



***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**

**PROOF OF EVIDENCE Tom Webster BA (HONS) DIP TP MRTPI ON BEHALF OF  
Cherwell District Council The Local Planning Authority**

**MAY 2023**

## **Proof of Evidence of Tom Webster**

My name is Tom Webster, I am a Principal Planning Officer in the South Area Major Projects Team at Cherwell District Council.

I have a Bachelor of Arts (Hons) degree from Sheffield Hallam University, and a post-graduate Royal Town Planning Institute (RTPI) recognised Diploma in Town Planning. I am also a member of the RTPI.

My role at Cherwell District Council includes providing pre-application advice for major Planning and regeneration projects in the district, particularly in Bicester, and determining major planning applications.

In previous planning roles, I contributed to the drafting of Cambridge City Council's North Eastern Fringe Area Action Plan and Islington Borough Council Planning Obligations SPD and Council's CIL charging schedule.

At Cambridge City Council I also worked on a number of large-scale, mixed-use, cases on the growth sites along the northern, eastern and southern fringes of Cambridge. These projects included developments on Clay Farm (a 3,000 residential settlement on land allocated for housing in the 2006 Local Plan), and Cambridge Biomedical Campus (a 75,000 sqm medical and clinical science park).

I am familiar with the appeal site and the surrounding area. I consider the Council's position to be well founded, and I agree with the Council's putative reasons for refusal.

The evidence which I have prepared and provide for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

## Contents

<b>1.0</b>	<b>Introduction</b>	<b>3</b>
<b>2.0</b>	<b>Appeal Proposal</b>	<b>6</b>
<b>3.0</b>	<b>Description of Development</b>	<b>6</b>
<b>4.0</b>	<b>Site and Surroundings</b>	<b>6</b>
<b>5.0</b>	<b>Site History</b>	<b>6</b>
<b>6.0</b>	<b>Relevant Changes</b>	<b>6</b>
<b>6.0</b>	<b>Planning Policies</b>	<b>7</b>
<b>7.0</b>	<b>Evaluation</b>	<b>8</b>
	- Zero Carbon	9
	- Highways Impacts	15
	- Affordable Housing	10
	- Planning Obligations	13
	- Material Considerations/Five Tear Housing Land Supply	14
	- Overall Planning Balance	16
	- Conclusion	17
<b>8.0</b>	<b>Declaration</b>	<b>17</b>

## Appendices

**CDC1** Bioregional's response to the Appellant's Carbon Measures, Commentary, October 2022

**CDC2** Council's Arboriculturist Assessment of the impacts on the Charlotte Avenue Trees

**CDC3** Council's Affordable Housing waiting list

**CDC4** House Sales Prices and Monthly Rents evidence

## 1.INTRODUCTION

1.1 This Statement sets out my evidence on behalf of 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 Permission ref 21/01630/OUT pertaining to land known as Land at North West Bicester, Charlotte Avenue, Bicester (“**the Site**”).

1.2 The planning application, received by the council on 6th May 2021, sought planning permission for redevelopment of the site, and was described by the council 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.”*

1.3 Cherwell District Council Officers reported the application to Planning Committee on 9th March 2023, and they recommended to Members that, had an appeal not been lodged, and the Council was still the determining authority, planning permission should be granted subject to officers having delegated authority to carry on negotiating with the appellant in regards to Zero Carbon measures, affordable housing provision and S106 Contributions.

1.4 Members resolved that if they had been in a position to determine the application, they would have refused planning permission.

1.5 Following planning committee, it was confirmed that the Council’s Monitoring Officer has delegated authority to draft the putative reasons for refusal. The Council’s Five Putative Reasons for Refusal are:

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 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.*

- 1.6 The Council's evidence will be provided by myself, Nigel Simkin, Ian Tarbet, Patrick Moss, Jon Goodall and Lewis Knight.
- 1.7 Nigel Simkin of Highgate Land and Development and Ian Tarbet of MGAC will provide evidence in relation to the financial viability of the appeal proposal. They will respond to the post application-stage financial viability sales and build cost evidence prepared by the appellant's consultant, Nick Fell, of Rapleys LLP and the build cost plan prepared by Gardiner & Theobald G & T Quantity Surveyors.
- 1.8 Patrick Moss of IMA Transport Planning will provide evidence on highways matters.
- 1.9 Lewis Knight of Bioregional will provide evidence of the appellants failure to deliver a true net Carbon Zero development.
- 1.10 Jon Goodall will provide evidence in relation to the Council's Five-Year Housing Land Supply position.
- 1.11 In accordance with Annexe J of the Procedural Guide (dated 21<sup>st</sup> December 2022), my evidence focuses on the areas of differences. My evidence will summarise the planning policies relevant to this appeal (and will refer to earlier summaries). I will provide the overall planning assessment and will consider whether there are relevant circumstances that outweigh the appeal proposal's clear non-compliance with

planning policy, and the degree to which the benefits of the appeal proposal may offset the harm the proposed scheme would cause.

## **2. APPEAL PROPOSAL**

- 2.1 A detailed description of the development is provided in the Council's Committee Report.
- 2.2 Subsequent to the appellant lodging an appeal on 1<sup>st</sup> February 2023 and the Council discussing the application at Planning Committee on 9<sup>th</sup> March 2023, the appellant has submitted revised build costs and sale price information on the 28<sup>th</sup> March 2023 and 29<sup>th</sup> March respectively. During the course of the application the appellants made an informal offer of 10% affordable housing (which was then reflected in the March Committee Report).
- 2.3 Although this latest viability information does not allay the council's concerns regarding the appropriate level of affordable housing being provided up front, and Members and neighbouring residents didn't have the opportunity to review this information (which is dated February 2023) at the 9<sup>th</sup> March Planning Committee, the Council would not object to it being considered by the Inspector.
- 2.4 On the 22<sup>nd</sup> of April 2023 the appellants submitted a draft Housing Five Year Land Supply Statement of Common Ground, which sets out their reasons why they believe that the Council does not currently have a Five Year Housing Land Supply, contrary to the published position of the Council (5.4 years).

## **3. SITE AND SURROUNDINGS**

- 3.1 The site and its surroundings are described in section 1.0 of the Council's Committee Report, dated 9<sup>th</sup> March 2023.

## **4. SITE HISTORY**

- 4.1 Relevant planning history is detailed in sections 4.0 and 5.0 of the Council's Committee report, dated 9<sup>th</sup> March 2023.

## **5. RELEVANT CHANGES SINCE THE APPEAL WAS LODGED**

- 5.1 At its meeting on the 9<sup>th</sup> February 2023, the Council's Executive approved a housing land supply statement with a base date of 1<sup>st</sup> April 2022 which confirms that, against the standard methodology, the land supply for the district is 5.4 years.

## 6. PLANNING POLICIES

- 6.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 6.2 The Cherwell Local Plan 2011-2031 - Part 1 ('CLP 2015') was formally adopted by Cherwell District Council on 20th July 2015 and provides the Strategic Planning Policy Framework for the District to 2031 alongside the Cherwell Local Plan 2011-2031 Part 1 Partial Review – Oxford's Unmet Housing Need.
- 6.3 The CLP 2015 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996, although many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's Statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- PSD1: Presumption in Favour of Sustainable Development
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient Use of Land – Brownfield land and Housing Density
- BSC3: Affordable Housing
- BSC4: Housing Mix
- BSC7: Meeting Education Needs
- BSC8: Securing Health and Well-Being
- BSC9: Public Services and Utilities
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision - Outdoor Recreation
- BSC12: Indoor Sport, Recreation and Community Facilities
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD4: Decentralised Energy Systems
- ESD5: Renewable Energy
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDS)
- ESD8: Water Resources
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13: Local Landscape Protection and Enhancement
- ESD15 - The Character of the Built and Historic Environment
- ESD17: Green Infrastructure
- Bicester 1: North West Bicester Eco-Town
- Policy INF1: Infrastructure

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- TR1 - Transportation funding
- TR7 - Development attracting traffic on minor roads
- TR10 - Heavy Goods vehicle
- C28 – Layout, design and external appearance of new development
- C30 – Design Control
- ENV1 – Development likely to cause detrimental levels of pollution

- ENV12 – Development on contaminated land

#### OTHER MATERIAL PLANNING CONSIDERATIONS

- National Planning Policy Framework (NPPF) 2021
- Planning Practice Guidance (PPG)
- The Town and Country Planning Act 1990 (as amended)
- The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)
- Environmental Impact Assessment Regulations 2017 (as amended)
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- DfE - Securing developer contributions for Education - November 2019
- North West Bicester Supplementary Planning Document 2016
- Developer Contributions Supplementary Planning Document 2018

## 7. EVALUATION

- 7.1 The main planning issues relevant to this appeal are the failure to deliver, or get as close as is possible, to delivering a Zero Carbon scheme, severe highways safety impacts, material harm to the character and appearance of Charlotte Avenue, inadequate provision of affordable housing and failure of the proposal to mitigate its own impacts.
- 7.2 My proof of evidence sets out background information relevant to these matters. I then go on to set out the council's detailed evidence in relation to the balance of planning considerations relevant to this appeal.

