

Reference: 17/02534/OUT

**County Hall
New Road
Oxford**

Bob Duxbury
Cherwell District Planning
Bodicote House
Bodicote
Banbury

Director name Susan Halliwell
Directorate Planning and Place

25/01/2019

WITHOUT PREJUDICE

Dear Bob,

Re: Bicester Office Park (BOP)

1. In regard to the letter from DP9 on 08 January 2019 to Cherwell District Council, the County Council would like to respond to the points outlined in the letter.
2. The County Council retains the position that it requires a contribution to the South East Perimeter Road (SEPR) to make the application acceptable in planning terms and compliant with Cherwell's Local Plan policy and Local Transport Plan. The County Council understands the importance of delivering the office development in Bicester, but also the importance of delivering the key infrastructure to deliver the Local Plan growth, which Bicester office Park forms a part of the plan.
3. The key area of contention remains that no viability evidence has been submitted to base any reduction in the contribution. The recent letter from DP9 states that "*the applicant considers that this is excessive, and could put at risk delivery of the Bicester Office Park*", without viability evidence the County Council can not substantiate whether the contributions sought are "excessive" and makes the development unviable. Therefore, the County Council cannot move from the position in reducing payment until further information on viability is provided. This could be a high-level assessment of the gross development costs and land value costs.
4. In response to points raised by DP9 regarding County Council's counsel opinion, the instructions were based on legal advice that the calculation and amount of contribution is not a legal matter but a matter of planning judgement. Therefore, the Counsel instructions were based on points of legal principle that were in dispute highlighted in the James Strachan QC opinion and for County Council to check certain elements raised to ensure they are CIL regulation compliant.
5. The Counsel opinion from Nina Pindham QC outlined that OCC were justified in seeking a contribution for the South East Parameter Road as it complied with the Local plan and policies.

6. The County Council have circulated to the District Council and developer a comprehensive CIL R122 statement which clearly states why and how the contribution is being sought and that it is, in the County Council's view CIL compliant.
7. The letter from DP9 raised the issue of the Oxford to Cambridge Expressway superseding the SEPR scheme. It is unknown at present whether the Oxford to Cambridge Express way will bring any benefit to Bicester as the exact alignment has not been agreed by Government. Deliverability of the regional scheme is uncertain and therefore, this cannot be relied upon for mitigation of the Local Plan allocations by 2031.
8. The County Council are working on progressing a scheme that brings relief to Bicester and the A41 which at the moment is in the form of the SEPR. If an alternative scheme and funding presents itself at a later stage after a s106 agreement is signed, then County Council will approach the developer to change the use of the contribution or revise the obligation as a part of a deed of variation.
9. Regarding the points set out in the letter 08th January 2019 regarding "*other flaws in OCC position*" please see the response to these are answered in the R122 but clarity also set out below:
 - i) *Inconsistency with the previous (2010) consent of the site.*
The legal advice sought by the County Council is that the previous permission is a material consideration. The fact that other developments have provided improvements that benefit the Bicester Office Park development means that, on this basis of fairness, this development should be contributing its fair share towards projects that benefit Bicester as a whole. Further, since the 2010 permission, the Development Plan has changed. The Cherwell Local Plan was adopted in 2015 and allocates significant additional development at Bicester.
 - ii) *Grossly inconsistent to other recent consents in the area*
The issue of inconsistency of strategic contributions was remedied by the publication of the Cherwell Contributions SPD which gave a formula which can be used to calculate contributions. Each permission is assessed on the appropriate mitigation for that development and many aspects are taken into account. Other developments referred to in DP9 letter contributed in other measures towards the Bicester Transport strategy. For example, the Gateway retail was brought forward as a part of SW Bicester allocation and this development contributed significant benefits to the wider Bicester area both in terms of strategic transport enhancements and education.
 - iii) *The formula used is flawed and arbitrary and applied incorrectly*
A Strategic Transport Contribution is requested from Bicester 4 towards the delivery of the Bicester South East Perimeter Road (SEPR). Other developments in Bicester have been contributing towards the overall Local Transport Plan Bicester Area Strategy infrastructure requirements, which have been fair and proportionate towards increasing overall capacity for both highway and public transport around Bicester.

Due to CIL pooling regulations, Oxfordshire County Council (OCC) cannot ask all development in Bicester to contribute towards all elements of the Bicester Transport Strategy required to mitigate the cumulative impact of growth, and therefore have made a decision on which developments need to contribute towards certain elements of the strategy that are most closely related to them. Bicester 4 has not been asked to contribute towards the delivery of Howes Lane realignment for example, but will have an impact on and utilise this infrastructure for distribution of trips. OCC have tried to make the contributions as fair and proportionate as possible, so the required infrastructure can be delivered to benefit Bicester as a whole.

The formula/calculation that OCC now use to implement this has only been applied to sites since February 2018, when it was adopted by Cherwell in their Developer Contributions SPD. Sites before this came to an agreement on strategic transport contributions through a negotiation process or using the previous Cherwell Planning Obligations SPD. OCC negotiated contributions from Symmetry Park and Bicester 10 phase 1 towards the SEPR prior to the use of the current SPD methodology.

A maximum of 5 planning applications can be selected to contribute towards the SEPR and so Bicester 4, Bicester 10 (phase 2) and Wretchwick Green were regarded as the remaining 3 applications that a contribution would be secured from: Bicester 4 and Bicester 10 (Phase 2) as the remaining 2 sites on the A41 corridor the SEPR will relieve, and Wretchwick Green as it is on the SEPR itself.

