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Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

Committee: Planning Committee
Date: Thursday 11 March 2021
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 Richard Mould
Councillor Conrad Copeland
Councillor Timothy Hallchurch MBE
Councillor Tony Mephram
Councillor Douglas Webb
Councillor Bryn Williams
Councillor Sean Woodcock

Councillor Mike Bishop
Councillor Surinder Dhesi
Councillor Tony Ilott
Councillor Ian Middleton
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 4 - 28)

To confirm as a correct record the Minutes of the meeting of the Committee held on 11 February 2021.

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.

7. Proposed Pre-Committee Site Visits (if any)

There are no proposed site visits.

Planning Applications

- 8. Bicester Gateway Business Park, Wendlebury Road, Chesterton (Pages 31 - 65) 20/00293/OUT**
- 9. Blessed George Napier Roman Catholic School, Addison Road, Banbury, OX16 9DQ (Pages 66 - 96) 20/02745/F**
- 10. Land at Railway Line at Blackthorn and Piddington, Marsh Gibbon Road, Piddington (Pages 97 - 117) 20/02936/F**
- 11. Land Adjacent To The Oxford Canal, Spiceball Park Road, Banbury (Pages 118 - 122) 20/03692/DISC**

Review and Monitoring Reports

12. Appeals Progress Report (Pages 123 - 129)

Report of Assistant Director Planning and Development

Purpose of report

To keep Members informed about planning appeal progress including the scheduling of public inquiries and hearings and decisions received.

Recommendations

1.0 To note the position on planning appeals contained within the report.

Information about this Agenda

Apologies for Absence

Apologies for absence should be notified to democracy@cherwell-dc.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@cherwell-dc.gov.uk, 01295 221591

Yvonne Rees
Chief Executive

Published on Wednesday 3 March 2021

Agenda Item 4

Cherwell District Council

Planning Committee

Minutes of a meeting of the Planning Committee held as a Virtual meeting, on 11 February 2021 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
Councillor Katherine Tyson

Apologies for absence:

Councillor Simon Holland

Officers:

Alex Chrusciak, Senior Manager - Development Management
Nat Stock, Minors Team Leader
Matt Chadwick, Senior Planning Officer
Caroline Ford, Interim Major Developments Team Leader
Emma Whitley, Planning Officer
Karen Jordan, Deputy Principal Solicitor
Natasha Clark, Governance and Elections Manager
Lesley Farrell, Democratic and Elections Officer

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Declarations of Interest

11. Axis J9 Phase 1 OS Parcel 4200 Adjoining Middleton Road and Howes Lane, Bicester.

Councillor John Broad, Declaration, that the application could be seen as pre-determined as an objection had been submitted and would leave the meeting for the duration of the item.

Councillor Les Sibley, Declaration, that the application could be seen as pre-determined as an objection had been submitted and would leave the meeting for the duration of the item.

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

122 **Requests to Address the Meeting**

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

123 **Minutes**

The Minutes of the meeting held on 14 January 2021 were agreed as a correct record and signed by the Chairman.

124 **Chairman's Announcements**

The Chairman made the following announcements:

1. The Committee be reminded that the meeting was broadcast live and to bear in mind that every word counts.
2. Where applications were proposed for refusal, contrary to officer recommendations, in the past best practice had been for Councillors to provide policy numbers for reasons for refusal. The Committee were now required to provide clear planning reasons with officer advice to provide policy numbers.

125 **Urgent Business**

There were no items of urgent business.

126 **Proposed Pre-Committee Site Visits (if any)**

There were no proposed site visits.

127 **Barn In OS Parcel 0545 West Of Withycombe Farm, Wigginton**

The Committee considered application 20/01933/F for the erection of one residential dwelling for multi-generational living, landscape enhancements and associated works at Barn in OS Parcel 0545 West of Withycombe Farm, Wigginton for Virginia Sweetingham.

Due to the current ban on physical site visits, the Planning Officer had coordinated the use of a drone to record drone footage of the application site, which he presented to the Committee.

Ian McArdle, representing Wigginton Parish Council addressed the Committee in objection to the application

Ray Fazey, a local resident addressed the Committee in objection to the application.

Rob Hughes, agent for the applicant, addressed the Committee in support of the application.

It was proposed by Councillor Hugo Brown and seconded by Councillor Mike Kerford-Byrnes that application 20/01933/F be refused contrary to the officer recommendation due to the scale of the development, the multiple dwellings, not being of exceptional design and having a detrimental impact on the open countryside.

On being put to the vote, the proposal was lost and the motion subsequently fell.

It was proposed by Councillor Colin Clarke and seconded by Councillor Cassi Perry that application 20/01933/F be approved in line with the officer recommendation.

On being put to the vote the result was tied and went to the Chairman's casting vote.

In reaching its decision the Committee considered the officers report and presentation, the drone footage, the addresses of the public speakers and the written updates.

Resolved

- (1) That authority be delegated to the Assistant Director for Planning and Development to grant permission for application 20/01933/F subject to:
 - (i) 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) That application 18/00063/Q56 shall not be implemented
 - b) That the use of the building as one dwelling only
 - (ii) 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: Site Location Plan (117-L-01); Proposed Site and Roof Plan (117-P-01 Rev D); Proposed Ground Floor Plan (117-P-02 Rev D); Proposed First Floor Plan (117-P-03 Rev D); Elevations (117-E-01 Rev E); Stone Barn in NW of Damp Meadow Plans and Elevations as Proposed (117-B-02 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.

3. No development shall commence above slab level unless and until samples of the timber to be used externally in the construction of the walls and roof of the development have 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 samples so approved and shall be retained as such thereafter.

Reason - To ensure the satisfactory appearance of the completed development and to safeguard the character and appearance of the area 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.

4. No development shall commence 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, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps,
- (d) means of enclosure.

The development shall not be carried out other than in accordance with the approved landscaping scheme and the development shall not be occupied until the hard landscape elements of the approved scheme have been carried out and the hard landscape elements shall be retained as such thereafter.

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 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

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 buildings 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 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.

6. The dwelling hereby approved shall not occupied unless and until the existing means of access between the land and the highway has been improved formed, laid out and constructed strictly in accordance with Oxfordshire County Council's guidance.

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

7. The vision splays shall not be obstructed by any object, structure, planting or other material of a height exceeding 0.9 m 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

8. Prior to the first occupation of the development hereby approved, the parking and manoeuvring areas shall be provided in accordance with the plan approved (drawing no. 117-P-02 D) and shall be constructed from porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the site. Thereafter, the parking and manoeuvring area shall be retained in accordance with this condition and shall be unobstructed except for the parking and manoeuvring of vehicles at all times.

Reason - In the interests of highway safety, to ensure the provision of off-street car parking and to comply with Government guidance contained within the National Planning Policy Framework

9. No development shall commence unless and until full specification details of the proposed access drive including construction, surfacing, layout, drainage and road markings, have been submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of the dwelling the development shall be constructed in accordance with the approved details.

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.

10. No development shall commence unless and until a Landscape and Ecological Management Plan (LEMP), which shall include types, locations, design and numbers of all additional features to be included for wildlife as set out in the Preliminary Ecological Appraisal prepared by ecologybydesign dated August 2019, 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 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.

11. No development shall commence unless and until 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, 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 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.

12. 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 prior to the first occupation of the development. The vehicular electric charging points shall be provided in accordance with the approved details prior to the first occupation of the unit they serve 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 commencement of the development hereby permitted a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model shall be 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 shall be 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 risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

14. If a potential risk from contamination is identified as a result of the work carried out under condition 13, 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 risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

15. If contamination is found by undertaking the work carried out under condition 14, 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 risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

16. If remedial works have been identified in condition 15, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 15. 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 risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

17. If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.

Reason - To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

18. No development shall commence unless and until full details of the external lighting have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details and shall be retained as such thereafter.

Reason - To safeguard the character and appearance of the area and surrounding landscape and heritage assets 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.

19. Notwithstanding the submitted details, no development shall commence unless and until an amended Arboricultural Method Statement (AMS), undertaken in accordance with BS:5837:2012 and all subsequent amendments and revisions, has been submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the approved AMS.

Reason – To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape 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.

20. Notwithstanding the provisions of Classes A to E (inc.) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments, the approved dwelling shall not be extended, nor shall any structures be erected within the curtilage of the said dwelling,

without the grant of further specific planning permission from the Local Planning Authority.

Reason: To ensure and retain the satisfactory appearance of the completed development and to enable the Local Planning Authority to retain planning control over the development of this site to protect the character of the wider landscape and countryside and in the interests of sustainable development and to comply with Policies BSC1, ESD1, ESD13 and 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.

128 **The Chesterton Hotel, Bicester Road, Chesterton, OX26 1UE**

The Committee considered application 20/02653/F for the variation of condition 2 (plans) of application 18/01529/F - to amend the design of the extension at The Chesterton Hotel, Bicester Road, Chesterton, OX26 1UE for Rabinder Gill.

Christopher Messum, a local resident addressed the Committee in objection to the application.

Simon Sharpe, planning consultant for the applicant addressed the Committee in support of the application.

Kaven Gill, addressed the Committee in support of the application.

In reaching its decision the Committee considered the officer's report and presentation, the addresses of the public speakers and the written updates.

Resolved

- (1) That application 20/02653/F be refused for the following reason:

By virtue of its design, form and use of materials, the proposed function hall extension would result in a visually incongruous and poorly designed form of development that would fail to relate to well to the existing hotel building and would adversely affect the character and appearance of the area. This harm would significantly and demonstrably outweigh the proposals' benefits. The proposed development would therefore fail 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.

129 **Straw Barn College Farm, Main Street, Wendlebury, OX25 2PR**

The Committee considered application 20/02859/F for the erection of a general-purpose agricultural building at Straw Barn, College Farm, Main Street, Wendlebury, OX25 2PR for Mr & Mrs T Howard.

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

Resolved

- (1) That application 20/02859/F be approved subject to the following conditions:

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: 20.192.01 Rev B; 20/0192.02; 20/192.03 Rev A and the Landscaping Scheme produced by Pyramid Consulting Arboricultural Consultancy (January 2021).

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. The tree planting scheme, as shown on approved drawing number 20-0192-01 Rev B, and the Landscaping Scheme produced by Pyramid Consulting Arboricultural Consultancy (January 2021), shall be completely implemented within the first planting season following the first use of any part of the approved development. All planting, seeding or turfing comprised in the approved details of landscaping shall be maintained for a period of 5 years from the first use of any part of the approved 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 provide an effective and attractive screen for the development in the interests of visual amenity and to accord with Policy ESD13 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.

4. All site clearance (including the removal of any vegetation or works to hedgerows) should be timed so as to avoid the bird nesting season, this being during the months of March until July inclusive unless alternative

provisions have been previously agreed in writing by the Local Planning Authority

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 Policy ESD10 of the Cherwell Local Plan 2011–2031 Part 1, and Government guidance contained within the National Planning Policy Framework.

5. The existing trees to be retained along the eastern border of the development shall be protected in accordance with the detail set out in the Landscaping Scheme produced by Pyramid Consulting Arboricultural Consultancy (January 2021).

Reason : To ensure the continued health of retained trees and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policies ESD13 and 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.

6. If the use of the building, hereby approved, for the purposes of agriculture permanently ceases, the building must be removed from the land and the land must, so far as is practicable, be restored to its condition prior to the implementation of this permission or to such a condition as agreed in writing by the Local Planning Authority.

Reason – The site is in an area where permission for development unrelated to the needs of agriculture would not normally be granted and therefore to enable the Local Planning Authority to retain planning control over the development of the site and in order to safeguard the amenities of the area in accordance with saved Policies C28 and ENV1 of the Cherwell Local Plan 1996, Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

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Axis J9 Phase 1 OS Parcel 4200 Adjoining Middleton Road and Howes Lane, Bicester

The Committee considered application 20/03199/F for a variation of condition 13 (extent of employment development usage) of application 19/00347/OUT - to enable the full employment development to be occupied for use Class B8 at Axis J9 Phase 1 OS Parcel 4200 adjoining Middleton Road and Howes Lane, Bicester for Albion Land Two Limited.

Emma Lancaster, agent for the applicant addressed the meeting in support of the application.

It was proposed by Councillor Lynn Pratt and seconded by Councillor Ian Corkin that application 20/03199/F be approved subject an amendment as detailed in paragraph 9.26 of the officer's report, to refer to the site being used for no more than 85% B8 uses. This would enable the whole site as it was

planned to be used for B8 uses, but if further floorspace were proposed in the future, this would be restricted to B2/E(g)(iii) uses (as the up to 80% restriction on B2/B1c (now E(g) (iii) would remain in place). Officers recommend that Class E(g) (iii) is referred to as the grant of this permission would be a new permission for the site, but it would be necessary to restrict change of use to other uses within Class E given the nature of this commercial site.

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

Resolved

- (1) That authority be delegated to the Assistant Director for Planning and Development to grant permission for application 20/03199/F subject to:
 - a) 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 link the application to the Section 106 agreement that currently binds the site (other than in so far as to update the agreement to refer to this permission or and as otherwise advised by the Council's Legal department)
 - b) The following conditions (and any amendments to those conditions deemed necessary):

CONDITIONS

1. Details of the access (in so far as not approved in this decision), appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") of any phase of development shall be submitted to and approved in writing by the Local Planning Authority before any development of that phase takes place and the development shall be carried out as approved.

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, and Article 5(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

2. No development shall take place until a phasing plan for the whole development has been submitted to and approved in writing by the Local Planning Authority indicating the landscaping, open space, play facilities, affordable housing, cycle ways, footpaths and public transport facilities to be provided in each phase. Development shall be carried out in accordance with the phasing plan.

Reason: To ensure the proper phased implementation of the development and associated infrastructure in accordance with

Government guidance contained within the National Planning Policy Framework.

3. Application for approval of the reserved matters for the first phase of employment development shall be made to the Local Planning Authority not later than 3 years from the 19 December 2017.

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, and Article 5(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

4. Application for approval of the reserved matters for the remaining phases of development shall be made to the Local Planning Authority not later than 5 years from the 19 December 2017.

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, and Article 5(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

5. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

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, and Article 5(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

6. The access to the development hereby permitted shall be carried out in accordance with Parameter Plan 06, drawing number 17023/TP/106 Rev A and the following approved plans: 14042-30 revision B and 14042-56. No employment development on plot 4 shall be occupied until the access shown on drawing 14042-30 revision B has been completed to a standard capable of being adopted by the local highway authority.

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

7. No development shall take place other than in accordance with the Land Uses shown on Parameter Plan 02, drawing number 17023/TP/102 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 to comply with Government guidance contained within the National Planning Policy Framework.

8. The height of the development hereby permitted shall not exceed the limits shown on Parameter Plan 03, drawing number 17023/TP/103.

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

9. No development on any phase shall be occupied until the planting proposals shown on Parameter Plan 04_A, drawing number 4216_SK_204_A revision D and encompassed within that phase have been carried out.

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

10. No site clearance, preparatory work or development shall take place on any phase until a scheme for the protection of the trees and hedgerows in that phase shown to be retained on Parameter Plan 05 (drawing number 17023/TP/105 (vegetation retention and removal plan) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees and hedgerows shall be carried out as approved. No tree or hedgerow shown to be retained shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner, other than in accordance with Parameter Plan 05, without the prior written approval of the local planning authority. If any tree or hedgerow shown to be retained is cut down, uprooted or destroyed or dies another tree or hedgerow shall be planted at the same place within the following planting season and that tree shall be of such size and species as may be specified in writing by the local planning authority. Notwithstanding the detail shown on Parameter Plan 05, the element of hedgerow shown to be removed to the east of Plot 2 shall be retained and protected, which shall be demonstrated through the scheme for the protection of trees and hedgerows.

Reason: In the interests of the visual amenities of the area, to protect landscape features of importance, to ensure that the significant environmental effects arising from the development are mitigated, as set out in the Environmental Statement 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.

11. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive.

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 and Government guidance contained within the National Planning Policy Framework.

12. No more than 150 dwellings shall be constructed on the site.

Reason: In order to retain planning control over the use of the site, to ensure that the significant environmental effects arising from the development are mitigated, as set out in the Environmental Statement and in accordance with Government guidance contained within the National Planning Policy Framework.

13. No more than 53,000 sq m of employment floor space shall be constructed on the site, of which no more than 80% (42,400sqm) shall be utilised for purposes falling within Class E(g)(iii) or B2 (including ancillary uses) and no more than 85% (45,050sqm) within Class B8 (including ancillary uses) of the Town and Country Planning (Use Classes) Order 1987 (or their equivalent in subsequent enactments or re-enactments) and for no other purposes whatsoever, including no other categories of Class E.

Reason: In order to retain planning control over the use of the site, to ensure that the significant environmental effects arising from the development are mitigated, as set out in the Environmental Statement and in accordance with Government guidance contained within the National Planning Policy Framework.

14. No dwellings and no more than 18,020sqm of Class E(g)(iii)/B2 floor space may be occupied until the development work to realign Howes Lane and Lords Lane approved under application 14/01968/F (or any other such planning permission which may be granted for the Strategic Link Road) has been completed and the road is open to vehicular traffic.

Reason: Oxfordshire County Council as Highway Authority have advised that there is a need for a restriction on the quantum of development that can occur at North West Bicester prior to the opening of the Howes Lane/Lords Lane realignment. The maximum traffic that can be accommodated is a total of 900 homes (including 393 at Elmsbrook) and 40% of the proposed overall 10 hectares of employment land. The development identified to take place prior to the Howes Lane/ Lords Lane realignment would fall within this identified capacity in vehicular movement terms. Beyond this and without the realignment, the highways impact of development over

the identified capacity would be severe. A restriction on development is therefore necessary until such time that the tunnel is in place and open to vehicular traffic to mitigate the impact of traffic from the development in accordance with Government Guidance within the Eco Towns PPS and the National Planning Policy Framework.

15. No dwelling or employment building shall be occupied until it has been provided with devices showing real time energy and travel information in accordance with details which shall have been submitted to and approved in writing by the local planning authority prior to the commencement of their construction. The devices shall thereafter be retained in operational condition.

Reason: To support the delivery of modal shift towards sustainable modes and create high quality, inclusive, sustainable development in accordance with Government guidance contained within the Eco Towns PPS and National Planning Policy Framework.

16. No dwelling or employment building shall be occupied until it has been provided with service connections capable of supporting the provision of high speed broadband from the building to the nearest broadband service connection outside the site.

Reason: To facilitate information provision to homes for energy monitoring, travel and home working change in accordance with Government guidance contained within the Eco Towns PPS and National Planning Policy Framework.

17. Prior to the commencement of each residential phase, those areas of the phase that are likely to be subject to elevated levels of noise, e.g. from the Strategic Link Road, shall be identified and the dwellings that are constructed in those areas shall be designed and constructed in such a manner that they contain elements of sound insulation that will ensure that the internal noise levels contained within table 4 of BS 8233:2014 are achieved in accordance with details to be first submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details so approved.

Reason: To ensure the creation of a satisfactory environment free from intrusive levels of noise and to comply with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

18. No phase of development shall commence until details of the embedded carbon of its proposed construction materials have been submitted to and approved in writing by the local planning authority. The development shall be carried out in compliance with the approved details.

Reason: To ensure the development achieves a reduced carbon footprint in accordance with Planning Policy Statement 1: Eco Towns.

19. No phase of development shall commence until details of the route of service connections (both under and over ground) for that phase, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 or its successor, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework

20. There shall be no vehicular access created into the site from the existing A4095 Howes Lane and no existing field accesses from Howes Lane shall be used by any vehicular traffic whatsoever. Prior to the first occupation of the site, the existing field accesses on Howes Lane shall be permanently stopped up by means of planting and reinstatement of highway verge.

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

21. No residential phase shall commence until details of directional signage between the dwellings proposed and both Shakespeare Drive retail and community facilities and Kings Meadow Primary School have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No dwelling on the phase concerned shall be occupied until the signage has been installed.

Reason: To ensure sustainable travel in accordance with Government guidance contained within the Eco Towns PPS and National Planning Policy Framework.

22. Prior to the first occupation of any phase of the development, details of a Travel Plan setting out how at least 50% of trips originating within that phase will be made by non-car means, with the potential for this to increase over time to 60%, shall have been submitted to and approved by the local planning authority. The development shall be carried out and continued thereafter in accordance with the approved details.

Reason: To ensure sustainable travel in accordance with Government guidance contained within the Eco Towns PPS and National Planning Policy Framework.

23. Prior to the commencement of any phase of development, details of bus stop locations for that phase shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details as approved.

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

24. No development shall take place on any phase, including any works of demolition, until a Construction Method Statement for that phase has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

i) the parking of vehicles of site operatives and visitors;

ii) the routeing of HGVs to and from the site;

iii) loading and unloading of plant and materials;

iv) storage of plant and materials used in constructing the development;

v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

vi) wheel washing facilities;

vii) measures to control the emission of dust and dirt during construction;

viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;

ix) delivery, demolition and construction working hours;

x) The mitigation measures recommended in the Construction section of table 6.6, paragraphs 7.5.2 and 7.5.3, table 9.10 and paragraphs 10.5.3 and 10.6.13 of the submitted Environmental Statement June 2017;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

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

25. If, during development of any phase, land contamination is found to be present at the site then no further development of that phase shall be carried out until details of a remediation strategy for that phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved remediation details.

Reason: To ensure that any unexpected contamination encountered is dealt with, such that it does not pose an unacceptable risk to controlled water quality as required by PPS1 Policy ET17, Policy ENV12 of the adopted Cherwell Local Plan and the National Planning Policy Framework.

26. The level of noise emitted from the employment development shall not exceed 58 dB LAeq, between 0700 and 2300 daily and 50 dB LAeq, at any other time on Mondays to Fridays (except public holidays) and 48 dB LAeq at any other time on Saturdays, Sundays and public holidays, as measured at a position of 1m in front of the façade of the nearest dwelling.

Reason: To ensure the creation of a satisfactory environment free from intrusive levels of noise and to comply with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

27. Details of any external lighting on any phase of development shall be submitted to and approved in writing by the local planning authority before any development on that phase commences. Development shall be carried out in accordance with the approved details. The lighting shall be installed and made operational before any building on the relevant phase is first occupied.

Reason: To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the amenities of the occupants of the adjoining dwellings and to protect ecology in accordance with Policies C28 and C30 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

28. No phase of development shall commence until details of both surface water and foul drainage to serve that phase have been submitted to and approved in writing by the local planning authority. No building shall be occupied until it has been provided with its drainage in accordance with the approved details. The drainage shall thereafter be retained in an operational state.

Reason: To mitigate the risk of surface water flooding, protect water quality and biodiversity on the site and to ensure that sufficient capacity is available for sewage in accordance with Government guidance contained within the Eco Town PPS and the National Planning Policy Framework.

29. No phase of employment development shall commence until details of the measures to be installed in that phase to minimise water consumption have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The measures shall thereafter be retained in an operational condition.

Reason: The site is located in an area of water stress and to comply with Government guidance contained within the Eco Town PPS.

30. The residential development shall be constructed so as to meet as a minimum the higher Building Regulation Standard for water consumption limited to 110 litres per day (lppd).

Reason: The site is located in an area of water stress and therefore reaching a higher level of water efficiency is required to comply with Policy ESD3 of the Cherwell Local Plan 2011-2031.

31. No development shall take place on the relevant phase until details of a Scheme of Investigation of the archaeological features identified in figures 6 and 8 of the submitted archaeological evaluation (report 13/43 of Northamptonshire Archaeology dated March 2013) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved investigation details.

Reason: To safeguard the recording and inspection of matters of archaeological importance on the site in accordance with Government guidance contained within the National Planning Policy Framework.

32. No development shall take place on any phase of development until details of measures (including off-phase and off-site measures if necessary) to achieve zero carbon energy use (as defined in paragraph ET7.1 of the eco-towns supplement to Planning Policy Statement 1) for that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and the measures approved shall thereafter be retained in an operational condition.

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

Planning Policy Statement 1: Eco Towns and Policy Bicester 1 of the Cherwell Local Plan 2011-2031.

33. No residential development shall take place until a scheme for the provision as affordable housing of 30% of the number of dwellings proposed in the submission of reserved matters has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme.

Reason: To ensure that the development satisfactorily contributes towards the creation of mixed and balanced community as required by Policy BSC3 of the Cherwell Local Plan 2011-2031 and Government Guidance set out in the National Planning Policy Framework.

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3 The Green Barn, Stoke Lyne Road, Stratton Audley, Bicester, OX27 9AT

The Committee considered application 20/03426/F a retrospective application for the erection of new detached dwelling house - this application sought to amend the original dwelling design from 16/00366/REM and Appeal APP/C3105/W/16/3154107 at 3 The Green Barn, Stoke Lyne Road, Stratton Audley, Bicester, OX27 9AT for Mobley Limited.

Christina Honsinger, a local resident, addressed the Committee in objection to the application.

It was proposed by Councillor Barry Richards and seconded by Councillor Colin Clarke that application 20/03426/F be approved in line with the officer recommendation.

On being put to the vote the proposal was lost and the motion subsequently fell.

It was proposed by Councillor Ian Corkin and seconded by Councillor Maurice Billington that application 20/03426/F be refused, contrary to the officer recommendation, due to the interrelationship of the building with the surrounding conservation area, the design and orientation of the building in the context of which it was set and the loss of amenity due to the additional windows.

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

Resolved

- (1) That application 20/03426/F be refused contrary to the officer recommendation (with the exact wording of the reasons for refusal delegated to the Assistant Director Planning and Development).

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Glebe Farm, Boddington Road, Claydon, Oxfordshire OX17 1TD

The Committee considered application 20/02446/F for the formation of inland waterways marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake at Glebe Farm Boddington Road, Claydon, Banbury, OX17 1TD for W A Adams Partnership. This application was a re-submission of application 18/00904/F.

Application 20/02446/F had been considered by Planning Committee on 14 January 2021 and Members had resolved to refuse the application. Having reviewed the matter and having taken advice from the Council's legal services team, officers were returning this application to the Committee to seek clarity on the Committee's resolution.

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

Resolved

- (1) That the wording of the reasons for refusal of application 20/02446/F considered at Planning Committee on 14 January 2021, be agreed as follows:
 1. The proposed development, by reason of its nature, size and scale combined with its isolated location away from settlements, established moorings and existing popular destinations and with poor

alternative transport links, would be an unsustainable insertion into the open countryside. Future users of and visitors to the development would have no realistic choice of transport other than the private car, and the proposal would result in an unsustainable form of development. The proposal would therefore be contrary to Policies SLE1, ESD1, ESD16 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance within the National Planning Policy Framework.

