



## **CHERWELL DISTRICT COUNCIL**

### **STATEMENT OF CASE**

Appeal by Gallagher Estates, Charles Brown and Simon Digby under Section 78(1) of the Town and Country Planning Act 1990 against Cherwell District Council's refusal to grant outline planning permission (with all matters reserved except for access) for "*Residential development of up to 180 dwellings to include affordable housing, public open space, localised land remodelling, compensatory flood storage and structural planting*" at Part Land On The North East Side Of Gavray Drive, Bicester.

|                          |          |   |
|--------------------------|----------|---|
| <b>Appellants</b>        | <b>:</b> | <b>Gallagher Estates, Charles Brown and Simon Digby</b>               |
| <b>Appeal Site</b>       | <b>:</b> | <b>Part Land on the North East Side of Gavray Drive,<br/>Bicester</b> |
| <b>Appellant's Agent</b> | <b>:</b> | <b>David Lock Associates</b>  |
| <b>LPA Reference</b>     | <b>:</b> | <b>15/00837/OUT</b>   |
| <b>PINS Reference</b>    | <b>:</b> | <b>APP/C3105/W/17/3189611</b>   |

## **1. Introduction**

- 1.1 The appeal proposals were subject to a planning application (reference: 15/00837/OUT) submitted to Cherwell District Council (the Council) as the local planning authority and validated on 11<sup>th</sup> May 2015.
- 1.2 The planning application was subsequently held in abeyance pending legal proceedings in relation to the adoption of the Local Plan before detailed discussions took place between officers and the appellants about the scheme. The application was eventually reported to the Council's Planning Committee on 18<sup>th</sup> May 2017 at which determination of the application was deferred to enable the appellants to submit an ecological management plan. The appellants did not fulfil this request and the planning application was duly reported back to the next available Planning Committee on 15<sup>th</sup> June 2017 where the Council resolved to refuse to grant planning permission. A decision notice was issued on 22<sup>nd</sup> June 2017.
- 1.4 This appeal will be determined by means of the inquiry procedure where, in addition to the appellant and the Council, there will be four (Rule 6(6)) parties involved. This Statement of Case sets out the Council's position on the appeal proposals; though this position may be amplified or modified accordingly at the inquiry dependent upon any further submissions made by the appellants and the contents of the planning obligation expected to be submitted by the appellants as part of the appeal.

## **2. Appeal Site and Locality**

- 2.1 The appeal site is part of a wider strategic allocation of land for residential development known as Bicester 13 in the Cherwell Local Plan 2011-2031 Part 1 (CLPP1) and predominantly comprises an arable field to the north of Gavray Drive to the eastern side of Bicester. The appeal site is defined by the existing residential area of Langford Village to the south and Bicester Park Industrial Estate to the north. Railway lines delineate the western and northern boundaries (the latter on an embankment) which connect via the new East-West rail chord. A tree belt lines the site's southern boundary with Gavray Drive and new steel palisade fencing forms the open northern and western boundaries with the railway lines. Langford Brook lies just outside the appeal site to the east. A public footpath passes through the appeal site from Gavray Drive to a footbridge that leads over the rail chord and then underneath the embankment through to the industrial park to the north. A hedgerow extends

perpendicularly from the Gavray Drive boundary into the appeal site along the route of part of the public footpath.

- 2.2 The appeal site can be seen edged red in the site location plan submitted as part of the appellants' appeal documentation. The site can be seen in the context of the wider Bicester 13 strategic allocation on the plan that accompanies the allocation policy in the CLPP1 which has been supplied to the Inspectorate as part of completing the questionnaire. The majority of the land to the east of Langford Brook (i.e. the remainder of the allocated site) also falls within the appellants' control and is indicated by a blue edged line on the appellants' site location plan.
- 2.3 Approximately the eastern third of the appeal site is identified through the Environment Agency's maps as well as the Council's Strategic Flood Risk Assessment (SFRA) to be at high risk of river flooding. The eastern edge of the appeal site is also shown to be designated through the Council's adopted Policies Map as being within the River Ray Conservation Target Area through which development is restricted via Policy ESD11 of the CLPP1 unless it contributes positively towards the ecological objectives of the Conservation Target Area (as required under Policy Bicester 13).
- 2.4 The majority of the land to the east of Langford Brook (within the remainder of the allocated Bicester 13 site) is covered by either the Gavray Drive Meadows Local Wildlife Site or River Ray Conservation Target Area or a combination of the two. Part of the remainder of the allocated site to the east of Langford Brook is also at a high risk of fluvial flooding based on Environment Agency and SFRA mapping.

### **3. The Appeal Proposals**

- 3.1 The appeal seeks outline planning permission for the erection of up to 180 dwellings and associated public open space, play facilities, landscaping and groundworks with a new vehicular access created via a priority junction with Gavray Drive. New pedestrian linkages through to Langford Village to the south are also proposed as well as the retention of the existing public footpath. All matters have been reserved except for access to the proposed development. A Parameters Plan has been submitted that indicates those areas proposed for built development and those areas proposed for public open space. An illustrative masterplan is also shown within the design and access statement that accompanies the appeal proposals.

