

**Statement of Case
of the
“North West Bicester Alliance”**

23 March 2023

Submitting under Rule 6(6) to present at Appeal

Reference: APP/C3105/W/23/3315849

for the

“Land at North West Bicester”

(Planning Application to CDC, Reference 21/01630/OUT)

1.0 INTRODUCTION – Who We Are, and Our Position

1.1 “We”, the “North West Bicester Alliance”, are a consortium made up of the following organisations and community groups:

- (1) Elmsbrook Residents Association
- (2) Elmsbrook Community Organisation
- (3) Gagle Brook Primary School (Board and Governors)
- (4) Perch Eco Business Centre (run by TownSquare)
- (5) Bucknell Parish Council
- (6) Elmsbrook Traffic and Parking Group
- (7) Bicester Residents Group for a Zero Carbon Eco-Town
- (8) Gagle Brook Parent Teachers’ Association

1.2 Furthermore, we fully support the views and input to this Inquiry of Bicester Bike Users Group, and we are happy to defer to their significant specific technical and legal expertise in the area of national and local cycling policies, standards and regulations.

1.3 Our position with respect to this Appeal and the Application by the Firethorn Trust (hereafter “the Appellant” or “the Applicant” as the context requires) is simple, and can be summarised as follows:

- (a) We fully support the growth of the NW Bicester Ecotown, however, it needs to be done correctly: we believe permission in the Application should be Refused, i.e. the present Appeal by the Appellant denied, due to critical errors/omissions and non-compliance issues.
- (b) The Applicant should correct and amend these errors in order to have any hope of being compliant, and should then Resubmit the application to Cherwell District Council (CDC) as soon as possible, in the amended form, such that CDC’s Planning Committee could approve something with broad local support. Without such changes, we do not see how the Applicant could possibly succeed at the Outline planning stage.
- (c) Critically, the errors contained in the Highways and Access supporting evidence and assessments in support of this application are contrary to essential requirements in the National Planning Policy Framework.
- (d) We all want to ensure that the UK’s National Ecotown Exemplar – NW Bicester Ecotown – continues in the direction of the national and local Climate Change Zero Carbon targets. This can only be achieved by Rejecting the Application as it currently stands. If key components of the Masterplan are treated as dispensable in the present Application, then all UK developers will be incentivised to take the same approaches: this will leave the UK with no chance of reaching anywhere near its Climate Change Targets, and we will no longer be able to call the NW Bicester development an “Ecotown”.

NB: In the following sections, statements made in the Appellant’s Statement of Case ^[1] are referred to via e.g. ‘SC: x.x’ where x.x is the numbering scheme used in that report.

2.0 OUR REFUTATION OF THE APPELLANT'S CASE

On Accordance with National and Local Policies:

- 2.1 The Appellant states (SC: 4.4) that its "evidence will show how the Planning Application accords with the development plan *when read as a whole*, as well as relevant national and local planning policies and supplementary planning documents." [*Emphasis added.*]
- 2.2 We will present evidence showing that this is not true: "*when read as a whole*" is a stretch too far. We will show that the application in fact contravenes a very large number of relevant national and local planning policies and the NW Bicester SPD.
- 2.3 The Appellant further states (SC: 5.2) : "The Officers had published their report in respect of the Planning Application, which was full and thorough."
- 2.4 CDC Planning Committee members voiced clearly at the meeting on the 9th of March 2023 that the Planning Officers' assessments were not full and thorough enough, at that time, voting by 8:2 that CDC should instead recommend the application should be refused, particularly on 4 specific areas.
- 2.5 The Appellant also states (SC: 5.3) that "other material considerations lend further support to allowing the appeal, in line with the recommendation of the CDC Officers."
- 2.6 We will present evidence clearly showing that the "other material considerations" referenced by the Appellant also contain critical errors, which have not been corrected.

Incorrect Statements in the Appellant's Statement of Case document:

- 2.7 There are several key points made by the Appellant in its Statement of Case, which are used to infer that a significant weighting should be given to a grant of planning permission on the basis of the present Application details/designs (as they currently stand). These key points include: Housing Land supply, Ecotown Principles, Housing Mix, and Highways and Access.
- 2.8 We will demonstrate why and how the significant errors contained in these key points are critical with respect to (a) National Planning Policy Framework requirements, and (b) the balance of weighting that the Appellant seeks in its Application. Between them, these cover the specific areas on which CDC recommends the Appeal should be refused.

