



Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY FIRETHORN TRUST

LAND AT NORTH WEST BICESTER, CHARLOTTE AVENUE, BICESTER

LOCAL PLANNING AUTHORITY REF NO: 21/01630/OUT

PLANNING INSPECTORATE REF NO: APP/C3105/W/23/3315849

REVISED STATEMENT OF CASE CHERWELL DISTRICT COUNCIL

JUNE 2023

Contents

1. Introduction	3
2. Revised Position	4
3. Conclusion	8

1. INTRODUCTION

1.1 This Statement sets out a revised case for Cherwell District Council (“**the Council**”) in respect of the appeal submitted by Firethorn Trust (“**the Appellant**”) under Section 78(1) of the Town and Country Planning Act 1990 against the Council’s failure to determine Planning Application ref 21/01630/OUT pertaining to Land at North West Bicester, Charlotte Avenue, Bicester (“**the Site**”).

1.2 As stated previously, following planning committee on the 9th March 2023, it was confirmed that the Council’s Monitoring Officer has delegated authority to draft five putative reasons for refusal. These five putative reasons were:

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

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. Any localised proposals to the road have not been proven to be possible, and are likely to raise safety concerns relating to users of the highway within proximity to Gagle Brook School, and would result in the loss of street trees and would impact on the character of the existing Eco Town. The proposal would not meet the requirements of LTN1/20 and would conflict with Oxfordshire County Council’s ‘Local Transport and Connectivity Plan’ Policies 1, 2b, 8, 9, 11, 35, 45 and 46b, Oxfordshire County Council’s ‘Tree Policy for Oxfordshire’ Policies 11, 18, 19 and 20, Policies SLE4 and Bicester 1 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016.*
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 and the development would therefore conflict with Government guidance contained within the National Planning Policy Framework and Policies SLE4 and Bicester 1 of the Cherwell Local Plan Part 1 2011-2031.*
4. *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.

5. *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.

2. REVISED POSITION

- 2.1 Throughout the appeal process Cherwell District Council (CDC) and the Appellant have engaged in a great number of meetings and discussions and, ultimately, worked in collaboration to deliver, subject to appropriately worded conditions and a robust S106 Agreement, a scheme which the Council can support as complying with Bicester 1 and the development plan overall subject only to matters going to the contents of the s.106, this is elaborated upon below.
- 2.2 This revised Statement of Case sets out how Four of the Council's Five Putative Reasons for Refusal have now been overcome.

Putative Reason for Refusal 1: Zero Carbon

- 2.3 The Council remains of the view that the proposal, as originally submitted, fell significantly short of trying its best to deliver a true zero carbon scheme on site, much less in fact delivering a true zero carbon scheme on site as required by Policy Bicester 1 and the NW Bicester SPD.
- 2.4 A key concern was the broad nature of the appellant's Energy Statement. It lacked a firm commitment to delivering a true zero carbon development on site and, because of the open way in which it had been drafted (including a notable lack of any "must" "shall" or "will" commitments), and its heavy reliance on policies ESD1 to ESD5 and building regulation standards, it failed to provide overarching parameters for a robust on site true zero carbon strategy; something that is required in the North West Bicester SPD and is needed for the flagship development in the local plan (as set out in Policy Bicester 1).
- 2.5 However, through detailed discussions, a cascade mechanism (achieved via an appropriately worded condition and linked planning obligations) is now proposed which captures the requirements of Policy Bicester 1 and the supporting North West Bicester SPD.
- 2.6 The condition will secure zero carbon measures beyond the appellant's Energy Statement, including the submission of a Zero Carbon Strategy for each phase that will set out a precise carbon balance.

