

# Proposal for New Highway Aligned With Howes Lane Bicester

14/01968/F

**Case Officer:** Caroline Ford

**Applicant:** A2 Dominion South Ltd

**Proposal:** Construction of new road from Middleton Stoney Road roundabout to join Lord's Lane, east of Purslane Drive, to include the construction of a new crossing under the existing railway line north of the existing Avonbury Business Park, a bus only link east of the railway line, a new road around Hawkwell Farm to join Bucknell Road, retention of part of Old Howes Lane and Lord's Lane to provide access to and from existing residential areas and Bucknell Road to the south and associated infrastructure.

**Ward:** Bicester North and Caversfield (part Bicester West)

**Councillors:** Cllr Nicholas Mawer                      Cllr John Broad  
Cllr Lynn Pratt                                      Cllr Les Sibley  
Cllr Jason Slaymaker                              Cllr Fraser Webster

**Reason for Referral:** Major Development being reported back to Planning Committee following material changes to the proposed development since the Committee resolution to approve of the 18 February 2016

**Expiry Date:** 07 August 2019

**Committee Date:** 18 July 2019

## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

### **RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

#### **Proposal**

The proposal is for the construction of new road infrastructure in accordance with the description of development above. In summary, the proposal is to realign Howes Lane with associated amendments to the existing road network and to provide a new tunnel under the railway. The proposal is to provide enhanced capacity to meet the transport generated by the planned growth of Bicester and to mitigate for the current constrained junction at the Howes Lane/ Bucknell Road/ Lords Lane junction.

#### **Consultations**

Through a re-consultation, the following consultees have raised **objections** to the application:

- OCC Drainage

The following consultees have raised **no objections** to the application:

- OCC Highways, CDC Environmental Protection, OCC Archaeology and Highways England

At the time of writing this report no additional letters of objection have been received but the consultation process is still open.

#### **Planning Policy and Constraints**

The application site sits on the land allocated by Policy Bicester 1 for a zero carbon residential led development. The proposal is on predominately agricultural land intersected by the mainline London to Birmingham railway, which runs on an embankment

to the north west of Bicester where the tunnel would be provided. Part of the land is within flood zones 2 and 3 (associated with the River Bure) and a bridge is proposed to cross the watercourse. A public right of way runs east to west from the town out into the countryside and the road would cross this. There are a number of trees protected by preservation orders and there is also some ecological potential on the site.

The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance as listed in detail at Section 8 of the report.

## **Conclusion**

The key issues arising from the application details are covered in the committee report presented to Planning Committee in February 2016 but this report provides an update and considers the following matters:

- Principle of development
- The amended design of the bridge and its impact
- EIA
- Ecology
- Other matters
- Planning conditions and obligations

The report looks into the key planning issues in detail, and Officers conclude that the proposal is acceptable subject to conditions.

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## **MAIN REPORT**

### **1. APPLICATION SITE AND LOCALITY**

- 1.1. The site covers 18.2ha and lies to the west of the existing Howes Lane and the town of Bicester. The land extends from the B4030 Middleton Stoney Road Roundabout to the A4095 Lords Lane, crossing the Bucknell Road and passing to the east of Aldershot Farm. The land it crosses is agricultural land and some areas of adopted highway. The site also includes a section of land beneath the railway line to the north of the Avonbury Business Park. The land surrounding the site to the north and west is largely agricultural land but within the site allocated by Policy Bicester 1, and to the east is the existing town of Bicester. There are a number of farms located within proximity to the application site and the River Bure runs through the eastern part of the site on a north-south axis and the railway line also cuts through the application site. There are a number of trees and hedgerows across the site, primarily forming the boundary of agricultural fields and/ or located adjacent to the watercourses.

### **2. CONSTRAINTS**

- 2.1. In terms of recorded site constraints, a public right of way runs on an east – west axis from the Bucknell Road junction, south of the railway line along a track leading to Aldershot Farm and beyond. A SSSI is within proximity and the site has the potential for archaeological interest, to be contaminated, and part of the site is within flood zones 2 and 3. There are a number of trees protected by a Preservation Order to the south of the site.

