3 The consultation requirements will be set out and agreed in a formal delegation agreement with Gloucestershire County Council, setting out the arrangements and coordination between the Joint Councils (Cheltenham and Tewkesbury Borough Councils) regarding the discharge of the Requirements contained in Parts 1 and 2 of Schedule 2 of the obligations owed to Cheltenham Borough Council under the Development Consent Order.

### **4 Reasons for recommendations**

- 4.1 The recommendation is necessary to ensure clear and prompt decision making in the sign-off of Requirements for the M5 Junction 10 and to ensure decision making delays do not impact on costs and programme.

### **5 Alternative options considered**

- 5.1 The County Council (supported by Tewkesbury and Cheltenham) had applied to the Secretary of State for a Correction Order to address the ambiguities. The Secretary of State concluded that it was not a correctable error.

5.2 The Joint Councils could seek a formal change application in respect of the DCO, however as set out in this report there is pressure on timing and concern as to impact on costs and programme. Therefore, this option is not recommended.

## **6 Consultation and feedback**

6.1 Consultation has been undertaken with officers at the County Council, Onelegal and the Cabinet Member for Planning & Building Control. The approach is supported, and feedback has been incorporated into this report.

## **7 Key risks**

7.1 See appendix 1.

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### **Report author:**

Tracey Birkinshaw, Director Planning & Building Control, [tracey.birkinshaw@cheltenham.gov.uk](mailto:tracey.birkinshaw@cheltenham.gov.uk)

### **Appendices:**

- i. Risk Assessment
- ii. Equality Impact Assessment – Screening
- iii. Schedule of DCO Requirements

### **Background information:**

[Correction Notice – 29<sup>th</sup> October 2025](#)

[Leader decision -11th July 2025 Support to the application by Gloucestershire County Council for a correction order pursuant to Section 119 Planning Act 2008 to M5 Junction 10 Development Consent Order](#)

[Secretary of State Decision letter – 4<sup>th</sup> June 2025](#)

**Appendix 1: Risk Assessment**

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
1	Should agreement not be reached to delegate the relevant planning powers to Gloucestershire County Council in respect of the M5 Junction 10 Improvement Scheme then Cheltenham will need to commission the relevant specialists across both development management, transport and enforcement to appropriately fulfill the councils' statutory responsibilities. Tewkesbury Borough will also need to do the same.	Director Planning & Building Control	10	1	5	Reduce	Report to Cheltenham Borough Council 15/12/2025 requesting authorisation to delegate appropriate planning powers to Gloucestershire County Council in respect of the M5 Junction 10 Improvement Scheme to ensure effective delivery of the development Consent Order.	Director Planning & Building Control – Cheltenham Borough Council	Report to Council 15/12/2025

## Appendix 2: Equality Impact Assessment (Screening)

### 1. Identify the policy, project, function or service change

#### a. Person responsible for this Equality Impact Assessment

Officer responsible: Tracey Birkinshaw	Service Area: Planning
Title: Director Planning & Building Control	Date of assessment: 7/11/2025
Signature: Tracey Birkinshaw	

#### b. Is this a policy, function, strategy, service change or project?

Function

If other, please specify:

#### c. Name of the policy, function, strategy, service change or project

Regulatory Planning &amp; Enforcement

Is this new or existing?

Other

**Please specify reason for change or development of policy, function, strategy, service change or project**

This is a specific activity relating to the Development Consent Order of the M5 Junction10 Improvement Scheme.

#### d. What are the aims, objectives and intended outcomes and who is likely to benefit from it?

Aims:

Objectives:

To deliver the Development Consent Order M5 Junction10 Improvement Scheme - See Equality, Diversity and Inclusion Implications in main body of the report

Outcomes:	All movements Junction 10 – See Equality, Diversity and Inclusion Implications in main body of the report
Benefits:	As above

#### e. What are the expected impacts?

Are there any aspects, including how it is delivered or accessed, that could have an impact on the lives of people, including employees and customers.

**Yes**

Do you expect the impacts to be positive or negative?

**Positive**

Please provide an explanation for your answer:

This report is a process report related to the regulatory planning and enforcement activities related to the M5 Junction 10 Improvement scheme. By delegating the responsibilities to Gloucestershire County Council, Cheltenham Borough Council can ensure its statutory responsibilities are met in the most efficient and effective way.

**If your answer to question e identified potential positive or negative impacts, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.**

#### f. Identify next steps as appropriate

Stage Two required	<b>No</b>
Owner of Stage Two assessment	
Completion date for Stage Two assessment	

## **Appendix 3 - Schedule of Requirements Register**

The [schedule of requirements register](#) was signed off as part of the extensive documentation during the DCO process. The references below relate to the relevant requirements and conditions from commencement to completion of development. This may include details which may need to be approved in writing with the relevant planning authority for matters such as landscaping, environmental protections, heritage, design etc. together with relevant procedures to discharge requirements.

Paragraph 3 (1) and 3(4) of Part 1 of Schedule 2. **Environmental Management Plan**

Paragraphs 4(1), 4(2), 4(3) and 4(4) of Part 1 of Schedule 2. **Details of consultation**

Paragraph 5(1) of Part 1 of Schedule 2. **Landscaping**

Paragraph 6(3) of Part 1 of Schedule 2. **Implementation and maintenance of landscaping**

Paragraph 7 of Part 1 of Schedule 2. **Fencing**

Paragraphs 8(3), 8(4) and 8(5) of Part 1 of Schedule 2. **Land and groundwater contamination**

Paragraphs 9(1), 9(2), 9(3), 9(5) and 9(6) of Part 1 of Schedule 2. **Archaeology**

Paragraph 11 of Part 1 of Schedule 2. **Detailed design**

Paragraphs 12(1) and 12(2) of Part 1 of Schedule 2. **Surface water drainage**

Paragraph 13(1) of Part 1 of Schedule 2. **Flood compensation and flood storage**

Paragraph 14(1) of Part 1 of Schedule 2. **Flood risk assessment**

Paragraph 15(1) of Part 1 of Schedule 2. **Noise Mitigation**

Paragraph 16(1) of Part 1 of Schedule 2. **Highway lighting**

Paragraph 17(1) of Part 1 of Schedule 2. **Building and construction materials – highways**

Paragraph 18(1) of Part 1 of Schedule 2 **Building and construction materials – structures**

Paragraph 19 of Part 1 of Schedule 2. **Approvals and amendments to approved details**

Paragraphs 20(1), 20(2) and 20(3) of Part 2 of Schedule 2. **Applications made under requirements**

Paragraphs 21(1) and 21(2) of Part 2 of Schedule 2. **Further information**

Paragraph 22(2) of Part 2 of Schedule 2. **Register of requirements**