

STATEMENT OF COMMON GROUND

for

CARBON REDUCTION

between

FIRETHORN DEVELOPMENTS LTD

AND

CHERWELL DISTRICT COUNCIL

AND

NORTH WEST BICESTER ALLIANCE

IN RESPECT OF THE APPEAL AGAINST THE DECISION OF CHERWELL
DISTRICT COUNCIL FOR THE DEVELOPMENT OF

LAND AT NORTH WEST BICESTER, CHARLOTTE AVENUE,
BICESTER, OX27 8BP

PLANNING INSPECTORATE REFERENCE NUMBER – APP/C3105/W/23/3315849

LOCAL PLANNING AUTHORITY REFERENCE NUMBER – 21/01630/OUT

(Draft V2 – incl. NWBA response – 28th April 2023)

(Draft V3 – incl. NWBA further response – 02 May 2023)

(Draft V4 – inc. Appellants comments on NWBA response – 03 May 2023)

(Draft V5 – inc. CDC comments and Appellants further comments – 03 May 2023)

Final Version, Signed – 03/04 May 2023

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1. INTRODUCTION

- 1.1 This Statement of Common Ground ('SoCG') has been prepared by Aether Ltd on behalf of Firethorn Developments Limited ('the Appellant'), the Local Planning Authority, Cherwell District Council ('CDC') and North West Bicester Alliance (NWBA).
- 1.2 The SoCG is submitted in relation to the appeal made by the Appellant under Section 78 of the Town and Country Planning Act 1990 ('the Appeal') [appeal ref. APP/C3105/W/23/3315849] in respect of an outline Planning Application (CDC ref. 21/01630/OUT), hereafter referred to as 'the Planning Application' or 'the Proposed Development'.
- 1.3 The Planning Application relates to land at North West Bicester, Charlotte Avenue, Bicester, OX27 8BP ('the Site').
- 1.4 The Planning Application was submitted to Cherwell District Council (CDC) on 5th May 2021 and was validated on 6th May 2021.
- 1.5 Following an earlier deferral by members in the committee meeting on 12th January 2023 which led to the appeal being lodged on the basis of non-determination, the application was presented to CDC Planning Committee on 9th March 2023 with a recommendation for approval (in the event that the Appeal had not already been lodged).
- 1.6 Members commented that had the Appeal not already been lodged on non-determination grounds, they would have refused planning permission, with one of the five putative Reasons for Refusal relating to True Zero Carbon requirements.
- 1.7 The purpose of this SoCG is to set out the matters agreed between the parties (common ground) and those that are not (uncommon ground), the aim being to focus on the issues that separate the parties in respect of the Proposed Development and narrow the areas of disagreement.
- 1.8 This SoCG has been prepared in accordance with the Government's 'Planning Appeals: Procedural Guide (as updated in December 2022).

2. THE SITE AND PLANNING HISTORY

2.1 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, Policy Bicester 1. It is 2.5km to the north west of Bicester Town Centre, south east of the village of Bucknell and north west of Caversfield. The land and boundaries of the Site comprise Banbury Road (B4100) and the ongoing construction works associated with the first phase of the North West Bicester allocation (the Exemplar site); completed housing associated with the same development; and fields, hedgerows, and trees to the north, north west, and west. Further to the south lie fields running up to Lords Lane (A4095) which is approximately 550m to the south and currently forms the northern edge of Bicester.

2.2 The land separating the two parcels of the Site comprising the first phase of the North West Bicester allocation (the Exemplar Site) is part complete and part under construction. The Exemplar Site was granted planning permission by CDC on the 10th of July 2012 for the following:

“Development of Exemplar phase of NW Bicester Eco Town to secure full planning permission for 393 residential units and an energy centre (up to 400 square metres), means of access, car parking, landscape, amenity space and service infrastructure and outline permission for a nursery of up to 350 square metres (use class D2), a community centre of up to 350 square metres (sui generis), 3 retail units of up to 770 square metres (including but not exclusively a convenience store, a post office and a pharmacy (use class A1)), an Eco-Business Centre of up to 1,800 square metres (use class B1), office accommodation of up to 1,100 square metres (use class B1), an Eco-Pub of up to 190 square metres (use class A4), and a primary school site measuring up to 1.34 hectares with access and layout to be determined.”

