

**Statement of Common Ground between Albion Land and Cherwell District Council**

**Axis J9 Business Park Phase 3, Howes Lane, Bicester**

**Appeal Ref: APP/C3105/W/22/3304021**

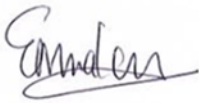
**Quod Ref: Q210286**

**CDC Ref: 21/03177/F**

**Agreement of Documents**

The content of this document has been produced jointly between Albion Land (the Appellant) and Cherwell District Council (the Local Planning Authority). All its content and associated appendices are agreed between the two parties

**Quod (on behalf of the Appellant)**



Emma Lancaster

Director, Quod

.....

Date: .... 22/12/2022 ...

Signed on behalf of Albion Land

**On behalf of the Local Planning Authority**

*Caroline Ford*

.....

Date: ... 22/12/2022 ...

Signed on behalf of Cherwell District Council

## Contents

<b>1. Introduction</b> .....	<b>4</b>
<b>2. The Planning Application</b> .....	<b>6</b>
<b>3. Site and Surrounding Area</b> .....	<b>9</b>
<b>4. Planning History</b> .....	<b>10</b>
<b>5. Decision Making Context</b> .....	<b>12</b>
<b>6. Matters in Agreement</b> .....	<b>15</b>
<b>7. Matters in Dispute</b> .....	<b>20</b>
<b>8. Planning Conditions</b> .....	<b>22</b>
<b>9. Planning Obligations</b> .....	<b>30</b>

## **1. Introduction**

- 1.1. This Statement of Common Ground (“SOCG”) has been prepared jointly by the Appellant (Albion Land) and Cherwell District Council (“CDC”).
- 1.2. The Appeal is made against CDC’s refusal of planning permission on 15 July 2022 for employment development on Land to the West of Howes Lane, Bicester (“The Site”) (Planning Application reference: 21/03177/F).
- 1.3. The decision to refuse planning permission was made by CDC’s Planning Committee, contrary to the Officer’s recommendation to grant permission.
- 1.4. This SOCG has been prepared to aid the efficiency of the forthcoming Hearing, by outlining the areas of agreement between the two parties, together with confirming the matters which are in dispute.

### **The Reasons for Refusal**

- 1.5. The Decision Notice sets out two reasons for refusal.
- 1.6. There are two parts to the first reason for refusal:
  - I. The principle of the proposed development and specifically the introduction of employment uses on a site identified for housing in the North–West Bicester Supplementary Planning Document (“NWB SPD”)
  - II. The impacts of these proposed uses on nearby homes, and the incompatibility of the employment uses with nearby residential uses, that would give rise to a detrimental impact upon the residential amenity of occupiers.
- 1.7. The Council has, since the lodging of the appeal, determined that it would not defend the second part of the first reason for refusal. This is reflected in its Statement of Case and within the matters agreed in this SOCG.
- 1.8. The second reason for refusal is borne out of a Section 106 Obligation (“S106”) not being completed prior to the determination of the Application and the parties are agreed this reason for refusal can be overcome by the completion of a satisfactory obligation.
- 1.9. This SOCG addresses matters relevant to these areas of alleged planning concern.

### **Matters Covered**

- 1.10. This SOCG covers a range of matters relevant to this Appeal, including:
  - An outline of the planning application process, the documentation originally submitted with the application and then up to its determination by CDC in July 2022.
  - An appraisal of The Site and its surrounding areas.
  - The planning history of The Site and relevant history of other sites that have bearing

on the Appeal.

- The relevant planning policy framework.
- An assessment of relevant development management considerations.

## 2. The Planning Application

- 2.1. The Planning Application was registered on 30 September 2021.
- 2.2. The Application was submitted following informal pre-application discussions with officers, though no formal pre-application advice was given by CDC.
- 2.3. The Application was determined on the basis of an application package which included the following information:
  - Application Forms and Ownership Certificates
  - Environmental Statement (including the following topics alongside their technical appendices: the construction process, socio-economic impacts, transport, noise, biodiversity, climate change and greenhouse gas impacts. Landscape and Visual matters were also assessed as an appendix to the ES)
  - Planning Report
  - Drawings Package, including Site Location Plan
  - Design and Access Statement, CGIs and Design Precedents
  - Arboriculture Assessment
  - Archaeology Statement
  - Air Quality Assessment
  - Landscaping Proposals and Landscape Management Plan
  - Economic Statement
  - Market Commentary
  - Flood Risk Assessment
- 2.4. A full copy of the planning submission has been provided to the Inspector.
- 2.5. Following submission of the Application further supporting and/or amended information was submitted to CDC and taken into consideration in determining the Application. This is outlined below:
  - Sustainability Statement
  - Amended Plans
  - Correspondence from BRITA Water
  - Transport Technical Notes and Road Safety Audit information
  - Updated Flood Risk Assessment and corresponding Drainage Details / Plans
  - Updated Air Quality Assessment
  - Noise Technical Note
  - Updated Biodiversity Impact Assessment

- 2.6. It is agreed that the Application provided sufficient information to enable a lawful determination of the proposals and that the Application contained sufficient detail for the likely effects (including any significant environmental effects) of the proposals to be fully understood.
- 2.7. The Application was reported to Planning Committee on 16 June 2022. It was recommended for approval by Officers. The Planning Committee resolved to refuse planning permission, contrary to the professional Officer's recommendation.
- 2.8. The Application was reported to Planning Committee again on 14 July 2022 to confirm the reasons for the refusal.
- 2.9. Planning permission was refused on 15 July 2022.

