



***Cherwell***

**DISTRICT COUNCIL  
NORTH OXFORDSHIRE**

**Cherwell District Council**

**TOWN AND COUNTRY PLANNING ACT 1990**

**Appeal by Albion Land**

**Axis J9 Phase 3**

**Howes Lane**

**Bicester**

**LPA Reference: 21/03177/F**

**PLANNING INSPECTORATE REF NO:**

**APP/C3105/W/22/3304021**

**Compliance Statement in Respect of Planning Obligations**

**November 2022**

## 1. INTRODUCTION

1.1. The following statement is made without prejudice to the District Council's case and its position that the appeal should be refused for the reasons set out in its statement. This document has been prepared by the Local Planning Authority to support the obligations sought under S106 of the Town and Country Planning Act 1990 (as amended) in the event that the Planning Inspector is minded to allow the appeal. It is considered that the obligations are required to adequately mitigate the negative impacts of the proposed development.

1.2. This statement is accompanied by

- Appendix 1 – Appeal decision for LPA reference 14/01675/OUT (PINS ref: APP/C3105/W/16/3163551)
- Appendix 2 – Oxfordshire County Council CIL Regulation 122 Compliance Statement

## 2. POLICY BACKGROUND

2.1. Paragraphs 55 to 58 of the National Planning Policy Framework set out the Government's policy in respect of planning obligations and, in particular, provide that planning obligations should be:

- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development; and
- fairly and reasonably related in scale and kind to the proposed development.

Equivalent legislative tests are contained within the Community Infrastructure Levy (CIL) Regulations 2010.

### **Relevant Development Plan policies**

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- INF1 – Infrastructure
- PSD1 – Presumption in Favour of Sustainable Development
- SLE1 – Employment Development
- SLE4 – Improved Transport and Connections
- BSC1 – District Wide Housing Distribution
- BSC2 – Effective and Efficient Use of Land
- BSC3 – Affordable Housing
- BSC4 – Housing Mix
- BSC7 – Meeting Education Needs

- BSC8 – Securing Health and Well-Being
- BSC9 – Public Services and Utilities
- BSC10 – Open Space, Outdoor Sport and Recreation Provision
- BSC11 – Local Standards of Provision – Outdoor Recreation
- BSC12 – Indoor Sport, Recreation and Community Facilities
- ESD1 – Mitigating and Adapting to Climate Change
- ESD2 – Energy Hierarchy and Allowable Solutions
- ESD3 – Sustainable Construction
- ESD4 – Decentralised Energy Systems
- ESD5 – Renewable Energy
- ESD6 – Sustainable flood risk management
- ESD7 – Sustainable Drainage Systems
- ESD8 – Water Resources
- ESD10 – Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 – Local Landscape Protection and Enhancement
- ESD15 – The Character of the Built and Historic Environment
- ESD17 – Green Infrastructure
- Bicester 1 – North West Bicester Eco Town
- Bicester 7 – Open Space

#### Other Material Considerations

- Developer Contributions SPD (February 2018)
- National Planning Policy Framework (2021)
- Planning Practice Guidance (PPG)
- North West Bicester SPD (February 2016)

The previous planning application 14/01675/OUT was refused and allowed at appeal (APP/C3105/W/16/3163551). The decision for which is attached at Appendix 1. The appeal decision provided a detailed assessment of each of the requested contributions. It is referred to throughout this assessment where requirements of the current S106 were also considered by that appeal decision.

### **3. REQUESTED OBLIGATIONS**

#### **3.1. Public Art**

3.2. A contribution of £21,214.05 index linked from 2Q17 is sought with the trigger for payment to be prior to occupation of each commercial unit presented as a formula for payment to be made to secure a public art contribution per commercial unit (based upon its floor area).

#### **3.3. Justified by Policies:**

- INF1 – Infrastructure

- Policy Bicester 1 which requires 'The provision of public art to enhance the quality of the place, legibility and identity'.
  - NW Bicester SPD which requires Cultural Wellbeing proposals to ensure NW Bicester is a culturally vibrant place through high quality design and community engagement.
  - Developer Contributions SPD – identifies that the public realm and public art can play an important role in enhancing the character of an area, enriching the environment, improving the overall quality of space and therefore people's lives.
- 3.4. The contribution is based upon the agreed rate which applied to Phases 1 and 2 of the Axis J9 scheme which, at Q2 2017 rates equates to £1.43 per square metre of employment space. Using the GEA of the proposal development (14,385sqm), the contribution would equal £21,214.05 index linked also from Q2 2017.
- 3.5. Whilst the appeal Inspector for the original Axis J9 scheme (14/01675/OUT) did not accept a public art contribution, he did conclude that this would be a matter for consideration at the reserved matters stage as to whether there was compliance with Local Plan policy including the requirement for Public Art. The conclusion was that *'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...'* (paragraph 75). This was secured through a later planning permission for the site.
- 3.6. This contribution is considered to be necessary because it would ensure that the development contributes towards the creation of a culturally vibrant place at NW Bicester and to meet the requirements of Policy Bicester 1 by enhancing the quality of the place, legibility and identity.
- 3.7. The contribution is directly related to the proposed development because it is intended that the contribution would be specified to be used towards the provision of public art within the NW Bicester development.
- 3.8. The contribution is fairly and reasonably related in scale and kind because it is based upon the same rate per square metre as the commercial development which was used in the S106 relating to the wider Axis J9 site and because it is based upon a square metre charge relates to the scale of the development proposed.
- 3.9. **Biodiversity Offset Contribution to mitigate for impacts upon farmland birds**
- 3.10. A contribution of £7,988.24 index linked from 2Q17 is sought with the trigger to require the payment prior to the implementation of the development.
- 3.11. Justified by Policies:



