

APP/1/F

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

Rebuttal Evidence of:

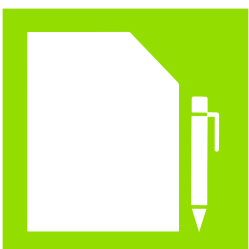
Nicholas Fell LL.B (Hons) PG.Dip MRICS

In Respect of: FINANCIAL VIABILITY IN PLANNING

On Behalf of Firethorn Developments Limited (the Appellant)

18 May 2023

Our Ref: NF/20-00678



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1 INTRODUCTION

- 1.1 My name is Nicholas Fell. The details of my qualifications and experience are included in my main proof of evidence (APP/1/A).
- 1.2 This rebuttal has been prepared in response to the viability evidence presented on behalf of North West Bicester Alliance by E.Toutain (Reference: EV-1).
- 1.3 My rebuttal is not intended to be an exhaustive response on all matters and deals only with certain points where it is considered appropriate or helpful to respond in writing at this stage. This does not mean that I am in agreement with any point by virtue of omission.
- 1.4 Where a specific point has not been dealt with, this does not mean that these points are accepted, and they may be addressed further at the Inquiry.
- 1.5 This rebuttal should also be read as an addendum to my proof of evidence.
- 1.6 I confirm that the opinions expressed are my true and professional opinions.

2 EVIDENCE OF E.TOUTAIN

2.1 For ease of reference I adopt E.Toutain's paragraph numbers against my comments below. I refer to these as E.T Para.

E.T Para 4-6 E.Toutain states that *'the Appellant has presented a viability assessment but has not articulated any particular circumstance why this viability assessment is needed or should be considered by the local planning authority'*. They also reference the PPG on Viability that states *"The role for viability assessment is primarily at the plan making stage" and "Where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the viability assessment that informed the plan; and the applicant should provide evidence of what has changed since then."*

I respond on the following basis:

i. The most recent viability evidence base underpinning the Local Plan was the Cherwell District council: Local Plan Partial Review – Viability Assessment, July 2017 (CD: 8.4.5). This is now six years old and the evidence base (sales values and build costs) are out of date.

ii. The PPG on Viability also states¹ (emphasis my own):

Should viability be assessed in decision taking?

Where up-to-date policies have set out the contributions expected from development, planning applications that fully comply with them should be assumed to be viable. **It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.** Policy compliant in decision making means that the development fully complies with up to date plan policies. A decision maker can give appropriate weight to emerging policies.

Such circumstances could include, for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan; where further information on infrastructure or site costs is required; where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people); **or where a recession or similar significant economic changes have occurred since the plan was brought into force.**

iii. Since the evidence base prepared in 2017 there have been major events that have affected the viability of residential development (Brexit, Covid, Ukraine War, high build cost inflation, falling house prices).

iv. The approach to viability testing for the Proposed Development is in accordance with both National and Local Plan Policy (BSC3 Affordable Housing).

v. Cherwell District Council ('CDC') are in agreement that the process undertaken by both main parties in respect of reaching agreement on the inputs to the Viability Appraisals was undertaken in accordance with the PPG on Viability and RICS Guidance².

¹ PPG on Viability, Paragraph: 007 Reference ID: 10-007-20190509

² Statement of Common Ground on Viability between the Appellant & CDC

E.T Para 12-15 There appears to be a misunderstanding of the profit margins adopted. At paragraph 13 of E.Toutain's proof they state, '*In the latest Viability assessment, presented in the 28 April 2023 Rapleys/HLD Statement of Common Ground re Viability, the required profit proportion has been elevated from 17% to 20%, apparently adding in 3% marketing percentage to justify this.*'

The Statement of Common Ground on Viability between the Appellant & CDC confirm that the profit margin adopted for private sale units is 20% on Gross Development Value (GDV) and 6% for affordable tenure units. The profit margin reflected in the development appraisals is a blended return of the private and affordable tenures. These profit margins have remained consistent throughout all viability submissions. The 3% marketing cost is not related to the developer margin. Marketing costs are a standard development cost and have been agreed in the SoCG between the Appellant & CDC.

Para 14(c) suggests that the scheme could come forward at a blended average margin of 8.6%. This is not a realistic return for a scheme delivering both private and affordable tenure homes and falls below even the returns that would be required for a forwarded funded development, such as a build-to-rent scheme, which are in the region of 10%. There is no evidence base provided to support the assertion that an 8.6% return would be acceptable in the market.

E.T Para 16-21 In paragraphs 17 and 18 there are a number of points raised that do not accord with standard viability methodology in respect of establishing an appropriate Benchmark Land Value (BLV). For example, in paragraph 17 E.Toutain refers to '*value creation being shared between the landowner and the developer*'. This doesn't accord with the standard assessment of BLV and should not form part of the consideration when assessing the approach based on the EUV+ methodology. In addition, in paragraph 18 it is stated that the statements made in paragraph 17 assume '*the landowner paid current agricultural land value 10 years ago and the developer needs 3 years to develop the site*'. The Proposed Development is for 530 units, the development timescales as agreed in the SOCG on Viability are 6 months pre-construction and then 93 months of house building, totalling 8 years and 3 months. Any assumptions based on a 3 year construction period are entirely unrealistic..

The approach adopted to assessing the Benchmark Land Value has been agreed with CDC's Viability Consultant and is in accordance with the PPG Guidance on Viability³. E.Toutain provides no evidence of any alternative premium that would be acceptable.

E.T Para 22 It is not correct to state the site is landlocked nor that there are any access constraints.

When the Exemplar land was sold to A2 Dominion the Vendor retained full access rights and services to the Proposed Development (the western parcel) on title with an obligation on A2 Dominion to construct the Estate Road to the boundary of the site.

³ PPG on Viability, Paragraph: 013 Reference ID: 10-013-20190509

The rights of access and services were granted in favour of SGR (Bicester 2) Limited over the land owned by A2 Dominion, and Appellant purchased the corporate so have retained the rights of access from the Highways. In addition, there was a deed of easement (dated 28 May 2020) that relates to the estate road and the access/service media rights that permits that the land can be fully developed without hindrance or ransom. This was an agreement signed between Elmsbrook (Crest A2D) LLP and A2 Dominion South Limited (as the grantors) and SGR (Bicester 2) Limited (as the grantee).

Also, the estate road will ultimately be adopted by Highways in accordance with the executed S38 agreement.

E.T Para 30-34 No evidence is provided for any alternative sales values to support the assertions made. The sales value evidence has been subject to significant negotiation between the Appellant and CDC and agreed in the SoCG on Viability. The sales evidence included the most recent sales from the Exemplar.

E.T Para 41-46 There are no development appraisals nor supporting evidence to justify any of the numbers put forward. This is not an appropriate methodology to establish financial viability in planning nor the correct methodology when undertaking a Residual Valuation.

3 SIGNATURE

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