NORTH-WEST BICESTER

Appellant's Closing Submissions

Introduction

1. This is an exceptional, pioneering scheme on an allocated eco-town site which has the full support of the local planning authority and all statutory consultees, including the highways authority.

2. As the inquiry closes, the position couldn't be clearer. The key points are agreed with Cherwell:

   (i) The principle of this development on this site is established by the Bicester 1 "*North West Bicester Eco-Town*" allocation policy in the Council's local plan.[1] The main parties agree that the scheme accords with that allocation policy.

   (ii) The scheme had the support of the Council's officers, who recommended it for approval – not once but twice.[2]

   (iii) Again, there is no objection from **any** statutory consultees (including from Oxfordshire County Council ("**OCC**"), the highways authority).[3]

   (iv) Members of the Council's planning committee came up with putative reasons for refusing permission against the advice of its officers, and that of statutory consultees. Indeed, at the time the putative reasons were formulated, they were based on no

[1] CD4.1, p.140.

[2] CD3.1 & CD3.4.

[3] CD10.8, §6.

technical evidence *at all* (e.g. on viability, highways or carbon reduction). That lack of a sound basis for that decision has been exposed by this appeal. The Council's attempt to find evidence to defend members' position has collapsed (in the event only shortly before the inquiry, albeit the concessions should have come much sooner – the Council was building its resistance on a range of points which, it agrees now but should have agreed much sooner, can all be dealt with by condition and planning obligation). All of its putative reasons have been withdrawn.[4]

(v) So there should have been no need for this inquiry. In any event, here we are. In a position where the Council does **not** identify **any** conflict with the statutory development plan, and therefore no longer opposes the grant of permission.

3. So we have – the main parties agree – a scheme which accords with the development plan and is supported by a raft of other material considerations, which will not give rise to any material policy conflicts, or to any significant environmental harm.

4. We are left, then, with the objections of two Rule 6 parties in relation to (in particular) highways matters and viability. Before addressing the detail of those issues, we emphasise that both topics have been subject to exacting and comprehensive scrutiny by independent experts employed by the Council, and also OCC, over – in some cases – not only weeks or months but years. The positive resolution of these issues with the Council's advisers has not been won lightly. It was the product of detailed and painstaking explanation and negotiation. No stone was left unturned. Every input into the analyses has been discussed, challenged, debated and – in the end – resolved. To the satisfaction, each time, of expert consultants employed by the Council and the OCC.

[4] IQ5, §2.

5. So with great respect to both Rule 6 parties who have clearly spent a great deal of time preparing for this appeal, there is a short answer to this inquiry: even if you take their evidence *at its highest*, it comes nowhere close to dislodging the common ground which has been established between the Appellant, the Council and the OCC.

The Bicester 1 allocation

6. This scheme has been a long time coming. In 2009, the wider site was identified as having potential to be an eco-town in the *Planning Policy Statement (PPS): Eco-towns a supplement to PPS1*.[5] In 2014, the "*Locally-led Garden City Prospectus*" led to Bicester being awarded Garden Town status. The local plan built on that vision was adopted in 2015, and in 2016 the Council adopted the North West Bicester Supplementary Planning Document ("**SPD**")[6], which confirmed in the foreword that the wider site "*will make a significant contribution to meeting the District's need for more homes and jobs as set out in the Cherwell Local Plan*".

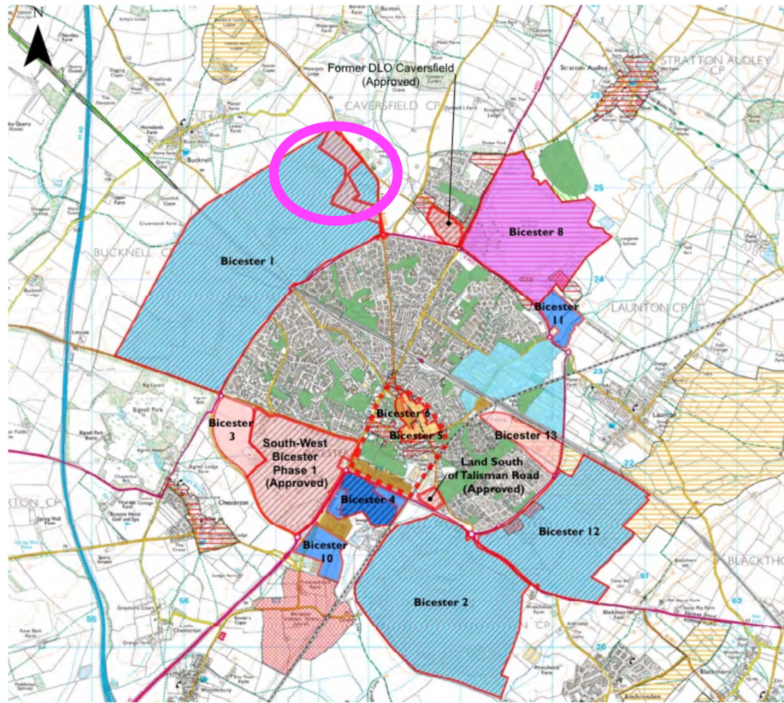
7. Of the plan's total housing requirement – 22,840 homes – over 10,100 are to be delivered in Bicester (far more than anywhere else).[7] By 2031, the plan expects Bicester to have grown enough to become an important economic centre in its own right, including through the delivery of those homes.[8] And the plan's largest single allocation by some distance is the area which includes this appeal site to the North-West of Bicester:

[5] CD8.3.9.

[6] CD4.5.

[7] CD4.1 – the Local Plan, p. 275.

[8] CD4.1 – the Local Plan, pp. 135-136.



