
APP/5/E
Section 78 Appeal

Land at North West Bicester, Charlotte
Avenue, Bicester, OX27 8BP

Summary Proof of Evidence of
Hannah Leary BA(Hons) DiP TP MRTPI

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

LPA Ref: 21/01630/OUT

Prepared on behalf of Firethorn Developments Limited

May 2023

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78

APPEAL AGAINST THE NON-DETERMINATION OF PLANNING APPLICATION FOR:

“OUTLINE PLANNING APPLICATION FOR UP TO 530 RESIDENTIAL DEVELOPMENT DWELLINGS (WITHIN USE CLASS C3), OPEN SPACE PROVISION, ACCESS, 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.”

**Land at North West Bicester, Charlotte
Avenue, Bicester, OX27 8BP**

**Summary Proof of Evidence of
Hannah Leary BA(Hons) DiP TP MRTPI**

Prepared on behalf of Firethorn Developments Limited

Barton Willmore, now Stantec
7 Soho Square
London
W1D 3QB

Tel: 020 7446 6888
Email: hannah.leary@bartonwillmore.co.uk

Ref: 31036/A5/HL/sl
Date: 09 May 2023

CONTENTS

1.0	QUALIFICATIONS AND EXPERIENCE.....	1
2.0	BACKGROUND AND APPEAL SCHEME	2
3.0	THE DEVELOPMENT PLAN	4
4.0	OTHER MATERIAL CONSIDERATIONS.....	6
5.0	OVERALL ASSESSMENT	9

1.0 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Hannah Kate Leary.
- 1.2 I am the holder of a Bachelor of Arts degree with Honours and a Post Graduate Diploma in Planning from Oxford Brookes University. I am a member of The Royal Town Planning Institute. I am a Director of Barton Willmore now Stantec, a leading practice of Chartered Town Planners, with offices in London, Bristol, Birmingham, Cambridge, Cardiff, Edinburgh, Glasgow, Leeds, Manchester, Newcastle, Reading, Southampton, and West Malling.
- 1.3 I have over 20 years' professional town planning experience, dealing with a broad range of land use planning issues and commercial property types, including residential development, sustainable urban extensions, and mixed use schemes and Major Developed Sites in the Green Belt, and other land uses.
- 1.4 I am familiar with the Site, and the surrounding area.
- 1.5 My Evidence focuses on the main planning issues and supplements the Evidence provided by other witnesses.

2.0 BACKGROUND AND APPEAL SCHEME

Appeal Site

- 2.1 The Appeal Site is described in the Planning Statement of Common Ground (SoCG) (**CD 10.2**) (the 'Site'). The Site is located to the north west of the centre of Bicester, and forms part of the strategic allocation for 6,000 dwellings at North West Bicester. It is 2.5km to the north west of Bicester Town Centre, south east of the village of Bucknell and north west of Caversfield.
- 2.2 The Site comprises three parcels of land, with a total area of 23.97ha, made up of an eastern, central and western parcel. The land is predominantly grassland with fields bounded by hedges with some large trees, woodland, and plantation. There is a historic hedgerow which runs along the north eastern border of the Site, a drainage feature running through the south of the Site, and the Site is relatively flat.
- 2.3 A full overview of the Appeal Site's previous planning history is set out in the agreed planning SOCG.

Appeal Scheme

- 2.4 My Evidence relates to an application for outline planning permission (reference 21/01630/OUT), validated on 6th May 2021 (**CD 8.1.3**) (the 'Planning Application').
- 2.5 The description of development is as follows:

*"Outline planning application for up to 530 residential dwellings (within Use Class C3), open space provision, access, 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."*¹ (the 'Appeal Scheme' or 'Proposed Development')

- 2.6 The Planning Application was submitted in May 2021 and sought permission for the redevelopment of the Site to deliver up to 530 homes, via an outline planning application, based on a set of parameters which defined the 'rules' in respect of the maximum built envelope, maximum building heights, extent of green space, and site access points/connection zones. The Planning Application was accompanied by an Illustrative Masterplan (**CD 1.13**).
- 2.7 Following discussions with Officers at CDC, and feedback from statutory consultees, the Planning Application was amended in November 2021, and in December 2022 (**CD 2.1 and 2.22**).

