



**SUPPLEMENTARY INFORMATION**

**Planning Committee**

**11 March 2021**

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# Planning Committee 11 March 2021 – Public Speakers

Agenda Item	Application Number	Application Address	Ward Member	Speaker – Objector	Speaker - Support
8	20/00293/OUT	Bicester Gateway Business Park, Wendlebury Road, Chesterton	Public Speaking has already taken place on this application.		
9	20/02745/F	Blessed George Napier Roman Catholic School, Addison Road, Banbury, OX16 9DQ	None	None	None
10	20/02936/F	Land at Railway Line at Blackthorn and Piddington, Marsh Gibbon Road, Piddington	None	None	None
11	20/03692/DISC	Land Adjacent To The Oxford Canal, Spiceball Park Road, Banbury	None	None	None

**CHERWELL DISTRICT COUNCIL  
PLANNING COMMITTEE**

**11 March 2021**

**WRITTEN UPDATES**

**Agenda Item 8**

**20/00293/OUT - Bicester Gateway Business Park, Wendlebury Road, Chesterton**

**Additional information received**

The Applicant has circulated to Members of the Committee a written Position Statement responding to the published committee report. In this instance it has been decided to include this statement in full as an appendix to this Written Update on the basis of transparency. This will ensure the issues raised within it are within the public domain should they be referenced at the Committee meeting.

**Additional Representations received**

Bicester Bike Users Group have queried the wording for planning condition 23 relating to the footway and cycleway alongside the A41. It is advised that to comply with LTN 1/20, segregated footway and cycleway provision would be required rather than shared provision. It is queried whether planning condition 23 should be updated to specify that segregated provision is required.

OCC Transport have advised that the matters of access arrangements were agreed to comply with the earlier standards now superseded by LTN 1/20 and so this later guidance would not apply and the facility along the A41 can be of a shared type as proposed. It is also highlighted that this approach would ensure consistency with the approved infrastructure nearby including to the north abutting Phase 1a.

**Officer response**

***Applicant's Position Statement***

- The (statutory) starting point for any planning application is that it should be determined in accordance with development plan policies, unless there are material considerations that indicate otherwise. The National Planning Policy Framework (NPPF) for example is a material consideration. The scope of what can constitute a material consideration is very wide and therefore corporate (non-development plan, policies) and the advice of professional officers, advisors and groups, can all be taken into consideration in decision making. The 'weight' to be given to any material consideration is a matter for the decision maker. In this instance, whilst the development plan policy is silent on the issue of Local Housing Allowance, officers support the advice of the Council's Housing Team as they look to implement the Council's corporate strategies in relation to affordable housing
- Officers would confirm that the proposed development is only policy compliant, sustainable development if it is accompanied by the completion of an acceptable S106.
- The applicant advises that Officers accept that the proposal to require LHA levels for affordable rents does not accord with policy. This is not the case. Officers are not advising that Planning Policy should be set aside in respect of affordable housing but it is acknowledged that Planning Policy does not prescribe rental levels capped at LHA. Policy BSC3 sets out the requirements around the provision of affordable housing. The

detailed point of contention in respect of affordable rental housing relates to the capping of rent levels where Officers say that the Tenancy Strategy carries weight as a material consideration to achieve affordable rental housing that meets need in terms of affordability. Officers do not see this as a conflict with Planning Policy or to outweigh it but a further layer of consideration related to the Cherwell District. Officer advice is that rent levels can be 'up to 80% or capped at LHA whichever is the lower' to provide scope for the rent charge to be as affordable as possible for those on the Council's Housing Register who will be nominated to one of the units.

- The applicant's advice to Members is that the Written Ministerial Statement for Oxfordshire granting a temporary relief from the need to achieve a 5 year housing land supply will expire on the 31 March 2021. Officers agree that the Oxfordshire Growth Board report from November 2020 indicated that 'an extension to this flexibility is not likely to be supported', however no final confirmation of this position has yet been received from MHCLG and as reported, Officers at the Growth Board have written to the Government to clarify the position. At this point in time, Officers cannot advise Members that this is the position regarding Housing Land Supply. In any event, a major residential development must, in the majority of circumstances, be accompanied by a satisfactory S106 to meet Policy requirements. Officers view is that the matters the applicant will not agree to are matters that will impact the ability to achieve suitable S106s for other development sites going forward.
- Officers are content that their position is consistent with the Housing Strategy and the Local Plan.
- The applicant requests that paragraph 2.15 be clarified. The view is that Officers are advising that the Housing Directors report to the Executive in March 2017 should not be relied upon by the Planning Committee and that instead Section 8 of the Tenancy Strategy should prevail. The applicant argues that the Executive were advised that LHA rates would be prescribed 'sometimes' and Members considered the corporate document on this basis. In response Officers would confirm that they advise that reliance is placed upon the Tenancy Strategy which is an adopted document. A covering report which presented this document to Members is not an adopted document.
- The applicant considers that the word 'expectation' is incorrect in paragraph 2.15 of the report because section 8 of the Tenancy Strategy states *'in order that the housing provided still meets local need, we believe that Affordable Rents should be capped at a level to match Local Housing Allowance...'*. Their view is that this should be a starting position with RPs but this 'belief' should not translate to standard drafting which imposes LHA rates always. The applicant is correct that the Tenancy Strategy states the Council's 'belief' that affordable rents should be capped at a level to match Local Housing Allowance. In securing that the rental levels will be as affordable as possible for those housing applicants whose housing needs are to be met, it is the 'expectation' of Officers that rent levels are capped hence this being included within standard drafting.
- The applicant refers to the impact upon viability that a cap at LHA levels would have and that this cannot be afforded at the site. An open book viability assessment has not been provided at this stage, however the applicant has confirmed that if Members resolve to support the Officer position on this matter, that this would be submitted.
- The applicant refers to their request for flexibility. Whilst their proposals for their site is to provide for an 'innovation community' as has been explained previously, this will not be secured through the planning process. As such, Officers consider that flexibility can only apply where the scheme would remain policy compliant. In this case, the uncontrolled units (usually market dwellings) would enable flexibility and Officers would be open to

