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Cherwell District Council

Executive

Minutes of a meeting of the Executive held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 5 December 2016 at 6.30 pm

Present: Councillor Barry Wood (Chairman), Leader of the Council
Councillor G A Reynolds (Vice-Chairman), Deputy Leader of the Council

Councillor Ken Atack, Lead Member for Financial Management
Councillor Colin Clarke, Lead Member for Planning
Councillor John Donaldson, Lead Member for Housing
Councillor Tony Ilott, Lead Member for Clean and Green
Councillor Kieron Mallon, Lead Member for Banbury Futures
Councillor D M Pickford, Lead Member for Clean and Green
Councillor Lynn Pratt, Lead Member for Estates and the Economy

Also Present: Councillor Mike Kerford-Byrnes, Lead member for Change Management, Joint Working and IT

Also Present: Councillor Sean Woodcock, Leader of the Labour Group
Councillor Carmen Griffiths, Local Ward Member, Kidlington East, for agenda item 8
Councillor Neil Prestidge, Local Ward Member, Kidlington East, for agenda item 8

Officers: Sue Smith, Chief Executive
Scott Barnes, Director of Strategy and Commissioning
Ian Davies, Director of Operational Delivery
Kevin Lane, Head of Law and Governance / Monitoring Officer
Paul Sutton, Chief Finance Officer / Section 151 Officer
Adrian Colwell, Head of Strategic Planning and the Economy, for agenda items 7, 8, 9, 10, 17 and 19
Andy Preston, Head of Development Management, for agenda items 17 and 19
Claire Taylor, Assistant Director - Commercial and Innovation, for agenda item 11
Natasha Clark, Interim Democratic and Elections Manager

88 **Declarations of Interest**

Members declared interest in the following agenda items:

12. Contract Award - Debt and Money Advice Service.

Councillor Colin Clarke, Declaration, as Cherwell District Council's appointed outside body representative to Banbury Citizens Advice Bureau and a trustee in a personal capacity.

89 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

90 **Urgent Business**

There were no items of urgent business.

91 **Minutes**

The minutes of the meeting held on 7 November 2016 were agreed as a correct record and signed by the Chairman.

92 **Chairman's Announcements**

There were no Chairman's announcements.

93 **'Making' (Adoption) of the Bloxham Neighbourhood Plan**

The Head of Strategic Planning and the Economy submitted a report to propose the Executive recommends the 'making' (adoption) of the Bloxham Neighbourhood Plan at the meeting of the Full Council on 19 December 2016.

Resolved

- (1) That the referendum result of 3 November 2016 where 97% of those who voted were in favour of the Bloxham Neighbourhood Plan which is above the required 50% be noted.
- (2) That Full Council be recommended to resolve that Cherwell District Council as the local planning authority 'make' the Bloxham Neighbourhood Plan so that it is part of the statutory development plan for the District.
- (3) That Full Council be recommended to approve the issuing and publication of a decision statement stating that Cherwell District Council has resolved to make the Bloxham Neighbourhood Plan.
- (4) That Full Council be recommended to delegate to the Head of Strategic Planning and the Economy the correction of any spelling, grammatical or typographical errors, and the undertaking of any minor presentational improvements, prior to the Plan being adopted and published by the council.

Reasons

Local planning authorities are required by statute to 'make' any neighbourhood plan if more than half of those voting in the referendum vote in favour of the plan. Of those eligible to vote, 877 voted in favour of the Plan with 26 against. This gives a majority vote of 97%.

Executive is therefore requested to recommend the 'making' (adoption) of the Bloxham Neighbourhood Plan at the meeting of the Full Council on 19 December 2016.

Alternative options

Where a referendum poll results in more than half of those eligible to vote voting in favour of the Neighbourhood Plan, the local planning authority must 'make' the Plan as part of the statutory development plan. There are no alternative options available unless the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).

94

Kidlington Framework Masterplan

The Head of Strategic Planning and the Economy submitted a report to seek approval of the Kidlington Framework Masterplan so that it can be presented to Council for adoption.

At the discretion of the Chairman, Councillor Carmen Griffiths and Councillor Neil Prestidge, local ward members for Kidlington East, addressed Executive.

In response to the comments from the local ward members regarding their opposition to the conversion of semi-detached houses to flats and that this be included in the Local Plan going forward, the Lead Member for Planning clarified that as a supplementary planning document the Masterplan could not establish new policy, however this could be taken into consideration during the Local Plan Part 2 process.

Resolved

- (1) That the changes to the draft Kidlington Framework Masterplan following consultation be approved.
- (2) That Full Council be recommended to adopt the Kidlington Framework Masterplan as a Supplementary Planning Document in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012.
- (3) That the Head of Strategic Planning and the Economy be authorised to publish an Adoption Statement and to make any further minor changes to the Masterplan before the meeting of the Full Council.

Reasons

Work on a Kidlington Framework Masterplan commenced in 2013. Evidence gathering work occurred before adoption of Local Plan Part 1 but the Masterplan was reviewed in the context of the Local Plan Inspector's Report and the Plan's subsequent adoption in July 2015. Public consultation on a draft Framework Masterplan occurred from 14 March 2016 to Wednesday 13 April 2016 supported by a public exhibition held on 30 March 2016. The results of that consultation have been considered in producing a final document for approval. Upon approval by the Executive it is intended that the Framework Masterplan be presented to Council for adoption as a Supplementary Planning Document (SPD). As an SPD the Masterplan would have statutory status as planning guidance. It does not establish Development Plan policy which is the role of the Council's Local Plans.

Alternative options

Option 1: Not to approve the Framework Masterplan and seek changes. Officers consider that the Masterplan responds appropriately to the policies in the adopted Cherwell Local Plan 2011-2031 (Part 1), provides guidance that will assist decision making, and responds to the views of the local community. Significant changes may require further consultation.

Option 2: Not to approve the Framework Masterplan and to rely only on the adopted Cherwell Local Plan 2011-2031 (Part 1). The production of the Masterplan is referred to in the adopted Local Plan Part 1 and in the Council's Local Development Scheme. The project has been in progress since 2013 and there is community expectation for a final Masterplan to provide additional planning guidance.

95 Adoption of the Banbury Vision and Masterplan Supplementary Planning Document (SPD)

The Head of Strategic Planning and the Economy submitted a report to seek approval of proposed changes to the draft Banbury Vision & Masterplan Supplementary Planning Document (SPD) following stakeholder and public consultation and to propose the Executive recommends adoption of the Masterplan incorporating these changes at the meeting of the Full Council on 19 December 2016.

Resolved

- (1) That the changes to the draft Banbury Masterplan Supplementary Planning Document following consultation be approved.
- (2) That Full Council be recommended to adopt the Banbury Masterplan as a Supplementary Planning Document.
- (3) That the Head of Strategic Planning and the Economy be authorised to publish an Adoption Statement and to make any further minor changes to the Masterplan before the meeting of the Full Council.

Reasons

Following stakeholder and public consultation representations have been considered and changes made to the draft Banbury Masterplan Supplementary Planning Document. Adoption of the Masterplan by the Council at the meeting of the Full Council on 19 December 2016 is recommended.

Alternative options

Option 1: Not to recommend adoption of the SPD. The SPD is identified in the Council's Local Development Scheme (LDS) (schedule and timetable for the Council's Local Development Documents) and this option would be inconsistent with public expectations that the Masterplan is to be adopted and would reduce the potential for the delivery of proposals and initiatives at Banbury.

Option 2: Not to recommend adoption of the SPD in its current form (at appendix 1) by proposing significant changes to the draft SPD. Significant changes at the stage may lead to a requirement for further public consultation before the SPD could be recommended for adoption and adopted which would involve a delay to the timetable.

96 **Re-adoption of Policy Bicester 13 of the adopted Cherwell Local Plan 2011-2031**

The Head of Strategic Planning and the Economy submitted a report to seek re-adoption of Policy Bicester 13 of the Cherwell Local Plan 2011-2031 in accordance with a Court Order and an associated addendum to the Local Plan Inspector's Report.

Resolved

- (1) That the Court Judgment, Court Order and addendum to the Local Plan Inspector's report (annexes to the Minutes as set out in the Minute Book) be noted.
- (2) That Full Council be recommended to adopt Policy Bicester 13 of the Cherwell Local Plan 2011-2031 (annex to the Minutes as set out in the Minute Book) in precise accordance with the addendum to the Local Plan Inspector's Report dated 18 May 2016 and the Court Order dated 19 February 2016.
- (3) That it be noted that upon adoption by Council Policy Bicester 13 will be inserted as modified into the published Cherwell Local Plan 2011-2031.

Reasons

A Court Order dated 19 February 2016 requires specific actions of the Secretary State, an appointed Planning Inspector and the Council pertaining to the legally prescribed modification of Policy Bicester 13 of the Cherwell

Local Plan 2011-2031. A specific modification to Policy Bicester 13 has been recommended by a Planning Inspector on behalf of the Secretary of State. The modification requires the deletion of the first sentence of the third bullet point under “Key Site Specific Design and Place Shaping Principles” which states – “*That part of the site within the Conservation Target Area should be kept free of built development.*”

To comply with the Court Order, the Executive is advised to recommend to Council that it formally adopts Policy Bicester 13 in precise accordance with the Court Order.

Alternative options

There are no other options. The Court Order dated 19 February 2016 states (para.3), “*The First Defendant [the Council] adopt Policy Bicester 13 subject to the modification recommended by the planning inspector appointed by the Second Defendant [the Secretary of State for Communities and Local Government]*”.

97

Community Lottery

The Commercial Director submitted a report to gain agreement to launch an online and fully automated Cherwell Lottery that will help fund discretionary support to voluntary and community organisations active in Cherwell and to enable such organisations to raise funds directly for themselves.

The proposal was for the Council to be an enabler and use the services of an External Lottery Manager to run the lottery.

Resolved

- (1) That the proposal that an online Cherwell Lottery be launched as detailed in the business case (annex to the Minutes as set out in the Minute Book) and that this includes a financial contribution and in-kind support, subject to this being funded from existing resources, be agreed.
- (2) That it be agreed that subject to procurement, due diligence and compliance with the guidance contained in the Joint Contract Procedure Rules, the council uses an external lottery manager (ELM) to run and operate the lottery and shares the risk of running it with them.
- (3) That agreement be given to the council providing £3K for set-up costs and £1k for the annual license and administration costs and that in the first year the council allocates £1.5K for marketing funded from existing resources, and £350 annually for on-going marketing (the majority of marketing material is paid for by the External Lottery Manager).
- (4) That it be agreed that an annual review of the Cherwell Lottery be reported to Executive on the anniversary of its launch.

Reasons

The Community Lottery business case brings together information from councils who have provided a community lottery and the provider of External Lottery Management (ELM). A Cherwell Lottery has the potential to help the VCS sector operating within Cherwell by helping address funding pressures they may be facing. This could benefit all people and communities in the district.