Determination Process

- 2.8 Following the submission of this Appeal, the Council prepared a detailed Report (**CD 3.4**) that was taken to the Council's Planning Committee on 9th March 2023. Contrary to the recommendation of Officers, Members resolved that they would have refused planning permission for the following reasons:
1. The development, when set against the viability of the scheme, would not go far enough in trying to achieve the True Zero Carbon requirements.
 2. The access arrangements to the Site would be unsatisfactory as there would be an inability to provide for suitable pedestrian and cycle facilities along Charlotte Avenue.
 3. The Proposed Development would result in congestion at the junction of Charlotte Avenue with the B4100, particularly during the peak period. This would result in a severe transport impact.
 4. The Proposed Development, when set against the financial viability of the scheme, would fail to provide an adequate level of affordable housing.
 5. The absence of a satisfactory unilateral undertaking or other form of S106 legal agreement.

¹ This is the agreed description of development as amended in March 2022 (**CD 2.15**).

3.0 THE DEVELOPMENT PLAN

3.1 Section 38(6) of the Planning and Compulsory Purchase 2004 states that '*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*' (my emphasis)

3.2 The Development Plan comprises the following documents:

- i. Cherwell Local Plan 2011-2031, Part 1 (adopted July 2015);
- ii. The Cherwell Local Plan 2011-2031 (Part 1) Partial Review - Oxford's Unmet Housing Need (September 2020); and
- iii. Cherwell Local Plan 1996, Saved Policies (adopted September 2007).

3.3 The policy position as set out in the Development Plan establishes a number of clear principles, including:

1. The Site falls within the North West Bicester site allocation in which residential development will be supported in principle (Policy **Bicester 1**, page 140)).
2. The Site can make a significant contribution to delivering the housing requirements for the North West Bicester site allocation within the Plan period (Policy **BSC 1**, page 61), particularly in the context of the assessment of housing need as set out in Mr Paterson-Neild's Evidence.
3. The Site can deliver much needed affordable housing, subject to the appropriate viability tests (Policy **BSC 3**, page 64)).
4. The Site can deliver a zero carbon development which accords with the energy hierarchy within the Development Plan (Policies **ESD 1** to **ESD 5** (pages 85 to 93), and Policy **Bicester 1** (page 140)).
5. The delivery of development at the Site will not have a severe traffic impact (Policy **SLE 4**, page 55).

- 3.4 On the basis of the above there is, in my view, clear planning policy support for the principle of the Appeal Scheme subject to the provision of a set of appropriately worded planning conditions and a S106 Agreement. In my judgement, the Appeal Scheme accords with the Development Plan.

4.0 OTHER MATERIAL CONSIDERATIONS

National Policy

4.1 The current version of the NPPF (**CD 8.1.1**) was published in July 2021. It is a material consideration in the determination of the Appeal Scheme. Paragraph 8 sets out the three dimensions of sustainable development: economic, social, and environmental. Paragraph 10 sets out the presumption in favour of sustainable development and Paragraph 11 states that this should apply in plan-making and decision-taking. For decision taking this means:

- “(c) approving development proposals that accord with an up-to-date development plan without delay; or**
- (d) where there are no relevant development plan policies, or the policies which are most important for determining the application area out-of-date, granting planning permission unless:**
 - (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or**
 - (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”**

4.2 Footnote 8 clarifies that ‘out-of-date’ in respect of Paragraph 11d) includes the situation in which a local planning authority cannot demonstrate a five-year supply of deliverable housing sites. It is my view that, based on the Evidence set out by Mr Paterson-Neild for the Appellant, and my conclusion that the Appeal Scheme is in compliance with the Development Plan (in Section 3.0 above), that this site meets the tests of paragraph 11(d) when engaged.

Other Relevant Policy Documents

4.3 There are two Supplementary Planning Documents (SPD’s) which are relevant in respect of the Appeal Scheme – the North West Bicester Supplementary Planning Document (NWB SPD), and the Development Contributions Supplementary Planning Document (DC SPD). SPD’s are non-statutory documents which give additional guidance on some of the policies within the Development Plan. The SPD’s must

accord with the policies within the Development Plan, so there should be an assumption that where a proposal accords with the Development Plan, it also accords with an SPD.

- 4.4 It is my view that the Appeal Scheme accords with the guiding principles set out in the NWB SPD, and subject to agreeing and finalising a S106 Agreement in advance of the start of the Inquiry, I am satisfied that the requirements of the DC SPD will be addressed.

