

# Public Document Pack



**Cherwell**

DISTRICT COUNCIL  
NORTH OXFORDSHIRE

**Committee: Planning Committee**

**Date: Thursday 14 July 2022**

**Time: 4.00 pm**

**Venue Bodicote House, Bodicote, Banbury, Oxon OX15 4AA**

## **Membership**

### **Councillor George Reynolds (Chairman)**

Councillor Andrew Beere  
Councillor John Broad  
Councillor Jean Conway  
Councillor Ian Harwood  
Councillor Fiona Mawson  
Councillor Lynn Pratt  
Councillor Dorothy Walker  
Councillor Barry Wood

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

Councillor Rebecca Biegel  
Councillor Hugo Brown  
Councillor Ian Corkin  
Councillor Simon Holland  
Councillor Richard Mould  
Councillor Les Sibley  
Councillor Amanda Watkins  
Councillor Sean Woodcock

## **Substitutes**

Councillor Mike Bishop  
Councillor Gemma Coton  
Councillor Donna Ford  
Councillor Matt Hodgson  
Councillor Adam Nell  
Councillor Douglas Webb

Councillor Colin Clarke  
Councillor Andrew Crichton  
Councillor David Hingley  
Councillor Ian Middleton  
Councillor Dr Chukwudi Okeke  
Councillor Fraser Webster

## **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.

Please note that the deadline for requests to address the meeting is noon on the working day before the meeting. Addresses can be made virtually or in person.

4. **Minutes** (Pages 5 - 12)

To confirm as a correct record the Minutes of the meeting of the Committee held on 16 June 2022.

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)**

The Committee to consider requests for and proposed pre-committee site visits.

Any requests or recommendations for site visits will be published with the written update.

## **Planning Applications**

8. **OS Parcel 5700 South West of Grange Farm, Street through Little Chesterton, Chesterton** (Pages 16 - 51) (Appendix 1 to follow) **22/01144/F**

9. **Kidlington Garage, 1 Bicester Road, Kidlington, OX5 2LA** (Pages 52 - 79) **22/00017/F**

10. **Waverley House, Queens Avenue, Bicester, OX26 2PY** (Pages 80 - 110) **21/01561/F**

11. **North Arms Inn, Mills Lane, Wroxton, OX15 6PY** (Pages 111 - 125) **22/00256/F**

12. **Allotment Gardens West Of Roebuck Inn and South East of The Blinking Owl Ph, Banbury Road, North Newington, OX15 6AB** (Pages 126 - 155) **21/01561/F**

13. **Land Adj To Cotswold Country Club and South of Properties on Bunkers Hill, Shipton on Cherwell** (Pages 156 - 164) **22/00978/M106**

14. **Castle Quay 2, Spiceball Park Road, Banbury, OX16 2PA (1217)** (Pages 165 - 170) **22/01217/DISC**

15. **Land Adjacent to The Oxford Canal, Spiceball Park Road, Banbury** (Pages 171 - 176) **22/01588/DISC**
16. **22 Castle Quay, Banbury, OX16 5UH** (Pages 177 - 184) **19/02538/F**
17. **22 Castle Quay, Banbury, OX16 5UH (LB)** (Pages 185 - 191) **19/02539/LB**
18. **Castle Quay 2, Spiceball Park Road, Banbury, OX16 2PA (1149)** (Pages 192 - 199) **22/01149/F**

## **Review and Monitoring Reports**

19. **Appeals Progress Report** (Pages 200 - 209)

Report of Assistant Director Planning and Development

### **Purpose of report**

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

### **Recommendations**

The meeting is recommended:

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

**Councillors are requested to collect any post from their pigeon-hole in the Members Room at the end of the meeting.**

## **Information about this Agenda**

### **Apologies for Absence**

Apologies for absence should be notified to [democracy@cherwell-dc.gov.uk](mailto:democracy@cherwell-dc.gov.uk) or 01295 221534 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.

**Evacuation Procedure**

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the car park as directed by Democratic Services staff and await further instructions.

**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 / Aaron Hetherington, Democratic and Elections  
democracy@cherwell-dc.gov.uk, 01295 221534

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

Published on Wednesday 6 July 2022

## **Cherwell District Council**

### **Planning Committee**

Minutes of a meeting of the Planning Committee held at Bodicote House, Bodicote, Banbury, Oxon OX15 4AA, on 16 June 2022 at 4.00 pm

#### Present:

Councillor George Reynolds (Chairman)

Councillor Rebecca Biegel  
Councillor John Broad  
Councillor Ian Corkin  
Councillor Ian Harwood  
Councillor Fiona Mawson  
Councillor Lynn Pratt  
Councillor Les Sibley  
Councillor Dorothy Walker  
Councillor Amanda Watkins  
Councillor Barry Wood  
Councillor Sean Woodcock

#### Substitute Members:

Councillor David Hingley (In place of Councillor Jean Conway)

#### Apologies for absence:

Councillor Maurice Billington  
Councillor Hugo Brown  
Councillor Jean Conway  
Councillor Simon Holland  
Councillor Richard Mould

#### Officers:

Alex Chrusciak, Senior Manager - Development Management  
Nat Stock, Minors Team Leader  
Andy Bateson, Team Leader – Major Developments  
Caroline Ford, Principal Planning Officer – Major Projects Planning Team  
David Mytton, Solicitor  
Aaron Hetherington, Democratic and Elections Team Leader  
Lesley Farrell, Democratic and Elections Officer

18 **Declarations of Interest**

**9. Axis J9 Phase 3 Howes Lane Bicester.**

Councillor Les Sibley, Declaration, as a member of Bicester Town Council which had been consulted on the application and separate declaration and would leave the chamber for the duration of 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.

**12. Land Adjacent to the Oxford Canal Spiceball Park Road Banbury.**

Councillor Andrew Beere, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Barry Wood, Declaration, as a member of the Executive and would leave the meeting for the duration of the item.

Councillor Ian Corkin, Declaration, as a member of the Executive and would leave the meeting for the duration of the item.

Councillor Lynn Pratt, Declaration, as a member of the Executive and would leave the meeting for the duration of the item.

Councillor Rebecca Biegel, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

19 **Requests to Address the Meeting**

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

20 **Minutes**

The Minutes of the meeting held on 19 May 2022 were agreed as a correct record and signed by the Chairman.

21 **Chairman's Announcements**

There were no Chairman's announcements.

22 **Urgent Business**

There were no items of urgent business.

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

There were no proposed pre-Committee site visits.

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### **Development Brief for Local Plan Partial Review site PR7a - Land at South East Kidlington**

The Committee considered a report from the Assistant Director, Planning and Development for a Development Brief for the Local Plan Partial Review to seek the Planning Committee's approval of the Development Brief for Local Plan Part 1 Review allocated site PR7a – Land at South East Kidlington.

Councillor Middleton, addressed the committee in his capacity as Local Ward member.

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

#### **Resolved**

- (1) That the Development Brief for site PR7a (Land at South East Kidlington) of the Cherwell Local Plan 2011-2031 Partial Review (annex to the Minutes as set out in the Minute Book) be approved.
- (2) That the Assistant Director - Planning and Development be authorised to publish the Development Brief subject to any necessary presentational or other minor corrections in consultation with the Chairman.

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### **Axis J9 Phase 3 Howes Lane Bicester**

The Committee considered application 21/03177/F for a full planning application for employment development (Use Classes E(g)(iii), B2 and/or B8) comprising 5 units within 3 buildings and associated parking and servicing, landscaping and associated works at Axis J9 Phase 3 Howes Lane Bicester for Albion Land.

Councillor Les Sibley, addressed the committee as Local Ward Member.

Marcus Heath, a local resident, addressed the committee in objection to the application.

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

It was proposed by Councillor Broad and seconded by Councillor Pratt that application 21/03177/F be refused, contrary to the officer recommendation as it would introduce unanticipated commercial uses onto a site identified for housing via the Masterplan included within the North West Bicester Supplementary Planning Document 2016.

In reaching its decision the committee considered the officers' report and presentation, the written updates and addresses of the local ward member and public speakers.

## Resolved

- (1) That application 21/03177/F be refused contrary to officer recommendation as it would introduce unanticipated commercial uses onto a site identified for housing via the Masterplan included within the North West Bicester Supplementary Planning Document 2016. The development proposed would be incompatible with the existing residential uses to the east of Howes Lane and would have a detrimental impact upon the residential amenity of those nearby residential occupiers. The exact reason for refusal will be set out on the refusal notice.

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## 94 The Moors Kidlington Oxfordshire OX5 2AG

The Committee considered application 22/00539/F for the demolition of existing dwellinghouse, garage and outbuilding. Erection of 2 x 5-bed detached dwellinghouses (Use Class C3). Car parking, and alterations to access and landscaping. (Resubmission of 21/03017/F) at 94 The Moors Kidlington Oxfordshire OX5 2AG for Henaud Developments.

Nik Lyzba, the applicant's agent, addressed the committee in support to the application.

In reaching its decision the committee considered the officers' report and presentation and the address of the public speaker.

## Resolved

That application 22/00539/F be approved, subject to the following 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 application form and the following plans and documents:
  - 21005-P01 - Site Location Plan
  - 21005-P05 - Proposed Site Plan
  - 21005-P06 - Floor Plans & Street Elevations
  - 21005-P07 - Elevations
  - Tree Survey Report, Impact Appraisal and Tree Protection Details



dated August 2021

Planning Design and Access Statement dated February 2022

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

3. Prior to the first occupation of the development hereby approved, the parking and manoeuvring areas shall be provided in accordance with the plan approved (Drawing No. 21005-P05 Site Plan) demarcated and 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 areas 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 and flood prevention and to comply with Policies ESD7 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

4. Prior to the first occupation of the development hereby permitted, covered cycle parking facilities shall be provided on the site 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 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 Policy ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

5. Prior to the first occupation of the development, the bin storage shall be provided on site in accordance with the approved drawing No. 21005-P05 Site Plan and shall be retained as such thereafter.

Reason: To encourage sustainable modes of transport, to ensure the satisfactory appearance of the completed development and to comply with Policies ESD1 and ESD 15 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. Prior to the first occupation of the development hereby approved full details of the enclosures along all boundaries and within the site shall be submitted to and approved in writing by the Local Planning Authority. Such approved means of enclosure shall be erected prior to the first

occupation of the development and shall be retained as such thereafter.

Reason: To safeguard the character and appearance of the area and the privacy of the occupants of the existing and proposed dwellings and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

7. Prior to the first occupation of the dwellings hereby permitted, the electric vehicle charging infrastructure shall be provided on site in accordance with the approved plan Drawing No. 21005-P05 Site Plan, and shall be retained as such thereafter.

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

8. Notwithstanding the provisions of Schedule 2, Part 1, Classes A to E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting or amending that order) there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted or any building or structure erected or placed within the curtilage of the dwelling(s) hereby permitted without the grant of further specific planning permission from the Local Planning Authority.

Reason: In order to safeguard the character and appearance of the area in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

9. All impermeable areas of the proposed development, including roofs, driveways, and patio areas shall be drained using Sustainable Drainage measures (SuDS). This may include the use of porous pavements and infiltration, or attenuation storage to decrease the run off rates and volumes to public surface water sewers and thus reduce flooding.

Soakage tests should be carried out in accordance with BRE Digest 365 or similar approved method to prove the feasibility/effectiveness of soakaways or filter trenches. Where infiltration is not feasible, surface water should be attenuated on site and discharged at a controlled discharge rate no greater than prior to development using appropriate SuDS techniques and in consultation with the sewerage undertaker where required.

If the use of SuDS are not reasonably practical, the design of the surface water drainage system should be carried out in accordance with Approved Document H of the Building Regulations. The drainage system

should be designed and maintained to remain functional, safe, and accessible for the lifetime of the development.

Reason: To avoid increasing surface water run-off and volumes to prevent an increase in flood risk in accordance with policies ESD6 and ESD7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

10. The ditch located at the northern boundary of the site shall be retained and maintained as existing.

Reason: To avoid increasing surface water run-off and volumes to prevent an increase in flood risk in accordance with policies ESD6 and ESD7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

11. A method statement for enhancing biodiversity on the site shall be submitted to and approved in writing by the Local Planning Authority prior to the development reaching slab level. Thereafter, the biodiversity enhancement measures approved shall be carried out prior to occupation and retained in accordance with the approved details.

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

12. Prior to the first occupation of the development hereby permitted, written confirmation that the development achieves a water efficiency limit of 110 litres/person/day under Part G of the Building Regulations shall be submitted to and approved in writing by the Local Planning Authority.

Reason: Cherwell District is in an area of water stress, to mitigate the impacts of climate change and in the interests of sustainability, to comply with Policies ESD1 and ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

## 27 **Land North East Of Fringford Study Centre Adjoining Rectory Lane, Fringford**

The Committee considered application 22/00998/F for the erection of a 4 bedroom detached dwelling with garage and access at Land North East of Fringford Study Centre adjoining Rectory Lane, Fringford for Mr A Bradbury.

Maxine Slater, a local resident, addressed the committee in objection to the application.

Sam Peacock, agent for the applicant, addressed the committee in support of the application.

It was proposed by Councillor Wood and seconded by Councillor Corkin that application 22/00998/F be refused, contrary to the officer recommendation as it would have a detrimental impact on the character of the area and street scene, including the loss of the dwarf wall.

In reaching its decision the committee considered the officers' report and presentation, the written updates and addresses of the public speakers.

**Resolved**

- (1) That application 22/00998/F be refused contrary to officer recommendation, as it would have a detrimental impact on the character of the area and street scene, including the loss of the dwarf wall, with the exact wording of the reasons for refusal delegated to the Assistant Director for Planning and Development.

28 **Land Adjacent to the Oxford Canal Spiceball Park Road Banbury**

The Committee considered application 22/00584/DISC for the discharge of Condition 22 (Plot B only) - details of operational plant and mitigation of 16/02366/OUT at Land Adjacent to the Oxford Canal Spiceball Park Road Banbury for Cherwell District Council.

In reaching its decision the committee considered the officers' report and Presentation and the written updates.

**Resolved**

- (1) Approved that condition 22 to 16/02366/OUT (in respect to Block B only) be discharged in accordance with the supplementary cumulative noise impact report prepared by Sharps Redmore, dated 27 May 2022 (Ref: 2120140 – Banbury: The Light Cinema and Bowl)

29 **Appeals Progress Report**

The Assistant Director Planning and Development submitted a report which informed Members about planning appeal progress including decisions received and the scheduling of public inquiries and hearings for new and current appeals.

**Resolved**

- (1) That the position statement be accepted.

The meeting ended at 7.11 pm

Chairman:

Date:

## CHERWELL DISTRICT COUNCIL

Planning Committee - 14 July 2022

### PLANNING APPLICATIONS INDEX

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

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

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

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

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

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

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

#### **Human Rights Implications**

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

#### **Background Papers**

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

<b>Item No.</b>	<b>Site</b>	<b>Application Number</b>	<b>Ward</b>	<b>Recommendation</b>	<b>Contact Officer</b>
8	OS Parcel 5700 South West of Grange Farm, Street through Little Chesterton, Chesterton	22/01144/F	Launton and Otmoor	*Grant Permission	David Lowin
9	Kidlington Garage, 1 Bicester Road, Kidlington. OX5 2LA	22/00017/F	Kidlington East	*Grant Permission	Samantha Taylor
10	Waverley House, Queens Avenue, Bicester, OX26 2PY	21/02573/F	Bicester West	*Grant Permission	Wayne Campbell
11	North Arms Inn, Mills Lane, Wroxton. OX15 6PY	22/00256/F	Cropredy, Sibfords & Wroxton	*Grant Permission	James Kirkham
12	Allotment Gardens West of Roebuck Inn and Southeast of the Blinking Owl PH, Banbury Road North Newington. OX15 6AB	21/01561/F	Cropredy, Sibfords & Wroxton	*Grant Permission	James Kirkham
13	Land Adj to Cotswold Country Club and South of Properties on Bunkers Hill, Shipton on Cherwell	22/00978/M106	Launton and Otmoor	*Grant Permission	Shona King
14	Castle Quay 2, Spiceball Park Road Banbury, Oxfordshire. OX16 2PA	22/01217/DISC	Banbury Cross and Neithrop	*Grant Partial Discharge of condition 22	Samantha Taylor

15	Land Adjacent to the Oxford Canal, Spiceball Park Road Banbury	22/01588/DISC	Banbury Cross and Neithrop	*Grant Permission	Samantha Taylor
16	22 Castle Quay Banbury. OX16 5UH	19/02538/F	Banbury Cross and Neithrop	*Grant Permission	Michael Sackey
17	22 Castle Quay Banbury. OX16 5UH	19/02539/LB	Banbury Cross and Neithrop	*Grant Permission	Michael Sackey
18	Castle Quay 2, Spiceball Park Road, Banbury, Oxfordshire. OX16 2PA	22/01149/F	Banbury Cross and Neithrop	*Grant Permission	Samantha Taylor

\*Subject to conditions

Agenda Item 8  
22/01144/F

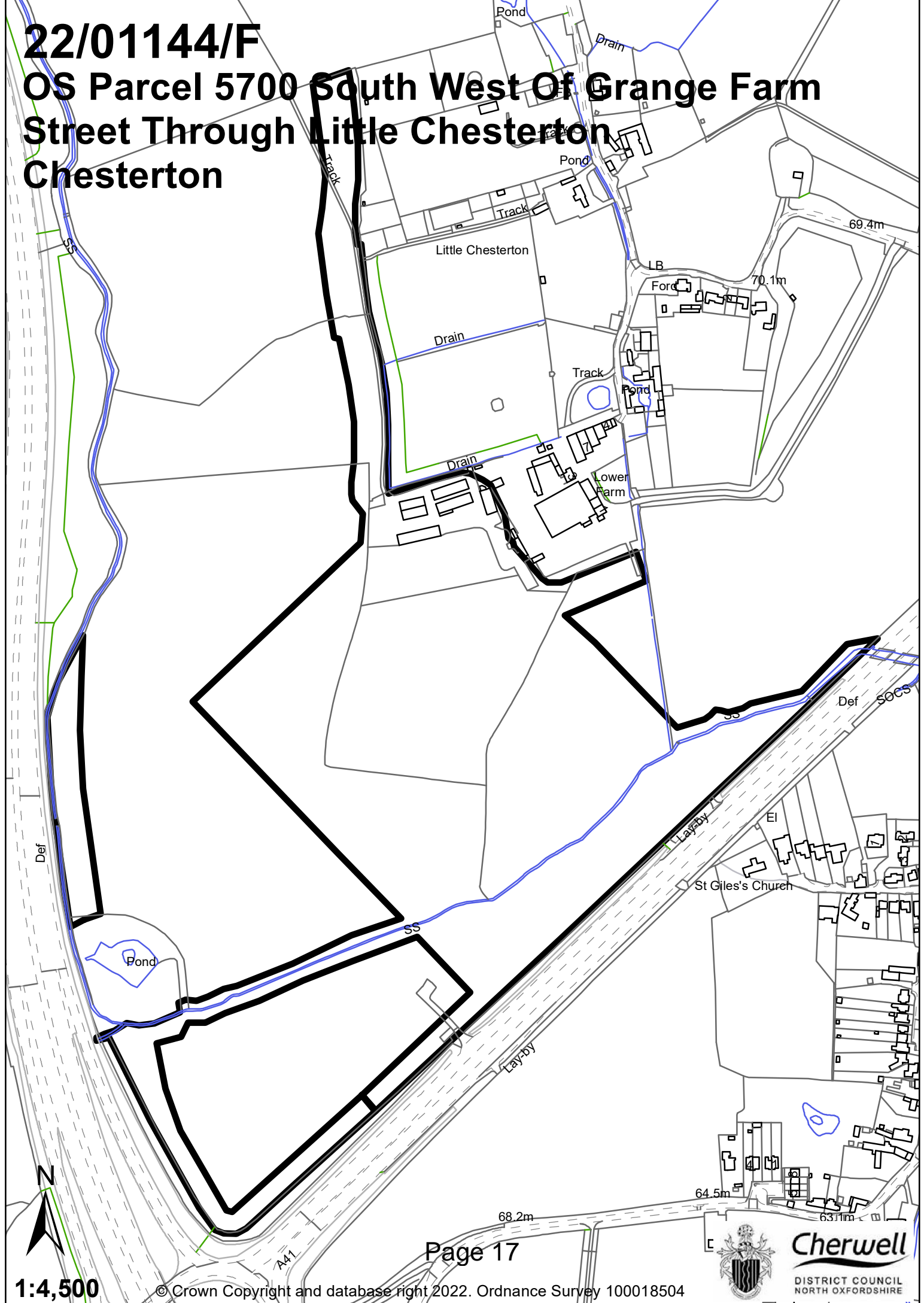
**OS Parcel 5700 South West Of Grange Farm  
Street Through Little Chesterton  
Chesterton**



1:5,000



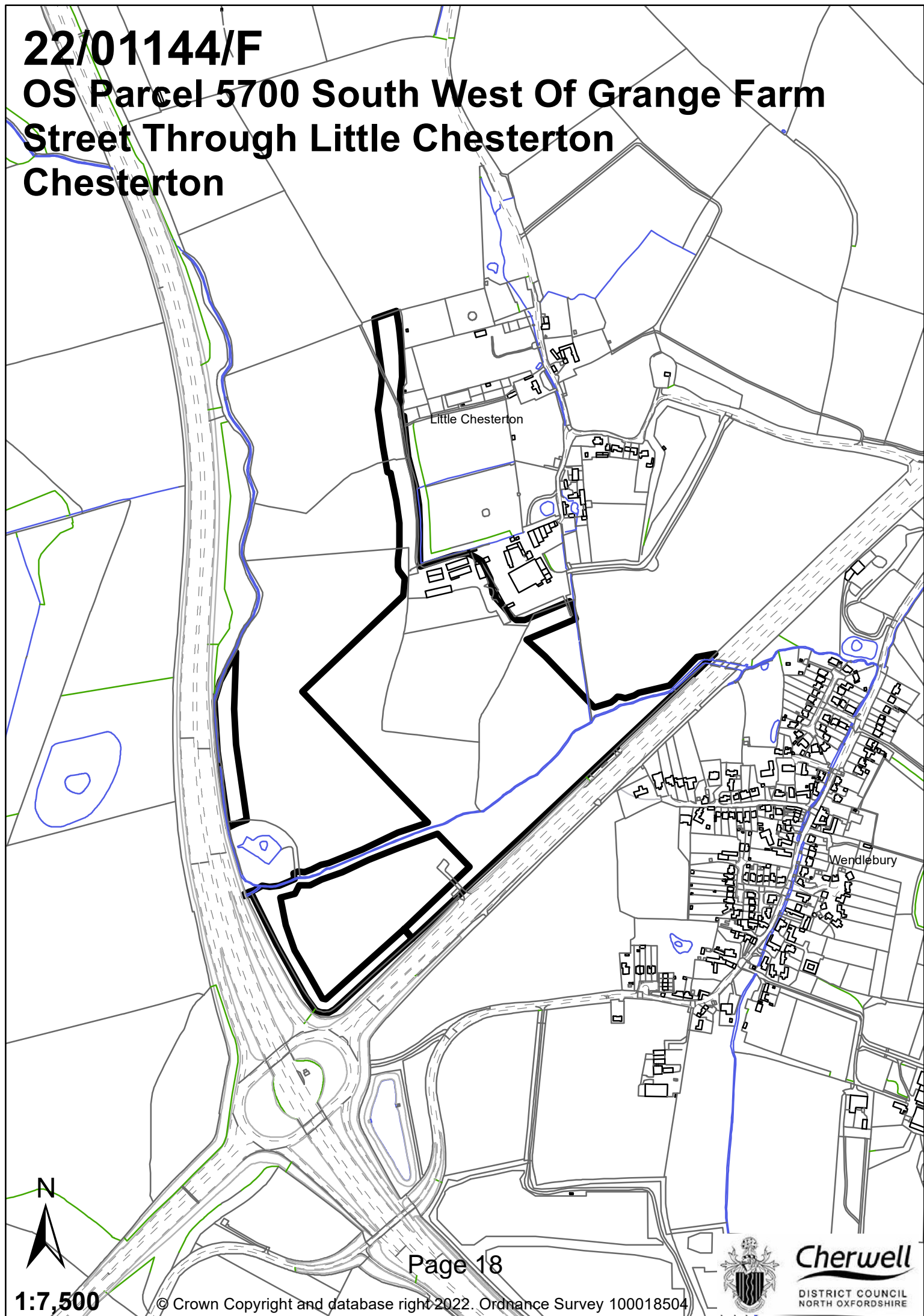
# 22/01144/F OS Parcel 5700 South West Of Grange Farm Street Through Little Chesterton Chesterton



1:4,500

**22/01144/F**

**OS Parcel 5700 South West Of Grange Farm  
Street Through Little Chesterton  
Chesterton**



**Case Officer:** David Lowin

**Applicant:** Tritax Symmetry Oxford North Ltd & Siemens Healthineers

**Proposal:** Full planning application for the erection of a new high quality combined research, development and production facility comprising of Class B2 floorspace and ancillary office floorspace with associated infrastructure including formation of signal-controlled vehicular access to the A41 and repositioning of existing bus stops; ancillary workshops; staff gym and canteen; security gate house; a building for use as an energy centre (details of the energy generation reserved for future approval); loading bays; service yard; waste management area; external plant; vehicle parking; landscaping including permanent landscaped mounds; sustainable drainage details; together with the demolition of existing agricultural buildings within the red line boundary; and the realignment of an existing watercourse

**Ward:** Launton and Otmoor

**Councillors:** Cllr Coton, Cllr Holland and Cllr Patrick

**Reason for Referral:** Major development

**Expiry Date:** 4 August 2022

**Committee Date:** 14 July 2022

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

**1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site extends to approximately 19.35 hectares and is located immediately to the north of M40 Junction 9. The main frontage extends along the A41 north towards Bicester. To the east of the A41 is the village of Wendlebury. Immediately to the northwest of the site is the hamlet of Little Chesterton. Bicester is approximately 2km north of the site.
- 1.2. The site is currently in agricultural use, with a number of buildings in agricultural or commercial use to the northeast of the site. The boundary of the site fronts the A41 and extends across several open fields that are currently in agricultural use. Generally, ground levels fall gently from north to southeast. The eastern extent of the site is defined by field boundaries and hedgerows, the Grange Farm Industrial Estate, and Lower Grange Farm. The industrial estate comprises a group of former agricultural type building and some later structures currently in use for employment purposes. The Wendlebury Brook defines the western edge of the site, flowing from north to south towards a small area of woodland, which is a designated ancient woodland, where its course then changes to flow east across the site, before passing under the A41 in culvert. The majority of the site is currently in Flood Zone 1 (the lowest risk of flooding). A very small proportion of the site is located within Flood Zone 2. The area affected follows the existing route of the Brook, which is proposed to be re-routed along the M40/A41 boundaries as part of the proposals.

- 1.3. Footpath 161/4/20 traverses the site and crosses the A41 to the village of Wendlebury. At present there are no formal crossing points for this PROW across the A41, but there is a pedestrian refuge area provided in the central reserve of the A41. The western boundary of the site is defined by the Wendlebury Brook. The proposed development is a production and research facility for medical equipment (MRI scanners) with ancillary buildings.

### **Local Context**

- 1.4 The Site is located approximately 4 km south-west of Bicester, adjacent to the A41 and M40 at Junction 9. The A41 provides direct access to Bicester and the M40 provides access to London to the southeast and Birmingham to the northwest. The surrounding landscape is generally low-lying agricultural land, dissected by major vehicular corridors, each being lined with native mature tree and hedgerow cover, which restricts views towards the site. The site is served by the S5 Bus Route that provides:
- Four buses per hour Monday to Friday;
  - Four buses per hour on Saturdays;
  - Two buses per hour on Sundays;
  - One service after midnight Monday-Thursdays and four on Fridays (midnight to 3am);
  - Bus stops in close proximity to Bicester North Railway Station, which enables combined bus-rail trips;
  - A journey time to Bicester of 10-15 minutes, and to Oxford between 25 and 30 minutes.
- 1.5 The site is well located with the National Cycle Network. Route 51 to the northwest is identified as a lightly trafficked route with good connectivity to Bicester.
- 1.6 There are several Grade II listed buildings within Wendlebury, including the Church of St Giles, on the southern side of the A41 to the south-east of the site. To the northeast of the site in Chesterton there are a number of Grade II listed buildings and two Grade II\* listed buildings - the Manor Farm House and the Church of St Mary. The Alchester Roman Site Scheduled Monument is located 0.9 km to the northwest. The site is not considered to form a part of the setting of any of these heritage assets and makes no contribution to the significance of any designated heritage asset.

## **2. CONSTRAINTS**

- 2.1. The application site is adjacent to, as described above, an area of Ancient Woodland on its western edge. The site is classified as agricultural land falling within grade 3b (Moderate Quality), with Grade 1 being the best within the Agricultural Land Classification. The nearby village of Wendlebury is subject to frequent flooding from the Wendlebury Brook which runs through the site

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

- 3.1. The development proposed is for a new high-quality combined research, development and production facility, to produce superconducting magnets for medical devices used in MRI systems. The building has two production halls and a spine, which serves the length of the production hall. From here goods loading, innovation centre, plant and personnel can serve both production spaces. A number of external buildings required to support the production process are situated on the northwest side of the facility.

3.2. The proposed facility, is to be built in two phases.

3.3. Phase 1 is:

- Clear production space for the manufacture of a new dry-magnet product;
- Other production including loading, workshops, welfare, staff changing and 3rd party suppliers' offices;
- New R&D offices and restaurant; and
- Site facilities e.g., waste, infrastructure, loading yards, roads & car parking plus landscaping.

Phase 2 will comprise production space only, which may include the manufacture of existing Siemens (SH) products which require external helium storage.

The development as a whole covers a total floorspace area of approximately 56,162sqm and consists of several distinct areas as follows:

- Single storey production space, delivered in 2 phases;
- Production ancillary spaces including workshops and office areas;
- Welfare facilities;
- Hard standings for external plant and parking;
- Loading bays and service yard;
- Landscaped carparking supporting a minimum of 474 parking spaces and external recreation space;
- Waste management space;
- Security gate house;
- Facilities Management Building (FMB); and
- Energy Centre.

3.4. The proposed main building's design comprises two parallel production areas comprising Phases 1 and 2, with adjoining office and reception areas, the building is rectangular in shape and is of a contemporary uncluttered design with significant areas of glass. The design of the building incorporates a parapet at 13m in height around the entirety of the building. The roof design incorporates a flat roof along the spine of the structure with additional areas of flat roof along the south-eastern and north-western elevations of the production facility, to accommodate plant provision (the maximum height of which will accommodate fall protection railing at 16.15m in height).

3.5. The entrance is proposed to be an open space with a triple height atrium, providing the reception with natural light. The reception space is proposed to be multifunctional, hosting a variety of functions including meet and greet, exhibition, informal meeting space, hot-desking and meeting pods.

3.6. Above the 3m glazed base, the office facade is divided into uniform 2m bands which alternate between solid metal facade and panoramic glazed windows. The half-height window approach creates a facade that is well proportioned and follows the same facade grid as the production building. The 2m glazed band reduces solar gain and creates a clean and uncluttered look from the exterior of the building as the spandrels are above desk level.