- 3.2 The planning application was accompanied by an Environmental Statement and thus the Council publicised, considered and determined the application as EIA development. The Council had regard to the information contained within the ES as part of considering the planning application. The appeal must therefore be considered and determined in the same manner.
- 3.3 Copies of representations from statutory consultees, internal consultees and third parties that were submitted to the Council in relation to the planning application will have already been forwarded to the Inspectorate as part of completing the appeal questionnaire. It is hoped that Statement of Common Ground will be agreed between the Council and the appellants for submission to the Inspectorate in advance of the inquiry. Statements of Case will also need to be submitted by the four existing Rule 6(6) parties which the Council has not had sight of in preparing its statement. Any cases put forward by Rule 6(6) parties are entirely independent of the Council's position in relation to the appeal. There has been no substantive correspondence between the Council and these other main parties as part of this appeal.

#### **4. Planning History**

- 4.1 The appeal site was initially part of a larger allocation for employment development through the Cherwell Local Plan 1996 (CLP 1996). An application for outline planning permission for residential development (up to 500 dwellings) relating to the whole of that site (which equates to the current Bicester 13 site) was made in December 2004 and was refused by the Council. It was subsequently allowed on appeal. This planning permission and any related planning permissions arising from applications made pursuant to s73 of the Town and Country Planning Act 1990 have since expired. Following expiry of the planning permission the Council then took the decision to re-allocate the appeal site for residential development as part of a larger allocation known as Bicester 13 in the CLPP1 as part of efforts to meet the full objectively assessed housing needs of the District as per the requirement of national policy set out in the NPPF – on adoption of the CLPP1 this superseded the previous employment allocation in the CLP1 1996. A more detailed site history with respect to planning applications received is set out below:

| <u>Application Ref.</u> | <u>Proposal</u>   | <u>Decision</u>   |
|-------------------------|---|---|
| 96/00255/F              | Construction of 20,864m2 manufacturing assembly plant, for automotive components, together with ancillary offices.  | Application Refused   |
| 96/00321/F              | Construction of 20,864m2 manufacturing and assembly plant, for automotive components, together with ancillary offices. Construction of new access.  | Application Refused   |
| 04/02797/OUT            | OUTLINE - Residential development (including affordable housing) incorporating a County Wildlife Site, together with the land reserved for a primary school, community facilities, public open space, rail chord and structure planting.                        | Not Determined. Appeal allowed 12.07.2006   |
| 05/01035/OUT            | OUTLINE - Residential development (including affordable housing) incorporating a County Wildlife Site, together with the land reserved for a primary school, community facilities, public open space, rail chord and structure planting.(Duplicate application) | Application Refused   |
| 09/00584/F              | Variation of Condition 8 of planning permission 04/02797/OUT.   | Application Permitted   |
| 09/00909/REM            | Reserved matters to Outline 04/02797/OUT. Road and drainage infrastructure.   | Not Proceeded With  |
| 10/01667/OUT            | Extension of time limit to 04/02797/OUT: Residential development.   | Application Permitted then quashed by Order of High Court. Remains pending consideration. |

## **5. Planning Policy Context**

- 5.1 Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require the determination of planning applications, and therefore appeals, to be in accordance with the development plan unless material considerations indicate otherwise. The statutory development plan for Cherwell District includes both the adopted Cherwell Local Plan 2011-2031 Part 1 (CLPP1) as well as a number of 'saved' policies within the Cherwell Local Plan 1996 (CLP 1996).
- 5.2 The Council sets out below the development plan policies that it considers relevant to the determination of the appeal proposals and which provide the basis for the consideration of the planning merits of the appeal scheme. The Inspectorate should have already been sent copies of these policies together with their supporting texts as part of the completion of the appeal questionnaire.

### **Development Plan Policies:**

#### Cherwell Local Plan 2011-2031 Part 1

- BSC1: District Wide Housing Distribution
- BSC2: Effective and Efficient Use of Land
- BSC3: Affordable Housing
- BSC4: Housing Mix
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision – Outdoor Recreation
- BSC12: Indoor Sport, Recreation and Community Facilities
- SLE4: Improved Transport and Connections
- ESD1: Mitigating and Adapting to Climate Change
- ESD3: Sustainable Construction
- ESD4: Decentralised Energy Systems
- ESD5: Renewable Energy
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13: Local Landscape Protection and Enhancement
- ESD15: The Character of the Built and Historic Environment
- ESD17: Green Infrastructure

- Bicester 13: Gavray Drive
- INF1: Infrastructure

#### Cherwell Local Plan 1996

- C8: Sporadic Development in the Open Countryside
- C28: Layout, Design and External Appearance of New Development
- C30: Design Control
- ENV1: Pollution Control
- ENV12: Contaminated Land

#### **Other Material Planning Considerations:**

##### National Planning Policy Framework (NPPF)

- 5.3 National planning policy is a material planning consideration. The NPPF sets out the Government's definition of sustainable development and the policies through which it envisages the planning system will deliver this. It reinforces the plan-led system introduced through the Planning and Compensation Act 1991 and has at its heart a presumption in favour of sustainable development. The NPPF has been updated via a number of written ministerial statements made since its publication.

##### National Planning Practice Guidance (NPPG)

- 5.4 The NPPG assists in the interpretation of national planning policy in the NPPF and its application to both plan-making and decision-taking. It also provides guidance on Government interpretation of relevant planning legislation as well as details of best practice in the planning system to assist practitioners and the public with general development management and plan-making matters.