### **The Proposed Development**

- 2.10. Planning permission is sought for 14,189 sqm (GIA) (14,835sqm GEA) of employment floorspace (Use Classes E(g)(iii) and/or B2 and/or B8 and ancillary E(g)(i)).
- 2.11. The floorspace is to be provided in 3 buildings, one of which is subdivided into 3 units giving 5 units in total.
- 2.12. A landscaped bund of 1.5-2.5m height is proposed between the development and the existing business park to the south. Landscaped bunds ranging from 1-3m high are also proposed to the west and north.
- 2.13. The proposal seeks to create development plateaus for the proposed buildings at around 84.200mAOD – 84.400mAOD.
- 2.14. Units 1-3 are contained within one building which measures 13.6m in height (taken from a finished floor level of 84.200mAOD) and they are smaller units with floorspaces of between 1,792 to 1,954 sqm GIA.
- 2.15. Unit 4 measures 15.15m in height (finished floor level of 84.400mAOD) with a floorspace of 4,753 sqm GIA.
- 2.16. Unit 5 measures 15.15m in height (finished floor level of 84.200mAOD) with a floorspace of 3,856 sqm GIA.
- 2.17. As well as service yards for each building, car parking is proposed (160 spaces in total) and secure cycle parking.
- 2.18. The design of the buildings generally follows the design approach adopted on the existing Axis J9 Business Park to the south, with a similar materials palette, projecting fin detailing, and solar panels situated on the southern facing roof slopes.

- 2.19. Over 40% Green Infrastructure is proposed as well as the retention of the trees and hedgerows along the Site's boundaries.
- 2.20. 10m buffers are provided to each hedgerow, some of the proposed bunds and service area are within these buffers. A net biodiversity gain of 5.5% is proposed. Sustainable drainage systems and landscaping is also proposed.
- 2.21. The buildings are designed to meet BREEAM Very Good level and to meet True Zero Carbon requirements, with the buildings being built to high environmental standards and with the use of PV panels and air source heat pumps. Electric Vehicle Charging points are also proposed.
- 2.22. Access is proposed from Empire Road (the existing business park), from the south from the Middleton Stoney Road. This access route is intended to be a temporary arrangement until such time as the strategic link road ("SLR"), as approved as part of the wider Eco Town, is implemented. At that point, access would be taken from the SLR.
- 2.23. As part of the development proposals, part of the SLR comprising a 7.3m wide road, right turn lanes, swale and verges, footpaths and segregated cycleways on both sides of the road will be delivered.



### 3. Site and Surrounding Area

- 3.1. The Site extends to approximately 6ha in total and it was last used for agriculture, though it has not been actively farmed for several years.
- 3.2. The Site forms parts of the allocated North-West Bicester Eco Town, which extends to approximately 390 ha.
- 3.3. To the north and west of the Site is agricultural land, which also forms the land allocated by Policy Bicester 1.
- 3.4. To the south of the Site is the existing Axis J9 Business Park, which provides a range of employment buildings that are in active use by a range of occupiers (for a mix of uses falling into Use Classes B1<sup>1</sup>, B2 and B8). The Appellant also delivered this business park development.
- 3.5. Beyond the operational business park is Middleton Stoney Road, and then Bignell Park beyond that.
- 3.6. To the east of the Site is a parcel of land which forms part of the allocation for the Eco Town, Howes Lane sits beyond this and then the existing residential area to the west of Bicester.
- 3.7. The nearest existing local centre is situated on Shakespeare Drive, just over 510m from the Site boundary, and a local centre is proposed as part of the Eco Town Masterplan almost immediately to the north.
- 3.8. The Masterplan for the Eco Town includes proposals for bus services to be provided through the Site in two loops, to provide a regular service to the town centre and stations. The Site is already serviced by several existing bus services. Bus stops are located on Wansbeck Drive and Shakespeare Drive to the east of the Site and bus stop infrastructure will be provided as part of the development and the wider Eco Town.
- 3.9. The Site is relatively level with a high point of approximately 85m AOD to the north-west corner and a low point around 82m AOD to the north-east corner. It is generally bound by natural vegetation; to the west, a block of trees/vegetation is present and to the north, a hedgerow.

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<sup>1</sup> The Town and Country Planning (Use Classes) was last updated on 1 September 2020. Through this update, Use Class B1 became part of a new Use Class; namely Class E. The adoption of the Development Plan pre-dated this change, as do several relevant planning applications that will be referenced throughout the Appeal. The Application was made after the introduction of Use Class E. The Use Classes that were in use at the time of the policy and/or application being referred to are used throughout.

## 4. Planning History

### The Site

- 4.1. There have been several applications for development at the Site. The majority of these relate to earlier phases of the business park development to the south, which have now been delivered and are operational.
- 4.2. The Site itself previously benefitted from outline planning permission for residential development (planning permission reference 20/03199/OUT, as a variation to both 19/00347/OUT and 14/01675/OUT).
- 4.3. The outline planning permission expired on 19 December 2022. This approval was subject to a Grampian style condition which prevented the occupation of any new housing or more than 18,020 sqm of Class E(g)(iii) or B2 floorspace at the approved business park until the SLR has been delivered and is open to traffic.