8. This Bicester 1 policy area – aka the "*North West Bicester Eco-Town*" – is a central plank in the Council's spatial strategy. And the appeal site sits in the heart of that allocation.

9. So the aspirations in the plan are vast. But, at least so far, those aspirations have not become a reality. We are now well over half-way through the plan period (2011-2031). The housing trajectory which supported the plan[9] anticipated that well over 1,600 homes would have been delivered across the wide Bicester 1 site by now (and another 200-210 every year for the rest of the plan period). Instead, all we have is the 2012 consent next to the appeal site for the "*exemplar*" development for 393 homes (which are not yet complete), and a further consent for 16 homes. Planning permission for 1,700 homes at Himley Village was granted in 2020, but it's not yet been delivered.[10]

[9] CD4.1 – the Local Plan, p. 275.

[10] CD14.4, §5.4.

10. Time is now running out to achieve the plan's vision for Bicester. Urgent action is required on the Bicester 1 site to regain ground which has been lost in the first half of the plan period.

11. Given the powerful local support for development on this site in the local plan, it is unsurprising that this scheme had the backing of Council officers. Again, they recommended it for approval not once but twice.[11] There were (and still are) no outstanding objections from any statutory consultees. As above, members decided to discard officers' advice, and that of statutory consultees, and to refuse permission. However, as the intervening months have shown, that was a bad decision taken for bad reasons. As the evidence to support the Appellant's case at this inquiry has been produced, the Council's resistance fell away.[12] As you have now heard:

    (i) The Council agrees that, subject to relevant conditions and mechanisms in the planning obligation which are all agreed, the scheme meets the requirements of the relevant policies on carbon reduction.

    (ii) The agreed position is that any highways safety scheme along Charlotte Avenue will not result in the loss of any trees.

    (iii) Further, it is agreed that such impacts as there will be on the local highway network will not be severe.

    (iv) The main parties are also agreed on build costs, viability and affordable housing. In particular, the Council's position is that the Appellant's offer of 10% affordable housing is a good offer, and the development cannot viably deliver more than that. In addition, there are agreed mechanisms to review the viability position in the future.

[11] CD3.1 and CD3.4

[12] IQ5, §2.

(v) Finally, an agreed planning obligation has been finalised.

12. The main parties agree there is no conflict with the development plan[13], and we have no outstanding objections from statutory consultees or from the local planning authority in relation to highways, ecology, built heritage, carbon reduction, flooding, drainage, landscape or visual matters, viability, or affordable housing provision.

13. So albeit the Rule 6 parties have maintained their opposition, it is important to emphasise that **none** of their concerns are shared by the Council or any relevant statutory consultees. In those circumstances, you are (i) bound to attach **considerable weight** to the views of the Council and statutory consultees, and therefore (ii) need **cogent and compelling reasons** to depart from the conclusions of those technical experts.[14] That sets a very high bar for the Rule 6 parties' evidence, and it does not meet it.

14. We turn next to consider the issues on which the Rule 6 parties base their remaining points of objection, before addressing the scheme's benefits and the overall planning balance.

Highways and access

15. Again, the key points are now agreed between the main parties:

(i) The Council now accepts that the site's access arrangements – including the pedestrian and cycle ways along Charlotte Avenue – will be satisfactory.[15] It has therefore withdrawn the second putative reason for refusal.

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[13] IQ5, §2.1.

[14] *R (Akester) v DEFRA* [2010] EWHC 232 (Admin), at §112.

[15] IQ5, §2.12.

(ii) The Council also no longer objects to the scheme on the basis that it would cause unacceptable levels of congestion at the junction of Charlotte Avenue with the B4100.[16] It has therefore withdrawn the third putative reason for refusal.

(iii) There are, of course, no objections from the OCC as highways authority or from National Highways.[17]

16. As Mr Kirby explained, what objections remain from the Rule 6 parties are unfounded: see his proof[18] and rebuttal[19]. In closing, we summarise where things stand on the headline issues.

(i) Loss of trees

17. OCC confirms there need be no tree loss as a consequence of improvements to Charlotte Avenue, and the planning obligation ensures that there will not be. So, as the Council belatedly recognised, there is no cause for any concern in relation to tree loss along Charlotte Avenue.[20]

(ii) Bicester Transport Model ("**BTM**")

18. The BTM was commissioned by OCC and originally developed by WYG, now Tetra Tech. It is a sophisticated traffic model of the impacts on the highway network associated with the increased growth which is coming forward through the Council's Local Plan. So the work

[16] IQ5, §2.15.

[17] CD 5.14.

[18] CD 14.11.

[19] CD 14.13.

[20] IQ5, §2.16.

which supports these appeal proposals is based on the BTM which constitutes best and most up-to-date modelling data available.

19. OCC as highways authority have, understandably given the BTM's strategic importance and wider ramifications for other schemes, insisted on adopting the BTM as the baseline for undertaking impact assessments of this scheme. OCC has agreed[21] that the trip rates, trip generation methodology and traffic data obtained from the BTM as presented within the Transport Assessment, Environmental Statement and subsequent supporting Technical Notes are all **correct**. Indeed, the OCC would object to any *deviations* from the BTM – such is its strategic importance in OCC's work in assessing traffic impacts around Bicester. Cherwell also accepts the use of the BTM.[22]

20. Against all of that, Mr Mason's evidence is that the BTM is wrong and should be departed from. He made that point (i) without even approaching OCC as highways authority to ask what their reaction would be to deviating from their strategic traffic model, and (ii) perhaps more important, on the basis of a simple misunderstanding of the evidence.

