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# Statement of Case

Axis J9 Business Park,  
Bicester

Albion Land

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SEPTEMBER 2022

Q210286

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# 1 Introduction

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## The Appeal Proposals

- 1.1 This Appeal relates to approximately 6.2ha of land to the west of Howes Lane, Bicester (“the Site”).
- 1.2 Albion Land (“the Appellant”) is seeking planning permission for an employment scheme at the Site that will form the third and final phase of the Axis J9 Business Park, which is part of a proposed “Eco Town” to the north-west of Bicester.
- 1.3 The Appeal follows Cherwell District Council (“CDC”)’s refusal of planning application reference 21/03177/F (“the Application”).
- 1.4 The Application originally sought full planning permission for 16,901 sqm (GIA) of employment floorspace (Use Classes E(g)(iii) and/or B2 and/or B8, with ancillary E(g)(i)) but was amended post-submission following receipt of advice from Officers at CDC (**Appendix 1**).
- 1.5 When determined, the Application proposed 14,189 sqm (GIA) and had the below description of development. Through this appeal, planning permission is therefore sought for:  
  
*Full planning application for employment development (Use Classes E(g)(iii), B2 and/or B8) comprising 5 units within 3 buildings and associated parking and servicing, landscaping and associated works*
- 1.6 The development will be delivered by the Appellant, who delivered earlier phases of the Axis J9 Business Park and various other successful employment schemes elsewhere in the town.
- 1.7 An occupier has already been confirmed for the largest of the employment units proposed (Unit 4) and they remain committed to the Site despite the decision of CDC’s Planning Committee to refuse planning permission, stating there are no available alternatives which are suitable to meet the needs of their business (**Appendix 2**).
- 1.8 There is strong local market demand for the remainder of the development (as evidenced by the Market Advice from CBRE included at **Appendix 3**) and the scheme is deliverable in the short term.

## Planning Decision

- 1.9 The Application was considered by CDC’s Planning Committee at meetings on 16 June 2022 and 14 July 2022.
- 1.10 It was recommended for approval by Officers at the meeting on 16 June 2022, but the Planning Committee resolved to refuse planning permission, contrary to the professional advice of CDC Officers. A copy of the Officers’ Committee Report (“OCR”) is included at **Appendix 4**.

1.11 The purpose of the Application being reported to Planning Committee again on 14 July 2022 was to confirm the reasons for refusal. Planning permission was refused on 15 July 2022.

1.12 Two reasons for refusal are given as follows:

1. *The proposed development introduces unanticipated commercial uses onto a site identified for housing via the Masterplan included within the North West Bicester Supplementary Planning Document 2016. The development proposed would be incompatible with the existing residential uses to the east of Howes Lane and would have a detrimental impact upon the residential amenity of those nearby residential occupiers. The proposal is therefore not considered to be sustainable development and is contrary to Policies SLE1 (in particular paragraph 6, bullet point 7 (with respect to land uses and residents only), ESD15 (in particular bullet points 3 and 11 (but not related to privacy, natural lighting, ventilation or indoor and outdoor space)) and Policy Bicester 1 (paragraph 2 and bullet points 1 and 25 under the section titled 'Key site specific design and place shaping principles') of the Cherwell Local Plan Part 1 2011-2031, Policy C31 of the Cherwell Local Plan 1996, the North West Bicester Supplementary Planning Document 2016 and the National Planning Policy Framework.*
2. *In the absence of a satisfactory completed S106 or other planning obligation, the Local Planning Authority is not convinced that the necessary infrastructure required both on and off site as a result of this development to mitigate the impact of the development will be provided. This would be contrary to Policies INF1, SLE4, and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011- 2031, the North West Bicester Supplementary Planning Document 2016, the Council's Developer Contributions Supplementary Planning Document (February 2018) and the advice within the National Planning Policy Framework.*

## **Summary of Appellant's Case**

1.13 In light of the reasons for refusal the Appellant will:

- Demonstrate that the proposed employment use is acceptable in principle
- Show that the proposals will have no unacceptable impact on the residential amenity of existing homes to the east of Howes Lane
- Enter into a Section 106 Agreement to ensure that the infrastructure required to mitigate the impacts of the development will be secured.

