

# Public Document Pack



**Cherwell**

DISTRICT COUNCIL  
NORTH OXFORDSHIRE

**Committee:** Planning Committee  
**Date:** Thursday 8 October 2020  
**Time:** 4.00 pm  
**Venue:** Virtual meeting

## Membership

### **Councillor James Macnamara (Chairman)**

Councillor Andrew Beere  
Councillor Hugo Brown  
Councillor Colin Clarke  
Councillor Chris Heath  
Councillor David Hughes  
Councillor Cassi Perry  
Councillor George Reynolds  
Councillor Les Sibley

### **Councillor Maurice Billington (Vice- Chairman)**

Councillor John Broad  
Councillor Phil Chapman  
Councillor Ian Corkin  
Councillor Simon Holland  
Councillor Mike Kerford-Byrnes  
Councillor Lynn Pratt  
Councillor Barry Richards  
Councillor Katherine Tyson

## Substitutes

Councillor Mike Bishop  
Councillor Surinder Dhesi  
Councillor Tony Ilott  
Councillor Ian Middleton  
Councillor Douglas Webb  
Councillor Bryn Williams  
Councillor Sean Woodcock

Councillor Conrad Copeland  
Councillor Timothy Hallchurch MBE  
Councillor Tony Mepham  
Councillor Richard Mould  
Councillor Fraser Webster  
Councillor Barry Wood

## AGENDA

- 1. Apologies for Absence and Notification of Substitute Members**
- 2. Declarations of Interest**

Members are asked to declare any interest and the nature of that interest which they may have in any of the items under consideration at this meeting

**3. Requests to Address the Meeting**

The Chairman to report on any requests to address the meeting.

**4. Minutes (Pages 1 - 15)**

To confirm as a correct record the Minutes of the meeting of the Committee held on 10 September 2020.

**5. Chairman's Announcements**

To receive communications from the Chairman.

**6. Urgent Business**

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

**Planning Applications**

- 7. Proposed Roundabout Access to Graven Hill and Wretchwick Green, London Road, Bicester (Pages 19 - 40) 20/01830/F**
- 8. Bicester Gateway Business Park, Wendlebury Road, Chesterton (Pages 41 - 55) 20/0293/OUT**
- 9. OS Parcel 9635 North East of HM Bullingdon Prison, Widnell Lane, Piddington (Pages 56 - 78) 20/01122/F**
- 10. Land South Side of Widnell Lane, Piddington (Pages 79 - 100) 20/01747/F**
- 11. Land North and West of Bretch Hill Reservoir, Adj to Balmoral Avenue, Banbury (Pages 101 - 139) 20/01643/OUT**
- 12. Magistrates Court, Warwick Road, Banbury, OX16 2AW (Pages 140 - 171) 20/01317/F**
- 13. The Ley Community, Sandy Lane, Yarnton (Pages 172 - 208) 20/01561/F**
- 14. 4 Drapers House, St Johns Road, Banbury, OX16 5BE (Pages 209 - 213) 20/02123/DISC**
- 15. 17 Fair Close, Bicester, OX26 4YW (Pages 214 - 219) 20/01993/F**
- 16. Land Adjacent to the Oxford Canal, Spiceball Park Road, Banbury - 01854 (Pages 220 - 224) 20/01854/DISC**
- 17. Land Adjacent to the Oxford Canal, Spiceball Park Road, Banbury- 00125 (Pages 225 - 229) 20/00125/DISC**

## **Review and Monitoring Reports**

### **18. Appeals Progress Report (Pages 230 - 236)**

Report of Assistant Director Planning and Development

#### **Purpose of report**

This report aims to keep members informed upon applications which have been determined by the Council, where new appeals have been lodged. Public Inquiries/hearings scheduled, or appeal results achieved.

#### **Recommendations**

The meeting is recommended:

- 1.1 To accept the position statement.

### **19. Enforcement Report (Pages 237 - 243)**

Report of Assistant Director Planning and Development

#### **Purpose of Report**

To inform Members about planning enforcement cases at CDC and update on the current position following the update in July regarding case numbers and how the team continues to operate during the restrictions of COVID19.

#### **Recommendation**

The meeting is recommended:

- 1.1 To note the contents of the report.

## **Information about this Agenda**

### **Apologies for Absence**

Apologies for absence should be notified to [democracy@cherwellandsouthnorthants.gov.uk](mailto:democracy@cherwellandsouthnorthants.gov.uk) or 01295 221591 prior to the start of the meeting.

### **Declarations of Interest**

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item.

## **Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates**

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

### **Access to Meetings**

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

### **Mobile Phones**

Please ensure that any device is switched to silent operation or switched off.

### **Queries Regarding this Agenda**

Please contact Lesley Farrell, Democratic and Elections  
democracy@cherwellandsouthnorthants.gov.uk, 01295 221591

**Yvonne Rees**  
**Chief Executive**

Published on Wednesday 30 September 2020

## **Cherwell District Council**

### **Planning Committee**

Minutes of a meeting of the Planning Committee held as a Virtual meeting, on 10 September 2020 at 4.00 pm

#### Present:

Councillor James Macnamara (Chairman)  
Councillor Maurice Billington (Vice-Chairman)  
Councillor Andrew Beere  
Councillor John Broad  
Councillor Hugo Brown  
Councillor Phil Chapman  
Councillor Colin Clarke  
Councillor Ian Corkin  
Councillor Chris Heath  
Councillor David Hughes  
Councillor Mike Kerford-Byrnes  
Councillor Cassi Perry  
Councillor Lynn Pratt  
Councillor George Reynolds  
Councillor Barry Richards  
Councillor Les Sibley

#### Substitute Members:

Councillor Conrad Copeland (In place of Councillor Katherine Tyson)

#### Apologies for absence:

Councillor Simon Holland  
Councillor Katherine Tyson

#### Officers:

Sarah Stevens, Interim Senior Manager – Development Management  
James Kirkham, Principal Planning Officer  
Matt Chadwick, Principal Planning Officer  
Jennifer Crouch, Solicitor  
Lesley Farrell, Democratic and Elections Officer

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### **Declarations of Interest**

#### **7. Land North of Hill Farm, Hill Farm Lane, Duns Tew, OX25 0JJ.**

Councillor James Macnamara, Declaration, as he knew the landowner of the application site

#### **8. Land Adj To Unit E25, Telford Road, Bicester.**

Councillor Les Sibley, Non Statutory Interest, as a member of Bicester Town Council which had been consulted on the application.

Councillor Lynn Pratt, Non Statutory Interest, as a member of Bicester Town Council which had been consulted on the application.

63 **Requests to Address the Meeting**

The Chairman advised that requests to address the meeting would be dealt with at each item.

64 **Minutes**

The Minutes of the meeting held on 13 August were agreed as a correct record subject to the following amendments and would be signed by the Chairman in due course:

The addition of Councillor Andrew Beere, Councillor Colin Clarke and Councillor Barry Richards having made a declaration of non-statutory interest in items 6,8 and 9 as a member of Banbury Town Council which had been consulted on these applications.

Councillor Barry Richards having made a declaration of non-statutory interest in item 7 as a member of Banbury Town Council which had been consulted on the application.

65 **Chairman's Announcements**

There were no Chairman's announcements.

66 **Urgent Business**

There were no items of urgent business.

67 **Land North of Hill Farm, Hill Farm Lane, Duns Tew, OX25 0JJ**

The Committee considered application 20/00574/F for the installation of a standalone Solar PV array, associated infrastructure, grid connection, access and landscaping at Land North of Hill Farm, Hill Farm Lane, Duns Tew OX25 0JJ for Greenheath NRG Limited.

Cannon Christopher Hall addressed the Committee in support of the application.

It was proposed by Councillor Mike Kerford-Burns and seconded by Councillor Hugo Brown that application 20/00574/F be approved subject to

the period of landscape maintenance being extended to 10 years and enforcement of construction traffic conditions.

In reaching its decision the Committee considered the officer's report and presentation and the address of the public speaker.

## **Resolved**

- (1) That authority be delegated to the Assistant Director for Planning and Development to grant permission for application 20/00574/F subject to no material planning considerations being raised before the expiry of the consultation period and the following conditions (and any amendments to those conditions as deemed necessary):

### **CONDITIONS**

#### **Time Limit**

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

#### **Compliance with Plans**

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Duns Tew Energy Park location Plan (PV-0446-02 Rev 9,3); Site Layout Plan (PV-0446-02 Rev 28.5); 20 ft Storage Cont. Elevation Plan (1939/D003 v.1); Outside of Redline Boundary Planting Scheme (PL401 Rev P04); Security Fencing (1939/D001 v.1); Table 4L11 20° for PV-Panel QCells QPLUS-G4 1670x1000x32 (17010001 Rev A); Access Road / CCTV Detail (1939/D002 v.1); 40 ft Storage Cont. Elevation Plan (1939/D004 v.1); Hill Farm, North Aston Road, Duns Tew Proposed Access Track (Appendix 6.1); Proposed Construction Access (Appendix 6.2); Hill Farm, North Aston Road, Duns Tew Proposed Field Access (Appendix 6.3) and Tracking Analysis 16.5m Artic Vehicle (4159-TR02 Rev A).

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

#### **Temporary Permission**

3. The permission shall expire no later than 40 years from the date when electricity is first exported from any part of the array to the electricity grid network ('First Export Date'). Written confirmation of the First Export Date shall be provided to the Local Planning Authority no later than one calendar month after the event.

Reason - In order to safeguard the amenities of the area and protect the rural character of the landscape and to comply with Policies ESD 13 and ESD15 of the Cherwell Local Plan 2011-2031 and saved Policy C28 of the

Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

4. Not later than 24 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted to and approved by the Local Planning Authority, such scheme to include the management and timing of any works and traffic management plan to address likely traffic impact issues during the decommissioning period. The approved scheme shall be fully implemented within 12 months of the expiry of this permission.

Reason - To ensure the environment is protected during decommission in accordance with saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

#### **Landscaping Implementation**

5. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policies ESD10, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

#### **Landscape Maintenance**

6. Prior to the clearance of the site a schedule of landscape maintenance for a minimum period of 10 years, to include the timing of the implementation of the schedule and procedures for the replacement of failed planting shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the landscape maintenance shall be carried out in accordance with the approved schedule.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 and saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

#### **Archaeology**

7. Prior to any demolition and the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.

Reason - To safeguard the recording of archaeological matters within the



site in accordance with the NPPF.

8. Following the approval of the Written Scheme of Investigation referred to in condition 7, and prior to any demolition on the site and the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority within two years of the completion of the archaeological fieldwork.

Reason – To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through publication and dissemination of the evidence in accordance with the NPPF (2019).

### **Ecology**

9. The development hereby approved shall be carried out in accordance with the recommendations set out in Sections 5 and 7 of the Preliminary Ecological Appraisal carried out by Western Ecology dated August 2019

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

### **Flood risk and biodiversity**

10. The development shall not be carried out other than in accordance with the submitted flood risk assessment reference 2640/FRA, version D4, by Hafren Water, dated May 2020 and the following mitigation measures:
  - All built development must be located within Flood Zone 1
  - The solar structures shall be designed to be open to flood water

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

Reason - To ensure that fluvial flood risk is not increased off site in accordance with the requirements of Policy ESD6 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the NPPF.

11. No development shall take place until a scheme for the provision and management of a minimum eight metre wide ecological buffer zone alongside the Deddington Brook has been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be carried out in accordance with the approved scheme.

Any subsequent variations shall be agreed in writing by the local planning authority, in which case the development shall be carried out in accordance with the amended scheme. The buffer zone scheme shall be free from built development including lighting and fencing. The scheme shall include:

- plans showing the extent and layout of the buffer zone which should be a minimum 8 metre width, measured from the top of the bank and where possible include all of flood zone 3.
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

Reason - To reduce flood risk locally and make provision for biodiversity enhancements in accordance with the requirements of Policies ESD6 and ESD10 of the Cherwell Local Plan 2011-2031 Part 1. Such details are required prior to development commencing to ensure this buffer zone is protected during construction so that there is no risk of increased flooding.

### **Lighting**

12. No external lighting shall be installed within the site area unless agreed in writing with the Local Planning Authority.

Reason - To safeguard the amenities of the area and to ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework

### **Highways**

13. The vision splays shown on drawing number Appendix 6.2 shall not be obstructed by any object, structure, planting or other material of a height exceeding 0.6m measured from the carriageway level.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework

14. The development shall be carried out in strict accordance with the recommendations set out within the Construction Traffic Management Plan Revision B prepared by ADL Traffic and Highways Engineering Ltd dated April 2020.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework

15. No development shall commence unless and until full design details of the proposed gatehouse, security gate and fencing as shown on drawing titled 'Proposed Construction Access' (Appendix 6.2) have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details.

Reason - In the interests of the visual amenities of the area and to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

### **Removal of PD**

16. Notwithstanding the provisions of Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 and its

subsequent amendments, no gate, fence, wall or other means of enclosure shall be erected, constructed or placed on the site other than those approved as part of this consent without the grant of further specific planning permission from the Local Planning Authority.

Reason - In the interests of preserving the intrinsic natural beauty of the countryside from inappropriate development in accordance with the requirements of Policy ESD13 of the Cherwell Local Plan 2011-2031 Part 1.

17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, replacing or re-enacting that Order) no fixed plant or machinery, buildings or structures shall be erected, altered, extended or installed at the site without the grant of further specific planning permission from the local planning authority other than that which is explicitly approved by this permission.

Reason - To ensure that further works do not result in significant cumulative harm to the natural environment in accordance with the requirements of Policies ESD10 and ESD13 of the Cherwell Local Plan 2011-2031.

68 **Land Adj to Unit E25, Telford Road, Bicester**

The Committee considered application 19/02081/F for the erection of four Class B2 units of varying sizes with associated car parking and landscaping at Land adjacent to Unit E25 Telford Road, Bicester for Knight. This application was a re-submission of application 19/00545F.

In reaching its decision the Committee considered the officer's report and presentation.

**Resolved**

- (1) That authority be delegated to the Assistant Director for Planning and Development to grant permission for application 19/02081/F subject to:
- 1) The completion of a planning obligation under section 106 of the Town and Country Planning Act 1990, as substituted by the Planning and Compensation Act 1991, to secure the following (and any amendments as deemed necessary:
    - a) Provision of £9,000 (index linked) for improvements to bus stop on Boston Road
    - b) Provision of £1,240 Travel Plan Monitoring Fee
    - c) An objection to enter into a S278 Agreement to secure the following:
      - Design and construction of new signalised crossing on Launton Road approximately 30 metres west of the junction with Boston Road.
      - Removal of existing pedestrian refuge.
      - Surfacing works either side of the proposed crossing.

- 2) The following conditions (and any amendments to those conditions deemed necessary):

### CONDITIONS

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Application forms, Flood Risk Assessment and Drainage Statement, prepared by Infrastruct CS Ltd, reference 2536- ICS-XX-RP-C-001D, Revision D, dated 4 August 2020, Transport Statement (Ref 502.0057/TS/4, Reptile Survey Report (Ref 20-3086 V.2 June 2020), Extended Phase 1 Survey Report (Ref 18-3223 V3 June 2020) and drawing numbers 100F, 101K, 102K, 103H, 104D and 105F

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

3. Prior to the commencement of works a Construction Traffic Management Plan (CTMP) shall be submitted to the Local Planning Authority and agreed in writing. This should identify;
- The routing of construction vehicles and management of their movement into and out of the site by a qualified and certificated banksman,
  - Access arrangements and times of movement of construction vehicles (to minimise the impact on the surrounding highway network),
  - Details of wheel cleaning / wash facilities to prevent mud, etc from migrating on to the adjacent highway,
  - Contact details for the Site Supervisor responsible for on-site works,
  - Travel initiatives for site related worker vehicles,
  - Parking provision for site related worker vehicles,
  - Details of times for construction traffic and delivery vehicles, which must be outside network peak and school peak hours,
  - Engagement with local residents

Thereafter the development shall be carried out in strict accordance with the approved details.

Reason: In the interests of highway safety and to mitigate the impact of construction vehicles on the surrounding network, road infrastructure and local residents, particularly at peak traffic times.

Note: The CTMP should follow Oxfordshire County Council's template.

4. Prior to commencement of development, details of measures to be incorporated into the proposals demonstrating how Secured by Design (SBD) principles and standards on physical security will be integrated shall be submitted to and approved in writing by the authority. The development will thereafter be carried out in accordance with the approved details.

Reason: To reduce the potential for crime in accordance with Policy ESD15 of the Cherwell Local Plan Part 1 (2015) and advice in the National Planning Policy Framework.

5. Prior to any works above slab level full details of the pedestrian access to the site from Telford Road including street lighting has been submitted and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details prior to the first occupation of the development and thereafter retained.

Reason: To provide pedestrian access to the site and to encourage sustainable forms of travel in accordance with Policy SLE4 of the Cherwell Local Plan Part 1 (2015) and advice in the National Planning Policy Framework.

6. Notwithstanding the details on the approved plans, prior to any works above slab level full details of the cycle parking areas, including dimensions and means of enclosure, shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall not be brought into use until the cycle parking areas and means of enclosure have been provided within the site in accordance with the approved details and thereafter the areas shall be retained solely for the purpose of the parking of cycles.

Reason: To encourage the use of sustainable modes of transport in accordance with Policy SLE4 of the Cherwell Local Plan and advice in the National Planning Policy Framework.

7. (a) Prior to the commencement of development above slab level, a design stage BREEAM certificate confirming that the development shall be constructed to at least a BREEAM Very Good standard shall be submitted to and approved in writing by the Local Planning Authority.

(b) Within 6 months of the occupation of the development hereby permitted, a final BREEAM certificate shall be submitted confirming that the development has achieved BREEAM Very Good standard.

Reason: To ensure energy and resource efficiency practices are incorporated into the development in accordance with Policy ESD1 and ESD3 of the Cherwell Local Plan 2011-2031 Part 1, and the Government's aim to achieve sustainable development as set out in the National Planning Policy Framework.

8. Prior to the first use of the development hereby permitted a framework travel plan shall be submitted and approved to the Local Planning Authority (LPA) for approval before first occupation of the site. Thereafter, the approved Travel Plan shall be implemented and operated in accordance with the approved details.

Reason: To promote sustainable modes of transport in accordance with Policy SLE4 of the Cherwell Local Plan Part 1 (2015) and advice in the National Planning Policy Framework.

9. No development shall take place until a Detailed Design, Surface Water Management Strategy and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The Detailed Design shall be based upon the Outline Design principles set out in the following documents and drawings:

- 2536-ICS-RP-C-07.001C - Flood Risk Assessment and Drainage Strategy (1) – Revision C, dated 4th June 2020.
- 2536-TELF-ICS-01-XX-DR-C-0200-S2-P06 - Proposed Drainage Strategy
- 2536-TELF-ICS-01-XX-DR-C-0206-S2-P04 - Flood Volumes Comparison Proposed
- 2536-TELF-ICS-01-XX-DR-C-0205-S2-P04 - Flood Volumes Comparison Existing
- 2536-TELF-ICS-01-XX-DR-C-0210-S2-P04 - Flood Zone Map

The details shall include a compliance report to demonstrate how the scheme complies with the "Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire", Detailed design drainage layout drawings of the SuDS proposals including cross section details, detailed design clearly demonstrating how exceedance events will be managed and Pre and Post development surface water flow paths to be identified on plan. The Drainage Maintenance Plan shall be in accordance with Section 32 of CIRIA C753 including

maintenance schedules for each drainage element, to be prepared and submitted as stand-alone document including contact details of any management company.

The approved drainage system shall be implemented in strict accordance with the approved Detailed Design prior to the use of the building commencing and shall thereafter be managed and maintained in accordance with the approved management and maintenance plan in perpetuity.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter in accordance with Policy ESD7 of the Cherwell Local Plan Part 1 and Government guidance within the National Planning Policy Framework

10. No development shall not commence above slab level until full details of the sustainability and energy proposals (based on the submitted report) has been submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the first occupation of the buildings hereby permitted and unless otherwise agreed in writing by the Local Planning Authority shall be retained as such thereafter.

Reason: To encourage the use of sustainable construction and renewable energy in accordance with Policy ESD1 to ESD5 of the Cherwell Local Plan and advice in the National Planning Policy Framework.

11. A method statement for enhancing biodiversity on site, to include features integrated into the fabric of the buildings, planting and bird and bat boxes, shall be submitted to and approved in writing by the Local Planning Authority prior to the development reaching slab level. Thereafter, the biodiversity enhancement measures approved shall be carried out prior to occupation and retained in accordance with the approved details.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within Section 15 of the National Planning Policy Framework.

12. Prior to the first occupation of the development, a scheme for the provision of vehicular electric charging points to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The vehicular electric charging points shall be provided in accordance with the approved details prior to the first occupation of any part of the development, and retained as such thereafter.

Reason: To comply with Policies SLE 4, ESD 1, ESD 3 and ESD 5 of the adopted Cherwell Local Plan 2011-2031 Part 1 and to maximise opportunities for sustainable transport modes in accordance with paragraph 110(e) of the National Planning Policy Framework.

13. Prior to the first occupation of any building hereby approved, a record of the approved SuDS details shall be submitted to and approved in writing by the Local Planning Authority for deposit in the Lead Local Flood Authority Asset Register. The details shall include:

- As built plans (in both .pdf and .shp file format);
- Photographs to document each key stage of the drainage system when installed on site;
- Photographs to document the completed installation of the drainage structures on site.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter in accordance with Policy ESD7 of the Cherwell Local Plan Part 1 and Government guidance within the National Planning Policy Framework and section 21 of the Flood and Water Management Act 2010.

14. A scheme for landscaping the site shall be provided to and approved in writing by the Local Planning Authority which shall include:-

(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch etc),

(b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,

(c) details of the hard landscaping including hard surface areas, pavements, pedestrian areas and steps.

Such details shall be provided prior to the development progressing above slab level. The hard landscaping shall be provided prior to the first occupation of the development and the approved soft scheme shall be implemented by the end of the first planting season following occupation of the development.



Reason: To ensure that a satisfactory landscape scheme is provided in the interest of well planned development and visual amenity and to accord with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

15. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner, and shall be maintained for a period of 5 years from the completion of the development. Any trees and/or shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent for any variation.

Reason: To ensure that the agreed landscaping scheme is maintained over a reasonable period that will permit its establishment in the interests of visual amenity and to accord with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

16. A schedule of materials and finishes to be used in the external walls and roof(s) of the buildings shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of those works. The development shall thereafter be completed in accordance with the approved details.

Reason: To ensure that the materials are appropriate to the appearance of the locality and to ensure the satisfactory appearance of the completed development in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

17. Prior to the first occupation of the development the parking, turning and loading and unloading shown on the approved plan(s) shall be provided on site and shall be permanently set aside and reserved for that purpose.

Reason: In the interests of highway safety, to ensure the provision of adequate off-street car parking [and turning/loading/unloading] to comply with Government guidance in the National Planning Policy Framework.

18. The development hereby approved shall be carried out in strict accordance with the following details unless otherwise agreed under a separate discharge of planning condition:

- Recommendations at Sections 9.9, 9.13, 9.15, 9.21, 9.23 of Extended Phase 1 Survey Report Lockhart Garratt June 2020).
- Reptile Mitigation Strategy outlined in Section 6, Reptile Survey report, Lockhart Garratt, June 2020
- Recommendations at Section 6 of Bats – Tree Inspection Report, Lockhart Garratt (Ref 20-3123 Version 1)

Reason: To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework

19. The development shall be carried out in strict accordance with the submitted Flood Risk Assessment and Drainage Statement, prepared by Infrastruct CS Ltd, reference 2536-ICS-XX-RP-C-001D, Revision D, dated 4 August 2020, including the following mitigation measures:

- Finished floor levels shall be set no lower than 69.80 metres above Ordnance Datum (AOD).
- 164m<sup>3</sup> of compensatory floodplain compensation storage shall be provided
- A floodable void as outlined in Section 5.2 and shown in Drawings no. 104 – Front elevation and section proposed and no. 105 – Rear and side elevations proposed shall be provided underneath the building

These mitigation measures shall be fully implemented prior to the first occupation of the building. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: This condition is sought in accordance with paragraph 163 of the National Planning Policy Framework to reduce the risk of flooding on-site and elsewhere. In particular to reduce the risk of flooding to the proposed development and future occupants, to prevent flooding elsewhere by ensuring that compensatory storage of flood water is provide and to prevent flooding elsewhere by ensuring that the flow of flood water is not impeded and the proposed development does not cause a loss of floodplain storage

20. If during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted,

and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: This site has been previously land filled. Although the site investigation concluded that the site does not pose a threat to controlled water, there is the possibility that undetected contamination may exist on site.

- (3) That it be further resolved that as the statutory determination period for this application expired on 30 September 2020, if the Section 106 agreement/undertaking was not able to be issued by that date and no extension of time had been agreed between the parties, that authority be delegated to the Assistant Director for Planning and Development to refuse the application for the following reason:
1. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides adequate highway infrastructure to encourage sustainable means of Transport to make the impacts of the development acceptable in planning terms contrary to Policy SLE4 and ESD15 of the Cherwell Local Plan Part 1 (2015) and advice in the National Planning Policy Framework.

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### **Appeals Progress Report**

The Assistant Director Planning and Development submitted a report which informed Members on applications which had been determined by the Council, where new appeals have been lodged, public inquiries/hearings scheduled, or appeal results achieved.

The Interim Senior Manager for Planning and Development responded to questions from the Committee regarding the Appeals process.

### **Resolved**

- (1) That the position statement be accepted.

The meeting ended at 4.42 pm

Chairman:

Date:

# Agenda Annex

## CHERWELL DISTRICT COUNCIL

Planning Committee - 8 October 2020

### PLANNING APPLICATIONS INDEX

The Officer's recommendations are given at the end of the report on each application.

Members should get in touch with staff as soon as possible after receiving this agenda if they wish to have any further information on the applications.

Any responses to consultations, or information which has been received after the application report was finalised, will be reported at the meeting.

The individual reports normally only refer to the main topic policies in the Cherwell Local Plan that are appropriate to the proposal. However, there may be other policies in the Development Plan, or the Local Plan, or other national and local planning guidance that are material to the proposal but are not specifically referred to.

The reports also only include a summary of the planning issues received in consultee representations and statements submitted on an application. Full copies of the comments received are available for inspection by Members in advance of the meeting.

#### **Legal, Health and Safety, Crime and Disorder, Sustainability and Equalities Implications**

Any relevant matters pertaining to the specific applications are as set out in the individual reports.

#### **Human Rights Implications**

The recommendations in the reports may, if accepted, affect the human rights of individuals under Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights. However, in all the circumstances relating to the development proposals, it is concluded that the recommendations are in accordance with the law and are necessary in a democratic society for the protection of the rights and freedom of others and are also necessary to control the use of property in the interest of the public.

#### **Background Papers**

For each of the applications listed are: the application form; the accompanying certificates and plans and any other information provided by the applicant/agent; representations made by bodies or persons consulted on the application; any submissions supporting or objecting to the application; any decision notices or letters containing previous planning decisions relating to the application site

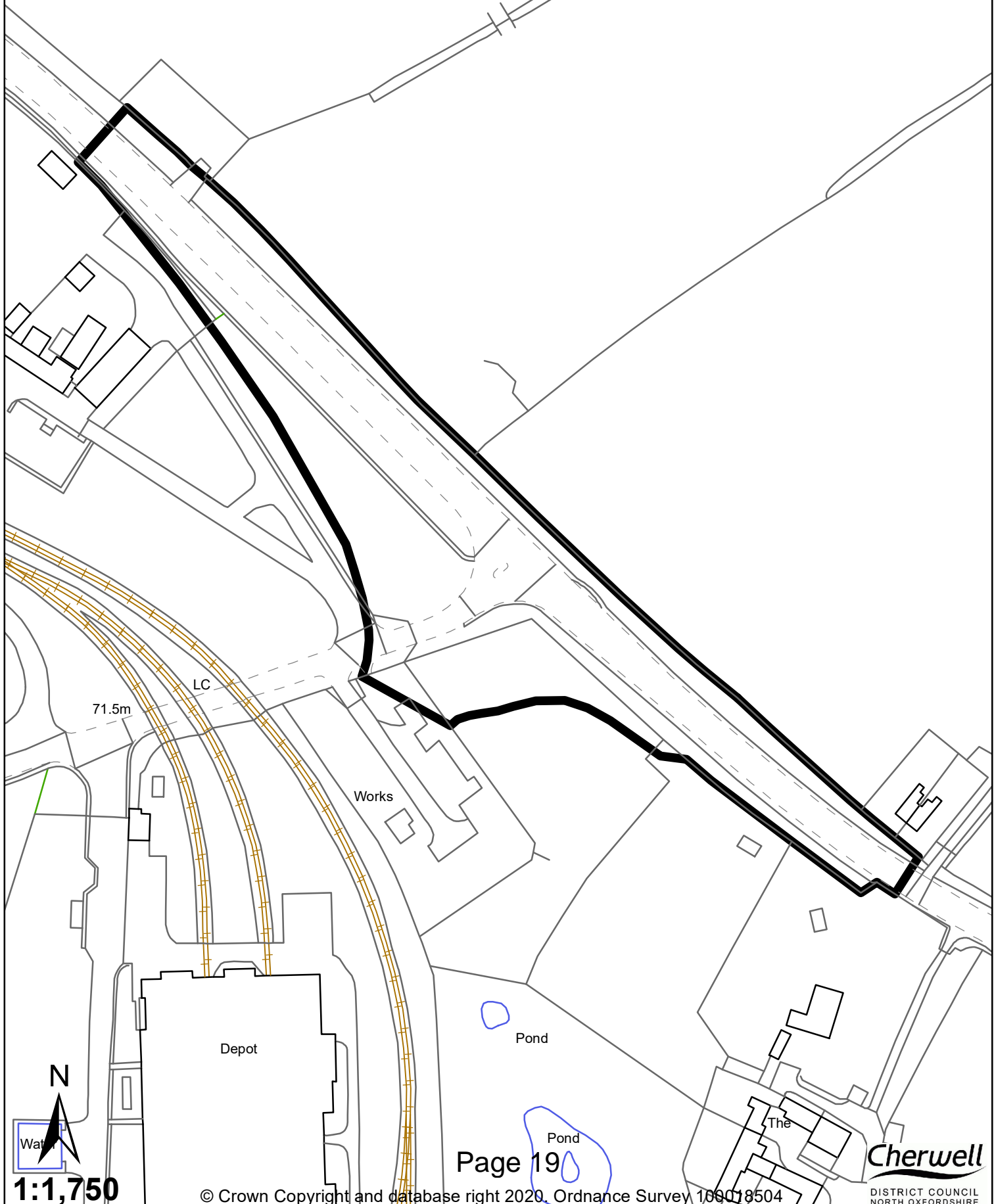
<b>Item No.</b>	<b>Site</b>	<b>Application Number</b>	<b>Ward</b>	<b>Recommendation</b>	<b>Contact Officer</b>
7	Proposed Roundabout Access to Graven Hill and Wretchwick Green, London Road, Bicester	20/01830/F	Bicester South and Ambrosden	*Grant Permission	Rebekah Morgan
8	Bicester Gateway Business Park, Wendlebury Road, Chesterton	20/0293/OUT	Fringford and Heyfords	*Grant Permission	Caroline Ford
9	OS Parcel 9635 North East of HM Bullingdon Prison, Widnell Lane, Piddington	20/01122/F	Launton and Otmoor	Refusal	Matthew Chadwick
10	Land South Side of Widnell Lane, Piddington	20/01747/F	Launton and Otmoor	Refusal	Matthew Chadwick
11	Land North and West of Bretch Hill Reservoir, Adj to Balmoral Avenue, Banbury	20/01643/OUT	Banbury Calthorpe and Easington	*Grant Permission	Matthew Chadwick
12	Magistrates Court, Warwick Road, Banbury, OX16 2AW	20/01317/F	Banbury Cross and Neithrop	*Grant Permission	James Kirkham
13	The Ley Community, Sandy Lane, Yarnton	20/01561/F	Kidlington West	*Grant Permission	James Kirkham
14	4 Drapers House, St Johns Road, Banbury, OX16 5BE	20/02123/DISC	Banbury Cross and Neithrop	*Grant Permission	Lewis Knox
15	17 Fair Close, Bicester, OX26 4YW	20/01993/F	Bicester East	*Grant Permission	Emma Whitley

16	Land Adjacent to the Oxford Canal, Spiceball Park Road, Banbury - 01854	20/01854/DISC	Banbury Cross and Neithrop	*Grant Permission	Samantha Taylor
17	Land Adjacent to the Oxford Canal, Spiceball Park Road, Banbury- 00125	20/00125/DISC	Banbury Cross and Neithrop	*Grant Permission	Samantha Taylor

\*Subject to conditions

# 20/01830/F

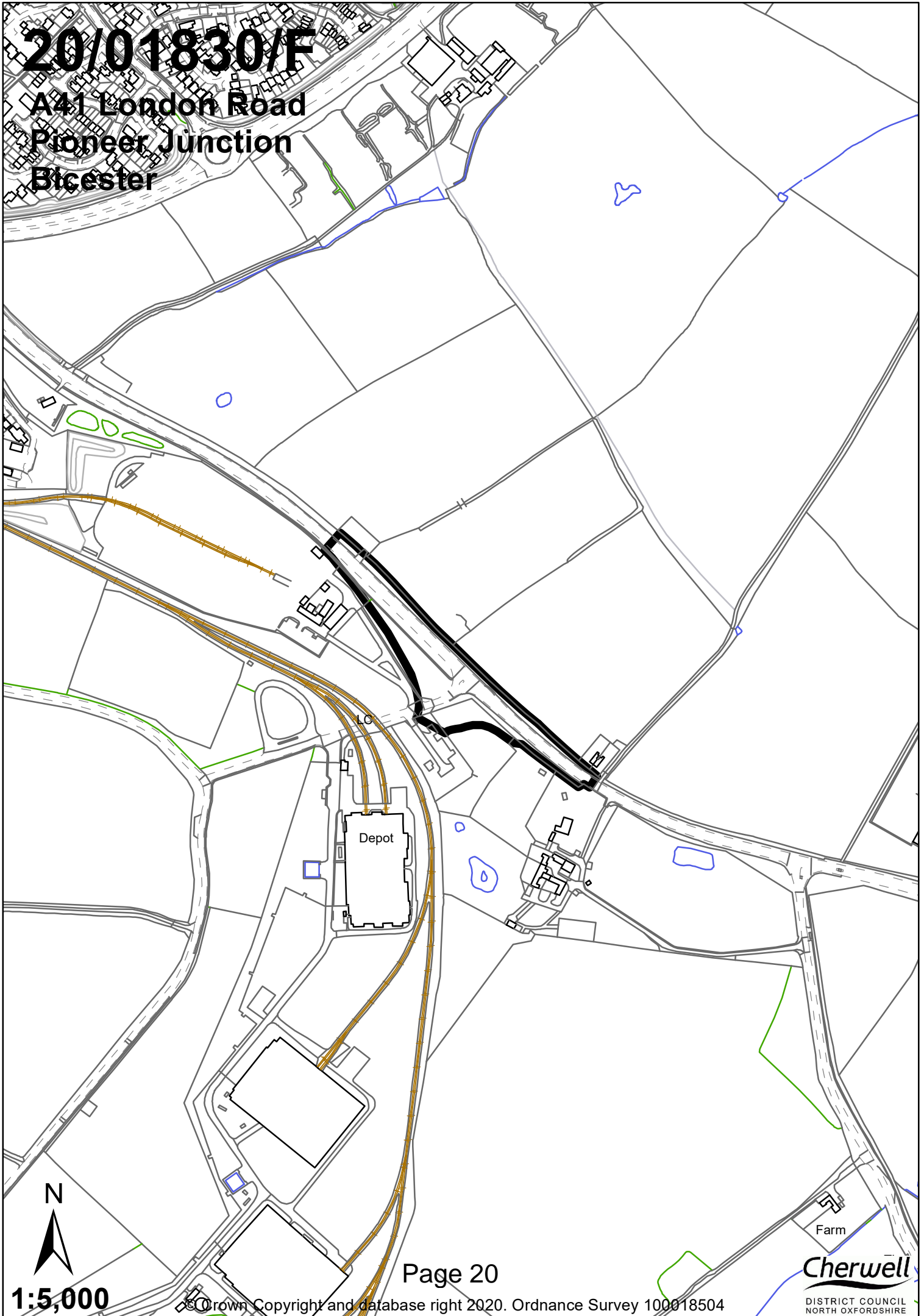
## A41 London Road Pioneer Junction Bicester



1:1,750

**20/01830/F**

**A41 London Road  
Pioneer Junction  
Bicester**





**Proposed Roundabout Access to Graven Hill and  
Wretchwick Green London Road Bicester**

**20/01830/F**

**Case Officer:** Rebekah Morgan

**Applicant:** Mr Adrian Unitt

**Proposal:** Proposed roundabout junction

**Ward:** Bicester South And Ambrosden

**Councillors:** Councillor Cotter, Councillor Sames and Councillor Wing

**Reason for Referral:** Major Development

**Expiry Date:** 8 October 2020

**Committee Date:**

8 October 2020

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**EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

**RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

**Proposal**

The application seeks consent for major junction improvement works at the Pioneer Road junction on the A41 (also known as the Aylesbury Road) in the form of a new roundabout.

**Consultations**

The following consultees have raised **objections** to the application:

- OCC Highways, Bicester Bike User Group

*Officer comment: OCC Highways have raised two technical points that they believe could be dealt with through the submission of amended drawings. Amended drawings have been submitted and we are awaiting further comments from OCC Highways.*

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

- Local Lead Flood Authority (OCC), OCC Archaeology, CDC Ecologist, CDC Environmental Protection Officer, CDC Landscape Officer, CDC Arboricultural Officer

11 letters of objection have been received and 1 letter of support has been received.

**Planning Policy and Constraints**

There are a number of protected species identified within the vicinity of the site and the site is within an area of archaeological interest. There is a public footpath which adjoins the A41 to the south of Wretchwick End Cottages; this is just beyond the application site boundary.

The proposed roundabout would provide access to two allocated sites: Policy Bicester 2 and Policy Bicester 12 of the Cherwell Local Plan 2031.

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:

- Principle of Development
- Transport and Highways
- Design and impact on the character of the area (including impact on trees and landscaping)
- Residential amenity (including noise)
- Ecology impact

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 application site comprises of a section of the A41 (and surrounding land) adjacent to the Graven Hill Development site in Bicester. The land within the red line boundary is a combination of adopted highway and land owned/controlled by the Graven Hill Development Company.
- 1.2. The section of road forms an existing T-junction at the A41 and Pioneer Road, providing an existing access to Graven Hill and the existing MOD barracks. The land is relatively flat across the site. Within the existing verge to the northwest and southeast of the existing Pioneer Road junction are a number of mature trees.

### **2. CONSTRAINTS**

- 2.1. Protected Species are identified as being present within the vicinity of the application site.
- 2.2. The site is within an area of high Archaeological interest.
- 2.3. There is a public footpath joining the A41 to the south of Wretchwick End Cottages; this is just beyond the application site boundary.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The application seeks consent for major junction improvement works at the Pioneer Road junction on the A41 (also known as the Aylesbury Road) in the form of a new roundabout.
- 3.2. The proposed roundabout includes four arms; the eastern and western arms of the A41, the northern arm to serve the future development at Wretchwick Green and the southern arm would tie into the proposed employment access road serving the Graven Hill development (The employment access road is the subject of a separate planning application 20/02415/F pending consideration). The proposal includes a reduction in the speed limit on the A41 to 40mph along the employment access application site frontage.

#### **4. RELEVANT PLANNING HISTORY**

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

11/01494/OUT – Outline scheme for the redevelopment of MOD Bicester (sites C, D and E) to provide a mixed-use development including up to 1900 homes, local centre, primary school, community hall, pub/restaurant/hotel, employment uses, and associated open space and infrastructure improvement works: APPROVED subject to a legal agreement on 8 August 2014.

15/02159/OUT – Variation of Conditions 2 (approved plans), 26 (masterplan and design code), 27 (reserved matters first phase), 32, 33 (building heights), 39, 40 (construction standards), 41, 42 (housing mix), 51, 52 (highways works), 56 (lighting scheme), 58 (internal access), 68 (approved drainage strategy) of 11/01494/OUT: APPROVED 3 June 2016.

15/02266/REM - Reserved matters (access, landscape and layout) in respect of the demonstrator plots (phases 01-A and 01-B) pursuant to 11/01494/OUT: APPROVED 4 March 2016.

16/01802/OUT – Variation of Condition 30 of 15/02159/OUT - Revised Design Code and Master Plan, and Removal of Condition 35 - Housing Mix. APPROVED 21 June 2017

16/01807/REM - Reserved matters to 16/01802/OUT - Reserved matters in respect of public areas in Phase 1a and part of phase 1b. APPROVED 6 October 2017

17/02352/REM - Reserved Matters to application 16/01802/OUT - layout, scale, appearance and landscaping in respect of public areas in Phase 1b. APPROVED 8<sup>th</sup> March 2019.

18/00325/OUT - Variation of conditions 2 (plans), 28 (Phasing), 30 (building heights), 32 (Residential Construction Standards), 33 (Non-Residential Construction Standards), 38 (Landscape Habitat Management Strategy), 46 (Archaeology), 57 (Entrance works), 63 (Phase 0 Masterplan), and 71 (Phase 1 Masterplan) and removal of condition 58 (Pioneer Junction works) of 16/01802/OUT APPROVED 3<sup>rd</sup> August 2018.

19/01998/NMA – Non Material Amendment to application 18/00325/OUT – Amended levels on parameter plans as set out in the attached list. APPROVED 24<sup>th</sup> October 2019.

19/00937/OUT - Variation of Conditions 2 (plans), 28 (Phasing) and 29 (Masterplan and design code) of 18/00325/OUT - to amend the site wide phasing plan and to include proposed earlier phasing for the employment land. (Original outline reference 11/01494/OUT, amended by 15/02159/OUT, 16/01802/OUT. Outline - Redevelopment of former MOD sites including demolition of existing buildings, development of 1900 homes; local centre to include a 2 form entry primary school (class D1), a community hall of 660sqm, five local shops or facilities to include A1, A2, A3, A5 and D1 uses totalling up to 1358sqm, up to 1000sqm gross A1 uses, a pub/restaurant/hotel (class A4/A3/C1) up to 1000sqm and parking areas; employment floor space comprising up to B1(a) 2160sqm, B1(b) 2400sqm, B1(c) and B2 20520sqm and B8 uses up to 66960sqm; creation of public open space and associated highway improvement works, sustainable urban drainage systems, biodiversity improvements, public transport improvements and services infrastructure. Erection of a 70400sqm fulfilment centre on 'C' site and associated

on site access improvement works, hardstanding, parking and circulation areas).  
APPROVED 3<sup>rd</sup> January 2020.

4.2. Relevant planning history associated with the site at South East Bicester (Wretchwick Green):

16/01268/OUT – Outline application with all matters reserved apart from access for residential development including up to 1,500 dwellings, up to 7ha of employment land for B1 and/ or B8 uses, a local centre with retail and community use to include A1 and/ or A2 and/ or A3 and/ or A4 and/ or A5 and/ or D1 and/ or D2 and/ or B1, up to a 3 Form Entry Primary School, drainage works including engineering operations to re-profile the land and primary access points from the A41 and A4421, pedestrian and cycle access, circulation routes, related highway works; car parking; public open space and green infrastructure and sustainable drainage systems.  
APPLICATION PENDING - COMMITTEE RESOLUTION TO APPROVE SUBJECT TO S106 AGREEMENT.

## 5. PRE-APPLICATION DISCUSSIONS

5.1. The following pre-application discussions have taken place with regard to this proposal:

19/00030/PREAPP Proposed Roundabout access to Graven Hill and Wretchwick Green

5.2. The District Council are supportive of the broad principle of a revised junction arrangement being provided in the location proposed, to serve the development committed to take place at both Graven Hill and Wretchwick Green. The permitted junction arrangement that forms part of the existing planning consent for Graven Hill would clearly not be sufficient to also meet the needs of Wretchwick Green. An amended solution, that meets the needs of both developments is sound infrastructure planning.

## 6. RESPONSE TO PUBLICITY

6.1. This application has been publicised as EIA development following the submission of additional information to support the original Environmental Statement. A site notice was displayed near the site, the application was advertised in the local newspaper, and letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **9 September 2020**, although comments received after this date and before finalising this report have also been taken into account.

6.2. The comments raised by third parties are summarised as follows:

- Increased traffic and traffic congestion
- Risk to public safety, in particular cyclists
- Increased noise and pollution
- Long-term construction disturbance
- Poor design and appearance – motor vehicle centred design
- Precedent for more junctions and traffic lights in Bicester
- Plan are insufficient for pedestrians and cyclists
- 3m is not wide enough for pedestrians and cyclists
- Plans do not include an allowance for cyclists using the road
- Opportunity to design and install a dutch style roundabout
- The timing and implementation of the roundabout are key to the delivery of housing on two development sites.

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## 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. AMBROSDEN PARISH COUNCIL: Request the cycle way is widened to 3m wide all the way to Ploughley Road.

### CONSULTEES

7.3. OCC HIGHWAYS: **Objections** for the following reasons:

- Shared use ped/cycle facilities around the roundabout should conform to LTN 1/20 and therefore require to be segregated
- The signalised crossings should be straight across rather than staggered to minimise delay to pedestrian and cyclists.

It is anticipated that the recommended changes could be made and the objection overcome.

*Officer note: Amended drawings have been submitted and officers are awaiting further comments from the Local Highway Authority.*

7.4. LOCAL LEAD FLOOD AUTHORITY (OCC): No objection, subject to conditions. The proposed drainage strategy is predominantly reliant on Filter drains and the attenuation basin in the centre of the roundabout which is acceptable in principle.

7.5. OCC ARCHAEOLOGY: No objection subject to conditions. The site is partly covered by hardstanding and trees which would make investigations ahead of the determination of this application unfeasible and a staged programme of archaeological evaluation and mitigation will therefore need to be undertaken ahead of any development of this proposal.

7.6. CDC ECOLOGIST: No objections subject to conditions. Two responses have been received relating to the initial ecological impact assessment and the updated version that has been submitted.

Conditions have been recommended requiring a Construction Environment Management Plan (CEMP) for ecology, adherence to sections of the Ecological Impact Assessment in relation to reptiles, nesting birds and bats, licence requirement for Great Crested Newts, Mitigation measures for Great Crested Newts and the requirement for new protected species surveys to be undertaken should a period of more than two years lapse.

With regards to net gain, it is noted that documents do not appear to detail any proposed enhancements on site for biodiversity for the application. This needs to be addressed and could be dealt with via a condition requiring a biodiversity enhancement scheme.

7.7. CDC ARBORICULTURAL OFFICER: Identifies a number of trees that require removal as part of the proposal. Focusing on the category B trees, it is understood their removal cannot be prevented in order to implement the highway layout, therefore it is suggested a significant replanting plan be commissioned should permission be granted in order to mitigate removal losses.

7.8. CDC LANDSCAPE OFFICER: Since this is a revised proposal to an already approved scheme for the roundabout and it is not materially different in landscape and visual terms. No objection is raised.

7.9. CDC ENVIRONMENTAL PROTECTION OFFICER:

Noise: Satisfied with the findings of the noise assessment. Requests a condition for a Construction Environment Management Plan (CEMP).

Contaminated land: No comments.

Air quality: No comments.

Light: No comments.

7.10. BICESTER BIKE USER GROUP (BBUG): **Object**, a number of concerns are raised regarding the proposed design of the roundabout:

- Grossly over capacity for motor vehicle traffic
- Replicates previously poorly designed roundabouts in Bicester
- The over capacity makes it impossible to make adequate provision for cyclists and pedestrians
- Alternative designs have been unworkable because their capacity has been grossly under underestimated in comparison to the over estimate for vehicle movements
- Concerns with the use of ARCADY software for modelling traffic flows
- Gross over capacity calculations result in rapacious land consumption and excessive construction costs. It also encourages unlawful motor vehicle speeds once complete which could be disastrous.
- No attempt to maximise walking and cycling provision within the design.
- Suggest a Dutch style approach to the roundabout design should be considered.
- LTN 1/20 has a requirement for segregated cycle and pedestrian paths.
- Concerns are raised regarding the design process and the work commissioned by OCC to consider alternative design approaches.

Detailed and lengthy comments on all of the above points have been made in the submission and considered by the Local Highway Authority. A full copy of the comments can be viewed online.

## 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)

- PSD1 – Presumption in favour of sustainable development
- SLE4 – Improved transport and connections
- ESD15 - The Character of the Built and Historic Environment
- BICESTER 2 – Graven Hill
- BICESTER 12 – South East Bicester

## CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- ENV1 – Development likely to cause pollution

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Connecting Oxfordshire: Local Transport Plan 2015-2031
- Cycle Infrastructure Design: Local Transport Note 1/20 (July 2020)
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)

## **9. APPRAISAL**

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

- Environmental Impact Assessment
- Principle of development
- Transport and Highways
- Design and impact on the character of the area (including impact on trees and landscaping)
- Residential amenity (including noise)
- Ecology impact

### Environmental Impact Assessment

9.2. This application is a “subsequent application” in respect of the Environmental Impact Assessment Regulations 2017, and the application has therefore been screened under Regulations 6 and 9 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended).

9.3. Having undertaken this consideration, it is concluded that the Environmental Statement (ES) submitted to support the original planning application 11/01494/OUT and addendum to the ES which was submitted in support of application 18/00325/OUT remain adequate to assess the environmental effects of the development.

9.4. The PPG advises ‘The Local Planning Authority should take into account the information in the Environmental Statement, the responses to consultation and any other relevant information when determining a planning application’. Proper consideration of these matters is integrated into the assessment of the application under the relevant sections below.

## Principle of Development

- 9.5. Section 9 of the National Planning Policy Framework (Promoting sustainable transport) requires 'transport issues to be considered at the earliest stages of plan making and development proposals, so that any potential of the development on transport networks can be addressed' (para 102).
- 9.6. Policy Bicester 2 (Graven Hill) and Policy Bicester 12 (South East Bicester) of the Cherwell Local Plan 2031 each allocate strategic development sites that will deliver a significant amount of housing and employment uses on the southern side of Bicester. The two allocated sites are located to the southwest and northeast of the A41 respectively. It is anticipated that the spine road for Wretchwick Green (South East Bicester development) will join the A41 opposite the Pioneer Road junction which serves Graven Hill. The need for highway improvements at the junction have been identified to mitigate the highways impacts of the two allocated sites.
- 9.7. A similar roundabout located slightly to the northeast of the A41, formed part of the planning application for Wretchwick Green (16/01268/OUT) as part of its access arrangements. The application has a planning committee resolution to approve the proposal subject to conditions and a Section 106 legal agreement. Furthermore, the Graven Hill outline application (see outline consents within planning history) also demonstrated the need for a roundabout at this junction.
- 9.8. This proposal has been submitted to ensure the timing of the delivery of the roundabout meets the needs of the Graven Hill development. The roundabout has been re-positioned so that it can be developed on highway land and land owned/controlled by Graven Hill Development Company.
- 9.9. The need for a roundabout to upgrade the Pioneer Road junction and the principle of the development has been established within the Wretchwick Green application. Whilst the Wretchwick Green application is still pending, in combination with the planning history for Graven Hill, it demonstrates that highway improvement works at this junction are essential to mitigate the impacts of the two allocated development sites. Therefore, the principle of development comprising of highway improvements works at the Pioneer Road junction is considered to be acceptable.

## Transport and Highways

### *Policy context*

- 9.10. Paragraph 108 of the National Planning Policy Framework states: *'In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:*
- a) *Appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
  - b) *Safe and suitable access to the site can be achieved for all users; and*
  - c) *Any significant impacts from the development on the transport network (in terms of capacity or congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree'*
- 9.11. Paragraph 109 of the National Planning Policy Framework states: *'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'*.



- 9.12. Policy SLE4 of the Cherwell Local Plan 2031 states *'All development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling. Encouragement will be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported'*.
- 9.13. Policy Bicester 2 (Graven Hill) of the Cherwell Local Plan 2031 sets out infrastructure needs for the development including *'Access and Movement – contribution to improvements to the surrounding local and strategic road networks. New points of access between the site and Bicester'*.
- 9.14. Policy Bicester 12 (South East Bicester – Wretchwick Green) of the Cherwell Local Plan 2031 sets out infrastructure needs for the development including *'Access and Movement – contributes to improvements to the surrounding local and strategic road networks. Safeguarding of land for future highway capacity improvements to peripheral routes'*.
- 9.15. Local Transport Note 1/20 (LTN 1/20) provides guidance and good practice for the design of cycling infrastructure, in support of the Cycling and Walking Investment Strategy. The scope of the document is limited to design matters.
- 9.16. LTN 1/20 states *'The guidance contains tools which give local authorities flexibility on infrastructure design and sets a measurable quality threshold to achieve when designing cycle schemes*. It sets out five core design principles for cycle schemes: Coherent, direct, safe, comfortable and attractive.

#### *Assessment*

- 9.17. The proposal is for a new four-arm roundabout on the A41, that would provide a second access into the Graven Hill site (forming the main access for the employment land within the Graven Hill development), and access into the Wretchwick Green development.
- 9.18. The roundabout that formed part of the Wretchwick Green proposal (set out in application 16/01268/OUT) would no longer be required if this proposal proceeds. The design makes provision for a connection from the Wretchwick Green development site.
- 9.19. The application has been submitted with an accompanying transport assessment.
- 9.20. As set out above, the principal of a roundabout in this location (to provide the necessary highway improvements to mitigate the two allocated development sites) has been established in both the previous Graven Hill planning applications and the Wretchwick Green planning application.
- 9.21. With regards to the design, the Local Highway Authority have provided the following detailed comments:

*'The proposed design conforms to DMRB standards (as set out in the Transport Assessment) in terms of its geometry, and is appropriate for the current speed limit, notwithstanding the proposal for the speed limit to be reduced to 40mph along the Graven Hill frontage. It is important to note that OCC would not be able to accept a design that was not in accordance with current speed limits. The design has also been modelled to show that it can provide sufficient traffic capacity in 2031 with acceptable levels of queueing and delay.*

*Vehicle swept path analysis provided with the application demonstrates that the turning movements of the largest HGVs can be accommodated without the need to overrun kerbs.*

*Signalised crossings are proposed on all of the arms of the junction, to cater for pedestrian and cycle movements. Whilst they involve a small detour from the desire line, they are positioned as close to the roundabout as possible for safety, in accordance with guidance. The small time advantage to pedestrians and cyclists of placing the crossings closer to the roundabout would be outweighed by the safety risk caused by drivers exiting the roundabout not giving way.*

- 9.22. The Local Highway Authority are content with the general design approach and design that has been submitted. Overall, this approach will provide a safe and accessible solution for all highway users. The comments go on to highlight two areas where minor amendments are required:

*'The form of crossing also conforms to the latest Government guidance on Cycle Infrastructure Design (LTN 1/20), which was published on 27 July 2020. However, consideration should be given to making the staggered crossing on the A41 W arm into a single phase, to minimise delay to pedestrians and cyclists. I would like to see this tested.*

*The width of the shared use facility at the roundabout does not conform to LTN 1/20, which requires segregation between pedestrians and cyclists. It should be amended to conform to LTN 1/20 and to be consistent with the facilities planned on the new roads leading into Graven Hill and Wretchwick Green. Sufficient space should be allowed for pedestrians and cyclists to wait at the crossings without obstructing the path of passing pedestrians and cyclists.*

- 9.23. The Local Highway Authority consider that both of these points can be overcome through the submission of amended drawings. Amended drawings have now been submitted to address the points raised further comments from the Local Highway Authority are awaited and an update will be provided to the committee.
- 9.24. A final point notes the existing shared use footway/cycleway along the western side of the A41 is substandard and the Local Highway Authority have aspirations to widen this. However, it is acknowledged this area is outside the scope of the application, so until such a time when the improvements are made, the new facilities will need to tie in safely, with warning signs if necessary.
- 9.25. The Bicester Bike User Group (BBUG) have submitted a lengthy representation which raises a number of concerns with the proposed design. Primarily, the concerns centre around a view that the design is based on an over estimated capacity requirement which in turn results in an over engineered design. Criticism has been raised regarding the modelling method used by the applicant's consultants and the assumptions that have been inputted into the models.
- 9.26. There has been ongoing correspondence throughout the application process between the Local Highway Authority and BBUG's representative. The Local Highway Authority has provided a table of further comments to specifically address the issues being raised by BBUG. It concludes that the opinion of the Local Highway Authority Officer is that *'the proposed design (with the changes that have been requested) offers high quality, safe pedestrian and cycle infrastructure which will encourage walking and cycling by all users, and is suitable within the context of the location on a busy, strategic junction on the edge of Bicester'*.