##### Non-Statutory Cherwell Local Plan 2011

- 5.5 The Non-Statutory Cherwell Local Plan 2011 was conceived and intended as a replacement for the adopted Cherwell Local Plan 1996. In light of the changes introduced by the Planning and Compulsory Purchase Act 2004 and the introduction of the Local Development Framework system, the Council took the decision to discontinue work on the plan in December 2004 and withdrew it from the local plan process before its examination in public. It was however endorsed by the Council for development management purposes. As an emerging development plan document that has not been subject to examination, the weight afforded to it has always been limited. With the publication of the NPPF in March 2012 and the adoption of the CLPP1 in July 2015 its relevance has diminished further as many of its draft policies have been effectively superseded or rendered out-of-date. Whilst still of limited

weight in certain circumstances, it is not considered to be of relevance to the determination of the appeal proposals.

Cherwell District Council Draft Developer Contributions SPD (November 2017)

- 5.6 The SPD sets out further detail on those matters expected to be secured through planning obligations by the Council having regard to planning policies of the Development Plan. Whilst not yet formally adopted this document has been the subject of the statutory public consultation and is scheduled to be adopted at a meeting of full Council in February/March 2018. It therefore carries significant weight.

Oxfordshire County Council's Local Transport Plan 2015-2031

- 5.7 This document is not part of the development plan for the local planning authority but it sets out the local highway authority's strategic policy framework, transport vision and objectives over the coming years. Implications for the objectives within this plan can be material in the consideration of major development proposals in the District.

**6. The Council's Case**

- 6.1 The Council refused to grant planning permission in relation to planning application 15/00837/OUT for two reasons as determined by its Planning Committee on 15<sup>th</sup> June 2017. A copy of the decision notice will have already been sent to the Inspectorate as part of completing the questionnaire. The first and main reason for refusal has at its heart the simple matter of the interpretation of Policy Bicester 13. The second reason for refusal relates to the absence of the completion of a satisfactory planning obligation to secure the necessary on and off site infrastructure associated with the development. The Council intends to keep its position in relation to this second refusal reason under review dependent on any legal agreement/undertaking prepared and submitted by the appellants during the course of the appeal. However, the Council is prepared to defend both of its reasons for refusing the planning application and will be recommending to the Inspector that the appeal is dismissed. The Council sets out its position as follows in relation to the appeal proposals which expands upon and amplifies the reasoning behind its decision to refuse to grant planning permission.



## Refusal Reason 1

- 6.2 *“The proposed development represents an inappropriate attempt at piecemeal development of the strategically allocated Bicester 13 site in the Cherwell Local Plan 2011-2031 Part 1 which, in the absence of a single comprehensive application covering the whole of the allocated site, leaves the Council unable to satisfactorily determine whether the proposals would enable development across the whole of the site to properly meet the overall objectives and requirements of Policy Bicester 13. In doing so the proposals fail to demonstrate that the allocated housing total can be appropriately provided across the allocated site in a manner that adequately protects and enhances locally significant ecological interests on the land to the east of Langford Brook which is in direct conflict with the inherent and sustainable balance contained within Policy Bicester 13 between housing delivery and biodiversity enhancement. As a result the proposals are considered to be contrary to the overall provisions of the Development Plan and the specific requirements of Policies Bicester 13, ESD10 and ESD11 of the Cherwell Local Plan 2011-2031 Part 1.”*
- 6.3 Following the grant of outline planning permission on appeal in 2006 for up to 500 dwellings (across an area equating to the whole of the site now allocated as Bicester 13), the ecological value of the allocated site together with its importance and interest to local residents has been increasingly recognised. Indeed part of the land to the west of Langford Brook and the majority of the land to the east of Langford Brook is now within a designated Conservation Target Area and a significant proportion of land to the east of Langford Brook is within a defined Local Wildlife Site. Once the previously granted planning permission(s) had expired, the Council took the decision to consider re-allocating broadly the same site for residential development as part of its emerging CLPP1 in order to meet the full objectively assessed housing needs of the District as per the requirements of Government guidance in the NPPF. However, in recognition of the ecological constraints and public interest in this regard, the Council allocated a substantially reduced amount of housing for the Bicester 13 site and in doing so included clear requirements for long term conservation and enhancement of biodiversity and important landscape features within the site including through the preparation and implementation of an ecological management plan. Policy Bicester 13 is therefore not merely a zoning of land for residential development but a carefully considered set of criteria and parameters that, if complied with, would lead to appropriate and sustainable development in the Council’s view. It is only if these criteria are fulfilled as part of development proposals

that such proposals could be considered to conform to the Council's democratically adopted and planned vision for the future of the site.