- 3.7. The spine building features some two facade design typologies, representative of the two sections of the building. The height, materials and proportions are identical, however the apertures in the facade reflect the occupancy and change of use inside the building. The goods section of the building follows the same typology as the production building, with horizontally laid trapezoidal cladding. However, there is the inclusion of a glazing band at first floor level.
- 3.8. The facade of the production building will be grey horizontally laid trapezoidal cladding, to match the colour of the office element cladding, above a three-metre glazed band. This will be consistent across phase 1 & 2. A parapet extends 1.1m above the roof pitch to conceal the plant and pitched roofline, creating a clean and ordered elevation.
- 3.9. The buildings are proposed to be delivered to 'net zero carbon in construction' to accord with the UK Green Building Council's definition, and the development will be constructed to BREEAM Excellent standard.
- 3.10. Each phase of the development will be provided with Photovoltaic Panel array of approximately 1,550sqm producing up to 380kW peak. Based on the use of high output Monocrystalline Solar Panels an array of 760kW peak times has a predicted energy output of 682,000kWhr/annum. It is intended that the full output of the photovoltaic panels array is utilised on site to maximise the Carbon reduction for the building. In addition, some 120 EV parking charging bays are to be provided.
- 3.11. Timescales for Delivery: The applicant/agent has advised that, in the event that planning permission is granted, they anticipate development commencing in late 2022/early 2023.

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

- 4.1. There is no planning history directly relevant to the proposal.

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

The following pre-application discussions have taken place regarding this proposal. An application seeking planning advice with respect to an employment use of the present site was responded to by letter dated 15<sup>th</sup> January 2021. That communication, after reporting consultation responses from OCC and CDC officers dealing with drainage, planning policy, landscape and sustainability, recognised the opportunity to secure benefits for the local economy but cautioned that this preliminary advice required resolution of various technical considerations.

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

- 6.1. This application has been 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 has been able to identify from its records. The final date for comments was **27 May 2022**.
- 6.2. The comments raised by third parties are summarised below:

7 letters of objection have been received and 11 letters of support have been received together with 5 letters of comment on the proposals.

The objections relate to:

- Concern expressed over scale and visual impact of proposal,

- Road safety, traffic generation and highway impact,
- Flooding, environmental damage
- Increased pollution
- Detrimental impact on Little Chesterton by reason of 24 hour working of site.
- Environmental concerns.

The letters of support highlight the following matters:

- Welcome signalisation of junction and improved safety of pedestrians and cyclists,
- Creation of employment in 'right place and career posts'
- Re-use of waste land regularly used for squatting caravans and fly tipping.
- Supportive of proposals to improve bus access

The letters of comment:

- Support for proposal but concern over highway impact and existing road infrastructure
- Traffic speeds on A41
- Concern over producing acceptable bus stop area for passengers crossing A41
- Concern over potential development of all quadrants of Junction 9 and adverse effect on Bicester Gateway

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

Weston-on-the-Green Parish Council: **Object** to the proposal by reason of it being contrary to the Development Plan, in particular Policy ESD 13 causing visual and actual intrusion into the open countryside. The development will have, by reason of traffic generation, a deleterious effect on the local road network for local village residents. The works proposed to the site both in terms of buildings and landscape. The impact of this in the existing rural environment will further compromise remaining natural habitats which are already affected by the major road structures e.g., animal trackways; light and air pollution affecting birds, bats, microhabitats for native plants (including wildflowers) and insects (including pollinators). The Parish are also concerned that the development will result in a deterioration in air quality and noise pollution from additional traffic, construction and service vehicles.

### CONSULTEES

7.2. OCC HIGHWAYS: **No objections** subject to conditions in respect of the provision of the enhanced access to the site and associated highway works, including facilities for pedestrians, and cyclists and the requirement to enter into a S106 Agreement to secure highway and sustainable transport improvements as follows:

- The provision of a pedestrian cycleway from the site's access to the Vendee Drive Roundabout. The costs of which are currently under discussion. An update will be given prior to committee.

- Improvements to the bus services comprising an enhancement to the public transport service between Oxford and the development site to meet required shift times.
- The need for a Traffic Regulation Order (if not dealt with under S278/S38 agreement) to consult on the implementation of a new / extended speed restriction on the A41 between the M40 J9 and Vendee Drive junctions at a cost of £3320.
- A travel monitoring Plan to monitor the Travel Plan for a period of 5 years post occupation at an indexed cost of £1558
- Upgrades to surfaces of PROW serving the site £30,000 index linked.

Key Points:

- The County Council considers that the proposed development can and must be made accessible by sustainable transport modes.
- Contributions towards public transport enhancements and a new pedestrian and cycle connection are therefore sought, and positive discussions are continuing with the applicant in this respect.
- A set of appropriate conditions has been agreed in conjunction with the applicant and National Highways which appropriately address the transport impacts of the development proposals, as per National Highways response of 21 June 2022.
- A Travel Plan monitoring fee is required in order to ensure that the Travel Plan measures to promote the use of sustainable transport are fully implemented and that targets are met.
- The new site access junction will provide the benefit of a safe crossing point over the A41 for access to the pair of bus stops at the Wendlebury turning and for users of the Public Right of Way.
- The new access junction will also have the benefit of naturally reducing speeds on the A41. A TRO is required to formally lower the speed limit in both directions.

7.3 National Highways (NH) have lifted their initial 'Holding Direction' and have raised **no objections** subject to conditions, which have been agreed by the applicant.

7.4 Natural England (NE) have **no objection** to the proposals.

7.5 CPRE Oxfordshire have made several **observations** on the proposals, some of which are interpreted as **objections** and others as **comments**. The CPRE claim that the scale of development proposed would be contrary to Local Plan policy SLE1 and harmful to the rural landscape appearance of the locality. They claim it could also exacerbate traffic congestion at J9 of the M40. If permission is ultimately granted, CPRE would like to see biodiversity net gain increased from 6.71% to 10% to accord with policy ESD13 [actually ESD10] and more done to reduce reliance on the private car and maximise use of sustainable non-car transport modes.

7.6 Lead Local Flood Authority (LLFA). At the time of writing this report Officers had only received the initial comments of the LLFA, following that response the applicants produced further information and a re-consultation took place, and the result of that re-consultation is that **no objection** subject to conditions is raised.

7.7 OCC Archaeologist. **No objection** subject to recommended planning conditions to ensure the implementation of archaeological investigation to be maintained during the period of construction.



- 7.8 CDC Land Drainage. Following discussions with the applicant's Drainage Consultant a revised Flood Risk Assessment Version 5 dated 25/05/2022 has been issued. The CDC officer raises **no objection** to the applicants' proposals and notes that the detailed proposals incorporate not only storage of water and its controlled discharge into the Wendlebury Brook from the site but a significant level of additional storage providing betterment to alleviate, in part, the current issues with flooding in Wendlebury. The discharge itself will need to be the subject of a Land Drainage Act consent, to be issued by Cherwell as the Wendlebury Brook is an Ordinary Watercourse upstream of its crossing under the A41. A minor diversion of the watercourse is also proposed for which a Land Drainage Act consent will be required which will be considered in liaison with the Environment Agency as it will have ecological implications.
- 7.9 CDC Economic Development officer. **No Objection** and welcomes the positive proposal for the economy
- 1) The proposed development would contribute significantly to the local economy, providing a range of knowledge-intensive employment opportunities within a headquarters facility of an established, growing Oxfordshire employer.
  - 2) Without a more suitable site being evident, the proposed location would be likely to serve the needs of both Siemens as an expanding business and the expanding resident population of Cherwell district.
  - 3) The premises should seek to minimise the impact of both energy consumption and development within a rural area. Early on-site investment in technologies and design should be delivered to maximise the potential positive impact this development could have in drawing further science-led, knowledge-based investment into Bicester whilst minimising environmental impact.
  - 4) Community Employment Plans should be prepared and implemented as soon as possible to prepare a 'pipeline' of talent to construct this valuable facility, and to operate within it over many years to come [officer note: recommended planning conditions encompass training and skill growth from this development
- 7.10 CDC Arboriculturist, **No Objection** subject to conditions.
- 7.11 CDC Environmental Health, **No Objection** subject to conditions.
- 7.12 CDC Ecologist **No Objection** subject to conditions. The necessary surveys for ecology have been carried out and a full assessment of impacts. Updated surveys may be necessary if two years elapses from the time of surveys until the start of construction or between phases.

The main ecological issue on site is the loss of habitats for the building footprint but an overall net gain for biodiversity in habitats is proposed of 7.3%. Whilst this falls short of the 10% minimum we seek; it is acceptable in policy terms subject to conditions.

- 7.13 CDC Planning Policy. **No Objection**. Key Policy Observations set out by CDC Policy team:
- The adopted 2015 Local Plan has an urban focus with the bulk of the District's strategic growth to 2031 directed to Banbury and Bicester.
  - In the rural areas growth is limited and directed towards larger and more sustainable villages. Development in the open countryside is strictly controlled.
  - A strategic objective of the adopted local plan (SO 1) is to facilitate economic growth and employment and a more diverse local economy with an emphasis on attracting and developing higher technology industries.

- Paragraph B.30 of the plan explains that that the aim is to secure
  - business-friendly and well-functioning towns
  - an eco-innovation hub along the Oxford – Cambridge technology corridor
  - internationally connected and export driven economic growth
  - investment in people to grow skills and the local workforce
  - vibrant, creative and attractive market towns
  - family housing
  - measures to reclaim commuters where possible
  - measures to increase labour productivity
- Paragraph B.31 continues by outlining the type of employment development the District wants to attract, which includes:
  - advanced manufacturing/high performance engineering
  - the Green Economy of innovation, research and development
  - retailing
  - consumer services.
- Policy SLE1 helps to deliver the Plan's strategy for economic growth. In addition, a number of strategic employment sites are allocated for development at Banbury, Bicester and Kidlington.
- The application site is on an unallocated greenfield site in open countryside, with the nearest settlements being Little Chesterton, and Wendlebury, two Cat C villages, which are both in close proximity to Bicester and the A34 transport corridor.
- Policy SLE 1 states that in the rural areas employment development should be located within or on the edge of Category A villages (see Policy Villages 1) unless exceptional circumstances are demonstrated.
- The policy sets out a list of criteria for assessing new employment proposals within the rural areas on non-allocated sites. These include the applicant demonstrating why the development should be located in the rural areas on a non-allocated site; and those proposals should be small scale unless it can be demonstrated that there will be no significant adverse impacts on the character of a village or surrounding area.
- Policy SLE 1 also requires the applicants to demonstrate a need for, and the benefits of, the employment development in the location proposed supported by an explanation of why the proposed development should not be located at the towns, close to the proposed labour supply.
- The application has provided significant supporting material, which includes an assessment of alternative, available sites which concludes that none are available.
- The application has also sought to demonstrate a need for, and benefits of, employment in the location proposed, including explaining the uses proposed, job creation, the locational requirements of the applicants and the role of this sector within the local, regional and national economy.
- Policy SLE 4 seeks to deliver key transport connections, supports a modal shift towards more sustainable modes of transport and supports employment growth in more sustainable locations.

- The proximity of the application site to Bicester and its location on a major strategic transport corridor provides an opportunity to meet employment needs, whilst facilitating modal shift, with a focus on reducing greenhouse gas emissions as encouraged by Policy SLE 4. The views of the Highway Authority should be sought for compliance with this policy, including to ensure that the proposals makes the most of opportunities in the area to provide public transport and safe walking and cycling to Bicester and nearby settlements.
- Policies ESD 1-5 provide a suite of policies related to sustainable construction and sustainable energy. The application includes a detailed sustainability statement, and this should be assessed to ensure that the requirements of the local plan policies are met.
- Saved Policy C8 of the 1996 Local Plan seeks to resist sporadic development in the open countryside including in the vicinity of motorway or major road junctions. The application is therefore contrary to this policy.
- In assessing the merits of this proposal consideration also needs to be given to Government advice in the NPPF.
- Paragraph 83 states that *'Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries, and for storage and distribution operations at a variety of scales and in suitably accessible locations'*.
- Paragraph 84 states that *'Planning policies and decisions should enable:*
  - a) *the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings.*
- Paragraph 85 states that *'Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.*
- **In conclusion, this proposal for the relocation and expansion of a high-quality combined R&D and manufacturing facility to Cherwell District is strongly supported by the strategic objectives of the adopted Cherwell Local Plan.** The proposal is contrary to saved policy C8 of the 1996 Local Plan, however, the application has sought to demonstrate that this development meets Policy SLE1 criteria for employment on unallocated sites in the rural areas. This included an assessment of potential suitable, available alternative sites which concluded that none was available.

7.14. The application includes a Landscape visual impact appraisal which has undergone an audit by CDC's appointed landscape consultants who are satisfied with the submitted appraisal and the conclusions.

## 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 in the Executive summary. And for ease for readers again below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

Policy SLE1 - Employment Development

Policy SLE4 - Improved Transport and Connections

Policy ESD1 - Mitigating an Adapting to Climate Change

Policy ESD2 - Energy Hierarchy and Allowable Solutions

Policy ESD3 - Sustainable Construction

Policy ESD4 - Decentralised Energy Systems

Policy ESD5 - Renewable Energy Policy ESD6 - Sustainable Flood Risk Management

Policy ESD7 - Sustainable Drainage Systems

Policy ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment

Policy ESD13 - Landscape Protection

Policy ESD15 - The Character of Built and Historic Environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

Policy TR1 - Transport Policy TR10 - Heavy Goods Vehicles

Policy C8 - Sporadic Development in the Countryside

- 8.3. Other Material Planning Considerations:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- 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
- Design, and impact on the character of the area
- Heritage impact
- Residential amenity
- Ecological impact
- Drainage
- Highways
- Environmental

Principle of Development

*Policy Context*

- 9.2 The policy context and a consideration of the proposal's compliance with the adopted Development plan policies and saved policies is also set out above in full from the Policy team in their consultation response.

#### *Assessment*

- 9.3 Policy SLE1 helps to deliver the Plan's strategy for economic growth and is considered to be the dominant or most important planning policy for the consideration of the merits of this proposal.

- 9.4 Policy SLE1 allows employment proposals within rural areas on non-allocated sites if they meet the following criteria. Where exceptional circumstances have been demonstrated:

- They will be outside of the Green Belt, unless very special circumstances can be demonstrated.
- Sufficient justification is provided to demonstrate why the development should be located in the rural area on a non-allocated site.
- They will be designed to very high standards using sustainable construction, and be of an appropriate scale and respect the character of villages and the surroundings.
- They will be small scale unless it can be demonstrated that there will be no significant adverse impacts on the character of a village or surrounding environment.
- The proposal and any associated employment activities can be carried out without undue detriment to residential amenity, the highway network, village character and its setting, the appearance and character of the landscape and the environment generally including on any designated buildings or features (or on any non-designated buildings or features of local importance).
- The proposal will not give rise to excessive or inappropriate traffic and will wherever possible contribute to the general aim of reducing the need to travel by private car.
- There are no suitable available plots or premises within existing nearby employment sites in the rural areas.

- 9.5 As the application site is not allocated in the Cherwell Local Plan and is located within the countryside, the proposed development falls within the second part of Policy SLE1. Fundamental to the support for employment developments on non-allocated rural sites are the following:

- i. The need to demonstrate 'exceptional circumstances'.
- ii. The need to meet the criteria set out in Policy SLE1.

- 9.6 The first part of the policy test is to therefore demonstrate exceptional circumstances in order to justify new employment development on unallocated land. The applicant has provided information within the supporting planning statement that demonstrates how Siemens Heathineers has built up an established supply chain and skilled personnel to form a cluster within the cryogenics cluster. The proposed investment by Siemens Healthineers is of some £80m, with the provision of 1,345 jobs (a net increase of 1,126) within the highly specialised super conducting magnet technology sector. Further details on the wider socio-economic benefits to both the Cherwell and wider Oxfordshire economies that will arise from the proposals are contained in the Socio-Economic Impact Assessment that accompanied the application. The applicants have robustly demonstrated through a detailed site analysis that the proposal cannot be accommodated on any allocated or committed site for

employment land within or on the edge of Category A Villages or any other land within the existing main urban areas of the District. The socio-economic benefits from this investment, and crucially the lack of alternative allocated or committed sites to accommodate this investment amount to 'exceptional circumstances' which are compelling and satisfy the requirements of Policy SLE1.

9.7 The operation of Policy SLE1 now requires consideration of the proposed development against the 7 criteria set out within the policy. An assessment against these criteria is contained below.

- The site is not within the Green Belt. (Criterion 1).
- The applicant has considered alternative locations and Officers are satisfied that the assessment provides sufficient justification being located in the rural area. (Criterion 2).
- The design of the proposal is sustainable through achieving a BREEAM rating of excellent in the construction of the building and its commitment to providing Solar PV Panels. It benefits from good access to bus services along the A41 that will be improved through a S106 contribution. The scale of development respects the character of villages and the surroundings. (Criterion 3)
- The proposals will not have a significant adverse impact on the character or setting of Wendlebury or Little Chesterton or the surrounding environment. (Criterion 3 and 4)
- The highway impact is considered by both National Highways and OCC to be acceptable, and as a consequence compliant with saved policy TR1. The development will by reason of its three-shift operation, improvement to public transport, cycling and pedestrian facilities, and drainage be a sustainable development without undue detriment to residential amenity, the highway network, village character, setting and the appearance and character of the landscape and the environment. (Criterion 5).
- The proposal will not give rise to excessive or inappropriate traffic and will contribute to the general aim of reducing the need to travel recognising that the opportunity to maximise sustainable transport so options will vary between urban and rural areas (Framework, paragraph 105). (Criterion 6).
- The applicants have provided sufficient evidence that there are no suitable or available plots or premises within existing nearby employment sites in the rural area that could accommodate the proposed development. (Criterion 7).

9.8 The Policy team in considering the principle of the proposed development conclude that it does not fall contrary to the adopted Local Plan when the Plan is considered in its entirety and recommend approval.

9.9 In assessing the merits of this proposal consideration also needs to be given to Government advice in the NPPF. Paragraph 81 requires significant weight to be placed on local business needs and wider opportunities for development.

9.10 Consideration has been given to the provisions of Article 15 (2(b)) of the Development Management Procedure Order and whether the proposed development accords with its provisions of the development plan. Where a development is not considered to accord with the development plan the Council are required to publicise it with both a site notice and press notice as required by Article 15 (3). This provides an opportunity for the Secretary of State to call in the application.

9.11 Article 15 (2) refers to development that does not accord with the provisions of the Development Plan. The comments received from the planning policy team state that

the proposed development is contrary to policy C8 of the 1996 Local Plan but is not in conflict with the development plan when read a whole. A development proposal does not have to accord with each and every policy in a development plan to be said to be in accordance with the development plan see (Regina v Rochdale Metropolitan Borough Council, Ex Parte Milne 2000).

### *Conclusion*

- 9.12 Officers conclude that the principle of development on this site is not contrary to the overarching employment location policy contained in the adopted Development Plan and other relevant policies as considered by the Policy Team, as set out above. The sole policy that has been identified as being not complied with by the proposal is saved policy C8 of the 1996 Local Plan. The applicant has demonstrated that this development meets Policy SLE1 criteria for employment on unallocated sites in the rural areas which is the dominant policy in the development plan for this development proposal and should be given substantial weight. This included an assessment of potential suitable, available alternative sites which concluded that none were available. Officers accept the robustness of this analysis and consider that the proposal complies with the Development Plan when considered as a whole. The other relevant saved policy TR1 relates to Transportation funding, the responses of National Highways and OCC transport are such that Officers have concluded that this Policy is also satisfied.
- 9.13 The Local Plan policy team in their response, set out above, have highlighted relevant policy and have noted that statutory consultees should be consulted on the details required to be satisfied to provide comfort that the development meets policy requirements. Those consultee responses are set out in an earlier section of this report and support the proposal and propose relevant conditions to allow the development to occur.

### National Policy

- 9.14 Section 6 of the NPPF requires that Planning Authorities help to create conditions which build a strong, competitive economy. Paragraph 81 requires 'significant weight' to be placed on local business needs and wider opportunities for development. Paragraph 83 requires LPAs to recognise and address the specific locational requirements of different sectors. The submitted socio-economic impact material submitted by the applicant together with their consideration of alternative sites makes the case, which officers accept, for compliance with this paragraph. Similarly, the conclusion of officers that the proposed site and the building to be erected thereon are well designed and constitute sustainable development comply with paragraph 84(a). The succeeding paragraph (85) notes that sites in rural areas may be locationally ill served by public transport and improvements to the sustainability of a site will be necessary.

### Assessment

- 9.15 Officers are, given the supportive views of the Highway Authorities (OCC & NH) content that the proposals accord with the relevant NPPF paragraphs.

### Heritage Impact

- 9.16 The site is not within a Conservation Area. The archaeological and heritage assessment that accompanied the submission of the application concludes that based on the height of the proposed building, the upper part of the development will be slightly visible above the adjacent hedgerow from the grade II listed building Church of St Giles in Wendlebury. The imposition into the church's setting is assessed as resulting in a Minor Adverse, permanent, non-significant effect. In terms of NPPF guidance, this harm would be at the lower end of the spectrum of 'less than substantial

harm' and, in accordance with Paragraph 202 of NPPF, should be 'weighed against the public benefits of the proposal'.

- 9.17 The site is of potentially significant archaeological interest with potential to contain previously unrecorded archaeological remains. The County Council's Archaeology Unit is content with the proposals subject to the imposition of planning conditions to allow for implementation of archaeological investigation to be maintained during the period of construction.

#### Assessment

- 9.18 Officers are content that the heritage assets which may potentially form the archaeology of the site can be safeguarded by the imposition of recommended planning conditions. The benefits of the proposals including creation of jobs and financial investment in the local economy along with wider environmental benefits in terms of bio-diversity net gain, improvements to the local highway network and provision of a new footway/cycleway and flooding betterment to Wendlebury are public benefits that significantly outweigh the low level of the less than substantial harm caused to the Grade II Listed Church in Wendlebury.

#### Ecology Impact

##### *Legislative context*

- 9.19 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.
- 9.20 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.
- 9.21 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.
- 9.22 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:
- i. 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?
  - ii. That there is no satisfactory alternative.



- iii. 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.

9.23 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, pipelines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

#### *Policy Context*

9.24 Paragraph 174 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.

9.25 Paragraph 180 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.

9.26 Paragraph 183 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.

9.27 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.

9.28 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.

9.29 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.

9.30 The Planning Practice Guidance dated 2014 postdates 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*

- 9.31 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').*

- 9.32 The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains buildings, is close to a stream and there are a number of mature trees and hedgerows within and adjacent the site, and therefore has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.
- 9.33 The application is supported by a detailed protected species survey and survey of the ancient woodland which concluded that subject to the implementation of the mitigation measure outlined in the submitted ES, residual effects anticipated for important ecological features during the construction phase are not considered significant. The study also considered impacts on nearby Bowlers Copse a Cherwell District Wildlife Site. The impact on that Copse was mentioned in the BBOW response to the application, the status of that Copse is as a local wildlife site, of only local significance and Officers consider that the development's impact is not materially significant.
- 9.34 The ecological impact of the site with respect to biodiversity nett gain (BNG) is also a subject dealt with in the ES, the development shows a nett gain of some 7.3% using the appropriate calculation tool, however discussions continue with the applicant to raise this percentage figure - hopefully to or closer to 10%, in accordance with policy ESD10.
- 9.35 Officers are satisfied, on the basis of the advice from the Council's Ecologist, arboriculturist 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. The specialist officer's support for ecological impact material in the ES with appropriate conditions is accepted.
- 9.36 The Council as part of its corporate policy seeks to achieve a 10% BNG. However, whilst desirable the 10% net gain figure is not replicated in the adopted plan policy relevant to the subject site (ESD10) nor does the NPPF (paragraphs 174(d), 179(b) and 180(d)) require a specific gain, being content to encourage biodiversity improvements. The newly approved Environment Act provides for BNG of at least 10% and will be incorporated into planning law at section 90A within the Town and

Country Planning Act 1990(TCPA). However presently that amendment has not occurred and is not expected until 2023.

- 9.37 Officers are content that the applicants, using appropriate measurement tools have achieved a considerable level of BNG, and have complied with extant adopted planning policy and the relevant paragraphs in the NPPF. The CDC corporate policy of 10% nett gain is not achieved, however that policy is currently of lesser planning weight than the relevant adopted local plan policy, officers consider at this time it is not possible to insist on 10% BNG being applied to planning applications. As a consequence, Officers are of the view that the BNG requirements along with the protection of protected species is achieved. Nevertheless, discussions are continuing to raise the level of BNG at the site and these will be reported on prior to Committee's consideration.

### Drainage

#### Policy Context

- 9.38 Policy ES10 of the adopted CLP requires that all development will be required to use sustainable drainage systems (SUDS) for the management of surface water run off. The policy requires that a site-specific flood risk assessment is produced. Such assessments are required to protect ground water quality. SUDS systems where possible should seek to reduce flood risk, reduce pollution, and provide landscape and wildlife benefits. SUDS schemes require the approval of the Lead Local Flood Authority (LLFA) and proposals must also include provision on future management, maintenance.

#### Assessment

- 9.39 The application has been submitted with a flood risk assessment which after discussion is considered acceptable by both the LLFA and CDC drainage Officer. The scheme produces sufficient storage capacity for surface water runoff on site by virtue of storage tanks under the proposed car park and a surface pond such that there is no increase in water discharge from the site as presently occurs. In addition, the storage capacity is proposed to be installed over the requirements of the proposal to limit run off to that which occurs from the current green field site but to introduce a greater storage capacity such that some of the persistent flooding in Wendlebury is alleviated by reducing the Wendlebury Brooks upstream flow.
- 9.40 Officers consider that the requirements of adopted policy ES10 are satisfied.

### Highways

#### Policy context

- 9.41 Policy SLE 4: 'Improved Transport and Connections', of the CLP requires that new development provide financial and in kind contributions to mitigate transport impacts. The policy also seeks to facilitate sustainable modes of transport and reduce congestion.

## Assessment

- 9.42 The submitted application has been the subject of detailed negotiation between the applicants, National Highways and OCC as Local Highway Authority. Both of those bodies are now satisfied that the proposal is acceptable in principle, subject to entering into a S106 agreement, the details of which are still under discussion to provide but are referenced below and in Appendix 1:

### Public Transport Service contribution for the provision of:

An additional daily journey from Oxford to Bicester (currently service S5) at 05:30, and an additional Sunday and Public Holiday journey at 21:40 from Bicester to Oxford – these are timed to meet shift change over patterns and the service passes the development site. An additional daily journey from Carterton to Oxford (currently H2 route) at 04:30 and an additional daily journey from Oxford to Carterton at 22:30. This is taking account of the large cluster of employees currently living in the Witney / Eynsham area who would otherwise be required to drive to the site due to a lack of a suitable public transport connection between the site and those towns. Interchange between the H2 and S5 services can be made in Summertown, Oxford. Both improvements are for the applicants to fund for a period of five years - £134,375.

### Pedestrian and Cycle connection to Bicester

Discussions are ongoing with the applicant with regards to the provision of a safe and suitable pedestrian / cycle route to the site from Bicester. Two options are currently being considered by the parties.

- The provision of a direct 3m wide shared route alongside the A41 between the site access and the Bicester Park and Ride. OCC could either deliver the route with funding secured through the S106, or the applicant could deliver the route via a S278 (secured through the S106) - circa £3m.
- Alternatively, the applicant could explore what measures / improvements could be made to Wendlebury Road to make that route safe and attractive for cycling between Bicester and the site. Measures could include a reduced speed limit, traffic calming, road surface treatments akin to a 'dutch-style' rural route. Officers consider any measures agreed upon for this route to be delivered by the developer through a S278 agreement and secured in the S106 – circa £1.5m.

An update on the progress of discussions on the matters set out above will be produced prior to the application being considered at Committee. However, the applicants have agreed to additional matters to be included in the S106 as follows:

- Traffic Reg Order (if not dealt with under S278/S38 agreement) To consult on the implementation of a new / extended speed restriction on the A41 between the M40 J9 and Vendee Drive junctions at a cost of £3,320.
- Travel monitoring Plan To monitor the Travel Plan for a period of 5 years post occupation at an indexed cost of £1,558
- Upgrades to surfaces of PROW serving the site £30,000 index linked.

A set of agreed and appropriate highway and sustainability conditions in conjunction with the applicant, National Highways and OCC are set out in recommended conditions later in this report, the Highway Authority and National Highways considers that the highways / traffic impact of the proposed development can be mitigated to an acceptable degree and that by providing for sustainable transport access, the development is not likely to lead to severe impacts on the local highway network or the Strategic network. The County Council considers that the mitigation package

outlined above aligns with policy SLE 4 of the Cherwell Local Plan. Officers are content that given the views of National Highways and the Highway Authority that the requirements of the relevant Development Plan policy are satisfied.

## Environmental

### Policy Context

- 9.43 Policy ESD 2 in the adopted CLP deals with 'Energy Hierarchy and Allowable solutions' in particular seeking within development carbon emissions reductions and promotes a hierarchy as follows:
- Reducing energy use, in particular by the use of sustainable design and construction measures.
  - Supplying energy efficiently and giving priority to decentralised energy supply.
  - Making use of renewable energy.
- 9.44 In addition, Policy ESD3 seeks all new non-residential development to meet at least BREEAM 'very good'.
- 9.45 Policy ESD 15 requires new development to produce high standards of design and protect heritage assets, designated or non-designated, together with the amenity of existing development. The policy requires that the design of new development be informed by an analysis of the development's context
- 9.46 The response to the application by CDC environmental health team notes that the scheme is acceptable subject to conditions controlling land contamination which are set out in the recommended conditions. The EHO's team are satisfied with the lighting proposals and a condition requiring a lighting scheme to be submitted is proposed. The EHO's response also confirmed the findings of the submitted ES that there was no material detriment to amenity by reason of land contamination, though a condition is recommended to ensure a precautionary approach is taken. The advice of the EHO having considered the submitted ES was that there was no objection on grounds of noise or vibration.
- 9.47 The response of the applicants to the requirements of Policy ESD 3 is that the scheme will be constructed to BREEAM excellent standard, complying with that policy.
- 9.48 The scheme is proposed, as set out above, to have photovoltaic cells for the generation of electrical power.
- 9.49 The scheme does not affect any designated or non-designated Heritage asset, and the response of the Archaeology Officer is positive providing, subject to detailed conditions dealing with excavation and recording being imposed. The suggested conditions reflect this requirement.

### Assessment

- 9.50 Officers consider that the scheme as presented satisfies the requirements of relevant environmental policy contained in the CLP. The building design has been produced both to satisfy functional requirements as set out in the design and access statement, but also having regard to its context. The scheme is not materially detrimental to the amenity of the area, or any heritage asset. The scheme's building will be of BREEAM Excellent standard and will embody sustainable elements to reduce carbon usage.

