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WITHOUT PREJUDICE

Dear Bob,

### **BICESTER OFFICE PARK (BOP)**

I am writing as agreed to set out my Clients formal position in respect of the s106 agreement relating to transport matters, following further discussions with CDC and OCC officers, as requested by the Committee on 23 August 2018.

By way of this letter we confirm that we would like to the Application to be reported to Committee on 17<sup>th</sup> January 2019. Given Members previous resolution to approve the application, subject to an appropriate s106 agreement, the sole purpose of the Committee is for CDC officers to present their recommendation as to the level of s106 contribution appropriate.

There is no conceivable basis for refusal of this application, as all parties recognise that any impacts arising can be made acceptable by means of an appropriate planning obligation, in line with the NPPF. OCC as highways authority is clear there is no in principle highways objection; the only issue is the level of contribution.

It was hoped that this matter could be agreed between the Applicant, and OCC. In the absence of agreement, it is for CDC officers to set out their recommendation as to what mitigation is required, having regard to the position of OCC and the Applicant, and Members of the Committee to decide what is appropriate.

The OCC maintains that a figure of £2.24m is required to make the application acceptable. The Applicant considers this is excessive, and could put at risk delivery of the Bicester Office Park, and in this letter sets out what it considers to be a reasonable contribution in the interest of reaching a compromise.

### **Context**

The outline application for the construction of Bicester Office Park was registered on 22 December 2017. The Site is allocated in an up to date Local Plan, and part of the site is the subject of a previous consent for the same quantum of floorspace, granted in 2010. This was subject to s106 covering various highways and public transport contributions, totalling £2.5m.



Subsequently, CDC approved an application by Tesco on part of the BOP Site, and agreed a deed of variation to the S106 in respect of the consented Tesco store, which allows for the construction of up to 45,000 sq. m of B1a/B1 (b).

This included a transport contribution of £407,198, in addition to the provision of the access road, and was approved by Members in part on the basis that it ‘pump-primed’ the delivery of the Bicester Office Park.

In parallel with this application, Members also approved the extension of Bicester Village, including significant highway works to the A41 in order to comprehensively address previous highway issues.

More recently, CDC has approved a number of additional developments in the vicinity, including the Gateway Retail Park and Gateway Business Park, which have, to varying degrees (which we consider later), made further contributions to highway works.

In addition to significant highway improvements to A41, the public transport situation has changed materially since the original Bicester Office Park consent; Bicester Village Station opened in 2015, and there are now regular bus services along the on A41. As such, the sites accessibility and highways network have been improved significantly since the original Bicester Office Park scheme was approved.

At the Planning Committee in September 2018, Members strongly supported the need for additional offices, and resolved to grant planning permission for the BOP, subject to a s106 agreement to cover any necessary highway contributions, to be determined by CDC officers in consultation with OCC.

This letter describes; the approach taken by OCC to this process; the subsequent agreement reached on technical matters between OCC and Motion, who represent the Applicant on transport matters; the steps taken by Applicant to seek to reach agreement; and the Applicants formal position in response to what it regards as the intransigent, unreasonable and unlawful position adopted by the OCC to this issue.

## **The OCC Position**

Despite the Application being registered as long ago as December 2017, the first time the Applicant was made aware of the OOC request for the sum of £4,023,757.99m of highways and public transport contribution was in its response to consultation dated 7 August 2018.

A significant proportion of the (£2,965,185.99) is said to be a contribution towards;

*‘The South East Perimeter Road western section) or scheme of similar benefit,’*

The other items relate to bus and rail improvements and ‘monitoring’ fees.



OCC has subsequently reconsidered its position, and on 12 November 2018 issued a revised request, for a total of £2,245,858, comprising a contribution of £1.88m for strategic highways improvements and £360k for improved bus services.

This was discussed at a meeting between OCC/CDC and the Applicant on 13 November 2018, after which we were informed verbally by CDC that OCC was minded to reduce the contribution to a combined total figure of circa £1.3m, although we now understand that senior OCC officers not present at that meeting wish to maintain the previous request for £2,245,858.

Throughout this period, we have consistently requested a clear explanation from OCC as to how the various requests have been calculated, and how they relate to requests made in respect of other schemes in the area, which OCC has been unable to provide.

More recently, on 3 January 2019, we were made aware that OCC has received Councils opinion, which we were only provided with on 7<sup>th</sup> January 2019. We have yet to review the scope of the advice sought and given, and will respond further on this in due course, if necessary.