- 9.27. BBUG and some of the public comments have suggested a 'Dutch Style' roundabout should be considered which gives priority to pedestrians and cyclist. Neither the Council nor the Local Highway Authority can insist that an applicant submit an alternative design; our role is to assess the submitted proposal and consider if it suitably addresses the highway issues.
- 9.28. The Local Highway Authority's role within the planning application process is to act as a technical consultee with expert knowledge on matters relating to highways and transport. Subject to some minor amendments, the Local Highway Authority is advising that the design is an acceptable and safe solution to the required junction improvements.

#### *Conclusion*

- 9.29. Subject to amended drawings to overcome the two points raised by the Local Highway Authority, the proposal will provide an adequate and safe means of access to the two allocated development sites. The Local Highway Authority have considered the detailed points raised by third parties and still consider the roundabout design, as proposed, makes adequate and safe provision for all users (including pedestrians and cyclists).
- 9.30. It is expected that amendments can be made to overcome the two technical points raised by the Local Highway Authority prior to the determination of the application. Therefore, subject to the receipt of satisfactory amendments, the proposal is considered to be acceptable and to comply with Government Guidance contained within the National Planning Policy Framework and Policy SLE4 of the Cherwell Local Plan 2031.

#### Design and impact on the character of the area (including impact on trees and landscaping)

- 9.31. Policy ESD15 of the Cherwell Local Plan 2031 seeks high quality design for developments and supports the efficient use of land and infrastructure, through appropriate land uses, mix and density/development intensity.
- 9.32. Policy SLE4 of the Cherwell Local Plan 2031 supports the implementation of the proposals in the Movement Strategies and Local Transport Plan to deliver key connections, to support modal shift and to support more sustainable locations for employment and housing growth.
- 9.33. As set out in the section above, the provision of a roundabout on the A41 is necessary to mitigate the impacts of both the Graven Hill and Wretchwick Green sites. The roundabout will serve both of these developments (circa 3200 dwellings and employment uses), whilst continuing to serve a key transport route in/out of Bicester. As such, the roundabout will be a significant piece of highway infrastructure, which is large in size.
- 9.34. The design of the roundabout is typical for this type of infrastructure and will come with all the normal paraphernalia such as safety railings, traffic signals and signage. Due to the nature of highway infrastructure, it is important the roundabout is visible from all approaches and is not hidden by landscaping for highway safety reasons.
- 9.35. Due to the scale of the roundabout (and the need for it to be contained within the existing highway boundary and land currently owned/controlled by the Graven Hill Development Company), the proposal requires the removal of approximately 50 trees, including a large proportion on the western side of the A41.

- 9.36. The Council's arboricultural officer has considered the proposal and stated the trees are made up of a mixture of Category B, C and U trees. Category C and U trees are of the lowest quality and it is stated they should not pose a constraint to the development. Category B trees are of moderate quality or value capable of making a significant contribution to the area for 20 or more years. Focussing on the category B trees (15 in total), it is acknowledged that the removal is necessary in order to implement the highway layout, and therefore it is recommended that a re-planting scheme is conditioned to mitigate the impacts of the development.
- 9.37. Due to the nature of highway infrastructure, the roundabout will be visible as you approach it from all directions, however it will not appear out of keeping as this type of structure is expected in this context. Overall, the design of the proposal is considered to be appropriate in terms of visual impact on the wider area. Officers therefore conclude that the proposal complies with Policy ESD15 and SLE4 of the Cherwell Local Plan 2031.

#### Residential amenity (including noise)

- 9.38. The proposed roundabout is providing highway improvements to the existing highway network to mitigate the impacts of two large development sites that have been allocated within the Cherwell Local Plan 2031.
- 9.39. The nearest existing residential properties are located to the southeast adjacent to the A41. Both of the allocated developments include the provision of a significant number of dwellings, however the parcels of land closest to the proposed roundabout will be subject to reserved matters applications at a later stage, so the exact position of the dwellings are unknown.
- 9.40. The Council's Environmental Protection Officer has raised no objections in terms of potential impacts of noise. Although the proposed roundabout is envisaged to be a busy junction, this was anticipated with the allocation of the development sites. Both developers will be able to consider the position of the roundabout and main road when designing layouts to mitigate any potential noise.
- 9.41. The existing dwellings (to the southeast) are located adjacent to the A41 (an existing busy road) and the proposed roundabout is not considered to generate noise levels that would be detrimental to the occupiers of those dwellings. Furthermore, a condition is recommended to require the submission of a Construction Environment Management Plan (CEMP) which will include details of working hours for the proposed construction work.
- 9.42. The proposal would make amendments to the existing highway network and would not generate additional noise levels that would be detrimental to residential amenity. Therefore, the proposal is considered to be acceptable and to comply with Policy ESD15 of the Cherwell Local Plan 2031 in this regard.

#### Ecology Impact

##### *Legislative context*

- 9.43. 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.

- 9.44. 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.
- 9.45. 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.
- 9.46. 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.
- 9.47. 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*

- 9.48. 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.
- 9.49. 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.

- 9.50. 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.
- 9.51. 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.
- 9.52. 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.
- 9.53. 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.
- 9.54. 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*

- 9.55. 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')

- 9.56. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains a number of mature trees and hedgerows within and adjacent the site, and therefore has the potential to be

suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.

- 9.57. 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 EPS 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.
- 9.58. 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.
- 9.59. The application is supported by a detailed protected species survey which concluded that as a result of this ecology impact assessment and based on the Development plans received to date, GCN have been identified as an IEF and roosting bats have been identified as a potential IEF which are anticipated to be affected by the proposed development.
- 9.60. It goes on to state that further surveys for roosting bats and consultation with Natural England with regard to GCN mitigation requirements will be undertaken during the determination period of the application and detailed within an updated version of the report. An updated report has been submitted and considered by the Council's Ecologist.
- 9.61. The reports conclude that to ensure legal and planning policy compliance, mitigation measures will be provided as part of the scheme. The Council's ecologist has recommended conditions requiring a Construction Environment Management Plan (CEMP) for ecology, adherence to sections of the Ecological Impact Assessment in relation to reptiles, nesting birds and bats, licence requirement for Great Crested Newts, Mitigation measures for Great Crested Newts and the requirement for new protected species surveys to be undertaken should a period of more than two years lapse.
- 9.62. The Council's Ecologist has highlighted the requirement for net biodiversity gain to be provided on all developments. At present these have not been demonstrated for this stand-alone application and therefore a condition is recommended to address this issue.
- 9.63. Officers are satisfied, on the basis of the advice from the Council's Ecologist and the absence of any objection from Natural England, and subject to conditions, that the welfare of any European Protected Species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged.

#### Other matters

- 9.64. Drainage: The Local Lead Flood Authority has raised no objection to the proposal subject to a condition requiring full details of a surface water drainage scheme to be submitted. Their detailed comments state:

*'The proposed drainage strategy is predominantly reliant on Filter drains and the attenuation basin in the centre of the roundabout which is acceptable in principle.*

*Kerb drainage is being proposed to drain parts of the highway. This has not been detailed but combined kerb drainage must be designed out wherever possible, especially on a roundabout. Other methods such as dropped kerbs must be considered.*

*Further detailed information is required at the detailed design stage including cross sections of the drainage features and full calculations up to the 1 in 100 year plus 40% climate change event to demonstrate that all water will be collected and managed appropriately post construction.*

- 9.65. This approach, using a condition, is considered appropriate as drainage details will also need to be agreed with the Local Highway Authority road agreements team. Therefore, it is likely that further tweaks may be required as that process progresses, and a condition will allow the final agreed scheme to be captured. In principle the proposed roundabout is not considered to have a detrimental impact in terms of flooding or drainage.
- 9.66. Archaeology: The site is located in an area of considerable archaeological interest and the proposed access and roundabout are likely to encounter further aspects of these features. The County Council Archaeologist notes that *'the site is however partly covered by hardstanding and trees which would make investigations ahead of the determination of this application unfeasible and a staged programme of archaeological evaluation and mitigation will therefore need to be undertaken ahead of any development of this proposal'*.
- 9.67. A condition is recommended requiring the applicant to maintain a staged programme of archaeological investigation during the construction works.
- 9.68. Air quality and noise: It is noted the Council's Environmental Protection Officer has made no comment nor raised an objection on the basis of air quality or noise. The proposed roundabout was an anticipated piece of highway infrastructure necessary when Policy Bicester 2 and Policy Bicester 12 of the Cherwell Local Plan were allocated. The roundabout will form part of the existing highway network and will be located a suitable distance from residential properties. As such the proposal complies with saved Policy ENV1 of the Cherwell Local Plan 1996.

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

- 10.1. This application addresses a significant need for highway infrastructure improvements to mitigate the impacts of two strategic allocated sites within the Cherwell Local Plan 2031 (Bicester 2 and Bicester 12). The proposed roundabout is considered to be of an adequate design to mitigate traffic impacts and will provide safe access for all users of the highway.
- 10.2. The design and visual impacts are considered to be appropriate given the context and nature of the development and it would not have a detrimental impact on residential amenity. The proposal is acceptable in terms of impact on ecology, drainage, archaeology, noise and air quality.
- 10.3. The information in the ES and the consultation responses received have been taken into account in considering this application and preparing this report.
- 10.4. Given consideration to the detailed assessment set out above, the proposal is considered to be acceptable and complies with Government Guidance contained



within the National Planning Policy Framework, Policies PSD1, SLE4, ESD15, Bicester 2 and Bicester 12 of the Cherwell Local Plan 2031 and Policies C28 and ENV1 of the Cherwell Local Plan 1996.

## 11. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION SUBJECT TO THE LOCAL HIGHWAY AUTHORITY REMOVING THEIR OBJECTION AND SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY)

### CONDITIONS

#### **Time Limit**

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

#### **Compliance with Plans**

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents:
  - Covering letter
  - Application forms
  - Drawing number WIE11386-RBT-90-001 Rev A01 – [Red line boundary]
  - Drawing number WIE11386-145-03-001-A41 Rev A02 – [Pioneer General Arrangement Drawing]
  - Drawing number WIE11386-145-92-500-001 – [Roundabout Drainage Strategy]
  - Arboricultural Impact Assessment
  - Archaeological Mitigation Strategy
  - Drainage Strategy
  - Ecological Impact Assessment
  - Transport Assessment
  - Noise Assessment
  - Landscape and Visual Impact Assessment
  - Air Quality Assessment

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

3. Construction Environmental Management Plan (CEMP) for Biodiversity  
No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include as a minimum:
  - a) Risk assessment of potentially damaging construction activities;
  - b) Identification of 'Biodiversity Protection Zones';

- c) Practical measures (both physical and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- d) The location and timing of sensitive works to avoid harm to biodiversity features;
- e) The times during construction when specialist ecologists need to be present on site to oversee works;
- f) Responsible persons and lines of communication;
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- h) Use of protective fences, exclusion barriers and warning signs

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

Reason – To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

4. The development hereby permitted shall be carried out in accordance with the recommendations set out in paragraphs 5.14, 5.16 and 5.19-5.24 of the Ecological Impact Assessment by Watermans Infrastructure and Environmental Limited dated September 2020 unless otherwise agreed in writing by the Local Planning Authority.

Reason – To protect habitats and/or species of importance to nature conservation from significant harm in accordance with the Government's aim to achieve sustainable development as set out in Section 15 of the National Planning Policy Framework.

5. Where an offence under Regulation 41 of the Habitat and Species Regulations 2010 is likely to occur in respect of the development hereby approved, no works of site clearance, demolition or construction shall take place which are likely to impact on [bats/newts] until a licence to affect such species has been granted in accordance with the aforementioned Regulations and a copy thereof has been submitted to the Local Planning Authority.

Reason – To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

6. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a method statement and mitigation strategy for Great crested newts to cover all works not included under an EPSL, and which shall include timing and manner of works, exclusion fencing, the location and design of alternative ponds/habitats together with the timing of their provision as required, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the works shall be carried out in accordance with the approved details.

Reason – To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the

Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

7. If the development hereby approved does not commence within 2 years of the date of this decision. A revised Ecological Impact Assessment shall be undertaken prior to the commencement of the development to establish changes in the presence, abundance and impact on protected species. The survey results, together with any necessary changes to the mitigation plan or method statement shall be submitted to and approved in writing the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details.

Reason – To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

8. Prior to the commencement of the development hereby approved, including any demolition, and any works of site clearance, full details of a scheme for biodiversity net gain (minimum 10% net gain) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.

Reason – To conserve and enhance biodiversity in accordance with Government guidance contained within the National Planning Policy Framework.

9. Construction shall not begin until a detailed surface water drainage scheme for the site, in accordance with the approved Watermans Drainage Strategy WIE11386-101-TN-1-1-2 June 2020, has been submitted to and approved in writing by the planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include:
  - A compliance report to demonstrate how the scheme complies with the “Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire”;
  - Full microdrainage calculations for all events up to and including the 1 in 100 year plus 40% climate change;
  - A Flood Exceedance Conveyance Plan;
  - Detailed design drainage layout drawings of the SuDS proposals including cross section details;
  - Detailed maintenance management plan in accordance with Section 32 of CIRIA C753 including maintenance schedules for each drainage element; and
  - Details of how water quality will be managed during construction.

Reason – To prevent environmental and amenity problems arising from flooding and to accord with Sections 14 and 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

10. Prior to any demolition and the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in

writing by the Local Planning Authority.

Reason – To safeguard the recording of archaeological matters within the site in accordance with the NPPF (2019)

11. Following the approval of the Written Scheme of Investigation referred to in condition 10, and prior to any demolition on the site and the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority within two years of the completion of the archaeological fieldwork.

Reason – To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through publication and dissemination of the evidence in accordance with the NPPF (2019).

12. Prior to the commencement of any works to the trees on the site, full details of tree re-planting scheme, including number, location, species and size at time of planting shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the replacement tree(s) shall be planted in the first planting season (mid November to end of March) following the removal of the tree(s) for which consent has been granted and any tree which, within a period of five years from being planted dies, is removed or becomes seriously damaged or diseased, shall be replaced in the current/next planting season in accordance with the approved details and the wording of this condition.

Reason – In the interests of the visual amenities of the area and to comply with good arboricultural practice and Government Guidance contained within the National Planning Policy Framework.

13. Highways conditions – We are still awaiting final comments from the Local Highway Authority including details of any recommended conditions.

#### **Planning Notes:**

1. **EIA Subsequent Application** - In accordance with Regulations 3 and 8 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended), Cherwell District Council as Local Planning Authority in this case, is satisfied that the environmental information already before it remains adequate to assess the environmental effects of the development and has taken that information into consideration in determining this conditions application.

CASE OFFICER: Rebekah Morgan  
227937

TEL: 01295

# 20/00293/OUT

**Bicester Gateway Business Park  
Wendlebury Road  
Chesterton**

ED Boy

Iron Age / Romano-British Settlement  
(site of)

65.6m

65.3m

Pond

Lakeside Bungalow

Lakeside House

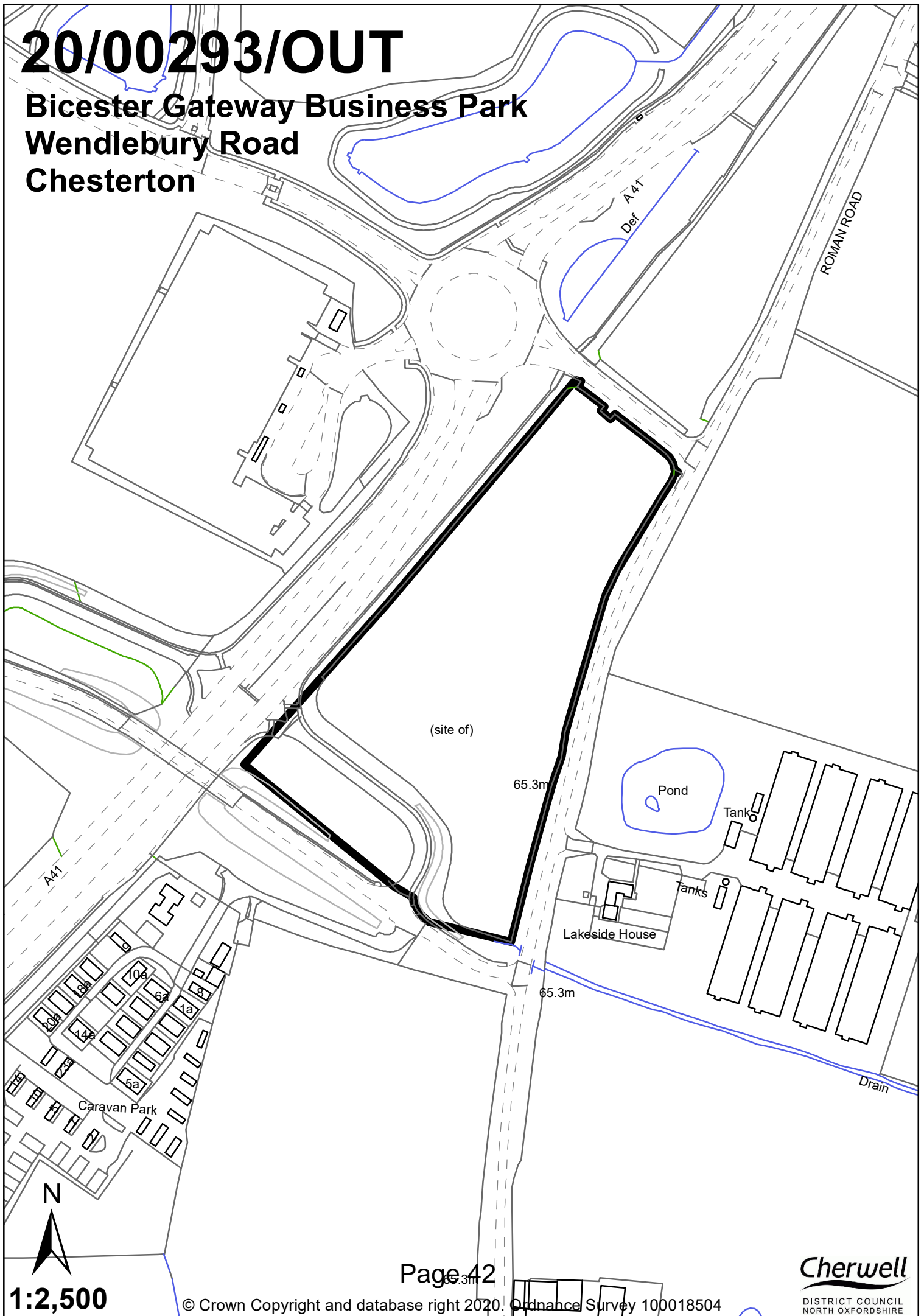
65.3m



**1:1,300**

# 20/00293/OUT

## Bicester Gateway Business Park Wendlebury Road Chesterton



## **Bicester Gateway Business Park Wendlebury Rd Chesterton 20/0293/OUT**

**Case Officer:** Caroline Ford

**Applicant:** Mr Cutler

**Proposal:** Outline application (Phase 1B) including access (all other matters reserved) for up to 4,413 sqm B1 office space (47,502 sqft) GIA, up to 273 residential units (Use Class C3) including ancillary gym, approximately 177 sqm GIA of café space (Use Class A3), with an ancillary, mixed use co-working hub (794 sqm/ ] 8,550 sqft GIA), multi-storey car park, multi-use games area (MUGA), amenity space, associated infrastructure, parking and marketing boards

**Ward:** Fringford And Heyfords

**Councillors:** Councillor Corkin, Councillor Macnamara and Councillor Wood

**Reason for Referral:** Major development and departure from adopted development plan

**Expiry Date:** 30 October 2020

**Committee Date:** 8 October 2020

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### **1. REASON FOR REVERSION TO PLANNING COMMITTEE**

- 1.1. The application was considered by Planning Committee on the 16 July 2020 where Members resolved to approve the application subject to conditions and the completion of a S106 agreement. The precise form and wording of the conditions and Heads of Terms of the Legal Agreement were to be brought back for further consideration by Planning Committee no later than the end of October 2020. This report aims to update Members on discussions that have taken place since the 16 July 2020 Planning Committee. It sets out a set of S106 Heads of Terms that Officers conclude to be required to mitigate the impacts of the development and to meet the legislative tests set out in The Community Infrastructure Regulations 2010 (as amended) at Regulation 122. Members are asked to resolve to approve the S106 Heads of Terms package and the proposed planning conditions, enabling the agreement to proceed to be negotiated and, once completed to enable planning permission to be granted.
- 1.2. The Planning Committee report presented on the 16 July 2020 sets out the site description, proposed development, consultation responses and it contains the full assessment of the proposal against the relevant Development Plan policies. Since then, the Cherwell Local Plan 2011-2031 (Part 1) Partial Review – Oxford's Unmet Housing Need has been adopted but this does not affect the current application and the list of relevant policies remains unchanged.
- 1.3. The only Consultee comment received since the July committee was from OCC (although Officers verbally updated at Committee). No other responses have been received over those reported in the July Committee report, other than in respect of negotiations on the S106 – any relevant comments will therefore be included within the appraisal section of this report.
- 1.4. OCC's updated response confirmed that in Transport Terms, No objection was raised as the pedestrian and cyclist accessibility issues had been addressed and that the development was therefore considered to be safe and suitable for access by all users. It also confirmed that the updated Framework Travel Plan was acceptable.

It also confirmed that the arrangements to accommodate a pedestrian crossing at Charles Shouler Way would cause only a modest effect on the operation of the roundabout which would not be significant in the context of the development. It also provided an updated Archaeological response confirming No Objections were raised subject to the imposition of conditions given the likely archaeological importance at the site.

- 1.5. This report will therefore focus on the proposed Heads of Terms only, presenting both the applicant's view on these and the set of Heads of Terms that Officers consider to be necessary to be secured through any agreement to be completed pursuant to this application.

## **2. APPRAISAL**

2.1 The key issues for consideration in this report are:

- The Heads of Terms for the S106 agreement

2.2 The July 2020 Planning Committee report set out the following required Heads of Terms, which, in accordance with the Council's SPD for Developer Contributions (2018) had been put to the applicant:

- The provision of 30% Affordable Housing on site with the mix made up of 70% affordable rent and 30% social rent.
- Contribution toward the improvement/ upgrade of Kingsmere Community Centre based upon a per unit contribution of £587.74 per 1 bed unit and £849.46 per 2 bed unit, all figures index linked from 2Q17.
- Contribution towards outdoor sport - the expansion/ upgrade of the Whitelands Farm Sports Ground and/ or improvements to the community use sports facilities at Alchester Academy based upon a per unit contribution of £922.81 per 1 bed unit and £1,333.75 per 2 bed unit, all figures index linked from 2Q17. These figures are discounted to account for the proposed MUGA on site.
- Contribution towards indoor sport – the expansion/ enhancement of indoor sport facilities at Bicester Leisure Centre based upon a per unit contribution of £429.21 per 1 bed unit and £620.34 per 2 bed unit, all figures index linked from 2Q17.
- Contribution towards a Community Development Worker of £32,970.60 to fund 0.4FTE for two years and a contribution of £2,500 towards a fund to carry out community development activities.
- The provision of a combined LEAP/LAP on site.
- Commuted sums for the management and maintenance of open spaces, mature trees/ hedgerows, SUDs features within open space, play facilities and the MUGA if these areas were to be transferred to the District Council or secure arrangements for a Management Company to carry out the long term management and maintenance in the event a transfer to the District Council does not take place.
- Contribution towards local primary health care – to contribute to existing expansion plans for additional primary care infrastructure at Bicester based



upon a per unit contribution of £505 per 1 bed unit and £720 per 2 bed unit, all figures index linked from 2Q17.

- Biodiversity contribution of £6000 towards the offsite biodiversity mitigation works planned at Bicester Wetland Reserve.
- Contribution of £106 per dwelling towards the provision of waste and recycling bins and £5.00 per dwelling towards recycling banks to serve the residential dwellings.
- Contribution of £24,195.90 towards highway safety improvement measures on the A41, index linked from a date TBC.
- Contribution of £214,668 towards Strategic highways – the South East Perimeter Road, index linked from a date TBC.
- Contribution of £3,120 (index linked from January 2020) towards the cost of administering a Traffic Regulation Order to enable the relocation of the existing 40mph/ national speed limit signage to a point south of the development's southern access for road safety reasons.
- Contribution of £4,691.28 (index linked from December 2019) towards the monitoring of the Travel Plans.
- The requirement to agree to enter into a S278 agreement with the Local Highway Authority to deliver safe and suitable access to the development as approved by this application as well as the offsite measures identified:
  - Two bellmouth accesses off of Wendlebury Road with associated pedestrian and cycle facilities to link into existing infrastructure
  - A 3m shared use footway/ cycleway linking Vendee Drive link road and the Chesterton slip road to the site along the A41 including works to enable a crossing at the western end of Charles Shouler Way.
  - Relocation of the speed limit signage on Wendlebury Road.
  - Arrangements for a northbound pedestrian/ cycle link along the Wendlebury Road west side north including a crossing to the eastern end of Charles Shouler Way IF Phase 1b were to progress in advance of development on Phase 2.
- Contribution of £557,233 (index linked from 3Q19) towards primary and nursery education – towards the new primary school at South West Bicester (with a matrix arrangement to be introduced to account for changes in the size of units that may result at the reserved matters stage should that final mix result in a change in pupil generation).
- Contribution of £423,943 (index linked from 3Q19) towards secondary education – towards the cost of new secondary schools in the locality (with a matrix arrangement to be introduced to account for changes in the size of units that may result at the reserved matters stage should that final mix result in a change in pupil generation).

2.3 As was reported, the applicant raised concerns regarding the compliance of the requested contributions against the CIL Regulation Tests. Discussions have been ongoing since the July 2020 Planning Committee regarding how the contributions

meet the CIL Reg tests and whether they can be varied to suit the particular circumstances of the application.

- 2.4 This report will consider each contribution requested and set out where this matter is, including the applicant's view on it. A conclusion will be made at the end of this report as to the final Heads of Terms that Officers recommend be included within the S106 agreement for the site.

#### Preliminary matters

- 2.5 Firstly, Officers have treated this application on the same basis as any other residential scheme in terms of both the likely occupancy levels for each size of unit which is based upon the occupancy rates for each type of unit as set out in the Council's Developer Contributions SPD. For note, contributions for education are based upon OCC's standard approach and contributions towards health infrastructure are based upon the OCCG's approach, both of which are accepted by the Council as set out in the SPD and are consistently used across all developments in the District.
- 2.6 The applicant has queried the approach and considers that occupancy rates should reflect the difference between houses and flats and that using Census data would be more reflective. They consider their evidence is justified and that the Council's baseline is not.
- 2.7 Secondly, Officers have taken the approach not to give a relief in terms of S106 requests due to the 'innovative' nature of the development on the basis that the units are not proposed to be controlled for this purpose such that they will be available to the open market (with 30% affordable housing). In addition, whilst the applicant argues that studio flats should be exempt from contributions being chargeable, Officers have no evidence to suggest that there is any reason to accept this and consider that studio flats should be treated on the same basis as one bed apartments.
- 2.8 The applicant has also suggested a viability review mechanism, which would enable later review of the viability of a scheme and enable the terms of an agreement to be varied enabling flexibility. In this case, no viability case has been made and so a policy compliant S106 is recommended to be secured. The Planning Practice Guidance confirms that Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project. Officers have explained that such a mechanism is not acceptable on the basis that this gives significant uncertainty over what mitigation would be secured by the development. The applicant's position as will be explained below, has been to prioritise certain heads of terms to ensure the affordable housing position is viable and deliverable, set against the background of a challenging business environment and to help the Council with its housing delivery position. If the applicant has a later viability issue, then they are able to apply for a Deed of Variation with appropriate evidence.

## Heads of Terms

- 2.9 **Affordable Housing:** The agreed position on affordable housing is for the S106 drafting to secure a Policy compliant affordable housing mix of 30% affordable housing on site with the mix being 70% for affordable rent and 30% as other forms of intermediate affordable homes. Reference to the appropriate percentages would be made to reflect the outline nature of the proposal.
- 2.10 In this case, social rent is not to be pursued. The nature of a development comprising apartments would incur service charges within communal areas and facilities such as lifts. Affordable rent levels include service charges however social rent levels do not. On this basis, affordable rent is the most appropriate tenure for this proposed development. The intermediate tenure units could be shared ownership, or another form of intermediate tenure such as discount market sales units providing their cost and long-term retention as discounted units remains into the future in accordance with the NPPF definition.
- 2.11 The applicant has raised some concern with affordable housing provision of the mix required on a development of this nature, also taking into account comments made by RPs. Some of the concerns expressed by RPs appear to be of a practical nature and could be overcome by way of design, which would evolve post outline planning permission being granted. On this basis, the applicant has agreed to the securing of a Policy compliant mix of affordable housing and this will be the basis moving forward, which Officers are content is acceptable.
- 2.12 **Community Halls:** The applicant queried the CIL Reg compliance of the requested contribution towards improvements to Kingsmere Community Centre on the basis that the application site sits within Chesterton Parish. They separately engaged with Chesterton Parish Council and offered a contribution towards community facilities linked to their new community centre.
- 2.13 The requested contribution towards Kingsmere Community Centre was sought given the relationship between the site and Bicester and the fact that new residents are more likely to be reliant on the services and facilities of the town to meet their everyday needs rather than those in Chesterton. However, upon further review, it was clear that there are currently no identified improvement projects at the Kingsmere Community Centre that would directly support the development.
- 2.14 With regard to the Chesterton Community Centre, the Council's Community Development Team are unaware of their plans and for the reasons above (that the residents of the site are unlikely to use community centre facilities at Chesterton instead of those at Bicester), Officers do not consider that a contribution of this nature would meet the legislative tests for a planning obligation.
- 2.15 On this basis, Officers advise that a contribution towards Community Halls would not meet the legislative tests and should not be pursued.
- 2.16 **Outdoor Sport:** Contributions have been requested towards the expansion/upgrade of the Whitelands Farm Sports Ground and/ or improvements to the community use sports facilities at Alchester Academy. The project identified is

towards increased tennis court provision at Whitelands Farm Sports ground. The Council's Sports Facilities Strategy dated August 2018 demonstrates the need for outdoor tennis facilities in Bicester. The applicant's view is that the proposed development provides substantial open space and that on site a MUGA is proposed as well as additional provision being offered including a running track and outdoor gym equipment. Their view is that this should offset the requirement for any contribution towards outdoor sport provision offsite.

- 2.17 Officers have noted the proposed onsite provision and indeed the contribution requested has been reduced slightly to account for the area of land the MUGA would provide (compared with the area of land that would result from the demand from residents on the site in accordance with the requirements set out at Policy BSC11, albeit the applicant's view is that the cost of the MUGA should be deducted, rather than a percentage based upon the area of land). However, Officers are clear that there is likely to be demand from the resulting population for access to formal outdoor sport facilities such as football, rugby and cricket pitches as well as tennis courts. It is these facilities that residents will need to access offsite and for which contributions towards local facilities is sought.
- 2.18 In light of this, Officers recommend that contributions are sought in line with those originally set out (and as summarised in the finalised heads of terms below). This would be on the basis of a MUGA being provided such that there is some provision on site.
- 2.19 The applicant has suggested that given the above, they may re-consider the provision of a MUGA on site. They therefore suggest that they should not be required (by condition or S106) to provide the MUGA but that the percentage reduction offered to reflect its provision should remain. Officers are content to recommend that a MUGA is not required on the basis that whilst the site exceeds the requirement for a NEAP/MUGA, given the site size, the amount of development and its proximity to Kingsmere, other facilities would be accessible. However, if a MUGA is not provided on site, then the reduction on the contribution should not be included. This is on the basis that the applicant may choose not to provide a MUGA at all if they are not required to or, if they were to provide a simpler, unequipped MUGA, then this would have no outdoor sports value at all. On this basis, Officers consider that an alternative could be included in the S106 if the applicant chooses not to provide a MUGA. It is understood that the applicant broadly agrees the principle of this contribution.
- 2.20 **Indoor Sport:** Contributions have been sought towards the expansion/enhancement of indoor sport facilities at Bicester Leisure Centre. The Council's Sports Facilities Strategy dated August 2018 demonstrates the need for swimming pool and sports hall space in Bicester.
- 2.21 The applicant has queried a contribution towards indoor sport provision and considers that a reasonable alternative would be to secure an arrangement to enable provision to the recently approved David Lloyd Health Club located very close to the site. Following discussion, they have also pointed out that their proposal includes an ancillary gym as part of the scheme and that their onsite provision therefore should also offset the requirement for an offsite contribution towards indoor sport.
- 2.22 Officers do not consider that an arrangement with a private gym would be a suitable arrangement. Bicester Leisure Centre is a publicly accessible space that would provide a long-term arrangement for access to indoor sports facilities that would serve the needs of the residents of this development. Contributions towards

enhancement of the facilities at the centre are therefore considered to be compliant with the legislative tests for a planning obligation.

- 2.23 Officers have however considered further the on-site gym provision and consider that this could be taken into account. The recommendation is therefore that if no ancillary gym is provided on site, that the contributions as previously sought continue to be required from the development. If an on site ancillary gym were proposed of no less than 27m<sup>2</sup> in area (which is the approximate level of sports hall space this development would require for the expected population based upon the guidance in the Council's Planning Obligations SPD), then a reduced contribution would be payable to reflect its provision, with the remaining contribution calculated based upon the element of the contribution identified for swimming pool provision. This would enable a contribution to continue to be secured towards offsite indoor sport provision at Bicester Leisure Centre, which is likely to be in demand from the residents but to reflect the on-site provision of an ancillary gym. There would also be a need for the ancillary provision on site to be retained for health and wellbeing purposes. Officers consider that this is a reasonable approach and that this would comply with the legislative tests for a Planning Obligation. It is understood that the applicant accepts this approach albeit they wish for the contribution to be able to be spent elsewhere rather than at Bicester Leisure Centre. The Council's intention would be for the contribution to be spent at the Leisure Centre.
- 2.24 **Community Development Worker:** The applicant's position is that they anticipate the work that a Community Development Worker would do being undertaken by the Hub and estate management company.
- 2.25 Officers have considered this response, alongside the CIL Regulations and noting the scale of the proposed development, recommend that this contribution should not be pursued.
- 2.26 **Provision of play areas on site:** It is recommended that the S106 will secure the provision of an on-site combined LEAP/LAP. It is understood that the applicant accepts the principle of this.
- 2.27 **Landscape Management and Maintenance:** It is recommended that the S106 will set out secure arrangements for the continued management and maintenance of open space and play areas. This would either be through its transfer and the provision of commuted sums to enable the Local Authority to carry this out or through secure arrangements for a Management Company including to ensure its financing to secure long term management and maintenance. Officers consider that in this case, a Management Company could be a suitable alternative given the character of the development site including its contained size away from other residential areas. It is understood that the applicant accepts the principle of this subject to a consideration of the legal drafting.
- 2.28 **Local Primary Health Care:** The applicant has submitted various correspondence in regard to the requested contribution towards local primary health care. They consider there is no evidence to support the requested contribution. They have queried the need for additional health care infrastructure (on the basis that there is spare capacity in the town, in particular at Bicester Health Centre, that changes to

appointment practices because of COVID-19 will reduce the requirement for built area and that already planned for facilities (for which the applicant argues they should not be treated on the same basis as other new developments) will cover the population growth of Bicester going forward – which in itself is distant from the site and so not directly related to the development). They have also queried the level of contribution, which they consider not to be proportionate to the development.

- 2.29 The CCG have been involved in reviewing the evidence submitted and have provided various correspondence in response. This includes evidencing the pressure the existing practices are under (in that existing healthcare infrastructure is at capacity and medical groups are already seeking new premises in the town to meet the needs of the growing population), the need for additional practice space (which is not limited to space for doctors, space is required for a range of healthcare professionals) and that despite the current pressures caused by COVID-19, different appointment practices does not negate the need to see patients in face to face settings.
- 2.30 The applicant does not agree with the evidence of the CCG. Their view is that whilst no contribution is justified, that given health and wellbeing is an important topic, they are willing to make a general contribution of £100,000 with the S106 including a broader range of beneficiaries to include initiatives proposed by Bicester Town Centre Task Group and OYAP.
- 2.31 Officers are satisfied with the responses from the CCG and do not support the applicant's offer. There is no justified reason to divert from the approach taken elsewhere and it is considered that contributions should be requested towards an evidenced need for additional health care infrastructure in Bicester to serve the growing population (of which this development adds to). Officers consider that the originally requested contributions meet the CIL Regulation tests and should be secured by this development. The applicant may be unwilling to sign a legal agreement on this basis.
- 2.32 **Biodiversity:** The contribution of £6000 towards the biodiversity offset scheme is required to offset the impacts of the development on biodiversity grounds to ensure that a net gain can be achieved on a local site. This contribution is agreed.
- 2.33 **Waste and Recycling:** Officers consider that it will be acceptable in this case for a planning condition to be imposed to secure the provision of waste receptacles prior to the first occupation of each residential unit rather than a financial contribution being made.
- 2.34 **Highway Safety Improvement Measures on the A41:** The applicant has agreed the contribution as requested. The necessary indexation base has been added below.
- 2.35 **Strategic Highway Contribution:** Following the Planning Committee, OCC Highway Officers reviewed the requested contribution and noted that the calculation undertaken for the extant permission for Phase 1 had been reduced to take account of other mitigating measures. The way the current contribution had been calculated also therefore included this reduction, however those mitigating measures have now been agreed as not required for the development and therefore no reduction should be allowed for. On this basis, the same formula that has been used to calculate contributions from other nearby sites has been used to ensure a fair and equitable contribution is sought. This gives a requested

contribution for this development of £289,578.66 index linked from October 2019. Following the applicant reviewing the calculation, this contribution is agreed.

- 2.36 **TRO contribution:** The applicant has agreed the contribution as requested.
- 2.37 **Travel Plan monitoring contribution:** The applicant has agreed the contribution as requested.
- 2.38 **S278 Works:** The applicant has agreed the inclusion of the required S278 works to be secured through the agreement to include requirements around timing and specification of the offsite highway works.
- 2.39 **Education:** The applicant has queried the contributions sought from OCC on a number of main grounds including: the number of pupils likely to be generated by the development (based upon a consideration of occupancy of flats v houses) and the costs per pupil place that OCC use (for which they argue should not be based upon the independent evidence OCC commissioned, but instead on national data). They also argue that OCC should not be seeking to build 600 place secondary schools as these are unviable and that costs should be sought on the basis of larger schools.
- 2.40 OCC have reviewed the evidence submitted and provided responses. On the main grounds, this sets out that evidence shows that additional capacity will be required for all age groups (including early education) and that the pupil numbers generated are based only upon 2 bed units, for which the numbers likely to be generated are not unreasonable. That the per pupil costs for building new schools are independently costed and reviewed and are not significantly different to national data once the scale of the school is considered (and that they are therefore robust and evidenced) and that OCC have very recently completed a 600 place secondary school in Bicester and their model going forward is on the same basis. OCC's basis for calculating contributions across the County will be based upon this model.
- 2.41 Nevertheless, OCC have reviewed the requested contributions and have agreed to consider them in a slightly different way which has resulted in a slightly lower pupil generation projection but retains the same per pupil cost. This has resulted in a lower contribution overall.
- 2.42 The applicant has considered the most recent response from OCC (which reduces the contribution requested) and have confirmed that they continue to hold the view that the costs per place have not been robustly evidenced. They also continue to suggest that lower yields should be applied to reflect the flatted nature of this scheme in comparison to a more usual housing scheme. Using costs from an appeal scheme in Bicester, alongside their lower pupil generation projections, they calculate their contribution should be £289,800.65 in total (compared to the OCC requested total contribution of £768,710). They consider that this is a fairly and reasonably related contribution, which is offered without prejudice and which is supported by evidence on pupil yield (reflecting the flatted nature of the development) and on costs per place from an appeal decision (which considered the OCC costs to be an over-estimate). They consider that an appeal Inspector would follow this view and could award costs against the LPA.
- 2.43 OCC have not considered the applicant's offer or their arguments at the time of writing this report. If a response is provided, then an update will be provided to committee, however Officers consider that the evidence provided by OCC is

reasonable and justified and demonstrates that contributions of the scale identified are necessary to mitigate the impacts of the development. The amended response offered by OCC is therefore set out in the final heads of terms and is recommended

to be secured albeit if there is a variation once OCC have considered the applicant's

most recent position, then this will be updated in the written updates. The applicant may be unwilling to sign a legal agreement on this basis.

- 2.44 **Monitoring fee:** CDC have sought a monitoring fee of £5000 and the applicant accepts this. OCC also seek a monitoring fee albeit the figure has not yet been provided. It is anticipated that the applicant is likely to accept a monitoring fee requested by OCC.

#### Final Heads of Terms

- 2.45 Taking into account the above comments, Officers recommend that the following Heads of Terms be secured through the S106 for this site:

- The provision of 30% Affordable Housing on site with the mix made up of 70% affordable rent and 30% intermediate tenures.
- Contribution towards outdoor sport – towards a project for increased tennis court provision at Whitelands Farm Sports Ground based upon a per unit contribution of £922.81 per 1 bed unit and £1,333.75 per 2 bed unit, all figures index linked from 2Q17. These figures are discounted to account for the proposed MUGA on site. If no MUGA is provided on site, then the figures per unit applicable would be: £1,036.87 per 1 bed unit and £1498.60 per 2 bed unit, all figures index linked from 2Q17.
- Contribution towards indoor sport – the expansion/ enhancement of indoor sport facilities at Bicester Leisure Centre based upon a per unit contribution of £429.21 per 1 bed unit and £620.34 per 2 bed unit, all figures index linked from 2Q17 if no ancillary gym is proposed on site. If an ancillary gym of no less than 27m<sup>2</sup> in area is provided, then contributions of £273.61 per 1 bed unit and £395.45 per 2 bed unit index linked from 2Q17 towards additional swimming pool capacity at Bicester Leisure Centre. The ancillary space to be retained for health and wellbeing purposes.
- The provision of a combined LEAP/LAP on site.
- Commuted sums for the management and maintenance of open spaces, mature trees/ hedgerows, SUDs features within open space, play facilities and the MUGA if these areas were to be transferred to the District Council or secure arrangements for a Management Company to carry out the long term management and maintenance in the event a transfer to the District Council does not take place with secure arrangements for the financing of the management and maintenance including monitoring by CDC.
- Contribution towards local primary health care – to contribute to existing expansion plans for additional primary care infrastructure at Bicester based upon a per unit contribution of £504 per 1 bed unit and £720 per 2 bed unit, all figures index linked from 2Q17.
- Biodiversity contribution of £6000 towards the offsite biodiversity mitigation works planned at Bicester Wetland Reserve.



- Contribution of £24,195.90 towards highway safety improvement measures on the A41, index linked from December 2019.
- Contribution of £289,578.66 towards improvements to the surrounding local and strategic road network – namely towards the western section of the South East Perimeter Route or to an alternative scheme or schemes which are expected to deliver similar or greater mitigation of the potential transport impacts of cumulative development at the site and elsewhere in Bicester index linked from October 2019
- Contribution of £3,120 (index linked from January 2020) towards the cost of administering a Traffic Regulation Order to enable the relocation of the existing 40mph/ national speed limit signage to a point south of the development's southern access for road safety reasons.
- Contribution of £4,691.28 (index linked from December 2019) towards the monitoring of the Travel Plans.
- The requirement to agree to enter into a S278 agreement with the Local Highway Authority to deliver safe and suitable access to the development as approved by this application as well as the offsite measures identified:
  - Two bellmouth accesses off of Wendlebury Road with associated pedestrian and cycle facilities to link into existing infrastructure
  - A 3m shared use footway/ cycleway linking Vendee Drive link road and the Chesterton slip road to the site along the A41 including works to enable a crossing at the western end of Charles Shouler Way.
  - Relocation of the speed limit signage on Wendlebury Road.
  - Arrangements for a northbound pedestrian/ cycle link along the Wendlebury Road west side north including a crossing to the eastern end of Charles Shouler Way IF Phase 1b were to progress in advance of development on Phase 2.
- Contribution of £442,600 (index linked from 3Q19) towards primary and nursery education – towards the new primary school at South West Bicester (with a matrix arrangement to be introduced to account for changes in the size of units that may result at the reserved matters stage should that final mix result in a change in pupil generation).
- Contribution of £326,110 (index linked from 3Q19) towards secondary education – towards the cost of new secondary schools in the locality (with a matrix arrangement to be introduced to account for changes in the size of units that may result at the reserved matters stage should that final mix result in a change in pupil generation).
- Contribution of £5000 to CDC to administer and monitor the development and a contribution to OCC for the same purpose, the amount for which is to be confirmed.

2.46 There are some matters that the applicant does not agree for the reasons set out. Members are asked to support the Officer recommendations for the reasons given.

### Other Matters

2.47 At paragraph 9.32 of the July 2020 Committee report, reference is made to the need

for the commercial development to be delivered alongside the residential development. The applicant has explained that this would not be feasible on the basis that speculative office space is unlikely to be provided and the intention of the development is to create demand for the office space (by bringing those likely to work in the knowledge economy to the town). They have offered to construct the Hub alongside the residential development which provides for some B1 office space including flexible space for business uses. On balance, Officers accept that the provision of the Hub alongside the residential development is required in recognition of the Local Plan allocation for the Bicester 10 site being for commercial development of high tech knowledge economy based industries but that the delivery of the remaining B1 floorspace is not required to be linked to the delivery of the residential uses recognising that office buildings are unlikely to be built speculatively. The planning conditions will be drafted to reflect this.

### **3. PLANNING BALANCE AND CONCLUSION**

3.1 This assessment aims to provide an overview of the required heads of terms to mitigate the impacts of the development. It sets out what Officers consider to be a justified, necessary set of heads of terms, the justification for which is considered to comply with the legislative tests set out at Regulation 122 of The Community Infrastructure Regulations 2010 (as amended). Members are asked to support the Officer recommendations for the reasons given and to resolve to grant permission for the development subject to the recommendation below

### **4. RECOMMENDATION**

**RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW (FULL WORDING FOR WHICH WILL FOLLOW IN THE WRITTEN UPDATES) (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) AND THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND COMPENSATION ACT 1991, TO SECURE THE MITIGATION SET OUT AT PARAGRAPH 2.45.**

FURTHER RECOMMENDATION: IF THE APPLICANT DOES NOT AGREE TO SIGN A S106 AGREEMENT TO CONTAIN THE MATTERS SET OUT AT PARAGRAPH 2.45 OR IF THE SECTION 106 AGREEMENT/UNDERTAKING IS NOT COMPLETED AND THE PERMISSION IS NOT ABLE TO BE ISSUED BY THE STATUTORY DETERMINATION DATE WHICH IS CURRENTLY 30 OCTOBER 2020 AND NO EXTENSION OF TIME HAS BEEN AGREED BETWEEN THE PARTIES, IT IS FURTHER RECOMMENDED THAT THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT IS GIVEN DELEGATED AUTHORITY TO REFUSE THE APPLICATION BASED UPON THE LACK OF A COMPLETED S106 AGREEMENT REQUIRED TO SECURE THE NECESSARY INFRASTRUCTURE TO MITIGATE THE IMPACTS OF THE DEVELOPMENT (WITH REFERENCE TO POLICY THAT REQUIRES MITIGATION TO BE SECURED):

#### **Planning conditions:**

1. Restriction to the development/uses applied for

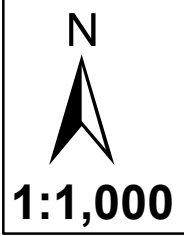
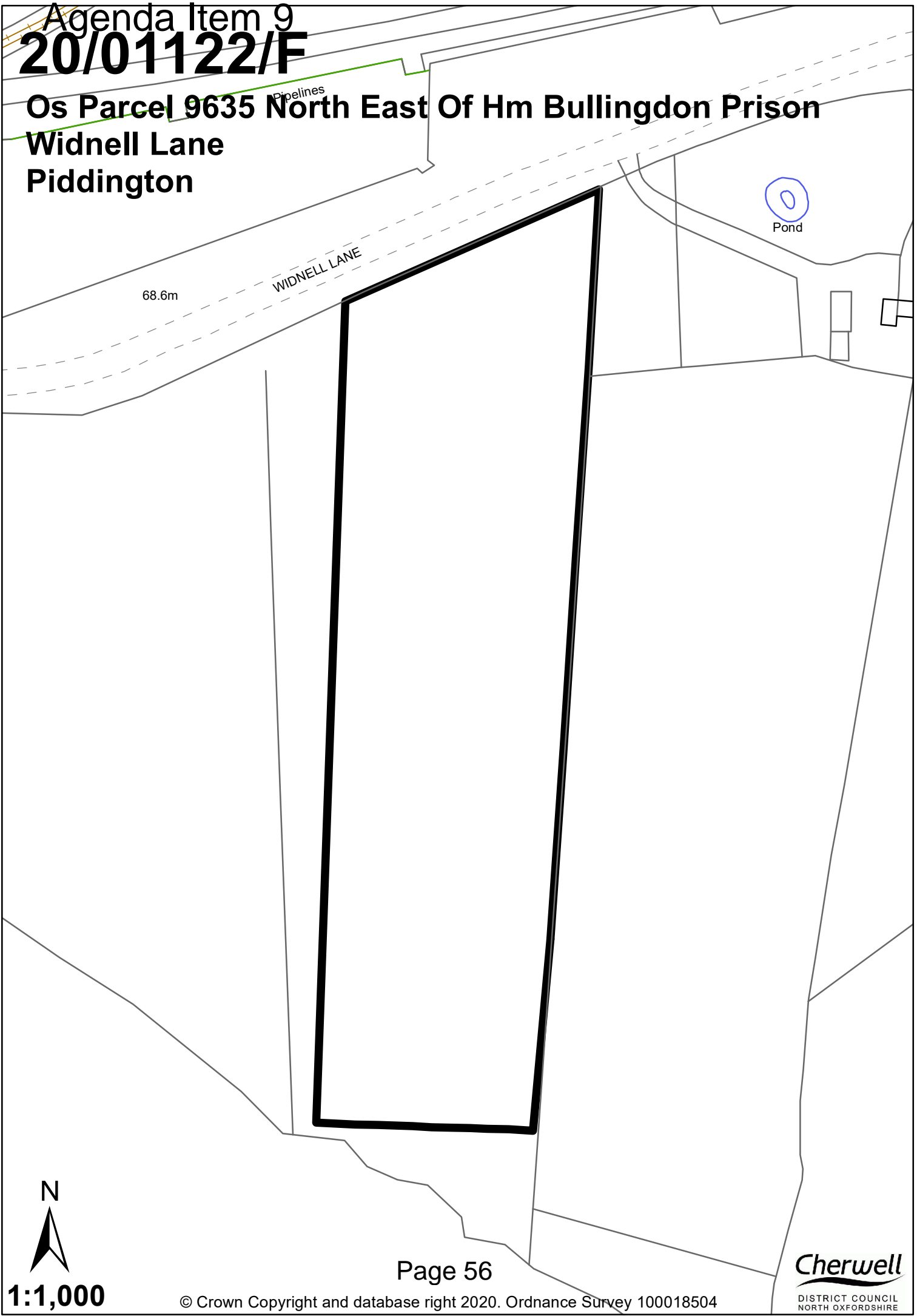
2. Requirement to submit a reserved matters application
3. Timescale for submission of reserved matters
4. Plans for approval
5. Vegetation clearance undertaken outside the bird nesting season
6. Retention of vegetation except to allow for means of access
7. Agreement of finished floor levels (with levels no less than as set out in the FRA)
8. Requirement to provide details of ecological enhancement measures
9. Requirement for protected species checks (site walkovers)
10. Requirement to provide details of sustainable design measures including the provision of on-site renewable energy technologies.
11. The achievement of BREEAM very good standard
12. Restriction of permitted development rights to ensure all required service infrastructure be provided underground unless otherwise granted through a reserved matters application
13. Requirement for the provision of a phasing plan
14. Requirement to provide a Construction Method Statement
15. Requirement to provide a Construction Environmental Management Plan (CEMP) for Biodiversity
16. Requirement to provide an Arboricultural Method Statement including tree protection measures
17. Requirement to provide a Training and Employment Management Plan
18. Requirement to provide a surface water drainage scheme including long term management and maintenance arrangements
19. Requirement to provide a foul drainage scheme
20. Requirement to provide full details of accesses, footways, cycleways
21. Conditions as necessary relating to the public rights of way
22. Conditions relating to archaeology to require further work pre-reserved matters and then to require a watching brief and details of development within the area to be preserved in situ.
23. A series of conditions relating to contaminated land.
24. Requirement for an odour assessment
25. Requirement for details of any required piling
26. Requirement for a noise survey to ensure that residential dwellings can be appropriately mitigated to ensure they are not unduly impacted by noise
27. Requirement to agree details of tree works on land to the south of the site
28. Requirement for phased travel plans
29. Requirement for a Landscape and Ecology Management Plan
30. Requirement for the provision of electric vehicle charging infrastructure
31. Occupation restriction until all required water upgrades are completed or a phasing plan has been agreed to ensure all development is provided with sufficient water infrastructure
32. Requirement for a car park management plan
33. Requirement for details of external lighting to be approved
34. Requirement for a scheme of public art to be first agreed.

CASE OFFICER: Caroline Ford  
221823

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Agenda Item 9  
**20/01122/F**

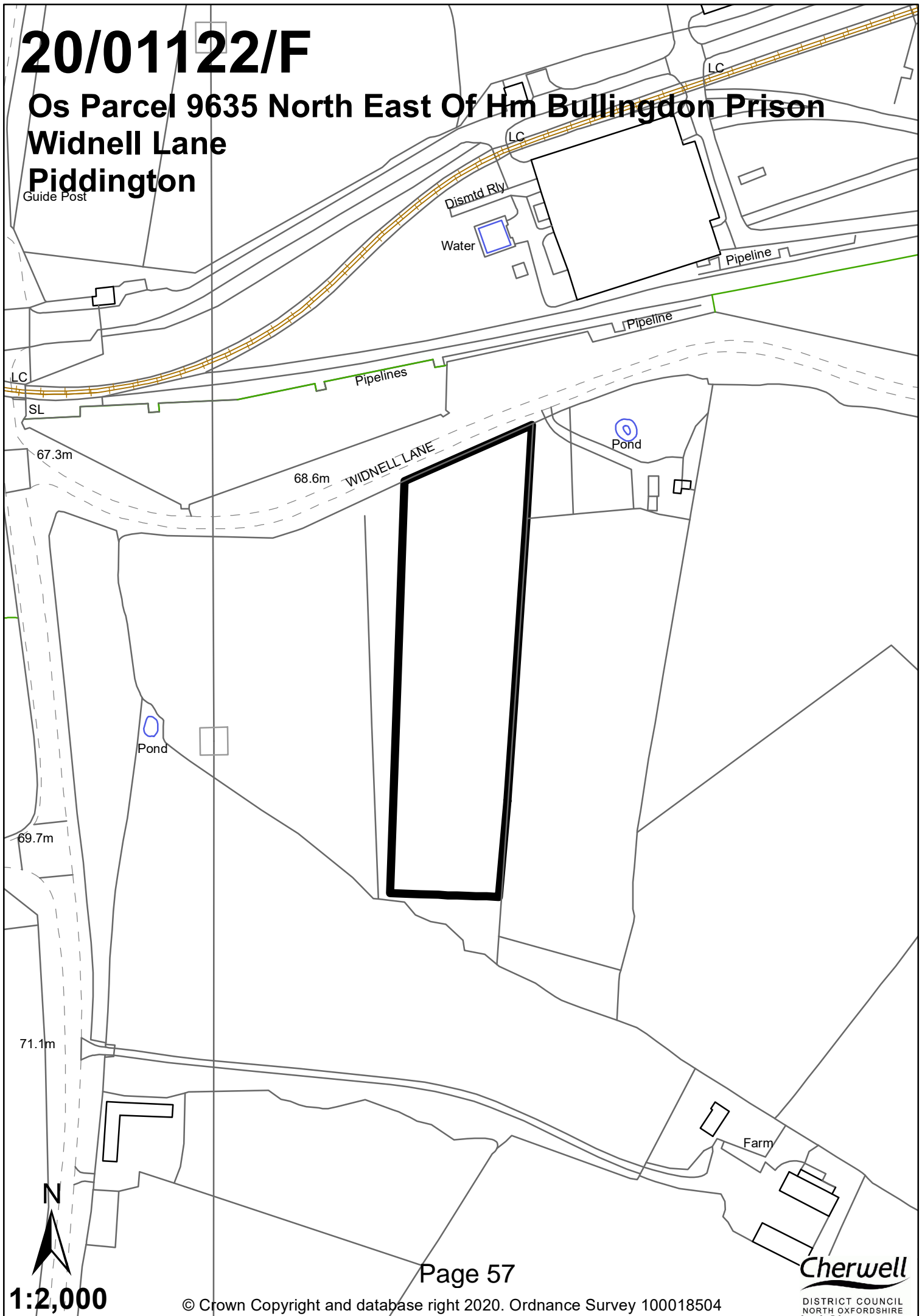
**Os Parcel 9635 North East Of Hm Bullingdon Prison**  
**Widnell Lane**  
**Piddington**



# 20/01122/F

## Os Parcel 9635 North East Of Hm Bullingdon Prison Widnell Lane Piddington

Guide Post



**Case Officer:** Matthew Chadwick

**Applicant:** Mr Patrick Foster

**Proposal:** Material Change of Use of land to use as a residential caravan site for 12no gypsy / traveller families, each with two caravans, including improvement of access, laying of hardstanding and installation of package sewage treatment plant

**Ward:** Launton And Otmoor

**Councillors:** Councillor Hallchurch, Councillor Holland and Councillor Hughes

**Reason for Referral:** Major Development

**Expiry Date:** 7 September 2020

**Committee Date:** 8 October 2020

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

### **RECOMMENDATION: REFUSE PERMISSION**

#### **Proposal**

Planning consent is sought for the change of use of agricultural land to use as a residential caravan site for 12no gypsy / traveller families, each with two caravans, including improvement of access, laying of hardstanding and installation of package sewage treatment plant

#### **Consultations**

The following consultees have raised **objections** to the application:

- Piddington Parish Council, OCC Highways, OCC Drainage, CPRE

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

- CDC Licensing, CDC Environmental Health, CDC Planning Policy, OCC Archaeology

The following consultees have commented on the application:

- CDC Ecology, Environment Agency, MoD Estates

81 letters of objection have been received.