On Housing Land Supply:

- 2.9 The Appellant states (SC: 5.4(i)) that it "will demonstrate through evidence that the delivery of homes at this Site is essential in contributing both to meeting the requirements of Policy Bicester 1, and to meeting the CDC five-year housing land supply position."
- 2.10 We will show that both of these points are incorrect.
- 2.11 Where authorities fall below 5 years of housing land supply (5YHLS), the 'tilted balance' in the National Planning Policy Framework (NPPF) applies, with the presumption in favour of sustainable development, and there may be grounds to approve an application that does not comply with the local plan.
- 2.12 However, on the 3rd of February 2023, Cherwell District's Executive approved an up-to-date Housing Land Supply Statement, which was required the 5YHLS to be calculated in line with new national guidance. This stated that Cherwell District's 5YHLS is currently 5.4 years.

- 2.13 This means that for this application, the “tilted balance” is not engaged; thus a significantly higher level of compliance with the local plan would be required for approval.
- 2.14 While more houses may be needed in Cherwell District, it is worth noting that the Appellant’s Application is only for 530 homes, whereas there are two other NW Bicester Ecotown Applications which are due to come to CDC Planning Committee in the next few months – totalling ~4,000 homes: these two will provide a much more significant contribution to the Housing Land supply in the next few years.
- 2.15 A further key reason why the Appellant’s Application should be refused, as it presently stands, also relates to these other Applications. Both have originally stated they will meet Policy Bicester 1 via True Zero Carbon per home and 30% Affordability, which the Appellant’s Application does not; and that they will meet numerous other national and local planning policies, which the Appellant’s Application does not meet. (We note that while the Appellant discusses meeting Future Homes Standard 2025, this is a much lower level than the now-rescinded Code for Sustainable Homes Level 5 – the standard required by Policy Bicester 1 and the NW Bicester SPD. We note also that Future Homes Standard 2025 is a draft that is not stabilised and is not expected to be finalised before 2025, possibly even later, whereas Level 5 is an existing recognised standard that can be used legally as a reference.)
- 2.16 However, if permission were to be granted at this Appeal, future applicants will undoubtedly seek to use this decision as a precedent to argue for the same reductions and dispensations, which would then be almost impossible for the Planning Authority to restrict.
- 2.17 As a direct consequence, Cherwell would likely lose thousands of Affordable Homes, and the >4,000 Ecotown home builds would also not meet Zero Carbon per home. Furthermore, it would become impossible to call NW Bicester an “Ecotown”. NW Bicester Ecotown is the national exemplar, designed to incentivise nationwide building construction enabling true zero carbon per home – which is a vital “stepping stone” towards national and local Climate Change targets: thus no houses in the Ecotown should contravene the NW Bicester SPD.
- 2.18 Critically, we will demonstrate the clear connections: that if the key next Exemplar Ecotown application is allowed to “cut these corners”, it would signal that the UK has given up on its Climate Change Targets. However, the UK government has acknowledged it is not on track to meet carbon budgets beyond 2022 ^[2], and the need for “accelerated action in this critical decade to 2030” ^[3], to reach net zero by 2050, as per the UK’s Climate Change Act and our Nationally Determined Contribution (NDC) in line with Article 4 of the Paris Agreement.

On the “Bicester Eco-Town Principles”:

- 2.19 The Appellant states (SC: 5.4(ii)) that it “will demonstrate through evidence, including that referred to at Appendix 2, that the Planning Application will be brought forward in accordance with the comprehensive masterplan for the whole allocation as identified in the NWBSPD, and the zero carbon requirements for the Site, including reference to Policies ESD1- ESD5.”
- 2.20 We will present evidence that the above statement is untrue, both at high level and in detail.
- 2.21 The Appellant tries to demonstrate that the true zero carbon per home, green space and Affordable Housing provision requirements are not viable economically. We will show evidence that the economic assessment presented is incorrect and not acceptable to justify watering down the requirements of the Local Plan/Policy Bicester 1/NW Bicester SPD.

