



PT/CJBG/DP4509

8<sup>th</sup> August 2018

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**BY EMAIL**

Dear Mr Colwell,

**LAND NORTH OF BICESTER AVENUE GARDEN CENTRE, OXFORD ROAD, BICESTER  
OUTLINE PLANNING APPLICATION – BICESTER OFFICE PARK (17/02534/OUT)**

Following our receipt of Oxfordshire County Council's (OCC) response to consultation, dated 7<sup>th</sup> August 2018, we write in response to the specific highways matters raised. A copy of the OCC response is attached to this letter.

***Introduction and Background***


The outline application for the construction of Bicester Office Park was submitted on 15 December 2017, on behalf of the Applicant Seavic Land Developments Ltd. Following pre-application discussions with Cherwell District Council (CDC) earlier in 2017, this scheme is submitted in outline, with the site being allocated in an up to date Local Plan.

Part of the site is the subject of a previous consent for the same quantum of floorspace (CDC Ref: 07/01106/OUT), and the deed of variation to the S106 in respect of the consented Tesco store on Lakeview Drive (CDC Ref: 12/01193/F) allows for construction of up to 45,000 sq.m of B1a/B1b floorspace on the remainder of that site. As set out in our planning submission, the Applicant has subsequently acquired a parcel of adjacent land of circa 3.8 ha, fronting onto Oxford Road, and this forms a natural extension and addition to the remainder of the original site and, when combined, now allows the delivery of the full quantum of office floor space, being 60,000 sq.m of Class B1 space, and the fulfilment of this important strategic policy allocation for employment floorspace across the combined site.

As you are aware, the Applicant has experienced real difficulties in progressing with this scheme, owing to the marginal viability of office development in Bicester and as such it has taken over four years to secure a partner who can commit to the delivery of Bicester Office Park. The recent response from OCC, and request for such significant Section 106 contributions, represents a significant risk to the future of the development and securing much needed high quality office floorspace and in excess of 3,000 important new jobs.

***The OCC response***

OCC in its response to consultation dated 7<sup>th</sup> August 2018 raises, for the first time, the request for the sum of £4,023,757.99 of highways and public transport contribution. A significant proportion of this



amount (£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.

We note that the OCC response states that:-

*“Due to pooling constraints on local authorities set out in Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended), OCC may choose not to seek contributions set out in this response during the s106 drafting and negotiation.”*

The reason for this statement is that since the introduction of the CIL regulations, OCC is not entitled to seek contributions where five or more such obligations have been sought since April 2010. CDC has no CIL charging schedule, and no plans to introduce one.

### ***The Legal and Policy Tests***

Considering the legitimacy of the requests made in the OCC response, the newly published NPPF (July 2018), at paragraph 56, states that planning obligations must only be sought where they meet all the following tests:-

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

The NPPF, at paragraph 109, then 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*”.

In this case, the only lawful basis on which OCC may seek contributions is therefore that they are necessary, directly related to the proposed Bicester Office Park development, and fairly and reasonable related in scale and kind and that the development could not proceed without the mitigation proposed. We again stress the marginal viability of this scheme, and question amongst other things, whether this request for contributions of this scales is fair and/or reasonable.

### ***The South East Perimeter Road (western section)***

In this case, by far the most significant element of the proposed mitigation is the ‘South East Perimeter Road (western section)’ (SEPR) or scheme of similar benefit.’ In the recent Bicester Gateway Retail appeal decision dated August 2016, in respect of land west of Oxford Road (APP/C3105/W/15/3137608), the Inspector concluded (at paragraph 7), 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. To this end, we are aware of ongoing discussions with key stakeholders and note that at CDC’s 19<sup>th</sup> July 2018 Strategic Delivery Board meeting, any decisions on the SEPR were effectively reliant on decisions relating to the Cambridge-Oxford Expressway and changes to the M40 junction, on which the SEPR relies. No decision has been made on these items, and no funding/programme is in place. As such, the August 2016 Appeal decision continues to be relevant (arguably even more so) and, critically, of utmost importance.