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

The site is located in an area of potentially contaminated land and Great Crested Newts have been located in close proximity of 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:

- Principle of Development

- Need for pitches
- Visual Impact and Effect on Landscape Character;
- Residential Amenity;
- Ecological Impact;
- Highway Safety;
- Flooding Risk and Drainage;
- Other Matters

The report considers the key planning issues in detail, and Officers conclude that the proposal is unacceptable for the following reasons:

1. Visual harm due to intrusion into open countryside
2. Flood risk
3. Ecological harm

**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 application site is located approximately 1km to the west of the village of Piddington, 1.5km to the east of Upper Arccott and 3km from the village of Ambrosden. The B4011 lies approximately 150m to the west of the site and to the west of the B4011 lies HM Prison Bullingdon. The site of the proposed development is an agricultural field which is currently laid to grass. The site is enclosed on the road side frontage by mature native hedgerow to the northern boundary and the southern boundary is also made up of a mature native hedgerow.

### **2. CONSTRAINTS**

- 2.1. The site is not in close proximity to any listed buildings and is not located within a conservation area. The site has some ecological value due to recent recordings of Great Crested Newts within 50m of the site. Piddington Training Area District Wildlife Site lies approximately 250m to the south east of the site.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. This application seeks planning permission for the change of use of the land to be used as a gypsy and traveller caravan site comprising 12 pitches, each pitch containing one mobile home and one touring caravan. The submitted plan shows that the existing access onto Widnell Lane would be improved. The proposal also includes construction of a driveway through the site and each pitch can be accessed from the main site driveway. Woodland planting and a grassed area of land would be provided in the north eastern corner of the site. Foul sewerage would be provided by way of a water treatment plant, of which details have been submitted with the application.

### **4. RELEVANT PLANNING HISTORY**

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

17/00145/F - Change of use of land to use as a residential caravan site for 16 gypsy/ traveller families, each with two caravans, including improvement of access and laying of hardstanding – Application Refused

17/01962/F - Material change of use of land to use as a residential caravan site for 6 gypsy families, each with two caravans, including improvement of access and laying of hardstanding – Application Refused. Decision appealed. Appeal allowed.

- 4.2. There is currently an application under consideration on a parcel of land immediately adjacent to the west of this site (20/01747/F). The current application site occupies a larger parcel of land than applications 17/00145/F and 17/01962/F.

## **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. No pre-application discussions have taken place with regard to this proposal.

## **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **13 July 2020**, although comments received after this date and before finalising this report have also been taken into account.

- 6.2. The comments raised by third parties are summarised as follows:

- There are traveller sites in other surrounding villages.
- If the approved application and currently submitted applications were approved, there would be an overprovision of traveller sites in Piddington, which is a Category C village.
- The previously approved scheme should be implemented first.
- There is no need for any extra pitches across Cherwell at the present time.
- The need for pitches has been miscalculated.
- The site is not sustainable.
- The site is next to a MoD training ground and residents will be subject to loud noises.
- The development would cause harm to the safety of the local highway network.
- The development would cause harm to local ecology.
- The land is prone to flooding.
- There is no footpath access to the site.
- There are concerns about service provision.
- The septic tanks would not be sufficient for the number of pitches.



- The same conditions should be imposed from the appeal decision.
- There are insufficient amenities on the site.

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## 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. ARNCOTT PARISH COUNCIL: No comments received.

7.3. PIDDINGTON PARISH COUNCIL: **Objects**. Piddington is not a sustainable village and the site has known flooding issues. There is no need for further pitches in Cherwell District.

### OTHER CONSULTEES

7.4. OCC ADULT SOCIAL CARE: No comments received.

7.5. OCC ARCHAEOLOGY: **No objections**.

7.6. CDC BUILDING CONTROL: No comments received.

7.7. CPRE: **Objects**. The site would fail to meet the majority of the criteria of Policy BSC6 of the Cherwell Local Plan 2011 – 2031. There are likely to be better sites available within the district and the Council should identify appropriate sites in the next stage of the Local Plan.

7.8. OCC DRAINAGE: **Objects**, as insufficient detail has been provided in relation to surface water management, flood risk, SuDS implementation to enable a technical assessment of the proposal and the area around Widnell Lane is noted to be subject to surface water flood risk.

7.9. CDC ECOLOGY: Raises concerns regarding the age of the ecological surveys, which are over three years old. The ecological impact of the additional plots need to be assessed with any additional mitigation requirements, changes to licence requirements for European Protected Species and evidence of how an overall net gain for biodiversity will now be achieved.

7.10. CDC ECONOMIC DEVELOPMENT: No comments received.

7.11. CDC ENVIRONMENTAL HEALTH: **No objections**, subject to the repeat of noise conditions from the appeal and no external lighting being installed at the site.

7.12. ENVIRONMENT AGENCY: Raises concerns regarding the use of treatment works and comments that the development should connect to the main foul sewer.

7.13. OCC GYPSY AND TRAVELLER SERVICES: No comments received.

7.14. OCC HIGHWAYS: **Objects**, as the proposals do not provide for safe and suitable access for all people, which is contrary to NPPF.

- 7.15. CDC LICENSING: **No objections**, but comments that that a Caravan site premises licence will be required before any such land can be used for the proposed planning permissions.
- 7.16. MOD ESTATES: Raises concerns regarding the impact that the MoD training area would have on future occupiers.
- 7.17. CDC PLANNING POLICY: **No objections**, stating that there is currently a sufficient supply of gypsy and traveller pitches based on the most up to date evidence on need therefore there is no pressing need for additional land to be released at this time. Detailed issues to be considered include whether a satisfactory living environment could be secured and potential impacts on biodiversity and visual impact and effect on landscape character.
- 7.18. CDC STRATEGIC HOUSING: No comments received.
- 7.19. THAMES VALLEY POLICE DESIGN ADVISER: Raises concerns regarding the boundary treatments, lighting and lack of refuse storage arrangement.
- 7.20. THAMES WATER: No comments received.

## **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)

- PSD1 - Presumption in Favour of Sustainable Development
- BSC6 - Travelling communities
- ESD1 - Mitigating and Adapting to Climate Change
- ESD6 - Sustainable Flood Risk Management
- ESD7 - Sustainable Drainage Systems
- ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 - Local Landscape Protection and Enhancement
- ESD15 - The Character of the Built and Historic Environment

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C8 - Sporadic development in the countryside
- C28 - Layout, design and external appearance of new development
- ENV1 - Development likely to cause detrimental levels of pollution

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)

- Planning Practice Guidance (PPG)
- Planning Policy for Traveller Sites (August 2015) (PPTS). This document sets out the Government's planning policy specifically for traveller sites and should be read in conjunction with the NPPF
- Designing Gypsy & Traveller Sites (2008) (although this document was withdrawn by the Government on 1st September 2015, it remains a useful starting point for considering the design and layout of proposed travellers sites)
- Gypsies and Travellers: Planning Provisions – Briefing Paper January 2016. Provides useful background information and summarises changes to the updated PPTS. It is noted however that as this is only a Briefing Paper; it carries very limited weight and should not be relied upon as a substitute for specific advice
- CDC Annual Monitoring Report 2019 (AMR) (December 2019)
- Cherwell, West Oxfordshire and South Northamptonshire Gypsy and Traveller Needs Assessment (2012/2013) (GTAA 2012/2013)
- Cherwell, Oxford City, South Oxfordshire and Vale of White Horse Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (2017) (GTAA 2017)
- The European Convention on Human Rights (ECHR) Articles 8 and Article 14 of Protocol 1
- Housing Act (2004)
- The Equality Act (2010)

## 9. APPRAISAL

The key issues for consideration in this case are:

- Principle of Development
- Need for pitches
- Visual Impact and Effect on Landscape Character;
- Residential Amenity;
- Ecological Impact;
- Highway Safety;
- Flooding Risk and Drainage;
- Other Matters

### Principle of Development

#### *Policy Context*

- 9.1 The National Planning Policy Framework (NPPF) states that the purpose of the planning system is to contribute towards the achievement of sustainable development. This required the economic, social and environmental objectives to be pursued in mutually supportive ways. Planning law requires planning applications to be determined in accordance with the development plan unless material considerations indicated otherwise.
- 9.2 The most relevant policies to the principle of development are Policies ESD1 and BSC6. Policy ESD1 states that to mitigate the impact of development on climate change, growth will be delivered in the most sustainable locations (as defined in the local plan) and reduce the need to travel. Policy BSC 6 of the Cherwell Local Plan 2011-2031 Part 1 builds on this in relation travellers' pitches in the District and in order to provide and maintain a five-year supply of deliverable traveller sites. This states that allocations will be made in Local Plan Part 2 and planning permissions will be granted for suitable traveller sites. Policy BSC6 also states that locations

outside the AONB and Green Belt will be considered and: *“In identifying suitable sites with reasonable accessibility to services and facilities the following sequential approach will be applied:*

- *Within 3km road distance of the built-up limits of Banbury, Bicester or a Category A village.*
- *Within 3km road distance of a Category B village and within reasonable walking distance of a regular bus service to Banbury or Bicester or to a Category A village.*

#### *Assessment*

9.3 The application site is not located within an area of Green Belt or AONB. The site is located approximately 2500m by road from the centre of Arncott, a Category A Settlement under Policy Villages 1. Therefore, the site meets the first criteria relating to the sequential test for the location of sites. However, this does not mean the proposal is *de facto* acceptable in principle as Policy BSC6 also requires the assessment of the suitability of sites against the criteria below:

The following criteria will also be considered in assessing the suitability of sites:

- Access to GP and other health services;
- Access to schools
- Avoiding areas at risk of flooding;
- Access to the highway network;
- The potential for noise and other disturbance;
- The potential for harm to the historic and natural environment;
- The ability to provide a satisfactory living environment;
- The need to make efficient and effective use of land;
- Deliverability, including whether utilities can be provided;
- The existing level of local provision;
- The availability of alternatives to applicants.

9.4 Arncott is a Category A settlement, which are amongst the most sustainable villages in the district, though they range considerably in terms of their size and level of facilities/services. Arncott has a shop, chapel, village hall, sports field and one pub.

9.5 The Parish Council and a number of the residents of Piddington have raised concerns in relation to the sustainability and suitability of the site. Officers recognise that Arncott is not the most sustainable of the Category A villages as it does not have as many services and facilities as a number of the other Category A settlements. In allowing the recent appeal for 6 pitches, the Planning Inspector noted that Arncott does have a regular bus service between Bicester and Oxford, which also stops on the B4011 approximately 250m from the application site. The site is also located 3.5km from Ambrosden where there is a wider range of services offering a primary school, shop, public house and part time surgery.

- 9.6 Furthermore, in the appeal decision for 17/01962/F the Inspector considered that the site was sustainable in this regard, as paragraph 103 of the National Planning Policy Framework (NPPF) explains that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Moreover, the provision of a settled base for twelve gypsy families would facilitate access to health services and schooling, in line with paragraph 13 of PPTS. As the site has been previously considered against the first two criteria of Policy BSC6 in an appeal from 2019, the site remains to be acceptable in this regard.
- 9.7 Part of the site is located within an area of agricultural land that has a classification of 3. Government guidance states that the best and most versatile agricultural land is graded 1 to 3a. The highest grade goes to land that:
- gives the highest yield or output
  - has the widest range and versatility of use
  - produces the most consistent yield from a narrower range of crops
  - requires less input
- 9.8 A number of the third party comments have highlighted that the land to which the application relates is grade 3 and 4 agricultural land. Grade 3 is good to moderate agricultural land and grade 4 is poor quality agricultural land. Concerns have been raised that the proposed development would lead to the loss of good quality agricultural land; however, the area of land is not an excessively large area of agricultural land and is not of the highest quality. Therefore, the change of use of this piece of land would not result in the loss of a significant amount of high quality agricultural land and officers consider the loss of agricultural land to an alternative use in this instance would not cause significant or demonstrable harm.
- 9.9 In relation to the national planning policy context for the provision of traveller sites this is contained within the August 2015 'Planning Policy for Traveller Sites' (PPTS) and should be read in conjunction with the NPPF. The Government's overarching aim is to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life that they have whilst at the same time respecting the amenity and appearance of the settled community.
- 9.10 Policy C of the Government PPTS states that when assessing the suitability of sites in rural or semi-rural settings, local planning authorities (LPAs) should ensure that the scale of such sites does not dominate the nearest settled community. There is no definition of what would constitute the domination of a settlement. This issue has been raised a number of times by residents during the consultation process. Six pitches have been approved under 17/01962/F and six further pitches are under consideration on the adjacent site, which would total eighteen if this application were to be approved as well. If all of these schemes were approved and implemented, this would result in the provision of a relatively large site. However, given the lack of definition of the domination of a settlement and the location of the sites approximately 1km away from Piddington, it is considered that the development would not dominate Piddington in this regard. In the case of this proposal, it is important in consideration of this matter to note that broadly the same site has been approved for 6no pitches and is not proposed to be increased in size.
- 9.11 Policy H states that LPAs should consider the existing level of need for site, the availability of alternative accommodation for applicants and their personal circumstances when considering proposals for gypsies and travellers sites and they

should determine applications for sites from any travellers and not just those with local connections.

- 9.12 Policy H goes on to advise that LPAs should strictly limit new traveller site development in the open countryside that are away from existing settlements or outside areas allocated in the development plan. The application site is located outside of any settlement, not having any strong relationship with the form of any village and clearly separated by open fields.
- 9.13 Given the above, the location of the site in relation to other settlements (as outlined above), the conclusions of the Inspector in the recent appeal and the fact that Policy BSC6 has the 3km criteria in relation to Category A villages, on balance it is not considered that the proposal can be said to be 'away from existing settlements' so would not conflict with national policy in that respect. It is recognised that this conclusion stands somewhat at odds with the conclusion above that the proposal would not dominate the settled community because it is c. 1km away.
- 9.14 Policy H goes on to state that in rural areas sites development should respect the scale of, and not dominate, the nearest settled community and when considering applications LPAs should attach weight to the following matters:
- a) effective use of previously developed (brownfield), untidy or derelict land;
  - b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
  - c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;
  - d) not enclosing sites with excessive hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

#### Need for pitches

- 9.15 The Local Planning Authority is required to make an assessment of the needs for gypsy and traveller sites within the district and to identify and update annually a 5-year supply of specific deliverable sites. Paragraph 27 of the PPTS states that if a local planning authority cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when consideration applications for the grant of temporary planning permission.
- 9.16 Policy BSC6 of the Local Plan 2015 states that the council will provide 19 (net) additional pitches to meet the needs of Gypsy and Travellers from 2012 to 2031.
- 9.17 A Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) for Cherwell, Oxford, South Oxfordshire and Vale of White Horse Councils was published in June 2017. Since its publication the GTAA 2017 has informed the examination and adoption of Local Plans covered by the study's area.
- 9.18 It identifies a new objective assessment of need for each authority based on the definitions of Gypsies and Travellers and Travelling Showpeople for planning purposes (Annex 1 of the Government's Planning Policy for Traveller Sites (PPTS, 2015)). It identifies a need for 7 additional pitches for households for Cherwell by 2031 that meet the planning definition.

- 9.19 The Assessment also suggests that the overall need could rise by up to 12 pitches if further information be made available to the Council that will allow for the planning definition to be applied to the unknown households. These are households where it was not possible to distinguish whether or not they meet the planning definition. Additionally, a potential need for 8 pitches is highlighted due to the closure of a site (Smiths Caravan Park), which could increase the need by up to a further 20 pitches.
- 9.20 The Assessment advises that for 'unknown' travellers 'it would not be appropriate when producing a robust assessment of need to make any firm assumptions about whether or not they meet the planning definition...' based on interviews that have taken place (para. 7.28 of the study).
- 9.21 The AMR 2019 presents a 5-year land supply calculation based on the need identified in support of the adopted Policy BSC6 and a calculation based on the latest GTAA 2017.
- 9.22 As noted above since the preparation of the need evidence/study supporting adopted Policy BSC6, the Government set out planning policies and requirements for Gypsy and Traveller sites in 'Planning Policy for Traveller Sites' (PPTS, 2015). The GTAA 2017 is more up to date and consistent with national policy set out in PPTS 2015.
- 9.23 The published five-year land supply position for gypsies and travellers based on the GTAA methodology as reported in the 2019 AMR is 3.8 years for the period 2020-2025 commencing 1 April 2020 (shortfall of 3 pitches). This does not include an allowance for 'unknown' need but includes the potential need for 8 pitches arising from the Smiths site (a site that was previously included in the district's supply).
- 9.24 The above calculation takes into account planning permissions for a total of 10 new pitches during 2019/20 (4 pitches at Summer Place, Launton and 6 pitches at Widnell Lane, Piddington). A separate permission for 3 new pitches was also granted towards the end of 2019/20 which follows the publication of the 2019 AMR (Land West of M40, Kirtlington Road, Chesterton). Inclusion of the 3 new pitches would mean that the Council can demonstrate a 5-year supply of gypsy and traveller pitches based on the most up to date assessment of need.
- 9.25 The application site is proposed to be used as a site for twelve families. No details of personal circumstances of the occupants of the site has been submitted in support of the application and it is unclear as to whether the potential future occupants would meet the planning definition of a gypsy/traveller. If officers were minded to recommend approval for the application, in order to ensure that the site was only occupied by households meeting the revised definition of gypsy/traveller a planning condition could be used in line with Government guidance. Officers are therefore satisfied that the application is for a site that would be used by gypsies/travellers.
- 9.26 The Council considers that there is currently a sufficient supply of gypsy and traveller pitches based on the most up to date evidence on need therefore there is no pressing need for additional land to be released at this time. In this instance there are also significant concerns as to whether this would be an appropriate location for such development, having regard to whether the development would cause harm to the historic and natural environment. The principle of development is therefore considered unacceptable in this instance.

### *Conclusion*

- 9.27 The proposed development fails to comply with Policy BSC6 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the NPPF due to the harm to the natural environment.

#### Visual impact and Effect on Landscape Character

##### *Policy context*

- 9.28 The NPPF recognising the intrinsic character and beauty of the open countryside. ESD13 of the Cherwell Local Plan Part 1 notes that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to the local landscape character cannot be avoided. Policy ESD13 also states that proposals will not be permitted if they would cause undue visual intrusion into the open countryside or be inconsistent with local character.
- 9.29 Policy ESD15 of the Cherwell Local Plan Part 1 states that: *“New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards.”*
- 9.30 Saved Policy C28 of the Cherwell Local Plan 1996 reflects Government guidance in relation to the design of new development by seeking to ensure that such development is in harmony with the general character of its surroundings and is sympathetic to the environmental context of the site and its surroundings. Saved Policy C8 of the Cherwell Local Plan 1996 seeks to protect the character of the open countryside from sporadic development.

##### *Assessment*

- 9.31 The site is currently bounded by a mature native hedgerow to the northern boundary which measures approximately 2.5 metres in height. The existing hedgerow currently screens views into the site from Widnell Lane, although views are achieved into the site from the existing access, which would be widened under the proposals. There are limited views of the site from the wider surroundings. The site cannot be seen from the B4011 due to a high mature hedgerow which bounds the field boundary adjacent to this road. Furthermore, due to the flat nature of the site itself and the surrounding landscape along with the mature hedgerow boundary features in the locality views into the site are limited only to localised views from Widnell Lane and distant views of the site from the surrounding area are limited.
- 9.32 Notwithstanding the above, the site would be located on agricultural land in the open countryside. Criterion (f) of Policy BSC6 requires the potential for harm to the natural environment to be considered. In the appeal decision for 17/01962/F, the Inspector considered that the formation of six pitches and the stationing of caravans on the site would involve the encroachment of development into the field and that this would cause some harm to the character and appearance of the area. The Inspector considered that the appeal development failed to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 and Policy C28 of the Cherwell Local Plan 1996.
- 9.33 The Inspector’s conclusion applies here as it did to the appeal site, i.e. the proposal would cause harm to the character and appearance of the area. The proposed development would result in an urbanisation of the countryside. The current application site is larger than the appeal site (extending further to the south) and would therefore cause further harm than the appeal scheme, albeit given that the site is broadly similar accordingly the degree of harm would be similar to that caused by the appeal proposal.



### *Conclusion*

- 9.34 It is therefore considered that the proposed development would cause harm to the character and appearance of the area, due to the urbanisation and intrusion into the open countryside. The proposed development therefore fails to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Policies C8 and C28 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

### Residential amenity

#### *Policy context*

- 9.35 The NPPF requires new development provide a high standard of amenity for existing and future occupants. Chapter 15 of the NPPF advises that decision should prevent new development from being subject to unacceptable levels of noise pollution and new development should be appropriate for its location taking into account the likely effects on living conditions. In doing so decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise and avoid noise giving rise to 'significant adverse impacts' on health and the quality of life.
- 9.36 Saved Policy ENV1 of the adopted Cherwell Local Plan sets out that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke other types of environmental pollution will not normally be permitted. Further, where a source of pollution is already established and cannot be abated, the Council will seek to limit its effect by ensuring that development within the affected area maintains a suitable distance from the pollution source. Policy ESD15 of the Cherwell Local Plan Part 1 states that: *"Development should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space."*

#### *Assessment*

- 9.37 With regard to the layout of the proposal, the proposed pitches would measure a minimum of 17m by 23m, which is considered by officers to be of a sufficient size to allow for the siting of a mobile home and touring van and would allow for privacy and amenity space for each pitch. The proposed layout is not considered to result in overcrowding of the site.
- 9.38 The site is located approximately 250 metres from a Ministry of Defence (MoD) training area known as Piddington Training Area. This training area is used by the MOD for a variety of exercises using small arms ammunition (Blank) and the use of pyrotechnics including illumination types and noise simulation. The site is used frequently during weekdays and at weekends for a variety of exercises. This type of use which generates noise and disturbance could cause undue harm to the residents of the proposed site, particularly due to the nature of the residential caravans which offer little noise attenuation due to their lightweight construction.
- 9.39 The MoD provided evidence with the application on the adjacent site and at the inquiry for the appeal. The Inspector concluded that whilst the operations at the training ground would impinge on the amenities of future occupiers, the development would not give rise to significant adverse impacts on health and the quality of life, as is the test set out in the NPPF. The application site now extends slightly closer to the MoD training ground than the appeal scheme, however the impacts would be similar.

- 9.40 The Environmental Health Officer (EHO) has offered no objections to the scheme, subject to a condition that one of the caravans stationed on each pitch shall be a static caravan or mobile home, and that static caravan or mobile home shall comply with the specification of paragraphs 4.8 and 4.9.4 in British Standard BS 3632:2015 – Residential park homes – Specification, which relates to noise standards. In light of the Inspector’s decision and subject to this condition, it is considered that the development would be acceptable in this regard.
- 9.41 The EHO has requested a condition relating to no lighting being installed on the site. This condition is considered to be acceptable.

### *Conclusion*

- 9.42 Subject to conditions, the proposed development would not cause harm to the amenities of neighbours and therefore complies with Policy ESD15 of the Cherwell Local Plan 2011 – 2031, Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

### Ecology Impact

#### *Legislative context*

- 9.43 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.
- 9.44 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.
- 9.45 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.
- 9.46 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.

9.47 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*

9.48 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.

9.49 Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) 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.

9.50 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.

9.51 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.

9.52 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.

9.53 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.

9.54 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 LPAs 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*

9.55 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 LPAs 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')

9.56 The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is close to a pond and there are mature hedgerows on the northern and southern boundaries of the site, with the access widened in the northern boundary with the removal of a small section of hedge and therefore has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.

9.57 In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS 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 LPA should then consider whether Natural England (NE) 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.

9.58 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 NE will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether NE will grant the licence then the Council may grant planning permission.

9.59 Ecological surveys have been submitted with the application; however, at the time of writing this report, these reports are all over three years old. The Council's Ecology Officer has raised concerns and has stated that new surveys and reports are required. The Ecology Officer went on to state that the ecological impact of the additional plots need to be assessed with any additional mitigation requirements, changes to licence requirements for European Protected Species and evidence of how an overall net gain for biodiversity will now be achieved all clearly outlined. None of this information has been provided with the application.

9.60 Having regard to the LPA's duty under the Conservation of Habitats and Species Regulations 2017, the lack of a suitable protected species/ecological survey and proposed mitigation strategy means that it has not been demonstrated that the proposal will not cause harm to any protected species or its habitat which is

reasonably likely to be present and affected by the development. The proposal is therefore contrary to 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.

### Highway safety

#### *Policy context*

9.61 National and local policy looks to promote sustainable transport options whilst ensuring that new development proposals do not cause harm to the safety of the highway network.

9.62 The NPPF (Para. 108) advises of the need to have due regard for whether new development includes:

- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- safe and suitable access to the site can be achieved for all users; and
- any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

9.63 Policy ESD15 of the CLP 2031 states that: *“New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work in. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions.”*

9.64 Policy SLE4 of the CLP 2031 states that: *“New development in the District will be required to provide financial and/or in-kind contributions to mitigate the transport impacts of development.”* Policy SLE4 also states that: *“All development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling...Development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported.”*

#### *Assessment*

9.65 A number of concerns have been raised in third party comments in relation to highway safety issues. The Highways Officer has objected on the grounds that the proposals do not provide for safe and suitable access for all people, which is contrary to NPPF, by virtue of the lack of a lit footway on Widnell Road. The previous application was not refused on this basis and the Inspector did not consider that this would be a significant issue, given that the majority of trips from the site would be in private motor vehicles. It is therefore considered that the application cannot be refused on this basis.

9.66 The Highways Officer has not raised any concerns with the improvements to the access onto Widnell Road, other than stating that conditions would be required to ensure further detail was submitted. Given that the Highways Officer has not objected in this regard, it is considered that the access to the site would not cause harm to safety of the local highway network.

#### *Conclusion*

9.67 It is therefore considered that the proposed development would not cause harm to the safety of the local highway network and therefore complies with Policies SLE4 and ESD15 of the Cherwell Local Plan 2011 – 2031 and Government guidance contained within the NPPF.

### Flood risk and drainage

#### *Policy context*

9.68 Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding and further, that development should be safe and remain operational in the event of flooding. In addition to safeguarding floodplains from development, opportunities will be sought to restore natural river flows and floodplains, increasing their amenity and biodiversity value.

9.69 Policy ESD7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

#### *Assessment*

9.70 In terms of assessing the potential flood-risk the proposals would constitute 'Highly Vulnerable' development. The proposals are not supported by any assessment of flood-risk. Policy ESD6 of the CLP 2031 states that site specific flood risk assessments will be required to accompany development proposals in the following situations:

- All development proposals located in flood zones 2 or 3
- Development proposals of 1 hectare or more located in flood zone 1
- Development sites located in an area known to have experienced flooding problems
- Development sites located within 9m of any watercourses.

9.71 Flood risk assessments should assess all sources of flood risk and demonstrate that:

- There will be no increase in surface water discharge rates or volumes during storm events up to and including the 1 in 100 year storm event with an allowance for climate change (the design storm event)
- Developments will not flood from surface water up to and including the design storm event or any surface water flooding beyond the 1 in 30 year storm event, up to and including the design storm event will be safely contained on site.

9.72 Development should be safe and remain operational (where necessary) and proposals should demonstrate that surface water will be managed effectively on site and that the development will not increase flood risk elsewhere, including sewer flooding. The foul sewerage for the site would be provided by way of two water treatment plant, of which details have been submitted with the application.

- 9.73 The application proposes the use of package treatment plant in the south of the site, to deal with the foul water at the site. The Environment Agency (EA) has said that its preferred option would be for this development to connect to the mains foul sewer.
- 9.74 However, the main drainage system is currently located approximately 250 meters to the north-west of the site at the junction of the B4011 and Palmer Avenue. The ability to connect into the main drainage system would be a complicated and costly exercise.
- 9.75 The above noted by the EA, it has not objected to the application. The EA has stated that the proposed package treatment plant associated with this development will require an Environmental Permit under the Environmental Permitting Regulations 2010, from the EA, unless an exemption applies. Whilst this is not ideal, Paragraph 183 of the NPPF states that LPAs should not control processes themselves where they are subject to approval under pollution control regimes.
- 9.76 Whilst the EA identifies the site as being in Flood Zone 1 the Oxfordshire Flood Toolkit records show the site to be in an area with a high chance of flooding from surface water (a fact corroborated in a significant number of third party representations from local residents). No flood risk assessment has been submitted with the application and the site is now significantly larger than the site of 17/01962/F.
- 9.77 Without knowing the extent of any site specific flood-risk and the geology of the area it cannot be established as to what form of drainage would be appropriate for the site or if indeed the site could be appropriately drained to ensure that it would not be to the detriment of the operation of the site or exacerbate flood-risk on surrounding land.
- 9.78 It is considered that through the lack of appropriate assessment of flood-risk or drainage requirements the applicant has failed to demonstrate that the proposals would not increase the flooding risk on the site or elsewhere and would remain operational in the event of flooding and therefore does not accord with Policies ESD6 and ESD7 of the Cherwell Local Plan (2011-2031) Part 1.

#### Human Rights and Equalities

- 9.79 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.
- 9.80 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*

- 9.81 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. In addition, third parties were invited to the public meeting of the Planning Committee and had the opportunity to speak. 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*

- 9.82 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.
- 9.83 Officers have considered that, in the event that the application is granted planning permission, there will not be any discrimination (or potential discrimination) on neighbours.

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

- 9.84 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.
- 9.85 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 application seeks planning permission for the change of use of land to a residential caravan site for 12no gypsy families. The site is located approximately 2.5km from the category A village of Arncott and benefits from suitable access to the local and wider highway network so can be considered under Policy BSC6 of the Local Plan.
- 10.2. In assessing the sustainability and suitability of the site the criteria set out within Local Plan Policy BSC6 is relevant in determining the most suitable locations for gypsy and traveller sites.
- 10.3. Criterion (a) considers access to GP and other health services; the nearest NHS GP surgery to the site would be in Ambrosden and is accessible from the site, given the findings of the Inspector in the recent appeal.
- 10.4. Criterion (b) considers access to schools; the nearest primary school again is located within Ambrosden and is accessible from the site.
- 10.5. Criterion (c) seeks to avoid areas at risk of flooding. The site is identified as being at risk from surface water flooding and in the absence of any appropriate flood-risk assessment it is unclear as to whether the proposals would not increase the flooding risk on the site or elsewhere and would remain operational in the event of flooding; and therefore unacceptable in this regard.



- 10.6. Criterion (d) considers the suitability of the site in relation to access to the existing highway network; in this respect the proposal is considered to be appropriately located without demonstrable harm caused to highway safety.
- 10.7. Criterion (e) considers the potential for noise and disturbance. The site is considered acceptable in regard to the impact on neighbouring uses. The site would be in close proximity of the MoD training ground; however, given the findings of the Inspector at the appeal, it is considered that the impact would not be so significant to justify a reason for refusal in this regard.
- 10.8. Criterion (f) seeks to ensure harm to the historic and natural environment is limited. The proposal would not adversely impact on any heritage assets. However, there would be harm to the rural character and appearance of the site and locality in the immediate vicinity of the site. In the absence of an ecological survey, it is considered that the development would cause harm in this regard too. This harm would be significant and weighs against the development. For the reasons set out in this report it is considered that the harm to the character and appearance of the area is slightly less in this instance than with the proposal for the nearby site assessed under application ref. 20/01747/F.
- 10.9. Criterion (g) seeks to ensure that proposals provide for a satisfactory living environment. In this case due to the potential flood-risk of the site this is not considered to be met as discussed above.
- 10.10. Criterion (h) seeks to ensure that efficient and effective use of land is made. In this case the current proposal would result in the development of a green field site. The agricultural land is rated moderate to good (grade 3); however, it is considered that the amount of agricultural land lost and the quality of the land would not be a significant loss.
- 10.11. Criterion (i) considers the likely deliverability of the proposal, including whether utilities can be provided on the site. The applicant's agent states that water and electricity already serves the site. It is not proposed to connect to mains drainage however this has not been justified. On balance it is considered that this criterion has been met.
- 10.12. Criterion (j) looks at the existing level of local provision for gypsy and travellers across the Cherwell District. Officers consider that there is currently no pressing need for further land to be released with a sufficient supply of pitches available within the district. This is a different position that the Council finds itself in compared to that when it faced the recent appeals at Piddington and Chesterton.
- 10.13. Criterion (k) considers the availability of alternative sites for the applicant. In this case no alternative sites are allocated in the Local Plan and little progress has been made in this regard. The applicant has not provided details of alternative sites available.
- 10.14. In conclusion, the proposal is not considered to dominate the nearest settled community and is located relatively well located in terms of access to facilities within the villages of Arccott and Ambrosden and further would not have any significant detrimental impacts on highway safety or residential amenity of existing residential properties; these factors weigh in support of the application. However, the proposal would lead to significant harm to the rural character and appearance of the countryside and would be significant where it occurs. The proposal would cause harm to the rural character and appearance of the area and local ecology and the proposals are likely to result in the exacerbation of flood-risk at the site and on surrounding land and these factors weigh against the proposals.

10.15. Overall, when assessing the development as a whole, the identified harm is considered to outweigh benefits of the scheme. It is therefore recommended that planning permission be refused.

## 11. RECOMMENDATION

RECOMMENDATION - **REFUSAL** FOR THE REASONS SET OUT BELOW

### REASONS FOR REFUSAL

1. The proposed development, by virtue of its siting in the open countryside, overall scale and appearance, would have an urbanising effect on the open countryside, and would result in significant and demonstrable harm to the rural character and appearance of the area. The proposal is therefore contrary to Policies ESD13 and ESD15 of the Cherwell local Plan Part 1, saved Policies C8 and C28 of the Cherwell local Plan 1996 and Government guidance within the National Planning Policy Framework.
2. The planning application has not been supported by adequate information to demonstrate the impact of the proposed development on protected species has been properly understood and the requirement for mitigation to secure a net gain in biodiversity can be met. The proposal is therefore contrary to Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
3. A Flood Risk Assessment has not been submitted with this application. Therefore, an assessment has not been made of the flood risks arising from the proposed development and it has not been clearly demonstrated that the development and its future users will be safe over the lifetime of the development. The proposal is therefore contrary to Policy ESD6 of the Cherwell Local Plan Part 1 and Government guidance contained within the National Planning Policy Framework.

CASE OFFICER: Matt Chadwick  
753754

TEL: 01295

# 20/01747/F

## Land South Side Of Widnell Lane Piddington

Pipelines

68.6m

WIDNELL LANE

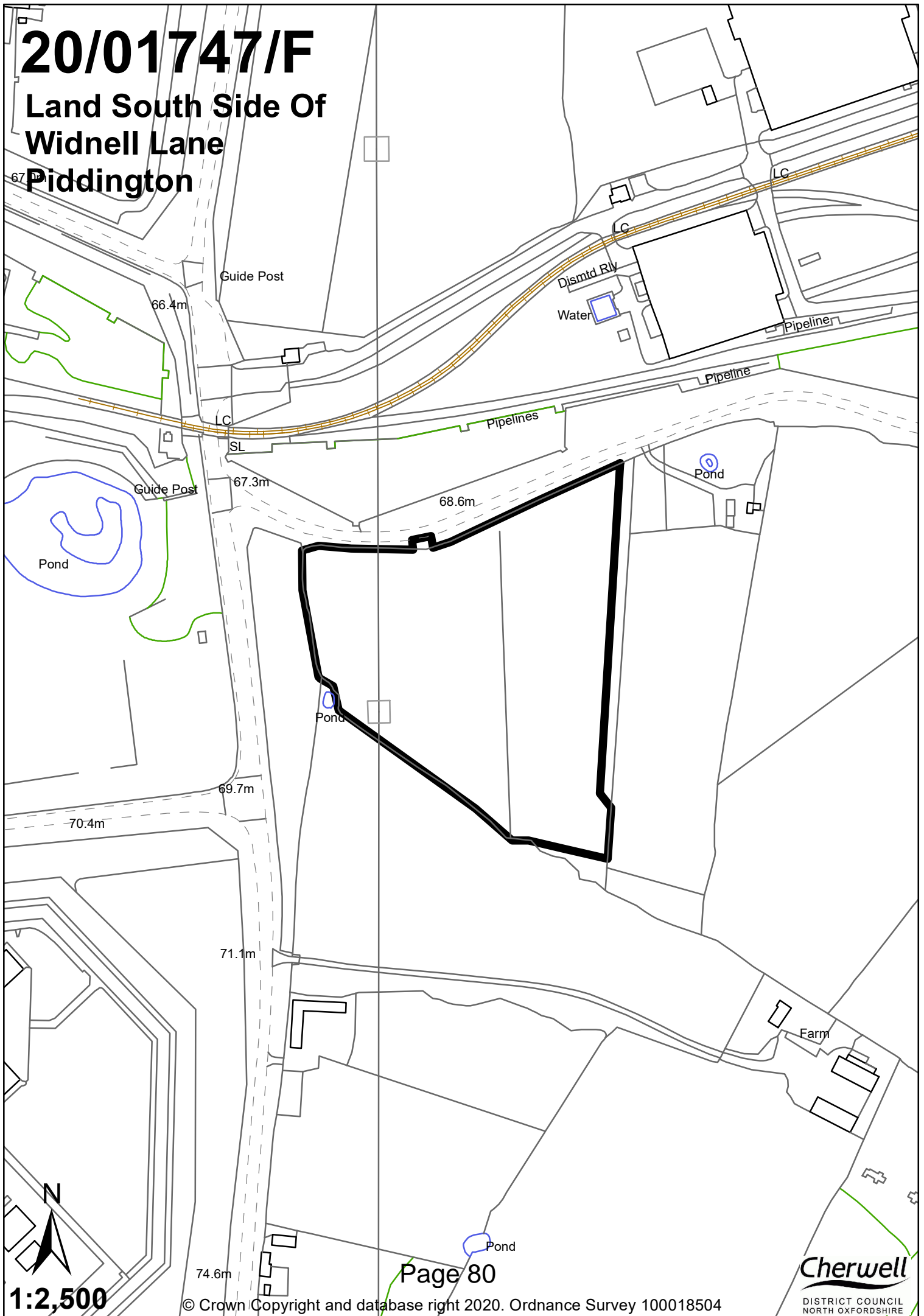
Pond

N

1:1,000

# 20/01747/F

## Land South Side Of Widnell Lane Piddington



1:2,500

**Case Officer:** Matthew Chadwick

**Applicant:** J Sweeny

**Proposal:** Change of Use of land to a 6no pitch Gypsy and Traveller site to include 6no mobiles, 6no tourers and associated operational development including hardstanding and fencing

**Ward:** Launton And Otmoor

**Councillors:** Councillor Hallchurch, Councillor Holland and Councillor Hughes

**Reason for Referral:** Major Development

**Expiry Date:** 1 October 2020

**Committee Date:** 8 October 2020

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**EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

**RECOMMENDATION: REFUSE PERMISSION**

**Proposal**

Planning consent is sought for the change of use of land to a 6no pitch Gypsy and Traveller site to include 6no mobiles, 6no tourers and associated operational development including hardstanding and fencing

**Consultations**

The following consultees have raised **objections** to the application:

- Piddington Parish Council, CPRE, OCC Highways

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

- CDC Environmental Health, CDC Landscape Services, CDC Planning Policy, CDC Strategic Housing

48 letters of objection have been received.

**Planning Policy and Constraints**

The site is located in an area of potentially contaminated land and protected species have been located in close proximity of 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:

- Principle of Development
- Need for pitches
- Visual Impact and Effect on Landscape Character;
- Residential Amenity;
- Ecological Impact;
- Highway Safety;

- Flooding Risk and Drainage;
- Other Matters

The report looks into the key planning issues in detail, and Officers conclude that the proposal is unacceptable for the following reasons:

1. Visual harm due to intrusion into open countryside
2. Flood risk
3. Ecological harm

**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 application site is located approximately 1km to the west of the village of Piddington, 1.5km to the east of Upper Arccott and 3km from the village of Ambrosden. The B4011 lies approximately 35m to the west of the site and to the west of the B4011 lies HM Prison Bullingdon. The site of the proposed development is an agricultural field which is currently laid to grass. The site is enclosed on the road side frontage by mature native hedgerow to the northern boundary and the southern boundary is also made up of a mature native hedgerow.

### **2. CONSTRAINTS**

- 2.1. The site is not in close proximity to any listed buildings and is not located within a conservation area. The site has some ecological value due to recent recordings of protected species within the vicinity of the site, including common mouse-ear and Dunnocks. Piddington Training Area District Wildlife Site lies approximately 250m to the south east of the site.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. This application seeks planning permission for the change of use of the land to be used as a gypsy and traveller caravan site comprising 6 pitches, each pitch containing one mobile home and one touring caravan. The submitted plan shows an existing access; however, at the time of the site visit no such access existed. The access in this location would be approximately 9.5m wide to allow for two-way traffic. The proposal also includes construction of a driveway through the site and each pitch can be accessed from the main site driveway. The site access is to be hard surfaced and the driveways within the site would be constructed from permeable materials. A paddock area is proposed in the south-western corner of the site. Foul sewerage would be provided by way of a water treatment plant, of which details have been submitted with the application.

### **4. RELEVANT PLANNING HISTORY**

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

17/00145/F - Change of use of land to use as a residential caravan site for 16 gypsy/ traveller families, each with two caravans, including improvement of access and laying of hardstanding – Application Refused

17/01962/F - Material change of use of land to use as a residential caravan site for 6 gypsy families, each with two caravans, including improvement of access and laying of hardstanding – Application Refused. Decision appealed and appeal allowed.

- 4.2. These applications were located on the site immediately adjacent to the east of the application site. There is currently an application under consideration on this site (20/01122/F).

## **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. No pre-application discussions have taken place with regard to this proposal.

## **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **18 August 2020**, although comments received after this date and before finalising this report have also been taken into account.

- 6.2. The comments raised by third parties are summarised as follows:

- There are traveller sites in other surrounding villages.
- If the approved application and currently submitted applications were approved, there would be an overprovision of traveller sites in Piddington, which is a Category C village.
- The previously approved scheme should be implemented first.
- There is no need for any extra pitches across Cherwell at the present time.
- The need for pitches has been miscalculated.
- The site is not sustainable.
- The site is next to a MoD training ground and residents will be subject to loud noises.
- The development would cause harm to the safety of the local highway network.
- The development would cause harm to local ecology.
- The land is prone to flooding.

- 6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## **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. PIDDINGTON PARISH COUNCIL: **Objects.** Permission already exists for 6 pitches on the same parcel of land [*Officer comment – the permission is on an adjacent site*]; an application for a further 6 pitches (20/01122/F) on this site is yet to be determined, making 18 pitches in all with this application. The population of the site would be in the region of 108 people. This would dominate the nearest settled community of Piddington which currently has a population of only 370. It would represent unsustainable development and would place undue pressure on the local infrastructure. The assessment of need is out of date, unsound and disputed and CDC has a more-than-adequate supply for the next five years. CDC has failed to identify suitable sites in its Local Plan and so exposes rural communities to speculative applications like this application.

#### OTHER CONSULTEES

- 7.3. CPRE: **Objects.** The site would fail to meet the majority of the criteria of Policy BSC6 of the Cherwell Local Plan 2011 – 2031. There are likely to be better sites available within the district and the Council should identify appropriate sites in the next stage of the Local Plan.

- 7.4. CDC ENVIRONMENTAL HEALTH: **No objections**, subject to conditions requiring that:

one of the caravans stationed on each pitch shall be a static caravan or mobile home, and that static caravan or mobile home shall comply with the specification of paragraphs 4.8 and 4.9.4 in British Standard BS 3632:2015 – Residential park homes – Specification; and

No external lighting shall be installed on the site, other than in accordance with a scheme, including details of the position, height and type of lights, which has been submitted to and approved in writing by the Local Planning Authority.

- 7.5. OCC HIGHWAYS: **Objects**, as the proposals do not provide for safe and suitable access for all people, which is contrary to NPPF.

- 7.6. CDC LANDSCAPES: Comments that landscaping would need to be implemented, with existing hedgerows retained and maintained and a new hedgerow implemented on the eastern boundary.

- 7.7. CDC PLANNING POLICY: **No objections**, stating that there is currently a sufficient supply of gypsy and traveller pitches based on the most up to date evidence on need therefore there is no pressing need for additional land to be released at this time. Detailed issues to be considered include whether a satisfactory living environment could be secured and potential impacts on biodiversity and visual impact and effect on landscape character.

- 7.8. CDC STRATEGIC HOUSING: **No objections.**

#### **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)

- PSD1 - Presumption in Favour of Sustainable Development
- BSC6 - Travelling communities
- ESD1 - Mitigating and Adapting to Climate Change
- ESD6 - Sustainable Flood Risk Management
- ESD7 - Sustainable Drainage Systems
- ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 - Local Landscape Protection and Enhancement
- ESD15 - The Character of the Built and Historic Environment

#### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C8 - Sporadic development in the countryside
- C28 - Layout, design and external appearance of new development
- ENV1 - Development likely to cause detrimental levels of pollution

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Planning Policy for Traveller Sites (August 2015) (PPTS). This document sets out the Government's planning policy specifically for traveller sites and should be read in conjunction with the NPPF
- Designing Gypsy & Traveller Sites (2008) (although this document was withdrawn by the Government on 1st September 2015, it remains a useful starting point for considering the design and layout of proposed travellers sites)
- Gypsies and Travellers: Planning Provisions – Briefing Paper January 2016. Provides useful background information and summarises changes to the updated PPTS. It is noted however that as this is only a Briefing Paper; it carries very limited weight and should not be relied upon as a substitute for specific advice
- CDC Annual Monitoring Report 2019 (AMR) (December 2019)
- Cherwell, West Oxfordshire and South Northamptonshire Gypsy and Traveller Needs Assessment (2012/2013) (GTAA 2012/2013)
- Cherwell, Oxford City, South Oxfordshire and Vale of White Horse Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (2017) (GTAA 2017)
- The European Convention on Human Rights (ECHR) Articles 8 and Article 14 of Protocol 1
- Housing Act (2004)
- The Equality Act (2010)

## 9. APPRAISAL

The key issues for consideration in this case are:

- Principle of Development
- Need for pitches
- Visual Impact and Effect on Landscape Character;

- Residential Amenity;
- Ecological Impact;
- Highway Safety;
- Flooding Risk and Drainage;
- Other Matters

### Principle of Development

#### *Policy Context*

- 9.1. The National Planning Policy Framework (NPPF) states that the purpose of the planning system is to contribute towards the achievement of sustainable development. This required the economic, social and environmental objectives to be pursued in mutually supportive ways. Planning law requires planning applications to be determined in accordance with the development plan unless material considerations indicated otherwise.
- 9.2. The most relevant policies to the principle of development are Policies ESD1 and BSC6. Policy ESD1 states that to mitigate the impact of development on climate change, growth will be delivered in the most sustainable locations (as defined in the local plan) and reduce the need to travel. Policy BSC 6 of the Cherwell Local Plan 2011-2031 Part 1 builds on this in relation travellers' pitches in the District and in order to provide and maintain a five-year supply of deliverable traveller sites. This states that allocations will be made in Local Plan Part 2 and planning permissions will be granted for suitable traveller sites. Policy BSC6 also states that locations outside the AONB and Green Belt will be considered and: *"In identifying suitable sites with reasonable accessibility to services and facilities the following sequential approach will be applied:*
- *Within 3km road distance of the built-up limits of Banbury, Bicester or a Category A village.*
  - *Within 3km road distance of a Category B village and within reasonable walking distance of a regular bus service to Banbury or Bicester or to a Category A village.*

#### *Assessment*

- 9.3. The site is not located within an area of Green Belt or AONB. The site is located approximately 2500m by road from the centre of Arncott, a Category A Settlement under Policy Villages 1. Therefore, the site meets the first criteria relating to the sequential test for the location of sites. However, this does not mean the proposal is *de facto* acceptable in principle as Policy BSC6 also requires the assessment of the suitability of sites against the criteria below:

The following criteria will also be considered in assessing the suitability of sites:

- Access to GP and other health services;
- Access to schools
- Avoiding areas at risk of flooding;
- Access to the highway network;
- The potential for noise and other disturbance;

- The potential for harm to the historic and natural environment;
  - The ability to provide a satisfactory living environment;
  - The need to make efficient and effective use of land;
  - Deliverability, including whether utilities can be provided;
  - The existing level of local provision;
  - The availability of alternatives to applicants.
- 9.4. In this case Arncott is a Category A settlement, which are amongst the most sustainable villages in the district, these range considerably in terms of their size and level of facilities/services. Arncott has a shop, chapel, village hall, sports field and one pub.
- 9.5. The Parish Council and a number of the residents of Piddington have raised concerns in relation to the sustainability and suitability of the site. It is recognised by officers that Arncott is not the most sustainable of the Category A villages as it does not have as many services and facilities as a number of the other Category A settlements. However, the village does have a regular bus service between Bicester and Oxford which also stops on the B4011 just 150m from the application site. The site is also located 3.5km from Ambrosden where there is a wider range of services offering a primary school, shop, public house and part time surgery.
- 9.6. Furthermore, in the appeal decision for 17/01962/F the Inspector considered that the nearby site was sustainable in this regard, as paragraph 103 of the National Planning Policy Framework (NPPF) explains that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Moreover, the provision of a settled base for six gypsy families would facilitate access to health services and schooling, in line with paragraph 13 of PPTS. As the immediately adjacent site has been considered against the first two criteria of Policy BSC6 in an appeal from 2019, the site is considered to be acceptable in this regard.
- 9.7. Part of the site is located within an area of agricultural land that has a classification of 3. Government guidance states that the best and most versatile agricultural land is graded 1 to 3a. The highest grade goes to land that:
- gives the highest yield or output
  - has the widest range and versatility of use
  - produces the most consistent yield from a narrower range of crops
  - requires less input
- 9.8. A number of the third party comments have highlighted that the land to which the application relates is grade 3 and 4 agricultural land. Grade 3 is good to moderate agricultural land and grade 4 is poor quality agricultural land. Concerns have been raised that the proposed development would lead to the loss of good quality agricultural land; however, the area of land is not an excessively large area of agricultural land and is not of the highest quality. Therefore, the change of use of this piece of land would not result in the loss of a significant amount of high quality agricultural land and officers consider the loss of agricultural land to an alternative use in this instance would not cause significant or demonstrable harm.

- 9.9. In relation to the national planning policy context for the provision of traveller sites this is contained within the August 2015 'Planning Policy for Traveller Sites' (PPTS) and should be read in conjunction with the NPPF. The Government's overarching aim is to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life that they have whilst at the same time respecting the amenity and appearance of the settled community.
- 9.10. Policy C of the Government PPTS states that when assessing the suitability of sites in rural or semi-rural settings, local planning authorities (LPAs) should ensure that the scale of such sites does not dominate the nearest settled community. There is no definition of what would constitute the domination of a settlement. This issue has been raised a number of times by residents during the consultation process. Six pitches were approved under 17/01962/on the nearby site F and six further pitches are under consideration on that same site, which would total eighteen if this application were to be approved as well. If all of these schemes were approved and implemented, this would result in the provision of a relatively large site, with a small field intervening between the two sites. However, given the lack of definition of the domination of a settlement and the location of the sites approximately 1km away from Piddington, it is considered that the development would not dominate Piddington in this regard. In the case of this proposal, it is important in consideration of this matter to note that this is a proposed new site, in contrast to that proposed under 20/01122/F which has approval for 6no pitches.
- 9.11. Policy H states that LPAs should consider the existing level of need for site, the availability of alternative accommodation for applicants and their personal circumstances when considering proposals for gypsies and travellers sites and they should determine applications for sites from any travellers and not just those with local connections.
- 9.12. Policy H goes on to advise that LPAs should strictly limit new traveller site development in the open countryside that are away from existing settlements or outside areas allocated in the development plan. The application site is located outside of any settlement, not having any strong relationship with the form of any village and clearly separated by open fields.
- 9.13. Given the above, the location of the site in relation to other settlements (as outlined above), the conclusions of the Inspector in the recent appeal and the fact that Policy BSC6 has the 3km criteria in relation to Category A villages, on balance it is not considered that the proposal can be said to be 'away from existing settlements' so would not conflict with national policy in that respect. It is recognised that this conclusion stands somewhat at odds with the conclusion above that the proposal would not dominate the settled community because it is c. 1km away.
- 9.14. Policy H goes on to state that in rural areas sites development should respect the scale of, and not dominate, the nearest settled community and when considering applications LPAs should attach weight to the following matters:
- a) effective use of previously developed (brownfield), untidy or derelict land;
  - b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
  - c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;

- d) not enclosing sites with excessive hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

#### Need for pitches

- 9.15. The Local Planning Authority is required to make an assessment of the needs for gypsy and traveller sites within the district and to identify and update annually a 5-year supply of specific deliverable sites. Paragraph 27 of the PPTS states that if a local planning authority cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when consideration applications for the grant of temporary planning permission.
- 9.16. Policy BSC6 of the Local Plan 2015 states that the council will provide 19 (net) additional pitches to meet the needs of Gypsy and Travellers from 2012 to 2031.
- 9.17. A Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) for Cherwell, Oxford, South Oxfordshire and Vale of White Horse Councils was published in June 2017. Since its publication the GTAA 2017 has informed the examination and adoption of Local Plans covered by the study's area.
- 9.18. It identifies a new objective assessment of need for each authority based on the definitions of Gypsies and Travellers and Travelling Showpeople for planning purposes (Annex 1 of the Government's Planning Policy for Traveller Sites (PPTS, 2015)). It identifies a need for 7 additional pitches for households for Cherwell by 2031 that meet the planning definition.
- 9.19. The Assessment also suggests that the overall need could rise by up to 12 pitches if further information be made available to the Council that will allow for the planning definition to be applied to the unknown households. These are households where it was not possible to distinguish whether or not they meet the planning definition. Additionally, a potential need for 8 pitches is highlighted due to the closure of a site (Smiths Caravan Park), which could increase the need by up to a further 20 pitches.
- 9.20. The Assessment advises that for 'unknown' travellers 'it would not be appropriate when producing a robust assessment of need to make any firm assumptions about whether or not they meet the planning definition...' based on interviews that have taken place (para. 7.28 of the study).
- 9.21. The AMR 2019 presents a 5-year land supply calculation based on the need identified in support of the adopted Policy BSC6 and a calculation based on the latest GTAA 2017.
- 9.22. As noted above since the preparation of the need evidence/study supporting adopted Policy BSC6, the Government set out planning policies and requirements for Gypsy and Traveller sites in 'Planning Policy for Traveller Sites' (PPTS, 2015). The GTAA 2017 is more up to date and consistent with national policy set out in PPTS 2015.
- 9.23. The published five-year land supply position for gypsies and travellers based on the GTAA methodology as reported in the 2019 AMR is 3.8 years for the period 2020-2025 commencing 1 April 2020 (shortfall of 3 pitches). This does not include an allowance for 'unknown' need but includes the potential need for 8 pitches arising from the Smiths site (a site that was previously included in the district's supply).

- 9.24. The above calculation takes into account planning permissions for a total of 10 new pitches during 2019/20 (4 pitches at Summer Place, Launton and 6 pitches at Widnell Lane, Piddington). A separate permission for 3 new pitches was also granted towards the end of 2019/20 which follows the publication of the 2019 AMR (Land West of M40, Kirtlington Road, Chesterton). Inclusion of the 3 new pitches would mean that the Council can demonstrate a 5-year supply of gypsy and traveller pitches based on the most up to date assessment of need.
- 9.25. The application site is proposed to be used as a site for six families. A document detailing the personal circumstances of the occupants of the site has been submitted in support of the application. If the Council were to approve the application, in order to ensure that the site was only occupied by households meeting the revised definition of gypsy/traveller a planning condition can be used in line with Government guidance. Officers are therefore satisfied that the application is for a site that would be used by gypsies/travellers.
- 9.26. The Council considers that there is currently a sufficient supply of gypsy and traveller pitches based on the most up to date evidence on need therefore there is no pressing need for additional land to be released at this time. In this instance there are also significant concerns as to whether this would be an appropriate location for such development, having regard to whether the development would cause harm to the historic and natural environment. The principle of development is therefore considered unacceptable in this instance.