#### **Site allocation and principle of development**

- 7.3 The site is the subject of site allocation Policy Bicester 1 North West Bicester Eco-Town, confirming that the Council supports and indeed promotes the residential development of the site, in accordance with the National Planning Policy Framework's presumption in favour of sustainable development. This policy is also supported by North-West Bicester Supplementary Planning Document (SPD) 2016.
- 7.4 Policy Bicester 1 is a very explicit and precise policy. It is also the pinnacle of aspirations laid out in Cherwell's local plan, applying to the largest site allocation proposed within the District. It has a very strong and clear set of objectives: to ensure that a highly sustainable, net zero carbon development will be delivered, which will also provide a wide range of housing choices, jobs and community facilities.
- 7.5 In addition to various key site-specific design and place shaping principles relating to the wider allocated site, the policy specifically requires new development on this site to deliver:
- "True" Zero carbon homes and to comply with other Eco Town Standards
  - 30% Affordable Housing provision
  - Employment opportunities providing at least 3,000 new jobs (4,600 new jobs in the SPD);
  - Up to four primary schools and one secondary school;
  - Forty per cent green space, half of which will be public open space;
  - Pedestrian and cycle routes;
  - New links under the railway line and to the existing town;

- Local centres to serve the new and existing communities; and
- Integration with existing communities.

7.6 These requirements are reinforced in the North West Bicester SPD (2016). In fact, the Council's clear vision for developing the North West Bicester site, as an exemplar, zero carbon development, is set out on page 2 of this document. It states:

*“North West Bicester will be a neighbourhood unlike any other in Bicester - a development that demonstrates the highest levels of sustainability. Residents who move to North West Bicester will be making a lifestyle choice to live in efficient modern homes built to the highest environmental standards with excellent access to the town centre, public transport and adjoining countryside. The site offers a unique opportunity to bring about a sustainable large scale development as part of the extension of the existing town with a comprehensive mixed use scheme designed and constructed to the highest environmental standards, bringing a mix of homes, offices, shops and easily accessible open space.*

*The development at North West Bicester will make a significant contribution to meeting the District's need for more homes and jobs as set out in the Cherwell Local Plan, including the delivery of affordable housing. A series of new places will be created, adding to the quality of and integrating with the existing town. The layout of the development will be based on the landscape framework of existing field boundaries defined by hedgerows.*

*The proposals will take at least 20 years to complete and will help trigger the transition to a low carbon community across the town. They present an exciting opportunity to build a new form of sustainable community within Cherwell District and to extend the benefits of this community to the existing town of Bicester.”*

7.7 Policy Bicester 1 was pre-dated by Eco Towns: A Supplement to Planning Policy Statement 1 (PPS), which had selected North West Bicester as one of four, national, showcase sites, to demonstrate that Net Zero Carbon developments can be achieved. The principles of the Eco Towns PPS1 supplement were bolstered when it was subsequently written into the Cherwell Local Plan:2011 -2031 to ensure that the North West Bicester site, as a Net Zero Carbon development, is delivered. The withdrawal of the PPS does not undermine the policy position – it is a clear part of the statutory development plan.

7.8 The intention of Eco Town PPS1 was for the four Eco Towns to be used as a springboard to the delivery other Net Zero Carbon schemes around the country, to show that they are possible to achieve, and as a means of greatly combatting climate change. Therefore, it is imperative that any development on the North West Bicester site is Net Zero Carbon or to get as close to this requirement as is possible. Failure to deliver this requirement, or to not adequately attempt to meet this requirement, is a major shortcoming or any proposal and will have far reaching impacts on the North West Bicester site, and beyond, if allowed.

7.9 Policy Bicester 1 has been assessed under the 2022 Regulation 10a Review process and found to be compliant with the NPPF.

## Zero Carbon

- 7.10 Planning plays a vital role in ensuring that developments minimise their contribution towards climate change. This is recognised by the Government and why one of the NPPF's core principles is that *"the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure (paragraph 152)"*.
- 7.11 Cherwell District Council is committed to tackling climate change. For many years Cherwell District Council has been at the forefront of developing and implementing robust and innovative planning policies and standards to tackle climate change. In July 2019 it declared a Climate Change Emergency.
- 7.12 When the 2011-2031 Local Plan was adopted, it strengthened previous planning policies relating to energy in order to ensure that the Council continues to take a robust and ambitious approach to minimising carbon emissions in the district. Policy ESD2 was introduced to promote 'energy hierarchies' and policies ESD3 and ESD5 encourage sustainable construction methods and renewable energy techniques to be used on all new developments.
- 7.13 Moreover, the Council, in recognising the critical importance of combatting climate change, and the need to set out its own vision of a fair and green future for local people, fully embraced the Eco Town Principles set out in 'Eco Towns: A Supplement to PPS1' by bringing those principles into the Local Plan through Policy Bicester 1.
- 7.14 The sustainability intentions of policy Bicester 1 are very clear. It is a Net Zero Carbon policy, and this requirement is set out in the policy description of development, which states that the North West Bicester development will be:
- "A new zero carbon(i) mixed use development including 6,000 homes will be developed on land identified at North West Bicester."*
- 7.15 Footnote 'i' clarifies what is meant by zero carbon. For completeness, footnote 'i' is set out below:
- "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."*
- 7.16 The importance of delivering a zero carbon scheme on the appeal site is underpinned by the North West Bicester SPD. Paragraph 4.3 (p19) of that document 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"*.

7.17 The North West Bicester SPD is also very clear that any planning application, Outline or Detailed, will need to demonstrate how the proposal is able to deliver the zero carbon principles of Policy Bicester 1. Paragraph 4.25, page 19, 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”.*

7.18 As well as requiring the development to be zero carbon, policy Bicester 1 also requires the new homes to:

- Achieve high standards of sustainability, for example, Building for Life Silver Standard and Level 5 of the Code for Sustainable Homes as a minimum (or any higher standards in the development plan)
- Meet lifetime homes standards and space standards
- Have real time energy monitoring systems; real time public transport information and high speed broadband access, including next generation broadband where possible. Consideration should also be given to the potential use of digital access to support assisted living and smart energy management systems
- demonstrate high levels of energy efficiency in the fabric of the building, having regard to proposals for standards to be incorporated into changes to the Building Regulations between now and 2016 (including the consultation on planned changes for 2010 issued in June 2009 and future announcements on the definition of zero carbon homes)]
- achieve, through a combination of energy efficiency and low and zero carbon energy generation, carbon reductions (from space heating, ventilation, hot water and fixed lighting).

7.19 Given the clear zero carbon requirements of this policy, the sustainable background and principles behind the policy, and the requirements of the North West SPD (2016), any proposals for the development of North West Bicester should demonstrate how zero carbon will be achieved.

7.20 To date, and despite the application being submitted on the 5<sup>th</sup> May 2021 and having sought pre application advice prior to the formal submission of the application, the Appellant has not been able to demonstrate how zero carbon could be achieved. The Appellant has not carried out the fundamental exercise of establishing what the potential carbon emissions might be from this 530 unit development or by how much the emission levels identified would be reduced.

