



*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**

**STATEMENT OF CASE CHERWELL DISTRICT COUNCIL**

**MARCH 2023**

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## 1. INTRODUCTION

- 1.1 This Statement sets out the case for Cherwell District Council (“**the Council**”) in respect of the appeal submitted by Firethorn Trust (“**the Appellant**”) under Section 78(1) of the Town and Country Planning Act 1990 against the Council’s failure to determine Planning Application ref 21/01630/OUT pertaining to Land at North West Bicester, Charlotte Avenue, Bicester (“**the Site**”).
- 1.2 Cherwell District Council Officers reported the application to Planning Committee on 9th March 2023. They recommended to Members that, should the application have remained with them for determination (had it not already been appealed for non-determination grounds), then planning permission should be granted.
- 1.3 Members, in passing an observation, commented that if an appeal had not been lodged on Non-Determination grounds then they would have refused planning permission for reasons relating to Zero Carbon requirements, access arrangements, highways safety, congestion, loss of trees and the impact on the character of the Eco Town, inadequate affordable housing provision, and the development’s failure to mitigate its own impacts on the local infrastructure.
- 1.4 Following planning committee, it was confirmed that the Council’s Monitoring Officer has delegated authority to draft the putative reasons for refusal. For completeness, those five putative reasons for refusal are set out below:
1. *The development, when set against the viability of the scheme, would not go far enough in trying to achieve the True Zero Carbon requirements for NW Bicester, as set out by Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031. This would undermine the Council’s strategy for achieving an Exemplary Eco Town development at NW Bicester which sets this site apart from others and where the Council has declared a Climate Emergency. The development would therefore conflict with Policy Bicester 1 and Policies ESD1-5 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016.*

*Note to Appellant: This reason for refusal is capable of being addressed*

2. *The access arrangements to the site would be unsatisfactory as there would be an inability to provide for suitable pedestrian and cycle facilities along Charlotte Avenue. Any localised proposals to the road have not been proven to be possible, and are likely to raise safety concerns relating to users of the highway within proximity to Gagle Brook School, and would result in the loss of street trees and would impact on the character of the existing Eco Town. The proposal would not meet the requirements of LTN1/20 and would conflict with Oxfordshire County Council’s ‘Local Transport and Connectivity Plan’ Policies 1, 2b, 8, 9, 11, 35, 45 and 46b, Oxfordshire County Council’s ‘Tree Policy for Oxfordshire’ Policies 11, 18, 19 and 20, Policies SLE4 and Bicester 1 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016.*

3. *The proposed development would result in congestion at the junction of Charlotte Avenue with the B4100, particularly during the peak period. This would result in a severe transport impact and the development would therefore conflict with Government guidance contained within the National Planning Policy Framework and Policies SLE4 and Bicester 1 of the Cherwell Local Plan Part 1 2011-2031.*
4. *The proposed development, when set against the financial viability of the scheme, would fail to provide an adequate level of affordable housing provision. The proposal is therefore contrary to Policy BSC3 and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester SPD 2016, CDC's Developer Contributions SPD 2018 and Government guidance contained within the National Planning Policy Framework.*

*Note to Appellant: This reason for refusal is capable of being addressed.*

5. *In the absence of a satisfactory unilateral undertaking or other form of S106 legal agreement, the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development and necessary to make the impacts of the development acceptable in planning terms. This would be to the detriment of both existing and proposed residents and would be contrary to Policies INF1, BSC3, BSC7, BSC8, BSC10, BSC11, BSC12 and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester SPD 2016, CDC's Developer Contributions SPD 2018 and Government guidance contained within the National Planning Policy Framework.*

