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05/08/2021

20/00293/OUT: BICESTER GATEWAY – SECTION 73 APPLICATION TO VARY CONDITION 16

Dear Caroline

Please find enclosed on behalf of our client, Bicester Gateway Ltd, an application for a variation of condition 16 under Section 73 of the Town and Country Planning Act 1990 (as amended) in respect of planning reference 20/00293/OUT dated 1 April 2021, at Bicester Gateway Business Park, Wendlebury Rd, OX25 2PA. The approved description of development is:

Outline application (Phase 1B) including access (all other matters reserved) for up to 4,413sqm B1 office space (47,502sqft) GIA, up to 273 residential units (Use Class C3) including ancillary gym, approximately 177sqm GIA of café space (Use Class A3), with an ancillary, mixed use co-working hub (794sqm/ 8,550sqft GIA), multi- storey car park, multi-use games area (MUGA), amenity space, associated infrastructure, parking and marketing boards

The proposed amendment comprises an alteration to condition 16 which currently requires delivery of a “mixed use Hub” alongside the first residential phase of development. For the reasons set out in this letter, this requirement is onerous (preventing the delivery of the innovation community, including 240 residential units) and therefore the proposed amendment seeks to de-link the delivery of the Hub from any other element or phase of development.

Application submission

This application is supported by the following documents:

- Application form;
- This letter;

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- Planning application fee. Planning fee of £234.00 paid via Planning Portal with reference PP- 10105044.

The aim of this Section 73 application is to secure a minor change to Condition 16 to enable the expeditious delivery of homes and jobs at the Bicester Gateway Innovation Community (Phase 1B) as envisaged in the consented scheme. The particular (potential) difficulty with Condition 16, as drafted, is that it requires the delivery of The Hub as part of the first residential phase, meaning the two are linked in terms of funding, legal contracts and delivery. In turn, this means that neither The Hub or residential can progress in isolation and, grounded in feedback from the market recently and over the last two years, the delivery of the whole innovation community cannot proceed on this basis because funders are unwilling to take the risk of combining the two investments. This is compounded by the prospect of the 794 sq m of mixed use and co-working associated with The Hub being unviable, if delivered ahead of the residential being occupied, due first to the unattractiveness of running a co-working mixed-use Hub (i.e. a business) from within a building site and, second, where the necessary footfall of new residents to drive its success is not yet present, that would make this innovation community fail from the outset.

These concerns were raised by Bloombridge LLP during the application process, including in market evidence provided by VSL & Partners, but the draft condition remained fundamentally unchanged and, as a consequence, the applicant agreed to try and make Condition 16 work. We now have further evidence to confirm the original expert opinion.

In addition, we consider that there is no legal or NPPF21 compliant basis for the link required by the condition given the residential element of the innovation community is not on land allocated for employment and the extant permission (live till July 2022) remains non-viable and there is no pre-let interest in the market. In these circumstances, it does not seem necessary or reasonable for Condition 16 to require the delivery of something that is non-viable (until the residential is delivered) or which prevents the delivery of residential in a sustainable location and on 'white land' in the face of Cherwell not having a 5 year housing land supply.

Notwithstanding, there are now three main evidential points that support the case for varying Condition 16:

1. The strong national, district and local desire/need to deliver knowledge economy growth in The Arc, Oxfordshire and Bicester. The Ramidus Report, submitted with the original application, sets out the economic context and explains the delivery principles behind the innovation community: being a linear progression from housing, people and place to knowledge economy occupier interest (and, as a result, B1a/B1b jobs). Creating the right place is therefore the essential pre-cursor to attracting knowledge economy investment and jobs.
 2. In the context of Cherwell not having a 5 year housing land supply (eg conceding the Lone Star appeal in Banbury, with Adderbury ongoing but probably now lost), we feel our efforts to deliver Bicester Gateway are of district-wide significance and the associated housing needs are somewhat pressing from a housing land supply point of view. Politically, being able to deliver around 240 units as the first phase of the innovation community means 240 fewer units via appeals in the Rural Areas.
 3. There remains no investment or occupier market for B1a and B1b employment in Bicester, as evidenced by the continuing lack of take-up in the town, consistent with the VSL Report, now further corroborated by the latest funding and investment campaign undertaken by Bloombridge's joint agents, BNP and VSL. The place-making strategy for Bicester Gateway aims to build towards an active and viable market for B1a and B1b employment space in the town.
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The particular difficulty with Condition 16 is the direct linkage it draws between residential development and the requirement to deliver approximately 794 sq m of mixed use space as part of The Hub with the first phase of residential development. This was raised as a serious concern during the application process (based on the discussions the applicant had been having with funders since 2018). To recap, the particular difficulties with funding (and therefore delivery) are:

1. The proposals for the innovation community are innovative/untried and therefore high risk. To the best of our knowledge, Bicester Gateway is a new concept for the UK, certainly outside London and the major metropolitan cities. This makes fund-raising for the whole development difficult/challenging. But funding for the individual residential element on a standalone basis is possible (which is how we have designed the development – i.e. as three separate demisable entities, comprising residential, the mixed use Hub, and employment). This funding is available now and, consequently, there are no delivery issues associated with the residential.
2. There are very few (if any) mixed use funders and lenders in the UK outside the metropolitan cities. Funders need to match their investment returns with the risks, within strict regulatory guidelines, meaning they predominantly offer finance for specific and discrete asset classes – eg residential, retail, industrial etc. Published investor research reflects this, with fund performance being matched to the asset class benchmark in each case. This means that mixed use investment is rare, especially outside core or established markets. In addition, regrettably, the Bicester business space market is pretty much non-existent, despite various planning and public sector interventions over many years. Bicester remains a ‘shed’ location, and it is common ground that this sort of development offers lower density employment and less GVA. Bicester Gateway is aiming to up-value the town’s employment profile by attracting B1a and B1b uses.
3. It follows that there are no mixed use funders for Bicester Gateway and no funder wants to pool the residential risk with the risk of delivering the commercial components of The Hub. This is now proven by the five months our client has taken in the open market actively seeking funders for the project, including through a specific and targeted marketing campaign undertaken since March.
4. Put simply, Bloombridge can fund the residential component of the innovation community, now, on a standalone basis, but not when mixed with the commercial. A call to any property investment agent (eg Savills, Bidwells or Carter Jonas) would confirm this as this is just the way the funding market operates. In contrast, no planning purpose is served by delaying the first phase of development at Bicester Gateway. It presents another step in building the profile and attractiveness of Bicester for further inward investment.
5. The success of the Hub is linked from the outset to its successful operation and occupation. As a separate building, it is likely to be built more quickly than the residential. It would then face seeking to become operational while the rest of the site is a building site. Furthermore, there will at that time be a nascent market on site for the services that the Hub offers. This is a central pillar of the innovation community and arises from the key element of “inward innovators”(people). People need to be present on site first, reaching a critical mass living in the development, before the Hub can successfully deliver its services and offer an attractive and innovative place to work from.

Taking matters back to ‘first principles’, we originally proposed the residential component of Bicester Gateway as a catalyst for B1a and B1b development, as set out in the Ramidus Report; and, in place-making terms, this economist’s view is embellished by the fact that no one wants a large B1c shed on the frontage/gateway. The

difficulty with Condition 16 is that we are left with a mismatch between commercial investment objectives and the practicalities of whatever planning objectives Condition 16 is seeking to achieve. This means:

- The required mixing of residential, mixed use and business allows no time to create the sort of place that would then attract commercial B1a and B1b occupiers and, besides, these occupiers are very unlikely to want to take space until the main part of construction on site (in this case residential) has completed. No one likes to try to run a customer-facing business within a building site and, in addition, we have always proposed that the key attractor for inward investors will be 'inward innovators' (people) on site (as explained in the Ramidus Report). This is a core part of the business case for The Hub, which we are seeking to build, step by step.
- There are very substantial risks in letting the commercial space, noting our previous advice that B1a/b space in Bicester is currently non-viable with top rents at £18.50 psf, perhaps a little more for serviced offices (but capitalisation rates are then lower). The rental equation for The Hub is complicated by the fact that, aside from the ground floor uses, the typical small scale mixed use and business occupiers for this space would not offer the sort of financial covenant necessary to support the investment yield levels required for viability (ie there is too much risk around the ability of small companies to guarantee rental payments). Leaving aside the funding risks, it is simply impossible to build something that is financially non-viable. An empty building would deliver no jobs, it would lead to the loss of millions of pounds (a risk which is wholly disproportionate in planning terms) and it would tarnish the market reputation of Bicester Gateway.