The success of the AVDC lottery has been reviewed and is considered to be robust; within the first six months, their lottery has exceeded all expectations with 115 organisations having joined (their target was just 10-20).

Therefore this report recommends that a local community lottery be created for CDC with the ticket price is set at £1 per ticket, the services of an External Lottery Manager (ELM) being used to run the lottery and that CDC provide £3K for set-up costs and £1k for the annual license and administration costs. Further, in the first year the Council allocates £1.5K each for marketing funded from existing resources, and £350 annually for on-going marketing.

Alternative options

Option 1: Not to agree the proposals. This is not recommended as the proposal will help to fund discretionary support to the voluntary and community organisations and enable such organisations raise funds directly for themselves. All funds raised through the lottery would be spent within the district and benefit local people and communities.

98

Contract Award - Debt and Money Advice Service

The Chief Finance Officer and Head of Regeneration and Housing Services submitted a report to seek approval for the contract award for the provision of Debt and Money Advice services across the Cherwell District.

Resolved

- (1) That the award of a contract for the provision of Debt and Money advice across all areas of the Cherwell District to North Oxfordshire and South Northants Citizens Advice (formerly known as Citizens Advice Bureau) be approved.
- (2) That it be noted that the bid includes partnership working with Bicester Citizens Advice who will provide services in Bicester and Kidlington.
- (3) That it be noted that the contract will operate for a period of two years from 1 April 2017 and includes an option to extend the contract for a further one year from 1 April 2019.

Reasons

A full OJEU Compliant procurement exercise has been undertaken

This new contract will enable the Council to ensure that impartial debt and money advice is available to all residence within the district and support key strategic aims for the council.

Alternative options

Not to approve the award of this contract. This would result in Cherwell residents having limited access to services to support with Debt and Money issues within the district. This would also potentially result in an increase in the number of people approaching the council as homeless and the district being less financially inclusive.

99 Council Tax Reduction Scheme and Council Tax Discounts 2017-2018

The Chief Finance Officer submitted a report to provide members with a review of Council Tax discounts and to seek approval to recommend the proposed level of Council Tax discounts for the 2017-2018 financial year to Council.

The report also provided an update on the consultation process that has taken place on the proposals for a Council Tax Reduction Scheme for 2017-2018 and to seek approval to recommend the proposed Council Tax Reduction Scheme to Council.

Resolved

- (1) That the option of no change to the Council Tax Reduction Scheme for 2017-2018 and the amendment of the Council Tax Reduction Scheme Regulations for Pensioners in line with uprating announced by DCLG and to uprate the Working Age Regulations in line with Housing Benefit as confirmed by Department for Work and Pensions be approved.
- (2) That Full Council be recommended to agree an unchanged Council Tax Reduction Scheme for 2017-2018.
- (3) That Full Council be recommended to grant delegated authority to the Chief Finance Officer, in consultation with the Lead Member for Financial Management, to make any changes to the Council Tax Reduction Scheme Regulations up to and including 31 January 2017.
- (4) That Full Council be recommended to agree the following level of Council Tax discounts for 2017-2018:
 - Retain the discount for second homes at zero
 - Retain the discount for empty homes (unoccupied and substantially unfurnished) at 25% for 6 months and thereafter at zero.
 - Retain the discount for empty homes undergoing major repair at 25% for 12 months and thereafter at zero.
 - Retain the empty homes premium of an additional 50% for properties that have remained empty for more than 2 years.

Reasons

The proposal is to keep the same Council Tax Reduction Scheme for 2017-2018. There will be some technical changes to Regulations. Consultation has taken place. Members are now required to recommend to Council a Council Tax Reduction Scheme for the financial year 2017-2018. Members are also asked to recommend that Council Tax Discounts for 2017-2018 are set at the levels detailed in the report.

Alternative options

Option 1: To not recommend any of the options for a scheme for 2017-2018 This would have financial implications for the Council and those residents affected by Welfare Reform.

100 **Quarter 2 2016/17 Performance Update**

The Director of Strategy and Commissioning submitted a report to provide an update on the Cherwell Business Plan progress to the end of Quarter Two 2016/17.

Resolved

- (1) That the exceptions highlighted and proposed actions be noted.
- (2) That it be noted that at its meeting on 22 November 2016 the Overview & Scrutiny Committee raised no issues and referred no items to Executive.

Reasons

This is the second report based on the new Business Plan and the new reporting style. Slight amendments in style and appendices have been made to try and improve how the report works. This is an evolutionary process and we will continue to develop the reports, including any changes from feedback received from the Overview and Scrutiny Committee.

As agreed previously, this report focuses on the exceptions. The performance and insight team have also picked out some 'good news' stories to provide a balance and provide case studies supporting the generally excellent levels of delivery.

Alternative options

Executive could request additional information on items or refer items to the Overview and Scrutiny Committee.

101 **Quarter 2 2016-17 - Revenue and Capital Budget Monitoring Report**

The Chief Finance Officer submitted a report which summarised the Council's Revenue and Capital position as at the end of the first three months of the financial year 2016-17 and projections for the full year.

At the discretion of the Chairman, Councillor Woodcock, Leader of the Labour Group addressed Executive commenting on delays to the capital programme identified in the report. In response to Councillor Woodcock's comments, the Chairman requested that officers send a written update to Councillor Woodcock regarding The Hill Youth Community Centre.

With regards to the projects that had been passed to the Solihull Partnership and were still outstanding, the Chief Finance Officer advised Members that a consultant had been brought in to oversee the works and the allocated budget would be spent by the end of 2017/18. A steering Group had been established to oversee the projects that had been passed to the Solihull Partnership and there would be regular updates to the Budget Planning Committee and Executive.

Resolved

- (1) That the projected revenue and capital position at September 2016 be noted.

Reasons

In line with good practice budget monitoring is undertaken on a monthly basis within the Council. The revenue and capital position is formulated in conjunction with the joint management team and reported formally to the Budget Planning Committee on a quarterly basis. The report is then considered by the Executive.

Alternative options

Option 1: This report illustrates the Council's performance against the 2016-17 Financial Targets for Revenue and Capital. As this is a monitoring report, no further options have been considered. However, members may wish to request that officers provide additional information.

102

Notification of Urgent Action: Free Parking for Small Business Saturday on 3 December 2016 and Free After Three Parking in January 2017

The Director of Operational Delivery submitted a report to advise Executive of the urgent action which was taken by the Director of Operational Delivery in consultation with the Leader relating to offering free parking for Small Business Saturday on 3 December 2016 and Free After Three Parking in January 2017.

Resolved

- (1) That the urgent action taken by the Director of Operational Delivery in consultation with the Leader to offer free parking for Small Business Saturday on 3 December 2016 and Free After Three parking in January 2017 be noted.

Reasons

Following requests to the Council to introduce free parking incentives to support local town centre traders over the Christmas and New Year period, the Director of Operational Delivery took urgent action in consultation with the Leader of the Council to approve the Small Business Day and Free after Three in January 2017 free parking offers.

The urgency for this arose from the need to publicise the decision to take effect at least 21 days before 3 December event and to enable the free parking offer to be part of the promotion for event.

Alternative options

Different applications time periods for the free after three parking offer as outlined in the report.

103

Business Cases: Joint Planning Policy and Growth Strategy Team and Joint Design and Conservation Team

The Head of Strategic Planning and the Economy and Head of Development Management submitted a report which presented the final business cases for a Joint Planning Policy and Growth Strategy Team and a Joint Design and Conservation Team across Cherwell District and South Northamptonshire Councils.

The report recommended the formation of a Joint Planning Policy and Growth Strategy Team and a Joint Design and Conservation Team and in doing so sought the Executive's agreement for the non-staffing elements of the business cases, the staffing elements having been approved by the Joint Commissioning Committee at their meeting of 1 December 2016.

The proposal was part of the wider transformation programme across the two Councils.

Resolved

- (1) That having given due consideration, the final business cases for a Joint Planning Policy and Growth Strategy Team and a Joint Design and Conservation Team and the consultation responses in relation to non-staffing matters be noted.
- (2) That it be noted that the business cases were considered and approved by the Joint Commissioning Committee with regard to staffing matters on 1 December 2016 and that this included consideration of the consultation responses from affected staff and trade union representatives.
- (3) That, subject to similar consideration and approval by South Northamptonshire Council Cabinet on 12 December 2016 and following approval of the staffing implications by the Joint Commissioning Committee on 1 December 2016, the proposed final business case to create a Joint Planning Policy and Growth Strategy Team and a Joint

Design and Conservation Team between Cherwell District Council and South Northamptonshire Council be approved for implementation.

- (4) That authority be delegated to the Head of Development Management and the Head of Strategic Planning and the Economy in consultation with the Leader of the Council any non-significant amendment that may be required to the business case following the decision by South Northamptonshire Council Cabinet.

Reasons

The recommendation is to establish a Joint Planning Policy and Growth Strategy Team and a Joint Design and Conservation Team between CDC and SNC.

The draft business cases set out the rationale for establishing the joint teams and in particular for deferring the savings from the Joint Planning Policy and Growth Strategy Team for two years to allow the completion of the 3 Local Plans.

Alternative options

The following alternative options have been identified and rejected as part of the development of the Joint Planning Policy and Growth Strategy Business Case:

Status Quo (No Change)

Retaining the status quo is an option; however both Councils have fairly small Planning Policy teams. Retaining the status quo while reflecting the different Local Plan positions of each council would not deliver the benefits set out in this business case or provides the additional resilience and shared expertise that a joint team could provide at a time of planning reform and following Brexit pressure to support additional growth.

Outsource Service

The preparation and monitoring of the local plans is a statutory responsibility and as such it is not considered appropriate to outsource the service without compromising the planning role of each district council.

Joint Planning Policy and Conservation Team

Although there are some synergies between both areas of work, it is considered that the best model for joint working is to have two distinct joint functions covering planning policy and design and conservation. It should be noted that there are equally (if not more) synergies between these service areas and development management.

The following alternative options have been identified and rejected as part of the development of the Joint Design and Conservation Business Case:

Status Quo (No Change)

Retaining the status quo is an option; however both Councils have fairly small Design and Conservation/Conservation teams. Retaining the status quo

would not deliver the financial benefits set out in this business case or provide the additional resilience and shared expertise that a joint team would provide.

Outsource Service

The Councils could seek to outsource the service; however this is not considered a preferred option. Both Councils have well established teams that deliver a good service. The preferred option is to bring the existing teams together, build on that experience and expertise and seek opportunities to trade.

Joint Planning Policy and Conservation Team

Although there are some synergies between both areas of work, it is considered that the best model for joint working is to have two distinct joint functions covering planning policy and design and conservation. It should be noted that there are equally (if not more) synergies between these service areas and development management.

The approach in the recommendations is believed to be the best way forward. The proposal is to establish a Joint Planning Policy and Growth Strategy Team and a Joint Design and Conservation Team.