2.3 An estate road, the Elmsbrook Spine Road, comprising Charlotte Avenue to the south of the Bus Gate and Braeburn Avenue to the north of the Bus Gate, separates the two parcels of land comprising the Site.

2.4 The Site comprises two parcels of land, with a total area of 23.97ha, made up of an Eastern and Western Parcel. The land is predominantly grassland with fields bounded by hedges with some large trees, woodland, and plantation. The land is classified as good to moderate value (primarily Grade 3b) under the Agricultural Land Classification system.

2.5 The west of the Site contains two distinct areas of woodland, and the most northern area of woodland contains a dry pond. There is a historic hedgerow which runs along the north eastern border of the Site and is a drainage feature running through the south of the Site. The Site is relatively flat rising gradually to the north west.

2.6 Furthermore, it is agreed that:

- a) The Site is not located within a Conservation Area;
- b) There are two listed buildings in close proximity to the Site - beyond Banbury Road to the east is the Church of St Laurence Grade II* Listed Building, and Home Farmhouse Grade II Listed Building is located approximately 85m to the south east at the closest point to the Site; and
- c) Part of the southern area of the site is in Flood Zone 2 and 3.

PLANNING HISTORY

- 2.7 The Relevant Planning History is set out in Section 4 of the Officer's Report to Planning Committee, as presented to Members on 12th January 2023. This is agreed between parties.

3. DEVELOPMENT PROPOSALS

3.1 The Planning Application, which forms the subject of this Appeal, was submitted in May 2021 in outline with all matters reserved for future approval, with the exception of access. The CDC reference for the Planning Application is 21/01630/OUT.

3.2 The Planning Application is for the development of up to 530 residential units, and the description of development (as amended) 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.”

3.3 The Planning Application seeks approval of the following:

a) Amended Development Parameter Schedule and Plans (December 2022) including the following Plans:

- I. Location Plan (drawing ref: 1192-001 Rev J)
- II. Parameter Plan 1 - Maximum Building Heights and Footprint (drawing ref: 1192-003 Rev N);
- III. Parameter Plan 2 - Green Space (drawing ref: 1192-003 Rev N);
- IV. Parameter Plan 3 - Access and Movement (drawing ref: 1192-003 Rev M); and

b) Highways drawings as follows:

- I. Proposed Pedestrian Crossing to Church (drawing ref: 4600-1100-T-004 Rev D);
- II. Site Access A – Access to Eastern Parcel (drawing ref: 4600-1100-T-040 Rev A);
- III. Site Access A & B – Access to Eastern Parcel & Western Parcel (drawing ref: 4600-1100-T-041 Rev A);
- IV. Site Access C – Access to Western Parcel (North) (drawing ref: 4600-1100-T-042 Rev A);
- V. Site Access D – Direct Access to North of the Western Parcel (drawing ref: 4600-1100-T-010 Rev B);
- VI. Site Access E – Proposed Construction Access (drawing ref: 4600-1100-T-011 Rev F); and
- VII. Construction Access Western Parcel (drawing ref: 4600-1100-T-027 Rev B).

3.4 The description of development, and the matters for which approval is sought through the Planning Application, are agreed between parties.