21. To summarise Mr Mason's misunderstanding:

    (i) The starting point is the historic traffic generation figures which were derived from OCC's assessment of the residential element of the permitted exemplar scheme operating at full capacity (which it is not yet, as it isn't fully built out). These figures are **not** part of the BTM. They are set out at Mr Kirby's Exemplar A and B diagrams at pdf pages 27-28 of his rebuttal.

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21 CD10.8, §5.1(a).

22 CD10.3, §5.2(i).

(ii) The appropriate baseline flows – which, in contrast, **<u>are</u>** from the BTM – were set out in the TA for 2016[23] and also for 2031[24] (noting that all parties, including Mr Mason, agree that 2031 is the appropriate assessment year).

(iii) There is a difference between the figures at (i) and (ii) above. The BTM's model of e.g. 2016 movements at the junction of Charlotte Avenue and the B4100 is different from (and lower than) the OCC's earlier assessment of the residential element of the permitted exemplar scheme's full impacts.

(iv) Mr Kirby illustrated that difference in these figures by showing in the TA negative traffic flows near Cranberry Avenue – he explained that at §4.4 of his rebuttal.[25]

(v) Those negative traffic flows are **<u>not</u>** within the BTM. They are Mr Kirby's attempt to demonstrate a difference between the BTM and earlier figures from OCC for the Charlotte Avenue / B4100 junction which related to the residential element of the exemplar scheme. So the negative traffic flows do not – as Mr Mason thought – suggest any kind of problem with the BTM which requires correction. On the contrary, deviating in the context of an individual planning appeal from the BTM would immediately engender an objection from the highways authority.

22. In a nutshell, then, there is no basis to depart from the BTM in this appeal, and the OCC has consistently required that it be used as the baseline for the relevant assessments.

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23 CD1.28.2, pdf pages 13-14.

24 CD1.28.2, pdf pages 18-19.

25 CD14.13, §4.4.

(ii) 40% car use

23. Every tier of policy and guidance in this case prioritises the reduction of reliance on the private car.

24. At the national level, §104, §105 and §110(a) of the NPPF[26] put a strong emphasis on limiting the need to travel and offering a genuine choice of transport modes. Further, in the context of eco-towns, the now-withdrawn supplement to PPS1[27] made clear that:

    (i) The town should be designed so that access to it and through it gives priority to options such as walking, cycling, public transport and other sustainable options, thereby reducing residents' reliance on private cars; and

    (ii) Planning applications should include travel plans which demonstrate: (a) how the town's design will enable at least 50 per cent of trips originating in eco-towns to be made by non-car means, with the potential for this to increase over time to at least 60 per cent (exactly what is proposed here through an agreed planning condition).

25. That was translated into the statutory development plan through Bicester 1, which sets out a raft of measures[28] on master-planning, layout, infrastructure provision and financial contributions all of which are expressly designed to "*reduce reliance on the private car*".

26. That is given further, and more detailed, expression through the SPD.[29] It was telling that Mr Mason did not appear to have read the SPD in any detail (he referred to "*skimming*" parts

[26] CD8.1.1.

[27] CD8.3.9, §11.1-2.

[28] CD4.1, p.143-144.

[29] CD4.5.

of it) before he gave his oral evidence. Because the SPD's measures are critical to understand why the 40% target is more than an aspiration. It's a realistic expectation. In particular:

(i) Reducing car dependency and prioritising walking and cycling are the first two "*key considerations*" to be addressed through planning applications.[30]

(ii) The SPD then sets out a long list of considerations under Development Requirement 6 and Development Principle 6(a) to show how this will be done, including passages on achieving high levels of containment,[31] delivering attractive routes for walkers and cyclists,[32] supporting car sharing and car clubs,[33] careful master-planning of land uses to ensure that neighbourhoods are walkable,[34] and making car use *less* convenient.[35]

(iii) In that context, Development Requirement 6(a) requires applications not only to (a) design Travel Plans which demonstrate how the design will enable at least 50% of trips originating in the development to be made by non-car means with the potential to increase to **60% by 2020**, but also (b) to include "**significantly more ambitious** targets for modal share than the 50% and for the use of sustainable transport".[36]

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30 CD4.5, §4.97.

31 CD4.5, §4.104-105.

32 CD4.5, §4.106.

33 CD4.5, §4.110.

34 CD4.5, §4.113.

35 CD4.5, §4.116.

36 CD4.5, p.29.

27. The travel plan which supports this scheme[37] reviews those SPD requirements in detail, confirms that "*all targets set in the [travel plan] have been formed from the polices set out in the North West Bicester SPD*"[38] and makes clear that:

> "The target of 60% of all trips being made by non-car modes following occupation of the site is ambitious but considering the measures that are to be provided as part of the RTP, this target should be considered achievable."[39]

28. Of course, that position is common ground with OCC who examined the travel plan in detail.

29. In addition to all of that, to respond to the SPD's requirements for enhanced bus services, the OCC is proposing a best-in-class bus service to which this scheme will contribute, which will include a "turn up and go" service every 10 minutes.[40] That is specifically – as OCC explains – to "*offer residents and visitors associated with the development a viable alternative to the private car, to promote travel by public transport, and to achieve the low car modal share required to mitigate the traffic impact of the site*".[41] The OCC further confirms that the "*transport assessment is based on this provision*". It is part of the strategy on which the TA has been modelled and assessed. Which makes it unfortunate that Mr Mason had – he confirmed during cross-examination – no regard to the bus service enhancements at all in any of his written or oral evidence to the inquiry. Indeed, he hadn't even been aware of the proposals when he wrote his proof.

30. Again, all the parties agree that 2031 is the appropriate assessment year to consider the scheme's impacts. That is **<u>over a decade</u>** after the 40% target is to be achieved under the

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[37] CD1.27.2.

[38] CD1.27.2, §7.3.5.

[39] CD1.27.2, §7.3.8.