#### *Conclusion*

- 9.27. The proposed development fails to comply with Policy BSC6 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the NPPF due to the harm to the natural environment.

#### Visual impact and Effect on Landscape Character

##### *Policy context*

- 9.28. The NPPF recognising the intrinsic character and beauty of the open countryside. ESD13 of the Cherwell Local Plan Part 1 notes that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to the local landscape character cannot be avoided. Policy ESD13 also states that proposals will not be permitted if they would cause undue visual intrusion into the open countryside or be inconsistent with local character.
- 9.29. Policy ESD15 of the Cherwell Local Plan Part 1 states that: *“New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards.”*
- 9.30. Saved Policy C28 of the Cherwell Local Plan 1996 reflects Government guidance in relation to the design of new development by seeking to ensure that such development is in harmony with the general character of its surroundings and is sympathetic to the environmental context of the site and its surroundings. Saved Policy C8 of the Cherwell Local Plan 1996 seeks to protect the character of the open countryside from sporadic development.

##### *Assessment*

- 9.31. The site is currently bounded by a mature native hedgerow to the northern boundary which measures approximately 2.5 metres in height. The existing hedgerow

currently screens views into the site from Widnell Lane, although views would be achieved into the site from the proposed access, which would create a gap in the hedge. There are limited views of the site from the wider surroundings. The site cannot be seen from the B4011 due to a high mature hedgerow which bounds the field boundary adjacent to this road. Furthermore, due to the flat nature of the site itself and the surrounding landscape along with the mature hedgerow boundary features in the locality views into the site are limited only to localised views from Widnell Lane and distant views of the site from the surrounding area are limited.

- 9.32. Notwithstanding the above, the site would be located on agricultural land in the open countryside. Criterion (f) of Policy BSC6 requires the potential for harm to the natural environment to be considered. In the appeal decision for 17/01962/F, the Inspector considered that the formation of six pitches and the stationing of caravans on the site would involve the encroachment of development into the field and that this would cause some harm to the character and appearance of the area. The Inspector considered that the appeal development failed to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 and Policy C28 of the Cherwell Local Plan 1996.
- 9.33. The application site is additional to that appeal site and the Inspector's conclusion applies here as it did to the appeal site, i.e. the proposal would cause harm to the character and appearance of the area. The proposed development would result in an urbanisation of the countryside and the amount of harm caused would be similar to that caused in the case of the appeal proposal, albeit that the cumulative harm arising from two separate sites, close to each other, adds to the aggregate harm caused by each of the two sites potentially greater larger than the appeal site.

#### *Conclusion*

- 9.34. It is therefore considered that the development would cause harm to the character and appearance of the area, due to the urbanisation and intrusion into the open countryside. The proposed development therefore fails to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Policies C8 and C28 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

#### Residential amenity

##### *Policy context*

- 9.35. The NPPF requires new development provide a high standard of amenity for existing and future occupants. Chapter 15 of the NPPF advises that decision should prevent new development from being subject to unacceptable levels of noise pollution and new development should be appropriate for its location taking into account the likely effects on living conditions. In doing so decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise and avoid noise giving rise to 'significant adverse impacts' on health and the quality of life.
- 9.36. Saved Policy ENV1 of the adopted Cherwell Local Plan sets out that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke other types of environmental pollution will not normally be permitted. Further, where a source of pollution is already established and cannot be abated, the Council will seek to limit its effect by ensuring that development within the affected area maintains a suitable distance from the pollution source. Policy ESD15 of the Cherwell Local Plan Part 1 states that: "*Development should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.*"

### *Assessment*

- 9.37. With regard to the layout of the proposal, the proposed pitches would measure a minimum of 19m by 29m, which is considered by officers to be of a sufficient size to allow for the siting of a mobile home and touring van and would allow for privacy and amenity space for each pitch. The proposed layout is not considered to result in overcrowding of the site.
- 9.38. The site is located approximately 300 metres from a Ministry of Defence (MoD) training area known as Piddington Training Area. This training area is used by the MOD for a variety of exercises using small arms ammunition (Blank) and the use of pyrotechnics including illumination types and noise simulation. The site is used frequently during weekdays and at weekends for a variety of exercises. This type of use which generates noise and disturbance could cause undue harm to the residents of the proposed site, particularly due to the nature of the residential caravans which offer little noise attenuation due to their lightweight construction.
- 9.39. The MoD provided evidence with the application on the adjacent site and at the inquiry for the appeal. The Inspector concluded that whilst the operations at the training ground would impinge on the amenities of future occupiers, the development would not give rise to significant adverse impacts on health and the quality of life, as is the test set out in the NPPF. The application site is slightly further away from the MoD training ground than the appeal scheme, however the impacts would be similar.
- 9.40. The Environmental Health Officer (EHO) has offered no objections to the scheme, subject to a condition that One of the caravans stationed on each pitch shall be a static caravan or mobile home, and that static caravan or mobile home shall comply with the specification of paragraphs 4.8 and 4.9.4 in British Standard BS 3632:2015 – Residential park homes – Specification, which relates to noise standards. In light of the Inspector's decision and subject to this condition, it is considered that the development would be acceptable in this regard.
- 9.41. The EHO has requested a condition relating to no lighting being installed on the site. This condition is considered to be acceptable.

### *Conclusion*

- 9.42. Subject to conditions, the proposed development would not cause harm to the amenities of neighbours and therefore complies with Policy ESD15 of the Cherwell Local Plan 2011 – 2031, Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

### Ecology Impact

#### *Legislative context*

- 9.43. 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.



- 9.44. 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.
- 9.45. 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.
- 9.46. 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.
- 9.47. 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*

- 9.48. 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.
- 9.49. Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) 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.

- 9.50. 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.
- 9.51. 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.
- 9.52. 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.
- 9.53. 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.
- 9.54. 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 LPAs 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*

- 9.55. 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')
- 9.56. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is close to a pond and there are mature hedgerows on the northern, western and southern boundaries of the site, with the access created in the northern boundary with the removal of a strip of hedgerow and therefore has the potential to be suitable habitat for bats, great crested newts and breeding birds.

- 9.57. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS 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 LPA should then consider whether Natural England (NE) 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.
- 9.58. 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 NE will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether NE will grant the licence then the Council may grant planning permission.
- 9.59. Having regard to the LPA's duty under the Conservation of Habitats and Species Regulations 2017, the lack of a suitable protected species/ecological survey and proposed mitigation strategy means that it has not been demonstrated that the proposal will not cause harm to any protected species or its habitat which is reasonably likely to be present and affected by the development. The proposal is therefore contrary to 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.

#### Highway safety

##### *Policy context*

- 9.60. National and local policy looks to promote sustainable transport options whilst ensuring that new development proposals do not cause harm to the safety of the highway network.
- 9.61. The NPPF (Para. 108) advises of the need to have due regard for whether new development includes:
- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
  - safe and suitable access to the site can be achieved for all users; and
  - any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 9.62. Policy ESD15 of the CLP 2031 states that: *“New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work in. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions.”*
- 9.63. Policy SLE4 of the CLP 2031 states that: *“New development in the District will be required to provide financial and/or in-kind contributions to mitigate the transport impacts of development.”* Policy SLE4 also states that: *“All development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling...Development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported.”*

##### *Assessment*

- 9.64. A number of concerns have been raised in third party comments in relation to highway safety issues. The Highways Officer has objected on the grounds that the proposals do not provide for safe and suitable access for all people, which is contrary to NPPF, by virtue of the lack of a lit footway on Widnell Road. The previous application was not refused on this basis and the Inspector did not consider that this would be a significant issue, given that the majority of trips from the site would be in private motor vehicles. It is therefore considered that the application cannot be refused on this basis.
- 9.65. The Highways Officer has not raised any concerns with the provision of a new access onto Widnell Road, other than stating that conditions would be required to ensure further detail was submitted. Given that the Highways Officer has not objected in this regard, it is considered that the new access would not cause harm to safety of the local highway network.

#### *Conclusion*

- 9.66. It is therefore considered that the proposed development would not cause harm to the safety of the local highway network and therefore complies with Policies SLE4 and ESD15 of the Cherwell Local Plan 2011 – 2031 and Government guidance contained within the NPPF.

#### Flood risk and drainage

##### *Policy context*

- 9.67. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding and further, that development should be safe and remain operational in the event of flooding. In addition to safeguarding floodplains from development, opportunities will be sought to restore natural river flows and floodplains, increasing their amenity and biodiversity value.
- 9.68. Policy ESD7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

##### *Assessment*

- 9.69. In terms of assessing the potential flood-risk the proposals would constitute 'Highly Vulnerable' development. The proposals are not supported by any assessment of flood-risk. Policy ESD6 of the CLP 2031 states that site specific flood risk assessments will be required to accompany development proposals in the following situations:
- All development proposals located in flood zones 2 or 3
  - Development proposals of 1 hectare or more located in flood zone 1
  - Development sites located in an area known to have experienced flooding problems
  - Development sites located within 9m of any watercourses.

- 9.70. Flood risk assessments should assess all sources of flood risk and demonstrate that:
- There will be no increase in surface water discharge rates or volumes during storm events up to and including the 1 in 100 year storm event with an allowance for climate change (the design storm event)
  - Developments will not flood from surface water up to and including the design storm event or any surface water flooding beyond the 1 in 30 year storm event, up to and including the design storm event will be safely contained on site.
- 9.71. Development should be safe and remain operational (where necessary) and proposals should demonstrate that surface water will be managed effectively on site and that the development will not increase flood risk elsewhere, including sewer flooding. The foul sewerage for the site would be provided by way of two water treatment plant, of which details have been submitted with the application.
- 9.72. Whilst the site is identified by the Environment Agency as being in Flood Zone 1 the Oxfordshire Flood Toolkit records show the site to be in an area with a high chance of flooding from surface water (a fact corroborated in a significant number of third party representations from local residents).
- 9.73. Without knowing the extent of any site specific flood-risk and the geology of the area it cannot be established as to what form of drainage would be appropriate for the site or if indeed the site could be appropriately drained to ensure that it would not be to the detriment of the operation of the site or exacerbate flood-risk on surrounding land.
- 9.74. It is considered that through the lack of appropriate assessment of flood-risk or drainage requirements the applicants have failed to demonstrate that the proposals would not increase the flooding risk on the site or elsewhere and would remain operational in the event of flooding and therefore does not accord with Policies ESD6 and ESD7 of the Cherwell Local Plan (2011-2031) Part 1.

#### Human Rights and Equalities

- 9.75. 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.
- 9.76. 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*

- 9.77. 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. In addition, third parties were invited to the public meeting of the Planning Committee and had the opportunity to speak. 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*

- 9.78. 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.
- 9.79. Officers have considered that, in the event that the application is granted planning permission, there will not be any discrimination (or potential discrimination) on neighbours.

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

- 9.80. 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.
- 9.81. 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 application seeks planning permission for the change of use of land to a residential caravan site for 6no gypsy families. The site is located approximately 2.5km from the category A village of Arncott and benefits from suitable access to the local and wider highway network so can be considered under Policy BSC6 of the Local Plan.
- 10.2. In assessing the sustainability and suitability of the site the criteria set out within Local Plan Policy BSC6 is relevant in determining the most suitable locations for gypsy and traveller sites.
- 10.3. Criterion (a) considers access to GP and other health services; the nearest NHS GP surgery to the site would be in Ambrosden and is accessible from the site, given the findings of the Inspector in the recent appeal.
- 10.4. Criterion (b) considers access to schools; the nearest primary school again is located within Ambrosden and is accessible from the site.
- 10.5. Criterion (c) seeks to avoid areas at risk of flooding. The site is identified as being at risk from surface water flooding and in the absence of any appropriate flood-risk assessment it is unclear as to whether the proposals would not increase the flooding risk on the site or elsewhere and would remain operational in the event of flooding; and therefore unacceptable in this regard.

- 10.6. Criterion (d) considers the suitability of the site in relation to access to the existing highway network; in this respect the proposal is considered to be appropriately located without demonstrable harm caused to highway safety.
- 10.7. Criterion (e) considers the potential for noise and disturbance. The site is considered acceptable in regard to the impact on neighbouring uses. The site would be in close proximity of the MoD training ground; however, given the findings of the Inspector at the appeal, it is considered that the impact would not be so significant to justify a reason for refusal in this regard.
- 10.8. Criterion (f) seeks to ensure harm to the historic and natural environment is limited. The proposal would not adversely impact on any heritage assets. However there would be harm to the rural character and appearance of the site and locality in the immediate vicinity of the site. In the absence of an ecological survey, it is considered that the development would cause harm in this regard too. This harm would be significant and weighs against the development. For the reasons set out in this report it is considered that the harm to the character and appearance of the area would be greater than that caused by the additional 6no pitches proposed on the nearby site assessed under application ref. 20/01122/F.
- 10.9. Criterion (g) seeks to ensure that proposals provide for a satisfactory living environment. In this case due to the potential flood-risk of the site this is not considered to be met as discussed above.
- 10.10. Criterion (h) seeks to ensure that efficient and effective use of land is made. In this case the current proposal would result in the development of a green field site. The agricultural land is rated moderate to good (grade 3); however, it is considered that the amount of agricultural land lost and the quality of the land would not be a significant loss.
- 10.11. Criterion (i) considers the likely deliverability of the proposal, including whether utilities can be provided on the site. The applicant's agent states that water and electricity already serves the site. It is not proposed to connect to mains drainage however this has not been justified. On balance it is considered that this criterion has been met.
- 10.12. Criterion (j) looks at the existing level of local provision for gypsy and travellers across the Cherwell District. Officers consider that there is currently no pressing need for further land to be released with a sufficient supply of pitches available within the district. This is a different position that the Council finds itself in compared to that when it faced the recent appeals at Piddington and Chesterton.
- 10.13. Criterion (k) considers the availability of alternative sites for the applicant. In this case no alternative sites are allocated in the Local Plan and little progress has been made in this regard. The applicant contends that there are no alternative sites available however has not commented on recent permissions within the district or the availability of such sites.
- 10.14. In conclusion, the proposal is not considered to dominate the nearest settled community and is located relatively well located in terms of access to facilities within the villages of Arccott and Ambrosden and further would not have any significant detrimental impacts on highway safety or residential amenity of existing residential properties; these factors weigh in support of the application. However, the proposal would lead to significant harm to the rural character and appearance of the countryside and would be significant where it occurs. The proposal would cause harm to the rural character and appearance of the area and local ecology and the

proposals are likely to result in the exacerbation of flood-risk at the site and on surrounding land and these factors weigh against the proposals.

10.15. Overall, when assessing the development as a whole, the identified harm is considered to outweigh benefits of the scheme. It is therefore recommended that planning permission be refused.

## 11. RECOMMENDATION

RECOMMENDATION - **REFUSAL** FOR THE REASONS SET OUT BELOW

### REASONS FOR REFUSAL

1. The proposed development, by virtue of its siting in the open countryside, overall scale and appearance, would have an urbanising effect on the open countryside, and would result in significant and demonstrable harm to the rural character and appearance of the area. The proposal is therefore contrary to Policies ESD13 and ESD15 of the Cherwell local Plan Part 1, saved Policies C8 and C28 of the Cherwell local Plan 1996 and Government guidance within the National Planning Policy Framework.
2. The planning application has not been supported by adequate information to demonstrate the impact of the proposed development on protected species has been properly understood and the requirement for mitigation to secure a net gain in biodiversity can be met. The proposal is therefore contrary to Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
3. A Flood Risk Assessment has not been submitted with this application. Therefore, an assessment has not been made of the flood risks arising from the proposed development and it has not been clearly demonstrated that the development and its future users will be safe over the lifetime of the development. The proposal is therefore contrary to Policy ESD6 of the Cherwell Local Plan Part 1 and Government guidance contained within the National Planning Policy Framework.

CASE OFFICER: Matthew Chadwick

TEL: 01295 753754



# 20/01643/OUT

## Land North And West Of Bretch Hill Reservoir Adj To Balmoral Avenue Banbury



1:1,500<sup>H</sup>

# 20/01643/OUT

Land North And West Of Bretch Hill Reservoir Adj To  
Balmoral Avenue  
Banbury



1:2,500

**Case Officer:** Matthew Chadwick

**Applicant:** Lone Star Land Limited

**Proposal:** Erection of up to 49 homes, public open space and other infrastructure, with all matters reserved except access - re-submission of 19/01811/OUT

**Ward:** Banbury Calthorpe and Easington

**Councillors:** Councillor Clarke, Councillor Mallon and Councillor Mepham

**Reason for Referral:** Major Development

**Expiry Date:** 21 September 2020

**Committee Date:** 8 October 2020

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

### **RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS AND SUBJECT TO A S106 LEGAL AGREEMENT**

#### **Proposal**

Outline planning permission is sought for up to 49 dwellings including 30% affordable housing. All matters reserved except access which is proposed from Balmoral Avenue to the south of the site. The site is on the western edge of Banbury, to the north of the Broughton Road and surrounded on three sides by existing residential development.

#### **Consultations**

The following consultees have raised **objections** to the application:

- Banbury Town Council, OCC Drainage, Clinical Commissioning Group

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

- CDC Building Control, CDC Ecology, CDC Landscape Services, CDC Rights of Way, OCC Highways, CDC Planning Policy, CDC Recreation and Leisure, CDC Strategic Housing, Thames Water, CDC Environmental Health

14 letters of objection have been received.

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

A public right of way (ref 120/24/10) runs along the northern boundary to the north-east corner of the site. There are a number of notable protected species which have been recorded as present on the site or within 250m of the site. Within 2km of the site is a Site of Special Scientific Interest (Neithrop Fields Cutting).

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:

- Principle of Development

- Site layout and design principles
- Design, and impact on the character and appearance of the area
- Highways
- Rights of way, access and pedestrian connectivity
- Residential amenity
- Affordable housing
- Flood risk and drainage
- Ecology impact
- Infrastructure
- Other matters

The report considers 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 application site is located on the western edge of Banbury to the immediate west of Bretch Hill. The site comprises approximately 2.8 hectares and is land formerly used for agricultural purposes associated with Bretch Farm but is now scrub. The physical remains of Bretch Farm lie in the south-west corner of the site with a number of buildings in ruin.
- 1.2. To the west is an existing water tower and an underground reservoir under the ownership and control of Thames Water. On three sides the site is bounded by existing residential development.
- 1.3. The site is generally flat with a slight drop in land level from west to east and the site is effectively on the top of the hill. There is also a significant fall on the northern boundary of the site and the rear gardens of properties on Harlech Close. The fall means that the site sits approximately 2.5 metres above these rear gardens.
- 1.4. The proposed access to the site would be off the existing gated entrance from Balmoral Avenue to the south of the site. Balmoral Avenue is a steep road on rising and from the Broughton Road to the south.

### **2. CONSTRAINTS**

- 2.1. The land is predominantly enclosed by hedgerows and well-established mature trees. There is a copse of trees in the northern corner which extends in a linear fashion along the northern boundary backing on to dwellings on Harlech Close. This woodland is classified as deciduous woodland priority habitat.
- 2.2. A public right of way (ref 120/24/10) runs along the northern boundary to the north-east corner to join a hard-surfaced footpath stretching into Bretch Hill. The current footpath within the site is unmarked, not levelled or laid to hardstanding or surfaced and is unlit.

- 2.3. There are a number of notable protected species which have been recorded as present on the site or within 250m of the site. Within 2km of the site is a Site of Special Scientific Interest (Neithrop Fields Cutting).
- 2.4. The site is dominated by the adjacent telecommunications mast (approximately 48 metres high) and concrete water tower (approximately 22 metres high). A raised reservoir lies immediately to the south east of the site surrounded by grassed embankments and steel palisade fencing.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. The planning application seeks outline consent for residential development with all matters reserved except access. The proposal comprises the following elements:

- Erection of up to 49 dwellings;
- 30% affordable housing;
- Vehicular access from Balmoral Avenue;
- Pedestrian access from Balmoral Avenue and via public right of way to Bretch Hill;
- 0.68 hectares of public open space;
- Local Area of Play;
- Informal play space;
- Sustainable urban drainage systems; and
- Other supporting infrastructure.

3.2. The application proposes vehicular and pedestrian access to be taken from Balmoral Avenue to the south of the site. This is a continuation of the existing road. In addition, the illustrative plan shows the public right of way running along the northern boundary of the site would remain in situ and as is, to provide a link through to Bretch Hill.

3.3. Whilst the layout is not submitted for approval, an illustrative layout plan has been submitted to show one way that the development could be delivered. The development proposed comprises up to 49 dwellings. A mix has been provided for illustrative purposes alongside the layout. It is acknowledged in the Planning Statement that the figures submitted are illustrative only and the mix for affordable units would be set by an agreed S106 agreement and the mix for market housing set through the relevant reserved matters application.

3.4. The illustrative layout shows the retention of the woodland to the north and this includes an area of public open space, a LAP and informal play space.

3.5. In terms of density, the proposed 49 dwellings are provided on approximately 1.52 hectares of developable land resulting in a density of 32 dwellings per hectare.

3.6. The application is accompanied by an illustrative site layout and landscape masterplan, Planning Statement, Design and Access Statement, Flood Risk Assessment, Ecological Appraisal and management plan, Air Quality report, Bat

report, Utilities assessment, Drainage statement, Tree Report, Transport Statement and a Landscape and Visual Impact Assessment.

#### **4. RELEVANT PLANNING HISTORY**

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

19/01811/OUT – Outline – Erection of up to 70 dwellings, public open space, and other infrastructure, with all matters reserved except access

#### **5. PRE-APPLICATION DISCUSSIONS**

5.1. The following pre-application discussions have taken place with regard to this proposal:

5.2. Pre-application advice was first given in January 2018 (17/00170/PREAPP refers). It was advised that the site was allocated through Policy H1b of the non-statutory Cherwell Local Plan. The designation is a material planning consideration but carries little weight. The report concluded that careful consideration would need to be given to the landscape impact of the proposed development and design and layout of the proposed development to ensure that satisfactory visual amenity (both perceived and actual) was achieved for future residents. Subject to these matters being satisfactorily resolved, and to the assessment of access and traffic matters and other technical matters, the principle of development was considered to be acceptable.

5.3. Limited advice was also given on the affordable housing requirements, developer contributions, landscape and visual impact, residential amenity, impact on trees and access and transport matters.

5.4. Advice was given on the requirement to provide suitable access from the site to existing bus stops in that any application should ensure dwellings are within 400m of bus stops in Bretch Hill. It was considered that bringing the existing public right of way across the northern boundary of the site up to a suitable standard to encourage people to use it would likely be too expensive and as it passes through woodland this would be difficult to light and people would avoid it due to personal safety concerns. The officer at the time expressed a preference to providing a footpath connection to Balmoral Avenue to the north which would allow access to bus stops at Chepstow Gardens. This link would also provide access towards schools and local shops.

5.5. The pre-application advice concluded that, although there was no pressing need for the release of further housing for development, the presumption in favour of sustainable development would need to be applied. Taking into account the previous allocation of the site and the apparent wider limited landscape impacts it was officer opinion that the development of the site could possibly be supported. This was on the basis that it could be demonstrated that development could be appropriately accommodated taking into account the site's constraints.

5.6. Pre-application advice was given following the withdrawal of the last application (20/00330/PREAPP refers). It was advised that the principle of development remained acceptable but that – as set out in the published report to Planning Committee in November 2019 – there were a number of issues that needed to be addressed for development of the site to be supported, pedestrian connectivity, layout and relationship with existing built development, provision of a LAP and the housing mix including affordable housing mix along with biodiversity enhancement and flood risk.

- 5.7. The layout submitted with the pre-app enquiry showed a LAP, which was an improvement on the previous planning application which didn't, although in officers' view it was in the wrong location and needed to be re-sited e.g. within the POS to the east of the proposed built development. The housing mix and affordable housing mix were not far away from being acceptable and the changes required were set out in the officer response.
- 5.8. Officers advised that it remained critically important that the pedestrian and cycleway links are provided and that providing satisfactory pedestrian routes and connectivity in the northern part of the site without detriment to trees or wildlife remained the major challenge with the site in order to bring forward development, i.e. the principle of development would only be acceptable if these issues can be resolved.

## **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **4 September 2020**, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. Letters of objection have been received from 12 households (11 households in the vicinity of the site and 1 household in Kirtlington). The comments raised by third parties are summarised as follows:
- 6.3. Need – no immediate need for additional houses given the ample developments in other areas of Banbury, e.g. Elmwood Park
- 6.4. Local Plan – not an allocated site / not part of the Cherwell Local Plan
- 6.5. Design – the design of the dwellings is not in keeping with those on Balmoral Ave
- 6.6. Footpaths – the proposal would impact on the existing footpaths across the site, dog walkers, etc.
- 6.7. Access – the proposal would create safety issues for residents
- 6.8. Impact on highway safety – the unsuitability of extra traffic; the very steep hill; the potential of parking problems; noise, heavy machinery, large construction vehicles, etc. The submitted transport assessment showed that speed limits are exceeded by between 15 and 33% (Dec 2018 figures); difficulties for parking for tradesmen and lorries during construction; blind corners when exiting from Briggs Road, Dorchester Grove or Denbigh Close; difficulties caused by multiple accesses close together on Broughton Road; the condition of Balmoral Ave is not suitable for construction and future use by occupiers of the proposed development
- 6.9. Impact on wildlife – e.g. badgers in the field, bats in the farmhouse
- 6.10. Drainage/Water – impact on water pressure and on foul water drains
- 6.11. Light pollution – the proposal would increase light pollution in the area
- 6.12. Noise – development of this site would make Balmoral Ave a noisier place

- 6.13. Crime – additional houses would bring more crime into Balmoral Ave
- 6.14. Issues raised with the first application not addressed with the second application
- 6.15. Condition of any permission given - Any permission given should be subject to a requirement for any prospective developer to engage “*a recognised independent road testing consultant carry out a detailed condition report and assess it’s suitability for both the construction traffic and that from the proposed additional homes. Such a report to include road pavement deflection testing. Subject to their findings it may require a Developer to re-construct the entire length of Balmoral Avenue (Broughton Road Side) should planning approval be granted*”.
- 6.16. Condition of any permission given – swift nest bricks to be incorporated in the development as a biodiversity enhancement, swifts now being amber-listed as birds of conservation concern.
- 6.17. The comments received can be viewed in full on the Council’s website, via the online Planning Register.

## 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. BANBURY TOWN COUNCIL: **Objects**, for the following reasons: 1, Adverse impact on local highway network - Broughton Road junction is not considered suitable for the additional traffic that will be generated. 2. The site is not within the adopted Local Plan and the area has a 3 year housing supply so the additional housing is not needed on a site that due to the size and positioning of the large adjacent structures will have a poor standard of amenity.

### OTHER CONSULTEES

- 7.3. CDC LANDSCAPING: **No objections** – the LVIA’s weighting and judgements are reasonable. The masterplan is generally acceptable. The attenuation basin when full must not flood into adjacent gardens and may need re-siting. Detailed landscape proposals, play area proposals (with construction details) and tree pit detail are required under relevant planning conditions.
- 7.4. CDC ECOLOGY: **No objections**, subject to conditions relating to a CEMP, LEMP and full lighting strategy.
- 7.5. CDC LEGAL SERVICES RIGHTS OF WAY: **No objection** – the proposal would not require any diversion to the public footpath numbered 120/24 which extends along the northern boundary of the site
- 7.6. OCC HIGHWAYS: **No objections subject to conditions** (provision of new permanent public footpaths, access full details, Travel Information Pack, Travel Plan Statement and Construction Traffic Management Plan, **and s106 financial contributions** (see below) **and s278 agreement**.)

- Public transport services - £49,000 (£1,000 per dwelling) – towards the strengthening and enhancing of the B5 bus service which runs through Bretch Hill



- Public rights of way - £5,000 – to improve the surfaces of all routes within 2km and to take account of the likely increase in use by residents of the development as well as new or replacement structures like gates, bridges and seating, sub-surfacing and drainage to enable easier access, improved signing etc.
  - Strategic highway contribution - £62,772 – a) Bridge Street/Cherwell Street eastern corridor improvements and b) A361 Bloxham Road/Queensway/Springfield Avenue junction movements.
  - Developer to enter into a S278 agreement to secure mitigation/improvement works including:
    - o A dropped kerb crossing facility to be provided at the origin of footpath 120/24 where it joins onto Bretch Hill.
    - o Provision of the site access and pedestrian footways as shown by a plan agreed with Highway Authority.
    - o Improvement of Public Right of Way 120/24 into a “blacktop” footpath which is illuminated to OCC standards. The footpath would need to connect the development to Bretch Hill and Balmoral Avenue north or Harlech Close. This could take the form of a self-binding gravel type path suitable for all users, without the need to tarmac.
- 7.7. In other comments, the vehicular access in the proposed location is deemed acceptable. The highway boundary appears to extend in full width to the site boundary; however, the applicant should verify this to ensure that a road of adequate width including footways can be extended into the site.
- 7.8. Pedestrian and Cycle Access – The proposals show two pedestrian and cycle links, the Broughton Road/Balmoral Avenue junction to the south and a connection linking the site to Balmoral Avenue North. The site still lacks a credible east/west connection but since footpath 120/24 is, at best, an illegible and muddy path we would not consider this footpath in its current condition a credible option for pedestrians or cyclists.
- 7.9. As the footpath could provide a good option for east/west connectivity and provide easy access to the bus stop opposite Mascord Road junction, we consider it imperative that it receive improvements. The proposals demonstrate a footpath linking the development and footpath 120/24 together so improvements to it would be a common sense approach to providing an effective east/west connection to the wider Banbury area. This could be done via resurfacing providing a self-binding gravel type path, with no tarmacking required.
- 7.10. Public Transport – Stops near to Chepstow Gardens and Bretch Hill serve the B5 bus which is a much more frequent service (4 buses per hour during weekday times). OCC is seeking to add additional value including route options, extended hours and extend the weekend hours of the route.
- 7.11. Traffic Impact – The overall conclusions of the Transport Statement as it relates to trip rates are accepted. The justification for not assessing the Queensway roundabout is considered sound. The methodology used to generate the final trip rates is accepted and it is noted that the Balmoral Avenue/Broughton Road junction is within capacity.
- 7.12. Travel Plan – For a development of this size, the slimmed down version of a travel plan, a Travel Plan Statement (TPS) and a travel information pack will be required.

Our approved guidance contains a simple form to complete to ensure that the TPS contains all the necessary information.

7.13. OCC DRAINAGE – **Objects.** No objections in principle with the proposed method of disposal via infiltration but expresses concerns with this being predominantly managed as a site solution in large volumes adjacent to existing properties. In line with local and national guidance, we expect surface water to be managed at source (i.e. close to where it falls) with residual flows then conveyed downstream to further storage or treatment components, where required. There is space throughout the site to provide storage or infiltration features to minimise the requirement for a large drainage feature so close to existing properties.

7.14. OCC EDUCATION: No objection subject to S106 contributions as follows:

□ Primary education - £269,976 – for the expansion of primary capacity serving the Banbury area. This is based on 21.39 being the number of primary pupils expected to be generated from the development. The estimated cost per pupil of expanding a primary school is £15,256.

□ Secondary education (including sixth form) - £407,462 – towards a new secondary school in Banbury. This is based on 15.06 being the number of secondary and sixth form pupils expected to be generated from the development. The estimated cost per pupil of building a new 600-place secondary school is £31,159.

7.26. The above contributions are based on a unit mix of:

6 x 1 bed dwellings

13 x 2 bed dwellings

21 x 3 bed dwellings

9 x 4 bed dwellings

7.15. OCC ARCHAEOLOGY: **No objections**

7.16. CDC STRATEGIC HOUSING: **Comments.** The mix in the pre-app scheme has been changed in line with our request. The units are therefore:

Rented Units:

4 x 1 bed 2-person maisonettes

2 x 1 bed 2-person houses

2 x 2 bed 4-person houses

2 x 3 bed 6-person houses

1 x 4 bed 7-person house

Total – 11 units

We would seek a social rent tenure for the rented units. The one-bed houses are to fulfil an unmet need and we would like these to be retained in any future planning applications.

Shared Ownership Units:

2 x 2 bed 4-person houses

2 x 3 bed 5-person houses

Total – 4 units

- 7.17. In terms of space, all rented dwellings must comply with the DCLG Technical housing standards – nationally described space standard.
- 7.18. We expect at least 50% of the social rented dwellings to meet Approved Document Part M4(2) Category 2. These units are especially suited to ground floor maisonettes in order to provide maximum accessibility.
- 7.19. Regarding the car parking, we note that the applicant has addressed comments from the Planning Officer so that parking along the frontages has been removed and more streets and trees are shown on the layout. However, we would like to see a better relationship to the car parking for some plots, especially plots 35 & 36, and to plots 37-39 if possible. We did not comment on this previously as these units were originally proposed as market housing.
- 7.20. We expect 1-bedroom dwellings will have a minimum of 1 parking space per unit, and all 2, 3- and 4-bedroom dwellings should have a minimum of 2 parking spaces per unit. Car parking spaces for units compliant with Part M4(2) should meet the requirements of the relevant part of the document.
- 7.21. The Landscape and Visual impact statement understandably considers the impact of the site from existing viewpoints on the fringes of the site, but as the mobile phone mast and water tower are very prominent features within views of the site, it would be reassuring to see a drawing which shows the relationship between the dwellings (assumed to be maisonettes) on plots 40-43, which have these tall structures behind them, to demonstrate the visual impact and the enhancement that the trees will provide.
- 7.22. To ensure the creation of mixed and cohesive communities the affordable housing should be fully integrated with the market housing (the proposed clustering and distribution of the affordable housing is good). Affordable housing should also be visually indistinguishable from the market housing. The Registered Provider taking on the affordable housing units would need to be agreed with the Council.
- 7.23. CDC COMMUNITY INFRASTRUCTURE: **No objections subject to s106 financial contributions** in line with the adopted 2018 SPD developer contributions guidance. These are:
- Off-site Outdoor Sports Contribution – 49 dwellings x £2,017.03 per dwelling contribution = £98,834.47 towards pitch and pavilion improvements at North Oxfordshire Community use site or the development of a new artificial pitch at Hanwell Fields playing fields in Banbury.
  - Off-site Indoor Sports Contribution – 49 dwellings x 2.49 avg. people per dwelling x £335.32 per person contribution = £40,912.39 towards Banbury Indoor Tennis Centre and/or the improvements of leisure centre provision in the locality.
  - Community Hall Contribution – 70 dwellings x 2.49 avg. people per dwelling x £520 contribution per person = £56,018.74 towards improvements at The Hill or Sunshine Centre in Banbury.

- 7.24. CDC WASTE AND RECYCLING: **No response at the time of writing this report.** Any response received prior to the committee meeting will be included in the written updates.
- 7.25. CLINICAL COMMISSIONING GROUP: **Objects** in the absence of mitigation for the health requirements of the additional population associated with this development. OCCG notes (as submitted to Cherwell DC in January 2017 for inclusion in the Infrastructure Development Plan) that primary medical care in Banbury is at capacity, and further housing growth will require additional or expanded infrastructure to be in place. OCCG therefore object to this application pending agreement of appropriate contributions to primary care infrastructure. Seeks a developer contribution of **£42,336** to support improvement of local primary care infrastructure if this development were to go ahead. This calculation is based on OCCG's adopted policy to use a calculation of 2.4 x number of dwellings x £360 for contributions to health infrastructure. The size of this development does not justify a new separate health centre or equivalent, so we would anticipate funds being used for enhancing existing primary care medical infrastructure to meet the needs of a growing population.
- 7.26. WATER AUTHORITY: **No objection** subject to conditions and informative notes. Thames Water notes that the existing foul water network is not able to accommodate the needs of this development proposal, but advises this issue can be addressed through a planning condition: "No properties shall be occupied until confirmation has been provided that either:- 1. All wastewater network upgrades required to accommodate the additional flows from the development have been completed; or- 2. A housing and infrastructure phasing plan has been agreed with Thames Water to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan." Reason - Network reinforcement works are likely to be required to accommodate the proposed development. Any reinforcement works identified will be necessary in order to avoid sewage flooding and/or potential pollution incidents. The developer can request information to support the discharge of this condition by visiting the Thames Water website at [thameswater.co.uk/preplanning](http://thameswater.co.uk/preplanning). Should the Local Planning Authority consider the above recommendation inappropriate or are unable to include it in the decision notice, it is important that the Local Planning Authority liaises with Thames Water Development Planning Department (telephone 0203 577 9998) prior to the planning application approval.
- 7.27. *Officer comment:- Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.*
- 7.28. *In this particular instance, the above financial payments are not considered to be material to the decision as they would not make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority and hence the above response from the Council's Finance department is therefore provided on an information basis only.*

## 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)

- PSD1: Presumption in Favour of Sustainable Development
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient Use of Land – Brownfield Land and Housing Density
- BSC3: Affordable Housing
- BSC4: Housing Mix
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision – Outdoor Recreation
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDS)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD15: The Character of the Built and Historic Environment
- Banbury 10: Bretch Hill Regeneration Area

#### NON-STATUTORY CHERWELL LOCAL PLAN 2011

Policy H1b: Allocation of sites for residential development

#### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C30 – Design control

#### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- EU Habitats Directive
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)
- Cherwell Residential Design Guide SPD
- Cherwell Developer Contributions SPD

## 9. APPRAISAL

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

- Principle of development
- Site layout and design principles
- Design, and impact on the character and appearance of the area
- Highways
- Rights of way, access and pedestrian connectivity
- Residential amenity
- Affordable housing
- Flood risk and drainage
- Ecology impact
- Infrastructure
- Other matters

#### Principle of Development

9.2. Planning law requires that planning decisions are made in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 12 of the National Planning Policy Framework (NPPF) makes clear that it does not change the statutory status of the development plan as the starting point for decision making. Proposed development that conflicts with the development plan should be refused unless other material considerations indicate otherwise. Cherwell has an up to date Local Plan and can demonstrate a 5 year housing land supply. However, the NPPF is a significant material consideration.

#### *NPPF*

9.3. Paragraph 11 of the NPPF explains the Government's presumption in favour of sustainable development. For decision-taking this means approving proposals that accord with an up to date development plan and in cases where there are either no relevant development plan policies or those policies important for determining the application are out of date; granting permission unless the NPPF policies provide a clear reason for refusal or any adverse impacts significantly and demonstrably outweigh the benefits.

#### *Development Plan*

9.4. The Development Plan comprises the saved policies of the 1996 adopted Cherwell Local Plan (CLP1996) and the 2015 adopted Cherwell Local Plan (CLP 2031 Part 1). The policies important for determining this application are referenced above.

9.5. Policy PSD1 of the Cherwell Local Plan 2011-2031 accords with the NPPFs requirement for sustainable development and that planning applications that accord with policies in the statutory Development Plan will be approved without delay.

9.6. The Cherwell Local Plan 2011-2031 seeks to allocate sufficient land to meet District Wide Housing needs. The overall housing strategy is to focus housing growth at the towns of Bicester and Banbury.

9.7. Policy H1b of the Non-Statutory Cherwell Local Plan identifies the site as suitable for residential development of approximately 70 dwellings. This document was never formally adopted as part of the Development Plan but it does hold some weight in terms of decision making in the District, albeit more limited. The adopted Part 1 Local Plan does not allocate sites under the threshold of 100 residential units, thus not considering this site.

#### *Assessment*

- 9.8. The Council's 2019 Annual Monitoring Report (AMR) confirms that the District can demonstrate a 4.4 years housing land supply. In the circumstances that a LPA cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer), there is a presumption in favour of sustainable development and ordinarily the circumstances at paragraph 11d of the NPPF are engaged – in short development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
- 9.9. However, in respect of the Oxfordshire Authorities including Cherwell there is a Written Ministerial Statement (“WMS”) made in September 2018 concerning the Housing and Growth Deal, which is a significant material consideration. This sets out the requirement for a 3 year (rather than 5 year) supply of deliverable housing sites (with the appropriate buffer) from the date it was made (12/09/2018) until the adoption of the Joint Statutory Spatial Plan in each area, providing the timescales in the Housing and Growth Deal are adhered to. Therefore, in this case, the tilted balance set out by Paragraph 11d is not engaged because the Housing Supply requirement for the District should be taken to be 3 years in accordance with the WMS.
- 9.10. Whilst the Council can demonstrate a 3 year housing land supply, significant weight is still afforded to benefits of providing housing to contribute towards meeting the requirements of Local Plan Part 1, meeting the housing needs of the area and contributing towards meeting the need of the Oxfordshire Growth deal.
- 9.11. Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. The NPPF sets out the economic, social and environmental roles of planning in seeking to achieve sustainable development: contributing to building a strong, responsive and competitive economy; supporting strong, vibrant and healthy communities; and contributing to protecting and enhancing our natural, built and historic environment.
- 9.12. In terms of the economic impact, the proposed development would create jobs both directly and indirectly. Socially, the development would provide both market and affordable housing whilst environmentally it would provide new planting and some enhancements for a range of habitats available for wildlife and the setting of the site. It is considered that the proposed development fulfils the requirements of paragraph 8 of the Framework and can be considered to be sustainable. However, these aspects are explored in greater detail through the coming paragraphs.

### *Conclusion*

- 9.13. Therefore, considering (1) the site allocation (albeit it holds limited weight), (2) the physical location of the site in Banbury and it being bounded by existing residential development on three sides, (3) that the proposal would assist in the delivering of new homes and meeting overall district housing requirements, including affordable housing to 2031 and (4) the presumption in favour of sustainable development, it follows that the development is acceptable in principle.

### Site Layout and Design Principles

#### *Policy Context*

- 9.14. Policy ESD15 of the CLP 2015 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. It seeks to secure development that would complement and enhance the character of its context through sensitive siting, layout and high quality design meeting high

design standards and complementing any nearby heritage assets. The National Planning Policy Framework is clear that good design is a fundamental to what the planning and development process should achieve.

- 9.15. Policy BSC10 of the Cherwell Local Plan Part 1 2011-2031 outlines the requirements for open space, outdoor sport and recreation provision. Policy BSC11 sets out the local standards of provision for outdoor recreation including children's play space.
- 9.16. The site is located in the Bretch Hill Regeneration Area (Policy Banbury 10), which states that development proposals will be permitted for small scale redevelopment/renewal that would result in improvements to the existing housing stock and community facilities.
- 9.17. The Council's Residential Design Guide SPD seeks to ensure that new development responds to the traditional settlement pattern, character and context of a village. This includes the use of continuous building forms along principle routes and adjacent to areas of the public open space, the use of traditional building materials and detailing and form that respond to the local vernacular.

#### *Assessment*

- 9.18. The application is in outline with all matters reserved except for access. The application is accompanied by an indicative concept layout. This layout, in contrast to that submitted with the last application, embraces the principles set out in the 2018 Residential Design Guide, including active surveillance from proposed dwellings onto the footpath which is broadly parallel to the northern boundary and terminates at the north/north-eastern corner; active surveillance onto the public open space now being achievable, provided corner turner dwellings are used – this can be secured at reserved matters stage; LAP now provided on the site; parking now provided to the sides of dwellings and in rear courtyards rather than on frontages; and provision of cycle link from Balmoral Avenue south to north.
- 9.19. Whilst design and materials would be assessed under a reserved matters application it is considered that, given the location of the site on the edge of the town and adjacent existing residential development, appropriate levels of control should be secured at any such detailed application stage, to ensure compliance with design principles reflective of those within the area and wider district.
- 9.20. The proposed landscaping, with retention of the existing tree lined boundaries, woodland and introduction of landscape buffers would provide a softer edge to the proposed development allowing for a transition to the rural landscape to the west.
- 9.21. That said, whilst every application would need to be assessed on its own planning merits at the time of the of any such application, officers are confident of the level of control that could be safeguarded through ensuring broad compliance with any approved plans secured by way of appropriate condition attached to any such permission.

#### *Conclusion*

- 9.22. It is considered that while the submitted indicative layout would not be acceptable, with some relatively minor amendments it would be acceptable and, importantly, (1) does not form part of any approval of the current application if supported and (2) demonstrates that 49 dwellings can be delivered on the site, and also allow for the provision of a well-designed, safe, accessible and well-connected environment with an appropriate tenure mix. As such, the proposal accords with Policies BSC10,



BSC11 and ESD15 of the adopted Cherwell Local Plan 2011-2013 and government guidance within the NPPF.

Impact on the character and appearance of the area

9.23. Government guidance contained within the NPPF towards achieving well-designed places states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. The NPPG goes on to note that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Further, Paragraph 130 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.

9.24. Paragraph 127 of the NPPF states that planning decisions should ensure that developments:

- Will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- Are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- Are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change;
- Establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- Optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks;
- Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

9.25. Policy ESD15 of the Cherwell Local Plan Part 1 states that: “New development proposals should:

- Contribute positively to an area’s character and identity by creating or reinforcing local distinctiveness and respecting local topography, including skylines, valley floors, significant trees, historic boundaries, landmarks, features or views.
- Respect the traditional pattern routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. Development should be designed to integrate with existing streets and public spaces, and buildings configured to create clearly defined active public frontages.”

9.26. Policy ESD13 of the Cherwell Local Plan Part 1 states that: “Development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not be permitted if they would:

- Cause undue visual intrusion into the open countryside;
- Cause undue harm to important natural landscape features and topography;
- Be inconsistent with local character;
- Harm the setting of settlements, buildings, structures or other landmark features;
- Harm the historic value of the landscape.”

9.27. Saved Policy C28 of the Cherwell Local Plan 1996 exercises control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context and Saved Policy C8 seeks to limit sporadic development beyond the built limits of settlements.

9.28. Saved Policy C33 states the Council will seek to retain any undeveloped gap with is important in preserving the character of a loose knit settlement structure or maintaining the setting of heritage assets.

9.29. The Cherwell Residential Guide SPD (2018) builds on the above policies and provides a framework to deliver high quality locally distinctive development.

9.30. The Non Statutory Local Plan also contains relevant policies as set out below: Policy EN31 (Countryside Protection) (like its equivalent policy C9 in the Adopted Cherwell Local Plan 1996) states that beyond the existing and planned limits of the towns of Banbury and Bicester, development of a type, size or scale that is incompatible with a rural location will be refused.

9.31. Policy EN34 (Landscape Character) sets out criteria that the Council will use to seek to conserve and enhance the character and appearance of the landscape through the control of development. Proposals will not be permitted if they would:

- cause undue visual intrusion into the open countryside
- cause undue harm to important natural landscape features and topography
- be inconsistent with local character
- harm the setting of settlements, buildings, structures or other landmark features
- harm the historic value of the landscape

#### *Assessment*

9.32. Given the site’s location on the edge of the town, its rural location and on top of the hill, the proposed development has the potential to cause harm and each of these criteria needs to be carefully considered.

9.33. The western boundary to the site is heavily treed and with well-established mature hedgerow providing a strong visual barrier to the wider open countryside beyond the site. The site visually is well-contained by tree-lined boundaries and being bounded on three sides by existing residential development. It is also dominated by the adjoining water tower and telecommunications tower.

- 9.34. The application is accompanied by a Landscape and Visual Impact Assessment (LVIA) produced by Mood Landscape Ltd, which seeks to introduce the principle of development into the context of the existing landscape character, visual environment and landscape related policy to assess the ability of the site to integrate future development. In terms of the visual assessment carried out by Mood Landscape, fieldwork was undertaken to identify several viewpoints in the immediate and wider setting of the site.
- 9.35. Within the Oxfordshire Wildlife & Landscape Study the site is identified as being adjacent the 'Farmland plateau' landscape type. Farmland plateau landscape type are identified as being:
- Level or gently rolling open ridges dissected by narrow valleys and broader vales,
  - Large, rectangular arable fields enclosed by low thorn hedges and limestone walls,
  - Rectilinear plantations and shelterbelts,
  - Sparsely settled landscape with few nucleated settlements,
  - Long, straight roads running along the ridge summits.
- 9.36. As noted above the site is a 'greenfield' site set at the edge of Banbury. It is described that the site is consistent with some of the key characteristics of the farmland plateau character area. It is a geometric elevated plateau with wooded rectilinear plantations of field maple, ash and oak on its boundaries. However, it has some distinct differences to the neighbouring farmland plateau character including the imposing water tower and mobile telephone mast on the site boundary and close proximity of neighbouring houses, which gives the site an urban fringe character and heavily dilutes any farmland character.
- 9.37. Although the site itself is not within the farmland plateau character area, the western boundary area of the site forms the eastern boundary of this character area and therefore the impact on the adjoining character area is relevant to the study and is categorised as being of medium sensitivity. The proposed development would bring the built environment closer to the boundary of the character area. The current transitional zone that the site provides between the existing housing in Bretch Hill and the farmland plateau would change in character. However, this is the only example of a transition zone being between the built form and the character area and the close proximity of housing to the edge of the character area is considered to be typical of the character along this boundary.
- 9.38. The LVIA asserts that the development would make a positive contribution to the character of the site area as it directly addresses and enhances an untidy fringe of the town and would help absorb the impact of the water tower and mobile phone mast in the urban fabric of the town. This coupled with the development bringing the boundary of the built form in line with the boundaries to the north and south represents a negligible overall impact on the farmland plateau character area and would not result in a significant impact on the character area.
- 9.39. The Landscape Visual Impact Assessment concludes that "the site is heavily influenced by the surrounding housing and most notably the adjoining water tower and mobile phone mast, which are detracting features and dominate the view across the site. These necessary but overbearing urban influences coupled with the unkempt rough grassland create a site, which is typically urban fringe in character.

- 9.40. The addition of properties and the associated infrastructure within the site will change its character from being urban fringe to urban”
- 9.41. The Council’s Landscape Officer (CLO) has assessed the proposals and accompanying LVIA and associated assessment of key viewpoints. The CLO raises no objections, his comments relating to a detailed layout – which is a reserved matter and not for assessment here, e.g. seeking the relocation of the attenuation basin to ensure it never floods residents’ gardens. The CLO requests the inclusion of several planning conditions should permission be granted, although landscaping is a reserved matter and so these matters are better handled by way of informative notes.

#### *Conclusion*

- 9.42. Officers consider that residential development of this site is generally acceptable in terms of the impact upon the character of the area and wider open countryside. This is demonstrated by a satisfactory Landscape Visual Impact Assessment. Any harm that would be caused to the wider landscape setting would not be so significant to warrant a reason to refuse the application.

#### Highway safety and vehicular access

#### *Policy context*

- 9.43. The NPPF (Para. 108) states that the planning system should actively manage patterns of growth in support of the achievement of promoting sustainable transport. However, notes that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.
- 9.44. The NPPF (Para. 108) advises that in assessing specific applications for development, it should be ensured that: a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; and c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 9.45. Both Policies ESD15 and SLE4 of the CLP 2031 reflect the provision and aims of the NPPF. Policy ESD15 of the CLP 2031 states that: “New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions”; whilst Policy SLE4 states that: “All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported”.
- 9.46. Policy TR7 states that: ‘Development that would regularly attract large commercial vehicles or large numbers of cars onto unsuitable minor roads will not normally be permitted’.

#### *Assessment*

- 9.47. All matters are reserved except access. The development would include a new access from Balmoral Road (south) to serve the new housing. This would extend from the existing highway where there is currently a field access at the end of the

highway. Pedestrian footpath would also be included with the access connecting with the existing footpath on Balmoral Avenue.

- 9.48. The Local Highway Authority (LHA) advises the proposed vehicular access is acceptable based on the information submitted. In terms of traffic impact, the overall conclusions of the Transport Statement are accepted. The LHA is content with the methodology used to generate the final trip generation figures and it is noted that the Balmoral Avenue/Broughton Road junction is within capacity.
- 9.49. The NPPF (Para. 109) states that: 'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'.
- 9.50. The LHA raises no objection to the application on the basis of highway safety.
- 9.51. The LHA also requests financial contributions to Bridge Street/Cherwell Street eastern corridor improvements. A361 Bloxham Road/Queensway/Springfield Avenue junction improvements, enhancement of public transport services by addition extended route options, hours and weekend hours to the B5 bus service on Bretch Hill and a rights of way contribution towards mitigation measures to footpaths within 2km of the site.
- 9.52. There have been a significant number of neighbour objections relating to the proposal's impact on the safety of the local highway network, specifically relating to the unsuitability of extra traffic, the steep hill accessing the site, the potential of parking problems; noise, heavy machinery and large construction vehicles. These concerns are noted but given that the LHA has not objected to the application it is considered that the proposal is acceptable in this regard and that any refusal on grounds of highway safety could not be substantiated at appeal.

### *Conclusion*

- 9.53. In light of the LHA's advice, and subject to conditions, S106 contributions and an obligation to enter into a S278 agreement, it is concluded that the proposal would not have a significant adverse impact upon the safe and efficient operation of the highway network, and therefore complies with Local Plan Policy ESD15 in this regard and government guidance within the NPPF.

### Rights of Way, access and pedestrian connectivity

#### *Policy Context*

- 9.54. The National Planning Policy Framework outlines three overarching objectives being economic, social and environmental. From a social perspective the NPPF discusses achieving sustainable development means supporting "strong, vibrant and healthy communities.... By fostering a well-designed and safe built environment". At paragraph 102(c) the NPPF requires transport issues to be considered at the earliest stages of development proposals so that opportunities to promote walking, cycling and public transport use are identified and pursued".
- 9.55. At paragraph 122 section c) the NPPF states that planning decisions should support development which make efficient use of land, taking into account "the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit car use".

- 9.56. Local Plan Policy SLE4 relates to improved transport and connections. It supports the NPPF where it states; “all development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling.”
- 9.57. Local Plan Policy Banbury 10 requires the layout of new development to enable a high degree of integration and connectivity with the existing communities and to support improve walking and cycling connections to the town centre.
- 9.58. The Cherwell Residential Design Guide SPD gives advice on routes for pedestrians and cyclists and states they “should be safe, direct, attractive and legible”. The SPD sets out guidance on how developments should respond to the site context and this includes where can access and connection to the wider network be gained and whether there are existing movement routes that should be retained. The SPD also poses questions about how the scheme can connect into the surrounding street and footpath/cycleway network and how does the site relate to existing public transport routes.
- 9.59. In addition, Oxfordshire County Council Residential Design Guide requires all developments of more than 50 homes to be served by at least an hourly bus service and for homes to be within 400m walkable distance of a bus stop.
- 9.60. Policy 34 of LTP4 states that “Oxfordshire County Council will require the layout and design of new developments to proactively encourage walking and cycling, especially for local trips, and allow developments to be served by frequent, reliable and efficient public transport”. One of the ways this is done is “ensuring that developers promote and enable cycling and walking for journeys associated with new development, including through the provision of effective travel plans”.

#### *Assessment*

- 9.61. A public right of way (footpath 120/24) follows the northern boundary of the site connecting the open countryside to Bretch Hill. The footpath, which is currently unsurfaced and unlit, runs along the tree line adjacent the boundary and then through the woodland to the northeast. The path is currently a muddy track, and in places is difficult to distinguish as a path because of the vegetation on and around it.
- 9.62. The bus stop on Broughton Road serves 4 buses a day and cannot be considered a credible bus service and therefore the nearest bus stops to the site are in Bretch Hill, at Chepstow Gardens and Hampden Close on Bretch Hill. These are a 1 mile walk away using the Broughton Road access if no other credible pedestrian access is provided at the north of the site. It is therefore critical for accessibility to provide that connectivity between the site and the surrounding development and there were concerns with the previously withdrawn scheme regarding the lack of pedestrian and cycle links.
- 9.63. The development as now proposed has sufficient pedestrian and cycle links to the surrounding residential area, bus stops and amenities. The proposals now show pedestrian links through to the north of the site to join the development to Balmoral Avenue (north), their provision meaning that the aforementioned bus stops would be within 400m of the site, and include provision for the improvement of the existing right of way.
- 9.64. The opening up of the public right of way to make it safer and more accessible, particularly through the woodland area, has the potential to be detrimental to ecology and biodiversity. The need to light the footpath would have an impact on species using the tree lined boundary as a foraging and migrating route. However,

based on the current application submission, and in light of the advice from OCC Highways and CDC Ecology, officers now have sufficient comfort that the footpath can be retained and upgraded to provide active surveillance and safe movement without detriment to trees or ecology. This would need to be subject to either conditions or legal agreement.

- 9.65. As the wooded area is a Priority Habitat a careful balance would need to be achieved as to how much, if any, of the trees could be removed. Safeguarding the priority habitat and biodiversity net gain is a priority in planning and must be balanced against the need to firstly deliver much need housing and then providing sustainable, safe and accessible connections to the existing built environment and facilities.