- 6.4 The generation of significant net ecological enhancements for the site, including the Conservation Target Area, was integral to the Council's decision to consider the Bicester 13 site suitable for allocation for residential development. Unlike other strategic sites allocated within the CLPP1, Bicester 13 was known to be within the control of a single developer at the time of the preparation and adoption of the plan and so there is no specific reference in Policy Bicester 13 to a need for the submission of a site-wide masterplan as part of any planning application as it was assumed that it would come forward as one proposal in the same manner that it did previously. Contrary to that suggested by the appellants, there can be no specific requirement within a site allocation policy for a single application to be submitted in relation to the site – such an approach would be exceptionally unlikely to be found sound at examination. It is, however, inherent to any development plan policy that allocates a site for development that proposals for part development of it may either fail to meet the overall requirements of that policy or potentially prejudice (or leave uncertain) the ability to achieve the full requirements of the policy in due course. Such a situation would leave the proposals in conflict with the site allocation policy and therefore the development plan as a whole.
- 6.5 The crux of the Council's case concerns the interpretation of Policy Bicester 13 which is clearly written and intended to be read and applied across a single site. Indeed the term 'site' is used within the policy in a singular form and many of its criteria can only be logically interpreted in the context of a planning application satisfying all of its requirements rather than dividing the allocated site so that some requirements of Policy Bicester 13 are not met. This is of particular importance in the case of this allocated site given the known ecological constraints associated with parts of the site and the requirement within Policy Bicester 13 to conserve valuable habitats and species within the site and secure net biodiversity gains whilst providing 300 dwellings. This is all in the knowledge that significant parts of the allocated site are unsuitable for residential development due to their susceptibility to flooding as well as there being other constraints such as the nearby railway lines and the well-used public footpaths passing through it.
- 6.6 With this in mind, it is simply impossible for the Council to make an adequate assessment of the likely implications of the appeal proposals on Policy Bicester 13 (as a whole, as required) given that only part of the site is being proposed for development. This leaves significant question marks as to whether a sufficient

number of homes can be proposed in a suitable manner on the remainder of the allocated site in a way that delivers on all of the requirements of Policy Bicester 13 to ensure that the Council delivers sustainable development and meets the full objectively assessed housing needs of the District. Whilst the appellants have provided some broad brush habitat assessment of the land to the east of Langford Brook, this is not based around detailed species and habitat surveys and fails to correspond to specific development proposals. The appeal proposals also fail to deliver on a requirement of Policy Bicester 13 for any proposals on the site and (one which the Council considers to be of principal importance and fundamental to the decision to allocate the site for development in the CLPP1) the preparation and commitment as part of development proposals to deliver an ecological management plan for the site.

- 6.7 A relevant and suitable ecological management plan that responds appropriately to the protected/priority species on the allocated site and the retained/new habitat on the allocated site can only be prepared in the full knowledge of development proposals for the whole of the allocated site. It is well understood that in the absence of management the Local Wildlife Site and Conservation Target Area are at risk of declining in value due to spread of invasive species and degrading of the quality of some of the habitat. With this firmly in mind the Council took the decision to re-allocate the Bicester 13 site for redevelopment with the residential development directly facilitating the objective of securing the long-term future of these areas as valuable habitat for wildlife. By proposing development on only part of the allocated site, these objectives and requirements of Policy Bicester 13 will remain unfulfilled and the future of the Local Wildlife Site and Conservation Target Area within the allocated site will remain uncertain, flying in the face of the Council's reasons for allocating the site for residential development. Policy Bicester 13 is explicitly clear in requiring the preparation and implementation of an ecological management plan to ensure the long-term conservation of habitats and species within the site – and this can only reasonably be interpreted as meaning the whole of the allocated site, not part of it. The first paragraph of Policy Bicester 13 specifically refers to the term “site” in a singular form as do numerous other paragraphs set out within the key site specific design and place shaping principles of the policy. Indeed a number of these criteria can only be reasonably fulfilled through the preparation of a single development proposal for Bicester 13. It is thus clear that Policy Bicester 13 relates to the whole of the allocated site and there is no separate definition of site provided that could lead to the conclusion that Policy Bicester 13 could be complied with only in part and still be acceptable. As such, any reference to “site” within Policy Bicester 13 must be taken to mean the whole of the allocated site. It is worth recalling

comments made by Lord Reed at para. 19 in *Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland)* [2012] UKSC 13: "... many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann)."

- 6.8 Whilst the appellants may have control over the majority of the remaining allocated land to the east of Langford Brook, it would not be possible to properly assess and then to overcome concerns about the lack of ecological enhancement/management of this land within the appeal proposals through the use of planning obligations or appropriately worded conditions on a planning permission given that the impact of development on it is not known as there are no proposals for it or detailed ecological/botanical surveys of the site. Any commitments within an ecological management plan would therefore be irrelevant and would certainly not meet the national policy tests of planning conditions as set out in paragraph 206 of the NPPF nor the statutory tests of planning obligations in the CIL Regulations 2010 (as amended).
- 6.9 In summary, Policy Bicester 13 is a democratically endorsed part of the development plan found sound at examination and thus in accordance with the NPPF. Meeting its requirements are integral to ensuring confidence in an up-to-date plan-led system provided for by legislation and supported by Government through national policy. The proposals for partial development of the allocated site would fail to deliver on a number of essential criteria set out within Policy Bicester 13 such as the creation of a relevant ecological management plan for the entirety of the allocated site and, furthermore, leave it impossible for the Council to be able to adequately assess whether anything now proposed would compromise the ability, in the fullness of time, to properly deliver on everything required by Policy Bicester 13 including ensuring long-term ecological enhancements rendering the policy unfulfilled.
- 6.10 The Council has reviewed the Statement of Case made by the appellants and draws attention to a number of inaccuracies and misrepresentations in the document. The first, is an erroneous claim of the tests to be applied when making decisions on planning applications/appeals as set out in paragraph 4.1. There are also claims within paragraphs 4.4 and 4.6 that could be construed as conflating the Council with its planning officers which are not the same. To be clear, the Council was not responsible for the committee reports - it was prepared by planning officers and so is

not specifically relevant to the rationale behind the decision taken. Furthermore, paragraph 4.6 suggests that the Council acknowledges that the appeal proposals meet the relevant ecological criteria in Policy Bicester 13 - this is not the case as has been explained above. There are numerous 'ecological' requirements of Policy Bicester 13 that have not, in the Council's view, been satisfied by these proposals and which proved fatal to the planning application.