- 2.7 As part of the cascade mechanism, the developer (in the event that true zero carbon cannot be delivered on site) will be required to submit a further strategy demonstrating how zero carbon will be achieved through other measures. The final part of the mechanism (secured via the s106 agreement) allows for an off-site carbon offsetting contribution. This is intended to be a last resort to plug a very small gap between what is delivered on each property and a true zero carbon balance, if that hasn't been fully achieved.
- 2.8 For these reasons, the condition and the s106 agreement (as presented by the Council) is considered to be necessary to make the scheme acceptable, is reasonable and proportionate and overcomes the Council's putative reason for refusal.
- 2.9 Please note that there is one area of difference between the main parties which is part of the obligation in the draft S106 Agreement. The appellant would like the cost of the off-setting contribution to be fixed now at £69 per tonne. However, the Council's view, noting Mr Sheldon's professional evidence that £69 per tonne is significantly below the current average carbon offsetting figures (see Mr.Sheldon's Proof of Evidence) is that a more appropriate mechanism should include the ability for this figure to reflect the accepted amount per tonne is at the time the contribution is due.
- 2.10 However, noting the viability constraints of the scheme, the Council would agree to accept a compromise position which is that the £69 per tonne is indexed linked from 2020. As a bare minimum, this sum should be subject to the same index link provision as all other sums within the planning obligation. There is no reason to exclude this figure from the requirement for sums in the s.106 to be index linked.

Putative Reasons for Refusal 2 and 3: Highways

- 2.11 In its original Statement of Case, the Council raised concerns that the proposed access arrangements to the site would be unsatisfactory due to an inability to provide for suitable pedestrian and cycle facilities along Charlotte Avenue within proximity to Gagle Brook School.
- 2.12 Following a site visit, and a comprehensive review of the appellant's evidence, the Council's Highways Consultant (Mr.Moss) reached the conclusion that the development would not result in poor pedestrian and cycle facilities along Charlotte Avenue. Once he had reached this conclusion, the Council formally withdrew this element of Putative Reason for refusal 2.
- 2.13 Despite this amendment to the second putative reason for refusal, the Council still had grave concerns about the appellant's proposal to widen Charlotte Avenue in such a way that it would likely result in the loss of trees, thereby materially harming the character and appearance of this residential street which is a tree lined avenue sitting right at the heart of the existing Exemplar development (Elmsbrook).
- 2.14 The Council also remained concerned that the proposal would result in congestion at the junction of Charlotte Avenue with the B4100 potentially causing severe transport harm.
- 2.15 However, through detailed discussions between the two main parties including, notably, the production of further evidence from Mr Kirby in the form of a sensitivity

test, the Council's concerns have been fully addressed. For ease of reference, they have been addressed in the following way:

- 2.16 *First*, the appellant's Highways Consultant (Mr. Kirby of Velocity Transport Planning) has, in the final week leading up to the Inquiry, offered a revised plan (reference 4600-1100-T-080-A) in relation to the narrow section of Charlotte Avenue. This plan shows a priority shuttle working system that would mean the carriageway stays within the existing kerb lines, and the root protection zone of the trees, located within the footway, would not be affected.
- 2.17 Moreover, this plan is in keeping with the ethos of the eco-town in that vehicle space is subservient to pedestrians, whereas alternatives would reallocate pedestrian space to vehicles. Mr Moss' Proof of Evidence, and the Council's objection, was based on the essential role of the trees within the street scene and the likely loss of them, given that the previous proposal would divert the kerb line into the root protection zone.
- 2.18 As Charlotte Avenue is a private road, and therefore not an adopted highway, a condition requiring the appellant to deliver this revised plan cannot be enforced. However, the appellant recognised this and, in the draft s106 agreement, has agreed to wording that stipulates that any highways safety scheme along Charlotte Avenue shall not result in the loss of trees. The Council's preference is for the wording to include 'directly or invertedly'.
- 2.19 *Second*, the capacity issue and the scheme's impact on the Charlotte Avenue/B4100 junction: it was Mr.Moss' contention that there were various weaknesses in the appellant's case, not least the absolute dependence upon a ten minute frequency bus service to assist in delivering the target modal split of 40% by car.
- 2.20 Mr. Moss writes: *"The bus service cited to deliver this was a ten-minute frequency and yet this is dependent upon all S106 contributions being in place and available to spend on this service. A solution has been found as Velocity have now undertaken a robustness assessment of the forecast capacity analysis at the Charlotte Avenue/B4100 junction with development traffic derived from a 50% modal choice for car rather than 40%, that is, 50% of person trips are made by "Car as driver" rather than 40%, in effect, an increase in traffic from the Appellant Site of 25%. In the PICADY analysis this leads to a Ratio of Flow to Capacity (RFC) of 91%, which is above the recommended upper limit of 85% but below the absolute limit of 100%. The forecast delays are a maximum of 90 seconds.*
- 2.21 *It should be noted that both the RFC and the delay only affect traffic from Charlotte Avenue seeking to join the B4100, not traffic making a through journey on the B4100, and that this situation only pertains for part of the peak period. Further this is at the edge of the network, there is no knock-on effect on other links or junctions, as there are no other links or junctions on the development to be affected. In view of this I would suggest we can't claim the impact is severe and thus the test set in the NPPF is not met.*
- 2.22 *With regard to what has changed since drafting my original proof, it is the presence of a robustness test that has resolved this issue - prior to this we did not know what the impact would be if the target of 40% "car as driver" was not met, and as a result could not accept that the impact was not severe, now we have a capacity analysis that puts a figure on this".*