### Officer consideration of Objections

- 9.51 The Weston on the Green Parish Council and the CPRE consider the proposal to be contrary to the adopted Development Plan, in particular Policy ESD 13 which deals with Local Landscape Protection and enhancement. They also are concerned at the deleterious impact on the local highway network, the natural habitat, air quality and the production of unacceptable noise pollution. The claim that the scheme is contrary to development policy is discussed in detail within the Officers assessment. The concerns raised about Landscape protection and enhancement are considered by Officers not to be so significant as to overturn the position that the scheme is consistent with the adopted policies of the Plan when taken as a whole. The audit of the LVIA submitted by the applicants demonstrates no undue impact causing harm, and given its location adjoining the strategic road network, and a considerable level of existing enclosure by tree and hedgerow boundaries the tranquillity of the site will be made no worse. The Heritage impact identified on the setting of the nearby grade II church is considered acceptable when weighted against the public benefits. Archaeology is considered acceptable as is the effect on air quality and noise generation.
- 9.52 In addition, local third-party concerns relate to increased flooding resulting from the development, the impact on Little Chesterton and environmental damage.
- 9.53 Officers have carefully considered these matters and note that the Highway Authority's support, with appropriate planning conditions being imposed and planning obligations being entered into, the proposal is judged to be acceptable. Similarly, the drainage proposals for the site are supported by both the LLFA and CDC'S drainage officer subject to appropriate recommended conditions and offer betterment to an existing flooding issue outside the site.
- 9.54 The impact on the Natural Habitat is judged acceptable by CDC's ecologist subject to planning conditions and the environmental health impacts are also considered acceptable by CDC's Environmental Health Officers, who consider that any effects that may occur by reason of noise or air quality are also with appropriate conditions acceptable.
- 9.55 The objections by BBOWT and CPRE; CDC's ecologist is content to advise that the scheme as submitted as it relates to ecology and bio-diversity issues is satisfactory and, on that basis, Officers are content with the impact of scheme which demonstrates positive BNG and a scheme endorsed by CDC's arboriculturist to protect the small area of ancient woodland at the edge of the site, subject to appropriate conditions.
- 9.56 Finally, an objection has been raised by Thames Valley Police (TVP) The applicants as a result of this response have submitted a report which deals with the majority of their concerns, the desire of TVP to have a boundary fence has been resisted by the applicants by reason that the car park is solely accessed via a permanently manned security checkpoint, and the area is monitored by CCTV. They consider, as do Officers that the erection of a security fence given that the area will be monitored on a 24-hour basis is unnecessary. Officers consider that the applicant's response to TVP is satisfactory, and the installation of a security fence would introduce a discordant and unnecessary feature into the area adversely affecting the setting of the proposed modern building and its landscaped grounds.

## 10. PLANNING BALANCE AND CONCLUSION

- 10.1 Overall, the submitted scheme is considered to be compliant with the Development Plan apart from saved policy (C8 sporadic development in the countryside), where the strength of that policy as it applies to the location of this development is overtaken by the arguments put forward by the applicants and accepted by officers and the weight to be accorded to the remaining more recent policies of the adopted plan.
- 10.2 Policy C8 states that: *“Sporadic development in the countryside must be resisted if its attractive, open, rural character is to be maintained.*
- 10.3 *Policy C8 will apply to all new development proposals beyond the built-up limits of settlements including areas in the vicinity of motorway or major road developments but will be reasonably applied to accommodate the needs of agriculture. There is increasing pressure for development in the open countryside particularly in the vicinity of motorway junctions. The Council will resist such pressures and will where practicable direct development to suitable sites at Banbury or Bicester.”*
- 10.4 This policy remains valid though aged and now has reduced weight by way of the more up to date 2015 Local Plan policy SLE1 and the NPPF (particularly paragraphs 81 to 85) which demonstrate considerable support for proposals which address specific requirements of different sectors, and ‘significant weight should be placed on the need to support economic growth’.
- 10.5 Updated Policy SLE1 of the 2015 Adopted Local Plan states:

*“Policy SLE 1: Employment Development Employment development on new sites allocated in this Plan will be the type of employment development specified within each site policy in Section C ‘Policies for Cherwell’s Places’. Other types of employment development (B Use class) will be considered in conjunction with the use(s) set out if it makes the site viable.*

*In cases where planning permission is required existing employment sites should be retained for employment use unless the following criteria are met:*

- the applicant can demonstrate that an employment use should not be retained, including showing the site has been marketed and has been vacant in the long term;*
- the applicant can demonstrate that there are valid reasons why the use of the site for the existing or another employment use is not economically viable;*
- the applicant can demonstrate that the proposal would not have the effect of limiting the amount of land available for employment.*

*Regard will be had to whether the location and nature of the present employment activity has an unacceptable adverse impact upon adjacent residential uses.*

*Regard will be had to whether the applicant can demonstrate that there are other planning objectives that would outweigh the value of retaining the site in an employment use.*

*Employment development will be focused on existing employment sites. On existing operational or vacant employment sites at Banbury, Bicester, Kidlington and in the rural areas employment development, including intensification, will be permitted subject to compliance with other policies in the Plan and other material considerations. New dwellings will not be permitted within employment sites except where this is in accordance with specific site proposals set out in this Local Plan.*

*Employment proposals at Banbury, Bicester and Kidlington will be supported if they meet the following criteria:*

- Are within the built-up limits of the settlement unless on an allocated site;*
- They will be outside of the Green Belt, unless very special circumstances can be demonstrated.*
- Make efficient use of previously developed land wherever possible;*

- *Make efficient use of existing and underused sites and premises increasing the intensity of use on sites;*
- *Have good access, or can be made to have good access, by public transport and other sustainable modes;*
- *Meet high design standards, using sustainable construction, are of an appropriate scale and respect the character of its surroundings;*
- *Do not have an adverse effect on surrounding land uses, residents and the historic and natural environment.*

*Unless exceptional circumstances are demonstrated, employment development in the rural areas should be located within or on the edge of those villages in Category A (see Policy Villages 1).*

*New employment proposals within rural areas on non-allocated sites will be supported if they meet the following criteria:*

- *They will be outside of the Green Belt, unless very special circumstances can be demonstrated.*
- *Sufficient justification is provided to demonstrate why the development should be located in the rural area on a non-allocated site;*
- *They will be designed to very high standards using sustainable construction, and be of an appropriate scale and respect the character of villages and the surroundings.*
- *They will be small scale unless it can be demonstrated that there will be no significant adverse impacts on the character of a village or surrounding environment;*
- *The proposal and any associated employment activities can be carried out without undue detriment to residential amenity, the highway network, village character and its setting, the appearance and character of the landscape and the environment generally including on any designated buildings or features (or on any non-designated buildings or features of local importance);*
- *The proposal will not give rise to excessive or inappropriate traffic and will wherever possible contribute to the general aim of reducing the need to travel by private car;*
- *There are no suitable available plots or premises within existing nearby employment sites in the rural areas.*

*The Local Plan has an urban focus. With the potential for increased travel by private car by workers and other environmental impacts, justification for employment development on new sites in the rural areas will need to be provided. This should include an applicant demonstrating a need for and benefits of employment in the particular location proposed and explaining why the proposed development should not be located at the towns, close to the proposed labour supply.*

*Monitoring and review will be undertaken regularly.*

*Extensions to existing employment sites will be considered in the Local Plan Part 2."*

10.6 Whereas the 1996 Local Plan policy generally resisted employment development outside of settlements in the open countryside, the more up-to-date adopted 2015 Local Plan policy prepared in the context of the national planning policy provided by the Framework, permits employment developments in rural, open countryside locations provided exceptional circumstances have been demonstrated, and the proposal satisfies the seven criteria. This proposal has been specifically designed to meet the operational needs of Siemens Healthineers. A planning obligation will ensure that the development is first occupied by Siemens Healthineers.

10.7 The applicant has selected this site to meet their expansion needs recognising that:

- the application site is located within a relatively short distance of the centre of Bicester (the District's principal growth location), and around a mile from its western edge;



- is readily accessed from the strategic highway network (the M40 and A41, from which it takes access).
- the development will replace an existing hi-tech business located 12 miles to the southwest, in neighbouring West Oxfordshire, where the business has outgrown its site and they are urgently seeking to relocate to an accessible location where existing, and new employees can be bused to the new location.
- the new site would facilitate opportunities to double the site of the business and provide a sector leading production and research facility.
- the new site is served by good public transport links which are proposed to be improved and pedestrian and cycle connectivity can readily be improved to maximise use of non-car modes;
- development can be safely accessed.
- private residential amenities in nearby Chesterton, Little Chesterton and Wendlebury villages would not be harmed.
- the proposal is for a high-quality gateway design feature at the southern entrance to Bicester from the motorway;
- there are no substantive landscape, ecological or arboricultural constraints to developing the site; and
- substantive surface water drainage enhancements can be delivered that should significantly reduce the risk of flooding in Wendlebury.

10.8 As per Article 15 (2) of General Development Management Procedure Order although the proposal does not accord with policy C8, it does accord with the development plan when read as a whole. A development proposal does not have to accord with each and every policy in a development plan to be said to be in accordance with the development plan (see Regina v Rochdale Metropolitan Borough Council, Ex Parte Milne 2000). On this basis it is not considered that this application needs to be advertised as being a departure from the Local Plan.

10.9 The scheme is sustainable and is positive with respect to all three and interconnected parts of the definition of sustainability, namely:

- Economic,
- Social and
- Environmental

10.10 The submitted material dealing with the social and economic aspects of the scheme's impact have been submitted by the applicants in support of the proposal, the positive nature of that report and the impacts are supported by CDC's economic development officer. Paragraph 81 of the NPPF requires significant weight to be placed on supporting economic growth and productivity, taking into account both local business needs and wider opportunities for development in making decisions.

10.11 The scheme will not materially affect adversely any local residential development, by reason of light, odour or noise, this position is confirmed by CDC's environmental health officer who considers following an examination of the submitted ES that the scheme can be controlled by the imposition of appropriate conditions relevant for both the construction and operational phases of the scheme.

10.12 The environmental impact aspects of the scheme, transportation, ecological, biodiversity landscape and drainage are all considered to be acceptable to statutory

consultees, subject to the imposition of controlling planning conditions and planning obligations secured through a s106 agreement to offset those impacts.

10.13 The public benefits to the economic objective of sustainable development which will be secured by this proposal significantly outweigh the low level of less than substantial harm which has been identified to the significance of the Church of St Giles at Wendlebury, a Grade II Listed Building.

10.14 In addition, the implementation of the scheme will provide materially significant level of bio-diversity to the current use, considerable additional highway improvements to reduce traffic speeds on the section of the A41 from junction 9 to the Vendee Drive junction, will deliver further s106 community and sustainable transport infrastructure contributions and produce a significant betterment to the flow levels of the Wendlebury Brook, to assist in alleviating periodic flooding by that watercourse in the village.

## 11. RECOMMENDATION

**DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT PERMISSION, SUBJECT TO:**

**(i) THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY); AND**

**(ii) 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 INFRASTRUCTURE SET OUT IN APPENDIX 1 (AND ANY AMENDMENTS TO THOSE OBLIGATIONS 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:
  - Access Plan - Drawing 205223/PD09 Rev C
  - 13-222-SGP-STE-00-DR-A-131002 - Location Plan – Symmetry Park, Oxford North (Rev. P8)
  - 13-222-SGP-ZZ-ZZ-DR-A-131007 – Watercourse Diversion Planning Location Plan (Rev. P1)
  - 13-222-SGP-ZZ-ZZ-DR-A-131009- 01 – Location Plan
  - 13-222-SGP-ZZ-ZZ-DR-A-121404 – Energy Centre Proposed Plan & Elevations (Rev. A)
  - 13-222-SGP-ZZ-ZZ-DR-A-131000 - Site Plan – Phase 1 (Rev. V)
  - 13-222-SGP-ZZ-ZZ-DR-A-131001 - Site Plan – Phase 2 (Rev. V)
  - 13-222-SGP-ZZ-ZZ-DR-A-131003 - External Furniture & Boundary Treatment Plan – Phase 2 (Rev. M)
  - 13-222-SGP-ZZ-ZZ-DR-A-131105 – Phase 1 – Production Area Layout (Rev.

F)

- 13-222-SGP-ZZ-ZZ-DR-A-131106 – Phase 1 & 2 – Office Layout (Rev. D)
- 13-222-SGP-ZZ-ZZ-DR-A-131107 – Phase 1 – Gross External Area Plans (Rev. C)
- 13-222-SGP-ZZ-ZZ-DR-A-131108 – Phase 1 - GIA Plans and Critical Dimensions (Rev. E)
- 13-222-SGP-ZZ-ZZ-DR-A-131109 – Phase 1 – Roof Plan (Rev. G)
- 13-222-SGP-ZZ-ZZ-DR-A-131110 – Phase 2- Production Area Layout Rev. E)
- 13-222-SGP-ZZ-ZZ-DR-A-131112 – Phase 2 – Gross External Area Plans (Rev. C)
- 13-222-SGP-ZZ-ZZ-DR-A-131113 – Phase 2 – GIA Plans & Critical Dimensions (Rev. D)
- 13-222-SGP-ZZ-ZZ-DR-A-131114 – Phase 2 – Roof Plan (Rev. H)
- 13-222-SGP-ZZ-ZZ-DR-A-131115 - Phase 1 & 2 – Facilities Management Building (Rev. D)
- 13-222-SGP-ZZ-ZZ-DR-A-131116 - Phase 1 & 2 – Gatehouse (Rev. B)
- 13-222-SGP-ZZ-ZZ-DR-A-131200 – Phase 1 – Production Area Sections (Rev. D)
- 13-222-SGP-ZZ-ZZ-DR-A-131201 – Phase 1 & 2 – Office Sections (Rev. C)
- 13-222-SGP-ZZ-ZZ-DR-A-131202 – Phase 2 - Production Area Sections (Rev. D)
- 13-222-SGP-ZZ-ZZ-DR-A-131204 – Phase 1 & 2 - Atrium Sections (Rev. E)
- 13-222-SGP-ZZ-ZZ-DR-A-131300 – Phase 1 – Elevations (Rev. E)
- 13-222-SGP-ZZ-ZZ-DR-A-131303 – Phase 2 – Elevations (Rev. E)
- 13-222-SGP-ZZ-ZZ-DR-A-131307 – Elevation Visuals
- Drainage Layout Drawing No. T/20/2407 Rev P5
- Water Course Sections T-212407 60-04 Rev P3
- Flood Risk Assessment ES Appendix 11.1 FRA V1.5
- Impermeable Areas Plan Drg 51 02 p1 (Dwg. No. T/20/2407 51-02 Rev P1)

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 with the National Planning Policy Framework.

3. The building hereby approved shall be constructed to BREEAM Excellent Standard or requirement thereof.

Reason: To ensure sustainable construction and to reduce carbon emissions in accordance with Policies ESD1-5 of the Cherwell Local Plan and Government guidance within the National Planning Policy Framework.

4. All planting, seeding or turfing comprised in the approved details of landscaping (EDP. Drawing no. EDP2425\_d017b) 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 operation of the service yard, 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 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.

5. The Delivery and Servicing Plan (January 2022, included as Appendix T of Vectos Transport Assessment dated March 2022) shall be implemented in perpetuity for the operation of the development hereby approved. The Plan shall ensure the implementation of specific details on the routing of vehicles in order to ensure that larger service / delivery vehicles avoid inappropriate routes on the local road network, in order to mitigate the impact on the surrounding network.

Reason: In the interests of highway safety and to ensure that the environment is protected during construction in accordance with Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

6. Shift change overs of Production Staff will avoid start and finish times during the peak highway network hours of 08:00 – 10:00 and 16:00 – 18:00, Monday-Friday in order to mitigate the impact of the development on the local highway network during peak network hours.

Reason: In the interests of sustainability, to ensure a satisfactory form of development and to comply 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. No energy generating equipment shall be installed within the energy centre hereby approved until an updated air quality assessment and noise impact assessment has been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of residential amenity and to ensure the details are acceptable to the Local Planning Authority.

8. All plant, machinery and equipment to be used by reason of the granting of this permission including any sound attenuating structures, shall be so installed, maintained and operated so as to ensure that the rating noise level from the site does not exceed 42dBLAeq 5 min when measured at the boundary of any noise sensitive receptor. Measurement and rating of noise for the purposes of this condition shall be in accordance with BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound.

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.

9. Surface Water Discharge from the development site shall be limited to 80% of QBAR rate up to the 1% AEP event plus an allowance of 40% for climate change (a discharge limit of 18.0 l/s).

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

#### **PRE-COMMENCEMENT CONDITIONS**

10. No development of any phase shall take place, including any works of demolition until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority for that phase. The CMP shall be appropriately titled (site and planning permission number) and shall provide for as a minimum:
  - Routing of construction traffic and delivery vehicles including means of access into the site;
  - Details of any road closures needed during construction;
  - Details 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;
- Measures to control the emission of dust and dirt during construction;
- 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;
- Details of the loading and unloading of plant and materials and the use of appropriately trained, qualified and certificated banksmen for guiding vehicles/unloading etc;
- Details of arrangements for site related vehicles (worker transport etc);
- 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 Dept – contact 0845 310 1111. Final correspondence is required to be submitted;
- Any temporary access arrangements;
- Delivery, demolition and construction working hours;
- Storage of plant and materials used in constructing the development;
- A scheme for recycling/ disposing of waste resulting from demolition and construction works.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

Reason: In the interests of highway safety and to ensure that the environment is protected during construction in accordance with 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.

11. No development shall take place (including demolition, ground works, vegetation clearance) on any phase until a Landscape and Ecological Management Plan (LEMP) for the development site has been submitted to and approved in writing by the Local Planning Authority for that phase. The LEMP will set out in detail the measures to be implemented to ensure the successful establishment/installation of new habitats/features and the long-term maintenance and management of both existing and new habitats/features proposed as part of the soft landscape scheme.

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.

12. No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include as a minimum:
- Risk assessment of potentially damaging construction activities;
  - Identification of 'Biodiversity Protection Zones';
  - Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction including the control of dust (may be provided as a set of method statements);

- The location and timing of sensitive works to avoid harm to biodiversity features;
- The times during construction when specialist ecologists need to be present on site to oversee works;
- Responsible persons and lines of communication;
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- 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.

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.

13. No development shall take place until, 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 Policy ENV12 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

14. If contamination is found by undertaking the work carried out under condition 13, 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 Policy ENV12 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

15. If remedial works have been identified in condition 14, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 14. 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 Policy ENV12 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

16. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the relevant phase of development is resumed or continued.

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 Policy ENV12 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

17. No development shall take place until a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the recording of archaeological matters within the site in accordance with the NPPF (2021).

18. Following the approval of the Written Scheme of Investigation referred to in Condition 17, and prior to the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a programme of archaeological mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority within two years of the completion of the archaeological fieldwork.

Reason: To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through publication and dissemination of the evidence in accordance with the NPPF (2021).

19. No development shall take place until, notwithstanding the details included in Woodland Management Plan EDP2425 R018-b (June 2022), an updated Woodland Management Plan to include a full management and replanting strategy for the ancient woodland has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the ancient woodlands longevity, and unique habitat is secured.

20. No development shall commence until a construction phasing plan has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the principles of sustainable drainage are incorporated into

this proposal and maintained thereafter.

21. No development shall commence until a Sustainable Surface Water Management Strategy compliance report to demonstrate how the scheme complies with the “Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire” shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

22. No development shall commence until a Flood Exceedance Conveyance Plan has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

23. No development shall commence until results from comprehensive infiltration testing across the site to BRE DG 365 standard have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

24. No development shall commence until detailed design drainage layout drawings of the SuDS proposals including cross-section details have been submitted to and approved in writing by the Local Planning Authority. The approved Drainage details shall be fully implemented prior to first occupation of each phase of the development.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

25. No development shall commence until details of how water quality will be managed during construction and post development in perpetuity have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

26. No development shall commence until details of any consents for any connections into third party drainage systems have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

#### **PRIOR TO THE CONSTRUCTION OF WORKS ABOVE GROUND LEVEL**

27. No development above ground level shall take place until a strategy has been submitted to and agreed in writing by the Local Planning Authority which sets out how Apprenticeships and Training Opportunities will be encouraged to be provided during the construction phase. Prior to the first occupation and prior to the occupation of any subsequent occupiers of the building, a further strategy shall be submitted to and approved in writing by the Local Planning Authority which sets out how Apprenticeships and Training Opportunities will be encouraged to be provided by the occupiers of the unit. The strategies above shall include details of the number of apprenticeships and training posts, over what period of time they will be employed,



where the apprentices may be placed within the company and where apprentices will be taken from. The strategies shall be implemented in accordance with the approved details.

Reason: In the interests of ensuring appropriate and adequate apprenticeships are made available in accordance with policy BSC7 of the Cherwell Local Plan 2011-2031, the Council's SPD on Developer Contributions (2018) and Government guidance within the National Planning Policy Framework.

28. No development above ground level shall take place on any phase until a scheme for the installation of PV panels to achieve a total power output of at least 380kW<sub>peak</sub> on each phase has been submitted to and approved in writing by the Local Planning Authority. The scheme for each phase shall be operational prior to the first occupation of that phase and be retained in accordance with the approved plans.

Reason: In the interests of sustainable development, and to comply with Policies ESD1-5 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

29. No development above ground level shall take place, notwithstanding the details included in the Biodiversity Impact Assessment Briefing Note EDP 2424 R017a, until an updated scheme has been submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented prior to first occupation of the building.

Reason: To achieve a Net Gain in biodiversity, this information is required prior to commencement as it is fundamental to the acceptability of the proposals.

30. No development above ground level shall take place until details of all permeable paving have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

31. No development above ground level shall take place until a detailed SuDS maintenance management plan in accordance with Section 32 of CIRIA C753 including maintenance schedules for each drainage element has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter.

#### **PRIOR TO OCCUPATION**

32. Prior to the first occupation of each phase of the building hereby approved, a detailed scheme showing external illumination of that phase of building and its curtilage shall be submitted to and approved in writing by the LPA. The scheme shall be implemented as approved.

Reason: To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2015, saved Policy C28 of the adopted Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework.

33. Prior to the first occupation of the development car park facilities shall be provided on the site (as shown in drawing ref: 13-222-SGP-ZZ-ZZ-DR-A-131000 Rev V: Site Pan – Phase 1). Thereafter, the car park facilities shall be permanently retained and maintained for the parking of vehicles in connection with the development.

Reason: In the interests of maintaining a well-functioning road network and in accordance with Policy SLE4, ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government advice in the National Planning Policy Framework.

34. Prior to the first occupation of the development covered cycle parking facilities shall be provided on the site (as shown in drawing ref: 13-222-SGP-ZZ-ZZ-DR-A-131000 Rev V: Site Pan – Phase 1). Thereafter, the covered cycle parking facilities shall 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 Policy SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government advice in the National Planning Policy Framework.

35. Prior to first occupation of the development a Workplace Travel Plan prepared in accordance with the Framework Travel Plan (January 2022, included as Appendix S of Vectos Transport Assessment dated March 2022, to include implementation of working practices for office staff set out in 'Healthineers Way of Working' (December 2020) to achieve a broad 70/30 split of office/remote based working) will be submitted to and approved by the Local Planning Authority. The plan shall incorporate site specific details of the means of regulating the use of private cars related to the development in favour of other modes of transport and the means of implementation and methods of monitoring.

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

36. Prior to the first occupation of the development, a record of the installed SuDs and 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:

- a) As built plans (.pdf and .shp file format);
- b) Photographs to document each key stage of the drainage system when installed on site.
- c) Photographs to document the completed installation of the drainage structures on site;
- d) The name and contact details of any appointed management company information.

Reason: In accordance with section 21 of the Flood and Water Management Act 2010.

**APPENDIX 1- Heads of Terms for Section 106 Agreement/undertaking**

**Appendix to follow**

Agenda Item 9  
22/000177F

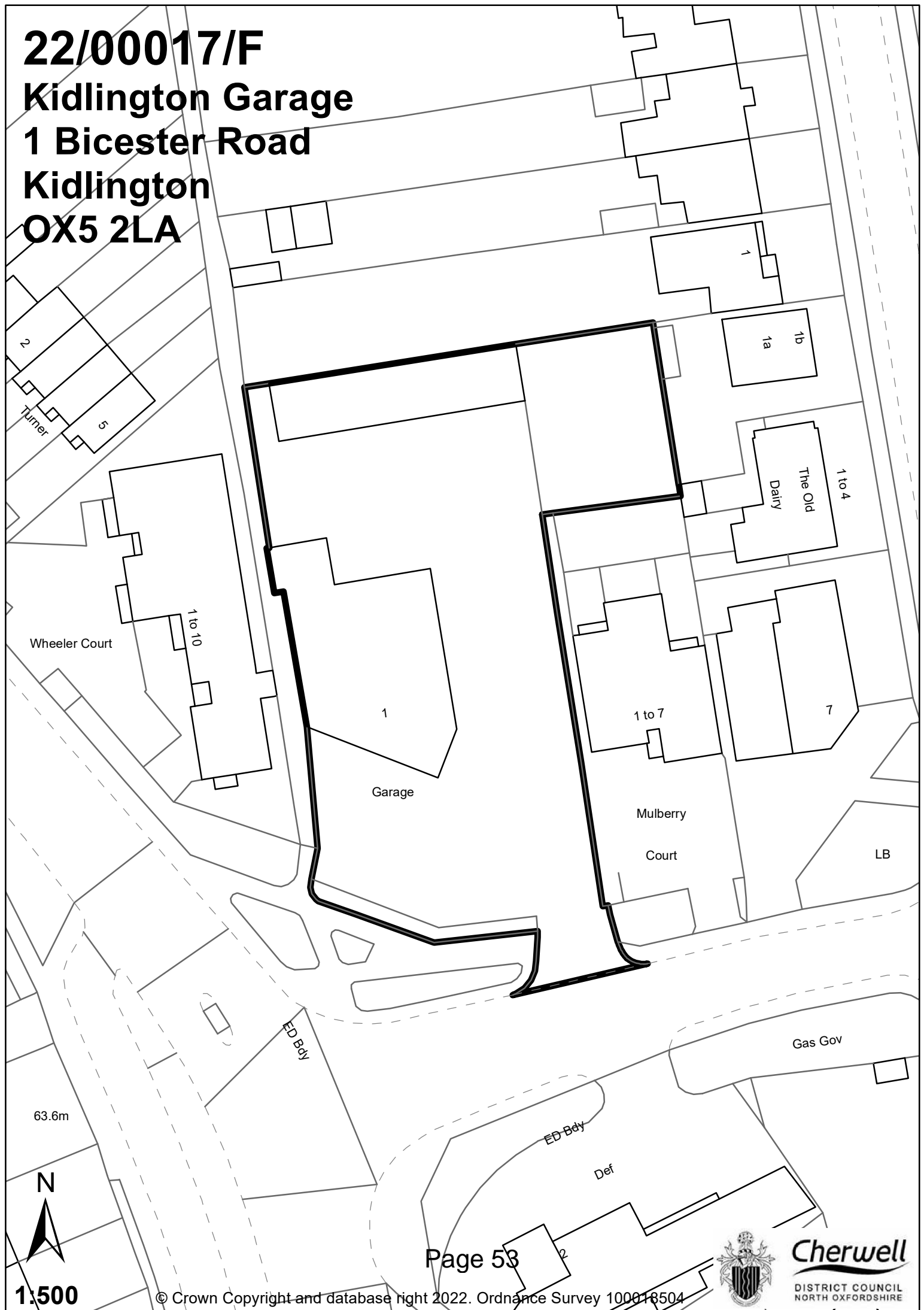
**Kidlington Garage**  
**1 Bicester Road**  
**Kidlington**  
**OX5 2LA**



1:750



**22/00017/F**  
**Kidlington Garage**  
**1 Bicester Road**  
**Kidlington**  
**OX5 2LA**



Wheeler Court

Garage

Mulberry Court

Gas Gov

63.6m

N

1:500



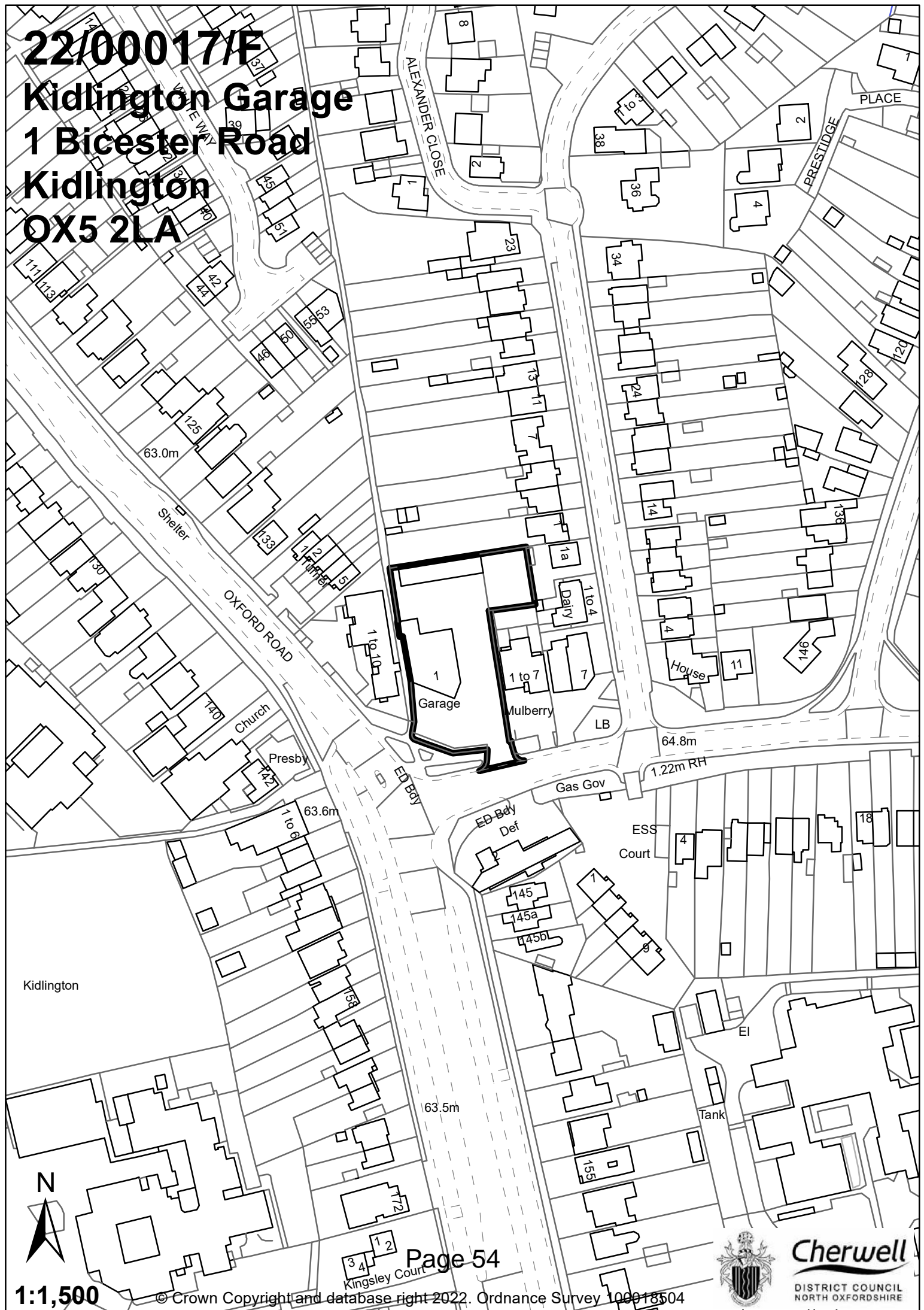
# 22/00017/F

## Kidlington Garage

### 1 Bicester Road

### Kidlington

### OX5 2LA



1:1,500



**Case Officer:** Samantha Taylor

**Applicant:** Sweetcroft Homes

**Proposal:** Demolition of existing vehicle showroom and associated garages. Erection of 2 new housing blocks containing total of 15 flats including car parking and ancillary supporting uses with landscaping

**Ward:** Kidlington East

**Councillors:** Cllr Billington, Cllr Mawson, and Cllr Middleton

**Reason for Referral:** Ten or more dwellings

**Expiry Date:** 11 April 2022

**Committee Date:** 14 July 2022

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**SUMMARY OF RECOMMENDATION: DELEGATE POWERS TO GRANT PERMISSION, SUBJECT TO CONDITIONS AND SECTION 106 LEGAL AGREEMENT**

**1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is located fairly centrally, within the residential area of Kidlington. The site and its context is formed of relatively modern buildings with residential properties, outbuildings and garages forming the character of the area. There are some smaller areas of commercial buildings within the local area. Building heights vary in this location, with some more recent developments adjacent measuring 3 storeys in height.
- 1.2. The application site was most recently used as a commercial car sales garage. There are two single storey buildings which exist on the site. One is located at the centre of the site and was used as an office and showroom with the other building located at the rear of the site used for storage.