### Wider Eco Town

- 4.4. Planning applications for other sites within the Eco Town have been submitted to CDC. These proposals are at various stages, as explained in **Table 4.1**.
- 4.5. Outside of the Exemplar Phase, no residential development has yet taken place within the Eco Town.

Table 4.1: Wider Eco Town Planning History

Application Reference	Overview of Uses	Status
10/01780/HYBRID	<p>Exemplar Phase at NW Bicester comprising 393 dwellings and non-residential uses.</p> <p>Applications have been made as non-material amendments to this scheme and to discharge conditions.</p> <p>Applications have also been made for local centre uses (including the provision of residential apartments) on the Exemplar Phase and for the re-plan of part of the site with an increase in 3 dwellings.</p>	Approved
21/01630/OUT	Outline application for up to 530 residential dwellings and associated open space and access	Pending consideration

Application Reference	Overview of Uses	Status
21/04275/OUT	Outline application for a mixed use development of up to 3,100 dwellings, extra care and non-residential uses, a PV array and associated open space and access	Pending consideration
14/01641/OUT	Outline application for a mixed use development of up to 900 dwellings, non residential uses and associated open space and access	Pending consideration
14/02121/OUT	Outline application for a mixed use development of up to 1700 dwellings, non residential uses and associated open space and access	Approved
14/01968/F	Construction of new road from Middleton Stoney Road roundabout to join Lord's Lane, east of Purslane Drive, to include the construction of a new crossing under the existing railway line north of the existing Avonbury Business Park, a bus only link east of the railway line, a new road around Hawkwell Farm to join Bucknell Road, retention of part of Old Howes Lane and Lord's Lane to provide access to and from existing residential areas and Bucknell Road to the south and associated infrastructure.	Approved
19/00349/REM	Reserved Matters to 19/00347/OUT - layout, scale, appearance and landscaping details for Phase 1 of the employment development (21,584 sq.m flexible B1c/B2/B8 floorspace) and earthworks for Phase 2 of the employment development	Approved
20/02454/REM	Reserved Matters application to 19/00347/OUT - layout, scale, appearance and landscaping details for Phase 2 of the employment development (23,226 sqm flexible B1c and/or B2 / and/or B8 floorspace), associated utilities and infrastructure and swale (SuDS) and strategic green infrastructure landscaping.	Approved

## 5. Decision Making Context

- 5.1. The Development Plan (“DP”) comprises the Cherwell Local Plan 2011 – 2031 (adopted July 2015) (“CLP 2015”) and the saved policies of the Cherwell Local Plan 1996 (“CLP 1996”).
- 5.2. The North–West Bicester Supplementary Planning Document (“NWB SPD”) is also a material consideration and is referenced in CDC’s reasons for refusal.
- 5.3. Copies of the DP policies referenced within the decision notice have been provided to the Inspector by CDC.
- 5.4. The Decision Notice specifically refers to the following policies of the DP:

### **Cherwell Local Plan 2011/2031**

- Policy Bicester 1 – North–West Bicester Eco Town
- Policy SLE1 – Employment Development
- Policy SLE4 – Improved Transport and Connections
- Policy ESD15 – Character of the Built Environment

### **Cherwell Local Plan 1996**

- Policy C31 – Development in residential areas

- 5.5. By virtue of CDC’s latest position (as expressed in their Statement of Case and elsewhere in this SOCG), no conflict is now alleged with Policies ESD15 of the Cherwell Local Plan 2011/2031 or Policy C31 of Cherwell Local Plan 1996.
- 5.6. This means that CDC now allege conflict only with:
  - Policy SLE1
  - Policy Bicester 1
  - North West Bicester Supplementary Planning Document 2016
  - Policy INF1
  - Policy SLE4
  - Developer Contributions Supplementary Planning Document (February 2018)
- 5.7. It is agreed that the proposals fully accord with all other relevant policies of the DP all of which are listed within the Officer’s recommendation report.

## **North – West Bicester Supplementary Planning Document**

- 5.8. The SPD and Masterplan take key elements from the North West Bicester masterplan and vision documents for the Eco Town prepared by A2Dominion. They form the basis of the SPD, which was adopted by CDC in February 2016.
- 5.9. The SPD provides further detail to Policy Bicester 1 and a means of implementing the strategic allocation. It sets out 14 development principles and requirements based on the Eco Town standards that were set out within the Eco Towns Supplement to (now revoked) PPS1.

## **National Planning Policy Framework**

- 5.10. The National Planning Policy Framework (NPPF) has at its core a presumption in favour of sustainable development (Paragraph 11) and reiterates the requirement for planning applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise (Paragraph 2)
- 5.11. Paragraph 12 confirms that the Development Plan is the starting point for decision-making and that where a planning application conflicts with an up-to-date development plan permission should not be granted.
- 5.12. It includes a range of guidance on matters relevant to the determination of the proposals, including (but not limited to):
- Building a strong, responsive and competitive economy by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity (Paragraph 8)
  - Supporting strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations (Paragraph 8)
  - The Government's objective to significantly boost the supply of homes and the importance of enabling a sufficient amount and variety of land to come forward where needed (Paragraph 60)
  - Creating the conditions in which businesses can invest, expand and adapt (Paragraph 81)
  - Placing significant weight on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (Paragraph 81)
  - Policies should be flexible enough to accommodate needs not anticipated in the plan and ensure a rapid response to changes in economic circumstances (Paragraph 82)
  - Planning decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where there is no reasonable prospect of an application coming forward for the use allocated in a plan, local planning authorities should support applications for alternative uses where the proposal would contribute towards meeting an unmet need for development in the area (Paragraph 122)
  - Attaching great importance to design of the built environment (Section 12)

Policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

## 6. Matters in Agreement

6.1. This Section sets out all the matters where there is no dispute between the parties.

### Principle of Development

6.2. The Appeal site forms part of a larger allocation identified by CLP 2015 Policy Bicester 1 for a mixed-use development including 6,000 residential dwellings and employment.