2. By virtue of its scale and location, the proposed development would result in a significant increase in traffic on the surrounding road network, and it has not been demonstrated that the access to the development or the visibility over bridges in the local area would be adequate for the scale of development proposed. The proposal would therefore be to the detriment of local highway safety and contrary to Policy SLE4 of the Cherwell Local Plan 2011-2031 Part 1 and saved Policies TR1, TR7 and TR10 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

3. By virtue of its scale and siting, the proposed development would fail to preserve the character and appearance of the Oxford Canal Conservation Area. This harm, which would be less than the substantial, would significantly and demonstrably outweigh the benefits of the proposed development. The proposed development would therefore be contrary to Policies ESD15 and ESD16 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

4. 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 for appropriate footpath improvements required as a result of the development and necessary to make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and contrary to Policies SLE4, ESD1, ESD15 and ESD16 of the Cherwell Local Plan 2011-2031 Part 1, and saved Policy TR1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework and relevant Government guidance 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.

Resolved

- (1) That the position statement be accepted.

The meeting ended at 7.47 pm

Chairman:

Date:

CHERWELL DISTRICT COUNCIL

Planning Committee - 11 March 2021

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

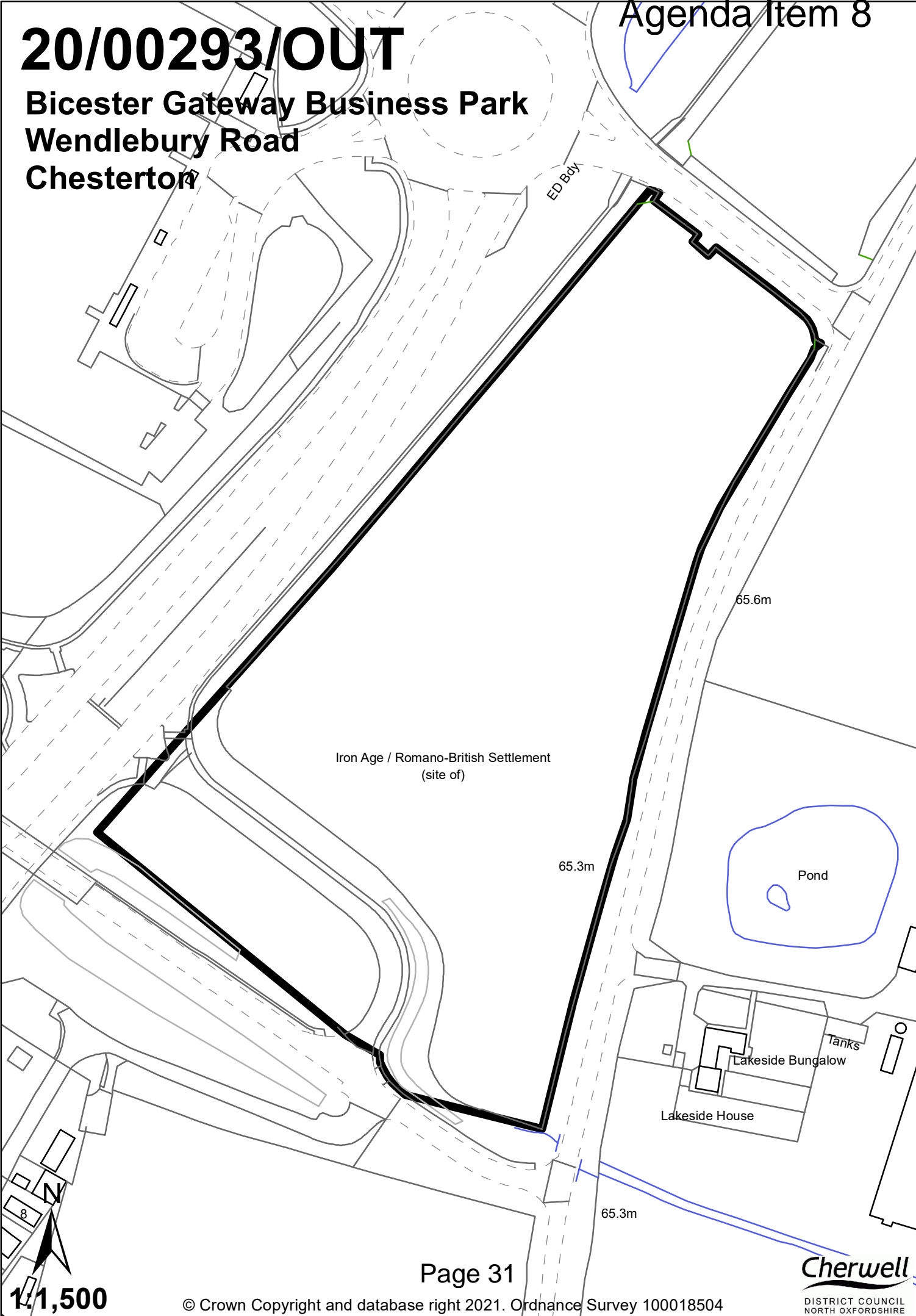
For each of the applications listed are: the application form; the accompanying certificates and plans and any other information provided by the applicant/agent; representations made by bodies or persons consulted on the application; any submissions supporting or objecting to the application; any decision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

Item No.	Site	Application Number	Ward	Recommendation	Contact Officer
8	Bicester Gateway Business Park, Wendlebury Road, Chesterton	20/00293/OUT	Fringford & Heyfords	*Grant Permission	Caroline Ford
9	Blessed George Napier Roman Catholic School, Addison Road, Banbury, OX16 9DQ	20/02745/F	Banbury Calthorpe and Easington	*Grant Permission	Bob Neville
10	Land at Railway Line at Blackthorn and Piddington, Marsh Gibbon Road, Piddington	20/02936/F	Launton and Otmoor	*Grant Permission	Linda Griffiths
11	Land Adjacent To The Oxford Canal, Spiceball Park Road, Banbury	20/03692/DISC	Banbury Cross and Neithrop	*Grant Permission	Samantha Taylor

*Subject to conditions

20/00293/OUT

**Bicester Gateway Business Park
Wendlebury Road
Chesterton**



Iron Age / Romano-British Settlement
(site of)

65.6m

65.3m

Pond

Lakeside Bungalow

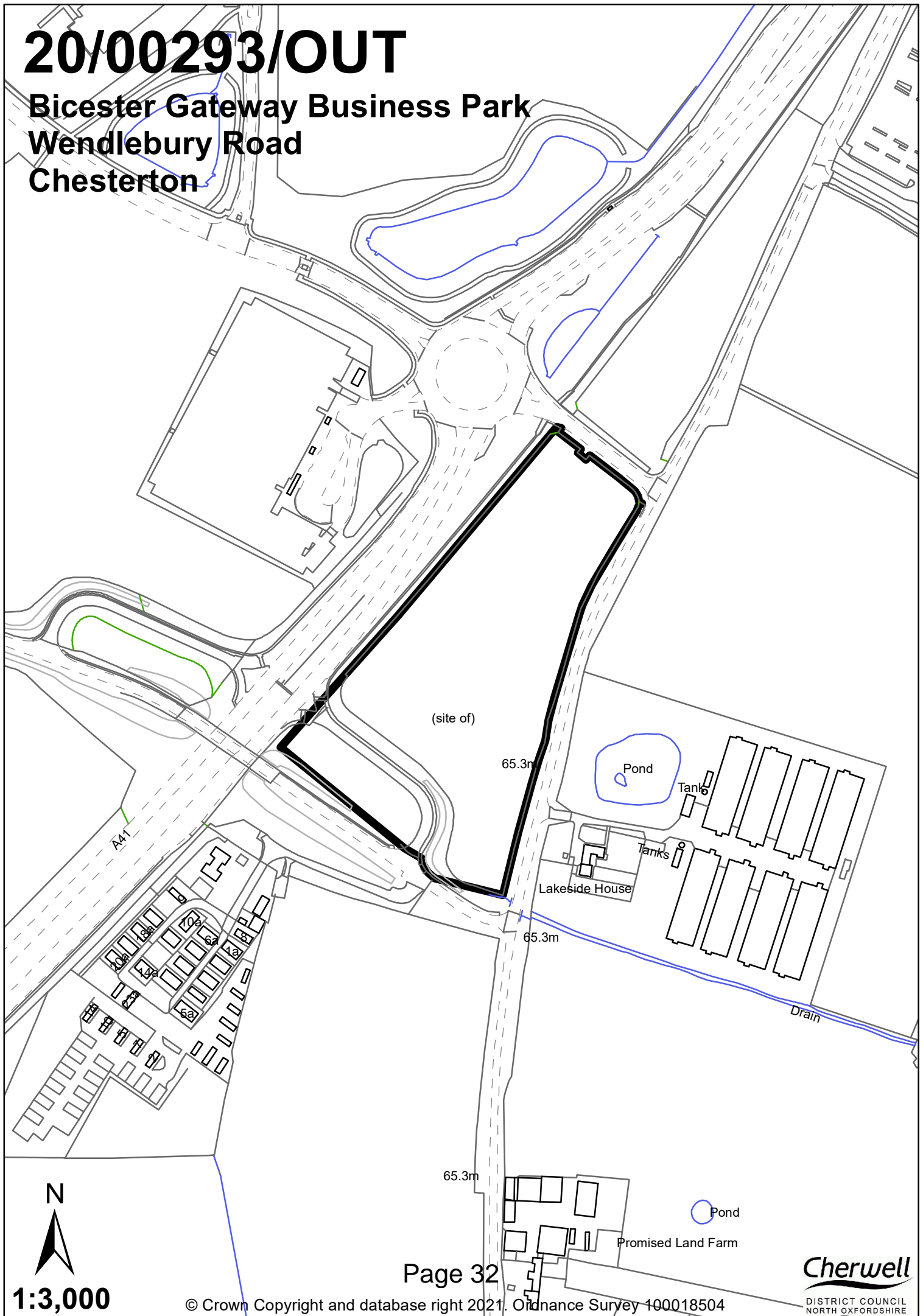
Lakeside House

Tanks

65.3m

20/00293/OUT

Bicester Gateway Business Park
Wendlebury Road
Chesterton



Case Officer: Caroline Ford

Applicant: Bicester Gateway Ltd

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 where there are two S106 matters that are in disagreement and a Committee decision is required because of the significance of those issues

Expiry Date: 31 March 2021

Committee Date: 11 March 2021

1. REASON FOR REVERSION TO PLANNING COMMITTEE

- 1.1. This application has been reported to Planning Committee on two previous occasions. Firstly, on the 16 July 2020, Members resolved unanimously 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 not agreed at that point and so the resolution of the July 2020 Committee was to return the application to Committee by the end of October 2020 for those matters to be considered. The application was returned to Committee on the 8 October 2020 where a set of S106 Heads of Terms were presented as well as a list of conditions. Members resolved unanimously to approve the S106 Heads of Terms and the proposed planning conditions and since then discussions have been ongoing in relation to both matters to enable the grant of planning permission.
- 1.2. Unfortunately, negotiations have stalled and there are two main issues where agreement cannot be reached. Consideration of these matters by the Planning Committee is therefore required and this report will set out the advice of Officers and the applicant's position on these matters (included verbatim at Appendix 1 to this report). There are also a number of other points where Officers have agreed changes to the Committee resolution of the 8 October 2020 under normal delegated powers and to the Council's standard position for S106s and conditions have been reviewed since then. This report therefore seeks a Member position on these matters to enable the application to be brought to a swift conclusion.
- 1.3. The 'Council's standard position for S106s' as referred to above, relates to standard drafting which forms the starting point for negotiation relating to all S106s the

Council intends to enter into. The drafting is produced by the Council's Legal team and takes into account the views of Officers and Consultees on specific topic areas and covers the points required to produce a legally sound agreement that appropriately secures the content of the agreement and which is enforceable. Delegation is provided through the Scheme of Delegation for S106 agreements to be completed where required to support a planning application, or by way of a resolution made by the Planning Committee. The drafting is a starting point and it is normal for negotiation to occur on the terms of an agreement, but there are also some matters that represent important points of principle. In this case, there are two particular points which raise issues of significance which Officers consider should be referred to Members in the wider public interest.

- 1.4. 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. The 8 October 2020 Committee report updated the Policy position with reference to the adoption of the partial review Plan. There have been no other relevant Policy changes since the 8 October 2020.
- 1.5. The Council published its December 2020 Annual Monitoring Report following its consideration by the Executive in January 2021, which has confirmed that the District currently has a 4.8 year Housing Land Supply (2020-2021), which will change to a 4.7 year Housing Land Supply from the 1 April 2021 (2021-2026). At the time of writing this report, this Housing Land Supply is against a temporary 3-year requirement as confirmed by the Written Ministerial Statement for Oxfordshire dated 12 September 2018. No fixed date has been published for the expiry of this temporary requirement, although it is understood that the Oxfordshire Growth Board have written to the Government to clarify when this change might occur.
- 1.6. There have been no further Consultation responses received other than in respect of S106 negotiations, the responses for which will be referred to within the appraisal below.

2. APPRAISAL

2.1 The key issues for consideration in this case are:

- Matters of disagreement arising through the S106
- Other matters that have been changed since the previous consideration of the application by the Planning Committee

Background

- 2.2 As referred to above, there are two main issues that are currently in disagreement between Officers and the applicant relating to the content of the S106 agreement. Those matters relate to standard provisions required to be included within all S106 agreements (and in respect of one of the points, a matter that Oxfordshire County Council require in all S106 agreements across Oxfordshire). The Officer advice as will be explained below is to continue to secure that standard drafting as it is required to make the development acceptable. It is also likely that a precedent could also be set for other proposals.
- 2.3 The applicant seeks some flexibility in order to meet the specific circumstances of the Bicester Gateway Innovation Community, notably with regard to delivery and they seek to rely on the Committee report from 8 October 2020, which, they argue confirmed that there would be no social rent and that affordable rent would be sought without mention of this being capped to LHA rates.

- 2.4 These matters are therefore brought before Members to seek a final resolution as to whether Members wish to divert from Officer advice in this case taking into account the applicant's position.
- 2.5 As an overarching point, the applicant has highlighted that the lack of agreement and therefore progress to agree the S106 to enable planning permission to be granted is stalling development from starting and hindering delivery on site.
- 2.6 Officers accept that delivery of development is a high priority for the Council as is maintaining a Housing Land Supply. However, development must be acceptable in planning terms and not result in unacceptable risk for the Council. 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. It is how much weight should be given to these material considerations, balanced against adopted development plans policies which lies at the heart of the current negotiations.

Affordable Housing

- 2.7 The applicant has agreed to the provision of affordable housing to meet the Policy BSC3 requirement for 30% affordable housing provision with this split between 70% rental and 30% intermediate tenures. The previous committee reports assessed the provision of affordable housing and advised Members that in this case, it was recommended that the rental tenure be at affordable rent levels and not social rent. This is to ensure the affordability of the units for the occupiers, taking into account that there could be significant service charges on this scheme which would be included within affordable rents but which would be an additional cost to tenants if social rent was charged. Social rent plus high service charges may not be as affordable as Affordable Rent (which includes service charges). The Council's Housing Officer advises that Affordable Rents would usually be capped at LHA levels in line with the Tenancy Strategy in the S106. In this case, the Affordable Rent tenure was agreed as a suitable and affordable solution on this basis recognising the core aspiration that the rents charged to future residents would be affordable to them. The applicant advises that the October 2020 Committee report did not mention capping of rent levels and that this was not agreed.
- 2.8 The Council's requirements relating to affordable rented housing has been disputed by the applicant who will not agree to it. The drafting states as follows (with the wording the applicant considers to be unacceptable in bold):

Affordable Rented Housing rented housing provided by the Registered Provider to households who are eligible to rent and occupy such housing and which is not subject to the national rent regime but in line with the District Council's tenancy strategy, the rents shall be no more than 80% of the local market rent (including service charge) or the relevant Local Housing Allowance rate in force at the time the property is advertised for letting **whichever is the lower**.

- 2.9 The applicant has provided a paper which is replicated at Appendix 1 of this report to explain why they consider that capping rent levels for the affordable rented

housing to be unacceptable and not beneficial in terms of increasing the supply of affordable housing.

2.10 The Council's drafting takes into account advice from the Strategic Housing Team which draws on the Tenancy Strategy and is specific to the Cherwell District taking into account local affordability levels.

2.11 The NPPF definition of Affordable housing for rent is as follows (it does not refer to Local Housing Allowance levels):

*Affordable housing for rent: meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is **at least** 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).* [wording highlighted in bold by Officers].

2.12 For Cherwell, Policy BSC3 of the Cherwell Local Plan Part 1 2011-2031 relates to the requirement to provide affordable housing. In the Policy wording, there is no reference to rent levels but, the preceding paragraphs to the Policy refers to the Council's Housing Strategy which recognises the need for affordable homes. The delivery of affordable housing on development sites is directly related to ensuring the supply of affordable housing is available to deliver the Council's Statutory Housing responsibilities.

2.13 Planning Policy is not prescriptive about rent levels for affordable housing, other than the reference within the NPPF to the need for rents to be set in accordance with the Government's rent policy..., or is **at least** 20% below local market rents (with the wording 'at least' not ruling out a lower rental level).

2.14 The applicant's key point is that the NPPF does not include the words 'whichever is the lower'. Their view is that if it did, it would have the effect of altering the definition of Affordable Rent, in their view contrary to Government Policy, and that national policy offers flexibility to fund increases in the overall supply of affordable housing to meet wider affordable needs, to aid delivery and assist viability. Their view is that standard drafting seeking to cap the rental levels is inconsistent with Planning Policy.

2.15 The Council, in its Statutory Housing function is required to produce documents relating to that function by the Localism Act 2011, the Homelessness Reduction Act 2017 and the Housing and Homelessness Acts. One of those documents is a Tenancy Strategy. This document is adopted by the Council and, whilst not a planning policy, is a corporate document and therefore a matter that Members have considered, approved and would have every expectation that those principles would be delivered. As Registered Providers are key partners in assisting the Council to meet its statutory housing functions, the Tenancy Strategy sets out the Council's requirements of Registered Providers who own, let and manage affordable housing stock in Cherwell District, including how the affordable housing should be suitable and affordable to meet the local housing need. Section 8 of the Tenancy Strategy sets out the Council's expectation that Affordable Rent should be capped at Local Housing Allowance levels to ensure that the housing provided still meets a local need and rents are not a disincentive for people to take up employment or make

tenancies unsustainable. Given that new affordable rent properties, once completed by the developer, will be transferred to a Registered Provider and let by them in accordance with the Council's Allocations Scheme and Tenancy Strategy, the principles set out in the Tenancy Strategy are relevant and therefore the document is a material consideration (but not a formally adopted planning policy that sits within the Development Plan) for planning purposes in this context.

- 2.16 The previous committee reports were not specific around the definition of affordable rented housing in terms of its reference to Local Housing Allowance (which is usual for all applications of a similar nature). On the basis that the Council has standard drafting which refers to the Tenancy Strategy and LHA levels, which has been applied many times before, Officers have taken the Member resolution to be in line with normal practice and to follow that standard position (i.e. to ensure that rental levels are at 80% market rent or Local Housing Allowance level whichever is the lower). Officers do not dispute that Members were asked to endorse the position that affordable rent should be supported and social rent not pursued, but this was not asking Members to move away from the standard position around rents as is in the normal drafting. The applicant's view is that Members have endorsed a position that the rental units will be affordable rented units that are not capped at LHA level because there is no planning policy reason for LHA levels to be prescribed at the S106 stage.
- 2.17 The applicant will not agree to the wording 'whichever is the lower'. This means that in contractual discussions between the developer and RPs over the delivery and transfer of affordable housing once the units are completed, the RPs may assume that without a specified cap on rent levels, the Council is happy for 80% of market rents to be charged. In turn, this expected level of rental income may influence the purchase price for the rented units. Such financial expectations would make it difficult for the Council's Strategic Housing Team to negotiate a more affordable rent level at a later date i.e. when the affordable housing scheme is to be agreed as part of a Reserved Matters planning application. The Council's Strategic Housing Team have advised that without the wording 'whichever is the lower' in the planning agreement, this would create a significant risk that the units might not be affordable in future to meet the needs of applicants on the Council's housing register. Affordable Rent capped at Local Housing Allowance levels would be affordable for more housing applicants, not just those households receiving a higher level of income. On this basis, and if other applicants also sought this flexibility, there could be significant wider implications around the delivery of affordable housing that meets needs in this District which is a matter of broader public interest.
- 2.18 In response to the applicant's paper at Appendix 1, Officers would comment as follows:
- The applicant raises concerns regarding the Tenancy Strategy and makes reference to the March 2017 Executive report that was presented with the Tenancy Strategy. Their view is that there were only two RPs who responded to consultation on the Tenancy Strategy (a very low response rate and therefore it was not representative) and those two RPs raised concerns with it, particularly in relation to the LHA section being too prescriptive about the level of rent setting in Cherwell and the limited options for people under 35. Housing Officers advised at the time that the monitoring of RP rents had shown that a prescriptive approach is 'sometimes' needed. In response to the applicant's points, Strategic Housing Officers have advised that whilst there were just two responses received from RPs to the consultation, the two individual comments were not afforded significant weight given that they do not represent the views of the majority of RPs who develop and deliver affordable housing in the district and who did not

formally respond to the consultation. Clearly there was evidence gathered in 2017 to justify a prescriptive approach in the Tenancy Strategy to rent setting. The 'sometimes needed' comment relates to the fact that in the past some RPs rents set at 80% of market rents soon became unaffordable as annual rent increases were applied, and Welfare Reform changes were introduced to limit the housing benefit that could be paid, making the higher rents less affordable for people. Since 2017, we have seen an increase in the number and range of Registered Providers who own and manage stock across the district. Annual performance monitoring meetings are held with RPs and this facilitates an opportunity to identify any operational issues with rent setting, allocations and housing management.

- It is also relevant to add that since the Tenancy Strategy was adopted, Members have acknowledged the challenges around affordability and have sought to prioritise social rented units from new development. This is reflected in the Action Plan in the Council's adopted Housing Strategy 2019-2024, and the views expressed by Members of the Overview and Scrutiny Committee in consultation on the Homelessness and Rough Sleeping Strategy 2021-2026 that there should be more social housing not just affordable housing. This indicates that Members are concerned about affordability and it is expected that the next iteration of the Tenancy Strategy, due to be reviewed from March 2021 (with adoption planned Summer 2021) will specifically include a focus on local affordability and the types of tenure that will provide sustainable housing solutions, including more social rent tenure.
- Whilst the applicant is correct that referring to 'up to 80% market rent' does not rule out LHA level, it is considered that this not being referred to as a cap could result in a baseline expectation that 80% market rents will be what is achieved (and no less).
- The applicant refers to their desire for flexibility to deliver affordable housing in the way that they wish to, in accordance with the knowledge economy themes of the innovation community, including whether they decide to (or can afford to) provide affordable housing at LHA rates at the delivery stage. Affordable housing is sought to meet a policy requirement (BSC3), which does not explicitly prescribe LHA rates. If the applicant's level of flexibility were granted, which they consider to be as allowed for by the NPPF, then there is no certainty as to whether affordable housing to meet local need will be provided. If affordable rented housing is being provided, then it should be provided at a rental level that is affordable for those who would be eligible for the units (hence the reference to LHA levels in the Tenancy Strategy).
- The applicant believes that their scheme should be treated as innovative, due to its objective to serve the knowledge economy, and therefore that this should provide justification for moving away from standard requirements. Officers have always accepted that the applicant's ambitions for the site are supported and it is hoped that the innovation community is successful. But, on the basis that there will be no planning control over the achievement of this scheme, the development must be treated as any other residential development would be as it will consist of market and affordable units. The applicant has mis-represented the comments of the housing team in the paper provided as Appendix 1 to this report. The Officer comments were observations made in concern to the application and to seek additional information, not as points in support of it (as was reported in the July papers). The applicant suggests these points are the reason why the requirement for social rent was not pursued which is not the case. The

Officers reports (July and October) are clear that the acceptance of affordable rent was based on affordability for the occupants (as explained earlier in para 2.7) only and not due to the fact that 'qualifying affordable housing tenants would be unlikely to fit the profile' of younger entrepreneurs and knowledge economy workers as the applicant suggests.

- 2.19 Officers do not disagree with the applicant that Planning Policy does not require reference to LHA levels in securing affordable housing. However, Officers consider that the Council's Housing Strategy, including the Tenancy Strategy are a material consideration in the delivery of affordable housing that meets local need. The Tenancy Strategy is an adopted Strategy. The report Housing Officers reported at the time is not albeit the applicant seeks to rely on it and the reference to LHA levels only needing be prescribed 'sometimes'. The advice of the Strategic Housing Team follows this approach. The NPPF does not rule out rental levels below 80% of local market rent in its definition of affordable housing for rent.
- 2.20 It is also relevant to note that the applicant's vision for the site as an innovation community and providing employment opportunities could assist with providing employment opportunities for those in need. It is important that rent levels are not set at a level that could deter affordable housing tenants from entering employment.
- 2.21 Officers therefore strongly advise that the definition of affordable rented housing remains as it is drafted to refer to rental levels as no more than 80% of the local market rent (including service charge) or the relevant Local Housing Allowance rate in force at the time the property is advertised for letting whichever is the lower. This advice is based on the view that the Council's Housing and Tenancy Strategies are a material consideration which should be given significant weight in order to ensure the affordable housing being secured through the planning system meets local needs. This report seeks committee endorsement for these non-development plan policies being given this significant weight.

Liabilities

- 2.22 A S106 agreement is binding on the land and therefore compliance with its terms run with those who have or acquire an interest in the land. This is important to ensure that the Local Planning Authority can enforce the terms of the agreement to ensure it is complied with should there be a breach. In some cases it may be reasonable to exclude liability for those who might acquire a future interest in the site, for example statutory undertakers where their interest would not be of a type where it would be reasonable to enforce the terms of the agreement against them. The Council has standard drafting to deal with situations of this type.
- 2.23 The Council otherwise requires that all others who acquire an interest in the land are liable for compliance with the terms of the agreement. This is to ensure that the requirements that make the proposal acceptable in planning terms always remain enforceable in practice. The applicant has raised two main points of disagreement. One has been resolved by Officers (relating to the liability for future owner/occupiers or tenants of any dwellings), the other, relating to the liability for Registered Providers, remains in dispute.
- 2.24 The applicant has made the case that Registered Providers (RP), who will own and operate the affordable housing, should be excluded from liability in respect of the S106 when they act as RPs. This would mean that the Council could not enforce the terms of the S106 against an RP should there be a breach. The practical effect of this is that a situation could be engineered that obligations to (for instance) provide and maintain open space, payments for essential off-site infrastructure and even necessary highway improvements may be difficult if not impossible to secure. The

applicant believes that legal drafting can address the risks identified by Officers but the legal advice received by Officers from the Council's Legal team does not accept this.