- 6.11 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be taken in accordance with the development plan unless material considerations indicate otherwise. The Council has provided cogent reasoning behind its conclusion that the appeal proposals fail to deliver on the requirements of Policy Bicester 13 and provide insufficient information to conclude that partial development of the allocated site would enable proper achievement of the requirements of Policy Bicester 13 overall. As Policy Bicester 13 is the primary planning policy within the development plan of relevance to these appeal proposals, the proposed development must in turn be contrary to the development plan. It is therefore necessary to consider whether other material considerations exist, such as national policy as set out in the NPPF, to outweigh the conflict with the development plan. It is known however that the CLPP1 and Policy Bicester 13 specifically were found sound when assessed against the NPPF at examination by an independent Inspector.
- 6.12 Paragraph 14 of the NPPF states that there is a presumption in favour of sustainable development that runs through plan making and decision taking which means, for decision taking, "*approving development proposals that accord with the development without delay*". The Council has demonstrated that the development proposals do not accord with the development plan. The second limb of the decision-taking section of paragraph 14 is not engaged as the development plan is up-to-date, directly relevant to the appeal proposals and with the Council being able to demonstrate at least a five year supply of deliverable housing sites. The Council and therefore the Inspector does not need to demonstrate that the adverse impacts would "*significantly and demonstrably outweigh the benefits of the proposal*". Indeed the decision taking section of paragraph 14 of the NPPF is silent on the situation whereby a proposal conflicts with an up-to-date development plan.
- 6.13 As has been established through recent court judgements (namely Barwood Strategic Land II LLP vs East Staffordshire Borough Council & SSCLG [2017] EWCA Civ 893) the presumption in favour of sustainable development does not apply outside paragraph 14 of the NPPF given that an up-to-date development plan will already be making provision for sustainable development since it will have been

prepared against national policy in the NPPF. At its heart therefore, development proposals that are in conflict with an up-to-date development plan are not in accordance with the sustainable spatial strategy for the area. Carrying out a generic balancing exercise of the benefits and harm associated with the proposed development to the economic, social and environment dimensions is not therefore appropriate nor supported by the NPPF in such circumstances. Other material planning considerations would therefore be needed to outweigh the conflict with the development plan.

- 6.14 Whilst the NPPF supports the boosting of housing delivery the Council is already doing this through the CLPP1 and there is projected to be a 5.7 year supply of housing sites in the District from 1<sup>st</sup> April 2018. Whilst the appellants may contend that some housing delivery on Bicester 13 is included within this calculation, which is correct, this does not justify the appellants coming forward with a substandard proposal on the land claiming support from figures that they directly have control over and which could be resolved if a suitable comprehensive application was submitted for the whole of the allocated site. As a result the Council contends that any benefits associated with new housing (whether market and/or affordable) as well as some wider benefits associated with off-site highway works and other infrastructure (dependent on the content of any submitted planning obligation) does not outweigh the conflict with an up-to-date development plan and the importance of following the plan-led system unless there are compelling reasons otherwise. These do not exist in this case and the appeal should therefore be dismissed for this reason.

#### Refusal Reason 2

- 6.15 *“In the absence of a satisfactory completed legal agreement, the proposals would not commit to the necessary provision of on-site and off-site infrastructure to mitigate the impact of the development or contribute towards providing affordable housing in order to create a mixed and balanced community. As a consequence the proposals would not deliver suitable and sustainable residential development and would have a significant detrimental impact on wider public infrastructure. The proposals are therefore found to be contrary to the requirements of Policies Bicester 13, BSC3, BSC4, BSC9, BSC10, BSC11, BSC12, SLE4, ESD15 and INF1 of the Cherwell Local Plan 2011-2031 Part 1 as well as Government guidance set out in the National Planning Policy Framework.”*
- 6.16 As to refusal reason two, the Council is firmly of the view that there is nothing unusual or spurious about the inclusion of the same despite the claim made by the appellants. As the planning application was refused before any legal agreement

could be drafted, let alone completed, there can be no certainty that the appellants (and any other parties with an interest in the land) would have committed to the necessary covenants to secure the infrastructure required. Indeed there can still be no certainty that the appellants will submit a legal agreement/undertaking as part of this appeal that is satisfactory to the Council. In this regard the Council must therefore safeguard its position by continuing to defend this reason for refusal unless/until a satisfactorily completed deed is submitted. Even then, where any deed includes a 'blue pencil clause', the Council will continue to make the case that all of the requirements of the deed must be found to meet statutory tests by the Inspector whether or not any covenants are specifically challenged by any main party as part of the inquiry.

- 6.17 The Council intends to produce a Planning Obligations Compliance Statement to be submitted to the Inspectorate along with its proofs of evidence which will set out in detail the commitments that it expects to see within a planning obligation submitted by the appellants and the justification for these having regard to the statutory tests set out in regs. 122 and 123 of the CIL Regulations 2010 (as amended). This is expected to be broadly in line with the recommended heads of terms for a planning obligation as listed in paragraph 7.68 of the officers' report to the 18<sup>th</sup> May 2017 Planning Committee though may need to be modified to reflect any changes in circumstances since this date.