In short, aside from the timing risk, the other key risk relating to The Hub is the viability of commercial uses on the first and upper floors. It is likely that the ground floor mix of uses will be viable, but The Hub is not envisaged as a 794 sq m single storey building. It follows that there is likely to be a design solution to resolving the mix of commercial uses for The Hub, but this still leaves funding and delivery risks around the linkage and timing stipulations of Condition 16.

The Project Team's objective has always been to create the place, attract 'inward innovators' (people) and then target B1a and B1b occupiers. The applicant objected to Condition 16 during the application process but had no choice other than to accept it (albeit in a compromise form) or face detrimental delays. Bloombridge has tried (and continues to try) to fund the development having undertaken an extensive funding campaign through BNP Paribas; but have been unable to secure a funding structure that works as linking the delivery of a commercial building alongside residential is putting investors off. Our professional opinion is that Bicester Gateway will not be delivered with Condition 16 unaltered. This condition presents a financial burden on an investor to build an unviable product at the wrong time in the development programme for Bicester Gateway. We need the people first and then the jobs will follow – the applicant has been consistent on this since the outset (and it is a major theme of the Ramidus Report).

Planning Background to Condition 16

Bicester Gateway was considered by the Planning Committee on 16 July 2020. Condition 16 was not raised by any Councillors or third parties, because the purpose of this Committee was to consider the principle of development. Relevant extracts from the Committee Report are as follows, noting the mixed use and co-working description of uses (including a gym, retail and café) and the general acceptability of the principle of development:

9.12. Also, on the land allocated by Policy Bicester 10, the application proposes up to 33 residential units, an ancillary mixed use co-working hub of around 794sqm GIA (to include a site management office, lounge area, desk space for hire, an active travel hub, a small food retail facility) and around 177sqm GIA of A3/ Café use.

Other uses

- 9.34. Paragraphs 9.12 and 9.13 set out the other uses proposed. In terms of the proposed ancillary gym, this sits on the land proposed for the residential development and is not identified as being situated within a standalone building. Apartment blocks are often provided with an ancillary gym for use by residents only and on this basis, this is considered acceptable.
- 9.35. The proposed hub is also considered to be an acceptable proposal on the allocated site being a flexible space for business as well as other uses and again its provision with an ancillary retail space is considered acceptable.
- 9.36. The proposal indicates a café space. On the basis that this is a main town centre use and is standalone and provided with its own car park, a sequential assessment has been sought. This concludes that the use is directly linked to the concept of the knowledge hub being promoted as part of the application and is therefore intended to support the function of the knowledge economy. The assessment finds that although there are likely to be other, more central sites available, that these would not support the knowledge economy proposals sought at Bicester Gateway. If the proposal is located on land associated with the policy designation, then it offers advantages from an accessibility and community point of view. As such there are important market and locational requirements which mean that the use is best placed in the specific location proposed as part of the current application. Officers accept the arguments made in this regard given the size of the proposed café is relatively contained, and consider it would support the proposals for the innovation community and this element of the proposal is unlikely to impact the vitality and viability of the town centre.

It is clear that the mix of employment and residential uses is considered by Officers (and the Committee) to be acceptable, but our client has been concerned throughout that the phasing and linkage aspirations of Officers might cause funding, contractual and delivery problems. In a nutshell, the issue is that the residential is needed to help bring the people and create the place to attract businesses, which are not currently coming to Bicester. Therefore, requiring the delivery of business space alongside residential, links this residential to something that is currently non-existent and non-viable. It therefore serves no purpose, including in relation to delivering the knowledge economy in Bicester – because nothing can be funded or built under these stipulations. This debate was touched on at paragraph 9.32 of the 8 October 2022 Committee Report:

9.32. Notwithstanding the above, an important factor in the site's suitability for development is its relationship to the Bicester 10 allocation; stand-alone residential development on the site would appear isolated and poorly connected and would not be acceptable without development coming forward on the allocation. Whilst the occupancy of the residential units cannot be controlled so as to guarantee an "innovation community", the application is nevertheless for a combined employment and residential development on a greenfield site, which is partly on unallocated land. Whilst it is concluded that the development of land outside the allocated site can be considered acceptable as a logical extension of the allocated site (as was the case under the extant permission), this is on the basis that it is delivered alongside development on the allocated land. As such, the commercial development is required to be delivered in a timely fashion alongside the residential development to make the development as a whole acceptable. The applicant has advised that the 240 residential units would be proposed to be constructed first to provide the accommodation to attract businesses. Officers consider that it is necessary to seek a phasing plan to require the commercial space to be delivered alongside the residential uses, with a restriction on the occupation of the residential space until development of the commercial floorspace has commenced.

Condition 16 was therefore borne out of paragraph 9.32. The first exchange on this condition took place in an email sent by Richard Cutler to the Case Officer, Caroline Ford, at 19.09 on 13 October 2020. The following comment was made by the applicant:

"I understand the principle here, but we need to be mindful that The Hub will need to trade and be viable in its own right. It is dependent on the adjoining residential as well as some passing trade. There may also be some construction issues that might impact and cause a nuisance to The Hub. Hence, can I suggest that this is not a "prior to the first occupation" condition? Maybe 80 units would be better [ie a third of the scheme]?"

There were further exchanges in February, following progress on other matters, including the Section 106. Richard Cutler's email of 10 February stated:

"Our key requests here are for flexibility and a set of conditions that provide for the mixed use nature of The Hub building in particular. This building is seen as the link between the residential and business space, exhibiting characteristics of both, at the heart of the innovation community. It is therefore ancillary to both B1 and C3. It will have a 'live work' feel, so it should not be categorised as either residential or business, and B1a is far too restrictive (and, in terms of the legal tests, not necessary - as evidenced above in the Committee decision). Moreover, the approved Regulating Plan describes The Hub as "mixed use"."

In the end, we settled on a general reference to the "first residential phase" and "mixed use", which are helpful in providing some useful flexibility. However, this does not resolve the funding or viability constraints to delivery – of the whole development. Hence our need now to agree a variation.

With regard to the changes sought to Condition 16, it seems clear from the Committee Report on 8 October 2020 that the overall principle of the mix of uses within the innovation community is considered acceptable by Officers.

9.39. The proposed innovation community has the potential to contribute to meeting the economic and social aims of the Local Plan for Bicester, however some reservations are held as to the weight that can be given to this concept given the units will be open market units available more widely than just the target market. However, Officers are persuaded that given the proposal would not materially have the effect of limiting the amount of land allocated for employment and would not compromise the number of jobs that, realistically, can be delivered on the Bicester 10 allocation, alternative uses on the non-allocated part of the site can be considered. The site does represent an opportunity to provide for residential development which, if it were to successfully achieve an innovation community, has the potential to support the high-tech knowledge industry and attract employers to the town, which itself would comply with the ambitions of Policy Bicester 10 and be in accordance with the guidance in the NPPF. Even if the innovation community did not come to fruition, there would remain a strong physical relationship between the residential and the employment development and as such this is considered to be a sustainable site that will be well connected to the town. Whilst the Council's Housing Land Supply remains above the 3 year requirement, the development would contribute to the Council maintaining a robust supply of housing. The provision of affordable housing is also a positive aspect to the scheme.

10.6. With respect to the proposed residential development, Officers consider that the location is sustainable for the proposals being considered. This is on the basis that it will be well connected and physically related to development on the allocation, and is within walking and cycling distance of a number of services and facilities and the surrounding employment uses are proposed to fall within Use Class B1, which are uses normally compatible within a residential area in terms of nuisance issues. In addition, conditions will be imposed to deal with environmental protection matters. The provision of additional housing as an extension of an allocated site at Bicester which, alongside Banbury, is the focus of the Council's housing strategy because of their sustainability is considered acceptable. This would also make a valuable contribution to the Council's Housing Land Supply position and provide for affordable housing. For these reasons and noting the guidance in the NPPF on the need for planning policies and decisions to be flexible to respond to changes in business and employment needs and demand for land, Officers consider the proposal to be acceptable and to outweigh the Policy conflict caused by a departure to the Development Plan in principle.