- ESD10: In considering proposals for development, a net gain in biodiversity will be sought by protecting, managing, enhancing and extending existing resources and by creating new resources.
- Policy Bicester 1: Preservation and enhancement of habitats and species on site, particularly protected species and habitats and creation and management of new habitats to achieve an overall net gain in biodiversity including the creation of a local nature reserve and linkages with existing BAP habitats.
- NW Bicester SPD requires the achievement of a net biodiversity gain. It also identifies that as it is not possible to mitigate for the impact of farmland birds on site, off site mitigation measures should be provided and all applications within the masterplan area should contribute to the provision of off-site mitigation.
- Developer Contributions SPD – identifies that '*where on site mitigation or compensation cannot be achieved, contributions may be sought towards a scheme that closely offsets the impact of the development, and which also meets the aims of the Council's BAP*'.

3.12. The Biodiversity Strategy supporting the NW Bicester Masterplan (Hyder 2011) identified that development would lead to the loss of land of value to farmland birds. It proposed an offset contribution to provide for offsite mitigation for farmland birds to mitigate for the impact related to the whole masterplan as a contribution towards biodiversity net gain. The contribution has been calculated to give a per hectare figure based upon a scheme to enhance 200ha of farmland for farmland birds for a period of 25 years including a 15% sum to enable resource to implement and manage the scheme. The per hectare figure is £1,333.04 index linked from 2Q17.

3.13. Based upon the area of the site being 6ha, the contribution sought would equal £7,988.24 index linked from 2Q17.

3.14. The appeal Inspector for the original Axis J9 scheme (14/01675/OUT) accepted the justification for a biodiversity offsetting payment finding that '*this is clearly necessary in order to contribute to the achievement of the policy*' (paragraph 71).

3.15. The contribution sought is necessary due to the identified impact of the whole of the NW Bicester development in that it would not be possible to compensate for the loss of habitats used by farmland birds. As the development site is part of the NW Bicester site, it is necessary that a contribution is made to account for the proportionate impact of the development upon farmland birds.

3.16. The contribution is directly related because it relates to the impacts on farmland birds arising from the development cumulatively with other developments at NW Bicester.

3.17. The contribution is fairly and reasonably related in scale and kind to the development because the contribution per hectare has been calculated based upon the calculations for the cost of enhancing a 200ha area for 25 years plus a

staff resource to manage the scheme. The per hectare figure has been used to calculate the contribution based upon the site area of this planning application to give the total amount sought.

### 3.18. Training and Employment Plan to secure 3 apprenticeship starts

3.19. The requirement would be for the provision of a Training and Employment Plan to be submitted prior to the implementation of the development.

3.20. Justified by Policies:

- The pre-wording to Policy Bicester 1 at paragraph C.39 (bullet point 5) relates to employment. The last paragraph states '*An economic strategy will be required and there should be local sourcing of labour, including providing apprenticeships during construction*'. Policy Bicester 1 requires the provision of an Economic Strategy to support planning applications demonstrating how access to work will be achieved.
- NW Bicester SPD states at Development Requirement 5 – Employment, that planning applications should '*support local apprenticeship and training initiatives*'.
- Developer Contributions SPD identifies the Government commitment to supporting sustainable economic growth. The need to increase the number of apprenticeships locally is picked up by both the Oxfordshire Local Economic Partnership (OXLEP) and the South Midlands Local Economic Partnership (SEMLEP). The Council's approach to securing construction apprenticeships and skills is set out at Appendix 13 of the SPD.

3.21. Whilst Appendix 13 of the SPD identifies an indicative number of apprenticeships to be 3 apprenticeship starts per 1000sqm floorspace, the Council accepted a target of 5 apprenticeship starts for the Employment Development element of the original Axis J9 development. The number of 3 sought for this proposal is therefore proportionately similar to that sought and agreed for the adjacent development.

3.22. The appeal Inspector for the original Axis J9 scheme (14/01675/OUT) accepted the justification for a Training and Employment Plan to secure apprenticeship starts finding that '*the argument that [ensuring the planning system does everything to secure sustainable economic growth] that includes requiring the provision of construction apprenticeships through new development is a compelling one and so I am convinced that the requirements of Schedule 10 ... are necessary, directly related to the development and fairly and reasonably related to it in scale and kind*' (paragraph 132).