On the Housing Mix:

- 2.22 The Appellant explains (SC: 5.4(v)) that due to economic viability, there are “reasons why the Appellant considers that the approach taken in respect of the Site is appropriate.” [*i.e. why they only offer 10-15% Affordable Housing, not the 30% required by Policy Bicester 1, etc.*]
- 2.23 We will show that there are errors in the Appellant’s Financial Viability Assessment, which the consultant employed by CDC Planning to assist their review/discussions of it *did not spot* - and were instead first detected by a Land Finance Expert who is part of the Bicester Residents Group for a Zero Carbon Eco-Town, which they reported to CDC in July 2022.
- 2.24 We will discuss concerns that something as critical as these errors *should not be* left simply to being a Reserved Matter. CDC Planning Committee members did not consider the proposed “upward only” modifier proposed (on the 9th of March 2023) to be good enough to ensure critical aspects of the Ecotown Masterplan and Local Plan would not be contravened. (Their 4 key reasons for voting for the position of Refusal included the Housing Mix, i.e. the proposed reduction to allow only 10-15% Affordable Homes.)

On Highways and Access:

- 2.25 The Appellant states (SC: 5.4(vi)) that: “The highways and access strategy has been supported by the preparation and submission of a Transport Assessment and a series of Technical Notes which have been shared with CDC and OCC, and which will be referred to in the SoCG as key documents. To this end, OCC has satisfied itself that there is not a sustainable reason for refusal on highways grounds.”
- 2.26 We will present significant evidence, including a new report prepared by an Independent Highways Consultancy, showing that the Highways and Access strategy is unsupportable as it stands, due to many significant technical errors present in the Application’s highway design and simulations results. (Many of these have been shared with OCC Highways/CDC Planning, in Objections from parties e.g. the Elmsbrook Traffic and Parking Group and Bicester Bike Users Group, during 2021-23, and further demonstrated in a video call on 23.2.23, to the same parties). As such, any decision favourable to the Appellant based on such a Highways and Access strategy would be fundamentally flawed and likely *Wednesbury* unreasonable.
- 2.27 Furthermore, we will show that the Appellant’s Highways and Access strategy contravenes several critical National Planning Policy Framework (NPPF) requirements, including paragraphs 111 and 112 – by prioritising vehicles over pedestrians and cyclists; by making the road much more dangerous for children crossing the road to access Gagle Brook School, the parks, and the forest school; and by failing to prove that traffic congestion will not be “Severe” at several key traffic-creation points: not just at the B4100 junctions with Charlotte and Braeburn Avenues, but more crucially: it will affect the nearest junction with the A4095 (the Bicester Ring Road), which would then create issues at further junctions along the A4095, and other junctions along the B4100 (i.e. north, up to the A43 and M40 Junction 10).
- 2.28 We will also document the history of responses from OCC Highways, and show that various statements of Objection and requests for explanations that were originally made to the Appellant (and its consultants) by OCC Highways were never completed, and these were unfortunately then forgotten or ignored when OCC Highways removed its later Objections. We will also show evidence that the Appellant advanced incorrect arguments in its responses, the consequences of which were to give misleading impressions at various points.

3.0 OTHER ASPECTS WE BELIEVE IT IS IMPORTANT TO RAISE

On “Masterplan creep”:

- 3.1 The Appellant states (SC: 3.1) that it “will refer to the fact that the site forms part of the wider North West Bicester Supplementary Planning Document (‘SPD’) allocation...”
- 3.2 The North West Bicester SPD was published in February 2016, and contains the most critical policies regarding the NW Bicester Ecotown’s Masterplan in its Section 4, also including numerous clauses from the original National Ecotown policy document, ET-PPS1.
- 3.3 However, the Eastern Parcel in the Appellant’s design was not intended for homes to be built on when the Masterplan was first published; the Masterplan and Exemplar transport assessment and traffic impact analyses show that no vehicles were intended to be added to the ends of Charlotte Avenue in the original plans (whereas the Appellant intends to add 138 homes’ worth of vehicles); and early versions had a much smaller number of houses here.
- 3.4 We will present evidence, relating to the above NPPF paragraphs, which demonstrates clearly that when you make significant changes to what the Masterplan originally specified, you cannot expect other figures and parameters of that Masterplan to remain accurate or reliable. Indeed, while any “plan” will inevitably be subject to some changes, the whole point of a Masterplan is to set expectations and key boundaries:
- 3.5 North West Bicester SPD states in ET20.2: *“Any subsequent planning applications that would materially alter and negatively impact on the integrity of the original master-plan should be refused consent.”*
- 3.6 The Application results in a significant risk of safety being compromised due to de-prioritised pedestrian footpaths and cycleways; removing trees to do so; and the provision of homes which are not zero carbon builds. These are material changes, negatively impacting the integrity of the original Masterplan. Therefore the application should, given this clause, be refused consent.