## 2 Background

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### Site Location and Description

- 2.1 It is intended that the Statement of Common Ground (“SOCG”) will fully explain the Site’s location and description.
- 2.2 In summary, the Site sits immediately to the north of the (fully operational) Axis J9 Business Park and adjacent to the existing built edge to the north-west of Bicester. The business park is occupied by a range of businesses (Use Classes B1, B2 and B8).
- 2.3 It is within the development limits of the town and forms part of a 390ha allocation for a new zero carbon, mixed-use development (“the Eco Town”). The delivery of the Eco Town is understood by the Appellant to be a high corporate priority for CDC.
- 2.4 A range of new infrastructure is intended to be delivered as part of the Eco Town, including local services/facilities and public transport. Some of this infrastructure (including a strategic link road and a strategic bus route) sits within the Site itself. As with the earlier phases of the business park, the proposals make provision for the delivery (in part) of this infrastructure by making land available for its provision and, in the case of the strategic link road, delivering a section of the road itself in accordance with the planning permission for it (previously secured by others).
- 2.5 The last use of the Site was for agricultural purposes, but it is no longer farmed.

### Relevant Planning History

#### The Site

- 2.6 The SOCG will fully explain the relevant planning history of the Site, but a summary is provided at **Table 2.1**.
- 2.7 The Axis J9 Business Park has been delivered in accordance with the latest outline planning permission for the Site, which also includes provision for residential development of upto 150 dwellings (reserved matters are required to be submitted for approval for this part of the development by December 2022).

Table 2.1 - Appeal Site Planning History

Application Reference	Summary of Description of Development	Status
14/01675/OUT	Outline application for B8 and B2 with ancillary B1 employment development and 4.5ha of residential land	Refused by CDC, allowed on appeal

Application Reference	Summary of Description of Development	Status
17/00455/HYBRID	Hybrid (part full and part outline) application for: (full) construction of a temporary and permanent vehicular and pedestrian accesses and (outline) residential development	Permitted
19/00347/OUT	Minor material amendment to planning permission 14/01675/OUT	Permitted
20/03199/OUT	Minor material amendment to permission 19/00347/OUT to enable additional B8 use	Permitted

### Wider Eco Town

2.8 Numerous planning applications for other land within the Eco Town have been submitted to CDC. A schedule of the relevant applications is included at **Table 2.2**.

Table 2.2 – Relevant Eco-Town Planning History

Application Reference	Site Location	Summary of Description of Development	Status
14/01384/OUT	Bicester Eco Town Exemplar Site, Banbury Road	Outline application for up to 2,600 homes, commercial floorspace, social and community facilities and energy centre	Withdrawn (February 2022)
14/01641/OUT	Land adjacent to Bicester Road and south-west of Avonbury Business Park	Outline application for up to 900 homes, commercial floorspace, leisure facilities, social and community facilities and energy centre	Pending (last activity on public planning file dated late 2015)
14/02121/OUT	Land north of Middleton Stoney Road	Outline application for up to 1,700 new homes, retirement village, commercial floorspace, social and community facilities and energy centre	Approved (January 2020), reserved matters submitted (ref 21/02339/REM)
18/00484/OUT	Land adjoining Home Farm	Outline application for up to 75 homes	Withdrawn (May 2021)
21/01630/OUT	Land adjoining Home Farm	Outline application for up to 530 homes	Pending (target decision date February 2022,

Application Reference	Site Location	Summary of Description of Development	Status
			various outstanding technical objections)
21/02339/REM	Land north of Middleton Stoney Road	Reserved matters to 14/02121/OUT	Pending (target decision date January 2022, various outstanding objections)
21/04275/OUT	Land adjacent Lords Lane and south east of Hawkwell Farm	Outline application for up to 3,100 homes, residential and care accommodation, mixed use local centre and commercial floorspace, social and community facilities	Pending (target decision date September 2022, various outstanding technical objections)

2.9 The majority of planning applications submitted for the Eco Town remain pending and/or have not been progressed. Later in this Statement, the Appellant considers the reasons why these proposals have not been determined (despite applications being submitted several years ago) and/or delivered. It is hoped that these reasons can be agreed with CDC through the SOCG. These reasons are relevant to the Appeal since it is part of the Appellant's case that the planning consent for residential development at the Site is not deliverable.

## 3 Decision Making Context

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- 3.1 The Development Plan (“DP”) for the area comprises the Cherwell Local Plan 2011-2031, which was adopted in July 2015 (“CLP 2015”) and the saved policies of the Cherwell Local Plan 1996 (“CLP 1996”).