**2. CONSTRAINTS**

- 2.1. The application site is within the largely residential area of Kidlington. The site is in an area of potentially contaminated land. A public footpath runs immediately to the west of the site (FP265/5/10).

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The application seeks full planning permission for the demolition of the existing garage and the erection of two apartment blocks comprising 15 units, with associated landscaping, parking and other infrastructure.

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

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

CHS.725/92

Continuance of use to allow car sales and display from the whole site area.

Approved.

11/0149/OUT

Demolition of existing dwelling and construction of building containing 7 apartments and parking, access and ancillary works.

Approved.

12/00149/REM

Reserved matters pursuant to application 11/01419/OUT

Approved.

18/01388/F

Demolition of existing vacant workshop and show room buildings. Erection of two and three storey building to provide 10no. dwellings (8x 2-bed and 2x-1 bed). Provision of off-street car parking, secure cycle storage and covered refuse/recycling store – resubmission of 18/00130/F

Approved.

18/00130/F

Demolition of existing vacant workshop and show room buildings. Erection of two and three storey building to provide 10no. dwellings (8x 2-bed and 2x-1 bed). Provision of off-street car parking, secure cycle storage and covered refuse/recycling store

Withdrawn.

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

5.1. 20/02874/PREAPP – Pre-Application Enquiry - Demolition of existing vehicle showroom and construction of new flat blocks providing 20 no. units. Acceptable in principle subject to massing and detailed design.

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

6.1. This application has been publicised by way of advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records (amend as appropriate). The final date for comments was **3 February 2022**.

6.2. Objections have been raised from 7 addresses. The comments raised by third parties are summarised as follows:

6.3. Materially relevant comments which can be considered when determining the application:

- An unacceptable loss of privacy to adjacent residential properties as a result of the creation of window openings and potential overlooking;
- The height of Block A is significantly higher than adjacent properties;
- The design fails to break the massing of the building due to the size and external appearance of the building, which is harmful to the local context;
- Insufficient parking leading to congestion and traffic issues;
- Appropriate contributions towards traffic improvements should be secured;



- Appropriate provision for the charging of elective cars should be made;
- An acceptable location for the air source heat pump should be used to ensure that there is not harm arising from noise or visual harm on the amenity of adjacent residents;
- Insufficient details regarding the fence/boundary treatment to be provided;
- Request that an energy plan for renewable sources should be required;
- A suitable landscaping scheme should be provided in conjunction with ecological improvements;
- Loss of light would have an unacceptable impact on the amenity of adjacent residents;
- Unacceptable impact on traffic and travel implications;
- Potential for birds on site;

6.4. Comments which are not materially relevant and cannot be considered when determine the application:

- Request for comments to be read in conjunction with comments made on a different application;
- Land ownership disputes – an amended site location and block plan has been received, notice has been served on other landowners as the applicant has identified and detailed on the application form. Should any issues arise regarding land ownership, these would be identified through the S106 process and appropriate amendments south if required.
- Potential for asbestos to be present on site;

6.5. 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. KIDLINGTON PARISH COUNCIL: **Objects**, agree with comments made by neighbours particularly in regard to parking. In addition, the Parish Council raises concerns in regards to land ownership disputes;

*Officer Comments: Noted, as outlined above, land ownership disputes are not a material consideration of the planning application. The applicant has amended the site location and block plans to include land within their ownership. Notice has also been served on the site owners identified as detailed on the application. Should any issues arise regarding land ownership, these would be identified through the S106 process and appropriate amendments sought if required.*

### CONSULTEES

7.3. OCC HIGHWAYS: **No objections** subject to S106 contributions sought in regards to a Traffic Regulation Order, recommended planning conditions and informative.

- 7.4. OCC Highways confirm that the use of the existing access is suitable with acceptable visibility. The site is within walking distance of Kidlington village centre and its local services and Oxford Parkway station is accessible by foot, cycle or bus, which also serves Oxford City Centre and Headington Hospitals.
- 7.5. The Highways Officer notes that the car parking provision is less than optimum however, this quantum has been widely accepted in many similar developments in Kidlington due to the high sustainability of the location in transport terms. Whilst there may be some overspill parking on to the local highway network, the highways officer has confirmed that a contribution to a Traffic Regulation Order to secure double yellow lines would overcome this concern.
- 7.6. All parking spaces provided should have EV charging infrastructure, in accordance with the Oxfordshire Electric Vehicle Infrastructure Strategy, a condition is requested. Some concerns regarding the acceptability of the access road for refuse collection is noted. The Highways Officer confirms that the 15 flat will generate less traffic than the existing approved car showroom and garage use.
- 7.7. Conditions have been requested in relation to the provision of cycle parking, delivery of car parking, estate accesses, driveways and turning areas plans and electric vehicle charging points.
- 7.8. LOCAL LEAD FLOOD AUTHORITY: **Objection**, a flood risk assessment has not been conducted for the site and a detailed drainage scheme has not been provided.

*Officer comments: due to the size of the application site being under 1 hectare (site measures 0.225 ha) and the location with flood zone 1 a flood risk assessment is not required in support of the application. Full drainage details can be secured by way of appropriate planning condition.*

- 7.9. OCC EDUCATION: Contributions are not being sought from this development.
- 7.10. ARCHAEOLOGY: There appears to be no invasive impact upon any known archaeological sites or features.

## **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 (CLP 2015) was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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
- Villages 1 – Village Categorisation
- BSC1 – District Wide Housing Distribution
- BSC2 – The Effective and Efficient Use of land – Brownfield Land and Housing Density
- BSC3 – Affordable Housing
- BSC4 – Housing Mix

- SLE4 – Improved Transport and Connections
- ESD1 – Mitigating and Adapting to Climate Change
- ESD2 – Energy Hierarchy and Allowable Solutions
- ESD3 – Sustainable Construction
- ESD4 – Decentralised Energy Systems
- ESD5 – Renewable Energy
- ESD6 – Sustainable Flood Risk Management
- ESD7 – Sustainable Drainage Systems
- ESD10 – Protection and Enhancement and the Natural Environment
- ESD15 - The Character of the Built and Historic Environment

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

- C28 – Layout, design and external appearance of new development
- C30 – Design of New Residential Development

#### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide (SPD) 2018
- Developer Contributions (SPD) 2017
- Kidlington Framework Masterplan 2016
- Conservation of Habitats and Species Regulations 2017

### **9. APPRAISAL**

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

- Principle of development
- Design, and impact on the character of the area
- Residential amenity
- Highway Safety
- Drainage
- Landscaping
- Ecology impact
- Planning Obligations
- Other Matters

#### Principle of Development

9.2. The principle of residential development in Kidlington is assessed against Policy Villages 1 in the CLP 2015, with Kidlington being recognised as a Category A village, one of the most sustainable settlements in the District's rural areas and having physical characteristics and a range of services to enable it to accommodate some limited extra housing growth. Within Category A villages, residential development will be restricted to the conversion of non-residential buildings, infilling and minor development comprising small groups of dwellings on sites within the built-up area of the settlement.

9.3. The application site is located in an established residential area within Kidlington and contains two detached single storey buildings used for care sales and garage. The application seeks planning permission for the demolition of these buildings and their replacement with two blocks comprising 15no. apartments.

9.4. In determining the acceptability of the principle of new dwellings regard is paid to Government guidance contained within the NPPF. This 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.

- 9.5. Paragraph 10 of the NPPF states that, so sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development. Paragraph 11 states that applying the presumption to decision-making means:
- approving development proposals that accord with up-to-date development plan without delay; or
  - where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (this includes, for applications involving the provision of housing, situations where the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites), granting permission unless:
    - i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed;
    - ii. or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 9.6. The position in which the most important policies are considered to be out-of-date because of the absence of a five-year housing land supply is often referred to as the 'tilted balance'. Cherwell's position on five-year housing land supply is set out in the 2021 Annual Monitoring Report (AMR). The AMR presents a 3.5 year supply position for 2022-2027. According to the AMR, an additional 2,255 homes would need to be shown to be deliverable within the current 2022-2027 five-year period to achieve a five year supply as required by the NPPF.
- 9.7. However, paragraph 12 of the NPPF advises that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. In February 2021, the primacy of development plans in the planning system was reaffirmed by a Court of Appeal ruling on two appeals by land promoter Gladman, which emphasised that, where a council lacks the required five-year housing land supply, this may tilt the balance in favour of proposed residential schemes but it does not render grants of planning permission automatic.
- 9.8. The provision of additional housing within an existing residential area located in a sustainable Category A village weighs in favour of this proposal which has the potential of increasing the District's housing supply and therefore helps to address the current shortfall, albeit one providing one additional dwelling in this instance. However, any development proposal would need to be assessed against the other policies of the Development Plan.
- 9.9. The proposed development can therefore be considered acceptable in principle, with overall acceptability subject to compliance with the relevant Development Plan policies and the NPPF.

#### Design, and impact on the character of the area

##### *Policy Context*

- 9.10. Guidance contained within paragraph 126 of the NPPF covering good design states that *good design is a key aspect of sustainable development, is indivisible from good*

*planning, and should contribute positively to making places better for people. Further, permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.*

9.11. Saved Policy C28 of the CLP 1996 exercises control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context.

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

9.13. Paragraph 130 of the NPPF states that planning decisions should ensure that developments:

*a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*

*b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*

*c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*

*d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*

*e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*

*f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

9.14. Section 6.4 of the Cherwell Residential Design Guide (SPD) 2018 relates to Scale. It advises the building scale should respond to local context and proposed character. As a principle for scale, it states "*Taller buildings may be appropriate in town centre locations, but individual buildings should be designed to fit comfortably with the general urban form*".

#### *Assessment*

9.15. In terms of the design of the buildings, concerns were raised through the pre-application process in regard to the height, massing and scale of the proposal. In response the number of units for which permission is sought has been reduced from 20 units to 15 units.

9.16. It is acknowledged that public representatives are concerned with the overall height of the buildings and the impact this would have on the street scene. Concerns have also been raised in regard to the design and external materials to be used, within the local context.

- 9.17. Block A is proposed to be a three storey apartment building. This block is the larger of the two and is situated towards the front of the site facing Bicester Road. Across the three levels are 12 no. units, with 4 no. flats on each floor.
- 9.18. Block B is a single storey block comprising 3no. units, adjacent to the northern boundary at the rear of the site. Given the context of this building with surrounding residential gardens and properties, this block has a more diminutive form.
- 9.19. Both apartment blocks use a contemporary flat roof design, with materials and design details used to minimise the massing and form of the building, whilst creating visual interest. This is achieved through creating steps in the form, use of different brickwork colours and large openings/balconies where appropriate.
- 9.20. Block A is situated adjacent to properties along Bicester Road at the front of the site. The building would be slightly taller (9.5 metres height) than the adjacent buildings at Wheeler Court and Mulberry Court, but not to an extent that would be out-of-keeping with the adjacent developments at Wheeler Court and Mulberry Court. Both of these developments are relatively recently constructed.
- 9.21. Block B is a single storey building situated on part of the site that contains an existing single storey storage building. The design is consistent with the approach to Block A, uses contemporary design details including a flat roof. This approach is consistent with the character of properties adjacent to the site.
- 9.22. The contemporary design of the buildings accords with the style of the adjacent buildings at Wheeler Court and Mulberry Court, which utilise similar changes in materials to break-up the built form, balconies and contemporary design features.

#### *Summary*

- 9.23. Overall, Officers consider that the design of the proposed buildings would be in-keeping with the surrounding streetscene and would not result in harm to the visual amenities of the area, thus complying with Saved Policies C28 and C30 of the CLP 1996 and Policy ESD15 of the CLP 2015.

#### Residential amenity

##### *Policy context*

- 9.24. Saved Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. Policy ESD15 of the CLP 2015 highlights, amongst other things, that new development should *consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.*
- 9.25. The Cherwell Residential Design Guide (2017) states that a minimum distance of 22m back to back, between properties must be maintained and a minimum of 14m distance is required from rear elevation to two storey side gable. First floor habitable room windows must not be within 7m of neighbouring property.

##### *Assessment*

##### *Relationship and Impacts with Existing Residential Properties*

- 9.26. Several of the public representations received have objected on the basis of the proposal causing unacceptable harm to their amenity through a loss of privacy by way of overlooking and loss of light.

- 9.27. On the eastern elevation, Block A contains secondary windows to the living room and kitchen space on the first and second floor of the properties. As outlined in the Cherwell Residential Design Guide, first floor habitable rooms must not be within 7m of a neighbouring property. There is a separation distance of 9.3m. However, there is a potential for overlooking as the floor plans for Mulberry Court show that the windows at the front of building adjacent to the boundary with Block A serve habitable bedrooms. As such, it is considered reasonable and necessary to impose a condition requiring the windows in the side elevation facing Mulberry Court to be obscurely glazed. This retains the reasonable amenity for new occupants of Block A by retaining the secondary window and limits the loss of privacy to existing residents at Mulberry Court.
- 9.28. In regard to the west elevation of Block A, the building has been designed such that there are no windows on this side of the building, and therefore no potential for overlooking along this side of the property. However, the building is situated approximately 5.5 to 6 m away from the east elevation of Wheeler Court which does contain windows which face on to the west elevation of Block A. Whilst this is not ideal, the floor plans approved for Wheeler Court show that, at the centre point of the building where there are windows, these serve a bathroom which is not a habitable room. At the front of the site, there are windows on the first and second floor at Wheeler Court which serve the habitable open plan living space. However, these rooms contain several windows, with two on the front, one of which leads to balcony. Each side elevation of this room at Wheeler Court contains at least 1 window. As such, there are at least 4 windows serving the open plan living space. As such, Officers consider that whilst there would be some harm caused through a loss of light, this would not be so substantial to warrant a refusal given the number of windows serving the space and the opportunity for daylight.
- 9.29. It is noted that concerns have been raised with the potential for overlooking between properties along Blenheim Road and Block A due to the three storey height of the building and habitable windows on the rear elevation. However, the separation exceeds the design guide requirements, measuring in excess of 50 metres to the closest rear elevation and without a direct relationship. As such, Officers consider there would not be harm to the privacy of residents along Blenheim Road as a result of windows on the rear elevation of Block A.
- 9.30. Block B is a single storey building located at the rear of the site, in the position of an existing single storey storage building. There are windows at the rear of the block which serve habitable bedrooms and bathroom spaces. There is a separation of approximately 1.2m before the boundary is reached with the garden of no.1 Blenheim Road. There are no surrounding residential properties that have a direct outlook on to the rear of Block B. As such, there is not potential for harm arising due to overlooking between habitable rooms. It is acknowledged that residents have raised concerns with regards to the possible removal of the boundary treatment between the rear of Block B and the garden of no. 1 Blenheim Road. Whilst the details of boundary treatments have not been provided, a condition securing the submission of these details is recommended. A standard 1.8m high close boarded boundary treatment would be sufficient in order to mitigate any harm

#### *Future Occupants and Outdoor Amenity Space*

- 8.10. Concerns have also been raised regarding the adequacy of the proposed provision of outdoor amenity space. An area of approximately 125m<sup>2</sup> of amenity space is to be provided at the rear of the site, adjacent to Block B. In addition, the apartments which front Bicester Road benefit from an enclosed balcony space. Whilst the amenity space is limited in scale and balconies have not been provided for all of the apartments, it is considered that an acceptable provision of amenity space has been provided. That said, there are parks within Kidlington that are accessible to the public and the lack of

such space is not considered to result in such a poor quality living environment that would warrant the refusal of the application.

### *Summary*

- 9.31. Overall, Officers acknowledge that the relationship of the west elevation of Block A in relation to the windows serving the eastern side elevation of Wheeler Court is not ideal. However, given the provision of alternate windows in the habitable living space of Wheeler Court, Officers consider that it would not be reasonable to refuse the application on amenity grounds in this aspect.
- 9.32. Subject to obscure glazing to the front eastern elevation windows serving the living spaces of the proposed apartments within Block A and a conditions securing suitable boundary treatments to the rear of the site, Officers consider that the proposal would not give rise to unacceptable to harm to residential amenity. Therefore, the proposal would comply with policy ESD15 of the Cherwell Local Plan and saved policy CLP30 of the 1996 Local Plan and advice with the Cherwell Residential Design Guide.

### Highway Safety

#### *Policy context*

- 9.33. Policy ESD15 of the CLP 2015 states, amongst other matters, that new development proposals should: be designed to deliver high quality safe places to live and work in.
- 9.34. Paragraph 108 of the NPPF states 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.*
- 9.35. In addition, paragraph 109 highlights that *development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

#### *Assessment*

- 9.36. Several concerns have been raised with regards to the parking provision proposed at the site, and the potential impact on highway safety. One parking space is to be provided per property plus three visitor spaces one of which is a disabled space. Whilst this is below OCC's standards, the Local Highway Authority (LHA) has confirmed this approach has been used in numerous occasions within developments based in Kidlington due to the high transport sustainability of the site and has therefore raised no objection to the parking proposed. Further to this, the LHA has raised no objections to the proposals, with the Highways Officers recommended conditions included as part of the recommendation on the application.
- 9.37. Furthermore, the LHA has requested a financial contribution towards additional double yellow line provision, in the form of a Traffic Regulation Order. This is considered reasonable and necessary to make the development acceptable to reduce unacceptable parking on the street.
- 9.38. The site is in a highly sustainable location, with frequent bus services within close proximity to the site. Further to this, there are a number of nearby amenities close to the site, and there are good levels of cycling infrastructure nearby. The application



includes suitable cycle parking provision, subject to additional details required by condition relating to the specific stand details. This would further promote the use of sustainable forms of travel and can be secured by an appropriately worded condition.

- 9.39. The LHA request for an electrical charging condition has not been imposed due to changes to Building Regulations.
- 9.40. Given the above, it is therefore considered the proposals comply with Policy ESD15 of the CLP 2015 and Government guidance contained within the NPPF and would therefore be acceptable in highway safety terms.

### Drainage

#### *Policy Context*

- 9.41. The NPPF states at paragraph 163 that when determining applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood risk assessment.
- 9.42. Policies ESD 6 and ESD 7 of the CLP 2015 together resist new development where it would increase flood risk or be unduly vulnerable to flooding. They also seek to ensure that the proposals incorporate sustainable drainage systems in order to prevent increased risk of flooding.

#### *Assessment*

- 9.43. It is acknowledged by Officers that there are objections due to the lack of drainage information in support of the application. The site lies within Flood Zone 1 the area at lowest risk of flooding, and therefore a Flood Risk Assessment was not required in support of the application. The applicant's Design and Access statement acknowledges that a SuDS compliant drainage scheme will be required to serve the proposal; however, it is considered that this could be secured by way of a suitably worded condition attached to any permission granted.
- 9.44. Having regard to the above, and that the site contains an existing building, it is considered that sufficient drainage details could be secured by way of a suitably worded condition and therefore the proposed development is considered acceptable in drainage terms and in accord with Policies: ESD6 and ESD7 of the CLP 2015.

### Landscaping

- 9.45. The application includes areas of amenity space and landscaping. However, details of the specific landscaping to be provided have not be submitted as part of the application. As such, it is considered reasonable and necessary to provide details of the landscaping and its management to ensure that the proposals are suitable in the context of the site. These details could be secured by way of a suitably worded condition and therefore the proposed development is considered acceptable in drainage terms and in accord with Policy ESD15 of the CLP 2015.

### Ecology Impact

#### *Legislative context*

- 9.46. 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.

- 9.47. 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.
- 9.48. 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.
- 9.49. 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.
- 9.50. 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*

- 9.51. 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.
- 9.52. Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and

around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

- 9.53. 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.
- 9.54. 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.
- 9.55. 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.
- 9.56. 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.
- 9.57. 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*

- 9.58. Given the site's context within a built residential area of Kidlington and the existing garage/showroom there is limited potential for protected species on site. However, Policy ESD10 of the Local Plan requires new developments within the District should achieve a net gain in biodiversity through the protection, enhancement or creation of new biodiversity measures on site.
- 9.59. Accordingly, it is reasonable and necessary to include a condition requiring the submission of a biodiversity enhancement scheme.
- 9.60. In addition, it is noted that public comments have raised concerns with the presence of nesting birds on or in close proximity to the site. As such, a condition is recommended which restricts the clearance of the site during nesting season unless other provisions are agreed with the Local Planning Authority.

#### Planning Obligations

- 9.61. A S106 Legal agreement will be required to be entered into to secure mitigation resulting from the impact of the development both on and off site. This would ensure that the requirements of Policy INF1 of the CLP 2015 can be met, which seeks to ensure that the impacts of development upon infrastructure including transport, education, health, social and community facilities can be mitigated. The Authority is also required to ensure that any contributions sought meet the following legislative

tests, set out at Regulation 122 of the Community Infrastructure Regulations 2011 (as amended):

- Necessary to make the development acceptable in planning terms;
- Directly relate to the development; and
- Fairly and reasonable related in scale and kind to the development

9.62. The table at Appendix 1 sets out the required Heads of Terms and the justification for those requests.

### Other Matters

#### *Land Ownership Dispute*

9.63. It is noted that many of the representations received related to concerns regarding the ownership of the amenity space to be provided at the rear of the site. Following these comments, the applicant has advised they have taken advice from a solicitor and amended their site location plan accordingly to now show the correct land ownership for the site.

9.64. Whilst land ownership disputes are not materially relevant to the consideration of the application, there are procedural matters that are associated with land ownership that must be adhered to, in order for the application to be valid.

9.65. The role of the Local Planning Authority in land ownership is to ensure that where the applicant does not own all of the land within the red-edged site location plan, appropriate notices are served on any landowners. Accordingly, the applicant has signed Certificate B of the application forms, stating that they are not the sole owner of the land and have listed the other parties that have been notified of the planning application. This list amounts to four additional interested parties, with notice having been served on 8 December 2021.

9.66. The amended plans show that an area of land between the rear of Mulberry House and the proposed amenity space has been removed from the red edged site location and block plans, therefore, is no longer included within the proposed development site. There is an area of land which remains to eastern side of the proposed Block A and the rear of Mulberry House and its curtilage that is proposed to remain as amenity space serving the development. This is considered sufficient, in combination with the balconies and other areas of amenity space on the site, to serve thr needs of future residents. ....

9.67. From the information provided from the applicant and the public representatives, the area of amenity space to be included appears to fall within the ownership of one of the parties which have been served notice. Therefore, appropriate notice has been served on the interest parties and the Authority is satisfied that there is a reasonable opportunity for the development to come forward as proposed.

9.68. Should planning permission be granted, a S106 agreement would be required to be signed by all parties who have an interest on the land. At this point, land registry plans are checked in relation to agreeing the S106 obligations. Should a land owner been identified that has not been served the correct notice, appropriate action would at this point be taken.

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

10.1. The proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development.

In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

- 10.2. The delivery of housing is high on the Government and District Council's agendas. Having regard to the above, the proposal will secure additional housing provision, in particular having regard to the Council's lack of a five-year housing land supply and other material planning consideration, the proposal is on balance considered acceptable.

## 11. RECOMMENDATION

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

S106 Head of Terms:

As set out in the table at Appendix 1.

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:

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.

**Landscaping**

3. A scheme for landscaping the site shall be provided to and approved in writing by the Local Planning Authority which shall include:-
- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch etc),
  - (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
  - (c) details of the hard landscaping including hard surface areas, pavements, pedestrian areas and steps.

(d) Full details of all means of enclosures

Such details shall be provided prior to the development progressing above slab level or such alternative time frame as agreed in writing by the developer and the Local Planning Authority. The development shall be carried out in accordance with the approved details and the hard landscape elements shall be carried out prior to the first 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 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 that any trees 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 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 a satisfactory landscape scheme is provided in the interest of well planned development and visual amenity and to accord with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

**Materials Details**

4. No development shall commence above slab level unless and until full details of the materials to be used in the construction of the external walls and roof of the building (including samples) as well as how these materials are to be applied on building have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details and shall be retained as such thereafter.

Reason: In the interests of the visual amenities of the area, to ensure and retain the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

**Door and Window Details**

5. No development shall commence above slab level except for demolition unless and until full details of the doors and windows hereby approved, at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour/finish, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the doors and windows shall be installed within the building in accordance with the approved details and shall be retained as such thereafter.

Reason: In the interests of the visual amenities of the area, to ensure and retain the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

**Vehicular Access Details**

6. No development shall commence except for demolition unless and until full specification details of the vehicular accesses, driveways and turning areas to serve the dwellings, which shall include construction, layout, surfacing, lighting and drainage, have been submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of any of the dwellings, the access, driveways and turning areas shall be constructed in accordance with the approved details.

Reason: In the interests of highway safety and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

#### **Parking Space Provision**

7. No dwelling shall be occupied until car parking space to serve that dwelling has been provided according to details that have been submitted to and agreed in writing by the Local Planning Authority. All car parking shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter, unless otherwise agreed in writing beforehand by the local planning authority.

Reason: To ensure appropriate levels of car parking are available at all times to serve the development, and to comply with Government guidance contained within the National Planning Policy Framework.

#### **Surface Water Drainage Details**

8. No development shall commence except for demolition unless and until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include:

- Discharge Rates
- Discharge Volumes
- Maintenance and management of SUDS features
- Sizing of features - attenuation volume
- Infiltration in accordance with BRE365
- Detailed drainage layout with pipe numbers
- SUDS - (in a treatment train approach to improve water quality)
- Network drainage calculations
- Phasing
- Flood routes in exceedance

Reason: To ensure satisfactory drainage of the site in the interests of public health, to avoid flooding of adjacent land and property and to comply with Policies ESD6 and ESD7 of the Cherwell Local Plan (2011-2031) Part 1 and Government guidance contained within the National Planning Policy Framework.

### **Site Contamination**

9. Further contamination risk assessment is required in accordance with paragraph 10.3.2 of the submitted Geo-Environmental Site Investigation, BRD3473-OR2-A report. Prior to the commencement of the development hereby permitted, the further assessment recommended at paragraph 10.3.2 shall be undertaken to inform the remediation strategy proposals. This 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.

10. If contamination is found by undertaking the work carried out under condition 9, 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.

11. If remedial works have been identified in condition 11, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 11. 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.

12. 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.

### **Cycle Storage**

13. Prior to the first occupation of the dwellings hereby approved, full design details of the cycle storage area, including elevations and materials, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved cycle storage area shall be erected in accordance with the approved details, prior to the first occupation of those dwellings.

Reason: To encourage sustainable modes of transport, to ensure the satisfactory appearance of the completed development and to comply with Policies ESD1 and ESD 15 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.

### **Waste Management**

14. Prior to the occupation of the development hereby approved, a waste management strategy including details of how waste would be collected from the site, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out and maintained in accordance with the approved details.

Reason: In order that proper arrangements are made for the disposal of waste, in the interests of highway safety and in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

### **Biodiversity Enhancement**

15. No development shall commence, including any demolition, and any works of site clearance, unless and until a method statement for enhancing the biodiversity on the site has been 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.

### **Boundary Treatments**

16. No development shall commence above slab level except for demolition unless until details of the boundary treatments have been submitted to and approved in writing by the Local Planning Authority. Thereafter, boundary treatments shall be implemented prior to the occupation of any unit on the site and retained in accordance with the approved details.

Reason: In order that proper arrangements are made for the disposal of waste, in the interests of highway safety and in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

### **Site Clearance outside of Nesting Season**

17. 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 the Government's aim to achieve sustainable development as set out in Section 15 of the National Planning Policy Framework.

### **Noise Levels to Habitable Rooms**

18. Prior to the development commencing, except for demolition, a report should be provided and approved in writing by the local planning authority that shows that all habitable rooms within the dwelling will achieve the noise levels specified in BS8233:2014 (Guidance on sound insulation and noise reduction for buildings) for indoor and external noise levels (if required then the methods for rating the noise in BS4142:2014 should be used, such as for noise from industrial sources). Thereafter, and prior to the first occupation of the dwellings affected by this condition, the dwellings shall be insulated and maintained in accordance with the approved details.

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

### **Construction Environment Management Plan**

19. 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. Thereafter the development shall be carried out in accordance with approved CEMP

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

### **External Lighting**

20. Prior to the first use of the development hereby approved details of the external lighting and security 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 the first use of the development hereby approved the lighting shall be installed and operated in accordance with the approved scheme at all times thereafter.

Reason: In the interests of the residential amenities of the area, to ensure and retain the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

### **Obscure Glazing to Eastern Windows of Block A**

21. The windows at ground floor, first floor and second floor level in the eastern side elevation that serve the habitable living areas of flats 1, 5 and 9 as shown on the Sketch Units – Block A Plans 18112-PP-002-A shall be permanently retained with

purpose made obscure glazing and shall be top opening only at 1.7m above the floor level of the room in which the window is installed.

