



Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY ALBION LAND

AXIS J9 PHASE 3 HOWES LANE BICESTER

LOCAL PLANNING AUTHORITY REF NO: 21/03177/F

PLANNING INSPECTORATE REF NO: APP/C3105/W/22/3304021

HEARING STATEMENT OF CHERWELL DISTRICT COUNCIL

NOVEMBER 2022

Contents

1. Introduction	1
2. Site and Surroundings	2
3. Development Proposed	3
4. Planning History	4
5. The Policy Position	6
6. Annual Monitoring Report	13
7. First Reason for Refusal	14
8. Second Reason for Refusal	21
9. Conclusions	23

Appendices

- CDC1. – Site Location Plan & Proposed Site Plan
- CDC2. – Cherwell Local Plan Policies Map Extract
- CDC3. – North West Bicester Supplementary Planning Document Masterplan
- CDC4. – 14/01675/OUT Appeal Decision & Indicative Masterplan

1. INTRODUCTION

- 1.1 This Hearing Statement is made on behalf of Cherwell District Council (“**the Council**”) in respect of an appeal by Albion Land (“**the Appellant**”) under Section 78(1) of the Town and Country Planning Act 1990 against the Council’s refusal to grant Planning Permission ref 21/03177/F for “*employment development (Use Classes E(g)(iii), B2 and/or B8) comprising 5 units within 3 buildings and associated parking and servicing, landscaping and associated works*” at Axis J9 Phase 3, Howes Lane, Bicester (“**the Site**”). A copy of the site location plan and Proposed Site Plan are attached at **Appendix CBC1**.
- 1.2 The application was considered at a meeting of the Council’s Planning Committee on 16th June 2022, where it was recommended to grant planning permission. The application was refused by a decision notice dated 15th July 2022 for two reasons.

2. SITE AND SURROUNDINGS

- 2.1 A full description of the appeal site and its immediate surroundings is set out in the committee report and within the Statement of Common Ground.
- 2.2 In summary, the appeal site covers an area of around 6 hectares and is located to the western edge of Bicester. Other than the proposed access road, the site is greenfield and broadly level, although there is a gradual change in levels across the site, with the land sloping gently down towards the east. The site is bounded by a substantial band of trees to the western side and by a mature hedgerow to the north.
- 2.3 The site lies within land allocated for development through the Cherwell Local Plan 2011-2031 (Part 1) as a new zero carbon, mixed-use development. This area is known as 'North West Bicester' and its allocation is secured by Policy Bicester 1. The site lies towards the south eastern corner of the North West Bicester allocation, just to the north of Middleton Stoney Road and to the west of Howes Lane. **Appendix CBC2** provides an extract of the interactive policies map of the Cherwell Local Plan 2011-2031 (Part 1). The map identifies the North West Bicester area for mixed use (housing and employment).
- 2.4 To the east of the site lies Howes Lane, beyond which are existing residential areas to the western side of Bicester formed largely of two storey red and buff brick properties in short terraces, semi-detached or detached forms. To the immediate south of the site lies the existing Axis J9 development, comprising the 14 No. commercial units of Phases 1 and 2 situated along Empire Road.

3. DEVELOPMENT PROPOSED

- 3.1 The development proposed comprises 5 commercial units across 3 separate buildings. The site would be accessed along the existing Empire Road and a stretch of the strategic link road (SLR), as a realignment of Howes Lane, would be constructed to the immediate east of the units. This would allow for more direct access to the site once the SLR is completed. A pedestrian route connecting eastwards to Howes Lane is also proposed, along with a crossing of Howes Lane to adjoin with the existing public footpath to the opposite side.
- 3.2 The units would be arranged with the 3 smaller premises contained within one building towards to the south of the central service road and the 2 larger independent units to the north of this road. Each of the units would have their own car parking areas and delivery/service yard spaces suitable for HGV movements.
- 3.3 Units 1-3, the smaller units to the south, have floor areas between 1,867sqm and 2,054sqm GEA and are contained within a building with a maximum height of 13.6m. Unit 4 has a floor area of 4,956sqm GEA and a height of 15.15m, and Unit 5 has a floor area of 4,030sqm GEA and a height also of 15.15m.
- 3.4 The proposed development also incorporates 40% green infrastructure with the retention of trees and hedgerows to the site boundaries, 10m buffer strips containing landscaped bunds (of a height between 1-3m), and sustainable drainage attenuation features.
- 3.5 The buildings are proposed to meet BREEAM 'Very Good' standard and to meet True Zero Carbon requirements. They have been designed to follow the same general approach as those on the completed Axis J9 Phases 1 and 2 development to the south.

4. PLANNING HISTORY

4.1 The following planning history for the site is of relevance to this appeal:

14/01675/OUT

OUTLINE: Erection of up to 53,000sqm of floor space to be for B8 and B2 with ancillary B1 (Use Classes) employment provision within two employment zones covering an area of 9.45ha; parking and service areas to serve the employment zones; a new access off the Middleton Stoney Road (B4030); temporary access off Howes Lane pending the delivery of the realigned Howes Lane; 4.5ha of residential land; internal roads, paths and cycleways; landscaping including strategic green infrastructure (G1); provision of sustainable urban systems (SuDS) incorporating landscaped areas with balancing ponds and swales. Associated utilities and infrastructure.

Application Refused, but Allowed at appeal

17/00455/HYBRID

HYBRID (part full & part outline): (1) Full – construction of a temporary vehicular and pedestrian access (including footway along Howes Lane), permanent highway works (part of proposed realigned Howes Lane) and pedestrian link to Howes Lane; (2) Outline – residential development, including landscaping, public open space, vehicular and pedestrian access.

Application Permitted

17/01090/OUT

OUTLINE: Development of B1, B2 and B8 (Use Classes) employment buildings, including landscaping; parking and service areas; balancing ponds and swales; and associated utilities and infrastructure. Construction of a new access off Middleton Stoney Road (B4030); temporary access off Howes Lane; internal roads, footways and cycleways

Application Permitted

19/00349/REM

RESERVED MATTERS to 14/01675/OUT: Layout, scale, appearance and landscaping details for Phase 1 of the employment development (21,684sqm flexible B1c/B2/B8 floorspace) and earthworks for Phase 2 of the employment development (pursuant to the Amended Appeal Consent)

Application Permitted

19/00347/OUT

MINOR MATERIAL AMENDMENT to 14/01675/OUT: Vary conditions 6, 7, 8, 9 and 10 to refer to updated parameter plans and temporary access plan; variation of condition 14 to enable delivery of employment development in full in advance of strategic link road; and amendment of condition 20 to reflect removal of temporary access onto Howes Lane

Application Permitted**20/02454/REM**

RESERVED MATTERS to 19/00347/OUT: Layout, scale, appearance and landscaping details for Phase 2 of the employment development (23,226sqm flexible B1c and/or B2 and/or B8 floorspace), associated utilities and infrastructure and swale (SuDS) and strategic green infrastructure landscaping.

Application Permitted**20/03199/OUT**

MINOR MATERIAL AMENDMENT to 19/00347/OUT: Variation of condition 13 (extent of employment development usage) of 19/00347/OUT – to enable up to 85% of the commercial site to be occupied for Use Class B8 in respect of the site

Application Permitted

- 4.2 The employment area granted planning permission through applications 14/01475/OUT, 19/00349/REM and 20/02454/REM equates to around 11.4 hectares of land, including the access road and immediately surrounding planting areas.

5. THE POLICY POSITION

- 5.1 Under Section 38(6) of the Planning and Compulsory Purchase Act 2004, applications and appeals are to be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 5.2 The development plan comprises:
1. Cherwell Local Plan 2011-2031 (Part 1) (CLPP1). Policies mentioned in the Decision Notice are SLE1, SLE4, ESD15, Bicester 1 and INF1.
 2. 'Saved' policies within the Cherwell Local Plan 1996 (CLP 1996). The relevant policy mentioned in the Decision Notice is C31.
 3. Cherwell Local Plan 2011-2031 (Part 1) Partial Review - Oxford's Unmet Housing Need. There are no relevant policies in this Plan.
- 5.3 Other material considerations include:
1. North West Bicester Supplementary Planning Document 2016 (NWB SPD).
 2. Developer Contributions Supplementary Planning Document 2018 (DC SPD).
 3. National Planning Policy Framework 2021 (NPPF).
 4. Planning Practice Guidance (PPG)

Cherwell Local Plan 2011-2031

- 5.4 The strategy for the distribution of development is summarised by the following extracts of the Cherwell Local Plan 2011-2031 (Part 1) (CLPP1). On page 29, the spatial strategy states

Most of the growth in the District will be directed to locations within or immediately adjoining the main towns of Banbury and Bicester.

- 5.5 With regard to economic development, the strategy for the distribution of employment development is set out on page 10 onwards. The strategy states

"The Local Plan seeks to ensure that there is a supply of employment land to meet the Needs of the District for the plan period.....The Local Plan identifies nine strategic employment areas to meet employment needs over the plan period. These are:...."

5.6 The appeal site is not one of the strategic employment sites listed in Table 1. It is located outside the land identified for employment in the Masterplan for NW Bicester.

5.7 Page 28 deals with the Vision for Cherwell District and it states;

We will develop a sustainable economy that is vibrant and diverse with good transport links and sound infrastructure, supported by excellent educational facilities. Our economy will grow to provide more diverse employment for our increasing population and reduce the need for our residents to travel outside the District for work.

5.8 With regard to the strategy for housing, page 12 states:

“Building Sustainable Communities

xiv. The Plan seeks to boost significantly the supply of housing and meet the objectively assessed need for Cherwell identified in the Oxfordshire Strategic Housing Market Assessment (SHMA) 2014 – some 1,140 dwellings per annum or a total of 22,800 from 2011 to 2031. Policy BSC 1 provides for 22,840 homes over the Plan period and sets the overall distribution of development across the District. Over the Plan period 10,129 homes are to be provided at Bicester, some 7,319 homes at Banbury and 5,392 homes in the rural areas including Kidlington. A further 2,707 homes are allocated at the North West Bicester Eco Town (Bicester 1) but are not presently expected to be delivered until after 2031.”

5.9 The Strategic Objectives of the CLPP1 include SO 7 which confirms the importance of the requirement to *“meet the housing needs of all sections of Cherwell’s communities”*.

5.10 Policy PSD1 confirms that *“applications that accord with the policies of this Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise.”*

5.11 Policy SLE1 sets out the Council's approach to employment development and that employment development on new sites allocated in the Plan will be of the type specified within each site policy. The supporting text to Policy SLE1 confirms, at paragraph B.46, that the *“new allocated employment sites in Banbury and Bicester*

along with existing employment sites are considered to ensure a sufficient employment land supply.”

5.12 Policy SLE4 requires new developments to provide financial and/or in-kind contributions to mitigate the transport impacts of development. Similarly, Policy INF1 places a requirement on development proposals to demonstrate that infrastructure requirements can be met, including provision for transport, education, health, social and community facilities.

5.13 Policy Bicester 1 sets out the requirements for the delivery of the strategic allocation at North West Bicester. The overall description of development here is a zero carbon mixed use development including 6,000 homes. Policy Bicester 1 provides a clear aim, as follows:

“Planning permission will only be granted for development at North West Bicester in accordance with a comprehensive masterplan for the whole area to be approved by the Council as part of a North West Bicester Supplementary Planning Document.”

5.14 In respect of employment, Policy Bicester 1 identifies that an area of at least 10 hectares of business premises focused at Howes Lane and Middleton Stoney Road, employment space in the local centre hubs and, as part of the mixed-use development are to be provided. Within this, the business park to the south eastern corner is anticipated to generate between 700 and 1,000 jobs in Use Classes B1, B2 and B8 early in the Plan period.

5.15 In relation to housing, it is confirmed that up to 6,000 new homes are to be delivered across the allocation, with 3,293 of these within the Plan period up to 2031. A further 2,707 homes are therefore anticipated to be delivered after the Plan period, i.e. post 2031.

North West Bicester Supplementary Planning Document 2016 (NWB SPD)

5.16 The SPD expands upon and supports Policy Bicester 1, setting out how the strategic allocation at North West Bicester should be implemented. The SPD identifies the

accompanying masterplan as a key element, which illustrates the essential components of the development strategy for the North West Bicester allocation. The masterplan was prepared as a collaborative effort between the Eco Bicester Project team (including representatives from Cherwell District Council, Bicester Town Council and Oxfordshire County Council), the Environment Agency, Natural England, Highways Agency and the Homes and Communities Agency. Other agencies such as the local wildlife trust, Bicester Vision and the Chamber of Commerce were also involved in the masterplan's preparation.

5.17 Section 4 of the NWB SPD refers to development requirements and principles, and states the following:

“4.5 Cherwell District Council is committed to ensuring comprehensive development through masterplanning. In order to ensure a comprehensive development, all planning applications will be required to be in accordance with the SPD masterplan shown in Figure 10.

4.6 The masterplan indicates the key development components of the masterplan. It will be used to guide the preparation of development proposals and deliver key components of the masterplan. The masterplan is supported by surveys and technical information and shows:

- *The site boundary;*
- *Proposed land uses;*
- *Existing woodlands and hedgerows, watercourses and ponds;*
- *Proposed woodlands and hedgerow buffers;*
- *Water corridor buffer zones;*
- *A nature reserve and country park;*
- *A burial ground;*
- *Site access points from the highway network; indicative primary and secondary routes (roads and street layout); and*
- *The proposed realignment of Howes Lane.” [emphasis added]*

5.18 The full masterplan included at Figure 10 of the SPD, along with its key are included at **Appendix CBC3**. An extract showing the appeal site is included here, at Figure 5.1.



Figure 5.1: Extract from North West Bicester Masterplan

- 5.19 The SPD further reiterates the importance of the masterplan in the consideration and determination of subsequent applications for planning permission across the strategic allocation, with Development Requirement 1 being ‘Delivering the masterplan’, and stating the following:

“4.10 In order to ensure comprehensive development, planning applications should be consistent with, and mindful of, the masterplan requirements set out below.

4.11 Planning applications will be:

- Determined in accordance with the masterplan framework in Figure 10 of the SPD”.*

National Planning Policy Framework (2021)

- 5.20 The National Planning Policy Framework (NPPF) is a material consideration and sets out the Government's clear intentions for the planning system and how these are to be applied.
- 5.21 The overarching objective of the NPPF is to achieve sustainable development, with this being comprised of an economic objective, a social objective and an environmental objective. Paragraph 9 confirms that these objectives should be delivered through the preparation and implementation of plans and the application of policies in the Framework.
- 5.22 Paragraph 11 contains the presumption in favour of sustainable development, which confirms that developments that accord with an up-to-date Development Plan should be approved without delay. It also states that where there are no relevant policies, or the policies most important to the determination of a proposal are out-of-date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
- 5.23 Paragraph 12 then confirms that this presumption does not change the statutory requirement that the Development Plan is the starting point for decision-making and that development that conflicts with an up-to-date Development Plan should not normally be granted (emphasis added). The only exception to this is where material considerations indicate otherwise.
- 5.24 The importance of the planning system being plan-led is reiterated at Paragraph 15. With Paragraph 16 then stating that plans should be prepared with the objective of contributing towards sustainable development, and that they should be prepared positively in an aspirational but deliverable way.
- 5.25 Paragraph 60 confirms the Government's clear objective of significantly boosting the supply of homes and the importance of ensuring that a sufficient amount and variety of land can come forward where it is needed.
- 5.26 Paragraph 81 states that decisions "*should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the*

need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.”

- 5.27 Land is also required to be used efficiently, and paragraph 122 indicates that policies and decisions should reflect changes in the demand for land and be informed by regular reviews of both land availability and land allocations.

6. ANNUAL MONITORING REPORT (2021)

- 6.1 The latest Annual Monitoring Report (2021) (AMR) states that the district has seen a considerable gain in employment floorspace completed over 2020/21. For example, at Bicester during 2020/21 there were 53,800.1m² employment completions on allocated land and 22,211m² employment completions on non-allocated land. Bicester contributed most to the total employment commitments (71.9%, or 33,9904.9m²). Between 1 April 2015 and 31 March 2021, all 10 hectares of land allocated for employment development at the North West Bicester site have planning permission and construction has started.
- 6.2 Paragraph 5.23 advises that since 2015 the level of housing completions in the District has remained high, with four of the last five years exceeding the annualised Local Plan requirement of 1,142 per annum. Paragraph 5.25 then states that in 2020/21, 40% of housing completions were at Bicester. Table 14 shows that the North West Bicester allocation had delivered 271 homes to date.
- 6.3 The Annual Monitoring Report states that Cherwell District has a 3.5 year housing land supply for the period 2022-2027. This means that the Council is not currently complying with national policy on housing land supply set out in the NPPF.

7. FIRST REASON FOR REFUSAL

7.1 The Decision Notice states:

“The proposed development introduces unanticipated commercial uses onto a site identified for housing via the Masterplan included within the North West Bicester Supplementary Planning Document 2016. The development proposed would be incompatible with the existing residential uses to the east of Howes Lane and would have a detrimental impact upon residential amenity of these nearby residential occupiers. The proposal is therefore not considered to be sustainable development and is contrary to Policies SLE1 (in particular paragraph 6, bullet point 7 (with respect to land uses and residents only), ESD15 (in particular bullet points 3 and 11 (but not related to privacy, natural lighting, ventilation or indoor or outdoor space)) and Policy Bicester 1 (paragraph 2 and bullet points 1 and 25 under the section titled ‘Key site specific design and place shaping principles’) of the Cherwell Local Plan Part 1 2011-2031, Policy C31 of the Cherwell Local Plan 1996, the North West Bicester Supplementary Planning Document 2016 and the National Planning Policy Framework.”

7.2 This reason for refusal can be broken down into two parts. The first part relates to the principle of the proposed commercial development on the site and its conflict with the spatial strategy. The second part relates to the impacts of the proposed development on the amenity of nearby residential properties and occupiers. The Council is no longer defending the second part of this reason for refusal and this has been agreed with the Appellant via the Statement of Common Ground.

7.3 The remainder of the Council’s Hearing Statement will therefore deal only with the first part of the refusal reason.

Spatial Strategy

7.4 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹. This is taken further by the NPPF which, at Paragraph 12, confirms that:

¹ S.38(6) of the Planning and Compulsory Purchase Act 2004 and NPPF paragraph 47.