### Cherwell Local Plan 2011-2031

- 3.2 The reasons for refusal reference three policies of CLP 2015, namely Policy Bicester 1, Policy SLE1 and Policy ESD15. Copies of these policies are included at **Appendix 5** to assist the Inspector and a summary is included below.

#### Policy Bicester 1: North - West Bicester Eco Town

- 3.3 CLP 2015 Policy Bicester 1 allocates 390ha of land to the north-west of the town for a new zero carbon mixed use development.
- 3.4 North-West Bicester was identified in Annex A of the Eco Towns PPS (2009) as one of four potential locations for the development of an Eco Town. It is central to CDC’s district-wide strategy for the delivery of both housing and employment growth over the plan period.
- 3.5 The policy seeks to deliver development in accordance with a comprehensive masterplan for the whole of the Eco Town area. This masterplan forms part of the North-West Bicester Supplementary Planning Document (“NWB SPD”), which was adopted by CDC for development management purposes in February 2016.
- 3.6 Amongst other matters, Policy Bicester 1 sets out CDC’s expectations that the masterplan and subsequent applications for planning permission will deliver the following development:
- A minimum of 10 ha for employment uses (Quod’s emphasis added)
  - At least 3,000 jobs (approximately 1,000 jobs on B use class land on the site)
  - 40% of the total gross site area as green space
  - Appropriate crossings of the railway line and changes/improvements to Howes Lane and Lords Lane
  - Utilities and infrastructure to allow zero carbon development and water neutrality on site.

#### Policy SLE1: Employment Development

- 3.7 Policy SLE1 is supportive of new employment development, subject to a range of criteria being met. It explains that careful consideration should be given to locating employment development and housing in close proximity and that unacceptable adverse effects on the amenity of residential properties will not be permitted.

#### Policy ESD 15: The Character of the Built and Historic Environment

- 3.8 Policy ESD15 seeks to protect the district’s built, nature and cultural context and requires all development proposals to comprise high quality development.



## Other Policies

- 3.9 Several other planning policies from CLP 2015 were also considered within the OCR but not referenced in the reasons for refusal. Through the SOCG the Appellant will seek CDC's confirmation that the proposals fully accord with all relevant policies that were not referenced in the reasons for refusal.

## Cherwell Local Plan 1996

- 3.10 The only policy from the CLP 1996 referenced in the reasons for refusal was Policy C31. A copy of this policy is included at **Appendix 6** to assist the Inspector.
- 3.11 Policy C31 states that any development which is not compatible with the residential character of (existing and proposed) residential areas, as well as any development that would cause an unacceptable level of nuisance or visual intrusion will not normally be permitted.
- 3.12 The stated purpose of the policy (as set out in the supporting text at Paragraph 9.70) is to prevent the introduction of non-residential uses in residential areas.

## North-West Bicester Supplementary Planning Document

- 3.13 Policy Bicester 1 of the CLP 2015 seeks to deliver development in accordance with a comprehensive masterplan for the whole Eco Town area.
- 3.14 A masterplan and supporting visions and objectives document were produced for the Eco Town by A2Dominion. Following local consultation by A2 Dominion during 2013 these were submitted to CDC in March 2014 and have formed the basis of the North-West Bicester Supplementary Planning Document ("NWB SPD").
- 3.15 The NWB SPD, including the masterplan framework, was adopted by CDC in February 2016 following consultation over 2014 and 2015.
- 3.16 The NWB SPD is intended to "*guide*" the preparation of planning applications and the comprehensive development of the Eco Town.
- 3.17 It "*provides further detail to the policy and a means of implementing the strategic allocation*" (Paragraph 1.1) and sets out (Paragraph 1.2) that when fully delivered the Eco Town will provide (inter alia):
- Employment opportunities providing at least 4,600 new jobs (Quod's emphasis)
  - 40% green space, half of which will be publicly accessible
  - Pedestrian and cycle routes
  - New links under the railway line into the existing town
  - Integration with existing communities.
- 3.18 Chapter 4 of the NWB SPD sets out "*key development principles and requirements for the site*" to guide the preparation of planning applications.