However, this does not alter the (agreed) technical highways case, or the inconsistent and arbitrary nature of the amount requested by OCC.

## **The Technical Position**

The OCC request comprises two key elements, and we consider each in turn.

- i) The South-East Perimeter Road ‘or similar’

The proposed mitigation is a financial contribution to the ‘South East Perimeter Road (western section) or scheme of similar benefit.’ In the recent Appeal decision dated August 2016 in respect of land west of Oxford Road, at Para 7 the Inspector concluded, inter alia, that :-

*‘It would not be right to take account of any mitigation provided by a South East Perimeter Road for which land has been safeguarded in the Graven Hill permission, as there is no currently identified financing of that highway scheme and it is at a relatively early stage in its progress towards implementation.’*

Since then, no further progress has been made with the SEPR, and we understand from statements made by OCC it is ‘on hold’ pending a strategic decision on alternative strategic options. No decision has been made on these, and no funding/programme is in place.

The future of this is further called into question by the recent announcements in respect of the Oxford-Cambridge Expressway. In short, there can be no certainty that this, or some alternative road, would be delivered by 2026, or at all.



**Critically, in this case, the technical work undertaken by Motion on behalf of the Applicant, which is now agreed with OCC, makes clear that there is no requirement for any further mitigation beyond that already agreed to make the BOP acceptable in planning terms.**

**Specifically, there is no technical requirement for the SEPR, and no alternative scheme which could conceivably be assessed, costed or factored in to any decision at this stage.**

In any event, the OCC case is that the SEPR is required to address congestion issues **after** 2026. In this regard, it is noteworthy that the Planning Practice Guidance clearly states that a Transport Assessment should consider an assessment of trips from all directly relevant committed development in the area, which is defined as ‘development that there is a reasonable degree of certainty will proceed within the next 3 years.’

Despite this, it was agreed with OCC during pre-application discussions that the traffic analysis to support the planning application would need to cover the future year of 2026, some 9 years post-application.

There was, and is, no technical, policy or legal requirement to consider a period beyond 2026 and therefore no traffic modelling or other evidence to support the suggestion that the development proposals will lead to congestion beyond 2026, as OCC now alleges.

**The analysis carried out to date, using the methodology and data agreed with OCC, demonstrates that operation of the road network in 2026 will be better with the development and the associated mitigation than without it. It is entirely reasonable to assume that this will continue to be the case beyond 2026, and there is no evidence whatsoever to the contrary.**

ii) Other contributions

A previously highlighted by the Applicant, the arbitrary contribution originally sought towards east-west rail does not meet any the CIL test, and is unnecessary as the primary objective of BOP is to make the employment base of Bicester more sustainable and reduce out commuting. This has now been accepted by OCC, which has dropped this request.

The OCC has maintained its request for a contribution of £360,000 towards bus service enhancement. While we do not accept that this is warranted, we have indicated that we would be prepared to agree to this on a ‘without prejudice’ basis, if an acceptable position can be agreed, and this is part of the formal offer we set out in this letter.

## **The Legal/Policy Position**



The newly published NPPF states that planning obligations must only be sought where they meet all the following tests:-

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development.

The NPPF confirms that 'development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'. (Para 109)

In this case, the only lawful basis on which CDC may seek contributions is therefore that they are necessary; directly related to the BOP; are fairly and reasonable related in scale and kind; and that the development could not proceed without the mitigation proposed.

The fact that local policy exists to support contributions, where required, is consistent with this approach, but provides no basis for seeking contributions which are not required and do not meet the legal tests

The Applicant has sought an opinion from Leading Counsel, James Strachan QC, as to whether the OCC request meets the relevant legal tests. We attach this opinion in full, but in summary Leading Counsel concludes:

### ***1. General principles***

***As a matter of basic principle, even if there were a legal basis for seeking tariff contributions which would not offend against Regulation 122 or 123 of the CIL Regulations, the calculation of any contribution would need to be fairly and proportionately done. It would need to ensure that all relevant developments shared the cost proportionately when calculating the figure E, as it is intended to represent the share of the overall cost of the relevant infrastructure. However, there is no meaningful explanation of how this is achieved in terms of what other development is included. For example, it is not explained how shares are attributed to the different forms of development that will potentially benefit from such infrastructure (such as housing).***

