

NOTES

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Note: Trees shown at year 15



A	Images updated to reflect design development during the planning application period	SK	23/08/2022
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Land at Middleton Stoney Road & Howes Lane, Bicester.

**Written Statement – Landscape & Visual Issues, 1<sup>st</sup> September 2022**  
**Appendix GD G: Technical Guidance Note 2/19 Residential Visual Amenity**

**Assessment published by the Landscape Institute (2019)**

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For  
Albion Land

# Residential Visual Amenity Assessment (RVAA)

Technical Guidance Note 2/19

15 March 2019

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Foreword

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Glossary

Appendix 1 – Planning Precedent

This Technical Guidance Note has been prepared in support of landscape and other appropriately qualified professionals who are engaged in RVAA. It is not prescriptive but aims to improve standards and it promotes a logical approach which should contribute to well informed decision making.

## Foreword

The third edition of the Guidelines for Landscape and Visual Impact Assessment, GLVIA3, published in 2013, is well established as providing ‘best practice guidance’ when undertaking landscape and visual impact assessment (LVIA). With respect to visual impact the focus of GLVIA3 and LVIA is on public views and public visual amenity.

Residential Visual Amenity Assessment (RVAA) is a stage beyond LVIA and focusses exclusively on private views and private visual amenity. RVAA has become more common particularly when development proposals are the subject of a planning appeal. A RVAA may be used by the decision maker when weighing potential effects on Residential Amenity in the planning balance.

This Technical Guidance Note is prepared in support of landscape and other appropriately qualified professionals who are engaged in RVAA. It is not prescriptive but aims to improve standards. It promotes a logical approach which should contribute to well informed decision making.

I wish to express my thanks to all those who responded to the consultation draft, contributed by offering suggestions and submitted examples of RVAA\*.

Marc van Grieken FLI

\* Examples of RVAAs and their presentation tools may be added to the LI website or included in a revised edition of this note.

# 1. Introduction

## **Context**

- 1.1 This Technical Guidance Note has been prepared to assist landscape professionals when undertaking Residential Visual Amenity Assessments (RVAA). People’s visual amenity is defined in Guidelines for Landscape and Visual Impact Assessment – Third Edition, 2013 (GLVIA3)<sup>1</sup> as:

*“the overall pleasantness of the views they enjoy of their surroundings”*

- 1.2 In this document, Residential Visual Amenity means: ‘the overall quality, experience and nature of views and outlook available to occupants of residential properties, including views from gardens and domestic curtilage’. Residential Visual Amenity is one component of ‘Residential Amenity’.

## **Views and visual amenity in the planning process**

- 1.3 The planning system is designed to act in the public interest when making planning decisions. Nevertheless, effects on private interests are considered by planners in the ‘planning balance’. This includes weighing effects on Residential Amenity.
- 1.4 Residential Amenity comprises a range of visual, aural, olfactory and other sensory components. Development can cause effects on one or more components of Residential Amenity, for example effects of noise, dust, access to daylight, vibration, shadow flicker, outlook and visual amenity. Sometimes this is referred to as ‘living conditions’.
- 1.5 Changes in views and visual amenity are considered in the planning process. In respect of private views and visual amenity, it is widely known that, no one has ‘a right to a view.’ This includes situations where a residential property’s outlook / visual amenity is judged to be ‘significantly’ affected by a proposed development, a matter which has been confirmed in a number of appeal / public inquiry decisions. (see also **Appendix 1 Planning Precedent**).
- 1.6 It is not uncommon for significant adverse effects on views and visual amenity to be experienced by people at their place of residence as a result of introducing a new development into the landscape. In itself this does not necessarily cause particular planning concern. However, there are situations where the effect on the outlook / visual amenity of a residential property is so great that it is not generally considered to be in the public interest to permit such conditions to occur where they did not exist before.
- 1.7 Appeals / public inquiries often consider the visual amenity component of Residential Amenity. Notably there have been many decisions relating to wind energy developments, perhaps not

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<sup>1</sup> Guidelines for Landscape and Visual Impact Assessment, Third edition, Landscape Institute and Institute of Environmental Management and Assessment, 2013

surprising given the height and size of modern wind turbines. A selection of decision extracts is included as background information in **Appendix 1**.

- 1.8 Judgements formed in respect of Residential Visual Amenity should not be confused with the judgement regarding Residential Amenity because the latter is a planning matter. Nor should the judgement therefore be seen as a 'test' with a simple 'pass' or 'fail'.
- 1.9 Landscape professionals should confine their judgement to Residential **Visual** Amenity. The final judgement regarding effect on Residential Amenity (which to greater or lesser extent may be informed by the judgement formed by the landscape professional in respect of Residential **Visual** Amenity) is a planning matter and requires weighing all factors and likely effects (positive as well as negative) in the 'planning balance'. This is a matter for qualified planners and not for landscape professionals.

## **2. Purpose of RVAA**

- 2.1 The purpose of RVAA is to provide an informed, well-reasoned answer to the question: ‘is the effect of the development on Residential Visual Amenity of such nature and / or magnitude that it potentially affects ‘living conditions’ or Residential Amenity’? In this guidance this is referred to as the Residential Visual Amenity Threshold.
- 2.2 The Residential Visual Amenity Threshold remains a constant irrespective of the type and nature of the development being assessed in the RVAA. However, the factors which might contribute to the threshold being reached, or the way in which these are expressed, may be different for different types of development (for example, one might use terms such as ‘overwhelming/overbearing’ for tall structures, or ‘overly intrusive’ for a development overlooking a garden or principal room). Determining whether the threshold has been reached requires informed professional judgement. It is the process by which informed professional judgement is engaged to reach a conclusion regarding the Residential Visual Amenity Threshold that is the subject of this Technical Guidance Note. It is important that assessors communicate their conclusions in a measured, rational manner. In keeping with recommendations in GLVIA3 this should be done using succinct narrative as opposed to a numerical tabular assessment format. Tables summarising narrative can, however, be very helpful.
- 2.3 It should be noted that RVAA does not consider, or provide information on, the other components of Residential Amenity referred to above such as noise and air quality. Decision makers, practitioners and others should consider RVAA alongside other relevant documents relating to Residential Amenity that may be provided in support of an application.

### ***RVAA and EIA***

- 2.4 A LVIA prepared in accordance with GLVIA3 provides an appropriate starting point for a RVAA. LVIA usually forms part of Environmental Impact Assessment (EIA).
- 2.5 LVIA findings of significant (adverse) effects on outlook and /or on visual amenity at a residential property do not automatically imply the need for a RVAA. However, for properties in (relatively) close proximity to a development proposal, and which experience a high magnitude of visual change, a RVAA may be appropriate, and may be required by the determining / competent authority. The scope of a RVAA is normally agreed with the determining / competent authority.

### 3. Undertaking a RVAA

#### *Approach*

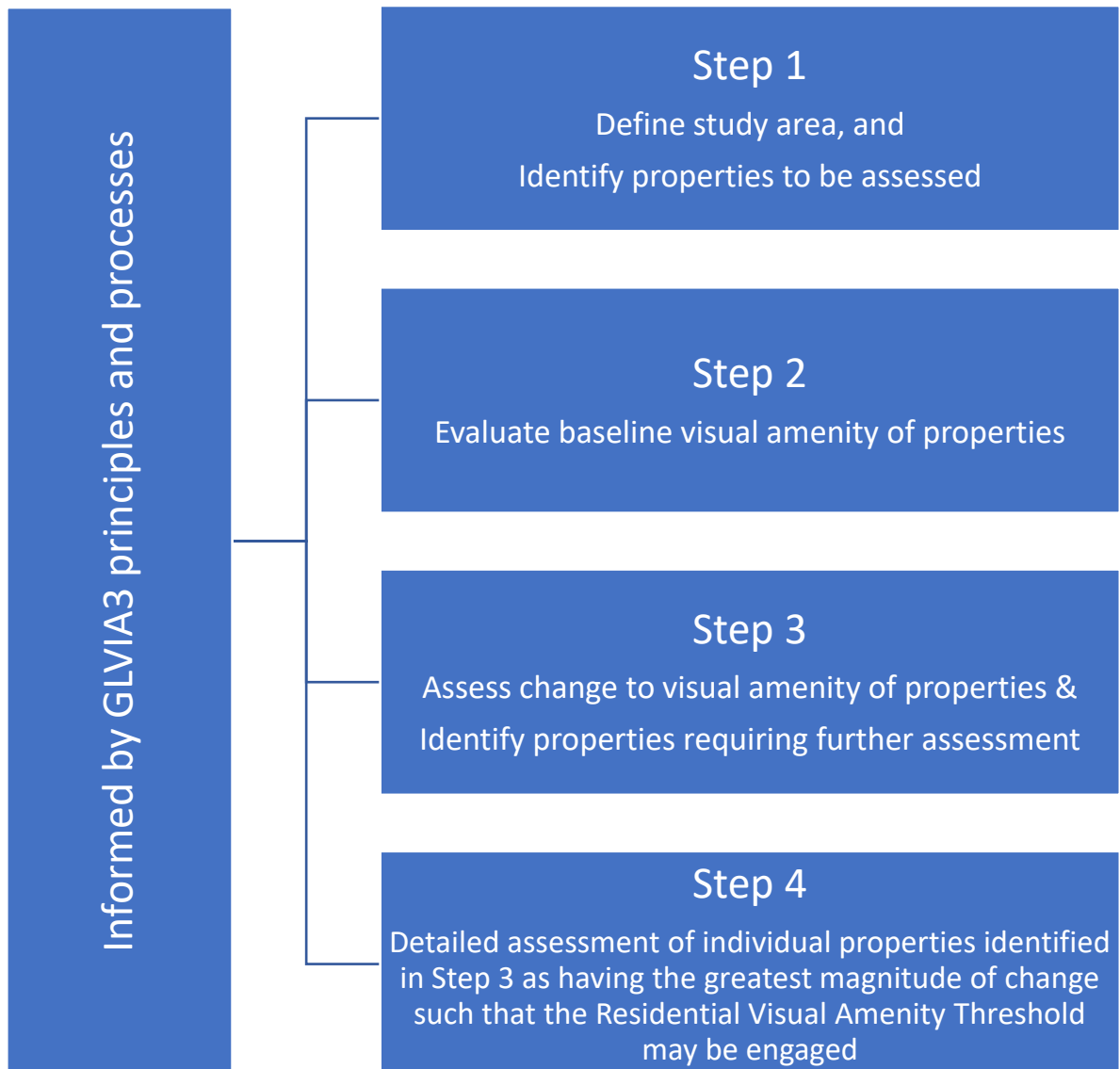
- 3.1 In terms of general approach RVAA should provide a transparent, objective assessment, grounded in GLVIA3 principles and processes, evaluating and assessing the likely change to the visual amenity of a dwelling resulting from a development. RVAA requires assessors to draw a conclusion whether the effect of the development on visual amenity and / or views from the property reaches the Residential Visual Amenity Threshold. Forming such a judgement requires experience in addition to thorough and logical evaluation and reasoning. Experience may be gained, for example, through peer review of the assessment by another landscape architect, or by visiting completed developments and checking if the changes in views and visual amenity were as predicted. Another form of reviewing one's judgement may be through analysing the information and reasoning used by planning Inspectors (England, Wales and Northern Ireland) and Reporters (Scotland) in reaching their findings and conclusions when they ascertain if the Residential Visual Amenity Threshold has been reached. However, assessors should not stray into the realms of planning balance.

#### *Process*

- 3.2 This guidance recommends that a full RVAA comprises four 'steps' and in situations where all four are engaged this will typically involve some iteration of the third and fourth steps. The first three steps fall broadly within the normal scope of LVIA consisting of an assessment of the magnitude and significance of visual effect (in the EIA context) and change to visual amenity likely to be experienced by occupants at those individual residential properties which were identified while scoping the RVAA.
- 3.3 The fourth and final step of RVAA requires a further assessment of change to visual amenity examining whether the Residential Visual Amenity Threshold is likely to be, or has been, reached. Whether or not this final step is engaged depends on the circumstances specific to the case. It will generally be clarified either during pre-application consultations relating to the accompanying LVIA, or subsequent to it during the RVAA. In any event RVAA should be considered supplementary to LVIA following on from, and informed by, the latter's findings and conclusions.
- 3.4 Consultation with the determining / competent authority is recommended to ensure that the scope of a RVAA accompanying an application is agreed in advance. In practice, a RVAA is generally only justified when the effect on Residential Visual Amenity could reach the Residential Visual Amenity Threshold.
- 3.5 The RVAA process is summarised below in **Figure 1 RVAA Process** and described in more detail in the following Methodology section.



**Figure 1 RVAA Process**



## ***The relationship between GLVIA3 and this RVAA guidance***

- 3.6 The RVAA approach and methodology set out in this document accords with GLVIA3 principles and processes. Paragraph 6.1 (page 98) of GLVIA3 states:

*“An assessment of visual effects deals with the effects of change on views available to people and their visual amenity. The concern here is with assessing how the surroundings of individuals or groups of people may be specifically affected by changes in the content and character of views as a result of the change or loss of existing elements of the landscape and/or introduction of new elements.”*

- 3.7 However, it should be stressed that, RVAA is distinct from LVIA as noted in GLVIA3 at paragraph 6.17 (pages 107 and 109), which states:

*“Effects of development on private property are frequently dealt with mainly through ‘residential amenity assessments’. These are separate from LVIA although visual effects assessment may sometimes be carried out as part of a residential amenity assessment, in which case this will supplement and form part of the normal LVIA for a project. Some of the principles set out here for dealing with visual effects may help in such assessments but there are specific requirements in residential amenity assessment.”*

- 3.8 RVAA is concerned specifically with the effects of change to the views and visual amenity available to people at their place of residence. As explained above the key difference between RVAA and LVIA is that RVAA focuses on private visual amenity at individual properties whilst LVIA focusses on public amenity and views. In relation to private property and residential receptors GLVIA3 states at paragraph 6.36 (page 114):

*“The issue of whether residents should be included as visual receptors and residential properties as private viewpoints has been discussed in Paragraph 6.17. If discussion with the competent authority suggests that they should be covered in the assessment of visual effects it will be important to recognise that residents may be particularly susceptible to changes in their visual amenity - residents at home, especially using rooms normally occupied in waking or daylight hours, are likely to experience views for longer than those briefly passing through an area. The combined effects on a number of residents in an area may also be considered, by aggregating properties within a settlement, as a way of assessing the effect on the community as a whole. Care must, however, be taken first to ensure that this really does represent the whole community and second to avoid double counting of the effects”.*

- 3.9 It should be noted that ‘combined effects on a number of residents’ referred to above, by means of ‘aggregating properties within a settlement’ is a matter of LVIA and not of RVAA.

## 4. Methodology

- 4.1 The recommended four RVAA steps should provide a transparent, robust framework and reporting structure for the assessment, one which is grounded in established GLVIA3 principles and processes, as summarised below.

### ***RVAA Steps***

1. Definition of study area and scope of the assessment – informed by the description of the proposed development<sup>2</sup>, defining the study area extent and scope of the assessment with respect to the properties to be included.
  2. Evaluation of baseline visual amenity at properties to be included having regard to the landscape and visual context and the development proposed.
  3. Assessment of likely change to visual amenity of included properties in accordance with GLVIA3 principles and processes.
  4. Further assessment of predicted change to visual amenity of properties to be included forming a judgement with respect to the Residential Visual Amenity Threshold.
- 4.2 The RVAA steps are described in more detail as follows.