“The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.” [emphasis added]

- 7.5 The appeal site lies to the western side of Bicester and towards the south eastern corner of the North West Bicester Eco-Town strategic allocation. Policy Bicester 1 of the CLPP1 states that North West Bicester is allocated for a new zero-carbon mixed use development including 6,000 homes. The North West Bicester allocation is shown striped blue and pink on the adopted Local Plan Policies Map (extract at **Appendix CBC2**).
- 7.6 Policy Bicester 1 then states that planning permission will only be granted for development at North West Bicester in accordance with a comprehensive masterplan for the whole area to be approved by the Council as part of a North West Bicester Supplementary Planning Document.
- 7.7 The North West Bicester Supplementary Planning Document (NWB SPD) was subsequently approved and adopted by the Council, in compliance with Policy Bicester 1, in February 2016. The NWB SPD contains a site wide masterplan (at its Figure 10) and development must therefore be brought forward in accordance with that masterplan in order to comply with Policy Bicester 1 of the CLPP1.
- 7.8 The masterplan (included at **Appendix CBC3**) identifies mixed-use development within the strategic allocation. This includes housing, green infrastructure, commercial/business uses, schools, retail and social/community uses. Commercial/business uses are concentrated within the south eastern portion of the allocated site, together with additional areas associated with the local centre hubs, as per Policy Bicester 1. Housing development is spread across the allocation and interspersed with other uses, including green infrastructure.

- 7.9 Figure 7.1 below shows the approximate location of the appeal site overlaid on the approved masterplan. The appeal site is allocated for a mixture of housing and green infrastructure development, together with a band for proposed woodland planting and a hedgerow buffer.
- 7.10 The portion of the appeal site lying immediately adjacent to the allocated commercial/business uses is shown as proposed woodland and hedgerow buffer. This is an intentional allocation in order to minimise any impacts on residential occupiers, arising from the adjacent commercial uses. This is allowed for via the implemented outline permission for the site (20/03199/OUT) the land use parameter plan for which (17023/TP/102 Rev A) identifies strategic green infrastructure between Plot 3 (employment development zone) and Plot 1 (residential development zone). The marking of the appeal site as a combination of both housing and green infrastructure further acknowledges that robust planting within and around the proposed housing should be brought forward. Green infrastructure will assist creating a verdant and pleasing residential environment, but also in providing a degree of separation to the proposed new primary school to the immediate north and existing commercial development to the south.



Figure 7.1: Appeal site overlain on NWB SPD masterplan

- 7.11 Therefore, in order to comply with Policy Bicester 1 development proposed at the appeal site should comprise residential accommodation with green infrastructure both within and surrounding the built development. Outline planning permission has been granted for residential development across the appeal site by virtue of the allowed appeal on application 14/01675/OUT (Appeal Ref: APP/C3105/W/16/3163551). This allows for Reserved Matters applications for the second phase (and onwards) of residential development to be made to the Council within a period of five years from the date of the appeal decision. Appeal decision and site plan attached at **Appendix CBC4**.
- 7.12 The appeal proposal seeks full planning permission for the erection of 5 commercial units contained within 3 buildings. The units would be accessed via the existing Empire Road through the previously approved and constructed commercial uses of Axis J9 Phases 1 and 2, although the proposal also includes the provision of part of the realigned Howes Lane (the SLR) immediately adjacent to the units, which would form the main access route once the realignment is completed.
- 7.13 The proposal therefore seeks commercial development on land allocated for housing, green infrastructure and woodland and hedgerow buffers, in clear contravention of the Development Plan. Planning law therefore dictates that the planning permission should not be granted unless material considerations indicate otherwise.
- 7.14 Policy SLE1 of the CLPP1 supports employment at Bicester where it meets the specified criteria. The first of these being that the site should be within the built up limits of the settlement, unless on an allocated site. As the site is not allocated for employment purposes, the proposal fails to comply with this criteria of Policy SLE1. It does not make efficient use of previously-developed land. Nor does the proposal satisfy the SLE1 paragraph that deals with the criteria for non-allocated employment sites in rural areas. If the site were not allocated for any purpose, the proposed development would therefore conflict with Policy SLE1, a clearly up-to-date policy of the Development Plan.

Material Considerations

- 7.15 The Council acknowledges that additional employment opportunities across the North West Bicester site is a benefit of significant weight. However, this benefit must be balanced against other factors.

- 7.16 The Appellant's claim a total of 214 to 416 new jobs would be created by the development proposed. These figures are not specifically contested by the Council, however, the Appellant's assertion, within their Statement of Case, that the existing commercial development at Axis J9 Phases 1 and 2 amounts to only 9.6 hectares of land is questioned. The Appellant's statement refers to this figure being a net site area, whereas an approximate calculation of the gross site area covered by existing employment uses at Axis J9 Phases 1 and 2 (i.e. including the necessary access roads and immediately surrounding landscaping incorporated to 'soften' the development) shows around 11.4 hectares of land has been delivered for this use.
- 7.17 Policy Bicester 1 states that a minimum of 10 hectares of land area should be brought forward across the North West Bicester allocation for business premises, with this to be focused at Howes Lane and Middleton Stoney Road, and at local centre hubs. The provision of around 11.4 hectares of employment land at the Howes Lane/Middleton Stoney Road site (Axis J9) has already ensured that this minimum target is met without any reliance upon the local centre hubs. As the local centre hubs are brought forward, the business and commercial land delivered will further increase.
- 7.18 The appeal site is allocated in the development plan for residential development interspersed with green infrastructure and has previously been shown, by virtue of the Outline permission, to be able to accommodate at least 150 new dwellings (market and affordable). Furthermore, the Council cannot currently demonstrate a 5 year supply of deliverable housing sites, with a supply of only 3.5 years being evidenced in the AMR. There is also a significant shortage of affordable housing across the District.
- 7.19 The loss of this strategic housing site is therefore a harm that attracts substantial weight.
- 7.20 Whilst the lack of a 5 year housing land supply would render the policies of the Development Plan concerned with limiting, restricting and controlling *residential* development to be out-of-date, it does not result in policies relating to employment provision or promoting residential development to be out-of-date. Indeed the contrary must be true in order to attempt to meet the housing target and deliver a 5 year supply of housing land. In this case, the policies which are most important for determining the application are not out-of-date and the tilted balance in respect of NPPF Paragraph 11 is not therefore engaged. NPPF Paragraph 12 is engaged.

- 7.21 The Appellant claims that the evidence upon which the allocation of the North West Bicester site was based, and the wording of Policy Bicester 1, is now too old and that market conditions have changed significantly over the last 8 years. Whilst changes to the market have clearly been experienced, there has not been a reduction in the requirement for new homes to be provided within Cherwell District. Rather, a shortfall in the delivery of houses has become apparent, continuing and is worsening. The importance of protecting sites which have been allocated for residential development and to allow them to come forward for their intended purpose has therefore increased during the Plan period rather than diminished.
- 7.22 The Council is in the process of reviewing the Local Plan, with the Regulation 18 consultation due imminently. The Local Plan Review will assess the current and anticipated needs of the District and determine how policies of the Development Plan may need to be amended, or not, in order to ensure that these needs can be met. The appeal proposal to use land allocated for residential use for commercial development seeks to circumvent the plan-led system and 'guess' what the requirements of the District are likely to be for the period up to 2040, and dictate where types of development should be brought forward.
- 7.23 The Appellant alleges that the future residential development of the site would be unviable and that such a form of development is not therefore deliverable. The Council is aware that viability has been raised elsewhere across NW Bicester but to date, the Council does not consider that this is to such a degree that would threaten deliverability. The Council does not consider this matter to be an overriding issue with respect to this scheme and has not independently reviewed or verified the submission made in respect of this appeal. It does not therefore accept its conclusions in the absence of this.
- 7.24 The Report does not however, provide any comparable evidence to show the viability of the proposed commercial scheme, or evidence of how a scheme with a greater number of residential properties (more than 150) would compare. Without the appropriate opportunity for the Council (and other stakeholders) to independently review and assess the Viability Report submitted only at appeal stage, this evidence should be given only limited weight in the consideration of this proposal.

- 7.25 Irrespective of the requirement for the Viability Report to be independently reviewed, it does not prove that residential development in accordance with Policy Bicester 1 could not be deliverable across the site within a 5 year period especially in the absence of an assessment of the transport impact of a residential development on this site as to whether the impact would be severe (similar to the way transport impact was assessed with respect to the appeal scheme). As new build developments move towards higher energy efficiency and minimal carbon usage, in order to comply with increasing standards set within Building Regulations (net zero requirement anticipated in 2025), there is little doubt that the cost for such elements will begin to reduce in coming years. In addition, achieving net zero will become an integral part of all new developments, rather than a site abnormal.
- 7.26 There is no evidence to prove that the delivery of the appeal site for residential development within the next 5 years, or Plan period, is not achievable. With reference to Paragraph 122 of the NPPF, there is no evidence of an unmet need for employment development across the District, but there is a clear and pressing unmet need for residential development, as evidenced by the current 3.5 years supply of housing land.

Benefits / Harms

- 7.27 The benefits relating to the proposed development are summarised as:
- Job creation – this benefit is tempered by the large amount of employment floorspace recently built and committed at Bicester (see the AMR), the provision of sufficient employment land at the North West Bicester allocation and the requirement for further employment uses to be delivered as part of local centre hubs. Significant weight. The weight of this benefit is consistent with paragraph 81 of the NPPF.
- 7.28 The harm that would arise from the development are summarised as:
- Conflict with the spatial strategy – the substitution of land allocated for residential development (market and affordable housing) and green infrastructure with an alternative form of development. This substitution is particularly harmful given the shortfall in housing delivery to meet identified need and a shortfall in affordable housing. Substantial weight.

Conclusion

- 7.29 In respect of the first reason for refusal, the development would cause substantial harm to the spatial strategy of the Development Plan. The proposed development comprises commercial/employment uses on land allocated for residential development and green infrastructure provision. Policy Bicester 1 states that development at the North West Bicester Eco Town allocation is only to be granted permission in accordance with a comprehensive masterplan and the approved North West Bicester Supplementary Planning Document. The proposed development would conflict with Policies Bicester 1 and SLE1 of the Cherwell Local Plan (Part 1) and the North West Bicester SPD.
- 7.30 The benefits of the proposed development attract significant weight but are not unusual. On the other hand, the harm that would arise as a result of the development must be attributed substantial weight.
- 7.31 In accordance with planning law and Paragraph 12 of the National Planning Policy Framework (2021), material considerations (benefits and harms) do not indicate that the Development Plan should not be followed. Therefore, permission should be refused and the appeal should be dismissed.

8. SECOND REASON FOR REFUSAL

- 8.1 The Decision Notice states:

“In the absence of a satisfactory completed S106 or other planning obligation, the Local Planning Authority is not convinced that the necessary infrastructure required both on site and off site as a result of this development to mitigate the impact of the development will be provided. This would be contrary to Policies INF1, SLE4 and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester Supplementary Planning Document 2016, the Council’s Developer Contributions Supplementary Planning Document (February 2018) and the advice within the National Planning Policy Framework.”

- 8.2 The second reason for refusal therefore relates to the absence of a signed legal undertaking to mitigate the impacts of the development on existing community services and infrastructure serving the development. This reason for refusal is capable of being

resolved by completing a suitably worded Section 106 agreement to address the range of matters listed in Appendix 1 of the Officer's Committee Report. In summary these are:

- Public Art;
- Biodiversity offsetting;
- Training & Employment;
- Monitoring requirements;
- Link to major infrastructure agreements;
- Public Transport (bus services);
- Public Transport (bus stop infrastructure);
- Traffic Regulation Order (if needed);
- Travel Plan monitoring;
- Public Rights of Way;
- S278 Agreement for crossing of Howes Lane;
- Traffic Routing Agreement;
- CDC & OCC Monitoring fee.

8.3 If a suitable Section 106 agreement is not completed, the proposed development will be in conflict with Policies INF1, SLE4 and Bicester 1 of the Cherwell Local Plan (Part 1) 2011-2031 and Government guidance contained within Paragraphs 34, 56 and 57 of the National Planning Policy Framework 2021.

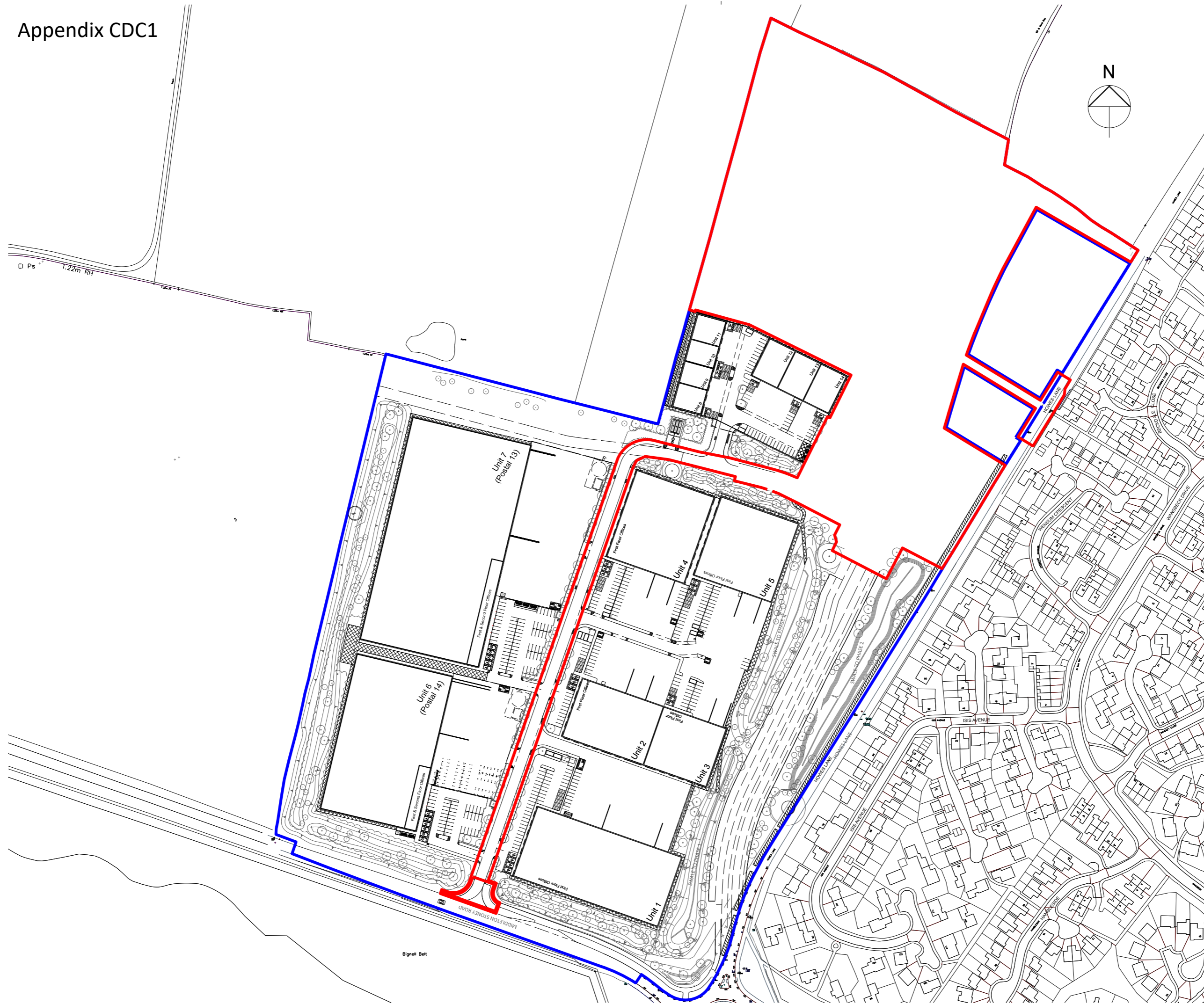
9. CONCLUSION

- 9.1 In respect of the first refusal reason, the proposal constitutes the loss of land allocated for residential development and green infrastructure provision. The site has been allocated for residential development and green infrastructure through the Cherwell Local Plan (Part 1) 2011-2031. Policy Bicester 1 allows for the development of the North West Bicester site only in accordance with a comprehensive masterplan and the details of the approved North West Bicester Supplementary Planning Document. It is anticipated that the wider North West Bicester Eco Town allocation will deliver 3,293 homes across the Plan period and a further 2,707 homes after 2031, to bring the total across the allocation to 6,000 new homes. The proposed development would conflict with both the masterplan and the approved NWB SPD and is contrary to Policy Bicester 1. It would also conflict with the criteria for granting employment development as set out in Policy SLE1 of the CLPP1.
- 9.2 At the moment there is a significant shortfall of housing land supply and affordable housing in the District. Cherwell District Council is unable to demonstrate a 5 year supply of housing sites, with only 3.5 years currently available. The loss of this allocated housing site would undermine the ability of the development plan to reduce the shortfall and fail to assist in meeting the identified need for additional housing across the District. It has not been demonstrated that the site is unachievable for residential development for the remainder of the Plan period.
- 9.3 In terms of material considerations, job creation delivered by the appeal proposal is a benefit of significant weight. Even so, the district has seen a considerable gain in employment floorspace completed over 2020/21, much of it at Bicester (completed and committed). Overall, the proposal causes substantial conflict with the spatial strategy of the Development Plan.
- 9.4 Despite the Council's current housing land supply position, i.e. less than a 5 year housing land supply, the policies most relevant to the determination of this proposal are not out-of-date, as they seek to promote the delivery of residential development, and the 'tilted balance' or presumption is not therefore engaged.
- 9.5 At present, with the lack of an agreed S106 obligation, the proposed development would fail to provide sufficient and necessary mitigation to address the impacts of the

development, and would therefore also be contrary to Policies INF1 and SLE4 of the Cherwell Local Plan (Part 1) 2011-2031 and the requirements of the National Planning Policy Framework in this regard.

- 9.6 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise². The proposed development is contrary to policies Bicester 1 and SLE1 of the Cherwell Local Plan (Part 1) 2011-2031 and the North West Bicester Supplementary Planning Document. With regard to paragraph 12 of the National Planning Policy Framework (2021), material considerations (benefits and harms) do not indicate that the Development Plan should not be followed. Therefore, permission should be refused and the appeal should be dismissed.

² S.38(6) of the Planning and Compulsory Purchase Act 2004 and NPPF paragraph 47.



NOTES

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Rev	Description	Chk	Date
F	Revision to Howes Lane crossing	CS	09/03/2022
E	Red line revised for drainage and cycle provision changes	CS	08/03/2022
D	Units 6 - 11 omitted	CS	04/03/2022
C	Site Boundary Updated	SM	02/09/2021
B	Site Boundary Updated	CS	02/09/2021
A	Site Boundary Updated	CS	31/08/2021

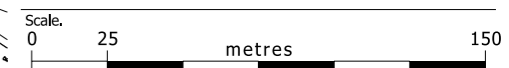
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 enquiries@cornisharchitects.com
 www.cornisharchitects.com



Project Title:
PHASE 3 AXIS J9 BICESTER

Drawing Title:
SITE LOCATION PLAN

Drawing Status:
TOWN PLANNING



Drawn By	Scale	Date	Chk'd By
S K	1:2500 @ A3	16/08/2021	C S



Drawing No.
20019 - TP - 001 Rev.
F

NOTES

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Subject to Statutory Approvals.

Subject to Highways Development.