[40] CD14.13 – Mr Kirby's rebuttal, Attachment A.

[41] CD14.13, p.14.

SPD, and **15 years** after the SPD's adoption. Mr Kirby, the OCC and the Council all agree that it is appropriate – indeed it is conservative – to assume that 40% will be achieved by then. Mr Mason's view is that 40% will come several years later. With respect to him, his view is an outlier. And he has reached an outlier view because he failed to have any regard to lots of material and important information that bears on this question, e.g. (i) the raft of policies and guidance for example in the SPD that are particularly designed to achieve *at most* 40% car use in short order, and which are incorporated into and reflected by this scheme or (ii) the proposals to dramatically enhance the bus service. So Mr Mason's pessimism about the date by which 40% car use will be achieved is explained by his lack of engagement with important relevant evidence. In contrast, the OCC as highways authority *has* had regard to the SPD and the various proposals to fund public transport and infrastructure improvements through the planning obligation, and it supports the 40% modal share of car use reflected in Mr Kirby's work.

31. In any event, Mr Kirby has also – as a sensitivity test – now modelled the scheme at 50% car use and we address the consequences of that work now.

(iii) Junction capacity modelling

32. To cut a long and complicated story short:

    (i) Mr Mason agrees with Mr Kirby, the OCC and Cherwell that **if** it is appropriate to model 40% car use in 2031 (on which see above), then there **not** be severe cumulative impacts on the highway network (subject to his quibble about departing from the BTM on which again see above).

    (ii) If, on the other hand, against the position of the OCC as highways authority, against the guidance in the SPD, and against the approach in the TA, you decide that it is appropriate to assume 50% car use in 2031, the implications of that exercise are

modelled in Mr Kirby's 1st sensitivity test.[42] In that sensitivity test, there are – Mr Mason agreed – no severe post-signalisation impacts in relation to the Charlotte Avenue arm of the junction in AM peak. In that scenario, there is a marginal exceedance of the junction's practical capacity (albeit not its theoretical capacity) in relation to the B4100 North limb of the junction. But (a) the exceedance over the 90% degree of saturation threshold is marginal (i.e. 0.4%)[43], (b) it does not – Mr Moss agrees with Mr Kirby – constitute a "*severe*" impact, and (c) even then, the model is conservative (i.e. too high) because it has no regard to the positive effects which will be achieved through the recently consented signalised junction of the B4100 / A4095 to the south – OCC accept that the two junctions will be linked, designed and modelled together.[44] Further, of course, nobody except Mr Mason takes the view that sensitivity test 1 is in fact the appropriate basis for determining this appeal.

33. Against all of that, Mr Mason maintained his view that the residual effects on the highway network will be "*severe*". He agreed that severity in §111 NPPF sets a very high threshold to be met. He also accepted that there was no transparent methodology, justification or reasoning to support his conclusion that the effects would be severe in this case. We have to "*take his word for it*".

34. With respect to Mr Mason, for a professional and experienced witness, that just is not good enough. Of course, determining severity under §111 NPPF requirements an element of professional judgment. But to assist a public inquiry, important judgments like that must be made robustly in accordance with a transparent methodology. Otherwise, it's nothing more

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[42] Planning SoCG IQ6, Appendix 5 which starts on pdf page 65.

[43] Planning SoCG IQ6, Appendix 5 pdf page 113.

[44] CD5.1, pdf p.12.

than a "he said, she said". In this case, the topic of severity has been discussed for several years between the Appellant and the OCC, on the basis of very detailed work in particular from Mr Kirby to consider what the parameters for severity would be in this local highway network, and why none of them are breached. For Mr Mason simply to *assert* "*severity*" against all of the other evidence in the case, against the position of the OCC as highways authority, and Cherwell as the LPA, without even hazarding a methodology or justification for his view is, again with respect, not credible.

(iv) Charlotte Avenue improvements

35. Again, to cut an overly long story short: the final design, configuration and implementation of improvements to Charlotte Avenue are all completely outside the scope of this inquiry.

36. All this scheme proposes is a contribution toward those works. Nothing more. Mr Mason was quite wrong to suggest that this arrangement, i.e. a contribution toward Charlotte Avenue, was somehow veiled in secrecy until late in the day. It was made quite clear in the officer's report[45] and is confirmed in the SoCG between the Appellant and OCC.[46]

37. If permission is granted, the works will be designed and implemented not by the Appellant but by the OCC. And we note that on the inquiry's final sitting day, the OCC produced a robust justification to support how this scheme's contribution toward those works has been calculated which easily passes the threshold of necessity under Regulation 122(2)(a) of the Community Infrastructure Levy Regulations 2010.

[45] CD3.1, §9.94, §9.216.

[46] CD10.8, §5.1(q) and (s).

38. It will be for the OCC to consider in due course how whatever scheme it designs accords with the OCC's Street Design Guide[47], which is in any event only to be applied flexibly.[48] The OCC will also no doubt consider guidance documents like LTN 1/20[49], which also is not to be applied prescriptively but with flexibility, particularly when working within the limitations of pre-existing infrastructure.

39. But in any event, there is no need for this inquiry to get into a detailed examination of those guidance documents, because – again – it is not the function of the inquiry to fix whatever form those future works may take.

40. This basic misunderstanding was at the heart of Mr Mason's evidence. It may go toward explaining the resistance of the R6 parties to reaching more common ground on highways (in contrast to the OCC and Cherwell). Almost every member of the public who spoke yesterday focussed their representations on the approach being taken to works along Charlotte Avenue. Again, their interest is perfectly understandable, but those works are not for you to determine.