Reason: To safeguard the amenity of the occupiers at Mulberry Court, former 3 Bicester Road, to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

**APPENDIX 1 – Heads of Terms for Section 106 Agreement/Undertaking**

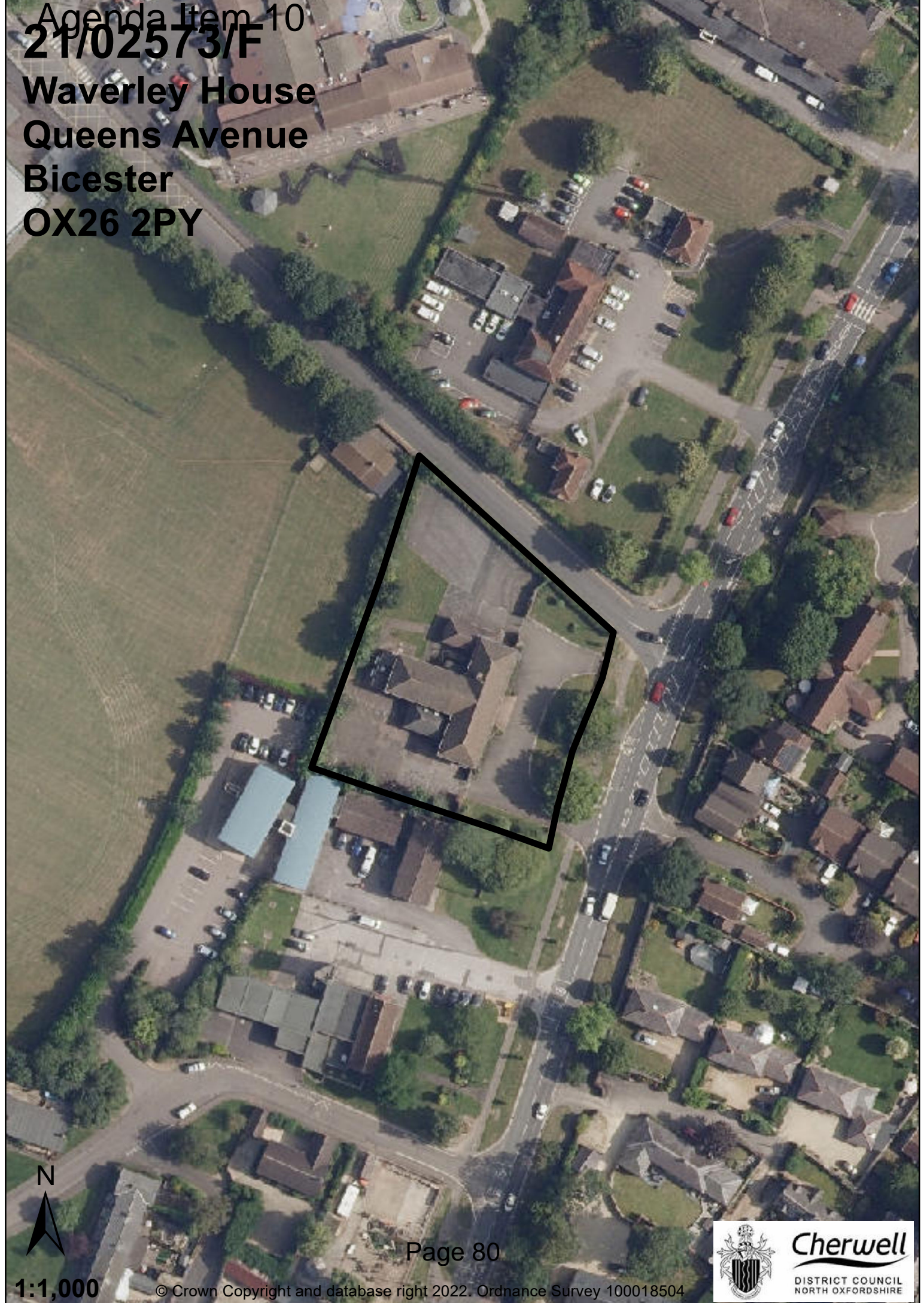
<b>Planning Obligation</b>			
<b>Detail</b>	<b>Amounts (all to be index linked)</b>	<b>Trigger Points</b>	<b>Regulation 122 Assessment</b>
Off-site Affordable housing	Tbc but would be equivalent to the cost of providing 5 affordable units on site which is 35% of the total, to be delegated to Officers	Tbc but likely prior to the occupation of any unit on site to be delegated to Officers	<p><b>Necessary</b> – as would provide housing for those who are not able to rent or buy on the open market pursuant to Policy BSC3 of the Cherwell Local Plan</p> <p><b>Directly Related</b> – the affordable housing would be provided off-site due to relatively small-scale of the proposal and requirements for registered providers to take on affordable housing on site. The requirement is directly generated from the proposal, above the affordable housing threshold set out in Policy BSC3.</p> <p><b>Fairly and reasonably related in scale and kind</b> – the contribution will be based upon the Cherwell Local Plan requirement for the percentage of affordable housing and the associated cost of providing this off-site.</p>
Off-site outdoor sports facilities provision at Stratfield Brake	£5,557.76	Prior to the occupation of any unit on site	<p><b>Necessary</b> - the proposed development will lead to an increase in demand and pressure on existing services and facilities in the locality as a direct result of population growth associated with the development in accordance with Policy BSC12,</p>
Off-site indoor sports facilities provision at Kidlington and Gosford Leisure Centre	£3160.56	Prior to the occupation of any unit on site	

Community Hall Facilities	£11,128.00	Prior to the occupation of any unit on site	<p>INF1 and advice in the Developer Contribution SPD.</p> <p><b>Directly Related</b> – the future occupiers will place additional demand on existing facilities.</p> <p><b>Fairly and reasonably related in scale and kind</b> – calculations have been based on the final mix of housing proposed and the likely number of occupants as set out in the Developer Contributions SPD.</p>
Waste and Recycling Facilities	£1,665	Prior to the occupation of any unit on site	<p><b>Necessary</b> – the dwellings will require adequate recycling facilities and waste collections for future occupants and in accordance with the advice in the Developer Contributions SPD.</p> <p><b>Directly Related</b> – the need for these comes from the provision of new residential accommodation</p> <p><b>Fairly and reasonably related in scale and kind</b> – costs in accordance with the advice in the Developer Contribution SPD.</p>
Traffic Regulation Order	£6,255	Likely prior to the occupation of any unit on site, to be delegated to Officers	<p><b>Necessary</b> – the proposal will place an additional demand on street parking and further management through the provision of double yellow rules around Oxford Road/Bicester Road are required to mitigate any harm from off-site parking</p>

			<p><b>Directly Related</b> – the need for this arises from the provision of new residential accommodation and a reduction in on-site parking below OCCs standards.</p> <p><b>Fairly and reasonably related in scale and kind</b> – the costing of this TRO is directly related to the scale of additional yellow lines that required as a result of the scale of the proposed development and reduction in parking below the standard required.</p>
Requirement to monitor the development through the construction and post occupancy stages	N/A	The requirement to agree a scheme prior to implementation and then ongoing timescales to monitor the development	<p><b>Necessary</b> – in order to ensure that the development is meeting the high standards sought across the district.</p> <p><b>Directly related</b> – the monitoring is directly related to the development itself</p> <p><b>Fairly and reasonably related in scale and kind</b> – the monitoring to be undertaken would be proportionate to the development itself and therefore is fairly and reasonably related in scale and kind to the development.</p>
CDC and OCC Monitoring Fees	<p>CDC - £1,500</p> <p>OCC- TBC</p>	On completion of S106	The CDC charge is based upon its recently agreed Fees and Charges Schedule which set

			<p>out that for developments of 10-100 dwellings that a bespoke charge will be based upon the number of obligations and triggers with a minimum charge of £1,000. A registration charge of £500 is also applicable. As the development has relatively few obligations and triggers for CDC, the minimum charge plus the registration charge is required. The need for a monitoring fee is to ensure that it can appropriately monitor that the development is complying with its S106 including the high standards sought at the site and taking into account the context of the site.</p>
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Agenda Item 10  
**21/02573/F**  
**Waverley House**  
**Queens Avenue**  
**Bicester**  
**OX26 2PY**



**1:1,000**



**21/02573/F**  
**Waverley House**  
**Queens Avenue**  
**Bicester**  
**OX26 2PY**

Station

Waverley House

Magistrates  
Court (dis)

ED Bdy

73.8m

Shelter

ED & Ward Bdy

PW

Childrens  
Nursery

Bicester Fire Station

Page 81



**Cherwell**  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

N



**1:500**

**21/02573/F**  
**Waverley House**  
**Queens Avenue**  
**Bicester**  
**OX26 2PY**

Bicester Leisure Centre  
Sports Centre

Tank

Bicester  
Studio

Primary School

Tel Ex

El Sub Sta  
El Sub Sta

Mast

Police

Shelter

Waverley House

Court (dis)

Shelter

Oxfordshire and  
Buckinghamshire  
Probation Service  
Offices

PW

Bicester Fire Station

QUEENS COURT

Oldwall

Middlewall

Threewall

Gardens

House

Bicester House Cottage

The Lodge

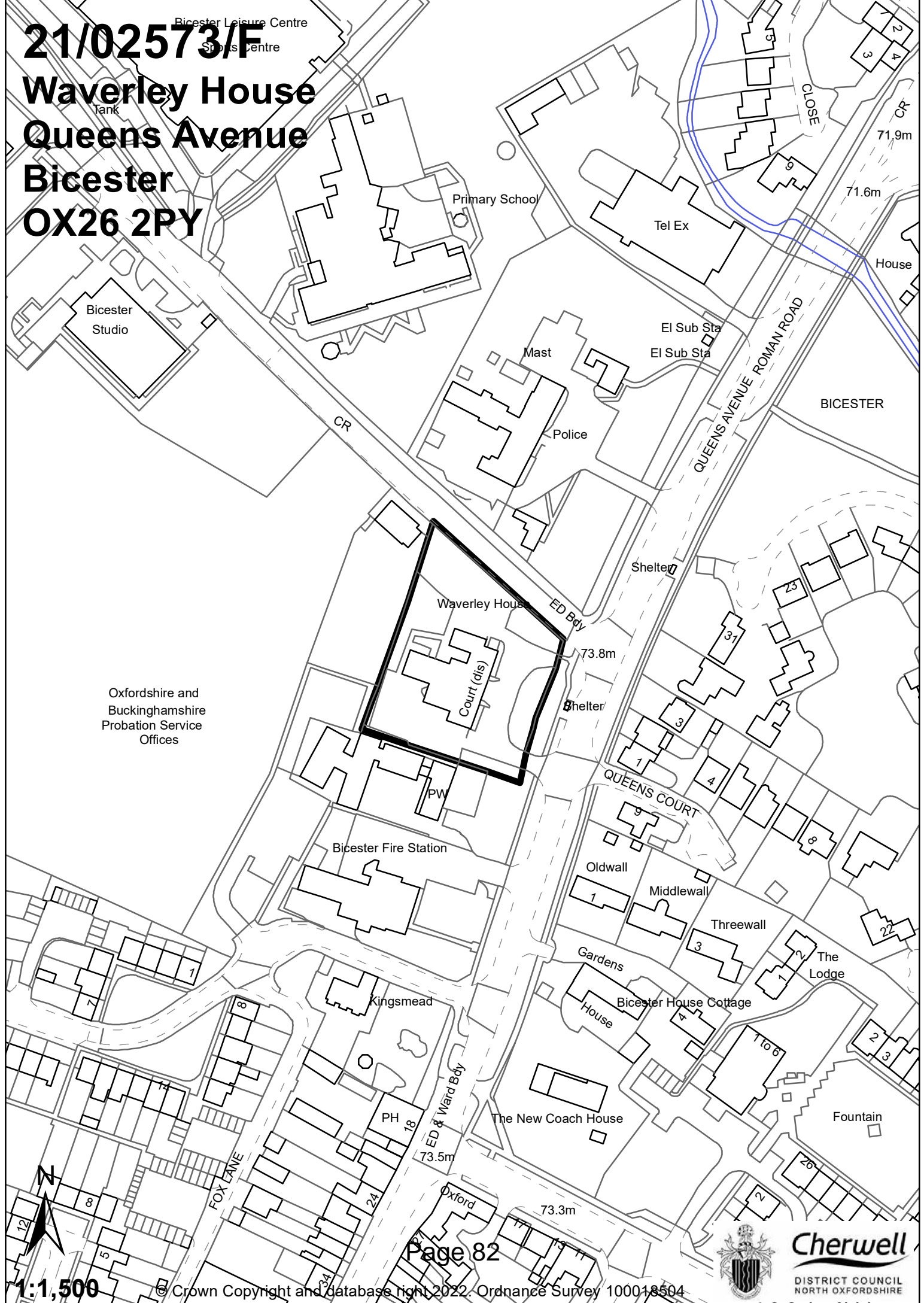
Fountain

Kingsmead

PH

The New Coach House

Oxford



**Case Officer:** Wayne Campbell

**Applicant:** GG Oxford Investments Ltd

**Proposal:** Demolition of existing building and erection of building to form 48no apartments together with landscaping, car parking, bin stores, secure cycle parking and associated infrastructure

**Ward:** Bicester West

**Councillors:** Cllr Broad, Cllr Sibley and Cllr Webster

**Reason for Referral:** Major development – 10 or more dwellings

**Expiry Date:** 14 March 2022

**Committee Date:** 14 July 2022

**Note: This application is subject to a Committee Site Visit**

**SUMMARY OF RECOMMENDATION: DELEGATE POWERS TO GRANT PERMISSION, SUBJECT TO: RESOLUTION OF LEAD LOCAL FLOOD AUTHORITY OBJECTION; CONDITIONS; AND A SECTION 106 LEGAL AGREEMENT**

**1. APPLICATION SITE AND LOCALITY**

- 1.1. The application relates to the former Bicester Magistrate Court building located in a broadly rectangular site within the Bicester Town Centre area. The building is currently vacant and being disposed on the open market.
- 1.2. The former magistrate court building is essentially a two-storey T-shaped brick building with a series of more modern single storey extensions to the rear. The building is surrounded on all sides with tarmac hard standing, which provides a car parking area for users / visitors of the building. Incidental landscaping is maintained along all boundaries with semi-mature trees located to the front (southern) boundary of the site.
- 1.3. The southern boundary to the site is marked by a two-storey building the front of which is occupied by the Redeemed Christian Church of God while to the rear the building is occupied by the National Probation Service and also the Bicester Fire Station is located in a further separate building. To the north the site boundary is marked a hedgerow beyond which is the access road serving the Bicester School, Bicester Leisure Centre, and St. Mary's Primary School. The boundary to the and the west the boundary is marked by a close boarded fence beyond which are the playing fields for The Bicester school. To the east the site is marked by Queens Avenue.

## **CONSTRAINTS**

- 2.1. The application site is a short distance from Bicester town centre and lies just outside the Bicester Town Centre Extension (Area of Search). Although not located within the Bicester Conservation Area the existing building is recorded as a locally listed building / non-designated heritage asset. The site is located within the Bicester Air Quality Management Area.

## **2. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. This application seeks planning permission for the re-development of the site for residential use. The form of this re-development is for the demolition of the existing building and its replacement with a single building to provide 48 no apartments together with landscaping, car parking, bin stores, secure cycle parking and associated infrastructure. In terms of breakdown of accommodation, the proposal is for 13 x 1 bedroom apartments and 35 x 2 bedroom apartments.
- 3.2. The proposed building would be three storeys in height with a crescent shaped footprint with a central courtyard to the rear of the building. The main entrance to the building would be along the Queens Avenue frontage which would also provide the only vehicle access to the site via the existing vehicular access point.
- 3.3. In terms of design the proposal is for a modern / contemporary design with a combination of local materials, natural stone at the ground floor and an off-white render to upper floors. The design approach aims to make the most effective use of a previously developed site, as required by national and local planning policy. As such, the development achieves a higher density than the current use, in recognition of the town centre location and its proximity to public transport.

## **3. RELEVANT PLANNING HISTORY**

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

02/02489/OCC: Ref. C.19/02. Single storey rear and side extension to provide witness suites accommodation – Permitted

02/02491/OCC: Ref. C.20/02. Single storey rear and side extension to provide witness suites accommodation – Permitted

## **4. PRE-APPLICATION DISCUSSIONS**

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

*21/03683/PREAPP*

- 5.2. Re-development of the site including demolition of the existing building. Construction of approximately 50 no apartments.
- 5.3. The advice provided to the applicant confirmed that the site is located in a sustainable urban location with good access to shops, facilities and services. However, the merits of providing additional housing needs to be considered alongside issues such as the impact on heritage assets, biodiversity and ecology, highways, air quality and the requirement to meet high quality design standards. The compatibility of the proposal to neighbouring uses would also need to be considered.
- 5.4. The advice confirmed support for the proposed residential development of the site, but only on the strict provision that amendments were made to reduce the scale of

the proposal that the development use Natural stone along with either render or brick, that the existing trees along the front were retained and that there was a revision to the layout for car parking.

## 6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **15 September 2021**. Comments received after this date have been accepted on the basis that the application remains under consideration.

6.2. There were 20 objections, 103 submissions of support and 4 comments received. The comments raised by third parties are summarised as follows:

6.3. Comments of support include:

- Support more homes being built on brownfield sites in the local area and not enough currently available.
- More homes being built in the local area as this would create more jobs and increase the chances of younger families getting onto the property ladder
- Work in the school next door to that site, I am unsure what else could be build there so there is always a need for more homes
- Environmental Records Centre records show Swifts and House Sparrows breed very near this site, the proposals should make provision for these and other hole-nesting species by incorporating nesting bricks.

6.4 Comments objecting to the proposal includes:

- Highway safety concern with 48 cars from 48 apartments
- Queens Court is bad as it is and adding extra vehicles next to a primary secondary and leisure centre will increase risk to children, create a bottleneck and cause increase in co2.
- Already enough housing in Bicester needs more infrastructure than houses
- Premises may need adapting to modern standards, but making it a public asset would be better eg education, arts, museum, music, theatre, dance groups etc. Even Bicester Town Council to relocate out of Garth House.
- Flats would likely only be buy-to-let Air BnBs for Bicester Village and not be part of the Bicester community.
- In principle I don't object to a town centre site being used for housing I would rather this happen than green space be developed, however, not enough parking for 48 flats no suggestion / proposal of where visitors are expected to park.
- No turning area for Council Refuse Vehicles within the site the process of wheeling out 48 bins, across the footpath, and then returning them, the refuse men will 'in conflict' with other users on the footway and users of Queens Avenue.
- Significant impact on The Bicester School, especially the likely required access to the new properties and services including refuse and waste collection and increased traffic on our access road and the potential heightened risk to our 11-18 students, 1300 in total.

- Lack of small community halls – but no performance hall or many modern, accessible, larger community spaces, *disappointing that this sizable public building in the town centre has apparently been sold for commercial residential development without any meaningful opportunity for discussion of positive community use of the building and the site.*
- *Bicester needs more areas available for hire - a decent-sized performance hall of for instance. In addition, there are churches looking for places to build, the members of which contribute to society in a disproportionately positive way*
- Magistrates Court and the other civic buildings should have been saved for the town. Civic buildings along Queens Road forms very important part of the town's history and Waverley House 'locally listed' asset in the Bicester Conservation Area Appraisal clearly meets the heritage assets criteria of contributing to the local environment, given its close links to the Police House and other civic buildings surrounding it.
- 3 storeys an infringement of privacy and dependent on the retention of mature trees, which are already 100 years old, to maintain privacy and would look out of place in the immediate area, bulk, design, scale and height (3 to 3.5 story) of the proposed building, and general visual impact of the proposed development will create a significant impact, and possible over-looking on neighbouring residential homes.
- The two bed apartments will obviously attract families and the lack of private gardens will still apply. Planning Authority must not accede to reduced affordable housing to satisfy the developers financial viability.
- *Bicester struggling to provide our students with the right educational, social, emotional and mental health support given the rise in these areas as an effect of the pandemic years and huge loss of learning. Building should be used as Special Therapeutic School for 11-16 year olds that have learning difficulties, social, emotional and mental health needs.*

6.5 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. BICESTER TOWN COUNCIL: **Objection.** Concerns over refuse access, development will result in the loss of part of Bicester Heritage in conservation area, development will cause overlooking onto residential homes and recreational areas, and finally concerns raised over the issue of parking.

7.3. CHESTERTON PARISH COUNCIL: **Objection.** *Application is controversial in itself because it is basically a zero-parking proposal. I know that some local Councillors oppose this scheme and as local Councillors their views should be upheld. Bicester needs a Community Hub which could be used for performances, functions and other uses. we have many requests for bookings in our Community Centre some of which we cannot accept and who would use a Community Hub in Bicester and the Magistrates Court with its space, location and parking would be a real benefit to the facilities available in a growing town.*

## CONSULTEES

- 7.4. OCC HIGHWAYS: **No objection.** Subject to conditions and S106 agreement
- 7.5. CDC WASTE & RECYCLING OFFICER: **No objection**
- 7.6. CDC CONSERVATION OFFICER: **Objection.** With the adjacent police house as part of the re-appraisal of Bicester Conservation Area as a 'Locally listed building', despite the fact that neither building is included within the conservation area boundary. The police house and magistrates court (along with the Fire and Ambulance Station and Civic Defence Training Centre which are not identified as 'locally listed buildings') form part of a group of mid-20th century civic buildings. They are of significance as a group and as part of the local context. The design of Waverly House (former council building, later magistrates court) was deliberately designed to pay reference to the Police House, which was built a few years earlier.

*The Historic England 'Law and Government Buildings' Designation Selection Guides states in relation to such buildings 'They can possess considerable community value and play key roles in our townscape. Sometimes the various functions (law courts, assembly rooms, concert halls, administrative quarters) were combined in a single structure or alternatively separately house but perhaps grouped together to form a municipal enclave'.*

The buildings are typical (rather than special) for their era and there is no suggestion that the buildings are of an architectural value worthy of listing. They are, however, of historic and communal significance within the context of Bicester and form part of the local history and development of the town. Hence their status as non-designated heritage assets. The contribution the buildings make to the setting of Bicester Conservation Area is as part of the civic development on the outskirts of the historic settlement.

- 7.7. CDC PLANNING POLICY: **No objection** subject to satisfactory consideration of impact on heritage assets, biodiversity and ecology, highways, air quality and existing neighbouring areas.
- 7.8. CDC LAND DRAINAGE: **No comments.**
- 7.9. OCC LEAD LOCAL FLOOD AUTHORITY: **Objection.** No mention of impermeable areas in the report. A comparison of betterment must be presented in order for us to conclude that the strategy is in line with our guidance. Where betterment cannot be provided, a valid justification must be provided. Furthermore, calculations do not the impermeable area used for hydraulic simulation.
- 7.10. THAMES WATER: **No objection** subject to conditions
- 7.11. ENVIRONMENT AGENCY: **No objection**
- 7.12. OCC EDUCATION: **No objection** subject to S106 contribution.
- 7.13. CDC ENVIRONMENTAL PROTECTION: **No objection** subject to conditions.
- 7.14. CDC LANDSCAPE: **No objection** subject to conditions
- 7.15. CDC RECREATION & LEISURE: **No objection** subject to S106
- 7.16. BICESTER BIKE USERS' GROUP: **Comment.** external cycle parking is now in a much more advantageous location, though we would be keen to ensure that the facility is secure. However, major concerns about the access arrangements for the

internal cycle storage as this accessed from the 'wrong' side of the building, which necessitates a journey around the whole of the building along a fairly lengthy, narrow, and contorted path. This is likely to be a huge disincentive for cyclists and would be completely inappropriate for a car-free development which would expect the highest level of service and convenience.

7.17. CRIME PREVENTION DESIGN ADVISOR: **Objection.** Concerns with the current proposals, particularly relating to defensible space and excessive permeability. Design and Access Statement (DAS) does not adequately address crime and disorder as required by CABE's 'Design & Access Statements- How to write, read and use them'. Require further details on Building Security, details on ground floor window functions and security, details on defensible space, revision to recessed entrance design, insufficient car parking provision, details of bin store and security issue.

7.18. LOCAL MEMBERS VIEWS: (Cllr. Les Sibley, also on behalf of Cllrs Michael Waine and Donna Ford)

**Objection.** *Application has a high level of public interest and concern amongst Bicester Residents. It lies close to a Conservation Area and within an area of an historic environment that contains many listed buildings. Development would represent an over-development of the site with an adverse impact on the character and appearance of the area.*

*The proposed development site on Queens Avenue is a main route through the town for traffic from the Oxford Road to the Buckingham and Banbury roads via Field Street which are already recognised as areas that suffers from high levels of traffic congestion, noise and air pollution. The Queens's Avenue is the only route for all buses and coaches through the town and into and out of the town centre via the traffic congested St. Johns Street. Lack of car parking spaces on a 48-unit development. (Council Policy requires 1.3 parking spaces per unit) No parking bays or access for residents who own a fossil fuel car. No designated parking bays or access for fossil fuel delivery vehicles. There are no public car parks available near the development site.*

*Lack of cycle provision and storage facilities with a proposed 48-unit development should provide 1 cycle per one bed unit and 2 cycles per two bed. Concerned about the adverse impact the proposed development will have on the Active Travel Measures of installing a Cycle Priority route on Queens Avenue.*

*The use of the existing Bus Stop area next to the site on Queens Avenue by the HGV Refuse Vehicles for the two- or three-times weekly collection of residents waste raises several highway safety issues for pedestrians' cyclists and motorists. Its Council policy not to collect residents waste from the Highway. The use of the Bus Stop on either side of Queens Avenue is for Buses only and any other vehicle parking in the area will be penalised. The refuse collection and cleaning vehicles at this time are all fossil fuel vehicles so would not be permitted to this site. Question whether access to the bin store is available as this section of Queens Avenue is not adopted highway.*

*Access and exiting the proposed development site across a well-used footpath and cycle way on Queens Avenue raises several highway safety issues for motorists, cyclists & pedestrians, especially for the 1300 + pupils who attend the three schools on the adjoining site. Concern about the lack of safety details for residents when exiting the block of high raise flats in an emergency.*

*Highways should ensure that a routing agreement for construction vehicles and the travel management plan are robustly enforced should the development proceed. I*



*wish to object to this planning application on the above Highway Grounds as this so called 'Car Free' development is not sustainable.*

*Development of 48 apartments should provide 30% affordable housing on the site as part of the proposal.*

7.19. CDC ECOLOGY: No comments received

7.20. CDC ECONOMIC DEVELOPMENT: No comments received

7.21. CDC HOUSING STANDARDS: No comments received.

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

8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2. The Cherwell Local Plan 2011-2031 - Part 1 ('CLP 2015') was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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)

- PSD 1: Presumption in Favour of Sustainable Development
- SLE 4: Improved Transport and Connections
- BSC 1: District Wide Housing Distribution
- BSC 2: The Effective and Efficient Use of Land – Brownfield Land and Housing Density
- BSC 3: Affordable Housing
- BSC 4: Housing Mix
- BSC 10: Open Space, Outdoor Sport and Recreation Provision
- BSC 11: Local Standards of Provision – Outdoor Recreation
- BSC 12: Indoor Sport, Outdoor Sport and Recreation Provision
- ESD 1: Mitigating and Adapting to Climate Change
- ESD 2: Energy Hierarchy and Allowable Solutions
- ESD 3: Sustainable Construction
- ESD 4: Decentralised Energy Systems
- ESD 5: Renewable Energy
- ESD 6: Sustainable Flood Risk Management
- ESD 7: Sustainable Drainage Systems
- ESD 8: Water Resources
- ESD 15: The Character of the Built and Historic Environment
- INF 1: Infrastructure

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

- C28: Layout, design and external appearance of new development
- C30: Design of new residential development
- C31: Compatibility of proposals in residential areas
- ENV1: Environmental pollution
- ENV12: Potentially contaminated land
- TR1: Transportation funding

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Parking Standards for Cherwell Urban Area,
- Cherwell Residential Design Guide Supplementary Planning Document 2018
- Oxfordshire County Council Residential Road Design Guide (2003) - Second Edition (2015)
- Oxfordshire County Council Cycling Design Standards A guide for Developers, Planners and Engineers 2017
- Oxfordshire County Council Suds Policy
- Bicester Conservation Area Appraisal (2011)

## 9. APPRAISAL

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

- Principle of development
- Design, and impact on the character of the area
- Heritage impact
- Highway impact
- Residential amenity
- Ecology impact
- Sustainability
- Drainage
- S106

#### Principle of Development

- 9.2. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Also, of a material consideration is the guidance provided in the recently revised National Planning Policy Framework (NPPF) which sets out the Government's planning policy for England and how this should be applied.
- 9.3. 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. The Development Plan for this area comprises the adopted Cherwell Local Plan 2011-2031 ('CLP 2015') and the saved policies of the Cherwell Local Plan 1996 ('CLP 1996').
- 9.4. Policy PSD1 of the CLP 2015 states that when considering development proposals, the Council will take a proactive approach to reflect the presumption in favour of sustainable development contained in the National Planning Policy Framework. The policy continues by stating that planning applications that accord with the policies in this Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise. Paragraph B88 of the CLP 2015 also highlights that by focusing development in and around the towns of Bicester and Banbury we aim to ensure that the housing growth which the District needs only takes place in the locations that are most sustainable and most capable of absorbing this new growth.
- 9.5. Policy BSC2 of the CLP 2015 highlights the importance of effective and efficient use of land and the use of sites. Under this Policy it is highlighted that housing development in Cherwell will be expected to make effective and efficient use of land.

The Policy also states that the Council will encourage the re-use of previously developed land in sustainable locations. New housing should be provided on net developable areas at a density of at least 30 dwellings per hectare unless there are justifiable planning reasons for lower density development.

- 9.6. In determining the acceptability of the principle of new dwellings regard is paid to Government guidance contained within the NPPF. This 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.
- 9.7. Paragraph 10 of the NPPF states that *so sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development. Paragraph 11 defines the presumption in favour of sustainable development as approving development proposals that accord with up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*
- 9.8. Paragraph 12 also advises, amongst other things that *the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. The NPPF also states that a Local Planning Authority may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.*
- 9.9. Section 5 of the NPPF covers the issue of delivering a sufficient supply of homes, and paragraph 60 states that *to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.*
- 9.10. Paragraph 73 highlights the need for Local Planning Authorities (LPAs) to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period). Paragraph 74 continues by stating that *a five-year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:*
- a) *has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and*
  - b) *incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.*
- 9.11. The site is clearly located within the urban area of Bicester Town Centre. The existing building on the site is no longer required for its previous use. The proposal would therefore represent a re-development of a brown field site in an urban area. As

highlighted above, the Council seeks to focus new development in and around Bicester and Banbury which this proposal would comply with. The site is also considered to be in a sustainable location within easy access to the main facilities and amenities being approximately 450m from Bicester Town Centre. The front of the site looks onto Queens Avenue a major road within Bicester and immediately to front of the site is a bus stop served by route 26 which runs into Bicester Town centre and Bicester Village on a half hour service.

- 9.12. Policy BSC2 (Effective and Efficient Use of Land - Brownfield Land and Housing Density Housing) of the CLP 2015 highlights that the Council will seek to ensure that all new developments in Cherwell *will be expected to make effective and efficient use of land* and that the Council *will encourage the re-use of previously developed land in sustainable locations*. This development would re-use this previously developed site for the provision of 48 apartments which will ensure that the site is developed to make the most effective and efficient use of the site in compliance with Policy BSC2.
- 9.13. In addition to the above, the decision maker must have regard to Cherwell's housing land supply position, most recently reported in the Council's 2021 Annual Monitoring Report (AMR). The 2021 AMR concludes that the District can demonstrate a 3.5 year supply for the current period 2022-2027 commencing on 1 April 2022. There is a shortfall of housing supply equal to 2,255 dwellings for the period 2022-2027. It is clear that the current application for 48 apartments would make a significant contribution towards the Council's housing stock and this in itself weighs in favour of the development.
- 9.14. Members will see that some objections have been raised over the loss of the building as a potential community asset with suggestions that the building be used as a community hall / Special Therapeutic School / music venue etc. Although the community use of the building may be considered as an alternative use of the site this proposal is for the re-development of the site for residential use and not community use. The LPA is required to consider the application presented at the current time and to determine whether the proposal is appropriate. Alternative uses of the site would clearly have different implications in terms of highway movements / parking, noise levels and potential disturbance on the local residents for which there is no information provided and therefore cannot be considered in this application. The LPA is required to determine the application before it and must not compare the proposal against a hypothetical alternative use which is not before this committee.
- 9.15. For the above reasons, the principle of the re-development of the site for residential use is considered acceptable.

#### Design, and impact on the character of the area

- 9.16. Government guidance contained within the NPPF requiring good design states that *good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people*. Further, *permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions*.
- 9.17. Saved Policies C28 and C30 of the CLP 1996 exercise control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context. New housing development should be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.

- 9.18. Policy ESD 15 of the CLP 2015 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. It seeks to secure development that would complement and enhance the character of its context through sensitive siting, layout and ensuring a high-quality design.
- 9.19. Paragraph 130 of the NPPF states that planning decisions should ensure that developments:
- *will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
  - *are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
  - *are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change*
- 9.20. The Council's Design Guide seeks to ensure that new development responds to the traditional settlement pattern and character of a town. This includes the use of continuous building forms along principal routes and the use of traditional building materials and detailing and form that respond to the local vernacular.
- 9.21. The existing building on the site is a large two-storey T-shaped brick-built building with a series of more modern additions. Areas of car parking wrap around the building, whilst there is a small amount of landscaping at the site frontage, and a small area of grass to the rear of the building. The building is set back from the site frontage, with views to the building being partially restricted by a number of mature trees, whilst the remaining site boundary is well enclosed with trees and mature hedgerow planting.
- 9.22. When compared to the existing building on the site the new development would appear as a larger development at 3 storeys but with the incorporation of a shallow pitched roof hiding a flat roof area the overall height of the building would not appear out of place on this site. In terms of position within the site the current building is set back with the provision of a hardstanding area to the front of the building along with a single access arrangement. The proposed scheme shows the use of the frontage of the site with a 'U' shaped building which maintains an enclosed private courtyard to the rear of the building. The building would therefore be positioned closer to the Queens Avenue frontage than that of the existing building. As highlighted in paragraph 9.20 above the Council's Design Guide seeks to ensure that new development continues the building form along principal routes. The position of the proposal fronting onto Queens Avenue before continuing along the section of Queens Avenue to the north east ensures that the development complies with this design guide requirement. Furthermore, the proposal retains the existing trees located along the main frontage of the site which would help soften the appearance of the development within the street scene.
- 9.23. The proposed new apartment building would be constructed from different materials to that of the existing former magistrates building. The existing building is constructed from a dark red brick with dark grey roof tiles. The proposed apartment building would be constructed using a stone on the ground floor with pale render for the two floors above. The windows on the first and second storeys would be highlighted using a mix of stone or timber cladding which would reduce the impact of the render on the elevations and help to break up the mass of the building. The shallow pitched roof would be faced in a slate grey tile similar to that used on the existing building. Overall, it is considered that the proposal would result in an appropriate, high-quality development within the street scene that would contribute positively to and not detract from the area's character, compliant with Policy ESD15 of the CLP 2015.