- Parameters Boundary
- Planning Site Boundary
- Ownership Boundary
- Notional Boundary
- Hedgerow Protection
- SLR License
- - - 2.5m high acoustic fence
- - - 1.5m high timber post and rail fence

R	Width of cycle lane to west side of SLR increased to 3m, grass verge to west side of SLR, width of link to Howes Lane increased to 3m, Units 1 - 3 cycle parking relocated. Surface finish to path and cycle lane updated.	CS	04/05/2022
P	Revision to Howes lane crossing	CS	09/03/2022
N	Unit 1 - 3 refuse stores relocated. Red line adjusted to allow for four drain cycle paths increased to 3m wide. Provisions for cycles at Howes Lane crossing	CS	08/03/2022
M	Units 6 - 11 omitted	CS	04/03/2022
L	Unit 1 Cycle parking relocated closer to the building	SM	08/02/2022
K	Planning boundary updated to include howes lane crossing	SM	04/02/2022
J	Minor adjustments to radii.	SM	01/02/2022
H	Enhanced pathway to include cycle path & crossing point to Howes Lane.	SM	25/01/2022
G	Area Schedule Corrected	SK	02/11/2021
F	Site Boundary Updated	CS	02/09/2021
E	Site Boundary updated	CS	31/08/2021
D	Acoustic fences added	SK	20/08/2021
C	Sheet number amended. Road layout updated. Areas updated.	SK	16/08/2021
B	Paving around units 1-3 yards adjusted. Acoustic fence added and landscaping adjusted between units 10 and 11.	SK	29/07/2021
A	Units 6-11 moved further into the site to achieve 10m buffer to eastern site ownership boundary	SK	16/07/2021

Rev	Description	Chk	Date
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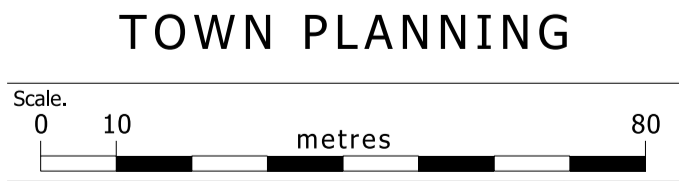
RIBA Chartered Practice

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Project Title: **PHASE 3 AXIS J9 BICESTER**

Drawing Title: **PROPOSED SITE PLAN**

Drawing Status: **TOWN PLANNING**



Drawn By: S K | Scale: 1:1000 @ A1 | Date: 08/07/2021 | Chk'd By: C S

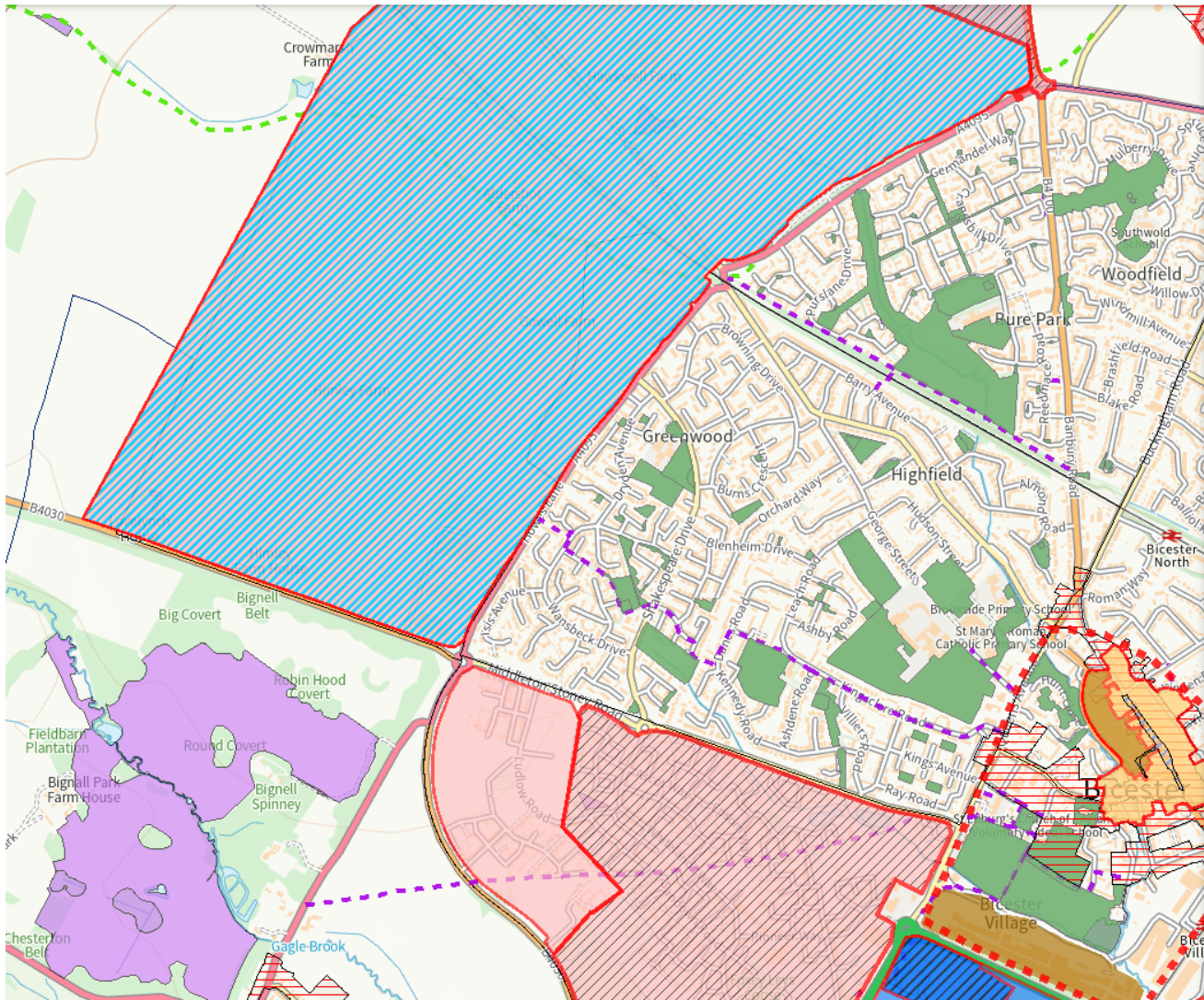
ALBION LAND

Drawing No: **20019 - TP - 002** | Rev: **R**

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UNIT	Ground Floor GEA sm	Ground Floor GEA sf	First Floor GEA sm	First Floor GEA sf	Second Floor GEA sm	Second Floor GEA sf	Total Unit GEA sm	Total Unit GEA sf	Ground Floor GIA sm	Ground Floor GIA sf	First Floor GIA sm	First Floor GIA sf	Second Floor GIA sm	Second Floor GIA sf	Total Unit GIA sm	Total Unit GIA sf	Car Parking
1	1830	19698	224	2411	0	0	2054	22109	1759	18934	195	2104	0	0	1954	21038	23
2	1665	17922	202	2174	0	0	1867	20096	1613	17362	179	1929	0	0	1792	19291	21
3	1717	18482	211	2271	0	0	1928	20753	1650	17761	183	1973	0	0	1833	19734	21
4	4412	47491	272	2928	272	2928	4956	53346	4278	46048	238	2558	238	2558	4753	51165	53
5	3552	38234	478	5145	0	0	4030	43379	3433	36953	423	4553	0	0	3856	41506	42
TOTAL	13176	141826	1387	14930	272	2928	14835	159684	12733	137058	1219	13118	238	2558	14189	152734	160



Layer List	
<input checked="" type="checkbox"/>	Bicester Policies
<input checked="" type="checkbox"/>	Primary Shopping Frontage
<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Key Proposals Bicester
<input checked="" type="checkbox"/>	Tourism Development
<input checked="" type="checkbox"/>	Bure Place Redevelopment
<input checked="" type="checkbox"/>	Existing Town Centre
<input checked="" type="checkbox"/>	Town Centre Extension (Area of Search)
<input checked="" type="checkbox"/>	Existing Retail Parks (Indicative)
<input checked="" type="checkbox"/>	Approved Housing Sites
<input checked="" type="checkbox"/>	Mixed Use (Housing and Employment)
<input checked="" type="checkbox"/>	Strategic Housing Sites
<input checked="" type="checkbox"/>	Existing Strategic Employment Sites (Indicative)
<input checked="" type="checkbox"/>	Approved Employment Sites

Appendix CDC2

Figure 10: North West Bicester Masterplan – Masterplan Framework



Appeal Decision

Inquiry Held on 12 and 13 September 2017

Site visit made on 11 September 2017

by P W Clark MA MRTPI MCI

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

Decision date: 19 December 2017

Appeal Ref: APP/C3105/W/16/3163551

Land off Howes Lane and Middleton Stoney Road, Bicester, Oxfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Albion Land Ltd against the decision of Cherwell District Council.
 - The application Ref 14/01675/OUT, dated 2 October 2014, was refused by notice dated 23 June 2016.
 - The development proposed is the erection of up to 53,000 sq m of floor space to be for B1, B2 and B8 (use classes) employment provision within two employment zones covering an area of 9.45 ha; parking and service areas to serve the employment zones; a new access off the Middleton Stoney Road (B4030); temporary access off Howes Lane pending the delivery of the realigned Howes Lane; 4.5 ha of residential land; internal roads, paths and cycleways; landscaping including strategic green infrastructure (GI); provision of sustainable urban systems (SUDS) incorporating landscaped areas with balancing ponds and swales; associated utilities and infrastructure.
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 28 November 2017.

Decision

1. The appeal is allowed and planning permission is granted in outline for the erection of up to 53,000 sq m of floor space to be for B1, B2 and B8 (use classes) employment provision within two employment zones covering an area of 9.45 ha; parking and service areas to serve the employment zones; a new access off the Middleton Stoney Road (B4030); temporary access off Howes Lane pending the delivery of the realigned Howes Lane; 4.5 ha of residential land; internal roads, paths and cycleways; landscaping including strategic green infrastructure (GI); provision of sustainable urban systems (SUDS) incorporating landscaped areas with balancing ponds and swales; associated utilities and infrastructure at Land off Howes Lane and Middleton Stoney Road, Bicester, Oxfordshire in accordance with the terms of the application, Ref 14/01675/OUT, dated 2 October 2014, as subsequently amended, subject to the thirty-three conditions appended to this decision.

Procedural matters

2. The application was made in outline with all matters reserved apart from some details of access to the site. Details of access within the site, appearance, landscaping, layout and scale are reserved for subsequent consideration and so

- do not fall to be considered within this appeal except in so far as they are specified within parameters plans, for reasons explained further below.
3. The application originally proposed the erection of up to 53,000 square metres of B8 and B2 with ancillary B1 (use classes) employment provision within two employment zones covering an area of 9.45 ha, parking and service areas to serve the employment zones, a new access off the Middleton Stoney Road (B4030), temporary access off Howes Lane pending the delivery of the realigned Howes Lane, 4.5 ha of residential land, internal roads, paths and cycleways, landscaping including strategic green infrastructure (GI), provision of sustainable urban drainage systems (SUDS) incorporating landscaped areas with balancing ponds and swales, associated utilities and infrastructure.
 4. It was amended during its consideration by the Council and again during the appeal process. The amendments were the subject of consultation as widespread as that on the original application and so nobody would be prejudiced by my basing the decision on the revised proposal. The description in the headings above and in the decision is that provided in a letter from Tim Waring, Director of Quod, the appellant's agents, to Cherwell District Council dated 11 April 2017 and is that also used in the Unilateral Undertaking reported below.
 5. For the avoidance of doubt, the drawings on which this decision has been based are as follows:
 - Seymour Harris Architecture drawing number AP(0)001 dated 20-02-14 Red Line Boundary Relative to Existing Survey
 - Seymour Harris Architecture drawing number AP(0)002 revision L dated 14-01-14 Master Plan
 - David Tucker Associates drawing number 14042-30 revision B dated July 17 Highway Infrastructure Middleton Stoney Road Access (Inquiry document (ID) 7a)
 - David Tucker Associates drawing number 14042-32 revision E dated Sept 17 Highway Infrastructure prior to North West Bicester link road (ID 7b)
 - David Tucker Associates drawing number 14042-34 revision C dated Sept 17 Interim Residential Access (ID 7c)
 - David Tucker Associates drawing number 14042-25-2 revision a dated Sept 17 Highway Infrastructure Post North West Bicester link road (ID 7d)
 - David Tucker Associates drawing number 14042-45 revision f dated June 17 Residential Right Turn Lane Access from Strategic Link road (ID 7e).
 6. The application was accompanied by an Environmental Statement prepared by Framptons. In preparation for the Inquiry into this appeal, the Environmental statement was completely substituted by a new Environmental Statement prepared by Quod. In accordance with decisions of the courts¹, any parameter plan submitted with an Environmental Statement must be applied by condition,

¹ R v Rochdale MBC ex parte Tew and Others [1999] 3 PLR 74 and R v Rochdale MBC ex parte Milne [2000] EHW 650 (Admin)

if permission is granted, so as to establish an envelope within which the detailed design and discharge of reserved matters can proceed, irrespective of whether or not they would otherwise be required to make the development acceptable. These matters are therefore included for consideration within this appeal.

7. For the avoidance of doubt, the parameter plans on which this decision has been based are as follows:

- Chetwoods Architects drawing number 4216_SK_201 dated 22.03.17 Parameter Plan 01 Application site boundary
- Chetwoods Architects drawing number 4216_SK_202_ A dated 07.09.17 Parameter Plan 02_A Land Use (ID 8a)
- Chetwoods Architects drawing number 4216_SK_203_ A revision C dated 11.09.17 Parameter Plan 03 A Building Heights Plan
- Chetwoods Architects drawing number 4216_SK_204_ A revision A dated 07.09.17 Parameter Plan 04A Vegetation Parameters
- Chetwoods Architects drawing number 4216_SK_205_ A_ revision E dated 12.09.17 Parameter Plan 05 A Vegetation Retention and Removal Plan
- Chetwoods Architects drawing number 4216_SK_206_ A_ revision A dated 12.09.17 Parameter Plan 06 A Access and Circulation Plan.

8. These show:

- The application outline boundary
- Residential development zones (two plots marked C3 residential), Employment Development zones (plot 3 marked B1c/B2/B8 – employment, plot 4 marked B2/B8 and ancillary B1 offices – employment), zones of strategic green infrastructure, roads, a route of temporary access and access points into plots 1 and 2 shown indicatively
- Areas on both plots 1 and 2 for ridge heights of up to 12 and 16 metres above current site levels, a development plateau for plot 3 of 84.3m aod with roof ridges up to 14 metres above the development plateau and two development plateaux of 83 and 85 m aod on plot 4 with roof ridges up to 16 metres above the development plateaux
- Areas of dense native tree and shrub planting, areas of parkland landscape including swales, tree planting, native woodland shrub mix, pond and play spaces, areas of combined verge and swales with tree planting, areas of a reserved corridor for strategic bus route – buffer to existing retained hedgerows with intermittent tree planting and meadow grass, an area of hedgerow buffer with proposed native hedgerow to augment existing, areas of proposed hedgerow planting and areas of retained hedgerow planting
- Five trees to be retained (including those included in Tree Preservation Order TPO 13/2001), three trees to be removed, four lengths of trees and hedgerows to be retained and reinforced, two lengths of proposed

hedgerow planting, a length of vegetation already proposed for removal in application 14/01968/F and five lengths of hedgerow to be removed

- Pedestrian, cycling and vehicular access works including Strategic Link Road (application reference 14/01968/F in part), a 32m wide reserved corridor for Strategic Bus Route, three areas within which pedestrian access is to be formed, two areas within which residential vehicular access is to be formed and interim access works.
9. The proposal is accompanied by a signed and dated Unilateral Undertaking. In addition to the usual procedural, administrative and interpretative matters, the Unilateral Undertaking provides for:
- A Health contribution of £259.46 per dwelling up to a maximum of £38,918.67 paid in two instalments for the provision of a GP surgery to serve the development
 - A Police contribution of £151.30 per dwelling up to a maximum of £22,693.96 paid in two instalments towards the increase in capital costs of providing neighbourhood policing
 - A Community Facilities Build contribution of £775.12 per dwelling up to a maximum of £116,267.91 paid in two instalments towards the construction of a community building and sports pavilion in the north-west Bicester development
 - A Community Development Fund contribution of £45.29 per dwelling up to a maximum of £6,792.64 towards community development work and support for groups of residents
 - A Community Workers contribution of £347.46 per dwelling up to a maximum of £52,118.38 for staff to carry out community development work
 - A Bicester Leisure Centre Phase 1 contribution of £498.48 per dwelling up to a maximum of £74,770.72 paid in two instalments towards phase 1 of Bicester Leisure Centre expansion work
 - A Sports Pitches contribution of £227.68 per dwelling up to a maximum of £34,151.82 paid in two instalments towards the provision of sports pitches in the north-west Bicester development
 - A Sports Pitch Maintenance contribution of £250.35 per dwelling up to a maximum of £37,551.76 towards the future maintenance of sports pitches
 - A Burial Ground contribution of £10.06 per dwelling up to a maximum of £1,507.75 towards the provision of a burial ground in the north-west Bicester development
 - A Waste Collection contribution of £109.84 per dwelling up to a maximum of £16,476 towards the provision of refuse and recycling containers for each dwelling
 - An Employment Biodiversity contribution of £17,994 towards the costs of a biodiversity offsetting scheme

- A Residential Biodiversity contribution of £8,944.42 (approximately equating to £59.63 per dwelling) towards the costs of a biodiversity offsetting scheme
- An Employment Public Art contribution of £75,646.74 and a Residential public art contribution of £27,667.54 (the latter approximately equating to £184.45 per dwelling) or, in the alternative, a Cultural Wellbeing Statement detailing proposals for the cultural enrichment of the development and its implementation
- A Community Management Organisation contribution of £2,605.89 per dwelling up to a maximum of £390,882.18 payable in four instalments towards encouraging and promoting environmental, social and economic sustainability principles, encouraging community engagement and involvement, liaison to secure full integration, investment to generate income and maintenance of any facilities transferred to the organisation.
- A Primary Education contribution of between £3,224.50 and £3,389.20 per 2-bedroom unit, £7,397.37 and £7,625.91 per 3-bedroom unit and £9,673.49 and £10,167.88 per dwelling 4-bedroom or larger (the parties dispute the size of the figures) payable in three instalments towards the provision of a new primary school at the north-west Bicester development.
- A Secondary Education contribution of between £2,748.47 and £3,277.57 per 2-bedroom unit, £7,245.97 and £8,521.67 per 3-bedroom unit and £11,743.48 and £13,765.78 per dwelling 4-bedroom or larger (the parties dispute the size of the figures) payable in three instalments towards the provision of a new secondary school at the north-west Bicester development.
- A Special Education Needs contribution of £114.54 per 2-bedroom unit, £277.24 per 3-bedroom unit and £400.38 per dwelling 4-bedroom or larger towards the expansion of SEN Bardwell School.
- A Bus Service contribution of £134,375.00 (approximately equivalent to £895.83 per dwelling) payable in two instalments relating to the occupancy of the dwellings towards the provision of a bus service connecting the development with Bicester town centre and Bicester Village station
- An Interim Bus Service contribution of £157,130, payable in four instalments relating to the occupancy of the employment floorspace prior to the opening of the Strategic Highway replacing Howes Lane towards the provision of a bus service linking the development with Bicester town centre.
- A Bus Infrastructure contribution of £38,920 shared equally between the residential development and the employment development, (approximately equivalent to £129.73 per dwelling) payable in two instalments towards the provision of bus stop infrastructure in the north-west Bicester development and on Middleton Stoney Road
- A Rights of Way contribution of £2,846 (equivalent to approximately £18.97 per dwelling) towards improvement to Bicester Bridleway 9 and Bucknell Bridleway 4