7.21 Moreover, the appellant’s proposal, at the time of preparing this Proof of Evidence, represents a significant breach of Policy Bicester 1 North West Bicester Eco-Town. The advice that the Council has received from Bioregional (a long-established sustainability consultancy, who advise the Council on sustainability matters relating to North West Bicester) is that the proposal would fail to achieve zero carbon or get as close to achieving a zero carbon development as is it is capable of doing, thus undermining the very essence and ethos of the policy.

- 7.22 If granted, on this basis, it would also reduce the quality of the overall development of North West Bicester. In practice, what is meant to be a development with an exemplary standard of sustainability would, in fact, fall significantly short of this mark.
- 7.23 Bioregional provided very comprehensive and detailed advice during the course of the application (see **Appendix CDC1**) explaining how the appellant, notwithstanding viability issues, could deliver a zero carbon scheme on site, but, unfortunately, this advice was not followed
- 7.24 Presently, for reasons set out in Bioregional's Proof of Evidence, the Appellant's Zero Carbon offer does not go far enough and does not provide sufficient evidence to demonstrate that this element of the policy could or would be met on site. The Appellant's formal offer made during the application stage included a commitment to building the new properties to the Future Homes Standard. At present, the standards have not been defined, however it is clear that even when they are, these standards, in themselves, would not deliver a net zero carbon development – the Government describes FHS as “zero carbon ready” rather than a route in itself to zero carbon<sup>1</sup>. In fact, even the Future Homes Standard cannot be guaranteed and, as noted in paragraph 9.33 of the 9th March Committee Report, the appellant did not make the commitment as to what would be delivered if national changes to Building Regulations are not brought forward.
- 7.25 In addition to the Future Homes Standard offer, the Appellant is proposing to offset the remaining carbon emissions by offering to pay a contribution based upon £60 per tonne of carbon per year over a 30-year period; to be spent on carbon abatement measures to reduce total CO<sub>2</sub> emissions, presumably from some of the existing building stock elsewhere in the district, as well as on site.
- 7.26 The appellant's Statement of Case is not clear on this point; paragraph 6 states that:
- “..the VE Scheme, which will be constructed to Future Homes Standard 2025, together with a Carbon Off-Set payment, which the Appellant will commit to being spent on the site, does meet the definition of True Zero Carbon in Policy Bicester 1 and North West Bicester SPD.”*
- 7.27 However, paragraph 4, page 110 of the Statement of Case states
- In lieu of none of the preferred technology options, established for the eco-town coming forward, to deliver true zero carbon, offsetting or offsite renewable energy projects will be required. The off-site location could accommodate all the renewable energy generation for the development within a single location.”*
- 7.28 This carbon offsetting approach represents a significant departure from Policy Bicester 1 because this policy requires North West Bicester development itself to be zero carbon and does not allow for carbon offsite reductions elsewhere in the district and definitely does not envisage reliance upon an unspecified and unsecured “off-site location”. This approach could be seen as setting a dangerous precedent for future developments on the wider North West Bicester site. Developers may seek to adopt a similar approach thereby undermining the policy and the final development.

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<sup>1</sup> Government response to Select Committee Report on Local Government and the Path to Net Zero January 2022 <https://www.gov.uk/government/publications/local-government-and-the-path-to-net-zero-government-response-to-the-select-committee-report/local-government-and-the-path-to-net-zero-government-response-to-the-select-committee-report#new-homes>

Moreover, the scheme will not deliver zero carbon without carbon off-setting contributions. My view is that it would be better to spend these contributions on physical carbon reduction measures that genuinely off-set carbon, as part of the build.

- 7.29 Furthermore, with a 30 year spend cap, this carbon offsetting measure is not in perpetuity and will run out, whilst 530 houses, delivered as part of this scheme, will be erected permanently and will not be in a position to fully offset their carbon emissions. The Appellant's current proposal runs completely counter to the aims and principles of the policy and the aspirations of the Eco Town concept in PPS1.
- 7.30 Mr Knight of Bioregional, who have been involved in reviewing the appellant's proposed approach to Zero Carbon in the cost plan, have made it clear (in their Proof of Evidence, and in paragraph 7.34 of the 9<sup>th</sup> March Committee Report) that not only is the calculation of the figure being offered inconsistent, more crucially, the payment of £60 per tonne of CO<sub>2</sub> emissions would be insufficient because it is based on historic (Greater London Authority (GLA)) data that have since changed. To put the scarcity of the Appellant's proposal into context, the BEIS non-traded central valuation per tonne of carbon, as of 2021, is £248/tonne. The GLA's 2016 figure was based on BEIS non-traded central valuation per tonne of carbon at that time.
- 7.31 The Council is also concerned that the appellant has not applied a logical approach to delivering a zero carbon development, and that the shortcomings of the proposal are avoidable. As noted in Bioregional's Proof of Evidence, the appellant has included a number of items in their carbon reduction proposal which are not as effective as other measures (e.g. night storage heaters instead of gas boilers (which allows for more cost savings but not carbon savings). They are also proposing measures which are expensive but also not required: for example, over £6m towards rainwater/greywater harvesting measures and the provision of approximately 449 hundred mature fruit trees, at a cost £256 per tree (see Bioregional's Proof for full details).
- 7.32 Whilst these are welcome sustainability elements (and there is some encouragement given in the NW Bicester SPD for consideration of these elements as a contribution towards a sustainable development), they would not actually help a new residential property achieve a net zero carbon position. The North West Bicester SPD makes references to Greywater harvesting (paragraph 4.58, page 22). Whilst it is a desirable detail of what was, at the time, an exemplar development (Elmsbrook) it is not an essential part of a policy compliant scheme nor does it help the proposal obtain zero carbon emissions. It is also essential, in the spirit of the policy requirement and the intention of Eco Towns, that energy strategies on this site embrace future zero carbon technologies and do not rely on past techniques such as storage heaters.
- 7.33 At this moment in time, when the viability of the scheme has also been impacted by significant cost inflation, these desirable, but not required, elements could be removed. For instance, grey harvesting should be removed and younger trees (widely available in Supermarkets and garden centres for circa £15 - £25 per tree) could be planted instead of mature trees (£200 per tree). Similarly, removing the off-site carbon offsetting contribution, and redirecting it to the core spend on on-site carbon reduction measures such as air source heat pumps, for example, is another area where savings could be made (and these savings could then be redirected towards on-site true carbon zero measures).
- 7.34 Bioregional, in their evidence, have also identified several local authorities (Bath and North East Somerset Council, Central Lincolnshire Joint Strategic Planning

Committee and Cornwall Council) who have clear, adopted, policies which show that far more stringent carbon reduction developments than this appeal proposal can be achieved, without unduly impacting on the viability of the scheme. Whilst specific viability considerations will vary from location to location, this demonstrates that by carefully targeting measures, it is possible to viably provide for carbon zero homes in a range of different regions and viability environments.