3.23. The proposal to secure a training and employment plan is necessary to meet the requirements of Policy Bicester 1 and the CDC Developer Contributions SPD.

3.24. The proposal to secure a training and employment plan is directly related to the development as the development itself is a vehicle to support an ongoing

programme of skills, training and apprenticeships. The apprenticeship starts would be directly related to the construction of the development itself.

3.25. The proposal to secure a training and employment plan is fairly and reasonably related in scale and kind to the development because, whilst the number of apprenticeship starts is lower than that set out by the SPD, that number is proportionate to the number secured by Phases 1 and 2 and therefore is fairly and reasonably related in scale and kind to the development scale.

**3.26. Requirement to monitor the development through the construction and post occupancy stages**

3.27. The requirement would be to agree a scheme prior to the implementation of the development and to then monitor the development through the construction and then occupancy stages.

3.28. Justified by Policies:

- Policy Bicester 1 – Monitoring – the embodied impacts of construction to be monitored, managed and minimised and sustainability metrics, including those on zero carbon, transport, water and waste to be agreed and monitored for learning, good governance and dissemination.
- NW Bicester SPD states that planning submissions should set out a strategy and programme for monitoring and reviewing the proposals once implemented. This will ensure that the eco-town principles and standards are measured and the performance of the development can be managed effectively to provide feedback and potential improvements to later phases of the scheme (page 56).

3.29. The appeal Inspector for the original Axis J9 scheme (14/01675/OUT) accepted the justification for the need to monitor the development because *'the need for monitoring of development in eco-towns is a requirement unique to developments of that case'* (para 97).

3.30. The requirement to monitor the development is considered to be necessary to ensure that the development is meeting the high standards sought across NW Bicester, to learn from the site and to allow improvements to future phases of the development. It is necessary therefore to secure a scheme of monitoring from this site.

3.31. The requirement to monitor the development is directly related to the development because it relates to the development itself.

3.32. The requirement to monitor the development is fairly and reasonably related in scale and kind to the development because it would be proportionate to the development itself and therefore it is fairly and reasonably related in scale and kind to the development.

### 3.33. CDC Monitoring Fee of £5,500

3.34. Regulation 122 (2A) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) now makes it clear that a monitoring fee can be charged to monitor planning obligations provided:

- a) The sum to be paid fairly and reasonable relates in scale and kind to the development; and
- b) The sum to be paid to the Authority does not exceed the Authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.

3.35. The CDC charge is based upon its recently agreed Fees and Charges Schedule which sets out that for developments of between 10,000-75,000sqm floorspace that a bespoke charge will be based upon the number of obligations and triggers with a minimum charge of £5,000. A registration charge of £500 is also applicable. As the S106 has relatively few obligations and triggers for CDC, it has been concluded that the minimum charge plus the registration charge is therefore applicable. The need for the monitoring fee is to ensure that the Local Planning Authority can appropriately monitor that the development is complying with its S106 including the high standards sought at the site and taking into account the complex nature of the site.

3.36. **Arrangements to link the proposal to the major infrastructure agreements (comprising a legal charge, an access licence and a contribution agreement). The agreements make provision for allowances against the proportionate contribution required from this site where the owner delivers part of the SLR themselves and sets out the need for the technical approval of this.**

3.37. This requirement is considered to be necessary as the development includes land that is required to deliver a strategic link road based upon its currently planned route as shown on the NW Bicester Masterplan which is critical to overcome a highway constraint relating to enabling development at NW Bicester to be delivered. In the same way that arrangements have been secured in the past related to the wider outline site, those same (or as agreed following advice) arrangements should also apply to this site where relevant to ensure that those elements remain secure. The detail of the element of the strategic link road to be delivered will require technical approval via these agreements to ensure it is constructed to an appropriate standard.

3.38. This requirement is considered to be directly related to the development as the land forms part of the application site and nearby and as it is for strategic purposes, the requirement to secure this is directly related to the development.

- 3.39. This requirement is considered to be fairly and reasonably related in scale and kind to the development as it would ensure a fair and reasonably related contribution in scale and kind towards the strategic infrastructure, also taking into account any infrastructure which is directly delivered. The other agreements are proportionate because they relate to the land itself.
- 3.40. **The requirement to enter into a S278 agreement to secure the proposed crossing of Howes Lane with a signalised crossing to the public right of way at Wansbeck Drive (with the potential requirement to identify the areas required to be dedicated as public highway and agreement of all relevant landowners)**
- 3.41. This requirement is considered to be necessary because the provision of pedestrian and cycle links from the development site to the local area is necessary. As the works are necessary to create the opportunities for sustainable travel, their provision must be secured with appropriate timing. The requirement is therefore for the S106 to include a process to secure the entering into a S278 prior to the implementation of the development and to include timescales for the works to be completed by.
- 3.42. This requirement is considered to be directly related because the requirement to deliver the offsite highway works is directly related to the development as it requires these works to make it acceptable.
- 3.43. This requirement is fairly and reasonably related in scale and kind to the development because the works have been negotiated and secured as necessary works to make the development acceptable and to provide for a means of access to the site.
- 3.44. **A routing agreement to prevent HGV traffic from using Howes Lane**
- 3.45. This requirement is necessary due to the transport impact of the development which assumes that a certain number of trips would route North to the Howes Lane/ Bucknell Road/ Lords Lane junction prior to the opening of the realigned SLR. This would rely on a routing agreement to ensure that any HGV traffic routes south in the same way that routing is secured for the existing site. The requirement is therefore necessary to mitigate for the transport impacts of the development.
- 3.46. This requirement is directly related to the development as it relates to vehicular movements related to and from this appeal site.
- 3.47. This requirement is fairly and reasonably related in scale and kind to the development as it relates to vehicular movements related to and from the site only.

