

# Proof of Evidence

**To:** The Planning Inspectorate

**From:** Sean V Silk MRTPI

**For:** Cherwell District Council

**Subject:** GAVRAY DRIVE, BICESTER - PUBLIC INQUIRY

**Date:** 23<sup>rd</sup> May 2018

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# Table of Contents

Section	Page
1	Introduction..... 1
2	Case Summary Timeline ..... 3
3	Grounds for Refusal and Areas of Dispute ..... 4
4	Assessing the Proposal..... 6
5	Summary..... 19

## Appendices

- SVS1 R (Hampton Bishop PC) v Herefordshire Council, 1<sup>st</sup> July 2014
- SVS2 Tesco Stores Ltd v Dundee City Council, 21<sup>st</sup> March 2012
- SVS3 Barwood Strategic Land II LLP v East Staffordshire BC, 30<sup>th</sup> June 2017

# 1 INTRODUCTION

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- 1.1 My name is Sean Silk. I am a Planning Consultant and have been a Member of the Royal Town Planning Institute since 1995. I am currently employed by Blake Morgan as a Planning Consultant within the Planning Team and have been since 2013. I have experience in most areas of planning, the majority of which is housing or housing-led mixed use proposals.
- 1.2 I am instructed by Cherwell District Council ("the District Council") to act on its behalf in explaining its decision to refuse to grant planning permission to develop part of a site allocated for development, known as Bicester 13 Gavray Drive ("the Allocation"). The Appellant seeks permission to build up to 180 houses solely on the western part of the Allocation ("the Proposal"), known as Gavray Drive West ("GDW"). This is in isolation from and excludes the remainder of the Allocation known as Gavray Drive East ("GDE").
- 1.3 This Public Inquiry follows the decision of the District Council to refuse to grant planning permission. Issued on 22<sup>nd</sup> June 2017, the District Council's Refusal Notice cites: (1) a failure by the Appellant to demonstrate that the objectives and requirements of Policy Bicester 13 are not compromised as a result of proposals for part development of the Allocation; and (2) the absence of a Planning Obligation fails to ensure delivery of requirements arising from the Proposal and, at least proportionately, the Allocation.
- 1.4 I have prepared this Proof of Evidence ("PoE") prior to appearing for the District Council at a Public Inquiry which is to take place in June 2018. This PoE has been prepared following review of the case history and recent visits to the Allocation and surrounding area. The documentation review includes the National Planning Policy Framework ("NPPF"), the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), the Development Plan, the Statement of Case ("SoC") prepared by the District Council, the Statement of Common Ground ("SoCG") prepared by the Appellant and signed by the District Council, the 2015 Application, the associated Environmental Statement ("ES") submitted at that time and then the further information submitted by the Appellant during the appeal.
- 1.5 These should already be Appeal Documents and so, whilst to be relied upon in my Evidence, they are not appended to this PoE. In addition, though, I have had recourse to three decisions of relevance, namely: R (Hampton Bishop PC) v Herefordshire Council, 1<sup>st</sup> July 2014 (SVS1); Tesco Stores Ltd v Dundee City Council, 21<sup>st</sup> March 2012 (SVS2); and Barwood Strategic Land II LLP v East Staffordshire BC, 30<sup>th</sup> June 2017 (SVS3).
- 1.6 Having outlined briefly the background to the case and to my role, Section 2.0 provides a summary timeline of events, both in relation to the Allocation and the Proposal, with Section

3.0 outlining the reasons for refusal and areas of dispute. Section 4.0 assesses the Proposal against the current policy position and other material considerations. Section 5.0 provides a brief summary and concluding remarks.

## 2 CASE SUMMARY TIMELINE

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2.1 This PoE does not repeat or replicate any evidence that is within the case files. However, I provide below a summary timeline to provide context to the Public Inquiry setting out key events and stages from the start of this matter to date:

- **1999** the District Council announced a review of the 1996 Local Plan, followed by a 'call for sites' exercise. This resulted in the Appellant submitting land off Gavray Drive for a potential housing allocation.
- **December 2004** the Non-Statutory Cherwell Local Plan 2011 was approved as interim planning policy for development control purposes. The Plan was intended to review and update the Local Plan adopted in 1996. Land off Gavray Drive was identified for employment use.
- **December 2004** the Appellant submitted a planning application (04/02797/OUT) for the whole Allocation which was then the subject of a non-determination appeal (recovered by the Secretary of State) decision in **2006**.
- The Appellants lodged a high court challenge in relation to the wording of the policy relating to the Allocation as contained within the post-Inquiry **2014** Main Modifications draft Local Plan published by the District Council. This resulted in a small section of the proposed policy wording being deleted.
- **2013 – 2014** survey work undertaken by Appellant's consultant team, followed by requesting Scoping Opinions in **September 2014** for GDE and GDW.
- **November 2014** the District Council provided Scoping Opinions to the Appellants under the 2011 EIA Regulations, both for GDW and GDE separately.
- **May 2015** Outline Application submitted by the Appellants for GDW only.
- **July 2015** Local Plan adopted.
- **June 2017** District Council's Planning Committee refuses to grant permission for the Proposal, following the Appellant's decision to not submit an Ecological Management Plan requested when deferring determination at the May 2017 Planning Committee.