### ***Step 1 – Definition of study area and scope of the assessment***

- 4.3 The type and nature of development proposal and its likely effects informs the determination of both the need for, and the scope of, a RVAA. The description of the development should provide a robust, transparent basis for defining the extent of the study area and the scope, including which properties to include in the assessment. Mapping techniques such as Zone of Theoretical Visibility (ZTV) analysis are useful in this regard. The description of the development will be substantially the same as that used in the LVIA, but may be more focussed on a more limited geographic area.
- 4.4 There are no standard criteria for defining the RVAA study area nor for the scope of the RVAA, which should be determined on a case-by-case basis taking both the type and scale of proposed development, as well as the landscape and visual context, into account.
- 4.5 As a starting point the study area will typically be established using the general approach recommended in GLVIA3 (see Chapter 6, paragraph 6.2, page 98) and using such aids as ZTV mapping<sup>3</sup>. This should focus on identifying the properties to be included for assessment and should be proportionate to the proposed development in question having regard to the

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<sup>2</sup> Type and nature of the development having regard to scale, form, massing etc and existing landscape context.

<sup>3</sup> GLVIA3, paragraph 5.2, page 70, and paragraphs 6.2, page 98, and 6.7-6.12, pages 101-103 etc.

landscape and visual context. Simply being able to see a proposed development from a property is no reason to include it in the RVAA.

- 4.6 Over the last few years a large number of RVAAs have been prepared, especially relating to wind energy proposals. Local Planning Authorities (LPA) have frequently requested 'study areas' of up to 3 or even 5 km. The logic for these (exceptionally) large study areas was based on certain findings of LVIA's which identified significant visual effects from 'settlements' or from clusters of residential properties within this range. This fails to recognise that RVAA is a stage beyond LVIA. Consequently, many RVAAs, including those of windfarms with large turbines (150m and taller), have included disproportionately extensive study areas incorporating too many properties. This appears to largely be based on the misconception that if a significant effect has been identified in the LVIA adjacent to a property at 2.5km it will also potentially lead to reaching the Residential Visual Amenity Threshold.
- 4.7 When assessing relatively conspicuous structures such as wind turbines, and depending on local landscape characteristics, a preliminary study area of approximately 1.5 - 2 km radius may initially be appropriate in order to begin identifying properties to include in a RVAA. However, other development types including potentially very large but lower profile structures and developments such as road schemes and housing are unlikely to require RVAA, except potentially of properties in very close proximity (50-250m) to the development. For example, when assessing effects of overhead transmissions lines, generally only those properties within 100 – 150 metres of the finalised route are potentially considered for inclusion in a RVAA.
- 4.8 Properties are normally assessed individually, but if their outlook and / or views are in all aspects the same (for example if a development is visible from the rear gardens only of a small row of houses) they could be assessed as one (group). This will be at the discretion of the assessor and will require a clear explanation of the reason for the grouping or clustering.

## ***Step 2 – Evaluation of Baseline Visual Amenity***

- 4.9 The next step involves describing and evaluating the baseline visual conditions at the properties to be included, informed as appropriate by desk study and fieldwork. Fieldwork is briefly discussed at the end of this section.
- 4.10 The existing (or baseline) visual amenity of a residential property should be described in terms of the type, nature, extent, and quality of views that may be experienced 'in the round' (see glossary) from the dwelling itself, including its 'domestic curtilage' (domestic gardens and access drives).
- 4.11 When evaluating the baseline, it is recommended that the following aspects are considered:
- the nature and extent of all potentially available existing views from the property and its garden / domestic curtilage, including the proximity and relationship of the property to surrounding landform, landcover and visual foci. This may include primary / main views from the property or domestic curtilage, as well as secondary / peripheral views; and

- views as experienced when arriving at or leaving the property, for example from private driveways / access tracks.

4.12 In accordance with GLVIA3 residents at home are considered, amongst ‘visual receptors’, to be the most ‘susceptible’ to change<sup>4</sup> and to attach most value to their private, views and visual amenity. They are therefore considered to be most sensitive<sup>5</sup>.

### ***Step 3 – Assessment of likely change to visual amenity of properties***

4.13 The third step in the process assesses the magnitude and significance of likely visual effect at the included properties. Effects are examined in accordance with GLVIA3 principles and processes<sup>6</sup>, considering the ‘nature of the receptor’ (‘sensitivity’ comprising ‘value’ and ‘susceptibility’) with the ‘nature of effect’. The assessment findings may be recorded in both narrative and tabular form as appropriate, but the conclusion should be fully explained. The aim of Step 3 is to identify those properties requiring further assessment in Step 4 in relation to the Residential Visual Amenity Threshold judgement.

4.14 Considerations which provide a framework for describing and evaluating the predicted magnitude of visual change and related visual amenity effects which may lead to the property being considered in Step 4 include:

- Distance of property from the proposed development having regard to its size / scale and location relative to the property (e.g. on higher or lower ground);
- Type and nature of the available views (e.g. panoramic, open, framed, enclosed, focused etc.) and how they may be affected, having regard to seasonal and diurnal variations;
- Direction of view / aspect of property affected, having regard to both the main / primary and peripheral / secondary views from the property;
- Extent to which development / landscape changes would be visible from the property (or parts of) having regard to views from principal rooms, the domestic curtilage (i.e. garden) and the private access route, taking into account seasonal and diurnal variations;
- Scale of change in views having regard to such factors as the loss or addition of features and compositional changes including the proportion of view occupied by the development, taking account of seasonal and diurnal variations;
- Degree of contrast or integration of new features or changes in the landscape compared to the existing situation in terms of form, scale and mass, line, height, colour and texture, having regard to seasonal and diurnal variations;
- Duration and nature of the changes, whether temporary or permanent, intermittent or continuous, reversible or irreversible etc.; and

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<sup>4</sup> GLVIA3, paragraph 6.33

<sup>5</sup> Ibid, paragraphs 6.31-6.36

<sup>6</sup> Footnote ‘13’ (first instance) missing in consultation draft?

- Mitigation opportunities – consider implications of both embedded and potential further mitigation.
- 4.15 This step will typically involve both desk study and detailed fieldwork but is unlikely to require visits to individual properties which, for the purposes of this step, can generally be assessed from the nearest publicly available vantage / access point. Where this is not feasible then visits to certain individual properties (or clusters of) may be appropriate.
- 4.16 Step 3 should conclude by identifying which properties should be assessed further in the final step in order to reach a judgement regarding the Residential Visual Amenity Threshold.

#### ***Step 4 – Forming the RVAA judgement***

- 4.17 The final step of RVAA involves a more detailed examination of the predicted effects on the visual amenity at those properties identified for further assessment in the previous step.
- 4.18 There is an important distinction between this concluding step of RVAA and the preceding one. In Step 3 the assessor has reached a conclusion with respect to magnitude and (EIA) significance of visual effect, and the change in visual amenity at the property. In this final step, and only for those properties where the largest<sup>7</sup> magnitude of effect has been identified, a further judgement is required. This concluding judgement should advise the decision maker whether the predicted effects on visual amenity and views at the property are such that it has reached the Residential Visual Amenity Threshold, therefore potentially becoming a matter of Residential Amenity. This judgement should be explained in narrative setting out why the effects are considered to reach the Residential Visual Amenity Threshold. Equally, judgements should explain why the threshold has not been reached.
- 4.19 The Residential Visual Amenity Threshold judgement should be communicated in a coherent manner, using text with clear descriptions, employing terminology which is commonly understood and descriptors which may have previously been used. Assessors should ensure that their judgements are unambiguous and have a clear, rational conclusion. Some examples of descriptions and descriptors that might be used include: ‘blocking the only available view from a property’, or ‘overwhelming views in all directions’; and ‘unpleasantly encroaching’ or being ‘inescapably dominant from the property’. It may also be useful to employ bespoke graphics such as annotated aerial photographs and wireframe visualisations to aid this further assessment in Step 4.
- 4.20 The key point regarding Step 4 is that the judgement required in this final, concluding step goes beyond the assessment undertaken in Step 3 which is restricted to judging the magnitude and significance of visual effect, typically as a supplement to the accompanying LVIA.

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<sup>7</sup> In line with GLVIA3 best practice (page 38, paragraph 3.27, point 2), visual impact magnitude is expressed on a sliding scale from minimum to maximum, typically using descriptors such as negligible, small, medium and large. Being a continuum, each of these has its upper and lower limits. It is important for assessors to keep in mind that RVAA is only concerned with those properties in the highest magnitude category.

## ***Fieldwork and Associated Activities***

4.21 In keeping with advice on LVIA set out in GLVIA3 it is standard practice to carry out fieldwork and use various tools when undertaking a RVAA. Fieldwork will be focussed on those properties identified for inclusion in the RVAA in Step 1; for those properties included in Step 4 it may also include visiting those properties subject to occupier consent. It requires prior preparation (desk study) and appropriate tools and materials such as drawings, maps and visualisations etc. Dependent on assessment scope and consultation feedback more than one visit may be required. Fieldwork will typically include the following:

- **Fieldwork** – Initial fieldwork may be used during Steps 1-3 to evaluate and assess the general visual amenity of the included properties, based on assessment scope and consultation feedback. The scoping of properties from publicly accessible locations is usually appropriate. The initial fieldwork would typically form the basis for identifying those dwellings to be assessed in more detail in Step 4, namely those which may require detailed inspection of views and visual amenity, both from inside the property as well as from its garden and general curtilage;
- **Visualisation** – Preparation of suitable graphic and / or visual material such as ZTVs and wirelines may be appropriate for use during fieldwork and as an aid to assessment, in addition to aiding presentation of RVAA findings. Depending on the circumstances and consultation responses, and feedback from determining / competent authorities, the type and nature of visualisations may vary. In any event visualisations should be proportionate to the development proposal in question and appropriate to the project phase / assessment stage, and considered in the context of relevant best practice guidance including LI Technical Guidance Note 02/17<sup>8</sup> Such visualisations may be shared with residents at the appropriate stage when documents become publicly available, or as agreed between the parties and their clients; and
- **Property Inspection** – the purpose of the property inspection is to gather information pertinent to the assessment of Residential Visual Amenity. There are no standard protocols for property inspections but best practice dictates that they should be arranged between the parties on a case by case basis with the involvement of the determining / competent authority as and when appropriate. In the event that access to private property cannot be obtained, and having employed best endeavours to do so, assessment can and should be undertaken from appropriate publicly accessible locations.

4.22 Communication with local residents needs to be carefully planned and executed with sensitivity, demonstrating respect for residents' privacy. It is recommended that site visits and property inspections be conducted in pairs. Assessors should make it clear to residents that, although he/she is unable to comment on the findings during the site visit, the RVAA report will be made publicly available at the appropriate stage in the planning process.

4.23 Residents of private property are likely to be concerned regarding potential visual effects and change to the visual amenity of their homes. This concern is reflected in RVAA best practice which, as with LVIA and in line with advice in GLVIA3, considers residential receptors to be of

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<sup>8</sup> 'Visual representation of development proposals', Landscape Institute Technical Guidance note 02/17 (31 March 2017)

the highest visual sensitivity (high susceptibility and high value)<sup>9</sup>. It is important that residents are made aware of this and how to make representations to the decision maker / competent authority regarding the proposed development in order to express any concerns felt.

### ***Seasonal and Diurnal Considerations***

- 4.24 Seasonal and diurnal variation (including lighting impacts) are factors that need consideration when assessing the visual amenity baseline and the likely visual effects resulting from a development proposal. Both these aspects form part of the evaluation factors / objective considerations set out in Step 3 of the RVAA process and should be dealt with in line with advice contained in GLVIA3 (refer paragraph 6.12, page 103 and paragraph 6.28, page 112).

### ***Cumulative Considerations***

- 4.25 Cumulative impacts on the landscape and visual resource are matters to be addressed in the LVIA of a proposed development in accordance with recommendations in GLVIA3 (refer Chapter 7). As a rule, future cumulative visual effects are not assessed in RVAA, the focus of which concerns effects on existing visual amenity. Existing cumulative development will form part of the baseline visual amenity considered in Step 2 of RVAA; future cumulative development is generally not a RVAA consideration. However, in certain circumstances, it may be appropriate to consider a particular cumulative proposal which is effectively already part of the existing landscape baseline. For example: where an extension to an existing development is consented, or under construction, but not yet built; or where two developments are proposed simultaneously. Such circumstances should be dealt with on a case by case basis in consultation with the competent / determining authority.

### ***RVAA Presentation Techniques***

- 4.26 Examples of RVAA graphics and presentation techniques generally can be found on the Directorate for Planning and Environmental Appeals (DPEA) website<sup>10</sup> (for Scotland) and the Planning Inspectorate<sup>11</sup> and Department for Communities and Local Government websites<sup>12</sup> (for England & Wales). Going forward practitioners may add examples of RVAAs and presentation tools to the LI website subject to client approvals and anonymising of individual properties. Meanwhile the aforementioned websites contain examples of RVAAs in the public domain made available by planning and other decision-making authorities.

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<sup>9</sup> However, it is important to note that, RVAA is distinct from LVIA in that its ultimate purpose is to provide a further assessment of residential visual amenity concluding with a judgement in relation to the Residential Visual Amenity Threshold taking any previous LVIA's as the starting point, as explained in Section 3 Undertaking a RVAA above.

<sup>10</sup> <http://www.dpea.scotland.gov.uk/>

<sup>11</sup> <https://acp.planninginspectorate.gov.uk/>

<sup>12</sup> <https://www.planningportal.co.uk/>



## 5. Summary and Conclusions

- 5.1 The purpose of carrying out a Residential Visual Amenity Assessment (RVAA) is to form a judgement, to assist decision makers, on whether a proposed development is likely to change the visual amenity of a residential property to such an extent that it becomes a matter of 'Residential Amenity'. Potential effects on Residential Amenity are a planning matter and should not be judged by landscape architects.
- 5.2 The threshold at which a residential property's visual amenity becomes an issue of Residential Amenity has sometimes been described as the point when 'the effect(s) of the development on the 'private interest' is so great that it becomes a matter of 'public interest''. The planning system is only concerned with public interest. In certain circumstances, however, the effect of the development is so great that it is not in the public interest to create or allow 'such conditions' where they did not exist before. This is sometimes referred to as the 'public interest test'. However, this is a legal / planning term and not recommended for use by landscape practitioners. This guidance uses the term Residential Visual Amenity Threshold.
- 5.3 The recommended approach to undertaking a RVAA is grounded in principles and process set out in GLVIA3. The recommended method for undertaking a RVAA involves four steps. It follows a structured assessment process employing a range of objective criteria to underpin the ultimate professional judgement regarding the Residential Visual Amenity Threshold. The aim is to identify those residential properties whose visual amenity has the potential to be affected to the largest magnitude of impact. Properties with the highest magnitude of effect are assessed further culminating in a professional judgement as to whether the Residential Visual Amenity Threshold is likely to be reached at this property or not.
- 5.4 There are no hard and fast rules or criteria for making this judgement, but it does require objective, logical evaluation and reasoning, and must be explained in clear and common language. A RVAA judgement so executed will contribute to well informed decision making.

## Glossary

The following glossary of terms commonly used in relation to RVAA is intended to supplement that provided in GLVIA3.

### **Planning balance**

When forming a judgement if a development is acceptable or not, all relevant planning matters pertaining to the proposed development (both planning benefits and disbenefits) will be given, greater or lesser, weight in forming the judgement. This is often referred to as the 'planning balance'.

