

<b>This report is public; Appendices are exempt from publication by virtue of paragraph 3 of Schedule 12A Local Government Act 1972</b>	
<b>Rutten Lane planning application: fact-finding review outcomes and action plan</b>	
<b>Committee</b>	Accounts, Audit and Risk Committee
<b>Date of Committee</b>	28 May 2025
<b>Portfolio Holder presenting the report</b>	Portfolio Holder for Planning and Development Management, Councillor Jean Conway
<b>Date Portfolio Holder agreed report</b>	16 May 2025
<b>Report of</b>	Assistant Director – Planning and Development, David Peckford

## **Purpose of report**

This report presents the outcomes from Veritau's fact-finding review into the circumstances surrounding the handling of the Rutten Lane planning application and subsequent appeal.

It also provides the committee with information on the Development Management service's draft action plan, which has been prepared in response to Veritau's review and to a separate lessons learned exercise carried out by the service.

While this report is public, the three appendices have been exempted. This is on the grounds that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information). This information is classed as exempt under paragraph 3 of Schedule 12A to Section 100A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006). In addition, both exempt appendices 2 and 3 are working drafts. This includes an action plan for the management of strategic planning applications which will be developed further with the Portfolio Holder for Planning and Development.

## **1. Recommendations**

The Accounts, Audit and Risk Committee resolves to:

- 1.1 Note the findings and conclusions from Veritau's fact-finding review, which have been summarised in this report and included in full in exempt appendix 1.
- 1.2 Note that a strategic planning applications action plan (exempt appendix 2) has been drafted by the council's Development Management service to help manage delivery of the identified improvements, and that this will be finalised in consultation with the Portfolio Holder for Planning and Development Management.

## **2. Executive Summary**

- 2.1 In April 2024, the council was notified that the Planning Inspectorate had found in favour of Merton College and that full costs were to be awarded in relation to the Rutten Lane planning application. Veritau was then engaged to undertake an independent fact-finding review into the circumstances surrounding the handling of the application and its non-determination.
- 2.2 The report provides details on the outcomes from Veritau's fact-finding review, following finalisation of the report in March 2025. It also informs the committee of the Development Management service's draft action plan which has been prepared following the Inspectorate's judgement, a lessons learned exercise and the Veritau review.
- 2.3 This report has been prepared to enable to committee to fulfil its governance, risk and control responsibilities set out in its terms of reference. In particular, the report addresses a matter which is considered a significant risk-related issue and a weakness in the council's governance arrangements.

## Implications & Impact Assessments

Implications	Commentary
<b>Finance</b>	<p>The review of the costs decision and the development of the draft action plan have been undertaken within existing budgets. The resource implications of the lessons learned and the actions required to minimise the risk of such cost awards in the future are in the main to be met from existing budgets. However, there are related wider demands on the planning service which affect the time/capacity for improvement work generally which are being considered by the Corporate Leadership Team. Any cost arising from that consideration would be met from within the Communities Directorate. The lesser impact of required actions on other services (principally staff time) would be met within existing budgets but kept under review. Any resource proposals made as a result of the action plan that cannot be met within existing budgets will need to be approved by Executive.</p> <p>Joanne Kaye, Head of Finance, 19 May 2025</p>
<b>Legal</b>	<p>There are no direct legal implications arising from the report. In terms of the action plan and various roles contained therein, it is necessary that they are properly coordinated between departments. The decision to implement the action plan sits with the Executive or under delegated decision (to be determined).</p> <p>Shiraz Sheikh, Assistant Director - Law, Governance and Monitoring Officer, 19 May 2025</p>
<b>Risk Management</b>	<p>The Veritau review of the award of costs against the Council and the preparation of an action plan, have been undertaken in the interest of minimising the risk of such an award of costs being made against the Council in the future. Once finalised, implementation of the action plan will be overseen by the Strategic Programmes Board / CLT.</p> <p>Julie Miles, Performance Analyst and Developer, 19 May 2025</p>