- 3.19 At Figure 10 it includes a Masterplan Framework (a copy of which is included at **Appendix 7**). The scale of the Masterplan Framework is such that it cannot be relied upon as being precise, but the Site is generally identified as accommodating residential development or open space, and lies directly adjacent to an area identified as being intended for employment uses / a business park.
- 3.20 *Development Principle 5 – Employment and Development Requirement 5 – Employment* specifically refer to proposals for employment development.
- 3.21 Development Principle 5 sets out that “*larger scale commercial development*” is proposed at the business park to provide “*employment space for target sectors including high value logistics, manufacturing (including performance engineering) and low carbon companies*” (Paragraph 4.7). There is also a general requirement for buildings at the business park to be in a high-quality landscape setting.
- 3.22 The NWB SPD was informed by the North-West Bicester Masterplan Economic Strategy (March 2014) which sets out the scale, type and location of jobs related to North-West Bicester, together with an action plan.
- 3.23 Through that document a “*business park*” is proposed on land at Middleton Stoney Road and Howes Lane. The North-West Bicester Masterplan Economic Strategy was complemented by the North-West Bicester Economic Baseline (also dated March 2014).
- 3.24 Paragraph 19 of the Economic Strategy confirms that a flexible approach to accommodating jobs growth would need to be adopted if actual achieved on-site employment delivery did not provide the 4,600 jobs expected to be located at the Eco Town.
- 3.25 Chapter 5 of the Economic Strategy considers the type, location and scale of jobs related to the Eco Town. In relation to employment development at the business park it suggests this would include a mix of office, manufacturing and logistics uses.
- 3.26 Paragraph 5.35 of the Economic Strategy recognises that “*imposing too onerous constraints risks preventing any commercial development from proceeding. Ultimately, the market will determine the detailed mix of activities and the resulting employment densities.*”

## 4 Appellant's Case – Reason for Refusal 1

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- 4.1 As detailed earlier in this Statement of Case, CDC's Planning Committee resolved to refuse planning permission for the proposed employment development, contrary to the advice of its professional officers, at its meeting on 16 June 2022.
- 4.2 The reasons for refusal were subsequently confirmed by the Planning Committee at its meeting on 14 July 2022.
- 4.3 The decision notice sets out two reasons for refusal, which are set out in full at **Section 1** of this Statement.
- 4.4 The Appellant's case in response to the first of these reasons is set out below. This case can be further explained through oral evidence and the Inspector's questioning at the Hearing as necessary.

### Reason for Refusal 1

- 4.5 There are two parts to the first reason for refusal.
- 4.6 The first part relates to the principle of the proposed development, referring to the introduction of commercial uses on a site which is identified for housing in the NWB SPD.
- 4.7 The second part relates to the impacts of these proposed uses on nearby homes, alleging that the employment uses are incompatible with residential uses and would give rise to a detrimental impact upon the residential amenity of occupiers.
- 4.8 These two parts are considered in turn in this Section.

#### (i) Principle of Employment Development

- 4.9 The Inspector's attention is drawn to the clear support for the principle of development from CDC's Economic Development Officer (see Paragraph 7.11 of the OCR (**Appendix 4**)) and the Planning Officer's conclusions (see Paragraph 9.30-9.35 of the OCR) on the same.
- 4.10 The Planning Officer had explicitly considered that the proposal is for employment uses on an area identified in the NWB SPD for either housing or open space, but they had concluded the principle of development to be acceptable taking into account all relevant material considerations.
- 4.11 The Planning Committee's decision to refuse planning consent was contrary to the views of their professional officers.
- 4.12 With regard to the general principle of development, the conflict alleged with Policy Bicester 1 is limited and is focussed on the adherence of the proposals (in terms of their location and extent within the Eco Town) to the Masterplan included in the NWB SPD.

4.13 The conflict now alleged by CDC must be weighed in the planning balance with the national objective of building *“a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity”* (NPPF Paragraph 8), as well as the overarching objectives of the DP and in light of the NWB SPD not being part of the DP, limiting the weight to be afforded to it in decision-making.