6.3. The Masterplan included in NWB SPD allocates an area to the south- east corner of the Eco Town for a business park. The site sits directly adjacent to this area.

6.4. The Masterplan identifies the Site itself to be used for residential development and/or green infrastructure.

### Employment

6.5. It is agreed that the proposed mix of employment uses (E(g)(iii) and/or B2 and/or B8 with ancillary E(g)(i) accommodation) complies with the employment uses specified within Policy Bicester 1, which makes provision for development comprising B1, B2 and B8 uses at the business park and the SPD (Paragraph 4.72) which makes provision for *“business space for offices, workshops, factories and warehousing”*.

6.6. It is also agreed that Policy Bicester 1 sets a minimum jobs target to be delivered through B- Class employment uses of 700-1,000 jobs, supporting an overall objective of achieving 4,600 jobs across the Eco Town.

6.7. It is agreed that the proposed development will give rise to a significant number of new job opportunities at the Site

6.8. The parties are agreed that the proposed mix of uses would deliver additional jobs across the Eco Town, thereby increasing the prospect of additional jobs being delivered early in the Plan Period. The applicant has advised CDC that the largest unit proposed as part of the development has already secured an occupier.

### Housing

6.9. It is agreed that the 150 homes that could have been delivered at the Site (by virtue of a previous planning permission) are not included in CDC’s five-year housing land supply position due to current restrictions on their occupation prior to delivery of strategic infrastructure (by others).

6.10. It is agreed that elsewhere across the Eco Town planning applications have been made for higher residential numbers than previously anticipated by the Masterplan.

6.11. It is agreed that CDC cannot currently demonstrate a 5 year supply of deliverable housing land (currently at 3.5 years).

## **Amenity**

- 6.12. It is agreed that the proposed development would be situated sufficiently far enough away from residential properties to the eastern side of Howes Lane, that there would not be significant impacts upon the amenities experienced by these residents.
- 6.13. It is agreed that the proposed development will not prevent or frustrate the comprehensive delivery of the remainder of the Eco Town.

## **Zero Carbon**

- 6.14. The Application was accompanied by an energy statement. This demonstrates how it is envisaged that the development can achieve the zero carbon standards. This will involve highly efficient building fabric and construction and on-site energy generation (PV panels).
- 6.15. Further detail in relation to how the development will reach the zero carbon standards can be secured via planning obligations and conditions. This is the approach taken by CDC in the case of earlier applications and it is considered appropriate in the context of the Appeal.
- 6.16. The parties are therefore agreed that the Appeal fully satisfies the requirements of the Policy Bicester 1 and the SPD with regards to the achievement of true zero carbon development.

## **Climate Change Adaptation**

- 6.17. It is agreed that the development will fully accord with the requirements of Policy Bicester 1 and the SPD with regard to the requirement for climate change adaptation.
- 6.18. The development will provide a minimum of 40% of the gross site area as green infrastructure, contributing towards the achievement of urban cooling.

## **Transport**

- 6.19. The parties are agreed that the trips that will be generated by the proposed development can be satisfactorily accommodated on the local highway network now.
- 6.20. No off-site highway works are necessary prior to the development being brought into use.
- 6.21. It is agreed that the proposed access arrangements are appropriate and acceptable, as a temporary arrangement until such time as strategic highway works are undertaken.
- 6.22. It is also agreed that the Framework Travel Plan submitted in support of the application represents an acceptable means for minimising travel via private car and maximising the use of sustainable travel options. A planning condition can secure an update to the Framework Travel Plan and a Travel Plan for each Employment Unit to be submitted and agreed prior to occupation, should permission be granted.



- 6.23. All other highways and transportation effects of the development are confirmed as being agreed and acceptable.

### **Healthy Lifestyles**

- 6.24. It is agreed that the proposals could make a contribution towards the promotion and achievement of healthy lifestyles as part of a mixed-use allocation.
- 6.25. The development makes appropriate provision for sustainable transport options, such as cycling and walking, through the intended approach to cycleway and footway provision across the Site and the intended connections with the rest of the network proposed across the Eco Town and the existing network in the vicinity of the Site.

### **Green Infrastructure**

- 6.26. The Application is supported by a Green Infrastructure Calculation which demonstrates how the development will achieve 40% of the total gross site area as green space, of which more than half will be publicly accessible and provide a network of high quality green/open spaces in conjunction with surrounding development (existing and proposed).