- A Cycle Improvements contribution of £28,040 (equivalent to approximately £186.93 per dwelling) towards the improvement of the cycle route along Middleton Stoney Road between Howes Lane and Oxford Road
- A Cycle Improvements contribution of £60,668 (equivalent to approximately £404.45 per dwelling) towards traffic calming and the improvement of the cycle route on Shakespeare Drive
- A Traffic Calming contribution of £6,568, related to the occupancy of the employment floorspace, towards a traffic calming scheme for Middleton Stoney village
- Two travel plan monitoring contributions of £1,309 each for the Residential Travel Plan (equivalent to approximately £8.72 per dwelling) and for the Employment Travel Plan
- A County Council monitoring fee of £7,500 (equivalent to about £50 per dwelling)
- A District Council monitoring fee of £1,127.44 (equivalent to about £7.52 per dwelling)
- Schemes for the provision of open space, incidental open space, a Neighbourhood Equipped Area of Play (NEAP) and Local Areas of Play (LAPs) to accord with Cherwell Local Plan policy BSC1, a Sustainable Drainage Scheme (SuDS) and not less than 0.14ha of allotments and their implementation, together with provisions for their transfer either to a Management Company or to the Council (in either case with financial contributions for future maintenance, amounting in the latter case to the equivalent of £2,109.93 per dwelling for the NEAP and one LAP alone)
- A Framework Affordable Housing Scheme for the provision of 30% of the proposed dwellings as affordable housing but subject to an Affordable Housing Viability Review three months before commencement
- The safeguarding of the land for the Strategic Highway (the diversion of Howes Lane), the licensing of a road developer to enter onto the land for the purposes of constructing the road, the dedication of the land as public highway on completion and a contribution of 1.73% of its funding costs. (estimated to be in excess of £20 million, equivalent to over £2,306.67 per dwelling)
- A Strategy for achieving zero carbon generation and its implementation
- The infrastructure works to be constructed to CEEQUAL "excellent" standard
- The non-residential buildings to be constructed to BREEAM "very good" standard with a capability of achieving "excellent" standard
- All contractors to be registered in the Considerate Contractor scheme
- A scheme of local sourcing of construction materials
- A residential development training and employment plan for seven apprentices

- An employment development training and employment plan for five apprentices
- A routeing agreement for employment development construction traffic
- The employment development not to start until a Highways Agreement with the County Council has been entered into for the Permanent Highway works on Middleton Stoney Road and not to be occupied until the Highway works have been completed
- The residential development (and plot 3 employment development) not to start until a Highways Agreement with the County Council has been entered into for the Temporary Highway works on Howes Lane and not to be occupied until the Highway works have been completed
- Monitoring the construction of the development and its functioning for ten years subsequently in accordance with the Eco Towns Standards Monitoring Scheme.

Some referencing errors in Schedule 27 of the Unilateral Undertaking came to light after it was delivered. These minor corrections, which are said not to undermine its interpretation, are listed in a letter from Pinsent Masons, the appellant's solicitors dated 26 October 2017 (post-Inquiry document 20). I note the assurance of the appellant's solicitors that these do not undermine the interpretation of the Schedule or the Undertaking as a whole.

10. An informal site visit was made before the opening of the Inquiry. Because of the outline nature of the proposal, no detailed matters arose during the Inquiry session which required a further site visit to understand. Accordingly, with the agreement of the parties, no further accompanied site visit was made.
11. The Inquiry sat on the two days stated above but was held open for public consultation on the revised scheme to be concluded and for the two main parties to conclude their negotiations on the Unilateral Undertaking and to provide closing remarks. The Inquiry was closed in writing on 1 November 2017.

Main Issues

12. The main issues arising from the Council's reasons for refusal were the effects of the proposal on:
 - The generation of employment
 - The landscape character of the area
 - The supply of affordable housing
 - The supply of and demand for community, social and transport infrastructure
 - Highway safety for pedestrians
 - The provision of green infrastructure
 - Biodiversity
 - The demand for and supply of transport.

13. By the time of the Inquiry, the council had granted permissions in response to two further applications which, in sum, duplicated the current appeal proposals and provide a fall-back position in the event of this appeal being dismissed. The Council did not therefore pursue any of its reasons for refusal except to the degree that these would or would not be satisfied by the Unilateral Undertaking or by conditions to be attached to a permission. The accredited Rule 6 party gave no evidence.
14. Consequently, the only remaining issues between the two main parties for the Inquiry to consider were firstly, whether the Unilateral Undertaking complied with the CIL regulations, both in terms of necessity, direct relationship to the development and proportionality to the development as well as the limitations on pooling financial contributions and secondly, what conditions would be necessary to make the proposed development acceptable and which would be relevant to planning and to the development, enforceable, precise and reasonable in all other respects.
15. However, there were a number of representations from third parties which were made in writing and which were not withdrawn. These concerned the generation of employment, the provision of affordable housing, the consistency of the development proposed with the character of the area in terms of both land use and height of buildings and the effects of the development on the capacity of local transport infrastructure and on the living conditions of nearby residents in terms of potential noise, air and light pollution. My decision therefore considers these matters, notwithstanding the agreement reached between the main parties.

Reasons

Employment generation

16. Although the proposal does not specify any particular employment mix, the development is anticipated to focus on warehousing and logistics (Use class B8) rather than offices (Use class B1a). This has disappointed many local people. The submitted Environmental Statement has tested both a mix of 70% B8 with 30% B2 and of 80% B2 with 20% B8.
17. Local Plan policy Bicester 1 seeks a total provision of at least 3,000 jobs within the overall North-West Bicester eco-town, of which approximately 1,000 would be in B use classes. Use classes would be expected to be B1 with limited B2 and B8 uses. The policy provides that the business park at the south-east corner of the allocation (i.e.; within the application site) is anticipated to generate between 700 and 1,000 jobs in use classes B1, B2 and B8 early in the Plan period.
18. Paragraph 4.8 of the Statement of Common Ground (August 2017) records that the five planning applications for other sites within the eco-town, together with the appeal site, would be expected to deliver in the region of 2,500 permanent on-site jobs, plus construction jobs. That is a slight shortfall compared to the policy aspiration.
19. The Economic Strategy submitted in support of the proposed development on the site itself claims that it is likely to provide between 900 and 1,200 net jobs, somewhat in excess of the requirements of policy. Using the Homes and Community Agency (HCA) standard of employment densities (Employment

Densities Guide 2010 – 2nd edition) the development can be shown to generate approximately 800 to 1,000 new jobs. Furthermore, paragraph 6.13 of the Statement of Common Ground confirms the Council's acceptance of the market evidence prepared by the appellant suggesting that the mix of uses envisaged would respond to current market conditions, thus increasing the prospect of early delivery of the jobs, in accordance with the policy requirement.

20. I have no reason to disagree with these assessments and so conclude that, notwithstanding the conflict with Local Plan policy requirements for an emphasis on B1 uses, the proposal would produce an acceptable degree of employment generation in accordance with the numerical aims of the policy.

Affordable housing

21. Contrary to the assertion of two correspondents that the proposal would provide no affordable housing, the submitted Unilateral Undertaking makes provision for 30% of the dwellings to be provided as affordable housing, subject to a viability assessment. This would comply with the requirement in Local Plan policies Bicester 1 and BSC3, the latter of which provides for "open book" financial analysis for in-house or external viability assessment and so, subject to the consideration of the Unilateral Undertaking in detail, considered below, I conclude that the proposal would make appropriate provision for affordable housing.

Character of area

22. The inclusion of the development site as an allocation within the Cherwell Local Plan 2011-2031 adopted in July 2015 necessarily implies a change in the character of the site from undeveloped farmland to a developed area. Many local residents feel that the character of the employment part of the proposal, likely to comprise a preponderance of large scale warehousing structures, would be incompatible with the character expected of an eco-town. But, as one correspondent writes: "Please consider the long-term vision of an eco-town where people can live and work in the same place and do not have to drive miles to find a job." It is part of the essential nature of the eco-town concept, reflected in the requirement of Local Plan policy Bicester 1 for a layout to maximise the potential for walkable neighbourhoods that employment is provided within walking distance of places where employees can live.
23. Appearance, landscaping, layout and scale are all matters reserved for later consideration, should outline permission be granted. But it is clear from the Parameter Plans (which are to be secured by condition) that the height of the buildings, their separation both from neighbouring residential areas and from undeveloped countryside to the south, and the nature of the vegetation proposed, including dense native tree and shrub planting to the west and south, would permit the reserved matters applications to comply with those parts of Local Plan policy Bicester 1 which require a well-designed approach to the urban edge, relating development at the periphery to its rural setting, minimising the impact of development when viewed from the surrounding countryside, respecting the landscape setting, maintaining visual separation with outlying settlements with careful consideration of open space and structural planting around the site. I therefore conclude that the proposal would have an acceptable effect on the character of the area, according both with Local Plan policy Bicester 1 and with policy ESD13 which seeks protection and enhancement of the local landscape especially in fringe locations.

Transport infrastructure

24. Paragraph 5.3.2 of the Highway and Transportation Issues Statement of Common Ground confirms the Highway Authority's acceptance of the appellant's predictions of the effects of the development proposed in the interim year of 2019 and in the year 2031 when the wider north-west Bicester eco-town, together with the diversion of Howes Lane on a new alignment is expected to be in place. These show acceptable effects on the junction of Howes Lane, Vendée Drive and Middleton Stoney Road and on the junction of Lord's Lane and Bucknell Road. No technical evidence is provided to cause me to disagree with these findings. The proposal makes adequate arrangements for and contribution to the construction of the diversion of Howes Lane through the site.
25. Many local commentators are concerned about the effects of the development on the current alignment of Howes Lane prior to its diversion. For the interim period before the diversion of Howes Lane onto its new alignment, the Highway Authority has identified a threshold of development within the overall north-west Bicester eco-town which can come forward without an unacceptable effect on highway capacity. In a series of technical notes, accepted by the Highway Authority, the developer has established the proportion of the proposed development which can go forward without generating traffic impact on the key junction of Howes Lane and Bucknell Road in excess of that implied in the Highway Authority's identified threshold. I have no reason to disagree with these findings, which can be secured by condition.
26. Public concerns focus on the effects of construction traffic. A provision of the Unilateral Undertaking establishes a routeing agreement for construction traffic in connection with the employment development. A condition can require the submission of a Construction Method Statement which for the residential development could be required to include a routeing plan for construction traffic to that part of the development.
27. Paragraph 7.1.2 of the Highway and Transportation Issues Statement of Common Ground confirms the Highway Authority's view that the existing bus service 21, operating on Wansbeck Drive (currently as a hail and ride arrangement) within about 125m of the boundary of the site is sufficient as an interim solution to serve the residential development. The Unilateral Undertaking proposes to fund the provision of a defined stop on Wansbeck Drive close to the point where public footpath 129/15 leads to the site. The construction of a controlled pedestrian crossing of Howes Drive at that point is shown on approved drawing 14042-32. This would facilitate safe pedestrian access between the residential site and the bus stop.
28. To serve the employment development, extra journeys would be provided on route 25 which runs along Middleton Stoney Road and bus stops would be provided outside the employment site on Middleton Stoney Road. The Unilateral Undertaking makes provision for these to be funded.
29. In the longer term a commercially sustainable bus service would be provided to serve the entire north-west Bicester development, passing through the development site along a reserved bus corridor. The Unilateral Undertaking proposes a proportionate contribution to the cost of establishing this service.

30. The Unilateral Undertaking also makes provision for the improvement of cycle facilities along Middleton Stoney Road and along Shakespeare Drive, for the improvement of two local footpaths and for a traffic calming scheme in Middleton Stoney village.
31. There is no technical evidence before me which would cause me to come to any conclusion other than that the proposal would have an acceptable effect on transport infrastructure.

Living conditions

32. Local residents report that the existing volume of traffic on Howes Lane adversely affects their living conditions in terms of noise and air pollution. They are concerned that the proposed development would exacerbate that situation. However, the proposed development makes provision for the diversion of Howes Lane onto a new alignment which should considerably improve the living conditions of those properties adjacent to Howes Lane and so be a material benefit.
33. In the interim, a condition is proposed to limit the quantity of development which may take place to that which can be accommodated without unduly overloading the junction of Howes Lane with Bucknell Road. Consequently, there would be only a moderate increase in traffic along Howes Lane². Adding a noise source to an existing noise source does not generally result in an arithmetically equivalent increase in noise because the existing noise tends to subsume the new noise source. For that reason, correspondents' fears, although understandable, are not well-founded. Tables 9.13 and 9.14 of the submitted Environmental Statement predict negligible effects on air pollution from the development. I have no information to contradict those findings and so I do not impose any condition restricting employment development access to the use of Middleton Stoney Road alone in advance of the delivery of the Howes Lane diversion (although for road capacity reasons I do impose a condition limiting the overall quantity of employment development which may be occupied prior to the completion of the Strategic Road Link).
34. There are also concerns that the new employment development would generate noise which would adversely affect the living conditions of nearby residents. This cannot be known until the details of the proposed development are made clear upon the submission of reserved matters. But the parameters plans, which can be imposed by condition, set the employment development at a distance from residential property. Distance attenuates noise generation. Furthermore, a condition can be imposed at this outline stage which sets acceptable limits to the levels of noise from the employment development to be experienced at nearby residential properties and with which detailed proposals would have to comply.
35. Likewise, the distance between the development proposed and existing residential properties is sufficient to allow for lighting to be designed which would have no adverse effect on existing residential properties.
36. The height of the development proposed would be limited by condition to that shown in the Parameters Plans. That, together with the distance required by compliance with the layout shown on the Parameters Plans between the

² An increase of up to 13% on the part of Howes Lane south of the temporary access proposed, according to paragraph 8.7.9 of the submitted Environmental Statement.

developments proposed and the existing development to the east of Howes Lane would ensure that there could be no overlooking of or oppressive outlook from the existing dwellings to the east of Howes Lane.

37. For all the above reasons I conclude that the proposals would have an acceptable effect on the living conditions of residents to the east of Howes Lane. The proposed development would therefore comply with the requirement of Local Plan policy ESD15 to consider the amenity of both existing and future development.

Unilateral Undertaking

38. One of the stated motivations for continuing with this appeal despite the granting of permissions for developments amounting to the same development as that proposed concerns the allegedly burdensome nature of the planning obligations resulting from the planning agreements reached in those permissions. The appellant believes that a test of these obligations against the CIL regulations would reduce the burden. To put this concern into context, the total financial contributions for a typical 3-bedroomed house may be summed as follows (to which must be added the effects of non-financial requirements):

• Health	£ 259.46
• Police	£ 151.30
• Community facilities Build	£ 775.12
• Community Development Fund	£ 45.29
• Community workers	£ 347.46
• Leisure Centre Phase 1	£ 498.48
• Sports pitches	£ 227.68
• Sports pitches maintenance	£ 250.35
• Burial Ground	£ 10.06
• Waste collection	£ 109.84
• Residential biodiversity	£ 59.63
• Residential public art	£ 184.45
• Community Management Organisation	£2605.89
• Primary education	£7625.91
• Secondary education	£8521.67
• SEN contribution	£ 114.54
• Bus service	£ 895.83
• Bus infrastructure	£ 129.73
• Rights of Way	£ 18.97
• Middleton Road Cycle improvements	£ 186.93

• Shakespeare Drive Cycle improvements	£ 404.45
• Travel Plan monitoring	£ 8.72
• County council monitoring	£ 50.00
• District Council monitoring	£ 7.52
• Open space maintenance ³	£2109.93
• Strategic Highway ⁴	£2306.67
Total	£27905.88

39. The Council is concerned that the terms of the Unilateral Undertaking would not be enforceable against individual purchasers of dwellings. In consequence it would have to obtain an injunction if occupancy thresholds which triggered the payment of obligations were passed without payments being made. But it is normal for planning obligations to be enforced by injunction and commonplace for individual purchasers to be excluded from liability for misdemeanours which may be incurred by the developer. This is because it would normally be regarded as disproportionate to deprive any one owner or occupier on a large development of the right to occupy their home as a penalty for a developer's failure to pay a financial contribution related to a much larger number of homes when due.⁵ I do not regard the Unilateral Obligation as ineffective on account of this provision.
40. The Council is also concerned that because most of the contributions are expressed in terms of rates per dwelling, the total contribution from the appeal site may be less than expected if reserved matters approvals result in a lesser number of dwellings than presumed in calculating the share of the total costs for north-west Bicester attributed to this site. But this is largely an inevitable consequence of a planning obligation prepared at outline stage when details of dwelling numbers and sizes and hence the numbers of people for whom infrastructure provision is needed are not known.
41. If detailed approvals lead to a lesser population then it is likely that a lesser infrastructure provision would be needed in any event. Moreover, if it turns out that the details submitted for reserved matters approval would not result in an adequate provision of infrastructure, it is open to the Council to decline to approve the details for that reason, since details submitted for approval are as subject to compliance with Local Plan policy Bicester 1 as the outline application. For these reasons I do not consider that the formulation used in the Planning obligations submitted in association with this outline proposal would be inadequate.
42. In response to the appellant's concerns that the financial contributions proposed in the Unilateral Undertaking would contravene the parts of the CIL regulations which preclude the pooling of contributions, the District and County

³ Contingent on transfer to District Council rather than management company

⁴ Approximate estimate based on information in letter from Barton Willmore dated 13 September 2017

⁵ The same may not be true on a small development where a single occupant may exert greater proportional responsibility for the discharge of obligations

Councils have provided information concerning the other planning applications which comprise the overall North-West Bicester eco-town which demonstrates that the pooling restrictions would not be contravened. I have no reason to disagree.

Health

43. Paragraph 12.4.35 of the submitted Environmental Statement June 2017 suggests that there may currently be surplus General Practitioner capacity within Bicester because the average doctor's list is 952 patients compared with a London Healthy Urban Development Unit (HUDU) benchmark of 1,800. But the nearest premises are about 1.7km from the site and so nearer premises are required to serve the development, even if no additional doctors need to be recruited. Local Plan policy Bicester 1 requires the provision of a surgery for 7 GPs to serve the whole eco-town development. A scheme is included within the Council's Infrastructure Delivery Plan for completion within about five years. The suggested contribution in the Unilateral Undertaking is proportionate to that and so I conclude that the obligation outlined in Schedule 1 of the Unilateral Undertaking complies with the CIL Regulations.