<b>Impact Assessments</b>	<b>Positive</b>	<b>Neutral</b>	<b>Negative</b>	<b>Commentary</b>
<b>Equality Impact</b>				N/A
<b>A</b> Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		N/A
<b>B</b> Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		N/A
<b>Climate &amp; Environmental Impact</b>		X		N/A
<b>ICT &amp; Digital Impact</b>		X		N/A
<b>Data Impact</b>		X		N/A
<b>Procurement &amp; subsidy</b>		X		N/A
<b>Council Priorities</b>	The subject of this report relates to the council's quality housing and place making priority, and related goals, as set out in its Corporate Plan.			
<b>Human Resources</b>	N/A			
<b>Property</b>	N/A			
<b>Consultation &amp; Engagement</b>	No consultation has been required in the preparation of this report. However, committee members should be aware that the Portfolio Holder for Planning and Development Management will be consulted before the strategic planning applications action plan is finalised.			

## Supporting Information

### 3. Background

3.1 Merton College submitted a planning application to Cherwell District Council on 14 October 2021 (reference 21/03522/OUT). This application was for up to 540 new

homes at land to the west of Yarnton, Rutten Lane (also referred to as PR9), a site allocated in the Local Plan for housing development.

- 3.2 By September 2023, the application had still not been determined. Merton College then lodged an appeal to the Planning Inspectorate on 15<sup>th</sup> September 2023, citing, *'...the Appellant is ... not convinced that the current trajectory of progress will deliver a planning permission, and has therefore determined that an Appeal is now the most appropriate route to secure determination of the application.'*
- 3.3 Following a local inquiry and a site visit in February 2024, the Inspectorate found in favour of Merton College and awarded them full costs on 2 April 2024 (appeal Ref: APP/C3105/W/23/3329587 [PM-AC.FID3635931]).
- 3.4 In July 2024, the Chief Executive and the Assistant Director of Finance requested that Veritau undertake an independent fact-finding review into the circumstances of the application. The council's chief officers wanted to establish the key events and reasons leading to the delay, non-determination, and resultant appeal.
- 3.5 The purpose of the fact-finding review was to evaluate the events and circumstances pertinent to the handling of the application by the council's Development Management service.
- 3.6 It was not the purpose of the review to make recommendations or to agree management actions. A lessons learned exercise was carried out by the Development Management service following the appeal. This has already identified actions (and has partly informed the action plan described later in this report). The Inspectorate's costs decision also goes into some detail regarding the chronology of events and covers technical planning matters which were not appropriate for internal audit to evaluate.
- 3.7 Veritau commenced the fact-finding review in August 2024. In completing the review, discussions were held with management and senior officers from the Development Management service, and with those involved in application 21/03522/OUT. In addition, the work involved a desktop review of supporting documentation relating to the application which was provided to Veritau by the service.
- 3.8 The fact-finding review (exempt appendix 1) was completed in February 2025, and a final report was agreed and shared with senior management on 19<sup>th</sup> March 2025, incorporating a management response from the Assistant Director – Planning and Development. The portfolio holder was also provided with a copy of the report in March 2025.
- 3.9 In April 2025, the Development Management service drafted an action plan (exempt appendix 2). The plan is designed to govern and manage the implementation of improvements the service has identified arising from the handling of the Rutten Lane application and other strategic site applications. The aim of the plan is to minimise the risk of costs being awarded against the council in future.