greater flexibility in the intermediate tenure of affordable housing. Officers do not consider flexibility in the affordable rental units which are secured to meet housing need for those on the Councils Housing Register should be possible. This takes into account the policy position and reason for why such a policy exists to secure affordable housing and with reference to the local situation as set out in the Council's Tenancy Strategy with regard to LHA levels. With regard to reference to viability, Officers expect that if there are viability concerns that these are dealt with pre-decision. If a viability clause is included in a S106 without this having been raised through the planning application process, then it will be unclear at the point of the decision what mitigation for the development is secured and if it relates to affordable housing, then this would be the only matter to be considered in terms of assisting with achieving a viable scheme, when all mitigation should be included in this consideration.

- The Housing Team have advised that the Housing Strategy 2019-2024 is a strategy for the whole District and it has to consider how housing contributes to meeting the social, environmental and economic needs of the District. The Housing Strategy is not a standalone document and it relates to other national and local legislation and policies, one of which is the Council's Tenancy Strategy. The Housing Strategy and associated action plan should be read in conjunction with the other listed strategies and policies.
- The Housing Team have also advised that whilst the Housing Strategy does not specifically reference capping affordable rents at Local Housing Allowance levels, it does reference the need to secure more affordable and social rented housing. This is also supported in the more recently adopted Homelessness and Rough Sleeping Strategy 2021-2026. Although Officers have indicated that affordable rent tenure would be acceptable on this development, it will be important to ensure that those affordable rents are genuinely affordable for households on the Council's Housing Register. The development is in the Bicester area where market rents are higher than those seen in the Banbury market rental area.
- The applicant seeks for Members to not consider in detail the RP Liability point as their view is that this can be resolvable by Solicitors through drafting. The reason for putting this point to Members is that the Council's legal advice has indicated that this matter is not resolvable through drafting and that it must remain as per standard drafting to ensure that RPs are liable for the reasons set out in the report.

### **Condition 23**

In light of the advice from OCC Transport, officers are of the view that there is no need to amend the wording for planning condition 23 as recommended.

### **Recommendation**

As per the published report.

### **Agenda Item 9**

**20/02745/F - Blessed George Napier Roman Catholic School, Addison Road, Banbury**

### **Additional information received**

None.

### **Additional Representations received**

Following the finalisation of the Officer recommendation a revised Arboricultural Impact Assessment has been received from the applicant and a further response received from the Arboricultural Officer on the revised information.

### Arboricultural Officer (AO)

Previous concerns with regards to the detail on submission in respect of potential impacts on existing trees has been addressed following the submission of revised Arboricultural Impact Assessment (AIA). No objections to approval of the application subject a condition that an Arboricultural Method Statement (AMS) is submitted before works commence for approval.

### **Officer response**

In respect of issues of potential detrimental impacts on existing trees expressed in his initial response on the application the AO has assessed the revised impact assessment (AIA) submitted and is satisfied that an appropriate working method can be secured by way of the condition to ensure the continued health and well-being of trees along the western boundary of the site during the construction of the proposed development including 3G sports pitch; and his concerns in this respect have been withdrawn. A condition requiring approval of an AMS (condition 18) is included within the recommendation and therefore no changes to the recommendation are required in this respect.

### **Recommendation**

As per the published report.

### **Agenda Item 10**

**20/02936/F - Land at Railway Line at Blackthorn and Piddington, Marsh Gibbon Road, Piddington**

### **Additional information received**

None.

### **Additional Representations received**

None.

### **Officer update**

Further to the publication of the committee agenda report, additional work has been undertaken the conditions (see below).

