

LAND AT NORTH WEST BICESTER, CHARLOTTE AVENUE, BICESTER

APPEAL BY FIRETHORN TRUST

LPA REF: 21/01630/OUT

PINS REF: APP/C3105/W/23/3315849

**OPENING SUBMISSIONS ON BEHALF OF
THE LOCAL PLANNING AUTHORITY**

Introduction

1. The Appellant seeks outline planning permission for development described as

“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.”

2. The site sits within an allocation governed by Policy Bicester 1 of the Cherwell Local Plan (CD 4.1). The requirements of Bicester 1 are derived from the Government’s (now withdrawn) proposals for Eco Towns within the supplement to PPS1 (CD8.3.9) and they are rightly demanding given that the stated aim is to create a *“neighbourhood unlike any other in Bicester”*¹.
3. The principle of housing on the Site has therefore always been a matter of agreement between the parties, however, the detail has not. The ability of the scheme to viably meet all of the requirements of Bicester 1 and the extent to which those requirements could viably be met was the primary driver for the Council’s decision that, had it been in a position to determine the application, it would have refused it. In particular, the appeal scheme fell short in relation to affordable housing provision and steps taken towards achieving true carbon zero in line with Bicester 1 and the allocation-specific North West Bicester SPD².

¹ See forward to NW Bicester SPD CD 4.5

² CD4.5

4. In addition, the Council considered that the submitted highways evidence gave rise to two reasons for refusal, one concerning the proposals for Charlotte Avenue leading to a loss of important street trees and another relating to the potential for a severe impact on the network given vagaries within the Appellant's modelling as set out in the TA³.
5. Finally, in the absence of an agreed planning obligation, various harms remained unmitigated including a requirement to adequately fund places for education, strategic highways, health, sports pitches, libraries, buses and others. As set out below, there are now no outstanding matters in relation to the principle of matters to be secured by way of a s.106 agreement and accordingly the Council has also withdrawn its fifth and final reason for refusal.

Viability, True Zero Carbon and Affordable Housing

6. In relation to viability, carbon zero and affordable housing, the Council's concern has always been to strike an appropriate balance between these strands. The Officer's Report considered that an appropriate balance had been achieved by the Applicant, however, Members took a different view. When reviewed as a matter of detailed evidence, Mr Sheldon and Mr Webster on behalf of the Council were of the professional opinion that the submitted Outline Energy Strategy⁴ failed to adequately demonstrate a sufficient commitment to enable them to conclude that the proposals were in compliance with Bicester 1 and therefore the development plan as a whole. Bicester 1 is fundamental to the allocation and any shortcomings need to be robustly justified.
7. It should be noted that the Appellant's Statement of Case and Outline Energy Strategy failed to give an unambiguous assurance that the requirements of Bicester 1 would be met in this regard. The Appellant's SoC refers to viability evidence within the first sentence of its section dealing with zero carbon⁵ and the strong indication is that the Appellant was aiming at the wrong target of ESD1-5 rather than the more stringent requirements of Bicester 1 and the SPD.
8. Indeed, it remains the case that the Outline Energy Strategy includes no express commitment to achieving true zero carbon in line with the definition set out within Bicester 1 and the SPD. As a document it is therefore insufficient evidence to base a conclusion that the policy can be satisfied at reserved matters stage. The document is replete with references to achieving

³ See ES chapter 6 CD 1.26 and proof of Mr Patrick Moss CD 5.11- 5.14

⁴ CD 1.18

⁵ CD para 5.4(iii)

building regulations standards and complying with a suite of policies entitled ESD1-5 which relate to all development in Cherwell rather than aiming at the more stringent site-specific requirements of Bicester 1 and the SPD.