## **4. Details**

### **Findings and conclusions from Veritau's fact-finding review**

- 4.1 The work undertaken on the fact-finding review identified five ‘thematic areas’ which combined to form the most significant contributing factors to the non-determination of the Rutten Lane application. Each thematic area is explored later in this report but, to summarise, they are:
1. Planning officer recommendations
  2. Strategic partnerships and stakeholder management
  3. Resource and document management
  4. Internal performance management
  5. Management of Planning Performance Agreements
- 4.2 A sixth thematic area of ‘service improvement’ was also identified. However, this is not explored in this report as it has been superseded by the action plan prepared by the Development Management service. To summarise, this part of the fact-finding review report commented on the fact that the initial lessons learned exercise, completed in July 2024 after the appeal was lodged, had not yet been developed into a formal improvement action plan. It was our view that more clarity and corporate oversight was needed to ensure the required improvements were made, and in good time. The Development Management service understood that actions would follow, and be informed by, Veritau’s fact-finding review.
- 4.3 Before addressing the remaining thematic areas, it is important that the committee is aware of a factor which Veritau concluded had the most significant impact on the duration and non-determination of the application. This was the strategic transport modelling.
- 4.4 Oxfordshire County Council (OCC / the County Council) required additional transport modelling to be carried out for all partial review (PR) sites and that all parties agreed to this modelling for the Rutten Lane site. This modelling was only concluded by all PR contributors in September 2023. OCC maintained its objection to the transport issues for the duration of the application and appeal, from June 2022 until October 2023.
- 4.5 On conclusion of the transport modelling in September 2023, Merton College’s developers then informed the council that they could no longer afford to continue with the development and submitted a further viability assessment. It is relevant to note that an application for costs was also lodged against OCC, with the Planning Inspectorate finding in the appellant’s favour. However, the Planning Inspectorate was critical of this Council’s management of consultation with the County Council as Local Planning Authority which is reflected in the costs decision.
- 4.6 Notwithstanding the transport objection by OCC, and its contributions to the delay, the review by Veritau identified and confirmed wider themes within the council that also contributed to delays in the determination process.
- 4.7 The first of these themes relates to the framing of officer recommendations following the lodging of the appeal by Merton College for non-determination..
- 4.8 The application was presented to the Planning Committee on 2 November 2023 to seek the committee’s view had the Council continued to determine the application. This was to inform the Council’s appeal position for this major development. The officer recommendation presented to the Committee was , ‘...*members are requested to resolve...that permission would have been refused...but...that officers continue to*

*seek to [r]esolve the outstanding issues prior to the appeal inquiry...'* This was rather than recommending that permission would have been granted subject to resolving outstanding matters.

4.9 This recommendation was made, and the practice emerged, because of the Northwest Bicester development (21/01630/OUT, known as the 'Firethorn case'). The Firethorn application had been recommended for approval, subject to some matters being resolved. However, this recommendation led to significant external criticism and accusations of corruption against the council's Development Management service from a section of the local community affected by the proposed development; an allegation that the council's then Interim Head of Legal Services concluded had *"no basis whatsoever, and is a bare allegation, levelled unfairly at officers, without a fair and proper consideration of the facts or the planning process."*

4.10 The 'legacy' of the Firethorn case is that it has gone on to impact decision making and reporting practices, including the handling of the Rutten Lane application.

4.11 In undertaking the review, it was clear that officers considered the negative framing of the recommendations to the Planning Committee was likely to have been a factor in the Inspector's 'weighing-up'. There is some suggestion of this in the Inspector's costs decision:

*"44. The alacrity which these matters were eventually dealt with by the Council when faced with the inquiry throws into relief the unreasonably slow and over-zealous approach it had taken until then towards the planning application and the putative reasons for refusal...."*

4.12 The second theme relates to how the council managed and engaged with the applicant and its consultees in handling the application.

4.13 Several issues were identified which combined to demonstrate weaknesses in how the consultation and stakeholder management processes are designed and how they were carried out. These are too detailed to reflect fully in this report but, in summary, they were:

- a five-month delay in receiving a response to consultation from the council's Housing service
- an over-reliance on informal working relationships and an expectation of cooperation from other service areas, with no formal processes for escalation and resolution
- weaknesses in the process of engaging colleagues in legal services in drawing up Section 106 agreements
- the County Council's objection in relation to transport infrastructure being upheld for the duration of the application
- an overreliance on emailing consultees for responses, rather than taking more proactive steps or firmer action where responses were not forthcoming
- the failure of both strategic site meetings (i.e. with OCC) and internal PR site meetings to provide a resolution to outstanding matters.