Graven Hill is also considered to have a part to play in the delivery of the SEPR and will be providing part of the route through their site, as will Wretchwick Green. From Graven Hill there is also the strategic contribution towards improvements along Boundary Way (and the roundabout junction of Oxford Road and Middleton Stoney Road), which was in the Bicester Transport Strategy prior to commitment towards the SEPR.

The formula has taken into account development that already has permission through the element in the formula which deducts off money secured against the project. It is a decision for the transport authority to decide which developments contribute towards certain items of infrastructure and OCC has to take into account other benefits and contributions along with viability of the development.

Regarding the other permissions on the Bicester 4 allocation, these applications for Tesco and McDonalds have a significantly different impact to the original designated use as an office park. They generate more trips than predicted and modelled in the local plan for the site. Therefore, each application has paid or completed work proportionally for their impact. McDonalds were not asked for a strategic infrastructure contribution as the development was too small and the County Council decided that due to pooling restrictions they would not seek a contribution.

The contributions secured through a s106 or held to date have been taken into account in the 'Y' of the formula (estimated held or secured s106 contributions) these include Bicester Gateway Phase 1B and Akeman Park.

These are not then replicated in the 'E' of the formula as this was felt it would be double counting. So 'E' is purely the development that is still to be delivered as part of the Local Plan.

The formula is open to interpretation and it is down to the Highways Authority to make the judgment on how best to interpret the variables. However, the variables are informed by sound evidence, judgement and experience. Regarding the alternative funding OCC have a successful record of bidding for Government funding and a clear understanding that the more match funding from the council collected through s106, the greater will be the certainty of success.

Securing funding is becoming challenging especially with the competing needs for strategic infrastructure schemes nationwide. To date OCC's match funding has ranged from the very minimum accepted at 15% to 50% plus of the scheme cost from development contributions. The contributions depend on the value of the infrastructure and the viability of the development to support a contribution. The appropriate contribution towards the SEPR has been established as a mid-point of this range (33%) due to the overall cost of SEPR. A higher level of contributions could affect viability of the developments in the southern quadrant of Bicester contributing towards this strategic infrastructure, and a lower percentage would mean that less contributions would be sought and there is a lower chance of securing funding from Government.

Since reviewing the formula again and checking the variables, an error in the calculation has been remedied regarding the match funding and that this should be for the total of the scheme and not for the remaining gap. This has given a slight adjustment to the formula and lowered the contribution slightly.

SEPR Western Section

X = £21.3m (October 2015 cost estimate) for SEPR Western Section

Y = £585,127.83 (estimated held or secured s106 contributions)

Z = £14,185,800 (notional 66.6% match funding)

E = Bic 4, Bic 10 (phase 2) and Wretchwick Green, amounting to 7463 peak hour trips in total (Wretchwick Green = 1773, Bicester 4 = 2032 and Bicester 10 = 3658 based on floor space compared with Bicester 4).

The cost estimate was taken from the "Preliminary ecological appraisal, planning advice and engineering feasibility for the South East Perimeter Road" document that can be downloaded from the County Council's website [here](#).

Under section 8.2, the costing for the preferred southern alignment (option 2) is estimated at £15m engineering (structures cost) and £6.3m new highway costs.

Contribution per unit therefore = £874.86

Contribution requested from Bicester Office Park is therefore **£1,777,715**

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

OCC, as a point of practice, do not deduct off site works (s278) from strategic contributions unless they are deemed that a developer is implementing strategic works over and above their requirement for direct mitigation. In the case of Bicester Office Park the off-site works are direct mitigation and seeing that other substantial junction works on the A41 have been undertaken by other developers as a part of their off-site direct mitigation it would not be fair to allow this of this development. The only way OCC will take the off-site works into account would be as a part of an overall viability assessment which indicates that the development cannot afford the whole infrastructure package. As already stated, no such evidence has been provided by the developer.

v) *It ignores phasing, calling for the payment not for an 'alleged' potential impact post 2026*

The Bicester 4 development application submission has proposed a scheme to provide suitable access to the site locally but has not considered its part in the strategic implications of cumulative growth in Bicester as a whole. Indeed, the Transport Assessment shows that the network along the A41 corridor on which the development site sits is already under strain in the opening year of 2026 from the cumulative impact of growth. This strain will continue to grow until a trigger point when the South East Perimeter Road will be required before 2031, in order to provide relief to the A41 corridor.

As a result, a Strategic Transport Contribution from the Bicester 4 Local Plan growth allocation is required, in addition to any local mitigation that may also be necessary, and this is considered to be fully in compliance with the CIL regulation tests. Oxfordshire County Council's LTP4 Policy BIC4 in the Bicester Area Strategy also supports this:

"BIC4 – to mitigate the cumulative impact of development within Bicester and to implement the measures identified in the Bicester Area Transport Strategy we will ... Secure strategic transport infrastructure contributions from all new development"

It is considered that the most appropriate piece of strategic infrastructure for this contribution to be allocated against is the SEPR, as the site will directly benefit from its construction. This is supported by the independent transport consultant commissioned by Cherwell District Council specifically to provide advice relating to this case.

In summary Oxfordshire County Council's position remains the same until there is robust evidence presented to understand why the development cannot afford the contribution sought. OCC have reviewed the formula to make it more robust and the SEPR contribution has been revised with the slight adjustment of the formula.

Yours sincerely



Moaz Khan
Growth Manager (North), Growth and Place