104 **Exclusion of the Press and Public**

There being no questions on the exempt appendices to the Business case: Joint Planning Policy and Growth Strategy Team and Joint Design and Conservation Team, it was not necessary to exclude the press and public.

105 **Business Cases: Joint Planning Policy and Growth Strategy Team and Joint Design and Conservation Team - Exempt Appendices**

Resolved

- (1) That the exempt appendices be noted.

The meeting ended at 7.30 pm

Chairman:

Date:



Neutral Citation Number: [2016] EWHC 290 (Admin)

Case No: CO/4622/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT BIRMINGHAM

Birmingham Civil Justice Centre
Priory Courts, 33 Bull Street, Birmingham, B4 6DS

Date: 18/02/2016

Before:

THE HON. MRS JUSTICE PATTERSON DBE

Between:

(1) JJ GALLAGHER LTD	<u>Claimants</u>
(2) LONDON AND METROPOLITAN INTERNATIONAL DEVELOPMENTS LTD	
(3) NORMAN TRUSTEES	
- and -	
(1) CHERWELL DISTRICT COUNCIL	<u>Defendants</u>
(2) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	

Satnam Choongh (instructed by **Pinsent Masons LLP**) for the **Claimants**
Hugh Flanagan (instructed by **Cherwell District Council**) for the **First Defendant**
Richard Kimblin (instructed by the **Government Legal Department**) for the **Second Defendant**

Hearing date: 9 February 2015

Approved Judgment

Mrs Justice Patterson:

Introduction

1. This is an application under section 113(3) of the Planning and Compulsory Purchase Act 2004 (“PCPA”) for an Order that “Policy Bicester 13 adopted by the first defendant on 20 July 2015 be treated as not adopted and remitted to the second defendant.” Policy Bicester 13 appears in the Cherwell Local Plan (“CLP”).
2. The claimants have an interest in land at Gavray Drive, Bicester. That land is allocated in the CLP as Bicester 13.
3. The first defendant is the Cherwell District Council, local planning authority for the area which includes Bicester.
4. An inspector, Nigel Payne BSc (Hons), DipTP, MRTPI, MCMI, was appointed by the second defendant, the Secretary of State for Communities and Local Government to hold an examination into the CLP. He conducted hearings during 2014 and issued a report on 9 June 2015 recommending that the CLP be adopted, subject to modifications necessary to make the CLP sound.
5. On 20 July 2015 the full council of the first defendant resolved to approve the main modifications to the CLP, as recommended by the inspector, together with additional modifications to enable the CLP to proceed to adoption. The CLP was adopted by Order dated the 20 July 2015.
6. The claimant submits that in adopting the CLP the first defendant erred in law because:
 - i) Policy Bicester 13 fails to give effect to the inspector’s reasons and adopting it as it stands is illogical and irrational;
 - ii) Policy Bicester 13 is inconsistent with policy ESD11 of the CLP and so the decision to adopt is illogical and irrational on the basis of its current wording also;
 - iii) The inspector failed to provide reasons for recommending adoption of policy Bicester 13 as drafted so that the first defendant’s decision to adopt the plan is unlawful.
7. The first defendant agrees that policy Bicester 13 must be quashed on the basis that the inspector’s reasoning was inadequate but disagrees with the claimants about the terms of the Order remitting the CLP to the second defendant.
8. The second defendant disagrees with both the claimants and the first defendant. The second defendant contends that the policy Bicester 13 is ambiguous and a judgment of the court is sufficient to resolve any ambiguity. Accordingly, there is no need for policy Bicester 13 to be remitted at all.
9. The relevant parts of CLP policy Bicester 13 read:

“Development Area: 23 hectares

Development Description: a housing site to the east of Bicester town centre. It is bounded by railway lines to the north and west and the A4421 to the east.

Housing:

- Number of homes – 300 dwellings
- Affordable Housing – 30%.

...

Key site specific design and place shaping principles:

- ...
- That part of the site within the Conservation Target Area should be kept free from built development. Development must avoid adversely impacting on the Conservation Target Area and comply with the requirements of Policy ESD11 to secure a net biodiversity gain.”

The supporting text to the policy reads:

“C104. The majority of the site is part of the River Ray Conservation Target Area. Part of the site is a Local Wildlife Site and is situated to the east of Bicester town centre. It is bounded by railway lines to the north and west. The site comprises individual trees, tree and hedgerow groups, and scrubland/vegetation. The Langford Brook water course flows through the middle of the site.

C105. The central and eastern section of the site contains lowland meadow, a BAP priority habitat. There are a number of protected species located towards the eastern part of the site. There are several ponds and a small stream, known as the Langford Book, which runs from north to south through the middle of the site. A range of wildlife has been recorded including butterflies, great crested newts and other amphibians, reptiles, bats and birds.

C106. There are risks of flooding on some parts of the site therefore mitigation measures must be considered. There is also a risk of harming the large number of recorded protected species towards the eastern part of the site. Impacts need to be minimised by any proposal. Approximately a quarter of the site is within Flood Zones 2 and 3 therefore any development would need to be directed away from this area.

C107. Although there are a number of known constraints such as Flood Zone 3, River Ray Conservation Target Area and protected species, this could be addressed with appropriate mitigation measures by any proposal.”

10. Policy ESD11, referred to in Bicester 13, is entitled ‘Conservation Target Areas’. That reads:

“Where development is proposed within or adjacent to a Conservation Target Area biodiversity surveys and a report will be required to identify constraints and opportunities for biodiversity enhancement. Development which would prevent the aims of a Conservation Target Area being achieved will not be permitted. Where there is potential for development, the design and layout of the development, planning conditions or obligations will be used to secure biodiversity enhancement to help achieve the aims of the Conservation Target Area.”

11. The Gavray Drive site is subject to different designations on the eastern part of the site beyond Langford Brook. The Conservation Target Area (“CTA”) and Local Wildlife Site (“LWS”) overlap within the site but are not coterminous.

Factual Background

12. The CLP examination commenced on 3 June 2014. The site was not included as an allocation. The examination was immediately suspended by the inspector to allow the first defendant to put forward modifications that would address the need for additional housing sites.
13. The first defendant consulted on and submitted proposed modifications to the CLP. One of the modifications included the allocation of the Gavray Drive site for 300 houses.
14. The claimants responded to the consultation on the proposed modification. They supported the principle of the allocation but argued that, “As drafted the policy can be read as precluding any development within the River Ray Conservation Target Area which we are sure was never the intention”. Policy ESD11 Conservation Target Areas does not seek to restrict development within CTAs but instead states, “Where development is proposed within or adjacent to Conservation Target Areas biodiversity surveys and a report will be required to identify constraints and opportunities for biodiversity enhancements.” The response continued that, “Development on the part of the CTA outside the Local Wildlife Site would be balanced through securing the long term restoration, management, maintenance and enhancement of part of the local wildlife site within the developer’s control.” The claimants put forward an amendment to policy Bicester 13 to delete the opening sentence of the relevant bullet point which stated, “That part of the site within the Conservation Target Area should be kept free from built development.”
15. Examination into the CLP commenced on 21 October 2014.

16. At the examination before the inspector the first defendant, supported by members of the public, argued that there should be no built development on any part of the allocated site designated as a CTA.
17. The day before the examination commenced the first defendant passed a resolution that sought a modification to the policy that would designate the CTA as “Local Green Space” within the meaning of paragraph 76 of the National Planning Policy Framework (“NPPF”).
18. The examination hearings concluded on 23 December 2014.
19. The inspector issued a final report on 9 June 2015.
20. Prior to then the first version of the draft report had been sent to the first defendant on 22 May 2015 for fact checking. The first defendant sent comments to the second defendant on that version including some on Policy Bicester 13. At that time paragraph 139 of the report read:

“Requests that the developable area shown on the policies map should be reduced to avoid any building in the whole of the River Ray Conservation Target Area, as distinct from the smaller Local Wildlife Site, would significantly undermine this contribution. It would also potentially render the scheme unviable or at the very least unable to deliver a meaningful number of new affordable units, as required under policy BSC 3, when all other necessary contributions are also taken into account. Moreover, it could well materially reduce the potential for the scheme to contribute to enhancement of the Local Wildlife Site’s ecological interest as part of the total scheme, thereby effectively achieving the main objective of the Conservation Target Area. Consequently, it would not represent a reasonable, realistic or more sustainable alternative to the proposals set out in the plan, as modified.”

21. Version two of the report was received by the first defendant shortly after receipt of the representations and included a change to paragraph 139 as follows:

“Requests that the developable area shown on the policies map should be reduced to avoid any building in the whole of the River Ray Conservation Target Area would significantly undermine this contribution. It would also potentially render the scheme unviable or at the very least unable to deliver a meaningful number of new affordable units, as required under policy BSC 3, when all other necessary contributions are also taken into account. Moreover, it could well materially reduce the potential for the scheme to contribute to enhancement of the Local Wildlife Site’s ecological interest as part of the total scheme, thereby effectively achieving the main objective of the Conservation Target Area. Consequently, it would not represent a reasonable, realistic or more sustainable alternative to the proposals set out in the plan, as modified.”

22. That version was followed by a telephone call from the first defendant to the Inspectorate raising further questions, including about policy Bicester 13.
23. The final report was then received as set out.
24. The relevant parts of the inspector's final report read as follows:

“135. This area of largely flat land, bounded by railway lines to the north and west, the ring road to the east and residential development to the south lies to the east of Bicester town centre in a very sustainable location. Planning permission has previously been granted for new housing but that has now expired. In view of the need for additional sites to help meet OANs it is still considered suitable in principle to accommodate new development. However, the eastern part is now designated as a Local Wildlife Site, with the central/eastern sections containing lowland meadow; a BAP priority habitat.

136. Additionally, roughly a quarter of the site lies in Flood Zones 2 and 3 adjacent to the Langford Brook that runs north-south through the centre of the site. The majority also lies within the River Ray Conservation Target Area. Nevertheless, even with these constraints, indicative layouts demonstrate that, taking into account appropriate and viable mitigation measures, the site is capable of delivering around 300 homes at a reasonable and realistic density not greatly different from that of the modern housing to the south.

137. In addition to necessary infrastructure contributions towards education, sports provision off site, open space, community facilities and public transport improvements, a number of other specific requirements are needed under policy Bic 13 for this proposal to be sound, in the light of current information about the site's ecological interests and environmental features. In particular, that part of the allocation within the Local Wildlife Site east of Langford Brook (just under 10 ha) needs to be kept free from built development and downstream SSSIs protected through an Ecological Management Plan prepared and implemented to also ensure the long term conservation of habitats and species within the site. Landscape/visual and heritage impact assessments and archaeological field evaluation are also required.