## Heritage impact

- 9.24. The site is not located within but lies approximately 50m outside the Bicester Conservation Area and as such the development would have an impact upon the setting of the Conservation Area. The existing building, the former Magistrates Court, is a locally listed building and therefore a non-designated heritage asset, though it is not a nationally listed building. The building was constructed as an alternative civic building (council offices) and formed part of a group of civic buildings (police station, fire station etc) and has group value as part of this.
- 9.25. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*
- 9.26. Conservation Areas and Listed Buildings are designated heritage assets, and paragraph 199 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*
- 9.27. Paragraph 202 highlights that *where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.* Paragraph 203 of the NPPF continues by stating that *the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.* Policy ESD15 of the CLP 2015 highlights that new development proposals should, *conserve, sustain and enhance designated and non-designated 'heritage assets' including buildings, features, archaeology, conservation areas and their settings, and ensure new development is sensitively sited and integrated, furthermore development should respect the traditional pattern of the form, scale and massing of buildings.*
- 9.28. The Council's Conservation Officer objects to the proposals on the basis that the Waverley House has historic significance in a local context and advises that the building could be converted to residential – potentially with some extensions to the building. The Conservation Officer is of the view that the re-use of the existing building would allow the embodied carbon within the building to be retained which is increasingly being recognised as a way of meeting climate change targets. The demolition of the building would clearly result in substantial harm to a non-designated heritage asset. There are also concerns about the impact the proposed demolition of the building would have on the streetscape and setting of the Bicester Conservation Area through the loss of part of the 'set piece' of civic buildings. The Conservation Officer also considers the scale, massing, design, materials and location on the plot of the proposed building to be entirely inappropriate for the specific location and to have a detrimental impact on the streetscape and setting of the Bicester Conservation Area.
- 9.29. In response to the objection raised by the Conservation Officer, the applicant has provided an updated advice note which is to be read alongside the initial Heritage Assessment submitted with the application. The amended Heritage Note highlights that although the existing building is locally listed along with the police station neither of these buildings makes a positive contribution to the Bicester Conservation Area

(though neither do they make a negative contribution) and refers to the map at page 54 of the Bicester Conservation Area appraisal. The applicant also considers the fact that it is one of a number of mid- century civic buildings to have no specific relevance to the special interest of the Conservation Area, which is designated for different architectural and historical attributes.

- 9.30. Officers consider this approach to show a miss-reading of the map on page 54 of the Bicester Conservation Area appraisal. The map highlights unlisted buildings within the Conservation Area which make a significant positive contribution to the character and appearance of the Conservation Area - the map does not refer to those unlisted buildings outside the Conservation Area and this was not the purpose of the map provided.
- 9.31. Waverley House is an important building in the context of local history. The advice in paragraph 203 of the NPPF is clear that *the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.* That said, the building has clearly reached a point where its continued use as a magistrate court has ended and therefore a new use for the building / site needs to be found. The principle of the residential use is in-line with adopted policy and not disputed by the Conservation Officer with the main conflict being the re-development of the site with a new building.
- 9.32. The applicant's agent has stated that the re-use / conversion of the building would not be feasible due to its layout and the conversion of the building would not result in the same level of accommodation being provided and would not therefore result in an efficient use of the site.
- 9.33. The loss of the building needs to be weighed in the planning balance against the benefit of the re-development of the site for a significant level of residential use. It must also be noted that given the site's location outside of the Conservation Area the demolition of the existing building could, subject to a prior notification application relating to the method of demolition, be carried out as permitted development.

#### Highway impact

- 9.34. Paragraph 110 of the NPPF states that in assessing specific applications for development, it should be ensured that:
- a) *appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
  - b) *safe and suitable access to the site can be achieved for all users; and*
  - c) *any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*
- 9.35. In addition to this, paragraph 111 highlights that *development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*
- 9.36. 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.* Policy SLE4 states that *all development where reasonable to do so, should facilitate the use of sustainable*

*modes of transport (and) development which is not suitable for the roads that serve the development, and which have a severe traffic impact will not be supported.*

- 9.37. The proposal seeks to retain the existing access point onto Queens Avenue with a single access point as current exists. The access would lead to a small parking area with 2no disable parking spaces along with a turning head which is larger enough for access to and from by a large delivery van. The applicant's approach is for a car free development due to the sustainable location close to Bicester Town centre with all the public facilities and amenities the town offers. To support this approach the proposal also provides a significant level of cycle parking spaces with a free-standing enclosed cycle store to the front of the development providing 32no cycle spaces plus a further cycle storage area in the centre of the main building on the ground floor providing a total of 52 cycle spaces. Furthermore, the applicant highlights that the site is served by an existing bus stop positioned directly outside the front entrance to the site which allows easy access for residents onto and off public transport routes. As highlighted in the paragraphs above this bus stop served by route 26 which runs into Bicester Town centre and Bicester Village on a half hour service and hence allows for a quick and easy public transport route as an alternative to the private car.
- 9.38. The local highway authority (LHA) has no objection to the proposal on highway safety grounds. The LHA has confirmed that it is developing and implementing active travel measures along key transport corridors in Bicester to facilitate and encourage walking and cycling. Various measures are under development for the Kings End / Queens Avenue / Buckingham Road which, it advises, would require this development to make a Section 106 contribution of £88,380 towards the funding of these measures as they pass the frontage of the proposed development. Notwithstanding the fact that the applicant has stated that the proposed scheme is not viable with any S106 monies required the applicant has agreed to make a contribution of £46,880 towards the highway improvement measures as requested by OCC Highways. This contribution would be added to contributions provided by other permissions along Queens Avenue to help pay for the highway improvements to ensure that the development is acceptable from a highway safety point of view.
- 9.39. On a final point regarding highway safety, the proposal seeks to address the issue of refuse collection by locating the main bin storage is located in the north section of the site. Access to the bins during bin collection day would be via the section of Queens Avenue leading to the primary school, leisure centre and Bicester Community College with the bin lorry collecting the bins from the highway rather than entering the site. The Council's Waste & Recycling officer has no objections to this proposed arrangement. Notwithstanding, comments raised by third parties that this section of Queens Avenue is not an adopted section of highway raising a question over access rights. The Council's waste team has advised that this would not be an issue in that the schools and the leisure centre all have refuse collected from unadopted roads and therefore this site would be no different. The LHA has also commented that this location for bins and point of collection is appropriate. Furthermore, following further investigations with Land Registry, it is clear that the access to the schools and leisure centre, although not included as adopted highway, is owned by Oxfordshire County Council which would allow access rights.
- 9.40. Further concern over safety has been raised as part of the objections to this proposal and in particular the safety of pupils / students arriving and leaving the schools along this section of Queens Avenue. Officers acknowledge that the refuse vehicle would be parked on the highway and that this would restrict access along this access road to the schools and leisure centre. However, the width of this section of Queens Avenue is approximately 6.75m which compares to an average width of 4.8m for a public highway increasing to 6.75m for a bus route. It is considered that there would be adequate space for other road users to pass the refuse vehicle on bin collection



day to ensure safe passage. The only footpath along this section of Queens Avenue is located along the north side of the road and the opposite side of the road to the development site. This side of the road also maintains a post guard rail between the road edge and the footpath to ensure that pedestrian safety is maintained. Overall, it is considered that the access arrangements for the bins on this site would not result in a highway safety issue to warrant a refuse of permission.

#### Residential amenity

- 9.40 Saved Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 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.
- 9.41 The closest neighbouring properties are located on the opposite side of Queens Avenue in Queens Court and are approximately 30 – 39 metres from the edge of the application site and the rear elevation of the existing residential property. Although concern has been raised by objectors to the scheme that the development would result in a loss of privacy it is considered that this distance is more than sufficient to ensure that the development of the site although at three storeys would not result in any significant loss of privacy, light or outlook. The distance between the site and the rear elevations of these neighbouring properties would also exceed the distance required as outlined in the Cherwell Council Design Guide by around an extra 10m. As such it is not considered that the development as proposed would not have any significant adverse impact upon the neighbours' amenities.

#### Ecology Impact

- 9.42 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.
- 9.43 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.
- 9.44. 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.
- 9.45 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.

9.46 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).

9.47. 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.

9.48. 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.

9.49. 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.

9.50. 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.

951. 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.

- 9.52. These polices 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.
- 9.53. 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.
- 9.54. This application is supported by a Preliminary Ecological Appraisal (PEA) of the site which was undertaken in September 2020 by a suitably experienced ecologist. The results of the PEA conclude that there was no evidence of bats was identified during the internal or external inspections. It was noted that there is a small number of potential roosting features were identified during the inspection the building was deemed to have low potential to support roosting bats. With regards to birds the PEA highlights that the scattered trees and hedgerows offer suitable habitat for a variety of common nesting birds, but this is unlikely to be an important nesting feature in the local area due to the limited extent of this habitat at the Site. Where vegetation removal is required, it has the potential to cause adverse (not significant) impacts to nesting birds and avoidance measures should be implemented to prevent harm to these species as such the PEA highlights that any vegetation clearance should avoid the nesting bird season (March to August inclusive) or be checked by a suitably qualified ecologist immediately prior to clearance to check for nesting birds.
- 9.55. Turning to the issue of mammals the PEA confirms no record of any presence of badgers, otters, Hazel Dormouse nor any evidence of notable or protected invertebrates, reptiles or amphibians. The PEA does, however, confirm that records of hedgehog were provided by the biological records centre (TVERC, 2020), the closest of which was located c.480m south-east in 2019. The hedgerows and scrub on the site offer suitable foraging and commuting habitat for hedgehogs; therefore, good practice measures should be implemented throughout the construction phase to prevent harm to this species. The PEA recommends that good practice measures comprise covering, back filling or placing mammal ramps in any excavations at the end of each day and covering pipework to prevent any animals from becoming trapped. Any excavations should be checked first thing in the morning to ensure any trapped animals are able to be released.
- 9.56. Officers are satisfied, that in the absence of any objection from the Council's Ecology Officer, 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.

### Sustainability

- 9.57 Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 150 states that new development should be planned for in ways that:
- a) *avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through*

*suitable adaptation measures, including through the planning of green infrastructure; and*

*b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.*

9.58 Paragraph 151 continues by stating, amongst other things, that *in order to help increase the use and supply of renewable and low carbon energy and heat, plans should:*

*c) identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.*

9.59 Policy ESD1 of the CLP 2015 covers the issue of Mitigating and Adapting to Climate Change and includes criteria under which application for new development will be considered. Included in the criteria is the requirement that development will incorporate suitable adaptation measures to ensure that development is more resilient to climate change impacts. These requirements will include the consideration of, *taking into account the known physical and environmental constraints when identifying locations for development. Demonstration of design approaches that are resilient to climate change impacts including the use of passive solar design for heating and cooling. Minimising the risk of flooding and making use of sustainable drainage methods and reducing the effects of development on the microclimate (through the provision of green infrastructure including open space and water, planting, and green roofs).*

9.60 Policy ESD 2 covers the area of Energy Hierarchy and Allowable Solutions. This policy seeks to achieve carbon emissions reductions, where the Council will promote an 'energy hierarchy' as follows: *Reducing energy use, in particular by the use of sustainable design and construction measures. Supplying energy efficiently and giving priority to decentralised energy supply. Making use of renewable energy Making use of allowable solutions.* Any new development will be expected to take these points into account and address the energy needs of the development.

9.61 Policy ESD 3 covers the issue of Sustainable Construction and states amongst other things that *all new residential development will be expected to incorporate sustainable design and construction technology to achieve zero carbon development through a combination of fabric energy efficiency, carbon compliance and allowable solutions in line with Government policy.* The Policy continues by stating that *Cherwell District is in an area of water stress and as such the Council will seek a higher level of water efficiency than required in the Building Regulations, with developments achieving a limit of 110 litres/person/day.* The Policy continues by stating that *all development proposals will be encouraged to reflect high quality design and high environmental standards, demonstrating sustainable construction methods including but not limited to: Minimising both energy demands and energy loss. Maximising passive solar lighting and natural ventilation. Maximising resource efficiency Incorporating the use of recycled and energy efficient materials. Incorporating the use of locally sourced building materials. Reducing waste and pollution and making adequate provision for the recycling of waste. Making use of sustainable drainage methods. Reducing the impact on the external environment and maximising opportunities for cooling and shading (by the provision of open space and water, planting, and green roofs, for example); and making use of the embodied energy within buildings wherever possible and re-using materials where proposals involve demolition or redevelopment.*

- 9.62 This application seeks planning permission for the re-development of this site for 43 apartments in a single building. The design of the building allows for the provision of an array of solar PV panels on the roof area to provide 21.85 kWp of solar PV panels to each apartment. In addition to this the building would also be fitted with an Air Source Heat Pump system which is an all-in-one exhaust air heat pump which provides heating, ventilation, heat recovery and hot water efficiently, simply, and economically which could be run in conjunction with the solar panels on the roof. These measures along with the fact that the built form would be constructed to an improved fabric would yield a 67% reduction over the Part L SAP 10 standard.
- 9.63 Based on the above points it is considered that the applicant has demonstrated that the proposal will comply with the requirements of Policies ESD1, ESD2 and ESD3.

#### Drainage

- 9.64 Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 167 of which states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that: a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; b) the development is appropriately flood resistant and resilient; c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate; d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
- 9.65 Paragraph 169 of the NPPF continues by stating that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should: a) take account of advice from the lead local flood authority; b) have appropriate proposed minimum operational standards; c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and d) where possible, provide multifunctional benefits.
- 9.66 Policy ESD 6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.
- 9.67 Policy ESD 7 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.
- 9.68 The site is located wholly within Flood Zone 1 which is land that has a less than 1 in 1,000 annual probability of river flooding. Notwithstanding this the applicant has provided a surface water drainage strategy in support of the application.
- 9.69 The Local Lead Flood Authority (LLFA) Officer initially raised an objection to the proposal and requested further information. The applicant has provided additional information and the LLFA has been reconsulted. However, at the time of drafting this report the further comments from the LLFA were awaited. Until further comments from the LLFA are received it is accepted that there is an outstanding objection on the details submitted with the application and as such the application has failed to address the need to ensure that adequate drainage is provided on the site. The development

therefore fails to comply with policies ESD6 and ESD7 of the CLP 2015 as well as advice contained within section 14 of the NPPF. Were the LLFA to be content with the information officers would conclude the proposed development to be acceptable in terms of drainage.

#### S106

9.70 Paragraph 54 of the NPPF states that *local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph 56 continues by stating that planning obligations must only be sought where they meet all of the following tests:*

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development.*

9.71 Policy INF1 of the CLP 2015 covers the issue of Infrastructure. This Policy states, amongst other things, that the *Council's approach to infrastructure planning in the District will identify the infrastructure required to meet the District's growth, to support the strategic site allocations and to ensure delivery by:*

- Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.*

9.72 Policy BSC 3 of the CLP 2015 states, amongst other things that at *Kidlington and elsewhere, all proposed developments that include 11 or more dwellings (gross), or which would be provided on sites suitable for 11 or more dwellings (gross), will be expected to provide at least 35% of new housing as affordable homes on site. The Policy continues by stating that, all qualifying developments will be expected to provide 70% of the affordable housing as affordable/social rented dwellings and 30% as other forms of intermediate affordable homes. Social rented housing will be particularly supported in the form of extra care or other supported housing. It is expected that these requirements will be met without the use of social housing grant or other grant.*

9.73 The Council also has a Developer Contributions SPD in place which was adopted in February 2018. It should, however, be noted that this is a general guide and development proposals will continue to be assessed on a case-by-case basis with the individual circumstances of each site being taken into consideration when identifying infrastructure requirements.

9.74 Due to the level of development on the site the issue of affordable housing should be taken into account. Paragraph 65 of the NPPF states that *where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.* This application is for 48 apartments on the site which would represent a major application in terms of definition. For this reason, the application should provide an element of affordable housing as part of the proposal.

9.75 The policy requirement is for 30% affordable housing as set out in Policy BSC3 in the CLP 2015 which would equate to 15 units with a 70:30 tenure split between rented and shared ownership. However, as part of the application the applicant has provided

a detailed viability assessment of the scheme which highlights that the proposal would not be viable with the cost of providing an element of affordable housing as part of the development. For this reason, the application as submitted would not be supported by any S106 contributions such as affordable housing.

- 9.76 To assist in the LPA's appraisal of this submission on viability officers instructed an independent review of the applicant's viability assessment which was carried out by Turleys. In reviewing the viability assessment Turleys confirmed that the findings of the applicant's assessment were reasonable and within the region of costs expected for this type of development. The Turley review of the development has therefore concluded support for the applicant's view that the proposed scheme is unable to make any contribution towards the provision of affordable housing whilst maintaining economic viability.
- 9.77 Taking this review into consideration the Strategic Housing Officer has confirmed that as the report concludes that the scheme is unviable with 30% and also 0% affordable housing, the Strategic Housing team will not be pursuing any affordable housing contributions at this stage. It is also considered that although the requirement to provide an element of affordable housing as outlined in Policy BSC3 has not been met the applicant's viability assessment has outlined that the development would not be viable with an element of affordable housing being required and therefore a reason to warrant an exception to this Policy.
- 9.78 Notwithstanding the findings of the Turley report the County Council has confirmed that it is developing and implementing active travel measures along key transport corridors in Bicester to facilitate and encourage walking and cycling. The County confirm that various measures are under development for the Kings End / Queens Avenue / Buckingham Road which requires a Section 106 contribution of £88,380 towards the funding of these measures as they pass the frontage of the proposed development. Despite stating that the proposed scheme would not be viable with any S106 monies being paid, the applicant has agreed to make a contribution of £46,880 towards the highway improvement measures as requested. This contribution will assist in mitigation against the fact that the development is promoted as a car free site.

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

- 10.1. 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. The NPPF supports this position and adds that proposals that accord with an up-to-date development plan should be approved and those which do not should normally be refused unless outweighed by other material considerations.
- 10.2. The principle of the redevelopment of the site is considered acceptable. The design of the amended proposal is considered appropriate in terms of scale and materials, and the design of the building and its position within the plot would ensure that the development would not result in any loss of light, privacy or outlook currently enjoyed by local residents on the opposite side of Queens Avenue. The proposal is considered acceptable in terms of highway safety.
- 10.3. The current Magistrates Court building has historic significance in a local context and its demolition would have an impact on the streetscape, the character and appearance of the area and the setting of the Conservation Area. The demolition of the building would result in the loss a non-designated heritage asset; that said its demolition would not likely require planning permission and the use of the building as a Magistrates Court has now expired and an alternative use of the building / site is necessary.

- 10.4. At the time of drafting this report the LLFA had an objection to the proposal and further information had been requested. This additional drainage information has been provided and the further comments from the LLFA are awaited. On the basis that the LLFA confirm that the new information is acceptable it is considered that the development would not result in any adverse impact upon the area in terms of drainage / flooding.
- 10.5. This scale and type of development would normally require a S106 to be negotiated and attached to any planning permission granted to include an element of affordable housing. As outlined under Policy BSC3 the district council will need to be satisfied that such affordable housing is economically viable in terms of its ability to meet the need identified. As part of the supporting documents attached to the application the applicant has submitted a detailed viability assessment with the application. The viability assessment outlines the fact that the development would not be viable in the event that a S106 would be required. In considering this the Council's viability consultant, Turley's has reviewed the details and advises that the applicant is correct and as such there is no S106 to be attached to the development in the event that the application was to be approved. Notwithstanding this point the applicant has confirmed that a traffic mitigation contribution would be made to reduce the highway impact of the development and in particular as the development is promoted as a car free proposal.
- 10.6. Turning to other material considerations the Council is not presently able to demonstrate a 5 year land supply and there is therefore a clear and pressing need for new housing to be delivered in the district. In this case paragraph 11(d)(ii) of the NPPF, also known as the tilted balance, is engaged, which favours granting planning permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF when taken as a whole.
- 10.7. The provision of 48 residential units on the site would align with the NPPF objective to significantly boost the supply of new housing and in the context of the Council not being able to demonstrate a 5 year land supply is to be afforded significant weight. There would also be some economic benefits associated with the development including the jobs through construction.
- 10.8. Overall, taken as a whole the harm arising from the demolition of the existing building is not considered to clearly and demonstrably outweigh the benefits of the scheme. It is therefore recommended that planning permission be granted.

## **11. RECOMMENDATION**

### **RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT PERMISSION, SUBJECT TO:**

- i. RESOLUTION OF LEAD LOCAL FLOOD AUTHORITY OBJECTION;**
- ii. THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) AND**
- iii. 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, (AND ANY AMENDMENTS AS DEEMED NECESSARY):**

**FURTHER RECOMMENDATION: IF THE SECTION 106 AGREEMENT / UNDERTAKING IS NOT COMPLETED AND THE PERMISSION IS NOT ABLE TO BE ISSUED, AND, NO EXTENSION OF TIME HAS BEEN AGREED BETWEEN THE**



**PARTIES, IT IS FURTHER RECOMMENDED THAT THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT IS GIVEN DELEGATED AUTHORITY TO REFUSE THE APPLICATION FOR THE FOLLOWING REASON:**

1. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure 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 Policy INF 1 of the adopted Cherwell Local Plan 2011- 2031, Government guidance within the NFFF and CDC Planning Obligations SPD 2018

**S106 HEADS OF TERMS**

As set out in the table attached as Appendix 1.

**CONDITIONS**

**Time Limit**

1. The development hereby permitted shall be begun before the expiration of three years from 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. The development shall not be carried out otherwise than in complete accordance with the approved plans 20270\_PA\_17 Rev A, 20270\_PA\_18 Rev A, 20270\_PA\_19 Rev A, 20270\_PA\_20 Rev A, 20270\_PA\_21 Rev A, 20270\_PA\_22 Rev A, 20270\_PA\_23 Rev A, and 20270\_PA\_24 Rev A, received 07/03/2022 unless a non-material or minor material amendment is approved by the Local Planning Authority under the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

Reason: To clarify the permission and for the avoidance of doubt.

3. 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 the Government's aim to achieve sustainable development as set out in Section 15 of the National Planning Policy Framework.

4. Prior to, and within two months of, the commencement of the development, the site shall be thoroughly checked by a suitably qualified ecologist to ensure that no protected species, which could be harmed by the development, have moved on to the site since the previous surveys were carried out. Should any protected species be found during this check, full details of mitigation measures to prevent their harm shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved mitigation scheme.

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

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

5. The development hereby permitted shall be carried out in accordance with the recommendations set out in Ecological Appraisal by Wharton dated 07 September 2020 unless otherwise agreed in writing by the Local Planning Authority.

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

6. Prior to the first occupation of the development hereby permitted, written confirmation that the development achieves a water efficiency limit of 110 litres/person/day under Part G of the Building Regulations shall be submitted to and approved in writing by the Local Planning Authority.

Reason: Cherwell District is in an area of water stress, to mitigate the impacts of climate change and in the interests of sustainability, to comply with Policies ESD1 and ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

7. A colour scheme for the colouring of the external render shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of those works. Thereafter, and prior to the first occupation of the development, the render shall be finished in accordance with the approved colour scheme and retained as such thereafter.

Reason: In order to safeguard the visual amenities of the area in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996.

8. Prior to the development progressing above slab level, a Landscaping Scheme for the site shall be provided to and approved in writing by the Local Planning Authority

The Landscaping Scheme shall include:-

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

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

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

All planting, seeding or turfing comprised in the approved Landscaping Scheme 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. All hard landscaping elements shall be provided prior to the first occupation of the building(s).

The planning 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.

9. Prior to the first occupation of the development hereby approved, a Residential 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 (and a Travel Plan Statement setting out how this phase will contribute to the overall site wide Residential Travel Plan), shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Travel Plan shall be implemented and operated in accordance with the approved details.
10. Prior to the first occupation of the development hereby permitted, the cycle parking facilities as shown on approved plans 20270\_PA\_17 Rev A, and 20270\_PA\_18 Rev A, shall be provided on the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities so provided 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 Government advice in the National Planning Policy Framework.

11. Prior to the commencement of the development hereby approved, full details of a drainage strategy for the entire site, detailing all on and off site drainage works required in relation to the development, including the prevention of drainage onto the public highway, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the drainage works shall be carried out and completed in accordance with the approved strategy, until which time no discharge of foul or surface water from the site shall be accepted into the public system.

Reason: To ensure that sufficient capacity is made available to accommodate the new development and in order to avoid adverse environmental impact upon the community in accordance 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.

12. Prior to the first occupation of the development hereby permitted, suitably located waste bins shall be provided outside the premises and retained for public use in accordance with details to be firstly submitted to an approved in writing by the Local Planning Authority.

Reason: In order that proper arrangements are made for the disposal of waste, and to ensure the creation of a satisfactory environment free from intrusive levels of litter in accordance with Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

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

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

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

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

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 18. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

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

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

18. No development shall take place, 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 provide for at a minimum:
- a) The parking of vehicles of site operatives and visitors;
  - b) The routeing of HGVs to and from the site;
  - c) Loading and unloading of plant and materials;
  - d) Storage of plant and materials used in constructing the development;
  - e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - f) Wheel washing facilities including type of operation (automated, water recycling etc) and road sweeping;
  - g) Measures to control the emission of dust and dirt during construction;
  - h) A scheme for recycling/ disposing of waste resulting from demolition and construction works;
  - i) Delivery, demolition and construction working hours;

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.

**APPENDIX 1- Heads of Terms for Section 106 Agreement/undertaking**

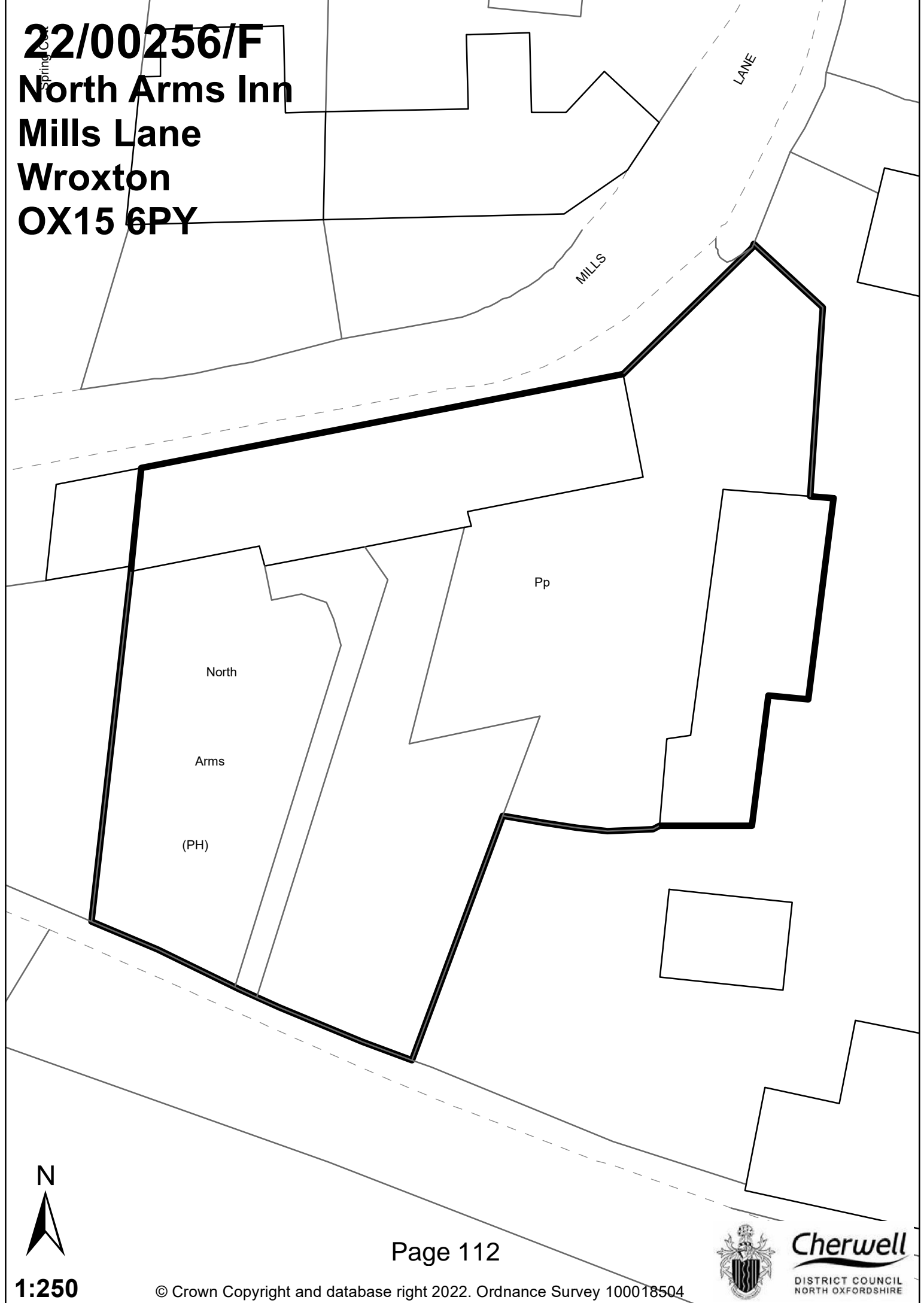
Planning obligation			Regulation 122 Assessment
Detail	Amounts (all to be Index linked)	Trigger points	
Transport Strategy request to cover a new traffic free route and continuous footway	<b>£46,880.</b>	To be delegated to officers	<p><b>Necessary</b> - to ensure sustainable mode of transport and encourage and integrated into the development and made attractive to future users as a car free development.</p> <p><b>Directly related</b> - as these will benefit the future occupants of the site and encourage use of sustainable transport options in the locality.</p> <p><b>Fairly and reasonably related in scale and kind</b> – The contributions are in scale with the development and would be directly benefiting residents of the future development.</p>
S106 Monitoring Fees	<p><b>CDC - £500</b>  <b>Registration charge</b></p> <p><b>OCC TBC</b></p>		

**22/00256/F**  
**North Arms Inn**  
**Mills Lane**  
**Wroxtton**  
**OX15 6PY**



**1:350**

**22/00256/F**  
**North Arms Inn**  
**Mills Lane**  
**Wroxton**  
**OX15 6PY**



**1:250**





**22/00256/F**

**North Arms Inn**

**Mills Lane**

**Wroxton**

**OX15 6PY**

House

Spring Cott

Cott

Lavender

Cott

Honeysuckle

Radstone

Raydon

Hill

House

MILLS

LANE

Pp

North

Arms

(PH)

Woodcote

The Old Bakehouse

The Old

Laundry

Lodge

N



**Case Officer:** James Kirkham

**Applicant:** James Collins

**Proposal:** Change of Use from public house to single residential dwelling

**Ward:** Cropredy, Sibfords and Wroxton

**Councillors:** Cllr Chapman, Cllr Reynolds and Cllr Webb

**Reason for Referral:** Level of public interest

**Expiry Date:** 22 March 2022

**Committee Date:** 14 July 2022

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**SUMMARY OF RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

**1. APPLICATION SITE AND LOCALITY**

1.1. The application relates to a two-storey detached public house with thatched roof located on Mills Lane in Wroxton. Access to a small area of parking and hard standing exists from Mills Lane which is a narrow lane to the north of the site. A separate pedestrian access from Church Street exists to the south. The site is also within the setting of numerous listed buildings around the site. The pub has been closed for a number of years and is currently vacant.