#### Objectives of the Development Plan

- 4.14 The proposals accord with the strategic objectives of the DP, which states (Paragraph xi) that *“Securing the economic future of the District is the main priority of this Plan...”*.
- 4.15 The DP also seeks to provide a strategy which enables CDC to continually develop the *“local economy to ensure it remains internationally competitive, to enable the creation of jobs and prosperity now and for the future and to create a more diverse economy”* (Paragraph A15).
- 4.16 The business park at the Eco Town is a strategic location employment site by the DP (Table 1) and Policy Bicester 1 seeks to deliver at least 10ha of employment development at North-West Bicester (Quod’s emphasis added).
- 4.17 The first phases of the business park have not met this target (having a net site area of 9.6ha) and there is therefore a need to allow some further employment uses in the vicinity of the business park if this policy objective is to be fully satisfied.
- 4.18 Notwithstanding, the 10ha figure in Policy Bicester 1 is expressed as a minimum and the policy does not limit the area of the business park or specify a maximum quantum of employment floorspace.
- 4.19 The proposed development comprises 14,189 sqm (GIA) and would represent a modest extension to the business park (6.2ha) in the context of the wider Eco Town (390ha).
- 4.20 The location of the development would demonstrably accord with the criteria in Policy SLE1, including locating employment uses in a sustainable location, in proximity to housing and the intended labour supply (as acknowledged by CDC in the OCR, Paragraph 9.21-9.22) and the aim of ESD15 to support the efficient use of land and infrastructure through delivery of appropriate land uses and development density.
- 4.21 Further, the outline planning permission for the business park allowed up to 53,000 sqm (GIA) of employment floorspace but, at detailed design stage, it was only possible to bring forward 44,810 sqm of development (21,584 sqm on Phase 1 and 23,226 sqm on Phase 2) because of site constraints, policy requirements and market requirements – some 8,190 sqm less than previously envisaged in this part of the Eco-Town, with consequential impacts on job creation.
- 4.22 The inability of experienced commercial developers such as the Appellant to bring forward development at the densities envisaged at the time that the DP (and supporting guidance) was prepared/adopted is a material consideration that weighs in favour of proposals for a modest extension to the business park beyond the minimum 10ha area in the DP. This indicates that the DP underestimated the scale of the business park / quantum of development that would be required to deliver the necessary number of jobs at the Eco Town, which the proposals seek to remedy.

4.23 The ability of the development to deliver jobs growth (in the order of 214-416 jobs, calculated with reference to the Homes and Communities Agency's *Employment Density Guide* (2015) depending on whether the occupiers are predominantly B2 or B8 businesses) must be considered positively in this context, as well as in light of the CLP 2015's objective of creating approximately 1,000 jobs on B class land at the Eco Town and 3,000 jobs over the Plan Period. No other employment generating uses have been delivered at the Eco Town to date.

#### The NWB SPD

4.24 The NWB SPD is not part of the DP, and the Masterplan Framework it includes (and with which there is minor difference in relation to the extent of the business park as proposed by the Appellant) is just one part of it.

4.25 The NWB SPD is intended to "*guide*" development of the Eco Town and provide further detail to the policy and a means of implementing the strategic allocation, but (as recognised at Paragraphs 1.7 – 1.10 of the SPD, for example) its weight is limited to being a material consideration, and it must be read alongside other policies and guidance.

4.26 Several other factors indicate that the weight that should be afforded to the NWB SPD in decision making is diminished furtherstill:

- (i) It was prepared based on evidence dated 2014. The economy has changed significantly over the last 8 years, with particularly rapid change since 2020 brought about by the COVID-19 pandemic. It follows that the economic needs of the Eco-Town and/or the wider local area will not be met if planning decisions fail to respond to clear market signals (considered further below).
- (ii) Development of the Eco Town has not come forward at the rate, nor in the way, that was anticipated by either the DP or NWB SPD.

4.27 Taken together these factors mean that, in advance of a Local Plan Review, to have any realistic prospect of achieving the strategic objectives of the DP and the Eco Town there is a pressing need to adopt a flexible and pragmatic approach to the application of relevant policies and, in particular, the guidance which supports them.

4.28 This would accord with the thrust of national policy, which seeks to achieve Local Plans which are "*flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices... and enable a rapid response to changes in economic circumstances*" (NPPF Paragraph 82d) and directs that "*decisions need to reflect changes in the demand for land [and where there is no reasonable prospect of development proposals coming forward for the use allocated]... applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area*" (NPPF Paragraph 122).

4.29 Notwithstanding the limited weight that should be afforded to the Masterplan, the Appellant acknowledges that the NWB SPD identifies the Site for either open space or residential development, and that the proposal for employment development would not accord with the Masterplan in this regard.