### **'In the round'**

'In the round' means the combined or all-round visual amenity experience at, or from a property. Visual amenity is *"the overall pleasantness of the views they enjoy of their surroundings"* (paragraph 2.20, page 21; GLVIA)

### **Judgement**

Judgement in RVAA (as in LVIA) means: the considered, well-reasoned, informed and dispassionate opinion of the qualified professional (refer GLVIA3 paragraphs 2.21-2.26, pages 21-22).

### **Outlook**

The outlook of a property incorporates the views from, and visual amenity of, all aspects of the building and its domestic curtilage. Different 'aspects' of a property's outlook may be identified and assessed, namely its 'main' or 'front' aspect, as opposed to its 'side' or 'rear' aspects.

### **Overbearing**

The Department for Communities and Local Government online planning portal defines 'overbearing' as *"the impact of a development or building on its surroundings, particularly a neighbouring property, in terms of its scale, massing and general dominating effect"*<sup>13</sup>.

### **Principal room**

The principal room(s) of a residential property is a living room, or one fulfilling the same primary use role. In some properties this room may not be located on the ground floor, but on an upper storey. A conservatory may also fulfil a living room / primary use role depending on the circumstances and the internal arrangement of the residence.

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<sup>13</sup> [https://www.planningportal.co.uk/directory\\_record/412/overbearing](https://www.planningportal.co.uk/directory_record/412/overbearing)

### **Domestic curtilage**

The domestic gardens and access drives / roads immediately surrounding a residential property including patios, terraces, courtyards and forecourts. The domestic curtilage does not extend to surrounding paddocks and other peripheral land / outbuildings within the property ownership, or to public or private approach roads.

### **Public interest**

The 'public interest' is a legal term which the Merriam Webster online law dictionary defines as "the general welfare and rights of the public that are to be recognized, protected, and advanced"<sup>14</sup>. The Law Society online legal glossary defines it as "the overall welfare of the general public."<sup>15</sup>

### **Residential Amenity**

The Merriam Webster online law dictionary defines 'amenity' as "the quality of being pleasant or agreeable", and further in relation to property as "the attractiveness and value of real estate or of a residential structure."<sup>16</sup>

### **Residential Visual Amenity**

The overall quality, experience and nature of views and outlook available to occupants of residential properties, including views from gardens and domestic curtilage. It represents the visual component of Residential Amenity.

### **Residential Visual Amenity Threshold**

The threshold at which the visual amenity of a residential property is changed and adversely affected to the extent that it may become a matter of Residential Amenity and which, if such is the case, competent, appropriately experienced planners will weigh this effect in their planning balance.

### **Scenic quality**

The quality of a view in terms of 'scenery'; the scenic attributes of a view.

### **Significant effect / Significantly affected**

When undertaking an LVIA as part of an EIA the assessor is required to report on all effects and to identify 'significant' effects. A LVIA should explain which of the range of effects reported are 'significant' in the context of EIA and why.

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<sup>14</sup> <https://www.merriam-webster.com/dictionary/interest#legalDictionary>

<sup>15</sup> <https://www.lawsociety.org.uk/for-the-public/legal-glossary/#P>

<sup>16</sup> <https://www.merriam-webster.com/dictionary/amenity>

**Visual amenity**

The overall pleasantness of the views available to people of their surroundings which provide an attractive visual setting or backdrop for the enjoyment of activities of those living, working and recreating, visiting or travelling through an area (GLVIA3 Glossary, page 158).

**Visual effects**

Effects on specific views and on the general visual amenity experienced by people (GLVIA3 Glossary, page 158).

**Visual impacts**

The action which results in / causes the effect. For example, introducing a built structure into an undeveloped landscape will have an impact on the landscape and views which will be experienced by people as effects on local landscape character and visual amenity. It is the purpose of LVIA to judge the magnitude and significance of the resulting landscape and visual effects (see next entry)

**Visual impacts versus effects**

GLVIA3 distinguishes between landscape and visual impacts and effects. Paragraph 1.15 (page 9) *“This guidance generally distinguishes between the ‘impact’, defined as the action being taken, and the ‘effect’, defined as the change resulting from that action, and recommends that the terms should be used consistently in this way.”*

## Appendix 1 – Planning Precedent

### **Introduction**

- A1.1 This Appendix is intended to provide some background to the RVAA guidance with reference to inquiry / appeal decisions that illustrate how Inspectors and Reporters have reached conclusions in respect of Residential Visual Amenity.

### **Judgement**

- A1.2 In the Baillie decision Reporter David Russell concluded that assessing effects on private visual amenity is ultimately a matter of judgement<sup>17</sup>:

*“Any assessment of acceptability in these circumstances relies on judgement rather than measurement.”*

- A1.3 And:

*“Given that I have found that this wind farm, because of its visual prominence and proximity, would have a significant detrimental impact on the visual amenity of some of the people living nearby, and as the impact would be long term, that interpretation would appear to preclude the granting of consent for this application. However, the guidance also confirms that proposals are to be considered on a case by case basis, and I consider that this inevitably requires a judgement to be reached on the acceptability of the impacts identified.”*

### **Reasoning**

#### **Clocaenog Forest Windfarm**

- A1.4 In the Clocaenog Forest windfarm Report of Findings in para 4.237<sup>18</sup>, the inspector concludes:

*However, for three properties there is a risk that residential amenity would be affected to such a degree that the PPW standard of "good neighbourliness" would not be achieved and there would be conflict with Policy NTE/7 of the CLDP, and VOE 9 of the DLDP. This level of impact, which could make a property an unattractive place in which to live, has been found to be against the public interest and therefore unacceptable in Inspectors' appeal decisions<sup>266</sup>, and permission has been refused. I therefore consider that the adverse impact on the residential amenity of the three dwellings is important and relevant matter to be weighed against the benefits of the project under s104(7) of the PA2008.*

- A1.5 The subsequent decision letter by the Secretary of State<sup>19</sup> concludes:

*“The Secretary of State agrees that the arguments in this case and in respect of this particular issue are finely balanced. He agrees with the ExA's view that it is not possible*

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<sup>17</sup> Erection of wind farm at Bardnaheigh Farm, Westfield, by Thurso (Baillie). Case reference IEC/3/105/3, 17th August 2009

<sup>18</sup> Clocaenog Forest Wind Farm, Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy and Climate Change, Wendy J Burden BA(Hons) DipTP MRTPI Examining Authority Clocaenog Forest Windfarm DCO

<sup>19</sup> Decision letter 12 September 2014, 12.04.09.04/217C, paragraph 4.14

*to mitigate the impacts of the wind farm on the three properties in question. He considers the matter has been considered appropriately during the examination of the application and that residential amenity is not an issue of sufficient magnitude to justify the withholding of consent given the benefits of the Development. In these circumstances, he considers that the interference with the human rights of the occupants of the three properties would be proportionate and justified in the public interest.”*

### **Burnthouse Farm Windfarm**

A1.6 At the Burnthouse Farm windfarm inquiry<sup>20</sup> Inspector Jill Kingaby stated at paragraph 119 of her report that:

*“No individual has the right to a particular view but there comes a point when, by virtue of the proximity, size and scale of a given development, a residential property would be rendered so unattractive a place to live that planning permission should be refused. The test of what would be unacceptably unattractive should be an objective test.”*

A1.7 At paragraph 120 of the Burnthouse Farm report the Inspector comments further on the threshold for determining unacceptable effects on visual amenity:

*“There needs to be a degree of harm over and above an identified substantial adverse effect to take a case into the category of refusal in the public interest. Changing the outlook from a property is not sufficient.”*

A1.8 In the conclusions on her report Inspector Kingaby addressed the living conditions of neighbouring occupiers and stated that:

*“The methodology for assessing the visual impact on residential occupiers was considered fully at the Inquiry. I accept that the approach used by Inspectors in the Enifer Downs, Poplar Lane and Carland Cross Appeals and elsewhere should not be regarded as a mechanistic ‘test’ and has no status in terms of being part of statutory documentation or planning policy or guidance. However, it seems to me that a logical, transparent and objective approach to assessing visual impact should be adopted”.*

A1.9 The Inspector also observed that judging serious harm to living conditions which might lead to a recommendation for planning permission to be refused in the public interest is a more stringent requirement than identifying of a significant adverse effect in EIA, stating:

*“I consider that when assessing the effect on visual outlook, it is helpful to pose the question ‘would the proposal affect the outlook of these residents to such an extent i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?’”*

A1.10 Inspector Kingaby’s recommendations were endorsed by the Secretary of State (SoS) and summarised in the SoS decision letter dated 6 July 2011 at paragraphs 10 and 11.

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<sup>20</sup> Burnthouse Farm Windfarm, SoS Decision (APP/D0515/A/10/2123739) 6th July 2011

## **Langham Windfarm**

A1.11 In the Langham Windfarm appeal decision<sup>21</sup> the Inspector stated that

*“The planning system controls development in the public interest, and not in the private interest. The preservation of open views is a private interest, which the planning regime is not intended to protect. But public and private interests may overlap. The issue is whether the number, size, layout and proximity of wind turbines would have such an overwhelming and oppressive visual impact on a dwelling and its amenity space that they would result in unsatisfactory Living Conditions, and so unacceptably affect amenities and the use of land and buildings which ought to be protected in the public interest.”*

## **Enifer Downs Windfarm**

A1.12 The issue of Residential Visual Amenity was first addressed by Inspector Lavender in the Enifer Downs appeal decision<sup>22</sup> in which he observed that:

*“when turbines are present in such number, size and proximity that they represent an unpleasantly overwhelming and unavoidable presence in main views from a house or garden, there is every likelihood that the property concerned would come to be widely regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live.”*

A1.13 In coming to his decision Inspector Lavender considered the extent to which:

- the visual experience from the dwelling and garden may be comparable to “actually living within the turbine cluster” rather than a turbine cluster being present close by; or
- the experience of the turbines is “unpleasantly overwhelming and unavoidable”.

## **Carland Cross Windfarm**

A1.14 In the subsequent Carland Cross decision<sup>23</sup> Inspector Lavender elaborated and qualified his position stating:

*“The planning system is designed to protect the public rather than private interests, but both interests may coincide where, for example, visual intrusion is of such magnitude as to render a property an unattractive place in which to live. This is because it is not in the public interest to create such living conditions where they did not exist before. Thus I do not consider that simply being able to see a turbine or turbines from a particular window or part of the garden of a house is sufficient reason to find the visual impact unacceptable (even though a particular occupier might find it objectionable).”*

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<sup>21</sup> Langham Windfarm, Appeal Decision APP/D2510/A/10/2130539. 29<sup>th</sup> September 2011

<sup>22</sup> Enifer Downs Windfarm, Appeal Decision APP/X2220/A/08/2071880. 28<sup>th</sup> April 2009

<sup>23</sup> Carland Cross Windfarm, Appeal Decision APP/D0840/A/09/2103026 19<sup>th</sup> Jan 2010

## ***Preston New Road Exploration Works (Appeal A)***

A1.15 In the Preston New Road (Appeal A) fracking development appeal case<sup>24</sup> the Secretary of State agreed with the Inspector stating in the decision letter:

*“For the reasons given at IR12.117-12.120, the Secretary of State agrees with the Inspector that the proposal would not affect the outlook of any residential property to such an extent that it would be so unpleasant, overwhelming and oppressive that it would become an unattractive place to live (IR12.118).”*

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<sup>24</sup> Preston New Road Exploration Works Secretary of State Decision (Appeal A) (APP/Q2371/W/15/3134386), 6<sup>th</sup> October 2016



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## Appendix 13

### UPDATED DESIGN AND ACCESS STATEMENT

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PHASE 3 AXIS J9

LAND TO THE NORTH OF HOWES LANE BICESTER

PROPOSED EMPLOYMENT DEVELOPMENT

DESIGN AND ACCESS STATEMENT



SEPTEMBER 2021  
Rev A—SEPTEMBER 2022

Revision	Description	Date	Chk
A	Updates to reflect design development following discussions with the LPA during the Planning Application period	September 2022	CS

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### **Appendix 1: Extant consent parameter plan 03**

### **Appendix 2: NW Bicester Masterplan**

## 1.0 Introduction

Cornish Architects have been appointed by Albion Land to prepare a design proposal for a new commercial development on the land to the North West of Howes Lane, Bicester.

This statement has been prepared by Cornish Architects in support of a Full Application, for Phase 3 of the proposed commercial/employment areas to the east of Middleton Stoney Road. It has been updated to support an appeal and reflect changes made to the scheme post-submission in response to officer feedback. The site benefits from an extant Planning consent for development, ref 20/03199/OUT.

This application now seeks planning consent for the proposed commercial/employment development totalling 14,835 sqm GEA (14,189 sqm GIA) of flexible, speculative employment floorspace. The uses will be market led within Use Classes E(g)(iii), B2 and/or B8, together with car and HGV parking, landscaping, hard standing and associated facilities including access.

The proposed development comprises 5 units with car and HGV parking, hardstanding and associated facilities. It provides the opportunity for companies to locate within a popular, accessible and highly sustainable multi-use site which benefits from good communication routes and easy access. This development will help Cherwell District Council meet the aims set out in Policy Bicester 1, in particular many of those set out under Employment and Infrastructure sections.

The development will adopt sustainable construction and operational methods and will be designed and constructed to meet BREEAM 'Very Good' standard with the potential of achieving 'Excellent'. An outline of how this will be achieved is outlined in the ESC pre-assessment document, included within the submission. The scheme will also achieve zero carbon emissions as defined in the adopted SPD and Policy Bicester 1, as outlined in the ESC document included within the submission.

This statement should be read in conjunction with the drawings, the Planning Report prepared by Quod and supporting documentation. This statement demonstrates that the matters of access, layout, scale, appearance and landscape have regard to, and follows the principle of the previous phases of development

New developments can have a significant effect on the character and quality of an area as they define spaces, streets and vistas and when well designed, their effects will be to the benefit of the area. It is recognised that good design can help promote sustainable development, improve the quality of the existing environment, attract investment and reinforce civic pride and a sense of place.



Fig. 01 Site Location Plan



Fig. 02 Aerial View of Site

## 2.0 Site Context

### 2.1 The site

Bicester is a town in North Eastern Oxfordshire and the site referred to in this application, for phase 3 of the overall Axis J9 development, is located to the North West of the town.

Figures 01 & 02 show the overall development site, with the phase 3 plot boundary in red.

### 2.2 Environment & Surrounding Buildings

Howes Lane (A4095), a road that forms part of the ring road around Bicester, runs along the south eastern side of the ownership boundary. To the north, west and north east, the site is surrounded by existing fields and hedgerow, with the M40 beyond.

Phases 1 and 2 of the overall development sit towards the south/ south west of the site and are comprised of commercial/employment use buildings. In total there are 14 units of varying sizes and heights. All of the units are now occupied.

To the south east of the site, just beyond Howes Lane, is a residential area.