The reason the Appellant filed for Appeal under Non-Determination:

- 3.7 The Appellant states (SC: 1.2, 1.3) “The Planning Application was submitted in May 2021, but CDC did not find themselves in a position to present it to Members until January 2023. It is the Appellant’s view that the reason for the deferral of the Planning Application for decision as a later date was unreasonable.”
- 3.8 In the view of CDC Planning Committee members, and the general public, this was *entirely* reasonable – and if it is necessary to debate this point during the Appeal, we will present evidence as to how quickly the Planning Officers appeared to “U-turn” and bring this Application to committee – despite the fact that so many errors, omissions and unanswered questions remained by that stage, such that even 4 hours prior to the Committee meeting on the 12th of January 2023, an additional *34 pages* of documentation attempting to answer some of the issues was produced. This was done at lunchtime on the day of the meeting itself, with many Committee members having to also travel a significant distance to attend, reducing the time available to consider these additional arguments.
- 3.9 Committee members already had a large volume of documentation to read, to prepare for this meeting. It would seem entirely reasonable that adding such a large volume of new points would lead the Committee members to conclude that the fairest option (for the

Applicant's own case and understanding it) would be to move to Defer. In fact, Committee members voiced in pre-meeting discussions, in the council chamber on the 12th of January 2023, that if it did not go for Deferral, they would be minded to Reject the application, due to the large number of key concerns which had not been answered by the Applicant.

- 3.10 In fact, it is inaccurate and misleading to claim the local authority has "failed" to make a determination since the application in May 2021. At no point has there been unreasonable delay, particularly in the context of a global pandemic. There have been extensive discussions and additional information/papers, between May 2021 and January 2023, due to the Applicant seeking to not comply with the local plan and local officers have given the Applicant the opportunity to improve its application, to be able to better support it (which, inevitably, caused a determination to be put back).
- 3.11 The Applicant's latest 'Development Parameters Schedule and Plans' update was made on the 20th of December, which left less than 12 working days until the Planning Committee of the 12th of January 2023 – including the Christmas to New Year week, when people are usually taking additional Annual Leave, leaving the Committee members and the various groups represented in this document very little opportunity to scrutinise it and respond.

Other important changes/errors within the Application:

- 3.12 The Applicant has (again) refused to link up with the Ecotown's existing District Heating System. We will show that, while it may be easier for the builder not to link the two, it will reduce the potential for future upgrades to continue to keep the Ecotown at True Zero Carbon level, and improve it if it becomes possible to do so.
- 3.13 The Application contains an area adjacent to the current northern end of Elmsbrook Phase 2 where they propose to build homes above 12 metres tall, and up to 14 metres tall. This is contrary to the height requirements of the NW Bicester SPD, clause 5.12.
- 3.14 Sports England believes the Appellant's future residents automatically are allowed access to a Multi-Use Games Area (MUGA) located on Elmsbrook because it is on adopted land. We will show that this is incorrect – it doesn't count as a MUGA (it doesn't meet the criteria for any of the Sports England MUGA categories). Furthermore, it is on Elmsbrook communal land, and Elmsbrook residents pay ~£100,000 annual grounds maintenance charges, a portion of which pays for the upkeep of such an area (cleaning, mowing, rubbish removal etc). Use of communal land by those who do not contribute anything toward it would be unequitable and it would therefore be a mistake to proceed on the basis of Sport England's view.
- 3.15 The Appellant's design assumes possible permeability into Elmsbrook for cycle lanes and pedestrian access outside of the Road Access points. We will show that these are currently slated to be unadopted roads, and that in most cases at the boundaries of both parcels, they have no pedestrian or cycle paths, as they are beyond "turning heads" and on drives providing vehicle access to parking.
- 3.16 We will demonstrate that the Applicant is making fewer S106 contributions and trying to free itself from planning constraints that other developers have accepted. This does not appear to be fair, reasonable or sensible.
- 3.17 Policy Bicester 1 requires that "Good accessibility to public transport services should be provided for, including the provision of a bus route through the site with buses stopping at