138. There must also be no new housing in flood zone 3 and the use of SUDs to address flood risks will be required. Subject to such modifications (MMs 89-91), policy Bic 13 is sound and would enable this site to make a worthwhile contribution to new housing needs in Bicester and the district in a sustainable location. This can be achieved without any material harm to environmental or ecological interests locally as a result of the

various protection, mitigation and enhancement measures to be included in the overall scheme.

139. Requests that the developable area shown on the policies map should be reduced to avoid any development in the whole of the River Ray Conservation Target Area would significantly undermine this contribution. It would also potentially render the scheme unviable or at the very least unable to deliver a meaningful number of new affordable units, as required under policy BSC 3, when all other necessary contributions are also taken into account. Moreover, it could well materially reduce the potential for the scheme to contribute to enhancement of the Local Wildlife Site's ecological interest as part of the total scheme, thereby effectively achieving the main objective of the Conservation Target Area. Consequently, it would not represent a reasonable, realistic or more sustainable alternative to the proposals set out in the plan, as modified.

140. Similarly, despite the historic interest of the parts of the site in terms of their long established field patterns and hedges, this does not amount to a justification for the retention of the whole of the land east of the Langford Brook as public open space, nor for its formal designation as Local Green Space. This is particularly so when the scheme envisaged in the plan should enable the more important LWS to be protected with funding made available for enhancement at a time when the lowland meadow habitat is otherwise likely to deteriorate further without positive action. Such an approach would be capable of ensuring no net loss of biodiversity as a minimum and also compliance with policies ESD 10 and 11 as a result.

141. All in all the most suitable balance between the need to deliver new housing locally and to protect and enhance environmental assets hereabouts would essentially be achieved through policy Bic 13, as modified, and the land's allocation for 300 new homes on approximately 23 ha in total, given that the requirements of policies ESD 10 and 11, including to achieve a net gain in biodiversity arising from the scheme as a whole, can also be delivered as part of an overall package of development with appropriate mitigation measures.”

25. On 20 July 2015 the first defendant resolved to approve the main modifications to the CLP as recommended by the inspector and additional modifications to allow the CLP to proceed to adoption. Its resolution included the following:

“That the designation of the Conservation Target Area at Gavray Drive (Policy Bicester 13) as a designated Local Green Space through the forthcoming stages of the Cherwell Local Plan Part 2 be positively pursued.”

26. The CLP was adopted by order dated 20 July 2015.

27. In light of the inspector's conclusions the claimants asked the first defendant for an explanation of the resolution to pursue a Local Green Space ("LGS") designation. The first defendant responded by email dated 24 July 2015 in the following terms:

"My understanding is that a proper case was not made for the land being a Local Green Space as part of Part 1. There is thought to be a more robust case available to support it, this time with full public consultation engagement and that the appropriate mechanism for this is Part 2. It is policy officers' view that the adopted site allocation policy prevents any built development in the CTA in any event though this does not preclude appropriate provision of associated public open space etc as part of a development in the CTA. The provision of such open space and facilities is thought to be unlikely to be inconsistent with the Local Green Space designation if this does indeed take place. Therefore proceeding with attempts to designate part of the CTA as a Local Green Space as Part 2 of the Local Plan is not thought to be at odds with achieving the development provided for in the site allocation policy."

Legal and Policy Framework

28. The statutory framework for local plans is found in part 2 of the Planning and Compulsory Purchase Act 2004 (PCPA). In particular:
- i) A local planning authority is to prepare a scheme of development plan documents: section 15(1).
 - ii) The development plan documents must set out the authority's policies relating to the development and use of land in their area: section 17(3).
 - iii) In preparing a local development plan document the local planning authority must have regard to the matters set out in section 19 such as national policy: section 19(2)(a).
 - iv) Each local development plan document must be sent to the Secretary of State for independent examination: section 20(1).
 - v) The local development plan document must only be sent for examination if the relevant requirements have been complied with and the plan is thought to be ready: section 20(2).
 - vi) Section 20(5) provides that the purpose of an independent examination is to determine whether the development plan documents satisfy the requirements of section 19 and section 24(1) (regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents), whether the plan is sound and whether the local planning authority has complied with its duty to cooperate.
 - vii) The purpose of an independent examination is to determine in respect of the development plan document whether it is sound: section 20(5)(b).

- viii) If the inspector finds that the plan is sound he must recommend adoption of the plan and give reasons for his recommendation.
29. Both the inspector's recommendations and reasons must be published.
30. There is no statutory definition of what "sound" means. Paragraph 182 of the NPPF states that in order to be sound a plan should be:
- ".....examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:
- Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
 - Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
 - Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
 - Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."
31. With the exception of modifications that do not materially affect the policies of the plan the effect of section 23 of the PCPA is that the plan cannot be adopted otherwise than in accordance with the recommendations of the inspector.

Issue One: Is Policy Bicester 13 Ambiguous?

32. Given the respective stances of the parties the first question that arises is whether policy Bicester 13 is ambiguous or, to be more precise, whether the opening words of the third bullet point of the policy under the key site specific design and place shaping principles, namely, "that part of the site within the Conservation Target Area should be kept free from built development..." are ambiguous or make the policy ambiguous.
33. At the examination both the claimant and first defendant regarded those words as clear. They both contended that the words meant no built development was to take place in that part of the site within the CTA.

34. In its written submissions for the court hearing the second defendant agreed that the bare words were capable of bearing the meaning adopted by the first defendant and the claimants provided that the context is entirely ignored. In argument, the second defendant agreed that the disputed words used were not ambiguous in themselves. The issue arose from the emphasis placed upon them.
35. The second defendant submits that when the contentious words are read in context, the interpretation adopted by the first defendant and claimants is clearly wrong. In itself, their interpretation is irrational because:
 - i) It is plainly impossible to give effect to the fundamental purpose of the allocation if the contentious words are interpreted as both the claimants and first defendant contend as 300 dwellings could not be built;
 - ii) There is an obvious alternative reading to these contentious words, namely, that some but not all of the CTA may be built upon;
 - iii) The supporting text to the policy explains and makes clear that the majority of Gavray Drive is in the CTA but the plan allocates the whole site and further makes clear that the development will assist in funding improvements to CTAs;
 - iv) Development within CTAs is fully and expressly anticipated in the plan; see ESD11. The supporting text to ESD11 explains that development may contribute to the objectives of CTAs and fund enhancements;
 - v) The inspector's report is crystal clear in its findings on the issue: see paragraphs 139 and 140;
 - vi) Both the claimants and first defendant participated fully in the examination and understood the background, the issues and the result.
36. In short, both parties at the examination understood the issue of building on "all or some" of the CTA was an issue which was before the second defendant. Paragraph 136 of the inspector's report, in particular, makes clear that the majority of the site is within the CTA but nevertheless the site is capable of accommodating 300 dwellings.
37. Further, paragraph 141 of the inspector's report deals with the balance between the need to deliver housing and environmental protection. It finds that environmental protection can only be delivered as an overall package of development with appropriate mitigation measures producing a net gain in biodiversity. Policies Bicester 13 and ESD11 when read together give effect to that part of the inspector's findings.
38. The interpretation adopted by the claimant and the first defendant ignores all of the context and the obvious alternative reading of the words in the policy.
39. The policy adopted by the first defendant, is entirely clear when read in full and in its proper context alongside the supporting text, the site allocation and other plans.
40. The claimants submit that there is no difficulty understanding the policy. The words mean what they say: there can be no built development on that part of the site which

sits within the CTA. There is nothing in the policy or the explanatory text that would allow some part of the CTA to be built upon. What was said by the parties pre-adoption becomes irrelevant once the plan is adopted: it is impermissible to rove through the contents of the background documents which would include the inspector's report and what was said at the examination. The first defendant is seeking to import ambiguity by reference to extraneous material to the plan itself.

41. The first defendant submits that at the time of the examination both the claimants and itself were of the view that the words used within the policy precluded built development in the CTA. They did not, as alleged by the second defendant, understand the words to mean that some but not all the CTA could be built upon. The interpretation of the second defendant would mean that the policy would become extremely difficult to apply, that such an interpretation would be contrary to that adopted in the sustainability appraisal, that it would be inconsistent with the similar wording in policy Bicester 12, and would result in a strained interpretation of the language used.

Discussion and Conclusions

42. In interpreting a policy in a development plan the judgment of Lindblom J (as he then was) in **Phides Estates Overseas Limited v Secretary of State for Communities and Local Government** [2015] EWHC 827 (Admin) makes it clear that where a policy is neither obscure nor ambiguous it is not necessary or appropriate to resort to other documents outside the local plan to help with the interpretation of policy. In [56] Lindblom J said:

“I do not think it is necessary, or appropriate, to resort to other documents to help with the interpretation of Policy SS2. In the first place, the policy is neither obscure nor ambiguous. Secondly, the material on which Mr Edwards seeks to rely is not part of the core strategy. It is all extrinsic – though at least some of the documents constituting the evidence base for the core strategy are mentioned in its policies, text and appendices, and are listed in a table in Appendix 6. Thirdly, as Mr Moules and Mr Brown submit, when the court is faced with having to construe a policy in an adopted plan it cannot be expected to rove through the background documents to the plan's preparation, delving into such of their content as might seem relevant. One would not expect a landowner or a developer or a member of the public to have to do that to gain an understanding of what the local planning authority had had in mind when it framed a particular policy in the way that it did. Unless there is a particular difficulty in construing a provision in the plan, which can only be resolved by going to another document either incorporated into the plan or explicitly referred to in it, I think one must look only to the contents of the plan itself, read fairly as a whole. To do otherwise would be to neglect what Lord Reed said in paragraph 18 of his judgment in Tesco Stores Ltd. v Dundee City Council: that ‘[the] development plan is a carefully drafted and considered statement of policy, published in order to inform the public of

the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it', that the plan is 'intended to guide the behaviour of developers and planning authorities', and that 'the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained'. In my view, to enlarge the task of construing a policy by requiring a multitude of other documents to be explored in the pursuit of its meaning would be inimical to the interests of clarity, certainty and consistency in the 'planned system'. As Lewison L.J. said in paragraph 14 of his judgment in R. (on the application of TW Logistics Ltd.) v Tendring District Council [2013] EWCA Civ 9, with which Mummery and Aikens L.JJ agreed, 'this kind of forensic archaeology is inappropriate to the interpretation of a document like a local plan ...'. The 'public nature' of such a document is, as he said (at paragraph 15), 'of critical importance'. The public are, in principle, entitled to rely on it 'as it stands, without having to investigate its provenance and evolution'."