**2. CONSTRAINTS**

- 2.1. The main building and the barn to the south east (which is within the application site) are both, individually, Grade II listed buildings. The site is also located in Wroxton Conservation Area. The earlier application on the site was accompanied by ecological surveys which identified there were bats on the site.
- 2.2. The site was previously registered as an Asset of Community Value; however, this status has now lapsed.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. The current application seeks permission to change the use of the public house and surrounding land to be used for a single residential dwelling. The application solely seeks permission for the change of use and no other alternations/extensions are proposed at the current time.

**4. RELEVANT PLANNING HISTORY**

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

07/00897/F – Erection of lean-to front extension – Refused, 03.07.2007

07/01648/F – Hexagonal timber shelter – Approved, 01.10.2007

11/00280/LB – Internal alterations – Refused, 15.04.2011

19/01148/F and 19/01149/LB – Refurbishment and repair of North Arms with Change of Use and conversion of stables into private dining facility and ancillary facilities and underground LPG tank – Granted with conditions, 10.01.2020

- 4.2. Whilst planning consent and listed building consent were granted for the refurbishment of the buildings in 2019 these have not been implemented and the site has subsequently changed into new ownership.

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

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

21/02657/PREAPP

Change of use from pub to house (minimal internal and no external changes) possible conversion of barn to annex

Response Sent: 3 September 2021

It was advised that marketing and viability information would need to be provided in respect of the loss of the public house for which there is policy protection. It was also stated that the change of use of the building was likely to result in some heritage harm.

## **6. RESPONSE TO PUBLICITY**

This application has been publicised by way of a site notice displayed near the site, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **18 February 2022**.

The comments raised by third parties are summarised as follows:

37 Letters of objections

- Loss of community facility which acts as an important meeting place and encourages community cohesion, inclusiveness, and community spirit
- Loss of focal point of village community.
- The pub reopening would aid with village employment and growth of other businesses.
- Both pubs in the village are now closed.
- The village needs a pub and has been promised one for years with no result.
- Alternative pubs in different villages are not accessible for residents to serve their needs. The use of the hotel bar does not provide the same type of environment or community provision.
- Prior to the closure the pub was poorly run by inexperienced people and the brewery upped all the prices.
- Under the correct management the North Arms could thrive.
- Disagree with the findings that the pub is not viable. The village has lots of visitors and no other pubs. Many small villages retain public houses.
- The pandemic is not a usual event and the asking price is too high.
- The Council should have the viability independently assessed,
- The village has lots of visitors to sustain a pub.
- The current owner has solely brought the pub to convert it.
- Other pubs in the area are thriving under good management.

- An offer has been acceptable on the pub on the basis it remains as a public house.
- Impact on house prices

#### 1 letter of support

- The existing building, along with the White Horse, are eyesores and should be allowed to be improved and converted to dwellings.

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. WROXTON AND BALSCOTE PARISH COUNCIL: **Comment.** Notes the objections stated by many residents of Wroxton. The Council is very sympathetic to the views expressed by many as to the benefit to the community of a thriving pub and the great loss of amenity in a village when a much-loved pub is redeveloped for housing. The PC is very aware of the sorry history of the saga of the North Arms since its closure and, indeed, has intervened when it could to assist negotiations between CDC's conservation officer and the previous owner. Indeed, even before the pandemic struck, the PC had expressed its concerns that the refusal by CDC to permit the then owner to undertake work to protect this listed building from water ingress led to serious deterioration of the structure of the building with resulting major financial burdens imposed on anyone hoping to bring the pub back into use. Consequently, the PC earnestly enjoins CDC to consider very carefully indeed the views expressed by objectors and the rationale behind them.

### CONSULTEES

- 7.3. CDC CONSERVATION: **Objects.** The loss of this village pub would be regrettable. There would be less than substantial harm to the heritage assets caused by the change of use from an inn to a dwelling. Cannot lend support to its change of use.
- 7.4. CDC COMMUNITIES AND WELLBEING: **Comments.** This property was formerly listed as an Asset of Community Value. The listing lapsed on 20 October 2021 and the relevant restrictions have been removed from Land Registry records.
- 7.5. SAVILLS (COUNCIL INSTRUCTED CONSULTANT PROVIDING ADVICE ON EVIDENCE SUBMITTED): Concludes by stating that the North Arms is unviable as a public house based on the information provided.
- 7.6. Provide a summary of the demographics of Wroxton and the house prices in the village. The trading areas are small being approximately 42sqm. The property has been closed since 2011 and there is no trade furniture or kitchen equipment. The property is in a poor condition and any new operator will be required to invest a significant sum in order to modernise the property. The works to the main building is likely to cost in excess of £150,000 plus fixtures and fittings.
- 7.7. Historically the pub was owned by Green Kings. It was subsequently acquired by Wroxton College who planned to refurbish and reopen it however this did not progress. There are no historical trading accounts. In the opinion of Savills this type

of business would be suitable only for a lifestyle operator. It is likely that the business would not trade early weekdays or Monday and Tuesday. Savills do not envisage the business being able to achieve sales in excess of £2,000 per week

#### *Marketing*

- 7.8. The pub was placed on the market by the University through Christie and Co, a specialist pub agency. They sold the pub to the current owner in August 2021. No interested parties made offers who wished to retain the building as pub. Subsequently a specialist pub agency, Sidney Phillips (SP), marketed the freehold interest from September 2021 (until present) with an asking price of £295k. Therefore the pub has been marketed for over a year now in combination. The current asking price is considered to be reasonable given other sales and underlying property values. SP undertook a full marketing campaign. There were 15 viewings of the property of which two stated their intention was for a continued public house use but they were not pursued as the feedback was the layout did not work and the building needs too much work.
- 7.9. One offer for continued pub use was accepted but this never proceeded. The vendor asked for proof of funds, solicitors details, a deposit and experience in operating a pub and limited information was forthcoming. It appears that this potential buyer has objected to change of use. From the correspondence seen this potential buyer was provided ample opportunity to purchase the property. The failure to do so suggest that they were not comfortable in their proposed business plan or they could not raise funds. The potential buyer was asked to provide details of their current pubs they operate, but did not do so. Had they done, it would have given their offer more credibility. There was nothing to stop this applicant provide this information over the past few months.
- 7.10. The only other offers received were for residential use. This is not surprising, and Savills would have expected to have seen low demand from pub operators given its location, its size, its trading potential, its condition and the low number of potential customers in the surrounding area. Savills advise that the pub and restaurant market has become increasingly polarised, with interest being driven to those sites that have a good trading history or potential to trade profitably. Operators have become increasingly reluctant to take on sites with a negative trading history or those which require a significant investment, and they are of the opinion that the North Arms falls into this category, due to the increased risks associated with any capital investment.

#### *Competition*

- 7.11. There is some competition in the village. The White Horse is currently closed but may reopen as a pub. Also in the village is the Wroxton House Hotel which as a bar and dining facilities. Therefore the village as an alternative provision in the village.
- 7.12. Savills have considered the Campaign for Real Alex (CAMRA) Viability Test and consider the catchment is small, visitor potential is limited, there is competition in the village, and the flexibility is limited (due to its small size and listed status).

#### *Comments on application*

- 7.13. Concerns have been raised that it is too soon to permit the change of use however the pub has been closed since 2011. It has been subject to separate marketing campaigns and has failed in recent attempts to reopen by the college which Savills consider has the best chance of success. No further additional proceedable offers to have arisen from the marketing which indicates no one wishes to invest their own time, capital and energy into the pub which is an indication it is not viable. The marketing of the property is clearly the best evidence of the long term viability of the property

### *Viability assessment*

- 7.14. Savills challenge some of the assumptions made by the applicant in their viability assessment. However even based on their own figures conclude that when the property costs and cost of repairs are considered, the business would be projected to have a loss of approximately £18k per annum.

### *Conclusions*

- 7.15. In Summary the North Arms is unviable as a public house. This is because of the following reasons:-the pub is poorly located, in an area with a low population and little demand from operators;

- it is too small to make a worthwhile, meaningful profit;
- there are other pubs and hotels in the area;
- the business is unlikely to make a profit even before cost of acquisition and refurbishment costs are taken into consideration, making the losses even greater.

It is considered that an operator would perceive the opportunity of making a worthwhile profit too risky against the capital investment required. They are therefore of the opinion that a lender would also consider this a risky business to lend a commercial mortgage against. An individual operator is unlikely to have substantial cash reserves and if they did this would be an unwise business venture to place their capital. Given the strength of the competition in better locations nearby, has serious doubts if a new operation in this location would survive even after investment. There have been considerable lifestyle changes over the past few years, and more to come, which have made venues such as the North Arms unviable.

Taking these factors into consideration, an operator would deem the risk too great and therefore conclude that the pub is unlikely to be commercially viable now and in the longer term.

## **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 ('CLP 2015') was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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)

- PSD 1- Presumption in Favour of Sustainable Development
- BSC2- Effective and Efficient Use of Land
- BSC12 – Indoor sport, recreation and community facilities.
- ESD1 – Mitigating and Adapting to Climate Change
- ESD 3 – Sustainable Construction
- ESD15 – The Character of the Built and Historic Environment
- Policy Villages 1 – Village Categorisation

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

- C28 – Layout, design and external appearance of new development
- S29 – Local Services

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990

## **8. APPRAISAL**

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

- Principle of development
- Loss of public house
- Impact on the character of the area
- Other matters

#### Principle

9.2. The proposed development is located in Wroxton, which is identified as a Category A settlement under Policy Villages 1. In Category A villages minor development, infilling and conversions are acceptable in principle within the built up limits of the village. The proposal represents a conversion of an existing building in the built limits of the village, and therefore accords with the Council's housing strategy. Overall acceptability is subject to other material considerations outlined below.

#### Loss of public house

##### *Policy context*

9.3. Government guidance contained within the National Planning Policy Framework ('NPPF') seeks to promote health and wellbeing in communities. In creating a prosperous rural economy and community paragraph 84 states that planning decisions should enable the retention of accessible local services and community facilities such as public houses. Paragraph 93 goes on to state that to provide social, recreation and cultural facilities and services planning decisions should plan positively for the provision of community facilities such as public houses to enhance the sustainability of communities. It states that decisions should guard against the loss of valued facilities and services particularly where this would reduce the community's ability to meet its day to day needs.

9.4. Policy BSC 12 of the CLP 2015 states that the Council will encourage the provision of community facilities to enhance the sustainability of communities through the protection and enhancement of existing facilities.

9.5. Saved Policy S29 of the Cherwell Local Plan 1996 ('CLP 1996') states that proposals that will involve the loss of existing village services which serve the basic needs of the local community will not normally be permitted. The supporting text explains that the District Council recognises the importance of village services, particularly the local shop and pub, to the local community and will seek to resist the loss of such facilities whenever possible. However, it is also recognised that it will be difficult to resist the loss of such facilities when they are proven to be no longer financially viable in the long term.

### *Assessment*

- 9.6. It is understood that the public house last operated in 2013 by the national chain Greene King. They subsequently sold it and it has not operated as a public house since then. It was purchased by a third party who allegedly wished to convert it to a dwelling. The American based University with a campus in Wroxton (at Wroxton Abbey) purchased the pub in approximately 2015 and a planning application and listed building consent to refurbish the buildings, including the use of the first floor for additional seating and food covers, was granted in 2019. However, the University decided not to go forward with these plans and subsequently the site was put up for sale in early 2021. The current owner purchased the building in August 2021 and applied for pre-application advice to the Council with respect of changing the use of the property to a dwelling.
- 9.7. The application has been accompanied by an Economic Development Statement, a Marketing Strategy Report and a Viability Statement prepared by Bruton Knowles. These reports are all available to view on the Council's website and the following discussion only covers the main elements of these. The Council has also commissioned an independent specialist review of the marketing and viability assessment undertaken by the applicant which has been undertaken by Savills.
- 9.8. In terms of the marketing exercise, the site has been on the market a number of times in the past 10 years and has not found a new buyer willing to proceed and invest in the public house. Whilst the university did get permission for the works ultimately, they decided not to go forward with their plans. The Council does not have full details of earlier marketing strategies, so it is the latest marketing strategy which is most relevant however it is material to consider that other marketing exercises have been undertaken in recent times.
- 9.9. The current owners purchased the building in August 2021 and then sought pre-application advice from the Council to change the use of the building to a dwelling. However, they immediately placed the property on the market again with a national pub agent, Sidney Phillips, to ascertain whether there were any willing parties to take the building on to operate it as a pub. The premises have continued to be actively marketed throughout the planning application and it remains on the market and available for sale. The applicant also contacted the Parish Council to make them aware the building was available for sale to anyone wishing to operate the building as a public house.
- 9.10. The latest marketing of the property began in September 2021 for the Freehold of the property at an asking price of £295,000. Sidney Phillips, an agent who specialises in the Leisure and Hospitality industry, undertook a full marketing campaign for the site including placing the property on various websites (Daltons, Zoopla, Rightmove, Landsite, Businessforsale, Morning Adviser and social media outlets), presence on Sidney Phillips website, regular email marketing to registered buyers, sales board at the site and sales being sent to direct enquiries.
- 9.11. From the marketing exercise there were a number of enquiries and there have been 20 viewings arranged at the site. There were a number of enquiries relating to the reuse of the building as a pub use however many were for residential conversion of the building. In order to consider the robustness of the information provided by the applicant the Council instructed an independent advisor, Savills, to review the information. This related to the marketing exercise and the viability information provided. Savills considers that the asking price of £295,000 is reasonable given the building, its existing use and its condition. Savills also considers that given the property was marketed for a period prior to the current marketing exercise, by Christies on behalf of the University, the length of market is also acceptable.



- 9.12. To date, three offers have been made on the building. Two offers were residential use of the building for £325,000 and £350,000 respectively. The third offer was made on 25 March 2022 and was claimed to be for continued pub use. This was at £295,000 and was accepted by the applicant in early April. However, despite this application not placed on the June committee agenda to allow more time for this to progress, this has not proceeded further.
- 9.13. Sidney Phillips (SP) have stated that the prospective new buyer agreed to put down a £5,000 deposit, provide evidence of funds, provide references and view the property. The new buyer then failed to attend two viewings of the property but insisted they wished to continue with the purchase. Officers understand that the new purchaser still has not internally inspected the building. Sidney Phillips advises they made numerous efforts to contact the new buyer with limited success and only limited information being provided. A number of deadlines have been given to the new buyer by SP to provide additional information such as a solicitor's details and a deposit however this commitment and information has not been forthcoming. The applicants have also stated that the references provided by the new buyer have been contacted but they had never heard of them or the North Arms. This matter has now been going on for a number of months (early April 2022) with little in the way of progress. This offer was therefore not considered to be proceedable by the applicant.
- 9.14. Officers have had contact with the prospective new buyer and explained the position. Unfortunately, however, this has not resulted in them addressing the concerns of the seller, which are in the public forum and there has now been a period of three months for the new buyer to address these issues, but this has not happened. In the latest correspondence with the prospective new buyer (which is approximately 3 months after their offer was originally accepted) they have stated that they are not willing to proceed with the purchase of the public house whilst the current application is live and will only progress further dialogue once the application is withdrawn or determined. The applicant has previously advised that they would seek to have the application put on hold until the contracts for the sale were exchanged and then withdrawn it, however the prospective purchaser is now indicating this would not be acceptable to them. The sale of the property would be subject to an overage clause. This would mean that 80% of the uplift in land value, if planning permission were to be granted for the use of the building as a dwelling, would be payable to the current owner for a period of 80 years. The prospective purchaser has raised some concerns over this however it would along become payable if a change of use were to be granted on the building and therefore Officers are unclear what impediment it causes to the sale of the site if the intention is to run the business as a public house.
- 9.15. Overall based on the evidence available to officers, the lack of information the prospective purchaser has provided to the current owner and the time which has past to address these concerns, officers agree that this offer does not appear to be proceedable and Savills agree with this assessment.
- 9.16. Savills have advised the Council that the lack of interest from operators is at odds with their current experience where, due to limited stock on the market, there has generally been good demand. However, Savills advises that given its location, size, potential trading, condition and low number of customers in the area the application premises does not suit continued pub use. Its lack of business use for nearly 10 years and failure to be re-open by the University despite investing in plans and consultants on the building reinforces this. Savills advises that much interest is now driven by sites with good trading history or potential to trade profitably and operators have become increasingly reluctant to take on sites which require significant trading history or which require investment due to the increased risk associated with any capital investment.

- 9.17. The applicant has also submitted a Viability Assessment. This notes that the Covid19 pandemic has significantly impacted on the trade but for the purposes of the Viability Assessment it assumed that normal trading conditions would resume. It notes that the building is in a general poor state of repair with the walls, roof and windows requiring repair and replacement which would require significant investment and cost in the region of £200k. There is also a need to provide trade fixtures and fittings to the building including a new kitchen and restock the trade inventory. The business needs to operate profitably and be able to service loans (and provide a return on capital investment) as well as allowing for depreciation of equipment and fittings etc. As the pub has not operated for a number of years there are no trading records available and therefore estimated trade figures have been used based on the available trade space in the property and for trade levels of similar properties in affluent villages. The Council's consultant considers that these provide reasonably optimistic assessment of turnover.
- 9.18. The assessment indicates that based on the current arrangement of the building there would be a loss of approximately £35k. One of the options explored in the viability appraisal is to implement the refurbishment works which were permitted in 2019 to allow a greater number of covers. However, even with these works the submitted viability information indicates there would be a loss of approximately £30k. Whilst the Council's consultant Savills has questioned some of the assumptions and figures used overall they consider that the public house is unlikely to be able to operate profitably, and even with Savills own assumptions, would return a loss of £18k when property costs and repairs are taken into account.
- 9.19. A further consideration is the availability of alternative provision in the area to meet the day to day social needs of residents. In this case there is the White Horse on the A422 Stratford Road) approximately 100 metres to the north of the site. Like the North Arms this pub is also currently not operating; however, its lawful planning use remains as a public house and therefore it is a relevant consideration. The village is also served by the Wroxton House Hotel which includes a bar and restaurant which is open to non-residents. Whilst it is appreciated that the hotel does not meet exactly the same social and community hub that a thriving village public house would provide it nevertheless offers residents of the village with an alternative venue. Both of these offer more prominent locations on the main road and, whilst the Council can not require the White Horse to reopen, its lawful planning use remains as a public house.
- 9.20. The applicant has also referred to pubs and facilities in neighbouring villages and settlements but these are not likely to be accessed on foot on a regular basis and are unlikely to serve as a community meeting place for the residents of Wroxton.
- 9.21. Savills have also considered the property against the Campaign for Real Ale Public House Viability Test (CAMRA) viability assessment and considers given the nature of the location and the building that there is limited scope to provide a viable business.
- 9.22. In drawing these matters together the Council's consultant, Savills, concludes by stating:

*I am of the opinion that the North Arms is unviable as a public house. This is because of the following reasons:*

- *the pub is poorly located, in an area with a low population and little demand from operators;*
- *it is too small to make a worthwhile, meaningful profit;*
- *there are other pubs and hotels in the area;*
- *the business is unlikely to make a profit even before cost of acquisition and refurbishment costs are taken into consideration, making the losses even greater.*

*In my opinion an operator would perceive the opportunity of making a worthwhile profit too risky against the capital investment required. I am therefore of the opinion that a lender would also consider this a risky business to lend a commercial mortgage against. An individual operator is unlikely to have substantial cash reserves and if they did this would be an unwise business venture to place their capital. Given the strength of the competition in better locations nearby, I have serious doubts if a new operation in this location would survive even after investment. There have been considerable lifestyle changes over the past few years, and more to come, which have made venues such as the North Arms unviable.*

*Taking these factors into consideration, an operator would deem the risk too great and I therefore conclude that the pub is unlikely to be commercially viable now and in the longer term.*

- 9.23. Officers agree with the general conclusions of the Council's consultant and, whilst we still have reservations over the length of the latest marketing campaign, it is considered that given the history of the site, with the building been vacant for a number of years, alongside the other marketing campaigns, on balance the loss of the pub is considered to be acceptable. Furthermore, the existence of the other buildings in lawful planning use as a public house in the village also reduces the impact of the loss of the facility to some extent and may allow more business opportunity for that building to reopen.
- 9.24. Overall, therefore, whilst the loss of a village public house is regrettable, in this specific case there is considered to be adequate justification presented by the applicant for the loss of the public house. As such, on balance, officers consider the proposal would not conflict with Policy BSC12 of the CLP 2015, Saved Policy S29 of the CLP 1996 and Government advice in the NPPF.

#### Impact on Heritage Assets

##### *Policy context*

- 9.25. The existing public house and the outbuilding to the east are both Grade II listed buildings and located within the Conservation Area (CA). They are therefore defined as designated heritage assets by the NPPF.
- 9.26. The NPPF requires that Local Planning Authorities take account of the desirability of sustaining and enhancing the significance of heritage assets. It goes on to state when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation and any harm should require clear and convincing justification. It goes on to state that where development proposals will lead to '*less than substantial harm*' to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
- 9.27. Policy ESD 15 of the CLP 2015 echoes this advice. Furthermore Section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is paid to these heritage matters.

##### *Assessment*

- 9.28. The building lies in an historic part of the village and while in need of some maintenance, it nevertheless has an attractive historic character and appearance which provides a positive contribution to the CA. Furthermore, given the location of the site near the historic heart of the village, its operation as a pub provides a social focal point for the community and therefore provides a positive contribution to the

significance and character of the CA in this respect. The use of the listed building as public house also contributes to the significance of the Listed Building.

- 9.29. Officers consider that the change of use of the property away from a public house would lead to some harm (*'less than substantial'* in terms of the NPPF's categories of harm) to the significance of the listed building and the CA through the loss of the historic and social use of the building. In such situations the NPPF advises that clear and convincing justification should be provided, and the harm needs to be weighed against the public benefits of the scheme including securing the optimal viable use.
- 9.30. In this case Officers consider that the applicant has demonstrated that the loss of the public house is justified and its use for this purpose is very unlikely to commence in a viable manner. Therefore, in Officers opinion clear and convincing justification has been provided to justify the harm. The proposal would provide a new viable use of the building which would incentivise repair and upkeep. The nature of a residential use is also likely to mean that the pressure to make changes to the historic fabric of the building would be reduced. The proposal would also make a small contribution to the Council's supply of land for housing, but the scale of the contribution tempers the significant weight to be afforded. Taking these matters together, and whilst giving weight to the harm caused to the heritage assets, the benefits of the scheme are considered to outweigh the harm in this case.
- 9.31. No external changes are proposed to the building in this application and any internal works would require separate listed building consent which would be assessed on its own merits. A planning informative would be placed on any permission to make this clear.

#### *Other matters*

- 9.32. The proposal would utilise the existing parking area and amenity spaces serving the public house for the new dwelling as these are within the red line plan accompanying the application. The barn would also be used as ancillary to the proposed dwelling as it lies within the red line. No alterations are proposed to this in the current application.
- 9.33. The proposed development would lead to the creation of a new dwelling so in accordance with Policy ESD3 of the CLP 2015 a condition to limit water use is proposed.

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

- 10.1. The proposed development would result in the loss of a community facility that, if opened, would contribute to the social wellbeing and economy of the village. However, in this case the pub has been closed for a number of years and whilst a previous purchaser had made attempts to refurbish the building these did not come to fruition. In the current application evidence has been submitted to show that the building would need significant investment to bring it back into use and that a viable business is unlikely to be achievable given the constraints of the building. There are alternative facilities in the village which would help to meet some of the day to day needs of residents and the marketing campaign has been unable to find a new operator for the building. Overall, the loss of the facility in this case is considered to be justified.
- 10.2. The loss of the use would also result in some less than substantial harm to the character of the Conservation Area and also the significance of the Listed Building. However, whilst this harm carries weight, given the findings on the viability of the existing building, the harm is considered to be outweighed by the benefits of the

scheme including finding a new viable use for the building. It is therefore recommended that planning permission be granted.

## **11. RECOMMENDATION**

### **GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW**

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 information contained within the application form and drawings Site Location Plan and Site P

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to safeguard the significance of heritage assets and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C18 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

3. Prior to the first occupation of the development hereby permitted, written confirmation that the development achieves a water efficiency limit of 110 litres/person/day under Part G of the Building Regulations shall be submitted to and approved in writing by the Local Planning Authority.

Reason: Cherwell District is in an area of water stress, to mitigate the impacts of climate change and in the interests of sustainability, to comply with Policies ESD1 and ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

#### **Informative**

The current permission relates solely to the change of use and does not authorise any internal or external changes. Any interior or exterior works to the building may require planning consent including Listed Building Consent.

Agenda Item 12  
**21/01561/F**

**Allotment Gardens West Of Roebuck Inn  
And South East Of The Blinking Owl Ph  
Banbury Road  
North Newington  
OX15 6AB**

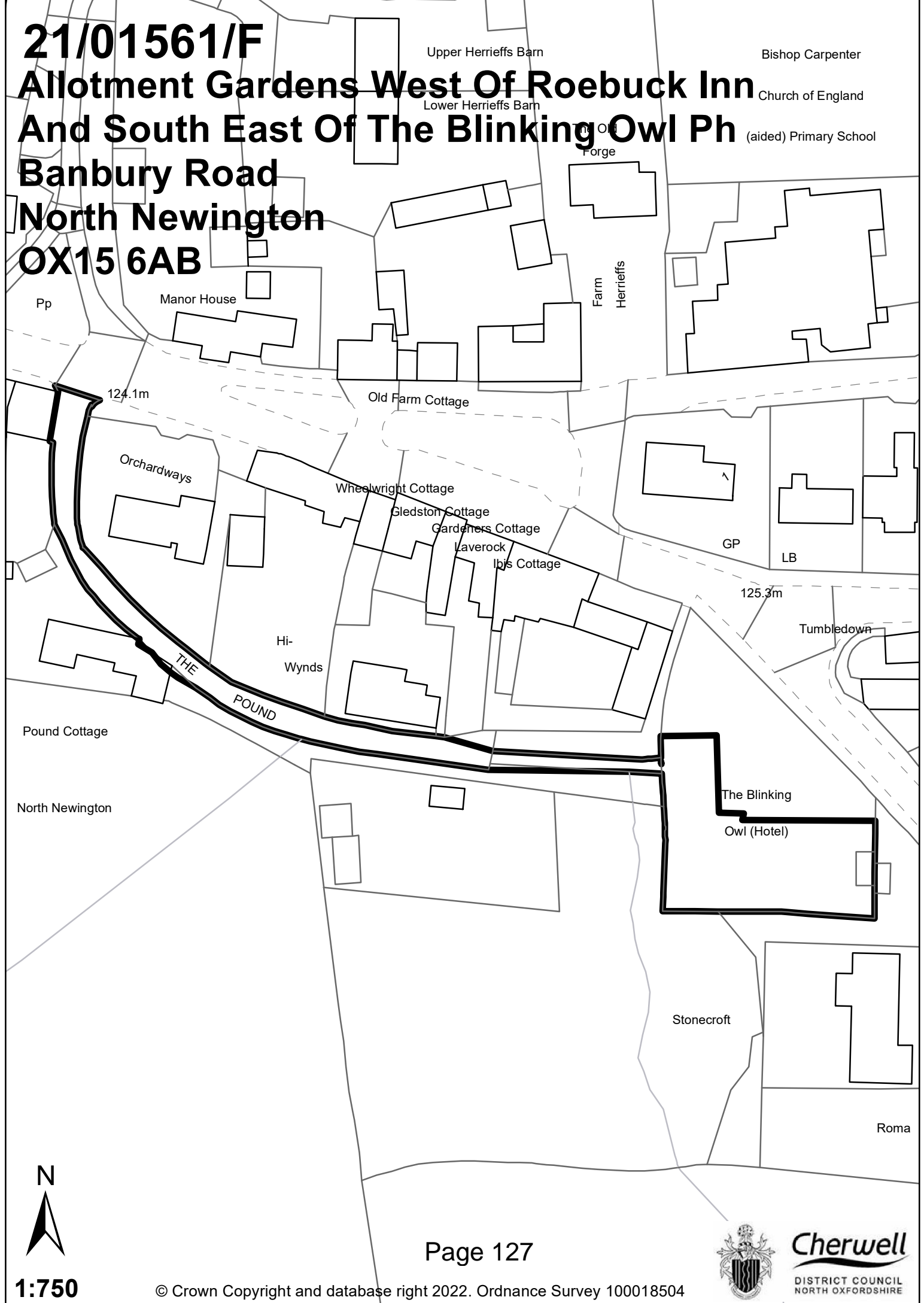


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21/01561/F

**Allotment Gardens West Of Roebuck Inn  
And South East Of The Blinking Owl Ph  
Banbury Road  
North Newington  
OX15 6AB**



1:750



21/01561/F

# Allotment Gardens West Of Roebuck Inn And South East Of The Blinking Owl Ph

## Banbury Road North Newington OX15 6AB





**Allotment Gardens West Of Roebuck Inn And South  
East Of The Blinking Owl Ph Banbury Road North  
Newington OX15 6AB**

**21/01561/F**

**Case Officer:** James Kirkham

**Applicant:** Mr Christopher McNally

**Proposal:** Erection of one detached dwelling and detached garage

**Ward:** Cropredy, Sibfords and Wroxton

**Councillors:** Cllr Chapman, Cllr Reynolds and Cllr Webb

**Reason for Referral:** Call-in request by Cllr Reynolds for the following reasons:

- Local concern and public interest
- Access problems
- Planning policy
- A similar previous submission on the site was referred to the Planning Committee.

**Expiry Date:** 19 July 2021

**Committee Date:** 14 July 2022

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**SUMMARY OF RECOMMENDATION: GRANT PERMISSION SUBJECT TO  
CONDITIONS**

**1. APPLICATION SITE AND LOCALITY**

- 1.1. The application relates to a parcel of mainly agricultural land located within the village of North Newington. There is a small, single storey building on the site that benefits from an industrial use (see relevant history below) allowed under permitted development; however, the remainder of the land is still considered to be an agricultural use. The site sits in an elevated position relative to the adjacent highway and properties to the north. A stone boundary wall runs along the boundary of the site adjacent to the Banbury Road and vehicular access is shown via The Pound to the west of the site.

**2. CONSTRAINTS**

- 2.1. The site is within the North Newington Conservation Area and the village's historic core which is considered of archaeological interest. There are a number of grade II listed buildings within the vicinity of the site; the nearest being The Roebuck (a former public house) to the east of the site and The Blinking Owl public House (known as Baker's Arms on listing description) to the north-west of the site. There are records of a number of protected and notable species (including species of bat and Swifts) within the vicinity of the site.

- 2.2. There are Public Rights of Way (PRoW) (Footpath 315/11/10 runs along the western boundary of the site and Footpath 315/18/20 runs along the alignment of The Pound to the west of the site) within the vicinity of the site. The application site is within an area where the geology is known to contain naturally occurring elevated levels of Arsenic and affected by Radon Gas, as is seen in many areas across the district.