Policing

44. Thames Valley Police has assessed that the development of the North-West Bicester eco-town, of which the development is part will generate: (i) a requirement for 15 new members of staff to police the additional population generated by the development; (ii) to be accommodated by an extension to and adaptation of the existing Bicester Police Station; (iii) a control room/police network database at their Kidlington district headquarters; (iv) 4.5 additional patrol vehicles, 4.5 PCSO vehicles and 6 bicycles; (v) two additional Automatic Number Plate Recognition cameras; (vi) mobile IT kit for each police officer; and (vii) an increase in radio coverage.
45. Proposals are included in the Council's Infrastructure Delivery Plan. Each element would be delivered in phases. The first phase of additional personnel would be delivered by the 2,000th dwelling (probably around the year 2028 according to the trajectory described in the Council's Infrastructure Delivery plan), the second phase by the 3,500th dwelling (circa 2033) and the third phase by the 5,500th (out of 6,000) dwellings (circa 2043).
46. I am not convinced that the revenue costs of paying the salaries of the additional staff required is a cost attributable to the development, since residents of the development will be paying in the usual way towards the funding of police salaries. To make a contribution through a planning obligation charged to the capital costs of buying their homes would be paying twice over and is not necessary. To that extent I do not regard the obligation contained in Schedule 2 of the Unilateral Undertaking as complying with the CIL regulations. But the other elements represent capital costs which can be said to be attributable to the development.
47. The accommodation would be provided towards the end of the eco-town's build-out period (design work on Bicester Police station to commence by the 4,900th dwelling, circa 2039). The building work would be started by the time of the 5,260th dwelling (circa 2042) and be completed by the time of the 5,500th dwelling (circa 2043).

48. The first phase of the control room would be rolled out by the 2,500th dwelling (circa 2029), the second phase circa 2043 by the time of the 5,500th dwelling. Phase 1 of the vehicle fleet would be delivered by the time of the 2,000th dwelling (circa 2028), the second phase by about the 3,500th dwelling (circa 2033) and the final phase by the 5,500th dwelling (circa 2043).
49. The two ANPR cameras would be installed by the time of the 2,000th dwelling (circa 2028). Phase 1 of the mobile IT equipment roll-out would be completed at the same time, phase 2 by the 3,500th dwelling (circa 2033) and phase 3 by the 5,500th dwelling (circa 2043). Phase 1 of the increased radio coverage would be completed by the 2,500th dwelling (circa 2029) and the second phase by the time of the 5,500th dwelling (circa 2043).
50. Because the obligation contained in Schedule 2 of the Unilateral Undertaking includes a payback requirement if the contribution is not spent or committed within 15 years of the final payment of the contribution (probably circa 2035), it is likely that the obligation would in fact contribute only to the ANPR cameras, the first phase of the control room, the first two phases of the IT equipment roll-out and the first phase of the increased radio coverage. In so far as that would be fairly and reasonably related in scale and kind to the development and is directly related to the development, I accept that the obligation contained in Schedule 2 of the Unilateral Undertaking complies with the CIL regulations and I have taken it into account in making my decision.

Community Facilities Building

51. Local Plan policy Bicester 1 requires the provision of Community Facilities, to include facilities for leisure and indoor and outdoor sport and community meeting spaces. The Council's Infrastructure Delivery Plan provides for three temporary and three permanent community halls to serve the whole of the North-West Bicester eco town. The first temporary community hall is already in place and functioning. The second temporary hall is expected to be completed by the time of the 640th dwelling in the eco-town (in the early 2020s) and the third temporary hall by the time of the 1100th dwelling in the eco-town (in the mid 2020s).
52. Permanent Community Hall 1 (to be sited north of the railway line) is expected to be delivered by the time 640 dwellings have been delivered within the eco-town (within two-three years). Permanent Community Hall 2 (to be sited north of the railway line) is expected to be delivered by the time 3,000 dwellings have been completed in the eco-town (circa 2031). The third permanent Community Hall (to be sited south of the railway line) is expected to be delivered by the time 4,900 dwellings have been completed in the eco-town (circa 2039).
53. The Council's Infrastructure Delivery Plan provides for the design of a sports pavilion south of the railway line to commence by the time of the 4,970th dwelling in the eco-town (circa 2039) with completion by the time of the 5,600th dwelling (circa 2040/2041).
54. Because the obligation contained in Schedule 3 of the Unilateral Undertaking includes a payback requirement if the contribution is not spent or committed within 15 years of the final payment of the contribution (probably circa 2035) and because the definition of community facilities contained in the obligation is restricted to those south of the railway line, it is likely that the obligation would in fact expire before the construction of the sports pavilion or the third

community hall and could do no more than contribute to the funding of the third temporary community hall.

55. In so far as that would be fairly and reasonably related in scale and kind to the development and is directly related to the development, I accept that the obligation contained in Schedule 3 of the Unilateral Undertaking complies with the CIL regulations and I have taken it into account in making my decision.

Community Workers and Community Development Fund

56. The Council's Note dated 13 October 2017 in respect of Community Development Workers, Community Development Fund and Community Led Management Organisation points out that a characteristic of large-scale developments is that while they will attract some residents from the local area, many new residents will be from elsewhere in the country and so there is a strong likelihood that many residents in north-west Bicester will have moved away from their previous support groups. The Note refers to evidence of "New Town Blues" which shows that while some people rise to the challenge, others, citing particular groups, have more difficulty in adjusting to their new life without familiar avenues of support.
57. The note provides a list of potential Community Development activities. These include engaging through a range of activities specific groups of people such as pregnant mothers, parents with new babies, parents with pre-school children, after school and holiday provision for school age children, evening provision for young people, provision for senior citizens and provision for other groups which may be specific to ethnicity and age.
58. But many of these are no different from what such groups in the general Bicester community outside the eco-town development area might expect and which would normally be funded through the Council tax. The proposed contributions are not for the limited purpose of pump-priming services before the new population is fully in place and contributing to Council tax revenues but are intended to pay for two community workers full time for twenty years and then part time for a further four years and to provide them with a fund to be spent within fifteen years pursuing their activities. New residents of the proposed development will also be paying Council tax during that time and should not be expected to pay twice over for such services through a financial contribution levied on the capital cost of buying their home.
59. For these reasons I conclude that the community workers to serve the development may be as necessary as they are to serve the rest of Bicester but the contributions sought are not directly related to the development and not fairly and reasonably related in scale and kind because they duplicate revenue raised through Council tax. I share the view reached by the Secretary of State in appeal reference APP/C3105/A/12/2178521 that contributions to the cost of a Community Development Worker do not meet the CIL tests. I therefore take no account of the obligations to provide a Community Development Fund contribution and a Community Workers contribution set out in Schedule 4 of the Unilateral Undertaking.

Bicester Leisure Centre Phase 1

60. Local Plan policy Bicester 1 requires the provision of Community Facilities, to include facilities for leisure and indoor and outdoor sport and community

meeting spaces. The Council's Infrastructure Delivery Plan records that work has already commenced on preparing the Design, the Business Case and obtaining Council approvals for the provision of additional predominantly dry side facilities at the Bicester Leisure Centre. It anticipates that work on site will commence by the time of 1,680 dwellings in the eco-town (circa 2024-25) and be completed twelve months later. This would be comfortably within the 15-year pay-back time for non-expenditure of the contribution envisaged in Schedule 5 of the Unilateral Undertaking and so it is likely that the contribution will contribute to the provision of infrastructure necessary to serve the development.

61. I concur that this would be necessary, directly related to the development and fairly and reasonably related to it in scale and kind. I therefore take it into account in making my decision.

Sports pitches contribution

62. Local Plan policy Bicester 1 requires the provision of Community Facilities, to include facilities for leisure and indoor and outdoor sport. The Council's Infrastructure Delivery Plan makes provision for two phases of permanent sports pitches south of the railway line and one north and also for one temporary pitch location south of the railway line to allow for the contingency that the permanent pitches are delayed.
63. Phase one of the pitches south of the railway line is expected to be complete by the time of the 1650th dwelling in the eco-town as a whole (circa 2024-25). Phase two would be expected to be complete by the time of the 2,550th dwelling in the eco-town (circa 2029). The pitches north of the railway line are expected to be complete by the time of the 1850th dwelling in the eco-town (circa 2025-26). Complete provision is expected well within the 15-year pay-back time for non-expenditure of the contribution envisaged in Schedule 6 of the Unilateral Undertaking and so it is likely that the contribution will contribute to the provision of infrastructure necessary to serve the development.
64. I therefore conclude that the sports pitches contribution included in schedule 6 of the Unilateral Undertaking is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

Sports pitch maintenance

65. Once provided, pitches need to be maintained. But, in that respect, the sports pitches required by this development are no different from the sports pitches which have been provided elsewhere within the local authority's area and which are maintained through funds raised either by fees for their use or by Council tax payers. The sports pitches in North-west Bicester are to be provided in proportion to the demand arising from the increased population of the development and it is appropriate that their capital costs do not fall on the wider population which has not required their provision. Once provided, the increased population resulting from the development will be paying Council tax like any other residents and should not need to pay twice over for the maintenance of their sports pitches through a planning obligation which adds to the capital cost of purchasing their homes.

66. In its papers provided subsequent to the Inquiry sitting, the Council asserts that the maintenance contribution is appropriately payable towards maintenance of the facilities prior to full build out of the wider development which the Council accepts should lead to a level of usage to enable the facilities to be self-financing. In contrast to the open space provisions of Schedule 16 this is not made clear within the Unilateral Undertaking itself. But it is clear from the implementation programme set out in the Council's Infrastructure Delivery Plan that the sports pitches would be provided in full in advance of most of the population of the eco-town taking up residence. Thus a requirement for a pump-priming maintenance contribution until the Council tax resource of the new residents takes effect is needed. This obligation contained within Schedule 6 of the Unilateral Undertaking is therefore necessary, directly related to the development and fairly and reasonably related in scale and kind. It complies with the CIL regulations and so I have taken full account of it in reaching my decision.

Burial Ground contribution

67. The seventeenth bullet point of Local Plan policy Bicester 1 requires development of the North-West Bicester eco-town to provide a site for a Burial Ground of a minimum of 4ha. The appeal site is a part of the North-West Bicester eco-town allocation and so it is necessary that it should contribute to the provision required.

68. The Council's Infrastructure Delivery Plan makes provision for the completion of the first 0.9ha of a 4ha site by the time of the 1570th dwelling in the eco-town (circa 2024). This is expected well within the 15-year pay-back time for non-expenditure of the contribution envisaged in Schedule 7 of the Unilateral Undertaking and so it is likely that the contribution will contribute to the provision of infrastructure necessary to serve the development. This obligation contained within Schedule 7 of the Unilateral Undertaking is therefore necessary, directly related to the development and fairly and reasonably related in scale and kind. It complies with the CIL regulations and so I have taken full account of it in reaching my decision.

Waste collection

69. Obviously, waste bins need to be provided for the Council to carry out its statutory waste collection service and it would no doubt be convenient for them all to be provided to a standard pattern. Indeed the Council's conditions for providing its service may well require that. Most developers would no doubt consider it a selling point for their products to be provided with waste bins in the way that they are often provided with white goods such as dishwashers, fridges and washing machines. But, failing that, the Council has the power to charge for waste bins and does so. Consequently, there is no necessity arising from the development for them to be provided through a planning obligation.

70. I therefore concur with the decisions taken in appeals APP/C3105/A/14/2213263 and APP/C3105/A/12/2178521, amongst others, that an obligation to pay for the provision of refuse bins does not meet the CIL tests. In consequence, I have taken no account of the obligation contained in Schedule 8 in reaching my decision.

Biodiversity offsetting

71. Paragraph 6.4.30 of the submitted Environmental Statement confirms that the breeding and wintering bird assemblages at the site are considered to be of local ecological importance. Local Plan policy Bicester 1 requires a net gain in biodiversity as a result of the development. The Strategic Environmental Report for the North-West Bicester Ecotown acknowledges that the loss of farmland used by foraging and nesting birds cannot be mitigated on site and proposes a scheme of off-site mitigation by increasing the “carrying capacity” of other local habitat. This is clearly necessary in order to contribute to the achievement of the policy. The two Biodiversity contributions proposed in Schedule 9 of the Unilateral Undertaking are a proportionate contribution to this scheme and so comply with the CIL regulations.
72. Provision is made within the Council’s Infrastructure Delivery Plan for the first phase of the Biodiversity Offset scheme to be delivered by the time of the 2,500th dwelling on the eco-town (circa 2029). This is likely to be well before the date for the clawback of unspent funds set in Schedule 9 of the Unilateral Undertaking, so I am satisfied that the Undertaking is likely to result in the mitigation required.

Public Art

73. Local Plan policy Bicester 1 requires the provision of public art to enhance the quality of the place, legibility and identity. Schedule 11 of the Unilateral Undertaking provides for either the payment of a Public Art contribution or for the submission, approval and implementation of a Cultural Wellbeing Statement.
74. The Council’s Infrastructure Delivery Plan makes no provision for the expenditure of any Public Art contribution. It states the Council’s expectation that developers will deliver cultural wellbeing initiatives across all areas of development on site. I accept that that would be the preferred way of complying with the policy.
75. As this current appeal concerns an outline proposal, details of appearance, layout and landscaping are reserved for subsequent consideration by the Council in any event. When those details are submitted, it will be for the Council to consider whether they comply with Local Plan policy, including the requirement for public art. The details to be submitted may, at that stage, include the offer of a planning obligation to provide a payment in lieu of the provision of public art integral to the development even though that is clearly not the Council’s preferred method of compliance with policy. If the submitted details do not comply with policy, the Council may consider refusing to approve the details. But it is not necessary to require a cultural well-being statement for the provision of public art to be achieved.
76. I therefore conclude that the obligations contained in Schedule 11 of the Unilateral Undertaking are unnecessary and so do not comply with the CIL regulations. I have therefore taken no account of them in making my decision.

Community Management

77. The Council’s Note dated 13 October 2017 (INQ 14c) in respect of Community Development workers, Community Development Fund and Community Led Management Organisation records that the Community Led Management

Organisation is intended to have a long term role in the management and maintenance of community assets in the North-West Bicester eco-town. But paragraph 3.4 of the Council's Position statement in respect of matters set out in the letter from Quod to CDC dated 6 September 2017 stated as not being in agreement (Document INQ1 annex3) records that the residents of Elmsbrook who have been involved in the early stages of establishing a Community Led Management Organisation have advised that the long term management and maintenance of open space would not be desirable due to the ongoing requirements that a body of local residents would find difficult to manage. Appendix 14 of the Council's CIL compliance statement also confirms that open space on the Exemplar phase 1 development, elsewhere within the eco-town, will be managed by a private management company.

78. I note that Local Plan policy Bicester 1 includes a requirement for the submission of proposals to support the setting up and operation of a financially viable Local Management Organisation to allow locally based long term ownership and management of facilities in perpetuity and that the PPS for Ecotowns similarly requires the use of governance arrangements. But it is clear from the experience of the pilot scheme in Elmsbrook that the Community Led Management Organisation is not going to fulfil that role.
79. I also note that the obligation in Schedule 16 of the Unilateral Undertaking provides for the setting up of a Management Company to carry out the long term management and maintenance of any open spaces to be managed by it. It would have powers to level and collect charges and would be accountable to residents of the Development. It would therefore fulfil the governance requirements of Local Plan policy Bicester 1 and the PPS for Ecotowns.
80. There appears to be a clear duplication of function between the intention of setting up the Community Led Management Organisation and the intention of setting up the Management Company. Since those already involved in the early stages of the former have declined to take on the management and maintenance of community assets, it is clear that only the latter will serve the purpose envisaged in the Local Plan policy and PPS.
81. I therefore conclude that it is not necessary for the appeal development to contribute to the Community Led Management Organisation. The obligation set out in Schedule 15 of the Unilateral Undertaking would not comply with the CIL regulations for that reason and so I have not taken it into account in reaching my decision.

Education

82. Paragraphs 12.4.29 and 12.4.32 of the Environmental Statement suggest that Bicester may currently have about 5% spare capacity in primary schools and about 14% spare capacity in secondary schools. Some spare capacity, particularly in primary schools, is necessary to maintain the possibility of parental choice. In any event, the appeal site is part of the North-West Bicester eco town allocation within the Local Plan and so contributes to the demand from the eco town as a whole. Local Plan policy Bicester 1 requires sufficient secondary, primary and nursery education to be provided on site to meet projected needs. It is expected that four 2FE (forms of entry) primary schools and one secondary school would be required.

83. A contribution to this provision from the appeal proposal is therefore necessary to make the development acceptable in planning terms. The proportion of the contribution is fairly and reasonably related in scale and kind to the development and directly related to the development by the use of trigger points related to the occupancy of dwellings. In principle therefore, the three education contributions outlined in Schedule 25 of the Unilateral Undertaking would comply with the CIL regulations.
84. The Council's Infrastructure Delivery Plan includes provision for the development of four primary schools, a secondary school and for the extension of Bardwell School Bicester and a new Didcot Special School. Primary School 1 (Gagle Brook) is under construction. Primary School 2 (Himley Village) is estimated to start construction in line with the 1,000th dwelling on the eco-town. The first phase of Primary School 3 (Howes Lane) is likely to open at the time of the 2,750 dwelling in the eco-town (circa 2030). Phase 1 of Primary School 4 is expected to open coincident with the 3,500th dwelling on the eco-town (circa 2033).
85. The secondary school is likely to be delivered in three phases coinciding with the 2,000th, 4,000 and 5,500th dwelling on the eco town (circa 2027, 2035 and 2043). The Bardwell SEN extension is expected to be delivered in 2019/20. The Didcot SEN school is expected to be delivered in 2022/23 but the terms of Schedule 24 of the Unilateral Undertaking limit the Special Educational Needs contribution to the Bardwell School proposal. These delivery dates suggest that the contributions proposed in Schedule 24 could contribute to all the projects in the programme before the fifteen-year clawback date for unspent monies applies.
86. The point at issue between the parties relates solely to the construction costs factored into the Primary and Secondary Education contributions. The Special Education Needs contribution is not in dispute. There is in fact very little difference between the parties in the figures submitted subsequent to the Inquiry sitting for the Primary Schools; the Council suggests a figure of £8,838,800, the appellant suggests a slightly higher figure of £8,896,892. The main difference relates to the secondary school, where the parties are about £2m apart but the likelihood is that the appeal development's contribution would only be applied to the first phase of construction before the fifteen-year payback period takes effect.
87. In its post-Inquiry comments on the draft Unilateral Undertaking, the County Council suggested that the differences between the parties lay in the appellant's exclusion of embedded costs (such as furniture and ICT hardware), the County's adoption of discretionary additional space standards higher than national minima and the County's use of a wider range of benchmarking sources than basic BCIS data. I concur with the County Council's view that a school without its embedded equipment is not a functioning facility. I take the view that the schools provided to serve this development should not be provided to a lesser standard than that used elsewhere in the County and that the widest range of benchmarking sources is likely to provide the most robust construction figure.
88. The chances of failing to provide adequate educational infrastructure need to be minimised. For that reason, I am satisfied that the obligations included within Schedule 25 of the Unilateral Undertaking are necessary. In reaching

my decision I have taken into account the higher of the range of figures suggested by the parties. These are well-justified, directly related to the development and fairly and reasonably related in scale and kind and so I find that the obligations contained in Schedule 25 comply with the CIL regulations. I have taken them into account in full in making my decision.

