

## URGENT BUSINESS

**Axis J9 Phase 3 Howes Lane Bicester**

**21/03177/F**

**Case Officer:** Caroline Ford

**Applicant:** Albion Land

**Proposal:** Full planning application for employment development (Use Classes E(g)(iii), B2 and/or B8) comprising 5 units within 3 buildings and associated parking and servicing, landscaping and associated works

**Ward:** Bicester North and Caversfield/ marginally Bicester West

**Councillors:** Councillors Mawer, Pratt and Slaymaker (Bicester North And Caversfield)  
Councillors Broad, Sibley and Webster (Bicester West)

**Reason for Urgency:** Legal advice received after the publication deadline identified a need for additional delegated powers to be sought from the Committee. This is urgent in order to minimise the Council's exposure to costs in an expected appeal

**Expiry Date:** 29 July 2022

**Committee Date:** 14 July 2022

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### **AGENDA ITEM 6 – URGENT BUSINESS**

#### **1. Reason for referral as Urgent Business**

- 1.1 At the 16 June 2022 Planning Committee, Members resolved to refuse application 21/03177/F. Officers have been working on the wording of the identified reason since the meeting. Officers have been advised that the applicant intends to submit an appeal against the decision of the Planning Committee to refuse the application at its [16 June 2022 meeting](#).
- 1.2 Legal advice has indicated that officers require additional powers to be delegated from the Planning Committee to allow them deal with any S106 issues within an appeal. It is understood that the appeal is to be lodged soon, it is within the Council's interests to ensure that this delegation is in place, and that its refusal reasons are defined and available to the applicant so that their appeal can be lodged against those specified reasons. Should this matter have been delayed to the August Planning Committee, there is a risk that an appeal could be lodged on the grounds of non-determination. In that scenario the applicant would need to prepare their appeal submission to address the application as a whole and would likely seek to prepare evidence on matters that could later be confirmed as unnecessary then the Council issues its formal decision, which could result in the risk of an award of costs against the Council for this unnecessary work.
- 1.3 A risk of an award of costs would always remain in any appeal, but by ensuring that the reasons for refusal are defined and that Officers have the necessary delegation to complete a S106 pursuant to the appeal so that the necessary infrastructure is secured in the event that the appeal is allowed, this would put the Council at the best chance of avoiding any substantial award of costs against it.

## **2. Updated Matters since the application was considered**

- 2.1 Through the written updates, Officers identified three main outstanding issues:
1. That the LLFA continued to hold an objection to the drainage arrangements for the site.
  2. That an air quality assessment had been received and that a re-consultation was underway with the Environmental Protection Team.
  3. That an updated noise assessment had been received and that a re-consultation was underway with the Environmental Protection Team.
- 2.2 In response to these points, Officers can advise as follows:
1. Following the receipt of additional information, the Lead Local Flood Authority have confirmed that they have No Objection subject to conditions.
  2. The Environmental Protection Officer considered the updated Air Quality report and confirmed that the methodology and findings were satisfactory. A planning condition was recommended.
  3. The Environmental Protection Officer considered the noise technical note and confirmed that he is happy with the methodology and confirmed that there was no reason to object to the application on noise grounds. This was based upon the report indicating that there will be no or negligible change to the noise climate with the changes to the site as proposed.
- 2.3 A further response has been received from the Environment Agency since the last Planning Committee, which confirmed that they have no comments to make in respect of the proposed development.

## **3. Reasons for refusal**

- 3.1 Reason for refusal 1 as set out below has been formulated based upon the Officer understanding of the reason Members discussed and resolved against at the 16 June 2022 meeting. This includes highlighting specific parts of the referred to Policies to ensure the reasons are clear and to avoid other matters needing to be argued at appeal. Officers seek Member agreement to this reason including the specific parts of the named policies. Members are asked to highlight any other policies/ specific paragraphs of the named policies should there be further points that Officers have not referred to.
- 3.2 Reason for refusal 2 as set out below is considered to be a necessary reason to ensure that it is clear that the Local Planning Authority considers the requirement for a Planning Obligation to be necessary to mitigate the impacts of the development. In the absence of this, the application is therefore considered to be unacceptable.
- 3.3 Reasons such as reason 2 are often overcome through an appeal process by a S106 being negotiated and secured. This is necessary to ensure that should any appeal be allowed that the necessary S106 is therefore in place to mitigate the impacts of the development. In addition to the reasons for refusal, Officers have also been advised this week (following the publication of the main agenda for the 14 July 2022 Committee) that delegation from the Planning Committee is required to allow Officers to complete a S106 pursuant to any appeal that might be submitted. This is important because should the application proceed to appeal and, should that appeal be allowed, the requirement for a S106 would be a matter that would be necessary to ensure the development is acceptable by mitigating its impacts.

#### **4. RECOMMENDATION**

- i. THAT POWERS BE DELEGATED TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT, HAVING REGARD TO THE HEADS OF TERMS SET OUT WITHIN THE WRITTEN UPDATES TO THE 16 JUNE 2022 PLANNING COMMITTEE, TO NEGOTIATE AND COMPLETE AN AGREEMENT CONTAINING OBLIGATIONS PURSUANT TO S106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) RELATING TO ANY PLANNING APPEAL SUBMITTED AGAINST THE DECISION ISSUED UNDER 21/03177/F.**
- ii. THAT PLANNING PERMISSION IS REFUSED FOR THE FOLLOWING REASONS:**
  1. The proposed development introduces unanticipated commercial uses onto a site identified for housing via the Masterplan included within the North West Bicester Supplementary Planning Document 2016. The development proposed would be incompatible with the existing residential uses to the east of Howes Lane and would have a detrimental impact upon the residential amenity of those nearby residential occupiers. The proposal is therefore not considered to be sustainable development and is contrary to Policies SLE1 (in particular paragraph 6, bullet point 7 (with respect to land uses and residents only), ESD15 (in particular bullet points 3 and 11 (but not related to privacy, natural lighting, ventilation or indoor and outdoor space)) and Policy Bicester 1 (paragraph 2 and bullet points 1 and 25 under the section titled 'Key site specific design and place shaping principles') of the Cherwell Local Plan Part 1 2011-2031, Policy C31 of the Cherwell Local Plan 1996, the North West Bicester Supplementary Planning Document 2016 and the National Planning Policy Framework.
  2. In the absence of a satisfactory completed S106 or other planning obligation, the Local Planning Authority is not convinced that the necessary infrastructure required both on and off site as a result of this development to mitigate the impact of the development will be provided. This would be contrary to Policies INF1, SLE4, and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester Supplementary Planning Document 2016, the Council's Developer Contributions Supplementary Planning Document (February 2018) and the advice within the National Planning Policy Framework.