2.2 The next section sets out the reasons for refusal and outlines the areas of dispute that I see between the District Council and the Appellant.

### 3 GROUNDS FOR REFUSAL AND AREAS OF DISPUTE

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3.1 The grounds for refusal are reproduced in full below:

*"The proposed development represents an inappropriate attempt at piecemeal development of the strategically allocated Bicester 13 site in the Cherwell Local Plan 2011 – 2031 Part 1 which, in the absence of a single comprehensive application covering the whole of the allocated site, leaves the Council unable to satisfactorily determine whether the proposals would enable development across the whole of the site to properly meet the overall objectives and requirements of Policy Bicester 13. In doing so the proposals fail to demonstrate that the allocated housing total can be appropriately provided across the allocated site in a manner that adequately protects and enhances locally significant ecological interests on the land to the east of Langford Brook which is in direct conflict with the inherent and sustainable balance contained within Policy Bicester 13 between housing delivery and biodiversity enhancement. As a result the proposals are considered to be contrary to the overall provisions of the Development Plan and the specific requirements of Policies Bicester 13, ESD10 and ESD11 of the Cherwell Local Plan 2011 – 2031 Part 1.*

*In the absence of a satisfactory completed legal agreement, the proposals would not commit to the necessary provision of on-site and off-site infrastructure to mitigate the impact of the development or contribute towards providing affordable housing in order to create a mixed and balanced community. As a consequence the proposals would not deliver suitable and sustainable residential development and would have a significant detrimental impact on wider public infrastructure. The proposals are therefore found to be contrary to the requirements of Policies Bicester 13, BSC3, BSC4, BSC9, BSC10, BSC11, BSC12, SLE4, ESD15 and INF1 of the Cherwell Local Plan 2011 – 2031 Part 1 as well as Government guidance set out in the National Planning Policy Framework."*

3.2 It is this refusal to which this PoE relates, following the Appellant's appeal to the Planning Inspectorate in November 2017.

3.3 To be read in conjunction with the SoCG, below is a summary of what I see as the areas of dispute between the District Council and the Appellant:

3.3.1 To ensure that all policy requirements can be met, particularly those that relate to biodiversity and ecology, it is important, and the District Council's intention, that development and impact assessment comes forward for the Allocation as a whole;

3.3.2 Development on the Allocation should provide all of the requirements set out under development plan policies of relevance, principally Policy Bicester 13;

3.3.3 The Proposal does not demonstrate meeting key requirements of the Allocation and all relevant Development Plan policies, particularly Policies Bicester 13, ESD10 and ESD11, especially on housing numbers, affordable housing, open space, accessibility and legibility, community facilities and ecological protection, mitigation and management; and

3.3.4 The Proposal is not in accordance with the Development Plan and other material considerations identified do not justify or outweigh this non-compliance to an extent that would allow planning permission to be granted.

3.4 I note s38(6) of the 2004 Act requiring determination of a planning application in accordance with the development plan unless material considerations indicate otherwise, as well as the three decisions appended. In Section 4 I consider these areas of dispute in detail. I focus upon the areas where the Proposal does not demonstrate adequately or there is uncertainty in meeting the requirements of the Allocation and the Development Plan. I balance this non-compliance with the material considerations that may outweigh or justify this non-compliance with the Development Plan.

## 4 ASSESSING THE PROPOSAL

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- 4.1 In considering this Proposal in detail at Committee the District Council took fully into account the case review provided to the Councillors by the Principal Planning Officer assigned the case. The District Council was concerned that the evidence submitted by the Appellant was not detailed sufficiently to demonstrate clearly that development of the Allocation in a piecemeal way would not cause harm and would not fetter the remainder of the Allocation coming forward in a manner that accords with the Development Plan and delivering upon the District Council's expectations and vision for development of the Allocation as set out in Policy Bicester 13.
- 4.2 Without a clear understanding of the implications of the Proposal effectively reserving at least 120 dwellings for later development on GDE, given the known and unknown constraints, it has not been possible for the District Council to conclude that a suitable residential development of at least 120 dwellings could be delivered across GDE that complies with Development Plan policies, principally Policy Bicester 13, including ecological enhancements. Furthermore, the absence of any Planning Obligation meant that the District Council could not be assured of receiving the necessary infrastructure which would be required in order to make the Proposal acceptable in planning terms when considered with GDE proposals and thus for the Allocation as a whole.
- 4.3 It is entirely reasonable for the District Council to seek to ensure that any proposal accords with an up-to-date development plan. Where this is not the case, any harm caused is to be shown to be outweighed by material considerations to an extent necessary to provide justification for this non-compliance. It is reasonable for a precautionary stance to be taken, especially where the Proposal is for only part of an Allocation that is of significant interest to the local community and has been assessed over what in this case amounts to a period of nearly 20 years from the initial 'call for sites' exercise carried out in 1999 to now.
- 4.4 By way of underlining the robustness of the District Council's concerns, the Appellant has felt it necessary to have prepared, subsequent to the refusal and within weeks of the Public Inquiry, an update of the ES submitted originally in 2015 which was based upon assessments/surveys undertaken in 2013 and 2014, submitting ES Further Information in May 2018. Apart from this, the Appellant has not, at any time since Application submission in April 2015, provided any additional or updated information reflecting either the subsequent adoption of the Local Plan or the passage of time, with the exception of a Biodiversity Impact Assessment for GDW and an indicative one for GDE. The ES therefore does not assess the potentially significant environmental effects of development in the context of the Allocation as