### **Change to recommendation**

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT AUTHORITY TO GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY)

### SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. The development shall not be carried out otherwise than in complete accordance with the approved plans: Construction Traffic Management Plan (CTMP), dated February 2021 Reference 21387/01; Environmental Statement and Appendix; Noise Impact Assessment Addendum, dated February 2021; Habitat Creation and Restoration Scheme; Biodiversity calculations; Biodiversity Monitoring and Maintenance Strategy; Landscape Visual Impact Appraisal; Flood Risk Assessment, dated May 2020; and the following drawings: R167 05 5000, 5002, 5003 5004, 5005, 5006, 5007, 5008, 5009,

5010, 5011, 5012, 5013, 5014, 5015, 5016, 5017, 5018, 5019, 5020, 5021, 5022, 5023, 5024 and 7549; 198 1 Rev B, 198 2, 198 Rev C & 198 3 Rev B; SJG/109/100454/02/1006; SJG/109/100454/02/1006/01 Rev B; SJG/109/100454/02/1006/02 Rev B; SJG/109/100454/02/1006/03 Rev B and SJG/109/100454/02/1006/04 Rev B; unless a non-material or minor material amendment is approved by the Local Planning Authority under the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). Reason: To clarify the permission and for the avoidance of doubt.

3. No materials, plant, temporary structures or excavations of any kind should be deposited/undertaken on or adjacent to the Public Right of Way that obstructs the public right of way whilst development takes place.  
Reason: To ensure the public right of way remains available and convenient for use.
4. The development should be designed and implemented to fit with the existing public rights of way network. No changes to the public rights of way's legally recorded direction or width must be made without first securing appropriate temporary or permanent diversion through separate legal process. Alterations to surface, signing or structures shall not be made without prior permission by Oxfordshire County Council.  
Reason: To ensure the legal public right of way remains available and convenient for public use.
5. Any gates provided in association with the development shall be set back from the public right of way or shall not open outwards from the site across the public right of way.  
Reason: To ensure the public right of way remains available and convenient for use.
6. The water quality management protection measures detailed in Appendix E to the approved Construction Environmental Management Plan (CEMP) prepared by Murphy, dated 16 July 2020 shall be adhered to throughout the construction.  
Reason: To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in accordance with Government guidance within the National Planning Policy Framework.
7. Prior to the commencement of the development hereby approved, a full assessment of the impact of noise and vibration resulting from the development on 1 and 2 Cowleys Cottages shall be carried out and the report submitted to the Local Planning Authority for approval in writing. The development shall thereafter be carried out in accordance with the recommendations and any mitigation measures set out in the report.  
Reason: In the interests of the residential amenities of 1 and 2 Cowleys Cottages and to comply with Government guidance within the National Planning Policy Framework.
8. The development hereby approved shall be carried out in accordance with the Construction Traffic Management Plan (CTMP) Reference 21387/01, dated February 2021 and produced by Turner Jomas and Associates.  
Reason: In the interests of the amenities of nearby residential properties and highway safety and to comply with Government guidance within the National Planning Policy Framework.
9. The development shall be implemented in accordance with the Ecological Management Plan and the on and off-site ecological mitigation measures set out in the Environmental Statement.  
Reason: In the interests of protecting wildlife and supporting habitat and creating ecological enhancements in accordance with Policy ESD10 of the adopted Cherwell

Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

10. Prior to the commencement of the development hereby approved, a report on the hydrological impact of the drainage works on Meadow Farm Local Wildlife Site shall be submitted to and approved in writing by the Local Planning Authority. The report is to detail appropriate mitigation measures should they be considered necessary, including any amendments to the approved scheme. Thereafter the development shall be carried out in accordance with the approved details.

Reason: In the interests of protecting wildlife and supporting habitat and creating ecological enhancements in accordance with policy ESD10 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the NPPF.

11. The development shall be carried out in accordance with the submitted Flood Risk Assessment (Ref: P2451J1890 Version 3.0, dated 10/12/2020) and the following mitigation measures it details: Compensatory storage and flood risk mitigation should be provided in accordance with Section 7.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the schemes timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided, in accordance with Policy ESD6 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

#### **Agenda Item 11**

#### **20/03692/DISC - Land Adjacent to the Oxford Canal, Spiceball Park Road**

#### **Additional information received**

None.

#### **Additional Representations received**

None

#### **Recommendation**

As per the published report.



**BICESTER GATEWAY, OXFORDSHIRE  
APPLICATION RE: 20/00293/OUT**

**POSITION STATEMENT ON “AFFORDABLE RENT” FOR COMMITTEE ON 11 MARCH 2021**

**UPDATE FOLLOWING PUBLICATION OF THE COMMITTEE REPORT**

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**5 March 2021**

**Final Version**

## Summary for Councillors

This rebuttal to the Committee Report urges a sense of perspective on some key issues:

1. The innovation community at Bicester Gateway is policy compliant, sustainable development – which will be very beneficial for the town and district.
2. Policy is of primary importance in planning decisions. It is rare for Officers to argue that a material consideration outweighs the NPPF and policy in the planning balance.
3. Bicester Gateway benefits from two unanimous Planning Committee decisions.
4. Bicester Gateway will generate more than £1m per annum in business rates and Council Tax, so every month's delay is costing the Council c£100,000 per month.
5. Cherwell only has a dispensation on its 3 year housing land supply until 31 March 2021. Paragraph 14 of the minutes from the Oxfordshire Growth Board meeting on 24 November 2020 state that "in conversations with MHCLG on extending the timetable, they have indicated that an extension to this flexibility is not likely to be supported". Therefore, from 1 April 2021, Cherwell will have a 4.7 year housing land supply and it is likely that the district will be back to housing by appeal, typically in the villages.
6. The innovation community aims to attract knowledge economy jobs to Bicester as well as delivering policy compliant affordable housing (30% - ie 82 units out of 273).