Bus services

89. Local Plan policy Bicester 1 requires development within the eco-town to provide good accessibility to public transport services, including the provision of a bus route through the eco town with buses stopping at the railway stations and at new bus stops on the site. The County Council's Regulation 122 Compliance Statement, submitted to the Inquiry as an appendix to Caroline Ford's proof of evidence, adequately explains the necessity of the provisions of Schedules 19 and 20 of the Unilateral Undertaking and their relationship to the development.
90. The Council's Infrastructure Delivery Plan expects completion of the bus only link between the appeal site and land to the west to be delivered by the year 2021/22. It provides for the North-West Bicester bus service to commence upon the opening of the Strategic Link road and for the Interim bus service along Middleton Stoney Road to commence prior to the occupation of the employment element of the appeal proposal. It provides for bus stop infrastructure to be provided prior to the first occupation of each relevant phase of development. Thus the contributions provided through these undertakings are likely to lead to the satisfaction of the policy requirements. They are directly related to the development and fairly and reasonably related in scale and kind and so I am satisfied that they comply with the CIL regulations.

Rights of Way

91. Local Plan policy Bicester 1 requires development within the eco-town to reinforce connections with the wider landscape. The provisions of Schedule 21 of the Unilateral Undertaking would ensure compliance with this policy by the provision of contributions towards improvements to Bicester Bridleway 9 and Bucknell Bridleway 4 and so they are necessary for the development to be acceptable in planning terms.
92. The Council's Infrastructure Delivery Plan provides for the improvements to be delivered in two phases, the first in 2022/23, the second possibly in 2038/39. These timescales, and the provision within Schedule 21 of the Unilateral Undertaking to clawback monies not spent or committed within fifteen years means that the obligation is only likely to contribute to the first phase of implementation. In so far as this is fairly and reasonably related in scale and kind to the development, I conclude that it would be compliant with the CIL regulations.

Cycle Improvements

93. Local Plan policy Bicester 1 requires development within the eco-town to provide new footpaths and cycleways that link with existing networks. The County Council's Regulation 122 Compliance Statement submitted to the Inquiry as an appendix to Caroline Ford's proof of evidence adequately explains the necessity of the project and its relationship to the development. The

Council's Infrastructure Delivery Plan confirms that both stage 1 of the Shakespeare Drive cycle and traffic calming scheme and phase 1 of the Middleton Stoney Road cycle route will be delivered by the year 2022/23, likely to be well within the fifteen-year clawback period for unspent monies contained within Schedule 22 of the Unilateral Undertaking.

94. The contributions contained in Schedule 22 of the Unilateral Undertaking are therefore likely to lead to a satisfaction of the policy requirement. I conclude that they are compliant with the CIL regulations and have taken them into account in reaching my decision.

Traffic calming

95. Local Plan policy Bicester 1 requires development within the eco-town to provide measures to prevent vehicular traffic adversely affecting surrounding communities. Traffic modelling evidence has clearly demonstrated the effects of the north-west Bicester development, of which the proposal forms a part, on Middleton Stoney village. There are residential properties close to the roads affected and so their living conditions would be affected by the increase in traffic, necessitating a scheme of traffic calming to afford mitigation. The Council's Infrastructure Delivery Plan expects this scheme to be completed by the year 2023/24. The contribution proposed in Schedule 23 of the Unilateral Undertaking would be a proportionate contribution to this scheme and so complies with the CIL regulations.

Monitoring

96. A recent legal case⁶ has upheld the view that an administrative or monitoring fee in a planning obligation was not necessary to make the development acceptable. Monitoring and enforcement of planning controls is normally part of an authority's discretionary services, funded from its normal revenues. However, section 6 of the eco-towns supplement to the otherwise superseded Planning Policy Statement 1 advises that eco-towns will need to be monitored and that arrangements should be put in place for the long-term monitoring of eco-town standards.
97. For these reasons, the monitoring of development in eco-towns is a requirement unique to developments of that kind. I therefore conclude that, in the exceptional case of this eco-town development, monitoring fees, payable to the County and to the District are necessary. Those proposed in Schedules 18 and 24 of the Unilateral Undertaking are directly and fairly and reasonably related to the development in scale and kind and so I take them into account in making my decision.

Open space

98. Local Plan policy Bicester 1 requires that 40% of the total gross site area should comprise green space, of which at least half will be publicly accessible. The network would include sports pitches and the burial ground for which separate provision is made within the Unilateral Undertaking but it would also include parks and recreation areas, play spaces, allotments and SUDs.
99. Within the Council's Infrastructure Delivery Plan are provisions for a Community Farm, a Country Park, a Nature Reserve, Allotments, Play Areas

⁶ Oxfordshire County council v SCLG [2015] EWHC 186

and Other Areas of Green Space. The Community Farm is expected to be completed by the time of the 2,130th dwelling within the eco-town (circa 2028). The Country Park would not be delivered until late in the development of the eco town (by the 4,680th dwelling, circa 2038-9). The Nature Reserve would be similarly late in the programme (completed by the time of the 4,900th dwelling in the eco-town, circa 2039). The Unilateral Undertaking offers no contribution to these projects. Instead it provides for various categories of open space to be provided on site to meet the 40% requirement of the policy. This also accords with the Council's Infrastructure Plan which provides that allotments, play areas and other areas of green space would be provided in tune with the delivery of each phase of development.

100. The Council has a particular concern about service runs under open space. But it should have as equal a concern about service runs under other public spaces such as roads. Its concern is better met by requiring details of all service runs to be submitted with the details of the layout of the scheme to be submitted at reserved matters stage. A suggested condition sought details of overground service runs. I have expanded this to require details to be submitted of all service routes so that the Council can satisfy its concerns.
101. The Council is also concerned that the obligations would cease to have effect if the open space is transferred to a Management Company. But Management Company is defined within Schedule 16 of the Undertaking as a body "to carry out the long term management and maintenance of any open spaces to be managed by it". There is to be a Management Company Structure Scheme, to be submitted to the Council for approval which will set out its constitution amongst other matters. Normally, a company's constitution will set out its purpose and objectives. There is to be a Management Company Default Deposit available to the Council should the Management Company fail to maintain any of the open space transferred to it and a Monitoring Payment made to the Council so that it can check on the performance of the Management Company in maintaining the open space. Finally, section 8 of Schedule provides for the Council to take over the management of the open space in the event that the Management Company fails to maintain it in accordance with the relevant scheme and technical specification. For these reasons I consider the Council's concern to be ill-founded.
102. The Council is also concerned that there is no trigger point for the provision of allotments. But clause 2.1.1 of Schedule 16 of the Undertaking provides that implementation of the residential development shall not take place until the phase of development within which the allotments will be delivered has been identified. So, even though the trigger point is not identified within the Unilateral Undertaking, there is clearly provision for it to be identified before the residential part of the development is implemented. For that reason, I consider the Council's concern to be ill-founded.
103. The Council correctly observes that there is no negative obligation whereby occupation of more than a set percentage of dwellings should not take place until the play areas have been provided. Instead, there are positive obligations to provide the NEAP prior to the occupation of 50% of the dwellings or of any dwelling within 30m of the boundary of the NEAP and to provide any LAP prior to the occupation of any dwelling within 30m of the boundary of the LAP. I accept that it may be more difficult to enforce a positive than a negative obligation but the obligations are provided and are adequate.

104. Finally the Council objects that there is no completion certificate process by which it can control the detailed standard of provision of the areas in question. But there is provision for the Council to inspect the completed areas and to issue a notice if any fails to comply with the scheme agreed for its provision. It is up to the Council to ensure, before it gives its approval to any scheme of provision, that the scheme provides sufficient detail for it to exercise its power of inspection on completion. Bearing in mind these provisions, I consider that the Council's objection has little substance.
105. I therefore conclude that the obligations contained within Schedule 16 of the Unilateral Undertaking are necessary, directly related to the development and fairly and reasonably related to it in scale and kind. They comply with the CIL regulations and so I have taken full account of them in reaching my decision.

Affordable housing

106. There is no doubt but that 30% of dwellings should be provided as affordable housing. This is required by Local Plan policy Bicester 1 and BSC3. The latter also prescribes the proportions of affordable housing to be provided as social rented and as intermediate tenures. In so far as the obligation set out in schedule 12 meets these requirements it meets the three CIL tests of being necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonable related in scale and kind to the development.
107. But the obligation goes well beyond those policy requirements in spelling out in precise detail the mix of tenure and dwelling types in percentages that could only be delivered in fractions of a dwelling. This is clearly impractical. In advance of the approval of reserved matters which would give details of housing types and numbers, this element of the obligation set out in the Unilateral Undertaking has little practical meaning. I doubt that it would be effective or could be precisely complied with.
108. In the council's comments on an earlier draft of the Unilateral Undertaking, it suggests a form of words for what it calls a "cascade" of affordable housing. Schedule 12 of the signed Unilateral Undertaking includes a cascade of the type suggested. Such a cascade envisages the possibility that a Registered Provider may not be found to accept the affordable housing proposed. It then canvasses the possibility of negotiating amendments to the affordable housing scheme, the possibility of the Council itself producing the affordable housing units on site and finally the possibility of accepting a commuted sum in lieu of provision on site. This cascade, suggested by the Council, accepts by implication the uncertainties of prescribing an affordable housing scheme at the outline stage when no detailed scheme has been designed.
109. In similar vein, Schedule 13 of the Unilateral Undertaking provides an opportunity for the developer to submit a Viability Review three months before implementing the residential development. This Viability Review may lead to a Revised Affordable Housing Scheme. These contingency arrangements are consistent with Local Plan policy BSC3 which provides that if the promoter of a development considers that individual proposals would be unviable an "open book" financial analysis will be expected so that an economic viability assessment can be undertaken. The policy goes on to envisage that this may lead to negotiations including consideration of the mix and type of housing, the split between social rented and intermediate housing, the availability of social

housing grant/funding and the percentage of affordable housing to be required. Without an option for review, the risk is that development may not proceed at all.

110. National Planning Practice Guidance⁷ (Guidance) stresses that where affordable housing contributions are being sought, obligations should not prevent development from going forward. In the absence of a specific detailed scheme which can be tested for viability, this consideration, together with the provisions of Local Plan policy BSC3 persuades me that Schedule 13 of the Unilateral Undertaking is a necessary qualification of Schedule 12.
111. The Council considers that s106A of the Town and Country Planning Act provides a more appropriate vehicle for reviewing the affordable housing scheme set out in Schedule 12 but subsection (4) of s106A precludes an application for modification being made within five years of the date when the obligation is entered into, whereas it is likely that reserved matters for the housing development which may give rise to the need for a review are likely to be prepared sooner than that.
112. National Guidance advises that a negatively worded condition limiting the development that can take place until a planning obligation for the provision of affordable housing is unlikely to be appropriate in the majority of cases. It advises that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed.
113. That advice supports the Council's view that the assessment of viability should take place prior to the determination of an application. But in this case there is only an outline application. A full planning application, including all reserved matters, has yet to be submitted, let alone determined. It is at that stage that viability should be assessed and the specific details of an affordable housing scheme concluded. As the experience of the present case shows, to attempt to do so at the outline stage is somewhat futile. But, there is no requirement to propose or agree a scheme at that reserved matters stage; Schedule 13 only applies three months before commencement, which may well be after reserved matters are approved, not before.
114. Nevertheless, the obligation is before me to consider. For the reasons already stated, affordable housing is a requirement and I find both Schedules 12 and 13 compliant with policy. I therefore have no reason to find them inconsistent with the CIL regulations. But, also for the reasons explained and for the reasons put forward by the Council, they may be ineffective in securing an appropriate amount or quality of affordable housing.
115. National Guidance advises that, in exceptional circumstances, a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.⁸ The present case is both complex and strategically important to the delivery of the North-west Bicester eco-town. So, notwithstanding the

⁷ Paragraph: 002 Reference ID: 23b-002-20140306

⁸ Paragraph: 010 Reference ID: 21a-010-20140306

terms of Schedules 12 and 13, which I have taken into account as described above, I impose a condition.

Strategic Highway

116. The Strategic Link Road or Strategic Highway is the realignment of Howes Lane. It is shown on the Parameter Plans as part of the development proposal but it is the intention that only part of it will be constructed in connection with the present development. The remainder will be constructed by another party.
117. As previously noted, until the Strategic Link Road is fully constructed, the extent of development of the current appeal proposal must be limited so that the capacity of the highway infrastructure at the junction of Howes Lane and Bucknell Road is not exceeded. Its construction is therefore necessary for the full development of the current appeal proposal to proceed.
118. Furthermore, as previously noted, the construction of the Strategic Link Road is necessary to improve the living conditions of those residential properties bordering the east side of Howes Lane. This is one of the potential planning benefits of the proposed development which it is necessary to secure.
119. It is therefore necessary to secure arrangements for the contribution to the complete construction of the Strategic Link Road to be made by the appeal development. For these reasons I am convinced that the obligations contained in Schedule 27 of the Unilateral Undertaking are necessary to make the development acceptable in planning terms.
120. Both the Council's Infrastructure Delivery Plan and the Anticipated Construction Programme submitted by Barton Wilmore on behalf of A2Dominion confirm that the expected completion date for the Strategic Link road including the tunnel under the railway would be in the financial year 2021/22. In any event, Schedule 27 does not appear to include a clawback clause requiring repayment if the contribution is not spent within a defined period, although the draft licence would endure for only 15 years. I am therefore satisfied that the contribution payable will effectively contribute to the delivery of the project.
121. The provisions of Schedule 27 are directly related to the development in that a licence to access the land to construct the Strategic Highway may be requested by the County Council at any time after a date six weeks after the grant of planning permission and an executed licence must be delivered within fourteen days of the County Council's request. I make no comment on the contents of the draft licence because, as a draft, it is still open to negotiation between the parties and the Unilateral Undertaking contains a facility for resolving disputes between the parties. For reasons explained below, I have included a condition which limits development of the appeal site in terms consistent with those used in the draft licence, so the Council's concerns about the inability of the trigger point to be reached need not apply even if the finally delivered licence does not differ from the draft included in the Unilateral Undertaking.
122. No implementation of the appeal development may proceed until an agreement has been entered into for the owner and developer of the appeal site to contribute 1.73% of the costs of completing the Strategic Link Road. That percentage is calculated by reference to the appeal site's proportion of the

total housing quantities expected to be delivered in the North-West Bicester eco-town and so is fairly and reasonably related in scale and kind to the development. It is implausible to expect the developer to enter into this aspect of the obligation on the coming into effect of the planning permission prior to implementation of the appeal development, since that would require the developer to commit to a substantial contribution to the road construction costs before the developer could be confident of the development itself providing the funding involved.

123. The appellant has noted that the definition of Strategic Road Land includes an incorrect drawing reference number but that the correct drawing has been attached to the Undertaking. It is correctly identified as Plan 2 in accordance with the reference to Plan 2 in the definition of Strategic Road Land, so the referencing error is self-evident. I therefore accept the appellant's assurance that it does not render the Unilateral Undertaking incapable of correct interpretation.
124. The Council is concerned that Plan 2 does not include a drainage channel which will need to be used for off-site drainage of the new road. But the plan does not show any of the arrangements which would be necessary to deal with drainage from the road which is inevitably going to involve discharge to drains not included within the land dedicated to the road itself, so I do not regard this as a fatal circumstance. In any event, I note the appellant's contention that the extent of land shown in Plan 2 is greater than that shown in the fall-back permissions.
125. I therefore conclude that the obligations contained in Schedule 27 of the Unilateral Undertaking comply with the CIL regulations. I have therefore taken full account of them in reaching my decision on the appeal proposal.

Zero Carbon

126. Local Plan policy Bicester 1 requires the application of design standards including zero carbon development. What is meant by zero carbon development is explained by section ET 7 and ET 9 of the eco-towns supplement to the otherwise now cancelled Planning Policy Statement 1. It concerns carbon dioxide emissions from energy use from locally produced energy and energy provided by or fed into central networks. Dwellings are expected to demonstrate high levels of energy efficiency in the fabric of the building and to achieve carbon reductions from space heating, ventilation, hot water and fixed lighting of at least 70% relative to current Building Regulations.
127. An Energy Assessment for the development has already been prepared by Silcock Dawson and Partners (submitted to the Inquiry as Core Document CD1a1). This amounts to a strategy for achieving the development's contribution towards a zero carbon development. As noted in the Council's committee report, the Council's consultants, Bioregional, have advised that the strategy proposed would not necessarily result in a truly zero carbon development.
128. However, what is needed is not so much a further strategy, more the identification of measures which will result in a zero carbon development and to provide for their implementation, which can be done through conditions, considered below (though I note that achievement of BREEAM "Very Good"

standard for non-residential buildings with a capability of achieving “Excellent” standard is anyway required by the obligation included in Schedule 17 of the Unilateral Undertaking).

129. I therefore conclude that the obligations contained in Schedule 14 of the Unilateral Undertaking are unnecessary and so do not comply with the CIL regulations. I therefore take no account of them in making my decision.

Construction standards

130. As noted above, the development is expected to be a zero carbon development. For non-residential buildings, the achievement of BREEAM “Excellent” standard is an important contribution to that aim. That particular requirement of Schedule 17 of the Unilateral Undertaking is therefore necessary (though not sufficient by itself) to make the development acceptable in planning terms. I am satisfied that the requirement complies with the CIL regulations and have therefore taken it into account in making my decision.

Materials sourcing

131. Local Plan policy Bicester 1 requires development to promote the use of locally sourced materials. That particular element of Schedule 17 of the Unilateral Undertaking is therefore necessary to make the development acceptable in planning terms. I consider that it complies with CIL regulations and have therefore taken it into account in making my decision.

Training and employment plans

132. Paragraph 19 of the NPPF records the government’s commitment to ensuring that the planning system does everything it can to support sustainable economic growth. The argument that that includes requiring the provision of construction apprenticeships through new development is a compelling one and so I am convinced that the requirements in Schedule 10 of the Unilateral Undertaking are necessary, directly related to the development and fairly and reasonably related to it in scale and kind. I have therefore taken these into account in reaching my decision.