a whole. It only considers GDE as part of generic cumulative impacts but without a detailed assessment of the Allocation as a whole.

- 4.5 At the time of preparing this PoE the Appellant has also not brought forward a satisfactory Planning Obligation.
- 4.6 It is therefore the District Council's view that, by virtue of non-compliance with the adopted and up-to-date Local Plan, the absence of a satisfactory Planning Obligation and lack of material considerations which would justify the non-compliance, the Proposal should be refused permission and asks for the Appeal to be dismissed.
- 4.7 Below I assess the Proposal against the Development Plan. This is primarily Policy Bicester 13 but there are a number of interlinked and inter-related policies that are cross-referred to as well, particularly Policies ESD10 and ESD11. I consider whether there are any material considerations to take into account that potentially outweigh and warrant approval of a proposal that is not compliant with the Development Plan.

#### **APPLICATION OF LOCAL PLAN POLICIES**

- 4.8 The principal policy of relevance to development of the Allocation is Policy Bicester 13 Gavray Drive. If the bullets and paragraphs are replaced with a simple chronologically ordered numbering system, this adopted policy sets out 31 requirements for such development to meet. There is then cross-referencing to other adopted policies which themselves provide further assessments to be made to ensure that the Proposal is acceptable.
- 4.9 I have taken each of these tests in turn and assess whether the Proposal complies with these and where not the extent of harm caused, potential mitigation and then other material considerations that may be available to outweigh any residual harm.
- 4.10 From my review of the 31 requirements set out under Policy Bicester 13, I have grouped my findings into 3 categories (albeit with some overlap):
1. Those that cannot be addressed adequately or rely upon assumptions being made on what may or may not come forward by way of proposals for GDE in order to meet any shortfalls of policy compliance left over from GDW. These are: dwelling numbers and tenure (Requirements 1 and 2); open space and recreation (Requirements 4, 14 and 15); biodiversity (Requirements 9, 10 and 11) and landscaping (Requirement 13);
  2. Those that cannot be met unless and until a satisfactory Planning Obligation is entered into in order to deliver on-site infrastructure, off-site works and/or funding. These

include: affordable housing (Requirement 2); education and community facilities (Requirements 3 and 5); off-site landscaping (Requirement 13); and means of access and transport improvements (Requirements 17, 20, 21 and 25);

3. Those potentially capable of being addressed adequately at later reserved matters and condition discharging stages. These include: access (Requirement 6); matters of internal layout, design and movement/access (Requirements 7 - 8, 12, 16 – 18 and 20 - 25); hydrology (Requirements 19 and 26 - 28); archaeology (Requirement 30); and agricultural land quality (Requirement 31).

### ***Housing Numbers and Tenure***

- 4.11 Requirement 1 **Dwelling Numbers** (see also Policy BSC1) advises that 300 dwellings are to be provided. The Application and Appeal documentation mostly refers to "up to" 180 although the landscape work refers to "approximately" 180. Nonetheless it is clear from the Officer's Report and the Appellant's DAS that nowhere near 300 units can be secured from GDW. In the absence of any certainty in relation to GDE deliverability, the Proposal does not therefore meet the requirement for the Allocation by a shortfall of at least 120 dwellings.
- 4.12 The extent of shortfall will have implications for the wider housing need calculations and therefore Policy BSC1 which sets out the District-wide housing distribution numbers for the Local Plan, as well as for seeking an appropriate balance of land uses for Bicester so as to try to avoid unnecessary travel. Alongside various appeal decisions, the District Council has made significant efforts over recent years to be now in a position to demonstrate a 5-year housing land supply. I don't go into any detail on this because this is common ground that there is a 5-year housing land supply in place. What is relevant here is that the Allocation forms part of this work and has been objectively assessed as part of the Local Plan preparation process. Any shortfall from any of the allocations risks under-delivering on housing need or making other less suitable and sustainable sites vulnerable to speculative development.
- 4.13 The housing allocated and provided for in the Local Plan is to meet sustainably and objectively assessed need through to 2031. Any departure from this in favour of windfall provision will have a potentially significant harmful impact on the planning for the town. In the absence of any certainty over what may or may not be deliverable from GDE, this uncertainty and any such shortfall is a failure to meet the requirements of the Allocation, will be significantly harmful to the land use balance in Bicester and potentially to wider housing need calculations and therefore Policy BSC1. It is worth noting that every housing allocation in and for Bicester in the Local Plan is behind trajectory, with none delivering additional dwellings