## **7. Conclusion**

- 7.1 Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require determinations to be made in accordance with the development plan unless material considerations indicate otherwise. The NPPF, as Government guidance, supports this approach and reinforces the importance of a plan-led system where such plans are up-to-date having regard to the latest national policy.
- 7.2 The CLPP1 forms the principal development plan document for Cherwell District and was examined and found sound against the provisions of the NPPF such that it is consistent with current national planning policy. Amongst other things, the CLPP1 provides for meeting the full objectively assessed housing needs of the District over the plan period in a sustainable manner and development on Bicester 13 forms a part of meeting this objective. As the Council can demonstrate in excess of a five year supply of housing within the District, full weight must be attached to the relevant

policies of the CLPP1 including its policies for the supply of housing and therefore Policy Bicester 13.

- 7.3 The Council contends that part development of this allocated site would lead to a failure to comply with fundamental requirements of Policy Bicester 13 which at its heart sets out a framework for suitable and sustainable delivery of approximately 300 dwellings across the allocated site whilst delivering long-term ecological conservation and enhancements to locally designated sites, preventing residential development in areas at high risk of flooding and delivery of new public amenity areas. Furthermore, in the absence of development proposals relating to the whole of the allocated site the Council is simply unable to satisfactorily conclude that the proposed part development of the allocated site would ultimately lead to development across Bicester 13 that accords with the overall requirements of Policy Bicester 13 and thus the Council's vision for the future of the site and must therefore be considered to be in conflict with the provisions of the development plan. The Council has considered whether there are any material considerations that indicate determining the appeal proposals other than in accordance with the development plan and cannot conclude that this is the case for reasons already given. The Inspector is therefore respectfully requested to dismiss the appeal.
- 7.4 Notwithstanding the above, in the absence of the submission of a satisfactory planning obligation to properly secure the infrastructure considered to be necessary to provide a suitable on-site environment as part of the development as well as mitigate the wider public impacts of the development, the Council contends that the appeal should be dismissed given that the proposals would adversely affect local provision of public infrastructure, fail to contribute sufficiently towards mixed and balanced communities and fail to deliver a satisfactory quality of development on the site. Furthermore, the failure to satisfactorily secure the infrastructure necessary at this stage to serve and mitigate the appeal proposals could contribute towards prejudicing delivery of sustainable development across the wider Bicester 13 allocated site in due course in the way required by the allocation policy.
- 7.5 The Council intends to submit a detailed planning obligations compliance statement at the relevant stage to justify the infrastructure that it considers to be necessary to have secured via a planning obligation in order to make the proposed development acceptable in planning terms. Where this differs from that contained within the appellants' final submitted planning obligation, it should be assumed unless otherwise stated that the Council will object to the appeal proposals on these grounds at the inquiry and contend that the appeal should be dismissed. The Council



reserves the right to make further written representations to the Inspectorate as part of the appeal once the appellant has submitted a final planning obligation in order to provide comments on both the drafting of the deed and the obligations contained within it.

- 7.6 Notwithstanding the Council's position that the appeal should be dismissed, if the Inspector is satisfied with the submitted planning obligation and is minded to allow the appeal, the Council recommends that the following conditions be imposed in addition to any others the Inspector considers appropriate:

#### Suggested Conditions

1. No development shall commence until full details of the layout, scale, appearance and landscaping (hereafter referred to as reserved matters) of the hereby approved development have been submitted to and approved in writing by the Local Planning Authority.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

2. In the case of the reserved matters, no application for approval shall be made later than the expiration of three years beginning with the date of this permission.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

3. The development to which this permission relates shall be begun not later than the expiration of two years from the approval of all of the reserved matters or, in the case of approval on different dates, the approval of the last such matter to be approved.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

4. Except where otherwise stipulated by condition, the development shall be carried out strictly in accordance with the following plans and drawings:

JJG050-015 Rev. A

14-033/009 Rev. B

and all applications for reserved matters approval shall be in accordance with the principles set out in the submitted Parameters Plan (dwg no. 001 Rev. D).

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with Government guidance contained within the National Planning Policy Framework.

5. Prior to the commencement of the development hereby approved, a plan showing full details of the finished floor levels of proposed buildings in relation to existing and proposed ground levels on the site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved floor levels plan.

Reason - To ensure that the proposed development is in scale and harmony with its neighbours and surroundings and to comply with Policy ESD 15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

6. No dwelling hereby approved shall be occupied until 3 bins for the purposes of recycling, residual and garden waste have been provided for that dwelling in accordance with the following specification:

- One 240 litre blue wheeled bin for the collection of dry recyclable material;
- One 240 litre green wheeled bin for the collection of residual waste;
- One 240 litre brown bin for the collection of garden waste material

Reason - To provide appropriate and essential infrastructure for domestic waste management in accordance with the provisions of Policies INF1 and BSC 9 of the Cherwell Local Plan 2011 - 2031 Part 1.

7. Prior to the first occupation of any dwelling hereby approved, full details of the fire hydrants to be provided on the site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of any dwelling, the fire hydrants shall be provided in accordance with the approved details and retained as such thereafter.

Reason - To ensure sufficient access to water in the event of fire in accordance with Government guidance contained within the National Planning Policy Framework.

8. No dwelling shall be occupied until it has been constructed to ensure that it achieves a water efficiency limit of 110 litres person/day.