#### *Conclusion*

- 9.66. For the reasons set out above, the site as now proposed has sufficient pedestrian and cycle links to the surrounding residential area, bus stops and amenities. The current application is accompanied by sufficient information relating to the proposed use of the public right of way along the northern boundary as a pedestrian link. Subject to conditions and/or legal agreement, the current proposal would therefore provide for retention and enhancement of the right of way, plus a new pedestrian connection from the site to Balmoral Avenue (north) such that the development would enable a high degree of integration and connectivity with the existing communities and to support improve walking and cycling connections to the town centre, compliant with national and local planning policy as listed in the paragraphs above.

#### Residential amenity

##### *Policy Context*

- 9.67. Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2031 which states that: 'new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space'.

##### *Assessment*

- 9.68. The application is in outline only. Any detailed proposals would need to have due regard to requirements of Section 6 of the Residential Design Guide SPD about appropriate standards of amenity for both existing and future residents. Appropriate positioning and scale of dwellings, boundary treatments and the nature of such treatments could be given due consideration at reserved matters stage.
- 9.69. The nearest residential properties to the site would be on Balmoral Avenue north, Harlech Close to the north and Balmoral Avenue south to the south. In terms of the properties along Balmoral Avenue north and Harlech Close these are to the north of the boundary of the proposed site separated by well-established trees its entire length. It is considered that, subject to appropriate scale and design of any proposed dwellings along the northern boundary of the site, and retention and potential enhancement of existing boundary planting it is likely that a satisfactory layout could be achieved that would avoid any significant unacceptable impacts on the residential amenity of the neighbouring residential properties.

- 9.70. Existing properties along Balmoral Avenue South would sit side on to the site and face the access road. They are currently separated from the site by some shrubs, hedgerow and fencing. Again, subject to a satisfactory layout being achieved and any proposed landscaping and planting, it would avoid any unacceptable impacts on the residential amenity of these neighbouring properties.
- 9.71. Assessment of internal amenity with the proposed dwellings would be a matter for consideration at any reserved matters or detailed application stage. Whilst only indicative at this stage, the concept layout indicates an appropriate layout that would provide for both public and private outdoor amenity space that would allow for an acceptable standard of living to be achieved for potential future occupants.

#### *Conclusion*

- 9.72. Given the above, officers are satisfied that the development can be made acceptable in residential amenity terms, both for existing residents neighbouring the site and future occupiers, with acceptable details to be secured at reserved matters stage.

#### Affordable housing

#### *Policy Context*

- 9.73. The NPPF advises that in order to create sustainable, inclusive and mixed communities, Local Planning Authorities should plan for a mix of housing, reflect local demand and set policies for meeting affordable housing need. Policy BSC4 of the adopted Cherwell Local Plan part 1 2011-2031 requires new residential development to provide a mix of homes in the interests of meeting housing need and creating socially mixed and inclusive communities. Policy BSC3 requires development such as this are to provide 30% affordable housing on site and provides details on the mix that should be sought between affordable/social rent and shared ownership. Policy BSC2 requires that to make efficient use of land that new residential development should be provided at a net density of at least 30 dwellings per hectare.

#### *Assessment*

- 9.74. On a development of 49 units Policy BSC3 would require 15 units to be provided as affordable housing. Of these 15 affordable units, the Strategic Housing Team recommends an indicative mix of tenures and sizes of the following:
- 4 x 1 bedroom 2 person maisonette for social rent
  - 2 x 1 bedroom 2 person house for social rent
  - 2 x 2 bedroom 4 person house for social rent
  - 2 x 2 bedroom 4 person house for shared ownership
  - 2 x 3 bedroom 5 person house for shared ownership
  - 2 x 3 bedroom 6 person house for social rent
  - 1 x 4 bedroom 7 person house for social rent

- 9.75. This represents a 70/30 split between social rent and shared ownership units as stated in the adopted Local Plan Part 1 Policy BSC3, but also blends the findings of



the most recent county-wide Strategic Housing Market Assessment, with our own district-specific levels of in-house data to relate this mix which will best meet local needs.

- 9.76. The current proposals now include / allow for the affordable housing provision set out above, which would need to be secured through a Section 106 agreement.

#### *Conclusion*

- 9.77. The current proposal and indicative layout provide an acceptable affordable housing mix and layout and thus accords in this regard with Local Plan Policy BSC4.

#### Flood Risk and drainage

##### *Policy Context*

- 9.78. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.
- 9.79. Policy ESD7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

##### *Assessment*

- 9.80. A site-specific Flood Risk Assessment (FRA) prepared BWB Consulting has been submitted in support of the application. The Environment Agency's flood maps indicate that site is not within a higher risk flood zone and are within Flood Zone 1 where residential development is acceptable in principle subject to no increased flood risk elsewhere as a result of proposal.
- 9.81. Oxfordshire County Council as Local Lead Flood Authority raises an objection to the development on the basis of the attenuation pond being in close proximity to the dwellings to the south on Briggs Close and Balmoral Avenue. Following negotiations with the agent, the attenuation pond has been moved further to the north, an additional small attenuation feature has been created in the north-east of the site, and various other SUDS methods have been added.
- 9.82. The position of the attenuation pond is now probably too close to proposed development within the site, but it must be borne in mind that the plan is illustrative and not forming part of the determination of the application. Importantly, the submitted plans demonstrate that the site can be adequately drained and in a safe and sustainable manner. Officers consider that a combination of an attenuation feature and infiltration is considered the most appropriate drainage strategy, which in any case can and would be required by condition of any permission given.
- 9.83. The Drainage Officer has been consulted on the amended drainage proposals but at the time of writing this report has not responded. Their comments will be reported to Planning Committee when received.
- 9.84. Third party comments have raised concerns with regards to the capacity of the sewage system and its ability to cope with additional load as a result of the proposed development. Thames Water, which provides waste water/sewage services, has raised concern regarding an inability of the existing foul water network

to accommodate the needs of the development proposal. TW suggests this could be dealt with by an appropriately worded condition; however, further information is required as to what the necessary wastewater network upgrades are in order to ensure the network can accommodate the developments needs and without knowing this the works may not be deliverable. A sewage drainage strategy itself could be secured through an appropriate condition.

### *Conclusion*

- 9.85. Officers consider that the current proposals can be considered acceptable in terms of flood-risk and drainage, in accord with local and national planning policy in this regard.

### Ecology Impact

#### *Legislative context*

- 9.86. 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.
- 9.87. 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.
- 9.88. 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.
- 9.89. 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.

9.90. 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*

9.91. 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.

9.92. 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.

9.93. 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.

9.94. 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.

9.95. 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.

9.96. 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.

9.97. 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 (LPAs) 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*

9.98. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it is 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 LPAs 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')

9.99. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains a number of dilapidated ruined buildings, is on the edge of the built up area of Banbury abutting open countryside and there are a number of mature trees including Priority Habitat Woodland and hedgerows within and adjacent the site, and therefore has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.

9.100. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS 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 LPA should then consider whether Natural England (NE) would be likely to grant a licence for the development. In so doing the LPA has to consider itself whether the development meets the 3 derogation tests listed above.

9.101. 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 NE will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether NE will grant the licence then the Council may grant planning permission.

9.102. The application is supported by a detailed protected species survey which concluded that there are bats commuting and foraging round the boundaries of the Site. In addition, the habitats have potential to support other wildlife including breeding birds and potentially badger. Retained habitats and associated species interest have been buffered from the development footprint and recommendations for their protection during the construction, demolition and management during operation to ensure their long-term retention and enhancement. The report also proposed an ecological mitigation strategy for the scheme. The application proposes to enhance the retained vegetation on site and to put forward additional land within the applicant's ownership as compensation to ensure an overall net gain for biodiversity is achievable on site.

9.103. The Council's Ecology Officer ('CE') has offered no objections to the proposals, subject to a number of conditions. The CE has commented that the appropriate surveys have been carried out and the recommendations within the ecological report are acceptable and that currently no protected species licences are required.

9.104. The CE has requested conditions relating to a CEMP, LEMP, an additional pre-works badger survey and a full lighting strategy. These conditions are considered to meet the tests set out in Paragraph 55 of the NPPF.

9.105. It is therefore considered that the proposed development complies with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 and Government guidance contained within the NPPF and is acceptable in this regard.

### Infrastructure

#### *Policy Context*

9.106. New development often creates a need for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect on local amenity and the quality of the environment. National planning policy sets out the principle that applicants may reasonably be expected to provide, pay for, or contribute towards the cost, of all or part of the additional infrastructure/service provision that would not have been necessary but for their development. Planning Obligations are the mechanism used to secure these measures.

9.107. Policy INF1 of the CLP 2015 states that: “Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.”

9.108. Policy BSC11 of the CLP 2015 states that: “Development proposals will be required to contribute to the provision of open space, sport and recreation, together with secure arrangements for its management and maintenance. The amount, type and form of open space will be determined having regard to the nature and size of development proposed and the community needs generated by it. Provision should usually be made on site in accordance with the minimum standards of provision set out in ‘Local Standards of Provision – Outdoor Recreation’. Where this is not possible or appropriate, a financial contribution towards suitable new provision or enhancement of existing facilities off site will be sought, secured through a legal agreement.” Policy BSD12 requires new development to contribute to indoor sport, recreation and community facilities.

9.109. The Developer Contributions Supplementary Planning Document (SPD February 2018) sets out its position in respect of requiring financial and on site contributions towards ensuring the necessary infrastructure or service requirements are provided to meet the needs of development, and to ensure the additional pressure placed on existing services and infrastructure is mitigated. This is the starting point for negotiations in respect of completing S106 Agreements.

#### *Assessment*

9.110. Where on and off-site infrastructure/measures need to be secured through a planning obligation (i.e. legal agreement) they must meet statutory tests set out in regulation 122 of the Community Infrastructure Ley (CIL) Regulations 2010 (as amended). These tests are that each obligation must be:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development;
- c) Fairly and reasonably related in scale and kind to the development

9.111. Where planning obligations do not meet the above statutory tests, they cannot be taken into account in reaching a decision. In short, these tests exist to ensure that local planning authorities do not seek disproportionate and/or unjustified infrastructure or financial contributions as part of deciding to grant planning permission. Officers have had regard to the statutory tests of planning obligations in considering the application and Members must also have regard to them to ensure that any decision reached is lawful.

9.112. Having regard to the above, in the event that Members were to resolve to grant planning permission, the following items would in officers' view need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts:

#### Cherwell District Council

- Provision of 30% affordable housing together with 70/30 tenure split between social rented and shared ownership;
- Provision of public open amenity space and future maintenance arrangements;
- Provision of a LAP together with future maintenance arrangements;
- Maintenance arrangements for on-site trees, hedgerows, and drainage features;
- Payment of a financial contribution towards the provision of refuse/recycling bins for the development;

9.113. Off-site Outdoor Sports Contribution – 49 dwellings x £2,017.03 per dwelling contribution = £98,834.47 towards pitch and pavilion improvements at North Oxfordshire Community use site or the development of a new artificial pitch at Hanwell Fields playing fields in Banbury.

- Off-site Indoor Sports Contribution – 49 dwellings x 2.49 avg. people per dwelling x £335.32 per person contribution = £40,912.39 towards Banbury Indoor Tennis Centre and/or the improvements of leisure centre provision in the locality.
- Community Hall Contribution – 49 dwellings x 2.49 avg. people per dwelling x £520 contribution per person = £56,018.74 towards improvements at The Hill or Sunshine Centre in Banbury.

#### Oxfordshire County Council

- Highway Works Contribution of £62,772 towards Bridge Street/Cherwell Street eastern corridor improvements and A361 Bloxham Road/Queensway/Springfield Avenue junction improvements;
- Public Transport Service Financial Contribution of £49,000 towards the enhancement of public transport services serving the site by improving the B5 bus service on Bretch Hill by adding additional route options, extended hours and extended weekend hours;
- Public Rights of Way Contribution of £5,000 to provide mitigation measures in the impact area up to 2km from the site to primarily improve the surfaces

of all routes as well as new or replacement structures like gates, bridges, seating etc and improved signage and drainage;

- To secure entry into a S278 agreement (Highways Act 1980) to secure mitigation/improvement works, including: a dropped kerb facility to be provided at the origin of footpath 120/24 where it joins onto Bretch Hill, provision of site access and pedestrian footways as show by a plan agreed by the LHA, improvement of PROW 120/24 into a blacktop footpath connecting the development to Bretch Hill and Balmoral Avenue north / Harlech Close. This could take the form of a self-binding gravel type path suitable for all users, without the need to tarmac.
- Primary education contribution of £269,976 for the expansion of primary capacity serving the Banbury area.
- Secondary education (including sixth form) contribution of £407,462 towards a new secondary school in Banbury.

9.114. Health care contribution of £42,336 to support improvement of local primary care infrastructure if this development were to go ahead, on the basis that primary medical care in Banbury is at capacity, and further housing growth would require additional or expanded infrastructure to be in place.

9.115. CDC's Developer Contributions SPD states that new residential development will be expected to contribute towards the provision of additional health care infrastructure generated by its population growth where there is insufficient existing capacity, well located to serve the development. Whilst the Oxfordshire Clinical Commission Group has been consulted, comments have not been received from this consultee and they have indicated they are only likely to comment on larger applications. Thus, officers do not consider that they can request contributions towards health care infrastructure.

### *Conclusion*

9.116. A number of items need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts. At this stage, no legal agreement has been drafted and therefore the recommendation for the application reflects that the legal agreement must be completed to ensure that the contributions set out above are secured.

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

10.1. The overall purpose of the planning system is to seek to achieve sustainable development as set out in the NPPF. The three dimensions of sustainable development must be considered in order to balance the benefits against the harm. Section 38(6) of the Planning and Compulsory Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise.

10.2. The application proposal seeks consent for up to 49 dwellings on the edge of Banbury, which is considered a sustainable location. Planning policy directs residential development towards Banbury and although the district benefits from a 3 year housing land supply the site has previously been allocated in the non-statutory local plan. As such, considering its location and the benefits of delivering further housing to meet the districts housing need, the principle of development is judged to be acceptable.

- 10.3. The proposed development provides for the retention and upgrading of the public right of way to the northern boundary of the site and subject to conditions / legal agreement would ensuring the upgrade of this footpath to one that is well surfaced, accessible, lit and safe or the provision of a footpath link through to Balmoral Avenue north.
- 10.4. The submitted indicative layout plan demonstrates that 49 dwellings can be satisfactorily delivered on the site in addition to LAP, public open space, etc., and the current proposal and indicative layout provide an acceptable affordable housing mix and layout. Subject to conditions and planning obligations, the proposal is considered acceptable in highway safety terms. The development can be made acceptable in residential amenity terms, both for existing residents neighbouring the site and future occupiers, with acceptable details to be secured at reserved matters stage. Following the receipt of additional/amended information, the proposal is acceptable in terms of flood risk and drainage, and in ecology terms.
- 10.5. Through the development of a greenfield site the proposal would have an adverse impact on the character and appearance of the site and its surroundings albeit that this harm would be limited, and the harm that would be caused to the wider landscape setting would not be so significant to warrant a reason to refuse the application.
- 10.6. The proposal would deliver additional new housing including affordable housing and significant weight must be attached to this benefit. Against this must be balanced the proposal's impact on the character and appearance of the site and its immediate surroundings. Overall, it is considered that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the Development Plan and the NPPF, and therefore planning permission should be granted.

## 11. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) **AND THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106** OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND COMPENSATION ACT 1991, TO SECURE THE FOLLOWING (AND ANY AMENDMENTS AS DEEMED NECESSARY):

- a) Provision of 30% affordable housing together with 70/30 tenure split between social rented and shared ownership;
- b) Provision of public open amenity space and future maintenance arrangements;
- c) Provision of a LAP together with future maintenance arrangements;
- d) Maintenance arrangements for on-site trees, hedgerows, and drainage features;
- e) Payment of a financial contribution towards the provision of refuse/recycling bins for the development;
- f) Off-site Outdoor Sports Contribution – 49 dwellings x £2,017.03 per dwelling contribution = £98,834.47 towards pitch and pavilion improvements at North Oxfordshire Community use site or the development of a new artificial pitch at Hanwell Fields playing fields in Banbury.



g) Off-site Indoor Sports Contribution – 49 dwellings x 2.49 avg. people per dwelling x £335.32 per person contribution = £40,912.39 towards Banbury Indoor Tennis Centre and/or the improvements of leisure centre provision in the locality.

h) Community Hall Contribution – 49 dwellings x 2.49 avg. people per dwelling x £520 contribution per person = £56,018.74 towards improvements at The Hill or Sunshine Centre in Banbury.

i) Highway Works Contribution of £62,772 towards Bridge Street/Cherwell Street eastern corridor improvements and A361 Bloxham Road/Queensway/Springfield

Avenue junction improvements;

j) Public Transport Service Financial Contribution of £49,000 towards the enhancement of public transport services serving the site by improving the B5 bus service on Bretch Hill by adding additional route options, extended hours and extended weekend hours;

k) Public Rights of Way Contribution of £5,000 to provide mitigation measures in the impact area up to 2km from the site to primarily improve the surfaces of all routes as well as new or replacement structures like gates, bridges, seating etc and improved signage and drainage;

l) To secure entry into a S278 agreement (Highways Act 1980) to secure mitigation/improvement works, including: a dropped kerb facility to be provided at the origin of footpath 120/24 where it joins onto Bretch Hill, provision of site access and pedestrian footways as show by a plan agreed by the LHA, improvement of PROW 120/24 into a blacktop footpath connecting the development to Bretch Hill and Balmoral Avenue north / Harlech Close. This could take the form of a self-binding gravel type path suitable for all users, without the need to tarmac.

m) Primary education contribution of £269,976 for the expansion of primary capacity serving the Banbury area.

n) Secondary education (including sixth form) contribution of £407,462 towards a new secondary school in Banbury.

## CONDITIONS

### **Reserved Matters Time Limit**

1. No development shall commence until full details of the layout (including the layout of the internal access roads and footpaths), scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.

Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. In the case of the reserved matters, the final application for approval shall be made not later than the expiration of three years beginning with the date of this permission.

Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as

amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.

Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

#### **Compliance with Plans**

4. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: PA/104 (Site Location Plan), PA/101 Rev B (Illustrative Site Layout), 19\_106\_01D (Illustrative Landscape Masterplan), 20496-04 (Site Layout Refuse Vehicle Tracking) and BAB-BWB-ZZ-XX-DR-CD-0004\_S2-P2 (Amended Drainage Strategy).

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

5. No development shall take place until details of all finished floor levels in relation to existing and proposed site levels and to the adjacent buildings have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be constructed strictly in accordance with the approved levels.

Reason: To secure an acceptable standard of development that safeguards the visual amenities of the area and the living conditions of existing and future occupiers and to ensure compliance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance within Section 12 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

6. No part of the development hereby permitted shall take place until a desk study and site walk over to identify all potential contaminative uses on site and to inform the conceptual site model has been carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and has been submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

Reason: To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

7. If a potential risk from contamination is identified as a result of the work carried

out under condition 6, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

8. If contamination is found by undertaking the work carried out under condition 7, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

9. If remedial works have been identified in condition 8, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 8. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

10. Notwithstanding the details submitted, development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, and which shall be in general accordance with drawing BAB-BWB-ZZ-XX-DR-CD-0004\_S2-P2 (Amended Drainage Strategy), has been submitted to and approved in writing by the local planning authority. The scheme shall not be implemented other than in accordance with the approved details and shall be implemented before the development is completed. The scheme shall also include:

- Discharge Rates

- Discharge Volumes
- SUDS (Permeable Paving, Soakaway Tanks)
- Maintenance and management of SUDS features (To include provision of a SuDS Management and Maintenance Plan)
  - Infiltration in accordance with BRE365
  - Detailed drainage layout with pipe numbers
  - Network drainage calculations
  - Phasing
- Flood Flow Routing in exceedance conditions (To include provision of a flood exceedance route plan)

Reason: To ensure that sufficient capacity is made available to accommodate the new development and in order to avoid adverse environmental impact upon the community and to ensure compliance with Policy ESD 7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

11. Prior to the commencement of the development hereby approved, full details of the improvements to footpath 120/24 including, position, layout, construction, drainage, vision splays and a timetable for the delivery of the improvements shall be submitted to and approved in writing by the Local Planning Authority. The means of access shall be constructed in accordance with the approved details and shall be provided prior to the first occupation of the development and shall be retained as such thereafter.

Reason - In the interests of highway safety and public amenity and sustainable development and to comply with Policies ESD1, ESD15 and Banbury 10 and Government guidance contained within the National Planning Policy Framework.

12. Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to first occupation the means of access shall be constructed and retained in accordance with the approved details.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework

13. Prior to commencement of the development hereby approved; a construction traffic management plan shall be submitted to and approved by the Local Planning Authority. The CTMP will need to incorporate the following in detail and throughout development the approved plan must be adhered to
  - The CTMP must be appropriately titled, include the site and planning permission number.
  - Routing of construction traffic and delivery vehicles is required to be shown and signed appropriately to the necessary standards/requirements. This includes means of access into the site.
  - Details of and approval of any road closures needed during construction.
  - Details of and approval of any traffic management needed during construction.
  - Details of wheel cleaning/wash facilities – to prevent mud etc, in vehicle tyres/wheels, from migrating onto adjacent highway.
  - Details of appropriate signing, to accord with the necessary standards/requirements, for pedestrians during construction works, including any footpath diversions.
  - The erection and maintenance of security hoarding / scaffolding if required.

- A regime to inspect and maintain all signing, barriers etc.
- Contact details of the Project Manager and Site Supervisor responsible for onsite works to be provided.
- The use of appropriately trained, qualified and certificated banksmen for guiding vehicles/unloading etc.
- No unnecessary parking of site related vehicles (worker transport etc) in the vicinity – details of where these will be parked and occupiers transported to/from site to be submitted for consideration and approval. Areas to be shown on a plan not less than 1:500.
- Layout plan of the site that shows structures, roads, site storage, compound, pedestrian routes etc.
- A before-work commencement highway condition survey and agreement with a representative of the Highways Depot – contact 0845 310 1111. Final correspondence is required to be submitted.
- Local residents to be kept informed of significant deliveries and liaised with through the project. Contact details for person to whom issues should be raised with in first instance to be provided and a record kept of these and subsequent resolution.
- Any temporary access arrangements to be agreed with and approved by Highways Depot.
- Details of times for construction traffic and delivery vehicles, which must be outside network peak and school peak hours.

Reason: In the interests of highway safety and to mitigate the impact of construction vehicles on the surrounding highway network, road infrastructure and local residents, particularly at morning and afternoon peak traffic times

14. Prior to commencement of the development hereby approved, a Construction Environment and Traffic Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved CEMP.

Reason: In the interests of highway safety and the residential amenities of neighbouring occupiers and to comply with Government guidance contained within the National Planning Policy Framework.

15. Prior to the commencement of any works associated with the construction of a dwelling, details of the means by which all dwellings will be designed and constructed to achieve an energy performance standard equivalent to a 19% improvement in carbon reductions on 2013 Part L of the Building Regulations (unless a different standard is agreed with the local planning authority) shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and no dwelling shall be occupied until it has been constructed in accordance with the approved energy performance measures.

Reason - In the interests of environmental sustainability in construction in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance in the National Planning Policy Framework.

16. Prior to the commencement of the development hereby approved including any demolition, and any works of site clearance, and as part of any reserved matters application for layout and landscaping, a method statement and scheme for enhancing biodiversity on site such that an overall net gain for biodiversity is achieved, to include details of enhancement features and habitats both within green spaces and integrated within the built environment, shall be submitted to

and approved in writing by the Local Planning Authority. This shall also include a timetable for provision. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.

Reason: To ensure the development provides a net gain in biodiversity in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

NOTE TO APPLICANT/DEVELOPER: It is advised that this condition include a Biodiversity Impact Assessment metric to show how a clear net gain for biodiversity will be achieved.

17. Prior to the commencement of the development hereby approved, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved LEMP.

Reason -To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

18. Prior to the installation of any external lighting a full lighting strategy to include illustration of proposed light spill and which adheres to best practice guidance, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved document.

Reason -To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

19. No properties shall be occupied until approval has been given in writing by the Local Planning Authority that either:

- Evidence to demonstrate that all water network upgrades required to accommodate the additional flows/demand from the development have been completed; or
- a housing and infrastructure phasing plan has been agreed with Thames Water and the Local Planning Authority in writing to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.

Reason - The development may lead to no / low water pressure and network reinforcement works are anticipated to be necessary to ensure that sufficient capacity is made available to accommodate additional demand anticipated from the new development.

20. Prior to first occupation the development a Travel Information Pack shall be submitted to and approved by the Local Planning Authority. Thereafter the first residents of each dwelling shall be provided with a copy of the approved Travel Information Pack.

Reason: To ensure all residents and employees are aware from the outset of the travel choices available to them, and to comply with Government guidance

contained within the National Planning Policy Framework.

21. No dwelling shall be occupied until it has been constructed to ensure that it achieves a water efficiency limit of 110 litres person/day and shall continue to accord with such a limit thereafter.

Reason - In the interests of sustainability in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

22. The development hereby approved shall be carried out strictly in accordance with the recommendations set out in sections 5.5-5.50 of the Ecological Appraisal carried out by EDP dated June 2020 unless otherwise agreed in writing by the Local Planning Authority.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

23. Each dwelling shall be provided with ducting to allow for the future installation of electrical vehicle charging infrastructure to serve that dwelling prior to its first occupation.

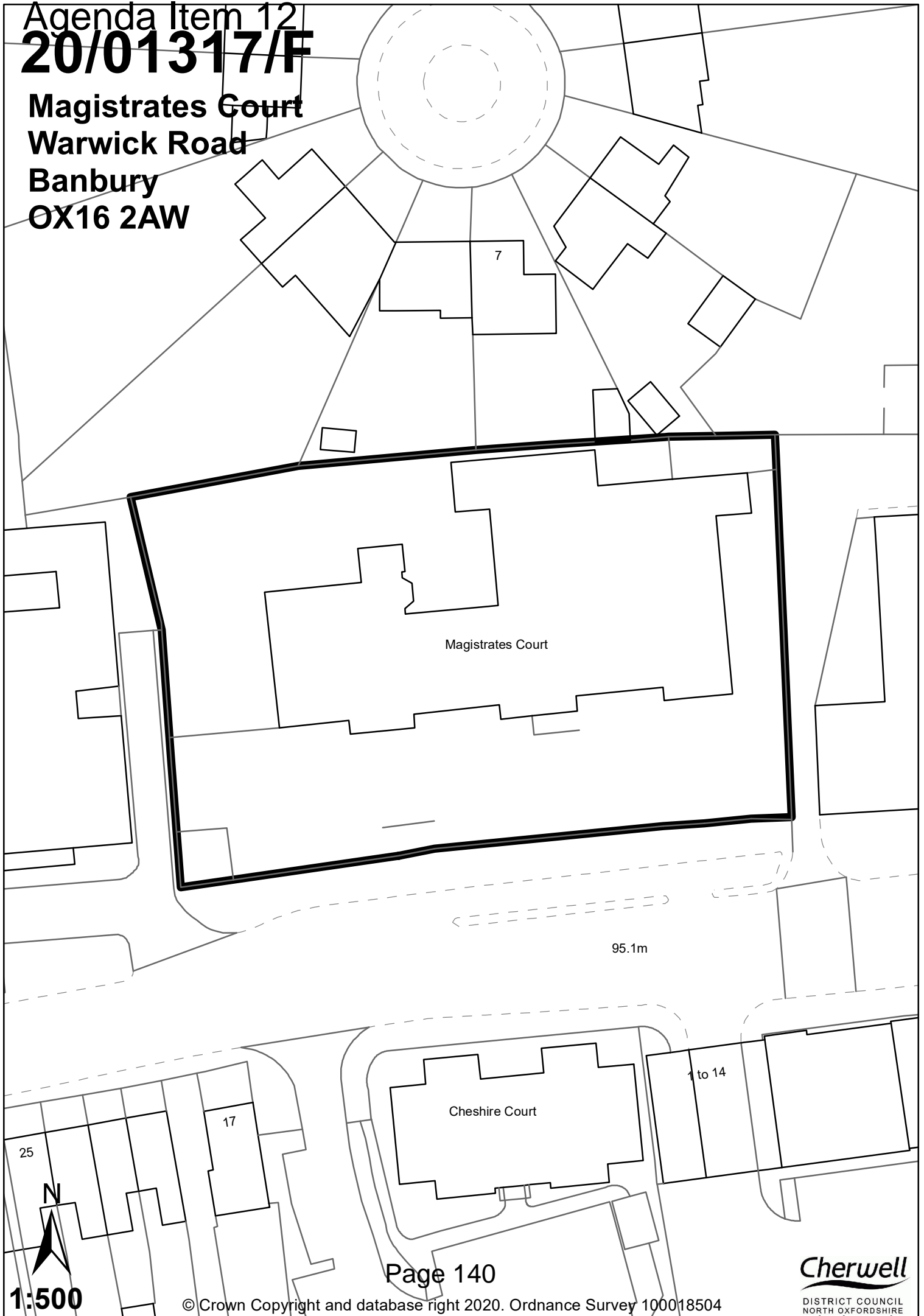
Reason - To maximise opportunities for sustainable transport in accordance with Government guidance contained within the National Planning Policy Framework

CASE OFFICER: Matthew Chadwick  
753754

TEL: 01295

Agenda Item 12  
**20/01317/F**

**Magistrates Court  
Warwick Road  
Banbury  
OX16 2AW**



Magistrates Court

Cheshire Court

1 to 14

17

25

95.1m



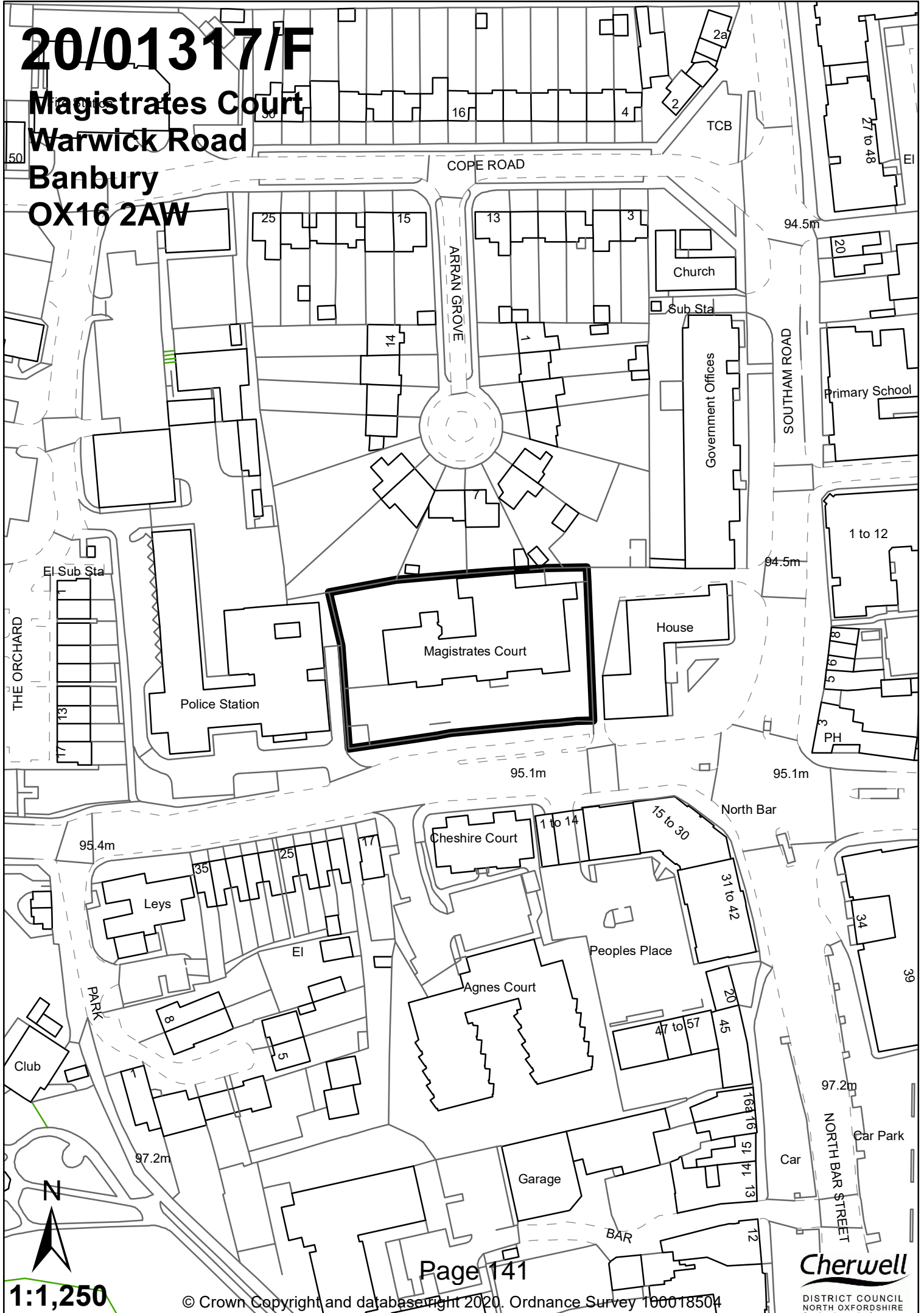
**20/01317/F**

**Magistrates Court**

**Warwick Road**

**Banbury**

**OX16 2AW**



**1:1,250**

**Case Officer:** James Kirkham

**Applicant:** Mr Jamie Pyper

**Proposal:** Conversion of existing building from Magistrates Court (Use Class D1) to 23 No  
apartments incorporating extension and selective demolition

**Ward:** Banbury Cross and Neithrop

**Councillors:** Councillor Banfield, Councillor Dhesi, and Councillor Perry

**Reason for Referral:** Major development

**Expiry Date:** 12 October 2020

**Committee Date:** 8 October 2020

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**EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

**RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

**Proposal**

The application seeks permission to demolish the existing range of flat roof extensions to the rear of the former magistrates court building, and extend and convert the building into 23 flats (14 no. 2-bed and 9 no. 1-bed units), with associated parking, cycle and bin stores and landscaping.

**Consultations**

The following consultees have raised **objections** to the application:

- Banbury Town Council, CDC Well-Being

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

- CDC Ecology, OCC Highways (Local Highway Authority), CDC Environmental Protection, Council's Viability Consultant (Bidwells), OCC Drainage (Lead Local Flood Authority), TVP Crime Prevention Design Advisor and Thames Water

3no letters of objection and 1no of comment have been received. No letters of support have been received.

**Planning Policy and Constraints**

In terms of site constraints, the application site is located in Banbury Conservation Area and is also registered as a locally listed building (non-designated heritage asset). The application site is also located in an area of potentially contaminated land as shown on the Councils mapping systems.

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:

- Principle of development

- Heritage, design, and impact on the character and appearance of the area
- Residential amenity
- Ecology impact
- Viability, affordable housing and infrastructure
- Highways

The report considers 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 application site is the former Magistrates Court located on Warwick Road in Banbury. It is currently vacant following the closure of the Magistrates Court. The building is a large attractive stone building with stone mullion windows and is set back from the main road behind a small parking area. A limestone wall exists to the northern and part of the eastern boundary of the site. Residential properties exist to the north of the site in Arran Grove and flats exist to the east and south of the site on Warwick Road. The site is also located immediately adjacent to the police station which is situated to the west of the site.

### **2. CONSTRAINTS**

2.1. The application site is located within the Banbury Conservation Area and is also registered as a locally listed building (non-designated heritage asset). The application site is also located in an area of potentially contaminated land as shown on the Councils mapping systems.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. The current application seeks permission to extend and convert the former Magistrates Court into 23no flats (14no 2-bed and 9no 1-bed units).

3.2. It is proposed to demolish the existing range of flat roof extensions to the rear of the building and replace them with two flat roof two storey extensions to the rear of the building which would accommodate several flats. A gable ended extension is also proposed centrally to the rear elevation of the main building to provide a circulation space. These extensions would be constructed of stone and the central gable would have a tiled roof to match the existing roof.

3.3. Flat roof single storey extensions are also proposed to the both sides of the rear of the building, which would be similar in appearance to the existing flat roof extensions to the sides of the building.

3.4. It is also proposed to convert the roof space of the existing principal building into living accommodation. This would include the provision of 2no roof lights in the side elevations of the existing front gable element of the building and the lowering of the cill of the existing window in this gable at second floor level. To the rear a number of dormer windows and roof lights are proposed.

- 3.5. Parking for 35 cars would be provided to the front and side of the building along with cycle parking and bin stores in the north west corner of the site. A small area of amenity space would be provided to the rear of the site between the proposed two storey rear extensions.
- 3.6. The application has been amended significantly during the course of the application following feedback from officers on heritage, design and amenity issues, which has also resulted in the number of flats being reduced from 29 to 23 and the scale and form of the extensions being significantly altered.

#### **4. RELEVANT PLANNING HISTORY**

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

02/02128/OCC – Alterations and extensions to existing magistrates court, demolition of existing garage and alterations to existing car park layout OCC ref.: C.17/02 - Approved

11/00032/F – Retrospective - Galvanised barriers on roof – Approved

#### **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. The following pre-application discussions have taken place with regard to this proposal:

19/00033/PREAPP – Change of use and alterations/additions to create 37 new residential units

- 5.2. This pre-app was not undertaken by the current applicant but by the public body that previously owned the site. The scheme was materially different to the one now presented. It was stated that there would be unlikely to be any objection to the principle of the change of use to residential and some extensions to the rear of the building may be supported. The scheme presented at that time was unacceptable for a number of reasons.

#### **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records (amend as appropriate). The final date for comments was **31<sup>st</sup> August 2020**, although comments received after this date and before finalising this report have also been taken into account.

- 6.2. 3 letters of objection have been received and 1 letter of comment. The comments raised by third parties are summarised as follows:

- Residential amenity: Loss of light, outlook (i.e. overbearing) and privacy to gardens and dwellings in Arran Grove which are located on lower ground than the application site. Proposal does not accord with the distances in the New Residential Design Guide SPD. Amount of amenity space for future residents very limited.
- Detrimental impact on Conservation Area and locality: Inappropriate use of materials with metal roof. The extensions are not subservient to the main building. Dry stone wall should be preserved
- Overdevelopment of the site: Extensions too large and not sufficient amenity space for number of residents.

- Traffic – Increase in traffic leaving to severe congestion
- Noise, disturbance and air and light pollution as a result of the change of use to residential and also the building works.
- The building is known as a traditional swift site and appropriate mitigation and enhancement should be provided. Requires the provision of a bat roost within the structure.
- A restriction should be placed on construction working hours
- Concerns regarding approval by amendment.
- Loss of value to neighbouring properties.

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## 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. BANBURY TOWN COUNCIL: **Objects.** Supports the principle of the development, but object as the proposal does not provide affordable housing in accordance with the Development Plan. It is suggested that a development with less new build may be more viable. The proposal does not ensure provision for essential off-site infrastructure, especially sports and education contributions. The relocation of the of the bin store is welcomed.

### CONSULTEES

7.3. HISTORIC ENGLAND: **No comments.**

7.4. CDC CONSERVATION: **No objections.** A number of changes have been made to the proposed scheme, which are more respectful of the non-designated heritage asset and the character and appearance of the conservation area. Happy to support the proposed development, which has the public benefit of bringing this historic building into a beneficial use.

7.5. OCC HIGHWAYS: **No objection** subject to conditions. Details of the proposed access will need to be considered as will a Construction Traffic Management Plan (CTMP). The site is well located to public transport and travel information packs should be provided to residents. The proposal would have a negligible impact on the traffic on the local highway network. Parking is in accordance with the standards. The site would benefit from the removal of the island to the frontage.

7.6. CDC ECOLOGY: **No objection** subject to conditions. A bat roost has been found during the surveys and licence will be required. There appears to be sufficient scope within the building for mitigation. Swifts are also known to be nesting at the site and these will need to be protected with conditions. The Biodiversity calculator shows a very small gain biodiversity and would request further enhancement to show a clear gain. Further swift nesting opportunities should be explored.

7.7. CDC ENVIRONMENTAL PROTECTION: **No objection subject to conditions.** A Construction Environmental Management Plan (CEMP) should be conditioned. The land is identified as potentially contaminated therefore conditions are required in this respect. Request provision of electric charging points for vehicles in the car park.

Agree with the findings of the Air Quality Report and agree the recommendations within it should be followed during construction.

- 7.8. CDC STRATEGIC HOUSING: Comments: Vacant Building Credit (VBC) not applicable at site. A commuted sum in lieu of any affordable housing may be required depending on the outcome of any assessment of the financial viability appraisal.
- 7.9. COUNCILS VIABILITY CONSULTANT (BIDWELLS): **No objections.** The Financial Viability Appraisal (FVA) comprises a residual land appraisal of the Proposed Scheme, factoring in anticipated costs, revenues and a profit margin to calculate the land price that a developer would be capable of paying to acquire the site for development. This residual land value is then compared with a benchmark value, which represents the minimum price at which a rational landowner would be incentivised to sell the site.
- 7.10. Under the principles of development viability, a scheme can be considered viable if it generates a residual land value in excess of the benchmark value. The logic behind this is that development will only proceed if it can meet the developer's required profit margin as well as the landowner's minimum price expectations.
- 7.11. The applicant appraisal demonstrates a residual land value of £102,838 for the Proposed Scheme. This is shown to be £852,262 below the agreed Benchmark Land Value for the application site. The applicant therefore concludes that the Proposed Scheme is unable to sustain any level of contribution towards CDC's adopted Affordable Housing policy target whilst remaining viable.
- 7.12. Bidwells have considered each of the assumptions and sources of information which have been relied upon by the applicant in arriving at the stated position on scheme viability. We have also undertaken our own appraisal of the Proposed Scheme, making adjustments to the cost and value inputs as appropriate, to verify the applicant's findings.
- 7.13. Bidwells' appraisal of the Proposed Scheme generates a Residual Land Value of £619,140, which is £335,960 below the Benchmark Land Value. Whilst this indicates a reduced deficit in comparison to the submitted position, it nevertheless validates the conclusion of the applicant's consultant that the Proposed Scheme cannot viably provide any Affordable Housing contributions
- 7.14. CDC WELL-BEING: Request contributions in accordance with BSC10, 11 and 12 and the Developer Contributions SPD. £17,225 community hall (to Ruscote community centre), £30,368 to outdoor sports (North Oxfordshire Academy), £12,571 indoor sports provision (Banbury indoor tennis club or improvements at Spiceball Leisure Centre) and £5152 to public art.
- 7.15. OCC DRAINAGE (LEAD LOCAL FLOOD AUTHORITY): **No objections** subject to conditions.
- 7.16. CRIME PREVENTION DESIGN ADVISOR: **No objection** subject to condition for Secured by Design accreditation. Advises windows and door meet certain standards and adequate lighting is provided across the site. The new railing around the site should be at least 1.8 metre high and provide a private space. The cycle and bin stores should be secure enclosures. All suggests use of fob activated access control system, secure post system, use of smart metres and internal lighting.
- 7.17. THAMES VALLEY POLICE: **Comment.** The site is immediately adjacent to the operational police station which is a 24/7 functioning operation including custody

suite and blue light movements throughout. There will potentially be disruptive activity at unsociable hours. Future occupiers should be aware of the impact and complaints about noise and disturbance will not be given any weight. Construction vehicles need to be aware of the operational needs and requirements of the police.

- 7.18. THAMES WATER: **No objection** subject to conditions on piling statement. There is a strategic sewer near the site and therefore if piling is proposed a method statement is required. Any ground water discharges to the public sewer will require a permit. The wastewater network and sewage treatment works infrastructure and the water infrastructure have capacity to accommodate the development.
- 7.19. BANBURY CIVIC SOCIETY: **Comment.** The building has a history of public use and it is unfortunate another public use cannot be found for it. It is in an accessible location and contains a good mix of room sizes which may be appropriate for uses such as doctors surgeries/ health centre which are stretched at the current time. It could replace the Cope Road site which could then be redeveloped for housing.
- 7.20. CDC BUILDING CONTROL: **Comment.** The proposals will require a Building Regulations application.
- 7.21. *Officer comment:- Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.*
- 7.22. *In this particular instance, the above financial payments are not considered to be material to the decision as they would not make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority and hence the above response from the Council's Finance department is therefore provided on an information basis only.*

## **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)

- PSD1: Presumption in Favour of Sustainable Development
- SLE4: Improved Transport and Connections
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient Use of Land - Brownfield Land and Housing Density

- BSC3: Affordable Housing
- BSC4: Housing Mix
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision – Outdoor Recreation
- BSC12: Indoor Sport, Recreation and Community Facilities
- ESD1: Mitigation and Adapting to Climate Change
- ESD3: Sustainable Construction
- ESD7: Sustainable Drainage Systems (SuDS)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD15: The Character of the Built and Historic Environment
- INF1: Infrastructure

#### Cherwell Local Plan 1996 (Saved Policies) (CLP 1996)

- C23: Retention of features contributing to the character of a conservation area
- C28: Layout, design and external appearance of new development
- C30: Design control
- ENV1: Environmental pollution
- ENV12: Contaminated land

#### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide Supplementary Planning Document (SPD) (July 2018)
- Developer Contributions SPD 2019

### 9. APPRAISAL

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

- Principle of development
- Heritage, design, and impact on the character and appearance of the area
- Residential amenity
- Ecology impact
- Viability, affordable housing and infrastructure
- Highways

#### Principle of Development

##### *Policy Context*

9.2. There are no adopted Local Plan policies relating specifically to housing development within Banbury. However, the Cherwell Local Plan (2011-2031) Part 1 states that housing growth will be directed towards the urban areas of Banbury and Bicester. Paragraph B.88 states: *“By focussing development in and around the towns of Bicester and Banbury we aim to ensure that the housing growth which the District needs only takes place in the locations that are most sustainable and most capable of absorbing this new growth.”*



- 9.3. In addition to this, Policy ESD1 of the Cherwell Local Plan (2011-2031) Part 1 (CLP Part 1) states that: *“Measures will be taken to mitigate the impact of development within the District on climate change. At a strategic level, this will include:*
- *Distributing growth to the most sustainable locations as defined in this Local Plan.*
  - *Delivering development that seeks to reduce the need to travel and which encourages sustainable travel options including walking, cycling and public transport to reduce dependence on private cars.”*
- 9.4. Furthermore, Policy BSC2 of the CLP 2031 also states that the Council will encourage the re-use of previously developed land in sustainable locations and they will be expected to make efficient and effective use of land.

#### *Assessment*

- 9.5. The site is located within the built up limits of Banbury and within proximity to the Town Centre, which is a sustainable urban location with good access to public transport links, local shops and amenities and which in principle is suitable for residential development and in accordance with Policy ESD1 of the Local Plan. The proposal is also previously developed land which Policy BSC2 encourages the use of in delivering new housing in sustainable locations.
- 9.6. Officers have considered whether the magistrates court should be considered as a community facility. Paragraph 92 of the NPFF states that to provide social recreational and cultural facilities and services the community needs, planning decisions should plan positively for local services to enhance the sustainability of communities and guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the ability to meet its day to day needs. On balance officers do not consider that a magistrates court is a facility which would be covered by this policy protection and, even were it to be concluded that it was, there would be no prospect of the building being used for a facility which serves the same purpose as a magistrates court given these are operated by public bodies. The same day to day need would therefore not be met by an alternative use of the site. The Banbury Civic Society comments that it is unfortunate that a new public use such as a health centre cannot be found for the building given its central location and history. Officers have sympathy with that position. However, there is no planning policy requirement to consider alternative community uses for the building. Therefore, the loss of the use as a magistrates court is not considered to warrant refusal of the application.
- 9.7. Overall, therefore the principle of residential use on the site is considered to be acceptable subject to other material considerations discussed below

#### Heritage, design, and impact on the character and appearance of the area

##### *Legislative and policy context*

- 9.8. The site is within Banbury Conservation Area and the Magistrate’s Court is a locally listed building (non-Designated Heritage Asset).
- 9.9. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention is given to the preservation or enhancement of designated conservation areas.

- 9.10. Paragraph 189 of the NPPF states that: *“In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance.”*
- 9.11. Paragraph 193 of the NPPF states that: *“When considering the impacts of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”* Paragraph 194 of the NPPF goes on to state that: *“Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification”*. The NPPF goes on to state that where harm is caused to the significance of a heritage asset it should be weighed against the public benefits arising from the scheme.
- 9.12. Paragraph 197 of the NPPF states that: *“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*
- 9.13. Government guidance contained within the NPPF towards achieving well-designed places states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. The NPPG goes on to note that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Further, Paragraph 130 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.
- 9.14. Paragraph 127 of the NPPF states that planning decisions should ensure that developments:
- Are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
  - Are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change;
  - Establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive welcoming and distinctive places to live, work and visit.
- 9.15. Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1 states that new development proposals should: *“Conserve, sustain and enhance designated ‘heritage assets’ (as defined in the NPPF) including buildings, features, archaeology, conservation areas and their settings, and ensure new development is sensitively sited and integrated in accordance with advice in the NPPF and NPPG.”* Policy ESD15 also states that: *“New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high-quality design. All new development will be required to meet high design standards.”*
- 9.16. Saved Policy C28 of the Cherwell Local Plan 1996 exercises control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context as well as compatible with existing buildings.

## Assessment

- 9.17. The site is identified as being within the Main Route Corridor character area of the Banbury Conservation Area within the Banbury Conservation Area Appraisal (BCAA). The BCAA states that: *“Banbury Court House is one on its own in terms of buildings within the town. It was built as a new County Police Station in 1935, following the Borough losing control of its police force to the County in 1925. The building is constructed in stone thereby following the 19th Century architectural tradition that equates stone with civic pride; the architectural style is paired-down and the building appears severe but not to the point of brutality.”* It is noted as a building that positively contributes to the Conservation Area and the Conservation Area was recently extended to include this building.
- 9.18. It is considered that the building is of significance as a representative example of the development of the police and legal systems in the 20th Century. The building demonstrates a national phenomenon in a local context and provides a further understanding of the evolution of the town. It is therefore considered that the building is of communal and illustrative historical value, and of high significance within the context of Banbury.
- 9.19. The building was specifically designed to convey civic pride and authority and continues to do so due to its institutional formal appearance and its prominence within the street scene. The architectural features and fabric of the exterior of the building are well preserved. The set back from the general building line of the street is a particular characteristic of civic buildings and contributes to its prominence within the streetscape. It is therefore considered that the building is of aesthetic design value and architectural interest.
- 9.20. The plans have been amended during the course of the application due to concerns raised by Officers on a number of matters including heritage. The alterations now proposed to the external appearance of the principle and side elevations of the original building are much less significant than originally sought as these elements are key to the significance of the building. The changes to the front elevation (i.e. roof lights and alteration to window on front projecting gable) are now considered to be modest and would not significantly detract from the character and appearance of the Conservation Area, the character of the existing building or the positive contribution the building makes to the street scene.
- 9.21. The Conservation Officer also sought that the two existing two storey hipped roof out-riggers to either end of the rear elevation of the main building be retained as they form part of the original building and ensure that the front elevation of the building remains the prominent element in the street scene which is important to the significance of the heritage asset. Whilst it is noted that part of one of these elements would be demolished it would be replaced with a similar form and this is considered to be acceptable given the limited scale of the replacement.
- 9.22. The proposed single storey extensions either side of the building would be externally faced in matching materials (stone) to the main building and would have similar fenestration and detailing. They would be set back from the front elevation of the building and the one to the east would replace an existing structure and the one to the west would be located behind a similar extension. These additions are clearly subservient to the main building. These elements are therefore considered to be in character and scale with the existing building and not harmful to the Conservation Area.
- 9.23. However, the main changes now proposed would be to the rear of the building. Whilst public views of these would be limited, which tempers the impact on the wider

character and appearance of the Conservation Area, it must be borne in mind that the site is located in the Conservation Area and also is a non-designated heritage asset which is a material consideration in its own right. The rear elevation is therefore important, and these additions would have an impact on the Conservation Area.

- 9.24. During the course of the application the scale, form and design of the rear projections has been significantly altered. Officers, including the Conservation Officer, are strongly of the view that the extensions should remain subservient to the existing building in order to preserve its significance. The proposed extensions are therefore now designed as flat roofed extensions, which means they do not extend above the eaves of the main building. Whilst this approach may not normally be endorsed, in this case there are already significant areas of flat roof elements to the rear of the building which would be removed as part of the current proposal and some of the single storey elements have flat roofs. Therefore, in this case, the form of the proposed extensions is considered broadly acceptable and the Conservation Officer raises no objection to this. Public views of these elements would also be limited and largely screened by the existing building.
- 9.25. The proposed extensions are now proposed to be constructed of stone to match the existing building (rather than the render walls and metal roofs which were originally proposed). This is in keeping with the simple palette of materials on the existing building and is considered important in terms of the significance of the building. The applicant has sought to amend the fenestration of the extensions to better reflect that of the existing building and whilst it is still not ideal, given it is located to the rear of the building and would not be visually prominent in public views it is not considered to justify refusal. Full details of the windows, recesses and surrounds can be controlled by condition and this will be very important to the final quality of the scheme.
- 9.26. The rear dormers have also been amended during the course of the application and their scale and form is now more sympathetic to the building. In order to provide accommodation in the roof space it is necessary to provide light and officers have worked with the applicant to ensure that the front elevation of the building, which is part of its core significance, is retained relatively unaltered by the proposal. On balance, the dormers and roof lights in the rear elevation of the building are considered to strike an acceptable compromise to allow more efficient use of this brownfield site particularly given the viability issues around the development (outline elsewhere in this report
- 9.27. An attractive and what appears historic drystone wall exists to the northern and part of the eastern boundaries of the site. The submitted plans show this to be retained and in order to protect it a condition is proposed to rear a method statement for the protection of this.
- 9.28. Overall, the proposed development is considered to result in some harm to the heritage assets (i.e. the Conservation Area and building itself). This harm is considered to be 'less than substantial' in the context of the NPPF but would be limited and relatively minor and therefore at the lower end of the spectrum. In such cases the NPPF advises that the harm be weighed against the public benefits of the scheme. In this case the proposal would provide a new use for the building and utilise previously developed land. It would also provide for new housing to meet the Council's housing requirement in a sustainable location which reduces the need to travel. Overall, these benefits are considered to outweigh the limited harm to the heritage asset and the proposal is considered acceptable in heritage and design terms.

## Residential amenity

### *Policy*

- 9.29. Policy ESD15 of the CLP 2031 requires new development to consider the amenity of both existing and future occupants, including matters of privacy, outlook, natural light, ventilation, and indoor and outdoor space.
- 9.30. Saved Policy ENV1 of the CLP 1996 states that development which is likely to cause materially detrimental levels of noise, smell, fumes or other types of environmental pollution will not normally be permitted.

### *Assessment*

- 9.31. The properties that would be most affected by the proposal would be those to the north of the site in Arran Grove. These are two-storey, semi-detached properties with rear gardens adjacent to the northern boundary of the application site. An attractive drystone limestone wall a limestone wall is on the boundary with these properties. The gardens of these properties are located on approx. 0.8 to 1 metre lower ground than the rear of the application site.
- 9.32. In terms of outlook the existing flat roof extensions to the rear of the building, including the van dock, already impacts on the amenity of the neighbouring properties, particularly 7 Arran Grove, to a considerable degree given its overall height, length, proximity and massing. The current proposal would remove these existing flat roof extensions. The Council's new Residential Design Guide SPD generally seeks to provide a minimum of 14 metres distance from the rear elevation of one property to the blank two storey side elevation of another to ensure developments do not appear overbearing or unacceptably impact on outlook. This is a starting point for consideration. Whilst it is accepted that the proposal would clearly change the outlook from the rear of the properties in Arran Grove, this in itself is not a reason to refuse consent and a judgement has to be made as to whether this impact would unduly impact on the outlook from these properties.
- 9.33. In this case the fact that the side elevations of the flat roof extension would be approximately 8 metres deep and 6.5m tall needs to be considered alongside the fact the application site is on higher level than the gardens in Arran Grove. This would all result in the building having a bulk and massing more like a 3-storey building when viewed from these neighbouring properties. Overall, in officers' opinion the outlook from the rear of 7 Arran Grove would be improved as the existing flat roof extension (van dock), which covers a significant proportion of its rear boundary, would be removed and the proposed outriggers would be further off-set from the rear of this property. 6 and 9 Arran Grove are orientated slightly away from the application site and given the distance of the two-storey extensions from the rear of these properties, and the single storey scale of the closest elements, the proposal is not considered to unacceptably impact on the outlook to these properties. The two storey rear western extension would be located to the rear of 8 Arran Grove; however, it would be located approximately 19 metres from the rear elevation of this property and based on this, and having regard to all circumstances including the distances set out in the SPD it is not considered to unacceptably impact on their outlook.
- 9.34. In terms of privacy the gardens in Arran Grove are currently relatively private with limited overlooking. However, they are located in an urban location where some level of overlooking is common. The Council's New Residential Development Design Guide SPD advises a 22 metre distance should be provided between first floor windows when the rear of properties directly face one another.