Routeing agreement

133. Paragraph 8.6.7 of the submitted Environmental Statement advises that Middleton Stoney Road is a rural link providing access to Bucknell to the north with a route to junction 10 of the M40. It is not a route via which to encourage HGV movements. As such a routeing restriction to preclude such movements during construction is appropriate with all movements routeing via the B4030/A4095 roundabout onto the perimeter road (Vendée Drive) to the south.

134. Paragraph 4.3.2 of the Unilateral Obligation commits the developer to enter into a routeing agreement substantially in the form recommended by the Environmental Statement but with the additional provision that it would apply to the subsequent operation of the development, not just its construction. For the reasons given in the Environmental Statement, I consider it is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development.

135. It passes the CIL tests and I have taken it into account in making my decision but it would only be triggered by the commencement of the

employment development, whereas the recommendations of the Environmental Statement are not so restricted. Accordingly, I have imposed a condition requiring a Construction Method Statement to be submitted. This would provide an opportunity for the Local Planning Authority to secure a routeing agreement for the construction of the residential part of the development when details of the Construction Method Statement are submitted. It would not be necessary or practical to require a routeing agreement for the subsequent operation of the residential development but for the employment development the routeing agreement incorporated into the planning obligation would continue to apply.

Highways agreements

136. The permanent highway works at Middleton Stoney Road are integral to the larger part of the employment development. The temporary highway works at Howes Lane are integral to the residential part of the development. It would be unacceptable for the development to take place without the two accesses being first constructed. Because their construction involves works to the existing highway, it will be necessary for the developer to enter into a s278 agreement with the County Council for these works to be delivered.
137. However, it is government policy, set out in paragraph 203 of the National Planning Policy Framework that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. A planning condition can require that no other development on site should take place until the two accesses have been formed. To comply with that condition will inevitably require the developer to enter into the necessary s278 agreements and so it is not necessary for that to be required by a planning obligation.
138. I therefore take no account of the planning obligation set out in Schedule 26 because it is unnecessary and so does not comply with the CIL regulations.

Design

139. In their closing submissions, both main parties deal with this issue summarily. I will do the same.
140. Local Plan policy Bicester 1 requires high quality exemplary development and design standards and a well designed approach to the urban edge. Local Plan policy ESD 15, which applies throughout the Cherwell District, requires all new development to meet high design standards. So, policy Bicester 1 does not place a different requirement on the appeal site. Good design is a universal requirement as paragraphs 56 and 57 of the NPPF make clear.
141. It therefore follows that it should not be necessary for the appeal proposal to be subject to special arrangements for considering its design qualities. It is reasonable to expect that the Council will be able to apply its policies through the normal operation of its development control system. I therefore conclude that the absence from the Unilateral Undertaking of any arrangements for a Design Panel or similar do not make the appeal proposal unacceptable or in any way contrary to planning policy.

Conditions

142. The two main parties sought to agree on a draft list of conditions to be submitted during the Inquiry but, in the event were only able to submit a travelling draft pursued by several commentaries subsequent to the Inquiry sessions (Inquiry documents 14e, 21 and 23). Some suggested conditions have already been discussed in this decision letter. I have considered all suggested conditions in the light of advice contained in national Guidance and by reference to the model planning conditions contained in Appendix A of the otherwise cancelled Circular 11/95 *the Use of Conditions in Planning Permissions*, preferring the wording of the latter where appropriate.
143. Firstly, I make a general observation. The grant of outline permission does not give carte blanche for a developer to do as it pleases in submitting reserved matters. A permission given in outline does not waive away the requirements of development plan policies. The details to be submitted in pursuit of reserved matters still fall to be considered against development plan policy and if they contravene that policy they may be denied approval. It is therefore not necessary for me to impose conditions on this outline consent which simply reiterate the requirements of policy; the policies continue to apply in any event.

Parameter plans

144. The first five conditions are standard conditions which I have adjusted to reflect the circumstances of the case, including the possibility of phasing development. Conditions 6 to 10 apply the provisions of the Parameter Plans as required by the courts, together with the drawings for the two approved accesses. The recommendations of other documents submitted with the application are picked up in other conditions. Conditions 12 and 13 limit the development to the quantities of development which have been evaluated in the Environmental Statement.

Size of employment units

145. I have not included a condition limiting the size of units to be provided on plot 3 because although the North West Bicester Masterplan Economic Strategy identifies a demand for units smaller than 500 sq m and the appellant's evidence suggests that they intend to provide start-up business space in any event, there is no information to show that there is a need for units below the suggested size threshold to the exclusion of others. Contrary to the reason given in the draft Conditions Schedule circulated at the Inquiry, Local Plan policy Bicester 1 does not appear to require a range of commercial uses. In any event layout is a reserved matter so the Council will have the opportunity to consider the acceptability of the layout when details of that matter are submitted at a later date.

Design Codes

146. For reasons similar to my reasons for finding the Unilateral Undertaking acceptable without a requirement for a special arrangements for considering its design qualities, I do not consider that conditions are necessary requiring either the submission of a Design Code or an Urban Design Framework prior to the submission of details of reserved matters of appearance, landscaping layout and scale. Local Plan policy ESD 15 asserts that for major

sites/strategic sites and complex developments, Design Codes will need to be prepared in conjunction with the Council and local stakeholders to ensure appropriate character and high quality design is delivered throughout. But no design code for the whole of the North-west Bicester eco-town, to which the development might be expected to comply through the requirements of a condition, has been produced. The Council will be able to judge for itself whether the substantive requirements of policy ESD 15 would be met when details of reserved matters are submitted.

Building for Life

147. Likewise, I do not impose a condition (agreed by both main parties) requiring the submission of a document showing how the residential development would achieve "Built for Life" status. Although the government attaches great importance to the design of the built environment, simply producing a document would not, of itself, achieve that aim. Appearance, landscaping, layout and scale are reserved matters. When those details are submitted, the Council will be in a position to consider whether they comply with Local Plan policies Bicester 1 and ESD15 which require development to be compatible with up to date urban design principles, including Building for Life.

Dwelling mix

148. For much the same reason, I do not impose a condition (agreed by both main parties) requiring the submission of a schedule of dwelling mix to accord with the requirements of Local Plan policy BSC4. Either the details of the reserved matters, when they are submitted, will demonstrate compliance with Local Plan policy BSC4, or they will not. Either way, it is open to the Council to decide whether the submitted details are acceptable or not, irrespective of the submission or otherwise of a schedule. A condition requiring the submission of a schedule is unnecessary.

Information technology

149. Suggested conditions requiring both employment and residential buildings to be fitted with devices showing real time energy and travel information in accordance with details to be submitted for approval and to facilitate high speed broad band provision are necessary because reserved matters would not provide such details yet Local Plan policy Bicester 1 requires housing to have real time energy monitoring systems, real time public transport information and superfast broadband access. The same provision in the employment development would contribute towards achieving the objectives of the eco-town.

Climate change

150. The NPPF advises that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change amongst other matters. To mitigate and adapt to climate change local planning authorities should adopt proactive strategies.
151. For this development it is suggested that a condition require the submission of a statement identifying and explaining the development's adaptation to the impact of a set of defined climate change parameters. Whilst this information would no doubt be helpful to the Council in evaluating the details of reserved

matters when they are submitted, it fails the tests of precision and enforceability in that although it sets performance requirements it does not make clear exactly what the substantive features are which the condition is expected to produce which would need to be incorporated into the development, it does not require their incorporation and it does not require their retention in operation.

152. Paragraph ET 8.2 of the eco-towns supplement to the now otherwise cancelled Planning Policy Statement 1 advises on what is involved in dealing with climate change. Eco towns should deliver a high quality local environment and meet the standards on water, flooding, green infrastructure and biodiversity taking into account a changing climate for these as well as incorporating wider best practice on tackling overheating and impacts of a changing climate for the natural and built environment.
153. Design to achieve a high quality local environment is considered elsewhere in this decision. In other parts of this decision I have considered substantive requirements for the submission of details concerning water, green infrastructure, surface water drainage and biodiversity. There is no information to show that these details cannot be adequately examined for their resilience to the climate change parameters identified by the Council in its Note dated 30 October in respect of planning conditions. The Council has powers to require the submission of further information if the details submitted are inadequate. No further condition is required.
154. Best practice in tackling overheating through planning concerns layout, glazing and the cooling effects of trees and water bodies. Other matters, such as insulation are dealt with through the Building Regulations. Appearance, layout and landscaping are reserved matters for which details are required in any event by other conditions. There is no information to show that the details to be submitted cannot be evaluated by the Council to establish whether they would comply with the requirement of Local Plan policy Bicester 1 which requires the incorporation of best practice on tackling overheating, taking account of the latest UKCIP climate predictions. The Council has powers to require further information if the details submitted are inadequate. No further condition is required.

Noise

155. Paragraph 10.7.34 of the Environmental Statement June 2017 predicts that while large areas of the residential development site will experience BS8233 compliant internal noise levels with windows open for ventilation, plots close to the Strategic Link Road would require acoustic alternative means of ventilation such as a Mechanical Ventilation with Heat Recovery (MVHR) system to minimise the likelihood of overheating. Details of such provision would not normally be provided as part of reserved matters applications and so a condition, as agreed by the two main parties, is necessary to ensure that provision is made.
156. Whilst there are no details currently before me it may be supposed that the employment development proposed in this development would house plant and machinery and would emit noise. Table 17 of the submitted Environmental Statement suggests target noise criteria for inclusion in a condition limiting the noise which can be emitted from the employment development.

157. Because I have included the recommendations of the Environmental Statement in relation to construction noise within condition 24 (x) the separate condition about construction noise levels agreed between the two main parties is unnecessary and so I do not impose it.

Embedded carbon

158. Local Plan policy Bicester 1 requires the use of low embodied carbon in construction materials. Information to judge whether this policy is being complied with would not normally be provided as part of the submission of reserved matters and so a condition is necessary to ensure that details are provided.

Access

159. The submitted Unilateral Undertaking makes no provision for the closure and removal of the temporary access on to Howes Lane following the completion of the Strategic Link Road. The diversion of Howes Lane, allowing for its closure, is one of the planning benefits of the appeal proposal, so it is necessary to ensure that this is not stymied by the retention of the temporary access longer than is needed. Conditions are therefore imposed to ensure that this takes place and that existing accesses from the site onto Howes Lane are stopped up.

160. Accesses to the residential development from the Strategic Link Road are not approved as part of this outline permission. They remain as reserved matters details of which are reserved for later consideration. It is therefore not necessary for a condition to require their submission or for their construction prior to the occupation of the residential development. Such a condition may become necessary and appropriate when reserved matters details are submitted.

161. Details of layout and further details of access to and within the residential development are not submitted as part of this application. They remain as reserved matters and so it is not necessary for a condition to require the submission of details of footpath linkages to Howes Lane, Shakespeare Drive retail and community facilities and King's Meadow Primary School. It will be for the Council to consider their adequacy when details of reserved matters are considered. But these details would not normally include the provision of details of signage. Signage would be necessary to encourage and maximise the habit of walking in accordance with the requirement of Local Plan policy Bicester 1 to maximise the potential for walkable neighbourhoods. A condition is therefore imposed to require the submission of details of signage and their implementation.

Travel plan

162. Implementation of a travel plan to reduce reliance on the private car is a requirement of Local Plan policy Bicester 1. This would not be routinely submitted as part of reserved matters and so a condition is necessary to secure its submission and implementation. Provision is made within Schedule 24 of the Unilateral Undertaking for a financial contribution to the County Council for its monitoring. I have already noted that this would comply with the CIL regulations.

Bus stops

163. Much of the length of the roads along which the bus service to serve north-west Bicester would pass would be provided by other developers. The Unilateral Undertaking makes provision for a financial contribution to the provision of bus stops. Other than on Middleton Road, the details presently submitted do not show the location of bus stop infrastructure to be provided. Not every phase of the scheme will include a bus stop. As the Council remarks, these need to be planned holistically. The allocation of bus stops to phases of development is therefore required as part of the phasing plan. In so far as bus services would require locations for bus stops on roads provided as part of this development, reserved matters would not automatically show these details and so it is necessary that their submission and implementation be required by condition.

Contaminated land

164. Table 3.1 of the submitted Environmental Statement points out that trial trenching was carried out for the archaeological assessment of the site and that historical maps identify that the site has been in agricultural use since 1881 and has had no other uses. It concludes that it is not considered that there is any potential for significant contamination of the site and scoped ground conditions and contamination out of further assessment. I have no reason to disagree.

165. National Guidance advises that if there is a reason to believe contamination could be an issue, developers should provide proportionate but sufficient site investigation information. That is not the case here, because there is no reason to believe that contamination could be an issue. I do not therefore impose any conditions requiring further investigation or remediation other than that requiring remediation if contamination is unexpectedly found during construction.

Biodiversity

166. Local Plan policies Bicester 1 and ESD10 require the development to achieve a net biodiversity gain. Appendix 6.2 of the Environmental Statement June 2017 and the Biodiversity Offsetting Metric Assessment of July 2015 demonstrate that the achievement of a net biodiversity gain is possible across the site as a whole but, as the Council recognises in its Note dated 13 October 2017 in respect of planning conditions, this is dependent upon detailed matters that can only be fully assessed at the reserved matters stage. The suggested draft condition calls for the production of a scheme demonstrating net biodiversity gain. But that is just what Appendix 6.2 of the Environmental Statement and paragraph 3.4 of the Biodiversity Offsetting Metric Assessment already do; what is now required is to put that strategy into effect.

167. Paragraph 5.4 of Appendix 6.2 of the Environmental Statement June 2017 summarises four planning controls needed to secure a mitigation and enhancement strategy:

- Secure the retention and enhancement of retained hedgerows and trees. The trees and hedgerows to be retained and enhanced are shown on parameters plans 04A and 05A. These are secured by conditions 9 and 10. No further condition is necessary.

- Secure the production and implementation of a Construction Environmental Management Plan. This is secured by condition 24, particularly subsection (x). No further condition is necessary.
- Provide financial contributions to off-site mitigation for farmland birds. This is provided by Schedule 9 of the Unilateral Undertaking. No further condition is necessary.
- Secure the production of a habitat management plan. The habitats required are listed in paragraphs 4.3 and 4.4 of Appendix 6.2 of the Environmental Statement June 2017 and in paragraph 3.4 of the Biodiversity Offsetting Metric Assessment of July 2015. To some extent their retention and/or provision (as appropriate) is already secured by the degree to which they are included in parameters plans 04a and 05A which are secured by conditions 9 and 10. But in any event, landscaping is a reserved matter. When details of this reserved matter are submitted, the Council will be able to judge for itself whether they meet the expectations of the Strategy (including the recommendation in paragraphs 3.25 and 3.28 of Appendix 6.2 to the Environmental Statement June 2017 and paragraph 3.4 of the Biodiversity Offsetting Metric Assessment that ten bat boxes and ten bird nesting boxes be provided⁹ together with a number of log piles for the benefit of amphibians, reptiles and invertebrates and the recommendations in paragraphs 3.20, 3.23 and 3.30 that detailed proposals be founded on up to date surveys of badgers, bats and reptiles) and so to decide whether to approve the details or not. It is not incumbent upon the Council to approve details which do not comply with Local Plan policies Bicester 1 and ESD 10. No further condition is necessary to secure the submission of these details.

If, when considering the submission of reserved matters relating to landscaping, the Council considers that a plan for their future management is necessary, it can impose a condition requiring one at that stage. Because I do not have details of the landscaping proposed before me, I cannot come to the view that the condition (agreed by both parties) requiring a management plan is necessary now and so I do not impose it.

168. Although not specifically recommended in the submitted Biodiversity Strategy, condition 11 is necessary to prevent the removal of trees and hedges when birds are nesting.

Trees and hedgerows

169. Because the protection of trees and hedgerows is shown on a parameters plan which is to be secured by condition, there is no necessity for the separate suggested conditions agreed between the two main parties. I have therefore not imposed them.

⁹ The submission of reserved matters relating to appearance will allow for consideration of whether the recommendation for the provision of bird and bat boxes is followed through on houses so as to meet the requirements of Local Plan policies Bicester 1 and ESD10

Air quality

170. Tables 9.13 and 9.14 of the submitted Environmental Statement predict that the development will have negligible effects on air quality. I have no information to cause me to come to a different conclusion. For that reason I do not impose the conditions related to air quality sought by the Council.

External activity

171. The layout of the development, including the employment element, is a reserved matter. When details of this reserved matter are submitted for approval, the council will be able to assess whether there would be any areas where goods, materials, plant or machinery would be likely to be stored, repaired, operated or displayed in the open and whether such areas would need to be screened in any way in order to safeguard the visual amenities of the area in accordance with Local Plan policy C28. If such screening is necessary it would be open to the Council to require such by a condition at that stage or to decline to approve the details for the reason of conflict with policy.

172. For the present, because I have no details of the layout of the employment development before me, I am not in a position to conclude that such a condition is necessary. Therefore I do not impose the suggested condition (agreed between the two main parties) prohibiting open air activity without the prior express consent of the Council.

External lighting

173. Details of reserved matters do not include external lighting. Because the design of external lighting can have adverse effects on ecology and biodiversity both surrounding and within the site, as is recognised in the submitted Environmental Statement it is necessary for the Council to be able to ensure that its design does not cause harm. For that reason a condition requiring the submission and approval of details is required.

Water supply

174. A condition is suggested which would require a study of the existing water supply infrastructure to be carried out, to identify any additional infrastructure necessary to serve the development and to prevent the occupation of the development until any additional supply required has been provided. The wording of the condition is disputed but neither party disputes its necessity.

175. It was said at the Inquiry that it was a condition requested by Thames Water. However, I have no further information to substantiate this report. Thames Water's only submitted comment on this application, dated 23 October 2014 and repeated on 26 August 2015 is an informative about the minimum pressure and flow rate which Thames Water aims to provide.

176. It is a principle of a planning condition that it should not derogate from the grant of permission. Yet this suggested condition implies a suspicion that there may not be an adequate water supply to serve the development. There can be no presumption that, if an inadequate water supply is identified, the inadequacy can be rectified. Yet, if it is not, the occupation of the development would be prevented, thus having the effect of negating the benefit of the permission. For that reason it is not a condition which I could legitimately impose.