43. It is, of course, permissible to look to the supporting text to a policy as an aid to interpretation: see R (Cherkley Campaign Limited) v Mole Valley District Council [2014] EWCA Civ 567 at [16].
44. The second defendant referred to other decisions dealing with the issue of construction of any document. I do not find them particularly helpful in the circumstances of the instant case. The most helpful is Cusack v Harrow Borough Council [2013] UKSC 40 where Lord Neuberger was dealing with the approach to construction and interpretation of any document. He referred to the intention of the drafter being determined by reference to the precise words used, their particular documentary and factual context and, where identifiable, their aim or purpose. That decision does not deal with the issue of interpretation of planning policy, which is the concern in this case, and thus does not take the issue of interpretation significantly further.
45. The other authorities relied upon by the second defendant are considerably less apposite. The first is Pepper v Hart [1992] 3 WLR 1032. That is cited as authority for the court having recourse to parliamentary material where there is ambiguity in legislation. There is no legislation to construe here. That decision is dealing with a very different situation to that which is facing the court in the current case. The other case relied upon is Sans Souci Limited v VRL Services Limited [2012] UKPC 6 and the judgment of Lord Sumption on the interpretation of a court order remitting an arbitration award. That judgement is not dealing with a document regulating the use of land in the public interest. Nor is it dealing with a document which is available for public inspection and which is to guide development in the public interest over the next few years. The judgment is not dealing with the interpretation of public documents. It is not on the point.
46. The starting point to be taken when interpreting planning policy seems to me to be the wording of the policy itself, assisted, if necessary, with words from the supporting text. If the words of the policy with the supporting text are not clear or are ambiguous

then, but only then, it may be permissible to have regard to documents incorporated within the plan itself. That is consistent with the approach in the case of **Phides**. It would be entirely unrealistic to expect any party reading the development plan, whether a member of the public, developer or land owner to have to resort to an investigation of other background documents. That is particularly so given the public interest in the role of planning. It follows that even if the policy is ambiguous or not clear I do not accept that it is appropriate to have resort to the various versions of the inspector's report to clarify the meaning as the first defendant invites the court to do. The extent to which one can have regard to other documents in determining the meaning of policy is not, in my judgment, at large but is circumscribed by the development plan and what is incorporated within it.

47. Adopting the approach of taking the disputed words of the policy as a starting point I reject the submission that the words used in Bicester 13, in themselves, and in their context, admit some built development within the CTA. The words used are perfectly clear; they do not permit any development within the CTA.
48. The policy is a housing allocation policy for 300 homes of which 30% are to be affordable. That built development is to take place within the allocated site which is edged red on the proposals map. Within the red line there are key site-specific design and place shaping principles which apply. One of those is that the part of the site within the CTA should be kept free from built development. That clearly refers to that part of the allocated site which is within the designation of CTA. It may be that the layout of any development would allow playing fields or public open space within the CTA so as not to adversely impact upon it but residential development or other forms of built development are not permissible under the policy as worded. In themselves, therefore, the words of the policy are clear.
49. Further, the wording makes sense in context. The provision of 300 homes elsewhere within the site can be used to produce funds to assist the targets of the CTA and to secure net biodiversity gains to the LWS. Whether that is what the inspector intended is a matter for the next issue to which I turn. But, in itself, I repeat, the policy is clear and not ambiguous. There is no need to have recourse to any document other than the CLP itself.
50. In considering the supporting text of the development plan the supporting paragraphs are entirely consistent with that interpretation. Paragraph C104 describes the physical location of the site and the degree to which it was affected by other designations. Paragraph C105 recites the wildlife interests. C106 sets out the risks of flooding and the fact that that causes a risk of harm to a large number of recorded protected species. Paragraph C107 notes the number of constraints but states that they can be addressed with appropriate mitigation measures in any proposal. The supporting text is, therefore, consistent with a significant housing allocation of 300 dwellings, the layout of which is to be tailored to take into account the various policy constraints within the allocated site.
51. Although the first defendant disagrees with the second defendant on reasons why the policy was ambiguous and agrees with the claimants that the policy should be remitted it had become a late, if somewhat tentative, convert to the view that policy Bicester 13 may be ambiguous. The first defendant contends that the question under the policy is whether all of the site within the CTA or part of the site within the CTA

should be kept free from built development. In my judgment, that is an entirely artificial approach to the words used. It is not compatible with the plain and ordinary meaning of the words of the policy.

52. There is no need, therefore, to go through the reasons why the first defendant submits that the second defendant is wrong in its interpretation.
53. The first defendant has sought to resolve the alleged ambiguity by reference to material which is extraneous to the plan itself. The transcript of the proceedings, the various versions of the inspector's report and the other documents referred to in Mr Peckford's witness statement are not incorporated into the plan nor specifically referred to in it. Accordingly, they do not fall within the category of documents to which resort may be had in a case of ambiguity which, as I have found, is not the case here.
54. Although policy ESD11 is part of the plan and regard needs to be had to it in interpreting policy Bicester 13 the wording of ESD11 is general in application and insufficient to displace the clear words of the site-specific allocation policy. In its adopted form the plan means that the restrictions upon development within CTAs generally, as set out within policy ESD11, have given way to the site specific conclusion that in the context of Gavray Drive there should be no development within the particular CTA covered by policy Bicester 13.
55. In short, the policy needs to be interpreted without regard to extraneous material; it is clear on its face in prohibiting any built development within that part of the site which falls within the CTA. There is nothing anywhere else within the plan or within the supporting text that would support built development within this particular CTA. The policy is clear and not ambiguous.

Issue Two: Was the Inspector's Report and Consequent Recommendation on Bicester 13 Irrational and/or Inadequately Reasoned?

56. The next question is whether it was a rational decision on the part of the inspector to recommend the adoption of policy Bicester 13 as worded in the light of his findings and conclusions in his report and/or whether he gave any or adequate reasons for recommending adoption of policy Bicester 13 as drafted?
57. The claimants submit that the inspector did not give any reasons as to why there should be no development within the CTA. All the reasons that he gave pointed in the opposite direction, namely, that there should be some development with the CTA area. The first defendant accepts that the reasoning given by the inspector is unsatisfactory.
58. The claimants draw attention to the indicative layout that it submitted to the examination, and which was referred to by the inspector in his report, which showed built development within that part of the allocation site that was within the CTA but outwith the LWS.
59. The second defendant submits that the claimants need to show that the inspector erred in law. Given the role of the inspector he made no error. The duty upon him is to examine the submitted plan for its soundness. His reasoning on whether the plan was

sound is clear. He addressed matters that were raised during the hearing session. It was open to the first defendant to make modifications to the plan which did not materially change it; in short it was open to the first defendant to clarify the policy.

Discussion and Conclusions

60. I have set out the full text of the inspector's report into the Gavray Drive site above. Within that he referred to indicative layouts demonstrating that, taking into account appropriate and viable mitigation measures, the site was capable of delivering around 300 homes at a reasonable, realistic density. The layouts that were before him were those submitted by consultants to the claimants. The revised master plan in the court hearing bundle (which was one of those submitted at examination) clearly shows some built development within that part of the CTA to the east of Langford Brook but no built development in the LWS within the CTA. The revised masterplan is the document that the inspector was referring to in paragraph 136 of his report.
61. In paragraphs 137 and 138 of his report the inspector went through other requirements that were necessary for policy Bicester 13 to be sound. They involved keeping that part of the allocation within the LWS free from built development, the absence of new housing in flood zone 3 and the use of Sustainable Drainage Systems ("SUDS") to address flood risks. Subject to those modifications, the inspector found the policy to be sound and that the site made a worthwhile contribution to new housing needs in Bicester and the district in a sustainable location. In so concluding, it is evident that the inspector took into account the indicative master plan supplied by the claimants as that was the only indicative layout before him. He seems to have relied on that to conclude that the site was capable of delivering some 300 homes.
62. The inspector then turned to suggestions before him by both the first defendant and members of the public that the developable area should be reduced. He discounted those suggestions in paragraph 139. The avoidance of any development in the whole of the River Ray CTA would, he found, significantly undermine the contribution of the site to the housing needs of Bicester. Such a reduced area would also potentially render the scheme unviable or, at the very least, unable to deliver a meaningful number of new affordable units. Further, a reduced area could materially diminish the potential for the scheme to contribute to enhancement of the LWS's ecological interest thereby achieving the main objective of the CTA. As a result, the requested reduction to avoid any development in the whole of the River Ray CTA would not represent a reasonable, realistic or more sustainable alternative to the proposal set out in the plan. In other words, the inspector understood that the policy to deliver around 300 homes was justified and sound when considered against reasonable alternatives, in this instance the alternative of no development within the CTA.
63. The inspector continued in his report to discount the suggestion that the whole of the land east of the Langford Brook should be retained as open space or designated as LGS. That was particularly the case as the proposal would enable the more important LWS to be protected with funding made available from the development (paragraph 140).
64. In paragraph 141 the inspector concluded that the most suitable balance was between the need to deliver new housing locally and protection and enhancement of environmental assets by the allocation of the site for 300 new homes on about 23

hectares. That could achieve a net gain in biodiversity which could be delivered as part of an overall package of development with appropriate mitigation measures. That was a matter for his planning judgment having considered and reached conclusions on all of the issues raised in the examination by the allocation of the site.

65. The inspector's overall reasoning was to retain the allocation as shown on the proposals map of the submitted CLP and to use the development proposed to deliver gains to enhance the LWS and produce a net gain in biodiversity as part of an overall package. That overall package centred on the delivery of around 300 homes. The inspector was satisfied that the indicative layouts showed that that was realistic and appropriate with viable mitigation measures. Notably those indicative layouts showed built form within the CTA.
66. The inspector's reasoning, therefore, is inimical with the first sentence of the key site-specific design and place shaping principles referring to keeping that part of the site within the CTA free from built development. He gave no reason at all to explain or justify the retention of that part of policy Bicester 13 that prevented built development in the CTA. As the claimants submit all his reasoning pointed the other way. Therefore, I find that the inspector failed to give any reasons for, and was irrational, in recommending the adoption of a policy that prevented built development in the CTA.
67. The inspector's findings were clear, both in rejecting the argument that there should be a reduction of the developable area to avoid any development in the whole of the CTA and on the absence of justification for the retention of the whole of the land to the east of the Langford Brook as public open space or its designation of LGS. His reasoning was that the LWS needed to be kept free from built development and protected, together with downstream SSSIs, through an ecological management plan which would ensure the long term conservation of habitats and species within the site.
68. Against that background it is difficult to understand how the inspector recommended that policy Bicester 13 should remain in its current form. Part of his modifications, consistent with his report, should have been to recommend the deletion of the first sentence of the third bullet point within the policy. That would have produced a justified and effective allocation consistent with national policy which was then sound and consistent with his report.
69. For those reasons the inspector erred in law in failing to give reasons for acting as he did, taking into account the duty upon him to examine the plan for soundness. Alternatively, the inspector was irrational in recommending as he did without supplying any reasons.
70. The first defendant had no legal power to make a modification to the plan which would have had the effect of deleting the disputed sentence as that would materially change the contents of the CLP.
71. It follows that some remedy is clearly appropriate. I turn now to consider which of the competing submissions of the claimant and first defendant is preferable.