- 7.35 The appellants have advised me that they are preparing a Proof of Evidence (written by a Sustainability Consultant) to demonstrate that their proposal meets the requirements of North West Bicester SPD in relation to Zero Carbon. Whilst this verbal commitment is certainly welcomed, the Council has, to date, not received any evidence to substantiate this commitment and explain how the policy would be satisfied.
- 7.36 The appellant, when drafting the Zero Carbon Statement of Common Ground, has suggested that a zero carbon scheme could be secured by way of planning condition. This would not meet the requirements of Policy Bicester 1 and the supporting North West Bicester SPD. The SPD, in paragraphs 4.3 and 4.25, requires the parameters of a zero carbon scheme to be secured at the Outline stage. The use of the condition without a clear, appropriate, route to a carbon zero scheme before the Council at this Outline stage would fail to meet the policy requirement and it would be too late in the process. In practice, an outline consent will have been granted without a zero carbon scheme in place.
- 7.37 This is a major shortcoming of the proposal. The Council is entirely uncomfortable conditioning a carbon offsetting proposal from the appellant that it knows to be inadequate and not policy compliant. and in the context of assertions in the Appellant's statement of case that the scheme has viability issues and its view that a development which meets future homes standards plus a carbon offset payment would meet the requirements of the policy. There is a difference between the parties on this matter which goes to the principle of whether the scheme should be permitted. It also means that the viability analysis (and hence the approach to affordable housing) is based upon costs which assume the Appellant's approach to delivering a Zero Carbon scheme are appropriate, which the Council considers not to be the case.
- 7.38 There is also the concern that if the Council sought to impose a more stringent set of criteria in a planning condition compared to what is currently being offered by the appellant, this could well be challenged by the appellant at a later date, given that they have a strong contrary position on what comprises a zero carbon development. It is therefore not appropriate to simply delay this issue to be dealt with at reserved matters stage.
- 7.39 In short, in the absence of seeing the appellant's revised zero carbon offer, the Council's position remains the same: the appeal scheme's failure to deliver a zero carbon scheme, or to get as close to that requirement as it practically and financially could, would be contrary to the plan-led sustainability vision of policy Bicester 1 North West Bicester Eco Town. Moreover, it is the Council's position that future homes standard plus a carbon offset payment of £60 per tonne is not capable of meeting the policy requirement.
- 7.40 As such, if the scheme were to be approved, the development would serve as a significant blow to the Council's flagship development site (and the wider masterplan's ability to achieve a zero carbon footprint), at a time when climate

change is of critical importance. Instead of building on the Council's work to make the district a fairer, greener, place for everyone, the development would not be materially different from any other development across the district. For these reasons, the proposal would represent long-term harm and greatly diminish the over-arching policy aims.

- 7.41 If, post submission of the appellant's Proof of Evidence, Bioregional are happy with the proposal set out in the appellant's Proof of Evidence (NB: it would need to be materially different from what the Council has seen to date), and a robust zero carbon development, demonstrating a net zero carbon development can be achieved on-site through ultra-low energy fabric specification, low carbon technologies and on-site renewable energy generation, then this putative reason for refusal can be overcome. Presently, this putative reason for refusal still stands because the breach of the policy is material, and unnecessary.

### **Highways Impacts**

- 7.42 Paragraph 111 of the NPPF sets out that development should only be refused on highways grounds when an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 92 promotes healthy, inclusive and safe places through a number of measures including ensuring streets are designed to allow easy pedestrian and cycle connections within and between neighbourhoods. This is further emphasised in Paragraph 10.
- 7.43 Policy SLE 4 (Improved Transport and Connections) of the Local Plan makes clear that the Council will support the implementation of the proposals in the Movement Strategies and the Local Transport Plan to deliver key connections, to support modal shift and to support more sustainable locations for employment and housing growth.
- 7.44 Criterion 10 of sub section of Policy Bicester 1 states: *"Good accessibility to public transport services should be provided for, including the provision of a bus route through the site with buses stopping at the railway stations and at new bus stops on the site"*
- 7.45 Cherwell District Council's view is that the proposal would amount to severe harm and unacceptable impact on the Highways network. The Council is also of the opinion that the proposal would materially impact on Charlotte Avenue. Whilst it is accepted that Oxfordshire County Council (OCC) concluded that the highways proposals are acceptable (subject to planning contributions and conditions being agreed), they did so in the round, and Cherwell District Council does not reach the same overall view of the impacts.
- 7.46 The Council's Highways Consultant (Patrick Moss) has reviewed the appellant's evidence, visited the site, and reached the following conclusions (full details are set out in his Proof of Evidence):
- The data in the appellant's Transport Assessment is erratic
  - There is a fundamental lack of evidence in the Framework Residential Travel Plan
  - Inaccurate traffic generation forecasts; some of the assumptions are very ambitious and unsupported by evidence and as a result not really credible.
  - The proposal will cause significant delays to the bus service through blocked traffic, and the resultant congestion and tailbacks to the B4100

- If the RTP achieves its target proposal it will overload the existing bus service with a 131% increase in its demand. This impact is compounded (at the time of writing this proof) by the absence of an agreement to pay a s106 service contribution.
- The appellant has chosen the wrong solution to dealing with Highways safety issues along Charlotte Avenue.
- The road widening works to Charlotte Avenue will cause material harm by resulting in the loss of the existing trees, impacting on the character and appearance of the Eco Town and losing vital tools for carbon capture and improved air quality, contrary to the principles of the Policy Bicester 1.

- 7.47 Moreover, Mr. Moss has concluded that, cumulatively, these shortcomings, would amount to severe transport impact. He is also of the view that many of these highways and transport impacts are avoidable, especially the street widening works to Charlotte Avenue which, in his professional judgement, are unnecessary. In his evidence, he has proposed an alternative solution that would not result in such harm: he advises that, subject to signage, a priority one-way working scheme could resolve the impacts of the development on Charlotte Avenue. Mr. Moss' proposal would also mean that a contribution toward street widening works on Charlotte Avenue would not be required and could be redirected to achieving Zero Carbon on site and/or further affordable housing provision.
- 7.48 The Council's Arboriculturist (Iain Osenton) and Landscape Officer (Tim Screen) (see **Appendix CDC2**), having both assessed the site and proposal, have concluded that the street widening scheme would likely result in harm to the highway trees and potentially result in the loss of the trees. I have visited Charlotte Avenue as well, and I agree with Mr. Moss' conclusions that the street widening works could potentially result in material harm to the character of Charlotte Avenue through unnecessary conflict with the existing trees.
- 7.49 The trees are a key aspect of Charlotte Avenue. They have aesthetic and communal value, and their potential loss stems from the appellant's designer's failure to explore all highways safety options for this road. If removed, as well as harmfully impacting on the character and appearance of Charlotte Avenue, the proposal would be in breach of Local Plan policy ESD13 (Local Landscape Protection and Enhancement), as well as Policy Bicester 1. This aspect of the proposal would also be contrary to the NPPF, which places great emphasis on trees. In fact, paragraph 131 of the NPPF not only recognises the important role that trees have in positively contributing to the character of urban environments, and climate change adaption, it states that "*Planning policies and decisions should ensure that new streets are tree-lined*". This proposal would potentially do the very opposite and remove trees from an Eco Town.
- 7.50 Returning to Mr. Moss' conclusions that the proposal will potentially result in overcrowding of the local bus service, it should be noted that the current bus service to the adjacent Elmsbrook site ceased operation in April 2023 (due to the expiry of developer funding).
- 7.51 OCC has managed to secure an alternative service which will operate hourly on Mondays to Saturdays until March 2025, and they have sought a contribution to secure either an improved service to Elmsbrook or a continued operation of the post-April 2023 arrangements, whichever is appropriate at the time of occupation of this appeal scheme. However, at the time of writing this Proof of Evidence, no formal commitment has been given by the appellant to make this payment, which is another

shortcoming weighing against this proposal. Moreover, if the appellants contribute, the best the residents are likely to get is an hourly service on this offer, which is short of being a regular, easy to use option.

- 7.52 In summary, the Appellant's approach to Highways and Transport would lead to a series of conflicts with the NPPF, policies SLE4 and Bicester 1 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016 which are unacceptable and amount to severe harm.