On our key concern is drafting in the Section 106 that limits affordable rent to LHA rates:

7. This is not consistent with Government policy, which encourages flexibility up to 80% market rent in order to provide additional funding for RPs to increase the supply of affordable housing and improve the quality and energy efficiency of their housing stock.
8. This is not consistent with Cherwell's Business Plan, the Housing Strategy 2019 – 24 (see Appendix 3), or the Local Plan (eg paragraph B.108, see Appendix 4).
9. Against all of the above, reliance is placed by Officers on a material consideration, being the Tenancy Strategy 2017; but this is out of date, it does not say what Officers claim it says (see Appendix 1) and we feel Councillors and Bloombridge ought to be able to rely on the advice of the Housing Director to the Executive in March 2017 (which approved the Tenancy Strategy) stating that LHA rates will only be prescribed "sometimes" (see Appendix 2). There is no support here for the standard drafting proposed by Officers.
10. The viability (and delivery) of Bicester Gateway depends on a policy compliant definition of affordable rent. We cannot afford LHA rates and we haven't planned for them.

We therefore request that Officers are instructed by Committee to now engage fully on the Section 106 and grant planning permission without delay, even if this involves some flexibility around standard clauses. So far, the only meeting between solicitors took place on 9 December.

## Introduction

Officers have brought two issues to Committee for decision, but we request that the Committee only considers the LHA rates point, or at least focusses on this point, as RP liability ought to be resolvable between solicitors. It is clearly not necessary or proportionate to have drafting that makes a not-for-profit RP liable to every aspect of the s106 (including all of the costs) when the RP is just aiming to deliver affordable housing (at the lowest rents possible). This simple point seems self-evident. Only the banks benefit from the standard drafting on RP liability required by Officers. Put simply:

RP Liability = indemnity = bank bond = cost (= higher rent or less affordable housing)

Turning to our main point, on the prescription of LHA rates, we are concerned that the Committee Report is not as clear as it should be on the decision basis that Councillors are required by law to address, notably the importance of policy in the planning balance, and there appears to be some mild obfuscation in the Committee Report around:

- The purpose of policy on affordable rent,
- What Government and Cherwell policy on affordable rent says,
- What Cherwell's Business Plan and Housing Strategy say, and
- The planning benefits that come with a policy compliant decision (including in relation to increasing the supply of affordable housing).

Put simply, the weakness in the approach that Officers' are recommending in the Committee Report can be summarised as:

LHA rents only = less money for RPs to increase the supply of housing or improve quality

In addition, the commercial and practical perspective is missing from the Committee Report; notably how the prescription of LHA rates may impact on the viability and delivery of 273 apartments at Bicester Gateway and how, in turn, this impacts (1) on the District's response to the 5 year housing land supply challenges that will emerge after 1 April 2021 and (2) on the District's desire to bring the knowledge economy to Bicester. Put simply:

LHA rents only = no innovation community, no housing at all, and no knowledge economy

On these introductory points, it seems clear that the Committee Report does not get the planning balance right. This response therefore starts from the statutory basis for planning decision making and puts policy and other material considerations in the planning balance. We define the point of disagreement with Officers, and then explain the planning benefits in our approach. We conclude with two possible ways forward on affordable rent versus LHA rates, with our preference comprising the deletion of just four words from the s106 – being "whichever is the lower", thereby ensuring consistency with the NPPF Annex 2 definition.

### **Decision Basis – ie the 'Planning Balance'**

Paragraph 2.6 of the Committee Report quotes the standard decision basis for planning applications set out at Section 38(6) of the TCPA 1990; with the key point being the primacy of policy. Officers accept that their proposal to prescribe LHA rates for 'affordable rent' does not accord with policy. This means that the Planning Committee is being asked to make an exceptional decision based on

‘other material considerations’. Unusually, however, the Committee Report does not explain why Officers are recommending that the Planning Committee should make a decision that departs from policy. Nor do Officers explain why policy is framed the way it is, and the benefits that flow from the intentional flexibility of policy in relation to rent setting, which is particularly relevant to the current case.

Government policy at paragraph 11 of the NPPF19 sets out a presumption in favour of sustainable development and, on decision making, this paragraph gives clear guidance to local planning authorities by explaining that this means:

“approving development proposals that accord with an up to date development plan without delay”

Officers are not claiming that there are no relevant development plan policies or that policies are out of date. It is not unreasonable therefore for Bloombridge, as an investor in Cherwell, to request a decision based on policy, including in relation to affordable housing. Paragraph 2.19 of the Committee Report is the nub of the issue between Officers and Bloombridge:

“Officers do not disagree with the applicant that **Planning Policy does not require reference to LHA levels in securing affordable housing**. However, Officers consider that the Council’s Housing Strategy, including the Tenancy Strategy, are a material consideration in the delivery of affordable housing that meets local need. The Tenancy Strategy is an adopted Strategy. The report Housing Officers reported at the time is not, albeit the applicant seeks to rely on it and the reference to LHA levels only needing be prescribed ‘sometimes’. The advice of the Strategic Housing Team follows this approach. The NPPF does not rule out rental levels below 80% of local market rent in its definition of affordable housing for rent.”