### 2.3 Planning Policy

Falling within the area covered by Policy Bicester 1, the site forms part of the North West Bicester Eco Town. The fields to the north and west have been identified for the location of the residential use. Policy Bicester 1 places several expectations upon development, and this document demonstrates how this scheme meets them, in particular:

- The scheme should be a zero carbon development as defined in the Eco-Towns PPS and Eco Bicester One Shared Vision
- Delivery of a high quality local environment
- Climate change adaptation—eco-town standards are met on water, flooding, green infrastructure and biodiversity
- Employment—approximately 1000 jobs on B use class land on a site within the plan period
- Transport—at least 50% of trips originating from the development to be made by means other than the car
- Promotion of healthy lifestyles
- Provision of local services and facilities
- Green infrastructure and biodiversity—40% of the total gross site area will be provided as green space and development should deliver a biodiversity net gain.
- Sustainable management of waste



Fig. 03 Looking North East on Howes Lane from roundabout



Fig. 04 Looking North East on Howes Lane





Fig. 05 Looking North East on initial access road



Fig. 06 Looking South East on temporary initial road



Fig. 07 Unit 1 Phase 1 viewed from Middleton Stoney Road



Fig. 08 Units 2 & 3 viewed from Empire Road (Access Road)



Fig. 09 Looking North East on route of proposed SLR and landscaping



Fig. 10 Looking North East on route of proposed SLR and landscaping



Fig. 11 Site Plan as Proposed

Schedule of approximate areas																	
UNIT	Ground Floor GEA sqm	Ground Floor GEA sq ft	First Floor GEA sqm	First Floor GEA sq ft	Second Floor GEA sqm	Second Floor GEA sq ft	Total Unit GEA sqm	Total Unit GEA sq ft	Ground Floor GEA sqm	Ground Floor GEA sq ft	First Floor GEA sqm	First Floor GEA sq ft	Second Floor GEA sqm	Second Floor GEA sq ft	Total Unit GEA sqm	Total Unit GEA sq ft	Car Parking
1	1830	19698	224	2411	0	0	2054	22109	1759	18934	195	2104	0	0	1954	21038	23
2	1865	17822	202	2174	0	0	1867	20096	1613	17262	179	1929	0	0	1792	19291	21
3	1717	18482	211	2271	0	0	1928	20753	1650	17761	183	1973	0	0	1833	19734	21
4	4412	47491	272	2928	272	2928	4956	53346	4278	46048	238	2558	238	2558	4753	51165	53
5	3552	38234	478	5145	0	0	4030	43379	3433	36953	423	4553	0	0	3856	41506	42
TOTAL	13176	141826	1387	14930	272	2928	14835	159604	12733	137058	1219	13118	238	2558	14189	152734	160

Fig. 12 Schedule of Areas

### 3.0 Design

#### 3.1 Design Approach

14,835 sqm GEA (14,189 sqm GIA) of commercial/employment floorspace. The Site Plan (Fig. 11) shows the site laid out with three buildings, one of which is a terrace of 3 units. The unit sizes range from 1792 sqm to 4,753 sqm GIA to offer a range in employment space. The units are accessed initially via the previous employment site from Middleton Stoney Road onto a new section of road that will eventually form part of the strategic link road.

The design approach is consistent with that adopted on earlier phases, in terms of massing, materiality, detailing and sensitive landscaping to create a high quality gateway development sympathetic to the local environment. This is recognised in the officer's report for the phase 1 reserved matters application (19/00449/REM) in which they state the proposal; *"is acceptable and will be appropriate visually in the street scene in this area of the wider NW Bicester site and adjacent to the existing settlement."* and *"the landscaping proposals are acceptable and, alongside the proposed buildings, will provide an acceptable high quality scheme."* The report also states *"In light of the above assessment, the impact upon the residential amenity from the development sought via this reserved matters application is considered to be acceptable."*

The proposed development includes the construction of a section of the strategic link road. The units are accessed via a road coming off to the west of this. The buildings are positioned away from the existing residential properties to the east a distance ranging 115.62–137.10 m. This is greater than on phases 1 & 2 which range 65.74-113.89 m. This together with the retention and reinforcement of the existing hedgerow and sensitive landscaping ensure no unacceptable impact on the amenity of the existing residential properties.

The extant consent (20/03199/OUT) includes residential between the SLR and Howes Lanes, of similar height and much closer to the existing residences. This is outlined below in section 3.5.

The buildings each have an ordered layout rationalised by a structural grid and optimised to create efficient open plan internal accommodation. Entrance cores and ancillary first floor accommodation are positioned on the front facades, providing good accessibility and assisting visitors with orientation. Unit 5 has ancillary spaces facing the new access road. Coupled with rainscreen cladding to the road side corners of units 1, 4 and 5, the glazed façade creates an active frontage along the access road that will become the strategic link road.

The proposed units would receive good levels of natural light through roof lights and glazing to the facades.

Each building is positioned to enable suitable escape paths around the perimeter which also provide a maintenance strip. The layout respects the topography of the site.



Fig. 13 3D massing sketch



Fig. 14 3D massing sketch

### 3.2 Use

The uses will be market led within Use Classes E(g)(iii) and/or B2 and/or B8, together with car and HGV parking, landscaping, hard standing and associated facilities including access.

The proposed redevelopment will comprise of flexible spaces providing commercial/employment accommodation, offering high quality and secure facilities to new and existing organisations in the area. The units have first/second floors, that could be used for offices, over 10% of the floor plan to create units suitable for a variety of tenants.

### 3.3 Amount

This application now seeks consent for three buildings with a total of five units for Use Classes E(g)(iii) and/or B2 and/or B8. The approximate total Gross Internal Area (GIA) of the development proposed by this application is 14,189 sqm (152,734 sqft) See fig. 12, Schedule of Areas. This represents the third phase of the total Axis J9 development.

The first phase allowed for six buildings with a total of twelve units for flexible B1c, B2, B8 and ancillary B1a uses. The total GIA of the first phase of development was 21,584 sqm (232,328 sqft). The second phase allowed for two buildings for flexible B1c, B2, B8 and ancillary B1a uses with a total GIA of 23,226 sqm (250,004 sqft).

### 3.4 Layout

As illustrated on the proposed site plan (fig. 11), the proposed layout includes service yards and manoeuvring spaces for each unit. This proposal provides delivery vehicle parking at appropriate ratios for modern industrial use.

Each unit has car parking within its demise with adequate provision of spaces including bicycle and accessible parking bays. Car parking bay sizes are of 5m x 2.5m in accordance with the Parking Standards. Building entrances are located in a prominent position creating a safe and pedestrian-friendly entrance.

2 metre high black weld mesh separating fencing is provided to secure Unit 4 and 5 service yards. The units feature core accommodation incorporating an entrance lobby with toilet facilities at ground floor and ancillary office accommodation at first floor on units 1, 2 3 & 5 and at first and second floor on unit 4.

In line with Policy Bicester 1, the scheme will provide a high degree of integration and connectivity with the town and the surrounding traffic network. The proposed development provides a high quality urban edge which functions as a high profile economic attractor. The careful consideration of layout, design and landscaping make sure the proposed scheme respects and preserves the



Fig. 15 Units 1-3 Elevations

character of the setting. It has good accessibility to public transport services with bus stops located close to the site and footpaths and cycleways allow easy access to and from the site. The development utilises the route of the strategic link road and maintains provision for the strategic bus route.

### 3.5 Scale & Density

The proposed buildings are in keeping with the immediate surrounding context, in particular, with the adjacent Axis J9 phases 1 and 2 commercial/employment buildings to the south west of the site.

The proposed height of the buildings is the minimum necessary to meet the requirements of the market with a clear internal height of 12.0 metres on Units 4 and 5, and 10.0 metres on Units 1-3.

This gives a ridge height of 15.15 m and 13.6 m respectively. The extant consent parameter drawing show a building height of 16.0 m to the northern edge of the site and the site to the west side of the strategic link road facing onto the existing residential.

The buildings have hipped portal frames, keeping the eaves level low, without presenting a gable end. The elevations have different material treatments across their length, breaking up the appearance of their mass which helps to further reduce their impact (see below).

The extant consent (20/03199/OUT) includes residential between the SLR and Howes Lanes., of similar height and much closer to the existing residences. Approved parameter plan 03, building heights, (Appendix 1) shows building bordering Howes Lane to a height of 12m and buildings bordering onto the strategic link road to a height of 16m. This generally adheres to with the North Northwest Bicester Masterplan (Appendix 2) and the building heights referred to in the NW Bicester SPD section 5.12: *"Generally the development proposals will be suburban in scale reflecting the location of the site and the Bicester context with two-storey buildings with pitch roofs up to a height of 12 metres. In the local centres and along the strategic route through the site, taller buildings with up to four storeys (heights up to 20 metres) will be considered in the context of the masterplan to increase density and meet the requirements of occupiers in these locations."*

The Northwest Bicester Masterplan identifies the future development immediately to the north of the site as commercial in nature, since it is shown as retail / social and community / energy centre.

### 3.6 Appearance

The design and external appearance of the proposals will respect and complement the surrounding area and the developments in earlier phases. The developments have been designed to a high standard, to suit clients' and tenants' demands for high quality contemporary buildings that reflect their ambitions and company identities.

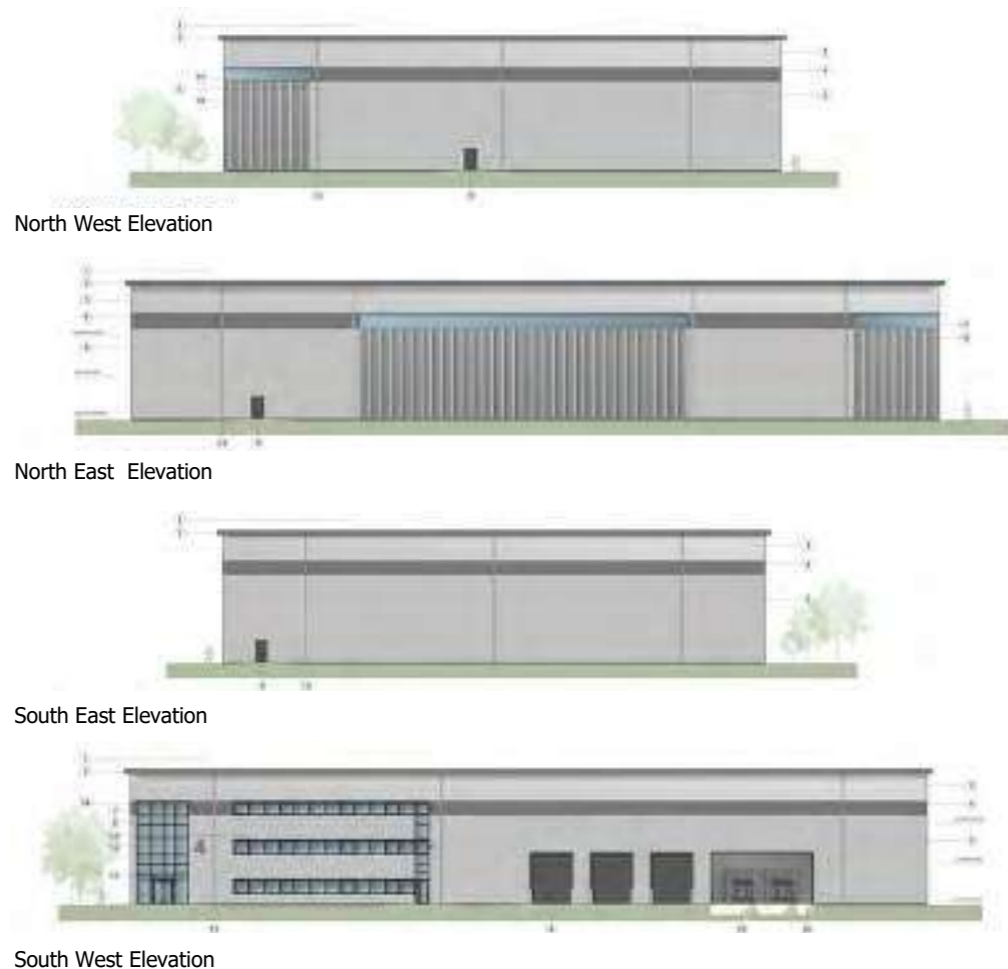


Fig. 16 Unit 4 Elevations

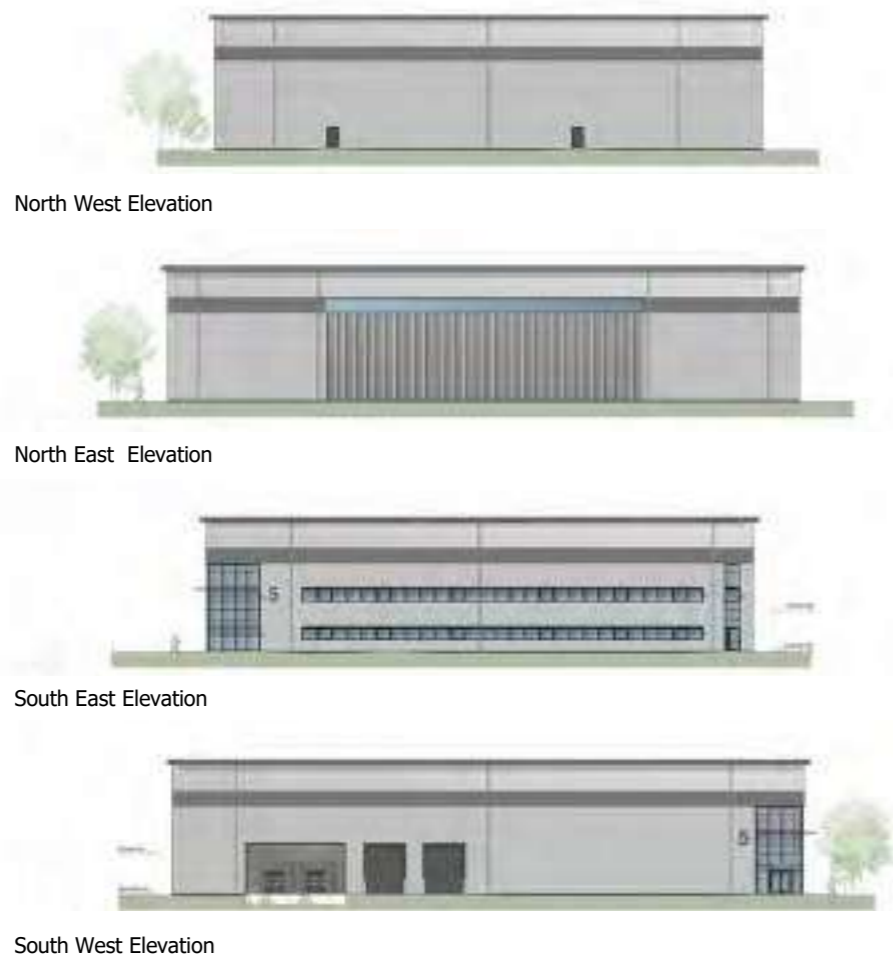


Fig. 17 Unit 5 Elevations

The proposed elevations (fig. 15—17) show a mixture of built up and composite cladding along with curtain walling, windows, translucent cladding panels and brise-soleil. In addition, the elevational treatment of units 1, 4 and 5 to the new access road (strategic link road) and future link road to the north have been further enhanced by the introduction of feature rainscreen and translucent cladding .

A simple palette of colours is proposed which includes goosewing pale grey roof forms, and dark grey frames to windows, doors, curtain walling and brise-soleil (RAL 7016 Anthracite). The built up cladding is in Sirius and the composite cladding is proposed in Sirius with a Zeus feature band. The rainscreen cladding system has a Zeus background with projecting elements in Sirius. The gutter fascia is proposed to be Zeus and the RWP's Silver (RAL 9006). The doors to loading bays and dock levellers are proposed to be in RAL 7016 Anthracite.