### **Landscape and the Historic Environment**

- 6.27. The parties are in agreement that the development will not have any impact on the significance or setting of designated or undesignated heritage assets. The Application was supported by an Archaeological Assessment which confirms that there is no archaeological interests at the Site that will prohibit development coming forward in the manner anticipated.
- 6.28. It is agreed that the proposed scale and density of the employment units are appropriate and acceptable when considered in the context of the development to the south.
- 6.29. It is agreed that the Site is not located in an especially sensitive landscape area and that the development will respect its landscape setting.
- 6.30. The proposals will integrate appropriately with the surrounding built form through careful consideration of scale and massing together with open space and structural planting around the Site.

### **Environmental Matters**

- 6.31. The parties are agreed that the development would not have any environmental effects by virtue of loss of privacy, overshadowing or outlook, light, noise/vibration or air quality (either during the construction or the operational phase) that are unacceptable or cannot be appropriately mitigated.

### **Net Biodiversity Gain**

- 6.32. It is agreed that the development can preserve, enhance and create habitats and wildlife corridors such that net biodiversity gain can be achieved at the Site in accordance with Policy Bicester 1.
- 6.33. A biodiversity net gain calculation was provided as part of the Application and this confirmed a net gain of 5.5% was achievable on-site.

### **Flood Risk**

- 6.34. The Appeal is supported by a flood risk and drainage assessment which demonstrates that the development would not be at risk of flooding and nor would it increase the risk of flooding elsewhere.
- 6.35. It was agreed that the intended approach to drainage is acceptable.

### **Design**

- 6.36. It is agreed that the proposed buildings will be of appropriate design taking into account their context, adjacent to existing commercial uses, and their intended use.
- 6.37. It is agreed that the design approach follows that which was accepted for Phases 1 and 2 of the Axis J9 Business Park which will enable the creation of a high quality, cohesive scheme.
- 6.38. The selected materials palette assists and in reducing the appearance of mass and it is consistent with that adopted for phases 1 and 2.
- 6.39. The buildings are sited in a landscape setting, with appropriate attention to the detail of the landscaping proposals paid.

### **Planning Obligations**

- 6.40. It is agreed that the planning obligations set out within the CDC Committee Report are reasonable, fairly related to the development in scale and kind, and necessary to make the development acceptable in planning terms.
- 6.41. The Appellant submitted a draft Section 106 Agreement which would secure the requested obligations prior to the Application being determined. The Appellant has been engaging with both CDC and OCC on the drafting of the Agreement since the submission of the appeal and it is anticipated that a completed obligation will be before the Inspector by the time of the Hearing.

### **Summary**

- 6.42. It is agreed that the development proposed would be compatible with the existing residential uses to the east of Howes Lane and would not have any unacceptable impact upon the residential amenity of those nearby residential occupiers.

6.43. It is also agreed that the second reason for refusal can be overcome by the completion of a satisfactory planning obligation. The Appellant has been engaging with both CDC and OCC on the drafting of such an obligation and it is anticipated this will be with the Inspector in completed form prior to the Hearing.

## 7. Matters in Dispute

7.1. This Section sets out where there remains dispute between the parties.

7.2. The decision notice cites two reasons for refusal:

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

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

7.3. As detailed in earlier Sections of this SOCG, CDC is no longer defending part of the first reason for refusal.

7.4. The only matter in dispute relates to the principle of development.

### Principle of Development

7.5. The parties disagree on the consistency of the proposal with the Development Plan and the weight that should be afforded to relevant material considerations.

7.6. It is CDC's position that there are no material considerations which justify any departure from the North West Bicester Supplementary Planning Document and that, because the development is not in accordance with the North West Bicester Masterplan, which forms an integral part of the adopted North West Bicester Supplementary Planning Document, it does not comply with Policy Bicester 1.

7.7. CDC do not agree that residential development of the nature previously consented at the Site would not be viable during the Plan period. CDC has not independently reviewed or

verified the viability submission made by the Appellant with respect to this appeal and it does not therefore accept its conclusions. It is not expected that a viability issue will form a main consideration of this appeal.

- 7.8. It is CDC's position that the proposed development conflicts with Policy SLE1 in the provision of employment development outside of a defined built-up area and on land not allocated for that purpose.

## 8. Planning Conditions

8.1. The schedule of planning conditions below has been agreed between the parties. The proposed conditions reflect those presented to the Planning Committee on 16 June 2022.