Remedy

72. The claimants seek an Order that:

- i) Policy Bicester 13 adopted by the first defendant on 20 July 2015 be treated as not adopted and remitted to the second defendant;
 - ii) The second defendant appoint a planning inspector who recommends adoption of policy Bicester 13 subject to a modification that deletes from the policy the words “that part of the site within the Conservation Target Area should be kept free from built development”;
 - iii) The first defendant adopts policy Bicester 13 subject to the modification recommended by the planning inspector appointed by the second defendant.
73. The first defendant submits that the second and third parts of the proposed Order are inappropriate as they ask the court to assume plan making powers and redraft the plan. They would constrain the second defendant and first defendant as decision makers and exclude the public from participation.
74. The first defendant submits that the extent to which policy Bicester 13 should allow housing development on the site or protect the site as an environmental resource is pre-eminently a matter of planning judgment. If the court were to require the policy’s adoption in the amended form that would restrike the planning balance and would trespass into a function which is that of the defendants.
75. The evidence before the court suggests that the final drafting of the policy was anything but an oversight. The first defendant had specifically queried the relationship of the disputed words and the conclusions in the inspector’s report. The inspector in response made no recommendations about deletion or modification of the disputed words in the policy. It is clear that their inclusion was deliberate.
76. Further, the first defendant submits that the claimants’ proposed Order is unsatisfactory in that it excludes the public from making representations on the amended wording of policy Bicester 13. The first defendant refers to the statutory framework requiring consultation during the preparation and revision of local plans.
77. Yet further, the claimants’ proposed Order raises issues about the sustainability appraisal which, in the addendum, noted that the policy requires that the part of the site within the CTA should be kept free from built development before concluding that “Overall the site is likely to have ... mixed effects, with potential for overriding minor positive effects overall.” Modification would, therefore, require consideration of whether a further sustainability appraisal was required.
78. Instead, the first defendant seeks an Order that the second defendant appoints a planning inspector to reconsider the way in which policy Bicester 13 treated the designated CTA, that the planning inspector appointed permit representations by all interested parties on the way in which policy Bicester 13 treated the CTA and how that policy should be drafted, that the planning inspector shall make recommendations in respect of modifications to policy Bicester 13, provide reasons for those recommendations and that the first defendant shall adopt policy Bicester 13 subject to whatever modification is recommended by the appointed planning inspector.
79. The second defendant does not support the Order proposed by the first defendant. That is because the process of examination of a development plan is holistic with all

parts of the plan interconnected. The exercise is resource intensive and here was fully and properly undertaken. The answer is fully contained within the inspector's report which sets out the inspector's planning judgement. There is, therefore, no need to return to a reopened examination.

80. In addition, there are good reasons why a reopened examination is not necessary, namely, the integrity of the plan process and clarity as to the outcome based on the inspector's report.
81. As to sustainability, without the first sentence of the third bullet point of policy Bicester 13, the policy is clear in that it says that the development must not adversely impact upon the CTA. It is difficult to see where a requirement for a further sustainability appraisal, in those circumstances, would come from. There has been no suggestion that the sustainability appraisal was not properly considered. The site itself was addressed in considerable detail by at least two ecologists at the examination hearing.
82. It follows that, if the policy is unambiguous, the claimants' draft Order is preferable and deals with all matters.

Discussion and Conclusions

83. Under section 113(7) of the PCPA the High Court may quash the relevant document and remit the document to a person with a function relating to its preparation, publication, adoption or approval. If the High Court remits the relevant document, under (7B) it may give directions as to the actions to be taken in relation to the document. 113(7B) reads:

“(7B) Directions under subsection (7A) may in particular—

(a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted;

(b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken;

(c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);

(d) require action to be taken by one person or body to depend on what action has been taken by another person or body.”

84. Those powers are exercisable in relation to the relevant document in whole or in part.
85. On this part of the case I am of the view that the approach of the claimants and the second defendant to the appropriate remedy is correct.

86. The reasons for that view are as follows. An extensive examination process has taken place into the plan as a whole. As part of that process the inspector has exercised and made clear his planning judgment on, amongst other matters, housing across the district. As part of that exercise his decision was to permit policy Bicester 13 to proceed on the basis that it made a valuable contribution of 300 houses to the housing supply in Cherwell District Council. That conclusion was reached having heard representations from the claimants, the first defendant and the public. The representations from the public argued that there should be reduced developable areas on the allocation site and that part of the site was suitable for designation as LGS. The public, therefore, have fully participated in the planning process. The error which I have found occurred was not as a result of the public having any inadequate opportunity to participate in the examination process.
87. There is no statutory requirement when remitting the relevant document to the second defendant to give directions which, in effect, require a rerun of part of the examination process that has already taken place. There may be circumstances where it is appropriate to do so where, for example, there is a flaw in the hearing process but this is not one of those cases. There was a full ventilation of issues as to where development should take place within the Bicester 13 allocation site, the importance of biodiversity and the ecological interests, LGS issues and whether there should be any built development within the CTA. Those are all matters upon which the inspector delivered a clear judgment. The difficulty has arisen because he did not translate that planning judgment into an appropriately sound policy.
88. In those circumstances, and for those reasons, I do not consider it appropriate to accede to the directions sought by the first defendant. If the matter were to be remitted as sought by the first defendant there would be a rerun of the same issues for no good reason, without any suggestion of a material change in circumstance, and at considerable and unnecessary expenditure of time and public money. I reject the contention that a further sustainability appraisal will be required. The residual wording of the policy is such that it secures the objective of any development having a lack of adverse impact upon the CTA.
89. The justice of the case here is met with the Order sought by the claimants and, if the policy has not been found to be ambiguous, which it has not, supported by the second defendant which gives effect to the planning judgment of the inspector.
90. Accordingly this claim succeeds. The Order should be in the terms of paragraphs 1, 2 and 3 of the draft submitted by the claimants. The parties are invited to draw a final agreed Order and should agree costs within seven days of the judgment being handed down, failing which the issue of costs will be determined on paper.

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(PLANNING COURT)**

Claim No. CO/4622/2015

BEFORE THE HON. MRS JUSTICE PATTERSON DBE

BETWEEN :



**(1) JJ GALLAGHER LTD
LONDON AND METROPOLITAN DEVELOPMENTS LTD
(3) NORMAN TRUSTEES**

Claimants

- and -

**(1) CHERWELL DISTRICT COUNCIL
(2) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL
GOVERNMENT**

Defendants

ORDER

UPON HEARING Counsel for the Claimants and for the First Defendant and for the Second Defendant

IT IS ORDERED THAT:

1. Policy Bicester 13 adopted by the First Defendant on 20th July 2015 be treated as not adopted and remitted to the Second Defendant;
2. The Second Defendant appoint a planning inspector who recommends adoption of Policy Bicester 13 subject to a modification that deletes from the policy the words "That part of the site within the Conservation Target Area should be kept free from built development";

3. The First Defendant adopt Policy Bicester 13 subject to the modification recommended by the planning inspector appointed by the Second Defendant;
4. There be no order for costs as between the Claimants and the Second Defendant; and
5. The First Defendant to pay the Claimants' costs of £16,158.50 of the claim.

Signed:

Dated 18 February 2016

By the Court



The Planning Inspectorate

Report to Cherwell District Council (Addendum - March 2016)

by Nigel Payne BSc (Hons), Dip TP, MRTPI, MCIM

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 18 May 16

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

ADDENDUM REPORT ON THE EXAMINATION INTO THE CHERWELL LOCAL PLAN

Document submitted for examination on 31 January 2014

Examination hearings held between 3 June and 23 December 2014

File Ref: PINS/C3105/429/4

Addendum

1. This report is an addendum to my report of May 2015 containing my assessment of the Cherwell Local Plan in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). This considered first whether the Plan's preparation complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considered whether the Plan was sound and whether it was compliant with the legal requirements. The National Planning Policy Framework (paragraph 182) makes clear that to be sound, a Local Plan should be positively prepared; justified; effective and consistent with national policy.
2. Following the Order of the High Court of Justice No. CO/4622/2015, dated 19 February 2016, I recommend that, in relation to Policy Bicester 13 – Gavray Drive, Main Modification No. 91, page 130, the first sentence of the third bullet point under "Key Site Specific Design and Place Shaping Principles" which states – "That part of the site within the Conservation Target Area should be kept free of built development." be deleted in the interests of soundness, clarity and to facilitate implementation of the policy and allocation in the plan.

Conclusion and Recommendation

3. **Policy Bicester 13 of the Plan has a deficiency in relation to soundness and/or legal compliance for the reasons set out above which mean that I recommend non-adoption of Policy Bicester 13 as submitted, in accordance with Section 20(7A) of the 2004 Act.**
4. **The Council has requested that I recommend main modifications to make the Plan sound and/or legally compliant and capable of adoption. I conclude that with the amendment to the schedule of main modifications recommended in this addendum report relating to Policy Bicester 13 the Cherwell Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.**

Nigel Payne

Inspector

Cherwell Local Plan 2011-2031 (Part 1)
Policy Bicester 13 – Modified Policy For Adoption

Modification: Deleted text shown in tracked changes. There are no other modifications.

Reason: To comply with Order of the High Court of Justice, Case No. CO/4622/2015, 19 February 2016, and Inspector's Addendum Report on the Examination of the Cherwell Local Plan, 18 May 2016

Modified Policy:

**Strategic Development: Bicester
13 – Gavray Drive**

C.104 The majority of the site is part of the River Ray Conservation Target Area. Part of the site is a Local Wildlife Site and is situated to the east of Bicester town centre. It is bounded by railway lines to the north and west. The site comprises individual trees, tree and hedgerow groups, and

scrubland/vegetation. The Langford Brook water course flows through the middle of the site.

C.105 The central and eastern section of the site contains lowland meadow, a BAP priority habitat. There are a number of protected species located towards the eastern part of the site. There are several ponds and a small stream, known as the Langford Brook, which runs from north to south through the middle of the site. A

range of wildlife has been recorded including butterflies, great crested newts and other amphibians, reptiles, bats and birds.

C.106 There are risks of flooding on some parts of the site therefore mitigation measures must be considered. There is also a risk of harming the large number of recorded protected species towards the eastern part of the site. Impacts need to be

minimised by any proposal. Approximately

a quarter of the site is within Flood Zones 2 and 3 therefore any development would need to be directed away from this area.

C.107 Although there are a number of known constraints such as Flood Zone 3, River Ray Conservation Target Area and protected species, this could be addressed with appropriate mitigation measures by any proposal.