### ***2. OCC's Approach Based on the agreed technical position***

***Having set out the principles, I am asked whether, having regard to the evidence and the Applicant's case that the application proposals will not result in severe cumulative impacts on the road network (as referred to in paragraph 109 of the NPPF), the approach taken by OCC can be regarded as meeting the necessary tests, namely whether***



*the contributions sought are necessary, directly related to the development and fairly and reasonably related in scale and kind.*

*Dealing first with the NPPF, it is clear that as a matter of national policy under paragraph 108 the approach is generally to ensure that any significant impacts from development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost-effectively mitigated to an acceptable degree. This, however, is subject to the principle in paragraph 109 of the NPPF that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe.*

*Accordingly, in my opinion, the NPPF positively advises CDC that planning permission should not be refused for this application in terms of its impact on the road network unless the residual cumulative impacts on the road network would be severe.*

*Turning to development plan policies, Policy Bicester 4 refers to making contributions to local and strategic road networks, but no specifics of such contributions are set out and the same is true of Policy SLE4. These policies now need to be read in light of the NPPF in any event. It is therefore difficult to see how an up-to-date application of the development plan policies can form a reasonable basis for objecting to a proposal in terms of impact on the road network unless there is a severe residual cumulative impact.*

*Moreover, even if one were to ignore the NPPF (which is clearly inappropriate) and read Policy Bicester 4 in isolation, on its face the policy is satisfied if some contribution is made to improvement of the surrounding local and strategic road network (something that has in fact already been offered by the Applicant). There is nothing in these policies which justifies, or supports, the scale of contributions that OCC has suggested as being required. And Policy SLE4 is specific in seeking new development to provide financial or in-kind contributions to mitigate the transport impacts of the development. If those impacts have been mitigated, or can be mitigated, in the way Motion has identified without any strategic contribution, then there is no obvious policy requirement for such additional strategic contribution.*





*Turning to the legal requirements affecting any planning obligation under Regulation 122, it is necessary to ensure that any contribution meets the three tests of being necessary, directly related to the development and fairly and reasonably related in scale and kind.*

*If there are no residual severe impacts on the highway network from the development, then it is difficult to see how these tests are met by attempting to impose a requirement for further significant contributions, in light of the clear policy position in paragraph 109 of the NPPF and in the absence of any more specific policy requirement in the development plan.*

*As I understand the state of the evidence, it is at least common ground between Motion and CDC's consultant that there is no residual material impact from the development proposal on the Oxford Road/Middleton Stoney Road/Kings End Road roundabout junction (see paragraph 3.21 of the Edwards and Edwards Report). It therefore appears that the development proposal mitigates its impact on the road network in terms of this junction. There is therefore no justification for seeking a contribution to the strategic road network, given the absence of any residual material impact arising from the development to this junction.*

*In light of this, I cannot see any proper justification for additional mitigation being required in the form of a contribution to the SEPR as a matter of principle. It seems to me that such a contribution would fail the tests under Regulation 122, not least because such a contribution is simply not necessary to make the development proposal acceptable in planning terms.*

*Secondly, I find it difficult to see how OCC and CDC could legitimately seek a contribution to the SEPR, given that it is not a committed scheme and for all the reasons identified by the Inspector in the Bicester Gateway Retail decision. I am not aware of any significant changes in circumstances since that time which could justify a different decision.*

*Thirdly, even if a contribution to the SEPR could theoretically be justified in principle, I am at a loss to understand how the very large sum said to have been calculated under*



*the SPD can be justified at all, both in terms of calculation and in terms of Regulation 123 of the CIL.*

*In terms of calculation, I have been unable to understand why OCC has applied the figures it has to the formula in terms of the figure E. It seems to me that even if it were legitimate to seek some sort of tariff from all development that would benefit from the SEPR, there is no basis for calculating E in the way that has been done simply by reference to the floorspace of the proposed development and other office space development, without factoring in all other forms of development (housing, retail etc) that would also benefit and be expected to make a proportionate contribution.*

*In terms of Regulation 123, no explanation is provided as to the composition of the sums already said to be secured by section 106 agreements, and whether there are already more than five section 106 contributions in place. But even if there were not, there is no coherent explanation as to how the remainder of the funding could and would be secured from future development without infringing Regulation 123 and the pooling restriction. If that cannot be achieved, it is impossible to see how the contribution meets Regulation 122. For example, the contribution from this development cannot be necessary if the SEPR depends upon other contributions in the future which cannot be secured without infringing Regulation 123. Nor could it be said to be fairly and reasonably related in scale and kind.*