### **Affordable Housing**

- 7.53 There is a known need for a significant quantum of affordable housing in the Cherwell District.
- 7.54 The Council's Affordable Housing waiting list (set out on a system called Civica Abritas) identifies a high level of need for an affordable housing property in Cherwell. This waiting list breaks down the need into different tiers (Bands) ranging from those with the most pressing need to those, where the need is less severe. For context, Bands 1 and 2 represent the most urgent need, Band 3 identifies those moderately in need and Band 4 is at the lower end of need for affordable housing, although they are still in need of affordable accommodation. The combined number of people in Bands 1 and 2 is 700, which shows that there is a clear and urgent need. The total need of Bands 1 to 4 (see **Appendix CDC3**) is 1924.
- 7.55 The National Planning Policy Framework requires that local planning authorities should significantly boost the supply of housing by using their evidence base to ensure that their Local Plan meets the full, objectively assessed need for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework (paragraph 23).
- 7.56 Long-term projections set out in the JSNA Bitesize document (March 2023) expect Cherwell's population to reach approximately 185,500 people by 2035 (see **Appendix CDC3 -supporting email**), an increase of over 24,000 people from the 2021 Census population figure of 161,100. Moreover, Bicester North & Bicester Village train stations, with their direct links to London, make Bicester an obvious choice for those working in London.
- 7.57 Housing affordability is one of the most significant issues in Cherwell. According to Land Registry (May 2023) the average house price in Cherwell is £373,155 which is 30% above the average house price for England (£287,506 -Land Registry, May 2023). In Bicester itself, the median monthly rents (across all Property types, [Home.co.uk](https://www.home.co.uk), May 2023), at £1,375pm, are 15% higher than the national average monthly rent of £1,199pm (Home Let Rental Index, April 2023). The average median salary in Cherwell is £41,631 (Varbes.com, May 2023), which is just 2.2% higher than the UK average annual salary. For ease of reference, the evidence in this paragraph is set out in **Appendix CDC 4**),
- 7.58 The Housing and Economic Needs Assessment (HENA) Cherwell and Oxford City Councils (December 2022) has been published to support the Local Plan Review process and whilst those policies have not been fully tested yet, or endorsed by the Council, as they are emerging policies, the evidence in the HENA is a material consideration and some weight can be attached to it.
- 7.59 Table 9.34 of the HENA, which excludes those people in existing households, estimates there to be an annual need of 426 social/affordable rented properties

across the Cherwell District. Table 9.11 in the HENA estimates there to be a need of 660 affordable homes.

- 7.60 To put this estimated need into context, the total estimated annual affordable housing property need is 620 units and this figure represents more than double the average total annual affordable housing properties being completed in Cherwell (secured under Cherwell's affordable housing policy requirements of 30%-35%): according to the Annual Monitoring Report, across an 11-year period (2011 -2022 as set out in the 2021/2022 Annual Monitoring Report -see **Appendix CDC 3**) the average annual affordable housing completions amount to 261 properties. In 2021/2022, 178 Affordable Homes were completed in Cherwell, of which only 31 were in Bicester.
- 7.61 Additionally, as noted above, the local salaries have not kept pace with the local sales prices for houses: the median house price in Cherwell is now 9 times the median salary per annum. Therefore, it is evident that the need for affordable housing in the district, already particularly high, will continue to be high for the foreseeable future, especially for first time buyers.
- 7.62 Despite this significant need for affordable housing in Cherwell, there are fundamental questions over the extent to which the proposed development would be complying with Local Plan Policies Bicester 1 and BSC3 or contributing to sustainable development as required by the NPPF paragraph 8, in particular the second criterion (b) which states that the planning system should "*support strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations.*"
- 7.63 The proposed provision of only 10% of the units as affordable housing (with certainty) as part of this Outline application, is insufficient when it is not clear whether more affordable housing could be provided given that the viability analysis is based upon the Appellant's interpretation of a Zero Carbon scheme which may include expensive costs which are not necessary. In short, this is an inadequate offer when set against the overall viability of the scheme (after unnecessary costs such as the carbon offsetting contributions and grey water harvesting systems are deducted -see Bioregional's Proof of Evidence), the local affordable need and the Local Plan policy requirement.
- 7.64 The Council's evidence relating to viability is set out in Nigel Simkin and Ian Tarbet's Proofs of Evidence. The implications of Nigel Simkin's evidence are that, at this stage, with the appellants current set of costings and interpretation of True Zero Carbon, the minimum level of 10% affordable housing is a reasonable offer.
- 7.65 However, it should be noted that this is based upon the Appellant's proposed build specification and as identified in the Zero Carbon chapter and Bioregional's Proof of Evidence, there are a number of significant costs in the appellants costs plan that should be removed in order both to assist with achieving true carbon zero and improve the viability of the scheme.
- 7.66 Following the exchange of proofs and crystallisation of the Appellant's case on such issues, it may be appropriate for Mr Simkin to review his appraisal of the Appellant's proposals to reflect an alternative approach to delivering Zero Carbon at that stage to assess a reasonable contribution towards affordable housing. However, at present, it is clear that the Appellant's proposal could do more to achieve a balance between true zero carbon and affordable housing. Paragraph 58 of the NPPF, which states that the weight to be given to a viability assessment is a matter for the decision maker concludes that viability assessments, including any undertaken at the plan-

making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

- 7.67 It is very important to the Council that viability appraisals are carried out in a realistic way so as not to wipe out the potential for vital affordable housing; and the Council is concerned that the appellant's approach to delivering a Zero Carbon scheme (as reflected in the now agreed Cost Plan) over -provides on some sustainability features which could reduce the potential for an increased affordable housing provision.
- 7.68 It is noted that the Appellant has indicated that it would be willing to agree to a viability review mechanism being included in the S106 agreement, as a means of capturing the shortfall in affordable housing provision during the Outline stage. Whilst it is welcomed that the principle of including such reviews are now agreed between the Appellant and the Authority, to date, no S106 agreement has been completed and signed (with agreed viability review trigger points included).

#### *Local Plan*

- 7.69 For the reasons outlined above, delivering as much affordable housing provision on site is a key priority for Cherwell District Council. This is set out in Cherwell's Local Plan 2011 -2031, which includes the objective of ensuring that there are decent, suitable, and affordable homes for all.
- 7.70 Specifically, the priority given to affordable housing on the appeal site is reflected in policy Bicester 1 North West Bicester Eco Town. This policy includes the requirement that 30% of new housing delivered on the North West Bicester site should be affordable. Policy BSC3 also requires provision of of at least 30% affordable housing on all residential developments in Bicester that proposals 12 residential units or more
- 7.71 My evidence has explained why I consider that the Appellant's affordable housing offer is inadequate and fails to deliver the appropriate level of affordable housing on this site with certainty before a (still to be agreed) viability review mechanism is triggered.
- 7.72 Therefore, the scheme is contrary to the NPPF objectives of meeting housing need and of providing mixed and balanced communities. It is also contrary to Cherwell Local Plan Policy Bicester B1 North West Bicester Eco Town.
- 7.73 The Council will cooperate with the appellant to seek to ensure that an appropriate obligation can be executed to deliver the required amount of affordable housing, should the appellant be willing to do so. In such an eventuality, the Inspector is asked to determine the appropriate level of affordable housing that can be supported up front, based on the evidence presented at the inquiry.

#### ***Viability Review Mechanism***

- 7.74 The Council's Adopted Developer Contributions SPD (2018) states that, in exceptional circumstances (para 3.18), viability review mechanisms will be required through Section 106 agreements. The purpose of such reviews is to determine whether greater compliance with the Development Plan can viably be achieved. For example, where a proposal does not meet the strategic and site allocation affordable housing requirement in full at the time permission is granted or provide adequate developer contributions.

- 7.75 For a range of reasons, this is now an agreed position between the Council and the appellants that a Viability Review Mechanism is required.
- 7.76 Therefore, a Viability Review Mechanism is necessary to ensure that either a policy compliant 30% on-site provision of affordable housing is delivered, or as close to the 30% policy requirement, as is viably possible (if viability is an issue at the time), as well as providing adequate developer contributions and helping to deliver a Net Zero Carbon development.
- 7.77 A Viability Review Mechanism is directly relevant to the development because the review will assess the specific economic viability of the proposal. It is relevant in scale and kind because any additional obligation will be based on the level that the scheme can viably support and will only be required in the event that the viability of the scheme improves, and any contribution will be limited by the equivalent of the Development Plan target.
- 7.78 As stated above, although the appellants have committed (via the Statements of Common Ground) to having a Viability Review Mechanism in the Section 106 Agreement, at the time of writing this proof, the detailed drafting of this review mechanism have not been agreed. At the very least, it is imperative that this review mechanism is agreed prior to the commencement of the Inquiry, along with confirmation of the Appellant's minimum affordable housing provision up front (if necessary informed by additional viability appraisal analysis which sensitivity tests any discussions between the parties regarding a more robust approach to delivering True Zero Carbon from the Appellant).