Motion, the Applicant's transportation consultant and advisors, have prepared a detailed Transport Assessment (with updates), this being a robust assessment of the highway network local to the site which includes traffic associated with a number of committed developments including Bicester Gateway Retail Park, Bicester Gateway Office Park, McDonalds Lakeview Drive and Graven Hill. The highway capacity analysis presented in the Transport Assessment does not include for any reduction in vehicle movements on the A41 Oxford Road corridor as a result of the SEPR and therefore the assessment presented in the Transport Assessment is not dependent on the delivery of the SEPR. The Transport Assessment has demonstrated that, subject to the highway mitigation works identified at the junctions between A41 Oxford Road/ Lakeview Drive and at the junction between Oxford Road and Middleton Stoney Road, the development proposals would not result in a material effect in the operation of the highway network local to the site. The proposed highway mitigation works are sufficient to mitigate the effect of the development on the local highway network and are not dependent on the delivery of the SEPR. As such, no further mitigation measures or contribution towards the SEPR are considered necessary or justified in planning terms. Moreover, no alternative scheme (to the SEPR) could conceivably be assessed, costed or factored in to any decision at this stage, nor is there a legal or other basis for pooled or other contributions to such an option.

#### Public Transport Contributions

The response from OCC requests a contribution of £375,000 towards public transport improvements. The submitted Transport Assessment has demonstrated that the site is adequately served by a number of bus services on the A41 Oxford Road including the No. 6, 26, NS5, S5 and X5 services. The existing bus routes provide a frequent connection to local key destinations including Bicester Town Centre (every 10 minutes) and Bicester Village Station (every 5-10 minutes). Whilst a contribution to public transport improvements was secured as part of the previous consent at the site, bus infrastructure and services in the vicinity of the application site have been significantly improved since the time of the previous outline planning permission at the site. At that time there were no bus stops on the A41 Oxford Road in the vicinity of the application site and the nearest bus stops to the site were either located north of Pingle Drive or south of the site in the vicinity of the junction connecting towards Chesterton. Furthermore, at that time, there were 3 to 4 bus services per hour passing the application site on Oxford Road during peak periods. At present there are 8 bus services per hour passing the application site on Oxford Road during peak periods, double the frequency of service at the time of the previous outline planning permission. It is evident that the bus infrastructure and services in the vicinity of the site and are adequate to serve the development and no obligation in this regard is considered necessary or justified in planning terms.

#### Strategic Rail Infrastructure

The response from OCC requests a contribution of £670,532 towards a strategic rail infrastructure. The OCC response does not provide appropriate justification that this contribution is required to mitigate an impact of the development or is necessary or justified in planning terms. The OCC response indicates that the S106 agreement for the previous outline planning permission at the site included a contribution towards strategic rail infrastructure. However, that contribution was limited to the improvements of the railway line between Bicester Village and Oxford. These improvements have subsequently been completed and rail services from Bicester Village Station (previously known as Bicester Town) have been significantly enhanced since the time of the previous outline planning permission. At the time of the previous outline planning permission Bicester Village Station was at the end of a local line connecting to Oxford and provided just 7 trains per day between Bicester and Oxford only. The upgraded services at Bicester Village station now provide 2 trains per hour in each direction connecting between London Marylebone and Oxford. It is evident that the enhancements to train services through Bicester Village station expected as part of the original planning permission have since been implemented and therefore no obligation in this regard is considered necessary or justified in planning terms.



In summary, CDC is being asked to accept a recommendation by OCC which: -

- Has been raised less than a week before the Committee Report is to be finalised for this strategic application, in accordance with the CDC development plan, and which has been before CDC since December 2017 (i.e. circa 35 weeks);
- Affects a key part of the employment land supply, that will support in excess of 3,000 new jobs and has the benefit of previous planning permission;
- Threatens the delivery of this important scheme at a critical stage in securing a developer to implement the scheme;
- Is contrary to the conclusions of rigorous technical work, which identifies that none of the mitigation works requested are required;
- Is patently inconsistent and not reasonably related in scale and kind, for example given the SEPR contribution of circa £350,000 agreed by OCC for Bicester Gateway Office scheme (delivering approximately 15,000 sq.m); and
- On any basis, has no foundation in planning policy or law.