The rainscreen comprises polyester powder finished aluminium panels mounted onto a built up substructure. The modules are flat 780mm with 150mm wide modules projecting approximately 300mm and arranged to create further modelling to the façade. The rainscreen matches that on the previous phases and provides an interesting feature to the corner, frames the translucent panels and reduces the apparent mass of the building.

A modular window size and elevational rationale has been utilised across all of the units to provide a clean and unified scheme. High quality design and finishes, with careful consideration given to materials and colourings, reduce visual impact while creating a site which seeks to maximise the opportunity for an engaging frontage. Functional elements such as loading doors, dock levellers, pedestrian doors and windows provide further interest to the facades. The buildings have an ordered layout rationalised by a structural grid and optimised to create efficient open plan warehouse accommodation. The proposed units would receive good levels of natural light through roof lights and translucent panels to the warehouses and glazing to the offices.

The composite cladding, glazing and brise-soleil are located around the cores and office accommodation, identifying the offices and entrances and breaking down the scale and mass of the buildings. Locating the core and ancillary office accommodation to the front facades of each building provides good accessibility and assists visitors with orientation.

### 3.7 Landscaping & Drainage

Areas of landscaping are shown on the external finishes site plan and a full landscaping scheme and strategy note, prepared by Re-Form Landscaping (fig 18), is included as part of this application. The project exceeds 40% green infrastructure.

The landscape proposals for phase 3 aims to sensitively integrate the proposed development into the receiving landscape context, whilst at the same time increasing green infrastructure and improving biodiversity across the site.

A substantial new number of trees and hedgerows are proposed in order to augment existing

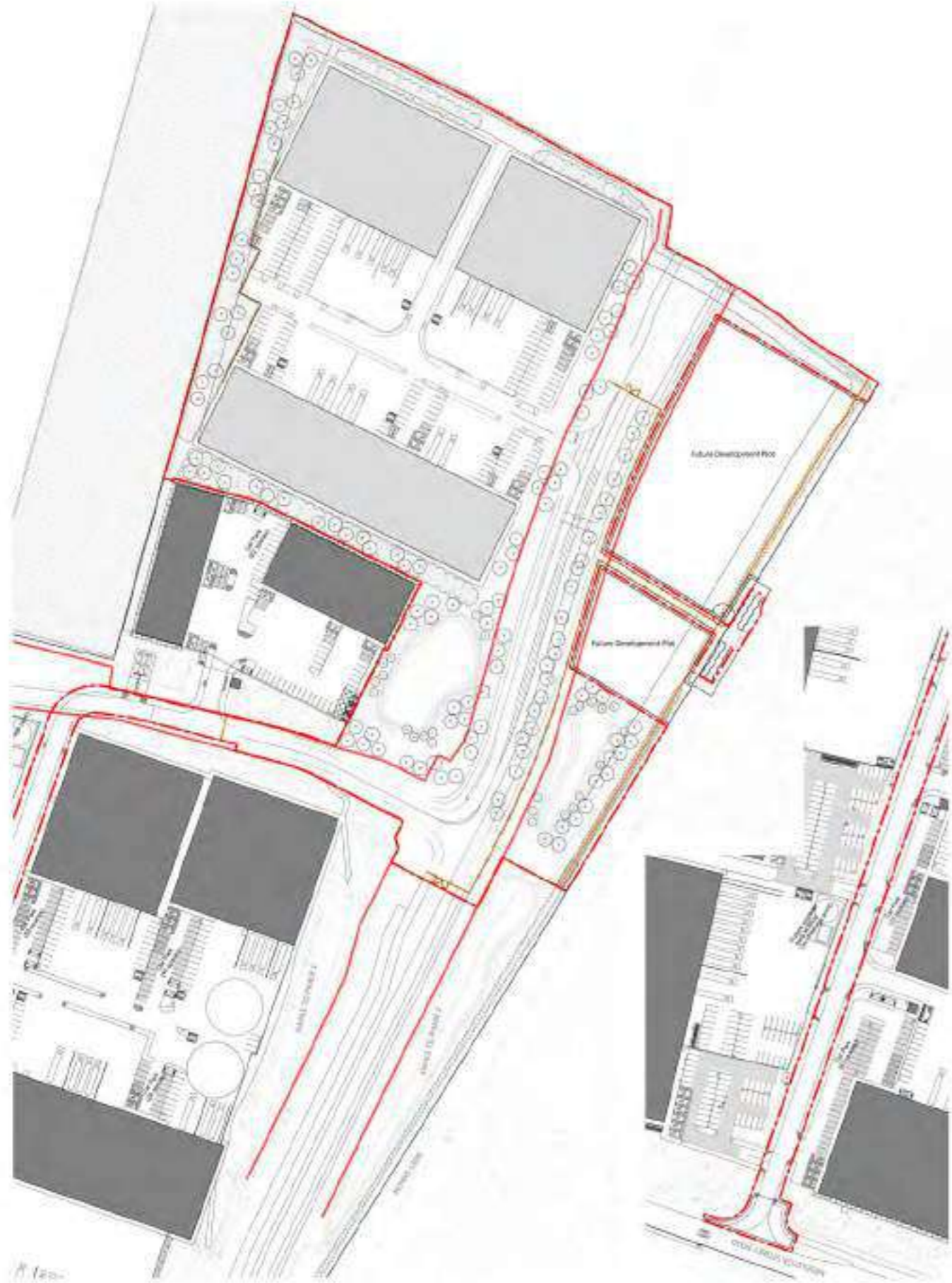


Fig. 18 Landscaping

hedgerows and areas of vegetation, and also to create new blocks of woodland and new hedgerows consistent with the character of the surrounding landscape. Collectively this new planting will serve to screen, filter and soften views of the proposed development whilst providing an enhancement to the connecting Green Infrastructure. The proposals have been informed by the notion to avoid, preserve and enhance as much existing vegetation as possible including the field boundary hedges.

An integral part of the landscaping and civil engineering design, the drainage strategy will follow the principles of the SUDS philosophy as set out in the previous permission. This is detailed in the Bailey Johnson Hayes drawings and Drainage Strategy.

### 3.8 Sustainability

The development will adopt sustainable construction and operational methods and will be designed and constructed to meet BREEAM 'Very Good' standard with the potential of achieving 'Excellent'. An outline of how this will be achieved is detailed in the ESC pre-assessment document, included within the submission. The scheme will also achieve zero carbon emissions as defined in the adopted SPD and Policy Bicester 1, and as outlined in the ESC Energy Strategy.

Examples of the methods used to mitigate climate change include:

- The design has used building orientation and solar shading to maximise useful daylight and control sunlight entering the buildings.
- Reducing water use has been targeted across the whole scheme.
- Each unit has a dedicated refuse point, divided into waste type, making sorting and recycling easier.
- A waste management plan will be implemented for the duration of the construction phase.
- Capacity and ducting for car-charging points has been allowed for.
- A biodiversity report has been completed by Tyler Grange and is included within the submission. Its recommendations will be adopted throughout the scheme.

### 3.9 Refuse and Cycle Store

Each unit is provided with refuse and cycle storage facilities either internally or externally. Cycle storage is provided for staff and visitors via covered stands, close to the entrance and in accordance with the Local Authority standards on an individual unit basis.

Waste refuse and recycling areas are provided within external fenced enclosures. This ensures that waste is stored in a secured area.



## 4.0 Access

### 4.1 Access to the Site

The development is accessed initially via the previous employment site from Middleton Stoney Road onto a new section of road that will eventually form part of the strategic link road.

The site access allows for the safe entrance and exit of vehicles up to HGV size.

A cycleway/footpath is proposed both sides of the SLR which is set back from the carriageway. A signalled crossing to Howes Lane and cycleway/footpath link connects the development to the residential units to the east.

The development safeguards the route of the strategic bus service as well as the strategic road link. A bus stop has been provided on Middleton Stoney Road under a previous application and the scheme provides for cycle routes through the site. Cycle parking is provided for staff and visitors, in numbers that satisfy council standards (see table, below):

Unit	Number of Cycle Parking Spaces
1	10
2	10
3	10
4	20
5	18

Car Parking provision is as follows.

Unit	Number of Car Parking Spaces
1	23
2	21
3	21
4	53
5	42

Approximately 5% of spaces are DDA compliant.

The development will provide 10% of the parking spaces with Electrical Vehicle Charging with provision for up to 25%

## 4.2 Inclusive Access

Access is established as a fundamental planning issue owing its importance to a growing percentage of the population with mobility impairments. The design includes allocated parking spaces for people with disabilities at each unit near the entrance to the building. The layout of the proposal aims to provide ease of use for people arriving and using the buildings.

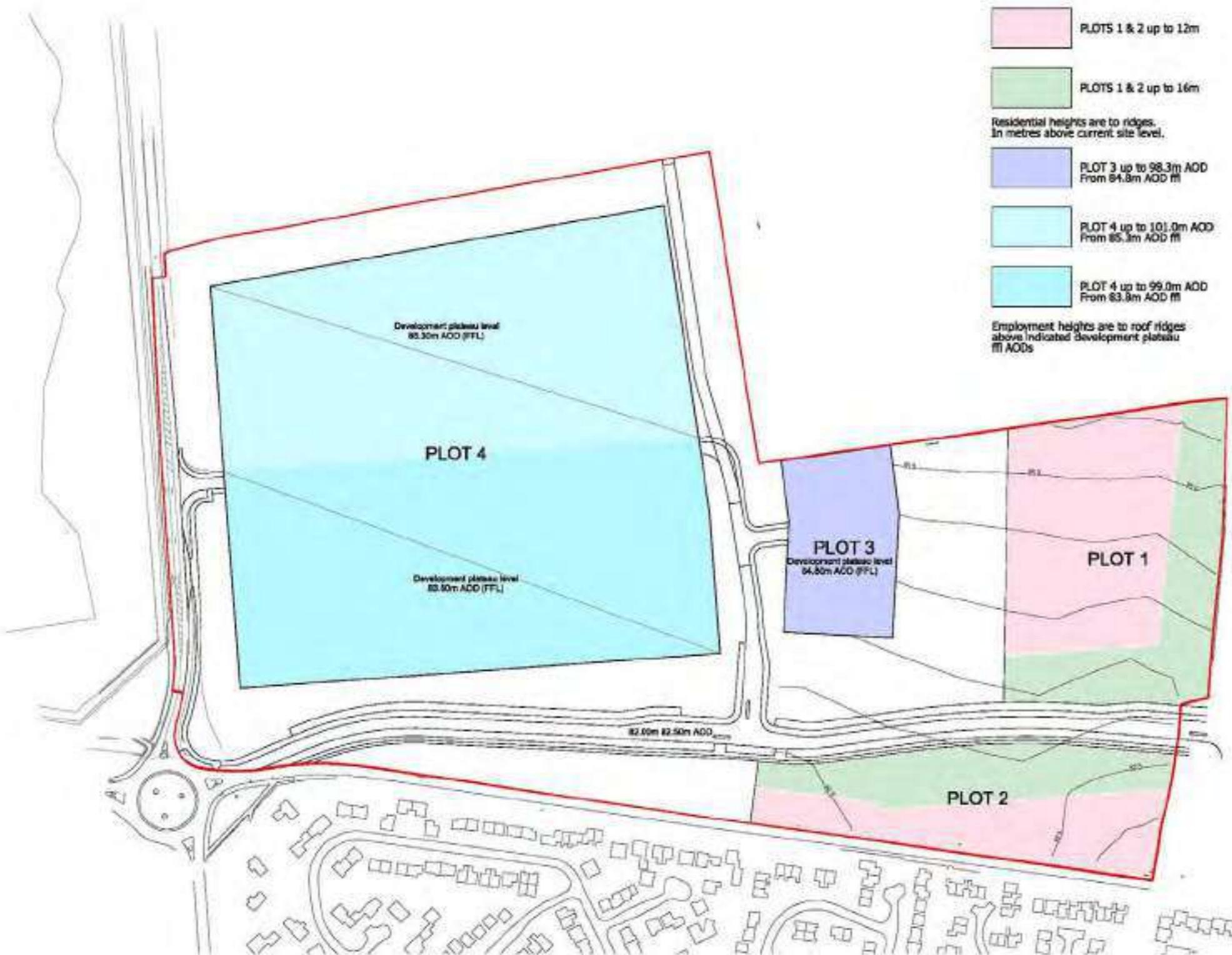
The principle entrance doors to the buildings and other doors will meet / exceed the effective clear width of 800mm through doorways. Entrance doors will be glazed and provided with manifestation as appropriate.

Within all units that have multiple storeys, a passenger lift is provided. Accessible WC and shower facilities are provided to all units.

The issue of visually impaired building users and those with hearing impairments will be fully addressed as the project detail design is developed to comply with Building Regulations and relevant British Standards.

## 5.0 Application Drawing Schedule

<b>Drawing No</b>	<b>Drawing title</b>
20019/TP/001F	Site Location Plan
20019/TP/002R	Proposed Site Plan
20019/TP/003L	Proposed Site Finishes Plan
20019/TP/004P	Green Infrastructure Plan
20019/TP/005C	Units 1-3 Floor Plans
20019/TP/006A	Units 1-3 Roof Plan
20019/TP/007	Units 1-3 Sections
20019/TP/008D	Units 1-3 Elevations
20019/TP/009C	Unit 4 Floor Plans
20019/TP/010A	Unit 4 Roof Plan
20019/TP/011	Unit 4 Sections
20019/TP/012D	Unit 4 Elevations
20019/TP/013B	Unit 5 Floor Plans
20019/TP/014A	Unit 5 Roof Plan
20019/TP/015	Unit 5 Sections
20019/TP/016C	Unit 5 Elevations
20019/TP/023	Cycle Shelter Details
20019/TP/024	Refuse Enclosure Details
20019/TP/025	Entrance Canopy Details
20019/TP/026	Fencing Details
20019/TP/027A	External Finishes Sample Board
20019/TP/028A	3D Massing Images



- PLOTS 1 & 2 up to 12m
- PLOTS 1 & 2 up to 16m
- Residential heights are to ridges.  
In metres above current site level.
- PLOT 3 up to 98.3m AOD  
From 84.8m AOD m
- PLOT 4 up to 101.0m AOD  
From 85.3m AOD m
- PLOT 4 up to 99.0m AOD  
From 83.8m AOD m
- Employment heights are to roof ridges  
above indicated development plateau  
m AODs

**NOTES**

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Rev	Description	Drawn	Date
	Plot House 8-14 Verulam Street London WC1X 8LZ		
	Tel +44(0)20 7400 2120		
	enquiries@cornisharchitects.com www.cornisharchitects.com		