### 3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The proposal is for new road infrastructure as described in the description of the development and is required to address existing deficiencies in the current railway crossing and the road infrastructure and to provide enhanced capacity to meet the transport generated by the planned growth of Bicester. The proposed road would incorporate footways/cycleways along its length as well as SUDs features, trees and lighting. The proposal has been amended through the application processing.
- 3.2. The planning application for the development already benefits from a resolution for approval made by Planning Committee in February 2016. The resolution was subject to a set of planning conditions and a legal agreement.
- 3.3. Since Planning Committee first considered the application, negotiations have been ongoing with the applicant A2 Dominion linked to discussions on their planning applications made for larger scale development at NW Bicester. S106 agreements have not yet been completed on those developments and A2 Dominion has made the decision to no longer take the lead on the provision of the major infrastructure. In order to maintain progress, Oxfordshire County Council has stepped in to take the application forward and now act as agent for the application. As well as discussions regarding S106 matters, technical discussions with Network Rail (NR) in regard to the road tunnel crossing have also continued. This has been positive and the scheme has progressed through their technical GRIP process. This process has resulted in changes to the design of the tunnel to meet NR requirements.
- 3.4. The application is therefore reported back to Planning Committee principally due to the change to the design of the railway crossing, but also on the basis of the time that has elapsed since the application was last considered by the Committee. The rest of the road infrastructure remains as per the design and layout as was last considered. For ease of reference, the original committee report from 2016 is appended to this report.
- 3.5. In terms of timescales for delivery, ongoing discussions are taking place with Network Rail with a view to achieving a 100 hour track possession at Easter 2021 during which time the tunnel would be constructed. This will enable the road to be constructed at the appropriate time, once the necessary funding is secured. Network Rail have provided a programme with key milestones to reach this target, which includes design work, construction and the completion of various required legal agreements.

### 4. RELEVANT PLANNING HISTORY

- 4.1. The following planning history is considered relevant to the current proposal:

| <u>Application Ref.</u> | <u>Proposal</u>   | <u>Decision</u>        |
|-------------------------|---|------------------------|
| 14/00007/SCOP           | Scoping Opinion for development to provide strategic infrastructure, namely a new road to replace Howes Lane with new crossing under the railway to enable reconnection to Lords. | Scoping Opinion Issued |

- 4.2. The wider site at NW Bicester has been the subject of a number of planning applications for large scale residential and commercial development. Some of these are still pending consideration, others benefit from a resolution to approve pending the completion of a legal agreement, and others are approved.

## 5. PRE-APPLICATION DISCUSSIONS

- 5.1. Although no formal pre-application discussions have taken place, Officers have been involved in the evolution of the design of the road tunnel and with Network Rail through their technical approval process.

## 6. RESPONSE TO PUBLICITY

- 6.1. This application has been re-publicised by way of a site notice displayed near the site, by advertisement in the local newspaper and by neighbour notification letter. The final date for comments is the 03.08.2019, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. No additional comments have been raised by third parties at the time of writing this report.

## 7. RESPONSE TO CONSULTATION

- 7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 7.2. BICESTER TOWN COUNCIL: No comments received
- 7.3. CHESTERTON PARISH COUNCIL: **Observations** – “initially no supporting documentation was received and it was not possible to access through the planning portal. The plan was forwarded but the drawing detail is so small and referred only to the bridge. Nothing received regarding the new road and layout so the information is vague. The Parish Council is dissatisfied due to the lack of supporting information”.

*Officer comment: the Parish Council was re-consulted in respect of the amended details relating to the tunnel/bridge only. The full set of plans submitted with the application remain available to view on the Council's online planning register. This has been clarified with the Parish Council.*

### CONSULTEES

- 7.4. OCC HIGHWAYS: **No objection** to the amendment. The application includes a plan and cross sections of the rail overbridge which were not previously included in the application. The widths of the carriageway and footway/ cycleway are acceptable as is the headroom, which complies with current standards. The application does not include any amendments to the design of the proposed strategic link road beyond the overbridge and immediate approaches. Previous responses should be referred to regarding the design of the strategic link road.
- 7.5. OCC DRAINAGE: **Objection** the drainage information is out of date and not in line with local and national standards.
- 7.6. OCC ARCHAEOLOGY: **Comments** the submitted amendments do not alter the original comments made.
- 7.7. ENVIRONMENTAL PROTECTION: **no further comments** based on the new plan submitted regarding the railway bridge.