### **Planning Obligations**

- 7.79 The use of planning obligations to address the impact of development and ensure they are acceptable in planning terms is well established in legislation and national, regional and local planning policy. The NPPF and Cherwell District Council's Local Plan (2011- 2031) all recognise the importance of addressing the impacts of development and having effective mitigation in place to ensure that development can be accommodated sustainably.
- 7.80 The Council is keen to ensure that new development continues, as detailed in its Local Plan (2011 -2031). However, new development which adds to the residential population, and on such a large-scale, places significant additional pressure on the local environment, infrastructure and public facilities. The Local Plan not only sets out plans for the delivery of development but also provides the basis on which development can be delivered sustainably, and in a way that respects environmental limits and resident's quality of life.
- 7.81 Cherwell's Local Plan Policy Bicester 1: North West Bicester Eco-Town requires the development of the masterplan to mitigate the impacts associated with the development and to deliver key infrastructure. There is an 'Infrastructure' section in the policy which, amongst other things, requires the masterplan to ensure that the educational needs of the future occupiers are met. It states:

*"Education -Sufficient secondary, primary and nursery school provision on site to meet projected needs. It is expected that four 2 Forms of Entry primary schools and one secondary school will be required. There should be a maximum walking distance of 800 metres from homes to the nearest primary school."*

- 7.82 The same part of this site allocation policy also sets out the other key social and physical infrastructure that should be provided. Specifically, it lists:
- “Community facilities – to include facilities for leisure, health, social care, education, retail, arts, culture, library services, indoor and outdoor sport, play and voluntary services. The local centre hubs shall provide for a mix of uses that will include retail, employment, community and residential provision. Education, health care, community and indoor sports facilities will be encouraged to locate in local centres and opportunities for co-location will be welcomed. Provision will be proportionate to the size of the community they serve. Each neighbourhood of approximately 1,000 houses to include provision for community meeting space suitable for a range of community activities including provision for older people and young people. A site of 0.5 ha for a place of worship to be reserved for future use.”*
- 7.83 Policy Bicester B1: It also refers to the need for long term community governance arrangements. These infrastructure requirements are in line with the NPPF. For instance, paragraph 95 of the NPPF asks local planning authorities to take a proactive, positive and collaborative approach to meeting educational requirements and gives great weight to the need to create, expand or alter schools.
- 7.84 Paragraph 95 of the NPPF also recognises the importance of future residents having access to high quality open spaces and sport and recreation opportunities to allow for the health and well-being of communities.
- 7.85 Similarly, the NPPF makes it clear that Transport issues should be considered from the earliest stages of plan-making and development proposals, so that the potential impacts of development on transport networks can be addressed.
- 7.86 In accordance with Policy Bicester 1, the NPPF, and as part of delivering a sustainable North West Masterplan, there are a number of vital infrastructure projects that will need to come forward. These schemes include increasing the size and capacity of Gagle Brook Primary School (which is located on the adjacent Elmbrook Site) and building a secondary school (on the southern part of the North West Masterplan site) All of these pieces of infrastructure are an integral element of the additional and enhanced social infrastructure which is needed to support the whole of the North West Bicester Masterplan.
- 7.87 As well as the on-site infrastructure provision, contributions are needed for key off-site infrastructure including capacity improvement works to Bicester Leisure Centre to help absorb the new residents and ensure that maximum use of these facilities can be made.
- 7.88 During the course of the application process Oxfordshire County Council has identified a number of vital Highways improvement works, ranging from street widening to strategic highways works, including a realignment of the A4095, and the on-going provision of a new bus service.
- 7.89 At the time of preparing this Proof of Evidence, the Appellant has not formally committed to paying the full amount of the contributions being sought by both Councils.
- 7.90 Without a commitment to sign the Section 106 agreement under the terms set out by the Councils, the application would fail to comply with planning policy, would not sufficiently mitigate its impacts or pay for necessary works surrounding the site, and the proposal would not comply with the principles of sustainable development.

- 7.91 Discussion will continue between the Council and the appellant on the Heads of Terms (and the appropriate wording for the Section 106 agreement). I intend to update the Inspector (prior to or at the Inquiry) regarding Section 106 matters but, at present, the proposal represents an unsustainable development that will not mitigate its own impacts.

### **Material considerations and Planning Balance**

- 7.92 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan for the area, unless material considerations indicate otherwise.
- 7.93 Regard must therefore be paid to what other material considerations may apply to the site, and the appeal proposal and what weight should be given to them. A decision must therefore be made as to whether these material considerations outweigh the appeal proposal's harmful shortcomings and the breaches of policies that the appeal proposal would cause.
- 7.94 Material considerations can include the benefits and shortcomings of the appeal proposal. In determining the weight to be given to any identified benefits, regard must be paid as to whether these benefits are required by current planning policies in any other case, and whether they are dependent upon the delivery of the specific development currently proposed.
- 7.95 The Council's Committee report dated 9<sup>th</sup> March 2023 assessed the appeal proposal with regard to relevant planning policies and found several areas where the proposal does not comply with current, relevant policies (which is why the case officer had requested delegated powers to continue negotiating with the Appellant prior to the appeal being lodged). The Members observed that, had the application not been appealed, the shortcomings of the proposal were such that they would have refused the application.
- 7.96 The Inspector is required to determine the appeal in accordance with the development plan, and the unresolved shortcomings of the development can be material to the Inspector's consideration and determination of the appeal (the appeal could be dismissed on grounds other than those set out in the council's putative reasons for refusal).

### *Five Year Housing Land Supply*

- 7.97 A material change in circumstance is that the appellant is now contesting the Council's Five Year Land Position. The Council had not formally published its updated 5 Year Housing Land Supply at the time that the appeal was lodged. However, on the 9<sup>th</sup> February 2023, the Council published a Five Year Housing Land supply position of 5.4 years. This was then set out in the 9<sup>th</sup> of March Committee report.
- 7.98 Following the CMC for the Inquiry and completion of the first signed Topic SoCG between the parties to explore matters in dispute relating to housing land supply, it is agreed that the latest inputs should be applied to the calculation of local housing need under the Standard Method and at the point of exchanging evidence under the Council's case for the housing requirement this would result in a revised figure of 5.67 years' deliverable supply.

- 7.99 The Council's position is that its five-year housing land supply is robust and sound and therefore the tilted balance of paragraph 11 of the NPPF is not engaged.
- 7.100 My view is that in the event that the Inspector concluded that the Council does not currently have five years of housing land supply, then the tilted balance would still not be engaged as the appeal site is already allocated for housing.
- 7.101 If, however, the Inspector concluded that the tilted balance was engaged, my view is that the harm of the scheme would significantly and demonstrably outweigh the benefits of the scheme at a time when the Council (allegedly) faced a short-term housing land difficulty which would be addressed through the Local Development Plan Review process, in any event.
- 7.102 Whilst the Council does not accept the Appellant's position for supply measured against the Council's case that the Local Housing Need provides the requirement for the purposes of paragraph 74 of the NPPF (2021), this would result in a deficit of only 87 units.
- 7.103 The extent of any shortfall versus the five year requirement is a material consideration and cannot be considered significant. The adopted development plan continues to remain up-to-date in providing support for the Council's adopted spatial strategy and would support development as a result of acceptable proposals provided in accordance with the policies and allocations making substantial provision for residual supply identified through the development plan at Bicester.
- 7.104 I also highlight that, in terms of any deficit the Council, in its published Land Supply Statement (**Core Document 8.18**, para 38), confirms that it has already made a conservative assessment of supply from provision at Bicester, including only 50 units' supply included from forecast capacity at NW Bicester. The reality is that further supply in the five year period may be achieved at this location, irrespective of any contribution from the Appeal Site.