*For these reasons, on the evidence as it stands, I do not consider there to be any proper legal or policy justification for the strategic highway contribution being sought by OCC.*

### *3. OCC's approach if there was any evidence of severe cumulative impacts*

*I am asked to consider whether OCC's approach would meet the relevant tests in Regulation 122 if there were evidence to suggest that the proposals would result in severe cumulative impacts on the road network.*





*This question only relates to the strategic highway network contribution being sought. If there were residual severe cumulative impacts from the development within the meaning of paragraph 109 of the NPPF, this could potentially form a basis for refusing the scheme absent further mitigation measures to address that impact. In those circumstances, if a road scheme could be identified which was to be delivered to mitigate those impacts, then a contribution could potentially be classified as necessary for the purposes of Regulation 122. If the contribution were proportionate, it could also meet the other two tests. The difficult would remain, however, that the SEPR is not a committed scheme and it would be difficult to meet the Regulation 122 tests without knowing that it was to be delivered to address the development. In addition, my concerns as to the calculation of the sum being required from this development would remain, as would my concerns under Regulation 123 of the CIL Regulations 2010.*

*4. What reliance can be placed on the SEPR, or any other unspecified scheme of “similar benefit” by way of mitigation in respect of the development?*

*For the reasons I have touched on above, I do not consider that any meaningful reliance can be placed on the SEPR as things currently stand, let alone some other unspecified scheme of “similar benefit” by way of mitigation in respect of the development. As the Bicester Gateway Retail Inspector pointed out, the SEPR is at too embryonic a stage to provide any requisite degree of comfort as a scheme by way of mitigation, given that it is not committed and its route is not known. In addition, there is uncertainty as to how it could legitimately be funded and when it would be delivered. In those circumstances, it is difficult to see how it can rationally be relied upon by OCC as a form of mitigation said to be necessary for development proceeding now.*

*5. The lawfulness of the OCC approach to the CIL pooling restrictions and the suggestion that it may not seek the contributions set out in its response and how this approach is relevant to the appropriate tests*

*As set out above, Regulation 123 of the CIL Regulations is directly relevant to any attempt to fund the SEPR by way of pooled section 106 contributions (or indeed any*



*other form of infrastructure). CDC is not entitled to rely upon section 106 obligations to fund infrastructure with five or more such pooled contributions.*

*It is helpful to see that OCC acknowledge this point in principle in the standard part of their consultation response; but there is then no subsequent analysis in OCC's consultation response. In my view OCC should have explained clearly how they consider contributions towards the SEPR can legitimately be sought in light of Regulation 123 but I have not seen any such explanation.*

*6. The appropriateness of phasing any payment, if required, having regard to any potential future impact on timescales*

*Given that the whole point of contributions towards infrastructure is to address the impact of development which requires mitigation, I consider that it is necessary and appropriate to consider whether phasing of development can help to address any mitigation when mitigation is required. For example, if there were in fact a highway impact arising from office space provided on this site, it would be directly related to the number of users travelling by car. That in turn is directly related to the amount of floorspace proposed. If that highway impact would only arise after a certain volume of floorspace had been exceeded, it would be sensible to consider the phasing of development so that the need for highway mitigation were triggered at the point at which a certain floorspace were exceeded. I do not see why it would be reasonable or logical to exclude this approach as a means of addressing a development impact of this kind. I have seen no good reason for doing so*

*7. The relevance of any OCC/CDC concerns about precedent and consistency and the implications of this case for any future requests for section 106 payments*

*In my opinion, there is no legitimate reason for OCC or CDC to rely upon precedent or consistency as a basis for seeking the contributions in question above, absent any proper legal or policy basis for the contributions themselves.... The fact that the law and policy may mean that OCC and CDC do not have a proper basis for collecting a levy for delivery of infrastructure such as the SEPR only serves to expose a problem of their own making, namely the absence of a proper CIL mechanism for collecting tariff*



*type contributions for infrastructure in their area. That does not provide a basis for not complying with Regulations 122 or 123 of the CIL Regulations.*

8. *The relevance of the inconsistency of approach taken by OCC in respect of other schemes in the vicinity to the application of the CIL tests, both in relation to strategic highway contributions and public transport contributions, and whether in the circumstances the OCC approach could be regarded as reasonable*