- 9.35. The change of use of the property would have some impact on privacy as it would be occupied over the course of the whole day. However, this is not considered to be especially significant. The new dormer windows and roof lights would also result in an increase in overlooking to the neighbouring properties and gardens but these would be approximately 30 metres from the rear of the properties in Arran Grove (17 metres from the boundary), which officers consider would result in the level of overlooking not being significant in an urban context. A window is proposed in the end of the end of the existing western outrigger which would face these properties, but this serves a bathroom and could be conditioned to be obscurely glazed.
- 9.36. It is proposed to provide small outdoor amenity spaces to the ground floor flats facing onto the northern boundary along with ground floor windows in the northern elevations of the extensions. Given the levels difference between the sites the existing limestone boundary wall would only be approximately 1.5 metres high from the finished floor level of the proposed flats which would mean that residents in the flats and using these amenity spaces would be able to view directly into the gardens in Arran Grove at close proximity. This would have a significant impact on residential amenity and weighs against the development.
- 9.37. However, in order to screen these views, the applicant has proposed to provide screening panels (fence panels) above the wall. These are likely to be between 0.3-0.5 metres above the existing wall to provide an effective 1.8 - 2.0 metre high screen with the neighbours. Whilst this is not ideal in design terms, or amenity terms, as they would increase the height of the boundary wall which is already approximately 2.8 metres from the properties in Arran Grove, it is noted a 2 metre high screen from the existing ground level of the application site could be put up on the application site without the need for planning permission and it would overcome the issues on loss of privacy. Therefore, on balance, it is considered acceptable and full details of the appearance and height of this can be secured by condition.
- 9.38. The two-storey extension does not include any first floor windows in the northern elevation directly facing the properties in Arran Grove, although some recessed panels have been included in order to try and soften the bulk and mass of the elevation. However, there are several first floor windows proposed in the eastern and western facing elevations of both of the two storey rear extensions. Whilst it is acknowledged that overlooking from these windows is not direct officers had raised concerns regarding the level of overlooking from these windows particularly to the garden of 7 Arran Grove given the number of windows and the overlooking from multiple directions.
- 9.39. The plans have been amended to remove the first-floor windows in the ends of the two-storey extension facing into the proposed shared amenity space closest to the boundary facing with 7 Arran Grove. This means that the closest first floor window is now further from the boundary with the properties in Arran Grove and has a more oblique angle of overlooking and is considered to overcome this issue.
- 9.40. First-floor windows are still proposed in the outer elevations of the proposed two storey rear extensions facing east and west which would overlook the gardens of 9 and 6 Arran Grove, and would have a significant impact in this respect, which counts against the development. However, the angle of overlooking from these windows, distance to boundaries and properties, and the offset relationship of the windows from the adjoining properties is considered to mean the level of overlooking would not be so great as to warrant refusing the application.
- 9.41. Overall, in terms of outlook and privacy, whilst officers accept that there would be a relatively large degree of change to the outlook and levels of overlooking to the properties in Arran Grove, this is not considered to be to an extent which would

warrant refusal particularly given the urban context of the site and the guidance in the Councils New Residential Development Design Guide SPD.

- 9.42. Concerns have been raised regarding the loss of light to the properties in Arran Grove. Given the distance to the neighbouring properties and the fact that extensions are now set lower than the existing main part of the building it is not considered that the loss of light would be significant.
- 9.43. The proposal would also include a number of new and ground floor windows serving flats facing towards Town Centre House to the east of the site. Given the detailed relationship, the separation distance and the fact that many of the windows which would be impacted on Town Centre House already face into a shared parking area the impact on the amenity of these windows is not considered to be significant.
- 9.44. Planning policies also require a high standard of amenity is secured for proposed occupants of land and building. All the flats would be of a good size and would provide adequate levels of living space to provide a good level of amenity. There are some concerns regarding the outlook of the ground floor flat to the east of the site (unit 8) as the only windows serving this property's main living space face onto the boundary at close proximity. The applicant argues that the living space is served by multiple openings and also a large rooflight is proposed over the living space which will make the space light and spacious. Officers still have some reservations regarding the amenity of this flat and this weighs against the development.
- 9.45. In terms of noise and disturbance the site is located next to the Police Station and also a busy main road which is a source of noise. The application has been accompanied by a noise report which included a series of noise surveys at the site. This recommends that with the standard thermal double glazing (which exists in the building) an acceptable noise environment would be achieved; however, a number of the flats would require an alternative means of ventilation to ensure windows can be closed to achieve internal noise levels. The Council's Environmental Protection Officer has assessed this and considers it to be acceptable. The police station is in 24/7 operation and is likely to lead to some noise and disturbance, but it is noted that it is already located in an area with a number of residential properties.
- 9.46. Whilst this is not ideal given the sustainable location of the site, the fact that other housing is very nearby and there is no objection by the Councils Environmental Protection Officer this is considered to be acceptable. Full details of the noise mitigation measures can be secured through condition to ensure they are not harmful to the historic significance of the building.
- 9.47. Concerns have been raised by residents over noise, disruption and other pollution during construction. These impacts are a product of any new development and are temporary in nature whilst building works are being undertaken. They are not considered to be a reason to refuse the application; however, in order to reduce these impacts as far as possible the Council's Environmental Protection Officer has requested a Construction Environmental Management Plan which can be secured by planning condition. Given the scale of the development and its proximity to neighbours this is considered reasonable and necessary and to meet the tests for conditions.

#### Ecology Impact

##### *Legislative context*

- 9.48. 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.

- 9.49. 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.
- 9.50. 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.
- 9.51. 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.
- 9.52. 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*

- 9.53. 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.
- 9.54. Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) 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.

- 9.55. 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.
- 9.56. 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.
- 9.57. 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.
- 9.58. 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.
- 9.59. 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 LPAs 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*

- 9.60. The site is largely laid to hard standing with little landscaping on site. The main constraint is the building. The application is accompanied by a Protected Species Survey. This included emergence surveys for bats and found a small number of brown long eared bats entering the roof space. Swifts were also noted to be nesting in the eaves of the building.
- 9.61. The Council's Ecologist (CE) has reviewed the submitted information and is satisfied that adequate mitigation can be provided for bats within the building and that a licence from Natural England (NE) will be required. In respect of Swifts the CE has requested the provision of further swift nesting opportunities on the building to show a clear biodiversity enhancement across the site and this can be secured by condition.
- 9.62. Officers are satisfied, on the basis of the advice from the CE and the absence of any objection from NE, and subject to conditions, that the welfare of any European Protected Species found to be present at the site and surrounding land will continue

and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged.

#### Viability, affordable housing and infrastructure

##### *Policy context*

- 9.63. Policy BSC3 of the Cherwell Local Plan Part 1 states that all developments within Banbury and Bicester that include 11 or more dwellings (gross) will be expected to provide at least 30% of new housing as affordable homes on the site. This provision expects 70% of the affordable housing as affordable/social rented dwellings and 30% as other forms such as shared ownership.
- 9.64. Policy BSC10 and BSC11 of the Cherwell Local Plan Part 1 states that all development proposals will be required to contribute to the provision of open space, sport and recreation, together with securing arrangements for its management and maintenance.
- 9.65. Policies BSC3 and BSC11 both acknowledge viability can be an issue and state where an applicant considers that this would make a scheme unviable and open book financial viability assessment will be required to be undertaken. Viability assessments are a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it allowing for a developer profit.
- 9.66. Policy BSC12 states that development should contribute towards the provision of new or improved facilities where the development would generate a need for sport, recreation and community facilities which cannot be met by existing provision. The Council's Developer Contributions SPD 2018 builds on this and details how each contribution will be calculated.
- 9.67. Paragraph 57 of the NPPF states it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. It states that all viability assessments, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.
- 9.68. The PPG also provides guidance on defining the key inputs into viability assessments. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.

##### *Assessment*

- 9.69. When the application was originally submitted the applicant sought to argue that Vacant Building Credit applied to the development, which would have significantly reduced the amount of affordable housing required by the scheme as it off-sets the existing floor space of a building against the affordable housing requirement. However, officers did not agree that Vacant Building Credit (VBC) was appropriate to apply to this scheme in light of the guidance in the Planning Practice Guidance and considered that the site was vacant for the purposes of redevelopment and would therefore not qualify for VBC.
- 9.70. However, the applicant has also argued that the site would not be financially viable with the provision of affordable housing on the site or other planning obligations

towards open space, community halls, and outdoor and indoor sports. The applicant has submitted a viability assessment to support their case, which is publicly available and has been amended to reflect the revised scheme. The Council instructed an independent external consultant (Bidwells) to provide specialist advice to determine whether the key inputs and conclusions are reasonable and robust, having regard to the particular nature of the development and the site. A full copy of the applicant's viability assessment and Bidwells' review of viability on behalf of the Council is available to view on the Council's website.

- 9.71. The submitted viability report comprises a residual land appraisal of the Proposed Scheme, factoring in anticipated costs, revenues and a profit margin to calculate the land price that a developer would be capable of paying to acquire the site for development. This residual land value (RLV) is then compared with a benchmark value (BMLV), which represents the minimum price at which a rational landowner would be incentivised to sell the site. Under the principles of development viability, a scheme can be considered viable if it generates a residual land value in excess of the benchmark value. The logic behind this is that development will only proceed if it can meet the developer's required profit margin as well as the landowner's minimum price expectations.
- 9.72. It is important to note that for a development to be viable the value generated by a development must be more than the cost of its delivery and provide a developer return. Without a developer return and landowners' premium, development is unlikely to come forward.
- 9.73. The Council's Viability Consultant ("VC") and the applicant have agreed on a benchmark land value of the site (i.e. what is it worth now). The existing use is very specialised but logically the land and buildings cannot have zero value, and it is therefore appropriate to consider alternative land value benchmarks in line with the PPG. They have agreed an alternative use value of the site being used as an office (as this use is likely to gain planning permission), giving the site a benchmark land value of £955,100.
- 9.74. The applicants had submitted a viability appraisal which gave the site a residual land value of £102,838 factoring all costs and revenues and a 20% developer profit. This is significantly below the benchmark value of the site £955,100.
- 9.75. The Council's VC has reviewed the inputs to the appraisal and have challenged a number of the assumptions. E.g. the Council's VC considers the building costs outlined by the applicant are too high and some of the sales values of some of the 1 bed flats are too low. In terms of the developer profit the Planning Practice Guidance on Viability states that a return to the developer of 15 – 20% on Gross Development Value (GDV) may be considered appropriate for plan-making purposes. When considering the viability of individual development schemes, the level of profit allowed for in the appraisal should reflect the particular risks of the project, both in terms of prevailing market conditions and site-specific factors. The 'Community Infrastructure Levy: Viability Study Update' (2016) undertaken by Montagu Evans on behalf of the Council also suggests a developer return of 20%-25% for viable development. In this case the applicant has adopted a 20% profit margin for their assessment. The Council's VC advised that the current market uncertainty resulting from the Covid-19 pandemic, together with the sales risk presented by a flatted scheme where revenue cannot be received until completion of construction, supports the inclusion of a minimum return of 20% on GDV.
- 9.76. The Council's VC undertook its own appraisal based on its own assumptions and whilst this improves the residual land value it still shows the scheme would result in a residual land value of £619,140. When this is compared to the benchmark land

value of £955,100 there would be -£335,960 land value deficit. This would reduce the developer profit on the scheme below the 20%, which the Council's VC considers to be appropriate in this case in accordance with the Planning Practice Guidance. Officers did request that the Council's VC also provide sensitivity testing to understand if the scheme would be viable with a 15% developer return as this is the lower end of the developer return outlined within the Planning Practice Guidance. However, even with the developer profit at the lowest end of the PPG profit margin the residual land value would still be approx. £100k below the Benchmark Land Value. The Council's VC states that if the Benchmark Land Value was paid for the site based on their assessment it would provide approximately a 12.9% return with the applicant's appraisal indicating a 4.4% return.

- 9.77. Overall, the Council's VC considers that the viability exercise demonstrates that the Proposed Scheme is unviable, because it is unable to provide an acceptable level of return to the landowner as required by Planning Practice Guidance. Officers agree with this and therefore in light of the guidance in Policy BSC3 and BSC12 which both allow for the consideration of viability in seeking these requirements it is not considered the affordable housing or contributions to outdoor open space can be pursued in this case.
- 9.78. As noted above the proposed development could also not viably support the provision of open space. However, it is noted that the scheme would provide a shared amenity to the rear of the building for residents and small amenity areas for some the ground floor flats.
- 9.79. The Town Council suggests that a development with less new build may be more viable; however, this is not the case and would actually worsen the viability of the scheme as this would achieve fewer residential units and therefore the Benchmark Land Value would need to be shared between fewer units.
- 9.80. Policy BSC12 of the CLP 2031 and the Developer Contributions SPD also require contribution be made towards community halls, off-site indoor sport and off-site outdoor sports. The Well-Being Team has requested several contributions in this respect. However, given the viability of the scheme as outlined above the proposal is not able to provide these and this would conflict with Policy BSC12. The scheme is relatively small and when assessed against the likely number of occupants in appendix 1 of the Developer Contributions SPD is likely to generate approximately 37 residents. This would have a relatively modest impact on such provision and given the evidenced viability issues with the development, and when balanced against the benefits of providing new flats in a sustainable location and a new use for the building on this conflict is not considered to justify refusing the application.
- 9.81. The Local Education Authority have not requested any contributions and consider there is sufficient capacity to accommodate the proposed development.

#### Highways

- 9.82. Policy SLE4 of the CLP 2031 states that development which is not suitable for the roads that serve the development, and which have a severe traffic impact will not be supported. The NPPF has a similar thrust and also requires that safe and suitable access is achieved for all. Policy SLE4 also seeks to ensure that new development is accessible by a variety of sustainable transport modes and that the use of such modes as walking and cycling is maximised.
- 9.83. The application site is in a sustainable location close to services and facilities and a range of public transport. Residential Travel Information Packs for future residents can be secured by condition and this is requested by the Local Highway Authority

(LHA) in order to encourage the uptake of sustainable transport options. The application has been accompanied by a Transport Statement which demonstrates that the increase in trip generation from the proposed development would be negligible compared to the existing use of the site and given the scale of the development it is not considered that it could be regarded to have a severe impact on the local highway network. The LHA has raised no objection on traffic grounds and officers agree with this assessment.

- 9.84. The access to the site will be from the existing barrier-controlled access from Warwick Road. It is indicated that this would be altered and full details of this can be secured by condition. The LHA has raised no objection to the use of this access.
- 9.85. The car and cycle parking comply with the County Council's Standards and are considered adequate to meet the needs of the future occupants of the site particularly in this location near the Town Centre and the provision of these will be secured through condition.
- 9.86. The LHA has requested a Construction Traffic Management Plan given the busy location of the site in order to minimise disruption to the surrounding road network and this can be secured by condition.

#### Other matters

- 9.87. The land is identified as potentially contaminated and therefore in order to ensure that it is suitable for residential accommodation and in accordance with Saved Policy ENV12 the ground investigation and remediation are recommended as conditions.
- 9.88. A condition in regard to the installation of Electric Vehicle (EV) charging infrastructure in order to make resident parking places EV ready for future demand is also proposed. The NPPF and Policies SLE4 and ESD1 of the CLP 2031 encourage and support the incorporation of measures into new development that promote more sustainable forms of transport and to reduce carbon emissions. It is considered reasonable and necessary for this to be secured through a condition of any permission given.
- 9.89. The Crime Prevention Design Advisor has commented on the application and has made a number of suggestions in regard to designing out opportunities for crime and anti-social behaviour. Policy ESD15 of the CLP 2031 encourages that development achieves of Secure by Design accreditation and It is recommended that a condition be imposed consider these detailed issues further.
- 9.90. Policy ESD7 of the CLP 2031 requires the use of SUDS in new development to manage surface water runoff. The application is accompanied by a Flood Risk and Drainage Statement. The site is located in Flood Zone 1 which has the lowest risk of flooding and where residential development is considered to be appropriate. The site is currently occupied by buildings and laid to hard standing. It is proposed to reduce the surface water run-off by from the site to a discharge rate 1 l/s which provides a 74% reduction on the existing 1 in 1 year brownfield run off rate. It is proposed to provide attenuation storage on the site to achieve this which would discharge into the public sewer as infiltration and discharge to a watercourse has been shown not to be feasible. The outline drainage strategy proposes to use permeable block paving and the attenuation within the lined sub-grade for the parking areas. Full details of the drainage scheme would need to be required by condition; however, it is noted that the Lead Local Flood Authority raises no objections to the proposed concept scheme.

9.91. Thames Water has not objected to the application and considers there to be adequate water and wastewater capacity in the existing network. However, it has noted that the site lies within 15 metres of a strategic sewer and has therefore requested a condition for a piling method statement is attached to any consent. TW has also requested an informative note be included in respect of any discharge of ground water to the public sewer requiring a separate licence.

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

10.1. The planning system seeks to secure sustainable outcomes which means achieving the economic, social and environmental objectives in mutually supportive ways. This requires the undertaking of the planning balance. The Development Plan remains the starting point for decision making.

10.2. In this case there would be modest economic benefits stemming from the proposal in terms of providing jobs during construction. There would also be social and economic benefits in providing new homes in a sustainable location, close to services and facilities, and also through the re-use of previously developed land and finding a new use for the building of heritage value. On balance, the environmental objective of securing a good standard of amenity for existing and proposed residents is also achieved.

10.3. Weighing against the proposal there would be some limited harm to the building which is a non-designated heritage asset and also the character and appearance of the Conservation. This is only limited harm at the lower end of the spectrum but it carries significant weight against the scheme. The proposal would also not deliver the social benefit of affordable housing or provide other financial contributions to delivery health and wellbeing facilities to support new development. However, it has been demonstrated through a viability exercise that the proposal cannot viably provide these and furthermore the scheme is relatively modest in scale and in population terms.

10.4. Also weighing against the development is the adverse effects that would be incurred to the living conditions of Nos. 6, 8 and 9 Arran Grove and to the future occupier of Flat 8 in the proposed development. To some extent these impacts can be ameliorated through planning conditions.

10.5. When viewed as a whole the benefits of the scheme as outlined above are considered to outweigh the less than substantial harm to the heritage asset and the impact on local infrastructure. The absence of affordable housing contribution is extremely unfortunate but it has been demonstrated not to be viable with the provision of such contributions for which Policy BSC3 of the CLP 2031 allows.

10.6. Overall, therefore, on balance, it is considered that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the Development Plan and the NPPF, and it is therefore recommended that planning permission be granted, subject to conditions.

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

### CONDITIONS:

#### **Time Limit**

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

### **Compliance with Plans**

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Protected Species Survey (prepared by 'Philip Irving', dated August 2019), Noise Impact Assessment (ref. AC108753-1r1, dated 16/04/2020), Energy Statement (ref. PA-ES-TH-BMC-20-01, dated April 2020), Flood Risk Assessment & Drainage Strategy (prepared by 'Waterco', dated August 2020), and drawings numbered: AA042/2.0/000-E, AA042/2.0/100-I, AA042/2.0/101-J, AA042/2.0/102-I, AA042/2.0/103-H, AA042/2.0/104-E, AA042/2.0/105-E, AA042/2.0/106-F, AA042/2.0/108-C, AA042/2.0/109-C, AA042/2.0/110-G, AA042/2.0/111-A, AA042/2.0/114-D and AA042/2.0/118-A.

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

### **Contaminated land investigation**

3. No part of the development hereby permitted shall take place until a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model has been carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and has been submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

Reason: To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

4. If a potential risk from contamination is identified as a result of the work carried out under condition 3, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

Reason: To ensure that any ground and water contamination is adequately

addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

5. If contamination is found by undertaking the work carried out under condition 4, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

6. If remedial works have been identified in condition 5, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 5. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

### **Transport**

7. No development shall commence unless and until full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details.

Reason: In order to provide safe and suitable access to the site in accordance with Policies SLE4 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

8. No development shall commence on site until a Construction Traffic Management Plan (CTMP) addressing all phases of the development has been submitted to and approved in writing by the local planning authority in consultation with the local highway authority. The CTMP shall be prepared in accordance with OCC guidelines. The approved Plan shall be implemented in full during the entire construction phase.

Reason: In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.



9. The proposed access and parking, turning areas shall be provided in accordance with the approved plans before first use of the development hereby permitted. The access parking, turning areas shall thereafter be retained for use in connection with the development for those purposes only.

Reason: In the interests of highway safety, to ensure the provision of adequate off-street car parking and turning areas to comply with Government guidance in the National Planning Policy Framework.

10. Prior to first occupation a Residential Travel Information Pack shall be submitted to and approved by the Local Planning Authority. Thereafter the Travel Information Pack shall be issued to all residents on first occupation.

Reason: To encourage the use of sustainable transport options in accordance with Policies SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

### **Drainage**

11. No development shall commence until a Detailed Design, Surface Water Management Strategy and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved Detailed Design prior to the use of the building commencing. The Detailed Design shall be based on the Outline Design as demonstrated in the Flood Risk Assessment reference;

- Flood Risk Assessment & Drainage Strategy, Revision 02 dated 26th August 2020.
- The detailed drainage design will discharge at a maximum 1l/s and attenuate up to and including the 1 in 100 year event plus climate change.
- Attenuation volumes to be described in Detailed Design.

No dwelling hereby permitted shall be occupied until the sustainable drainage scheme for this site has been completed in accordance with the approved details. The sustainable drainage scheme shall be managed and maintained thereafter in perpetuity in accordance with the agreed management and maintenance plan.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal in accordance with Policy ESD6 and ESD7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

12. Prior to the first occupation of the development hereby approved, a record of the approved SuDS details shall be submitted to and approved in writing by the Local Planning Authority for deposit in the Lead Local Flood Authority Asset Register. The details shall include:

- As built plans in both .pdf and .shp file format;
- Photographs to document each key stage of the drainage system when installed on site;
- Photographs to document the completed installation of the drainage structures on site.

Reason: In accordance with section 21 of the Flood and Water Management Act

13. If piling is to take place, no piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

Reason: The proposed works will be in close proximity to underground sewerage utility infrastructure.

#### **Construction and materials**

14. Prior to any works above slab level, a Crime Prevention Design Strategy following the principles of Secured by Design shall be submitted and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details prior to its first occupation.

Reason: To reduce the opportunity for crime and anti-social behaviour in the development in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

15. No development shall commence unless and until details of all finished floor levels in relation to existing and proposed site levels and to the adjacent buildings have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved levels.

Reason: In order to safeguard the visual amenities of the area and to protect the amenity of the neighbouring properties in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

16. Full detailed scale drawings of the dormer window include external facing materials to be used in the construction of the dormer windows hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of those works. The development shall not be carried out other than in accordance with the approved details.

Reason: To ensure that the materials are appropriate to the appearance of the locality and building and to ensure the satisfactory appearance of the completed development in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

17. Notwithstanding the details shown on the approved plans, no development shall commence above slab level unless and until further details (including scale plans) of the architectural detailing of the exterior of the buildings, including the windows and doors (and their surrounds and recesses), together with the eaves and verge treatment, the parapet roofs, coping, the blank window panels on the extensions, banding or any other decorative architectural features have been submitted to and approved in writing by the Local Planning Authority.

The development shall not be carried out other than in accordance with the approved details and shall be retained as such thereafter.

Reason: In order to safeguard the character and appearance of the conservation area and the significance of the heritage asset in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance in the National Planning Policy Framework.

18. Notwithstanding the details on the approved plans the roof tiles to the proposed pitched roof extensions shall be stone slates to match the tiles on the existing building. Samples of the tiles and ridge tiles to be used in the covering of the roof of the building(s) shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of those works. The development shall not be carried out other than in accordance with the samples so approved and shall be retained as such thereafter.

Reason: In order to safeguard the character and appearance of the conservation area and the significance of the heritage asset in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance in the National Planning Policy Framework.

19. The external walls of the development hereby approved shall be constructed in stone which shall be laid, dressed, coursed and pointed in accordance with a sample panel (minimum 1 metre squared in size) which shall be constructed on site to be inspected and approved in writing by the Local Planning Authority before the stonework is commenced. The sample panel shall be constructed in a position that is protected and readily accessible for viewing in good natural daylight. The panel shall be retained on site for the duration of the construction contract.

Reason: In order to safeguard the character and appearance of the conservation area and the significance of the heritage asset in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance in the National Planning Policy Framework.

20. Full details of the enclosures along all boundaries and within the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of those works. This shall include details of the proposed railings to the front of the site and the screen fencing to the northern boundary with the properties in Arran Grove to ensure adequate screening from the ground floor windows in northern elevation. The development shall be carried out in strict accordance with the approved details prior to the first occupation of the development and shall be retained as such thereafter.

Reason: In order to safeguard the character and appearance of the Conservation Area and setting of the building and to safeguard the privacy of the occupants of the existing and proposed dwellings and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

21. Notwithstanding the details submitted, no development shall commence unless and until a detailed Method Statement for the protection of the dry-stone wall to the northern boundary has been submitted to and approved in writing by the

Local Planning Authority. The development shall not be carried out other than in strict accordance with the approved method statement.

Reason: In order to safeguard the character and appearance of the conservation area and the significance of the heritage asset in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance in the National Planning Policy Framework.

22. Notwithstanding the details submitted, full details of appearance and materials of the bin store hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of those works. The development shall not be carried out other than in accordance with the approved details.

Reason: In order to safeguard the character and appearance of the conservation area and the significance of the heritage asset in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance in the National Planning Policy Framework.

23. All rainwater gutters and downpipes, etc. shall be cast iron or aluminium manufacture and painted black unless alternative details are otherwise first approved in writing by the Local Planning Authority.

Reason: In order to safeguard the character and appearance of the conservation area and the significance of the heritage asset in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance in the National Planning Policy Framework.

24. All rooflights in the development shall be conservation grade and of a design which, when installed, fit flush with the plane of the roof and do not project forward of the general roof surface.

Reason: It is considered to be acceptable to provide daylight in the manner proposed provided the works do not detract from the character of the building in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

25. The first-floor window in the northern elevation serving the bathroom in unit 12 shall be obscure glazed, using manufactured obscure glass, before the dwelling is first occupied and shall be permanently retained as such thereafter.

Reason: To ensure that the amenities of the adjoining occupier(s) are not adversely affected by loss of privacy in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

26. Prior to the first occupation of any dwelling hereby permitted, the bin and cycle stores shall be provided on site and made available to use in strict accordance with the approved details. Thereafter they shall be retained for the occupants of the development and used for no other purpose whatsoever.

Reason: To ensure adequate bin and cycle parking provision for the residents of the development in accordance with the Cherwell Local Plan 2011-2031 Part 1

and Government guidance contained within the National Planning Policy Framework.

### **Ecology and Biodiversity**

27. No development shall commence above slab level unless and until a scheme for landscaping the site has been provided to and approved in writing by the Local Planning Authority which shall include:-

(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas

(b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation, including written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch etc),

(c) details of the hard landscaping including hard surface areas, pavements, pedestrian areas and steps,

(d) details of boundary treatments.

The development shall be carried out in strict accordance with the approved landscaping scheme and the hard landscape elements shall be carried out prior to the first occupation/use of the development and shall be retained as such thereafter.

Reason: In the interests of the character and appearance of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

28. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

Reason: In the interests of the character and appearance of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

29. All external works to the building should be timed so as to avoid the bird nesting season, this being during the months of march until August inclusive, unless the Local Planning Authority has confirmed in writing that such works can proceed, based on submission of a survey (no more than 48hrs before works commence) undertaken by a competent ecologist to assess the nesting bird activity on site, together with details of measures to protect the nesting bird interest on the site

as required.

Reason: To ensure that the development will conserve and enhance the natural environment and will not cause significant harm to any protected species or its habitat in accordance with Government guidance contained within the National Planning Policy Framework.

30. Full details of a scheme for the location of at least 9 swift bricks shall be submitted to and approved in writing by the Local Planning Authority. The approved swift provisions shall be installed on the site in accordance with the approved details prior to the occupation of any building and shall be retained as such thereafter.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

31. Where an offence under Regulation 43 of the Habitat and Species Regulations 2017 (as amended) is likely to occur in respect of the development hereby approved, no works of site clearance, demolition or construction shall take place which are likely to impact on bats until a licence to affect such species has been granted in accordance with the aforementioned Regulations and a copy thereof has been submitted to the Local Planning Authority.

Reason: To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

### **Environment**

32. Prior to the commencement of the development, a Construction Environment Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or surrounding the site together with details of the consultation and communication to be carried out with local residents shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with approved CEMP.

Reason: To ensure the environment is protected during construction in accordance with saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

33. Prior to the first occupation of the development, a scheme for the provision of vehicular electric charging points to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The vehicular electric charging points shall be provided in accordance with the approved details prior to the first occupation of the dwelling they serve, and shall be retained as such thereafter.

Reason: To comply with Policies SLE 4, ESD 1, ESD 3 and ESD 5 of the Cherwell Local Plan 2011-2031 Part 1 and to maximise opportunities for sustainable transport modes in accordance with paragraph 110(e) of the National Planning Policy Framework.

34. No development shall commence above slab level unless and until full details of

the proposed mitigation measures as outlined in the submitted Noise Impact Assessment (ref. AC108753-1r1) including their visual appearance and impact on the fabric of the building have been submitted and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details.

Reason: To ensure that an acceptable internal noise environment is provided for all residents whilst protecting the significance of the heritage asset in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and advice in the National Planning Policy Framework.

35. Prior to the first occupation of the development hereby permitted, written confirmation that the development achieves a water efficiency limit of 110 litres/person/day under Part G of the Building Regulations shall be submitted to and approved in writing by the Local Planning Authority.

Reason: Cherwell District is in an area of water stress, to mitigate the impacts of climate change and in the interests of sustainability, to comply with Policies ESD1 and ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

#### INFORMATIVE

A Groundwater Risk Management Permit from Thames Water will be required for discharging groundwater into a public sewer. Any discharge made without a permit is deemed illegal and may result in prosecution under the provisions of the Water Industry Act 1991. We would expect the developer to demonstrate what measures he will undertake to minimise groundwater discharges into the public sewer. Permit enquiries should be directed to Thames Water's Risk Management Team by telephoning 020 3577 9483 or by emailing [trade.effluent@thameswater.co.uk](mailto:trade.effluent@thameswater.co.uk). Application forms should be completed on line via [www.thameswater.co.uk](http://www.thameswater.co.uk). Please refer to the Wholesale; Business customers; Groundwater discharges section.

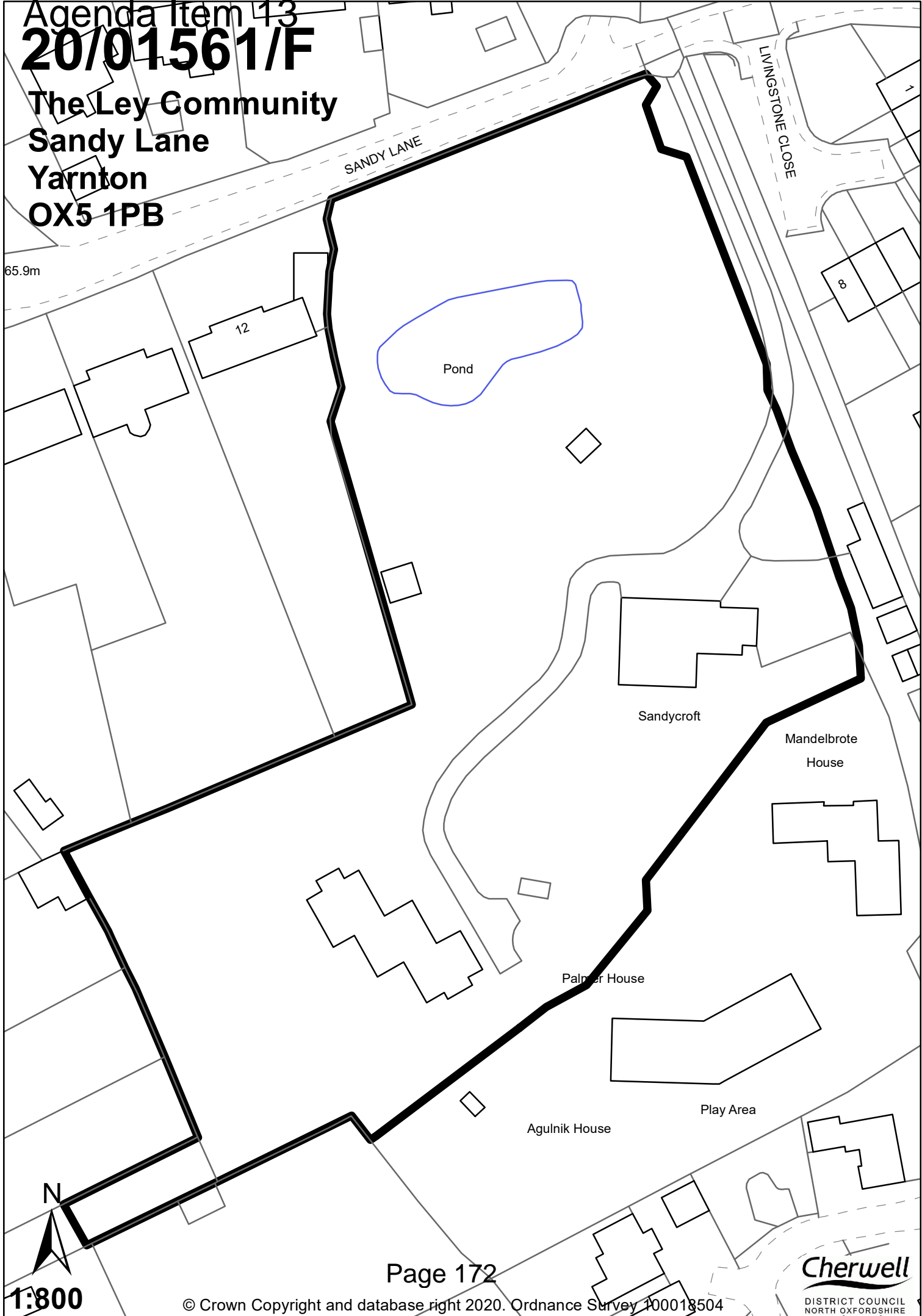
Prior to commencement of development, a separate consent must be obtained from the County's Road Agreements Team for the altered highway vehicular access under S278 of the Highway Act. Contact: 01865 815700; [RoadAgreements@oxfordshire.gov.uk](mailto:RoadAgreements@oxfordshire.gov.uk).

CASE OFFICER: James Kirkham

TEL: 01295 221896

Agenda Item 13  
**20/01561/F**

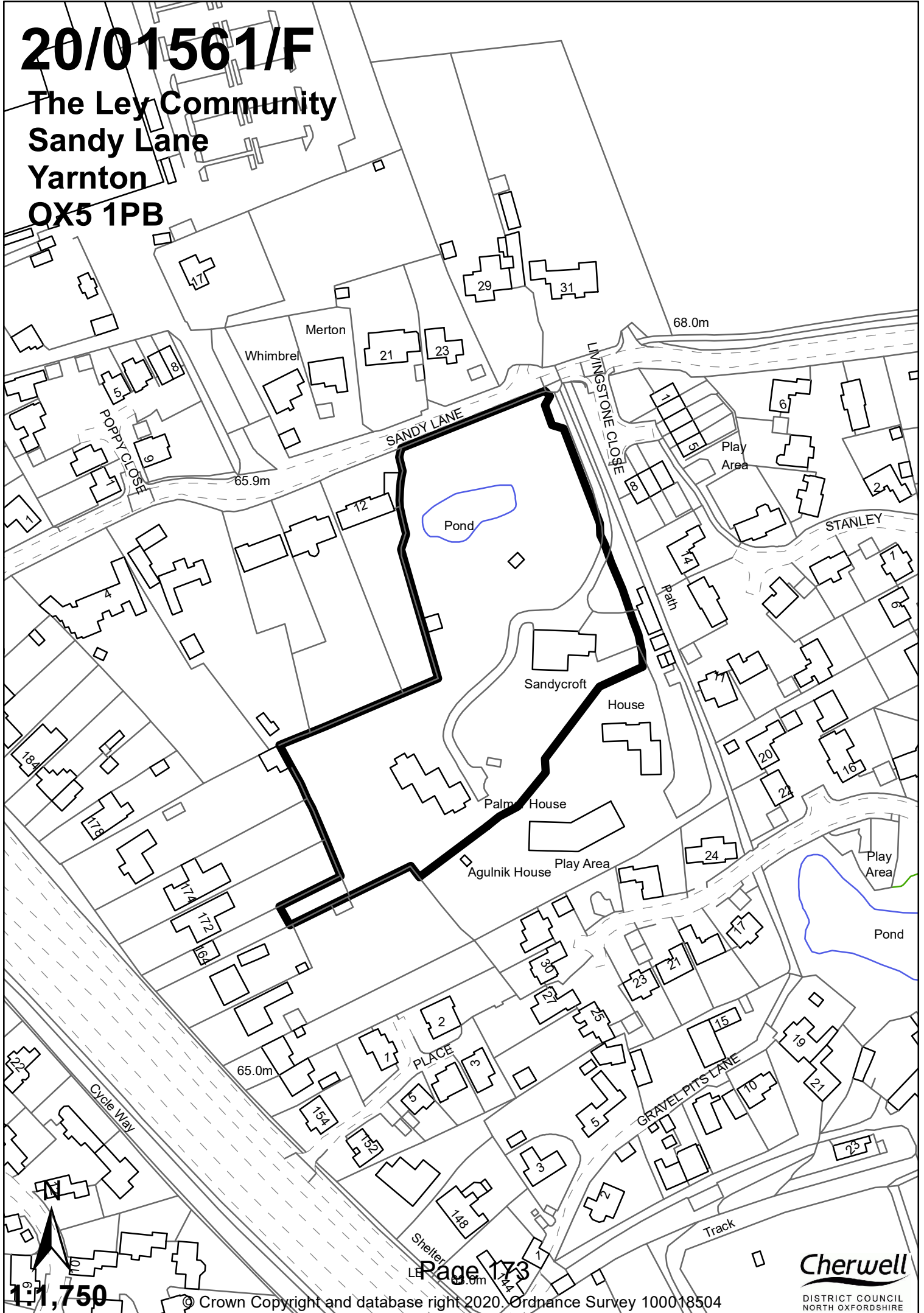
**The Ley Community  
Sandy Lane  
Yarnton  
OX5 1PB**





# 20/01561/F

The Ley Community  
Sandy Lane  
Yarnton  
OX5 1PB



1:1,750

**Case Officer:** James Kirkham

**Applicant:** 376 Estates & The Ley Community

**Proposal:** Erection of 10no dwellings (C3 Use Class) and Care Home (C2 Use Class),  
new  
access, parking, landscaping, demolition and other ancillary works

**Ward:** Kidlington West

**Councillors:** Councillor Copeland and Councillor Tyson

**Reason for Referral:** Major Development

**Expiry Date:** 9 October 2020

**Committee Date:** 8 October 2020

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

- 1.1. The application relates to The Ley Community on Sandy Road in Yarnton which is a residential rehabilitation facility for people with drug and alcohol dependencies. It is currently not being operated and at the time of the site visit the land was in part becoming overgrown. The wider Ley Community site consists of a number of buildings, predominately located to the southern part of the site set in large gardens. It contains numerous mature trees throughout the site and a pond in the northern part of the site. The levels of the site currently fall quite steeply from Sandy Lane into a depression in the land where the pond is located and then rise again to the south of the site where the existing buildings are located.
- 1.2. The application site forms the northern and western part of the Ley Community site which includes most of the undeveloped grounds, the pond, many of the larger mature trees and two buildings (which have previously been used by the Ley community and which have planning consent to be demolished under 20/01562/F).
- 1.3. The intention is that the Ley Community would retain the two buildings to the south of the site and the surrounding gardens. They have planning permission to extend the 2no remaining buildings to accommodate the needs of the Ley Community (20/01562/F refers). This also utilises the existing access from Sandy Lane to the north east corner of the site, albeit with it slightly realigned within the site.
- 1.4. The site is surrounded by residential properties of various styles and appearance including more spacious properties to the north and west on Sandy Lane and more modern development to the east and south.

## **2. CONSTRAINTS**

- 2.1. The site is identified as potentially contaminated land and a public footpath runs outside the eastern boundary of the site. The site is also within proximity to a historic landfill site and has higher levels of radon.

## **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The current application seeks to redevelop the site for 10no dwellings, in the northern part of the site, and a new 70 bed care home.
- 3.2. A new vehicular access would be provided approximately in the middle of the frontage of the site onto Sandy Lane and this would also provide footpaths to tie in with the existing footpaths to the south of Sandy Lane. The dwelling to the west of the access would face onto Sandy Lane whilst the dwelling to the east of the access would face onto the proposed access road. The remainder of the dwellings would be laid out around a central public open space which would accommodate a large copper beech tree and large wellingtonia tree (both Category A Trees – the highest category) alongside other retained trees. The dwellings would all be two storey and constructed predominately of red brick with some grey timber cladding to some of the elevations and clay roof tiles
- 3.3. The proposed residential care home would be located to the south west of the site. It would be a 2.5 storey structure and would be constructed of red brick and grey timber cladding to some elevations. The building would be broken up in a series of different forms with different building lines in order to break up its massing and bulk. Car parking would be located to the north of the care home.

#### **4. RELEVANT PLANNING HISTORY**

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

02/02552/F Construction of an artificial grass multi-sports court with 2.75m high wire mesh fencing Granted 30/01/2003

01/00980/REM (this was the Reserved Matters to Outline 00/00194/OUT). Erection of new residential block and extension of roadway to provide parking and turning. Granted 03/08/2001

00/00194/OUT Erection of new residential block. Extension of roadway to provide parking and turning head. (OUTLINE) Granted 11/09/2000

01/02458/F Erection of upper storey to single storey residential care home - Granted 15/02/2002

20/01562/F The demolition of existing buildings and the erection of multiple extensions to retained buildings, new landscaping, parking and other associated works - Granted

#### **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. The following pre-application discussions have taken place with regard to this proposal:

17/00290/PREAPP – To consider the potential for residential use of the site

18/00259/PREAPP - The proposed development includes two options: Scheme 1: The retention of The Ley Community (“TLC”) and residential development for up to 30 dwellings;

Scheme 2: The retention of TLC building and residential development for up to 10 dwellings, with 70 bed care home facility

20/00767/PREAPP - Residential development for up to 10 No dwellings with 70 bed care home facility, landscaping, access, parking and other ancillary works

Through the above discussion officers were generally supportive of the principle of developing the site for a mix of housing and a care home. Comments made regarding the retention of trees and on the design and layout of the development alongside concerns regarding the scale of the care home and impact on the amenity of neighbours. The current scheme has been amended during the course of discussion seeking to respond to these comments (but see officer assessment below for further detail on this).

## **6. RESPONSE TO PUBLICITY**

6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records (amend as appropriate). The final date for comments was **24 July 2020**, although comments received after this date and before finalising this report have also been taken into account.

6.2. 5 letters of objection and 1 letter of comment. The comments raised by third parties are summarised as follows:

- The site is isolated from many of the services in the village.
- Council should enforce guidance on overlooking and overshadowing to protect amenity of neighbours
- Increase in traffic – Sandy Lane is narrow and has bends and is not suitable in terms of road safety for more traffic. A number of accidents have occurred. Large construction vehicles will further impact this. Speed limit should be reduced. Impact on cyclists.
- Access – The access is inadequate. Too close to neighbouring accesses. The development and the Ley Community should be served by a single access.
- Noise pollution
- Loss of vegetation and trees will detrimentally impact on character and appearance of area.
- The loss of Sandy Croft, which is of architectural importance being an art deco streamline modern design inspired by Johann Schtte.
- Impact on wildlife – loss of pond and habitats
- Impact of loss of pond on drainage.
- Construction noise and disruption.
- Impact on local infrastructure including local GP practices.

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## **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 COUNCIL

- 7.2. YARNTON PARISH COUNCIL: **Objects**. Respects the work of the Ley Community and understands the need to create financial viability with development of land being an obvious choice. Objects to the planned private residential development as it does not believe the housing mix is appropriately diverse and consistent with the present residential demographic and need within Yarnton village. The additional traffic on a winding country lane alongside proposed siting of access/egress route adjacent to poorly sighted bends would increase risk to road users and nuisance to neighbouring properties. Yarnton Parish Council is concerned by the number of mature trees that will be removed as part of the development as their benefit in reducing flood risk will be lost. 10 residential dwellings and a care home will have important impact on primary if not secondary and tertiary care services. Should this application be granted by Cherwell District Council, Yarnton Parish Council should be informed regarding access to S106 monies.

### CONSULTEES

- 7.3. OCC HIGHWAYS: **No objections** subject to conditions in respect full details of access and new estate roads, travel plan, travel information packs and Construction Traffic Management Plan. The transport statement provides a sound evaluation of the expected trip rates for the proposed residential and care home elements of the proposal. The expected net increase from these elements is an additional 16 trips in the AM peak and 14 in the PM peak. This is below the threshold for requesting any off-site impact assessments and would constitute a minor impact on the local highway network.
- 7.4. Access – The proposed new access has viable visibility splays based on 80th percentile speeds taken from a recent speed survey and as such is considered safe. In pre application discussions requested a justification for creating an additional access in addition to the nearby access for the TLC facilities. This justification has been provided and is considered sound. The low trip rates expected of the TLC facility greatly minimise the chances of vehicles egressing the site and hampering visibility at the new junction. Please note that the applicant will be required to enter into a section 278 agreement with the County Council in order to carry out works on the public highway.
- 7.5. Cycle Parking – It is noted that all the residential units have garages sufficiently sized to class as cycle parking, the cycle parking provision for the residential element is considered acceptable. 5 spaces are proposed for the care home element, this is considered an appropriate amount for the expected number of staff.
- 7.6. Car Parking – Each residential dwelling has 2 off-street parking spaces plus single or double garages; this is considered an acceptable level of parking provision and the risk of overspill parking is considered low. Visitor spaces are also provided in an appropriate quantity. There are no set standards for parking provision at care homes in CDC/OCC but the transport statement justifies the proposed 29 spaces and the provision is considered acceptable. As visiting hours are not limited to short periods, it is expected that visitors will be spread throughout the day.
- 7.7. Internal Layout – The vehicle tracking in the transport statement demonstrates that large vehicles up to and including a refuse vehicle can safely enter and exit the site

- 7.8. CDC PLANNING POLICY: **No objections** subject to detailed consideration on the impact on the trees, surrounding residential properties and highways.
- 7.9. CDC ARBORIST: **No objection** subject to the recommendations within the report regarding replanting as mitigation for category B tree removals is implemented. Overall consider the proposal is considerate to trees on site providing sustainable relationship between retained trees and the proposal.
- 7.10. CDC ECOLOGY: Originally objected due to net loss in biodiversity. The submitted metric shows a net loss mainly due to the loss of the pond. The applicant will require a bat licence to demolish one of the buildings which should be conditioned. There are few other species issues on site although a CEMP will be required to ensure their protection during any construction. In addition, specific enhancements should be provided on site such as bat and bird bricks on dwellings. In response to an amended biodiversity metric **comments** that the latter “suggests a good level of net gain can be achieved on site without resorting to compensation elsewhere. If they could send a revised illustrative layout so we can see where these features are to go and whether they are likely to work in the layout then this may well solve the issues on net gain. They would require a LEMP to secure the ongoing feasibility and management of any habitats on site. They will also require a biodiversity enhancement scheme including integrated bat and bird bricks within buildings (at least on 10 on site would be expected) and further features such as hedgehog highways and log piles.
- 7.11. Further comments:
- I have looked at the revised biodiversity impact calculations and the layouts as sent on. I expect in parts the metric over estimates the likely future value of the habitats proposed given that at least half of the grassland is proposed to be 'amenity' grassland but it is all rated as neutral grassland which gives it a larger score than if parts were rated as 'urban-amenity'.
- However, considering the proposed habitats in my opinion it is possible, with careful management, to ensure that there is no overall net loss for biodiversity on site and at least some gain, such that it complies with policy.
- The production of a full LEMP which ensures that the created and retained habitats reach the required condition should be conditioned. A biodiversity enhancement scheme should also be conditioned (or could be included in a LEMP). This should include integrated bird and bat bricks (equivalent of one per dwelling) and boxes on retained trees, hedgehog highways through fencing, log piles, etc.
- In addition as per previous comments a bat licence and CEMP also need to be conditioned.
- 7.12. CDC LANDSCAPE: **Concerns** over loss of pond and harm to the visual harm to neighbouring properties as a result of the care home. An attractive tree cover should be retained on the site. A local area of play is triggered by the development. It should either be provided on site or an off-site contribution sought.
- 7.13. CDC ENVIRONMENTAL PROTECTION: **No objection** subject to a Construction Environmental Management Plan, contaminated land investigation conditions, provision of electric vehicle charging points and lighting. Consider the submitted noise and odour reports to be acceptable.
- 7.14. CDC STRATEGIC HOUSING: **No objections**. The proposal includes a care home and in previous comments evidence of the need for further care home provision in

the area was requested. We are content that this has been addressed in the Care Needs Assessment statement which states that there is a shortfall in market standard beds of 109 within a 5-mile radius and a shortfall of dedicated dementia beds over the next 10-years. As the provision is for a care home, where residents have their own room with en-suite facilities, rather than Extra Care Housing, where residents live in self-contained flats, we have no further comments for this element of the scheme.

- 7.15. The proposed houses – 4 x 3-bed, 4 x 4-bed and 2 x 5-bed - do not offer a variation in mix [*Officer clarification: they are all of a certain size; no smaller dwellings*], and at only 10 dwellings it does not trigger the Affordable Housing requirement. We had questioned as to whether the site could offer a better mix to include smaller houses which would potentially increase the overall number of dwellings, and although the design has been developed since the last Pre-App, and the overall massing and scale of the scheme has changed, there are still only 10 dwellings on site. We appreciate that the developer wants to deliver housing with a scale and massing that is sympathetic to other uses on the site and the surrounding area, and consider that in order to achieve this, the current number of dwellings has not been constrained to be under the Affordable Housing trigger, but instead has been configured to provide a quality residential scheme that works within the constraints of the site. We therefore have no objections to this proposal.
- 7.16. CDC LEISURE AND RECREATION: **No objections** subject to contributions for Community Halls, outdoor sports provision, indoor sports provision and public art.
- 7.17. CRIME PREVENTION DESIGN ADVISOR: **No objections** subject to Secured by Design accreditation condition.
- 7.18. OXFORDSHIRE CLINICAL COMMISSIONING GROUP: **No objections** subject to contributions of £37,730 to primary care infrastructure to support the care home and dwellings. This has been assessed against the Estates Policy and to ensure there is sufficient capacity and funding to support the development a contribution is required. One practice has indicated they do not have capacity to take on this number of patients and a further response from KEY Practice has been made on the application directly.
- 7.19. OCC ARCHAEOLOGY: **No objections** subject to conditions securing a scheme of investigation.
- 7.20. OCC DRAINAGE: **No objection** subject to conditions.
- 7.21. THAMES WATER: **No objections**
- 7.22. *Officer comment:- Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.*
- 7.23. *In this particular instance, the above financial payments are not considered to be material to the decision as they would not make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority and hence the*

above response from the Council's Finance department is therefore provided on an information basis only.

## **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)

- Policy PSD 1: Presumption in Favour of Sustainable Development
- Policy BSC 1: District Wide Housing Distribution
- Policy BSC 2: The Effective and Efficient Use of Land
- Policy BSC 3: Affordable Housing
- Policy BSC 4: Housing Mix
- Policy BSC 10: Open Space, Outdoor Sport and Recreation Provision
- Policy BSC 11: Local Standards of Provision – Outdoor Recreation
- Policy BSC 12: Indoor Sport, Recreation and Community Facilities
- Policy ESD 1: Mitigating and Adapting to Climate Change
- Policy ESD 2: Energy Hierarchy and Allowable Solutions
- Policy ESD 3: Sustainable Construction
- Policy ESD6: Sustainable Flood Risk Management
- Policy ESD 7: Sustainable Drainage Systems (SuDS)
- Policy ESD10: Protection and enhancement of biodiversity and the natural environment
- Policy ESD13: Local Landscape Protection and Enhancement
- Policy ESD15: The Character of the Built and Historic Environment
- Policy ESD17: Green Infrastructure
- Policy Villages 1: Village Categorisation
- Policy Villages 2: Distributing Growth Across the Rural Areas
- Policy INF1: Infrastructure

### PARTIAL REVIEW OF THE CHERWELL LOCAL PLAN: OXFORDS UNMET HOUSING NEED

- Policy PR8 – Land East of the A44.

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- Policy C28: Layout, design and external appearance of new development
- Policy C30: Design control

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- 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)
- Cherwell Residential Design Guide Supplementary Planning Document (SPD) (July 2018)
- Developer Contributions Supplementary Planning Document (SPD) Feb 2018

## 9. APPRAISAL

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

- Principle of development
- Design, and impact on the character of the area
- Heritage impact
- Residential amenity
- Ecology impact

### Principle of Development

#### *Policy Context*

- 9.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 2 of the National Planning Policy Framework (NPPF) makes clear that it does not change the statutory status of the development plan as the starting point for decision making. However, the NPPF is a significant material consideration.
- 9.3. The development plan comprises the saved policies of the 1996 adopted Cherwell Local Plan (CLP1996) and the 2015 adopted Cherwell Local Plan 2011-2031 – Part 1 (CLPP1). The policies important for determining this application are referenced below.
- 9.4. Policy BSC2 of the CLPP1 encourages the re-use of previously developed land in sustainable locations.
- 9.5. Policy BSC4 of the CLPP1 encourages the provision specialist housing for older and/or disabled people and other supported housing for those with specific living needs in suitable locations close to services and facilities. Para B.121 states that there is a need to provide a mix of housing in Cherwell that reflects the needs of an ageing population.
- 9.6. Yarnton is classified as a Category A village in Policy Villages 1 of the CLPP1. The development proposed is within the village's built up limit and paragraph C. 262 of the CLPP1 assists in gauging whether development can be considered to be minor. Criteria to be considered include the size of the village and level of service provision, the site context and the scale of development. Generally, Policy Villages 1 seeks to manage small-scale developments (usually of fewer than 10 homes).
- 9.7. Policy Villages 2 is therefore also of relevance and states that a total of 750 homes will be delivered. Policy Villages 2 identifies the Category A villages as being where planned development to meet the District rural housing requirements to help meet local needs in the should be directed, subject to a detailed assessment as to the proportionate impact of development proposed upon the settlement in question (given the category A settlements vary in size and sustainability) and an assessment of the suitability of the specific site proposed.

- 9.8. The intention of this approach is to protect and enhance the services, facilities, landscapes and the natural and historic built environments of the villages and rural areas whilst recognising the need for some development. A number of criteria are listed and particular regard must be had to these criteria when considering sites, whether through plan making or the planning application process.
- 9.9. The NPPF confirms that there is a presumption in favour of sustainable development. For decision making this means approving proposals that accord with the development plan without delay. The Framework advises that there are three dimensions to sustainable development; economic, social and environmental. With regard to housing, the NPPF supports the need to boost significantly the supply of housing to meet the full, objectively assessed need for housing.
- 9.10. The Council's 2019 Annual Monitoring Report (AMR) confirms that the District can demonstrate a 4.4 years housing land supply. In the circumstances that a LPA cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer), there is a presumption in favour of sustainable development and ordinarily the circumstances at paragraph 11d of the NPPF are engaged – in short development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
- 9.11. However, in respect of the Oxfordshire Authorities including Cherwell there is a Written Ministerial Statement (“WMS”) made in September 2018 concerning the Housing and Growth Deal, which is a significant material consideration. This sets out the requirement for a 3 year supply of deliverable housing sites (with the appropriate buffer) from the date it was made (12/09/2018) until the adoption of the Joint Statutory Spatial Plan in each area, providing the timescales in the Housing and Growth Deal are adhered to. Therefore, in this case, the tilted balance set out by Paragraph 11d is not engaged because the Housing Supply requirement for the District should be taken to be 3 years in accordance with the WMS.
- 9.12. Also of relevance to this application is Policy PR8 of the recently adopted Partial Review of the Cherwell Local Plan (2020) as it is located in close proximity to the site. This allocates the land to deliver a new development of 1,950 dwellings, secondary school, primary schools and local centre. One of the objectives of this is also to close Sandy Lane to vehicular traffic to between Yarnton and Kidlington.