Policy Bicester 13: Gavray Drive

Development Area: 23 hectares

Development Description: a housing site to the east of Bicester town centre. It is bounded by railway lines to the north and west and the A4421 to the east

Housing

- **Number of homes - 300 dwellings**
- **Affordable Housing - 30%.**

Infrastructure Needs

- **Education – Contributions sought towards provision of primary and secondary school places**
- **Open Space – to include general greenspace, play space, allotments and sports provision as outlined in Policy BSC11: Local Standards of Provision**
– **Outdoor Recreation. A contribution to off-site formal sports provision will be required.**
- **Community – contributions towards community facilities**
- **Access and movement – from Gavray Drive.**

Key site specific design and place shaping principles

- **Proposals should comply with Policy ESD15.**
- **A high quality development that is locally distinctive in its form, materials and architecture. A well designed approach to the urban edge which relates to the road and rail corridors.**
- **~~That part of the site within the Conservation Target Area should be kept free from built development.~~ Development must avoid**

adversely impacting on the Conservation Target Area and comply with the requirements of Policy ESD11 to secure a net biodiversity gain.

- Protection of the Local Wildlife Site and consideration of its relationship and interface with residential and other built development.
- Detailed consideration of ecological impacts, wildlife mitigation and the creation, restoration and enhancement of wildlife corridors to protect and enhance biodiversity. The preparation and implementation of an Ecological Management Plan to ensure the long-term conservation of habitats and species within the site.
- Development proposals to be accompanied and influenced by landscape/visual and heritage impact assessments.
- The preparation of a structural landscaping scheme, which incorporates and enhances existing natural features and vegetation. The structural landscaping scheme should inform the design principles for the site.

Development should retain and enhance significant landscape features (e.g. hedgerows) which are or have the potential to be of ecological value.

A central area of open space either side of Langford Brook, incorporating part of the Local Wildlife Site and with access appropriately managed to protect ecological value. No formal recreation within the Local Wildlife Site.

- Provision of public open space to form a well connected network of green areas within the site, suitable for formal and informal recreation.
- Provision of Green Infrastructure links beyond the development site to the wider town and open countryside.
- Retention of Public Rights of Way and a layout that affords good access to the countryside.
- New footpaths and cycleways should be provided that link with existing networks, the wider urban area and schools and community facilities.
Access should be provided over the railway to the town centre.
- A linked network of footways which cross the central open space, and connect Langford Village, Stream Walk and Bicester Distribution Park.
- Ensure that there are no detrimental impacts on downstream Sites of Special Scientific Interest through hydrological, hydro chemical or sedimentation impacts.
- A layout that maximises the potential for walkable neighbourhoods and enables a high degree of integration and connectivity between new and existing communities.

- **A legible hierarchy of routes to encourage sustainable modes of travel.
Good accessibility to public transport services with local bus stops provided. Provision of a transport assessment and Travel Plan.**
- **Additional bus stops on the A4421 Charbridge Lane will be provided, with connecting footpaths from the development. The developers will contribute to the cost of improving local bus services.**
- **Provision of appropriate lighting and the minimisation of light pollution based on appropriate technical assessment.**
- **Provision of public art to enhance the quality of the place, legibility and identity.**
- **Demonstration of climate change mitigation and adaptation measures including exemplary demonstration of compliance with the requirements of policies ESD 1 – 5.**
- **Take account of the Council's SFRA for the site.**
- **Consideration of flood risk from Langford Brook in a Flood Risk Assessment and provision of an appropriate buffer. Use of attenuation SuDS techniques (and infiltration techniques in the south eastern area of the site) in accordance with Policy ESD 7: Sustainable Drainage Systems (SuDS) and taking account of the Council's SFRA.**
- **Housing must be located outside Flood Zone 3 and the principles set out in Policy ESD 6 will be followed.**
- **The provision of extra-care housing and the opportunity for community self-build affordable housing.**
- **An archaeological field evaluation to assess the impact of the development on archaeological features.**
- **A detailed survey of the agricultural land quality identifying the best and most versatile agricultural land and a soil management plan.**

Cherwell District Council
COMMUNITY LOTTERY
BUSINESS CASE

1 Purpose of the Lottery

1.1 To help fund discretionary support for local voluntary and community sector (VCS) organisations and enable such organisations to raise funds directly for themselves. The Council would not take any of the proceeds for themselves.

1.2 All funds raised by the lottery would be spent within the district and provide benefits to the people and communities of CDC district.

1.3 This report has been written with guidance from Mendip District Council and Aylesbury Vale District Council (AVDC).

2 Executive summary

2.1 In the medium-term, as budget pressure continues to grow on all aspects of the council's work, there will inevitably be an impact on the funding available for the VCS sector. Historically CDC provides support to VCS but does not have a grants scheme. The CDC Lottery could be used to support existing contracts/service level agreements/grants (Current cost is £135,343.00: existing VCS receptive of monies in Appendix B (restricted)).

2.2 A CDC Lottery has the potential to help all VCS organisations active in the district by helping address any funding pressures they are facing. The lottery proposal would also help move the Council from 'provider' to 'enabler'. The AVDC have published that in their scheme (2015) they raised £65,000 pa, with over 120 VCS benefiting.

2.3 By agreeing the proposal, the council would adopt a proactive approach and be one of the first council in the country to run a lottery. The proposal is to use a model similar to that launched by AVDC. Namely to seek a license from the Gambling Commission and to 'buy-in' the skills and expertise of an External Lottery Manager (ELM) to run and market the lottery.

3 Supporting information

3.1 The council are exploring new income streams, streamlining processes, reducing costs and working innovatively in partnership - this work is completed through the newly created (August 2016) Commercial Development Team and the Transformation Team and this is some of ways for addressing the financial challenges we face over the coming years following the government's decision to

reduce the level of grants to local authorities.

3.2 This fits with the changing business model of the Council which is moving away from being the provider of all services to one where there is a mix of delivery models for buying and selling services, as well as moving customers towards more 'self-help' digital options.

3.3 Inevitably, in the medium-term, the amount of funding available for VCS organisations will be impacted. With this in mind, the Council has been investigating ways to address this position. A CDC Lottery would create new income stream for VCS organisations helping them address funding pressures and provide benefits to the people and communities in the district.

4 Background to Lottery

4.1 Lottery have long been a way of enabling smaller organisations to raise income. All local authority lottery must be licensed by the Gambling Commission and are regulated by the Gambling Act 2005.

4.2 There are different types of lottery available. In this instance, we are only discussing 'society lottery' which are promoted for the benefit of the non-commercial society. A society is deemed to be non-commercial if it is established and conducted for the following purposes and activities:

- Charitable purposes;
- To enable participation in or support of sports, athletics or cultural activities;
- Any other non-commercial purpose, other than that of private gain.

4.3 In all cases, local authority lottery must deliver a minimum of 20% of gross proceeds to community and voluntary causes – this business case recommends a minimum of 50% of proceeds going to such causes.

It is proposed that the CDC Lottery would split each £1 from the purchase of tickets as below:



5 The Lottery Market Place

5.1 There are three well-known national lotteries running in England and Wales – these are the National Lottery, Health Lottery and the Postcode Lottery. The table below provides background statistics regarding these providers for comparison.

Provider	Odds of jackpot win	Odds of any prize win	% share to CVS orgs	% to operator/owner
Euromillions	1:116m	1:13	28%	22%
National Lottery	1:14m	1:54	28%	22%
Health Lottery	1:2m	1:209	20%	22%
Postcode Lottery	No data available		27.5%	32.5%

5.2 In the Cherwell district there are no Community Lottery specifically based in the district, but some that cover the whole of the Thames Valley:

- Thames Valley Air Ambulance (£1,000 top prize)
- Thames Valley Hospice Lottery (£1,000 top prize)

There are only four other councils known to be a licensed lottery operator in the country (AVDC; Mendip District Council; Portsmouth City Council; Melton Borough Council).

5.3 A local authority lottery requires a set of aims or a unique selling point that resonates with lottery players. It is believed there is a place for a lottery that focuses on the following aims:

- *Delivering the proceeds locally* – a Council lottery would deliver benefits only to VCS causes that provide benefits the people and communities in the CDC district. Unlike any other lottery provider, players can be assured that the proceeds will stay within the district of their choice.
- *Maximising benefits to the community* –to bolster support and help continue the good work the Council already does, there is a need for significant support and benefits to be provided by the VCS sector. This proposal would result in 60% of proceeds being given to VCS organisations, with the additional benefit that none of the proceeds being generated is taken by the Council.

- *Minimising costs* - whatever delivery route is adopted, set-up costs have to be minimised. This means the lottery will need to be largely self-financing and any funding distribution mechanism should tap into existing distribution routes.
- *Delivering winners locally* – whilst anyone could play (players don't have to live in either the CDC district), it is likely that players will be locally based (or have a local connection) hence it will be easier to maximise the value from winners' stories and encourage more participation.
- *Facilitating a wider benefit* – whilst the lottery will help current funding to VCS organisations, it will also enable such organisations to fundraise in partnership with us. This can be seen as the council enabling VCS organisations to help themselves by reducing barriers to securing lottery-type funding, such as making access to funding easier and allowing freedom on how the money can be spent. It will also open up a way for voluntary and community organisations to create new links with repeat donors and reach out a much wider audience.
- *Helping to shift residents' perceptions* - of what a Council can do and is here for. This is in line with the changing business model for the Council towards adopting a more commercial approach to service delivery, as well as moving customers towards more 'self-help' options.

6 Proposed Form of the Lottery

6.1 The proposal is to use a model similar to that launched by AVDC. This is an online lottery due to the high costs of distribution and sales if it was run in any other way. The benefit of this approach is that this model has a proven track record of delivering a successful product which is achieving the aims of their lottery, i.e. helping deal with the pressure on their community funding budgets and enabling VCS organisations gain access to new funding streams.

6.2 The proposed lottery would create a new funding stream for the VCS active in the CDC district and provide them with a platform to fundraise independently.

Players can choose to buy a ticket to support either:

The Central Fund – this operates district-wide and players do not specify an organisation to benefit from the 60% of their ticket purchase. All the monies raised would be distributed direct to VCS organisations active in the CDC district through a new grant scheme – the details of how this would work are to be developed. As the lottery grows, it could also help towards the cost of

funding and support arrangements the Council may have with the VCS sector. This approach may also help organisations who may have fewer local supporters and/or less ability to generate funding support because of the nature and/or size of their service(s).

The Umbrella Scheme – this allows players to support a specific organisation and, in turn, this motivates participating organisations to encourage more players to support them and therefore generate more income for themselves. VCS organisations would need to meet criteria (see Annexe A) set by the license holder (i.e. the Council) before they can ‘sign-up’. Support would include their own branded web page on the lottery website and regularly updated bespoke marketing materials to help them engage with players. This option would help remove barriers for organisations who may struggle to access other funding streams or aspire to run their own lottery (barriers for them might include difficulties in holding their own license or setting up the infrastructure to run it). Organisations keep 50% of all ticket sales generated through their page and another 10% goes to the Central Fund.

The Council would control which organisations can join the umbrella scheme and VCS organisations would need to meet certain criteria in order to join. Annexe A sets out the draft criteria.