41. All we need at this stage is to confirm that the OCC accepts that a scheme *can* in due course be delivered – not across only some of Charlotte avenue, but all of it. The OCC does accept that. And moreover, the OCC accepts that such a scheme need not involve the removal of any of the street trees along Charlotte Avenue.[50] Yet again, Mr Kirby's attempts to assist (this time by drawing up a series of illustrative approaches to how the improvements could be delivered to try to reach more common ground with the R6 parties) appears to have

[47] CD8.2.6.

[48] CD8.2.6 see e.g. p.12 and p.19.

[49] CD8.2.8.

[50] Appendix B to CD14.11 – Mr Kirby's proof.

wrought more confusion. Even now, most of the closing submissions of the NWBA and BBUG focus on alleged issues with illustrative schemes that Mr Kirby has drawn up to assist OCC. With respect, all of those points miss the mark. They raise issues which are not for this inquiry to decide.

42. That confusion on the part of Mr Mason is regrettable in that it has wasted a lot of inquiry time. But it does not detract from what is, in fact, a very simple position: it will be for OCC to design and implement improvements to Charlotte Avenue in due course, and OCC – which is the relevant authority for these purposes – is satisfied that this can be done acceptably, and in accordance with the relevant guidance.

43. The NWBA's closings rely on the proposition that OCC was **wrong** to withdraw its objection. With respect, that is a nonsense. The planning system operates on the premise that statutory consultees with relevant expertise can and must be relied on to exercise that expertise properly. That is exactly what has happened here. That NWBA disagrees with OCC's judgments both on network capacity and highway safety is not proof that the OCC has made incorrect judgments. Instead, it points to the gulf of understanding on (a) the relevant technical assessments requires at this stage (i.e. an outline planning application) and how they are to be completed (e.g. by adopting the BTM baseline), and (b) who will be required to design an appropriate scheme in due course (the OCC, not the Appellant).

(v) Primary school parking

44. With respect to Gagle Brook Primary School, yet again, the position is simple.

45. This scheme will bring a far greater proportion of the school's parents to within walking or cycling distance of the school than at present.

46. That will have an obvious effect which Mr Kirby explains e.g. at section 7 of his rebuttal[51]: traffic flows to, and parking stress around the school will **<u>decrease</u>**. Not increase. Mr Mason said he was not "convinced" by that logic. With respect, it is totally unclear why not. A greater proportion of parents who *can* walk to school (because they live closer by) and who will be actively *encouraged* to walk to school through travel planning measures, is likely to lead to a greater proportion of parents actually walking to school. That conclusion is not, as Mr Mason suggested, "*complacent*". It is exactly the outcome that Bicester 1 and the SPD are designed to achieve.

<u>(vi) Access point E</u>

47. The starting point is that the function of this inquiry is not to consider alternative schemes. There is only one scheme before you, with only one access strategy, and that strategy has the express support of the highways authority. So alternative access strategies are, with respect to Mr Mason, immaterial.

48. In any event, again to cut a long story short, Mr Mason confirmed in cross-examination that he had not asked OCC about whether it would support a visibility splay passing over a ditch (which would be required in relation to the alternative access points he posited, including Access E). He had not asked.

49. Mr Kirby had. And the OCC have made absolutely clear that it would **<u>not</u>** support visibility splays which include that arrangement because the ditch is not within the highway boundary.[52] Which makes all of Mr Mason's putative alternative arrangements completely undeliverable. In any event, as Mr Kirby explained, such a solution would require not temporary but permanent reduction in the speed limit along the B4100 Banbury Road which

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[51] CD14.13.
[52] CD5.1, pdf page 4.

(a) as Mr Mason agreed, would probably not be followed in practice by drivers, which would lead to an unsafe arrangement, and (b) in any event, would require a permanent Traffic Regulation Order which impedes this scheme's delivery (and OCC has only accepted speed restrictions in this area on a **temporary** basis).[53]

50. And even if alternative access arrangements were material – which they aren't – and were deliverable – which they aren't – Mr Mason could have, but has not, done any modelling work to show whether they would actually improve anything. Instead of modelling, he asks you to rely on his "*instinct*". Again, and with respect to him, instinct just is not good enough for a professional witness at a public inquiry where detailed modelling work has been undertaken and agreed with the highways authority.

Conclusion on highways

51. The Appellant's highways evidence in this case has been unusually thorough: a series of detailed technical notes, along with Mr Kirby's proof and rebuttal. It had to be that detailed in order to achieve consensus with National Highways, OCC and Cherwell. The policy bar set by §111 NPPF is high. And it is now, with respect to the Rule 6 parties' evidence, obvious that this scheme would not give rise to impacts which come anywhere close to being "*severe*".

Carbon reduction

52. The Council's true zero carbon requirements are contained in Policy Bicester 1 and Policies ESD1-5 of the Local Plan, as well as the NW Bicester SPD.[54] Policy Bicester 1 requires development *"as a whole"* to be zero carbon. That is an important starting point. And a fallacy

[53] CD5.2, pdf p.8, point 7.

[54] IQ6, §5.13.

in the Rule 6 parties' objection. There is no need for *each and every* part of the Bicester 1 eco-town to reach true zero carbon on its own.

53. That said, this scheme **will be** zero carbon within the meaning of the local plan. No ifs, buts or maybes. That is **guaranteed** by the agreed form of words in the planning conditions and the s.106 obligation. And that really should be the end of that.

54. The ways in which true zero carbon can be achieved are not set out in Bicester 1. Instead, Bicester 1 cross-refers to policies ESD1-5 which set out various ways to achieve that, including (at ESD2) by using "*allowable solutions*", i.e. off-site offsetting measures, if required.[55]

55. As the SPD makes clear, its intention is **not** to be too prescriptive on the means employed to achieve zero carbon.[56] The Council's officers referred to a "*flexibility in approach*", noting that – of course – standards and technologies not only might but inevitably will evolve over the lifetime of this development.[57] The same point is made in the outline energy statement which supports this scheme – the function of the strategy at this stage is to set out a framework, with the detail to be worked up at each reserved matters application[58] along with the detailed designs and specifications of the proposed buildings.