- 4.30 The alleged harm that would arise because of 6.2 ha of additional land being developed for employment uses needs to be weighed in the planning balance with the demonstrable benefits that would accrue.
- 4.31 The job creation that would arise from the development (in its operational stage) is considered above. The Planning Report submitted with the application identifies a range of other planning benefits that also weigh further in favour of the proposals.
- 4.32 Of particular note, since the NPPF directs (Paragraph 81) that *“significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”* is that the proposed development will directly respond to known market requirements and simultaneously will also meet the needs of a named, well established local business. This is evidenced by the submissions from Brita and Market Advice from CBRE (**Appendix 2 and 3** respectively).
- 4.33 CDC’s reason for refusal does not allege that any harm would arise as a consequence of the Site no longer being available to deliver new homes.
- 4.34 Notwithstanding, it is the Appellant’s case that there is no prospect of housing being delivered at the Site in the foreseeable future. The Inspector is therefore not being asked to determine whether the proposed employment development is an acceptable alternative to residential development at the Site, they are in fact being asked whether employment development is appropriate as opposed to no development taking place at all.
- 4.35 There are two principal reasons for this:
- (i) That residential development at the Site is unviable (as demonstrated by the Residential Viability Report included at **Appendix 8**).
  - (ii) There is a Grampian condition included on the outline planning permission which prevents the occupation of any residential development until a strategic link road is delivered (by others) and open to vehicular traffic (Condition 13 of Planning Permission ref 20/03199/OUT<sup>1</sup>). The OCR acknowledges the delivery of this strategic infrastructure is in doubt (Paragraph 9.42).
- 4.36 If planning permission for an alternative, deliverable use of the Site is not granted, no development will take place at the Site and it will not make any contribution at all towards the delivery of the wider Eco Town or the DP’s objectives. The potential for this situation arising was acknowledged by CDC in the OCR (Paragraph 9.19).
- 4.37 CDC, in the same part of the OCR (i.e. Paragraphs 9.18-9.20), went on to confirm it has no concerns in relation to the “loss” of residential development land at the Site since the very limited quantum residential development that was expected to be delivered (i.e. up to 150

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<sup>1</sup> *“No dwellings and no more than 18,020sqm of Class E(g)(iii)/B2 floor space may be occupied until the development work to realign Howes Lane and Lords Lane approved under application 14/01968/F (or any other such planning permission which may be granted for the Strategic Link Road) has been completed and the road is open to vehicular traffic.”*

homes) could readily be accommodated elsewhere in the Eco Town by making efficient use of land (Paragraph 9.34).

- 4.38 The conclusion that the non-residential use of the Site is acceptable is further supported by the fact that the NWB SPD indicated that residential development at the Site was not essential to achieve 6,000 homes across the Eco Town as a whole (as confirmed by the open space or housing designation shown on the Masterplan).

#### Principle of Development – Summary of Case

- 4.39 The proposals represent a modest, logical extension to the business park which is explicitly permitted by Policy Bicester 1.
- 4.40 If planning permission is not granted, no development will take place at the Site in the foreseeable future because, as evidenced by the Appellant through this Appeal, residential development is not deliverable at the Site.
- 4.41 The proposals will, however, be delivered quickly and are therefore a realistic proposition for meeting evidenced market needs and achieving the DP’s jobs creation target.
- 4.42 The development is genuinely sustainable and accords with all the key economic/employment development objectives of the DP and national policy.

#### (ii) Impact on Residential Amenity

- 4.43 The OCR concluded that *“the proposal would not be harmful to landscape and visual amenity”* and *“could be accommodated without undue harm to the residential amenity of nearby properties”* (see Paragraphs 9.87-9.90 and 10.6). CDC’s reason for refusal is contrary to the advice of its professional officers in this regard.
- 4.44 The reason for refusal itself confirms that the alleged conflict with residential amenity excludes the matters of privacy, natural lighting, ventilation, and indoor and outdoor space). Elsewhere it refers to policy criteria which are focussed on “visual amenity”. The Appellant’s case is therefore focussed on this component of residential amenity.
- 4.45 It is noted that the conclusions of the technical assessments (including, but not limited to, noise and air quality) which supported the Application and the views of CDC’s professional Officers on these matters have not been disputed by CDC via the reasons for refusal and, as such, the Appellant has not sought to address these here. However, the Appellant reserves the right to respond to any new material which may introduced in this regard by CDC through their Statement of Case.
- 4.46 Turning to the matter of visual amenity, it is well established that private individuals do not have a “right to a view”<sup>2</sup> and, even if a new development significantly changes a view from a private property, this is not normally considered to be a ground on which planning approval can be refused.