the railway stations and at new bus stops on the site." The NW Bicester SPD contains several further clauses regarding the expansion of the Ecotown's Public Transport network. However, we will show that the Applicant only suggests additional bus stops and does not have any sustainable funding for such suggestions, nor any public transport plan.

4.0 CONCLUSIONS AND PLANNING BALANCE

- 4.1 The Appellant has wrongly stated that CDC cannot currently demonstrate a five-year housing land supply for the period 2022-2027; that the planning balance shows it should be given consent; and that the Proposed Development accords with the development plan and is consistent with, and indeed encouraged by the NPPF, and the NW Bicester SPD.
- 4.2 We will present evidence as to why all these points are wrong. In particular we will show clearly why the Highways and Access approach contravenes key requirements of the NPPF (which are two of the four points for Refusal made by CDC's Planning Committee on the 9th of March 2023, where they Voted to oppose the Appellant's Case for Appeal); and that it contravenes around 50 different clauses within the Local Plan, NW Bicester SPD, and both national and local transport plans (between them, these cover all four points for Refusal – including the level of True Zero Carbon build, and the proportion of Affordable Housing to be provided).
- 4.3 The Appellant states (SC: 5.6) that it has "complied with Policy BSC3 of the development plan by demonstrating that the Proposed Development is unviable in relation to those requirements."
- 4.4 We will show that, due to the errors in the Appellant's viability assessment, it has not demonstrated this; we believe this should be completely corrected, in order to determine what build level and proportion of affordable housing can actually be provided, prior to resubmission to the democratic voting body of the CDC Planning Committee.
- 4.5 We will show examples of how we believe the Application could be improved in key places, such that compliance with both NPPF and local plans and policies can be attained, resulting in an application that could have broad local support for resubmission.
- 4.6 Because the 5-year housing land supply argument is incorrect, the Application needs to align more closely with the local plan in order to meet the necessary criteria for approval.
- 4.7 We will demonstrate a startlingly high level of non-compliance with national and local policy/framework requirements; an intolerably high level of errors *which are still present* in the Application, despite numerous Objections and communications pointing them out; and a positive way forward to remove these errors and thus respond positively to the Committee's grounds for Refusal.
- 4.8 We hope that our evidence will satisfy the Inspectorate that this Application is currently not fit for purpose, and should be Refused Consent, with recommendations being made for vital amendments to be made prior to resubmission as soon as possible.

References:

[1] “31036 A3 HL 23 01 31 - SoC - Final V6” - Land at North West Bicester Statement of Case, Prepared on behalf of Firethorn Developments Limited, January 2023.

[2] <https://lordslibrary.parliament.uk/climate-change-targets-the-road-to-net-zero/>

“The Climate Change Committee has said that the UK is ... not on track to meet its targets outlined by the fourth and fifth carbon budgets.” [These are to 2025, and 2030, respectively.]

“The committee said that the Government will have to “introduce more challenging measures” if the UK is to meet future carbon budgets and the net zero target for 2050.”

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1109429/uk-nationally-determined-contribution.pdf

“In December 2020, the United Kingdom of Great Britain and Northern Ireland (the UK) communicated its Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC) in line with Article 4 of the Paris Agreement. In its NDC, the UK commits to reducing economy-wide greenhouse gas emissions by at least 68% by 2030, compared to 1990 levels.

“At COP26 in November 2021, which the UK hosted in Glasgow, Parties resolved to pursue efforts to limit global temperature increase to 1.5°C. They recognised that this would require rapid, deep and sustained reductions in greenhouse gas emissions and accelerated action in this critical decade to 2030.”