over and above the allocation total. A few windfall sites have come forward but these have been factored into the overall housing supply requirements and therefore do not provide additional dwellings.

- 4.14 Requirement 2 **Affordable Housing** and Policy BSC3 require 30% of the units to be affordable. This is to then be split 70% affordable/social rented and 30% intermediate housing. There are two aspects to this requirement. The first overlaps with Requirement 1 insofar as the affordable housing requirement is a percentage of overall Allocation provision. If this is reduced to, say, 180 dwellings, there is a commensurate, proportionate reduction in affordable housing being delivered to meet the needs of Bicester. At 30% of the 120 dwelling shortfall, this equates to 40 affordable dwellings that are needed and may not come forward in part or in full as part of any potential future scheme for GDE. This means that the Allocation requirement is not met and the shortfall is significantly harmful, especially given that the shortfall is highly unlikely to be met by over-provision of affordable housing from other allocations or from windfall sites coming forward.
- 4.15 The second part of Requirement 2 is the absence of a satisfactory Planning Obligation. Without this the Proposal fails to demonstrate that 30% of the GDW units are to be delivered and at the tenure split required by policy. Without such certainty over the requirement being guaranteed and deliverable, given the high demand for such accommodation, this will be a departure from and contrary to Policies Bicester 13 and BSC3.
- 4.16 Having identified the policy non-compliance of the Proposal with respect to housing delivery and the associated significant harm, it is important to see whether there is any benefit arising from the Proposal that may outweigh this harm. These are considered in full towards the end of this section. In specific terms of housing, the District Council has in the past struggled to demonstrate a 5-year land supply. When this cannot be demonstrated there would be a significant benefit of bringing forward 180 dwellings from an allocated site because this would have at least come from a site that has been assessed fully through the development plan preparation process. This assumes though that there is no harm caused from any non-compliance with the Development Plan or that this is outweighed by the benefits arising from the partial delivery. In turn, this may then help to prevent a less suitable windfall site from coming forward to address this shortfall. There is the distinct possibility though that by bringing the Allocation forward in two parts known and unknown constraints relating to GDE could reduce the scope for achieving 300 units.
- 4.17 However, it is common ground that a 5-year land supply is in place. Providing up to 180 dwellings before the whole Allocation comes forward therefore poses the question whether this is neutral, positive or detrimental to GDE coming forward at a later stage to deliver at

least 120 dwellings. Uncertainty on this led partly to the District Council refusing to grant permission for part of the Allocation. The loss of 120 dwellings from the collective Bicester allocations, as well as the shortfall in affordable housing, will mean under-provision or requiring redress from other allocations or windfall sites. Some shortfall must be a realistic assumption to make, given the constraints and difficulties associated with bringing forward GDE, especially in order to provide at least 120 dwellings and the balancing requirements of the Allocation and Development Plan policies not provided by GDW.

- 4.18 On balance, therefore, the Allocation as a whole needs to be assessed to demonstrate that it can be split with up to 180 dwellings provided on GDW and at least 120 on GDE in order to comply with housing numbers, with a satisfactory Planning Obligation in place to deliver the affordable housing. Without this the Proposal doesn't meet the Policy Bicester 13 Requirements 1 and 2, causing significant harm. The potential benefits of bringing forward 180 dwellings instead, with 30% of these as affordable houses, do not outweigh this shortfall of at least 120 dwellings to serve the needs of a balanced Bicester land use and population.

#### ***Open Space, Recreation and Landscaping***

- 4.19 Requirement 4 **Open Space**, as well as Policies BSC10 and BSC11, require on- and off-site provision for needs arising from the Allocation. Based upon the formula for calculating this need and for it to be accommodated within GDW, this equates to 2.33 hectares of land. This land should not include areas for wildflower meadow planting, flood attenuation bunding and areas that are prone to flooding risk. The Proposal looks to provide 2.0 hectares of land, including wildflower meadow, flood attenuation measures and structural landscaping, with no off-site provisions in place. The Proposal does not therefore meet the open space requirement set out by the Allocation.
- 4.20 Furthermore, Requirement 14 requires **green areas** to be provided "*within the site*", suitable for formal and informal recreation. A combined LAP/LEAP would be needed on-site to serve new children on the development. There is insufficient space for a NEAP within GDW given the size of the site and its constraints. A contribution is therefore expected to the District Council towards off-site provision for a facility on the adjacent Bicester Fields amenity area. An application for only part of the Allocation is unable to deliver this and doesn't demonstrate how any such provision could be accommodated on GDE and linked to GDW, particularly in the absence of a satisfactory Planning Obligation.
- 4.21 There are three parts to this concern, namely: (1) quantitative provision; (2) qualitative provision; and (3) deliverability. There is a reduction in open space provided by the Proposal, both from what currently exists and in comparing the application of the policy formula. The