**cornisharchitects**

**Project**  
AXIS J9 BICESTER

**Doc Title**  
PARAMETER PLAN 03  
BUILDING HEIGHT

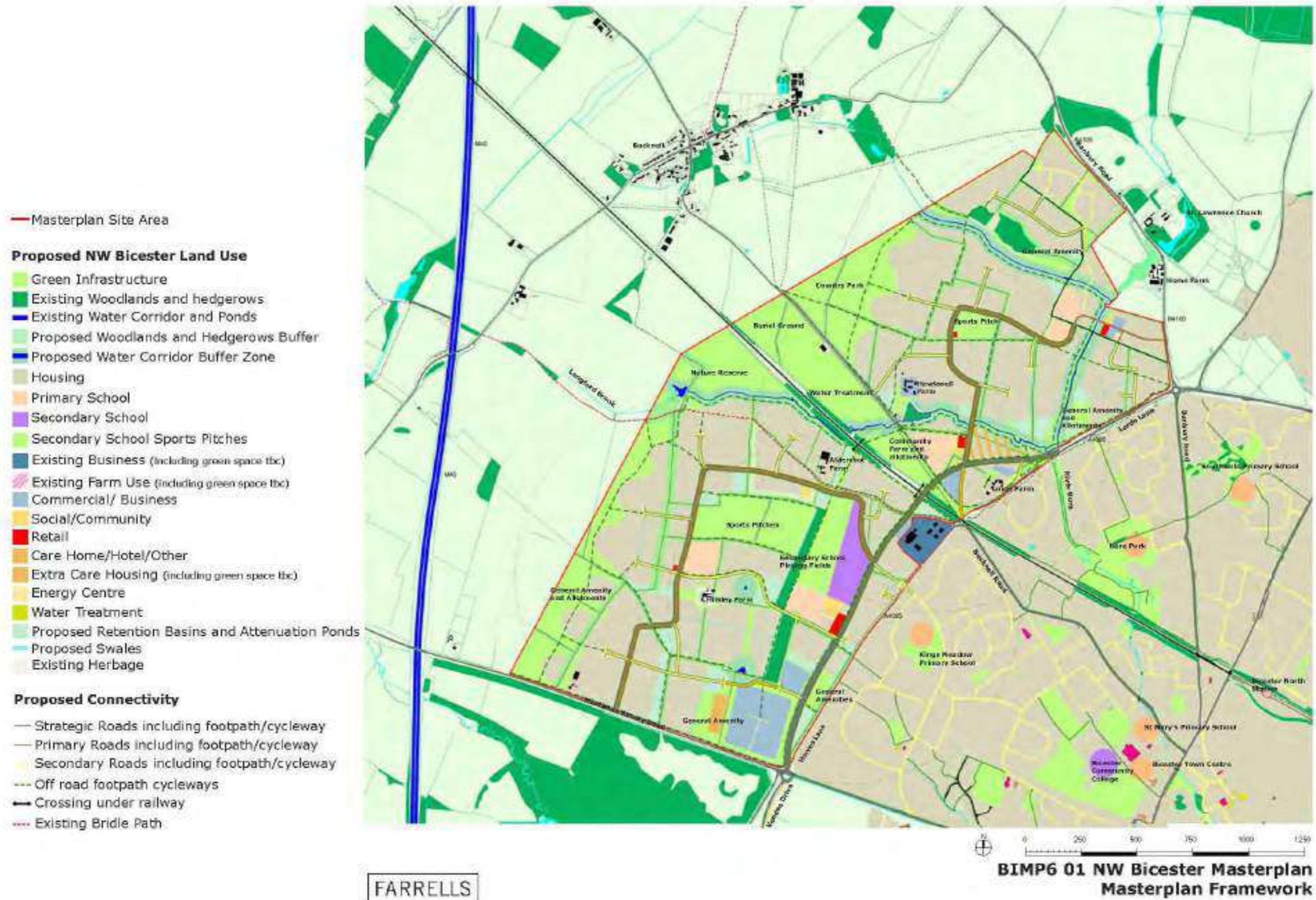
**Status**  
PLANNING

0 125m

**Scale** 1:2500 @ A3 **Date** 04/01/2018

**Doc No** 17023 / TP / 103 **Rev** -

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## Appendix 14

### COPY CORRESPONDENCE RE S106 HEADS OF TERMS

## Emma Lancaster

---

**From:** Emma Lancaster  
**Sent:** 15 June 2022 16:45  
**To:** Caroline Ford  
**Cc:** Kelvin Pearce (kelvinpearce@albionland.co.uk); Johnathan Welton; Farmer, Matthew  
**Subject:** RE: 21/03177/F -Planning Obligations  
**Attachments:** draft Phase 3 Employment S106 - (1) HLP LLP (2) Cherwell DC (3) Oxfordshire CC.DOCX; 21-03177-F Appendix 1 Heads of Terms - updated for Cttee updates.docx

Caroline

Following on from the below, I attach some very minor queries/comments on the proposed updated HOT.

For avoidance of doubt, however, and for the purposes of updating Members tomorrow, **the Applicant accepts all the proposed HOT in principle**. A draft s106 which captures these is attached to this end, which we trust will assist with the progression of an Agreement post-committee (assuming Members resolve to grant planning consent).

I note your query below in relation to CEEQUAL. You will no provision has been made for this in the draft s106. Our position remains as per the correspondence you refer to, which has been submitted in relation to the earlier phases and the Council has not responded to. In short:

- CEEQUAL is typically applied for in connection with major public infrastructure and civil engineering projects. It is intended to be a voluntary "charter mark" scheme, rather than a compliance tool (which is how it has been used to date at the site).
- Many of the "credits" required to achieve a high score against the CEEQUAL assessment questions have not been available to Albion Land (and would be highly unlikely to be in the context of Phase 3 also) due to the nature of the project and the fact that (i) key project decisions were made by others prior to Albion Land's involvement and (ii) it was not known at the time of these decisions that recording for CEEQUAL was necessary.

In light of your email below and the above, I am hopeful you will not find it necessary to draw to much / any attention to this matter at Committee. A degree of pragmatism needs to be applied to the issue and lessons learned from issues faced during delivery of earlier phases.

---

**From:** Caroline Ford <Caroline.Ford@Cherwell-DC.gov.uk>  
**Sent:** 14 June 2022 14:01  
**To:** Emma Lancaster <emma.lancaster@quod.com>  
**Subject:** RE: 21/03177/F - First draft conditions

Emma,

Please see attached the Heads of Terms updated – please let me know your thoughts on this.

I've just checked back to the permission for the strategic road – 14/01968/F. This included a compliance only condition to secure CEEQUAL standard 'Very Good' as follows – the condition is as follows:

All phases of the development shall be constructed to meet a minimum of CEEQUAL Standard 'Very Good'.

Reason – To ensure the development achieves a reduced carbon footprint in accordance with Planning Policy Statement 1: Eco Towns.

I'm wondering whether a condition is also needed relating to the strategic road element of this site – do you have any thoughts on this (especially as I note your outstanding query relating CEEQUAL)?

I look forward to hearing from you. This is of course provided without prejudice.

Kind regards  
Caroline

**Caroline Ford** BA. (Hons) MA MRTPI  
**Principal Planning Officer – Major Projects Planning Team**  
Development Management Division  
Communities Directorate  
Cherwell District Council  
Tel: 01295 221823  
Email: [caroline.ford@cherwell-dc.gov.uk](mailto:caroline.ford@cherwell-dc.gov.uk)  
Web: [www.cherwell.gov.uk](http://www.cherwell.gov.uk)

Find us on Facebook [www.facebook.com/cherwelldistrictcouncil](http://www.facebook.com/cherwelldistrictcouncil)  
Follow us on Twitter @Cherwellcouncil

My usual working hours are: Monday to Friday, 09:00am to 17:15pm.

Planning and Development services can be contacted as follows: Development Management - [planning@cherwell-dc.gov.uk](mailto:planning@cherwell-dc.gov.uk); Building Control - [building.control@cherwell-dc.gov.uk](mailto:building.control@cherwell-dc.gov.uk); Planning Policy - [planning.policy@cherwell-dc.gov.uk](mailto:planning.policy@cherwell-dc.gov.uk); Conservation - [design.conservations@cherwell-dc.gov.uk](mailto:design.conservations@cherwell-dc.gov.uk). For the latest information on Planning and Development please visit [www.cherwell.gov.uk](http://www.cherwell.gov.uk)

---

**From:** Caroline Ford  
**Sent:** 13 June 2022 18:26  
**To:** Emma Lancaster <[emma.lancaster@quod.com](mailto:emma.lancaster@quod.com)>  
**Subject:** 21/03177/F - First draft conditions

Emma,

Please see attached for your consideration as discussed. Please do let me know your comments.

I will review and forward the heads of terms tomorrow and make a start then on pulling the updates together.

I trust this helps for now. It is of course provided without prejudice.

Kind regards  
Caroline

**Caroline Ford** BA. (Hons) MA MRTPI  
**Principal Planning Officer – Major Projects Planning Team**  
Development Management Division  
Communities Directorate  
Cherwell District Council  
Tel: 01295 221823  
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Web: [www.cherwell.gov.uk](http://www.cherwell.gov.uk)

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My usual working hours are: Monday to Friday, 09:00am to 17:15pm.



Planning and Development services can be contacted as follows: Development Management - [planning@cherwell-dc.gov.uk](mailto:planning@cherwell-dc.gov.uk); Building Control - [building.control@cherwell-dc.gov.uk](mailto:building.control@cherwell-dc.gov.uk); Planning Policy - [planning.policy@cherwell-dc.gov.uk](mailto:planning.policy@cherwell-dc.gov.uk); Conservation - [design.conservaion@cherwell-dc.gov.uk](mailto:design.conservaion@cherwell-dc.gov.uk). For the latest information on Planning and Development please visit [www.cherwell.gov.uk](http://www.cherwell.gov.uk)

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## Appendix 15

### **DRAFT S106 AGREEMENT**

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**DATED**

**2022**

**(1) HOWES LANE PROJECTS LLP**

**and**

**(2) CHERWELL DISTRICT COUNCIL**

**and**

**(3) OXFORDSHIRE COUNTY COUNCIL**

---

**PLANNING OBLIGATION BY AGREEMENT**  
under section 106 of the Town and Country Planning  
Act 1990 (as amended) and section 111 of the Local  
Government Act 1972 and section 1 of the Localism  
Act 2011 relating to land adjoining and North East of A-  
4095 and adjoining and South West of Howes Lane,  
Bicester, Oxfordshire

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**Application: 21/03177/F**

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This Agreement is entered into by:-

- (1) **HOWES LANE PROJECTS LLP** (Company Registration Number OC374499) whose registered office is at Penrose House, 67 Hightown Road, Banbury OX16 9BE (the "**Owner**");
- (2) **CHERWELL DISTRICT COUNCIL** of Bodicote House Bodicote Banbury Oxfordshire OX15 4AA (the "**District Council**"); and
- (3) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford OX1 1ND (the "**County Council**").

**WHEREAS:-**

**IT IS AGREED** as follows:-

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The County Council is the county planning authority for the purposes of the Act and has for the area in which the Site is situated sundry powers and duties in respect of highways and the regulation of traffic.
- (C) The Owner is the freehold owner of the Site registered at the Land Registry under Title Number ON271407 subject as therein provided.
- (D) Pursuant to the Application the Developer has applied to the District Council for full planning permission for the Development of the Site.
- (E) On [ ] the District Council's Planning Committee resolved to grant the Planning Permission subject, among other things, to the completion of this Agreement
- (F) The parties have agreed to enter into this Agreement with the intention that subject to the terms of this Agreement the obligations contained herein may be enforced by the District Council and the County Council against the Owner and their respective successors in title.

**1. DEFINITIONS**

1.1 For the purposes of this Agreement the following expressions shall have the following meanings:-

<b>"Act"</b>	means the Town and Country Planning Act 1990 as amended
<b>Application</b>	means the application for full planning permission submitted to the District Council for the Development validated on [ ] and allocated reference number 21/03177/F
<b>"CIL Regulations"</b>	means the Community Infrastructure Regulations 2010 (as may be amended from time to time)
<b>"Committed"</b>	means approval by the District Council or the County Council (in accordance with the relevant Councils' standard procedures) of the business case for the infrastructure for the purpose associated with the Contribution and which expressly relies on that Contribution or part of it
<b>"Contribution"</b>	means any contribution payable in accordance with this Agreement

<b>"Councils"</b>	means the District Council and the County Council
<b>"County Council Monitoring Fee"</b>	means the sum of £[ ] ([ ]) to be used by the County Council for administration of and monitoring of the compliance with the obligations within this Agreement
<b>"Development"</b>	means the erection of 5 units of floor space for E(g)(iii), B2 and B8 use classes incorporating landscaped areas with a swale and associated utilities and infrastructure, pursuant to the Planning Permission
<b>"District Council Monitoring Fee"</b>	means the sum of £5,000 (five thousand pounds) to be used by the District Council towards the administration of and monitoring of the compliance with the obligations within this Agreement
<b>"Expert"</b>	means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society
<b>"Implementation"</b>	<p>means the carrying out of any material operation (as defined in section 56(4) of the Act) forming part of the Development other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, or construction of a contractor's compound</p> <p>and <b>"Implement"</b> and <b>"Implemented"</b> shall be construed accordingly</p>
<b>"Index Linked (Baxter)"</b>	<p>means adjusted according to any increase occurring between April 2017 and the date the payment is made in composite indices of the BCIS Price Adjustment Formulae (Civil Engineering) (1990 Series) made available through the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-</p> <ul style="list-style-type: none"> <li>(a) Index 1 Labour &amp; Supervision 25%</li> <li>(b) Index 2 Plant &amp; Road Vehicles 25%</li> <li>(c) Index 3 Aggregates 30% and</li> <li>(d) Index 9 Coated Macadam &amp; Bituminous Products 20%</li> </ul> <p>or if at any time for any reason it becomes impracticable to compile the said composite index then an index compiled in such other manner as may be agreed in writing by the Owner and the County Council and applied to the relevant Contribution up to the date of its payment</p>
<b>"Index Linked (CPIX)"</b>	means adjusted according to any increase occurring in the All Items Consumer Prices Index published by the Office of National Statistics from Quarter 2 2017 to the date the payment is made

unless expressly stated otherwise

<b>"Index Linked (RPIX)"</b>	means adjusted according to any increase occurring in the All Items Consumer Prices Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics from Quarter 2 2017 in respect of any contributions due to the District Council and August 2017 in respect of any contribution due to the County Council to the date the payment is made unless expressly stated otherwise
<b>"Interest"</b>	means interest at 4% above the base lending rate of Lloyds Bank plc from time to time compounded annually
<b>"Occupation" and "Occupied"</b>	means occupation for the purposes permitted by the Planning Permission of the Development but not including occupation for the purpose of construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and derived terms shall be construed accordingly
<b>"Original Planning Permission"</b>	the Outline Planning Permission granted by Cherwell District Council reference number 20/03199/OUT
<b>"Original S106 Agreement"</b>	a planning obligation dated 16 July 2019 between (1) the Seller (2) Faccenda Property Limited (3) W H Farms Limited (4) Coldharbour Farming Limited (5) Cherwell District Council and (6) Oxfordshire County Council as varied by an agreement pursuant to s106A of the Planning Act dated 20 May 2021 and made between (1) the Seller (2) Cherwell District Council (3) Oxfordshire County Council and Others
<b>"Plan"</b>	means the plan with reference [ ] to this Agreement at Appendix 1 showing the Property edged red
<b>Planning Permission</b>	the planning permission to be issued pursuant to the Application subject to the completion of this Agreement
<b>Property</b>	the part of the Site shown edged red on the Plan
<b>Site</b>	the land registered at the Land Registry under Title Number ON271407
<b>"Strategic Highway"</b>	means the central spine road and associated roads required to serve the North West Bicester Development as shown indicatively in planning application reference number 14/01968/F or as otherwise authorised and for the purposes of this Agreement also includes save where the context otherwise requires the proposed bus link at the Site to the boundary with the adjoining site registered at the Land Registry under Title Number ON257022
<b>"Working Day(s)"</b>	means any Monday to Friday (other than Bank or public holidays)

## 2. INTERPRETATION

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or part of a schedule or recital or appendix such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or part of a schedule or recital in or appendix to this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.



- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 "**including**" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "**include**" shall be construed accordingly.
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it and "**statutory requirement**" will be construed accordingly.
- 2.8 Reference to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District Council and County Council the successors to their respective statutory functions and any duly appointed employee or agent of the District Council and County Council or such successor.
- 2.9 Save where stated to the contrary, in the event of any conflict between the provisions in the Appendices to this Agreement and the provisions of this Agreement (including the Schedules) the provisions contained in this Agreement (including the Schedules) will prevail.
- 2.10 The headings in this Agreement are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.

### 3. **LEGAL BASIS**

- 3.1 This Agreement is made by deed pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 To the extent that the covenants, restrictions and requirements imposed upon the Owner under this Agreement fall within the terms of section 106 of the Act such covenants, restrictions and requirements are planning obligations for the purposes of section 106 of the Act being enforceable (subject to the terms of this Agreement) by the District Council and the County Council as local planning authorities against the Owner in respect of the Property.
- 3.3 To the extent that any of the covenants, restrictions and requirements contained in this Agreement are not planning obligations within the meaning of section 106 of the Act they are entered into pursuant to the powers of section 111 and 120 Local Government Act 1972 section 1 Localism Act 2011 and all other enabling powers and are enforceable thereunder.

### 4. **CONDITIONALITY AND OWNER'S COVENANTS**

- 4.1 The obligations in the Schedules to this Agreement are conditional upon implementation of the Planning Permission save where it is expressly provided either that compliance is required prior to Implementation or that a provision comes into force prior to Implementation.
- 4.2 The Owner covenants with the District Council:-
- 4.2.1 as set out in Schedule 1 to Schedule 4 (inclusive) and Schedule 9;
- 4.2.2 to pay to the District Council no later than the date of this Agreement its reasonable legal costs of and in connection with this Agreement; and

- 4.2.3 prior to beginning any material operation (as defined in Section 56 of the Act) to notify the District Council whether it will be implementing the Original Planning Permission or the Planning Permission.
- 4.3 The Owner covenants with the District Council not to implement the Original Planning Permission on the Property where the Owner has notified the District Council that it is implementing the Planning Permission
- 4.4 The Owner covenants with the County Council:-
- 4.4.1 as set out in Schedule 5 to Schedule 8 (inclusive) and Schedule 9 and Schedule 10;
- 4.4.2 not to begin any material operation (as defined in Section 56 of the Act) in respect of the Development until they have entered into a routeing agreement in the form or substantially in the form of the template document attached to this Agreement at Appendix 4.
- 4.4.3 to pay to the County Council no later than the date of this Agreement its reasonable legal costs of and in connection with this Agreement;
- 4.4.4 prior to beginning any material operation (as defined in Section 56 of the Act) to notify the County Council whether it will be implementing the Original Planning Permission or the Planning Permission;
- 4.4.5 not to implement the Original Planning Permission on the Property where the Owner has notified the County Council that it is implementing the Planning Permission.
- 4.5 Notwithstanding clauses 4.3 and 4.4.5 of this Agreement, the Implementation of Planning Permission shall not affect the validity of the Original Planning Permission or the ability to implement or carry out development pursuant to the same so far as it relates to land other than the Property.
- 4.6 Prior to the Implementation of the Development the Owner covenants to pay the District Council Monitoring Fee to the District Council.
- 4.7 Prior to the Implementation of the Development the Owner covenant to pay the County Council Monitoring Fee to the County Council.
5. **DISTRICT COUNCIL'S AND COUNTY COUNCIL'S OBLIGATIONS**
- 5.1 The District Council covenants with the Owner as follows:-
- 5.1.1 to comply with its obligations as set out in Schedule 1 to Schedule 4 (inclusive); and
- 5.1.2 in the event that any Contribution has not been spent or Committed towards its intended purpose within the period of 15 years from the date of payment of the final instalment of a contribution payable by way of instalment to repay within 28 days of a written request from the party that made payment any such unexpended or uncommitted balance together with accrued interest thereon.
- 5.2 The County Council covenants with the Owner as follows:-
- 5.2.1 To comply with its obligations as set out in Schedule 5 to Schedule 8 (inclusive); and
- 5.2.2 In the event that any Contribution has not been spent or Committed towards its intended purpose within the period of 15 years from the date of payment of the final instalment of a Contribution payable by way of instalment to repay within 28 days of a written request from the party that made payment any such unexpended or uncommitted balance together with accrued interest thereon.

6. **DISCHARGE**

It is hereby agreed and declared that from the date of Implementation of Planning Permission the Original S106 Agreement shall be discharged so far as it relates to the Property and shall no longer bind the Property.

7. **MISCELLANEOUS**

7.1 Save where indicated to the contrary no provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 (other than by the parties and their successors in title and assigns and by the District Council and the County Council and any successor to the District Council's or the County Council's functions).

7.2 This Agreement shall be registered as a local land charge by the District Council.

7.3 If any provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted. Any deletion of a provision under this clause shall not affect the validity or enforceability of the rest of this Agreement and insofar as reasonably practicable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality.

7.4 This Agreement will come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn before Implementation so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

7.5 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs except they will remain liable for any breaches of this Agreement before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purpose of this clause.

7.6 This Agreement shall not be enforceable against:-

7.6.1 any utility companies or statutory undertakers who acquire an interest in the Site for the purpose of providing services to the Site save that any provisions relating to works at the Site and provisions as to use shall be enforceable in respect of its interest in the relevant part of the Site;

7.6.2 the District Council or the County Council or successor in title or assignee of either of them in so far as it holds an interest in any part of the Site as a result of the operation of this Agreement;

7.6.3 any owner of any part of the Property after he has disposed of his interest in the Property provided that this will not relieve any owner of liability for any breach in respect of the part of the Property in which that owner had an interest arising prior to the date of parting with such interest; and

7.6.4 anyone whose only interest in the Site or any part of it is in the nature of the benefit of an easement or covenant save that any provisions relating to works at the Site and provisions as to use shall be enforceable in respect of such interest in the relevant part of the Site.

7.7 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission, granted (whether or not on appeal) after the date of this Agreement.

7.8 Where the approval agreement or consent of the District Council or the County Council or the Owner is required under the terms of this Agreement it shall not be unreasonably withheld or delayed.

8. **DISPUTE RESOLUTION**

8.1 If a dispute between the Owner and the District Council or the County Council persists beyond 10 Working Days and relates to any matter contained in this Agreement (but excluding any matter of law) the Owner may submit to the District Council and/or County Council (as applicable) notice stating that they intend to refer the dispute to an Expert and allow it a maximum of 20 Working Days to consider the same and give written notice to the Owner as to whether it is content for the dispute to be referred to an Expert.

8.2 If the District Council and County Council (as relevant) issues written notice stating that it is content for the dispute to be referred to an Expert pursuant to clause 8.1 above then the Owner shall refer the dispute to an expert on the following terms:-

8.2.1 each party will bear its own costs and the Expert's costs will be paid as determined by him/her;

8.2.2 the Expert will be appointed subject to an express requirement that he must reach his decision and communicate it to the parties within the minimum practical timescales allowing for the nature and complexity of the dispute, and in any event not more than 20 Working Days from the date of his/her appointment to act;

8.2.3 the Expert's decision will be given in writing with reasons and in the absence of manifest error will be binding on the parties; and

8.2.4 the Expert will be required to give notice to each of the parties, inviting each of them to submit to him if they so wish within 10 Working Days written submissions and supporting material and will afford to the parties an opportunity to make counter submissions if they so wish within a further 5 Working Days in respect of any such submission and supporting material.

8.3 In the event that the District Council or County Council (as relevant) issues written notice within the period specified in clause 8.1 above which states it does not wish the dispute to be referred to an Expert or no written notice is issued by the District Council or County Council then the dispute shall not be referred to an Expert and other dispute resolution may be pursued by the Owner.

9. **WAIVER**

No waiver (whether expressed or implied) of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

10. **NO FETTER**

Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the District Council or the County Council in the exercise of their respective functions in any capacity.

11. **CHANGE OF OWNERSHIP**

The Owner covenants with the District Council and the County Council to give the District Council and the County Council written notice as soon as possible of any change in ownership of any of its interests in the Property occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office if a company or usual address if not together with the area of the Property or unit of occupation purchased by reference to a plan.

12. **NOTIFICATION**

12.1 The Owner covenants with the District Council and separately the County Council to notify the District Council and separately the County Council in writing as soon as possible (and in any event

no later than 20 Working Days) after the occurrence of each of the following events and to specify in the notification the date on which it occurred:-

12.1.1 the proposed date of Implementation of the Development no later than three months in advance and which of the Original Planning Permission or Planning Permission is being Implemented;

12.1.2 the proposed and actual date of Occupation of any part of the Development.

**13. INTEREST**

If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

**14. VAT**

All consideration given in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax properly payable and the Owner shall pay to the District Council and separately to the County Council any Value Added Tax properly payable on any sums paid to the District Council and/or the County Council or works undertaken under this Agreement upon presentation of a valid Value Added Tax invoice addressed to the Owner.

**15. NOTICE**

15.1 Any notice or notification to be given under this Agreement shall be sent:-

15.1.1 to the District Council to the Assistant Director – Planning and Economy of the District Council (Application Reference 21/03177/F) at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA or to such other person at such other address as the District Council shall from time to time direct;

15.1.2 to the County Council to The Director for Planning and Place (Application Reference 21/03177/F) at the County Council County Hall, New Road Oxford OX1 1ND or to such other person at such other address as the County Council shall direct from time to time;

15.1.3 to the Owner c/o Albion Land Limited, Holdenby House, Holdenby, Northampton NN6 8DJ or to such other address as the Owner shall direct from time to time;

15.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:-

15.2.1 if delivered by hand, at the time of delivery;

15.2.2 if sent by post, on the second Working Day after posting;

15.2.3 if sent by recorded delivery, at the time delivery was signed for; and

15.2.4 if a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

15.3 For the avoidance of doubt, where proceedings have been issued, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

**16. JURISDICTION**

This Agreement is governed by and shall be interpreted in accordance with the law of England and the courts of England shall have exclusive jurisdiction to settle any dispute or claim.

17. **DELIVERY**

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a Deed on the day and year first before written.

## SCHEDULE 1

### BIODIVERSITY OFF-SET CONTRIBUTION

1. The following definitions relate to the biodiversity contributions and shall have the following meanings throughout this Agreement:-  
  
    **"Biodiversity Contribution"** means the sum of £7,988.24 (seven thousand nine hundred and eighty eight pounds and twenty four pence) (Index Linked (CPIX))
2. The Owner covenants to the District Council not to cause permit or suffer the Implementation of the Development until the Biodiversity Contribution has been paid to the District Council and it shall pay the Biodiversity Contribution to the District Council prior to Implementation of the Development.
3. The District Council covenants with the Owner that the District Council or it's nominee shall use or procure the use of the Biodiversity Contribution towards a biodiversity off setting scheme for local landowners or for the purchase and management of land in the vicinity of the Development for the benefit of farmland birds displaced by the Development.

## SCHEDULE 2

### TRAINING AND EMPLOYMENT PLAN

1. The following definitions relate to the Training and Employment Plan and shall have the following meanings throughout this Agreement:-

**"Training and Employment Plan"** means a plan for the training and employment opportunities arising as a result of the Development and shall include as a minimum:-

- (a) the arrangements by which the Owner will use reasonable endeavours to provide an appropriate number of construction and related trades apprenticeship starts during the construction of the Development in accordance with a target of three apprenticeship starts:-
  - (i) the apprenticeships may be delivered through the Apprenticeship & Training Company Ltd (an Oxfordshire based Skills and Funding Agency accredited Apprenticeship Training Agency) or another equivalent approach; and
  - (ii) all apprenticeship opportunities arising shall be initially advertised within the administrative area of the District Council and if there are no suitable applicants identified as a result of such advertisements the opportunities shall be advertised to people residing in Oxfordshire and then the surrounding locality (e.g. Milton Keynes, Aylesbury, Northamptonshire);
- (b) how the Owner and its appointed contractor will work directly with local employment/training agencies including Job Centre Plus and Bicester Job Club or successive initiatives to identify employment opportunities relating to the construction of the Development and skills and training to assist local people residing in Bicester and within five miles thereof to access job opportunities;
- (c) how the Owner will deliver local supply chain events to promote opportunities for companies local to Bicester and how such opportunities shall be advertised;
- (d) details of how the Training and Employment Plan will be monitored including details of the report that shall be submitted to the District Council on not less than an annual basis to demonstrate the progress towards achieving the targets set out in the Training and Employment Plan.

2. The Owner covenants to the District Council as follows:-

- 2.1 not to cause permit or suffer the Implementation of the Development until a Training and Employment Plan has been submitted to and approved in writing by the District Council;



- 2.2 where the District Council rejects the Training and Employment Plan submitted to it for approval the Owner shall take into account the District Council's reasonable comments and reasons for rejection and shall resubmit a further version of the Training and Employment Plan for approval;
- 2.3 to implement and carry out the requirements of the Training and Employment Plan as approved during the lifetime of the Development.

### SCHEDULE 3

#### MONITORING

1. The following definitions relate to monitoring and shall have the following meanings throughout this Agreement:-

<b>"Construction Stage Monitoring Schedule"</b>	means the Schedule marked Construction Stage Monitoring set out in the Eco Towns Standards Monitoring Scheme so far as is relevant to the Development attached to this Agreement at Appendix 2
<b>"Monitoring Details"</b>	means a scheme to demonstrate how the matters set out in the Construction Stage Monitoring Schedule and Post Occupancy Monitoring Schedule will be monitored in practice
<b>"Post Occupancy Monitoring Schedule"</b>	means the Schedule marked "Post Occupancy Monitoring" set out in the Eco Towns Standards Monitoring Scheme so far as is relevant to the Development attached to this Agreement at Appendix 3

2. **MONITORING**

The Owner covenants with the District Council as follows:-

- 2.1 subject to paragraphs 2.4 and 2.5 to comply fully with the measures in the Post Occupancy Monitoring Schedule and Construction Stage Monitoring Schedule;
- 2.2 to commence the measures set out in the Construction Stage Monitoring Schedule on Implementation of the Development;
- 2.3 to commence the measures set out in the Post Occupancy Monitoring Schedule prior to the Occupation of the second unit forming part of the Development;
- 2.4 prior to Implementation of the Development to submit to and secure the written approval of the District Council for the Monitoring Details;
- 2.5 not to cause or permit the Implementation of the Development unless and until the Monitoring Details have been approved in writing by the District Council;
- 2.6 to submit to the District Council reports on a six monthly basis until the completion of the Development in respect of the compliance with the Construction Stage Monitoring Schedule in accordance with the requirements of that Schedule; and
- 2.7 to submit to the District Council reports on an annual basis for 10 years commencing on the first Occupation of the second unit forming part of the Development in respect of the compliance with the Post Occupancy Monitoring Schedule in accordance with the requirements of that Schedule.

## SCHEDULE 4

### PUBLIC ART CONTRIBUTION

1. The following definitions relate to the Public Art Contributions and shall have the following meanings throughout this Agreement:-  
  
    "**Public Art Contribution**" means the sum of £21,214.05 (twenty one thousand two hundred and fourteen pounds and five pence) (Index Linked (CPIX))
2. The Owner covenants with the District Council not to cause permit or suffer Occupation unless and until the Public Art Contribution has been paid to the District Council.
3. The District Council covenants with the Owner that the District Council or it's nominee shall use or procure the use of Public Art Contribution towards the provision of public art within the North West Bicester Development.