- 7.8. ENVIRONMENT AGENCY: the application is for development that the EA does not wish to be consulted on.
- 7.9. NATURAL ENGLAND: The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.
- 7.10. HIGHWAYS ENGLAND: **No objection**

## **8. RELEVANT PLANNING POLICY AND GUIDANCE**

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

#### Sustainable communities

- PSD1: Presumption in Favour of Sustainable Development
- SLE1: Employment Development
- SLE4: Improved Transport and Connections
- BSC1: District wide housing distribution
- BSC2: Effective and efficient use of land
- BSC3: Affordable housing
- BSC4: Housing mix
- BSC7: Meeting education needs
- BSC8: Securing health and well being
- BSC9: Public services and utilities
- BSC10: Open space, sport and recreation provision
- BSC11: Local standards of provision – outdoor recreation
- BSC12: Indoor sport, recreation and community facilities

#### Sustainable development

- ESD1: Mitigating and adapting to climate change
- ESD2: Energy Hierarchy and Allowable solutions
- ESD3: Sustainable construction
- ESD4: Decentralised Energy Systems
- ESD5: Renewable Energy
- ESD6: Sustainable flood risk management
- ESD7: Sustainable drainage systems
- ESD8: Water resources
- ESD10: Biodiversity and the natural environment
- ESD13: Local landscape protection and enhancement
- ESD15: Character of the built environment
- ESD17: Green Infrastructure

#### Strategic Development

- Policy Bicester 1 North West Bicester Eco Town
- Policy Bicester 7 Open Space

## Policy Bicester 9 Burial Ground

Infrastructure Delivery  
INF1: Infrastructure

### CHERWELL LOCAL PLAN 1996 (SAVED POLICIES)

TR1: Transportation funding  
TR10: Heavy Goods Vehicles  
C8: Sporadic development in the open countryside  
C28: Layout, design and external appearance of new development  
C30: Design Control

#### 8.3. Other Material Planning Considerations

- North West Bicester Supplementary Planning Document (February 2016)
- Planning Policy Statement 1 supplement: Eco Towns
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Oxfordshire Local Transport Plan 4 (2015-2031)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 ("HRA")
- Equalities Act 2010 ("EA")

#### 8.4. Council Corporate Priorities

Cherwell District Council's Business Plan for 2019-20 sets out the Council's three strategic priorities which form our overarching business strategy. Below these are the key actions for the year 2019–20. This is a strategy which looks to the future taking into account the priorities and aspirations of the communities who live and work in the district.

The three corporate priorities are to ensure the District is "Clean, Green and Safe", that it supports "Thriving Communities & Wellbeing", and is a District of "Opportunity & Growth". All three priorities are of significance to the determination of planning applications and appeals. Below these priorities, the key actions which are of most relevance to planning applications and appeals are: (1) deliver the Local Plan; (2) increase tourism and increase employment at strategic sites; (3) develop our town centres; (4) protect our built heritage; (5) protect our natural environment; (6) promote environmental sustainability; (7) promote healthy place shaping; (8) deliver the Growth Deal; (9) delivery innovative and effective housing schemes; and (10) deliver affordable housing.

The remaining key actions may also be of significance to the determination of planning applications and appeals depending on the issues raised.

The above corporate priorities are considered to be fully compliant with the policy and guidance contained within the National Planning Policy Framework and National Planning Practice Guidance.