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<sup>2</sup> Established in 1610 by Aldred’s Case

- 4.47 The exception to this is when a visual impact on a private property is so severe that it may affect the residential amenity of a dwelling to such an extent that living conditions for occupiers of that dwelling would be unacceptable<sup>3</sup>.
- 4.48 There is limited guidance on how to reach this conclusion objectively, but Technical Guidance Note 2/19 *Residential Visual Amenity Assessment* published by the Landscape Institute identifies current best practice in undertaking this objective test.
- 4.49 Technical Guidance Note 2/10 is aimed at landscape professionals and provides a framework for assessing whether the nature or magnitude of a visual effect is so great that it could affect the “living conditions” of a property.
- 4.50 Factors that would contribute to a conclusion that the “residential visual amenity threshold” has been exceeded include whether a development is “overwhelming in views in all directions”, “inescapably dominant” or “unpleasantly encroaching”.
- 4.51 The Landscape and Visual Impact Assessment (“LVIA”) submitted with the Application and subsequently updated in support of this Appeal, considered the wider landscape and visual impacts of the development, as well as potential impacts on several residential receptors. It demonstrated that none of these statements would apply in this case, for any residential properties.
- 4.52 The LVIA submitted with the Application categorised the visual impacts of the development as “moderate major adverse” to nearby residential properties. This conclusion remains true for the Appeal proposals.
- 4.53 Importantly, this would have also been the case for any residential development at the Site.
- 4.54 Such an impact has, therefore, already been judged to be acceptable by both a Planning Inspector (in allowing the appeal in respect of Application ref 14/01675/OUT) and CDC, in approving numerous applications at the Site (see **Table 2.1**)
- 4.55 The relationship (separation) between the proposed development and existing residential properties to the east of Howes Lane represents a material betterment to the relationship which already exists between earlier phases of the business park and existing development to the east of Howes Lane (and was judged to be acceptable by both CDC and an Inspector appointed by the Secretary of State).
- 4.56 An annotated plan showing the existing separation distances between Phase 1 of the business park and the highway boundary to the rear of properties to the east of Howes Lane (65.74m at its closest, 113.89 at its furthest) and the separation that would be achieved by the proposals (115.63m at its closest and 137.10m at its furthest) is included at **Appendix 9** to assist the Inspector’s consideration of this issue. It is also noted that the buildings in Phase 1 are generally of greater scale and mass than those proposed in this case.

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<sup>3</sup> Burnthouse Farm Windfarm, SoS Decision (APP/D0515/A/10/2123739) 6th July 2011



- 4.57 At its closest point, the development would be more than 115.63m from the nearest residential property to the east of Howes Lane.
- 4.58 The Comparative Sections (**Appendix 10**) and Illustrative Massing Sketches (**Appendix 11**) also enable deeper understanding of the relationship between the proposed employment development and the existing residential properties in the vicinity, further illustrating the intervening landscaping, infrastructure and future development plots that lay between the proposed and existing development.
- 4.59 The visual amenity matter raised by CDC's reason for refusal has been specifically considered by Mr Guy Denton BA (Hons), DipLA (Hons), CMLI, AoU and his Written Statement is provided at **Appendix 12** to assist the Inspector. This further explains and reinforces the above conclusions.
- 4.60 It is also relevant that the NWB SPD (together with the residential planning permission for the Site) accept the location of residential development in much closer proximity to the business park than proposed via this proposal; with the business park proposed adjacent to new residential development parcels within the Eco Town to the north and west (see the Masterplan Framework at **Appendix 7**). CDC have therefore already accepted that the two uses can be satisfactorily delivered in proximity to one another, and acceptably co-exist.
- 4.61 Design quality has the potential to contribute towards the visual amenity of an area and therefore influence residential amenity. CDC confirmed in the OCR that the design approach would help *"create a cohesive scheme"* (Paragraph 9.77) and would be an *"appropriate addition in the context of this scheme"* (Paragraph 9.86).
- 4.62 The Appellant submits that the design of the employment units will deliver a high-quality development which accords with the design quality aspirations for the Eco Town and the requirements of national policies. This conclusion is supported by the Design and Access Statement (which has also been updated in support of the Appeal to assist the inspector, copy included at **Appendix 13**). No concerns about the proposed design of the development have been raised by CDC.