extent of provision could be increased at the detailed design and layout stages but it is uncertain whether this could be to an extent that means compliance with the policy formula and Allocation.

- 4.22 It may be that any substandard quantitative provision could be balanced with a space that was to be a material enhancement and improvement to the existing situation in meeting the needs of the existing and future residents. No assessment of existing need has been carried out so this is difficult to assess. Any such provision would need to not be 'double-counted' in terms of function and purpose. It would therefore require locating outside of any flood risk/attenuation measures and wildlife and ecological enhancement areas. It seems that this is possible only with a reduction in the extent of land covered by residential development. Any intensification of use of this land would mean over-development in density terms compared to surrounding housing areas. Therefore, whilst not harmful in itself, a further reduction from the 180 seems the result, with associated adverse implications for and greater harm to Requirements 1 and 2 discussed in the previous sub-section made worse. No benefits seem available to balance this harm, in terms of open space and landscaping, given the current openness of the Allocation.

### ***Biodiversity***

- 4.23 Requirement 9 relates to **biodiversity**, seeking to: (a) avoid adverse impact upon the River Ray Conservation Target Area ("CTA"); (b) comply with CTA Policy ESD11; (c) protect the Gavray Drive Meadows Local Wildlife Site ("LWS") within GDE and consideration of its relationship with residential development; and (d) secure net biodiversity gain from the Allocation.
- 4.24 It is not clear if any one of these objectives is met from a review of the Proposal for the Allocation as a whole. It is accepted that the Proposal does not directly harm the CTA and would deliver net biodiversity gains on and for GDW. The doubt is the ability to protect priority and protected species and habitats across the Allocation, deliver net gains across the Allocation, protect the LWS and enhance the CTA. There is no information on the habitats and species of the LWS, CTA or other parts of GDE. Without a comprehensive position taken for the Allocation as a whole, it is not possible to conclude that achieving at least 120 dwellings on GDE would be consistent with the requirement to deliver net gains for biodiversity, enhance the CTA and protect the LWS, in compliance with Policy Bicester 13.
- 4.25 Furthermore, Requirement 11 is for an **Ecological Management Plan** to be provided across the Allocation, with Requirement 13 requiring **structural landscaping** to be provided across the Allocation and *"either side of"* Langford Brook. Neither of these requirements is delivered

by the Proposal. Requirement 19 requires avoidance of adverse impact upon the downstream **SSSI**. I have no reason to believe that this isn't possible as part of the Proposal although it would be preferable and sensible for hydrological impacts to be assessed for the whole Allocation, in particular to assess collective impact on the Allocation and extent of limitation imposed upon GDE in delivering at least 120 dwellings.

- 4.26 Taken together, I accept that it is possible to either avoid ecological harm or mitigate it so as to prevent adverse impact within GDW and probably deliver a net gain in ecological habitat on GDW itself, as shown within the Biodiversity Impact Assessment submitted by the Appellant. However, any such biodiversity gain for GDW would be very modest and is not an enhancement on the Allocation but rather a mitigation of harm arising from the Proposal. It provides no benefits to biodiversity across GDE and, therefore, no benefits to biodiversity to the Allocation, certainly to an extent that is a material consideration sufficient to justify non-compliance with the Development Plan. Also, any such potential modest benefit for the biodiversity of GDE cannot be certain without a clear ecological strategy or plan for the whole Allocation, as required under Bicester 13.
- 4.27 This failure to meet the Allocation's biodiversity objectives could result in future residual harm that cannot then be avoided or mitigated for in the Proposal where outside of the GDW area. Any potential modest benefits across the Allocation would be compromised by premature approval of development on part of the site. Such harm caused on GDE or to the CTA and LWS could not be offset on GDW as the opportunity would be lost. This non-compliance with biodiversity elements of Policy Bicester 13 and potential failure to mitigate or enhance biodiversity on GDE is significantly harmful and I can see no biodiversity benefits on GDW sufficient to outweigh this harm across the Allocation as a whole.