*Benefits of the appeal proposal*

- 7.105 I accept that the appeal proposal would have some benefits. These benefits were included in the Council's balancing of planning considerations when the planning application was presented at Planning Committee (see paragraphs 10.2 to 10.10 of the council's Committee report dated 9<sup>th</sup> March 2023).
- 7.106 In summary, the benefits of the appeal proposal include:
- Providing market and (some level of) affordable housing
  - Providing jobs during the construction phase (albeit time limited)
  - New residential spend which would support services and facilities in the area
  - Site recreation and play facilities
  - Green infrastructure
  - Landscape features
  - Carbon offsetting measures
- 7.107 While these benefits weigh positively in the balance of planning considerations relevant to the appeal, it must be noted that they could also be delivered as part of a policy-compliant development that achieved the policy objective of a net zero carbon development, provided more affordable housing up front (if a more robust approach

to zero carbon had been undertaken by the appellants), and was subject to a Section 106 agreement that mitigated the development's own impacts and secured compliance with the development plan. The weight to be attached to these benefits should therefore be limited accordingly.

- 7.108 The appellant's agent, in their Proof of Evidence, may refer to an ongoing need for housing in Cherwell and the contribution the appeal proposal would make towards meeting these targets.
- 7.109 The Council is acutely aware of the need for housing in the Cherwell district, and that development plans set out minimum delivery targets which local planning authorities should seek to exceed, ideally on allocated sites. This does not, however, mean that any, and all proposals for residential development, should be granted planning permission where they would achieve a poor level of compliance with the development plan. There is no policy imperative to deliver housing and contribute towards meeting relevant housing targets at the expense of other important planning objectives.
- 7.110 I acknowledge that the proposed use of the site for housing is acceptable and policy-compliant in land use terms, however the housing delivery, site allocation policy and the Council's five-year land supply evidence demonstrates that there is not a need for the appeal scheme to ensure Cherwell's housing target is met.
- 7.111 In short, significant weight should be attached to proposed breach of the Zero Carbon requirement, the severe transport harm, the insufficient affordable housing offer (based on the based upon the Appellant's interpretation of the requirements to deliver a Zero Carbon scheme and the appeal scheme's inability to mitigate its own impacts. All of these shortcomings are contrary to the requirements of the Local Plan and significant weight should be attached to them, individually, and collectively. As stated above, they outweigh the benefits of the scheme.

### **Conclusion**

- 7.112 Policy Bicester 1 does not support a carbon offsetting contribution approach to the North West Bicester development site. The appellant is relying on carbon offsetting contributions (at an unacceptably low payment level), to make a zero carbon offer, and therefore there is a clear breach of the development plan policy.
- 7.113 The Council's view is that the appeal scheme, along with all the other shortcomings, does not represent the right development proposal for this site. It would cause a significant amount of harm, some of which is avoidable, if a more balanced approach had been taken by the appellant. In my opinion, even with the current viability constraints, it is possible to achieve a beneficial development on this site (that is more in alignment with Policy Bicester 1) without causing such harm; harm that would be permanent and enduring.
- 7.114 For the reasons set out in my Proof of Evidence, I respectfully request that the appeal be dismissed.
- 7.115 However, if the Inspector were to determine that the appeal proposal could (pending the outcome of further discussions on the Zero Carbon scheme, Section 106 contributions, and subsequently updated viability evidence), in fact, support a level of affordable housing beyond which the appellant is offering, and if further affordable housing provisions relating to a financial viability review could be agreed (with fair and robust trigger points); the Highways issues were resolved; the necessary

developer contributions were secured in the Section 106 agreement (and secured by the Inspector's decision as necessary to make the development acceptable) and a net zero carbon scheme was secured on site, the overall planning balance would be materially different. If all these issues could be resolved, I would not object to the appeal being allowed and planning permission being granted.

**8. DECLARATION**

- 8.1 The evidence which I have prepared and provided for this appeal is true to the best of my knowledge. I confirm that the points and arguments expressed in this proof of evidence are my true and professional opinion.

## **APPENDIX CDC 1**

### Bioregional's response to the Appellant's Carbon Measures, Commentary, October 2022

NB: This document is sent under separate Cover as an email attachment.

## APPENDIX CDC 2

### Council's Tree and Landscape Officer Advice re Charlotte Avenue

**From:** Tim Screen <[Tim.Screen@Cherwell-DC.gov.uk](mailto:Tim.Screen@Cherwell-DC.gov.uk)>

**Sent:** 31 March 2023 10:57

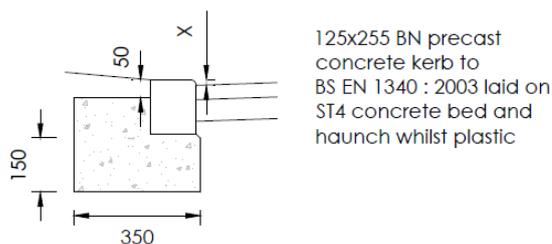
**To:** Thomas Webster <[Thomas.Webster@cherwell-dc.gov.uk](mailto:Thomas.Webster@cherwell-dc.gov.uk)>

**Cc:** Iain Osenton <[iain.osenton@cherwell-dc.gov.uk](mailto:iain.osenton@cherwell-dc.gov.uk)>

**Subject:** FW: 21/01630/OUT - Land at North West Bicester Home Farm, Lower Farm and SGR2 Caversfield: Loss of Trees on Charlotte Avenue

Hi Tom

As promised, the technical response from Iain and myself.



X = Refer to engineers finishes drawing

### **BN KERB CONSTRUCTION**

#### Road Widening Proposal

The 0.7 m widening of the eastern side of the road will detrimentally effect the health of the 7 trees. With the road widening of 0.7 this will mean with the BN Kerb construction the total imposition on the root ball will be 0.53 m x 0.4 deep (least worst case scenario). A section of root ball would need to be cut away for the BN Kerb to be laid. The tree stem would effectively be 0.77 m away from the edge of the BN kerb and the canopies of trees of 4 trees will extend into the road.

The size of the tree pit is 1.5 x 1.5 x 1.00 m – refer to enclosed tree pit construction detail. The tree stems are currently positioned approximately 1.3 m away for the traffic kerb, and planted centrally within a 1.5 x 1.5 tree pit – refer to enclosed tree pit construction detail

(10/01780/HYBRID). The tree canopies of the 7 trees extend towards the road by 0.6 m to 1.3 m from the tree stem.

The tree species is *Carpinus betulus Fastigiata* 'Frans Fontaine' and will eventually grow to 12/17 m depending on growing conditions and approximately 3 m wide at 25 years (Barcham Trees)

#### Proposal Impacts to 7 Street Trees

Proposals impacts can be broadly split into two categories, above and below ground.

##### **Above ground.**

The proposal will place the existing crown spread of the 7 trees within the footprint of the highway. The existing trees are in their infancy and are unlikely to have put on significant above ground growth since planting. This is very common with transplanted 'standard' trees which will often need several years to establish a root system before putting on significant above ground growth. The proposal therefore places an immediate degree of conflict between the highway and the trees. The trees are fastigate in nature, therefore there is little scope to significantly prune a single side of the trees without detrimentally impacting their form. This will only be exacerbated as the trees grow and establish. Whilst the trees predicted crown spread is 3m, this does not account for phototropism which may place more growth on one side of the tree than the other. Based on the trees position, with buildings shading from the west, I predict the east aspect of the trees will produce more growth as they establish, creating an ongoing conflict between them and the highway. To mitigate this, ongoing pruning, detrimental to the trees form will be required, which will remove photosynthetic material key to the trees health whilst creating an unsustainable conflict between the trees and the highway.

##### **Below ground.**

Root-balled trees have effectively been undercut their entire time in a nursery in order to compact the trees fibrous rooting system into a manageable size. The root-ball therefore holds a high volume of roots which will be seeking new ground following the first few years after planting. As mentioned above, the trees rarely produce above ground growth when first establishing in their new environment as their energy is focused on producing new roots. To encroach into the tree pit would almost certainly be detrimental to the trees health both short and long term. Short term, the trees may lose essential fibrous roots essential for establishment. Long term, the proposed close position of the highway would limit root growth creating at best, a scenario where the trees will begin dying back before they reach their full height potential due to limited soil resources. And, worst case, a tree vulnerable to root plate failure as the ground lacks sufficient volume for the tree to effectively anchor itself into the ground.

**Summary.**

In summary, the proposal to widen the highway in such a way that places the highway within the crown, and root spread of young trees reflects a proposal contrary to BS5837:2012, in addition, pruning operations would reflect conflict with BS3998. The proposal will almost certainly guarantee unmitigated detrimental impact upon the trees.