## SCHEDULE 5

### BUS SERVICE CONTRIBUTIONS

1. The following definitions relate to the bus service contributions and shall have the following meanings throughout this Agreement:-

**"Interim Bus Service Contribution"** means the sum of £112,540 (one hundred and twelve thousand pounds five hundred and forty pounds) (Index Linked (RPIX)) which is payable in two equal instalments

2. The Owner covenants with the County Council as follows:-

- 2.1 not to cause permit or suffer Occupation until the first instalment of 50% of the Interim Bus Service Contribution has been paid to the County Council and it shall pay the first instalment of 50% of the Interim Bus Service Contribution to the County Council prior to Occupation and for the purposes of this paragraph 2.1 the date of first Occupation shall constitute the due date for payment of the first instalment of the Interim Bus Service Contribution;

- 2.2 not to cause permit or suffer Occupation of the second unit forming part of the Development until the final instalment of 50% of the Interim Bus Service Contribution has been paid to the County Council and it shall pay the final instalment of 50% of the Interim Bus Service Contribution to the County Council prior to Occupation of the second unit forming part of the Development and for the purposes of this paragraph 2.2 the date of first Occupation of the second unit forming part of the Development shall constitute the due date for payment of the final instalment of the Interim Bus Service Contribution;

and if a payment payable pursuant to this paragraph 2 has not been made on or before the due date for payment not to cause or permit any further Occupation at the Development until payment has been made in full.

3. The County Council covenants with the Owner not to apply or procure the application of the Interim Bus Service Contribution other than towards the provision of a bus service linking the Development with Bicester town centre.

## SCHEDULE 6

### BUS INFRASTRUCTURE CONTRIBUTION

1. The following definitions relate to the Bus Infrastructure Contribution and shall have the following meanings throughout this Agreement:-

**"Bus Infrastructure Contribution"** means the sum of £19,460 (nineteen thousand four hundred and sixty pounds) (Index Linked (Baxter))

2. The Owner covenants with the County Council not to cause permit or suffer Occupation until the Bus Infrastructure Contribution has been paid to the County Council and it shall pay Bus Infrastructure Contribution to the County Council prior to Occupation.
3. The County Council covenants with the Owner not to apply the Bus Infrastructure Contribution other than towards the provision of bus stop infrastructure at the North West Bicester Development and Middleton Stoney Road.

## SCHEDULE 7

### RIGHTS OF WAY CONTRIBUTION

1. The following definitions relate to the Rights of Way Contribution and shall have the following meanings throughout this Agreement:-

**"Rights of Way Contribution"** means the sum of £2,384 (two thousand three hundred and eighty four pounds) (Index Linked (Baxter))

2. **RIGHTS OF WAY CONTRIBUTION**

2.1.1 The Owner covenants with the County Council not to cause permit or suffer Occupation until the Rights of Way Contribution has been paid to the County Council and it shall pay the Rights of Way Contribution to the County Council prior to Occupation.

2.1.2 The County Council covenants with the Owner not to apply the Rights of Way Contribution other than towards improvements to Bicester Bridleway 9 and Bucknell Bridleway 4.

## SCHEDULE 8

### TRAVEL PLAN MONITORING CONTRIBUTION

1. The following definitions relate to the travel plan contributions and shall have the following meanings throughout this Agreement:-

**"Travel Plan Monitoring Contribution"** means the sum of £5,271 (five thousand two hundred and seventy one pounds) (Index Linked (RPIX))

2. The Owner covenants with to the County Council not to cause permit or suffer Occupation until the Travel Plan Monitoring Contribution has been paid to the County Council and it shall pay the Travel Plan Monitoring Contribution to the County Council prior to Occupation.
3. The County Council covenants with the Owner not to apply the Travel Plan Monitoring Contribution other than towards the monitoring of the employment travel plan required pursuant to the planning conditions attached to the Planning Permission.

## STRATEGIC HIGHWAY - SAFEGUARDING

### PART 1

1. The following definitions relate to the safeguarding of the Strategic Highway and related matters and shall have the following meanings throughout this Agreement:-

<b>"Licence"</b>	means the licence for access to land to construct the Strategic Highway dated 18 October 2019 between (1) the Owner (2) the County Council and (3) the District Council
<b>"Strategic Road Land"</b>	means the part of the Site shown shaded pink on the plan in the Licence
<b>"Commencement Notice"</b>	means a Commencement Notice as that term is defined in the Licence
<b>"Dedication Notice"</b>	a notice from the County Council advising as to its intention to issue a certificate of completion for the Strategic Highway (or at the absolute discretion of the County Council part of it located on the Strategic Road Land) and a plan depicting the parts of the Strategic Road Land shaded pink on the plan in the Licence which are intended to be dedicated as highway
<b>"Disconnection Works"</b>	works so that the connection between any roadway on the Site which is accessed from Middleton Stoney Road and the part of the Major Infrastructure shaded pink is removed so that there is no vehicular access over the Site from Middleton Stoney Road to any part of the Major Infrastructure (other than by means of the Major Infrastructure)
<b>"Strategic Highway Agreement"</b>	the agreement which it is proposed should be entered into with the County Council and the District Council for the construction and delivery of the Strategic Highway
<b>"Strategic Road Completion Date"</b>	the date of issue of the certificate of completion by the County Council for the Strategic Highway

### 2. SAFEGUARDING OF STRATEGIC ROAD LAND

The Owner covenants with the District Council and County Council:-

#### 2.1 Safeguarding of Strategic Road Land

- 2.1.1 subject to the terms of this Agreement and the Licence to set aside the Strategic Road Land and not to cause or permit anything to be done which may materially delay or prejudice in any way the use of the Strategic Road Land for the construction of the Strategic Highway including for the installation of services that may be required to serve the Strategic Highway; and
- 2.1.2 without prejudice to the generality of paragraph 2.1.1 not to cause or permit any works to take place on the Strategic Road Land including causing or permitting any engineering works or building works to be undertaken or constructed on it or causing or permitting it to be otherwise developed save that this shall not preclude:-
- (a) passing over the Strategic Road Land with or without vehicles for the purpose of undertaking the Development provided always that this shall be coordinated with the Road Developer (as that term is defined in the Licence) after the



Commencement Notice (as that term is defined in the Licence) has been given pursuant to the terms of the Licence;

- (b) maintaining the Strategic Road Land in a clean and tidy condition and otherwise as may be required by a condition in the Planning Permission (prior to the date of the Commencement Notice);
- (c) installing services under (including across but beneath) or adjacent to the Strategic Road Land that may be required to serve the Development (as may be varied from time to time) in locations that have previously been approved in writing by the County Council; and
- (d) constructing any roadway on the Strategic Road Land in accordance with detailed plans and specifications that have been approved in writing by the County Council.

PROVIDED THAT the obligations in 2.1.1 and 2.1.2 above shall cease to apply in respect of any part of the Strategic Road Land which is not included in the Dedication Notice;

## **2.2 Licence and Agreement to Dedicate**

The Owner acknowledges that the Licence affects land forming part of the Site and as set out in the Original S106 Agreement the Owner agrees that forthwith on the issue by the County Council of the certificate of completion for the Strategic Highway (or such part of the Strategic Highway as the County Council may select) there shall be deemed to have been dedicated as public highway for all public highway purposes (including by mechanically propelled vehicles) the part of the Strategic Road Land shaded pink on the plan in the Licence (or such different parts of the area shaded pink identified with the Dedication Notice) and it shall thereafter subject to the provisions of the Strategic Highway Agreement be maintainable at the public expense;

## **2.3 Noting at Land Registry**

the Owner agrees with the Councils that they will consent to the noting of provisions of paragraph 2.2 (agreement to dedicate all or part of the Strategic Road Land shaded pink on the Plan in the Licence) on the register of title number ON271407 and provide the County Council with all reasonable assistance and all reasonable documentation to affect the same.

## **2.4 Disconnection Works**

the Owner agrees with the Councils that there shall be undertaken in conjunction with the Major Infrastructure Works at the Site the Disconnection Works and the Owner covenants with the Councils that it shall not seek to reinstate the connection removed by the Disconnection Works;

## SCHEDULE 10

### HIGHWAY WORKS

The following definitions relate to the Highway Works and related matters and shall have the following meanings throughout this Agreement:

**“Highways Agreement”**

means an agreement made pursuant to inter alia section 278 of the Highways Act 1980 substantially in accordance with the template form annexed to this deed at Appendix 6 which provides for the execution of the Highway Works by the Owner at the Owner’s expense

**“Highway Works”**

means the works set out in Part 2 of this Schedule

**“Works Plan (Indicative)”**

means David Tucker Associates drawing number [ ] attached to this Agreement at Appendix 7

1. The Owner covenants with the County Council that save where an agreement has previously been entered into with the County Council for the delivery of the Highway Works not to cause or permit Implementation until
  - 1.1 There has been submitted to the County Council and approved by it in writing in principle drawings for the Highway Works together with associated drawings and technical information as set out in the County Council’s Section 278 application form as adjusted from time to time;
  - 1.2 There has been submitted to the County Council and approved by it in writing plans detailing the land to be dedicated and the land (if any) in respect of which easements are to be granted following completion of the Highway Works and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated and the easements to be granted as identified on the approved dedication and easement plans;
  - 1.3 The anticipated duration of construction of the Highway Works has been agreed together with a long stop date for completion of the Highway Works and commuted maintenance sums in respect of the cost of future maintenance and as applicable replacement of the Highway Works has been agreed;
  - 1.4 A Highways Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraph 1.1 to 1.3 of this Schedule has been entered into by the Owner in respect of the Highway Works together with all parties with an interest in the land to be dedicated further to the Highways Agreement and the easement areas in respect of which rights are to be granted further to the Highways Agreement and any mortgagee of the land to be dedicated further to the Highways Agreement has released fully and effectively that land from its charge;
- 2 The Owner covenants with the County Council not to cause or permit Occupation until the Highway Works have been completed pursuant to and in accordance with the Highways Agreement or other agreement with the County Council.

## Part 2

### Highway Works – Description

#### 1. **Principal Works**

The provision and construction of the following works (“the **Principal Works**”):

Pedestrian signalised crossing of Howes Lane to the public right of way at Wansbeck Drive; as shown indicatively on the Works Plan (Indicative).

#### 2. **Preparatory and Ancillary Works**

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Principal Works such alteration thereof) as the Council shall consider requisite for the proper construction and functioning of the Principal Works including:-

- (a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works
- (b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- (c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works
- (d) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the grading and seeding of grassed areas
- (f) all measures necessary to ensure visibility for drivers at any bend or junction
- (g) all traffic signs, road markings, bollards and safety barriers
- (h) all tapers, joints and reinstatements necessary where the Principal Works abut the existing highway

#### 3. **Amenity and Accommodation Works**

The provision and construction of all such amenity and accommodation works as the Council shall consider requisite for the protection of the local environment and private and public rights and property in consequence of the Principal Works including:-

- (a) any earth bunds and/or planting necessary to screen the Principal Works
- (b) all fences gates hedges and other means of separation of the Principal Works from adjoining land
- (c) any necessary alteration of any private access or private or public right of way affected by the Principal Works
- (d) any necessary embankments retaining walls or other things necessary to give support to adjoining land

Executed as a Deed by HOWES LANE PROJECTS  
LLP, acting by IAN JAMES FACCENDA duly authorised  
by FACCENDA PROPERTY LIMITED to sign on its  
behalf as a member of HOWES LANE PROJECTS LLP  
in the presence of

.....  
Signature of IAN JAMES  
FACCENDA on behalf of a member

.....  
Full Name (Witness)

.....  
.....

.....  
Address

.....  
Signature of Witness

THE COMMON SEAL of  
CHERWELL DISTRICT COUNCIL  
was affixed in the presence of:-

.....  
Authorised Signatory

THE COMMON SEAL of  
OXFORDSHIRE COUNTY COUNCIL  
was affixed in the presence of:-

.....  
Director of Law and Governance  
/Designated Officer

**APPENDIX 1**

**PLAN**

**APPENDIX 2**  
**CONSTRUCTION STAGE MONITORING SCHEDULE**

**APPENDIX 3**  
**POST OCCUPANCY MONITORING SCHEDULE**



## ROUTEING AGREEMENT

**APPENDIX 5**  
**DRAFT S278 AGREEMENT**

**APPENDIX 6**

**S278 PLAN**







## Appendix 16

### COPY CORRESPONDENCE RE S106 AGREEMENT

**Our ref:** Q210286  
**Your ref:** 21/03177/F  
**Email:** emma.lancaster@quod.com  
**Date:** 8 July 2022



Caroline Ford  
Cherwell District Council  
Development Management  
Bodicote House  
Bodicote  
Banbury  
OX15 4AA

By Email

Dear Caroline

### **Section 106 Agreement – Statement of Intent**

This correspondence is submitted on behalf of Albion Land (the Applicant). It follows the Planning Committee's resolution to refuse planning consent for employment development that would comprise a third phase of the Axis J9 Business Park at North West Bicester.

The Planning Committee resolved to refuse planning consent for a single reason, relating to the general principle of development and its compatibility with existing neighbouring residential development. However, Officers had recommended approval of the planning application subject to several matters being satisfactorily resolved. One of those matters was the completion of a Section 106 Agreement which made provision for the following:

- Contributions towards public art.
- Contributions towards biodiversity offsetting scheme for farmland birds.
- A training and employment plan.
- Monitoring of the development through the construction and post-occupancy stages.
- Linking of the proposal to other major infrastructure agreements.
- Contributions towards bus services serving North West Bicester.
- Contributions towards bus stop infrastructure.
- Travel Plan monitoring.
- Contributions toward public rights of way improvements.



- Entering into a Section 278 Agreement to secure a pedestrian crossing of Howes Lane with a signalised crossing to the public right of way at Wansbeck Drive.
- Routing agreement.
- Monitoring fees payable to Cherwell District Council and Oxfordshire District Council.

It was also noted that a Traffic Regulation Order may also need to be secured via the Agreement.

The Applicant accepts that the above obligations would be necessary to make the proposed development acceptable in planning terms and does not object to the scale of the financial contributions which were identified by Officers in the schedule which was included in the papers for the Planning Committee.

The Applicant also agrees that a Section 106 Agreement would be necessary to secure the above noted planning obligations and would propose to enter into such an Agreement should planning permission be granted. To this end, they had drafted an Agreement in anticipation of planning consent being granted. A copy of the draft Agreement was provided to the Council ahead of the Planning Committee meeting to confirm all the above.

It is also the Applicant's intention to submit a copy of the draft agreement with their Appeal when this is lodged with PINS following receipt of the Council's decision notice.

This letter is provided for the avoidance of doubt and to confirm this acceptance and intent. A reason for refusal based on there not being a completed Agreement in place which secures the above noted heads of terms should not be necessary in these circumstances.

I trust that you will be able to release the Decision Notice for this application without further delay now that you have the Applicant's intentions clearly stated in writing for your records. The need for a Section 106 Agreement to be completed prior to the appeal being heard will be highlighted in the Applicant's appeal submission in due course. It will be set out and accepted via the Statement of Common Ground also.

Yours sincerely



Emma Lancaster  
Director





Quod

---

# Emma Lancaster

emma.lancaster@quod.com  
0113 245 1243

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Capitol Bond Court  
Leeds  
LS1 5SP