#### *Assessment*

- 9.13. The application site is located within the built limits of Yarnton, which is a Category A settlement, being one of the more sustainable rural settlements in the district. Yarnton will also see considerable further growth with the new allocations on the Review of the Local Plan which includes 1950 houses at the land allocated under PR8 in close proximity to the site and 540 dwellings under Policy PR9 of the Partial Review to the north west of Yarnton.
- 9.14. The 10 dwellings can be considered under Policies Villages 1 and 2 of the Cherwell Local Plan Part 1 as they are within the built up limits of the village. The proposal would add to the number of dwellings that have been granted planning permission at Category A villages in exceedance of the 750 specified in Policy Villages 2 (“PV2”). The 2019 Annual Monitoring Report states 920 dwellings have been identified for meeting the requirements of PV2 and, as of 1 April 2019, 271 dwellings were completed with a further 311 dwellings under construction (i.e. total of 582 either completed or under construction). Of the 920, the only permission to have lapsed is one for 17 dwellings at Arncott. The evidence suggests all other sites are coming forward.

- 9.15. By way of update, 144 dwellings were delivered during 2019/20 at PV2 developments, giving a total from 1 April 2014 to 31 March 2020 of 415 dwellings, and at 31 March 2020 there were 193 dwellings under construction, giving a total of 608 either completed or under construction. The total completions under PV2, year on year, from 2014/15 to 2019/20 is 2, 69, 32, 65, 103 and 144, demonstrating a consistent upward trend over the last four years. Although COVID-19 will have an impact on delivery in 2020/1, given these figures it remains likely that 750 dwellings will have been delivered by 2023.
- 9.16. A number of appeal decisions have considered PV2 with various outcomes. The Inspectors at Launton and Tappers Farm Bodicote interpreted PV2 as requiring the *delivery* of 750 dwellings as opposed to *permitted*. As set out above, although making significant progress the delivery of that 750 has not yet been achieved. The number of dwellings proposed must be considered as to whether it would undermine the strategy of the Local Plan and that the assessment of the sustainability of the village and other factors are significant matters to consider.
- 9.17. In this case the proposal is modest in size with only 10 dwellings. The site is within the built limits of the village and is well contained and related to other development. Furthermore, for the reasons outlined below Yarnton is considered one of the more sustainable rural settlements in the district. Furthermore, the Partial Review of the Local Plan: Oxfords Unmet Need allocates large areas of new strategic growth to the north, east and west of Yarnton, which will significantly increase the size of the village and the services and facilities available. In light of the above, officers do not consider in this particular instance, given the scale of the development, that the proposal could be regarded as a departure from the Council's housing strategy.
- 9.18. The criteria in Policy Villages 2 include consideration of whether the site is well located to services and facilities and also whether satisfactory pedestrian access/egress can be provided. Whilst the site is located on the opposite side of the A44 to many of the facilities that currently exist in Yarnton it is still within reasonable walking distance of the health centre being approx. 600m, the school being approximate 1km and a shop being approximately 700m. Yarnton Garden Centre is also within proximity to the site which may meet some of the needs of the residents. There are also a range of other facilities in the village. The site also has reasonable public transport links. While the bus stop located on Sandy Lane offers a limited service to Kidlington, the site is approximately 0.3km from the bus stop on the A44, which runs twice hourly through to Chipping Norton, Woodstock and Oxford (Stagecoach S3 service). Furthermore, when the newly allocated sites under the Partial Review are delivered the access to services and facilities from the site would be further improved. Overall, the site is considered a relatively sustainable one in the context of its rural location and is considered to be acceptable to provide this scale of growth subject to other matters.
- 9.19. In respect of the residential care home, this would fall within use class C2 'residential institutions' of the use classes order and would not provide independent living accommodation for residents. Each resident would have their own bedroom and there would be shared lounges and other spaces. The supporting Care Needs Assessment states that it will be capable of meeting the needs of all aspect of elderly care provision with an environment suited towards the provision of specialist dementia care.
- 9.20. Policy BSC4 states that opportunities for the provision of specialist housing and those with mental health needs and other supported housing need will be encouraged in locations close to services and facilities. The Planning Practice Guidance also notes that the need to provide housing for older people is critical. As outlined above the site is considered to be relatively well located in relation to services and facilities

given its rural context. The applicant has included a Care Needs Assessment with their application which highlights the growing ageing population and the need for additional facilities in the area. This has looked at demand in a 5 mile radius of the site and based on the population has indicated a demand for 667 residential and care bed spaces compared to the existing provision of 558 registered bed spaces leading to a shortfall. They also indicate that there is poor provision for specialist dementia care in a qualitative assessment. The current proposal would go some way to addressing this need and this weighs in favour of the development. The Councils Strategic Housing Officer advises that they are satisfied with the information provided. Therefore, on balance, the site is considered a suitable location for a residential care home.

- 9.21. The applicant has stated that the redevelopment of the site is essential to secure the long term future of the Ley Community which is a private charity which provides facilities to those with drug and alcohol dependencies. The sale of the current application site for the development proposal would allow the money to be invested in the retained Ley Community buildings and site and provide finances to secure the long term provision of the services at a time when public funding has reduced. Whilst officers are supportive of the works of the Ley Community it is considered that the weight that can be attributed to this benefit is limited as the granting of planning permission for this development and how such land receipts will be used in the future is not controlled or secured by the planning application and could be spent elsewhere.
- 9.22. Overall, therefore, the principle of the development including the dwellings and care home is considered to comply with the relevant policies in the Development Plan and is considered acceptable subject to other material considerations outlined elsewhere.

#### Design and impact on character and appearance

##### *Policy Overview*

- 9.23. Government guidance contained within the NPPF towards achieving well-designed places states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. The NPPG goes on to note that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Further, Paragraph 130 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions. Paragraph 170 states planning decisions should contribute and enhance the natural and local environment recognising the intrinsic character and beauty of the countryside.
- 9.24. Paragraph 127 of the NPPF states that planning decisions should ensure that developments:
- Will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
  - Are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
  - Are sympathetic to local character and history, including the surrounding built environment and landscape setting

- Establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- 9.25. Policy ESD15 of the Cherwell Local Plan Part 1 states that development should contribute positively to an area's character and identity by creating or reinforcing local distinctiveness and respecting local topography and significant trees. It should also respect the traditional pattern routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings and should be designed to integrate with existing streets and public spaces, and buildings configured to create clearly defined active public frontages.
- 9.26. Policy ESD13 of the Cherwell Local Plan Part 1 states that development should be expected to respect and enhance local landscape character, securing appropriate
- 9.27. Policy Villages 2 also states regard will be had to whether a proposal would have significant adverse impacts on heritage, whether development would contribute to enhancing the built environment and whether significant adverse landscape and impacts can be avoided in determining applications under that policy.
- 9.28. Saved Policy C28 of the Cherwell Local Plan 1996 exercises control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context
- 9.29. The Cherwell Residential Guide SPD (2018) builds on the above policies and provides a framework to deliver high quality locally distinctive development.

#### *Assessment*

- 9.30. The application site is located in an area of Yarnton that has a mixed variety of buildings. The application site and the majority of Sandy Lane has a verdant and Sylvain character and appearance with hedgerows and trees dominating the road frontage. To the north and the west the majority of properties are detached, are set back from the road on large spacious plots and have dwellings of various different housing styles although predominantly are constructed of brick. However, the development to the east of the site in Livingstone Close is denser and uniform in layout and appearance being more modern. To the south and south-east are the properties in Broadfield Road which are mainly two-storey, detached and relatively modern houses (late 1990s). The site is at a transition point between these different character areas albeit more closely related to the verdant character of Sandy Lane. It is also noted that the development of the land allocated at PR8 of the Partial Review of the Local Plan for 1950 dwellings will also change the character of the surrounding of the site in particularly the context of Sandy Lane.
- 9.31. There are also a significant number of trees further into the site which contribute to the character and appearance of the area. Given the level and quality of many of the trees on the site this is a significant constraint and the applicant has sought to take a landscape led approach to the development, which has been instrumental in determining the layout of the site. There is an existing avenue of horse chestnut trees and Douglas Fir trees on the western boundary which are largely category B trees and would be retained around the revised access to the retained Ley Community Facility. The main open space serving the development is centred around the retention of a large Copper Beach tree and Wellingtonia tree which are both Category A trees (the highest category of tree) and retaining these features is important to the acceptability of the scheme. These trees would form part of the public open space serving the development which is central to the layout of the scheme.

- 9.32. The development would lead to the loss of several category B trees on the site. However, given the constraints of the site including the levels difference and spread of the trees across the site this is required to provide a viable development site and it is considered an acceptable balance has been negotiated. Essentially the area where the pond is located is in a depression and the existing pond would be infilled and the land raised to better reflect the levels of the remainder of the site. Whilst concerns have been raised regarding the loss of the pond it should be noted that the pond is not visible from outside of the site and is therefore not a strong landscape feature in the wider locality. The most important trees on the site would be retained and it is also proposed to translocate some of the trees and new tree planting which will mature over time and help mitigate the loss. Whilst the proposed development of the site will no doubt change the character of the site and result in the loss of openness it provides it is considered on balance that the development will still retain a verdant character and appearance which is in keeping with the locality and retain the most significant trees. Additional new planting to the frontage of the site has been negotiated during the planning application
- 9.33. The Council's Arborist has fully considered the application and raises no objection to the proposal advising that the proposal is considerate to the trees on the site and provides a sustainable relationship between the retained trees and dwellings subject to replacement planting, which can be secured by condition.
- 9.34. In terms of the layout, the proposed development would provide a new access point from Sandy Lane approximately central to the northern boundary. The plot to the west of the access would be dual fronted and face onto Sandy Lane and also provide an active frontage to address the new access drive into the development. During the course of the application this plot has been moved further back into the site to create a set back from the road to be more consistent with the other properties on Sandy Lane and also allow the provision of some additional planting to the front of this property to contribute and respects the street scene. The plot to the east of the access would not have frontage onto Sandy Lane but would be set back from the road to allow for planting to the northern boundary to retain the verdant character of Sandy Lane. This plot would face onto the new road into the development and also provide some surveillance to the new public open space to the south which would help integrate it into the development.
- 9.35. As noted above the site is a transition site between the lower density housing to the west and the higher density and more modern development to the east and south. The dwellings adjacent to the western boundary of the site would all face across to the proposed public open space, which would contain the mature trees and would have a looser density with gaps between the dwellings and hedging to the frontage in order to respect the lower density of the surrounding development and reflect the character and that area. Plots 7-10 would face north over the public open space and would have a more compact form and layout. However, they would be largely viewed in the context of the open space, which would soften their appearance and it is noted they would be situated closer to the denser development to the east of the site.
- 9.36. In terms of design, the form and appearance of the dwellings in the area is very mixed and no one style dominates. The current proposal, although not locally distinctive in the wider Cherwell sense, seeks to pick up on some of the characteristics of the properties in the locality whilst also seeking to form a sense of identity and place to the development. Given that the proposal is for a relatively modest size of development surrounded by existing development of varied character this approach is considered acceptable. During the application officers raised concerns regarding the amount of grey cladding on several of the buildings and that this becoming a rather defining characteristic of the scheme, which would not sit

comfortably in the context. The use of this cladding has been reduced and it now only forms a smaller element of the materials, which is considered acceptable, with brick being the main material.

- 9.37. The proposed care home would be a large building compared to the surrounding buildings but is located in the south west part of the site, which is away from any existing road frontages. The building would be clearly visible from within the site and views of the building would also be available from Broad Field Road to the south of the site, albeit these would be more distant views.
- 9.38. The care home is proposed to be predominantly 2.5 storeys in scale, which is taller than the other buildings in the surrounding area, which are predominately two-storey in scale. However, the upper floors of the building would largely be accommodated with the use of dormers and gable roof features in the roof space. Efforts have been made to break up the bulk and mass of the building and provide it with a more residential scale through the use of different forms, broken building line and using a mix of brick and the timber boarding which would reflect the similar materials used on the dwellings proposed and help to provide a sense of place and unity to the development.. The building is designed with a series of different bays, with varying eaves and ridge height and changes in the use of materials which help to ensure the building does not appear too monolithic or institutional in appearance and helps to break up its bulk and mass.
- 9.39. Whilst it is acknowledged that the care home building would be larger than the other buildings in the locality, this is generally the requirement of such uses in order to provide a viable and efficient scheme development. As outlined above the area has a wide mix of buildings and the wider public views of the care home would be largely limited to Broad Field Road and in these views it would be seen in the context of the retained buildings of the Ley Community, which are also larger in footprint than the surrounding residential properties. Furthermore, the care home development would be softened by the retention of many of the existing trees around the building and the provision of new tree planting. The landscape officers' requests for a Landscape Visual Impact Assessment are noted in respect of the care home; however, given the above matters and the fact it would not be prominent in wider surroundings this is not considered to be justified. Therefore, on balance, the proposed care home is considered not to adversely affect the character and appearance of the locality.
- 9.40. Some concerns have been raised regarding the loss of the existing building known as Sandycroft, which is an art deco style. Whilst these comments are noted the building is not considered to be of such quality to merit retention, is not prominent in the public realm and in any case could potentially be demolished without the need for planning permission. Furthermore, planning consent has already been granted for the removal of these buildings.
- 9.41. Overall, given the site's context and the fact it is surrounded by existing development, the proposal is considered to respond positively to the constraints of the site. Whilst the loss of several category B trees is unfortunate the current proposal (as amended during the application) is considered to strike an acceptable balance of providing new residential accommodation in a sustainable location whilst protecting the more verdant character of the site. The design of the buildings is considered acceptable in this context and would result in a development with its own sense of place, whilst being broadly sympathetic to its surroundings. The proposal is therefore considered acceptable with regard to its design and its impact on the character and appearance of the area.

#### Residential Amenity

### *Policy*

- 9.42. Policy ESD15 of the CLP 2015 (Part 1) requires new development to consider the amenity of both existing and future occupants, including matters of privacy, outlook, natural light, ventilation, and indoor and outdoor space.
- 9.43. Saved Policy ENV1 of the CLP 1996 state development which is likely to cause materially detrimental levels of noise, smell, fumes or other types of environmental pollution will not normally be permitted.

### *Assessment*

- 9.44. The proposed new dwellings are considered to be a sufficient distance from those existing properties to the north of the site on the opposite side of Sandy Lane and from the properties to the east in Livingstone Close not to significantly impact on their amenity.
- 9.45. The property that would be most impacted upon by the development is Arran House on Sandy Lane, which is located immediately to the west of the site. This dwelling faces onto Sandy Lane and has a large, south facing garden that is relatively private. The proposed development would lead to the rear elevations of Plots 3 to 6 facing onto the side boundary of this property and overlooking its rear garden and hitherto private amenity space. Plots 3 and 4 would be closest to the most private and most likely highly used area of garden space closest to the rear of Arran House. At the closest point the proposed dwelling on Plot 3 would be approximately 12.5 metres from the shared boundary. The first floor windows on the rear of plot 4 would be approximately 11.7m from the boundary albeit further from the rear of the dwelling.
- 9.46. This relationship has been subject to much discussion during the application. The applicant has refused to amend the siting or layout of Plots 3-6, but has stated that they would provide trees and planting on this boundary to help screen the views and this could be secured by condition. The proposed development would no doubt lead to a large degree of change to the levels of privacy and overlooking to Arran House.
- 9.47. The Council's Residential Design Guide sets out that no first floor windows should be within 7 metres of the boundary of a neighbouring property, although this relates to plot to plot relationships within planned major developments, whereas in this case the affected property is existing and the occupier incumbent. It is even more critical than in estate development that the neighbour's amenity is protected. The Council has other adopted guidance that states it will seek appropriate separation distances between dwellings, e.g. back to back distances of 22 metres. There would be at least 22 metres between the rear elevation of the proposed dwellings and the neighbour, and so the level of overlooking to the dwelling itself is not considered to be significant given the distance between windows and the angled relationship of the windows. Whereas, in this instance, the issue is instead one of overlooking of the hitherto private rear garden. The entire length of the garden of Arran House would experience overlooking from the dwellings down the eastern boundary of this garden. This harm weighs against the development.
- 9.48. Arran House has a forward projecting element of the building closest to the western boundary of the site which has a number of rooflights directly overlooking the application site at first floor level. It is believed these are secondary windows serving a study. Given the nature of the openings the proposed development is not considered to unduly impact on their outlook and amendments have been made



during the course of the application to Plot 2 to ensure that no habitable first floor windows would face directly into these windows.

- 9.49. Plot 10 to the east of the site would have some impact on the amenity of the properties to the east of the site in Stanley Close as the site is located on higher ground than these properties. However, given that the side elevation of this dwelling, windowless at first floor level, would face these dwellings and at the closest point Plot 10 would be in excess of 15 metres from the rear boundaries of these properties any impact on loss of outlook or overlooking is not considered to be significant.
- 9.50. The relationship between the proposed dwellings and the retained Ley Community buildings to the south is also considered to be acceptable and the distance between the internal living spaces would be in excess of the distances outlined in the New Residential Development Design Guide. The proposed care home would lead to some loss of privacy and overlooking to the garden spaces of the Ley Community, particularly the first floor balconies to the rear of the care home, and this weighs against the development, although it is to be noted that both are currently within the same ownership and regard is to be had to the communal nature of these types of accommodation.
- 9.51. The care home would be in excess of 40 metres from the properties to the south of the site in Broad Field Road and whilst the windows in the rear of the care home and the first floor balconies would provide some overlooking to the gardens and secondary windows in the site elevation of this property this is not considered to be significant given the distance. The care home would be clearly visible from the properties to the west of the site on Woodstock Road and would be a sizable building. However, given that the building would be in excess of 40 metres from the habitable living spaces of these dwellings the loss of outlook is not considered to be materially harmful and the first floor window in this elevation can be conditioned to be obscurely glazed to prevent overlooking of the garden space as it serves a laundry. Likewise, the flat roof section of the adjoining roof can be conditioned to ensure it is not used as an outdoor seating or amenity area.
- 9.52. The windows in the first and second floor of the south western part of the care home would overlook the large garden serving Willow Brook (160 Woodstock Road) at approximately 6 metres. This area of garden they would overlook is currently heavily vegetated and covered in trees and a considerable distance from the main dwelling and is rather detached from the dwelling. Given these factors, and whilst the proposal would lead to an increase in overlooking to this area, it is not considered to be materially harmful.
- 9.53. The northern elevation of the care home would also have full height windows facing north towards the properties on Sandy Lane. However, many of the trees on the boundary between the care home and these properties gardens would be retained which would filter views and the care home is in excess of 25 metres from the rear boundaries of these long rear gardens. Therefore, the level of overlooking from the care home is not considered to be significant.
- 9.54. All the dwellings are considered to have adequate internal and outdoor space to provide a good level of amenity for future residents.
- 9.55. The application has been accompanied by a Noise Report and an Odour Report in relation to the proposed development. The Council's Environmental Health Officer (EHO) is satisfied that if the recommendations of the Odour Report are followed the kitchen odours from the proposed care home would not give rise to significant impacts on neighbouring properties. It is recommended that full details of these are

conditioned to ensure they are in accordance with the submitted report and any external elements are visually acceptable.

- 9.56. The EHO has also requested full details of the lighting of the scheme, including that to the care home, to ensure there is not significant adverse impact on neighbouring properties.
- 9.57. The more intensive use of the site would lead to some increase in noise and disturbance. However, the site would still be adequately separated from neighbouring residential properties and the uses are all appropriate to a residential area to ensure that any noise and disturbance would not be regarded as significant in land use terms.
- 9.58. Concerns have been raised regarding noise and disturbance during construction however these are temporary in nature and a Construction Environmental Management Plan can be required by condition to try and reduce these impacts as far as possible.

### Highways

#### *Policy context*

- 9.59. Policy SLE4 of the Cherwell Local Plan Part 1 states that development which is not suitable for the roads that serve the development, and which have a severe traffic impact will not be supported. The NPPF has a similar thrust and also requires that safe and suitable access is achieved for all. Policy SLE4 also seeks to ensure that new development is accessible by a variety of sustainable transport modes and that the use of such modes as walking and cycling is maximised.

#### *Assessment*

- 9.60. The existing Ley Community would be served by the existing access from Sandy Lane, albeit a realigned driveway and this has already been approved under the earlier planning application.
- 9.61. The development proposed under this application would be served by a new access from Sandy Lane which would be located approximately central to the site frontage with Sandy Lane. The access provides 2.4m x 43m visibility splays in both directions taking into account the nearby bend in the road and the proximity of mature trees to be retained. Speed surveys have also been undertaken at the junction that show that the 85th percentile speeds slightly exceed the posted speed limit. It has also been demonstrated that adequate visibility exists for these actual speeds from the access. The Local Highway Authority (LHA) is satisfied with this and raises no objection in respect of the safety of the access.
- 9.62. Concerns were raised that vehicles using the retained access from the Ley Community may impede visibility from the proposed access to the new site. Whilst this may be the case given the relatively modest amount of traffic likely to use the access to the Ley Community it is not considered to happen very often and is not considered to justify refusal. The LHA raises no objection in this respect and whilst the comments from residents are noted officers consider the proposed new access to be acceptable. Consideration was given to using a single point of access during the pre-application discussions but the applicant discounted this given the likely impact on mature trees in order to provide a viable development.
- 9.63. In terms of the internal site layout, it is proposed to provide a 4.8m wide road with footpath down the western side to link to the footpath on Sandy Road. A small area

of path would also be provided to the east of the access to connect with the existing footpath on Sandy Lane. The applicant has also demonstrated that refuse and delivery vehicles would be able to turn. It is indicated that the road would remain private but would be constructed to adoptable standard and this can be secured through condition along with details of the access.

- 9.64. In terms of traffic impact, the development is likely to result in an increase of 16 trips in the AM peak and 14 in the PM peak. The LHA advises this is below the threshold for requiring any off-site impact assessment and would only have a minor impact on the local highway network. Therefore, no objection is raised in this respect as the test in the NPPF requires that development should only be refused when the traffic impact is severe. It is noted that one of the objectives of Policy PR8 of the recently adopted Partial Review of the Cherwell Local Plan is to close Sandy Lane to vehicular traffic to Kidlington and this would impact on the traffic flows. It is not currently known how the development of PR8 will impact on traffic flows along Sandy Lane as details of the access arrangements for the wider allocation would be considered in the Development Brief.
- 9.65. The care home would provide 70 beds and it is proposed to be provided with 29 parking spaces and an ambulance bay. This would equate to 1 space per 2.4 residents. Given the proposal is for a residential care home, residents would be very unlikely to have cars so the parking would be to serve staff and visitors. The County Council do not have an adopted parking standard for care homes but the quantum of parking is similar to other care homes permitted in Oxfordshire and the LHA raise no objection to the proposed parking serving the care home. 5no cycle parking spaces are also proposed.
- 9.66. All of the dwellings, with the exception of plots 7 and 10, are provided with 2 parking spaces in addition to garages; plots 7 and 10 (the two, 3 bed dwellings) are provided with 1 space plus a garage. The garages of these two dwellings would need to be conditioned to be used as such. Visitor parking bays are provided parallel to the road to serve the wider development and the LHA consider this to be acceptable provision.
- 9.67. The LHA requests that the occupants proposed dwellings be provided with Travel Information Packs and that a Travel Plan be provided for the proposed care home.
- 9.68. Overall, therefore, and subject to conditions, the proposal is considered to provide a safe and suitable access, and to provide an acceptable level of parking within the development, and to therefore accord with local and national planning policy in this regard.

### Ecology Impact

#### *Legislative context*

- 9.69. 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.
- 9.70. 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.

- 9.71. 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.
- 9.72. 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.
- 9.73. 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*

- 9.74. 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.
- 9.75. Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) 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.
- 9.76. 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.

- 9.77. 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.
- 9.78. 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.
- 9.79. 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.
- 9.80. 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*

- 9.81. The application is currently a largely undeveloped area of land with a number of trees, vegetation, buildings and also a man-made pond. It therefore possible that it contains habitats of interest and protected species.
- 9.82. The application has been accompanied by an Ecological Appraisal and further surveys recommended by this Appraisal.
- 9.83. Emergence surveys have been carried out for bat and a small population of common species of bats have been found to be using a roost in the tiles of the Palmer building which is to be demolished as part of this application and a Bat Mitigation Class Licence would be required for this.
- 9.84. The pond has been tested using eDNA surveying and this has confirmed that there are no great crested newts using the pond on the site and therefore this is not considered to be a constraint to the development.
- 9.85. The main concern in this case is that the proposal shows there to be a net loss in biodiversity across the site. This results largely from a loss of the existing pond on the site which would be infilled as part of the application. The applicant has recently submitted a new biodiversity calculator, which demonstrates a net gain across the site. This takes into account the detailed layout of the site and the landscaping scheme.
- 9.86. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS

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 LPA should then consider whether Natural England (NE) would be likely to grant a licence for the development. In so doing the LPA has to consider itself whether the development meets the 3 derogation tests listed above.

- 9.87. 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 NE will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether NE will grant the licence then the Council may grant planning permission.
- 9.88. In light of the comments of the Council's Ecologist on the additional information, officers are satisfied, subject to conditions, that the welfare of any European Protected Species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged.

#### Flood Risk and Drainage

- 9.89. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding. Policy ESD7 of the Local Plan requires the use of Sustainable Urban Drainage Systems (SUDS) to manage surface water drainage. This is all with the aim to manage and reduce flood risk in the District.
- 9.90. The application site is located in Flood Zone 1 (the area of lowest risk) on the Environment Agency flood risk maps and this is considered to be suitable for development.
- 9.91. The existing pond, which would be removed as part of the proposal, appears to be solely an amenity feature and gets topped up during dry summer months from a well on the eastern boundary of the site. On the evidence available it does not appear that the pond forms part of any positive draining of the site and therefore does not serve a drainage function.
- 9.92. The surface water drainage strategy has been designed for the 1 in 100 year event plus 40% increase for climate change. The development proposes to manage surface water using infiltration methods with a series of permeable roads and driveways and soakaways. The Lead Local Flood Authority have been consulted on the concept drainage strategy and have raised no objection subject to conditions. Officers therefore consider the scheme is acceptable from a drainage and flood risk perspective.
- 9.93. Thames Water have been consulted and have confirmed they have no objection in regard to water or waste water capacity.

#### Impact on Infrastructure

##### *Policy Context*

- 9.94. Policy INF1 of the CLP 2015 states that: "Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities."

- 9.95. Policy BSC11 of the CLP 2015 states that: “Development proposals will be required to contribute to the provision of open space, sport and recreation, together with secure arrangements for its management and maintenance. The amount, type and form of open space will be determined having regard to the nature and size of development proposed and the community needs generated by it. Provision should usually be made on site in accordance with the minimum standards of provision set out in ‘Local Standards of Provision – Outdoor Recreation’. Where this is not possible or appropriate, a financial contribution towards suitable new provision or enhancement of existing facilities off site will be sought, secured through a legal agreement.” Policy BSD12 requires new development to contribute to indoor sport, recreation and community facilities.
- 9.96. The Developer Contributions Supplementary Planning Document (SPD) sets out the position in respect of requiring financial and onsite contributions towards ensuring the necessary infrastructure or service requirements are provided to meet the needs of development, and to ensure the additional pressure placed on existing services and infrastructure is mitigated. This is the starting point for negotiations in respect of completing S106 Agreements.

#### *Assessment*

- 9.97. Where on and off-site infrastructure/measures need to be secured through a planning obligation (i.e. legal agreement) they must meet statutory tests set out in regulation 122 of the Community Infrastructure Ley (CIL) Regulations 2010 (as amended). These tests are that each obligation must be:
- a) Necessary to make the development acceptable in planning terms;
  - b) Directly related to the development;
  - c) Fairly and reasonably related in scale and kind to the development.
- 9.98. Where planning obligations do not meet the above statutory tests, they cannot be taken into account in reaching a decision. In short, these tests exist to ensure that local planning authorities do not seek disproportionate and/or unjustified infrastructure or financial contributions as part of deciding to grant planning permission. Officers have had regard to the statutory tests of planning obligations in considering the application and Members must also have regard to them to ensure that any decision reached is lawful.
- 9.99. Having regard to the above, in the event that Members were to resolve to grant planning permission, the following items would in officers’ view need to be secured via a legal agreement in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts:
- Provision of and commuted sum for maintenance (or detailed arrangements and provision for a management company) of the proposed open space (including informal open space, mature trees, hedgerows etc) in accordance with the Policy BSC11 of the CLP
  - Commuted sum of £3,989.04 per dwelling for off site play area enhancement in the locality as no local area of play is being provided on site in accordance with Policy BSC11.
  - Community hall contribution of £19,0067.60, outdoor sports provision contribution of £28,594.80 and indoor sports provision contribution of £11,836.80. These are calculated in accordance with the Developer

Contributions SPD and detailed in the Leisure officers comments to be spend on various projects in the locality.

- £106 per dwelling for bins in accordance with the SPD
- a contribution of £37,730 towards primary care in the locality. Oxfordshire Clinical Commissioning Group (OCCG) have requesting funding to ensure there is sufficient capacity and funding from the scheme to allow primary care to respond with services to these occupants. They have indicated that one local practice has already indicated they do not have capacity to take on this number of residents in addition to their current workload, and a further response has been made directly on this application by KEY practice. The funding will be invested into capital projects in the locality to increase capacity to serve the development.

9.100. These matters would need to be secured by a S106 agreement.

#### Other matters

9.101. The proposed development sits below the threshold for affordable housing and the care home is for residential care (i.e. not separate units of accommodation) and is therefore not subject to affordable housing requirements under Policy BSD3. Officers have given consideration to whether the development has been designed to avoid the threshold for affordable housing however in this case, given the character of the area and the constraints such as the trees and levels it is not considered that the number of dwelling proposed has been kept low to avoid affordable housing.

9.102. Officers note the parish council's concerns regarding housing mix. The proposed housing mix is for 4 x 3-bed, 4 x 4-bed and 2 x 5-bed. Whilst the housing mix proposed is not ideal, in light of Policy BSC4 and the findings of the Strategic Housing Market Assessment (table 67 of the CLP 2015) the Council's Strategic Housing Team have not objected to the proposed mix. It is considered that the character of the locality and the site lends itself to larger dwellings with space around them. Furthermore, it is also relevant that the care home would cater for a number of smaller household sizes with single occupancy rooms and so would provide a mix to the development. Overall, on balance, the proposal is considered acceptable in this respect and there are considered to be justifiable planning reasons for the mix in this case.

9.103. The County Council's Archaeologist (CA) has advised that the site lies in an area of archaeological potential and that there have been other finds within the area including roman and Iron Age finds. The application is accompanied by an archaeological desk-based assessment which agrees the site does not some potential. The CA has therefore requested a condition to ensure there is the implementation of a staged programme of archaeological investigation undertaken on the site. Officers agree with this and it can be secured by condition.

9.104. The land is identified as potentially contaminated and therefore in order to ensure that it is suitable for residential accommodation and in accordance with Saved Policy ENV12 the ground investigation and remediation are recommended as conditions.

9.105. A condition in regard to the installation of Electric Vehicle charging infrastructure in order to make resident parking places EV ready for future demand is also proposed. The NPPF and Policies SLE4 and ESD1 of the CLP 2015 encourage and support the incorporation of measures into new development that promote more sustainable forms of transport and to reduce carbon emissions. It is considered reasonable and necessary for this to be secured through a condition of any permission given.



## 10. PLANNING BALANCE AND CONCLUSION

- 10.1. Notwithstanding that the Council is able to demonstrate a sufficient supply of land for housing, the proposal would deliver additional housing in a relatively sustainable location. Significant weight should be afforded to this benefit, tempered by the size of the development and that the proposal does not include affordable housing.
- 10.2. Whilst the loss of several category B trees is unfortunate the proposed development would allow for the preservation of the verdant character of the site. The proposed development is of an acceptable design that is broadly sympathetic to its surroundings, and overall, subject to conditions, the proposal would not adversely impact on the character and appearance of the area. Subject to conditions the proposal would be acceptable in terms of highway safety, drainage, flood risk, ecology and archaeology, and subject to planning obligations the proposal would not place undue pressure on local infrastructure.
- 10.3. The proposed development would have a significant impact on residential amenity, especially the occupier of Arran House who would experience a high degree of change in terms of overlooking and privacy. This harm could be ameliorated to some extent through tree planting adjacent to the site boundary.
- 10.4. On balance, and subject to conditions, it is considered that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the Development Plan and the NPPF, and therefore it is recommended that planning permission be granted.

## 11. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) **AND THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106** OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND COMPENSATION ACT 1991, TO SECURE THE FOLLOWING (AND ANY AMENDMENTS AS DEEMED NECESSARY):

- Provision of and commuted sum for maintenance (or detailed arrangements and provision for a management company) of the proposed open space (including informal open space, mature trees, hedgerows etc) in accordance with the Policy BSC11 of the CLP
- Commuted sum of £3,989.04 per dwelling for off-site play area enhancement in the locality as no local area of play is being provided on site in accordance with Policy BSC11.
- Community hall contribution of £19,0067.60, outdoor sports provision contribution of £28,594.80 and indoor sports provision contribution of £11,836.80.
- £106 per dwelling for bins in accordance with the SPD
- a contribution of £37,730 towards primary care in the locality.

### CONDITIONS

### **Time Limit**

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

### **Compliance with Plans**

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents:

20012 L00013 (Location Plan)  
20012 PE0010 Rev C (Contextual Plan)  
20012 PP0012-Rev C (Proposed Site Plan)  
20012 PP1030 Rev D (Plot 1 plans)  
20012 PP2030 Rev C (Plot 2 plans)  
20012 PP3030 Rev B (Plot 3 plans)  
20012 PP4030 Rev C (Plot 4 plans)  
20012 PP6030 (Plot 6 plans)  
20012 PP7030 (Plots 7 and 8 plans)  
20012 PP8030 (Plots 9 and 10 plans)  
G4405-WRD-XX-00-DR-A-0200 P8 (Care home ground floor plan)  
G4405-WRD-XX-00-DR-A-0201 P7 (Care home first floor plan)  
G4405-WRD-XX-00-DR-A-0202 P8 (Care home second floor plan)  
G4405-WRD-XX-XX-DR-A-0500 P4 (Care home site plan)  
G4405-WRD-XX-ZZ-DR-A-0300 P3 (Care home elevation drawings)  
948.1\_03F Landscape Layout - Site A  
10598-P500A (drainage plan)  
10598-P501A (drainage plan)  
Energy Statement  
Flood Risk Assessment ('FRA')  
FRA Appendix B Survey Sheet 1 of 2  
FRA Appendix B Survey Sheet 2 of 2  
FRA Appendix C  
Transport Statement  
Ecological Update (June 2020)  
Amended Biodiversity Metric 2.0 Calculation Tool Beta Test – December 2019 (received in an email from Hugh Shepherd dated 25.09.2020 at 1645 hours.  
Ecological Impact Assessment (2018)  
Yarnton Noise Assessment  
Yarnton Odour Assessment  
Appendix 4 Site Investigation Report  
Surface Water Calculations  
Yarnton Care Needs Assessment  
Archaeological Desk-based Assessment

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

### **Contaminated land investigation**

3. No part of the development hereby permitted shall take place until a desk study

and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model has been carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and has been submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

Reason: To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

4. If a potential risk from contamination is identified as a result of the work carried out under condition 3, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

5. If contamination is found by undertaking the work carried out under condition 4, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

6. If remedial works have been identified in condition 5, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 5. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

### **Highways / Construction**

7. Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays and tie in with existing footpaths shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details.

Reason: In order to provide safe and suitable access to the site in accordance with Policies SLE4 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

8. No development shall commence on site until a Construction Traffic Management Plan (CTMP) addressing all phases of the development has been submitted to and approved in writing by the local planning authority in consultation with the local highway authority. The CTMP shall be prepared in accordance with OCC guidelines. The approved Plan shall be implemented in full during the entire construction phase.

Reason: In the interests of highway safety and traffic impacts and to accord with Cherwell Local Plan 2011-2031 Part 1 and in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

9. No development shall commence unless and until a Construction Environment and Traffic Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved CEMP.

Reason: In the interests of highway safety and the residential amenities of neighbouring occupiers and to comply with Government guidance contained within the National Planning Policy Framework.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting or amending those Orders with or without modification), the garages hereby permitted to plots 7 and 10 must only be used for the parking of private cars and for no other use whatsoever and shall not be converted to habitable accommodation.

Reason: In the interests of highway safety and the residential amenities of neighbouring occupiers and to comply with Government guidance contained within the National Planning Policy Framework.

11. The car parking and any turning facilities within the development to serve the dwellings and care home hereby approved shall be provided hard surfaced and made available for use before the respective dwelling and/or care home is first occupied and shall thereafter be permanently so maintained.

Reason: In the interests of highway safety, to ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking problems in the area and to accord with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

12. Prior to first occupation a Residential Travel Information Pack shall be submitted to and approved by the Local Planning Authority. Thereafter the Travel Information Pack shall be issued to all residents on first occupation.

Reason: To encourage the use of sustainable transport options in accordance with Policies SLE4 and ESD1 of the Cherwell Local Plan Part 1 (2015) and Government guidance in the National Planning Policy Framework.

13. Prior to the first occupation of any of the dwellings hereby approved, all of the estate roads and footpaths (except for the final surfacing thereof) shall be laid out, constructed, lit and drained in accordance with Oxfordshire County Council's 'Conditions and Specifications for the Construction of Roads' and its subsequent amendments.

Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with Government guidance contained within the National Planning Policy Framework.

14. Prior to the first occupation of the care home hereby approved, a Travel Plan Statement, prepared in accordance with the Department of Transport's Best Practice Guidance Note "Using the Planning Process to Secure Travel Plans" and its subsequent amendments, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Travel Plan Statement shall be implemented and operated in accordance with the approved details.

Reason - In the interests of sustainability, to ensure a satisfactory form of development and to comply with Government guidance contained within the National Planning Policy Framework.

15. Prior to the first occupation of the development, a scheme for the provision of vehicular electric charging points to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The vehicular electric charging points shall be provided in accordance with the approved details prior to the first occupation of the dwelling they serve and shall be retained as such thereafter.

Reason: To comply with Policies SLE 4, ESD 1, ESD 3 and ESD 5 of the adopted Cherwell Local Plan 2011-2031 Part 1 and to maximise opportunities for sustainable transport modes in accordance with paragraph 110(e) of the National Planning Policy Framework.

### **Archaeology**

16. Prior to any demolition and the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.

Reason - To safeguard the recording of archaeological matters within the site in accordance with the Government guidance in the National Planning Policy

Framework.

17. Following the approval of the Written Scheme of Investigation referred to in condition 16, and prior to any demolition on the site and the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.

Reason – To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through publication and dissemination of the evidence in accordance with the Government guidance in the National Planning Policy Framework.

### **Trees**

18. The development shall be carried out in strict accordance with the details in the Arboricultural Impact Assessment (ref: MW.19.1203.AIA Rev C issued 14.09.2020) and associated drawings. Prior to the removal of any tree identified for relocation in drawing number MW.19.1203.TPP.RevB, full details of the proposed relocation and methodology for removal, relocation and establishment shall be submitted and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Reason: To mitigate for the loss of trees on the site and ensure that appropriate mitigation is provided in the interest of the character and appearance of the area and biodiversity.

### **Design**

19. No development shall take place until details of all finished floor levels in relation to existing and proposed site levels and to the adjacent buildings have been submitted to and approved in writing by the Local Planning Authority. This shall include details of any retaining walls or features. The development hereby permitted shall be constructed in accordance with the approved levels.

Reason: In order to safeguard the visual amenities of the area and to protect the amenity of the neighbouring properties in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

20. The first floor window in the western elevation of the care home (shown to serve the laundry room on drawing number 4405-WRD-XX-00-DR-A-0201 Rev P7) hereby permitted shall be glazed with obscure glass (at least Level 3) only, and fixed with a ventilation stay restricting the opening of the window to no more than 30 degrees from the elevation in question, prior to the first occupation of the care home and must be permanently maintained as such at all times thereafter.

Reason - To safeguard the living conditions of neighbouring residents and future occupiers of the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and

Government guidance contained within the National Planning Policy Framework.

21. The flat roof above the kitchen and plant roof at the western end of care home hereby permitted shall not be used as an outdoor seating or amenity area at any time whatsoever.

Reason - To safeguard the living conditions of neighbouring residents and future occupiers of the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

22. Full details of odour and ventilation in accordance with the Odour report and visual appearance.

23. Notwithstanding the details shown on the approved plans, further details (including scale plans) of the architectural detailing of the exterior of the buildings, including the windows and doors (and their surrounds and recesses), together with the eaves and verge treatment and parapet roofs, shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of the building above slab level. The development shall not be carried out other than in accordance with the approved details and shall be retained as such thereafter

Reason: In order to safeguard the visual amenities of the local area in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance in the National Planning Policy Framework.

24. Prior to the installation of any external lighting a full lighting strategy to include illustration of proposed light spill and which adheres to best practice guidance, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved document.

Reason – To safeguard residential amenity and to protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

25. No development shall commence above slab level unless and until a detailed schedule of materials and finishes for the external walls and roofs of the development hereby approved, including samples of such materials, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved schedule and shall be retained as such thereafter.

Reason: To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

26. No development shall commence above slab level unless and until samples of the timber boarding to be used externally in the development have been submitted to and approved in writing by the Local Planning Authority. The roof shall not be covered other than in accordance with the samples so approved and shall be retained as such thereafter.

Reason: To ensure the satisfactory appearance of the completed development and to ensure that the completed development is in keeping with and conserves the special character of the historic environment, to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

27. No development shall commence above slab level unless and until a brick sample panel, to demonstrate brick type, colour, texture, face bond and pointing (minimum 1m<sup>2</sup> in size) has been constructed on site, inspected and approved in writing by the Local Planning Authority. The boundary wall of the development shall be constructed in strict accordance with the approved brick sample panel and shall be retained as such thereafter.

Reason: To ensure the satisfactory appearance of the completed development and to ensure that the completed development is in keeping with and conserves the special character of the historic environment, to comply with Saved Policy C28 of the Cherwell Local Plan 1996, Policy ESD 15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

28. No development shall commence unless and until a Construction Environment and Traffic Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved CEMP.

Reason: In the interests of highway safety and the residential amenities of neighbouring occupiers and to comply with Government guidance contained within the National Planning Policy Framework.

29. No development shall commence above slab level unless and until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-

- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
- (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
- (c) details of the hard surface areas,
- (d) screen planting to Arran House
- (e) details of boundary treatments

The development shall be carried out in strict accordance with the approved landscaping scheme and the hard landscape elements shall be carried out prior to the first occupation/use of the development and shall be retained as such thereafter.

Reason: In the interests of the character and appearance of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

30. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date



and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

Reason: In the interests of the character and appearance of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

31. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting or amending those Orders with or without modification), no development within Parts 1 or 2 shall take place.

Reason - To safeguard the living conditions of neighbours to and future occupiers of the development, to protect the health and integrity of trees within the site and to safeguard the character and appearance of the area and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

### **Ecology**

32. Biodiversity enhancements scheme (bird and bat brick, hedgehog houses, log piles:

No development shall commence including any demolition and any works of site clearance unless and until a method statement and scheme for enhancing biodiversity on site such that an overall net gain for biodiversity is achieved, to include details of enhancement features and habitats both within green spaces and integrated within the built environment, has been submitted to and approved in writing by the Local Planning Authority. This shall also include a timetable for provision. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.

Reason: To ensure the development provides a net gain in biodiversity in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

NOTE TO APPLICANT/DEVELOPER: It is advised that this condition include a Biodiversity Impact Assessment metric to show how a clear net gain for biodiversity will be achieved.

33. No development shall commence unless and until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved LEMP.

Reason -To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

## **Drainage**

34. No development shall take place until a Detailed Design, Surface Water Management Strategy and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved Detailed Design prior to the use of the building commencing.

A detailed drainage strategy including calculations, ground levels and plans must be submitted for approval.

The Detailed Design shall be based upon the Outline Design principles set out in the following documents and drawings:

(19)20012 - PP0013 - PROPOSED SITE PLAN

948.1\_02C Landscape Layout - Site C

Surface Water Calculations – Fully detailed calculation files to be provided.

948.1\_03B Landscape Layout - Site A

948.1\_04B Landscape Layout - Site B

10598- Flood Risk Assessment V1.0

10598-P502 drainage construction details

20012 - L00011 Location Plan TLC (1)

Appendix 1 SuDS LLFA pro-forma

Appendix 4 (i)12571 Site Investigation Report

Appendix 4 (ii)12571 Site Investigation Report

FRA-Appendix B survey-Sheet 1 of 2

FRA-Appendix B survey-Sheet 2 of 2

FRA-Appendix C (I) 10598-P500 residential development

FRA-Appendix C (ii)10598-P501 care home development

A compliance Surface Water Management Strategy report to demonstrate how the scheme complies with the “Local Standards and Guidance for Surface Water

Drainage on Major Development in Oxfordshire”

Detailed design drainage layout drawings of the SuDS proposals including cross section details.

Detailed design clearly demonstrating how exceedance events will be managed.

Pre and Post development surface water flow paths to be identified on plan.

Evidence that WFD requirements have been addressed to improve water quality.

### **Reason:**

To ensure that the principles of sustainable drainage are incorporated into this proposal

35. Completion and Maintenance of Sustainable Drainage – Shown on Approved Plans - No building or use hereby permitted shall be occupied or the use commenced until the sustainable drainage scheme for this site has been completed in accordance with the submitted details. The sustainable drainage scheme shall be managed and maintained thereafter in perpetuity in accordance with the agreed management and maintenance plan, (including contact details of any management company).

36. SuDS Features and Drainage Maintenance Plan (Detailed maintenance management plan in accordance with Section 32 of CIRIA C753 including

maintenance schedules for each drainage element, to be prepared and submitted as stand-alone document).

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

37. Outline Design Infiltration: The development hereby permitted shall not commence until full Detailed Design details of the proposal, implementation, maintenance and management of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. Those details shall include:

a) Information about the design storm period and intensity (1 in 30 & 1 in 100 (+40% allowance for climate change), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters;

b) Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);

c) Flood water exceedance routes, both on and off site;

d) A timetable for implementation;

e) Site investigation and test results to confirm infiltrations rates; and

**Reason:**

To ensure that the proposed development can be adequately drained.

To ensure that there is no flood risk on or off the site resulting from the proposed development.

38. SuDS – Design Documentation Plans: Prior to occupation, a record of the approved SuDS details shall be submitted to and approved in writing by the Local Planning Authority for deposit in the Lead Local Flood Authority Asset Register. The details shall include:

As built plans in both .pdf and .shp file format;

Photographs to document each key stage of the drainage system when installed on site;

Photographs to document the completed installation of the drainage structures on site.

Reason:

In accordance with section 21 of the Flood and Water Management Act 2010.

39. Prior to the first occupation of the development hereby permitted written confirmation that the development achieves a water efficiency limit of 110 litres/person/day under Part G of the Building Regulations shall be submitted to and approved in writing by the Local Planning Authority.

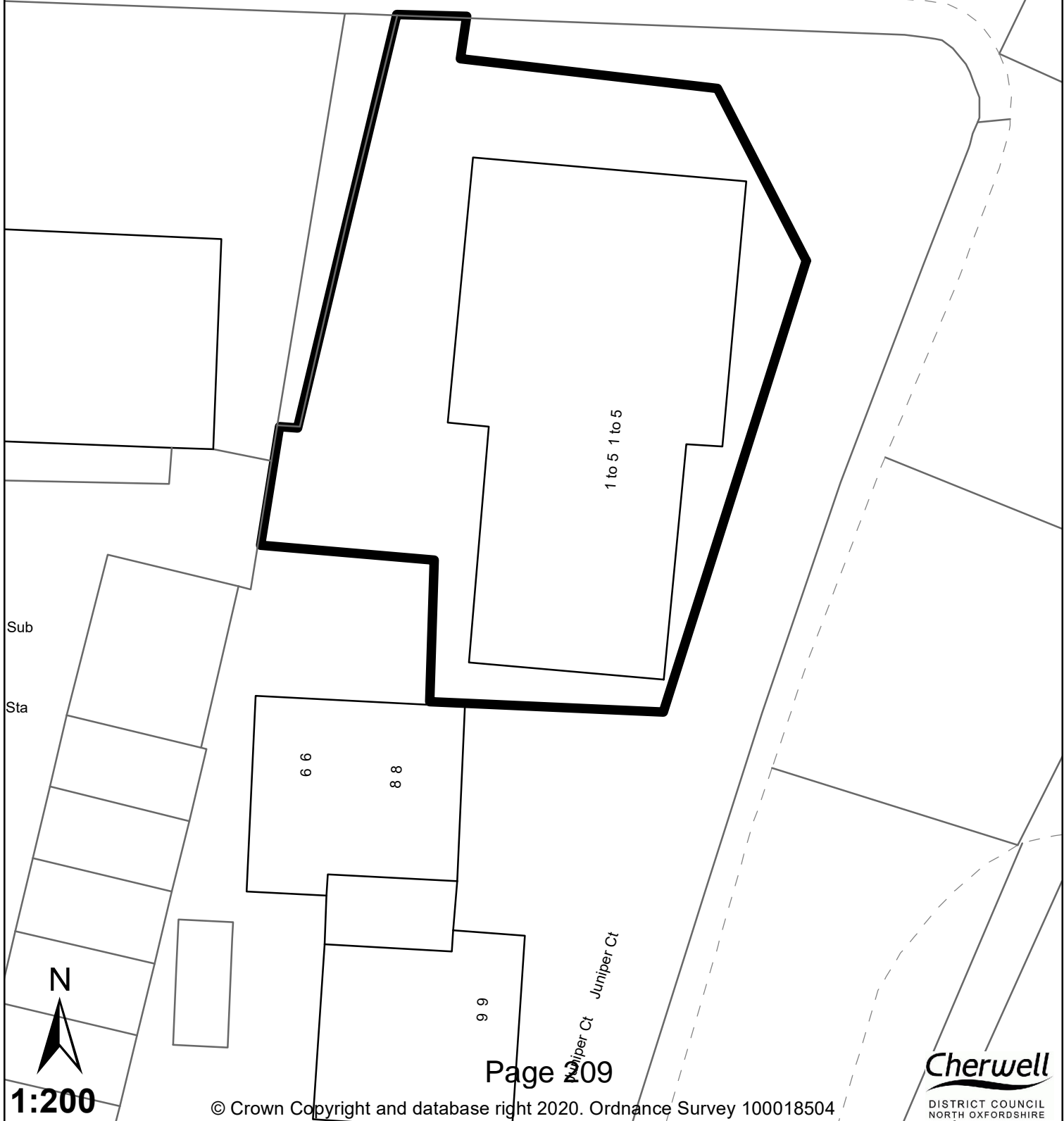
Reason: Cherwell District is in an area of water stress, to mitigate the impacts of climate change and in the interests of sustainability, to comply with Policies ESD1 and ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.



# 20/02123/DISC

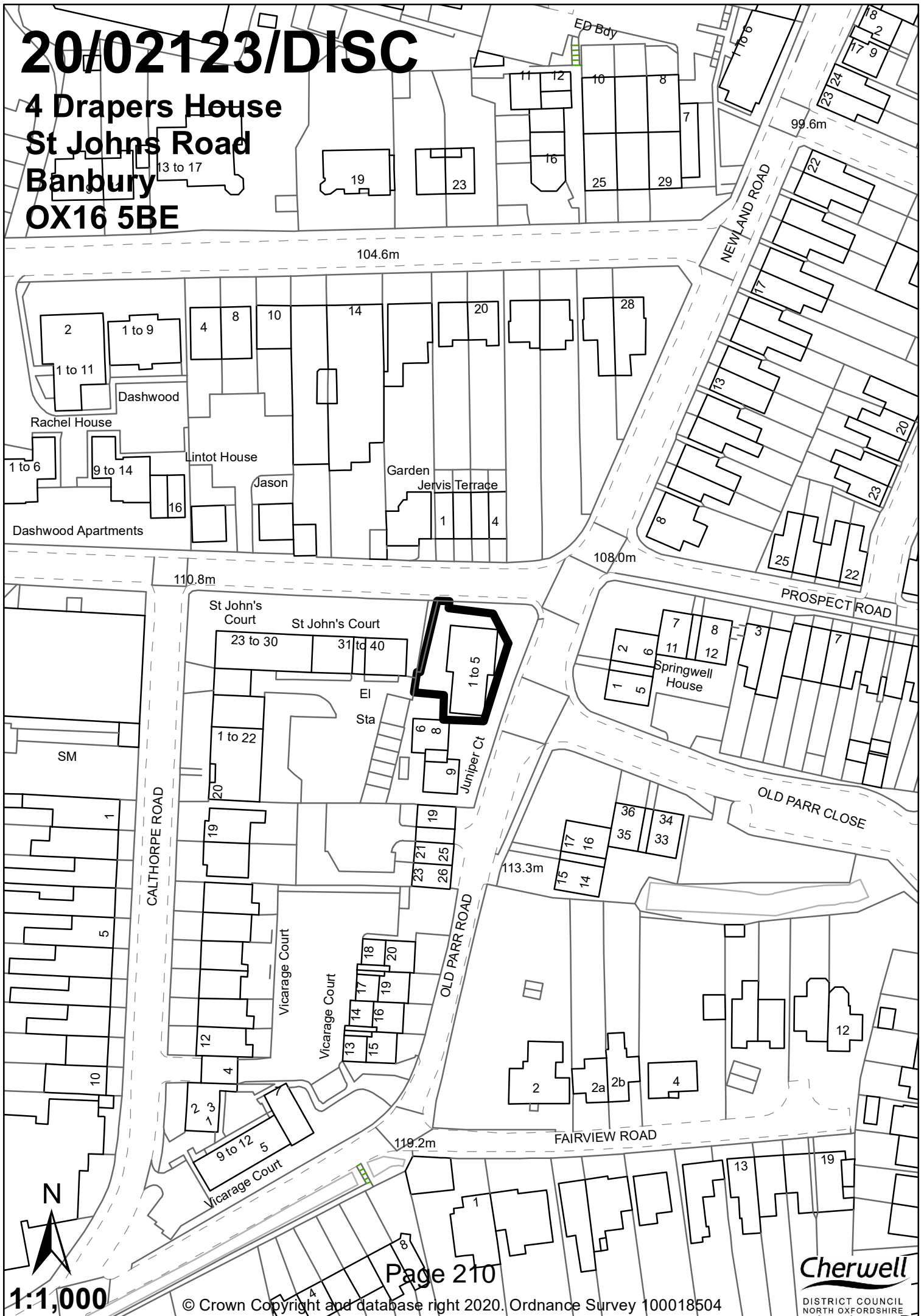
4 Drapers House  
St Johns Road

Banbury  
OX16 5BE



# 20/02123/DISC

4 Drapers House  
St Johns Road  
Banbury  
OX16 5BE



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**Case Officer:** Lewis Knox

**Applicant:** Mr Stephen Reynolds

**Proposal:** Discharge of condition 3 (windows) of 20/00693/LB

**Ward:** Banbury Cross and Neithrop

**Councillors:** Councillor Banfield, Councillor Dhesi and Councillor Perry

**Reason for**

**Referral:** Application submitted by a member of staff of CDC acting as agent

**Expiry Date:** 30 September 2020

**Committee Date:** 8 October 2020

**1. APPLICATION SITE AND LOCALITY**

1.1. The application property is a large two storey brick building, the majority of which dates back to around 1840. The building has entrances on both the east and west side elevations and large traditional timber sash windows on all elevations. The rear section of the building is a later addition in matching brick with smaller timber sash windows.

**2. CONSTRAINTS**

2.1. The application property is a grade II listed building and is located within the Banbury Conservation Area.

**3. CONDITIONS PROPOSED TO BE DISCHARGED**

3.1. The application seeks to discharge Condition 3 (Window details) of 20/00693/LB. The information submitted in conjunction with the application includes sections and plans of the proposed windows at 1:20 Scale as required by the condition.

**4. RELEVANT PLANNING HISTORY**

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

Application: 20/00693/LB      Permitted      22 June 2020

To replace 2 No. timber windows. Window 1 on the east facing elevation is a traditional boxed sash window and window 2 on the south facing elevation is a modern fixed light casement window circa 1970-80.

**5. PRE-APPLICATION DISCUSSIONS**

5.1. No pre-application discussions have taken place with regard to this proposal

**6. RESPONSE TO PUBLICITY**

6.1. This application has been publicised by way of a site notice displayed near the site and by advertisement in the local newspaper. The final date for comments is the **12 October 2020**.

- 6.2. No comments have been raised by third parties at the time of writing. Any comments received prior to Committee will be reported as an update.