#### Impact on Residential Amenity – Summary of Case

- 4.63 CDC's reason for refusal focuses on the impact of the development on the visual amenity of existing residential properties.
- 4.64 The proposals are some 115m from the nearest existing residential property at their closest point. There would be intervening infrastructure and landscaping, which would screen the proposals. There would be no overshadowing or overbearing sense of enclosure as a result of the development and the existing properties would not suffer unacceptable living conditions as a consequence of the proposals.
- 4.65 CDC and an independent Inspector accepted that similar development was acceptable within 66m of existing homes when granting planning consent for Phase 1 of the business park.
- 4.66 It has been shown that any development pursuant to the extant outline planning permission would have a similar, if not greater, impact on the visual amenity of the area.

## 5 Appellant's Case - Reason for Refusal 2

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- 5.1 CDC's second reason for refusal is borne out of a Section 106 Agreement not being completed prior to determination of the Application.
- 5.2 It sets out that CDC "*is not convinced*" that the necessary infrastructure (both on and off site) required as a result of the development will be provided.
- 5.3 The Appellant had engaged with CDC in relation to the Heads of Terms ("HOT") of the required Section 106 Agreement prior to the Application being considered by the Planning Committee on 16 June 2022.
- 5.4 The Appellant had confirmed their in-principle acceptance of the HOT requested by CDC prior to the Planning Committee considering the Application (please see copy correspondence included at **Appendix 14**).
- 5.5 A draft Section 106 Agreement which included all the requested HOT had been provided to Officers in advance of the Planning Committee on 16 June 2022 for their consideration (**Appendix 15**).
- 5.6 This draft Agreement was based on the form of the Section 106 Agreement which was completed in relation to the earlier planning permissions for the Axis J9 Business Park and was therefore considered to be an advanced draft, capable of being completed quickly if the Planning Committee resolved to grant planning permission.
- 5.7 Following the Planning Committee's resolution and at the request of CDC, the Appellant provided further confirmation of their intention to complete the Section 106 Agreement (subject to review by CDC officers and their confirmation it was acceptable) in connection with this Appeal. This confirmation was given in writing, prior to the Application being reported to the Planning Committee on 14 July 2022 and the second reason for refusal being added (**Appendix 16**).
- 5.8 The Appellant intends to engage with CDC in advance of the Hearing, with the objective of completing the Section 106 Agreement prior to the Appeal being heard. The Appellant has already completed an undertaking to cover both CDC's and the County Council's costs in relation to the agreement with this objective in mind. As a consequence, it is assumed by the Appellant that CDC will not seek to defend this reason for refusal at the Hearing but the Appellant reserves the right to make further submissions if CDC choose to do so.

## 6 Conclusions

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- 6.1 Albion Land is seeking planning permission for an employment scheme at the Site that will form a modest, logical extension to the Axis J9 Business Park, which is part of a proposed “Eco Town” to the north-west of Bicester.
- 6.2 Albion Land delivered earlier phases of the Axis J9 Business Park and various other successful employment schemes elsewhere in the town. An occupier has already been confirmed for the largest of the employment units and there is strong local market demand for the remainder of the development. The scheme is deliverable.
- 6.3 The Application was considered by CDC’s Planning Committee. It was recommended for approval by Officers at the meeting on 16 June 2022, but the Planning Committee resolved to refuse planning permission, contrary to the professional advice of CDC Officers.
- 6.4 Two reasons for refusal are given; the first relates to the principle of employment development at the Site and the corresponding impact on the residential amenity of existing homes to the east of Howes Lane, the second relates to the need for the Appellant to enter into a Section 106 Agreement prior to planning permission being granted.
- 6.5 In light of the reasons for refusal the Appellant has demonstrated through this Statement that:
  - The proposed employment use is acceptable in principle and is the only form of development which can be delivered on the Site in the foreseeable future
  - The proposed development will address local market needs, enabling the expansion of local businesses and the creation of a substantial number of new jobs
  - The proposals comprise high quality, sustainable development that accords with the zero carbon objectives for the Eco Town
  - The proposals will have no unacceptable impact on the residential amenity of existing homes to the east of Howes Lane
  - They are willing and able to enter into a Section 106 Agreement to ensure that the infrastructure required to mitigate the impacts of the development will be secured.
- 6.6 Taking these matters into account, the Inspector is respectfully requested to allow this appeal and grant planning permission for this sustainable and deliverable employment proposal, that will bring about a wide range of planning benefits for the local community.



Quod

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