### ***Community Infrastructure***

- 4.28 Requirement 3 **Education Contribution**, along with Policies BSC7, INF1 and the Supplementary Planning Document ("SPD") entitled 'Developers Contributions', require a financial contribution to be provided for primary and secondary education commensurate with need arising from the Allocation. No satisfactory Planning Obligation is in place and so the Proposal does not currently meet this requirement although I would envisage this requirement to be met as part of agreeing a satisfactory Planning Obligation.
- 4.29 In terms of Requirement 5 **Community Facilities**, along with related Policy BSC12 and the Developers Contributions SPD, I note that this is to be met by the Appellant funding improvements to the Langford Village community centre, located approximately a kilometre away. There is no satisfactory Planning Obligation in place demonstrating that any needs

arising from the Proposal imposed upon the Langford Village facility will be met by the Proposal. The Proposal does not therefore currently meet this requirement although I would envisage this requirement to be met as part of agreeing a satisfactory Planning Obligation.

### ***Access, Movement and Layout***

- 4.30 Requirement 6 **Access and Movement** within the Allocation and Proposal is not shown, beyond indicative illustrations that are wholly subject to change. In the absence of a more detailed internal layout it is difficult to assess whether the Proposal can and will meet this requirement.
- 4.31 Requirement 7 **Urban Character** is assessed in some way within the DAS and is a matter that can be addressed by reserved matters. However, this is only if it is deemed possible in principle to bring forward a scheme with acceptable urban character. For this I look at the 19 requirements listed under Policy ESD15 but have no scheme detail, even at master-plan level, against which to assess these requirements. I also don't have a Heritage Impact Assessment to review, referred to as Requirement 12 of Policy Bicester 13 and the fifth requirement of Policy ESD15 or a Design Code referred to under Policy ESD15 Requirement 19. It is therefore difficult to confirm if the Proposal does, can or will comply with and meet Requirement 7.
- 4.32 Requirement 8 seeks a **high quality design** and this is also assessed in some way within the DAS. However, this doesn't provide any detail that is certain and, moreover, provides no reassurances about the specific reference in the policy to a "*...well designed approach to urban edge to the road and rail corridors...*" As such, it is difficult to assess the Proposal against this requirement, or with Requirement 10 that seeks **wildlife protection** from and an appropriate relationship with housing.
- 4.33 Requirement 17 **Footpath and Cycleway Provision** requires linkages to existing footpaths and cycleways, including an access over the railway to the town centre. This is not shown in the Proposal. Similarly, Requirement 18 requires a **footway network** to cross an area of open space centrally located within the Allocation, connecting Langford Village, Stream Walk and Bicester Distribution Park. I have seen no details in terms of 'on the ground' facilities nor Planning Obligation details pertaining to off-site delivery and/or funding arrangements.
- 4.34 Requirement 15 looks to have **green infrastructure links** provided from the Allocation to the surrounding area, with Requirement 16 seeking good **countryside access**. Requirement 20 **Walkable Layout** is related, seeking to have all parts of development within the Allocation accessible by foot. Requirement 21 **Legible Route Hierarchy** is shown in broad terms within the DAS but there is no detailed master-plan to assess the suitability of the route hierarchy.

4.35 It is not clear from the Proposal how any of these requirements would be achieved across the Allocation and whether any solution would be acceptable or potentially cause harm, especially to biodiversity but also to providing good design and creating an attractive place in which to live.

4.36 I envisage that the District Council will be able to agree with the Appellant at reserved matters stage a layout and scheme design that meets these various requirements, as well as others such as Requirement 22 **Bus Stop** Provision, Requirement 23 **Light Pollution** and Requirement 24 **Public Art** (assuming that it is to be provided on-site and not require inclusion within a Planning Obligation to secure funding and/or off-site delivery). However, there needs to be a satisfactory Planning Obligation put in place to ensure this is the case.

#### ***Other Matters***

4.37 I have considered above the various requirements of Policy Bicester 13 and identified those where I feel that the Proposal does not comply, primarily because there is a shortfall for the Allocation as a whole but also in terms of the detail and/or because there is no satisfactory Planning Obligation in place. There are a number of other requirements that are probably capable of being addressed at the detailed stages, although this is only for GDW and leaves uncertainty on the remainder of the Allocation. These are set out below.

4.38 Requirement 25 **Climate Change** requires "*...exemplary demonstration of compliance with the requirements of Policies ESD1 – 5...*" Evidence is needed to demonstrate such compliance, including a feasibility assessment required under Policy ESD4.

4.39 Requirement 26 **SFRA**, Requirement 27 **Langford Brook Flooding** and Requirement 28 **Flood Zone 3** appear to be taken into account given that housing and the children's play facilities are not to be located within an area liable to a 100-year flooding event although the Proposal does not, at least at this stage, appear to use "*...infiltration techniques in the south eastern area of the site...*"

4.40 Requirement 29 **Extra-Care and Self-Build Housing** has not been taken into account in the Proposal but has been shown elsewhere to the District Council's satisfaction that such provision is not viable on schemes of less than 400 dwellings.