## **9. APPRAISAL**

9.1. The key issues for consideration in this case are:

- Principle of development
- The amended design of the bridge and its impact
- EIA
- Ecology
- Other matters
- Planning conditions and obligations

### Principle of Development

- 9.2. The previous committee report for this application, considered in February 2016 sets out the key policy considerations, the strategic need for the road and comments on the detailed design and walking and cycling connections. The change to the design of the road tunnel/railway bridge does not change the way the scheme complies with the planning policy requirements as set out in that report and the strategic need for the road has not changed. The design of the road has not changed either and so the same benefits as summarised within the earlier report (the improved design, the provision of walking and cycling infrastructure and the benefit of moving the road away from the rear boundary of the existing dwellings) remain.
- 9.3. Since the previous report, the NPPF has been replaced by a new version. The changes are not considered to be material for the purpose of this application. It still provides for the presumption in favour of sustainable development and it still requires the promotion of sustainable transport including the mitigation of significant impacts on highway safety resulting from new development, and to take opportunities to promote sustainable transport modes.
- 9.4. The principle of changing the design of the tunnel/bridge is acceptable. The design provided through the planning application process differed from that which has progressed through the Network Rail technical approval process and so it was inevitable that the planning design would be reviewed in response to that process. The changed design will be discussed below.
- 9.5. As the road and tunnel continue to meet a strategic need for improved highway infrastructure in this part of Bicester, which provides benefits to the wider strategic network as well as the development at NW Bicester, it is considered that the scheme remains acceptable in principle and will support sustainable development.

### The amended design of the bridge and its impact

- 9.6. The main changes to the bridge design are with respect to the highway cross sectional geometry (to facilitate minor reductions in span and headroom) and the addition of brick facing to the abutments and wingwalls (primarily to simplify provision of an acceptable finish and to better discourage graffiti than plain concrete). The finish of the bridge itself has also been confirmed as a weathering steel finish. The geometry of the bridge has been considered by Network Rail through the first two stages of the technical GRIP process with the bridge having been signed off for those stages. The technical approval process continues as does further technical detailed design and this is currently being worked on.
- 9.7. The change to the design of the bridge is considered to be acceptable. The design has evolved taking into account the requirements of Network Rail, which is necessary given the nature of the project being part of the railway infrastructure and therefore the need to obtain their approval to construct the development. Given the

above, the proposal is considered to continue to comply with the relevant policies of the Development Plan including Policy Bicester 1 and ESD15.

### EIA

- 9.8. The application is EIA development and the application is accompanied by an Environmental Statement. The main EIA was compiled in November 2014, with an addendum provided to accompany the amended scheme in November 2015. Given the time that has elapsed without a decision being issued, it is necessary to consider whether the EIA is up to date and therefore sufficient to consider the environmental impacts of the development.
- 9.9. The EIA covered the following main topics – landscape and visual impact, ecology, flood risk and hydrology, air quality, noise and vibration, cultural heritage, contaminated land, agriculture and land use, human health, socio-economics and community, waste and cumulative impacts. A separate transport assessment was submitted. The EIA identifies significant impacts of the development and mitigation to make the development acceptable.
- 9.10. The baseline conditions considered through the EIA in the majority of topic areas are unlikely to have significantly changed over and above the position reported in the EIA. There have been no changes to the physical context of the site to change the baseline landscape and visual position, there have been no changes to water courses or the provision of new water features to change the flood risk and hydrology baseline position, no new heritage features over and above those previously recorded to affect the cultural heritage baseline and no changes in the baseline for the following topics – contaminated land, agriculture and land use, human health, socio-economics and community and waste. In respect to the environmental topics relating to air quality and noise and vibration, these topics relate to the transport position which, whilst this has not been updated and transport issues may have increased, the nature of the proposal is such that these impacts would be mitigated for.
- 9.11. In respect to cumulative matters, the position may have moved on from that considered, with development proposals having progressed. However, the proposed development is to mitigate for wider transport constraints than just North West Bicester and has been planned taking into account town wide (and the allocated sites) growth. In these circumstances, the EIA is considered to be sufficient in terms of considering cumulative matters.
- 9.12. The EIA is therefore generally considered to remain sufficient in principle in order to assess the impacts of the development and the identified mitigation must be the subject of planning conditions. The one area that requires further consideration is that of ecology and this is considered in detail below.

### Ecology Impact

#### *Legislative context*

- 9.13. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.