4.14 The third thematic area relates to resource and document management.

- 4.15 During the first 10 months of the Rutten Lane application, the case was assigned to a planning officer who is no longer employed by the council. Another planning officer was assigned to the case in August 2022.
- 4.16 At the time the Merton College application was submitted in October 2021, planning officers had higher workloads than usual, pressures from staff departures, backlogs, and difficulties in recruitment. The Development Management (Major Developments) service comprised one team overseeing all major applications across the district. Towards the beginning of 2022, the service underwent a reorganisation. The service was divided into two groups covering specific localities: North Area Group (Banbury incl. Heyford) and South Area Group (Bicester and Kidlington) with two team leaders for major developments and two team leader for general developments. The result of this reorganisation was that the service advertised for a new team leader role (i.e. for two rather than one major developments teams). This reorganisation was done to improve resilience, recognising the risk this posed to delivery of the service.
- 4.17 The council's Housing service was also reducing in size at the time the application was being considered. There was only one full-time strategic housing officer responding to all planning applications and their related Section 106 agreements (for major applications). Since that time the service has been strengthened with a new team leader.
- 4.18 The Inspectorate's costs decision report specifically cites staff turnover as a key factor causing significant delays but does not consider it mitigation.
- 4.19 The issues with the management of the application in its first 10 months meant that, the service's IT database system was not kept up to date with all documentation pertaining to the case. For example, when the replacement planning officer was assigned to the case, the Merton College Planning Performance Agreement (PPA), a key document in project managing the application, could not be located on the council's system. The officer had to approach the applicant directly to obtain a copy of the PPA. It was very challenging for the newly assigned planning officer to determine the status of the planning application owing to the poor maintenance of the case file.
- 4.20 The fourth thematic area relates to the arrangements the service had in place to monitor and manage its performance.
- 4.21 Using the Development Management database to provide the information needed to manage the service at an operational level (i.e. on a case-by case basis) is a manual process. It is linked to the Council's public access system which comprises the Council's statutory Planning Register and from which the public can view documents associated with individual planning applications. It should also be used by officers in storing all relevant working documents. The system records when applications are registered, when consultations take place, when applications are due to be determined and when decision notices are issued. It is also used to extract information for government returns on development management performance. The Planning and IT teams are developing a dashboard tool to use the system more proactively for performance management and Veritau also identified that more use of the system should be made for as a management information tool. .
- 4.22 Given the lack of management information available in that system, the service developed two offline Strategic Site Programme Overview spreadsheets, one for

each area group, which track the progress of all active major applications. However, the North district group's spreadsheet had not been maintained and was not made available during the Veritau review.

- 4.23 At the time of the application, planning officers held 1:1 meetings with their supervisors. Process checklists were in place and included sections for both officers to complete, assisting with the monitoring of applications and officer performance. However, while 1:1s were held, they were not especially organised or completed consistently. This was not helped by the fact that the accompanying 1:1 practice note was outdated and did not provide sufficiently clear instruction on how to conduct 1:1s.
- 4.24 The fifth thematic area relates to the management of the Planning Performance Agreement (PPA) signed, alongside OCC, with Merton College.
- 4.25 PPAs are not legal agreements but do commit the council to providing the developer a higher level of service, for a fee. The primary purpose of a PPA is to set a clear framework, which is agreed by both the applicant and the local planning authority, for considering and progressing a major development proposal to determination (including the setting of milestones and timescales). Where the application is expected to take longer than the target timescales, extensions can be put in place between developers and the council. However, developers do not have to agree to the extensions.
- 4.26 The statutory limit for an appeal against non-determination is six months from when the determination should have been made. It is important that the council monitors the progress of planning applications against expected determination dates having regard to any agreed extensions of time and commitments within PPAs. Monitoring should lead to response and there should be mechanisms for escalation. It was not clear from the review that the service had the capacity or agreed-upon procedures for handling these situations at the time of the Merton College appeal. It also did not have means of tracking performance against its active PPAs.
- 4.27 The council and OCC jointly entered into a PPA on 13 July 2021 relating to the Rutten Lane application, with determination initially expected by May 2022 and then, following agreed extension, by April 2023. In the early stages of the PPA, despite regular meetings with the applicant, the council did not deliver to agreed timescales. This necessitated the extension. When the council, together with OCC, sought to extend for a further time in September 2023, this was refused by the applicant as they had lost confidence in the ability for their application to be determined favourably.
- 4.28 If an extension of time is agreed, the applicant cannot appeal until that extended period has expired. Retaining the option of appealing against non-determination is generally a low risk for developers and the prospect of an appeal can be highlighted in seeking a Council decision as soon as possible. If an extension of time is not agreed, officers can continue to proceed with an application with the on-going risk of an appeal for non-determination or take a recommendation of refusal to committee due to a lack of information. However, an applicant can submit an appeal against the refusal of planning permission and apply for appeal costs if it considers the Council has been unreasonable.
- 4.29 The Veritau report was concluded by stating that, unless and until identified improvements in the Development Management service's lessons learned exercise are made and tracked to completion, and the other matters raised in the fact-finding