56. The Council now accepts that the scheme *"captures the requirements"* of the relevant development plan policies, and it accepts that the appeal scheme is appropriately detailed

[55] CD4.1, p.140-144.

[56] CD4.5, §ET9.2.

[57] CD3.1, §9.19.

[58] CD1.18, §1.2.2-3.

for an outline application.[59] So the first putative reason for refusal has been withdrawn. That is because:

(i) The strategy described in Mr Riggall's evidence is sound. Each phase of the scheme will be supported by a zero-carbon strategy which will describe in detail how zero carbon will be achieved – either on site or through the use of allowable solutions.

(ii) The Council agrees that this approach – secured by condition and section 106 obligations – meets the requirements of the local plan.[60] Let's call a spade a spade – at the outline stage, when no detailed layout or building designs are up for approval. There is no alternative approach. The only mystery is why it's taken the Council so long to accept that.

57. In the end, there is no ambiguity about any of this. The effect of the section 106 obligations and the conditions will be to achieve true zero carbon in a way that meets the requirements of the local plan. End of story. That position is agreed between the main parties.

58. When you come to consider the NWBA's objections on carbon, the starting point should be to recall that it has not provided any evidence on this topic **<u>at all</u>**. In any event, the points that emerged through cross-examination of Mr Riggall are all unsubstantiated:

(i) Mr Fellows claimed that the Appellant's proposal lacked sufficient detail to ensure compliance with the development plan's policies on carbon reduction. He was wrong. As Mr Riggall explained, the level of detail is exactly what you'd expect for an outline application,[61] as is the strategy in the Outline Energy Statement. And, as above, the

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[59] IQ5, §2.5.

[60] IQ8, §10.

[61] CD 14.6, §2.2.5-§2.2.6.

agreed conditions require zero carbon strategies at each phase to explain precisely how zero carbon will be secured. Of course, as Mr Riggall noted, there are good reasons to allow some measure of flexibility at the outline stage.[62] Attempting to fix zero carbon technologies at the outline stage of a multi-phase project like this one is a self-defeating hostage to fortune. Technologies change. And schemes like this should be able to adapt to emerging solutions over the lifetime of the build-out.

(ii) There was a suggestion that carbon offsetting contributions were somehow inimical to Bicester 1 or the SPD. Wrong. "*Allowable solutions*" – which include offsite solutions – are built into the masterplan energy strategy for the wider NW Bicester scheme.[63] Of the proposed 8 strategic options in that strategy, all but 1 would require off-site mitigation to reach zero carbon.[64] And that one would require connection to a site-wide biomass CHP which, of course, has not been implemented. That is consistent with the approach in the plan itself, which introduces the concept of allowable solutions and confirms that they may include offsite mitigation.[65]

(iii) Mr Fellows also suggested that the scheme has not demonstrated that it would meet the standards in Level 5 of the Code for Sustainable Homes. But, of course, the Code was withdrawn by the Government in 2015. It only now applies only to legacy cases, and this scheme is not a legacy case.[66] There is no policy requirement for the scheme to

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[62] CD 14.6, §2.2.6.

[63] CD8.3.1, pp.13-14.

[64] CD8.3.1, p.36.

[65] CD4.1, §B.186.

[66] CD 14.4, p.41.

comply with Level 5 and no way of securing such compliance. This objection gets NWBA nowhere.

59. In the end, the Council and Appellant are right to agree that there is no conflict with the development plan in relation to zero carbon. And the NWBA has provided no evidence – let alone any good evidence – which is capable of disturbing that agreed position.

Viability and affordable housing

60. Policy BSC3 of the Local Plan on affordable housing sets a general 30% target, but that is subject to viability.

61. Our viability evidence – costs (including build costs), sales values, benchmark land values, developer returns, appraisal methodology, and everything else – has been scoured over by the Council's external expert advisers for many months. And we have reached a happy position of there being no material dispute at all in relation to any of those inputs.

62. We agree with the Council and its advisers that this scheme cannot viably afford any affordable housing at all.[67]

63. Nonetheless, the Appellant has proposed to deliver 10% affordable housing. The Council accepts that offer "*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.*"[68]

[67] IQ6, §5.18(vi).

[68] IQ5, §2.25.

64. In addition, there is an upwards-only review mechanism which – the Council accepts – *"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"*.[69] On that basis, the fourth putative reason for refusal was withdrawn.

65. So the position is clear: the inputs are agreed, the methodology is agreed, the broad conclusions are agreed, and even if e.g. sales values increase or costs decrease we have the viability review mechanisms agreed. All of that means that Policy BSC3 is complied with. End of story.

66. Nonetheless, NWBA raises a range of points. None are supported by expert viability evidence, and not all are easy to understand. Indeed, with respect to Monsieur Toutain, he has no relevant expertise on financial viability appraisals in the context of planning applications. The propositions in his proof are not supported by any "evidence" at all – just layer after layer of unsupported assertion and speculation.

67. In any event, taking his headlines in turn:

    (i) Sales values: Monsieur Toutain and Mr Fellows say that the sales values agreed between the Council and the Appellant are too low because they are based on comparators which do not reflect all of the many and various benefits of living an ecotown.[70] Wrong. The comparators included the best possible evidence, i.e. sales from the exemplar site next door. Which is part of an ecotown. Not just any ecotown: *this* ecotown. Those values offer a fair reflection of values in an ecotown setting. They are the best and most up-to-date evidence which could be hoped for. In any event, the values were subject to

[69] IQ5, §2.26.