This paragraph ought to be the end of any debate around Officers’ desires to prescribe LHA rates. The approach sought by Officers is inconsistent with the NPPF and local policy. For the record, despite Officers stating above that they wish to rely on the Housing Strategy and (Section 8 of) the Tenancy Strategy (as a material consideration), these strategies do not say what Officers are claiming they say. We have therefore extracted the relevant parts of these documents as Appendices 1, 2 and 3 to this Update, noting that the Housing Strategy has changed since 2017, generally encouraging more flexibility in line with Government policy.

Bloombridge wishes to rely on the definition of affordable rent in Annex 2 of the NPPF, being “at least 20% below local market rent”. This is Government policy. Importantly, this definition, which is reasonably flexible, does not exclude LHA rates being considered as part of the negotiations with Cherwell once an RP is appointed (because LHA rates are always at least 20% below market rent).

#### **The Point of Disagreement**

It follows that the point of disagreement between Officers and Bloombridge is the drafting in the s106 which seeks to restrict, from the outset, affordable rent to up to 80% of market rent or LHA rates, “whichever is the lower”. It is just these four words. They have the effect of limiting any rental offer to LHA rates whilst ruling out other affordable solutions up to 80% market rent (being quite a wide spectrum). This is contrary to Government guidance and Cherwell policy.

As applicant, Bloombridge ought to be able to rely on policy and, in terms of the principle of development, the fact that Bicester Gateway has been confirmed by the Planning Committee as

sustainable development. Bloombridge wishes to rely on this Committee decision, notably the advice at paragraph 2.10 of the 8 October 2020 Committee Report that states:

- “Social rent is not to be pursued” at Bicester Gateway, and
- **“Affordable rent is the most appropriate tenure for this proposed development”**

This was approved unanimously. There is no mention of a restriction to LHA rates. Moreover, as evidenced in Appendix 2, even the Tenancy Strategy only seeks to prescribe LHA rates “sometimes” (ie not as a standard) and any other interpretation is not consistent with the Strategic Priorities of Cherwell’s Housing Strategy (see Appendix 3).

There is therefore no Committee mandate for the Officers’ approach to the disputed drafting – for good, policy-based reasons (as explained further below).

### **The Planning Benefits**

Government and Cherwell policy is drafted the way it is to give clarity to investors but, in particular, because flexibility is considered (by policy makers) to offer more planning benefits than prescribing a single type of rent. Our view, which is consistent with every Government and Cherwell published document on affordable rent (see our full case appended to the main Committee Report) is that flexibility at the s106 stage is key in order to:

1. *Increase the supply* of affordable housing (including quality and energy efficiency issues), and
2. *Increase the range* of affordable needs that development can address, up to 80% market rent.

The first point is achieved by (a) the RPs, in certain circumstances, receiving some additional rent (income) up to 80% market rent to spend on more affordable housing or improvements to the RP’s stock (b) innovative funders now looking to deliver schemes of 100% affordable at 80% market rent and (c) by enabling developers to deliver housing, and therefore affordable housing, by ensuring a viable scheme. The second point is simply that there is a very wide range of affordable needs these days, up to 80% market rent – sadly, the need for affordable living space is not just a low income concern (in fact, we believe it is particularly relevant to the knowledge economy). It follows from these two points that **limiting affordable rent to LHA rates is restrictive on supply, quality, and the range of needs capable of being served**. It is against policy and, crucially, also against the purpose of policy (and the intended planning benefits associated with modest flexibility). It follows that lower rents (at LHA rates) are not necessarily productive in meeting affordable housing objectives, especially at the outline planning stage.

Helpfully, the policy (and evidence) in support of defining affordable rent as up to 80% of market rent is consistent with Cherwell’s Business Plan; where the Strategic Priorities include: delivering affordable housing, raising standards in rented housing, and promoting innovative housing schemes. There is nothing in Cherwell’s Business Plan about restricting affordable rents to LHA rates. Moreover, there is nothing in this regard in Cherwell’s Housing Strategy 2019-24; which, on the contrary, seeks to **“increase the supply and diversity of affordable housing”** through a “degree of flexibility”. There is also nothing in the Local Plan, Tenancy Strategy or any Committee decision to mandate anything other than the policy-compliant flexible approach of up to 80% market rent. In

fact, in response to concerns raised by third parties consulted about proposals in the Tenancy Strategy (that sought to limit affordable rents to LHA rates), Councillors were advised by Officers in their report to the Executive in March 2017 that:

“With regards to the LHA rates being too prescriptive, our data monitoring of RP rents has shown that a prescriptive approach is sometimes [our emphasis] required”

It follows that limiting affordable rents to LHA rates might be prescribed “sometimes”, but not always, or by standard convention, and, in any event, it is clear from the weighty foundation set by policy that such an inflexible approach would need special justification, especially when, with regard to Bicester Gateway, the Planning Committee in July and October 2020 has already recognised, unanimously, that the housing product for the Innovation Community has a ‘live work’ theme and an apartment form that raise issues with service charge affordability and social rent. It follows that **there is no mandate from the Planning Committee, and nothing in policy, to support the imposition of LHA rates at Bicester Gateway.** Such an approach is contrary to all policies – not only Government policy, but also Cherwell’s published corporate, planning and housing policies. It is also contrary to the advice given to the Executive in March 2017.