#	Proposed Condition
1.	The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.
2	<p data-bbox="336 568 1342 667">Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents:</p> <ul style="list-style-type: none"> <li data-bbox="384 712 906 741">• 20019-TP-001 Rev F 'Site Location Plan'</li> <li data-bbox="384 786 922 815">• 20019-TP-002 Rev R 'Proposed Site Plan'</li> <li data-bbox="384 860 1018 889">• 20019-TP-003 Rev L 'Proposed Site Finishes Plan'</li> <li data-bbox="384 934 943 963">• 20019-TP-005 Rev C 'Units 1-3 Floor Plans'</li> <li data-bbox="384 1008 863 1037">• 20019-TP-006 'Units 1-3 Roof Plans'</li> <li data-bbox="384 1081 839 1111">• 20019-TP-007 'Units 1-3 Sections'</li> <li data-bbox="384 1155 1321 1216">• 20019-TP-008 Rev D 'Units 1-3 Elevation' 20019-TP-009 Rev C 'Unit 4 Floor Plans'</li> <li data-bbox="384 1261 815 1290">• 20019-TP-010 'Unit 4 Roof Plan'</li> <li data-bbox="384 1335 799 1364">• 20019-TP-011 'Unit 4 Sections'</li> <li data-bbox="384 1408 895 1438">• 20019-TP-012 Rev D 'Unit 4 Elevations'</li> <li data-bbox="384 1482 903 1512">• 20019-TP-013 Rev B 'Unit 5 Floor Plans'</li> <li data-bbox="384 1556 815 1585">• 20019-TP-014 'Unit 5 Roof Plan'</li> <li data-bbox="384 1630 799 1659">• 20019-TP-015 'Unit 5 Sections'</li> <li data-bbox="384 1704 895 1733">• 20019-TP-016 Rev C 'Unit 5 Elevations'</li> <li data-bbox="384 1778 863 1807">• 20019-TP-023 'Cycle Shelter Details'</li> <li data-bbox="384 1852 887 1881">• 20019-TP-024 'Refuse Enclose Details'</li> <li data-bbox="384 1926 911 1955">• 20019-TP-025 'Entrance Canopy Details'</li> <li data-bbox="384 2000 799 2029">• 20019-TP-026 'Fencing Details'</li> </ul>

#	Proposed Condition
	<ul style="list-style-type: none"> <li>• 20019-TP-027 Rev A 'External Finishes Sample Board'</li> <li>• S1209-PH3-02 Rev H 'SW Drainage Layout'</li> <li>• S1209-PH3-03 Rev F 'FW Drainage Layout'</li> <li>• S1209-PH3-04 Rev F 'Phase 3 External Works &amp; Levels'</li> <li>• S1209-PH3-05 Rev A 'Phase 3 Typical Drainage Details'</li> <li>• S1209-PH3-06 Rev A 'Phase 3 Swale 1 Details'</li> <li>• S1209-PH3-07 Rev A 'Phase 3 Swale 2 Details'</li> <li>• S1209-PH3-DD01 Rev D 'Phase 3 Drained Areas'</li> <li>• S1209-PH3-DD02 Rev C 'Phase 3 MicroDrainage Network Design'</li> <li>• S1209-PH3-DD04 Rev B 'Phase 3 Exceedance Flood Route'</li> <li>• 1746-ESC-00-ZZ-DR-E-2100 Rev P3 'External Lighting Layout'</li> <li>• 14042-60-GA Rev N 'Access Road General Arrangement'</li> <li>• Report on Ground Investigation at Howes Lane, Bicester – S1209/ September 2021 Issue 2.</li> <li>• Site Specific Flood Risk Assessment and Drainage Strategy – AG2873-18-AF58 Issue January 2019</li> </ul>
3	<p>The development shall be used for uses falling within Classes E(g)(iii), B2 and B8 of the Town and Country Planning (Use Classes) Order 1987 (or their equivalent in subsequent enactments or re-enactments), only and shall be used for no other purposes whatsoever.</p>
4	<p>All site clearance (including the removal of any vegetation or works to hedgerows) shall be timed so as to avoid the bird nesting season, this being during the months of March until July inclusive unless the Local Planning Authority has confirmed in writing that such works can proceed, based on submission of a survey (no more than 48hrs before works commence) undertaken by a competent ecologist to assess the nesting bird activity on site, together with details of measures to protect the nesting bird interest on the Site as required.</p>
5	<p>All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner, and shall be maintained for a period of 5 years from the completion of the development. Any trees and/or shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or</p>

#	Proposed Condition
	diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent for any variation.
6	No goods, merchandise, material, scrap, vehicles or vehicle parts shall be stacked or stored above a height of 2.5m above approved ground levels and no installation or storage of machinery or plant nor any repair work shall take place outside the building(s) hereby permitted unless otherwise approved in writing by the Local Planning Authority.
7	If, during development, contamination not previously identified is found to be present at the Site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.
8	Any operational plant should not exceed 71.5 dB (A) at 1m from the plant or 61.9 dB(A) at 3m from the plant between 07:00-23:00 or 55.1 dB(A) at 1m from the plant or 45.5 dB(A) at 3m from the plant between 23:00-07:00.
9	Notwithstanding the provisions of Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments, no gate, fence or other means of enclosure shall be erected, constructed or placed on the Site (other than those shown on the approved plans or to be approved via planning condition 25) without the express planning consent of the Local Planning Authority.
10	<p>No development shall take place on any phase, until a Construction Method Statement incorporating a Construction Traffic Management Plan has been submitted to, and approved in writing by the Local Planning Authority. The statement shall be appropriately titled (site and planning permission number) and shall provide for at a minimum:</p> <ul style="list-style-type: none"> <li>• The parking of vehicles of site operatives and visitors;</li> <li>• The routing of HGVs to and from the Site;</li> <li>• Loading and unloading of plant and materials;</li> <li>• Storage of plant and materials used in constructing the development;</li> <li>• The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;</li> <li>• Wheel washing facilities including type of operation (automated, water recycling etc) and road sweeping;</li> <li>• Measures to control the emission of dust and dirt during construction;</li> <li>• A scheme for recycling/ disposing of waste resulting from demolition and construction works;</li> <li>• Delivery, demolition and construction working hours;</li> <li>• Spoil locations</li> <li>• Water management</li> <li>• The measures covered in the Environmental Statement dated September 2021 in paragraphs 6.4.4, 6.8.3, 6.8.5, 6.8.6, 9.5.2, 11.5.1 and 6.12 (of ES Vol 2, Landscape and Visual Assessment)</li> </ul>