*Note to Appellant: This reason for refusal is capable of being addressed.*

## 2. SITE AND SURROUNDINGS

- 2.1 The application site is situated to the North West of Bicester and comprises land extending to 23.97ha in area split across two separated parcels of land. However, this is extended to 24.2594ha to include two construction accesses to the east of the site. The site forms part of the land allocated by Policy Bicester 1 and it is within the Masterplan for NW Bicester. The two separated parcels of land relate to:
- An eastern parcel extending to approximately 4.68ha
  - A western parcel extending to approximately 15.962ha
- 2.2 The red line site area also includes access to the site meaning that the adopted highway of Charlotte Avenue and Braeburn Avenue are also included within the red line which would be utilised as existing accesses. Both roads are currently not adopted.
- 2.3 The site is characterised as predominantly grassland with fields bounded by hedges with some large trees, woodland and plantation, and is classified as good to moderate value (primarily Grade 3b) under the Agricultural Land Classification system. The west of the Site contains two distinct areas of woodland, and the most northern area of woodland contains a dry pond. There is a historic hedgerow which runs along the north-eastern border of the Site.
- 2.4 To the west and south are principally other areas of the site allocation for North West Bicester Eco-Town which are generally included within the site subject to consideration currently – 21/04275/OUT. Bucknell sits to the west of the site.
- 2.5 To the southeast is the Home Farm Farmhouse complex which also contains various business uses. Caversfield is further beyond to the southeast.
- 2.6 The A4095 and residential areas on the southern side of this road as part of Bicester are to the south.
- 2.7 To the east is the exemplar development as part of NorthWest Bicester Eco Town and beyond this the B4100 and St Lawrence Church. Other elements of the first phases of the Eco Town which include Elmsbrook Forest School and Gagle Brook Primary School, an Eco Business Centre and a community hall which is currently under construction are also located to the south of the application site with residential properties off Charlotte Avenue.
- 2.8 To the north, beyond the application site, is Caversfield House and then agricultural fields which are outside the current allocation.
- 2.9 The Site is undulating rising gradually to the north west with boundaries principally hedgerows which comprise a range of species and quality. The site includes the existing woodland (to be retained as part of the proposals). The highest elevation in the western parcel is approximately 92 m above ordinance datum (AOD) towards the north and the lowest elevation is approximately 85 m AOD to the south east. The

eastern parcel slopes in a south easterly direction with ground levels falling from approximately 91 m AOD to approximately 83 m AOD.

### **Constraints**

- 2.10 The application site is within the North West Bicester Allocated Housing site. There are watercourses running through the south of the western parcel and in a north south direction to the east of the eastern parcel and this area also comprises areas of flood zones 2 and 3. The Grade II\* listed Church of St Lawrence is situated to the north east and the Grade II listed Home Farmhouse to the east. The land has some potential for ecology. A public right of way is located to the north of the site, running in an east-west orientation.

### **3. SITE HISTORY**

- 3.1 A summary of the planning history relating to the site and its immediate surrounds is set out in the 9<sup>th</sup> March Planning Committee Report.

### **4. CONSULTATION**

- 4.1 The Council will elaborate on the results of the statutory consultation responses as set out in the Committee Report and may refer to representations of the public and internal and external consultees as part of its case.

### **5. PLANNING POLICIES**

- 5.1 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.
- 5.2 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 2031 Part 1)**

- 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)
- 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

## **6. PLANNING CONSIDERATIONS IN SUPPORT OF THE LOCAL PLANNING AUTHORITY'S CASE**

- 6.1 The Council will show that the proposals do not comply with development plan policies nor with national planning policy statements, guidance and circulars, and supplementary guidance. The Council will demonstrate that there are no (or insufficient) material considerations which would otherwise outweigh the failure to comply with the development plan and other material considerations.
- 6.2 The Council, having taken a balanced view, is of the opinion that the proposal is contrary to the development plan and that there are no material considerations that would justify the grant of planning permission. It will be shown that it is appropriate to refuse planning permission as two of these objections are not capable of resolution through minor amendments within the scope of the application for planning permission. It is anticipated that reasons 1, 4 and 5, can, potentially, be overcome and withdrawn prior to the start date of the public inquiry.

### **FAILURE TO ACHIEVE ZERO CARBON**

- 6.3 The Council considers that the standard to which the development would be constructed does not go far enough in trying to meet the Zero Carbon requirements for NW Bicester as set out by Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031 and the NW Bicester SPD.
- 6.4 The creation of a new zero carbon development is at the core of policy Bicester 1 and the express aim of the local plan is to create an "Eco Town". The allocation is therefore not a "standard" housing allocation merely for houses but it is an integral part of the acceptability of the allocation that it meets the Eco Town principles set out within the plan. The SPD makes it clear that the plan allocates development for "true" zero carbon homes. This is the first criterion both within Bicester 1 and within the introduction to the SPD. The Local Plan inspector describes the allocation as being "*a major mixed use, zero carbon, development*". The "zero carbon" criterion within Bicester 1 is therefore central to its aims and gives the allocation its identity. Any failure to meet this critical element is therefore a matter of considerable negative weight in the planning balance.
- 6.5 Whilst it is accepted that, at present, the viability of the scheme may not allow for Zero Carbon requirements to be fully achieved, the Council is of the opinion that the appellant hasn't demonstrated that the proposal has provided all viable sustainability measures. Given the importance of the policy aim, the Appellant should be required to demonstrate that all reasonable efforts have been made to comply with this requirement and at the time of writing, the Council is not satisfied that this is the case. The proposals therefore fail to meet Bicester 1 and the requirements of the SPD without adequate justification for doing so.
- 6.6 It is considered that, subject to further viability information and discussions between both parties, this putative reason for refusal could potentially be overcome and withdrawn. The Council will continue to engage with the appellant; however, if further progress is not made, the Council will call viability evidence.