Appendix 1 - Appeal decision for LPA reference  
14/01675/OUT (PINS ref: APP/C3105/W/16/3163551)

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## 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**

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**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.
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**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 courts<sup>1</sup>, any parameter plan submitted with an Environmental Statement must be applied by condition,

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<sup>1</sup> 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 – 2<sup>nd</sup> 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 Lane<sup>2</sup>. 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

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<sup>2</sup> 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 <sup>3</sup>	£2109.93
• Strategic Highway <sup>4</sup>	£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.<sup>5</sup> 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

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<sup>3</sup> Contingent on transfer to District Council rather than management company

<sup>4</sup> Approximate estimate based on information in letter from Barton Willmore dated 13 September 2017

<sup>5</sup> 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 2,000<sup>th</sup> dwelling (probably around the year 2028 according to the trajectory described in the Council's Infrastructure Delivery plan), the second phase by the 3,500<sup>th</sup> dwelling (circa 2033) and the third phase by the 5,500<sup>th</sup> (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 4,900<sup>th</sup> dwelling, circa 2039). The building work would be started by the time of the 5,260<sup>th</sup> dwelling (circa 2042) and be completed by the time of the 5,500<sup>th</sup> dwelling (circa 2043).

48. The first phase of the control room would be rolled out by the 2,500<sup>th</sup> dwelling (circa 2029), the second phase circa 2043 by the time of the 5,500<sup>th</sup> dwelling. Phase 1 of the vehicle fleet would be delivered by the time of the 2,000<sup>th</sup> dwelling (circa 2028), the second phase by about the 3,500<sup>th</sup> dwelling (circa 2033) and the final phase by the 5,500<sup>th</sup> dwelling (circa 2043).
49. The two ANPR cameras would be installed by the time of the 2,000<sup>th</sup> dwelling (circa 2028). Phase 1 of the mobile IT equipment roll-out would be completed at the same time, phase 2 by the 3,500<sup>th</sup> dwelling (circa 2033) and phase 3 by the 5,500<sup>th</sup> dwelling (circa 2043). Phase 1 of the increased radio coverage would be completed by the 2,500<sup>th</sup> dwelling (circa 2029) and the second phase by the time of the 5,500<sup>th</sup> 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 640<sup>th</sup> dwelling in the eco-town (in the early 2020s) and the third temporary hall by the time of the 1100<sup>th</sup> 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 4,970<sup>th</sup> dwelling in the eco-town (circa 2039) with completion by the time of the 5,600<sup>th</sup> 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 1650<sup>th</sup> dwelling in the eco-town as a whole (circa 2024-25). Phase two would be expected to be complete by the time of the 2,550<sup>th</sup> dwelling in the eco-town (circa 2029). The pitches north of the railway line are expected to be complete by the time of the 1850<sup>th</sup> 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 1570<sup>th</sup> 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 2,500<sup>th</sup> 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 1,000<sup>th</sup> 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 3,500<sup>th</sup> dwelling on the eco-town (circa 2033).
85. The secondary school is likely to be delivered in three phases coinciding with the 2,000<sup>th</sup>, 4,000 and 5,500<sup>th</sup> 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 case<sup>6</sup> 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

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<sup>6</sup> Oxfordshire County council v SSCLG [2015] EWHC 186

and Other Areas of Green Space. The Community Farm is expected to be completed by the time of the 2,130<sup>th</sup> 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 4,680<sup>th</sup> dwelling, circa 2038-9). The Nature Reserve would be similarly late in the programme (completed by the time of the 4,900<sup>th</sup> 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 Guidance<sup>7</sup> (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.<sup>8</sup> The present case is both complex and strategically important to the delivery of the North-west Bicester eco-town. So, notwithstanding the

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<sup>7</sup> Paragraph: 002 Reference ID: 23b-002-20140306

<sup>8</sup> 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 broadband 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 provided<sup>9</sup> 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.

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<sup>9</sup> 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 floorspace 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 routing 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.