#	Proposed Condition
11	<p>No development shall take place on any phase (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include as a minimum:</p> <ul style="list-style-type: none"> <li>a) Arrangements for a site walkover survey undertaken by a suitably qualified Ecologist to ensure that no protected species, which could be harmed by the development have moved onto the site since the previous surveys were carried out. If any protected species are found, details of mitigation measures to prevent their harm shall be required to be submitted;</li> <li>b) Risk assessment of potentially damaging construction activities;</li> <li>c) Identification of 'Biodiversity Protection Zones';</li> <li>d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);</li> <li>e) Measures to ensure that the risk of harming individual Great Crested Newts is minimised including those set out at paragraph 10.6.12 of the ES;</li> <li>f) Measures specific to the protection of badgers including those set out at paragraph 10.6.16 of the ES;</li> <li>g) Measures to avoid harm to individual reptiles including those set out at paragraph 10.6.22 of the ES;</li> <li>h) Measures to safeguard hedgehogs including those set out at paragraph 10.6.24 of the ES;</li> <li>i) The location and timing of sensitive works to avoid harm to biodiversity features;</li> <li>j) The times during construction when specialist ecologists need to be present on site to oversee works;</li> <li>k) Responsible persons and lines of communication;</li> <li>l) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;</li> <li>m) Best practice with regard to wildlife including use of protective fences, exclusion barriers and warning signs</li> </ul> <p>The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.</p>

#	Proposed Condition
12	No development shall commence until full details including lighting, road markings, signal infrastructure, signage and drainage of a segregated pedestrian and cycle path leading from the development directly to Howes Lane and a signalised crossing of Howes Lane have been submitted to and approved in writing by the local planning authority. Thereafter and prior to first occupation the path and crossing shall be delivered in accordance with the approved details.
13	No development shall commence until full details of the access to the western parcel including a priority crossing for pedestrians and cyclists accompanied by a Stage 1 Safety Audit have been submitted to and approved in writing by the local planning authority. Thereafter and prior to first occupation the access shall be delivered in accordance with the approved details.
14	No development shall take place until any existing trees or vegetation to be retained have been protected in accordance with the approved Tree Protection Plan drawing number 10706_P08 Rev A and Arboricultural Method Statement (TG Report No. 10706_R11a_RA_CW) dated 20 August 2021 unless otherwise agreed in writing by the Local Planning Authority. The barriers shall be erected before any equipment, machinery or materials are brought onto The Site for the purposes of development and shall be maintained until all equipment machinery and surplus material has been removed from The Site. Nothing shall be stored or placed within the areas protected by the barriers erected in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made, without the written consent of the Local Planning Authority.
15	No 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) (England) 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.
16	No development shall commence until evidence, produced by a suitably qualified BREEAM Assessor, has been submitted to and approved in writing by the Local Planning Authority to demonstrate that the development shall achieve BREEAM 'Very Good'.
17	Prior to any development above slab level, details of visibility splays at all vehicle accesses within The Site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all agreed visibility splays shall be provided and kept clear of all vegetation and other obstructions over 0.9m in height from carriageway level.
18	Prior to their installation on any building, full details of the solar PV including the quantum to meet the required level of PV to offset carbon to ensure a True Zero Carbon development, as set out by the Sustainability Statement prepared by Engineering Services Consultancy Ltd dated 03/11/2021 shall be submitted to and approved in writing by the Local Planning Authority. The solar PV shall be installed prior to first occupation of the relevant building and retained and maintained in working order thereafter

#	Proposed Condition
19	<p>Full details of the proposals to provide a biodiversity net gain of 5.5% and enhance biodiversity as referred to within paragraphs 10.6.30, 10.6.31 and 10.6.32 of the Environmental Statement including the position and type of each proposed enhancement measure shall be submitted to and approved in writing by the Local Planning Authority prior to the development reaching slab level. Thereafter, the biodiversity enhancement measures approved shall be carried out prior to occupation and retained in accordance with the approved details.</p>
20	<p>Notwithstanding the submitted landscape scheme and prior to the implementation of any landscaping, a scheme for landscaping The Site shall be provided to and approved in writing by the Local Planning Authority which shall include:-</p> <ul style="list-style-type: none"> <li>(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch etc),</li> <li>(b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,</li> <li>(c) details of the hard landscaping including hard surface areas, pavements, pedestrian areas and steps.</li> <li>(d) full details, locations, specifications and construction methods for all purpose-built tree pits and associated above ground features, to include specifications for the installation of below ground, load bearing 'cell structured' root trenches, root barriers, irrigation systems and a stated volume of a suitable growing medium to facilitate and promote the healthy development of the proposed trees.</li> </ul> <p>The approved scheme shall be implemented by the end of the first planting season following occupation of the development.</p>
21	<p>Notwithstanding the submitted Landscape Management Plan and prior to the first occupation of the development a Landscape Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be managed and maintained in accordance with the approved LEMP thereafter.</p>
22	<p>Prior to the occupation of any unit, full details of the enclosures along all boundaries and within The Site shall be submitted to and approved in writing by the Local Planning Authority. Such approved means of enclosure shall be erected prior to the first occupation of any unit.</p>
23	<p>Prior to the first occupation of any building to be provided with an air source heat pump, full details shall first be approved in writing by the Local Planning Authority prior to their installation. The air source heat pump shall be retained and maintained in working order thereafter.</p>