- 2.25 Legal advice has confirmed that there is nothing in the nature of an RP that means that their development should not mitigate their impact. RPs acquire an interest in a site by virtue of affordable housing, but it is not unusual for an RP to acquire a larger interest in the land (including common areas) or to develop market housing. In your Officers' view the nature of this development makes this a real prospect, not just a legal possibility. A blanket exclusion of liability for an RP could therefore enable all liability for a S106 to be entirely avoided which would mean no mitigation for the development would be secured, there would be no ability to enforce the terms of the agreement and therefore the mitigation would need to be covered by the tax payer in the event that the Developer (RP) defaults. This means that the risk sits with both the District and County Councils and the development could continue, unhindered.
- 2.26 It must be emphasised that virtually every major development proposal involving over ten residential units requires affordable housing to be provided (See policy BSC3) and therefore for an RP to acquire at least part of the development so that it can provide that Affordable Housing. Officers do accept that an RP could be reluctant to acquire an interest in a site where they could become liable for significant costs. The applicant has provided some email correspondence from RPs which support this view. However, the expectation would be that the Developer would indemnify the RP directly to protect them from this risk and the RP correspondence seen does not seem to exclude this as an option to satisfy their concerns. The applicant has advised that this indemnity would add a considerable cost to the development of Bicester Gateway. Whilst there have been rare instances of developers requesting that RPs be excluded from all liability (except that relating to Affordable Housing itself) this has been universally resisted, as far as Officers can tell, throughout Oxfordshire. The applicant is of the view that this is not the case elsewhere.
- 2.27 The applicant has suggested wording that would exclude an RP from liability unless they acquire an interest in the whole site (so in the event that they acquire the whole site, they would be liable). This is problematic because arguably acquiring an interest in a significant proportion of the site (99%) would still mean that the RP would not be liable. The concerns Officers have are therefore still valid for the same reasons as above. Negotiating a position around the level of interest an RP might have in a site would not be a workable solution.
- 2.28 The applicant has since suggested three further alternatives which are included at the end of the note dated 22 February 2021 (Appendix 1). In response Officers, would comment:
- The Council cannot be expected to waive necessary mitigation arising from a large residential development solely because of the nature of the Developer. Affordable Housing is expected to mitigate its impacts and there is no policy justification for doing otherwise.
 - The cost of a Bond depends on the risk associated with it. It is for the applicant to resolve how they deal with this risk (and the added costs) but it should not be that the Local Authorities are expected to deal with this risk.
 - The offer to make financial contributions payable in full before occupation does not fully resolve the position as it still leaves those obligations securing on site mitigation and the delivery of any off-site works, such as highway works, at risk. Further, it is clear that the alternative drafting proposed leaves

the developer with the option of not making the payments up front, and bringing the RP liability back in, which is no different to the present drafting. The applicant argues that this would give them the opportunity to explore the costs of the bonds that would need to underpin the indemnity required by the RP, however Officers consider that this risk is too great. Officers would also note that so far as financial obligations are concerned, the developer does have the option of paying early, should they so wish, which would have the same effect as releasing the RP from those obligations, but without the Councils taking the risk of non-compliance. It should also be noted that it is not the case that highway obligations will be protected by a bond under the s106, as no bond is required for highway works under the s106 agreement. Further, officers would need to reconsider any provisions regarding occupation in the event of breach presently agreed should this approach be considered further.

- 2.29 The applicant requests a nuanced approach in the drafting to save costs and to address the risks of concern to Officers because they consider the risk applies only where the developer defaults or in the event that the RP acts as the developer of the whole site. However, Officers strongly advise Members that RPs should not be excluded from liability from this or any other S106 agreement. As Officers have advised, should a situation occur where an RP takes control of a large proportion of a site, a situation could occur where the Council could not enforce the terms of the agreement. This would introduce significant risk to both the District and County Authorities, and in the absence of the ability to enforce the terms of the agreement, the development would be unacceptable in planning terms.

Education

- 2.30 Members will be aware that the applicant continued to challenge the requested education contributions up to the 8 October 2020 Planning Committee (with a long-written update provided on this matter). Following the meeting, the applicant continued to challenge the requested contribution and negotiations continued. In November 2020 and whilst reviewing the position on education contributions again, OCC Officers advised that they had noted that the site actually sat within Chesterton Parish. On the basis that there is a current project to expand Chesterton CE Primary School, it would be legitimate to seek a contribution towards that project at expansion costs rather than the new build rate previously sought. If children attend this school, then they would be likely to attend early education in the village and as there is a pre-school accommodated in the Village Hall for which there is no plan to expand it, no early education contribution would be required.
- 2.31 On this basis, OCC sought a primary education contribution of **£308,592** (index linked) based upon 16 pupils the site would generate. No change is made to the requested secondary contribution as set out in the October 2020 Committee report.
- 2.32 Whilst Officers consider that residents of the site are more likely to be reliant upon Bicester for every day services to meet their needs rather than Chesterton, it is entirely possible that children from the site would be allocated a place at Chesterton Primary School if it is in the catchment. On this basis, the revised request is reasonable and the applicant has accepted the revised contributions requested and the S106 drafting refers to this. Members are asked to endorse this position.

Landscape

2.33 The October 2020 Committee report required the provision of

Commuted sums for the management and maintenance of open spaces, mature trees/ hedgerows, SUDs features with 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.

2.34 This wording aimed to cover the requirements as set out by Appendix 8 of the Council's Developer Contributions SPD and the Council has standard drafting to secure this.

2.35 The applicant objected to the Council's requirements and in particular the step in rights (in terms of land transfer to the District Council in the event of default by a Management Company) because they consider their site should be treated in the same way that a commercial site is treated where there are limited controls, despite their proposal to include residential development on the site. Through negotiation, it has been agreed that the main residential part of the site will be subject to the Management Company provisions only and, whilst in a slightly different form to normal, there will be secure arrangements to ensure that if a Management Company defaults in terms of their maintenance responsibilities, there would be the ability for CDC to step in. Officers are content with the negotiated position.

Other matters

2.36 Planning Conditions have evolved since planning committee in October 2020. Most of these have evolved to clarify the conditions and have taken into account comments from the applicant and consultees. There are a couple of conditions to highlight at this stage:

- The originally recommended condition to control the use of the development has been amended to three separate conditions which enables reference to be made to the amendments made to the Use Class Order in September 2020. The applicant has raised concerns with the approach suggested in a couple of ways:
 - Firstly, the applicant wishes for wording to refer to ancillary Class B1c uses be included as a marketing tool for the site. Officers consider this to be unnecessary because ancillary uses do not need planning permission and so do not need to be specified. In the same way that B1c uses would be ancillary so to would other uses. The applicant is content with this clarification.
 - Secondly, the applicant has concerns over how Officers had drafted a use condition relating to the mixed-use Hub. In recognition of this concern, Officers consider that a condition to require a scheme for the Hub be submitted for approval and for the use of the Hub to then be accordance with that scheme only.
- The July 2020 Officer report referred to the need for the commercial development to be delivered in a timely fashion alongside the residential development and that the residential use should be restricted until development of the commercial floorspace has commenced. This was

clarified in the October 2020 report whereby it was confirmed that on the basis that the intention is that the development would create demand for the office space (by bringing those likely to work in the knowledge economy to the town) that it was not feasible for this restriction to be in place but that the Hub would be constructed alongside the residential development. The condition previously therefore required the mixed-use hub to be delivered prior to the first occupation of any residential development. The applicant continued to raise concerns with this and Officers have agreed to re-word the condition to ensure the mixed-use hub is delivered as part of the first residential phase.

3. PLANNING BALANCE AND CONCLUSION

- 3.1 Officers do not wish to change the recommendation for this proposed development based upon the reasons as set out in the July and October 2020 Committee reports. However, Officers consider that it is necessary for there to be a completed S106 that adequately secures mitigation required to make the development acceptable in planning terms. The Officer position as reported is recommended to be the position Members support to ensure this is the case. If Members do support this position but the applicant continues to resist this, Officers consider that the application should be refused in the absence of the completion of a S106 to secure the required mitigation, in which case the applicant has confirmed that the matter will first go to viability testing and then, if necessary, proceed to appeal.

4. 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 MITIGATION AS SET OUT IN PARAGRAPH 2.45 OF THE 8 OCTOBER 2020 PLANNING COMMITTEE REPORT AND AS AMENDED BY THIS REPORT INCLUDING SUPPORTING THE OFFICER POSITION ON THE MATTERS CURRENTLY IN DISPUTE (RP LIABILITY AND AFFORDABLE HOUSING).

FURTHER RECOMMENDATION – IF THE APPLICANT CONTINUES TO REFUSE TO AGREE TO SIGN A S106 FOLLOWING OFFICER ADVICE (AS ENDORSED BY MEMBERS) BY THE 31 MARCH 2021 (OR ALTERNATIVE DATE AS AGREED IN WRITING WITH THE LPA), THEN IT IS 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)

CONDITIONS

TIME LIMITS AND GENERAL IMPLEMENTATION CONDITIONS

1. No more than 4,413sqm (GIA) of floorspace for uses falling within Class B1a and B1b of the Town and Country Planning (Use Classes) Order 1987 (or their equivalent in subsequent enactments or re-enactments), shall be constructed on the site and the floorspace shall be used for no other purposes whatsoever. For

the avoidance of doubt and with reference to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, from the 01 September 2020, Use Classes B1a and B1b are now part of Class E, specifically Class E(g)(i) and E(g)(ii). The floorspace hereby approved, shall be used for no other uses covered by the other Categories of Class E.

Reason – In order to retain planning control over the use of the site and to ensure that the impacts of the development are no greater than those considered under this application in accordance with Policies SLE1 and Bicester 10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

2. No more than 177sqm (GIA) of floorspace for uses falling within Class A3 of the Town and Country Planning (Use Classes) Order 1987 (or their equivalent in subsequent enactments or re-enactments) shall be constructed on the site and the floorspace shall be used for no other purposes whatsoever. For the avoidance of doubt and with reference to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, from the 01 September 2020, Use Class A3 is now part of Class E, specifically Class E(b). The floorspace hereby approved, shall be used for no other uses covered by the other Categories of Class E.

Reason – In order to ensure that the facility is ancillary and supports the primary use of the site for business uses and to retain planning control over the use of the site in accordance with Policies SLE4 and Bicester 10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

3. No more than 794sqm (GIA) of floorspace shall be used as a mixed use co-working hub, a scheme for which, to include details of how the space shall be used by multiple, unconnected users in a way which is compatible and does not prejudice office type activities, shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of the mixed use co-working hub. The mixed use co-working hub shall be used in accordance with the agreed scheme thereafter.

Reason: To ensure that the final use of the facility is approved and to ensure that the proposal complies with Policies SLE1, SLE4 and Bicester 10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

4. No development shall commence on a phase identified within an approved phasing plan until full details of access (in so far as not approved by this decision), layout, scale, appearance and landscaping (hereafter referred to as reserved matters) of the development proposed to take place within that approved phase have been submitted to and approved in writing by the Local Planning Authority.

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 6 of the Town and Country Planning (Development Management Procedure (England)) Order 2015 (as amended).

5. Application for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and 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 (Development Management Procedure (England)) Order 2015 (as amended).

6. Except where otherwise stipulated by conditions attached to the Reserved Matters Permission(s), the development shall be carried out strictly in accordance with the following plans and documents:

PL03C – Regulating Plan

PL05 – Reserved Land

46463/5501/001 Rev C – Wendlebury Road Vehicle Access and Pedestrian Improvements

46463/5501/002 Rev A – Wendlebury Road Proposed Improvements (if required)

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

7. All site clearance (including the removal of any vegetation or works to hedgerows) shall be timed so as to avoid the bird nesting season, this being during the months of March until July 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 to comply with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

8. Except to allow for the creation of means of access with associated vision splays hereby approved, the existing hedgerows along the western (A41), southern and eastern (Wendlebury Road) boundaries of the site shall be retained and properly maintained from the date of this planning permission (unless otherwise approved as part of the approval of reserved matters submitted in requirement of Condition 2), and if any hedgerow plant/tree dies within five years from the completion of the development it shall be replaced and shall thereafter be properly maintained in accordance with this condition.

Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policies ESD13 and 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.

9. 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.

10. If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.

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 Government guidance contained within the National Planning Policy Framework.

11. All applications for approval of reserved matters relating to an approved phase shall be accompanied by details of the existing ground levels together with proposed finished floor levels of all buildings within that phase (with the level no less than 65.30m AOD as set out in the plans accompanying the LLFA Response reference number JAG//43386/Lt004). Development in that phase shall thereafter be undertaken in accordance with the ground/floor levels approved as part of the grant of reserved matters approval.

Reason - To ensure that the proposed development is in scale and harmony with its neighbours and surroundings and to comply with Policy ESD 15 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.

12. All applications for approval of reserved matters relating to an approved phase shall be accompanied by details of the proposed ecological enhancement measures to be incorporated within that phase in line with the recommendations at paragraph 18 of the Ecology Briefing Note prepared by Ecology Solutions Limited. All proposed ecological enhancement measures shall thereafter be installed in accordance with the details approved as part of the grant of reserved matters approval.

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

13. All applications for approval of reserved matters relating to an approved phase shall be accompanied by an Energy Statement based upon Revision P02 of the Energy Statement prepared by Kyoob that demonstrates which sustainable design measures, including the provision of on-site renewable energy technologies, will be incorporated into that phase. The sustainable design measures shall thereafter be fully incorporated into the development of each phase and no occupation of development within the relevant phase shall take place until the approved

sustainable design measures have been provided and, for on-site renewable energy provision, until such measures are fully installed and operational.

Reason – To ensure energy and resource efficiency practices are incorporated into the development in accordance with Policies Bicester 10, ESD3, ESD4 and ESD5 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

14. The non-residential floorspace hereby permitted shall be constructed to at least a BREEAM 'Very Good' Standard.

Reason – To ensure energy and resource efficiency practices are incorporated into the development in accordance with Policies Bicester 10, ESD3, ESD4 and ESD5 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

15. Notwithstanding any provisions contained within the Town and Country Planning (General Permitted Development) (England) Order 2015 (and any Order or Statutory Instrument amending, revoking or re-enacting that order), all water supply, foul water, energy, power (except any approved renewable energy infrastructure) and communication infrastructure to serve the development shall be provided underground and retained as such thereafter except where specifically approved otherwise as part of a grant of reserved matters approval for a phase.

Reason - In the interests of ensuring that such above ground infrastructure is not constructed in unsuitable locations on the site where it would be harmful to visual amenity and to comply with Policy ESD 15 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.

PRE COMMENCEMENT CONDITIONS

16. No development shall take place until a phasing plan covering the entire application site has been submitted to and approved in writing by the Local Planning Authority identifying the phases by which development will take place. The phasing plan shall demonstrate the delivery of the approximately 794sqm (GIA) mixed-use co-working hub to be delivered as part of the first residential phase. Thereafter the development shall be carried out in accordance with the approved phasing plan and applications for approval of reserved matters shall be submitted in accordance with the terms of the approved phasing plan and refer to the phase (or phases) to which they relate.

Reason: To ensure the proper phased implementation of the development and associated infrastructure in accordance with Policies ESD15, Bicester 10 and INF1 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 any development on the appropriate phase as it is fundamental to the acceptability of the scheme.

17. No development shall take place on any phase, including any works of demolition until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The statement shall be appropriately titled (site and planning permission number) and shall provide for at a minimum:

- The parking of vehicles of site operatives and visitors;
- The routeing of HGVs to and from the site;
- Loading and unloading of plant and materials;

- Storage of plant and materials used in constructing the development;
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- Wheel washing facilities including type of operation (automated, water recycling etc) and road sweeping;
- Measures to control the emission of dust and dirt during construction;
- A scheme for recycling/ disposing of waste resulting from demolition and construction works;
- Delivery, demolition and construction working hours;
- Spoil locations
- Water management

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

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. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

18. No development shall take place on any phase (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) Arrangements for a site walkover survey undertaken by a suitably qualified Ecologist to ensure that no protected species, which could be harmed by the development have moved onto the site since the previous surveys were carried out. If any protected species are found, details of mitigation measures to prevent their harm shall be required to be submitted;
 - b) Risk assessment of potentially damaging construction activities;
 - c) Identification of 'Biodiversity Protection Zones';
 - d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
 - e) The location and timing of sensitive works to avoid harm to biodiversity features;
 - f) The times during construction when specialist ecologists need to be present on site to oversee works;
 - g) Responsible persons and lines of communication;
 - h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
 - i) Best practice with regard to wildlife including 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.

19. No development shall take place on any phase until an Arboricultural Method Statement for that phase, undertaken in accordance with BS:5837:2012 and all subsequent amendments and revisions to include a plan identifying which trees are to be retained and details of how they will be protected, is submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the approved AMS and any tree protection measures shall be erected before any equipment, machinery or materials are brought onto the site for the purposes of development and shall be maintained until all equipment, machinery and surplus material has been removed from the site.

Reason: To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing built environment and to comply with Policy C28 of the adopted Cherwell Local Plan 1996 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.

20. No construction shall take place until a Training and Employment Plan for the development has been submitted to and approved in writing by the Local Planning Authority. As a minimum this Plan shall include the arrangements by which the applicant (or other specified persons) will provide construction (and related trades) apprenticeship starts during construction of the development hereby approved. Construction shall take place in accordance with the agreed Plan.

Reason: Paragraphs 80 and 81 of the National Planning Policy Framework support and encourage sustainable economic growth. Para B14 of the adopted Cherwell Local Plan 2011- 2031 recognises that it is important to ensure the population is sufficiently skilled to attract companies and investment to Cherwell and supports proposals to strengthen the skills base of the local economy. Strategic Objective 3 of the adopted Cherwell Local Plan seeks to support an increase in skills.

21. No development shall take place until a Detailed Design, Surface Water Management Strategy, Drainage Strategy (including calculations, ground levels and plans), associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods and details of the phasing of its provision has been submitted to and approved in writing by the Local Planning Authority. The detailed drainage will follow the Outline Design principles set out in the following documents:

- 43386 Lt004 LLFA Response (JAG) COMPLETE

The approved Sustainable Drainage System shall be implemented in accordance with the approved Detailed Design and prior to the first occupation of the development in that phase. 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 ESD8 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.

22. No development shall take place on any phase until full details of the means of vehicular access between the land and the highway on Wendlebury Road including position, layout, and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, and prior to the first occupation of any of the development, the means of access shall be constructed and retained in accordance with the approved details.

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. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

23. No development shall take place until full details of the combined footway/cycleways serving the site along the A41, Wendlebury Road, and accesses to the south onto the disused slip road including details of the pedestrian/cycle feature linking the site (over the culvert/ditch) to the A41, have been submitted to and approved in writing by the Local Planning Authority. The approved pedestrian and cycle facilities shall thereafter be provided prior to the first occupation any phase of the development.

Reason - In the interests of ensuring that suitable access is provided to the development that prioritises sustainable travel in accordance with the requirements of Policies Bicester 10 and SLE4 of the Cherwell Local Plan 2011-2031 Part 1 and to comply with Government guidance contained within the National Planning Policy Framework. This information is required prior to the commencement of the development as it is fundamental to the acceptability of the scheme.

24. No development shall take place (including any demolition) until and prior to the submission of the first reserved matters application, a professional archaeological organisation acceptable to the Local Planning Authority, has undertaken an archaeological evaluation of the site. This evaluation will need to be undertaken in accordance with a Written Scheme of Investigation, which has first been agreed with the Local Planning Authority. The Archaeological Evaluation of the site shall be submitted to and approved in writing by the Local Planning Authority. The conclusions of the Archaeological Evaluation shall be taken into account in the future layout of the application site.

Reason - To identify areas of significant archaeological interest not included in the previous evaluation to comply with Government advice in the National Planning Policy Framework (NPPF) (Section 16). This information is required prior to the commencement of the development as it is fundamental to the acceptability of the scheme.

25. No development shall take place (including any demolition) until the results of the archaeological evaluation required by condition 24 have been agreed and full details of archaeological protection measures have been approved in writing by the Local Planning Authority in a Construction Environmental Management Plan (CEMP) or equivalent document as set out in the Archaeological Mitigation Strategy (rev2 June 2020) submitted with this application.

Reason - To safeguard the physical preservation of significant archaeological deposits within the site to comply with Government advice in the National Planning Policy Framework (NPPF) (Section 16). This information is required prior to the commencement of the development as it is fundamental to the acceptability of the scheme.

26. Following the approval of the archaeological protection measures required by condition 25, and prior to any demolition on the site and the commencement of the development (other than in accordance with the archaeological protection measures required by condition 25), a second stage Written Scheme of Investigation, including a programme of methodology, site investigation and recording, shall be submitted to and agreed in writing by the Local Planning Authority.

Reason: To secure the provision of archaeological investigation and the subsequent recording of the remains, to comply with Government advice in the National Planning Policy Framework (NPPF) (Section 16). This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

27. Following the approval of the second stage Written Scheme of Investigation referred to in condition 26, and prior to the commencement of the development (other than in accordance with the Written Scheme of Investigation), the programme of archaeological mitigation shall be carried out and fully completed in accordance with the approved second stage 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). This information is required prior to the commencement of the development as it is fundamental to the acceptability of the scheme

28. No phase of the development 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 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.

29. If a potential risk from contamination is identified as a result of the work carried out under condition 28, 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 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.

30. If contamination is found by undertaking the work carried out under condition 28, 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 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.

CONDITIONS REQUIRING APPROVAL OR COMPLIANCE BEFORE SPECIFIC CONSTRUCTION WORKS TAKE PLACE

31. 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 shall be carried out, including measures to prevent and minimise the potential for damage to subsurface water 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: In order to protect groundwater and to achieve sustainable development in accordance with Section 15 of the National Planning Policy Framework.

32. No development above slab level on any building proposed to contain residential units shall take place until a scheme for protecting the proposed dwellings from noise has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall achieve internal levels that shall not normally exceed 30dB LAeq (8 hour) and 45dB L_{max}F in all sleeping areas between 2300 hours and 0700 hours. An internal level of 40dB LAeq 1 hour shall be achieved in all other areas of the building. An external level of 55dB LAeq (16 hours) shall be achieved in garden areas and balconies unless a higher level has been demonstrated as being acceptable through noise modelling. Any works which form part of the scheme shall be completed in accordance with the approved details before any of the permitted dwellings to which the scheme relates are occupied.

Reason - To avoid noise giving rise to significant adverse impacts on health and quality of life and to comply with Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework.

CONDITIONS REQUIRING APPROVAL OR COMPLIANCE BEFORE OCCUPATION

33. No part of the development shall be occupied until confirmation has been provided that either:

- all water network upgrades required to accommodate the additional flows to serve the development have been completed; or
- 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 anticipated to be necessary to ensure that sufficient capacity is made available to accommodate additional demand anticipated from the new development. Any necessary reinforcement works will be necessary in order to avoid low / no water pressure issues. In order to comply with Policy ESD8 of the Cherwell Local Plan 2011 - 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

34. If remedial works have been identified in condition 30, the relevant part of the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 30. 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 Government guidance within the National Planning Policy Framework.

35. Prior to the occupation of any phase of the development hereby approved, an updated Framework Travel Plan, 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 for that phase. This Framework Travel Plan shall be based on the draft document 46463 dated January 2020. The travel plan for each phase shall be implemented in accordance with the details approved.

Reason - In the interests of sustainability and to ensure a satisfactory form of development, in accordance with Government guidance contained within the National Planning Policy Framework.

36. Prior to first occupation 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 LEMP shall be carried out 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.

37. The development hereby permitted shall not be occupied until it has been provided with a system of electrical vehicle charging to serve the development. In addition, ducting should be in place to allow for the easy expansion of the EV charging system as demand increases towards the planned phase out of ICE vehicles (ideally ducting should be provided to every parking space to future proof the development).

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 Government guidance within the National Planning Policy Framework.

38. Prior to the first occupation of any development within a phase, a car park management plan relating to that phase shall be submitted to and approved in writing by the Local Planning Authority. The car park management plan shall include measures to ensure that the car parking areas within the phase are made available solely for use in connection with the use of the development hereby approved and for no other purpose whatsoever. Thereafter, the entirety of the development on Phase 1B shall operate in accordance with the approved car park management plan.

Reason - To ensure that car travel is not unduly encouraged as a means of accessing surrounding development and to comply with Policy SLE4 of the Cherwell Local Plan 2011-2031 Part 1 as well as Government guidance contained in the National Planning Policy Framework.

39. Details of external lighting including the design, position, orientation and any screening of the lighting shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of those works. The lighting shall be installed prior to the first occupation of the development and operated in accordance with the approved details at all times thereafter.

Reason: In order to safeguard the visual amenities of the area and to achieve a suitable lighting scheme which would minimise the impact to ecology and biodiversity in accordance with Policy ESD10 and ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government advice in The National Planning Policy Framework.

40. No development shall be occupied until a scheme for the commissioning and provision of public art to be accommodated within the site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented in accordance with the approved details prior to the occupation of any B1a floorspace or 150 residential units whichever is sooner.

Reason - To create an attractive and distinctive development in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Policy C28 of the adopted Cherwell Local Plan and Government guidance within the National Planning Policy Framework.

41. The dwelling(s) hereby approved shall not be occupied until bins for the purposes of refuse, food waste, recycling and green waste have been provided for use by each of the approved dwellings, in accordance with the Council's current bin specifications and requirements.

Reason - To provide appropriate and essential infrastructure for domestic waste management in accordance with the provisions of Policy INF1 of the Cherwell Local Plan 2011 - 2031.

42. The development shall be constructed so as to meet as a minimum the higher Building Regulation standard for water consumption limited to 110 litres per person per day.

Reason: The site is located in an area of water stress and therefore reaching a higher level of water efficiency is required to comply with Policy ESD3 of the Cherwell Local Plan 2011-2031.