4.41 Requirement 30 **Archaeology** appears to be a matter that has been dealt with and in any event can be dealt with through reserved matters and/or condition discharging. However, this only relates to GDW and not the Allocation as a whole.



4.42 Requirement 31 **Agricultural Land Quality** appears to have been addressed as part of the Proposal.

#### **POTENTIAL MATERIAL CONSIDERATIONS**

4.43 Given that the Proposal is not fully in accordance with an up-to-date Development Plan the starting point is for planning permission to be refused unless there are any material considerations that outweigh this non-compliance.

4.44 The Appellant's submissions make frequent reference to the benefit of providing housing. However, it is common ground that the District Council is now demonstrating a 5-year land supply of housing. The Allocation provides 300 of these units, with the development plan preparation process confirming suitability, availability and viability of the delivery of these units. There is a benefit from any new housing, particularly affordable units, given that these were allocated as part of meeting the determined need as part of the Plan period to 2031. However, the weight to this benefit is reduced given the 5-year supply and that the Proposal could compromise the total amount of housing delivered in due course over the whole of the Allocation, meaning a significantly harmful potential shortfall of at least 120 dwellings from the Allocation.

4.45 Further and related, such a shortfall also means a potential under-provision of some 40 affordable units which are very unlikely to be met elsewhere, be it through over-delivery of housing in Bicester on other allocated sites or in windfall developments.

4.46 In addition to being non-compliant with the up-to-date, adopted Local Plan, the Appellant has not demonstrated the ability to satisfy a number of policy-set requirements needing delivery through a Planning Obligation.

4.47 I accept that the matters listed under paragraph 7.68 of the Officer's Committee Report and the Heads of Terms produced by the District Council will be addressed if a satisfactory Planning Obligation is prepared and agreed. However, at the time of preparing this PoE no such Planning Obligation has been provided by the Appellant. It is therefore not possible for me or the District Council to check if these matters are addressed. As such and until any such Planning Obligation is received, reviewed and agreed to be satisfactory, it is appropriate to retain and rely upon the second reason cited on the Refusal Notice. If a satisfactory Planning Obligation is not in place then the Proposal fails to meet a number of policy requirements and warrants refusal and appeal dismissal.

4.48 Given that the Appellant comprises three disparate and unrelated parties, it is not clear that any Planning Obligation drafted to the satisfaction of the District Council and Oxfordshire

County Council is deliverable and signed by all parties prior to close of the Public Inquiry. This is notwithstanding the years that the Appellant has had to bring this forward and given reference at paragraph 1.5 of the Planning Statement that there are no restrictions in relation to land ownership and title for the Proposal and GDW.

- 4.49 The Appellant's submissions in 2015 make much of and rely wholly upon the Local Plan emerging at that time being out of date and thus triggering determination against the NPPF. However, although planning decision-makers have discretion, outside that given by NPPF paragraph 14, to approve developments which conflict with local plans, this is to be considered as exceptional rather than the norm (SVS3). With adoption of the Local Plan reliance on NPPF paragraph 14 is in any event an unsound approach. Rather, we must now look at the duty of the decision-maker to ensure that planning decisions accord with the development plan, weighing all other material considerations that may or may not balance against non-compliance with the Development Plan (SVS1).
- 4.50 The Appellant comes to this Public Inquiry with a Proposal that constitutes EIA Development. The ES that the Appellant then provides to comply with the 2011 EIA Regulations is dated April 2015 and contains within it surveys and reports that date back across 2013 and 2014. The ES Further Information submitted in May 2018 does seek to update the ES chapters. However, this still does not audit fully the environmental consequences of the Proposal across the whole of the Allocation or bring forward an Ecological Management Plan for the Allocation.
- 4.51 The Appellants also rely upon other supporting documentation that is out of date. The Planning Statement, for example, only makes reference (at paragraph 4.40) to the Gavray Drive policy. This is then limited to telling us that the application is "*...in conformity...*" with this policy and that an ES carried out in 2014 showed "*...no significant adverse effects...*" It goes on to state that the 2015 DAS "*...demonstrates how the form and layout of development and the disposition of land uses across the site responds to the specific place shaping principles...*"
- 4.52 The Planning Statement also suggests, at paragraph 4.46, that on-site biodiversity proposals meet the requirements of Policy ESD10. This makes no mention of the wider Allocation to which this policy refers, limiting itself instead to on-site, GDW proposals.
- 4.53 The Planning Statement goes on to regurgitate policy requirements without explaining or demonstrating compliance with these policies, for example paragraph 4.45 and reference to Policies ESD3, ESD6 and ESD7. It also then suggests, at paragraph 4.46, compliance with Policy INF1, although no satisfactory Planning Obligation is in place.