9. However, the Appellant and the Council have agreed a suitably worded condition to rectify this and ensure that appropriate detail and certainty is imported into the outline permission. The proposed wording includes an express tie to the requirements of Bicester 1 and the SPD which is necessary to ensure the condition and thereby the development properly reflects the requirements of the development plan. It also specifies minimum requirements for the future submission of a Zero Carbon Strategy and ensures that a detailed carbon balance is created for the scheme and, if it fails to reach 'zero' in terms of the amount of carbon generated for the development, the developer is required to submit a further strategy explaining how zero carbon will be reached by utilising other measures. That scheme can include measures to be taken on or off-site, albeit always with a view to the underlying policy for the allocation and its roots in the eco town principles.
10. The Council is of the view that subject to the imposition of this condition requiring additional details, the development would be in compliance with the development plan in this regard. The condition is therefore necessary to make the development acceptable, is reasonable and proportionate.
11. In relation to viability, the Council agrees that the Appellant's offer of 10% affordable housing provided on site is acceptable in the circumstances, provided that a viability review mechanism is included within the planning obligation to capture any potential future uplift in values which could release additional funds towards the provision of extra affordable dwellings over and above the 10% to be secured. At present, the development is unable to viably support more than 10%, however, should circumstances change, the terms of the obligation will allow for additional affordable units to be constructed on site.

Highways

12. Two matters arise under this heading:
13. *First*, based upon the information available at the start of the Appeal, the Appellant was proposing works to Charlotte Avenue which, based upon the Council's arboricultural evidence⁶,

⁶ Appendix CDC2 to PoE of Thomas Webster CD 5.15 p.27 onwards

would result in the loss of the existing street trees. Such trees having been planted as a key part of the existing Exemplar development and in line with the Government's encouragement for street lined trees in the NPPF.

14. However, in the week preceding the inquiry the Appellant has provided an assurance via a revised indicative plan and terms within the draft s.106 agreement that any highways scheme in relation to Charlotte Avenue would not cause such damage. It is a matter agreed between Mr Moss and Mr Kirby that a scheme can be designed which would adequately mitigate the highways impacts whilst retaining the street trees.
15. As such, the Council is content to withdraw this part of the reason for refusal on the basis of the agreed terms within the planning obligation.
16. *Second*, the Appellant's transport modelling is based upon 40% of residents using cars and 60% travelling by other means. Mr Kirby describes this target as "aspirational" and that in order to achieve it "*there must be an improved provision for other modes*" this, it appears, is based upon OCC's aspiration for a bus through the site at a frequency of every 10 minutes⁷ which in turn is based upon receipt of contributions from 2600 dwellings i.e. it will not be in place by 2031, the build out year for this scheme. At first glance, this is something of a significant problem and there is no sensitivity testing within the TA to establish the scale of that problem and whether or not it would lead to a severe impact if the 40% target wasn't achieved.
17. However, in the week before the inquiry, the Mr Kirby supplied sensitivity testing which demonstrated that in a scenario where the split was 50% rather than 40% car use, the effect was an exceedance of capacity at one arm of one junction in the AM peak. Mr Moss's view is that this has demonstrated an absence of severe impact even if the aspirations of the TA are not achieved in full by 2031. Accordingly this reason for refusal can also be withdrawn based upon this additional evidence.

Section 106

18. Up until the day immediately before the inquiry, there remain two substantive outstanding matters for the Inspector's determination in relation to inputs into the s.106 agreement:
 - a. Forward funding for primary education;
 - b. The quantum of contribution towards off-site strategic highways infrastructure; and

⁷ MK rebuttal para 2.7-6

19. However, the Appellant has now confirmed its agreement to these matters and therefore there are no outstanding matters of principle between the Council and Appellant.
20. Other more minor drafting discussions are ongoing between the Council and Appellant but can be aired at the planning obligations session and do not go to the principle of reason for refusal 5, which the Council has now formally withdrawn.

Conclusions

21. Matters have moved on materially since the date of the planning committee's decision and further assurances and evidence have been provided by the Appellant.
22. As such and subject to the strict imposition of planning conditions and obligations as outlined above, the Council is of the view that at the close of the inquiry it will invite the Inspector to allow the appeal on the basis that the proposal is in line with an up to date set of policies and most notably Bicester 1. It is therefore not necessary for the inquiry to hear evidence in relation to housing land supply as this is not a determinative issue.
23. The Council notes the request of both Rule 6 parties to put questions to the Council's witnesses on zero carbon, highways and planning and, should this assist the Inspector, the Council will call witnesses to assist the Inquiry.

STEPHANIE HALL
SHEMUEL SHEIKH

Kings Chambers

6th June 2023