We consider that these conclusions and the overall acceptability of the principle of development are unaffected by removing the requirement to deliver The Hub with the first phase of residential. Hypothetically, should a variation in this manner alter the planning balance detrimentally, this would not be so significant as to require the refusal of this Section 73 application. In particular, counter balancing planning considerations would be provided by:

- The need to deliver the innovation community generally, in accordance with Bicester Policy 10, which is not possible without varying Condition 16, and
- The District's five year housing land supply position (put simply, residential at Bicester Gateway is preferable to unplanned development in the Rural Areas).

Our overall case, therefore, is that the Section 73 is not only necessary, but also consistent with the case for development at Bicester Gateway agreed between Officers and Bloombridge over the last few years. Whilst the case is not wholly clear cut, the case for refusing this Section 73, on balance, serves no purpose. It will just delay much needed development where the principle of development has already been approved by Committee.

Changes sought

We do not actually believe Condition 16 was a fundamental part of Cherwell's planning case for Bicester Gateway, so we are hopeful that a Section 73 application will be non-controversial, especially given the heightened importance of housing delivery in Cherwell. The southern part of Phase 1B (comprising 'white land') is an acceptable housing site, in a highly sustainable location, meaning (in planning and political terms) it is far better to allow the variation of Condition 16 than lose appeals in the Rural Areas of Cherwell.

In terms of the variation sought, we suggest the addition of the words underlined and the deletion shown below:

16. No development on any phase shall take place until a phasing plan covering the entire application site has been submitted to and approved in writing by the Local Planning Authority identifying the phases by which development will take place. The phasing plan shall demonstrate the delivery of the approximately 794sqm (GIA) mixed-use co-working hub ~~to be delivered as part of the first residential phase~~. Thereafter the development shall be carried out in accordance with the approved phasing plan and applications for approval of reserved matters shall be submitted in accordance with the terms of the approved phasing plan and refer to the phase (or phases) to which they relate.

Reason: To ensure the proper phased implementation of the development and associated infrastructure in accordance with Policies ESD15, Bicester 10 and INF1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework. This information is required prior to commencement of any development on the appropriate phase as it is fundamental to the acceptability of the scheme.

You will appreciate that we have no objection to The Hub being planned into Bicester Gateway, and therefore included for delivery on the phasing plan – it is just the timing and the direct link to the delivery of residential development which is now evidenced to be preventing delivery of housing and, directly related to this, the delivery of the whole development and wider employment objectives at this important Gateway site.

I hope you understand the difficulties our client is facing with Condition 16 proving to be a complete block to the Project Team being able to fund and commence the development. Bloombridge has been consistent with the concerns on this point from the outset but the project is now suffering the direct consequences of an investment market unwilling to fund a commercial building (prematurely) whilst rents remain too low to make it a viable proposition. Rents will increase, but there needs to be a reason for rents to increase, which is what we will aim to achieve by delivering the residential and the 'place' ahead of The Hub and the main B1 buildings.

Next steps

It would be very helpful if we could have a short call to discuss the matters raised in this email so that we can get the Section 73 application 'right first time'. We have a window of opportunity to get Bicester Gateway funded having just gone through an extensive and expensive marketing campaign and we believe the two minor amendments we have proposed to Condition 16 will enable us to secure the necessary inward investment to unlock the scheme. Efforts to design and deliver The Hub will continue in parallel, but just not directly linked to the residential element, thereby then releasing funding for the residential and enabling a start on site.

I have copied this submission to your policy colleagues, who our client has been in touch with recently on the delivery programme for Bicester Gateway and Cherwell's efforts to address the five year housing land supply shortfall in the district. Bloombridge can be on site in Q1 2022, helping to resolve Cherwell's 5YHLS concerns, but not with Condition 16 unamended.