[70] CD 16.2, §30-§34.

extensive negotiation between the expert advisers for the Appellant and Council – and has been agreed by both.[71] Monsieur Toutain provides no evidence **at all** of his own comparables e.g. to show that the agreed numbers are too low. Further, and in any event, material increases in sales values can be factored into the review mechanisms.

(ii) Developer's return: The agreed viability exercise is predicated on a blended margin which incorporates the developer's return at 20% for private housing and 6% for affordable housing.[72] NB a 3% marketing figure is standard and unrelated to the developer's margin.[73] In any case, those agreed %s – particularly the 20% in relation to the market housing – reflects the raft of risks to which development of an Ecotown is subject which take it far beyond a standard housebuilding scheme. Monsieur Toutain has no evidence that the lower return he stipulates would be even vaguely realistic – but of course, this point is academic because Monsieur Toutain does **not** provide you with a worked alternative financial viability appraisal, so in the end we have no idea how his miscellany of points comes together into a coherent analysis.

(iii) Build costs: there was a point about rainwater harvesting, but it seems to have been born out of misunderstanding, and Mr Fellows withdrew it during the round-table.

(iv) Benchmark Land Value (BLV) and Viability Methodology: NWBA challenges the BLV input and general viability methodology. But as Mr Fell explained, the BLV has been calculated using standard methodology (in accordance with the NPPF and the PPG on Viability). In response, Monsieur Toutain – through Mr Fellows – asks you to depart from the standardised approach. A bold claim when we are all here to apply national

[71] CD 14.3, p.5.

[72] CD 14.3, p.5.

[73] CD 14.3, p.4.

policy, not to re-write it on the hoof. Bolder still when neither Monsieur Toutain nor Mr Fellows have actually taken the time to produce an alternative financial viability appraisal of their own.

68. So the position is straightforward. The approach to viability which is agreed between the main parties accords with best practice and national policy and guidance. Indeed, it is the only financial viability appraisal before the inquiry. It demonstrates that the affordable housing on offer in this case goes beyond what is technically viable. For that reason, it is agreed that there is no conflict with Policy BCS3.

69. There is literally **no** evidence at all before the inquiry to suggest even that the 10% affordable housing on offer is viable at this stage, let alone anything greater than 10%. And in any event, the Appellant has provided a detailed review mechanism. End of story.

Other matters

(i) Built heritage

70. The scheme affects two listed buildings: St Laurence's Church (a Grade II*) and Home Farmhouse (a Grade II).[74] In both cases, the level of harm to the significance of the assets is at the lower end of the less-than-substantial scale, and is clearly outweighed by public benefits under §202 NPPF. In particular:

    (i) St Laurence's Church is around 45 metres to the north-east of the Appeal Site within the rural settlement of Caversfield. It dates to the 10th or 11th century. Although the Church's historic fabric and form, as well as its more immediate setting, would be

[74] CD 14.15, Heritage Impact Assessment (Appendix HL1), §1.12.

preserved, the scheme would change the wider setting from agricultural fields to modern, residential development. Mr Sutton concluded this would cause *"less than substantial"* harm, which would be *"very much at [the] lower end of the scale".*[75] However, as Mr Sutton has explained, the scheme will deliver heritage benefits for the Church which, alone and by themselves, will outweigh the *"less than substantial"* harm to its setting. And the Council's officers have concurred with this conclusion.[76]

(ii) Similar findings have been made with respect to the Home Farmhouse. Although the scheme would result in *"less than substantial"* harm to the significance of its setting – by changing the agricultural character of its setting to a more urban one – the principal elements of significance would be preserved. And so the harm *"would be very much at the lower end of this scale".*[77] Again, the Council's officers have concurred with this conclusion.[78]

(iii) Ms Leary confirmed – and it is agreed with the Council – that the public benefits associated with this scheme easily outweigh the extent of that harm under §202 NPPF. So the Council's officers concluded that when *"all matters"* are taken into consideration, the proposals accord *"with Policy ESD15 of the Local Plan and guidance contained in the National Planning Policy Framework".*[79]

71. Reverend Wright, on behalf of St Laurence Church, raised concerns about the effect of the scheme on the *"assemblage"* of buildings that comprise the Church, Caversfield House and

[75] CD 14.15, Heritage Impact Assessment (Appendix HL1), §2.15-§2.18.

[76] CD 3.4, §9.132.

[77] CD 14.15, Heritage Impact Assessment (Appendix HL1), §2.32-§2.34.

[78] CD 3.4, §9.133.

[79] CD 3.4, §9.135.

the Farmhouse.[80] But aside from Caversfield House – which is not listed and, as Mr Sutton concludes, is *"unaffected by the [scheme]"*[81] – the cumulative effects of these buildings <u>have</u> been taken into consideration by both Mr Sutton and the Council's officers. There would, as Mr Sutton explains, be no greater harm to the buildings' significance cumulatively than taken individually.[82]

<u>(ii) Building heights</u>

72. The Appellant's Maximum Building Heights and Footprint plan, dated 23 November 2021, depicts a built form zone in the central development parcel, adjacent to the spine road, with a maximum height of 14 metres. In its Statement of Case, NWBA contended that this height conflicts with paragraph 5.12 of the NW Bicester SPD.[83] That paragraph states that *"Generally the development proposals will be suburban in scale reflecting the location of the site and the Bicester context with two-storey buildings with pitch roofs up to a height of 12 metres"*. [84]

73. Aside from the fact that the suggestion of 12 metres is contained in supplementary guidance – and not development plan policy – it is clear from the language of paragraph 5.12 that NWBA's concerns are misconceived. As Mr Leary explained in oral evidence, the guidance is *"generally"* for buildings to be up to 12 metres in height. There is no requirement that <u>all</u> buildings <u>must</u> be a maximum of 12 metres tall. This proviso is – presumably – why the Council's officers, after working with the Appellant to reduce the initial height from 16

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[80] CD 9.5, p.13.