- 4.54 Turning to the DAS prepared in 2015 this does not provide in a level of detail necessary to assess compliance with the Allocation policy requirements in terms of the form, layout or disposition of land uses or how the Proposal "...responds to specific place shaping principles..." Furthermore, paragraph 2.14 is the only place where any reference is made to the Allocation policy and this simply states that the Planning Statement addressed this policy in detail which is not the case.
- 4.55 Therefore, nowhere within any part of the Proposal is any assessment whatsoever of the Allocation, Policy Bicester 13 and all other policies contained within an adopted 2015 Local Plan, or identification of any material considerations balancing non-compliance with the Development Plan. On these I have discussed already that significant harm associated with a long-term shortfall of housing and lack of sufficient ecological benefits is greater than the modest benefits of bringing up to 180 dwellings forward now, particularly given the District Council's current housing supply position. There is then the potential for an inability to provide adequate ecological benefits across the Allocation envisaged by the District Council and local community when considering the potential for the Allocation, alongside the 120 dwelling shortfall.
- 4.56 Other potential benefits not considered elsewhere relate to: modest environmental benefits, relating to limited biodiversity improvements on GDW beyond mitigation; moderate but short-lived economic benefits arising from the construction of up to 180 dwellings, such as job creation, use of local materials, etc, boosting the economy, along with payment of the New Homes Bonus; and limited social benefits from delivering up to 180 dwellings, up to 60 of which as affordable dwellings, together with a financial contribution towards improving community facilities at Langford Village and provision of improved access links with, for example, a new bus stop and upgraded cycle routes/paths.
- 4.57 However, these benefits would be equally deliverable but to a 40% higher level if it was for 300 dwellings, as required by the policy for the Allocation. Moreover, only limited weight should be attached to these given that they are both short-lived and temporary (such as construction jobs) or are predominantly mitigation as opposed to enhancement (such as GDW biodiversity enhancement and community facility improvements). Also, giving weight to the New Homes Bonus payment as a financial/economic benefit is inappropriate given that this is paid into the District Council's central budget and will not directly make the development acceptable in planning terms.
- 4.58 Many of the benefits envisaged by the District Council arising from the Allocation assessment process relate to biodiversity enhancements on GDE, as evident from the number of Policy Bicester 13 requirements relating to ecology matters. None of these are deliverable from the

Proposal, especially in the absence of a satisfactory Planning Obligation, particularly where on GDE.

- 4.59 Finally, in addition to mitigation measures, limited GDW biodiversity benefits and non-delivery of GDE biodiversity, there are a number of other impacts arising from the Proposal that will cause some albeit limited and short-lived harm which are also to be taken into account. These include, for example: significant but short-lived construction disturbance to local residents; likely harm caused through disturbance to wildlife during the construction phase, albeit again limited and temporary in nature; and loss of amenity value to local residents from loss of countryside and open space.
- 4.60 Taken together, the Proposal does not meet all of the requirements set out in and is therefore not in accordance with the Development Plan. Key is the significant harm caused by failing to deliver the number of dwellings across the envisaged tenures but also harm in relation to lack of biodiversity enhancement, substandard quantitative and qualitative open space provision and Allocation-wide layout matters. Any potential economic, social and environmental benefits arising from other material considerations are proportionately less than those available for the Allocation and do not outweigh the significant harm arising from non-compliance. This harm is heightened then if GDW comes forward in such a way as to prevent or hinder GDE coming forward to provide the full balance of measures set out for the Allocation, particularly in terms of housing numbers and biodiversity.

## 5 SUMMARY

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- 5.1 The District Council decided to refuse to grant planning permission to develop part of the Bicester 13 Gavray Drive Allocation. The Appellant seeks permission to build up to 180 houses solely on GDW, in isolation from and excluding the remainder of the Allocation (GDE).
- 5.2 Issued on 22<sup>nd</sup> June 2017, the District Council's Refusal Notice cites: (1) a failure by the Appellant to demonstrate that there is no harm arising from part development of the Allocation; and (2) that the absence of a Planning Obligation fails to ensure delivery of requirements arising from the Proposal and, at least proportionately, the Allocation.
- 5.3 I have provided a summary timeline of events showing that after nearly 20 years the Allocation is adopted and that planning permission can be sought and will be given for a proposal that complies with the Local Plan, particularly Policy Bicester 13. I have set out the grounds for refusal and identified the areas of dispute. I have then assessed the Proposal against policy and noted where I feel there is uncertainty or failure to comply with policy requirements and is thus not in accordance with the Development Plan.
- 5.4 I have considered that non-compliance with the Development Plan is harmful, significantly so in terms of housing delivery and biodiversity enhancements for the Allocation. I have considered other material considerations with a view to identify any benefits that may outweigh such departure and allow the Proposal to be granted planning permission. I have concluded that the departure is not justified by other material considerations. There is therefore no justification for allowing GDW to come forward at the risk of delivery of and/or harm to GDE, the Allocation as a whole and those benefits identified by the District Council as necessary for the Allocation to be considered acceptable in planning terms.