- 9.14. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 9.15. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.16. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
  - (2) That there is no satisfactory alternative.
  - (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 9.17. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

#### *Policy Context*

- 9.18. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 9.19. Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

- 9.20. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 9.21. Policy ESD10 of the Cherwell Local Plan 2011-2031 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.22. Policy ESD11 is concerned with Conservation Target Areas (CTAs), and requires all development proposals within or adjacent CTAs to be accompanied by a biodiversity survey and a report identifying constraints and opportunities for biodiversity enhancement.
- 9.23. These policies are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.24. The Planning Practice Guidance dated 2014 post dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

#### *Assessment*

- 9.25. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development
- It also states that LPA's can also ask for:
- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
  - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')

- 9.26. The previous application identified the ecological surveys undertaken and the potential species that could be affected. The surveys have not been updated so they are dated as it stands. However, the existing baseline conditions are unlikely to have significantly changed as the land remains predominantly arable fields and improved grasslands with hedgerows forming the boundary of the fields as well as the water course remaining the same as it was when the surveys were completed. The ES identified that the development has been designed to reduce impacts on wildlife and

habitats as far as possible and to produce a design that incorporates measures to ensure that the development will result in a net gain in biodiversity as part of the wider masterplan.

- 9.27. In the circumstances, it is considered acceptable to require that up-to-date ecological checks are carried out prior to development commencing as a condition of the planning permission and for conditions to be used to ensure protection of the environment and biodiversity to be established through construction management plans and for the mitigation measures identified in the ES to be secured via condition.
- 9.28. In order for the local planning authority to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where protected species are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.
- 9.29. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.
- 9.30. In this case, if protected species were to be identified that have not been before and a licence required due to them being affected, it is considered that it is likely a compelling case would be made to justify the grant of the licence given the public benefits of this proposal and that there is no suitable alternative (the rest of the embankment is likely to be similarly affected in the same way as this site).
- 9.31. In the circumstances, the proposal is therefore considered to comply with Policy ESD10 of the CLP 2031 Part 1, advice contained in the PPG and Natural England's Standing Advice, and section 15 of the National Planning Policy Framework.

#### Other matters

- 9.32. The previous report considered the relevant eco town standards and noise and amenity impact on nearby residents, and the assessment of these matters has not changed between now and the time the previous report was written.
- 9.33. The previous committee report (appendix A) addressed the matter of flood risk and drainage and concluded that providing the Drainage Authority were content, it was likely that conditions could be used to require a detailed drainage design and strategy building on the information thus far. The OCC response provided as a written update to the previous committee report (appendix B) raised some concerns but also recommended a planning condition to seek a drainage strategy to seek the full surface water design. The OCC Drainage comments received in respect of the amended bridge/tunnel design object, but the reason for this objection is unclear. It is currently being clarified whether this matter can be sufficiently dealt with via planning condition (as was previously agreed).

#### Planning Conditions and Obligations

- 9.34. A set of planning conditions was presented to and agreed by Planning Committee in February 2016 and these are in the process of being reviewed to ensure that all

relevant conditions are present and up-to-date. In addition, a review of the timescales for the compliance of conditions is also being considered as the project may need to be delivered in two phases – one phase comprising the bridge and another phase comprising the road. Given the timescales for the delivery of the bridge, it is reasonable to ensure that conditions relating to that infrastructure are limited to those absolutely necessary, without necessarily being held up by conditions relating to the wider road (as this could come later). Conversely, conditions relating to the road are worded such that they relate to that infrastructure only for similar reasons.

- 9.35. The previous resolution was subject to the completion of a S106 agreement to secure the provision of apprenticeships, some traffic matters in terms of the closure of Howes Lane and a TRO (Traffic Regulation Order) to reduce the speed of the remaining part of Howes Lane and to secure the partial closure of the Bucknell Road, and relating to the securing of a financial contribution towards mitigating the impact on offsite farmland birds.
- 9.36. Due to the timescales to secure the delivery of the tunnel/bridge, it will be difficult to complete a S106 agreement in time. However given the nature as to what was to be secured through the S106, it is considered that in this instance, noting the critical role the delivery of the tunnel/bridge plays in facilitating the planned growth at Bicester, planning conditions can be used. A condition can be used to secure a training and employment management plan to secure apprenticeships and a condition can be used to secure a scheme to offset the impact of the development upon farmland birds (which could be a physical scheme or a financial contribution). OCC have been contacted regarding how to secure the highway matters and whether conditions can be used to secure this.