Appendix 2 – Oxfordshire County Council CIL  
Regulation 122 Compliance Statement



**OXFORDSHIRE COUNTY COUNCIL'S**  
**REGULATION 122 COMPLIANCE STATEMENT**

**Location:** Axis J9 Phase 3 Howes Lane, Bicester

**LPA Planning Application Ref No:** 21-03177-F

**Planning Appeal Ref No:** APP/C3105/W/22/3304021

**Proposal Description:** Full planning application 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

**Date of OCC Reg 122 Statement:** 01/112022

## **1. INTRODUCTION**

- 1.1. Oxfordshire County Council (OCC) considers that the proposed 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 is unacceptable without an agreement under Section 106 of the Town and County Planning Act 1990 (S106) which is required to mitigate the demands which will be placed on infrastructure and services as a result of the development. This statement by OCC provides the justification for its requirements for a contribution towards public transport services, public transport infrastructure, travel plan monitoring and public rights of way improvements, and for a fee towards the administration & monitoring of the S106 agreement.
- 1.2. This statement supplements the previously submitted formal responses by OCC to the formal statutory planning application consultations carried out by Cherwell District Council (CDC).
- 1.3. R122(2) of the Community Infrastructure Levy (CIL) regulations 2010 (as amended) introduced three tests for S106 agreements which must apply if a planning obligation is to constitute a reason for granting planning permission. It should be:
  - a) necessary to make the development acceptable in planning terms
  - b) directly related to the development and
  - c) fairly and reasonably related in scale and kind to the development.
- 1.4. The purpose of this statement is to show that the requested contributions

Comply with the requirements of the three tests.

## 2. **INFRASTRUCTURE CONTRIBUTIONS:**

- 2.1. OCC considers that the development would have a detrimental impact on the local services it provides unless the contributions sought are provided as set out below:

<b>Type of Contributions</b>	<b>Contribution</b>	<b>Indexed-linked &amp; Base Date</b>
Public transport services	£140,859	RPIX July 2022
Public transport infrastructure	£19,796	Baxter October 2021
Travel Plan Monitoring	£5,579	RPIX December 2021
Public Rights of Way improvements	£3,031	Baxter July 2022

*Table 1: OCC Required Infrastructure Contributions*

### 2.2. **The OCC Administration and Monitoring Fee= £4,600**

- 2.3. The above contributions save for the Administration and Monitoring Fee are to be indexed-linked to maintain the real values of the contributions so that they can in future years deliver the same level of infrastructure provision as currently required.

- 2.4. The site forms part of the North West Bicester strategic allocation (Cherwell Local Plan Policy Bicester 1). It has planning permission for 150 dwellings, which this application seeks to replace with industrial/warehousing development. The contributions secured on the residential permission form a proportionate part of the infrastructure package required to mitigate the impact of the strategic allocation. The contributions sought here are to provide what would otherwise be lost as a result of the change from residential to employment and are necessary to ensure that sufficient contributions are provided across the allocation to secure the full mitigation.

## 3. **TRANSPORT CONTRIBUTIONS**

### 3.1. **Relevant Policies:**

#### **National Policy**

#### **National Planning Policy Framework, July 2021**

The Government's planning policies relating to accessibility, transport and highways are set out in Section 9 of the National Planning Policy Framework (NPPF). The relevant sections of the NPPF which support the provision of transport contributions are set out below.

- i. **Paragraph 104**

Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:

- (a) the potential impacts of development on transport networks can be addressed;
- (b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;
- (c) opportunities to promote walking, cycling and public transport use are identified and pursued;
- (d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and
- (e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes and contribute to making high quality places.

ii. Paragraph 105

The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

iii. Paragraph 110

In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

- (a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- (b) safe and suitable access to the site can be achieved for all users; and
- (c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

iv. Paragraph 112

Within this context, applications for development should:

- (a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;
- (b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;
- (c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;

#### **Cherwell Local Plan 2015-2031**

Policy for North West Bicester, of which this development is part, is set out in the adopted Cherwell Local Plan Policy Bicester 1, which states that ‘planning permission will only be granted ...in accordance with a comprehensive masterplan for the area to be approved by the Council as part of a North West Bicester Supplementary Planning Document.’

Cherwell District Council’s adopted North West Bicester Supplementary Planning Document references the NW Bicester Masterplan Access and Travel Strategy, which was part of the NW Bicester Masterplan submission. This document sets out the transport impact of the masterplan development in aggregate.

Together these documents support the requirement for each application within NW Bicester to mitigate their share of the aggregate, cumulative impact of NW Bicester as opposed to their impact as a site being developed in isolation from the rest of NW Bicester.

#### **Northwest Bicester Supplementary Planning Document (SPD)**

4.142 The vision is to create a rapid and regular bus service from the site to key destinations in and around the town in order to be attractive to residents. The public transport service needs to be fast reliable, affordable and direct.

4.145 North West Bicester should be an exemplar in the design and operation of its transport systems. The challenge this presents is significant and means that “business as usual” is not an option. Street and place design should give pedestrians and cyclists priority with limited and managed car access.

4.146 An indicative bus route has been submitted with the Draft masterplan. It includes bus only routes and bus priority measures. The final public transport solution must be attractive to all future residents and provide a viable and efficient alternative to car travel.