review are resolved, Veritau could not provide a reasonable level of assurance that the events of the Rutten Lane application will not reoccur in future.

- 4.30 Members of this committee will appreciate that both Cherwell District Council and Oxfordshire County Council had roles to play in the application: the council as the local planning authority and the County Council as a statutory consultee. A summary of the findings made in the report which were relevant to the County Council was shared in April 2025 to help encourage stronger collaboration.

#### **Management of strategic planning applications: action plan**

- 4.31 The service has prepared a draft action plan (exempt appendix 2) to respond to both Veritau's fact-finding review and its own 'lessons learned' exercise. It recognises it is essential to minimise the risks of costs that might be awarded against the council following appeal decisions. It also recognises the importance of maximising the opportunity for sustainable developments to commence as promptly as possible.
- 4.32 The draft action plan contains 106 actions, largely related to the themes of Veritau's fact-finding review:
- a. service improvement
  - b. applicant engagement
  - c. strategic partnerships and stakeholder management
  - d. committee
  - e. performance management (internal)
  - f. planning officer recommendations
  - g. planning performance agreements
  - h. resource and document management
- 4.33 It is supported by an audit schedule (exempt appendix 3) to ensure that all recommendations are addressed.
- 4.34 The draft plan includes timed milestones for the completion of the actions by the end of the calendar year; albeit with two actions for longer-term consideration through the corporate transformation programme.
- 4.35 A project board and project team are proposed, with reporting to the Corporate Director – Communities and Portfolio Holder, to the Strategic Programmes Board, and to the Corporate Leadership Team.
- 4.36 The draft plan is being reviewed within the directorate and will be finalised in consultation with the Portfolio Holder for Planning and Development Management.

## **5. Alternative Options and Reasons for Rejection**

- 5.1 The nature of this report is such that alternative options are not appropriate. The report is for noting and not for a decision. It is intended to inform the committee of the outcomes from Veritau's fact-finding review, and of the Development Management service's action plan prepared following the Veritau review and its own lessons learned exercise.

## 6 Conclusion and Reasons for Recommendations

- 6.1 This report has been prepared to inform the committee of what is considered to be a significant risk-related issue and weakness in governance arrangements. Committee members are asked to consider the content of the report and to note both the outcomes from Veritau's review and the development of the draft action plan before this is finalised in consultation with the Portfolio Holder for Planning and Development Management.

### Decision Information

<b>Key Decision</b>	N/A
<b>Subject to Call in</b>	N/A
<b>If not, why not subject to call in</b>	N/A
<b>Ward(s) Affected</b>	All

### Document Information

<b>Appendices</b>	
<b>Exempt appendix 1</b>	Veritau Fact Finding Review - Partial Review 9 (PR9): Rutten Lane planning application and Merton College appeal
<b>Exempt appendix 2</b>	Draft Action Plan – Management of Strategic Planning Applications
<b>Exempt appendix 3</b>	Audit Schedule of Recommendations
<b>Background Papers</b>	None
<b>Reference Papers</b>	None
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<b>Corporate Director Approval (unless Corporate Director or Statutory Officer report)</b>	Ian Boll, Corporate Director – Communities 13 May 2025