#### Human Rights and Equalities

- 9.37. The Human Rights Act 1998 (“HRA”) sets out fundamental freedoms which have been laid out by the European Convention on Human Rights (“ECHR”). In making any decisions, Cherwell District Council (“the Council”) should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.
- 9.38. The rights under the ECHR which the Council views as being the most likely to affect planning matters are: Article 6 (the right to a fair trial); Article 8 (right to respect for private and family life); Article 14 (prohibition of discrimination); and Article 1 of the First Protocol (protection of property).

#### *Article 6*

- 9.39. Officers have considered these matters and have resolved that, whilst there are potential rights in play, these will not be affected by the application due to the application being publicised by way of neighbour letter, site notice and in the local press giving affected third parties the opportunity to comment on the application and their views taken into account when considering the application. In this case any comments/concerns raised by third parties are listed above and have been taken into account in assessing the application. Furthermore should a third party be concerned about the way the application was decided they could complain to the Local Government Ombudsman or if they question the lawfulness of a decision can appeal to the Courts for Judicial Review of the application.

#### *Article 8 and Article 1 of the First Protocol*

- 9.40. Officers have considered the duties under both Article 8 and Article 1 of the First Protocol and have resolved that the application does respect the private and family life of neighbours and does not fail to protect the neighbours' property.

#### *Duty under The Equalities Act 2010*

- 9.41. S149 of the Equalities Act 2010 ("EA") sets out what is known as the Public Sector Equality Duty ("PSED"). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who so not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.
- 9.42. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application.

### **10. PLANNING BALANCE AND CONCLUSION**

- 10.1. The proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development. The application proposal is identified as a key infrastructure requirement for the NW Bicester development site but it also brings wider benefits in terms of resolving a key transport constraint on the edge of Bicester. The proposal results in a number of benefits including providing the required capacity on the strategic highway network, moving the road away from existing residents, making it a part of the Bicester 1 development site and providing significant improvements for walking and cycling along its length. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

### **11. RECOMMENDATION**

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND ECONOMY TO **GRANT PERMISSION, SUBJECT TO NO NEW MATERIAL PLANNING CONSIDERATIONS BEING RAISED BEFORE THE EXPIRY OF THE CONSULTATION PERIOD AND SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY)

#### CONDITIONS

As summarised below, with full condition wording to follow in the written updates:

1. Time limit – development to commence within 3 years
2. Plans for approval
3. Requirement for a phasing plan
4. Necessary highway conditions
5. Details of the final surface treatment of the infrastructure
6. Details and positions of bus stops including the need to provide Real Time Information
7. Detailed surface water drainage scheme
8. Design details of any ponds
9. Provision of a Construction Environment Management Plan

10. Post construction noise survey
11. Unexpected contamination
12. Soil resources Plan
13. Existing and proposed levels for the road infrastructure
14. Details of tree pits
15. Landscaping scheme
16. Retention of the landscaping scheme
17. Protection of retained trees and hedgerows
18. Details of service runs
19. Archaeology – agreement of a written scheme of investigation and then archaeological evaluation and investigation
20. Updated ecology checks
21. Requirement for a biodiversity construction management plan
22. Requirement of a scheme to mitigate for farmland birds
23. Removal of vegetation outside of the bird nesting activity period
24. Landscape and Ecology Management Plan
25. Other mitigation to offset the environmental impacts of the development as identified in the EIA
26. Construction waste management plan
27. Development to meet CEEQUAL Standard 'Excellent'
28. Requirement for a Training and Employment Management Plan to commit to apprenticeship starts

#### PLANNING NOTE

1. Before granting this planning permission the Council has taken into account the environmental information relating to the development (within the meaning of the Town and Country Planning (Environmental Assessment) (Regulations) 2017 (as Amended).
2. Advice note regarding potential future access points to the road to aid pedestrian and cycle movements.
3. Advice note regarding the requirement to not obstruct or dissuade users from using the public right of way/ bridleway other than when the road is provided which crosses the route.

CASE OFFICER: Caroline Ford

TEL: 01295 221823