Reason - In the interests of sustainability in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1.

9. Notwithstanding any provisions contained within the Town and Country Planning (General Permitted Development) Order 2015 (and any Order or Statutory Instrument amending, revoking or re-enacting that order), all public water supply, foul drainage, power, energy and communication infrastructure to serve the proposed development shall be provided underground and retained as such thereafter except with the prior written approval of the local planning authority.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD 15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

10. No development shall commence until a foul drainage scheme detailing any on and/or off site drainage works, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.

Reason - The development may lead to sewage flooding; to ensure that sufficient capacity is made available to cope with the new development; and in order to avoid adverse environmental impact upon the community.

11. Prior to the commencement of the development, impact studies of the development on the existing water supply infrastructure, which shall determine the magnitude and timing of any new additional capacity required in the system and a suitable connection point, shall be submitted to, and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Reason: To ensure the water supply infrastructure has sufficient capacity to accommodate the additional demand in accordance with Government guidance contained within the National Planning Policy Framework.

12. No development shall take place until a scheme for the provision and management of an eight metre wide buffer zone alongside the Langford Brook has been submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. The buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping and should form a vital part of green infrastructure provision. The schemes shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan
- details of any proposed footpaths, fencing, lighting etc.

Reason - Development that encroaches on watercourses has a potentially severe impact on their ecological value and should be protected and enhanced in accordance with the requirements of Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1. Land alongside watercourses, wetlands and ponds is particularly valuable for wildlife and it is essential this is protected.

13. No development shall commence until a surface water drainage scheme for the site (including an implementation timetable and maintenance plan), based on the agreed JBA Consulting Flood Risk Assessment (FRA) and Drainage Assessment (reference 2013s7196, dated April 2015) has been submitted to and approved in writing by the local planning authority. The development shall subsequently be implemented in full accordance with the surface water drainage scheme approved. The surface water drainage scheme shall include:

- Details of the stone blankets/storage basin as outlined in the FRA, including a network drainage plan of these details.
- Reduction in surface water run-off rates to 3.22 l/s/ha for the 6.7ha site.
- Detailed drawings of the flood compensation scheme.

Reason - To prevent the increased risk of flooding, to improve and protect water quality and ensure future maintenance of these in accordance with the requirements of Policy ESD7 of the Cherwell Local Plan 2011-2031 Part 1.

14. Prior to the commencement of development, details of the renewable energy provision to be incorporated into the development shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the details approved and no dwelling shall be occupied until any and all approved renewable energy measures for that dwelling have been installed and are fully operational.

Reason – In the interests of delivering environmentally sustainable development in accordance with the requirements of Policy ESD5 of the Cherwell Local Plan 2011-2031 Part 1.

15. Prior to the first occupation of any dwelling hereby approved, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the retained and proposed landscaped areas on the site as part of the development shall be managed in accordance with the approved LEMP.

Reason LR4 - To ensure the delivery of green infrastructure and biodiversity gain in accordance with Government guidance contained within the National Planning Policy Framework.

16. All applications for reserved matters approval shall be accompanied by a Biodiversity Statement setting out how the reserved matters proposals would ensure

adequate protection and enhancement of biodiversity on the site so that an overall net gain for biodiversity is achieved as part of the development.

Reason – To ensure that a detailed scheme achieves the net gains for biodiversity that the planning application and its supporting documentation indicate is deliverable in accordance with the requirements of Policies ESD10 and Bicester 13 of the Cherwell Local Plan 2011-2031 Part 1.

17. Prior to the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.

Reason - To safeguard the recording of archaeological matters within the site in accordance with the NPPF (2012).

18. Following the approval of the Written Scheme of Investigation and prior to the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.

Reason – To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through publication and dissemination of the evidence in accordance with the NPPF (2012).

19. Prior to the commencement of the development, full details of proposed alterations to the alignment, surfacing and treatment of Public Footpath 129/3/20 including the link to the rail footbridge to the north and a timetable for its delivery shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.

Reason – To ensure suitable permeability of the development in the interests of pedestrian amenity in accordance with the requirements of Policy Bicester 13 of the Cherwell Local Plan 2011-2031 Part 1.

20. Prior to the commencement of the development hereby approved, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The CMP shall include measures relating to:

- a) The parking of vehicles of site operatives and visitors;
- b) The routing of HGVs to and from the site;
- c) Loading and unloading of plant and materials;
- d) Storage of plant and materials used in constructing the development;
- e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- f) Wheel washing facilities/ road sweeping;
- g) Measures to control noise disturbance for occupants of neighbouring sites and to control the emission of dust and dirt during construction;
- h) A scheme for managing and disposing of spoil arising from construction works;
- i) Details of recycling/disposal of waste resulting from demolition and construction works;
- j) Delivery, demolition and construction working hours;
- k) Measures to safeguard statutorily protected and priority species during construction works as well as habitats proposed for retention;
- l) The relevant mitigation measures recommended in the Environmental Statement.

The development shall be carried out in accordance with the approved Construction Management Plan at all times.

Reason – To ensure that construction work adequately safeguards the amenity of nearby residents and to minimise adverse impacts from construction traffic on the local highway network.

21. Prior to the first occupation of the development hereby approved, the name and contact details of the Travel Plan Co-ordinator should be submitted to the Local Planning Authority and prior to the occupation of the 90th dwelling a full Travel Plan, prepared in accordance with the Department of Transport's Best Practice Guidance Note "Using the Planning Process to Secure Travel Plans" and its subsequent amendments, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Travel Plan shall be implemented and operated in accordance with the approved details.