### **Why does this Need to be Decided Now?**

Officers are clear that they want LHA rates. If we fix these rates now (following Cherwell’s drafting: “LHA rates, whichever is the lower”) and we subsequently need flexibility to provide affordable rented accommodation up to 80% MR, but greater than LHA rates, then we will have to resubmit a fresh application, negotiate a new s106 and take this back to Committee, causing a great deal of further delay. There is no other procedure available to us, as any S106A deed of variation proposal will in all likelihood be rejected by Officers (consistent with their current stance). The current s106 drafting provides no flexibility on viability testing (contrary to Policy BSC3), no flexibility on the 30% of housing, no flexibility on what can be categorised as affordable rent, no flexibility on the mix between affordable rented and intermediate, and no flexibility on phasing. The current drafting effectively requires all affordable rented accommodation to be provided at LHA rates, and these will inevitably be lower than 80% MR.

If Officers are not prepared to accept any flexibility at this stage, how can we, or any investor interested in Bicester Gateway, have any confidence that a revised planning application or a renegotiated s106 would achieve a result different from the standard – at all, or within a reasonable time? Investors always have a choice, and they would choose to invest elsewhere. This is a key reason why Government policy guards against prescribing LHA rates.

### **We are Seeking....**

There are two possibilities:

1. Either the deletion of “whichever is the lower” in the s106 drafting so affordable rent is defined as “up to 80% Market Rent”, per Annex 2 of the NPPF, or
2. Acceptance by Councillors that the Innovation Community at Bicester Gateway, as an innovative housing scheme consistent with the Council’s Strategic Priorities, supports approval ‘on its merits’ without the need to restrict affordable rent to LHA rates.

We are strongly of the view that our preference, Point 1, accords precisely with Government and Cherwell policy. The evidence (eg quotes) in support of this point of view is set out in Appendices 1 – 4 of this paper, with more detail in our paper appended to the Committee Report. Whilst Point 1 directly challenges Officers’ standard drafting with policy, thereby creating potential for a precedent effect, it is worth adding that a decision based on Bicester Gateway as an innovative housing scheme (Point 2) offers a decision basis for Cherwell that avoids a direct challenge to standard drafting. Put another way, the ability of Bicester Gateway to attract knowledge economy growth to Bicester through an innovative proposal, and the need to increase housing delivery generally in Bicester (currently running at just 25% of district supply), are sound reasons to support the merits of what we are proposing, ensuring the s106 drafting is policy compliant, even if it departs from the standards preferred by Officers.

In short, we are seeking to ensure that Cherwell’s Housing Strategy is **“investment ready”** as well as helping residents to be **“housing ready”**. Getting the balance right is key. There is no policy support and, on balance, no planning benefits, for a housing strategy at Bicester Gateway based solely on LHA rates. And if there is no housing investment, there is no affordable housing.

## Conclusion

It is beneficial to all parties (Cherwell, the RPs and Bloombridge) to have some flexibility. This is consistent with the October 2020 Committee mandate, where paragraph 2.10 states: **“affordable rent is the most appropriate tenure for this proposed development”**. There is no reference to LHA limitations. In contrast, Officers have sought to rely on the Tenancy Strategy, but this is not planning policy, and it does not say what Officers are claiming is says, as we have evidenced (see Appendices 1 and 2). **The Tenancy Strategy only supports the application of LHA rates “sometimes” and it is not intended to be prescriptive.** It is also out of date. The Tenancy Strategy is available to guide the discussions between Cherwell’s Housing Team and the RPs, not to prescribe an approach at the s106 stage through inflexible drafting in the s106. Whilst the Tenancy Strategy is a “material consideration” for planning purposes, this does not override policy, or overrule the mandate from the Planning Committee on 8 October. Crucially, a “material consideration” cannot be used as a basis to apply LHA rates prescriptively, all the time, in the face of what the Tenancy Strategy actually says, and contrary to Government and Cherwell policy. Officers are on very weak ground.

## Possible Questions for Officers

In seeking a defensible resolution on the proposal from Officers to prescribe LHA rates at Bicester Gateway, Councillors may wish to ask the following questions:

1. Is Cherwell’s policy on affordable housing consistent with Government policy, including the definition of affordable rent at Annex 2 to the NPPF?
2. Does the accepted definition of affordable rent refer to LHA rates and include the proviso “whichever is the lower”?
3. Does defining affordable rent as up to 80% market rent preclude renting properties at LHA rates? Is it still classified as affordable rent?
4. Why are officers imposing LHA rates when the Tenancy Strategy is clear that this can only be justified “sometimes” (and certainly not as standard practice)?