6.19 The requirements of the planning obligations include the provision and/or contributions for the following:

- Sustainable transport
- Bus service

## **Oxfordshire County Council Policy**

### **Oxfordshire County Council- Local Transport and Connectivity Plan 2022 - 2050 – LCTP.**

#### **Policy 18: Public transport states:**

“ We will

- c) Seek to make the bus a natural first choice through development of infrastructure and network management measures which give priority over the private car .....
- e) Ensure that all new strategic development is designed for bus access and provides suitable funding for high quality services and infrastructure.
- h) Ensure bus services are accessible and support community transport to address unmet local transport needs (further information in community transport policy). “

#### **Policy 5 e) Public Rights of Way states that:**

'We will extend and improve the public rights of way network by securing on and offsite mitigation measures from developments and increasing partnership working with a range of stakeholders to achieve shared outcomes.'

**Connecting Oxfordshire: Oxfordshire County Council's Fourth Local Transport Plan (LTP4) 2015-2031 Volume 2 Bus & Rapid Transit Strategy (2016) (This has not yet been replaced by Part 2 of the Local Transport and Connectivity Plan).**

#### **Promoting bus use through the planning process**

##### *Paragraph 91:*

To support bus development and maximise use of strategic transport investment we will:

- Seek developer funding to support the development of existing or new bus services to achieve a higher and more attractive standard of service as required where there is a reasonable expectation of longer-term commercial sustainability.

##### *Paragraphs 93-95:*

The identification, negotiation and securing of section 106 developer contributions to bus services and infrastructure is currently undertaken on a site by site basis.

There is no strict formulaic approach which calculates a financial contribution to transport measures. The size and phasing of any specific developer contribution is

a matter of negotiation and agreement between the local authorities and the developers. The current approach allows flexibility based on the specific circumstances of development(s) based on experience elsewhere. Service and infrastructure measures can be tailored to circumstances, based on available local evidence and knowledge of bus operating conditions and potential passenger demand and professional judgement.

**Connecting Oxfordshire: Oxfordshire County Council's Fourth Local Transport Plan 2015-2031 (LTP4) – Bicester Area Strategy**

Policy BIC2

We will work to reduce the proportion of journeys made by private car by implementing a Sustainable Transport Strategy by:

Providing bus priority where feasible to ease movements – in particular there is the need to find a solution to issues at the Bucknell Road / Field Street junction which is proposed to become an important bus route as North West Bicester builds out and consider the need for bus lanes along the A41 to connect with the park & ride scheme.

**3.2. Public Transport Contribution: £140,859 to be index linked from July 2022 (RPIX) towards bus services serving North West Bicester**

**(a) Necessary to make the development acceptable in planning terms**

The development would form part of the wider North West Bicester strategic allocation for a new urban extension of 6000 homes plus employment. As such it needs to contribute to meeting the sustainable policy objectives for North West Bicester. The adopted North West Bicester SPD sets out the requirements for serving the development by bus, and refers to the North West Bicester Masterplan which proposes two new bus routes, one serving the development to the south and one to the north of the railway (North West Bicester Masterplan, Access and Movement Framework).

The aim is to achieve a ten-minute frequency, providing a genuine 'turn up and go' service, which is considered necessary for the bus to be attractive to all future residents and employees and provide a viable and efficient alternative to car travel. The SPD says that for North West Bicester, 'business as usual' is not an option for public transport: the offer must be sufficient to achieve the high levels of bus modal share in NW Bicester that the transport strategy and planned transport infrastructure relies on. If this share is not achieved, then the planned infrastructure will not provide sufficient capacity to meet the demand for car travel, and congestion will be severe by the end of the plan period.

Thus the bus service to which this development must contribute, is considered necessary to make the wider North West Bicester development, of which this development is part, acceptable.

**(b) Directly related to the development**

The proposed bus service would pass through and stop within the development. The route would vary as the development progresses, but ultimately it would pass through the site on a bus-only link.

**(c) Fairly and reasonably related in scale and kind to the development**

The contribution is based on a pro-rata share, based on the number of dwellings originally permitted at the site, of the total cost of providing the service to the south of the railway. The total cost of the service is estimated at £2.88 million. This has been calculated as set out below.

The eventual service level for the development sites south-west of the railway has been assessed as requiring 4 buses to fulfil the stated eventual service level. This is based on the delivery of a 10 minute frequency (6 buses per hour) with a round-trip journey time from Bicester Town station, around the development sites south-west of the railway and back to Bicester Town, of between 30 and 40 minutes.

The initial bus service from the first completion would commence with a single vehicle and then the frequency of the service would be increased at agreed trigger-points, to a two-bus service, a three-bus service and eventually a four-bus service. There would also be specified levels of service for evenings, Sundays, public holidays.

The cost of each additional bus inserted into the service level for North West Bicester is calculated as requiring £720k of financial support over a period of 8 years from the start of service for each of these buses. This amount is calculated from a declining financial support profile of £160,000 in the first year, £140,000 in the second year, £120,000 in the third year, £100,000 in the fourth year, £80,000 in the fifth year, £60,000 in the sixth year, £40,000 in the seventh year and £20,000 in the eighth year. In this calculation, each bus is assumed to reach commercial viability from the ninth year onwards.