Planning Notes

1. With respect to condition 21, the applicant is advised that the following information is required to be included:
 - Final points of discharge and rate to be clearly noted on drawing.
 - 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.
 - Pre and Post development surface water flow paths to be identified on the plan.
 - Details of how water quality will be maintained during construction.
 - Infiltration test results to BRE365 to be submitted.
 - Evidence of groundwater depth test results to be submitted.
 - Groundwater level monitoring to be undertaken for the duration of one year from completion of construction.
 - Evidence that WFD requirements have been addressed to improve water quality.
 - Discharge rates
 - Discharge volumes
 - Sizing of features - attenuation volume
 - Detailed drainage layout with pipe numbers
 - SUDS (list the suds features mentioned within the FRA and associated Drainage Strategy documentation to ensure they are carried forward into the detailed drainage strategy)
 - Network drainage calculations
 - Phasing
2. The applicant is advised that in accordance with Section 21 of the Flood and Water Management Act 2010 and prior to the occupation of the development, a record of the approved SUDs details should be deposited in the Lead Local Flood Authority Asset Register. The details should 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 and photographs to document the completed installation of the drainage structures on site.
3. With respect to Public Rights of Way it is the responsibility of the developer to ensure that the application takes account of the legally recorded route and width of any public rights of way as recorded in the definitive map and statement. This may differ from the line walked on the ground. The Definitive Map and Statement is available online at www.oxfordshire.gov.uk/definitivemap

4. No materials, plant, temporary structures or excavations of any kind should be deposited / undertaken on or adjacent to the Public Right of Way that obstructs the public right of way whilst development takes place.
5. The development should be designed and implemented to fit in with the existing public rights of way network. No changes to the public right of way's legally recorded direction or width must be made without first securing appropriate temporary or permanent diversion through separate legal process. Alterations to surface, signing or structures shall not be made without prior written permission by Oxfordshire County Council. Note that there are legal mechanisms to change PRow when it is essential to enable a development to take place. But these mechanisms have their own process and timescales and should be initiated as early as possible – usually through the local planning authority.
6. No construction / demolition vehicle access may be taken along or across a public right of way without prior written permission and appropriate safety/mitigation measures approved by Oxfordshire County Council.
7. No vehicle access may be taken along or across a public right of way to residential or commercial sites without prior written permission and appropriate safety and surfacing measures approved by Oxfordshire County Council.
8. Any gates provided in association with the development shall be set back from any public right of way or shall not open outwards from the site across any public right of way.

CASE OFFICER: Caroline Ford

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Appendix 1

**BICESTER GATEWAY, OXFORDSHIRE
APPLICATION RE: 20/00293/OUT**

POSITION STATEMENT ON “AFFORDABLE RENT” FOR COMMITTEE ON 11 MARCH 2021

PREPARED BY:

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22 February 2021

Final Version

The Government Rent Standard (April 2020) defines affordable rent as **up to 80% of market rent**. It is therefore not policy compliant for Officers to impose s106 drafting for Bicester Gateway that seeks to require rents at LHA rates (which are often lower than 80% of market rent). Flexibility on rent setting is considered essential by all policy makers – in order to provide additional funding to increase the supply of affordable housing, improve existing stock, meet energy efficiency requirements and, generally, increase the range of affordable needs served. It follows that lower rents (at LHA rates) are not necessarily productive in meeting affordable housing objectives.

Helpfully, the policy (and evidence) in support of defining affordable rent as 80% of market rent is consistent with Cherwell’s Business Plan; where the Strategic Priorities include: delivering affordable housing, raising standards in rented housing, and promoting innovative housing schemes. There is nothing in Cherwell’s Business Plan about restricting affordable rents to LHA rates. Moreover, there is nothing in Cherwell’s Housing Strategy 2019-24; which, on the contrary, seeks to “increase the supply and diversity of affordable housing” through a “degree of flexibility”. There is also nothing in the Local Plan, Tenancy Strategy or any Committee decision to mandate anything other than the policy-compliant flexible approach of up to 80% market rent. In fact, in response to concerns raised by third parties consulted about proposals in the Tenancy Strategy (that sought to limit affordable rents to LHA rates), Councillors were advised in the report to the Executive in March 2017 that:

“With regards to the LHA rates being too prescriptive, our data monitoring of RP rents has shown that a prescriptive approach is *sometimes* [our emphasis] required”

It follows that limiting affordable rents to LHA rates might be prescribed “sometimes”, but not always, or by standard convention, and, in any event, it is clear from the weighty foundation set by policy that such an inflexible approach would need special justification, especially when, with regard to Bicester Gateway, the Planning Committee in July and October 2020 has already recognised, unanimously, that the housing product for the Innovation Community has a ‘live work’ theme and an apartment form that raise issues with service charge affordability and social rent. It follows that **there is no mandate from the Planning Committee, and nothing in policy, to support the imposition of LHA rates at Bicester Gateway**. Such an approach is contrary to all policies – not only Government policy, but also Cherwell’s published corporate, planning and housing policies.

Importantly, however, defining affordable rent in the s106 as “up to 80% market rent” does not rule out LHA rates, nor social rent. But, as policy makes clear, the flexibility at the s106 stage that “up to 80%” offers will help housing delivery, especially for an innovative product like Bicester Gateway, where the investment risks and costs are, by definition, higher than the norm. Put another way, inflexibility is never helpful to delivery.

The Point of Disagreement

It follows that the point of disagreement between Officers and Bloombridge is the drafting in the s106 which seeks to restrict affordable rent to up to 80% of market rent or LHA rates, “whichever is the lower”. It is just these four words. They have the effect of limiting any rental offer to LHA rates whilst ruling out other affordable solutions up to 80% market rent. This is contrary to Government guidance and Cherwell policy.

Paragraph 2.10 of the Officer’s Report to the Planning Committee on 8 October 2020 states that:

- “Social rent is not to be pursued” at Bicester Gateway, and
- **“Affordable rent is the most appropriate tenure for this proposed development”**

This was approved unanimously. There is no mention of a restriction to LHA rates. There is therefore no Committee mandate for the Officers’ approach to the disputed drafting – for good, policy-based reasons (as explained below).

Our view, which we believe is consistent with every Government and Cherwell published document on affordable rent, is that flexibility at the s106 stage is key in order to:

1. Increase the supply of affordable housing (including quality and energy efficiency issues), and
2. Increase the range of affordable needs that development can address, up to 80% market rent.

Put another way, **applying LHA rates is restrictive on supply, quality and the range of needs capable of being served.**

If, under our preferred s106 drafting (“up to 80% MR”), we don’t want to (or cannot afford to) provide affordable housing at LHA rates, then we will have to argue our case when it comes to agreeing the Tenancy Strategy with Officers at the delivery stage (when we have an RP on board). For example, we could seek to provide 100% key worker accommodation, linked to a particular major knowledge economy occupier. We might be able to fund 100% of this at affordable rent (ie all 273 units), but the limitation to LHA rates would prevent the investment altogether.

Officers are clear that they want LHA rates. If we fix these rates now (following Cherwell’s drafting: “LHA rates, whichever is the lower”) and we subsequently need flexibility to provide affordable rented accommodation up to 80% MR, but greater than LHA rates, then we will have to resubmit a fresh application, negotiate a new s106 and take this back to Committee, causing a great deal of further delay. There is no other procedure available to us, as any S106A deed of variation proposal will in all likelihood be rejected by Officers (consistent with their current stance). The current s106 drafting provides no flexibility on viability testing (contrary to Policy BSC3), no flexibility on the 30% of housing, no flexibility on what can be categorised as affordable rent, no flexibility on the mix between affordable rented and intermediate, and no flexibility on phasing. The current drafting effectively requires all affordable rented accommodation to be provided at LHA rates, as these will inevitably be lower than 80% MR.

If Officers are not prepared to accept any flexibility at this stage, how can we, or any investor interested in Bicester Gateway, have any confidence that a revised planning application or a renegotiated s106 would achieve a result different from the standard – at all, or within a reasonable time. Investors always have a choice, and they would choose to invest elsewhere. This is a key reason why Government policy guards against prescribing LHA rates.

In contrast, by defining affordable rent (in accordance with the Government Rent Standard) as “up to 80% MR” we are not precluding LHA rates (which may be 10 - 20% lower than 80% MR). But we cannot accept “up to 80% MR or at LHA rates, whichever is the lower”. Such drafting is too inflexible for this stage of the process. Put another way, the extra 10 - 20% above LHA rates may make all the difference to the viability case, enabling affordable housing to be

delivered within the framework of the s106 without having to resubmit a new application. For the avoidance of doubt, there is no question that up to 80% MR still serves an important affordable need and there is no question that affordable rent is defined as up to 80% MR in both Cherwell and national planning policy.

More generally, **we are disappointed that Officers do not see our scheme as innovative** – it certainly is. There is nothing else like it proposed in Bicester or, to our knowledge, Oxfordshire. Whilst we cannot accept a ‘live work’ user restriction (because this would impose too much occupancy risk and make the scheme unworkable), it is up to Councillors whether they decide to place weight on our innovation community concept in the decision making process. This is worth considering because such an approach might support a decision ‘on its merits’ and help avoid an awkward precedent for other applications, which we know is a concern to Officers. Volume housing sites held under option have much more flexibility around the delivery of affordable housing because they have such a large margin on land value to work with (in contrast, Bloombridge paid market value, with the benefit of planning permission, for the land at Bicester Gateway).

What we are Seeking

There are two possibilities:

1. Either the deletion of “whichever is the lower” in the s106 drafting so affordable rent is defined as “up to 80% Market Rent”, or
2. Acceptance by Councillors that the Innovation Community at Bicester Gateway, as an innovative housing scheme consistent with the Council’s Strategic Priorities, supports approval ‘on its merits’ without the need to restrict affordable rent to LHA rates.

It is for Officers to confirm whether Point 2 is contrary to policy (or even the Tenancy Strategy). We are strongly of the view that our preference, Point 1, accords precisely with Government and Cherwell policy, and the evidence in support of this now follows.

The Evidence

Officers have not provided any policy-based arguments to date, and nothing that is persuasive in any way. Even if the Tenancy Strategy can be established as planning policy (Officers accept it is not), it is clear that the strategy is targeted at governing Cherwell’s relationship with RPs, not developers. **The Tenancy Strategy does not set out to provide detail for s106 obligation drafting and should not be treated as such.** The overall theme of housing policy is the need for flexibility – not the prescriptive approach proposed in our draft s106. The extracts (quoted further below) from Appendix 2 of the March 2017 Executive prove this point conclusively. Flexibility is key.

Government housing policy and the NPPF both seek to broaden the definition of affordable housing in order to drive delivery (through flexibility). So far as the Cherwell Local Plan is concerned, there is nothing in the adopted planning policies that gives any overriding weight to the Tenancy Strategy. Moreover, **there is nothing in the Tenancy Strategy that supports Officers’ belief that, in all circumstances, s106 drafting should prescriptively drive affordable rents to LHA levels, and absolutely no higher.** This belief is contrary to the overarching requirement for flexibility at all levels of policy.

It is also important to consider the mandate provided by the 8 October Committee Meeting:

- 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.

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.

The clear conclusion from the above extract is: no social rented, 70% affordable rent and 30% intermediate – and paragraph 2.10 (above) states that **“affordable rent is the most appropriate tenure for this proposed development”**. There is no qualifying reference to the Tenancy Strategy, including in relation to the proposed modified definition of “affordable rent”. It seems clear that there is no basis for Cherwell’s Housing Team to revisit their initial comments on the application, including those summarised at page 37 of the July 2020 Committee Report, which were instrumental in the “no social rented” decision, for example:

- In accordance with BSC3 in the Cherwell Local Plan Part 1, all developments proposed at Bicester that include 11 or more dwellings would be expected to provide at least 30% of new housing as affordable homes. This would require 82 homes on this site. Of these, and in line with Policy BSC3, it is expected that 70% should be provided as affordable/ social rented dwellings and 30% as shared ownership. Normal expectations are that affordable housing addresses housing needs and reflects a proportion of property types and sizes. There are also expectations around accessibility and the units should be designed to meet the DCLG Technical Housing Standards – Nationally Described Space Standard. This scheme raises the following concerns:
- The scheme is a fully flatted development and does not offer a mix of housing that is normally required.
- Affordable units would normally be distributed evenly across a site with clusters of no more than 15 dwellings, of which no more than 10 of the dwellings are rented. This would not be possible on this scheme. Blocks are likely to be mixed tenure which can be challenging for RPs to manage.
- The development is aimed at younger entrepreneurs and knowledge economy workers yet qualifying affordable housing tenants are unlikely to fit this profile. Local facilities would need to be accessible.

- To accept flats on a scheme with so much ancillary space (lifts etc), would require an understanding of the predicted level of services charges as this could impact affordability especially for social rent tenants.

It is for these (and other) reasons that social rent was dropped, in preference for (unqualified) affordable rent, and this was agreed by Committee on 8 October. To reiterate, there is no case to revisit the established position now; in fact, prescribing LHA rates in the s106 (and no higher) is very likely to be detrimental to the delivery of affordable housing at Bicester Gateway owing to the viability issues on affordability set out above (eg lifts, ancillary space and service charges, all to be determined, post-outline). Councillors also took the point that, as above, the **“development is aimed at younger entrepreneurs and knowledge economy workers yet qualifying affordable housing tenants are unlikely to fit this profile”**. In this context, limiting affordable rent in our s106 to “the lower of” 80% MR and LHA rates is not prudent as it restricts flexibility and delivery.

There is then the Tenancy Strategy itself. Looking at Section 8, we would reiterate that this is not a planning policy document and it is also out of date given it is meant to be updated annually (para 4.3, page 286, Executive, March 2017). Moreover, it recognises that affordable rent comprises up to 80% MR – for good reasons, which are wider than just tenant affordability in some sectors of housing need, noting the first sentence below on raising funds to build further affordable homes:

8. Affordable Rents

Affordability

› Aim

Affordable Rent was introduced in order to raise funds to build further Affordable Homes. Registered Providers can charge up to 80% market rent levels – higher than the social rents previously charged. Affordable rents can be charged in new properties and on a proportion of re-let homes.

This is also explained in the same section as follows:

› Capping the level of Affordable Rent

Cherwell District Council continue to support the use of Affordable Rents because we want to see development in the district to meet the housing need of our residents whilst also understanding that Registered Providers have a need to generate income through higher rents to replace public subsidy, which has been lost in current grant programmes.

Section 8 goes on to say that Cherwell **“believe” in capping affordable rent at LHA rates, but this ‘belief’ is not planning policy and it cannot override the accepted definition of affordable rent in**

NPPF19, nor is it applicable in every circumstance – or specifically in relation to Bicester Gateway, given the points approved unanimously by Committee. Indeed, there is a suggestion that high rents are seen as an Oxford rather than a Cherwell Valley (ie Bicester) problem:

However, in order that the housing provided still meets local need, we believe that Affordable Rents should be capped at a level to match Local Housing Allowance. We want to avoid a situation where high rents prove a disincentive for people to take up employment or make tenancies which are unsustainable. The Cherwell district falls into two Broad Market Rental Areas for housing benefit purposes, Cherwell Valley and Oxford, of which the rents nearer to Oxford are considerably higher.

There is nothing in the March 2017 Executive report that says that all Section 106 agreements will be capped at LHA rates. On the contrary, it is clear from the Tenancy Strategy that the intention is to discuss these issues with Registered Providers at the appropriate time:

We expect Registered Providers to discuss with us the level of rent it will be reasonable to charge as Affordable Rent. Where Cherwell District Council has invested Capital Funding in a building or acquisition project, the council will have a greater say in the negotiation of rent levels, although we would expect all Registered Providers to charge rents that do not fall outside of the Local Housing Allowance rates for the local area.

It is clear from this that the Tenancy Strategy is a document to guide relationships between Cherwell and the RPs (para 2.1 of the March 2017 Executive). It is emphatically not planning policy, and it is not a planning document. It should not, therefore, appear as standard drafting in every s106 agreement. That is not consistent with the broader approach envisaged by NPPF19, although we are not saying that the current, prescriptive drafting would be inappropriate for large housing sites or, as per the above extract, **where Cherwell has invested capital funding where the Council would then “expect all RPs to charge rents that do not fall outside of the LHA rates for the local area”**. Put another way, capital funding is one way in which Cherwell can achieve its belief that affordable rents should match the LHA, but such matching is not mandatory, and there is no weight of policy, and nothing in the NPPF19, that would support the inflexible application of such a belief. It follows that the Tenancy Strategy carries little if any planning weight. There was no mention of it in the Planning Committee Report in October 2020 and, **in terms of engagement on the Tenancy Strategy**, paragraph 2.7 of the March 2017 Executive (page 284) records that **just “two members of the public responded to the consultation and three RPs”** – hardly a representative or compelling mandate. In addition, having checked the feedback from the two RPs in Appendix 2 of the March 2017 Executive report, two of the four comments specifically support the case we are making:

- “The LHA section was too prescriptive about the level of rent setting in Cherwell”
- “The amount of options for people aged under 35 [eg knowledge economy workers] is somewhat limited” [this is a need addressed by Bicester Gateway]

The response in Appendix 2 to the first of these comments is also supportive of the case (for flexibility) that we are making:

- With regards to the LHA rates being too prescriptive, our data monitoring of RP rents have shown that a prescriptive approach is *sometimes* [my emphasis] required”

In short, the prescriptive approach to LHA rent setting currently drafted into the Bicester Gateway s106 is not supported, although it is *sometimes* acceptable, perhaps on large, standard housing schemes. It is not acceptable in the case of Bicester Gateway, as evidenced above.

Lastly on the Tenancy Strategy, it is clear from the monitoring, review and risk sections of the Executive Report that the overall strategy and rents will be kept under review. **Fixing rents to LHA rates in a s106 prevents any rental adjustments in response to these reviews**, making the review worthless and ineffective.

So far as planning policy is concerned, it is clear that the Tenancy Strategy is intended to operate flexibly, and paragraph B108 of the adopted Local Plan also puts an emphasis on delivery and innovative provision. The focus of Bicester Gateway (an innovative project) needs to be on work and the knowledge economy, Councillors accepted this unanimously, and so the s106 drafting must reflect the decision made on 8 October – we respectfully ask that Officers stick to that; and not revert to arguments aired in the report to the earlier Planning Committee in July. Put another way, per paragraph 7.1 of the March 2017 Executive, our comments are intended to ensure that Cherwell’s Housing Strategy is **“investment ready”** as well as helping residents to be **“housing ready”**. Getting the balance right is key. There is no support for a housing strategy at Bicester Gateway based solely on LHA rates (which is what the current drafting prescribes).

Conclusion

To conclude, Government policy targets strategies to deliver more affordable housing to accommodate a wider housing need than what can be provided by limiting/qualifying affordable rent to LHA rates or, indeed, social rent. We can live with a reference to the Tenancy Strategy, or LHA rates in the s106, but not “whichever is the lower” of 80% MR or LHA – noting that the accepted definition of “up to 80% MR” also encompasses LHA rates in the likely event that they are lower. The current drafting in the s106 is not consistent with Government rent policy, NPPF19, Cherwell’s Business Plan, Housing Strategy and Local Plan, or indeed actions Cherwell may wish to take on monitoring and review of the Tenancy Strategy. Flexibility is key, to aid the delivery of affordable housing.

In terms of actions:

1. Could we please ask that Matthew Barrett is instructed to ensure that the s106 drafting on affordable rent is not prescriptive and correctly reflects Government policy. This will be achieved by deletion of “whichever is the lower”, as set out above.
2. The current s106 drafting also needs to reflect the 8 October Committee Report that says there will be no social rented. This will need to be reflected in Mr Barrett’s drafting, and set out clearly.

It is beneficial to all parties (Cherwell, the RPs and Bloombridge) to have some flexibility. This is consistent with the October 2020 Committee mandate, where paragraph 2.10 states: **“affordable rent is the most appropriate tenure for this proposed development”**. There is no reference to

LHA limitations. In contrast, Officers have sought to rely on the Tenancy Strategy, but this is not planning policy, and it does not say what Officers are claiming it says, as we have evidenced above (by providing direct quotes). **The Tenancy Strategy only supports the application of LHA rates “sometimes” and it is not intended to be prescriptive.** The Tenancy Strategy is available to guide the discussions between Cherwell’s Housing Team and the RPs, not to prescribe an approach at this stage; ie to support inflexible drafting in the s106. Whilst the Tenancy Strategy is a “material consideration” for planning purposes, this does not override policy, or the mandate from the Planning Committee on 8 October. Crucially, a “material consideration” cannot be used as a basis to apply LHA rates prescriptively, all the time, in the face of what the Tenancy Strategy actually says, and contrary to Government and Cherwell policy.

Postscript on RP Liability

Cherwell is looking to impose all s106 obligations and costs onto the chosen Registered Provider. This is not common practice as it puts costs onto organisations which are essentially not for profit. We believe careful drafting between solicitors can address the risks and concerns identified by Cherwell. The advice from CMS, our solicitors, is as follows:

- Wide ranging liability is disproportionate and costly.
- A tightly drafted exclusion so that the RP is only liable for s106 obligations relating to affordable housing is reasonable. The previous draft of the S106 tried to ensure this mechanism could not be exploited if an RP were to develop the whole site. Alternatively, this could also be phrased to apply where an RP takes an interest beyond the Affordable Dwellings. It would be helpful to understand why these proposals are not acceptable to the Council.
- Without the RP liability exclusion, a bond or bank guarantee will be required in order to make the risks of supporting affordable delivery manageable for an RP. This is because Bicester Gateway Ltd is an SPV and so any indemnity from it will be of limited covenant strength. Bank bonds/guarantees are expensive to obtain and service. This will have a corresponding impact on affordability/viability.
- A bond/indemnity is expensive because there is a specific cost attached to it, and disproportionate because in practice the Council would not enforce against an RP. The downside of the indemnity/bond for the developer outweighs the perceived public benefit.
- Many of the obligations (ie landscaping and highway works) will be supported by bonds or deposits. The only perceivable area of risk for the Council is therefore the financial contributions. These are relatively easily enforceable from Cherwell’s perspective. For example, we could consider a provision whereby these contributions are paid in full before occupation, in order to engage the RP liability carveout. If the contributions are not paid before occupation then the payment phasing will remain (as per the current draft) but RP liability will not be carved out and my client will have to obtain the bond/bank guarantee in order to indemnify the RP.

We await feedback on these suggestions.

Agenda Item 9
20/02745/F

Blessed George Napier Roman Catholic School
Addison Road
Banbury
OX16 9DQ

EASINGTON

Blessed George Napier
(secondary)

Banbury Academy
(Sch)

Sports Ground



1:2,400

20/02745/F

Blessed George Napier Roman Catholic School
Addison Road
Banbury
OX16 9DQ

Recreation Ground

EASINGTON

(Sch)

N



1:3,500

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Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

Case Officer: Bob Neville

Applicant: Mr Fraser Long

Proposal: School expansion - erection of new teaching block and main assembly hall, relocation of artificial sports pitch

Ward: Banbury Calthorpe and Easington

Councillors: Councillor Clarke, Councillor Mallon and Councillor Mepham

Reason for Referral: Major development - Site area 6.6Ha with 2,440 sq m (GIA) of new floor space

Expiry Date: 8 April 2021

Committee Date: 11 March 2021

1. APPLICATION SITE AND LOCALITY

- 1.1. The application relates to Blessed George Napier Catholic School, Sixth Form and Specialist Sports College, an 11-18 academy located on Addison Road in a predominantly residential area approximately 2km (1.24 miles) to the south of Banbury centre.
- 1.2. The school is bounded to the north by existing residential properties, whilst to the east it is bounded by Easington Sports Club and residential properties. To the south and west, BGN school is bounded by Banbury Academy and the Banbury Academy playing fields. Salt Way runs across land south of the site currently with open countryside beyond; albeit that planning permission has already been granted for future development of this land.
- 1.3. The site benefits from two access points on Springfield Avenue and Addison Road. The Springfield Avenue access on the northern boundary comprises of a pedestrian access during school hours and serves as a vehicle access 17:00 – 22:00 on weekdays and all day on weekends. The Addison Road access, on the eastern site boundary, serves as a vehicle and pedestrian access point, which is used by staff and vehicles throughout the school day. The site has existing on site parking and also utilises neighbouring parking areas at Easington Sports adjacent to the east accessed off Addison Road. The site is bounded with palisade fencing and hedgerows with several trees along the western eastern and northern boundaries.

2. CONSTRAINTS

- 2.1. In terms of site constraints, there are several PRoW crossing land in the vicinity site, most notably: Restricted Byway (Salt Way) ref. 120/41/10 to the south of the school site and footpath ref. 120/44/10 to the east of the site. There are records of protected and notable species (including Pipistrelle Bats and Swifts) as being present within the vicinity of the site. Salt Way is also designated as a District Wildlife Site. Whilst the site is identified by the Environment Agency as being in Flood Zone 1 (area at lowest flood-risk level from rivers and sea) their records also show areas within the site and on adjacent land to be at low to medium risk from surface water flooding. The application site is within an area where the geology is

known to contain naturally occurring elevated levels of Arsenic Chromium and Nickel and affected by Radon Gas; as is seen in many areas across the district.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The application seeks full planning permission for new buildings to facilitate the expansion of the existing school to allow for additional capacity and improved facilities. The proposals include the erection of new Teaching Block, Multi-Function Hall, replacement external sports playing surfaces and on-site parking, with further playing field provision being proposed on land south of Salt Way; with associated parking, landscaping and drainage.
- 3.2. Teaching Block: 2 Storey flat roofed building finished in brick with contrasting profiled metal cladding, aluminium framed fenestration and Monodraught passive ventilation system to roof. Gross internal area (GIA) of 1526m², with roof height of 7.53m.
- 3.3. Multi-Function Hall: 2 Storey flat roofed building finished in brick with contrasting profiled metal cladding and Kingspan Micro-Rib composite cladding panels, aluminium framed fenestration and Monodraught passive ventilation system to roof. GIA of 914m², with roof height of 6.65m.
- 3.4. Parking: 49 additional car parking spaces proposed at the front (north) end of the site on area of hardstanding currently marked out for use as netball courts, with provision also made for cycle parking within this area and also along the western boundary of the site.
- 3.5. Sports Facilities:
 - Proposed all-weather replacement enclosed netball courts (x3) 55.75m x 34.5m
 - Proposed replacement all-weather replacement floodlit 3G sports pitch 95m x 60m. The proposed pitch would be lit by 10 no. LED Floodlights on 12m high lighting columns.
 - 1.855ha of additional land to be provided for use as playing field, on land south of Salt Way.
- 3.6. Amended and additional information has been received during the application in response to officer and consultee comments and concerns. Revisions notably included updated Transport Assessment and Travel Plan documents, additional drainage information and amendment to the application's site boundary to include the area of land proposed to be used for a further playing field; a full re-consultation was undertaken following the submission of this information.