Further Material Considerations

- 4.5 At the time of writing, the following matters constitute areas of common ground between the Appellant and the Council:

- i. The principle of development;
- ii. Design and impact on the character of the area;
- iii. Heritage and archaeology;
- iv. Ecology;
- v. Green infrastructure; and
- vi. Drainage and flood risk.

- 4.6 The remaining material considerations are as follows:

- i. Highways;
 - a. Access arrangements along Charlotte Avenue, and impacts on street trees;
 - b. Congestion at the Charlotte Avenue and B4100 junction;
- ii. 'Masterplan creep';
- iii. Filing for appeal under non-determination;
- iv. Linking to the District Heating System;
- v. Proposed building heights;
- vi. Use of the 'MUGA' on the Elmsbrook site;
- vii. Permeability into Elmsbrook for cycling and pedestrian access; and
- viii. Provision of bus routes and bus stops.

Conclusion on Other Material Considerations

- 4.7 In assessing the Appeal Scheme against the detailed criteria, I am of the firm view that the Appeal Scheme when considered against the relevant planning policy at both the national and local level, and in the context of the other material considerations, should benefit from planning permission. There is clear planning policy support for the Appeal Scheme for the proposed uses.

5.0 OVERALL ASSESSMENT

5.1 The Appeal Scheme will give rise to a number of substantial economic, social, and environmental benefits, as follows:

- i. The delivery of much needed housing, in an area in which the Council cannot demonstrate a 5 year housing land supply, and on an allocated site;
- ii. Provision of affordable homes, with a review mechanism secured via a S106;
- iii. A suite of S106 contributions;
- iv. A proposed development delivered in accordance with the Development Plan in respect of achieving zero carbon emissions, and sustainable construction;
- v. A minimum of 40% green space;
- vi. At least 10% biodiversity net gain; and
- vii. A package of public realm and highways improvements which increase connectivity.

5.2 It is my view that there are no adverse impacts which significantly or demonstrably outweigh the benefits of the Appeal Scheme, in the context of the NPPF (**CD 8.1.1**) policies, and I am firmly of the view that the scheme's benefits identified above are real, significant and should weigh strongly in favour of the Appeal Scheme.

The Planning Balance

5.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the Development Plan for the purpose of a determination, then that determination must be made in accordance with the plan unless material considerations indicate otherwise.

5.4 For decision making the 'presumption in favour' (NPPF Paragraph 11 (**CD 8.1.1**)) means approving development proposals that accord with an up-to-date Development Plan without delay (Paragraph 11c)). As set out in the Evidence of Mr Paterson-Neild, in light of the fact that the Council cannot in our view demonstrate a five year housing land it is my view that the Paragraph 11c) should not be applied in respect of the Appeal Scheme. Instead it is my view that Paragraph 11d) should be the appropriate test applied. The first test within Paragraph 11d), the application of the NPPF (**CD 8.1.1**) policies which protect areas or assets of particular importance, in respect of the heritage assets is passed on the basis of the conclusions of Mr Sutton in relation to the low level of harm (being less than

substantial), and my conclusions in respect of the significant weight to be applied to the public benefits. There is no clear reason to refuse the proposed development on the basis of Paragraph 11d)(i).

- 5.5 The next test to be applied is that of Paragraph 11d)ii. - the tilted balance - which states that permission should be granted unless *'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework as a whole'* (NPPF (**CD 8.1.1**)). I believe that the Appeal Scheme accords both with the Development Plan and with national planning policy. As a result, it passes this second test and should be approved without delay.
- 5.6 There are no highways grounds of objection that would render the Appeal Scheme unacceptable, and I concur with the conclusions of the Officers in their March 2023 Report to Planning Committee (**CD 3.4**) when they state that taking all material considerations into account, the scheme represents acceptable development (Paragraph 10.18).
- 5.7 However, if it is concluded (contrary to my view) that a decision to approve the Appeal Scheme would not be in accordance with the Development Plan when read as a whole, I believe that the substantial public benefits of the proposal in accordance with the tilted balance test (Paragraph 11d)ii.) would readily outweigh whatever is concluded to be the lack of accordance with the Development Plan, so as to indicate that the Appeal should be allowed.