5. With regard to the planning balance, what weight does the Tenancy Strategy hold in relation to Government policy and Cherwell's Business Plan, Housing Strategy and Local Plan (noting that it received just a handful of consultation responses in 2017)?
6. Is the Committee Report sufficiently clear in advising Councillors on whether the standard drafting preferred by Officers is consistent with Government policy on affordable rent, and does the Report explain the decision making implications for this in terms of s38(6) of the 1990 Act, including in relation to an appeal?
7. What are the benefits in diverging from policy compared with the increase in supply and improvement in affordable housing stock envisaged by Government policy?
8. What is the difference in planning terms between serving the affordable housing needs at either end of the spectrum within the definition of affordable rent, ie between LHA rates and up to 80% market rent? Is it so significant/material?
9. Is it likely that affordable housing at LHA rates can be delivered elsewhere, eg the main housing sites, or is there something special in this regard offered by Bicester Gateway which merits prescription?
10. Do the benefits of prescribing LHA rates and RP liability outweigh the guidance at paragraph 11 of the NPPF that requires applications in accordance with the development plan to be approved without delay?

#### **Postscript on RP Liability**

Cherwell is looking to impose all s106 obligations and costs onto the chosen Registered Provider. This is not common practice as it puts costs onto organisations which are essentially not for profit. The resultant bond/indemnity is expensive because there is a specific cost attached to it (typically 10% of the total indemnity), and disproportionate because in practice the Council would not enforce against an RP, and because the downside of the indemnity/bond for the developer outweighs the perceived public benefit.

Five RPs active in Cherwell have written to Bloombridge to say that they will not accept s106 liability and this correspondence was shared with Officers in February 2021. A sixth RP was approached but did not reply.

We believe careful drafting between solicitors can address the risks and concerns identified by Cherwell. There is no need for Councillors to make a decision on detailed drafting around RP liability, although it would be helpful if Officers were instructed to resolve the s106 and issue outline planning permission by the end of March 2021. Our only legal meeting was on 9 December and very little progress has been made on the drafting since then. Hopefully, clear instructions from the Planning Committee will break the inertia.



## 8. Affordable Rents

### Affordability

#### › Aim

Affordable Rent was introduced in order to raise funds to build further Affordable Homes. Registered Providers can charge up to 80% market rent levels – higher than the social rents previously charged. Affordable rents can be charged in new properties and on a proportion of re-let homes.

#### › Ability to afford

The government promotes work to reduce levels of benefit dependency, so it is important that rent levels do not deter tenants from entering employment.

In addition, the proposed introduction of Universal Credit (UC) is likely to have an effect on the ability to pay for those residents who are dependent on benefit payments to meet their rental responsibilities.

Cherwell District Council intends to review this approach and will take into account any further information that has been confirmed about the operation of Universal Credit.

The latest development on this front is the transition of single claimants from the previous system to Universal Credit, as part of one of the initial pilot schemes. As the roll-out continues to progress, more categories of applicants will be switched over from current system. Couples and family claimants are expected to be switched over to UC soon, as part of the overall national roll-out between now and 2021.

#### › Setting the level of a market rent

Registered Providers use the RICS User Guide "Market Rent" which was produced in association with the Homes and Communities Agency to assess market rents.

#### › Capping the level of Affordable Rent

Cherwell District Council continue to support the use of Affordable Rents because we want to see development in the district to meet the housing need of our residents whilst also understanding that Registered Providers have a need to generate income through higher rents to replace public subsidy, which has been lost in current grant programmes.

However, in order that the housing provided still meets local need, we believe that Affordable Rents should be capped at a level to match Local Housing Allowance. We want to avoid a situation where high rents prove a disincentive for people to take up employment or make tenancies which are unsustainable. The Cherwell district falls into two Broad Market Rental Areas for housing benefit purposes, Cherwell Valley and Oxford, of which the rents nearer to Oxford are considerably higher.

We expect Registered Providers to discuss with us the level of rent it will be reasonable to charge as Affordable Rent. Where Cherwell District Council has invested Capital Funding in a building or acquisition project, the council will have a greater say in the negotiation of rent levels, although we would expect all Registered Providers to charge rents that do not fall outside of the Local Housing Allowance rates for the local area.

Registered Providers should take into account the availability of property and the demographics of the district when setting rents. For example, in areas such as Kidlington where the availability of market and affordable properties is comparatively low, it will be important to retain a proportion of social rented properties. Market rents in rural areas can be extremely high while wages can be lower than average. We expect to discuss this with Registered Providers who are building in our villages. In these cases we anticipate rents may need to be set lower than 80% and we will work jointly with Registered Providers to assess information on local incomes. We will expect Registered Providers to take account of this information when setting rents. Where rents

## APPENDIX 2: EXECUTIVE REPORT SEEKING APPROVAL OF THE TENANCY STRATEGY

### Appendix 2

#### Tenancy Strategy 2017 Consultation

The consultation on the Tenancy Strategy update ran for one calendar month (1 December 2016 – 31 December 2016) and was available to Registered Providers as well as to the general public.