The trigger points for service enhancement should be:

- 1 bus service from first occupation
- 2 bus service from 401st occupation
- 3 bus service from 1000th occupation
- 4 bus service from 2000th occupation.

To arrive at the contribution, the total cost was divided by 3522 (being the total number of anticipated dwellings south of the railway, comprising 900 at Aldershot Farm, 1700 on Himley Village, 150 on the appeal site, and a further 772 on other applications (not yet received)), multiplied by 150, being the number of dwellings originally permitted on the appeal site.

**3.3. Public Transport Infrastructure: £19,796 to be index linked from October 2021 (RPIX) towards bus stop infrastructure serving North West Bicester**

**(a) Necessary to make the development acceptable in planning terms**

Bus stop infrastructure, comprising flagpoles and timetable cases, shelters and Real Time Information displays are required to make the bus service comfortable and convenient to use, and to ensure that residents and employees are aware of it. Real Time information is specified in the NW Bicester SPD and promotes user confidence in bus services, making it more likely that people will choose to travel by bus, thereby supporting the requirement at NW Bicester for high bus modal share.

**(b) Directly related to the development**

The infrastructure is required for a bus stop on the road leading from Himley Village to the realigned A4095, which would serve this employment parcel as part of the eventual NW Bicester bus service.

**(c) Fairly and reasonably related in scale and kind to the development**

The infrastructure would primarily serve employees and visitors at the site. The amount is equivalent to the cost to OCC of providing a bus stop pole and flag and a standard three-bay shelter with a real time information (RTI) display, with a commuted sum added for maintenance covering the asset life of 10 years.

**3.4 Public Rights of Way contribution: £3,031 to be index linked from July 2022 (Baxter) towards improvements to Bridleway 9 and Bucknell Bridleway 2**

**(a) Necessary to make the development acceptable in planning terms**

This bridleway links Bicester with the surrounding countryside and villages to the north west, and provides a key strategic leisure link for residents and employees and access to the countryside. It originates on Bucknell Road and passes north west through the North West Bicester Masterplan area, connecting to Ardley via Trow Pools nature reserve and on to RAF Upper Heyford and their wider networks, and is valuable to walkers, cyclists and equestrians. It would be accessed from routes within North West Bicester, including from this development. It is currently an unsurfaced bridleway through arable and pasture farmland, including minor road use and road crossing of the M40. The aim is to provide a predominantly traffic-free multi user route, suitable for all year round use, to mitigate the impact of the developments at NW Bicester. Partial funding has been secured from development at Heyford Park towards making the route suitable for cycling. The route would eventually be suitable for commuting from Heyford Park.

Increased use of this facility would support the active travel and health objectives of the North West Bicester SPD, and is part of the overall mitigation package for



the strategic allocation, with contributions also having been requested and secured from other sites at NW Bicester.

It is listed as Item 7 in the Bicester Key Area Countryside Access Needs section of the adopted Oxfordshire Rights of Way Improvement Plan.

**(b) Directly related to the development**

The improvements would directly benefit the employees of the development, who would be able to access the bridleway from within the pedestrian/cycle network of the North West Bicester Masterplan. It represents the only traffic-free countryside route near the site.

**(c) Fairly and reasonably related in scale and kind to the development**

The contribution is based on a cost estimate of £65,000 for the scheme, divided pro-rata (based on the number of dwellings permitted at the site) between the proposed developments at NW Bicester south of the railway.

The scheme aims to provide a wide green corridor, stone surfaced to 2 to 3m width with grass and tree verges and improvements to roads where possible, as well as in-field links for roads in key locations, and improvements to gates, bridges and signage.

The contribution would be put towards the upgrade of the Bicester end of the route – funds are secured for the Ardley and Heyford section of the route.

The cost estimate includes improved signage and information, drainage modifications, preparation and installation of the stone surfaced track, improvements to gates, seating and safety fencing, signing, traffic management and modified fencing on the minor road.

**3.5 Travel Plan monitoring contribution : £5,679 to be index linked from December 2021 (RPIX) towards the cost of monitoring the framework and individual travel plans over the life of the plans**

**(a) Necessary to make the development acceptable in planning terms**

The travel plans aim to encourage and promote more sustainable modes of transport with the objective of reducing dependence upon private motor car travel and so reducing the environmental impact and traffic congestion. Travel plans are required to make this development acceptable in planning terms.

A travel plan is a 'dynamic' document tailored to the needs of businesses and requires an iterative method of re-evaluation and amendment. The county council needs to carry out biennial monitoring over five years of the life of a Travel Plan which includes the following activities:

- review survey data produced by the developer
- compare it to the progress against the targets in the approved travel plan and census or national travel survey data sets
- agree any changes in an updated actions or future targets in an updated travel plan.

Government guidance, 'Good Practice Guidance: Delivering Travel Plans through the Planning Process' states that: 'Monitoring and review are essential to ensure travel plan objectives are being achieved. Monitoring for individual sites should ensure that there is compliance with the plan, assess the effectiveness of the measures and provide opportunity for review.... Monitoring must be done over time – it requires action and resources.'

