

APP/1/E

Town and Country Planning Act 1990 (Section 78)

Public Inquiry in Respect of:

LAND AT NORTH WEST BICESTER, OX27 8BP

Appeal Ref: APP/C3105/W/23/3315849

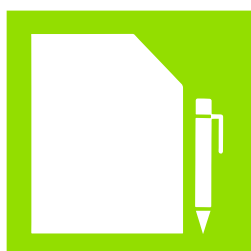
Summary Proof of Evidence of:

Nicholas Fell LL.B (Hons) PG.Dip MRICS

In Respect of: FINANCIAL VIABILITY IN PLANNING

On Behalf of Firethorn Developments Limited (the Appellant)

05 May 2023



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# 1 SUMMARY OF MY EVIDENCE

1.1 The appeal before this Inquiry is made by the Appellant for non-determination within the statutory period by Cherwell District Council (CDC) of outline planning application 21/01630/OUT (the "Application"). The Application was made in Spring 2021 for the following development:

"Outline planning application for residential development (within Use Class C3), open space provision, drainage and all associated works and operations including but not limited to demolition, earthworks, and engineering operations, with the details of appearance, landscaping, layout and scale reserved for later determination" (the "Proposed Development")

1.2 On 09 March 2023 the Application was considered by CDC to confirm how they would have resolved to determine the Application, in the absence of the appeal. The Application was put before members with Officer's recommendation for approval subject to (1) completion of the viability negotiations, (2) completion of a planning obligation under Section 106 of the Town & Country Planning Act 1990 and (3) a set of agreed planning conditions. Members confirmed that had the appeal not been lodged on non-determination grounds then they would have refused the application. There are five putative reasons for refusal. Grounds 1, 4 and 5 are relevant to my evidence.

## **Putative Reason for Refusal 1 (RfR1)**

*The development, when set against the viability of the scheme, would not go far enough in trying to achieve the True Zero Carbon requirements for NW Bicester, as set out by Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031. This would undermine the Council's strategy for achieving an Exemplary Eco Town development at NW Bicester which sets this site apart from others and where the Council has declared a Climate Emergency. The development would therefore conflict with Policy Bicester 1 and Policies ESD1-5 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016.*

*Note to Appellant: This reason for refusal is capable of being addressed*

## **Putative Reason for Refusal 4 (RfR4)**

*The proposed development, when set against the financial viability of the scheme, would fail to provide an adequate level of affordable housing provision. The proposal is therefore contrary to Policy BSC3 and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester SPD 2016, CDC's Developer Contributions SPD 2018 and Government guidance contained within the National Planning Policy Framework.*

*Note to Appellant: This reason for refusal is capable of being addressed.*

## **Putative Reason for Refusal 5 (RfR5)**

*In the absence of a satisfactory unilateral undertaking or other form of S106 legal agreement, the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development and necessary to make the impacts of the development acceptable in planning terms. This would be to the detriment of both existing and proposed residents and would be contrary to Policies INF1, BSC3, BSC7, BSC8, BSC10, BSC11, BSC12 and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester SPD 2016, CDC's Developer Contributions SPD 2018 and Government guidance contained within the National Planning Policy Framework.*

*Note to Appellant: This reason for refusal is capable of being addressed.*

1.3 In responding to these putative reasons for refusal my evidence will show that:

- i. In respect of **RfR1** the Appellant will commit to delivering the Proposed Development to True Zero Carbon in accordance with Policy Bicester 1 and Policies ESD1-5 of the Cherwell Local Plan Part 1 2011-2031 and the sustainability measures of the North West Bicester SPD 2016. The Appellant will commit to planning conditions that ensure compliance with these policies with details provided with each reserved matters application. The Proof of Evidence of Jonathan Riggall of Stantec provides full justification for how the Proposed Development will comply with Policy Bicester 1 and Policies ESD1-5 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016.
- ii. **Therefore RfR1 should not form the basis for a refusal of the Proposed Development.**
- iii. In respect of **RfR4** Cherwell's Policy BSC3: Affordable Housing states "*Should the promoters of development consider that individual proposals would be unviable with the above requirements (30% of new housing as affordable homes) 'open book' financial analysis of the proposed developments will be expected so that an in house economic viability assessment can be undertaken.....Where development is demonstrated to be unviable with the above requirements, further negotiations will take place. These negotiations will include 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 provided.*"
- iv. Local Plan Policy BSC3 and National Planning Policy are aligned and confirm that viability testing is an integral part of determining viable levels of affordable housing. If a development is demonstrated to be unviable through viability testing in negotiation with CDC, it can still be bought forward in compliance with Policy BSC3.
- v. The approach to viability testing in this case has followed the recommended approach detailed in the PPG Guidance Note on Viability including the adoption of standardised inputs. This has been agreed with HLD and confirmed in the Viability Statement of Common Ground.
- vi. The inputs to the viability development appraisals have been agreed with CDC and set out in the SoCG for Viability.
- vii. By adopting the agreed inputs, it is demonstrated that the Proposed Scheme cannot viably deliver any affordable housing whilst delivering on CDC's TZC and sustainability policies.
- viii. **The approach to viability testing for the Proposed Development is in accordance with Policy BSC3 and therefore RfR4 should not form the basis for a refusal of the Proposed Development.**
- ix. Notwithstanding this the Appellant will commit to deliver a minimum 10% affordable housing provision, in a policy compliant mix, across the Proposed Development.
- x. **Therefore, in responding to RfR4 the Appellant will commit to a minimum 10% on-site affordable housing delivery, notwithstanding the current viability evidence demonstrates that a lower level of affordable housing can be evidenced. They will also commit to a viability review mechanism within the s.106 Agreement.**
- xi. In respect of **RfR5**, on the basis that the S.106 will be agreed between the Parties, including the Viability Review Mechanisms as outline above, **RfR5 can be overcome and should not form the basis for a refusal.**

## **RULE 6 PARTY: NW BICESTER ALLIANCE**

- 1.4 The NW Bicester Alliance's Statement of Case sets out at paragraphs 2.22 – 2.24 that they have concerns regarding the approach undertaken in the Appellant's Financial Viability Assessment, however they provide no further details as to the basis of their concerns. I will review any arguments made in respect of viability within their Proof of Evidence and if necessary provide rebuttal on any issues raised.

## **2 SIGNATURE**

*Nicholas Fell*

Nicholas Fell (May 9, 2023 13:00 GMT+1)

Nick Fell  
LLB (Hons) PGDip MRICS



For further details contact:

Nick Fell

07964 558697

[nick.fell@rapleys.com](mailto:nick.fell@rapleys.com)

66 St James's Street St James's  
London SW1A 1NE

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Registration No: OC308311. Registered Office at Unit 3a, The Incubator, The Boulevard,  
Enterprise Campus, Alconbury Weald, Huntingdon, PE28 4XA. Regulated by RICS.

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