#### Public Consultation

Two members of the public completed the consultation, and the results were that they both:-

- Found the main points of the Tenancy Strategy clear to understand.
- Would not want to see any changes made to the proposed Tenancy Strategy.
- Did not think that any particular group would be affected more than others by the approach the council is taking.

#### Registered Provider Consultation

There were four responses from Registered Providers, the key points being that:-

- The LHA section was too prescriptive about the level of rent setting in Cherwell.
- Confirmation was required in the succession rights section as to whether the changes were compliant with tenancies created before April 2012, or to only to tenancies created before then.
- The amount of options for people aged under 35 is somewhat limited.
- Whether the Voluntary Right to Buy exceptions covers any types of housing except general needs housing.

#### Impacts of consultation responses

Whilst considering the responses, the Tenancy Strategy update must be viewed as a refreshing of an existing document – and so any changes reflect legislation changes in the same period.

The two responses from the general public had no suggestions for the improving the document, but the Registered Providers had four, so these had to be given consideration as to whether they would have any impact on the document:-

- With regards to the LHA rates being too prescriptive, our data monitoring of RP rents have shown that a prescriptive approach is sometimes required to ensure that Affordable Rent levels stay below the BRMA rates in our district.
- The succession rights were altered in the Localism Act, and the Tenancy Strategy just reflects these alterations. This means that any tenancy created after April 2012 will be subject to the new succession rules, although it does not retroactively affect tenancies created before April 2012.
- The previous housing options for people under 35 have been withdrawn by Central Government policies, and whilst we are trying to alleviate the impact that this will have, the options are still limited.
- The Tenancy Strategy states that any "specialist accommodation" will be excluded from the Voluntary Right to Buy - and so while a property might no longer be classified as a "Sheltered property" it would still be excluded from the Voluntary Right to Buy as a "Retirement Living property" is more specialist than a general needs property.

### Introduction

This Housing Strategy sets out Cherwell District Council's plans for the housing service for the period 2019-2024. The previous Housing Strategy was a combined Housing and Homelessness Strategy that covered the period 2012-2017. This is a standalone Housing Strategy as we published a new Homelessness Strategy in July 2018, in recognition of the significant shift in homelessness legislation with the implementation of the Homelessness Reduction Act 2017 (HRAct).

Our 2019-2024 strategy has been shaped by national policy and local context and is informed by data and information about our local housing market. A strong evidence base is essential to ensure that key strategic priorities and action plans are intelligence led. A key source of evidence for this housing strategy is Cherwell District Council's "[State of the District's Housing Report 2018](#)". This strategy should be read in conjunction with this report. Other evidence for the strategy includes [Oxfordshire Strategic Housing Market Assessment \(SHMA\) 2014](#), data from our internal housing register/housing advice and private sector housing databases and the [Cherwell Local Plan 2015](#).

In July 2017 we became a shared housing service with South Northamptonshire Council. However, local government reorganisation in Northamptonshire has prompted a termination in the partnership between Cherwell District Council and South Northamptonshire Council. There is currently a programme of work taking place that will culminate in the separation of the 2 councils. This programme is expected to be completed in mid-2019. We have also formed a new partnership with Oxfordshire County Council and with effect from 1 October 2018 we have a shared Chief Executive with the county council. From January 2019 we have a shared Assistant Director for Housing and Social Care Commissioning. This arrangement is new and the strategy recognises that the relationship between the two organisations will grow and develop. There will be lots of opportunities to work together over the lifetime of the strategy to join up pathways and improve housing solutions for our residents.

The Housing Strategy has three strategic priorities, these are:

- **Increase the supply and diversity** of affordable housing to ensure the right types of housing are available in the right places
- **Improve the quality and sustainability** of our homes and build thriving, healthy communities.
- Enhance opportunities for people to access suitable homes and have **housing choices**

Taking into account the level of change anticipated in national policy, the housing market, the local government sector and our communities we felt the housing strategy needed a degree of flexibility. The structure of the strategy is unlikely to change over the course of its life and will remain focused on the 3 key themes. But we will review regularly with the aim of producing an annual action plan which will enable us to respond to the changing environment. The action plan 2019-20 sets out year 1 delivery.

#### **APPENDIX 4: CHERWELL LOCAL PLAN LINK TO THE HOUSING STRATEGY**

There is no mention of prescribing LHA rates in the adopted Cherwell Local Plan and there is no mention of the Tenancy Strategy 2017 (or any of its predecessors). The principal reference is at paragraph B.108, which summarises the overall thrust of Cherwell's Housing Strategy – eg maximising investment by RPs, flexibility to respond and deliver, and encouraging innovation in the way the full range of affordable housing needs are provided. We believe Bicester Gateway falls four square within this paragraph. Our approach is therefore consistent with the housing policies of the adopted Local Plan:

**B.108** The Housing Strategy recognises the need for affordable homes, and aims to ensure that Cherwell is well-placed to maximise investment by Registered Providers and to respond to opportunities as they arise. A Delivery Plan will be prepared to implement the strategy, which seeks to maximise the resources available to support delivery, to maintain a close dialogue with Registered Providers, and to be innovative in the way affordable housing is provided.