In accordance with this Guidance, it is the view of the county council that without monitoring the travel plan is likely to be ineffective. Therefore, monitoring of the travel plan is required to make the development acceptable in planning terms.

The government's Good Practice Guidance has been archived but has not been superseded with any other guidance on the practicalities of implementing travel plans. The county council's own published guidance: Transport for new developments; Transport Assessments and Travel Plans, also includes the requirement for monitoring.

Further, the Good Practice Guidance states that 'local authorities should consider charging for the monitoring process and publish any agreed fee scales'.

Section 93 of the Local Government Act 2003 gives the power to local authorities to charge for discretionary services. These are services that an authority has the power, but not a duty, to provide. The Travel Plan Monitoring fee is set to cover the estimated cost of carrying out the above activities and is published in the county council's guidance: 'Transport for new developments; Transport Assessments and Travel Plans'.

As with most non-statutory activities, councils seek to cover their costs as far as possible by way of fees. This is particularly required in the current climate of restricted budgets. Without the fees the council could not provide the resource to carry out the activity, as it is not possible to absorb the work into the general statutory workload. In the case of travel plan monitoring, the work is carried out by a small, dedicated Travel Plans team.

The travel plan monitoring fee is therefore required to make the development acceptable in planning terms, because it enables the monitoring to take place which is necessary to deliver an effective travel plan.

**(b) Directly related to the development**

The travel plans will be bespoke documents relating to the development at the site.

**(c) Calculation:**

The fee charged is for the work required by Oxfordshire County Council to monitor the framework and individual travel plans related solely to this development site. The fee is based on an estimate of the officer time required to carry out the following activities:

- review the survey data produced by the developer
- compare it to the progress against the targets in the approved travel plan and census or national travel survey data sets

- agree any changes in an updated actions or future targets in an updated travel plan.

Oxfordshire County Council guidance –Transport for new developments: Transport Assessments and Travel Plans sets out two levels of fees according to the size of the development.

The figure for each travel plan is based on the officer time required for three monitoring and feedback stages (to be undertaken at years 1, 3 & 5 following first occupation). The fee was calculated on the basis of £2,563 for the Framework Travel Plan and £1,558 each for the two individual travel plans, totalling £5,679 (RPIx Dec 2021).

**4. 2022 OCC ADMINISTRATION AND MONITORING FEE = £4,600**

Regulation 122 (2A) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) now makes it clear that a monitoring fee can be charged to monitor planning obligations provided:

- (a) the sum to be paid fairly and reasonably relates in scale and kind to the development; and
- (b) the sum to be paid to the authority does not exceed the authority’s estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.”

The fee meets these tests because:

In order to secure the delivery of the various infrastructure improvements, to meet the needs arising from development growth, OCC needs to monitor Section 106 planning obligations to ensure that these are fully complied with. To carry out this work, the County Council has set up a Planning Obligation Team and so charges an administration/monitoring fee towards funding this team of officers. The work carried out by the Planning Obligations Team arises solely as a result of OCC entering into Section 106 Agreements in order to mitigate the impact of development on the infrastructure for which OCC is responsible. OCC then has a resultant obligation to ensure that when money is spent, it is on those projects addressing the needs for which it was sought and secured. The officers of the Planning Obligation Team would not be employed to do this work were it not for the need for Section 106 Obligations associated with the development to mitigate the impact of developments.

OCC has developed a sophisticated recording and accounting system to ensure that each separate contribution (whether financial or otherwise), as set out in all S106 legal agreements, is logged using a unique reference number. Systematic cross-referencing enables the use and purpose of each contribution to be clearly identified and tracked throughout the lifetime of the agreement.

This role is carried out by the Planning Obligations Team which monitors each and every one of these Agreements and all of the Obligations within each Agreement from the completion of the Agreement, the start of the development through to the end of a development and often beyond, in order to ensure complete transparency and financial probity. It is the Planning Obligations Team which carries out all of the work recording Agreements and Obligations, calculating and collecting payments (including calculating indexation and any interest), raising invoices and corresponding with developers, and thereby enabling appropriate projects can be delivered. They also monitor the corresponding obligations to ensure that non-financial obligations, on both the developer and OCC are complied with.

To calculate fees OCC has looked at the number of Agreements signed in a year, the size and nature of the various Obligations in those Agreements, and how much work was expected in monitoring each Agreement. From this, OCC has calculated the structure/scale of monitoring fees that would cover the costs of that team. This was then tested to see whether or not the corresponding fees associated with X number of agreements at Y contributions, would be sufficient to meet the costs; the answer was yes. It is relevant to note that the team costs, (against which the current fees were assessed) were established when there were only two officers in the Planning Obligation Team. There are now five officers. The team is therefore now bigger than when the fees were originally calculated.

The OCC 2022 administration and monitoring fee of = £4,600 does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development. The fee therefore meets the tests of Reg 122 (2A).