[81] CD 14.15, Heritage Impact Assessment (Appendix HL1), §2.2.

[82] CD 14.15, Heritage Impact Assessment (Appendix HL1), §3.2-§3.5.

[83] CD 9.3, §3.13.

[84] CD 4.5, p.50.

metres to 14 metres, stated that they were *"content"* with the *"information included on the proposed parameter plans"*.[85] This information included the 14-metre buildings.

74. So this point on building heights does not give rise to any conflict either with the Local Plan or the SPD.

75. Overall, this scheme will not give rise to any material conflicts with local or national policy, and would not cause any significant environmental harms.

The scheme's benefits are real and substantial

76. In contrast, its benefits are massive.

77. The scheme will further the vision in the Local Plan and NW Bicester SPD. It will deliver 530 of those much needed – and long awaited – homes that were allocated on the Bicester 1 site. We have already touched on the 1,600+ homes that should have been delivered by this point in the plan period. This scheme would go some way to starting to address that shortfall – to help get the Plan's delivery back on track.

78. That is an enormously important benefit for the many, many people who would take advantage of the benefits of ecotown living around Bicester, if only they could. Of course, since 2012, national policy has made significantly boosting the supply of homes a major objective. That objective is being failed around Bicester. The purpose of the planning system is to contribute to the achievement of sustainable development: §7 NPPF. Again, that means

[85] CD 3.4, §9.61.

ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations: §8(b) NPPF.[86]

79. The Council's current Local Plan target is to deliver an average of 1,140 dwellings every year across the plan period (to 2031).[87] The Appeal Scheme will provide nearly half of a full year's supply at a stroke. Taking this into account, along with the potential shortfall in the delivery of homes at North West Bicester within the Plan period as highlighted above, the delivery of homes at the Site is therefore of strategic importance. And the weight that delivery attracts in the balance should be commensurate with that importance.

80. On our primary case, the Council is failing in its minimum requirements to deliver *at least* a 5 year supply of housing land. But even on the agreed position with the Council, delivery on this site – the largest allocation in the local plan – has been catastrophically low. Which means the local planning system is failing in its most basic task here. And those failures are having dire social, economic and environmental consequences: families unable to afford somewhere to live, unsustainable solutions with people being forced to find a home further away from where they work, shop and socialise. Economic growth which simply cannot happen without sensible population growth.

81. Of course, the scheme's offer of *at least* 10% affordable housing is an incredibly important benefit in this regard by extending this scheme's benefits to some of the most vulnerable in our society, whose voices were not represented at this inquiry.

82. It is not just a question of meeting housing targets, or of supporting a struggling plan. This scheme will transform the lives of its residents – and will help that pioneering ecotown vision

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[86] CD8.1.1.

[87] CD 4.1, p.12.

that lies at the heart of this local plan become a reality. What is more, these homes will be delivered in an environmentally innovative way – see the section above on zero carbon – and in a highly sustainable location which will benefit from outstanding infrastructure and public transport accessibility.

83. There will be a range of environmental benefits. More than 40% of the site will be green space. And over half of this will be public space.[88] The scheme will also deliver a minimum of 10% biodiversity net gain.[89] Which is just one benefit to ensure that the scheme delivers environmental benefits that go far beyond the delivery of a true zero carbon development.

84. Finally, the scheme will deliver a range of highways and public realm improvements.[90] The scheme will provide safe pedestrian and cycle linkages to the surrounding and wider town networks. It will enhance linkages within the Bicester 1 site. And it will enhance the accessibility of the site (see e.g. the discussion above on bus service improvements). The scheme will also make contributions, amongst other things, towards education, health and community facilities.

Striking the balance

85. The Council and Appellant have starkly different positions on the Council's five-year housing land supply. For the purposes of this inquiry, without prejudice to our evidence on this topic (all of which we stand by), we are content for you to adopt the Council's five-year housing land supply figures for the purposes of striking your planning balance.

[88] CD 14.14, §3.27.

[89] CD 14.14, §4.14.

[90] CD 14.14, §5.12.

86. In the end, as Ms Leary explained:[91]

(i) The scheme accords with the development plan and is only supported by a raft of other material considerations, in the language of section 38(6) of the Planning and Compulsory Purchase Act 2004. Permission should be granted on that basis.

(ii) That conclusion is only supported by §11(c) NPPF.

(iii) In consequence, although we maintain that the Council cannot demonstrate a five-year housing land supply of deliverable housing (for the reasons given by Mr Paterson-Neild) – which means the tilted balance at §11(d) NPPF would apply – we do not need §11(d) for this appeal to succeed.

87. With respect to both of them, the objections from the Rule 6 parties do not come close to demonstrating any conflict with the development plan. In any event, as Ms Leary explained, even if some conflict with one or more policies in the development plan could be found, the scheme accords with the development plan read *as a whole*. Of course, because the Rule 6 parties do not provide any planning evidence, there is no contrary position before you on that important question.

88. And – finally – even if you, Madam, considered that the scheme did conflict with the development plan as a whole, the raft of benefits summarised in Ms Leary's evidence would indicate taking a decision other than that which accords with the plan, i.e. to allow the appeal and grant planning permission.

89. So, whichever way one looks at the planning balance, it weighs decisively in favour of granting planning permission. And for these reasons, we ask you to allow the appeal.

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[91] CD 14.14, §5.17-5.34.

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17th JUNE 2023