- 2.23 For the reasons set out above, the Council considers that these two putative reasons have been overcome, and formally withdraws them.

Putative Reason for Refusal 4: Affordable Housing

- 2.24 Given the clear need for affordable housing across the Cherwell District and the requirement of Policy Bicester 1 for 30% on site affordable housing provision, any departure from this policy requirement would need to be robustly justified with the burden very much upon the appellant to make the viability case.
- 2.25 Mr. Simkin and Mr. Tarbet, on behalf of the Council, carried out detailed updated assessments (including an extra sensitivity analysis) of the appellant's updated viability evidence (inclusive of sale prices and build costs). In their respective Proof of Evidences, and the Appellant subsequently agreed with both Mr Simkin and Mr Tarbet's assessment of the updated sales values and build costs. Accordingly, there are now no areas of difference between the Appellant and the Authority regarding the inputs to the development viability testing (as confirmed by the Statement of Common Ground on Viability (CD 10.4)). Whilst there remains some difference of opinions between the Council and the appellant on the level of "allowables"/carbon off-setting contribution", the conclusions are clear: that the appellant's offer of 10% affordable housing to be secured as part of this Outline application, is a good offer, and the development, at this point in time, cannot viably deliver more affordable housing without unduly impacting on the overall viability of the scheme.
- 2.26 Moreover, the appellants have agreed that there will be two further viability assessments of the scheme, at the 40% and 70% stages of the development being built out. Having taken expert advice from Mr. Simkin, I am satisfied that these trigger points give the Council the best chance of capturing the current shortfall in affordable housing provision and getting as close to the 30% policy requirement as is possible and are therefore required to make the development acceptable.
- 2.27 For these reasons, this fourth putative reason for refusal has been addressed and can be withdrawn on the basis that the relevant terms of the planning obligation are binding upon the developer.

Putative Reason for Refusal 5: Planning Obligations

- 2.28 All of Cherwell District Council's developer contributions, which are needed to mitigate the impacts of the development, have now been accepted and agreed by the appellant.
- 2.29 The appellant has also agreed the principle of all of Oxfordshire County Council's developer contributions and to pay these contributions.
- 2.25 Cherwell District Council has had sight of Oxfordshire County Council's information to support both requests and considers that they both meet the relevant tests within regulation 122 of the CIL Regulations and, without these payments, the development proposal would fail to address the wider infrastructure requirements of the area.
- 2.26 Although is some refinement needed to the final wording of the draft S106 Agreement, with the offer by the appellants to pay the outstanding forward funding and strategic road contributions, the Council's fifth reason for refusal has now been addressed and the Council is in a position to formally withdraw the fifth reason for refusal.

Five Year Housing Land Supply

- 2.27 Although the Council maintains that it has a Five Year Housing Land Supply, and the relevant policies in the local plan are up to date, with four out of five putative reasons for refusal now overcome and withdrawn, the Council considers that the appellant's challenge on Five Year Housing Land Supply grounds are no longer relevant.

3. CONCLUSION

- 3.1 Whilst the final wording of the draft S106 Agreement, and the planning conditions, still need finessing, the Council is in a position to formally withdraw all Five of the Council's putative reasons for refusal provided all relevant terms of the 106 and planning conditions are imposed as part of any grant of permission.