6.3 All sales for the lottery (no matter which of the two versions the player chooses) would operate through a dedicated website (specific organisations would have their own landing pages on this website) and be funded via ticket sales made by online payment (payment card) or direct debit. This approach is needed to keep operating costs at a minimum.

Delivery Options

6.4 The Council would have to apply to the Gambling Commission for a license to run a lottery and be the overall license holder.

6.5 The proposal is to use the services of an External Lottery Manager (ELM) to run the lottery. This is the most common form of lottery provision for Council. In terms of procurement rules, the provision of lottery services is a public service concession. However, under the current Concessions Contracts Regulations 2016, specifically under Regulation 10(13), lottery services are expressly excluded from being governed by the procurement rules. Given the Council would be an enabler and

would not be taking any money. All that would be required is a contract between the Council and the ELM. Notwithstanding the appointment of an ELM, the Council would retain obligations to the Gambling Commission to ensure that the lottery is conducted in a lawful and fully compliant way.

6.6 The Council has reviewed use of an ELM and considered the approach taken by AVDC. We have had informal discussions with both AVDC and an ELM and consider that appointing an ELM would be the most cost-effective solution and would provide the necessary skills and expertise required to establish and run the lottery.

There is no requirement to carry out a competition to appoint an ELM because of the exclusion of lottery services from the procurement rules; however the Councils' procurement guidelines will be followed. The Council must satisfy itself that any ELM considered holds a valid operating license, personal management licenses (if appropriate) and will conduct the Council's lottery in a lawful and compliant way. The Council will be required to complete due diligence on any ELM being considered.

6.7 The proposal is that the ELM would carry out all day-to-day management, including processing new players, distributing prizes, income for VCS organisations (once the Council have approved the monthly payments to CVS organisations) and assisting players should they experience difficulties. The ELM will also provide significant tailored marketing support to the VCS organisations and the Council. The ELM will send newsletters to all community and voluntary organisations signing up to the lottery providing updates on their lottery.

The resource implications for the Council are detailed in Section 11.

7.11 Ticket Price, Proceeds Apportionment and Prize Structure

Ticket Price £1 – the minimum play would be £1 ticket per week per player, this would equate to a minimum monthly expenditure of £4.33 per player (this being 52 weeks x £1 divided by 12 months).

Players can purchase multiple tickets/support multiple organisations.

7.12 Research shows that ticket price has a significant bearing on the success of a lottery the £1 cost would also create us in positive competition with the National Lottery (£2).

7.13 The public's perception of appropriate lottery ticket pricing is considered to be the most significant factor when selecting a preferred model for the lottery.

7.14 ***This report recommends that the ticket price is set at £1 per ticket.***

7.15 Based on the above, the CDC Lottery would operate as below:

- Ticket price - £1 per week
- Draw frequency – once per week
- With 2 delivery options – CDC Lottery and CDC Umbrella Scheme (see 4.12 above for details)

Proceeds Apportionment				
	Umbrella Scheme (Specific Org/Cause)		CDC Lottery (Unspecified Org/Cause)^a	
	<i>% allocation</i>	<i>£ allocation per ticket</i>	<i>% allocation</i>	<i>£ allocation per ticket</i>
Specific community and voluntary organisations	50	£0.50	-	-
Prizes	20	£0.20	20	£0.20
CDC Lottery community and voluntary organisations	8	£0.08	58	£0.58
External Lottery Provider	18	£0.18	18	£0.18
VAT	4	£0.04	4	£0.04
Totals	100	£1.00	100	£1.00

a CDC Lottery supports VCS organisations through a new grant pot.

Number Selection & Prize Structure:

7.16 The proposal would use the Australian Super 66 Lotto results to provide the winning numbers for the proposed Lottery. The Super 66 is played in all parts of Australia, except New South Wales, and draws take place on Saturdays.

Players of the CDC Lottery would choose 6 numbers. To win the jackpot, the ticket must match both the numbers and the sequence as drawn. You can also win a prize if your Super 66 number matches the sequence of the first or last 2, 3, 4 or 5 numbers drawn. In all there are 5 prize divisions.

The following are the winning numbers for each division, if:

•N means a winning number

•n means a number other than a winning number:

Division	Your Super 66 number starts with OR ends with	Odds based on 1 Game
Division 1	NNNNNN	1,000,000:1
Division 2	NNNNNn or nNNNNN	55,556:1
Division 3	NNNNnn or nnNNNN	5,556:1
Division 4	NNNnnn or nnnNNN	556:1
Division 5	NNnnnn or nnnnNN	56:1

Multiple tickets can be purchased and numbers can be changed by players.

7.17 Bolt-on 'raffle' type prizes are possible with this model. It is considered there is potential here for the CDC Lottery to partner with CDC based events and festivals and that this could provide significant additional benefits to VCS organisations and to the people and communities in both areas.

7.18 Players can donate their winnings to their chosen VCS organisation, if they wish.

7.19 The jackpot is an insured prize. It is a guaranteed pay out of £25,000 per winner and there could be multiple winners. There is no rollover if there is no winner.

7.20 The ELM distributes prizes to winners as soon as the player claims their win - either immediately into the winner's bank account or to the chosen VCS organisation if the winner has chosen to donate their win back to them.

Participating VCS organisations are paid monthly by the ELM and the Council are required to authorise these payments before they are made. The process for this will be developed and it will be covered under the contractual arrangements by which the ELM is appointed.

Number Selection and Prize Structure		
	<i>Winning odds</i>	<i>£ prize</i>
6 numbers	1:1,000,000	£25,000
5 numbers	1:55,556	£1,000
4 numbers	1:5,556	£250
3 numbers	1: 556	£25
2 numbers	1:56	3 free tickets
Overall odds of winning any prize	1:50	-

Player modeling:

7.21 Set out below is a player modeling analysis. It shows that a very conservative level of players can generate a considerable income for VCS organisations.

£1 Ticket / 1 Ticket per week						
Ticket price (£)	Number of players (16+)	% CDC Player Pop (16+)	Tickets per player/week	Number of weeks	Gross Return	Received by CVS organisation ^b
1	455	0.5	1	52	£23,660	£13,723
1	910	1	1	52	£47,320	£27,446
1	1,365	1.5	1	52	£70,980	£41,168
1	1,910	2	1	52	£94,640	£54,891
1	2,275	2.5	1	52	£118,300	£68,614

^b: no distinction has been made in the above table between players selecting either delivery option (CDC Lottery or the Umbrella Scheme). It is very difficult to model how this split will break down with actual players therefore a total to community and voluntary organisations is shown (58% of gross return).

8 Gambling Responsibly and Risks

8.1 Lottery are the most common type of gambling activity across the world, and considered to be a 'low risk' form with respect to the emergence of problem gambling. This is due to its relatively controlled form.

The CDC Lottery would help mitigate against many of the issues related to addictive gambling by:

- Being only playable via by pre-arranged sign-up and non-cash methods
- Offering no 'instant gratification' or 'instant reward' to those taking part
- Ensuring the lottery is compliant with the Gambling Commission's licensing code of practice, including self-exclusion and support organisation links.

8.2 Due to these factors, it is reasonable to believe that a Council led Community Lottery would not significantly increase problem gambling, and that the benefits to community and voluntary organisations in the district from the proceeds of the lottery would outweigh the possible negative

issues.

8.3 License holders and operators must comply with legislation and are regulated by the Gambling Commission; both are responsible for running the lottery in such a way that potential risks such as underage gambling, weak financial management and potential fraud are minimised. The proposed CDC Lottery operates within the law and follows the Gambling Commission's operational guidelines.

9 Delivery Timeline

9.1 Following the decision to go ahead with the proposal, based on AVDC's experience for establishing their lottery, it would take approximately four months from appointment of ELM to set-up and launch the lottery.

9.2 The key milestones in delivering this are set out below:

- By October 2016 – Report to BMP
- By December 2016 – Report to Executive
- By late December 2016 – Appoint ELM.
- By Jan 2017 - Hold launch event targeted at VCS organisations encouraging them to 'sign-up'; PR event for members and the media
- End February 2017 – License Approved for the Council (subject to Gambling Commission)
- Mid March 2017 – First Draw

10 Resource implications

10.1 The estimated costs to the Council is:

- £1,000 annually for licensing and administration costs
- Start up (off one) cost of ELM Setup Fee £3,000

There will also be a cost of £1,500 for marketing in the first year, with on-going £750 annually to promote the Lottery.

Inevitably, some officer time would be required to establish the lottery and ensure its administration. This can be managed within existing resources of the Grants Officer with the support of the Commercial Development Team.

This proposal would help fund discretionary support to the VCS and enable such organisations raise funds directly for themselves. Until the level of funds being raised is known, it is difficult to anticipate how much money may be generated. An annual review would be undertaken to ensure that the lottery is running in line with the aims set out in this report and to agree any changes.

10.2 This report recommends that a local community lottery be created for CDC with the appointment of an ELM.

10.3 This report recommends that the Council agrees to provide £3K for set-up costs and £1k for the annual license and administration costs. In the first year the Council allocates £1.5K for marketing funded from existing resources, and £750 annually for on-going marketing.

Tracie Darke

Business Development Officer

ANNEX A: CDC Lottery Umbrella Scheme

Draft Criteria for Accepting VCS groups

As part of the proposed CDC Lottery, voluntary and community organisations can sign up under an umbrella lottery scheme. Below are the draft criteria that will be used in deciding whether or not to allow an organisation to join.

Application Fee

There is no application fee to join.

Criteria for joining:

We want to enable as many VCS organisations as possible to join. The Council has been granted a licence to run the lottery by the Gambling Commission and part of its licence obligations are to ensure that organisations meet certain criteria.

YOUR ORGANISATION MUST:

- Provide local community activities or services *within* the CDC District, which benefit the people and communities of CDC - visitors to CDC may also benefit from the services/facilities, but not to the exclusion of local residents
- Have a formal constitution or set of rules
- Have a bank account requiring at least 2 unrelated signatories
- Operate with no undue restrictions on membership

AND BE:

A constituted group with a volunteer **management committee** with a minimum of three unrelated members that meets on a regular basis (at least 3-4 times per year); or, **a registered charity with a board of trustees.**

OR BE:

A registered **Community Interest Company** and provide copies of their Community Interest Statement, details of the Asset Lock included in their Memorandum and Articles of Association, together with a copy of their latest annual community interest report.

WE WILL NOT PERMIT APPLICATIONS THAT:

- Are incomplete
- Are from groups that promote a particular religious or political belief
- Are from organisations that do not do work within the boundaries of CDC
- Are from individuals
- Are from organisations which aim to distribute a profit
- Are from organisations with no established management committee/board of trustees (unless they are a CIC)

PLEASE NOTE THE FOLLOWING:

The Council reserves the right to reject any application.

The Council will reserve its rights to not accept or cease to license any organisation with a minimum of 7 days' notice for any reason, unless where fraudulent or illegal activity is suspected where cessation will be immediate.