*As I have already noted, consistency is a principle of good administrative law. If OCC has been inconsistent in its approach to other schemes, that is relevant. It should not, for example, be a basis for subsequently seeking a disproportionate contribution towards infrastructure from subsequent development proposals.*

9. *The likelihood of all, or any, of the contributions being sought by OCC being required if the Application were to be appealed and the reasonableness of OCC's position, and any reliance placed on it by CDC, in the event of an appeal and an application for costs.*

*On the basis of the evidence as it currently stands, it seems to me that it is unlikely that an Inspector would require the contributions being sought by OCC (save perhaps those relating to bus provision if they can be shown to be required) for the reasons I have set out above. In addition, in the absence of any meaningful justification from OCC on how these contributions comply with Regulations 122 and 123, I consider that an Inspector might well find OCC's position to be unreasonable and so potentially award the Applicant its costs of an appeal on such issues.*

In summary, Leading Counsels opinion confirms; that there is no legal or policy basis to justify the position of OCC; that the position taken by OCC is unreasonable; and that, if tested on appeal, the likely outcome would be that an independent inspector would conclude there is no planning or legal basis for any contribution to 'strategic highway works'.

We have now been provided with OCC's Counsels Opinion, which we will review and respond to if necessary. However, as CDC officers will be aware, James Strachan QC represented Value Retail at the Bicester Gateway Retail Park Inquiry, where he successfully opposed the proposal on traffic grounds, thus vindicating CDC's decision to reject the OCC advice on that occasion.



Officers and Members can therefore be confident that he has a very full, technical and legal understanding of these matters

### **Other flaws in the OCC Position**

In addition to failing the relevant technical, planning and legal tests, even within its own terms, the OCC position is fundamentally flawed for a number of reasons.

- i) It is inconsistent with the previous (2010) consent for the Site

First, as a matter of 'common-sense' the sum originally requested (£4m), and now requested (£2.245m) are clearly inconsistent with the previous consent for the Site.

The original Bicester Office Park consent was subject to a £2.5m s106. This predated the new railway station, the introduction of extensive established bus routes along the A41; the very extensive A41 improvements funded by the Bicester Village and Tesco developments; and the construction of the Site access itself, which was expressly supported as 'pump priming' the implementation of the stalled BOP scheme.

Given these changed circumstances, and the agreed technical position set out above, which demonstrates there is no technical justification whatsoever for the scale of further mitigation sought, the OCC request for a comparable sum now is patently inconsistent.

- ii) It is grossly inconsistent to other recent consents in the area

The amount requested is grossly inconsistent with other recent consents granted.

The revised request, totalling £2.245m, equates to £37.43 per sq m. Applying the same approach to the Bicester Gateway Retail Park, which included a contribution of only £56k, equates to £5.60 per sq.m. For phase I of Bicester Gateway Office Park, the equivalent figure is £24.53 per sq m.

As highlighted by Leading Counsel, one of the fundamental policy requirements is that any contribution is 'fairly and reasonably related in scale and kind to the development. This is patently not the case.

- iii) The formula used is flawed and arbitrary, and applied incorrectly

As illustrated by these inconsistencies, the formula used is arbitrary, and flawed. The formula is built on assumptions as to how much of the previously costed SEPR will be funded by the public sector, and makes arbitrary assumptions about how the remainder is split between schemes, having failed to secure proportionate contributions from previous developments.



The OCC formula assumes that the western section of the SEPR should be funded by just three allocations, namely Bicester 4 (within which the application site is located), Bicester 10 and Bicester 12. However, the formula fails to properly take account of the following:

- The completed Tesco scheme within Bicester 4 and the £407,198 already secured
- The approved drive-through fast food restaurant within Bicester 4 (an additional 129 peak hour trips)
- The remaining land within Bicester 4, understood to be within the ownership of Value Retail (future additional trips unknown).
- The approved phase 1 at Bicester 10 (an additional 670 peak hour trips), from which a contribution has been secured but at a different rate.
- The non-employment elements of Bicester 12, namely 1,500 dwellings, a three-form entry primary school and local centre (an additional 491 peak hour trips).

It is difficult to fully replicate OCC's calculation, but assuming that there is no held/committed funding (NB this is a worst-case assumption that takes account of the fact that Bicester 10 has contributed at a lower rate) we believe that Bicester 4 (excluding Tesco and the Value Retail Land), Bicester 10 and Bicester will result in 8,753 peak hour trips.