4. PLANNING POLICY AND GUIDANCE

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications must be determined in accordance with the relevant development plan, unless material considerations indicate otherwise. The Planning Application which is the subject of this Appeal will therefore need to be considered against the relevant development plan policy documents and other material considerations.
- 4.2 The Statutory Development Plan for CDC currently comprises:
- a) Cherwell Local Plan 2011-2031, Part 1 (adopted July 2015);
 - b) The Cherwell Local Plan 2011-2031 (Part 1) Partial Review - Oxford's Unmet Housing Need (September 2020);
 - c) Cherwell Local Plan 1996, Saved Policies (adopted September 2007).
- 4.3 The Officers Report to CDC Planning Committee (paragraph 8.2) listed the relevant development plan policies and is a matter of common ground.
- 4.4 Other relevant policy, guidance and local plan evidence documents include the:
- a) National Planning Policy Framework ('NPPF') (July 2021);
 - b) Planning Policy Statement: Eco-towns A supplement to PPS 1, July 2009;
 - c) National Planning Practice Guidance ('NPPG') (June 2021);
 - d) North West Bicester Supplementary Planning Document ('NWBSD') (February 2016).
 - e) North West Bicester Masterplan Energy Strategy V3 (Hyder, March 2014)
- 4.5 In addition, NWBA have highlighted the following as being relevant:
- a) Future Homes 2025 Consultation Response (January 2021); and
 - b) Climate Change Act 2008 (and updates).

5. MATTERS OF COMMON GROUND BETWEEN THE APPELLANT AND NORTH WEST BICESTER ALLIANCE

5.1 The following are considered to be matters of common ground between the appellants and North West Bicester Alliance. These are agreed between the parties, subject to the imposition of appropriately worded planning conditions:

- (a) CDC Local Plan Policy Bicester 1 defines the requirement for 6000 homes as a whole to be zero carbon or below.
- (b) Policy ESD2 defines the options for minimising carbon emissions to zero. This includes fabric energy efficiency to reduce energy demand, connection to decentralised energy supply (aligned to ESD 4), the use of renewable energy and 'allowable solutions'. These are listed in a hierarchy, with 'allowable solutions' at the bottom of the list. There are no specific targets set within ESD2 on levels of contribution for each of these measures for carbon emission reductions.
- (c) Policy ESD 4: Decentralised Energy Systems requires a feasibility assessment including the consideration of biomass combined heat and power. Where feasibility assessments demonstrate that decentralised energy systems are deliverable and viable, such systems will be required as part of the development unless an alternative solution would deliver the same or increased benefit.
- (d) The North West Bicester SPD states (Page 4, paragraph 1.8 5th bullet point) the requirements of the SPD should be met at the detailed planning application stage and beyond to ensure adequate and consistent approaches to quality and delivery.
- (e) Ecotown Principle ET 9.2 (Appendix 2 paragraph ET9.2 Page 64 of the SPD) states the need for options to ensure resilience in planning towards detailed applications.
- (f) According to a written statement from the Government in March 2015 regarding the Code for Sustainable Homes, "the government has now withdrawn the code, aside from the management of legacy cases." The Code for Sustainable Homes was withdrawn on 22 April 2015. The November 2010 technical guidance and May 2014 addendum are available alongside the written ministerial statement on housing standards at <https://www.gov.uk/government/publications/code-for-sustainable-homes-technical-guidance>.
- (g) The North West Bicester SPD Paragraph 4.15 notes: "The approach to energy and carbon dioxide reduction is set out in the Masterplan Energy Strategy"
- (h) Figure 3.2 page 12 within the North West Bicester Masterplan Energy Strategy defined the fabric energy efficiency standard for future zero carbon homes at North West Bicester as 46kWh/m²/year for detached, semi and end terrace homes and 39kWh/m²/year for mid terraces and apartments.
- (i) The Outline Energy Statement submitted with the outline planning application presents a suite of fabric energy efficiency measures and renewable and low carbon energy technology that could be used to meet CDC local plan policy.
- (j) Planning conditions were accepted on both Land off Howes Lane and Middleton Stoney Road, Bicester (Ref: APP/C3105/W/16/3163551) and Bicester Ecotown Exemplar Development (Ref: 10/01780/HYBRID) as an appropriate basis to secure compliance to Bicester Policy 1.