Kind regards

Tim

Tim Screen CMLI

Landscape Architect

Environmental Services

Environment & Place

Cherwell District Council

01295 221862

mailto:[tim.screen@cherwell-dc.gov.uk](mailto:tim.screen@cherwell-dc.gov.uk)

### APPENDIX CDC3

#### Cherwell Council's Current Affordable Housing Waiting List (Civica Abritas, 26<sup>th</sup> April 2023)

MaxBedSize Δ ▾							
Band Δ ▾	1	2	3	4	5	6	Grand Total
(Not set)	6	3					9
1	52	7	3	1			63
2	130	172	218	104	13		637
3	182	103	31	3	2		321
4	428	345	107	7	5	2	894
	798	630	359	115	20	2	1924

This table is from the Council's 2022 Annual Monitoring Report showing affordable housing completions for Cherwell with the following commentary:

Affordable Housing

**Table 16 – Net Affordable Housing Completions**

<b>Year</b>	<b>Affordable housing completions (net)</b>
<b>2011/12</b>	204
<b>2012/13</b>	113
<b>2013/14</b>	140
<b>2014/15</b>	191
<b>2015/16</b>	322
<b>2016/17</b>	278
<b>2017/18</b>	426
<b>2018/19</b>	510
<b>2019/20</b>	400*
<b>2020/21</b>	295
<b>2021/22</b>	178
<b>Totals</b>	<b>2,879</b>

\* There was some double counting during 2019/20 therefore the number of affordable housing completions has changed from 446 to 400.

## APPENDIX CDC4

### Average House Price in the UK, February 2023

Source: Land Registry, 9 May 2023

<https://landregistry.data.gov.uk/app/ukhpi/>

As of February 2023, the average house price in the UK is **£287,506**, and the index stands at 150.79. Property prices have fallen by 1.0% compared to the previous month, and risen by 5.5% compared to the previous year.

#### About the House Price Index

The UK House Price Index (HPI) uses house sales data from HM Land Registry, Registers of Scotland, and Land and Property Services Northern Ireland and is calculated by the Office for National Statistics. The index applies a statistical method, called a hedonic regression model, to the various sources of data on property price and attributes to produce estimates of the change in house prices each period.

The index is published monthly, with Northern Ireland figures updated quarterly.

It is advised that low number of sales transactions in some local authorities can lead to volatility in the estimates at these levels. Geographies with low number of sales transactions should be analysed in the context of their longer-term trends rather than focusing on monthly movements. Our guidance page provides further detail about our data and its quality.

Historic data within this tool is derived. Under the UK HPI, data is available from 1995 for England and Wales, 2004 for Scotland and 2005 for Northern Ireland. A longer back-series has been derived by using the historic path of the Office for National Statistics HPI to construct a series back to 1968.

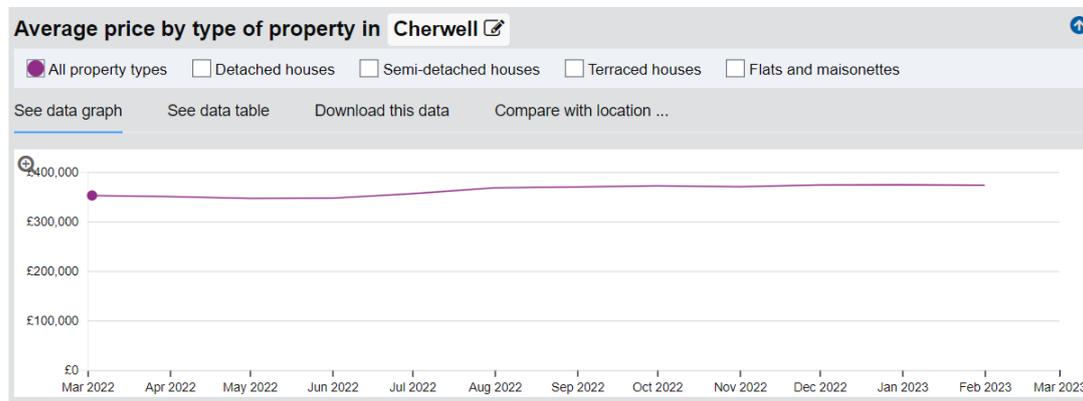
## Average House Price in Cherwell, February 2023

Source: [Land Registry, 9 May 2023](#)

<https://landregistry.data.gov.uk/app/ukhpi/browse?from=2022-03-01&location=http%3A%2F%2Flandregistry.data.gov.uk%2Fid%2Fregion%2Fcherwell&to=2023-03-01&lang=en>

### Type of property

Track the index, average price and both monthly and annual change for all property types or focus on one in particular.



## Average Salary in Cherwell

Source: [Varbes.Com](#)

<https://www.varbes.com/salary/cherwell-salary>

The average salary in Cherwell is **£41,631**, according to figures published by the ONS for 2022. Between 2021 and 2022, average salaries grew by £5,779. Compare average salaries by area.

Cherwell's salary growth rate is 16.12% per year based on changes in average salary between 2021 and 2022, which is 12.8% higher than the average salary growth rate in Cherwell over the past 10 years.

The average weekly hours worked in Cherwell is currently 40.6 hours. The average male works 41 hours per week and the average female works 39.0 hours per week - a 2.4-hour difference.

## Average Monthly Rents in Bicester

Source: [Home.co.uk](https://www.home.co.uk), 9<sup>th</sup> May 2023

[https://www.home.co.uk/for\\_rent/bicester/current\\_rents?location=bicester](https://www.home.co.uk/for_rent/bicester/current_rents?location=bicester)

### Bicester Market Rent Summary

Our rental price analysis for Bicester summarises the advertised rents for homes to let, calculated daily from the rental properties found by the Home.co.uk Property Search Engine

#### Summary of Properties for Rent in Bicester

Total properties for rent in Bicester:	48
Properties for rent in Bicester listed in the last 14 days:	19
Average* property rents in Bicester:	£1,487 pcm
Median* rent:	£1,375 pcm

#### Properties for Rent in Bicester by Price

	No. of properties
Rent under £250 pcm	0
£250 to £500 pcm rent	0
£500 to £1,000 pcm rent	7
£1,000 to £2,000 pcm rent	35
£2,000 to £5,000 pcm rent	6
Rent over £5,000 pcm	0

#### Property Rents in Bicester by Number of Bedrooms

	No. of properties	Average rent	Median rent
One bedroom	8	£1,022 pcm	£975 pcm
Two bedrooms	22	£1,293 pcm	£1,250 pcm
Three bedrooms	11	£1,819 pcm	£1,600 pcm
Four bedrooms	5	£2,190 pcm	£2,200 pcm
Five bedrooms	1	£3,000 pcm	£3,000 pcm

#### Property Rents in Bicester by Type

	No. of properties	Average rent	Median rent
Room	1	£800 pcm	£800 pcm
Flat	11	£1,195 pcm	£1,150 pcm
House	36	£1,595 pcm	£1,473 pcm

Note: The current rents for Bicester were calculated by sampling over all properties for rent in the Home.co.uk property search within 2 miles of the centre of Bicester

## **Average monthly rents in the UK**

Source: HomeLet

<https://homelet.co.uk/homelet-rental-index>

HomeLet Rental Index

### **What is the average rental value in the UK?**

For April 2023, the data shows that the average rental price for a new tenancy in the UK was £1,199 per calendar month (PCM), up 9.9% annually.

### **Latest Rental Index data: April 2023**

- The average rent in the UK has risen 1.3% since March to £1,199 PCM.
- Rents in every region in the UK have risen monthly and annually
- Excluding London, the average UK rent price is 9.3% higher than 12 months ago at £1,006 PCM.
- Rents in the capital are 11% higher than in April 2022, a 1.2% rise since last month to £2,003 PCM.
- The rental average in The South East is 2.1% higher than last month, up to £1,277 PCM.

[>About our methodology](#) [>Media & data enquiries](#) [>Data table](#) [>Report data.xlsx](#)

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