### **ACCESS ARRANGEMENTS AND HIGHWAYS SAFETY**

- 6.7 The Council will call expert highways evidence which will demonstrate that the proposed access arrangements to the site would be unsatisfactory due to an inability to provide for suitable pedestrian and cycle facilities along Charlotte Avenue.

- 6.8 The Council is also concerned that the localised proposals to the road are not possible, which is likely to raise safety concerns relating to users of the highway within proximity to Gagle Brook School.
- 6.9 The Council considers that the proposal would result in the loss of street trees and would impact on the character of the existing Eco Town. The loss of trees has not been adequately justified and the Council considers that this matter is of negative weight in the overall balance.
- 6.10 The Council will explain how the development would not introduce such benefits to the area that would outweigh the harm that would be caused, and the development would therefore be contrary to national and local policy.

### **CONGESTION**

- 6.11 The Council will call specialist highway evidence to demonstrate that the proposed development would result in unacceptable congestion at the junction of Charlotte Avenue with the B4100, particularly during the peak hours.
- 6.12 The Council will make the case that the proposed development would result in a severe transport impact; and, in doing so, the harm would outweigh the benefits of the proposal and would conflict with national and local planning policies.

### **AFFORDABLE HOUSING**

- 6.13 The Council, noting the viability conclusions of its independent viability assessor (Highgate Land and Development), will make the case that the appellant has not proposed an appropriate amount of affordable housing, at a time when there is a significant local need for affordable housing.
- 6.14 The appellant's proposed level of affordable housing provision is therefore contrary to National and Local Planning policies and weighs heavily against the proposal.
- 6.15 It is considered that, subject to further viability information and discussions between both parties, this putative reason for refusal could potentially be overcome and withdrawn. The Council will continue to engage with the appellant; however, if further progress is not made, the Council will call viability evidence.

### **PLANNING OBLIGATIONS**

- 6.16 The Council will explain the extent of planning contributions deemed necessary to make the development acceptable in accordance with NPPF, the Local Plan and Community Infrastructure Levy Regulations 2010 (as amended).
- 6.17 The Council will demonstrate that in the absence of necessary planning contributions, the proposed development would fail to adequately mitigate its impacts and the additional pressure that the development would place on local infrastructure.
- 6.18 However, the Council will continue to negotiate with the Appellant with the aim of submitting an agreed draft planning obligation to the Inspector prior to the inquiry.

## **7. CONCLUSION**

- 7.1 The Council therefore considers that the shortcomings of the proposal outweigh the benefits of the scheme and pursuant to section 38 of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

## **8. OTHER MATTERS**

- 8.1 Without prejudice to the Council's case, the Council will endeavour to negotiate and complete a S106 legal agreement as appropriate with the appellant in the course of this appeal, should the planning permission ultimately be granted on appeal.
- 8.2 In accordance with government guidance and without prejudice to the Council's case, appropriate planning conditions for the appeal proposals will be discussed with the Appellant and submitted to the Inspector in good time for the inquiry.

## **9. DOCUMENTS TO BE REFERRED TO IN EVIDENCE**

- 9.1 The Council will refer in its evidence to the documents identified above and other relevant documents including:

- Letters of representation and observations
- Any other relevant planning appeal decisions
- All documents which formed part of or accompanied the Planning Application.
- The Proof of Evidence of the Council's Planning Officer
- The Proof of Evidence of an Independent Highways Consultant
- The Proof of Evidence of an Independent Viability Consultant
- The Proof of Evidence of an Independent Cost Consultant
- Note of evidence from Independent Sustainability Consultant
- Note of evidence from Council's Landscape Officer

- 9.2 The Council reserves the right to refer to further documents in response to the appellant's case or any more recent updating information.

- 9.3 This document and the Council's questionnaire and Statement of Case, written comments, information or other documents sent by or to the Council in connection with the appeals can be inspected online at:

<https://www.cherwell.gov.uk/info/115/planning-process/857/search-and-comment-on-planning-applications>