- (k) A planning condition for meeting the policy requirements of true zero carbon Policy Bicester 1 would ensure that the project meets policy requirements at detail design/reserve matters application as defined in the SPD (paragraph 5.4 above).
- (l) Policy Bicester 1 requires "demonstration of climate change mitigation and adaptation measures including exemplary demonstration of compliance with the requirements of Policies ESD 1 – 5".
- (m) Policy Bicester 1 requires "Homes to be constructed to be capable of achieving a minimum of Level 5 of the Code for Sustainable Homes on completion of each phase of development, including being equipped to meet the water consumption requirement of Code Level 5."
- (n) The Future Homes consultation response report, (January 2021), states:
 - i. "At present, local planning authorities may include policies in their local plans which require developers to comply with energy efficiency standards for new homes that exceed the minimum requirements of the Building Regulations." (paragraph 2.33)
 - ii. "The Planning and Energy Act 2008 was amended in 2015 to provide Government with powers to stop local planning authorities from being able to exceed the minimum energy efficiency requirements of the Building Regulations, but this amendment has not been commenced. In the same year, the then Government set out in a Written Ministerial Statement an expectation that local planning authorities should not set energy efficiency standards for new homes higher than the energy requirements of Level 4 of the Code for Sustainable Homes, which is equivalent to a 19% improvement on the Part L 2013 standard." (paragraph 2.34)
 - iii. "To provide some certainty in the immediate term, the Government will not amend the Planning and Energy Act 2008, which means that local planning authorities will retain powers to set local energy efficiency standards for new homes." (paragraph 2.40)
 - iv. "Last year, the Planning for the Future white paper set out how a simpler planning process could improve certainty about what can be built where, as well as offering greater flexibility in the use of land to meet our changing economic and social needs. The white paper indicated that while development management policies would focus on identifying areas for development and protection, they would be set nationally. Further, as we move to ever higher levels of energy efficiency standards for new homes with the 2021 Part L uplift and Future Homes Standard, it is less likely that local authorities will need to set local energy efficiency standards in order to achieve our shared net zero goal" (paragraph 2.41)
- (o) In September 2020 the Future Homes Hub has been set up to deliver a cross industry task force to provide further definition to the Future Homes Standard. The "Ready for Zero" task group report (28 February 2023) provides current evidence on options for the Future Homes Standard.
- (p) Future Homes 2025 has not yet gone into technical consultation phases (due to start in 2023) and may potentially undergo further changes prior to coming into effect, which is proposed for 2025.
- (q) Policy ESD1 requires new development to ensure that development is more resilient to climate change impacts which should include consideration of a range of measures including "demonstration of design approaches that are resilient to climate change impacts including the use of passive solar design for heating and cooling"

- (r) NWBSPD states: “This SPD sets out the minimum standards to be achieved by the proposed development. Developers will be encouraged to exceed these standards where possible and will be expected to apply new higher standards that arise during the life of the document and reflect up to date best practice and design principles.” (paragraph 1.7)
- (s) NWBSPD states: “Applicants are expected to consider the principles and parameters set out in this section in the preparation of planning applications (in outline and detail) and Design and Access Statements. The principles should be applied to the development as a whole, as well as individual sites.” (paragraph 4.3)
- (t) NWBSPD states: “Development at North West Bicester must achieve zero carbon emissions as defined in this SPD.” (paragraph 4.24)
- (u) NWBSPD states: “Each full and outline application will need to be supported by an energy strategy and comply with the definition of true zero carbon development.” (paragraph 4.25)
- (v) NWBSPD states: “Where an approach is proposed that does not include a heat network it will have to be demonstrated that it is a robust long term solution and that connection to any heat network should be explored.” (paragraph 4.30)
- (w) NWBSPD states: “In summary, all homes should: [...] • Meet a minimum of Level 5 of the Code for Sustainable Homes.”(paragraph 4.64)