Reason - In the interests of sustainability, to ensure a satisfactory form of development and to comply with Policies SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

22. All applications for reserved matters approval shall be accompanied by a noise impact assessment to demonstrate that all habitable rooms within the proposed dwellings experience internal noise levels that do not exceed the criteria specified in Table 4 of the British Standard BS 8233:2014. Thereafter the approved dwellings shall be constructed in accordance with the details set out in the noise impact assessment approved as part of the grant of reserved matters approval so that the above noise standard is achieved.

Reason – In the interests of ensuring a suitable standard of internal and external living environment as part of all new dwellings in accordance with the requirements of Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1.

23. No vibro-compaction machinery or piling shall take place as part of the construction of the development unless details of such machinery and its use has been submitted to and approved in writing beforehand by the local planning authority in consultation with Network Rail.

Reason – In the interests of the safety of users of the adjacent railway line.

24. Prior to the commencement of the development, details of the boundary treatment(s) between the site and the adjacent railway line together with a timetable for its delivery as well as details of its long term maintenance arrangements shall be submitted to and approved in writing by the local planning authority in consultation with Network Rail. Thereafter the development shall only be carried out in accordance with the details approved.

Reason – To ensure the appearance of the development and safety of the railway can be considered in accordance with the requirements of Policies ESD15 and Bicester 13 of the Cherwell Local Plan 2011-2031 Part 1 as well as Government guidance set out in the National Planning Policy Framework.

25. Prior to the commencement of any part of the development where within 10m of the existing public footpath, the footpath shall be protected and fenced to accommodate a width of a minimum of 5m in accordance with details to be first



submitted to and approved in writing by the Local Planning Authority. Thereafter, the footpath shall remain fenced and available for use throughout the construction phase in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reason - In the interests of highway safety and public amenity and to comply with Government guidance contained within the National Planning Policy Framework.

26. Prior to but no more than three months before commencement of the development, the site shall be thoroughly checked by a suitably qualified ecologist to ensure that no statutorily protected species which could be harmed by the development have moved on to the site since the previous surveys submitted as part of the planning application were carried out. The results of the ecologist's site assessment should be submitted to and approved in writing by the local planning authority prior to any development commencing. Should any protected species be found during this check, full details of mitigation measures to prevent their harm shall be submitted to and approved in writing by the Local Planning Authority prior to any development commencing. Thereafter the development shall be carried out in accordance with the approved mitigation scheme.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 and Government guidance contained within the National Planning Policy Framework.

27. No removal of hedgerows, trees or shrubs shall take place between the 1st March and 31st August inclusive, unless the Local Planning Authority has confirmed in writing beforehand that such works can proceed, based on health and safety reasons in the case of a dangerous tree, or the submission of a recent survey (no older than one month at the time of its submission) that has been undertaken by a competent ecologist to assess the nesting bird activity on site, together with details of measures to protect the nesting bird interest on the site.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 and Government guidance contained within the National Planning Policy Framework.

28. No dwelling shall be occupied until the means of vehicular access to the development and associated highway works as shown in drawing no. 14-033/009 Rev. B have been fully laid out and made available for continued public use.

Reason – To ensure that there is a suitable means of access to the development in accordance with the requirements of Policies SLE4 and Bicester 13 of the Cherwell Local Plan 2011-2031 Part 1.

29. No dwelling shall be occupied until a scheme of public art for the site has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the artwork, timetable for its provision as well as details of its long term maintenance. Thereafter the public art shall be provided and maintained in accordance with the approved scheme.

Reason – In the interests of creating a high quality residential environment in accordance with the requirements of Policy Bicester 13 of the Cherwell Local Plan 2011-2031 Part 1.

30. No development shall commence until details of the pedestrian and cycle access links into the development from Gavray Drive as indicated in the Parameters Plan (dwg no. 001 Rev. D) together with associated works to the highway to enable connections with existing footpath/cycle links have been submitted to and approved in writing by the local planning authority together with a timetable for their implementation. No dwelling shall be occupied until the pedestrian and cycle links have been provided as approved.

Reason – To enable appropriate means of pedestrian connectivity between the development and the surrounding area in accordance with the requirements of Policies SLE4, ESD15 and Bicester 13 of the Cherwell Local Plan 2011-2031 Part 1.

31. No dwelling shall be occupied until details of a raised crossing of Mallards Way have been submitted to and approved in writing by the local planning authority in consultation with the local highway authority together with a timetable for its provision. The development shall thereafter only take place in accordance with the approved details.

Reason – To ensure suitable and safe means of pedestrian and cycle connectivity to and from the development in accordance with the requirements of Policies SLE4 and Bicester 13 of the Cherwell Local Plan 2011-2031 Part 1.

32. No development shall commence until details of two new bus stops on Wretchwick Way together with associated hardstanding, infrastructure, signalised crossing and footway improvements have been submitted to and approved in writing by the local planning authority together with a timetable for their implementation. The approved bus stops and associated works shall thereafter be provided in accordance with the approved details.

Reason – In the interests of promoting and delivering sustainable modes of travel for the residents of the development in accordance with the requirements of Policies SLE4 and Bicester 13 of the Cherwell Local Plan 2011-2031 Part 1.