4. RELEVANT PLANNING HISTORY

- 4.1. The following planning history is considered relevant to the current proposal:
 - 95/00073/F - Erection of roof over vehicle enclosure Application Permitted. 16 February 1995.
 - 99/01627/F - Erection of 2.1metre high boundary fence around school buildings. Application Permitted 29 October 1999.

- 02/00553/F - Erection of single storey flat roof prefabricated building. Application Permitted 31 May 2002.
- 04/00931/OCC - Installation of Macadam multi-use games area (MUGA) along with 5m high chain link fence and associated floodlighting (on 12m high columns). OCC ref:C.11/04. No Objections raised by CDC 26 May 2004. Application permitted 13 July 2004.
- 04/00093/OCC - Construction of Sports Hall. No Objections raised by CDC 11 February 2004. Application permitted 14 April 2004
- 12/01541/OCC - Retention and continued use of two temporary classroom buildings for a further period of 5 years (OCC ref:- R3.0179/12). Application Permitted 8 January 2013.

Salt Way residential development

- 14/01932/OUT - Proposal: Outline - Development of up to 1,000 dwellings together with a mixed use local centre [including A1 retail up to 1,000 m2, financial services (A2), restaurants, pubs and takeaways (A3, A4, A5), community uses (D1)]; primary school and safeguarded additional primary school land; secondary school playing field land; green infrastructure including formal (including playing fields) and informal open space, landscape and amenity space; changing and sports facilities (including D2); sustainable drainage systems; highway, cycle and pedestrian routes; car parking; infrastructure (including utilities); engineering works including ground remodelling; demolition, site reclamation and removal of structures. Formation of a new roundabout access from the A361 together with associated alterations to alignment of Bloxham Road and provision of a section of link road through the site up to its eastern-most boundary. Application permitted 19 December 2019.

5. PRE-APPLICATION DISCUSSIONS

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

- 20/01187/PREAPP - School Expansion - construction of new teaching block and main assembly hall.

The Council advised that the applicant that, whilst there was generally support for the principle of the expansion of schools in sustainable locations, there was insufficient information provided at pre-application stage to be in position to offer support to the proposals. The main issues which were likely to arise if proposals were to progress to a formal planning application were identified as being: (i) the potential highway impacts (traffic and parking) of the proposed development; (ii) the potential loss of sports pitch provision; and (iii) it would need to be demonstrated that the proposals will not be to the detriment of the amenity of surrounding residential properties. Applicant further advised of the requirements for supporting information for any future application. Response issued 23 June 2020.

6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by way of site notices displayed near the site (Addison Road & Springfield Avenue), 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. Following the initial consultation

additional re-consultation was undertaken following the submission of revised plans and additional information in respect of transport and drainage matters during the application. The final date for comments was **05 February 2021**, although comments received after this date and before finalising this report have also been taken into account.

6.2. 16 letter/emails of comments and objections have been received from local residents and other third parties including the Banbury Civic Society and Salt Way Action Group. The comments raised by third parties are summarised as follows:

- Concerns that the Flood Risk Assessment does not accurately reflect the existing situation, and that existing issues of flooding would be exacerbated by the proposed development. If granted the development should be subject to '*stringent water drainage provisions*'.
- Highway safety:
 - Concerns as to whether appropriate parking provision being made;
 - Control required over drop-off and pick-up of students including coaches attending the site.
 - Sustainable transport options required; including travel arrangements and parking for staff and sixth form students.
- Concerns with regards to potential impacts on Salt Way; both in terms of access and maintaining the right of way and also protecting its ecological value
- Lack of details relating to the type of sports surface and floodlight plans and future maintenance.
- Unclear if the sports pitches will be for the exclusive use of BGN school.

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: Initially raised no objection to the proposed buildings but was concerned about the impact of the increased traffic upon the local road network and congestion in nearby streets and that the Transport Assessment was not sufficiently detailed, and further highlighted the need for appropriate of potential reported flooding issues.

Following the submission of revised details acknowledged that the revised transport assessment and travel plan seem to indicate that the additional traffic impacts of this proposal can be tolerated on the existing highway network with little additional work other than opening up an access to Salt Way and improving that route. Further highlighted the need for due consideration of whether additional school buses would

be required and appropriate management of such; to avoid undue obstruction and safety concerns in Springfield Road.

OTHER CONSULTEES

- 7.3. ARBORICUTURAL OFFICER (CDC): Raises concerns with regards to the to the detail of the submitted Arboricultural Impact Assessment; considering it to have significantly underestimated the potential impacts on existing trees at the site and that revised details are required to allow for an appropriate assessment.
- 7.4. ARCHAEOLOGY (OCC): **No objections.**
- 7.5. BUILDING CONTROL: Proposals will require a Full plans Building Regulations application.
- 7.6. LAND DRAINAGE (CDC): Advised that development would require a building regulations application and a Build over agreement with Thames water if the development is near a public drainage. Raised concerns with regards the applicant's surface water drainage calculations and that they should provide evidence that the additional discharge can be accepted by Thames Water in their sewer.
- 7.7. ECOLOGY (CDC): No objections subject to conditions securing biodiversity enhancements.
- 7.8. ECONOMIC DEVELOPMENT: No comments received.
- 7.9. EDUCATION (OCC): **Supports the application** considering there to be an identified need for additional secondary school places, and that without the proposed expansion of Blessed George Napier (BGN), which is regularly over-subscribed, and that without the BGN's expansion there would be forecast shortages of secondary school places within Banbury by 2023. This would result in fewer families being able to secure a place at a school of their choice.
- 7.10. ENVIRONMENT AGENCY: No comments received.
- 7.11. ENVIRONMENTAL PROTECTION (CDC): **No objections** following the submission of further information in respect of the proposed flood lighting and proposed plant and machinery, subject to a condition requiring infrastructure being installed to accommodate Electrical Vehicle (EV) charging points to be installed.
- 7.12. LANDSCAPE SERVICES (CDC): No comments received.
- 7.13. LEAD LOCAL FLOOD AUTHORITY (OCC) (LLFA): **No objections subject to conditions**, securing specific details of the proposed drainage scheme and confirmation of implementation.
- 7.14. LOCAL HIGHWAY AUTHORITY (OCC) (LHA): **No objections subject to conditions**, in relation to: securing an appropriate Travel Plan; details of a School Bus management Plan; cycle parking provision; pedestrian and bicycle access off Salt Way and securing approval of a Construction traffic Management Plan; and further securing appropriate Travel Plan monitoring fees through legal agreement. Key points noted by the LHA include:
 - *Expansion of the school will result in additional traffic movements but these will not make a significant impact on congestion on the network.*

- *Additional drop off and pedestrian movements in Springfield Avenue has the potential to exacerbate any existing safety risk.*
- *Opening up an access onto Salt Way will be important in mitigating the safety risk and encouraging sustainable travel.*
- *The proposed increase in cycle parking is insufficient in terms of the potential for modal shift towards cycling.*
- *A strong travel plan is required to encourage sustainable travel and reduce the proportion of pupils being brought to school by private car.*

7.15. OXFORDSHIRE PLAYING FIELDS ASSOCIATION: No comments received.

7.16. PLANNING POLICY (CDC): No comments received.

7.17. RECREATION AND LEISURE (CDC): Comments on the lack of information with regards to the proposed 3G Pitch surfacing and its future maintenance; and also what the intentions are for community use and proposed hours of use. Further comments on whether there would be an opportunity to see if there is a way of creating a full-size 3G pitch on this site which would meet the needs of both the school and the community.

7.18. SPORT ENGLAND: **No objections subject to conditions**, in relation to securing: further details in respect of the proposed Artificial Grass Pitch and Multi Use Games and its future maintenance; further details in respect of the land proposed for a playing field, and also securing a Community Use Agreement for the proposed facilities.

7.19. THAMES VALLEY POLICE DESIGN ADVISOR: **No objections subject to a condition** requiring 'Secured by Design principles' being secured.

7.20. THAMES WATER: **No objections subject to conditions and informatives**. Raises no objections with regard to surface water network infrastructure capacity. However, identifies a likely inability of the existing water network infrastructure to accommodate the needs of this development proposal. Advises of the need for a condition to ensure to ensure that sufficient capacity is made available to accommodate additional demand anticipated from the new development.

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 2015):

- PSD1: Presumption in Favour of Sustainable Development
- SLE4: Improved Transport and Connections
- BSC7: Meeting Education Needs
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD5: Renewable Energy
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDS)
- 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):

- C28: Layout, design and external appearance of new development
- C31: Compatibility of proposals in residential areas
- TR1: Transportation Funding
- 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 for schools development': statement (15 August 2011)
- 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:

- Principle of development
- Transport and Highway safety
- Design, and impact on the character of the area
- Residential amenity
- Flood-risk and Drainage
- Sports pitch provision
- Ecology and Biodiversity

Principle of Development

Policy Context

NPPF

9.2. Government guidance contained within the NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

9.3. Paragraph 94 of the NPPF is clear that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. It goes on to state that Local Planning Authorities should:

- a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and*
- b) work with schools promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.*

9.4. The *'Planning for schools development: statement'* is also a relevant material consideration; which emphasises the government's commitment to meeting demand and providing choice and opportunity and raising standards in state-funded education (including Academies and free schools). It states the creation and development of state-funded schools is strongly in the national interest and that planning decision-makers should support that objective.

Development Plan

9.5. Policy PSD1 of the CLP 2015 accords with the NPPF's requirement for sustainable development and that planning applications that accord with policies in the statutory Development Plan will be approved without delay.

9.6. Policy BSC7 of the CLP 2015 reflects the provisions and aims of the NPPF, acknowledging that continued provision of primary and secondary education, along with early years and lifelong learning will be required throughout the District to accommodate population growth, stating that: *'The Council will work with partners*

to ensure the provision of pre-school, school, community learning and other facilities which provide for education and the development of skills. New schools buildings should be located in sustainable locations'.

Assessment

- 9.7. There is a need for additional facilities and capacity for educational needs as the district continues to see significant housing growth. Oxfordshire County Council (OCC) as authority for education supports the application for the BGN site noting that the school is regularly over-subscribed and that for the September 2020 intake, all 150 available places have been allocated and that the school is already operating above the capacity of its current buildings.
- 9.8. OCC identifies that demand for secondary school places in the Banbury area is expected to grow over the coming years, for three reasons:
1. Pupil numbers have already risen in the local primary schools. This is because the birth rate went up in the mid-2000s, and the extra children are now reaching secondary school age.
 2. In addition, there has been significant housing development in Banbury and surrounding villages.
 3. Further new housing is expected. Cherwell District Council's adopted Local Plan includes 7,106 new homes in Banbury between 2014 and 2031.
- 9.9. The proposals put forward on behalf of BGN, supported by OCC, looks to address the existing shortfall and potential future needs through the expansion.
- 9.10. OCC advises that admission numbers would increase from 150 to 210, and that the total capacity would increase from 847 places to approximately 1,250 places.
- 9.11. OCC further comments that: *'Without the proposed expansion of Blessed George Napier, there would be forecast shortages of secondary school places within Banbury by 2023. This would result in fewer families being able to secure a place at a school of their choice'.*
- 9.12. OCC indicates that in the longer term a new secondary school is expected to be required in Banbury to meet growing needs, and that a site for this has been identified south of the Bankside/Longford Park (area identified under Policy Banbury 12 of the CLP 2015). This site will not become available for construction of the new school until related housing development progresses sufficiently, which at this stage remains to be resolved. The timing and nature of this new school cannot therefore be confirmed at this stage, but it will not be open before the late 2020s. It would not be possible to open the new school quickly enough to avoid the need to expand Blessed George Napier.
- 9.13. In light of the above, officers consider the expansion of the BGN site to be an appropriate means of addressing the district's education needs. It is considered that the proposals can be achieved without significant detrimental impacts on either natural or built environment (discussed further in the relevant sections below) and would constitute a sustainable form of development in line with both local and national policy guidance highlighted above.

Conclusion

- 9.14. The proposals seek to expand the school in one of the District's main urban centres to meet both an identified shortfall in existing provision and potential future needs. In officers view, within the above policy context, the proposals represent a appropriate form of development and that the general principle of development in terms of the sustainability of the location can be considered acceptable, subject to further considerations discussed below.

Transport and Highway safety:

Policy Context

NPPF

- 9.15. The NPPF (Para. 108) advises that in assessing specific applications for development, it should be ensured that:
- 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.
- 9.16. Para. 109: *'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'*.

Development Plan

- 9.17. Both Policies ESD15 and SLE4 of the CLP 2015 reflect the provisions and aims of the NPPF. Policy ESD15 of the CLP 2015 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"*.

Assessment

- 9.18. In terms of assessing transport related issues and highway safety the application is supported by a Transport Assessment and Travel Plan prepared by TPS Transport Consultants. These documents have been updated during the course of the application, addressing deficiencies and a lack of information in the original submission.
- 9.19. The Local Highways Authority (LHA) has reviewed the submitted information and following the submission of revised Transport Assessment (TA) and Travel Plan (TP) documents raises no objections subject to a number of conditions looking to secure further information and ensure that appropriate control over the site is retained and further financial contribution towards the monitoring of an appropriate

- Travel Plan for the school. Officers see no reason not to agree with the LHA's advice.
- 9.20. The site is located within the urban area of Banbury and a large number of pupils live within the walking and cycling catchment area. Whilst BGN is a faith school and attracts pupils from a wide area, the expansion is intended specifically to cater for the increase in population in Banbury arising from new development in the town.
- 9.21. The LHA notes that the Springfield Ave pedestrian access into the school has the tendency to become congested with pupils on foot, and combined with parent drop off in Springfield Ave, and that it is also the main access route to Wykham Park Academy (formerly Banbury School). Further noting that there is a potential safety risk to pupils crossing the road, or being hit by a vehicle as a result of stepping into the road, albeit there is not a significant record of injury accidents.
- 9.22. The LHA advises that the revised TA is robust in terms of assessment of predicted number of vehicle movements associated with the proposed expansion. It assumes the modal share would stay the same over time, given that the proportion of pupils from the Banbury area is likely to increase. (It is also hoped that the travel plan measures would persuade more local pupils to walk or cycle.) By year five after the expansion, on this robust estimate, there would be an additional 68 pupil drop offs in the local area. Some of these would be outside the peak arrival departure time, due to before and after school clubs. Using the same approach, the TS predicts there would be an additional 10 staff movements.
- 9.23. Given the likely distribution of these trips, LHA considers that the impact on nearby junctions is modest, and is not likely to have a noticeable incremental effect on queuing and delay at the junction; and that the same applies to the other junctions in the immediate area.
- 9.24. The LHA considers that a strong travel plan is required to promote walking and cycling, and to discourage parent drop off in Springfield and Addison Road and mitigate any potential increase in highway safety issues above the current situation. This would also help the development to meet the policy requirements to take full advantage of opportunities for sustainable travel and encourage sustainable travel options. Discussions around the TP have been on-going during the application and, whilst improved the revised TP still requires some additional amendments for the LHA to consider it acceptable, it is considered that appropriate details can be secured by way of condition attached to any permission given for this proposal.
- 9.25. Whilst not indicated within the application the LHA advises there may be a need for an additional school bus in the future. Buses wait in Springfield Road and have the potential to block residential accesses. The LHA advises that it should be possible to stagger the arrival and departure times, using a suitable holding area if necessary, to minimise inconvenience; and that appropriate details and such control can be secured by way of an appropriate condition.
- 9.26. Addison Road forms the only peak time vehicular access for staff and 6th form pupils (the latter group parking in the Football Club car park). An additional 49 parking spaces are planned on the site – although only 15 additional staff are expected, the current arrangement for the use of the adjacent football club car park, which is largely used by sixth formers, is informal only and could potentially cease in future. On the assumption that in the meantime, the football club car park would remain open, and that demand for car parking would fill the new spaces, there could be an increase in vehicle movements in Addison Road of 49. If spread

over 30 minutes, this would represent a noticeable increase but in the LHA's opinion, not one that could be considered severe.

- 9.27. The LHA raises concerns with regards to amount of provision for cycle parking at the site. The application (Drwg. No. 18020-BP-ZO-00-M2-A-2001 Rev P01) details, the position of the existing 44 cycle parking spaces, and the proposed new staff and pupil cycle spaces. There is a commitment to provide 30 additional pupil spaces, with space reserved for a further 20, bringing the total to 90. The LHA considers that, given the large and increasing share of pupils living more than 2km but less than 5km from the school, this does not cater adequately for a potential, desired increase in cycling, and that space should be reserved for a further 20, which would allow for an eventual 10% cycling modal share. There appears to be sufficient space between the blocks on the western boundary, which should be reserved for further additional cycle parking. Again, appropriate details in this respect could be secured by way of condition.
- 9.28. The LHA also considers it vitally important to mitigate the safety risk by opening up an access onto Salt Way, so that as many as possible of existing and new pedestrian and cycle movements use that access in preference to Springfield Road. Salt Way has the potential to collect trips from large areas of existing and new development at Bodicote, the whole of Wykham Park Farm, as well as existing and new development north of Bloxham Road. Using Salt Way would make a large proportion of many pupils' journeys traffic free.
- 9.29. The expansion onto the sports field would be compensated for by the addition of new sports pitches on the south side of Salt Way. An access route is therefore required across Salt Way, leading into the south of the school site. This is due to be provided by the Wykham Park Farm developers, but not before the sports pitch becomes available – likely to be after the expansion of the school. Appropriate control over the nature and construction of this route is required in the interests of protecting biodiversity and sustaining appropriate access along Salt Way.
- 9.30. Given the context of the site within an existing residential area it is considered necessary to secure appropriate control over construction traffic through a condition requiring approval of a Construction Traffic Management Plan; 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.
- 9.31. Paragraph 110(e) of the NPPF states that development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. These aims are echoed within Policies SLE 4, ESD 1, ESD 3 and ESD 5 of the CLP 2015, which look to maximise opportunities for sustainable transport modes. Whilst no consideration appears to have been given with regards to the future need for Electrical Vehicle (EV) charging at the site, it is considered that appropriate infrastructure details could be secured through an appropriate condition; to ensure that potential future needs could be met and to comply with both local and national policy requirements.

Conclusion

- 9.32. In light of the LHA's advice, and subject to conditions and S106 contributions, 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 Policies SLE4 and ESD15 of CLP 2015 in this regard and government guidance within the NPPF.

Design and Impact on the Character of the Area:

Policy Context

NPPF

- 9.33. The Government attaches great importance to the design of the built environment within the NPPF. Para. 124 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.

Development Plan

- 9.34. The aims of the NPPF are also echoed within Policy ESD15 of the CLP 2015 which looks to promote and support development of a high standard which contributes positively to an area's character and identity by creating or reinforcing local distinctiveness, stating that: *"New development proposals should respect the traditional pattern of 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 designed active public frontages"*.
- 9.35. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development. Further, saved Policy C30 of CLP 1996 states control will be exercised to ensure that all new housing development is compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.
- 9.36. Policy ESD13 of the CLP 2015 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.

Assessment

- 9.37. Views of the proposed buildings would be limited from the public domain, given the context of the site and its location relative to public vantage points. Some views would be possible from the Public Right of Ways which cross land to the east and from Salt Way to the south adjacent properties. Such views would be would be seen in the context of the existing school buildings.
- 9.38. The proposed new buildings are considered to be of a functional design and of an appropriate palette of materials that is sympathetic to the context of a school site. The external elevations are to be finished in brick and cladding and would provide a more modern contemporary contrast to the finish on the existing buildings. It is considered that the proposed buildings would not be to the detriment of the visual amenities of the wider school site and would result in no significant intrusion beyond its existing boundaries.
- 9.39. The proposed new netball courts and 3G pitch again would be within the school site and would be of a similar appearance to existing and as such would not result in any significant harm above the existing situation, sustaining the character and appearance of the site.
- 9.40. The only element that would be beyond the existing boundaries of the school site would be the proposed additional playing field south of Salt Way and the access to this part of the proposals. The principle of the use of this area for a playing field

has previously been considered acceptable in the context of the outline approval for residential development approved under 14/01932/OUT and officers see no reason to now reach a different conclusion as to the acceptability of this and any potential visual impacts of such.

Conclusion

- 9.41. It is considered that the proposed development would not be to the detriment of the visual amenities of the school site or its wider setting. The proposals are considered to sustain the character and appearance of the area and are therefore considered acceptable in this regard; according with the provisions and aims of Policy ESD15 of the CLP 2015 and retained Policy C30 of the CLP 1996.

Residential amenity:

Policy Context

NPPF

- 9.42. Para. 180 of the NPPF advises of the need Planning policies and 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.

Development Plan

- 9.43. Saved Policy C31 of the CLP 1996 requires that in existing residential areas any development which is not compatible with the residential character of the area, should not cause an unacceptable level of nuisance or visual intrusion. These provisions are echoed in Policy ESD15 of the CLP 2015 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'.
- 9.44. Saved Policy ENV1 of the CLP 1996 seeks to ensure that the amenities of the environment, and in particular the amenities of residential properties, are not unduly affected by development proposals which may cause environmental pollution including noise and light pollution and traffic generation.

Assessment

- 9.45. The development proposals would largely be contained within the existing school site and would not introduce development beyond existing boundaries, aside from the proposed change of use of land to provide additional playing field.
- 9.46. The use of the site would not change as a result of the proposed development and impacts would be of the same nature as currently experienced.
- 9.47. The proposed two new buildings would be located well within the existing school site, sufficiently distant from existing residential properties (nearest property 34 Addison Road some 66m to the north east), and it is considered that these elements of the proposals would not have any material impact on the amenity of neighbouring residential properties.
- 9.48. The proposals include the replacement of the existing 3G floodlit pitch. The new pitch would be re-orientated through 90° and again benefit from flood lighting. These proposals are supported by detailed drawings assessing the potential

impacts of the proposed LED floodlights (10no. units on 12m high columns), which indicates that there would be very little light spill beyond the boundary of the site. The Council's Environment Protection Officer (EPO) has reviewed the submitted information and considers acceptable in terms of its detail and that it demonstrates that the proposals would have no greater impact on the amenities of surrounding residential properties than the existing situation and is therefore acceptable in this regard.

- 9.49. In terms of potential noise nuisance as noted above the nature of the use of the site would not change. Levels of noise associated with the school site and in particular those experienced through the use of the outdoor sports facilities, are unlikely to significantly increase above existing levels. The EPO has reviewed the application documents, including details and specifications of the proposed plant (passive ventilation system) to serve the new buildings and raises no concerns in respect of potential noise nuisance.
- 9.50. The proposed development does have the potential impact on residential amenity through vehicle movements associated with the construction phase of the development. Whilst such disruption is likely to be short term whilst construction is undertaken, as noted above a condition is recommended to secure an appropriate CTMP to minimise any such impacts.

Conclusion

- 9.51. Given the above, officers are satisfied that the development can be made acceptable in residential amenity terms and that proposals are considered to comply with the Development Plan policies identified and are therefore acceptable in this regard.

Flood-risk and Drainage:

Policy Context

NPPF

- 9.52. In respect of meeting the challenge of climate change and flooding, Para. 163 of the NPPF advises that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere by proposed development; and where appropriate, applications should be supported by a site-specific flood-risk assessment. Further at Para. 165 Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.

Development Plan

- 9.53. 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. The provisions of Policy ESD6 require site specific flood risk assessments to accompany development proposals of 1 hectare or more located in flood zone 1.
- 9.54. 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. Proposals should include a surface water drainage strategy.

Assessment

- 9.55. A site-specific Flood Risk Assessment (FRA) prepared by Flo Consult UK Ltd and Surface Water Management Report prepared by Moran Structural Consultants have 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 educational establishment development is acceptable in principle subject to no increased flood risk elsewhere as a result of proposal.
- 9.56. The FRA identifies that based on the assessed flood data for the development site, the probability of fluvial, pluvial, ground water, drains/sewers or artificial sources is deemed to be low.
- 9.57. Concerns have been raised by local residents to the south-east of the site with regards the potential for existing flooding issues (rear gardens and the adjacent playing fields suffering from surface water flooding in times of heavy rainfall) being exacerbated by the proposed development.
- 9.58. The detailed drainage strategy put forward within the application considers a range of potential SuDS (sustainable drainage system) options for drainage. However, given ground conditions (firm to stiff clay over dense slightly clayey layer, and then moderately weathered mudstone) the use of infiltration and soakaways is not considered appropriate. Connection to the existing sewer network is therefore proposed.
- 9.59. No technical objections have been received from the LLFA or the Council's Drainage Team (CDT) in respect of the proposed drainage strategy and detailed layout as submitted. The LLFA advises that the general principle of the drainage proposals is acceptable subject to conditions, and that the proposals would provide betterment of the drainage of the site, thereby reducing flood-risk elsewhere, but would like to give further consideration to the specific details, as submitted, whilst also acknowledging there may not be a need for further detail to be submitted once they have an opportunity to make a more detailed assessment of the proposals. Any change in position of the LLFA will be reported to committee by way written update as necessary.
- 9.60. The proposals look to use permeable surfacing to the 3G pitch where the surface water run-off from the pitch area would percolate through the surface to a 20mm no fines sub-base layer, then conveyed to the main drainage network via a perforated pipe within the pitch sub-base. The permeable surfacing and sub-base would reduce the surface water runoff rate, and act as attenuation and a pollutant control, and underground attenuation tanking restricting flow rates to the A further a filter strip to the east of the artificial pitch to accommodate excess surface water discharge to the filter drain. Again, the filter is proposed to reduce the surface water run-off rate, and act as attenuation and a pollutant control.
- 9.61. The surface water run-off from the development site would be restricted. The restricted rate will be lower than the surface water run-off rate, and underground attenuation tanking/storage is proposed to prevent flooding.
- 9.62. The CDT notes that the developers would likely require a build over agreement with Thames Water. Concerns were also raised as to whether there would be sufficient capacity within existing infrastructure to take the surface water discharge;

however, Thames Water has subsequently advised that it has no objections in this regard.

- 9.63. The LLFA initially raised an objection in respect of the proposed car parking area at the northern end of the site, but have subsequently withdrawn that objection following further review of the drainage information on submission. The proposed parking area is an area of existing hardstanding, which has been used for parking in the past and is flanked by two existing car parking areas. Drainage for the car park area would be similar to existing, with discharge into the existing network, albeit with the addition of an area of permeable paving. It is considered that proposed drainage layout, as submitted during the application, is appropriate and that appropriate control over its implementation can be secured by way of condition.
- 9.64. In respect of Thames Water's comments in respect of issues relating to water capacity at the site the applicant has confirmed engagement with Thames Water on this matter, with a view to looking to address the information required by the recommended condition.