## **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.

### CONSULTEES

- 7.2. **Cherwell District Council Conservation** – Window details considered to be acceptable
- 7.3. **Cherwell District Council Building Control** – Building Control Application Required

## **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)

- ESD15 - The Character of the Built and Historic Environment

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C18 – Development proposals affecting a listed building

- 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Managing Significance in Decision-Taking in the Historic Environment: Historic England Good Practice (2015)
- The Setting of Heritage Assets: Historic England Good Practice (2015)
- Banbury Conservation Area Appraisal (Sept 2018)

## **9. APPRAISAL**

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

- Heritage impact

### Heritage Impact



- 9.2. The site is within the Banbury Conservation Area and is a Grade II listed building
- 9.3. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*
- 9.4. Likewise Section 66 of the same Act states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Therefore, significant weight must be given to these matters in the assessment of this planning application.
- 9.5. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 193 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2031 Part 1 echoes this guidance.
- 9.6. The condition requires full details of the two windows to be replaced at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour/finish to be submitted to the Local Planning Authority for approval prior to the commencement of the approved works. Sufficient detail was submitted for the Council's Conservation Officer to make an assessment. It was subsequently concluded that the proposed wooden casement and sash windows were of an acceptable quality and would enhance the appearance of the building.
- 9.7. As the proposed windows would be a positive addition to the listed building, the approved drawings therefore comply with the heritage test set out in the NPPF as well as according with Policy ESD15 of the CLP 2031 and Policy C18 of the CLP 1996.

## **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 appropriate development. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted

## **11. RECOMMENDATION**

That, subject to no issues arising prior to the competition of the consultation period, Planning Condition 3 of 20/00693/LB be discharged based upon the following:

### **Condition 3 – Window Details**

In accordance with drawings entitled "Proposed replacement sash window ground floor East Elevation" and "Proposed Replacement Window South Elevation"

Agenda Item 15  
**20/01993/F**

**17 Fair Close  
Bicester  
OX26 4YW**



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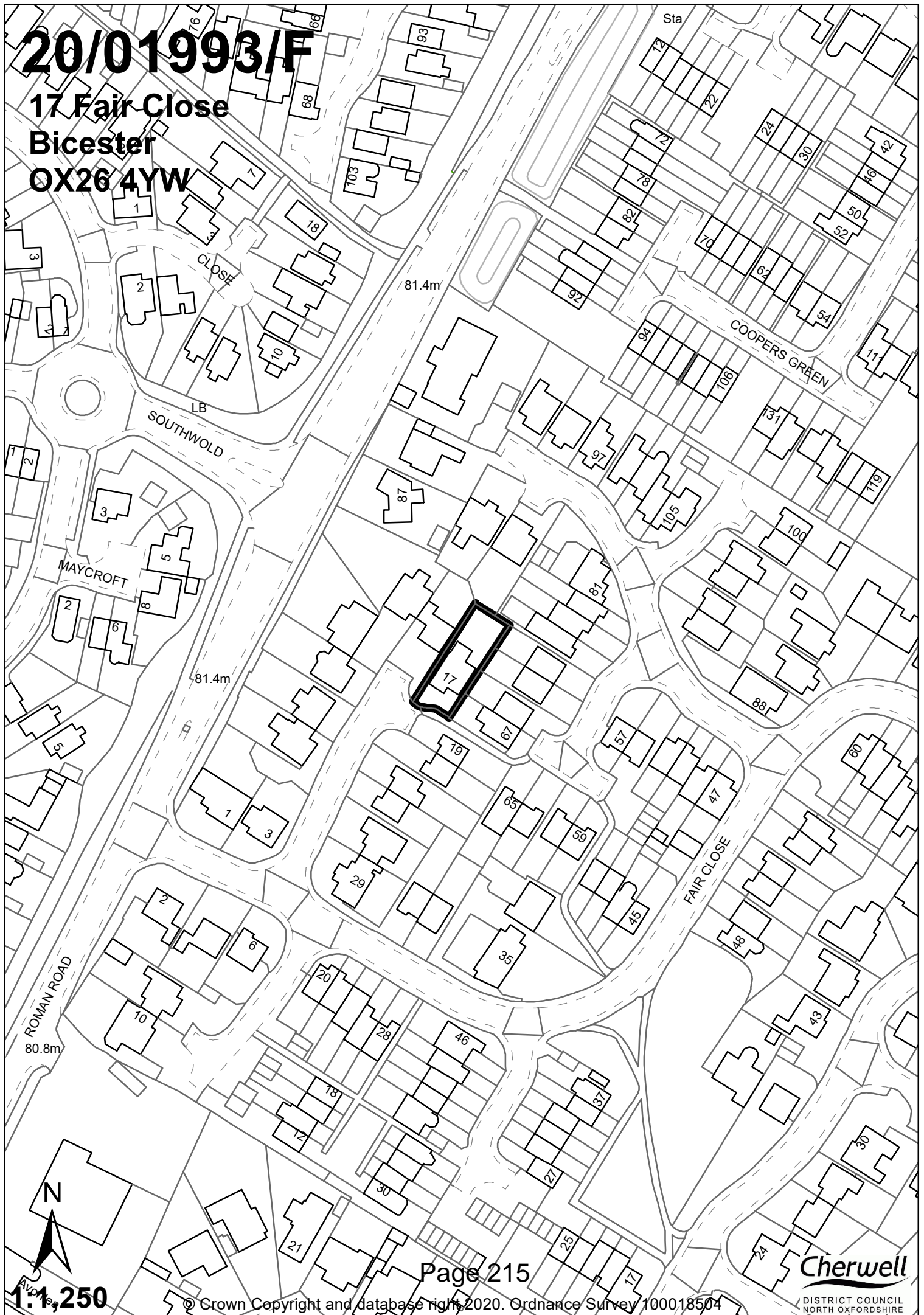
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# 20/01993/F

## 17 Fair Close

### Bicester

### OX26 4YW



**Case Officer:** Emma Whitley

**Applicant:** Mr Paul Nicol

**Proposal:** First-floor extension above the garage to create an additional habitable room.

**Ward:** Bicester East

**Councillors:** Cllr Sean Gaul, Cllr Richard Mold and Cllr Tom Wallis

**Reason for**

**Referral:** Application submitted by a senior officer of CDC

**Expiry Date:** 9 October 2020

**Committee Date:** 8 October 2020

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

- 1.1. The application site is a detached dwelling located on a residential estate to the north east of Bicester town centre. The dwelling is constructed from buff-facing brick with white uPVC fenestration under a plain tile roof. The property benefits from an attached single garage and an area of hardstanding to provide two off-street parking spaces.
- 1.2. The streetscene is characterised by detached and semi-detached dwellings of a similar scale: although the application property is slightly different due to a previous extension over the garage.

## **2. CONSTRAINTS**

- 2.1. The dwelling is not listed, nor is it situated within close proximity to any listed buildings. The property is not situated within a conservation area. Indeed, there are no site constraints considered relevant to this proposal.

## **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The applicant seeks planning permission for the enlargement of an existing first-floor extension above the garage. The space created would result in an additional habitable room.

## **4. RELEVANT PLANNING HISTORY**

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

90/00043/S – Single storey extension to kitchen and dining room and first floor extension over front of garage. *Application Permitted.*

75/00407/SRM(1) – Erection of 140 houses with garages, roads and all services. *Application Permitted.*

## **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. No pre-application discussions have taken place with regard to this proposal.

## 6. RESPONSE TO PUBLICITY

- 6.1. This application has been publicised by way of letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **10 September 2020**, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. No comments have been raised by third parties.

## 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 objections/ comments** received at the time of drafting the report.

### CONSULTEES

- 7.3. LOCAL HIGHWAYS AUTHORITY (OCC) – **No objections. Comments:** The proposal does not represent an intensification of use at the application site and is therefore unlikely to have an adverse traffic or road safety impact on the surrounding road network.

## 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)

- ESD15 - The Character of the Built and Historic Environment

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C30 – Design of new residential development

- 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide (2018)

- Cherwell Council Home Extensions and Alterations Design Guide (2007)

## 9. APPRAISAL

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

- Design, and impact on the character of the area
- Residential amenity
- Highways safety/ parking provision

### Design and Impact on the Character of the Area

- 9.2. Paragraph 124 of the NPPF states that: *'Good design is a key aspect of sustainable development'* and that it *'creates better places in which to live and work'*. This is reflected in Policy ESD15 of the CLP 2031 Part 1, which states that new development proposals should: *be designed to improve the quality and appearance of an area and the way it functions...contribute positively to an area's character and identity by creating or reinforcing local distinctiveness...(and) respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings.*
- 9.3. Saved Policies C28 and C30 of the CLP 1996 reinforce this, with Policy C30(ii) stating: *that any proposal to extend an existing dwelling (should be) compatible with the scale of the existing dwelling, its curtilage and the character of the streetscene.*
- 9.4. The proposed first-floor side extension would be very visible in the streetscene due to the site's prominent location at the end of a cul-de-sac. Following the receipt of amended plans, which now show a subservient addition, the design of extension is considered acceptable notwithstanding its conspicuous siting. It is therefore concluded that the design of the extension would remain in keeping with the character of the street scene, particularly as the materials used in the construction are proposed to match the existing dwelling.
- 9.5. The proposal is therefore considered to accord with Government guidance contained within the NPPF, saved Policies C28 and C30 of the Cherwell Local Plan and Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 in respect of its design.

### Residential Amenity

- 9.6. Paragraph 127 of the NPPF includes, as a core planning principle, a requirement that planning should have a *high standard of amenity for all existing and future users*. This is reflected in Policy ESD15 of the CLP 2031 Part 1, which states that new development proposals should: *consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.*
- 9.7. The Council's Home Extensions and Alterations Design Guide (2007) provides informal guidance on how the Council will assess proposed extensions to houses, including guidance on assessing the impact on neighbours. This includes assessing whether a proposed extension would extend beyond a line drawn at a 45° angle, as measured horizontally from the mid-point of the nearest habitable room window.
- 9.8. The position of the extension in relation to the surrounding properties means that the extension would not impact neighbouring residential amenity in respect of loss of light, outlook or privacy.

- 9.9. The proposal therefore complies with Government guidance contained within the NPPF, saved Policy C30 of the Cherwell local Plan 1996 and Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1.

#### Highway Safety/Parking Provision

- 9.10. Policy ESD15 of the CLP 2031 Part 1 states, amongst other matters, that new development proposals should: *be designed to deliver high quality safe...places to live and work in*. This is consistent with Paragraph 110 of the NPPF which states that: *developments should create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles*.
- 9.11. The site benefits from two parking spaces in front of the dwelling, with an additional space accommodated in the garage. As the proposal would not result in an additional bedroom, the parking provision retained at the dwelling is considered adequate for a dwelling of this size. Further, the Local Highways Authority did not provide any objections to this proposal.
- 9.12. The proposal is therefore considered acceptable in this regard and complies with Government guidance contained within the NPPF and Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1.

### **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 acceptable development. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

### **11. RECOMMENDATION**

DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW:

#### **Time Limit**

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

#### **Compliance with Plans**

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Drawing numbers SAS MCT 01 200 Rev PL; SAS MCT 01 201 Rev PL; SAS MCT 01 202 Rev PL; SAS MCT 01 250 Rev PL; SAS MCT 01 251 Rev PL; SAS FCB 01 Site Plan Rev P1; and SAS FCB 01 Location Plan Rev P0.

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

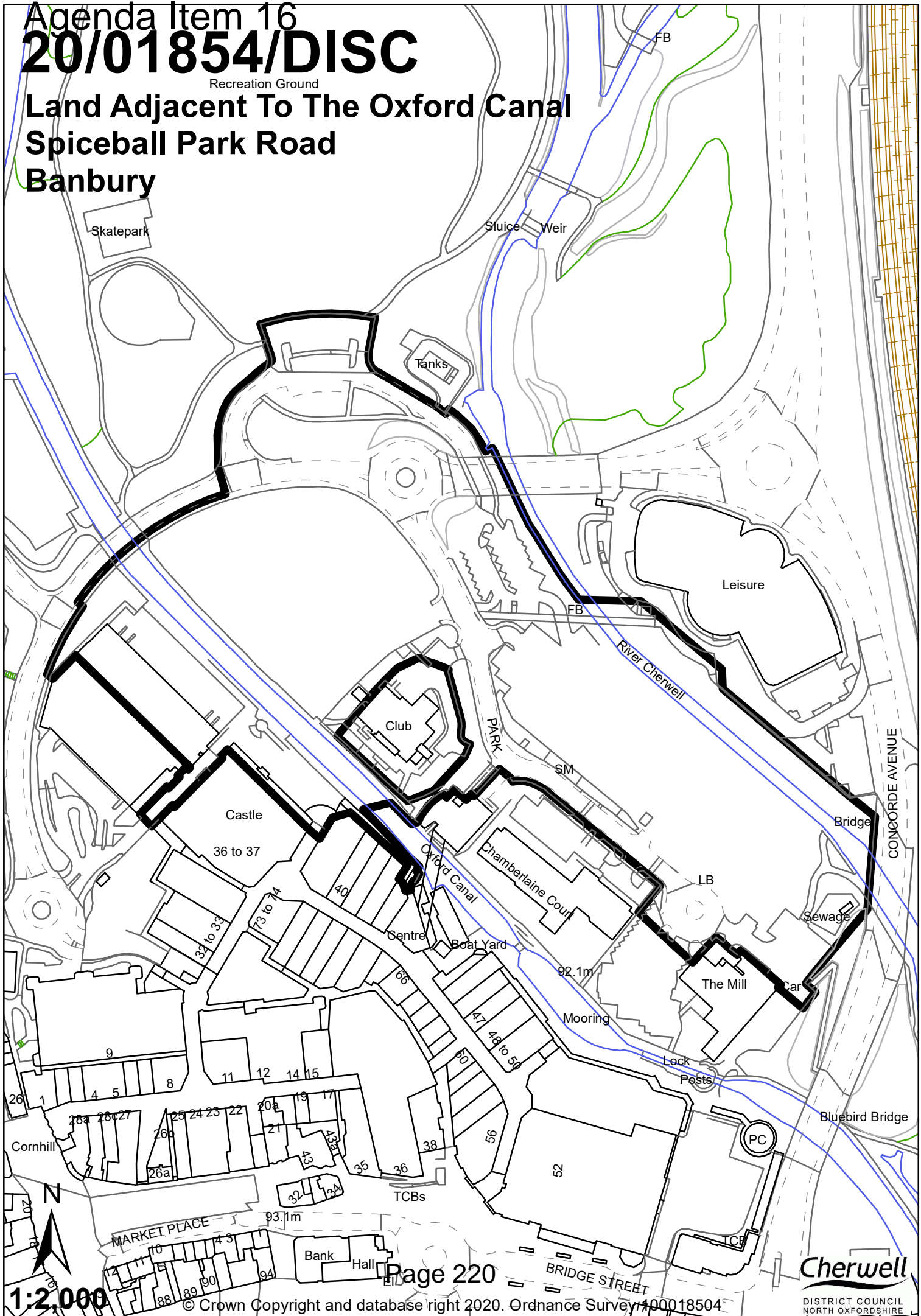
**CASE OFFICER:** Emma Whitley

**TEL:** 01295 221504

# Agenda Item 16 20/01854/DISC

Recreation Ground

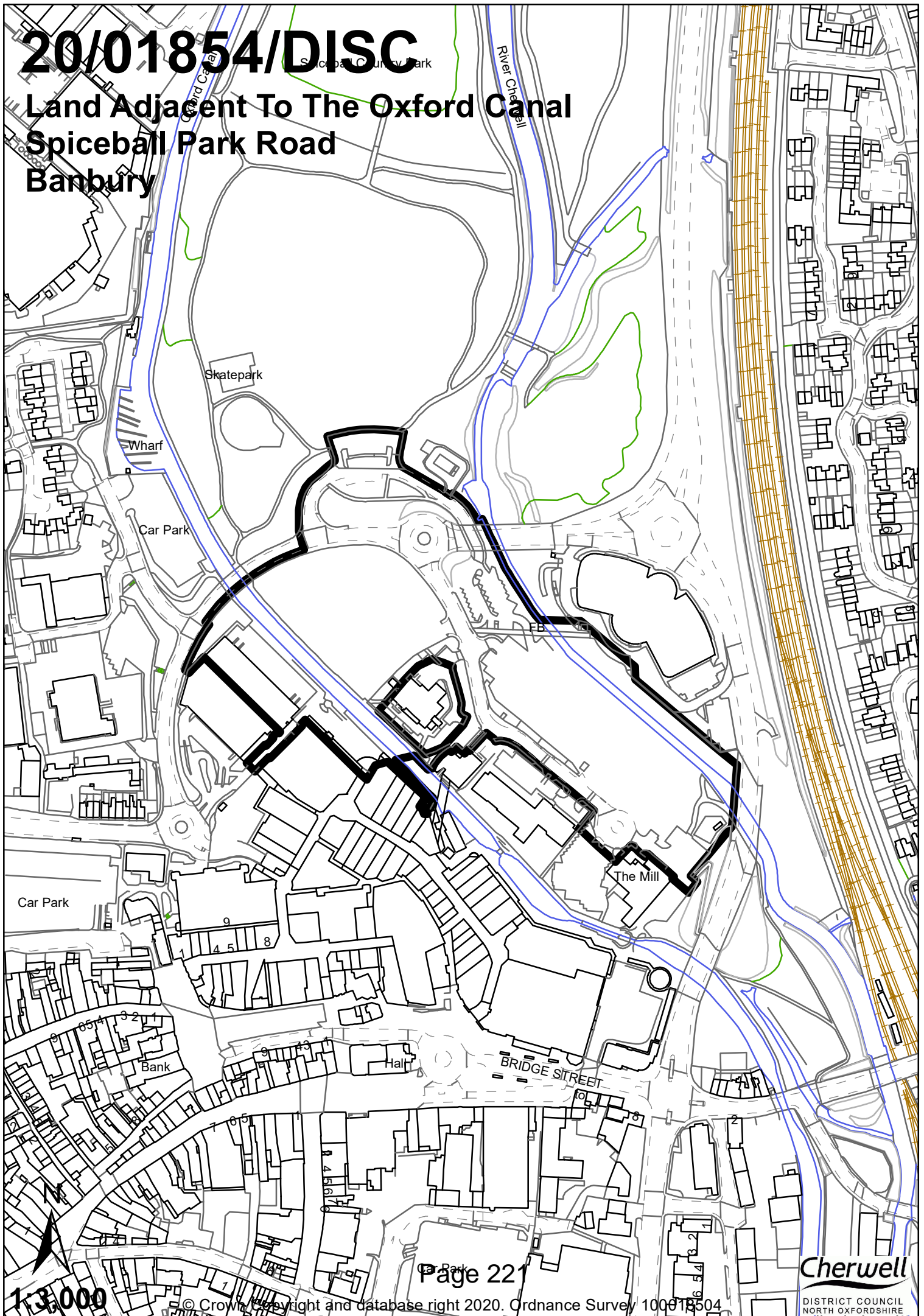
## Land Adjacent To The Oxford Canal Spiceball Park Road Banbury





# 20/01854/DISC

## Land Adjacent To The Oxford Canal Spiceball Park Road Banbury



Car Park

Car Park

Wharf

Skatepark

The Mill

Hall

Bank

BRIDGE STREET

**Case Officer:** Samantha Taylor

**Applicant:** Mr Ian Wallace

**Proposal:** Discharge of conditions 23 (surface water & foul sewage drainage) & 31 (SUDS Drainage) of 16/02366/OUT

**Ward:** Banbury Cross and Neithrop

**Councillors:** Councillor Banfield, Councillor Dhesi and Councillor Perry

**Reason for**

**Referral:** Application affects Council's own land and the Council is the applicant

**Expiry Date:** 24 August 2020

**Committee Date:** 8 October 2020

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

1.1. The application site is located within Banbury Town Centre, to the north of Castle Quay and adjacent to the Oxford Canal. The site is part of the Castle Quay 2 redevelopment which includes the provision of a new supermarket, retail and leisure facilities.

## **2. CONSTRAINTS**

2.1. The application site falls within Flood Zone 2 and is adjacent to the Oxford Canal Conservation Area.

## **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. The proposal seeks to discharge Condition 23 (surface water and foul sewage drainage) and Condition 31 (SUDs Drainage of the application 16/02366/OUT).

## **4. RELEVANT PLANNING HISTORY**

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

4.2. 17/00284/REM - Reserved Matters Application to 16/02366/OUT across the whole development site is sought. Application for approval of reserved matters for scale, layout, appearance and landscaping. Approved.

4.3. 17/00147/DISC – Discharge of Conditions 23 and 31. Approved.

4.4. 16/02366/OUT – Removal/ Variation of conditions 4 (list of approved drawings) and 9 (enhancement of River Cherwell) to 13/01601/OUT - Condition 4 to be varied to reflect alterations in the access and servicing strategy for Block C, with variations to maximum deviations in block and Condition 9 to be removed as no longer justified. Approved

4.5. 13/01601/OUT - Outline planning permission for the redevelopment of land adjacent to the Oxford Canal comprising; the demolition of the Castle Quay

Shopping Centre northern car park and the General Foods Sports and Social Club; change of use of part of the ground floor of the Castle Quay Shopping Centre southern car park and associated works; the erection of a retail foodstore (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafes (Use Class A3 and A4) and altered vehicular and pedestrian accesses, landscaping, construction of infrastructure, car parking and associated works, including glazed canopy over the Oxford Canal and the construction of pedestrian/cycle bridges over the Oxford Canal and River Cherwell. Details of new vehicular access off Cherwell Drive and alterations to Spiceball Park Road. Approved.

## 5. PRE-APPLICATION DISCUSSIONS

5.1. No pre-application discussions have taken place with regard to this proposal.

## 6. RESPONSE TO CONSULTATION

6.1. OCC LOCAL LEAD FLOOD AUTHORITY: No response received.

## 7. APPRAISAL

7.1. Previously, details have been considered acceptable to discharge Conditions 23 and 31. The current application varies some of the approved details, seeking to re-discharge Conditions 23 and 31.

7.2. The submitted plans on the whole, are consistent with the details previously considered acceptable. As such, consideration must be given to the amendments sought, which are summarised below:

7.3. Block A – the location of the drain outlet positions has been amended to suit tenant requirements and improvements to maintenance access to the drainage system, with the introduction of additional access chambers.

7.4. Block B – following a review of the surface water attenuation strategy, the applicant identified some discrepancies in the assumptions made. To ensure the development achieves the 20% betterment identified in the original application, a revised arrangement for attenuation and pumped outfall has been submitted.

7.5. Block C – variation to the drainage point of the north car park, separate roof drainage, increase in size of attenuation tanks, changes to drain outlet positions and number, improvement to maintenance access.

7.6. Overall the changes to the drainage plans ensure that the 20% betterment is achieved, improvements made were necessary and seek relatively minor amendments to the originally approved strategy for Conditions 23 and 31.

## 8. RECOMMENDATION

It is recommended that the details are approved as set out below:

### **Condition 23 – Surface Water and Foul Water Drainage**

Drainage Strategy Report – Blocks A, B & C CQ2-CCE-A0-XX-RP-C-5002

Block A – Hotel Drainage G.A. CQ2-CCE-A0-00-DR-C-1500 Rev C2

Block B Drainage Overall Drainage Layout CQ2-CCE-B0-00-DR-C-1527 Rev C1

Block C Drainage Layout (Sheet 1) CQ2-CCE-C0-00-DR-C-1581 Rev C3

Block C Drainage Layout (Sheet 2) CQ2-CCE-C0-00-DR-C-1582 Rev C4

Block C Drainage Layout (Sheet 3) CQ2-CCE-C0-00-DR-C-1583 Rev C4  
Block C Drainage Layout (Sheet 4) CQ2-CCE-C0-00-DR-C-1584 Rev C3

**Condition 31 – SUDs Drainage**

Drainage Strategy Report – Blocks A, B & C CQ2-CCE-A0-XX-RP-C-5002  
Block A – Hotel Drainage G.A. CQ2-CCE-A0-00-DR-C-1500 Rev C2  
Block B Drainage Overall Drainage Layout CQ2-CCE-B0-00-DR-C-1527 Rev C1  
Block C Drainage Layout (Sheet 1) CQ2-CCE-C0-00-DR-C-1581 Rev C3  
Block C Drainage Layout (Sheet 2) CQ2-CCE-C0-00-DR-C-1582 Rev C4  
Block C Drainage Layout (Sheet 3) CQ2-CCE-C0-00-DR-C-1583 Rev C4  
Block C Drainage Layout (Sheet 4) CQ2-CCE-C0-00-DR-C-1584 Rev C3

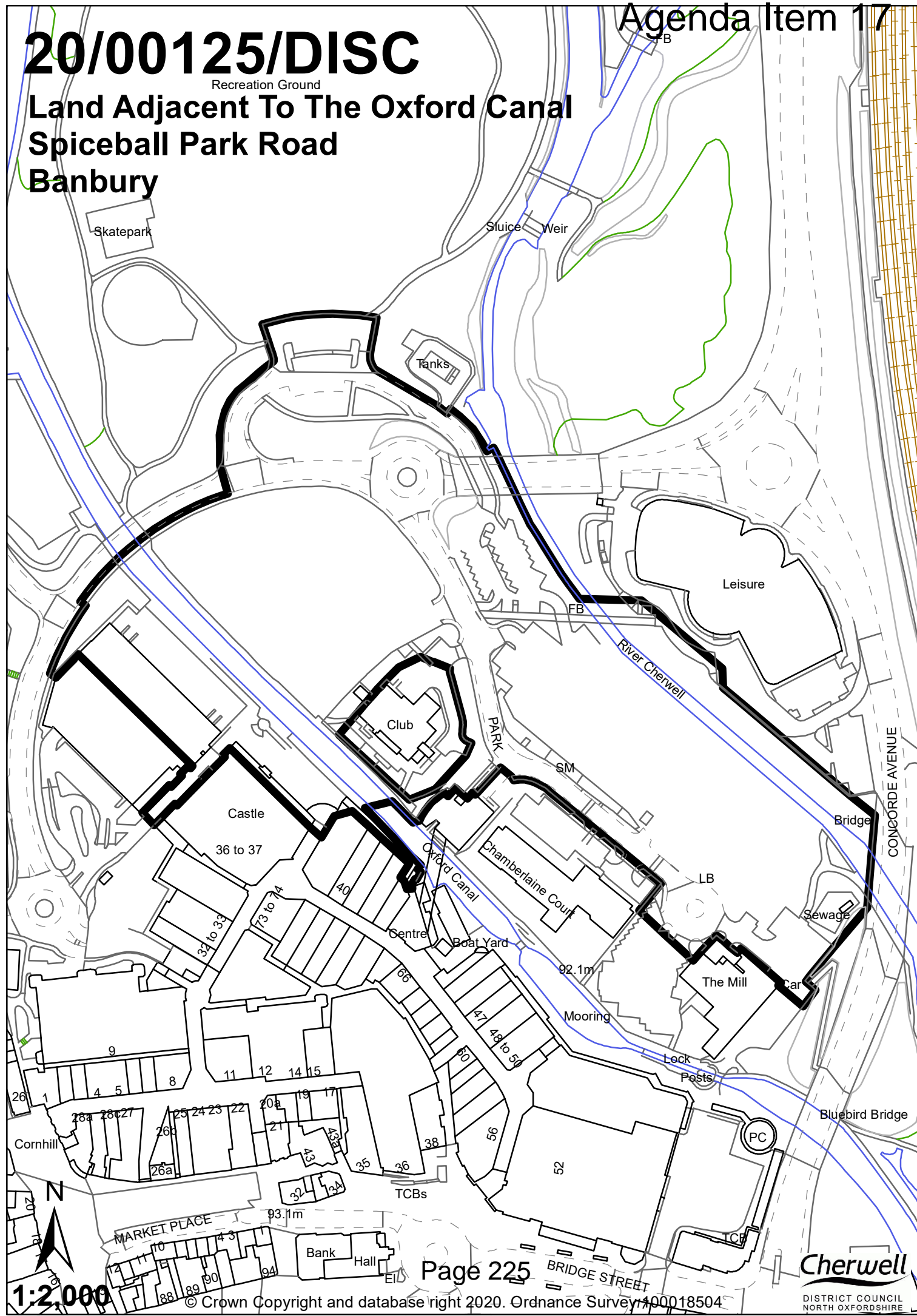
CASE OFFICER: Samantha Taylor

TEL: 01295 221689

# 20/00125/DISC

Recreation Ground

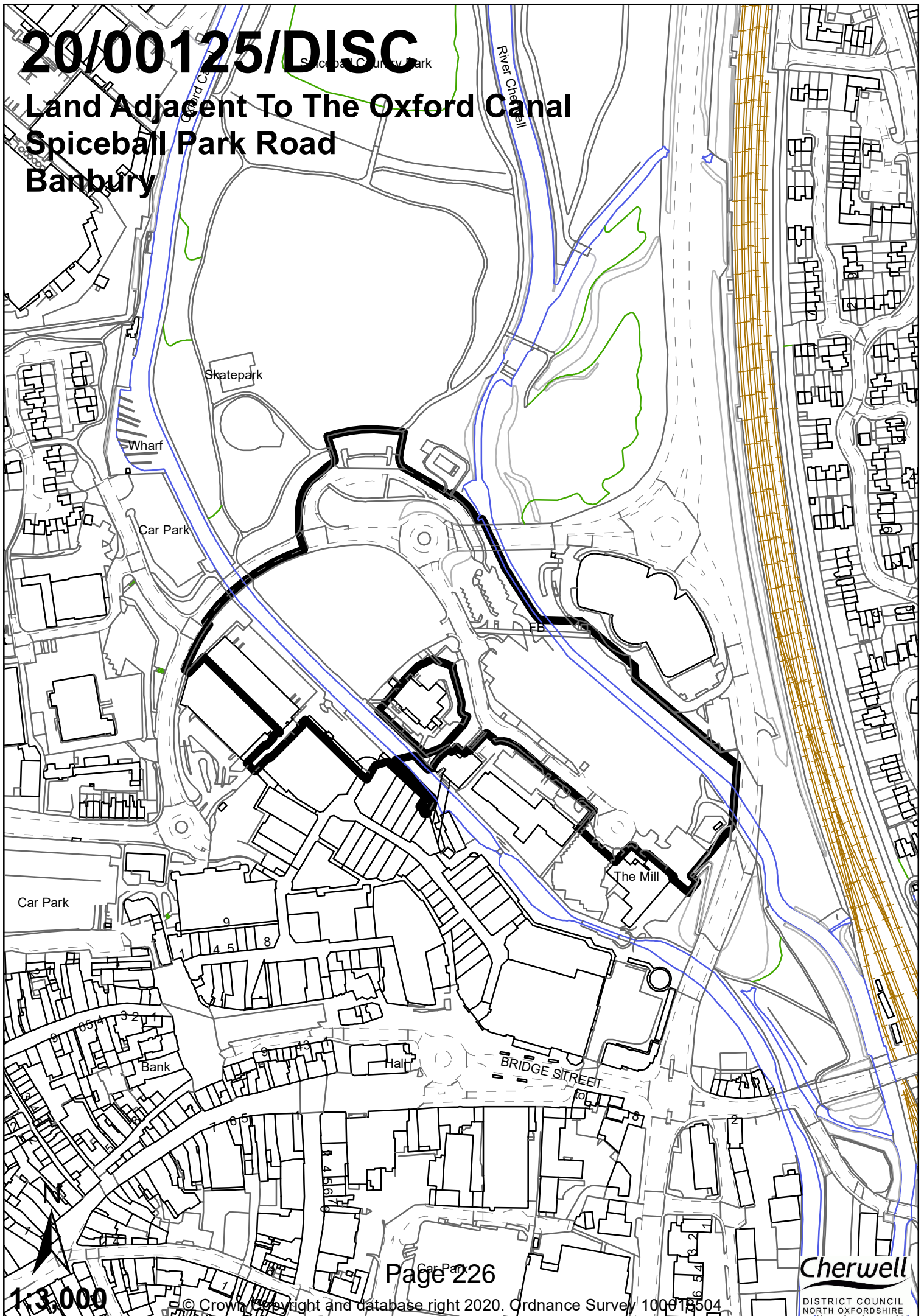
## Land Adjacent To The Oxford Canal Spiceball Park Road Banbury



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# 20/00125/DISC

## Land Adjacent To The Oxford Canal Spiceball Park Road Banbury



**Case Officer:** Samantha Taylor

**Applicant:** Ian Wallace

**Proposal:** Discharge of Condition 6 (Landscaping) of 17/00284/REM

**Ward:** Banbury Cross and Neithrop

**Councillors:** Councillor Banfield, Councillor Dhesi and Councillor Perry

**Reason for**

**Referral:** Application affects Council's own land and the Council is the applicant

**Expiry Date:** 16 March 2020  
2020

**Committee Date:** 8 October

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**1. APPLICATION SITE AND LOCALITY**

1.1. The application site is located within Banbury Town Centre, to the north of Castle Quay and adjacent to the Oxford Canal. The site is part of the Castle Quay 2 redevelopment which includes the provision of a new supermarket, retail and leisure facilities.

**2. CONSTRAINTS**

2.1. The application site falls within Flood Zone 2 and is adjacent to the Oxford Canal Conservation Area.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. The proposal seeks to discharge Condition 6 (landscaping) of the application 17/00284/REM.

**4. RELEVANT PLANNING HISTORY**

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

4.2. 17/00284/REM - Reserved Matters Application to 16/02366/OUT across the whole development site is sought. Application for approval of reserved matters for scale, layout, appearance and landscaping. Approved.

4.3. 16/02366/OUT – Removal/ Variation of conditions 4 (list of approved drawings) and 9 (enhancement of River Cherwell) to 13/01601/OUT - Condition 4 to be varied to reflect alterations in the access and servicing strategy for Block C, with variations to maximum deviations in block and Condition 9 to be removed as no longer justified. Approved

4.4. 13/01601/OUT - Outline planning permission for the redevelopment of land adjacent to the Oxford Canal comprising; the demolition of the Castle Quay Shopping Centre northern car park and the General Foods Sports and Social Club; change of use of part of the ground floor of the Castle Quay Shopping Centre southern car park and

associated works; the erection of a retail foodstore (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafes (Use Class A3 and A4) and altered vehicular and pedestrian accesses, landscaping, construction of infrastructure, car parking and associated works, including glazed canopy over the Oxford Canal and the construction of pedestrian/cycle bridges over the Oxford Canal and River Cherwell. Details of new vehicular access off Cherwell Drive and alterations to Spiceball Park Road. Approved.

## **5. PRE-APPLICATION DISCUSSIONS**

5.1. No pre-application discussions have taken place with regard to this proposal.

## **6. RESPONSE TO CONSULTATION**

6.1. CDC LANDSCAPING: Initial response received, further information is required showing the street furniture to be installed.

6.2. *Officer comments – the information requested has been submitted and an updated response has been requested. An update will be provided to the Planning Committee. The below appraisal is based on the Planning Officer's comments.*

## **7. APPRAISAL**

7.1. The application seeks approval of the landscaping details. Condition 6 states:

Notwithstanding submitted detail, a detailed landscape scheme shall be submitted and agreed with the Local Planning Authority prior to commencement of any works above ground floor slab level on any buildings. Details shall include:

- a) details of the proposed tree and shrub planting including their species, number, sizes and position together with grass seeded/turfed areas
- b) details of the existing trees and hedgerows to be retained as well as those to be felled including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation
- c) details of the hard surface areas, including pavements, pedestrian areas, crossing points and steps, public seating and waste bins
- d) details of the wire-based climbing plant systems.
- e) full details, locations, specifications and construction methods for all purpose built tree pits and associated above ground features, to include specifications for the installation of below ground, load-bearing 'cell structured' root trenches, root barriers, irrigation systems and a stated volume of a suitable growing medium to facilitate and promote the healthy development of the proposed trees

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

7.2. The planting plan shows landscaping will be provided across the development and to soften the hard edges where the site meets the road network and along the canal. A mixture of trees, shrubs, and other plants have been placed throughout the development according to their location and species need, using plant areas to define character. The street furniture is of a modern, functional design consistent with the context and design of the buildings.



7.3. Overall, it is considered the information provided satisfies the requirement of Condition 6 and is acceptable.

## 8. RECOMMENDATION

It is recommended that the details are approved as set out below:

### **Condition 6 – Landscaping**

Softworks Plan 1 P11478-00-001-400 Rev 02  
Softworks Plan 2 P11478-00-001-401 Rev 03  
Softworks Plan 3 P11478-00-001-402 Rev 02  
Softworks Plan 4 P11478-00-001-403 Rev 02  
Zone A Hardworks and Furniture CQ2-LJA-G0-00-DR-A-04310  
Zone A Kerbs, Edges and Walls CQ2-LJA-G0-00-DR-A-04311  
Zone A Levels and Drainage CQ2-LJA-G0-00-DR-A-04312  
Zone B Hardworks and Furniture CQ2-LJA-G0-00-DR-A-04320  
Zone B Kerbs, Edges and Walls CQ20LJA-G0-00-DR-A-04321  
Zone B Levels and Drainage CQ20LJA-G0-00-DR-A-04322  
Zone C Hardworks and Furniture Sheet 1 of 2 CQ20LJA-G0-00-DR-A-04330  
Zone C Hardworks and Furniture Sheet 2 of 2 CQ20LJA-G0-00-DR-A-04331  
Zone C Kerbs, Edges and Walls Sheet 1 of 2 CQ20LJA-G0-00-DR-A-04332  
Zone C Kerbs, Edges and Walls Sheet 2 of 2 CQ20LJA-G0-00-DR-A-04333  
Zone C Levels and Drainage Sheet 1 of 2 CQ20LJA-G0-00-DR-A-04334  
Zone C Levels and Drainage Sheet 2 of 2 CQ20LJA-G0-00-DR-A-04335  
Zone D Hardworks and Furniture CQ20LJA-G0-00-DR-A-04340  
Zone D Kerbs, Edges and Walls CQ20LJA-G0-00-DR-A-04341  
Zone D Levels and Drainage CQ20LJA-G0-00-DR-A-04342  
Step Details 1 CQ20LJA-G0-00-DR-A-24100  
Walls and Balustrade Details CQ20LJA-G0-00-DR-A-24101  
CQ2 Street Furniture

Case Officer: Samantha Taylor

TEL: 01295 221689

# Agenda Item 18

**Cherwell District Council**

**Planning Committee**

**8 October 2020**

**Appeals Progress Report**

**Report of Assistant Director Planning and Development**

This report is public

## **Purpose of Report**

This report aims to keep members informed upon applications which have been determined by the Council, where new appeals have been lodged. Public Inquiries/hearings scheduled, or appeal results achieved.

## **1.0 Recommendations**

The meeting is recommended:

- 1.1 To accept the position statement.

## **2.0 Report Details**

### **2.1 New Appeals**

**20/01232/DISC - Land to the South West of Tadmarton Road, Bloxham, Oxfordshire OX15 4HP-** Discharge of condition 22 (Car Park Management Plan) of 13/00496/OUT

Officer recommendation – Refusal (Delegated)

**Method of determination:** Written Representations

**Key Dates:**

**Start Date:** 26.08.2020    **Statement Due:** 30.09.2020    **Decision:** Awaited

**Appeal reference** – 20/00024/REF

**20/00674/F - Land Adjoining And West Of The Kings Head, Banbury, Road Finmere -** Erection of 5no dwellings, formation of new vehicular access and associated hardstanding for parking

Officer recommendation – Refusal (Delegated)

**Method of determination:** Written Representations

**Key Dates:**

**Start Date:** 18.09.2020    **Statement Due:** 23.10.2020    **Decision:** Awaited

**Appeal reference** – 20/00025/REF

## 2.2 New Enforcement Appeals

None

## 2.3 Appeals in progress

**19/00831/OUT - Land South Of Home Farm House, Clifton Road, Deddington, OX15 0TP - OUTLINE - Residential development of up to 15 dwellings**

Officer recommendation – Refusal (Committee)

**Method of determination:** Written Representations

**Key Dates:**

**Start Date:** 03.03.2020    **Statement Due:** 09.04.2020    **Decision:** Awaited

**Appeal reference – 20/00010/REF**

**19/02444/OUT - Land South Of Home Farm House, Clifton Road, Deddington, OX15 0TP - Outline planning permission for the residential development of up to 14 dwellings - all matters save for the means of access are reserved for subsequent approval - revised scheme of 19/00831/OUT**

Officer recommendation – Refusal (Committee)

**Method of determination:** Written Representations

**Key Dates:**

**Start Date:** 03.03.2020    **Statement Due:** 09.04.2020    **Decision:** Awaited

**Appeal reference – 20/00007/REF**

**19/00969/F - Bowler House, New Street, Deddington, OX15 0SS – Single storey rear extension forming new Sun Room**

Officer recommendation – Refusal (Delegated)

**Method of determination:** Written Reps.

**Key Dates:**

**Start Date:** 27.01.2020    **Statement Due:** 02.03.2020    **Decision:** Awaited

Officer recommendation – Refusal (Delegated)

**Appeal reference – 20/00009/REF**

**19/00970/LB – Bowler House, New Street, Deddington, OX15 0SS - Single storey rear extension forming new Sun Room**

Officer recommendation – Refusal (Delegated)

**Method of determination:** Written Reps.

**Key Dates:**

**Start Date:** 20.02.2020    **Statement Due:** 26.03.2020    **Decision:** Awaited

**Appeal reference – 20/00008/REF**

**19/02465/LB – Cedar Lodge, North Side, Steeple Aston, OX25 4SE - Creation of jib door and stair, and associated works to include the removal of ceiling joists**

Officer recommendation – Refusal (Delegated)

**Method of determination:** Written Reps.

**Key Dates:**

**Start Date:** 09.07.2020    **Statement Due:** 13.08.2020    **Decision:** Awaited

**Appeal reference – 20/00021/REF**

## 2.4 Enforcement appeals

None

## 2.5 Forthcoming Public Inquiries and Hearings between 9<sup>th</sup> October 2020 and 5<sup>th</sup> November 2020.

None

## 2.6 Results

Inspectors appointed by the Secretary of State have:

- 1. Dismissed the appeal by Euro Garages for RETROSPECTIVE - to retain storage container to rear of petrol filling station kiosk. Esso, Banbury Service Station, Oxford Road, Bodicote, OX15 4AB  
Officer recommendation – Refusal (Delegated) 20/00167/F  
Appeal reference – 20/00023/REF**

The Inspector considered the main issue to be the proposal's effect on the character and appearance of the area.

The Inspector held that the storage container has a boxlike and utilitarian form, with its limited openings, lack of detailing and grey finish results in a bland and unattractive structure. Furthermore, that the difference in height and proximity to the kiosk has a negative overall appearance of the site, through a cluttered and disjointed appearance. The Inspector concluded that the proposal failed to comply with Policy ESD15 or Paragraph 127 of the NPPF, in that it does not make a positive contribution to improving the surrounding character and appearance.

The Inspector observed that the character of the area is mixed, with commercial, but not industrial elements, and that storage containers are also not commonplace in the area. The Inspector noted that the text for Policy ESD15 holds design standards for new development, whether housing or commercial, in equal regard.

Overall, the Inspector found that the proposal would result in harm to the character and appearance of the area and would not complement the character of its context, contrary to Policy ESD15, as well as saved Policy C28 of the 1996 Plan, which requires development to have standards of design and external appearance sympathetic to its context.

Accordingly, the Inspector dismissed the appeal.

- 2. Dismissed the appeal by Mr K Bishop for Change of Use and conversion of 1no agricultural building into 1no self-contained dwellinghouse (Use Class C3) including associated operational development under Part 3 Class Q (a) and (b). Barn, Folly Farm, Grange Lane, Sibford Ferris, OX15 5EY  
Officer recommendation – Refusal (Delegated) 20/00174/Q56**

### **Appeal reference – 20/00022/REF**

The Inspector considered the main issues to be whether the proposal was permitted development (“PD”), with particular regard to whether the requirements of Class Q(b) would be met, and whether the requirements of Q(a) would be met having particular regard to the proposed curtilage of the dwellinghouse and the provisions Paragraph X to Part 3 of the General Permitted Development Order (“GPDO”).

The Inspector noted that development under Class Q(b) is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs or exterior walls, or water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwellinghouse.

The Inspector also noted the PPG advice that the Class Q ‘PD’ right assumes the agricultural building is capable of functioning as a dwelling and that it is not the intention of the PD right in Class Q(b) to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use.

The Inspector held that the works proposed amounted to extensive building operations, largely replacing all the external facing materials, and she was not assured that further works would not be required. The Inspector concluded that the works proposed would go beyond what might reasonably be described as a conversion and were therefore not permitted development.

In addition, the Inspector found that the curtilage shown on the approved plans exceeded the definition given in paragraph X of the GPDO. Although she agreed that it could have been resolved through imposition of a condition of any permission given, the proposal fell outside the extent of the Class Q(a) PD right.

Accordingly, the Inspector dismissed the appeal.

### **3. Dismissed the appeal by Mr A Baker for First floor side extension. Single storey rear extension. 1 Beechfield Crescent, Banbury, OX16 9AR Officer recommendation – Refusal (Delegated) 19/02267/F Appeal reference – 20/00017/REF**

The Inspector identified the impact on the character and appearance of the area, in respect of the first floor side extension, as the key issue in this case.

The Inspector agreed with the Council that the lack of subservience to the existing building would appear incongruous, as the surrounding area is characterised by a ‘notable degree of symmetry’. This harm was exacerbated by the ‘angled’ nature of the side elevation and the fact that the site is visibly prominent in the street scene. The Inspector dismissed the appellant’s assertion that there were a number of similar examples, to that of the appeal proposal, in the vicinity. Whilst the nature of the developments identified were

similar, it was concluded that there were significant differences with the appellant's scheme.

On the basis of this assessment, the Inspector dismissed the appeal.

**4. Allowed the appeal by Ultranz Ltd for Redevelopment of site; demolition of existing buildings and erection of building for B8 use. Cowpastures Farm, Arncott Road, Piddington, OX25 1AE  
Officer recommendation – Refusal (Delegated) 19/02399/F  
Appeal reference – 20/00020/REF**

The Inspector considered the main issues to be the principle of a new Class B8 building in this location, and the effect of the scale of the proposed building on the character and appearance of the area.

The Inspector held that since the two existing buildings had been converted and were being used for B8 purposes, and the proposal was therefore not for a new Class B8 use, it was less relevant than would normally be the case that the site was not an environmentally sustainable one or that the appellant had not demonstrated having explored the availability of other existing employment sites; the Inspector thus concluded the proposal was acceptable in principle.

Although agreeing with the Council that the proposed building would have a large physical mass and would be noticeably larger than the existing buildings, the Inspector was satisfied that the proposal “in effect would fill-in the present gap” and this reduced its overall visual impact. He also noted that the building was sited away from the public realm and that “large utilitarian buildings” were not unusual features in the local area, including buildings in institutional and military use.

Overall, subject to a condition to control the treatment of the external appearance of the building (which it is noted he did not impose) and conditions requiring a landscaping scheme and restricting the use, the Inspector concluded that the proposal would not adversely affect the character or appearance of the area, and accordingly allowed the appeal.

### **3.0 Consultation**

None

### **4.0 Alternative Options and Reasons for Rejection**

4.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To accept the position statement.

Option 2: Not to accept the position statement. This is not recommended as the report is submitted for Members' information only.

## 5.0 Implications

### Financial and Resource Implications

- 5.1 The cost of defending appeals can normally be met from within existing budgets. Where this is not possible a separate report is made to the Executive to consider the need for a supplementary estimate.

Comments checked by:

Karen Dickson, Strategic Business Partner, 01295 221900,  
[karen.dickson@cherwell-dc.gov.uk](mailto:karen.dickson@cherwell-dc.gov.uk)

### Legal Implications

- 5.2 There are no additional legal implications arising for the Council from accepting this recommendation as this is a monitoring report.

Comments checked by:

Matthew Barrett, Planning Solicitor 01295 753798  
[matthew.barrett@cherwell-dc.gov.uk](mailto:matthew.barrett@cherwell-dc.gov.uk)

### Risk Management

- 5.3 This is a monitoring report where no additional action is proposed. As such there are no risks arising from accepting the recommendation.

Comments checked by:

Matthew Barrett, Planning Solicitor 01295 753798  
[matthew.barrett@cherwell-dc.gov.uk](mailto:matthew.barrett@cherwell-dc.gov.uk)

## 6.0 Decision Information

### Wards Affected

All

### Links to Corporate Plan and Policy Framework

A district of opportunity

### Lead Councillor

Councillor Colin Clarke

### Document Information

<b>Appendix No</b>	:
<b>Title</b>	:
<b>Background Papers</b>	: None
<b>Report Author</b>	: Sarah Stevens, Interim Senior Manager,

Development Management  
**Contact Information:** [sarah.stevens@cherwell-dc.gov.uk](mailto:sarah.stevens@cherwell-dc.gov.uk)



## **Cherwell District Council**

### **Planning Committee**

**8 October 2020**

### **Planning Enforcement Report**

#### **Report of Assistant Director Planning and Development**

This report is public

#### **Purpose of Report**

To inform Members about planning enforcement cases at CDC and update on the current position following the update in July regarding case numbers and how the team continues to operate during the restrictions of COVID19.

#### **1.0 Recommendation**

The meeting is recommended:

- 1.1 To note the contents of the report.

#### **2.0 Introduction**

- 2.1 This report provides the quarterly overview of the work of planning enforcement last reported in July 2020. This report will provide the update on enforcement activity, including notices served since the last update in July.
- 2.2 This report will also provide an update on how the enforcement team have continued to operate during the COVID19 pandemic, and also the challenges currently being faced.

#### **3.0 Report Details**

##### *Active enforcement and monitoring cases*

- 3.1 There are currently 333 active enforcement cases and 245 active Development Monitoring cases (279 active cases reported in July 2020). The Council has received a total of 109 new planning enforcement cases since the last Committee report and 30 new Monitoring cases.
- 3.2 The number of open cases had been steadily reducing over the last 12-18 months, however, a recent rapid increase in cases received, along with some staff changes and the impact of the Covid-19 restrictions has meant that progress has slowed and unfortunately case numbers have begun to rise again.

- 3.3 During the lockdown period, there was a significant amount of time that site visits did not take place at all, therefore meaning that the usual progressing of cases could not occur. Site visits have resumed, but these are mostly limited to external visits with fewer internal visits carried out after risk assessments.
- 3.4 The team are working hard to prioritise and progress those enforcement cases causing the most significant planning harm and also to bring the case numbers back down.
- 3.5 The Department appear to be receiving higher numbers of cases each month when compared to previous years. This could be attributed to people spending more time at home and therefore having more time for self-home improvements, coupled with more people witnessing breaches of planning control for the same reason of being home for more prolonged periods.
- 3.6 There had also been some short-term staff issues in the team with one enforcement officer leaving the team during the summer. The team has now successfully recruited a replacement enforcement officer who began their position on 1 September, and this is anticipated to help drive forward case progression.
- 3.7 In addition, the team is looking to recruit a new Principal Enforcement Officer. This is a new position in the team to offer greater support to the Team Leader in driving forward the most controversial and complex breaches through to formal action.

#### *Notices issued and prosecutions*

- 3.8 It was reported at the last Committee meeting that the Council had temporarily halted the issuing of formal notices during the period of lockdown. Since the last report, re-issuing enforcement notices has begun as reported in the table below.
- 3.9 A number of prosecutions are being pursued with 5 prosecution hearings being held in October. It was hoped these would be determined by the time of the writing of this report, however the dates of hearings are not within the Councils control. The updates of these prosecutions will be reported at the next quarterly update

#### *Updates to significant ongoing cases*

- 3.8 A brief history and actions to date on cases that are 'public' and of significant Member Interest are set out below. Ward Members are now routinely advised when an enforcement notice is issued within their area, therefore you will be advised if a notice is issued within your ward area. The tables are broken down to show the notices issued Pre- 2020, Jan-March 2020 and then again for this last quarter since notices have been reissued again March 2020-October 2020. The table will only show outstanding enforcement cases

where formal action has been taken and remains to be resolved, as cases are resolved they will be removed. with the results of recently resolved cases following formal action are also shown but will be removed in subsequent reports to show only current enforcement cases.

## Pre-2020 Notices

Ref Number	Address	Type of Notice	Date Served	Breach	Commentary
17/00201/ PROS	Field Farm, Stratton Audley Road, Stoke Lyne	EN	24/05/16	Eco-Pod, structures and hard standing	<p>Court hearing was scheduled for April for non-compliance with enforcement notice. All Court Hearings postponed for Covid-19.</p> <p>First hearing in Court was scheduled for 7 August. However, this was rescheduled to Friday 2 October.</p>
12/00020/ ECOU	The Pheasant Pluckers Inn, Burdrop, Banbury	EN	09/02/12	Change of Use of Public House to C3 Dwellinghouse	<p>Latest planning appeal refused for change of use from pub to C3 residential use.</p> <p>Pub had reopened and work was underway to establish if this constituted compliance with the enforcement notice, however as all pubs have been closed since lockdown this matter has been placed on hold. Matter to be revisited.</p>
17/00237/ ENFC	Land Parcel 2783 Street from Cropredy To Great Bourton Cropredy	EN	15/03/18	Mobile Home sited in field	<p>Court hearing was scheduled for April for non-compliance with enforcement notice. All Court Hearings postponed for Covid-19.</p> <p>First hearing was in Court on 7 August. However, this was postponed to Monday 28 September for a case management hearing. Defendants pleaded not guilty. Trial now set for 17 March 2021</p>

Ref Number	Address	Type of Notice	Date Served	Breach	Commentary
18/00057/ ENFB	The Kings Head 92 East Street Fritwell OX27 7QF	EN	14/03/19	Unauthorised change of use from public house to independent dwelling house	Appeal dismissed. Compliance due 1 July 2020.  Initial visit attempted and contact made with owners. Full visits to be scheduled to check compliance with enforcement notice.
17/00241/ ENFC	OS Parcel 4400 South of Manor Farm House and East of North Aston Hall Farm Somerton Road North Aston	EN	14/03/19	Change of use from agricultural land to a caravan site	Compliance date for removal of caravan was January 2020.  Notice not yet complied with but working with owners and closely with housing colleagues to ensure the housing needs of the occupants are met.

### Notices Jan-March 2020

Ref Number	Address	Type of Notice	Date Served	Breach	Commentary
19/00128/ ENF	Spruce Meadows Cropredy Lane Williamscot	EN	13/02/20	Caravan on land used for residential, storage of shipping containers and other structures	Appeal submitted – awaiting start date from PINS
19/00172/ ENF	65 Calthorpe Street, Banbury.	BCN	10/02/20	Breach of condition regarding hours of opening	No right of appeal  09/03/20  Site being monitored to check compliance.
19/00171/ ENF	64 Calthorpe Street, Banbury.	BCN	10/02/20	Breach of condition regarding hours of opening	No right of appeal  09/03/20  Site being monitored to check compliance.
19/00309/ ENF	84 Green Road,	EN	13/02/20	Change of use of	Appeal not accepted by PINS – submitted out of

Ref Number	Address	Type of Notice	Date Served	Breach	Commentary
	Kidlington.			dwellinghouse to a guesthouse	time Compliance date of notice 18/08/20  Visit required to establish if notice has been complied with.
19/00099/ ENF	Land to rear of 9-11 The Garth, Yarnton	EN	12/03/20	Change of use of land for storage of builders & Plumbing materials	Not appealed  Compliance was required by 26/04/20. Prosecution now being considered.  Work underway to locate the owner of the site.

### Notices March-October 2020

Ref Number	Address	Type of Notice	Date Served	Breach	Commentary
19/00225/ ENFC	40 The Daedings, Deddington, Banbury, OX15 0RT	EN	21/08/20	Siting of a shipping container on front driveway	Not appealed.  Compliance period was set for 21 October 2020.  Recent visit confirms container has been removed and the breach is now resolved
19/00233/ ENFC	Horse And Groom Inn Main Road Milcombe OX15 4RS	EN	21/08/20	Installation of a kitchen extraction and air input system	Not appealed.  Compliance period was set for 21 October 2020.  Current application for new equipment with improvements to noise/smell emissions currently under consideration.  To be reviewed following decision.
18/00232/ ENFC	47 Easington Road	EN	14/09/20	Use of outbuilding	Recipients of the notice have until 14 October 2020

Ref Number	Address	Type of Notice	Date Served	Breach	Commentary
	Banbury OX16 9HJ			as self-contained dwelling-house	to submit an appeal to PINS.

EN – Enforcement Notice  
 BCN – Breach of Condition Notice  
 PINS – Planning Inspectorate

## 4.0 Conclusions and Reasons for Recommendations

4.1 Members are asked to note the report.

## 5.0 Consultation

5.1 None

## 6.0 Alternative Options and Reasons for Rejection

6.1 None

## 7.0 Implications

### Financial and Resource Implications

7.1 Comments checked by

Karen Dickson, Strategic Business Partner

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### Legal Implications

7.2 The body of the report sets out all the important legal implications

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## 8.0 Decision Information

### Key Decision

N/A

**Financial Threshold Met:**

N/A

**Community Impact Threshold Met:**

N/A

**Wards Affected**

All

**Links to Corporate Plan and Policy Framework**

A district of opportunity

**Lead Councillor**

Councillor Colin Clarke, Lead Member for Planning

**Document Information**

**Appendix number and title**

None

**Background papers**

None

**Report Author and contact details**

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