One third of the cost of the western section of the SEPR equates to £7,100,000, or £811.15 per trip (compared to the OCC figure of £927.08 per trip). Multiplying this by the 2,032 peak hour trips associated with the proposed development equates to £1,648,258 (compared to the OCC figure of £1,883,818). Subtracting the £407,198 associated with the Tesco S106 gives a figure of £1,241,060.

- iv) The formula ignores additional off site mitigation works being funded directly by the Applicant

It is also appropriate to take account of the proposed off site mitigation works, to be funded by the Applicant, which will have significant benefits on the operation of the A41 corridor. The mitigation works to the A41 (i.e. excluding the works within the site) have been costed at £644,553.

Subtracting this from the adjusted SEPR contribution of £1,241,060 (as detailed above) and then adding the public transport contribution of £360,000, which the Applicant is willing to agree to, leads to an overall figure of £956,507.

While this is not accepted as being required, it provides what we consider is a more reasonable figure, once the inconsistencies and double counting in the OCC figure have been removed.

- v) It ignores phasing, calling for payment now for an 'alleged' potential impact post 2026





Even on the OCC flawed basis, the alleged congestion only arises post 2026 (despite the fact that no modelling has been undertaken to substantiate this assertion) and as such, any strategic contribution should be phased to be payable only as and when the relevant development trigger is reached.

Furthermore, and calculation at that stage would have to reflect any other material changed circumstances at that time, which would in any event further undermine the case for any contribution, such as, for example, the Oxford/Cambridge Expressway, or other strategic developments on the A41. This explains why the NPPF only refers to impacts over the next three years.

## Summary

The Bicester Office Park is a strategically important development. The Site is allocated in the Local Plan and has the benefit of a previous planning consent. The Planning Committee has already resolved to approve the current application, subject to a s106, reflecting the agreed position that any impacts can be satisfactorily mitigated but a s106 contribution. In these circumstances, there is no conceivable basis for refusal of the application.

The the sole issue facing CDC officers, and the Planning Committee, is what level of s106 contribution is required (if any) to mitigate any transport impacts as required by policy. The previous committee requested that Officers discuss this matter with OCC and the Applicant to seek to reach agreement, if possible, and failing that, to report back their recommendation on the level of s106 contribution required.

CDC Officers and Members will be aware that the previous 2010 consent for Bicester Office Park included a s106 contribution of £2.5m. However, since that time there have been significant transport improvements, including works to the A41, construction of the site access, provision of bus services and a new railway station.

Following very detailed testing of transport and highway matters, the OCC now accepts that the Proposed Development will not result in any material adverse impact on traffic congestion at the design year of 2026, and all junctions will operate within capacity. As such, there is no technical basis for requesting any 'strategic highway improvements'.

In these circumstances, applying the current, more stringent CIL regulations, there is no legal or policy basis for the OCC request. Senior Counsel has confirmed that the OCC position fails the legal tests, and the position of OCC is manifestly unlawful and unreasonable. On this basis, CDC cannot reasonably rely on the inconsistent and unjustified OCC position in determining what, if any, contributions are warranted.



## **The Applicants Position**

**Notwithstanding the above, the Applicant is keen to secure a negotiated resolution to this issue, if possible.**

**The Applicant considers there is no sound technical or legal basis for seeking a contribution to strategic transport improvements of £2,245,858, as now sought. However, without prejudice to this position, the Applicant is prepared to agree to a reduced figure, reflecting what it considers are entirely reasonable, and necessary adjustments to reflect the two clear elements of double counting, ie:**

- **the £407,000 already secured in respect of this site from the Tesco applications; and**
- **the £644,553 of additional mitigation works to the A41 to the public highway which will be funded by the Applicant and delivered by the scheme.**

**By making what we consider are entirely reasonable and justified adjustments to the OCC claim, we reach a figure of £956,507. It is clearly for CDC officers to set out their own recommendations, having regard to the position of OCC, and our comments set out in this letter.**

**However, for the avoidance of doubt, if CDC officers and Members conclude the OCC position is robust, we request that the application is approved on this basis, as it will be for the potential purchaser to ultimately determine whether to proceed with the development on this basis.**

I trust this clarifies our position, and would be grateful to understand the position of CDC, and your recommendation to the forthcoming Committee as a matter of urgency.

Yours Sincerely,



**CHRIS GODDARD**  
**DP9 Ltd.**