6. MATTERS OF UNCOMMON GROUND BETWEEN THE APPELLANT AND NORTH WEST BICESTER ALLIANCE

6.1 Matters of Uncommon Ground between the Appellant and the North West Bicester Alliance are as follows:

- (a) The Application appears to be in contravention of NPPF paragraph 157, as the Appellant has not demonstrated non-feasibility/non-viability of joining the existing Ecotown District Heating Network, and is not complying with Local Plan policies regarding energy assessment and provision – there is no publicly available evidence detailing the options that may or may not have been explored/discussed.
- (b) The Appellant proposes not to meet Code Level 5 equivalent, as required for Zero Carbon as per the CDC Local Plan, Policy Bicester 1 – and the Original Masterplan, as detailed in the NW Bicester SPD. NB: Planning committee members made it quite clear on 9 March: that in their view the Ecotown must be continued as stipulated; not “as close as can be achieved.”
- (c) The Application does not do enough to support Climate Change Targets, due to the NW Bicester Ecotown’s role as an Exemplar Eco-development for the building industry’s trajectory towards Net Zero 2050 (ref. the UK’s Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC) in line with Article 4 of the Paris Agreement; and the UK’s Climate Change Act 2008 plus updates; OCC and CDC have also declared Climate Emergencies, on the 2nd of April and 22nd of July 2019, respectively.).
- (d) The Future Homes Consultation of 2021 saw overwhelming responses finding that 75-80% reduction is not enough, and that future retrofitting must be avoided: it is contended that this therefore also precludes the Integration Act (2016) “allowable solutions” – i.e. offsetting – being used here: without reaching Net Zero, with unknown total future lifetime of the homes, a valid offset cannot be calculated. (NB: this connects to (a), re existing proposal information provided by the Appellant, and shared on the CDC Planning Portal for 21/01630/OUT.)
- (e) The Appellant has removed water harvesting and passive ventilation measures costing £ 6m because they argue these only provide a small contribution to True Zero Carbon. However, water efficiency is critical on the NW Bicester Ecotown, because:
 - i. Bicester is an area of serious water stress,
 - ii. The proposed development should meet the NWBSPD stated requirement of 80 litres per person per day,
 - iii. The proposed development must show readiness for climate change - the systems required cannot be retrofitted without vast later expense (whose? - residents?),
 - iv. The proposed development should meet the minimum standard set by the Exemplar phase and promised by other ongoing/outline-stage Ecotown developments, and
 - v. The proposed development needs to show exemplary demonstration of how to build for the future – for all new developments to recognise the need

to get closer to water neutrality, to enable reaching our Net Zero 2050 targets.

7. MATTERS OF COMMON GROUND BETWEEN THE APPELLANT AND CHERWELL DISTRICT COUNCIL

7.1 The following are considered to be matters of common ground between CDC and the Appellant.

- (a) CDC Local Plan Policy Bicester 1 defines the requirement for 6000 homes as a whole to be zero carbon. For completeness, the accompanying footnote (i) defines what is meant by Zero Carbon. It states:

“The definition of zero carbon in eco-towns is that over a year the net carbon dioxide emissions from all energy use within the buildings on the eco-town development as a whole are zero or below.”
- (b) CDC Local Plan Policy Bicester 1 states that the Council will expect the Masterplan and applications for planning permission to meet the requirements of the policy.
- (c) Policy ESD1 explains that measures will be taken to mitigate the impact of development within the District on climate change.
- (d) Policy ESD2 seeks to reduce carbon emission reductions and sets out an energy hierarchy
- (e) Policy ESD3 explains that all new residential development will be expected to incorporate sustainable design and construction technology to achieve zero carbon development through a combination of fabric energy efficiency, carbon compliance and allowable solutions in line with Government policy.
- (f) Policy ESD 4: Decentralised Energy Systems requires a feasibility assessment including the consideration of biomass combined heat and power. Where feasibility assessments demonstrate that decentralised energy systems are deliverable and viable, such systems will be required as part of the development unless an alternative solution would deliver the same or increased benefit.
- (g) Policy ESD5 makes clear that the Council supports renewable and low carbon energy provision wherever any adverse impacts can be addressed satisfactorily.
- (h) The North West Bicester SPD at paragraph 4.24 (page 19) states that *“Development at North West Bicester must achieve zero carbon emissions as defined in this SPD.*
- (i) The North West Bicester SPD at paragraph 4.25 (page 19) states that *“Each full and outline application will need to be supported by an energy strategy and comply with the definition of true zero carbon development”.*
- (j) The North West Bicester SPD at paragraph 4.25 (page 19) states that *“Each full and outline application will need to be supported by an energy strategy and comply with the definition of true zero carbon development”.*
- (k) The North West Bicester SPD states (page 15, paragraph 4.3 that *“Applicants are expected to consider the principles and parameters set out in this section in the preparation of planning applications (in outline and detail) and Design and Access Statements. The principles should be applied to the development as a whole, as well as individual sites”.*