#	Proposed Condition
24	Prior to their installation on any building hereby approved, full details of any mechanical ventilation or extraction equipment shall be submitted to and approved by the Local Planning Authority. Thereafter the mechanical ventilation shall be installed, brought into use and retained in accordance with the approved details.
25	Prior to the provision of the acoustic screen shown on drawing number 20019-TP-003 Rev L titled 'Proposed Site Finishes Plan', full details of the colour finish of the acoustic screens shall be submitted to and approved in writing by the Local Planning Authority. The acoustic screens shall be finished in accordance with the approved colour finish and retained as such thereafter.
26	External lighting shall be provided in accordance with drawing number 1746-ESC-00-ZZ-DR-E-2100 Rev P3: External Lighting Layout. Lighting relating to an individual building shall be installed and made operational before the first occupation of that building and lighting serving the access road shall be installed and made operational prior to the first use of the road infrastructure. Any other external lighting shall first be approved in writing by the local planning authority prior to its installation.
27	Prior to the first occupation of any building, the provision for EV charging points shown on drawing number 20019-TP-003 Rev L titled 'Proposed Site Finishes Plan' serving that building shall be installed and made available for use and retained as such thereafter. In addition ducting should be in place to allow for the easy expansion of the EV charging system as demand increases towards the planned phase out of ICE vehicles (ideally ducting should be provided to every parking space to future proof the development).
28	Prior to the first occupation of any building, cycle parking to serve that building shall be provided in the positions shown for cycle parking on drawing number 20019-TP-003 Rev L titled 'Proposed Site Finishes Plan' and in accordance with the approved details shown on drawing number 20019-TP-023 titled 'Cycle Shelter Details'. The cycle parking shall be retained and maintained for the parking of cycles in connection with the development thereafter.
29	Prior to the first occupation of the development, acoustic fences as shown on drawing number 20019-TP-003 Rev L titled 'Proposed Site Finishes Plan' shall be installed. The acoustic barriers shall be retained as noise mitigation thereafter.
30	No 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 first have been submitted to and approved in writing by the local planning authority. The devices shall thereafter be retained in operational condition.
31	Prior to the first occupation of each unit, details of the measures to be installed in that unit to minimise water consumption shall be 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.
32	No 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.
33	Within 1 month from the receipt of each of a Design Stage Pre-Assessment Certificate to confirm the outcome of the Design Stage Pre-Assessment, and a Post Construction

#	Proposed Condition
	Certificate confirming the outcome of the Post Construction Assessment, which shall confirm that BREEAM 'Very Good' has been achieved, shall each be submitted to and approved in writing by the Local Planning Authority.
34	Notwithstanding the submitted Framework Travel Plan and prior to the occupation of the first employment unit, a Framework Travel Plan, prepared in accordance with the Department for Transport's Best Practice Guidance Note 'Using the Planning Process to Secure Travel Plans and its subsequent amendments, shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented in accordance with the details so approved
35	Within three months from the occupation of any employment unit, a Travel Plan for each, prepared in accordance with the Department for Transport's Best Practice Guidance Note 'Using the Planning Process to Secure Travel Plans and its subsequent amendments', and the Framework Travel Plan, shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented in accordance with the details so approved.

## 9. Planning Obligations

- 9.1. CDC's second reason for refusal relates to the non-completion of a S106 Agreement to secure the infrastructure necessary to mitigate the impacts of the development.
- 9.2. The Officer's report to the Planning Committee on 16 June 2022 confirmed the Heads of Terms that would have been secured via a S106 Agreement should the Planning Committee have resolved to grant planning permission.
- 9.3. Prior to the application being reported to the Planning Committee on 16 June 2022 the Appellant confirmed that they were willing to enter into a S106 Agreement that secured all of these matters. To this end the Applicant had prepared a draft S106 Agreement, a copy of which was provided to Officers prior to the Planning Committee meeting.
- 9.4. The S106 Agreement contained draft obligations intended to secure the following (in accordance with the Heads of Terms specified by CDC):
  - Contributions towards public art.
  - Contributions towards off-site mitigation for farmland birds.
  - A Training and Employment Plan to secure 3 apprenticeship starts.
  - Construction and post-occupancy monitoring.
  - Contributions towards bus services and bus stop infrastructure.
  - Payment of Travel Plan monitoring fees.
  - Contributions towards public rights of way improvements.
  - Routing agreement to prevent HGV traffic from using Howes Lane.
  - Arrangements to link the proposal to other major infrastructure agreements.
  - Agreement to enter into a Section 278 Agreement in respect of the proposed crossing of Howes Lane.
  - Payment of monitoring fees to CDC and OCC.
- 9.5. Both parties agree that the above obligations would satisfy the legal tests set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 57 of the NPPF. CDC has prepared a CIL Compliance Statement, which has been submitted to the Inspector.
- 9.6. It is intended that the Planning Obligation includes a "blue pencil" clause that would enable the Inspector to strike out any obligations which they do not consider meet these tests.

9.7. It remains the Appellant's intention to complete this S106 Obligation prior to the Appeal being determined.