There is no SEPR scheme, or alternative scheme, which could afford mitigation, if required. As accepted by the Bicester Gateway Retail Inspector, no weight can be attached to the potential SEPR scheme. Furthermore, to be required, in order to make the scheme acceptable in planning terms, neither this nor any other scheme in this area could come forward until completion of such a scheme. As there is no costed or programmed scheme, and no indication of what (if any) other 'pooled' contributions have, or may be requested, there is no basis on which to judge whether the circa £3m requested for Bicester Office Park would secure such a scheme, or over what timescale. The request therefore fails to meet any of the CIL tests and is patently unwarranted and unreasonable.

The unreasonableness of the request in relation to the SEPR contribution specifically, is further illustrated by the suggestion that if OCC chooses, it may not seek the contributions requested if this would breach the polling regulations. In essence OCC appears to be saying it reserves the right to choose the 'five best offers' it can secure. This is again patently unreasonable, and again fails all the relevant tests.

There is no basis to conclude, adopting such an approach, that all or any of the contributions would be necessary, related in scale or kind or reasonable, and adopting this approach, no basis to conclude that such mitigation, if actually required, would be in place by the time Bicester Office Park, or other schemes in the vicinity for that matter, are developed.

#### *Alternative Options for CDC*

Possibly anticipating these issues, the OCC response recognises that CDC may take a different view, and of course it is entitled to do so. The Bicester Office Park is a strategically important site to CDC, delivering important and planned-for new jobs not currently available in Bicester. Adopting the OCC approach, neither this, nor any other important schemes along the A41 could come forward before the SEPR, or an unspecified equivalent, have been completed. This has profound implications for the delivery of CDC's strategic policy objectives, beyond just those relating to job creation, and could realistically stall such growth for in excess of 10 years.

For the reasons set out above, we consider that unless OCC is prepared to withdraw these late and unreasonable requests, the only reasonable course of action CDC can take in these circumstances is to disregard the late and ill-conceived response from OCC, and take the application to Committee in August as previously discussed, with a recommendation to grant planning permission.



### ***The Applicant's Alternative Options***

It has taken the Applicant four years to get to this point and, as stressed the viability of delivering Bicester Office Park is marginal. As such, timing is critical, and in this regard it is essential to secure outline consent at the August Committee. There are no sound reasons for further delay, and for the avoidance of doubt, no basis on which the Applicant would be prepared to entertain any contribution of the scale suggested, even if any was justified, on the basis of the marginal viability of the development.

As a consequence, two options are open to the Applicant, being to delay delivery of the Bicester Office Park, potentially indefinitely, pending strategic highway decisions and their funding, or, if notwithstanding the above, CDC resolves to determine the application and refuse on solely highway grounds, to Appeal and enable these matters to be objectively and independently tested. With the latter option, considering the marginal viability of the project (and difficulty in securing a development partner) and the increasing disillusionment of the Applicant with the process, it is likely that the site would simply revert to its existing use. In short, both options would result in missing out on this single opportunity to deliver an office park campus in Bicester and the substantial strategic employment benefits associated with this.

We trust that this letter is helpful in setting out the Applicant's position and we add that it is with the greatest regret that we find ourselves in this position. The views expressed in relation to OCC's further consultation response, received yesterday, are critical in objectively considering the grounds on which this application could be determined and we stress the inappropriateness, both in planning and legal terms, of the requests for contributions made by OCC.

Yours sincerely,

**Chris Goddard**  
Board Director  
DP9 Ltd

**Encs.**

CC:  
Bob Duxbury  
Matthew Parry  
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John Holmes