Conclusion

Bicester Gateway is a major development for Cherwell and the houses and jobs are urgently needed. Planning works best when it is in tune with market and delivery considerations, as that is ultimately what gets things built. The professional and commercial expertise of Bloombridge LLP ought to be trusted in this regard. Put simply, either Condition 16 gets varied so that The Hub does not have to be delivered at the same time as residential, or nothing gets delivered. The nuance on this is that the ground floor uses described at paragraph 9.12 of the Committee Report ought to be viable and deliverable (in part or whole). The Project Team is therefore looking at a range of design options for The Hub, but these options are likely to be funded separately to the residential and they will therefore be on a separate delivery programme, albeit with the aim of reaching practical completion at the same time as the main residential element.

In terms of summary points:

1. Bicester Gateway is a sustainable location for residential development. That is confirmed in the three Committee Reports. The site is next to jobs and the P&R, and walkable to two new schools, the country park, Tesco and a wide range of other amenities, including the new David Lloyd Leisure.
 2. The main residential component (240 units) is not on land allocated for employment – it is on 'white land'. Please refer to the Local Plan Proposals Map. There is therefore no employment or loss of employment land objection.
 3. Cherwell's 5YHLS position, now confirmed as worse than the 4.7 years stated in the latest AMR, is a very significant change in circumstances, both technically and politically. Cherwell needs an urgent response to avoid 'planning by appeal'.
 4. The real estate funding and residential markets have remained strong throughout lock down, with construction continuing and house price increases being a frequently reported news headline. B1c and 'sheds' are also strong markets. Put simply, sheds are booming in Bicester, but this is distinct from higher density B1a and B1b development, and no one wants a shed on the gateway. The problem with B1a and B1b in Bicester is that rents are at £18.50 psf when they need to be at £25 psf to cover the costs of development and the very low levels of take-up means that no developer, including Bloombridge LLP, will take the risk of speculative development (because there is no proof of market demand). Hence nothing is being built and hence our case, throughout the application process, that Bicester needs to attract knowledge economy people, create the right place, and then knowledge economy investment and occupier demand will follow (with demand leading to rental increases and, therefore viability). This was all set out in the Ramidus Report and the market evidence for the application provided by VSL.
 5. The residential element is viable and fundable, now, but no one will sign up to a contract that requires the delivery of The Hub, which is either non-viable (subject to further design work), or not a mix of uses that residential funders will fund. The proposed variation to Condition 16 seeks to enable funding for the residential (and therefore a start on site at Phase 1B) by removing the direct linkage to The Hub, requiring this to be delivered as "part of the first residential phase". If the developers/funders of the residential
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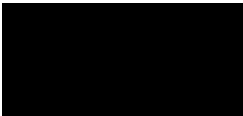
are not in control of The Hub then their very substantial investment in the construction of 240 units is at risk of planning enforcement action – no funder will release finance with that risk. Hence, the funding of the innovation community cannot progress.

Doing nothing (leaving Condition 16 as approved) means that Bicester Gateway will not get delivered, or it will be substantially delayed. That is not in anyone's interest. It is absolutely not in Cherwell's political interest to prevent the delivery of 240 units at Bicester Gateway given the context of the District's 5YHLS position. A standalone application for 240 units on the 'white land' at Bicester Gateway (as currently master planned and consented) could not be resisted on planning policy and sustainability grounds, given all of the locational advantages at Bicester Gateway for housing. Moreover, a standalone residential development of 240 units on the 'white land' would not harm policy, or the integrity of the master plan or, indeed, the ultimate delivery of The Hub. Separating out the residential from The Hub causes no harm whilst, conversely, combining the two as currently proposed serves no planning purpose and it does not satisfy the 'test of necessity' set out at paragraph 56 of NPPF19.

It follows that there is a clear and strong case for the minor variation to Condition 16 that we have proposed with this Section 73 application. The effect is to separate the delivery of The Hub from the residential, enabling both to be funded, contracted and delivered. We trust that this variation can be achieved without complication or delay.

We look forward to receiving confirmation that the application is registered promptly. If you have any queries please let me know.

Yours sincerely



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