Conclusion

- 9.65. In light of consultee comments and the above, Officers consider that, given the drainage strategy put forward within the application, and whilst the proposals would result in an approximately 8% increase of developed land within the wider school site, the proposals would not be affected by flooding or result in any exacerbation of flood-risk elsewhere with improved drainage provision being made within the site. The proposals are therefore considered to accord with the provisions and aims of the Development Plan policies identified above and are therefore acceptable in this regard.

Sports pitch provision:

Policy Context

NPPF

- 9.66. The NPPF advises that the social objective of sustainable development includes supporting well designed and accessible services and open spaces (Para. 8). Para. 91 emphasises that planning decisions should aim to achieve healthy and inclusive places including through the provision of safe and accessible sports facilities; and further that planning decisions should guard against the loss of valued facilities, particularly where this would reduce the community's ability to meet its day to day needs(Para. 92).
- 9.67. Para. 96 advises access to a high-quality open space and opportunities for sport are important for the health and wellbeing of communities and planning policies should be based on robust and up to date assessments.
- 9.68. The NPPF (Para. 97) states that Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
 - b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

Development Plan

- 9.69. Policy BSC 10 of the CLP 2015 reflects the provisions and aims of the NPPF, stating that the Council will ensure there is sufficient quantity and quality of, and convenient access, to open space, sport and recreation through protecting existing sites and through addressing deficiencies in provision through enhancement to existing sites or securing new provision.

Assessment

- 9.70. The proposals would result in development being carried out on areas that currently provide outdoor sports provision; with the proposed parking area being located on an area currently marked out for netball pitches at the northern end of the site, the teaching block would be located on land currently occupied by the existing 3G pitch and the proposed new multi-use hall partially sited on an existing area of parking and partially on informal playing field area.
- 9.71. Sport England's Play Fields Policy (March 2018) outlines Sport England's approach when proposals lead to the loss of playing field. Generally, they will object to applications which lead to the loss of playing fields unless a relevant exception is made. In this case the most relevant exception is Exception E4. This states:

The area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:

- *of equivalent or better quality, and*
 - *of equivalent or greater quantity, and*
 - *in a suitable location, and*
 - *subject to equivalent or better accessibility and management arrangements*
- 9.72. Sport England (SE) has assessed the proposals and raises no objections subject to further details in respect of the facilities to be provided (3G surfacing) and their future maintenance, securing additional playing field provision and also securing community use going forward. Officers see no reason not to agree with SE.
- 9.73. The existing netball courts and 3G pitch would be replaced by new facilities of similar size and would have the potential to provide improved surfacing appropriate to the nature of the sports being played upon them. Whilst surfacing details are lacking at this stage it is considered that appropriate details and their future maintenance can be secured by way of appropriate conditions attached to any such permission.
- 9.74. The proposed replacement 3G pitch would be rotated through 90 degrees from its current siting, covering an existing area of grassed playing field. There would be a loss in sports pitch/playing field provision within the school site as existing. However, this is being compensated for by additional playing field provision on land south of Salt Way and, overall, there would be a net gain sports pitch/playing field provision.

- 9.75. The proposed release of land for playing field provision for the school is linked to the residential development (permission 14/01932/OUT) on Salt Way with provision made with the associated S106 agreement (Fifteenth Schedule) for 1.855ha of secondary school playing field land to be provided to mitigate impact of expansion at Blessed George Napier School. The trigger point for the release of this land is the first occupation of the 190th dwelling of the development or 36 months after the first occupation of the first dwelling or the date the link road is complete. The proposed residential development is at very early stages and timescales are likely to be affected by the current circumstances of COVID. SE has recommended a condition requiring details of the proposed additional playing field area and timescales for implementation, which is considered appropriate by officers.
- 9.76. The existing sports facilities are let out to the local community outside school hours. SE has recommended a condition requiring details of a new community use agreement, to extend to the new facilities, which is again considered appropriate by officers to ensure well managed safe community access to the sports facility/facilities is retained, and to ensure sufficient benefit to the development of sport.

Conclusion

- 9.77. It is considered that, subject to appropriate conditions, it has been demonstrated that the proposed development would ensure there is sufficient quantity and quality of, and convenient access, to open space, sport and recreation would be provided by the proposed development, in accordance with the provisions and aims of the Development Plan policies identified above and is acceptable in this regard.

Ecology & Biodiversity:

Legislative context

- 9.78. 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.
- 9.79. 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.
- 9.80. 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 would 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.

- 9.81. 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.
- 9.82. 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

- 9.83. 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.
- 9.84. 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.
- 9.85. 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.
- 9.86. Policy ESD10 of the CLP 2015 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.

- 9.87. 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.
- 9.88. 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.
- 9.89. 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

- 9.90. 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')
- 9.91 The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is a well-manged school site with areas of hardstanding and mown playing field with fencing and established hedgerow to the boundaries. There are a number of trees close by and in the boundary of the site which would not be unduly affected by proposals. There are no buildings to be removed or altered due to the proposed development. The proposals would cross Salt Way, designated a District Wildlife Site; however, it is considered that appropriate control over this element can be achieved through the condition recommended above at Para. 9.29.
- 9.92 The Council's Ecologist raises no objections subject to securing biodiversity enhancements going forward. Having considered both the CE's advice and Natural England's Standing Advice and taking account of the site constraints it is considered that the site has limited potential to contain protected species and any species present are unlikely to be adversely affected by the proposed development. As such no formal survey is required and in the absence of which this does not result in a reason to withhold permission. An informative reminding the applicant of their duty to protected species shall be included on the decision notice and is considered sufficient to address the risk of any residual harm.

- 9.93 Concerns have been raised by the Council's Arboricultural Officer with regards to the detail of the submitted Arboricultural Impact Assessment (AIA) and that it does not demonstrate an appropriate method for the protection of the hedgerow and trees on adjacent land to the western boundary of the site. Revised details have been requested from the applicant's agent on this matter but had not been received at the time of the preparation of this report. It is therefore considered appropriate to require by condition an appropriate Arboricultural Method Statement to ensure the continued health and well-being of trees and hedgerows that have the potential to be affected by the proposed development. Should acceptable details be received prior to the committee meeting officers will provide a further written update in this respect.
- 9.94 As noted above both national and local policy guidance requires new development to look to provide net gains for biodiversity. Whilst not included within the detail of the current application, officers consider that there is potential for the proposals to include biodiversity enhancements, such as bat and bird nesting opportunities within the detailed design. It is considered that the lack of this detail is not sufficient to warrant a reason to refuse the application, but that such appropriate details could be secured through an appropriate planning condition; to ensure that that the proposed development would provide a net gain in biodiversity, in accordance with the provisions of Policy ESD10 of the CLP 2015 and Government guidance within the NPPF, regarding the importance of conserving and enhancing the natural environment.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. Government guidance within the NPPF supports the plan-led system and advises that applications that accord with an up-to-date plan should be approved without delay.
- 10.2. In reaching an informed decision on planning applications there is a need for the LPA to undertake a balancing exercise to examine whether the adverse impacts of a development would be outweighed by the benefits such that, notwithstanding the harm, it could be considered sustainable development within the meaning given in the NPPF. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the NPPF. It is also necessary to recognise that Section 38 of the 1990 Act continues to require decisions to be made in accordance with the development plan and the NPPF highlights the importance of the plan led system as a whole.
- 10.3. The proposed development looks to address secondary educational needs of the district within a sustainable urban location. The proposed development would not cause harm to the character and appearance of the area, given the design approach of the proposed development which is considered appropriate to the context of the school site. The proposals would not be to the detriment of the levels of sports provisions providing additional and improved facilities above existing levels. Subject to conditions, the proposed development would not cause harm to the safety of the local highway network, any features of ecological value, sustainable drainage systems or increase potential flood-risk at the site or on adjacent land.
- 10.4. Given the above assessment and in light of current guiding national and local policy set out in the report, your officers consider that the proposal amounts to sustainable development and is therefore recommended for approval.

11. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION** SUBJECT TO THE CONDITIONS SET OUT BELOW AND THE APPLICANT MAKING SUITABLE ARRANGEMENTS TO PAY

- a) Travel Plan monitoring fee of £1,426

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: Design and Access Statement, Environmental Sustainability Statement and Energy Statement prepared by 'Integratedenergy' Building Services, Flood Risk Assessment (FRA) prepared by Flo Consult UK Ltd, Surface Water Management Report prepared by Moran Structural Consultants Drawings labelled: 18020-CBP-Z0-00-M2-A-0001 Rev. P04, 18020-CBP-Z0-DR-A-2000 Rev. P05, 18020-CBP-Z0-00-M2-A-2001 Rev. P01, 18020-CBP-Z1-00-DR-A-3000 Rev. P04, 18020-CBP-Z1-00-DR-A-3001 Rev.P04, 18020-CBP-Z1-DR-A-2001 Rev. P02, 18020-CBP-Z1-XX-DR-A-4001 Rev.P05, 18020-CBP-Z1-XX-DR-A-4002 Rev. P05, 18020-CBP-Z2-00-DR-A-3010 Rev. P06, 18020-CBP-Z2-XX-DR-A-4020 Rev. P04, 18020-CBP-Z2-XX-DR-A-4021 Rev. P04, D1, D2, D3, D4, D5, C20026-M-150 Rev. C, C20026-M-160 Rev. C, 2020-78-DR01 Rev. T2, 2020-78-DR02 Rev. T1, 2020-78-DR03 Rev. T1, 2020-78-DR04 Rev. T1, 2020-78-DR05 Rev. T1 and 2020-78-DR10 Rev. T1.

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.

Transport

3. Notwithstanding the details submitted, a Travel Plan prepared in accordance with Oxfordshire County Council's Guidance on Transport Assessments and Travel Plans shall be submitted to and approved in writing by the Local Planning Authority prior to the first use or occupation of the development hereby permitted. The approved Travel Plan shall thereafter be implemented and operated in accordance with the approved details.

Reason: In the interests of sustainability and to ensure a satisfactory form of development, in accordance with Policies SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

4. A School Bus Management Plan for the use of Springfield Avenue by buses carrying pupils to and from Blessed George Napier School shall be submitted to and approved in writing by the Local Planning Authority prior to the first use or occupation of the development hereby permitted. The approved management plan shall thereafter be implemented and operated in accordance with the approved details.

Reason: In the interests of highway safety and to mitigate the impact of school

buses on the surrounding highway network, road infrastructure and local residents.

5. Prior to the first use or occupation of the development hereby permitted, additional covered cycle parking facilities shall be provided on the site, and land within the site shall be allocated and reserved for future additional cycle parking, in accordance with details which shall have first been submitted to and approved in writing by the Local Planning Authority. The covered cycle parking facilities so provided and the land allocated for future cycle parking shall thereafter be permanently retained and maintained for the parking of cycles in connection with the development.

Reason: In the interests of promoting sustainable transport modes in accordance with Policies SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

6. Prior to the first use or occupation of the development hereby permitted, an access path suitable for pedestrians and ridden or pushed bicycles shall be provided between the school buildings and the existing path along Salt Way, in accordance with details which shall have first been submitted to and approved in writing by the Local Planning Authority. The path so provided shall thereafter be permanently retained and maintained and be open and available for pupils and staff access to and from the school at the normal arrival and departure times at the beginning and end of the school day.

Reason: In the interests of promoting sustainable transport modes in accordance with Policies SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

7. Prior to commencement of the development hereby approved a Construction Traffic Management Plan (CTMP) 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 on-site 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.

8. No development shall commence above slab level until a scheme for a system of ducting to allow for the future installation of electrical vehicle charging infrastructure to serve the dwelling 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 details prior to the first occupation of the dwelling.

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.

Drainage

9. Notwithstanding the information submitted, no development shall commence until a detailed surface water drainage scheme for the site, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be subsequently be implemented in accordance with the approved details before the development is completed. The scheme 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”;
- Full micro-drainage 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 ensure satisfactory drainage of the site and appropriate flood prevention and to comply Policy ESD 7 of the Cherwell Local Plan 2011-2031 Part 1 and with Government guidance contained within the National Planning

Policy Framework.

10. Prior to occupation of the development hereby approved, a record of the installed SuDS and the site wide drainage scheme shall be submitted to and approved in writing by the Local Planning Authority for deposit with the Lead Local Flood Authority Asset Register. The details shall include:
 - i). As built plans in both .pdf and .shp file format;
 - ii). Photographs to document each key stage of the drainage system when installed on site;
 - iii). Photographs to document the completed installation of the drainage structures on site;
 - iv). The name and contact details of any appointed management company information.

Reason: To ensure satisfactory drainage of the site and appropriate flood prevention and to comply Policy ESD 7 of the Cherwell Local Plan 2011-2031 Part 1 and with Government guidance contained within the National Planning Policy Framework.

11. No development shall be occupied until confirmation has been provided that either:- all water network upgrades required to accommodate the additional flows to serve the development have been completed; or - a development and infrastructure phasing plan has been agreed with Thames Water to allow development to be occupied. Where a development and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed 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

Sports Facilities Provision

12. No development shall commence until details of the design and layout of the Artificial Grass Pitch and Multi Use Games Area have been submitted to and approved in writing by the Local Planning Authority . The Artificial Grass Pitch and Multi-Use Games Area shall not be constructed other than in accordance with the approved details.

Reason: To ensure the development is fit for purpose and sustainable and to accord with Policy BSC 10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

13. a) The buildings shall not be occupied until the following documents have been submitted to and approved in writing by the Local Planning Authority:
 - i. A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing field which identifies constraints which could adversely affect playing field quality; and
 - ii. Where the results of the assessment to be carried out pursuant to (i) above identify constraints which could adversely affect playing field quality, a detailed scheme to address any such constraints. The scheme shall include a written specification of the proposed soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

b) The approved scheme shall be carried out in full and in accordance with the approved programme of implementation. Thereafter the land shall be maintained in accordance with the scheme and made available for playing field use in

accordance with the scheme.

Reason: To ensure that the playing field is prepared to an adequate standard and is fit for purpose and to accord with Policy BSC 10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

14. Within 12 months of development starting on site, a community use agreement prepared in consultation with Sport England shall be submitted to and approved in writing by the Local Planning Authority. The agreement shall set out the facilities to which it relates and include details of pricing policy, hours of use, access by non-educational establishment users, management responsibilities and a mechanism for review. The development shall not be used otherwise than in strict compliance with the approved agreement.

Reason: To secure well managed safe community access to the sports facility/facilities, to ensure sufficient benefit to the development of sport and to accord with Policy BSC 10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

15. Before the Artificial Grass Pitch is brought into use, a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England. This should include measures to ensure the replacement of the Artificial Grass Pitch within the manufacturer's specified time period. The measures set out in the approved scheme shall be complied with in full, with effect from commencement of use of the Artificial Grass Pitch.

Reason: To ensure that a new Artificial Grass Pitch is capable of being managed and maintained to deliver Artificial Grass Pitch which is fit for purpose, sustainable and to ensure sufficient benefit of the development to sport and to accord with Policy BSC 10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Ecology and Biodiversity

16. Notwithstanding the details submitted prior to the commencement of the development hereby approved above slab level, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-

(a) details of any 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, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.

Thereafter, 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 use or occupation of the development and shall be retained as such thereafter.

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 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 commencement of the development hereby approved, including any demolition, and any works of site clearance, a method statement for enhancing biodiversity at the site, including bat and bird nesting opportunities, 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 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. Notwithstanding the details submitted, prior to the commencement of the development hereby approved an Arboricultural Method Statement (AMS), undertaken in accordance with BS:5837:2012 and all subsequent amendments and revisions shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the approved AMS.

Reason: To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing built environment and to comply with Policy C28 of the Cherwell Local Plan 1996, Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Other

19. No development shall commence until details of how the applicants will incorporate 'Secured by Design' principles and/or standards into the development have been submitted to and approved in writing by the authority. The development shall be carried out in accordance with the approved details and shall not be occupied or used until written confirmation of conformity is received by the authority.

Reason: In order to achieve a satisfactory form of development, to ensure that the development remains safe, inclusive and accessible and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Planning Notes:

1. Planning permission only means that in planning terms a proposal is acceptable to the Local Planning Authority. Just because you have obtained planning permission, this does not mean you always have the right to carry out the development. Planning permission gives no additional rights to carry out the work, where that work is on someone else's land, or the work will affect someone else's rights in respect of the land. For example there may be a leaseholder or tenant, or someone who has a right of way over the land, or another owner. Their rights are

still valid and you are therefore advised that you should seek legal advice before carrying out the planning permission where any other person's rights are involved.

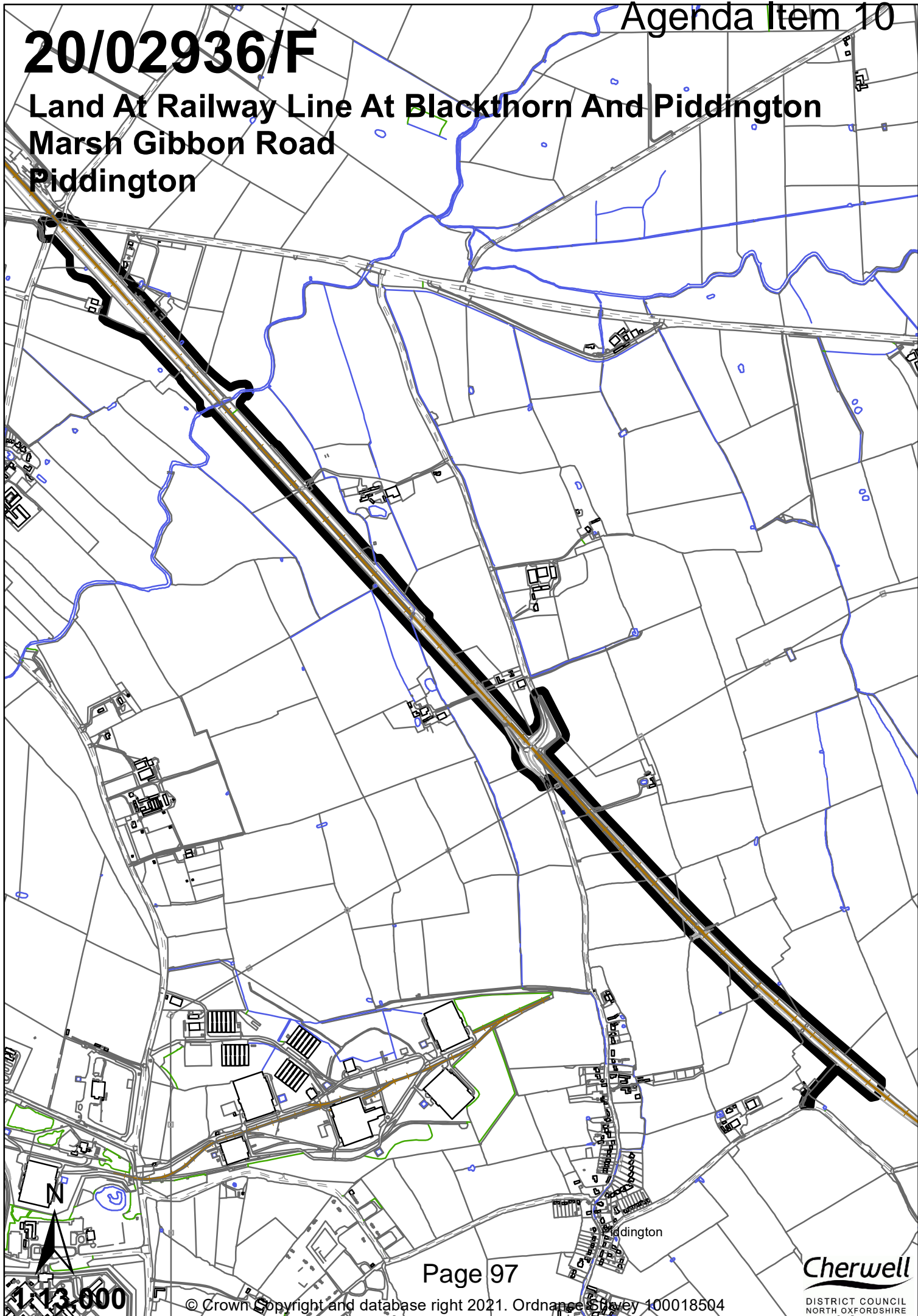
2. The proposed development is located within 15m of Thames Waters underground assets, as such the development could cause the assets to fail if appropriate measures are not taken. Please read our guide 'working near our assets' to ensure your workings are in line with the necessary processes you need to follow if you're considering working above or near our pipes or other structures. <https://developers.thameswater.co.uk/Developing-a-large-site/Planning-your-development/Working-near-or-diverting-our-pipes>. Should you require further information please contact Thames Water. Email: developer.services@thameswater.co.uk.
3. The applicant's and/or the developer's attention is drawn to the requirements of the Control of Pollution Act 1974, the Environmental Protection Act 1990 and the Clean Air Act 1993, which relate to the control of any nuisance arising from construction sites. The applicant/developer is encouraged to undertake the proposed building operations in such a manner as to avoid causing any undue nuisance or disturbance to neighbouring residents. Under Section 61 of the Control of Pollution Act 1974, contractors may apply to the Council for 'prior consent' to carry out works, which would establish hours of operation, noise levels and methods of working. Please contact the Council's Environmental Protection Team Leader for further advice on this matter.
4. Your attention is drawn to the need to have regard to the requirements of UK and European legislation relating to the protection of certain wild plants and animals. Approval under that legislation will be required and a licence may be necessary if protected species or habitats are affected by the development. If protected species are discovered you must be aware that to proceed with the development without seeking advice from Natural England could result in prosecution. For further information or to obtain approval contact Natural England on 0300 060 3900.
5. Birds and their nests are fully protected under the Wildlife and Countryside Act 1981 (as amended), which makes it an offence to intentionally take, damage or destroy the eggs, young or nest of a bird whilst it is being built or in use. Disturbance to nesting birds can be avoided by carrying out vegetation removal or building work outside the breeding season, which is March to August inclusive.
6. No materials, plant, temporary structures or excavations of any kind should be deposited / undertaken on or adjacent to the Public Right of Way that may obstruct or dissuade the public from using the public right of way whilst development takes place.
7. No changes to the public right of way direction, width, surface, signing or structures shall be made without prior permission approved by the Countryside Access Team at Oxfordshire County Council via the necessary legal process.
8. No construction/demolition vehicle access may be taken along or across a public right of way without prior permission and appropriate safety/mitigation measures approved by the Countryside Access Team. Any damage to the surface of the public right of way caused by such use will be the responsibility of the applicants or their contractors to put right / make good to a standard required by the Countryside Access Team.

CASE OFFICER: Bob Neville

TEL: 01295 221875

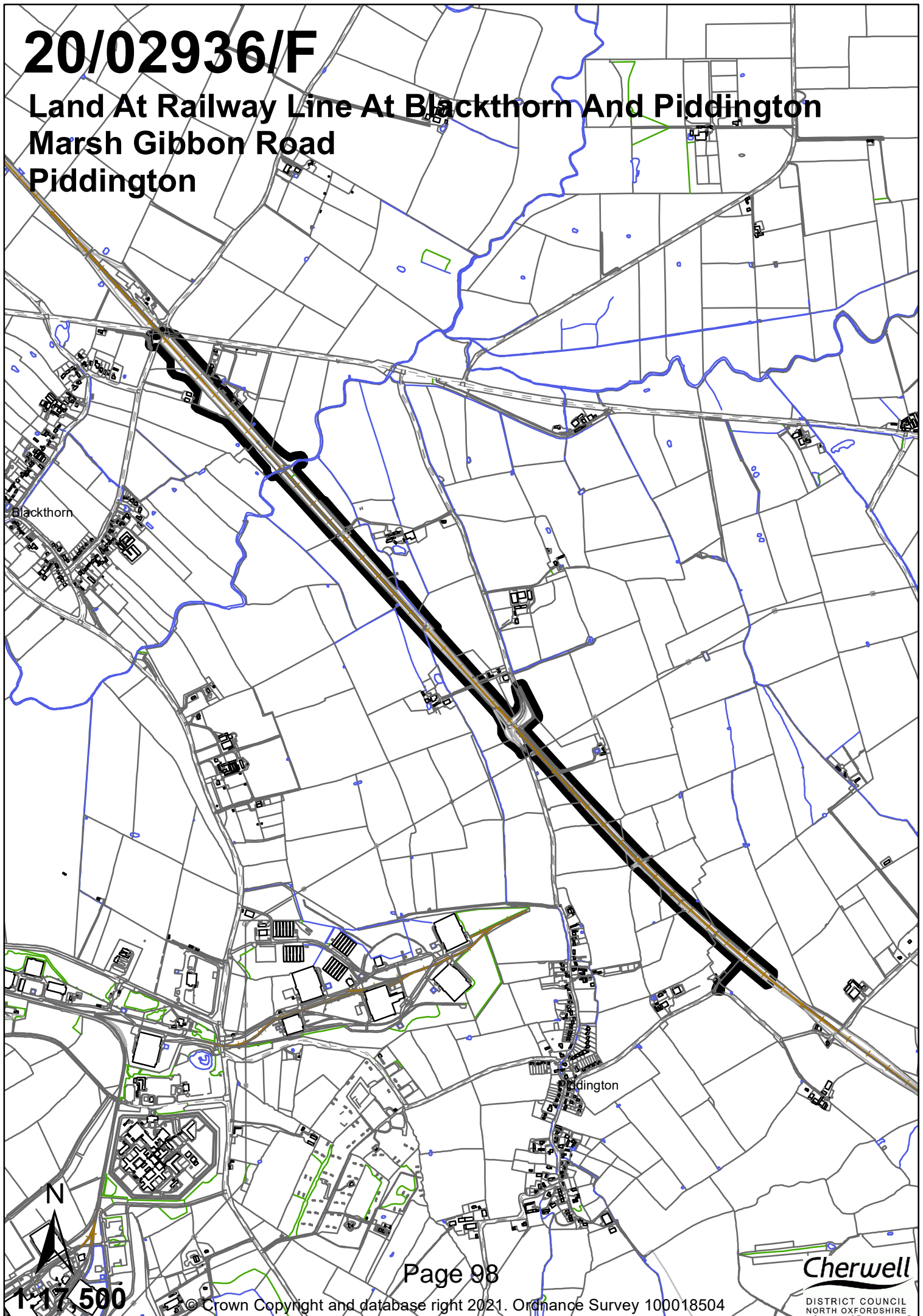
20/02936/F

Land At Railway Line At Blackthorn And Piddington
Marsh Gibbon Road
Piddington



20/02936/F

Land At Railway Line At Blackthorn And Piddington Marsh Gibbon Road Piddington



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Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

Case Officer: Linda Griffiths

Applicant: Network Rail Infrastructure Ltd

Proposal: Phase 2 of the Blackthorn & Piddington rail embankment stabilisation scheme (installation of sheet piles to provide stabilisation to the railway embankments)

Ward: Launton and Otmoor

Councillors: Cllr Hallchurch MBE, Cllr Holland & Cllr Hughes

Reason for Referral: Major development

Expiry Date: 25 February 2021

Committee Date: 11 March 2021

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS

Proposal

This application seeks consent for re-stabilisation works to a section of the railway embankment that runs between Blackthorn and Piddington. The embankment in question has a history of instability problems, which have resulted in emergency repairs, speed restrictions and repeated maintenance problems over recent years. The embankment to which this scheme relates is approximately 2km in length and consists of sheet piling. This application relates to Phase 2 of the stabilisation works. Phase 1 works, which were granted consent in 2019, are already well underway.