- (l) The North West Bicester SPD states (Page 4, paragraph 1.8 5th bullet point) the requirements of the SPD should be met at the detailed planning application stage and beyond to ensure adequate and consistent approaches to quality and delivery.
- (m) Eco Town Principle ET 9.1 (Appendix 2 paragraph ET9.2 Page 64 of the SPD) states that *“as well as being zero carbon as part of the whole built environment, homes in Eco Towns should”* meet a range of other standards:
- (n) Ecotown Principle ET 9.2 (Appendix 2 paragraph ET9.2 Page 64 of the SPD) states *“The intent of the energy efficiency and on-site carbon reduction standards is to ensure that, without being too prescriptive as to the means employed to achieve the overall zero carbon standard, reasonable opportunities for energy efficiency and onsite carbon mitigation (including directly connected heat systems) are utilised.”*
- (o) The Code for Sustainable Homes was removed by Government on 22 April 2015.
- (p) Planning conditions were accepted on both Land off Howes Lane and Middleton Stoney Road, Bicester (Ref: APP/C3105/W/16/3163551) and Bicester Ecotown Exemplar Development (Ref: 10/01780/HYBRID) as an appropriate basis to secure compliance to Bicester Policy 1. Although it should be noted these schemes' ability to delivering a true zero carbon development was not in dispute prior to the imposition of the planning conditions and the applicants in those cases did not claim that those developments would be unviable with zero carbon requirements.

8. MATTERS OF UNCOMMON GROUND BETWEEN THE APPELLANT AND CHERWELL DISTRICT COUNCIL

- Delivering a zero carbon scheme that is compliant with Local Plan Policy Bicester 1: it is a matter of *principle* as to whether the proposals are *capable of* satisfying this policy which therefore falls to be determined at the outline stage. At present, the Council considers there to be insufficient evidence to demonstrate the potential for compliance with Local Plan Policy Bicester 1.
- The absence of sufficient evidence to show that a zero carbon policy compliant scheme can be delivered at this outline stage means that a planning condition or obligation would not be the most appropriate mechanism of securing a zero carbon scheme. It should be a matter for consideration at this Outline stage.
- 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 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

- The Outline Energy Statement submitted with the outline planning application presents a suite of masterplan considerations, fabric energy efficiency measures and renewable and low carbon energy technology that could be used to meet true zero carbon and other relevant parts of the CDC local plan policy.

Signed on behalf of the Appellant:

A handwritten signature in black ink, appearing to be 'J Riggall', with a long horizontal stroke extending to the right.

Jonathan Riggall, Aether Limited

Dated: 4.5.2023

Signed on behalf of Cherwell District Council

A handwritten signature in black ink, appearing to be 'Tom Webster', written in a cursive style.

Tom Webster

Dated: 3.5.2023

Signed on behalf of North West Bicester Alliance

A handwritten signature in blue ink, appearing to be 'Rob Fellows', written in a cursive style.

Rob Fellows

Dated: 3.5.2023