177. The adequacy of a water supply is fundamental to a development. Without it, it might be necessary to dismiss this appeal and refuse permission. Notwithstanding the hearsay information reported at the Inquiry, written comment from Thames Water does not support the contention that there is, or may be, an inadequate water supply. Accordingly, I am not convinced either that the appeal needs to be dismissed or of the necessity of the condition suggested and so do not impose it.
178. Local Plan policy Bicester 1 requires water efficiency and demand management. Details of reserved matters are unlikely to provide the information to allow an assessment of the proposals' compliance with this policy, so conditions are necessary (agreed by the two main parties) to require details to be submitted.
179. A further condition is suggested seeking submission of details of a strategy to work towards water neutrality. Yet water neutrality, as described in paragraph ET17.5 and Annex B of the eco-towns supplement to the otherwise cancelled Planning Policy Statement 1 is concerned with achieving development without increasing overall water use across a wider area and so its achievement would not be within the scope of a single development.
180. According to paragraph ET 17.5 of the eco-towns supplement there are three strands to achieving water neutrality within a water cycle strategy:
- Limiting the impact of new development on water use (the two conditions described above would achieve this in the case of this appeal development) and making plans for additional measures within the existing building stock of the wider area. This latter element is clearly outside the scope of the current appeal proposal so no additional condition is necessary.
 - Equipping new homes to meet the water consumption of level 5 of the Code for Sustainable Homes. The Code for Sustainable Homes has now been withdrawn but the suggested condition to limit the water consumption of the residential element of the development sets an equivalent requirement, so no additional condition is necessary.
 - Equipping non-domestic buildings to meet similar high standards of water efficiency. The suggested condition to limit the water consumption of the employment element of the development meets this requirement so no further condition is necessary.

Drainage

181. Reserved matters do not require the submission of details of surface water or foul drainage. Yet it is necessary for the local planning authority to consider whether the development makes acceptable provision for these matters so I impose a condition to require the submission of details and their subsequent implementation. Until details are known, it is not possible to identify the necessity of requiring a scheme of maintenance, so I do not impose the suggested condition requiring such.

Archaeology

182. An archaeological evaluation of the site was carried out in March 2013 by Northampton Archaeology. It identified two distinct areas of archaeological

activity. Trial trenching was carried out. The report makes no recommendation either for or against further work but the County archaeologist seeks a programme of archaeological investigation because of the two areas of interest identified. I have adjusted the draft conditions suggested and agreed by both parties to relate specifically to the identified areas of interest.

Zero Carbon

183. As noted earlier, an Energy Assessment of the development has already been prepared and assessed by the Council's consultants, Bioregional. Their response has raised concerns with an apparent lack of commitment to a truly zero carbon development. But, as the Council's committee report correctly notes, it is the achievement of zero carbon on the North-West Bicester site overall which is the key.
184. As paragraph ET7.1 of the eco-towns supplement to the otherwise superseded Planning Policy Statement 1 points out, "the definition of zero carbon in eco-towns is that over a year the net carbon dioxide emission from all energy use within the buildings on the eco-town development as a whole are zero or below." I take particular note of the use of the words "as a whole" to infer that it is not necessary for every individual development within the eco-town to be zero carbon so long as deficiencies on one site are made up by better performance on another site. That interpretation is confirmed by footnote 6 of the eco-towns supplement; "This definition of zero carbon applies solely in the context of eco-towns and applies to the whole development rather than to individual buildings."
185. I note the advice of Silcock Dawson and Partners that it is not commercially viable to install the required levels of photovoltaic panels to achieve zero carbon dioxide emissions from the employment development. That may, or may not, turn out to be the case when details of reserved matters are to be submitted. I also note the Council's acknowledgement (in paragraph 5.68 of its January 2016 officer report) that "this site has some constraints in relation to the scale of the residential aspect of the scheme as well as the uncertainty over who may ultimately occupy the commercial buildings."
186. I concur with the Council's intention that "s106 obligations/conditions are used to carefully control this development such that additional energy information is required to be submitted and considered." The NPPF advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
187. Even though the Energy Assessment submitted by the appellant may not necessarily have led to a truly zero carbon development, it points to the details about which information needs to be submitted. Those details include:
- Insulation better than Building Regulation values
 - Target air permeability of less than 3 cu.m/hr/sq.m
 - Dwellings to have a balanced ventilation system with heat recovery
 - Dwellings to be provided with 100% low energy luminaires

- Provision for dwellings to be connected to the intended district heating network with interim provision of site-wide combined heat and power unit
- Dwellings to be fitted with photovoltaic panels
- Employment buildings to be fitted with high efficiency fluorescent luminaires with daylight compensation controls
- Employment buildings to be heated by ground source heat pumps or biomass boilers to meet the requirements of BREEAM Ene1 for an "Excellent" rating.

Those details would not normally be supplied in the submission of reserved matters and so, with the exception of the last point which is secured by the provisions of Schedule 17 of the Unilateral Undertaking, need to be secured by conditions.

188. Because the measures recommended by the appellant's consultant do not add up to a truly zero-carbon development (for example, the consultant's report specifically excludes consideration of appliances because they belong to residents, yet white goods are commonly supplied by housing developers as part of a scheme), I do not simply translate the recommended measures into a condition. More needs to be done to achieve an acceptable scheme. The appellant has suggested the words of a condition which the Council confirms was used for what is known as the Exemplar site (also part of the north-west Bicester eco-town) (planning permission 10/01780/HYBRID). As that condition has led to the submission of an acceptable scheme which is now being built out, I am confident that a similar condition, adjusted to reflect the phasing intended for the present proposal, would do the same in the present case.

Conclusion

189. The eco-towns supplement to Planning Policy Statement 1 asserts that eco-towns are exemplars of good practice. It notes that their standards are more challenging and stretching than would normally be required for new development. But it does not require their achievement to be complex, difficult or costly.

190. In essence, that issue underlies the arguments in this case. Neither main party argue against the principle of developing this site for the purposes intended. Their disputes focus on the terms of the planning obligations and conditions to be attached to any permission. By close examination of the Unilateral Undertaking and the suggested conditions I have found that an acceptable development may be permitted with a lesser extent of obligations and conditions than the fall-back position but without compromise to the objectives of the eco-town concept or to the substantive outcome of the development.

191. With those provisions of the Unilateral Undertaking which I have endorsed as compliant with the CIL Regulations in place, together with the application of the thirty-three conditions appended to this decision, I conclude that the proposal would have an acceptable effect on the generation of employment, the landscape character of the area, the supply of affordable housing, the supply of and demand for community, social and transport infrastructure, highway safety for pedestrians, the provision of green infrastructure, biodiversity and the

demand for and supply of transport. It would comply with Local Plan policies Bicester 1, SLE1, ESD13 and ESD15 which have been described previously in this decision. For these reasons the appeal is allowed.

P. W. Clark

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

James Neill, of Counsel	Instructed by Cherwell District Council
He called no witnesses but the following participated in discussions on conditions and obligations	
Caroline Ford BA(Hons) MA MRTPI	Principal Planning Officer, Cherwell District Council
Jenny Barker	Interim Assistant Director, Cherwell District Council
Julia Taplin	Oxfordshire County Council
Karen Mutton	Eversheds
Howard Cox	Oxfordshire County Council
Joy White	Oxfordshire County Council

FOR THE APPELLANT:

Paul Tucker QC	Instructed by Tim Waring, Quod
He called no witnesses but the following participated in discussions on conditions and obligations	
Tim Waring BA(Hons) DipTP MRTPI	Director, Quod
Simon Parfitt MIHE	DTA Transportation Ltd
Emma Lancaster	Quod
Michael Pocock	Pinsent Masons

INTERESTED PERSONS:

Stephen Rand	Derwent Green Residents' Group
G Johnson	PPP

Additional **DOCUMENTS** submitted at Inquiry

- 1 CDC and OCC Position Statement on Unilateral Undertaking (with Annex 1 and 2, position statement on matters set out in letter from Quod to CDC dated 6.9.2017, note on pooled contributions, Additional Position statement concerning contributions to County Council and notes on 14 class primary school pricing
- 2 Appellant's response to Councils' Position statements
- 3 Appeal decision APP/C3105/A/14/2213263
- 4 Letter dated 6 September 2017 from Tim Waring to Caroline Ford
- 5 Letter dated 12 September 2017 from Derwent Green Residents Group
- 6 Appeal decision APP/C3105/A/12/2178521
- 7 Bundle of highway drawings
 - a. Drawing 14042-30 revision B
 - b. Drawing 14042-32 revision E
 - c. Drawing 14042-34 revision C
 - d. Drawing 14042-25-2 revision a
 - e. Drawing 14042-45 revision f
- 8 Bundle of revised Parameter Plans
 - a. Drawing number 4216_SK_202_A
 - b. Drawing number 4216_SK_203_A revision C
 - c. Drawing number 4216_SK_204_A revision A
 - d. Drawing number 4216_SK_205_A_ revision E
 - e. Drawing number 4216_SK_206_A_ revision A
- 9 Agreed matters Ecology
- 10 Statement of Common Ground Highway and Transportation Issues
- 11 Statement of Common Ground
- 12 Note on further amendments to Parameter Plans

Additional **DOCUMENTS** submitted by arrangement following Inquiry adjournment

- 13 Letter from Barton Willmore dated 13 September 2017 with Anticipated Construction Programme for Rail Bridge and Strategic Link road
- 14 Bundle of documents comprising Council's comments on draft Unilateral Undertaking
 - a. Joint response by Cherwell DC and Oxfordshire CC
 - b. Draft undertaking with tracked changes dated 13.10.17
 - c. Note in respect of Community Development Workers, Community Development Fund and Community Led management Organisation
 - d. Infrastructure Delivery Plan dated 13 .10.17
 - e. Note on planning conditions
- 15 Rule 6 party's comments on draft Unilateral Undertaking
- 16
 - a. Unilateral Undertaking signed and dated 23 October 2017
 - b. Note on Unilateral Undertaking
- 17 Appellant's comments on representations to Amended Parameter plans
- 18 Core Documents 24b and 25
- 19 Council comments on draft licence appended to Unilateral Undertaking
- 20 Corrections to Schedule 27 of Unilateral Undertaking

- 21 Appellant's response to Document 14(e)
- 22 Council's Closing Submissions
- 23 Council's response to Document 21
- 24 Appellant's Closing Submissions

CONDITIONS

- 1) Details of the access (in so far as not approved in this decision), appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") of any phase of development shall be submitted to and approved in writing by the local planning authority before any development of that phase takes place and the development shall be carried out as approved.
- 2) No development shall take place until a phasing plan for the whole development has been submitted to and approved in writing by the local planning authority indicating the landscaping, open space, play facilities, affordable housing, cycle ways, footpaths and public transport facilities to be provided in each phase. Development shall be carried out in accordance with the phasing plan.
- 3) Application for approval of the reserved matters for the first phase of residential development and the first phase of employment development shall be made to the local planning authority not later than 3 years from the date of this permission.
- 4) Application for approval of the reserved matters for the remaining phases of development shall be made to the local planning authority not later than 5 years from the date of this permission.
- 5) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 6) The access to the development hereby permitted shall be carried out in accordance with Parameter Plan 06A, drawing number 4216_SK_206_A_ revision A and the following approved plans: 14042-30 revision B and 14042-32 revision E. No residential development nor any employment development on plot 3 shall be occupied until the access shown on drawing 14042-32 revision E has been completed to a standard capable of being adopted by the local highway authority. No employment development on plot 4 shall be occupied until the access shown on drawing 14042-30 revision B has been completed to a standard capable of being adopted by the local highway authority.
- 7) No development shall take place other than in accordance with the Land Uses shown on Parameter Plan 02A, drawing number 4216_SK_202_A.
- 8) The height of the development hereby permitted shall not exceed the limits shown on Parameter Plan 03A, drawing number 4216_SK_203A revision C
- 9) No development on any phase shall be occupied until the planting proposals shown on Parameter Plan 04A, drawing number 4216_SK_204_A revision A and encompassed within that phase have been carried out.
- 10) No site clearance, preparatory work or development shall take place on any phase until a scheme for the protection of the trees and hedgerows in that phase shown to be retained on Parameter Plan 05A (drawing number 4216_SK_205_A_ revision E (the tree protection plan) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees and

hedgerows shall be carried out as approved. No tree or hedgerow shown to be retained shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner, other than in accordance with Parameter Plan 05A, without the prior written approval of the local planning authority. If any tree or hedgerow shown to be retained is cut down, uprooted or destroyed or dies another tree or hedgerow shall be planted at the same place within the following planting season and that tree shall be of such size and species as may be specified in writing by the local planning authority.

- 11) No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive.
- 12) No more than 150 dwellings shall be constructed on the site.
- 13) No more than 53,000 sq m of employment floor space shall be constructed on the site, of which no more than 80% shall be utilised for purposes falling within Class B1c or B2 (including ancillary uses) and no more than 70% within Class B8 (including ancillary uses) of the Town and Country Planning (Use Classes)(England) Order 1987 (or their equivalent in subsequent enactments or re-enactments) and none for any other purposes whatsoever.
- 14) No more than 17,437 sq m of B8 floorspace and 7,473 sq m of B1c/B2 floorpace may be occupied until the development work to realign Howes Lane and Lords Lane approved under application 14/01968/F (or any other such planning permission which may be granted for the Strategic Link Road) has been completed and the road is open to vehicular traffic and the temporary link road to Howes Lane closed, removed and its site reinstated in accordance with details which shall have been previously submitted to and approved in writing by the local planning authority.
- 15) No dwelling or employment building shall be occupied until it has been provided with devices showing real time energy and travel information in accordance with details which shall have been submitted to and approved in writing by the local planning authority prior to the commencement of their construction. The devices shall thereafter be retained in operational condition.
- 16) No dwelling or employment building shall be occupied until it has been provided with service connections capable of supporting the provision of high speed broadband from the building to the nearest broadband service connection outside the site.
- 17) Prior to the commencement of each residential phase, those areas of the phase that are likely to be subject to elevated levels of noise, e.g. from the Strategic Link Road, shall be identified and the dwellings that are constructed in those areas shall be designed and constructed in such a manner that they contain elements of sound insulation that will ensure that the internal noise levels contained within table 4 of BS 8233:2014 are achieved in accordance with details to be first submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details so approved.
- 18) No phase of development shall commence until details of the embedded carbon of its proposed construction materials have been submitted to and

- approved in writing by the local planning authority. The development shall be carried out in compliance with the approved details.
- 19) No phase of development shall commence until details of the route of service connections (both under and over ground) for that phase, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 or its successor, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 20) Prior to the first use of the temporary access hereby permitted, the existing field accesses onto the site from the A4095 Howes Lane shall be permanently stopped up by means of full face kerbing, planting and the reinstatement of the highway verge and shall not thereafter be used by any vehicular traffic whatsoever.
 - 21) No residential phase shall commence until details of directional signage between the dwellings proposed and both Shakespeare Drive retail and community facilities and Kings Meadow Primary School have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No dwelling on the phase concerned shall be occupied until the signage has been installed.
 - 22) Prior to the first occupation of any phase of the development, details of a Travel Plan setting out how at least 50% of trips originating within that phase will be made by non-car means, with the potential for this to increase over time to 60%, shall have been submitted to and approved by the local planning authority. The development shall be carried out and continued thereafter in accordance with the approved details.
 - 23) Prior to the commencement of any phase of development, details of bus stop locations for that phase shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details as approved.
 - 24) No development shall take place on any phase, including any works of demolition, until a Construction Method Statement for that phase has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) the routeing of HGVs to and from the site;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust and dirt during construction;
 - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - ix) delivery, demolition and construction working hours;

- x) The mitigation measures recommended in the Construction section of table 6.6 , paragraphs 7.5.2 and 7.5.3, table 9.10 and paragraphs 10.5.3 and 10.6.13 of the submitted Environmental Statement June 2017

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

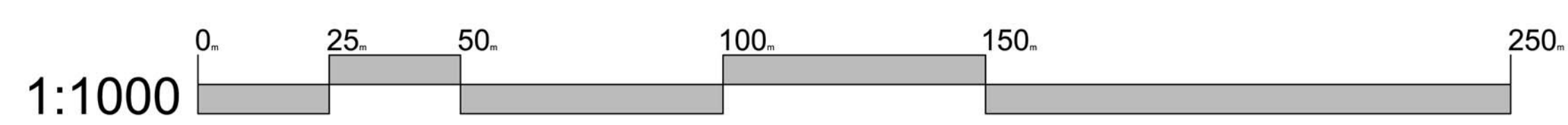
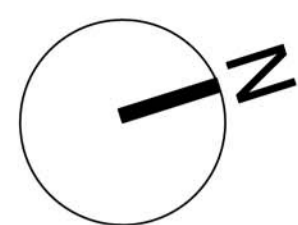
- 25) If, during development of any phase, land contamination is found to be present at the site then no further development of that phase shall be carried out until details of a remediation strategy for that phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved remediation details.
- 26) The level of noise emitted from the employment development shall not exceed 58 dB LAeq, between 0700 and 2300 daily and 50 dB LAeq, at any other time on Mondays to Fridays (except public holidays) and 48 dB LAeq at any other time on Saturdays, Sundays and public holidays, as measured at a position of 1m in front of the façade of the nearest dwelling.
- 27) Details of any external lighting on any phase of development shall be submitted to and approved in writing by the local planning authority before any development on that phase commences. Development shall be carried out in accordance with the approved details. The lighting shall be installed and made operational before any building on the relevant phase is first occupied.
- 28) No phase of development shall commence until details of both surface water and foul drainage to serve that phase have been submitted to and approved in writing by the local planning authority. No building shall be occupied until it has been provided with its drainage in accordance with the approved details. The drainage shall thereafter be retained in an operational state.
- 29) No phase of employment development shall commence until details of the measures to be installed in that phase to minimise water consumption have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The measures shall thereafter be retained in an operational condition.
- 30) The residential development shall be constructed so as to meet as a minimum the higher Building Regulation Standard for water consumption limited to 110 litres per day (lppd).
- 31) No development shall take place on the relevant phase until details of a Scheme of Investigation of the archaeological features identified in figures 6 and 8 of the submitted archaeological evaluation (report 13/43 of Northamptonshire Archaeology dated March 2013) shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved investigation details.
- 32) No development shall take place on any phase of development until details of measures (including off-phase and off-site measures if necessary) to achieve zero carbon energy use (as defined in paragraph

ET7.1 of the eco-towns supplement to Planning Policy Statement 1) for that phase shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and the measures approved shall thereafter be retained in an operational condition.




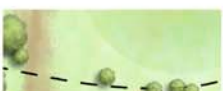




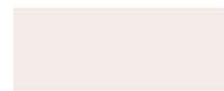
- 33) No residential development shall take place until a scheme for the provision as affordable housing of 30% of the number of dwellings proposed in the submission of reserved matters shall have been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme.

Notes:
 Contractors must verify all dimensions on site before commencing any work or shop drawings. This drawing is not to be scaled. Use figured dimensions only.
 Subject to statutory approvals and survey.
 AREAS
 Building areas are liable to adjustment over the course of the design process due to the ongoing construction detailing developments.



A2 Dominion
 Application.
 14/01641/OUT

- | | | |
|--|--|--|
|  Indicative built form |  Attenuation Area
(Size and Position Subject to Drainage Design) |  Existing Trees |
|  Landscape |  New Planting |  Employment Land |
|  Existing hedgerows |  Proposed Site Access |  Adjoining Land
(Incorporated in A2 Dominion Application) |

MIXED USE DEVELOPMENT - NORTH WEST BICESTER

INDICATIVE MASTERPLAN 3883-20