Consultations

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

- OCC Drainage and the Environment Agency objected to the original submission on grounds of insufficient detail with respect to drainage impacts, but those objections were removed following the submission of additional information and clarification from the applicant.

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

- Blackthorn Parish Council; CDC Ecology; OCC Countryside Access Officer; OCC Highways; CDC Environmental Health; and Natural England.

2 other letters of objection have also been received.

Planning Policy and Constraints

The railway embankment is within 20m of a main river (the River Ray) and located within Flood Zones 2 and 3. The site is also close to Meadow Farm, Blackthorn, a Local Wildlife Site and there are several known Protected and Notable Species within a 250m buffer of the site. The site is also within 2km of Arncott Bridge Meadows, Rushbeds Wood and Railway Cutting and Long Herdon Meadow SSSI's. Blackthorn Public Footpath 1 (131/1) passes under the railway embankment where the proposed work will be taking place.

The application has 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 are:

- Environmental Statement
- Planning and the Need for the Development
- Noise and Vibration
- Flooding and Drainage
- Ecology and Net Biodiversity Gain
- Transport and Highway Safety
- Archaeology
- Landscape and Visual Impact
- Human Rights and Equalities

The report examines 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 is given below, which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations. 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 referenced as Blackthorn embankment is located approximately 3 miles south east of Bicester. The northern extent of the site is located where the A41 crosses under the railway, while the southern extent is where Piddington Road crosses over the railway. The embankment was constructed in 1909, as part of the Great Western Railway. The railway is not electrified in this location and comprises two tracks on the embankment. The embankment was necessary to cross an area of low lying agricultural land in the flood plain of the River Ray. It now carries the Chiltern Line between Birmingham and London Marylebone. This is a modern, two-track high speed (100mph) passenger railway, which forms a commuter and intercity link through Oxfordshire.
- 1.2. The Earthworks Regrading Scheme and Sheet Pile installations are required along various sections of the embankment along a 3.7km length between Blackthorn and Piddington. This section of embankment is within open countryside, although there are a number of agricultural holdings and residential properties within close proximity of the embankment and the proposed works.
- 1.3. The villages of Blackthorn and Piddington are located to the west of the railway line, and a small number (11) of farms and residential dwellings are situated within 300m of the site – namely: Blackstone Farm, Lower Cowleys Farm, Nos.1 and 2 Cowleys Cottages, Piddington Cowleys Farm, Middle Cowleys, Ashville, Treadwells Barn, Weir Farm, Weir Farm Cottages and The Homestead to the southwest.

2. CONSTRAINTS

- 2.1. The railway embankment lies within 20m of the River Ray (a main river) and runs through an area designated as Flood Zones 2 and 3. The embankment is also close to Meadow Farm, Blackthorn a Local Wildlife Site and there are a significant number of Protected and Notable Species within 250m. The embankment is also within 2km of several Sites of Special Scientific Interest (SSSI), these being Arccott Bridge Meadows, Rushbeds Wood and Railway Cutting, and Long Herdon Meadow. Blackthorn Public Footpath 1 (131/1) passes under the railway embankment where the proposed works will be taking place.
- 2.2. The embankments are vegetated with rough grassland, blackthorn scrub and scattered trees, including oak, hawthorn, blackthorn, sycamore and ash. The River Ray and one of its tributaries, Piddington Brook, cross beneath the railway in the northern half of the site. There are a number of flood alleviation 'through pipes' that pass through the railway embankment within the flood plain area. A minor road linking the A41 to Piddington and three farm track roads cross over the railway. There are numerous drainage ditches throughout the surrounding farmland and several ponds close to the embankment.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The application seeks consent for the installation of sheet piles in conjunction with the previously approved stabilisation works to this section of the railway embankment that runs between Blackthorn and Piddington. The embankment in question has a history of instability problems, which have necessitated emergency repairs, speed restrictions and maintenance problems over recent years. Network Rail are seeking a long-term solution to these problems and in doing so improve the safety and reliability of the train services using the line, which provide an important link between London and the Midlands.
- 3.2. The Scheme for which the application is made involves work on various segments of the same section of route under Phase 1, using earthworks to re-grade the embankment on parts of the line totalling 3.7km in length. This proposal constitutes Phase 2, which comprises the installation of a 1,640m length of sheet pile retaining wall and re-grading to the rear with engineered fill to provide stabilisation to the railway embankments. It will affect approximately 2km of earthworks and sheet pile installation in total. The sheet piles will be approximately 6m long with a rear graded slope angle of 15 to 20 degrees. Each pile will extend no higher than 1m above ground level.

4. RELEVANT PLANNING HISTORY

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

13/01805/F – permission subject to conditions granted for stabilisation works to the Blackthorn/Piddington railway embankment;

18/00211/F – resubmission of 13/01805/F, conditional consent granted in July 2019;

20/01046/SCOP – scoping opinion given for ES submission.

5. PRE-APPLICATION DISCUSSIONS

- 5.1. No pre-application discussions have taken place about this phase 2 works proposal.

6. RESPONSE TO PUBLICITY

6.1. The application was publicised by way of site notices 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 was able to identify from its records. The final date for comments was **30 November 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:

- Why was this application not applied for at the outset of the project?
- Hope this potentially very loud and intrusive construction does not take place at night, as already subjected to some night time working at the weekend without any mitigation or compensation.
- The very noisy sheet piling works to the embankment will perpetuate and escalate the disruption for another year unless the Council is able to intervene and provide some mitigation.
- To date there has been no approach from the applicant to discuss the nature or timing of these works and how they might seek to reduce disruption – are they not required to demonstrate that they have engaged with those affected by the works?
- Looking at the ES, the affected properties have not been identified as a ‘Sensitive Receptor’, so their conclusion that the works would have no impact on anybody in the locality ignores the plight of those living right in the centre.
- Only 50m away from the main compound where construction vehicles enter and exit frequently from along the haul road and railway. The noise and light disturbance is especially intrusive.
- The compound was originally much smaller and now contains a two-storey high complex of portacabins used as offices, canteen and welfare facilities.
- Appreciate these works are necessary but request a visit from environmental health to assess the impact this project has as the impacts do not match the negligible effect that Goodhead Acoustics predicted at the outset.

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

6.4. Following the submission of an addendum relating to noise impact on Nos.1 and 2 Cowleys Cottages, a further objection was received on behalf of No.1 Cowleys Cottages which can be viewed on the website.

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. BLACKTHORN PARISH COUNCIL: Following concerns that the original agreement; assurances from Network Rail, and approval from the County Engineer, to divert the pumps towards the River Ray, as recommended by Blackthorn Parish Council, as part of a planning application had not been complied with; the PC has enlisted the support of District Cllr D. Hughes and County Cllr I. Corkin to ensure the recommendations are met before approving a further application and furthermore that the Traffic Management Plan previously approved should also be abided by and that both be made a condition of approval of the application.

CONSULTEES

- 7.3. OCC HIGHWAYS: **No objections** subject to a standard detailed condition in respect of a construction traffic management plan
- 7.4. OCC LOCAL LEAD FLOOD AUTHORITY: **Objection.** Further details are required on how the existing water courses will be protected during construction, the site is located in flood zones 2 and 3 and no detailed FRA or Surface Water Management Strategy has been provided.

Update 30th November 2020 following correspondence with the applicant. This is a high level water resources section of an EIA. This is not a detailed FRA and does not include an appropriate Surface Water Management Strategy.

Update 2nd December 2020 – Objection as above

Update 19th January 2021 – No objection subject to a condition relating to the management of water quality

- 7.5. OCC COUNTRYSIDE ACCESS OFFICER: **Comments.** Blackthorn footpath 1 runs through this site and is affected by this application. The footpath is currently closed via a TTRO but this temporary order expired on 4th December 2020 and needs to be renewed to ensure the footpath remains legally closed. The new plans show that the footpath is to be enclosed with fencing. At least 3m of width **MUST** be provided between the fences for the footpath to ensure the width of the footpath is not encroached. As part of the work, the stile should be replaced, and undergrowth cleared prior to re-opening the footpath.
- 7.6. LANDSCAPE OFFICER: **No comments** in respect of landscape/visual impacts
- 7.7. ECOLOGY OFFICER: **Comments** that the Ecological Management Plan is in the Appendices, but no Biodiversity Impact Metric has been included

Update 12th February 2021 – Comments that the ecological information submitted is fine and the recommendations within can be conditioned. The monitoring and management scheme also raises no issues and the Biodiversity Impact Assessment is accurate. Net gain for biodiversity is achievable and is to be gained through off-site enhancement works on part of the BBOWT reserve. If BBOWT are in agreement with the form of these measures, then this needs to be secured via condition or legal agreement if required as part of any permission. Beyond this I have no concerns although note the need raised by the Bucks Ecologist for the hydrological conditions previously agreed for Phase 1 to be applied here also.

7.8. ENVIRONMENTAL PROTECTION OFFICER: **Comments.** I have reviewed the ES submitted by JOMAS Engineering Environmental and I am happy with their assessment of the potential impacts on both noise and air quality. Providing the applicant commits to following best practicable methods outlined in the EIA, I have no further comments or observations to add.

7.9. ENVIRONMENT AGENCY: **Object** in the absence of an acceptable FRA

Update 26th January 2021: No objection subject to the imposition of a condition to ensure the development is carried out in accordance with the FRA.

7.10. BBOWT: **Comments** that they are happy with the off-site biodiversity compensation scheme on their land but raise concerns about the hydrological impact of the works on our nature reserve and suggest the condition from Phase 1 be re-imposed on this application in respect of monitoring hydrological changes.

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
- ESD7 – Sustainable Drainage Systems
- ESD8 – Water Resource
- ESD10 – Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 – Local Landscape Protection and Enhancement
- SL4 – Improved Transport Connections

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- TR7 – development attracting traffic on minor roads
- TR10 – Heavy Goods Vehicles
- C5 – Protection of Ecological Value and Rural Character

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)

- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)

8.4. Council Corporate Priorities

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

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

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

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

9. APPRAISAL

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

- Environmental Statement
- Planning and the Need for the Development
- Noise and Vibration
- Flooding and Drainage
- Ecology and Net Biodiversity Gain
- Transport and Highway Safety
- Archaeology
- Landscape and Visual Impact
- Human Rights and Equalities

Environmental Statement

9.2. The application is supported by an Environmental Statement (ES). The impacts of the proposed scheme during demolition, construction and operational phases are identified so as to determine the likely significant environmental effects both on its own and in combination with other committed developments. The proposed scheme is considered to fall within Category 2 (10) (d) *Infrastructure Projects* of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

9.3. The scope of the ES considers in detail the following topics: Ecology and Biodiversity, Traffic and Transport, Air Quality, Noise and Vibration and Water Resources and Cumulative Effects. An ES was submitted with the application because of the likely significant effects on the environment as a result of the nature

of the proposal and the length of track involved. Having regard to the nature of the proposal and that this follows a previous consent for embankment stabilisation works and the site constraints, Officers are satisfied with the scope of the submitted ES. On this basis it is considered that sufficient information is before the Local Planning Authority in order to consider the environmental effects of the development and any mitigation required to make the development acceptable. The submitted ES can be viewed with the application documents via the Council's website.

- 9.4. Regulation 26 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 requires that Local Authorities must examine the environmental information, reach a reasoned conclusion on the significant effects of the proposed development on the environment and integrate that conclusion into the decision as to whether to grant planning permission.
- 9.5. 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.

Planning Policy and the Need for the development

Legislative and policy context

- 9.6. The Development Plan for Cherwell comprises the adopted Cherwell Local Plan Part 1 2011-2031 and saved policies in the adopted Cherwell Local Plan 1996. Section 70 (2) of the Town and Country Planning Act 1990 provides that in dealing with applications for planning permission, the Local Planning Authority shall have regard to the provisions of the development plan in so far as is material to the application, and any material considerations. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that regard is to be had to the development plan for the purpose of any determination to be made in accordance with the development plan unless material considerations indicate otherwise. This is also reflected in the National Planning Policy Framework (NPPF) at paragraph 12 which makes it clear that the starting point for decision making is the development plan.
- 9.7. Policy PSD1 of the adopted Cherwell Local Plan 2011-2031 advises that the Council will take a proactive approach to reflect the presumption in favour of sustainable development and Policy SLE4 seeks to ensure improved Transport and Connections.
- 9.8. The embankment between Piddington and Blackthorn has a history of landslip movements due to its age and the original construction methods. As recently as 2007 these have led to the need for stringent speed restrictions and emergency repair work in order to manage the risk to railway safety. These proposals are part of the planned programme of works to provide cost-effective safe and reliable railway infrastructure.
- 9.9. The section of embankment at Blackthorn has been monitored since 2003 on both sides using devices to detect movement in the soil and ground water levels. Movements in clay embankments of this kind develop slowly and gradual 'creep' movements are precursors to sudden landslips which can occur without warning, usually over the winter months when the ground is wet and water levels in the ground are high. The movements identified suggest that the works to stabilise the slopes are urgently required. The initial stabilisation works granted under a previous consent (18/00211/F) which are identified as Phase 1 are underway. This application relates to Phase 2, which involves the insertion of sheet piles.

- 9.10. The Piddington section of the embankment is thought to be made up of re-worked Oxford Clay and ash shoulders and also has a longstanding history of instability, which has led to the need for speed restrictions and increased maintenance. The insertion of sheet piles is also proposed along this stretch.
- 9.11. Central to the benefits of the proposal is that the scheme will safeguard the operation of the line and the reduced occurrence of temporary speed restrictions which in turn should make the railway a more attractive transportation option thereby encouraging the use of the railway. As such therefore, the proposal accords with the NPPF in seeking to ensure sufficient provision of transport infrastructure in achieving sustainable development. Policy SLE4 'Improved Transport Connections' seeks to promote a modal shift away from an over reliance on the car to more sustainable forms of transport.
- 9.12. Construction is expected to commence in 2021 and it is anticipated that it will take approximately 4 months to complete.

Noise and Vibration

- 9.13. It is anticipated that construction work will take 4 months to complete, with working hours expected 08:00-17:00 Monday to Friday with provision for up to 10 shifts from 23:00-06:00 on Saturdays, if work needs to be undertaken while no trains are running on the line. The submission advises that should night-time working be required, activities will not take place on consecutive nights and advance notice would be given to local residents.
- 9.14. The ES has assessed the potential noise and vibration levels during construction of the piling and re-grading works together with noise levels from increased traffic during construction. Noise from any operational phase has been scoped out of the assessment as confirmed by the Local Planning Authority as the proposed works, once completed, will have no impact on the number of trains or road traffic.
- 9.15. Objections have been received by and on behalf of the occupiers of Nos.1 and 2 Cowleys Cottages, a pair of semis which sit adjacent to the railway line at the point where the road passes over the railway line, who are concerned about the impact of the construction upon their residential amenities in terms of noise and vibration and that the assessment in the ES has not considered their properties. The applicant was requested to look into the matter accordingly, and consequently, an addendum was received which considers the noise impact on Cowleys Cottage. This has been forwarded to the agent on behalf of the occupants of the Cottages. However, their objection currently still stands, advising that whilst each section is assessed in isolation, at no point does it recognise that at the Cottages, all of the nuisances, that is noise and vibration from the works together with traffic accessing the site, will be combined together at the same time.
- 9.16. In response to the above objection, the applicants have commented as follows:

'Please note that whilst Phase 1 of the works were concentrated in one area near the main compound, which was relatively close to the properties, Phase 2 is split into a number of worksites along the line. This is why receptors further away from the main compound are now equally affected, and why you would expect the overall noise impact to be reduced with work spread out along the railway line instead of in one place. The predictions set out in the Jomas Noise Impact Assessment Addendum reflect this. We believe that main compound is only used for Phase 2 of the works in order to access the line so there should be fewer movements in that area than during Phase 1. The road traffic movements to the east are not counted as part of the construction noise as they are on a public highway. These are very different assessment

methods and it would produce a false picture to combine them. It is also noted that whilst a minor increase in road traffic noise levels has been predicted during this phase, the absolute noise level is relatively low and not at a level likely to cause adverse impacts when assessed against other typical road traffic noise criteria.'

- 9.17. The above comments have been forwarded to the Environmental Health Officer for further comment and advice. Members will be updated at the meeting.
- 9.18. The noise and vibration chapter in the ES has been assessed by Environmental Health who raise no objections to the development in principle subject to the impact on No.1 Cowleys Cottage having been adequately assessed. Having regard to the above, it is considered that the proposal is acceptable in this respect, subject to the imposition of a condition requiring mitigation measures to be agreed in respect of the impact on Nos.1 and 2 Cowleys Cottages.

Flooding and Drainage

- 9.19. The scheme could affect the local water environment, including ground water and surface water courses. The proposed works will result in changes to local water features which include the diversion of a watercourse that crosses under the railway track, and the reduction of floodplain volume between the most northerly extent of the embankment stabilisation scheme and Upper Cowleys Farm.
- 9.20. Policies ESD6 and ESD7 of the adopted Cherwell Local Plan relate to Sustainable Flood Risk Management and Sustainable Drainage Systems. Policy ESD7 requires that all development will be required to use SuDS for the management of surface water run-off. The policy also requires ground water quality to be protected, flood risk to be reduced where possible, reduce pollution and provide landscape and wildlife benefits. Section 14 of the NPPF – Meeting the challenge of climate change, flooding and coastal change echoes the above-mentioned policies and is also relevant to the consideration of this application.
- 9.21. The site lies within the River Ray floodplain and also crosses the Piddington Brook. A Flood Risk Assessment was required as part of the submission to ensure that the proposed scheme would not adversely affect the existing floodplain and flood conveyance routes. The Blackthorn section of the line is predominantly within the floodplain associated with the River Ray, which flows south-west through the northern part of the site and passes beneath the railway. It is classified as a main river and is managed by the Environment Agency. The Piddington Brook flows northwards from Piddington and crosses beneath the railway line at Piddington Cow Leys before its confluence with the River Ray. The surrounding landscape is predominantly agricultural land, divided into fields that are drained by a network of drainage ditches that flow towards the River Ray. There are also numerous ponds, particularly within the Blackthorn section. The Piddington section of the embankment works lies within Flood Zone 1, but the Blackthorn embankment works are entirely within Flood Zones 2 and 3.
- 9.22. The application is accompanied by a Flood Risk Assessment and an explanation of the assessment carried out by the Phase 1 development proposals. These were submitted following initial objections from OCC and the Environment Agency. These have subsequently been assessed by the Environment Agency and OCC as Lead Flood Authority who are now content with the submission, which makes it clear that the scope of works to be completed as part of the Phase 2 works were all included in the modelling and FRA completed as part of Phase 1. The submission is therefore recommended for approval in this respect and the proposals are considered acceptable in terms of flood risk and drainage and therefore in accordance with the

development plan and NPPF Government guidance, subject to a condition that the works are carried out in accordance with the FRA and mitigation measures therein.

Ecology Impact

Legislative context

- 9.23. 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.
- 9.24. 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.
- 9.25. 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.
- 9.26. 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.
- 9.27. 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

- 9.28. 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.

- 9.29. 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.
- 9.30. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location considering 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.
- 9.31. 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.
- 9.32. 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.
- 9.33. These two 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.
- 9.34. 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

- 9.35. 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')

9.36. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site consists of scrub, a mix of species rich and species poor semi-improved grassland and agricultural land which has been subject to some improvement. A number of ponds and drainage ditches are also present within and adjacent to the site. The overall scheme also crosses three watercourses: the River Ray, Piddington Brook and an un-named drainage ditch. There are no buildings to be removed or altered due to the proposed development. There are several 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.

9.37. 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.

9.38. 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.

9.39. The application is supported by a chapter in the Environmental Statement which focuses on the ecology of the site and the surrounding area based upon desk study data, consultations and field surveys undertaken between 2009 and 2020. In particular, it considers the potential key impacts of this phase of the scheme on habitats and protected and notable species, paying most attention to the results of the most recent suite of ecological surveys.

9.40. The schemes ecological mitigation is largely tied into Phase 1 of the works. This includes replacement planting, which will take place on the railway embankment, consisting predominantly of native species including blackthorn, hazel, holly, oak, rowan, honeysuckle and dog rose. Blackthorn is a key location for a number of notable butterfly species, historically recorded within 500m of the site so its inclusion within the planting mix will provide long-term habitat for those species. There will also be a wildflower planting mix sown along the scheme, to include a high percentage of those species recorded as being present in the site during the walkover surveys. It is likely however that some off-site habitat compensation is likely due to the constraints of the site.

9.41. The submission has been assessed by the Ecologist who raised no objections but wished to see the Biodiversity Impact Metric that had not been included in the original submission. The biodiversity calculator was duly submitted, and the

application proposal is now considered acceptable in this respect subject to the imposition of a condition to ensure that development is completed in accordance with these documents and a condition relating to the hydrological impacts upon the adjacent nature reserve as per Phase 1.

- 9.42. 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.

Transport and Highway Safety

- 9.43. Saved Policies TR7 and TR10 of the adopted Cherwell Local Plan 1996 consider traffic generated by a proposed development and its impact on the local highway infrastructure. Whilst consideration of these policies is relevant to the Scheme, the traffic generated by the proposal in terms of construction traffic is only short term and once the embankment stabilisation scheme has been completed, except for infrequent inspections and future maintenance, this traffic will cease.
- 9.44. Section 9 of the NPPF 'Promoting Sustainable Transport' advises at paragraph 109 that *'development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'*.
- 9.45. The ES transport chapter has been prepared to consider the likely environmental effects associated with the construction traffic generated with this phase. The works duration is anticipated to be four months, commencing this year. The overall works area extends from the A41 in the northwest to the location where Piddington Road crosses the railway line in the southeast.
- 9.46. Access to the site will be via a number of points for construction vehicles. There is no public access to the site. The temporary access points for vehicular access and construction compound which were approved as part of the Phase 1 works will also be utilised for this development.
- 9.47. Access Point 1 is adjacent to A41 at the most northerly point of the site but will not be used by construction vehicles as part of these Phase 2 works. Access Point 2 has two accesses which are located off Lower End close to Upper Cowleys Farm, approximately 1.2km to the south of A41. Access Point 2a provides access to the north-west of the railway overbridge, with Access Point 2b located on the south eastern side of the railway overbridge. Access Point 3 also has two access points located off Lower End. Access Point 4 from Ludgershall Road will only be used by light vehicles serving the site.
- 9.48. The Transport submission within the ES has been assessed by OCC as highway authority who raise no objection to the development but recommend the imposition of a condition requiring the submission of a Construction Traffic Management Plan for approval.
- 9.49. Having regard to the above, it is considered that the proposed development accords with the policies within the development plan and Government advice within the NPPF and is therefore acceptable in this respect.

Air Quality

- 9.50. The National Planning Policy Framework sets out the Government's planning policies and how they are to be applied. Specific reference to air quality is provided within Section 15 at paragraphs 103 and 181.
- 9.51. In this regard the ES has focussed on the potential effects of dust and traffic emissions associated with the construction phase of the development, the operational phase has been scoped out as the proposal will not result in any increase in the number of train services provided nor future maintenance requirements. The ES has therefore looked at the construction phase only and the effects on air quality in that respect. The ES concludes that any impacts will not be significant. The document has been assessed by the Environmental Health Officer who has not raised any objections to this assessment and the conclusion reached.

Landscape and Visual Impact

- 9.52. The main impacts of the proposed scheme will result from the construction phase, including the removal of vegetation such as hedgerows, trees and scrub and construction of the works along sections of the embankment relating to the proposed piling. It should be noted however, that much of the existing vegetation has already been removed to facilitate the Phase 1 stabilisation works. Visual and landscape impact has not been included in the ES but the application is accompanied by a separate visual impact assessment.
- 9.53. The landscape immediately around the railway is flat, becoming gently undulating towards the south leading to the prominent Muswell Hill and Arncott Hills. It is primarily of a rural character with smaller scale developments such as Blackthorn, Piddington, Brill and Ludgershall within. The existing railway line also forms a strong element within the landscape as it runs on an embankment for the majority of its length through the application site.
- 9.54. Policy ESD10 of the adopted Cherwell Local Plan 2011-2031 refers to the protection and enhancement of ecology and the natural environment and requires amongst others, the protection of trees. Policy ESD13 also encourages the protection of trees and landscape features. The impact of the stabilisation works and removal of trees, hedgerows and scrub were all considered as part of the Phase 1 proposals. The additional impacts for consideration here in the main are the construction of sheet piles along sections of the embankment. These, however, will only project 1 metre above ground level and will therefore have minimal landscape impact.
- 9.55. The imposition of landscape conditions will ensure that appropriate replacement planting occurs and within a reasonable timescale. Accordingly, it is considered that the stabilisation works proposed accord with Policy ESD13 of the adopted Cherwell Local Plan and will not cause demonstrable harm to the landscape.

Human Rights and Equalities

- 9.56. 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.

- 9.57. 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

- 9.58. 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 notice 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

- 9.59. 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.
- 9.60. 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

- 9.61. 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.
- 9.62. 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 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 harm and come to a decision about the acceptability of the scheme. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise.

- 10.2. In terms of economic benefit, the proposals will generate some economic benefit during the construction works by providing construction employment and in the long term benefit the economy through the increased use of public transport.
- 10.3. In terms of social benefit, the scheme will ensure the long-term future of the railway network, increased use of public transport to the benefit of the local population, and also afford health and safety benefit through stabilisation of the embankments and removal of the risk of collapse.
- 10.4. In terms of environmental impact, the scheme through proposed mitigation measures will seek to ensure the protection of ecology and net biodiversity gain through replacement planting and the implementation of a construction Environmental Management Plan together with a Biodiversity Monitoring and Maintenance Schedule. The improvement to the public transport system will also help to reduce the reliance on the use of private vehicles.
- 10.5. The proposed embankment stabilisation scheme is necessary to ensure that the existing embankment does not collapse, in the interests of passenger safety and the provision of sustainable public transport. Therefore, provided acceptable mitigation measures are agreed in terms of ecology, flood risk and landscaping, it is considered that the proposed embankment stabilisation works are in accordance with the development plan and the NPPF and therefore should be approved.

11. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT AUTHORITY 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: to be inserted

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.

Public Right of Way

3. No materials, plant, temporary structures or excavations of any kind should be deposited/undertaken on or adjacent to the Public Right of Way that obstructs the public right of way whilst development takes place.

Reason: To ensure the public right of way remains available and convenient for use.

Public Right of Way

4. The development should be designed and implemented to fit with the existing public rights of way network. No changes to the public rights of way's legally recorded direction or width must be made without first securing appropriate temporary or permanent diversion through separate legal process. Alterations to surface, signing or structures shall not be made without prior written permission by Oxfordshire County Council. Note that there are legal mechanisms to change PRow when it is essential to enable a development to take place.

Reason: To ensure the legal public right of way remains available and convenient for public use.

Public Right of Way

5. Any gates provided in association with the development shall be set back from the public right of way or shall not open outwards from the site across the public right of way.

Reason: To ensure the public right of way remains available and convenient for use.

Drainage

6. Drainage – Wording awaited from OCC

Noise and Vibration

7. Prior to the commencement of the development hereby approved, a full assessment of the impact of noise and vibration resulting from the development on 1 and 2 Cowleys Cottages shall be carried out and the report submitted to the Local Planning Authority for approval in writing. The development shall thereafter be carried out in accordance with any mitigation measures identified within the report.

Reason: In the interests of the residential amenities of 1 and 2 Cowleys Cottages and to comply with Government guidance within the National Planning Policy Framework.

CTMP

8. CTMP – This has been submitted but wording will be required to ensure compliance

Ecology

9. The development shall be implemented in accordance with the Ecological Management Plan and the on and off-site ecological mitigation measures set out in the Environmental Statement.

Reason: In the interests of protecting wildlife and supporting habitat and creating ecological enhancements in accordance with Policy ESD10 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the NPPF.

Hydrological Impact

10. Prior to the commencement of the development hereby approved, a report on the hydrological impact of the drainage works on Meadow Farm Local Wildlife Site shall be submitted to and approved in writing by the Local Planning Authority. The report is to details appropriate mitigation measures should they be considered necessary, including any amendments to the approved scheme. Thereafter the development shall be carried out in accordance with the approved details.

Reason: In the interests of protecting wildlife and supporting habitat and creating ecological enhancements in accordance with policy ESD10 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the NPPF.

FRA

11. The development shall be carried out in accordance with the submitted Flood Risk Assessment (ref P2451J1890 Version 3.0 dated 10/12/2020) and the following mitigation measures it details:
- Compensatory storage and flood risk mitigation should be provided in accordance with Section 7
 - These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the schemes timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided, in accordance with Policy ESD6 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

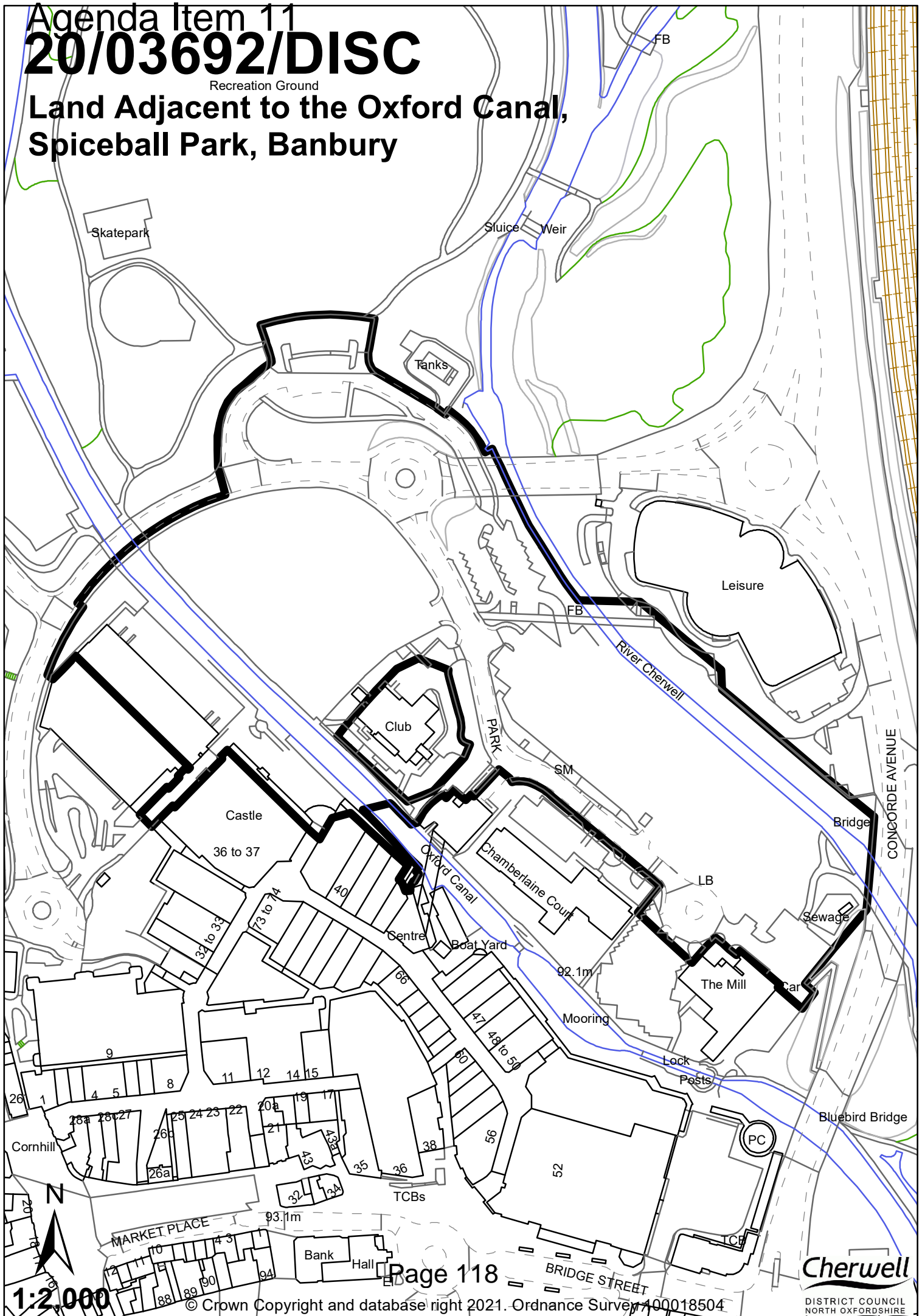
CASE OFFICER: Linda Griffiths

TEL: 01295 227998

Agenda Item 11 20/03692/DISC

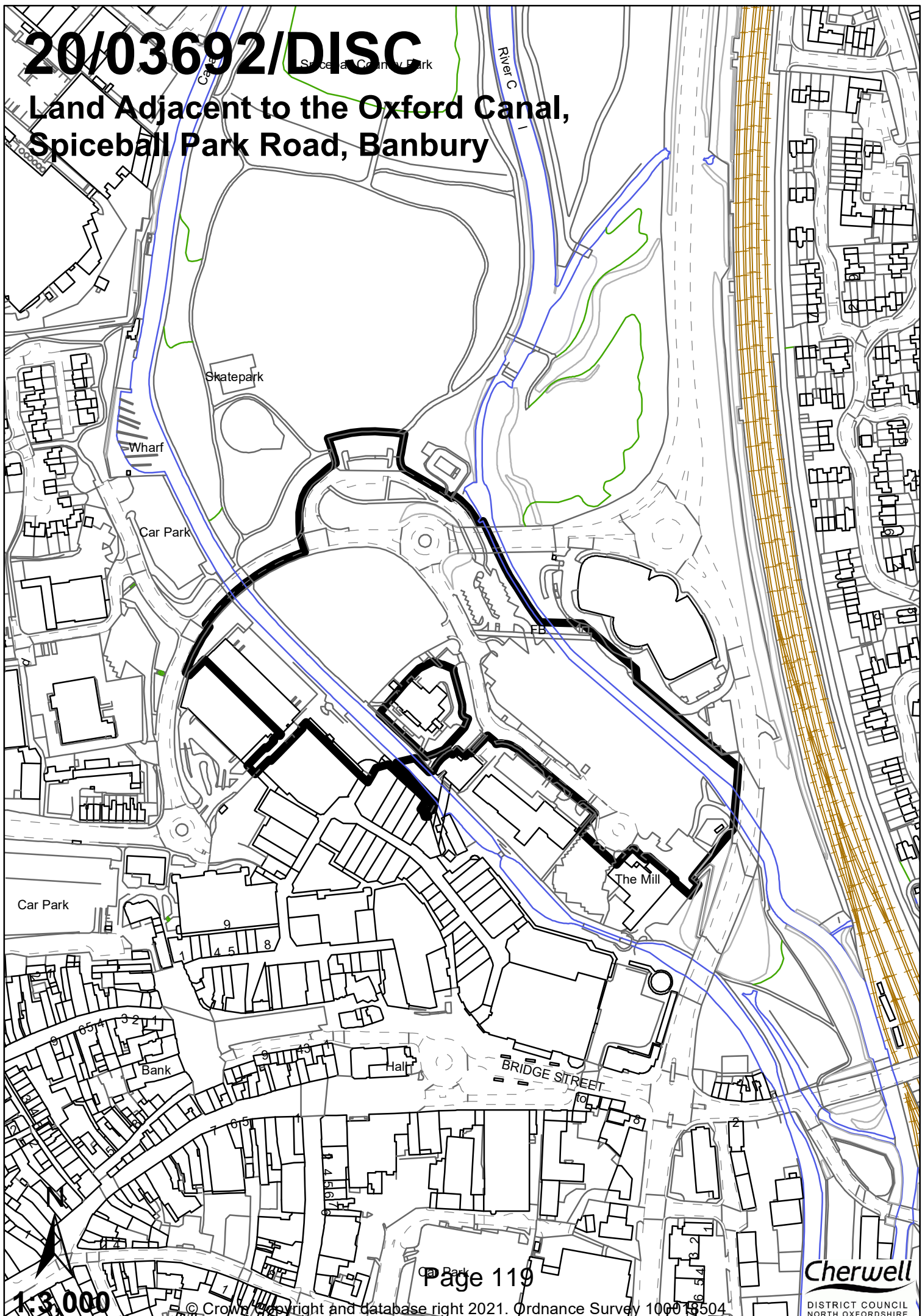
Recreation Ground

Land Adjacent to the Oxford Canal, Spiceball Park, Banbury



20/03692/DISC

Land Adjacent to the Oxford Canal, Spiceball Park Road, Banbury



Case Officer: Samantha Taylor

Applicant: Ian Wallace

Proposal: Discharge of Condition 9 (Car Park Payment Strategy) for Block B of application 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: 17 February 2021 **Committee Date:** 11 March 2021

RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS

1. APPLICATION SITE AND DESCRIPTION OF APPROVED DEVELOPMENT

- 1.1. The application site is relates to multi-storey car park within Block B of the Castle Quay 2 development which is currently under construction.
- 1.2. The approved development includes the provision of a retail food store, hotel, cinema, restaurants and cafes along with necessary access, landscaping, infrastructure car parking and other associated works.

2. CONDITIONS PROPOSED TO BE DISCHARGED

- 2.1. Condition 9 (Car Park Payment Strategy) – this condition states:
'Prior to the first use of the car parks associated with this development a car parking payment strategy shall be submitted to and approved by the Local Planning Authority and thereafter brought into use and maintained unless first agreed by the LPA'.
- 2.2. The application submitted is supported by details of the types of payment machine as well as layout plans of the car park showing the placement of the payment machines and barriers.

3. RELEVANT PLANNING HISTORY

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

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

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

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.

4. RESPONSE TO PUBLICITY

4.1. This application has been publicised by way of a site notice displayed near the site 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 **5 February 2021**, although comments received after this date and before finalising this report have also been taken into account.

4.2. One objection has been raised by a third party and is summarised as follows:

- Unclear what method of payment the machines will take
- Desire for cash to be a method of payment
- Concern with charging for parking due to problems with the retail sector currently

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

5. RESPONSE TO CONSULTATION

5.1. 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

5.2. CDC Landscape and Parking Team – No response received.

6. APPRAISAL

6.1. Condition 9 of approved application 17/00284/REM requires an acceptable car parking payment strategy. This application relates to the multi-storey car park at Block B of the Castle Quay 2 development.

6.2. The information submitted includes a Skidata Car Parking System document. Within this document the drawings submitted include a layout plan of each level of the car parking, the location of the payment machine, access barriers and the type of payment machine. In addition, brochure details of the types of machine and access barriers are provided in the document. This confirms what type of payment the machine would take.

6.3. Within the multi-storey car park, two types of machine are proposed, one which accepts both cash and card payments (skiosk Smart Parking) and the other which is cashless (skiosk Lite Parking). In total, 8 payment machines are proposed within the multi-storey car park, 5 being mixed payment Smart machines and 3 being cashless Lite machines. The machines are located in close proximity to pedestrian access points such as near the lifts or stairs. The proposed details are considered to be appropriate providing a suitable parking payment strategy.

7. RECOMMENDATION

7.1. That Planning Condition 9 of 17/00284/REM be partially discharged in respect of Block B (only) based upon the following:

Condition 9 – Car Parking Payment Strategy
Skidata Car Parking System Tech Sub Proposal, dated 23.10.20

Note:

This approval represents a partial discharge of Condition 9 of 17/00284/REM (as it relates to Block B only). You are advised that prior to the first use of any other car parks associated with this development, a car parking payment strategy shall be submitted to and approved by the Local Planning Authority.

Case Officer: Samantha Taylor

Cherwell District Council Planning Committee

11 March 2021

Appeal Progress Report

Report of Assistant Director - Planning and Development

This report is public

Purpose of report

To keep Members informed about planning appeal progress including the scheduling of public inquiries and hearings and decisions received.

1. Recommendations

1.1 To note the position on planning appeals contained within the report.

2. Introduction

2.1 This report provides a monthly update regarding planning appeals, including new appeals, status reports on those in progress and determined appeals.

3. Report Details

3.1 New Appeals

19/00963/OUT - OS Parcel 9100 Adjoining And East Of Last House Adjoining And North Of Berry Hill Road Adderbury - Resubmission of application 17/02394/OUT – Outline application for permission for up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access)

Officer recommendation – Refused (Committee)

Method of determination: Hearing

Start Date: 12.02.2021 **Statement Due:** 19.03.2021 **Decision:** Awaited

Hearing date – Wednesday 5th May 2021

Appeal reference – 21/00004/REF

20/00871/F - OS Parcel 3300 North Of Railway Line Adjoining, Palmer Avenue, Lower Arcott - Erection of a free range egg production unit, gatehouse and agricultural workers dwelling including all associated works - re-submission of 19/00644/F

Officer recommendation – Refused (Committee)

Method of determination: Written Representations

Start Date: 26.02.2021 **Statement Due:** 02.04.2021 **Decision:** Awaited

Appeal reference – 21/00007/REF

20/01747/F - Land South Side Of, Widnell Lane, Piddington - 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.

Officer recommendation – Refused (Committee)

Method of determination: Written Representations

Start Date: 12.02.2021 **Statement Due:** 19.03.2021 **Decision:** Awaited

Appeal reference – 21/00003/REF

20/01905/F - 110 Lyneham Road, Bicester, OX26 4FD - Formation of access and associated dropped kerb

Officer recommendation – Refused (Delegated)

Method of determination: Householder (Fast Track)

Start Date: 15.02.2021 **Statement Due:** N/A **Decision:** Awaited

Appeal reference – 21/00005/REF

20/02592/F - 28 The Moors, Kidlington, OX5 2AJ - Variation of Condition 2 (plans) of 20/01170/F to allow for amendments to the layout of bin and cycle stores, the relocation of the second parking space to Plot 1, amendments to landscaping, alterations to fenestration, and alterations to the externally facing materials of the dwellings.

Reason for Appeal - Appeal made against conditions imposed on the approval decision notice.

Officer recommendation – Approved (Delegated)

Method of determination: Written Representations

Start Date: 11.02.2021 **Statement Due:** 18.03.2021 **Decision:** Awaited

Appeal reference – 21/00002/CON

20/03191/F - Keepers Cover, Weston-On-The-Green, BICESTER, OX25 3QU - Single storey residential extension - re-submission of 20/01265/F.

Officer recommendation – Refused (Delegated)

Method of determination: Householder (Fast Track)

Start Date: 23.02.2021 **Statement Due:** N/A **Decision:** Awaited

Appeal reference – 21/00006/REF

3.2 New Enforcement Appeals

18/00059/ENFB - Land at The Digs and The Studio, Heathfield, OX5 3DX – Appeal against the enforcement notice served for Without the benefit of planning permission the erection of two units of residential accommodation with associated residential curtilages.

Method of determination: Written Representations

Key Dates:

Start Date: 01.02.2021 **Statement Due:** 15.03.2021

Decision: Awaited

Appeal reference: 21/00001/ENF

20/00419/ENF - The Stables, at OS Parcel 3873, Main Street, Great Bourton, Cropredy, Oxfordshire, OX17 1QU

Appeal against the enforcement notice served for without planning permission the change of use of the land to use as a caravan site currently accommodating one mobile home type caravan designed and used for human habitation together with associated parking and storage of motor vehicles and trailer, storage of touring caravans and associated domestic paraphernalia.

Method of determination: Hearing

Key Dates:

Start Date: 24.02.2021 **Statement Due:** 07.04.2021

Hearing date: TBC

Decision: Awaited

Appeal reference: 21/00008/ENF

3.3 Appeals in Progress

19/00290/F - Hebborns Yard, Bicester Road, Kidlington, OX5 2LD - Use of land for the storage of (non-residential) portable fairground rides and equipment in connection with, and strictly ancillary to, the authorised use of Hebborn's Yard, Kidlington as Showmen's Permanent Quarters (existing unauthorised).

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Start Date: 01.12.2020 **Statement Due:** 05.01.2021 **Decision:** Awaited

Appeal reference – 20/00031/REF

19/01542/F – Aviyal, Station Road, Ardley, OX27 7PQ - Change of use from Equestrian to Dog Agility Training Centre and extension of the domestic curtilage of Aviyal to include the existing land to the north enabling the existing stable block to be used as ancillary outbuilding.

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Start Date: 06.10.2020 **Statement Due:** 03.11.2020 **Decision:** Awaited

Appeal reference – 20/00026/REF

19/01715/F – Land To East Of Webbs Way, Mill Street, Kidlington - Restoration of building to be used for storing ground maintenance equipment

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Start Date: 01.12.2020 **Statement Due:** 05.01.2021 **Decision:** Awaited

Appeal reference – 20/00032/REF

19/02550/F - Land to the east of M40 and south of A4095, Chesterton, Bicester - Redevelopment of part of golf course to provide new leisure resort (sui generis) incorporating waterpark, family entertainment centre, hotel, conferencing facilities and restaurants with associated access, parking and landscaping

Officer recommendation – Refusal (Committee)

Method of determination: Public Inquiry

Start Date: 23.10.2020 **Statement Due:** 27.11.2020 **Decision:** Awaited

Inquiry opens – Tuesday 9 February 2021 and anticipated to run for 13 sitting days

Appeal reference – 20/00030/REF

20/00789/CLUE – Belmont, 8 Foxglove Road, Begbroke, Kidlington, OX5 1SB - Certificate of Lawful Use Existing for amenity land to west of dwelling at no. 8 Foxglove Road as a domestic garden, with the introduction of boundary fence and hedge on the western and northern boundaries.

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Start Date: 11.12.2020 **Statement Due:** 22.01.2021 **Decision:** Awaited

Appeal reference – 20/00035/REF

20/00805/F – Highway House, Park Road, Hook Norton, OX15 5LR - Demolition of existing dwelling, demolition of existing outbuildings/structures, erection of replacement dwelling and new outbuilding containing a garage, residential annexe and associated landscaping.

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Key Dates:

Start Date: 16.12.2020 **Statement Due:** 13.01.2021 **Decision:** Awaited

Appeal reference – 20/00034/REF

20/00841/F - Barn And Land South West Of Cotefield Farm, Church Street, Bodicote -
Erection of garage adjacent to approved dwelling and change of use of agricultural land to residential use

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Key Dates:

Start Date: 26.01.2021 **Statement Due:** 02.03.2021 **Decision:** Awaited

Appeal reference – 20/00039/REF

20/00878/F - Ashfield House, Alkerton Road, Balscote, OX15 6JR - Detached Dwelling
(Re-submission of Planning Application 19/00550/F).

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Key Dates:

Start Date: 15.01.2021 **Statement Due:** 19.02.2021 **Decision:** Awaited

Appeal reference – 20/00038/REF

20/00964/OUT – The Beeches, Heyford Road, Steeple Aston, OX25 4SN - Erection of
up to 8 dwellings with all matters reserved except the means of access on to Heyford Road

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Key Dates:

Start Date: 07.01.2021 **Statement Due:** 11.02.2021 **Decision:** Awaited

Appeal reference – 20/00037/REF

20/01230/TPO - The Brambles, Somerton Road, Upper Heyford, Bicester, OX25 5LB -
T1 (Horse Chestnut) - fell. Tree subject to TPO 4/88

Officer recommendation – Refusal (Delegated)

Method of determination: Fast Track

Key Dates:

Start Date: 27.01.2021 **LPA Questionnaire Due:** 10.02.2021 **Decision:** Awaited

Appeal reference – 20/00040/REF

20/01517/F – Manor Farm Cottage, Church Lane, Charlton On Otmoor, OX5 2UA –
Erection of a one bedroom studio dwelling and conversion of existing outbuilding;
associated works (Resubmission of 20/00311/F)

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Start Date: 01.12.2020 **Statement Due:** 05.01.2021 **Decision:** Awaited

Appeal reference – 20/00033/REF

Enforcement appeals

19/00128/ENFC – OS Parcel 3349, Spruce Meadows, Cropredy Lane, Williamscot.

Appeal against the enforcement notice served for change of use of the Land to use as a caravan site accommodating one mobile home type caravan designed and used for human habitation together with associated parking and storage of motor vehicles and a trailer, storage of shipping containers, erection of a summer house/shed type wooden structure, erection of a free-standing canvas shelter and associated domestic paraphernalia

Method of determination: Hearing

Key Dates:

Start Date: 06.10.2020 **Statement Due:** 17.11.2020

Hearing date: Tuesday 20th April 2021

Decision: Awaited

Appeal reference: 20/00019/ENF

3.4 Forthcoming Public Inquires and Hearings between 12 March 2021 and 15 April 2021

19/02550/F - Land to the east of M40 and south of A4095, Chesterton, Bicester -
Redevelopment of part of golf course to provide new leisure resort (sui generis) incorporating waterpark, family entertainment centre, hotel, conferencing facilities and restaurants with associated access, parking and landscaping

Online Public Inquiry Start Date and Days of the Inquiry: Tuesday 9 February. 10am start. 9th Feb – 12th Feb, 16th Feb – 19th Feb, 1st March – 5th March 2021.

Details on how to live stream the online Public Inquiry will be are on the Council's online planning register.

3.5 Results

Inspectors appointed by the Secretary of State have:

1. **Dismissed the appeal by EG Group for Single storey rear extension. Esso, Banbury Service Station, Oxford Road, Bodicote, OX15 4AB – 20/02298/F**
Officer recommendation – Refusal (Delegated)
Appeal reference – 20/00036/REF

The Inspector considered the main issue to the proposal's effect on the character and appearance of the area.

The existing storage container, already subject of one dismissed appeal for its retention, was now proposed to be finished with brick slips, with a white fascia and grey roof to broadly match the kiosk building.

The Inspector considered that the cladded container would retain its standardised box-like dimensions and would have a rudimentary connection with the main kiosk building, and found that there would be a height difference with both components of the existing kiosk building. The Inspector held that in combination these factors amounted to a harmful disjointed and cluttered appearance, and that the addition of the white fascia would draw the eye and emphasise the negative impact.

The Inspector concluded that the proposal would have a "small but noticeable harmful effect" on the character and appearance of the area and would thus be contrary to policy ESD15 and saved policy C28 of the CLP and that, while this harm would not be significant, the proposal would be harmful nonetheless. The Inspector stated that the modest scale of the development did not justify this harm, otherwise this argument could be repeated over time to amount to considerable cumulative harm.

The Inspector disagreed with the appellant's contention that the flat roofed kiosk extension provided a precedent for the appeal proposal, attaching to it limited weight. The Inspector was not persuaded that there were no alternative approaches to designing an extension to the building.

Accordingly the Inspector dismissed the appeal.

4. Conclusion and Reasons for Recommendations

- 4.1 The report provides the current position on planning appeals which Members are invited to note.

5. Consultation

5.1 None.

6. Alternative Options and Reasons for Rejection

6.1 None. The report is presented for information.

7.0 Implications

Financial and Resource Implications

7.1 There are no financial implications arising from this report. The report is for information only. The cost of defending appeals is met from existing budgets other than in extraordinary circumstances.

Comments checked by:

Karen Dickson, Strategic Business Partner, 01295 221900,
karen.dickson@cherwell-dc.gov.uk

Legal Implications

7.2 As this report is purely for information there are no legal implications arising from it.

Comments checked by:

Jennifer Crouch, Principal Solicitor
jennifer.crouch@oxfordshire.gov.uk

Risk Implications

7.3 This is an information report where no recommended action is proposed. As such there are no risks arising from accepting the recommendation.

Comments checked by:

Louise Tustian, Head of Insight and Corporate Programmes, 01295 221786
louise.tustian@cherwell-dc.gov.uk

Equality & Diversity Implications

7.4 The recommendation does not raise equality implications.

Comments checked by:

Robin Rogers, Head of Strategy, Policy, Communications & Insight, 07789 923206
Robin.Rogers@Cherwell-DC.gov.uk

8.0 Decision Information

Key Decision:

Financial Threshold Met	No
Community Impact Threshold Met	No

Wards Affected

All

Links to Corporate Plan and Policy Framework

Seeking to uphold the Council's planning decisions is in the interest of meeting the strategic priorities from the Business Plan 2020/21:

- Housing that meets your needs
- Leading on environmental sustainability
- An enterprising economy with strong and vibrant local centres
- Healthy, resilient and engaged communities

Lead Councillor

Councillor Colin Clarke, Lead Member for Planning

Document Information

None

Background papers

None

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