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

- 3.1. The application seeks planning permission for an 'L' shaped, two storey, 3-bedroom detached dwelling to be positioned on the southern side of the site, with detached garage/outbuilding to the west. The proposed dwelling and associated garage/outbuilding would be finished in natural stone under a natural slate roof. A parking area is shown on the submitted plans with access to the site is via the Pound to the west of the site.
- 3.2. This application follows an identical planning application under application reference 14/01816/F which was refused as it had not been demonstrated that the applicant benefited from a lawful vehicular access to the site via The Pound and as such it was considered the development may result in parking being displaced to the public highway compromising highway safety contrary to government guidance contained within the National Planning Policy Framework.

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

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

Application: CHN.667/76  
Refused  
7 January 1977  
Detached bungalow with double garage (outline)

Application refused for the following reasons:

- 1) An important element in the character and visual; amenities of villages lies in the existence of tracts of open land lying within the village street scene and the proposal would constitute the loss of one of the few remaining areas of such land in North Newington to the detriment of the character of the village scene generally.
- 2) The proposed development would involve a very long means of access to the dwelling which would result in inconvenience in the serving of such a dwelling.
- 3) The access road to and from the site is inadequate to serve further development.
- 4) The proposed development would be likely to result in motor vehicles standing in the highway with consequent detriment to the safety and convenience of users of the public highway.

Application: CHN.687/77  
Refused  
27 February 1978  
Detached bungalow with double garage (outline)

Application refused for the following reasons:

- 1) An important element in the character and visual; amenities of villages lies in the existence of tracts of open land lying within the village street scene and the proposal would constitute the loss of one of the few remaining areas of such land in North Newington to the detriment of the character of the village scene generally.
- 2) That provision of vehicular access, visibility splays, an access drive and turning space would involve works which would be physically disruptive having regard to the levels of the site above the level of the public highway and the need to provide a satisfactory access gradient and such works would thereby be detrimental to the appearance and character of the village street.
- 3) That, having regard to the elevated nature of the site the proposed dwelling would be likely to be detrimental to the degree of privacy currently enjoyed by the occupiers of the existing dwellings to the north.

Application: CHN.268/81  
Refused  
18 May 1981  
Erection of new three bedroom bungalow with garage and new vehicular access, drive and turning area.

Application refused for the following reasons:

- 1) An important element in the character and visual; amenities of villages lies in the existence of tracts of open land lying within the village street scene and the proposal would constitute the loss of one of the few remaining areas of such land in North Newington to the detriment of the character of the village scene generally.
- 2) That provision of vehicular access, visibility splays, an access drive and turning space would involve works which would be physically disruptive having regard to the levels of the site above the level of the public highway and the need to provide a satisfactory access gradient and such works would thereby be detrimental to the appearance and character of the village street.
- 3) That the visibility onto the village road from the proposed access is inadequate and would thereby result in detriment to the safety and convenience of road users.
- 4) That, having regard to the elevated nature of the site the proposed dwelling would be likely to be detrimental to the degree of privacy currently enjoyed by the occupiers of the existing dwellings to the north.

Application: CHN.106/84

Refused

14 May 1984

Application for erection of new 3 bedroom bungalow with garage (outline)

Application refused for the following reasons:

- 1) That in the opinion of the Local Planning Authority the existing track by virtue of its sub-standard width, alignment and surface construction is inadequate to satisfactorily serve the proposed development and would result in inconvenience for service vehicles and personnel from public and private bodies who may have occasion to visit the premises.
- 2) That the proposed development would result in the intensification of the use of the sub-standard track where visibility on to the village road from the track is inadequate and would thereby result in the detriment to the safety and convenience of other road users.
- 3) An important element in the character and visual; amenities of villages lies in the existence of tracts of open land lying within the village street scene, and the proposal would constitute the loss of one of the few remaining areas of such land in North Newington to the detriment of the character of the village scene generally.

Application: 01/02095/OUT

Withdrawn

27 November 2001

Erection of 1 no. dwelling and new vehicular and pedestrian access (Outline)

Application: 02/01103/OUT

Refused

26 July 2002

Erection of 1 no. dwelling and new vehicular and pedestrian access (Outline)

Application refused for the following reasons:

- 1) The proposed development would be contrary to Policy G2 of the Oxfordshire Structure Plan and Policies H14, C22 and C30 of the adopted Cherwell Local Plan. The development of this site for one dwelling does not constitute infill development and by virtue of the loss of this elevated and open land, which is prominent in the street scene and Conservation Area, and the likely character and appearance of any dwelling, including the significant reduction in site levels, would result in development which is unsympathetic and detrimental to the character and appearance of the site and the street scene in general and would neither preserve nor enhance the character and appearance of the Conservation Area.
- 2) The unjustified loss of the front boundary wall from its original position in order to provide access to the site would be contrary to Policy C23 of the Cherwell Local Plan and would neither preserve or enhance the character and appearance of the Conservation Area.
- 3) The proposed access would be contrary to Policy T18 of the Oxfordshire Structure Plan and Policies TR2 and TR5 of the Cherwell Local Plan as it is sub-standard in terms of visibility and the traffic generated by the proposal would result in a hazard and be detrimental to the safety of other road users.

Application: 14/01758/PAO  
17 December 2014

Notification of Change of Use from agricultural to B8 (storage and distribution) under Class M of The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (as amended).

The above notification was submitted under permitted changes of use in The Town and Country Planning (General Permitted Development) (England) Order 2013 (as amended). As the building was less than 150 sqm in size, the applicant was only required to notify the council of their intent to implement a permitted change of use. It was stated that the use would commence on 17th October 2014

Application: 14/01816/F  
Refused  
10 September 2015  
Erection of 1 No. detached dwelling and detached garage

Application refused for the following reason:

- 1) The Pound is a designated public Right of Way and crosses a second public Right of Way at the access point to the site and it has not been demonstrated that the applicant benefits from a lawful vehicular access to the site via The Pound. As such the development may result in parking being displaced to the public highway compromising highway safety contrary to government guidance contained within the National Planning Policy Framework.

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

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

## **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records (amend as appropriate). The final date for comments was **14 June 2021**, although comments received after this date and before finalising this report have also been taken into account.

- 6.2. 27 no. letters of objection (including a legal representation and statutory declarations) from local residents and none in support have been received during the application. The comments raised by third parties are summarised as follows:

- The site/applicant does not benefit from a lawful right of vehicle access along The Pound.
- Legal opinions have been submitted indicating that the applicant does not have a vehicular access right to the site and would be unsuccessful in claiming a prescriptive easement (a right through long term use). Furthermore no application has been made by the applicant to the Land registry for a prescriptive easement to evidence their claimed use.
- It is a criminal offence to drive over a public right of way.
- Inappropriate access arrangement along the Pound; narrow track lacking in passing provision. Access from the Pound on to the main street is difficult to navigate and dangerous.

- Proposals would be to the detriment to the safety and amenity of users of the PRowS which bound the site and run along The Pound.
- Access is unsuitable for construction vehicles.
- Poor access for waste collection vehicles accessing bins from the proposed dwelling.
- By virtue of its scale and massing and elevated position the proposed dwelling would be overly dominant and to the detriment of visual amenities of the village and heritage assets
- Harm to the character and appearance of the Conservation Area and the setting of Listed Buildings. A separate Heritage Statement has been submitted which was instructed by one of the objectors. This states that the proposed development would block, restrict and be dominant in the view of the Roebuck and it is evident that the setting of the Roebuck will be change. The openness of the proposed development plot contributes to the significance of the heritage asset and would harm the setting. It would also harm the setting of the non-designated brick barn and the character and appearance of the Conservation Area. It concludes the proposal would lead to the upper end of 'less than substantial harm' and would not be outweighed by the public benefits.
- The elevated position of the dwelling will make it very dominant.
- Loss of view of countryside
- Proposal lacks a Heritage Statement
- The open view afforded by the allotment gardens provides a visually important break in development that positively contributes to the character of the area, the conservation area and setting of listed buildings.
- Detrimental impacts on residential amenity through the potential for over-looking particularly having regard to the levels and loss of light. Also harm to residential amenity through increased use of the access along The Pound if it is used for dwelling
- Potential detrimental impacts on existing retaining wall.
- Appropriate drainage required.
- Proposals lack any appropriate ecological impact assessment.
- Potential for disruption, nuisance and damage arising during any construction phase.
- Numerous other applications on the site have been refused.
- There is a record of planning enforcement on the site relating to storage which was dismissed at appeal
- Multiple errors on the application form.

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. NORTH NEWINGTON PARISH COUNCIL: **Objects**. Commenting on the following matters:

- The Parish Council strongly disputes the applicant's claims of right of access across The Pound, and that such access in their opinion has previously been done unlawfully. Further, they will explore with Oxfordshire County Council the merits of bringing a prosecution under the Road Traffic Act 1988.
- There has been very little evidence of regular use and access to the site in recent years.
- The Parish Council strongly objects to the development of the Allotment Gardens into residential use; reiterating objections made to the previous, unsuccessful application (14/01816/F), which they consider remain valid.
- The proposed development does not make a positive contribution to the character and appearance of a conservation area; causing an undue visual intrusion inconsistent with local character and harming the historic value of the landscape.
- The site represents an important open space close to the centre of the village. It is elevated above the road and will have a significant impact on the visual amenities of the area. Any building will dominate the environment and be overbearing, particularly in relationship to two neighbouring historic buildings.
- The Parish Council also supports the concerns raised by the North East Countryside Access Officer.

### CONSULTEES

7.3. ARCHAEOLOGY: **No objection**. There are no archaeological constraints to this scheme.

7.4. BUILDING CONTROL: A Building Regulations application will be required.

7.5. CDC LAND DRAINAGE: No comments to make on drainage.

7.6. CONSERVATION: **No objections subject to conditions** in relation to construction and materials. Commenting:

*"The principle of a dwelling in this location has been previously accepted and the earlier proposals were concluded not to result in an unacceptable level of heritage harm, consequently no heritage reason for refusal was given. However, further consideration has been given to the impact of the proposals.*

*As previously highlighted, it is accepted that due to the location any new building will be visually prominent on the higher ground as you enter the conservation area along the Banbury Road. This land is also adjacent to The Roebuck to the east and Bakers Arms to the north both of which are Grade II Listed Buildings. As a result of the prominent position any new building on this site will also unavoidably alter the appearance of the street scene, but it is considered that the impact is softened by the*

fact that the area of the land immediately adjacent to the road is to remain undeveloped.

*It is further acknowledged that the appearance of the conservation area in this location may be altered in such a way that it will result in some harm. This harm is however considered to be minor, at the lower end of less than substantial and does not constitute unacceptable harm to the overall character of the conservation area.*

*In addition the resulting changes to the street scene will inevitably alter the setting of The Roebuck and to a much lesser extent Bakers Arms Listed Buildings. It is considered that the significance of these buildings lies in their architectural character and any historic fabric that remains, therefore development within their setting is deemed to have a limited effect on this significance. It was previously concluded that the proposal would not result in heritage harm and there has been no material change that would contradict this conclusion. However, it is considered to be inevitable that the proposed development will result in some minor harm to the heritage assets. The NPPF requires that this harm should be weighed against the public benefit.*

7.7. ECOLOGY: Originally raised concerns regarding absence of a Preliminary Ecological Appraisal (PEA). Following receipt of additional information and photos states that a walkover survey would be best practice here to understand the value of the site to secure a net gain in biodiversity. There is a possibility of reptiles and badgers using the site. However, it appears as though the trees are being retained and whilst the proposal will lead to the loss of some hedgerow the timing of works could be conditioned to ensure nesting birds are not harmed. A condition could also be attached to ensure a net gain in biodiversity and this will need to consider the loss of existing features. As part of the land will remain undeveloped (blue line), reptile presence could be assumed and a mitigation strategy to ensure none are harmed during any works and able to utilise the other parts of the land within the applicants ownership (which should be enhanced for them) could be conditioned. A workshop on site is to be demolished and following the receipt of photographs the Councils Ecologists has been confirmed this would not be suitable for bats. In short the Ecologist considers that the lack of information falls into 'not best practice' as opposed to a reason for refusal on its own but necessitates the attachment of some more involved pre-commencement conditions.

7.8. ENVIRONMENTAL HEALTH: **No objections subject to conditions**, assessing the potential for land contamination and further in respect of securing Electrical Vehicle (EV) Charging infrastructure.

7.9. OCC HIGHWAYS: **No objections** subject to conditions requiring parking and the provision of a Construction Traffic Management Plan, and for no other means of access to be formed or used other than the access/s approved. Notes that the Highway Engineer did not object to the earlier refusal on the site and then states:

*In this latest application, the applicant claims to have a lawful right to vehicular access along The Pound and I therefore accept this is the case. The Pound serves other dwellings – I identified two with vehicles during my site visit but I understand there may be five properties – so there will be an increase in total movements compared to what is witnessed at present. This has to be considered against the movements that might be expected to result from the lawful use of the land. The existing junction of The Pound with Main Street has reasonably good visibility so even if there were to be a slight intensification of use, this would not be a reason for objection.*

*The red line area does not abut Banbury Road, so pedestrian access (other than via The Pound) will be taken along Public Right of Way 315/11/10, which comes out opposite Park Lane. If it is demonstrated in the future that the applicant (or future*



resident) does not have a right of vehicular access along The Pound, then they will wish to park their vehicles close to the pedestrian access.

*Banbury Road is not suitable for parking and there is no reason to expect this would happen, given that there is on-street parking available along Park Lane and in the layby opposite The Blinking Owl. Additional on-street parking is possible further to the west along Main Street.*

*Therefore, the LHA considers that it would not be possible to demonstrate that the displaced parking from a single dwelling will compromise highway safety. Should planning permission be granted, construction of the new dwelling will present severe challenges. A Construction Traffic Management Plan is requested by condition so that the applicant may demonstrate how, in particular, materials and plant are to be safely transported along The Pound.*

7.10. RAMBLERS ASSOCIATION: No comments received.

7.11. RIGHTS OF WAY OFFICER (OCC): Comments

*North Newington Footpath 11 runs along the Western boundary of the development site and the proposed access to this site would cross this footpath. North Newington Footpath 18 runs within the red line area of the development. The proposed access for the development is along this footpath track. Both of these Public Rights of Way only provide public access on foot. Anyone taking vehicles along or across The Pound will be doing so via a private vehicular right. It would be an unlawful act to take vehicular access along The Pound without private vehicular rights.*

*North Newington Footpath 18 is outside the landownership of the applicant, so they should be able to provide evidence to the Local Planning Authority that they hold private vehicular rights over this track.*

*In addition to the legal question of vehicular access to the site I am concerned that the development would significantly increase vehicular movements along the footpath. The footpath is a narrow, single lane track with a blind bend on a steep incline. There are no passing spaces to allow vehicles to pass one another, so any vehicular meetings would require at least one to reverse. This is a popular and well used footpath and the added vehicular movements are likely to cause increased conflict between walkers and vehicles. I have particular concerns about how the applicant intends to manage this during the construction period if planning permission was approved as The Pound would be unsuitable for any large construction or material delivery vehicles.*

*Finally, Footpath 18 is currently surfaced for the majority of its length. However, there is a short section of unsurfaced grass area. This would need to be brought up to a standard that could sustain regular movement of road vehicles. As the Highways Authority, Oxfordshire County Council's Countryside Access Team would need to be consulted in writing prior to any surfacing works taking place and a standard for materials and construction agreed prior to works starting. Oxfordshire County Council's Countryside Access Team would not accept a tarmac surface at this location and the applicant would be expected to maintain a surface installed to a safe and useable standard in the future.*

7.12. Further notes that if planning permission was approved, then standard measures in respect of protecting and maintain the PRow would also apply.

## **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 (CLP 2015) was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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
- Villages 1: Village Categorisation
- BSC1: District Wide Housing Distribution
- ESD1: Mitigating and Adapting to Climate Change
- ESD3: Sustainable Construction
- 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)

- C23: Retention of features contributing to character or appearance of a conservation area.
- C28: Layout, design and external appearance of new development
- C30: Design control
- C33: Protection of important gaps of undeveloped land
- ENV12 – Development on contaminated land

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Cherwell residential Design Guide SPD (2018)

## **9. APPRAISAL**

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

- Principle of development
- Design, and impact on the character of the area including heritage
- Highways
- Impact on Neighbour Amenity;

- Ecology & Biodiversity;
- Other matters

## Principle of Development

### *Policy Context*

- 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. In respect of new residential development there is a requirement for the provision of new housing of the right type in the right location at the right time, and that development should contribute to protecting and enhancing our natural, built and historic environment, as well as fostering a well-designed and safe built environment. Paragraph 8 of the NPPF sets out the Government's view of what sustainable development means in practice for the planning system. It is clear from this that sustainability concerns more than just proximity to facilities, it clearly also relates to ensuring the physical and natural environment is conserved and enhanced as well as contributing to building a strong economy, and in the context of this proposal this would include the preservation and enhancement of the historic environment. These aims are echoed within the policies of the CLP 2015 which looks to support sustainable development.
- 9.3. Paragraph 11 states that planning decisions should apply the presumption in favour of sustainable development. For decision making this means:
- approving development proposals that accord with an up-to-date development plan without delay; or
  - where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
    - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 9.4. Footnote 8 clarifies that for applications involving housing, housing policies will be out of date when the Council cannot demonstrate a 5 year land supply. Cherwell's position on five-year housing land supply is set out in the 2021 Annual Monitoring Report (AMR). This highlights that despite a strong record of delivery since 2015, there is a land supply position of 3.5 years for the period 2022-2027. According to the AMR, an additional 2,255 homes would need to be shown to be deliverable within the current 2022-2027 five-year period to achieve a five-year supply as required by the NPPF. Therefore, the relevant housing policies are out of date and are reduced in weight.
- 9.5. However, paragraph 12 of the NPPF advises that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.
- 9.6. The Development Plan in Cherwell consists of the CLP 2015 and the Saved Policies of the Cherwell Local Plan 1996 and has a strong urban focus. Therefore, the rural housing strategy for the rest of the district is more constrained and seeks to reduce

the level of growth in the district's villages particularly the smaller villages with limited services and facilities and public transport.

- 9.7. Policy Villages 1 of the CLP 2015 is the most relevant policy to this application and groups villages into three separate categories (A, B and C). North Newington is recognised as a Category C village which are considered to be the least sustainable settlements in the District's rural areas (which is highlighted by the village's lack of community facilities) and as such new residential development is restricted to new infill development and conversions.

#### *Assessment*

- 9.8. The application site as a relatively long planning history. The latest application (14/01816/F refers) was considered under the Cherwell Local Plan Part 1 (2015) so the local planning policy context remains similar albeit the Council cannot currently demonstrate a 5 year land supply. This is therefore a significant material consideration.
- 9.9. Under Policy Villages 1 North Newington is a Category C village where development is restricted to conversion and infill development within the built limits. The application site has been considered in previous applications to be in the built-up limits of the village and there are not considered to be any material changes which would result in a different assessment being made in this regard.
- 9.10. The Cherwell Local Plan 2015 states '*Infilling refers to the development of a small gap in an otherwise continuous built-up frontage*' (Para C.264). The application site does represent a gap within the village however the built form is different on either side of the site. The existing gap along the road frontage is approximately 75m wide although the applicant does not own all of the land forming the gap. In the 2014 application (which was determined after the adoption of the current Local Plan) Officers previously considered that although the proposal would not wholly comply with the definition of infilling due to the size of the gap and the disjointed frontage, given that the proposal does respect the linear development along the Banbury Road and is a gap between existing buildings, that it would be difficult to defend a reason for refusal at appeal based on non-compliance with the Council's definition of infilling. This is still considered to be applicable in the current application. Therefore whilst there may be some minor conflict with Policy Villages 1 of the CLP 2015, this is a finely balanced judgement, and furthermore this policy is considered to be 'out of date' given the absence of a 5 year land supply. In addition the scale of development proposed is also in keeping with the scale of development directed to North Newington for a single dwelling.
- 9.11. Overall, given the above, the general principle of accommodating a single dwelling on the site is therefore considered to be acceptable subject to other considerations which are discussed below.

#### Design, and impact on the character of the area; including Heritage impact

##### *Policy Context*

- 9.12. Government guidance contained within the NPPF states that good design is a key aspect of sustainable development and is indivisible from good planning, and planning should contribute positively to making places better for people. Further, permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.
- 9.13. These aims are 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:

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

9.14. 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. Proposals will not be permitted if they would:*

- *Be inconsistent with local character;*
- *Harm the setting of settlements, buildings, structures or other landmark features;"*

9.15. 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. Saved Policy C33 states that the council will seek to retain any undeveloped gap of land which is important in preserving the character of a loose-knit settlement structure or in maintaining the proper setting for a listed building or in preserving a view or feature of recognised amenity or historical value.

9.16. The Council's Residential Design Guide SPD seeks to ensure that new development responds to the traditional settlement pattern, character and context of a village. This includes the use of continuous building forms along principle routes, the use of traditional building materials and detailing and form that respond to the local vernacular.

9.17. In the current case the application site also is located in North Newington Conservation Area and within the setting of a number of listed buildings. These are defined as designated heritage assets by the NPPF. The NPPF states assets should be conserved in a manner proportionate to their significance and that great weight should be given to their conservation. It states any harm should require clear and convincing justification. Paragraph 202 states where development will lead to 'less than substantial harm' to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the scheme.

9.18. The Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting and special attention is given to the desirability of preserving and enhancing the character and appearance of Conservation Areas.

### *Assessment*

- 9.19. The proposed development is identical to the earlier refused application on the site in 2014. Whilst the 2014 application was refused, the proposal's impact on the Conservation Area, setting of nearby listed buildings and the general character of the area was considered to be acceptable by the Planning Committee and did not constitute a reason for refusal. This is a significant material consideration when considering the merits of the case.
- 9.20. The application site consists of a gap in the built frontage within the village. Whilst in general policy terms the development of the site may be appropriate, when deciding if a 'gap' is suitable for new development consideration must also be given to the development form and the contribution the gap makes to the character and appearance of the locality and heritage assets as outlined in Saved Policy C33. The planning history highlights the importance of this site as a gap within the village; however, this does not rule out any development on the site, and a judgement needs to be made as to whether the development respects the character and appearance of the area and designated heritage assets.
- 9.21. The current proposal is for a dwelling to be located towards the southeast corner of the site adjacent to the neighbouring property Stonecroft. Its set back position and siting on the plot help to preserve the openness of much of the frontage of the plot and the positive contribution that this openness provides to this part of the Conservation Area. The red line site area was amended during the course of the 2014 application to restrict the extent of the application site and to deliberately exclude a large portion of the open land that fronts the Banbury Road. This remains the case in the current application. This would ensure that any future occupier is unable to use the land at the front of the site for domestic purposes and prevent the erection of ancillary domestic buildings on that parcel of land. This helps to ensure that part of the open character and feel of the village is retained in this location albeit the largely agricultural character of the plot will be lost given the change of use of the remainder of the parcel of land.
- 9.22. The site is located on considerably higher ground than the adjacent Banbury Road with an approximately 1.5 to 2 metre high wall adjacent to the pavement. The land continues to rise in the site and results in the site being between 3 metres (in the east) to approximately 6 metres (in the western part of the site) higher than the adjacent footway. This would increase the prominence of the dwelling in the street scene; however, the set back and design of the dwelling help to reduce the prominence of the building. Furthermore, given the topography of the village it is not unusual for dwellings to be set above or below the level of the adjacent road. Concerns have been raised that the street scene elevations may not be accurate in relation to showing the development in relation to the height of the adjacent buildings. Full details of the finished levels of the site in relation to the ridge heights of the surrounding buildings could be controlled through condition.
- 9.23. The siting of the dwelling is considered to respect the linear form of the village and the detailed design and form of the dwelling is considered to be acceptable and would be in keeping with the local vernacular with the use of local stone and slate roof. It would provide a frontage to the east which would address the Banbury Road when approaching the village from the south. Full details of the materials and detailing can be secured by planning condition.
- 9.24. Views of the site would also be available from the public footpath to the south west of the site running through the open countryside. It is considered without appropriate landscaping the proposed dwelling may appear rather stark in these views. It is therefore recommended that landscaping and boundary treatment conditions be applied alongside removal of permitted development rights.

9.25. Concerns have also been raised regarding the impact of the development on the setting of the nearby Listed Buildings including The Roebuck to the east of the site on the opposite side of Banbury Road. This is a former historic public house and forms an important building at the entrance of the historic core of the village. The proposed development will be seen in the context of this building; however, it is considered the siting of the dwelling in the plot and the retention of the area of open land to the frontage would help to mitigate the extent of harm to the setting of the building and would not significantly challenge the landmark status of The Roebuck. Whilst the Roebuck may have historically enjoyed a more open countryside setting at the entrance to the village this has been diminished and the setting of the building is now seen in the context of other built form within the village which the proposed development would form part of. It is therefore not considered that the proposal would significantly impinge on the setting of this building. The proposal is not considered to result in any harm to the setting of other listed buildings in the locality given their location and the scale of the proposal.

9.26. The Conservation Officer has raised no objection to the proposal after giving consideration to the submitted Heritage Assessment from an objector. In conclusion there is considered to be some minor 'less than substantial harm' caused to the character and appearance of the Conservation Area and setting of The Roebuck. However, this is considered to be limited and at the lower end of the spectrum of harm. In such cases the NPPF advises that this harm needs to be weighed against the public benefits of the scheme whilst acknowledging the statutory duties to give considerable importance to any harm to heritage assets. In this case there would be a modest economic benefit associated with the construction of the dwelling and the jobs this would provide. There would also be social benefits to providing a new dwelling in an area where there is a shortfall in housing supply within the built limits of the settlement. Taking these matters together, and given the limited harm, officers consider that the benefits of the scheme outweigh the limited harm to the designated heritage assets.

#### *Conclusion*

9.27. The scheme is identical to the 2014 application which was considered to be acceptable in these respects. Overall, for the reasons set out above, it is considered that the proposed dwelling and garage would be acceptable in regard to the character and appearance of Conservation Area and the setting of the nearby listed buildings. The development would therefore comply with Policies ESD15 of the CLP 2015, Saved Policies C28, C30 and C33 of the CLP 1996 and Government guidance contained within the NPPF.

#### Highways and parking

##### *Policy Context*

9.28. 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*"; whilst Policy SLE4 states that: "*All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported*".

9.29. Paragraph 108 of the NPPF states that in assessing development proposals it should be ensured that safe and suitable access to the site can be achieved for all users. It goes on to state 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.

- 9.30. Driving a vehicle across a public Right of Way is an offence under the Road Traffic Act 1988 if the person does not have a private vehicular right to use the route or doesn't have lawful authority to do so. If this is the case, the police could choose to prosecute an individual therefore preventing them from using the access and in turn, preventing the required parking and manoeuvring areas to be provided for a dwelling. This is a material planning consideration in that planning permission could be granted for a dwelling without the benefit of adequate vehicular access and associated of street parking may result in highway safety issues as a result of this displaced parking.
- 9.31. Rights of vehicular access are commonly shown on deeds or can be gained through what is referred to as a prescriptive use. A prescriptive use is where lawful access is gained via long term use of the access. In the case of an access across a public Right of Way a period of 20 years or more would constitute a long-term use.

#### *Assessment*

- 9.32. The application site, denoted by the red line, includes the land where the proposed dwelling is situated and also the length of The Pound which is a narrow access track to the west of the site linking back to Main Street. The ownership of The Pound is unknown and therefore the applicants have served the relevant ownership certificate including placing an advert in the press. The application drawings show the dwelling served with vehicular access from The Pound to a parking area and garage on the site.
- 9.33. A public Right of Way runs along The Pound and another crosses adjacent to the site entrance linking Banbury Road to the open fields to the south. Both of these are for access on foot and the County Public Rights of Way Officer (ROW officer) state that anyone taking vehicles along or across The Pound will be doing so via a private vehicular right and it would be an unlawful act to take vehicular access along The Pound without private vehicular rights. The Pound also provides existing vehicular access to a number of dwellings.
- 9.34. The 2014 application, which is identical to the current scheme, was refused on site for the following reason:
- 1) The Pound is a designated public Right of Way and crosses a second public Right of Way at the access point to the site and it has not been demonstrated that the applicant benefits from a lawful vehicular access to the site via The Pound. As such the development may result in parking being displaced to the public highway compromising highway safety contrary to government guidance contained within the National Planning Policy Framework.*
- 9.35. In the current application there is an ongoing dispute between the existing residents and the applicant over whether the applicant has vehicular access rights over The Pound. The applicant claims that he has acquired a vehicular right to use 'the Pound' to access the application site through a prescriptive easement by using the access for in excess of 20 years. However, this has not been established through the Land Registry or through any other formal legal process and as such has to remain just an assertion on the applicant's part and the Council is in no position to verify this. In any event the Council's Legal Services team advises that even if a right has been acquired it is far from certain that such a right can be used to access a new dwelling as opposed to the established use of the site over the last 20 years. Legal opinions have also been submitted from the objectors which raise queries over the applicant's evidence of use and also highlight that even were a prescriptive easement to be established by the applicant this may not extend to the use of the access for a dwelling and construction. It is not the role of the planning system to determine whether the applicant has vehicular rights of access over The Pound and this falls outside of the planning system in other legislation. However, in the earlier application, the Council



considered that without such assurances that the applicant can use the access, other planning harm was likely to arise in the form of on-street parking in the locality which would be detrimental to highway safety.

- 9.36. It is also important to note that planning permission would not override other legal issues that may arise from the development, such as unlawful use of the access or restrictive covenants, and these are enforceable by other parties outside of the planning system and could ultimately prevent the development from proceeding even were planning permission to be granted.
- 9.37. In the current application the Local Highway Authority (LHA) has raised no objection to the proposal and notes whilst the proposal may lead to an increase in vehicles using The Pound (if the applicant has legal rights to use it) they do not consider this would result in a reason to object to the application and consider the visibility at the access to be acceptable. The ROW officer has raised some concerns over the potential conflict between users of the footpath and additional vehicles using The Pound given the narrow nature of the lane however this remains the same as the earlier application on the site and was not considered to form a reason for refusal. The applicant has also stated that the planning history of the site allows for some B8 use of the site which would mean a greater number of vehicles could utilise the access. However, it is unclear whether this has ever taken place and, given the doubts over the legal rights of the access, the very limited size of the building in question and the condition of the buildings, this is not considered to carry any significant weight in the consideration of these issues.
- 9.38. In the current application the LHA also advises: *If it is demonstrated in the future that the applicant (or future resident) does not have a right of vehicular access along The Pound, then they will wish to park their vehicles close to the pedestrian access. Banbury Road is not suitable for parking and there is no reason to expect this would happen, given that there is on-street parking available along Park Lane and in the layby opposite The Blinking Owl. Additional on-street parking is possible further to the west along Main Street. Therefore, the LHA considers that it would not be possible to demonstrate that the displaced parking from a single dwelling will compromise highway safety.*
- 9.39. Therefore, in this case even if the applicant is not able to use The Pound to access the site to provide off-street parking for the dwelling, the LHA considers that future occupants would be able to park on the street without causing a highway safety concern that would warrant an objection from the LHA. It is noted that there is already on street parking in the village for a number of dwellings and this is not unusual in historic villages. If a right of access is not available the future occupants are likely to park on either Park Lane or Main Street and access the site using the public rights of way. To discourage residents from parking on the Banbury Road immediately to the east of the site it is recommended that a condition be imposed to provide full details of boundary enclosures and remove permitted development rights for new gates to be installed. This would ensure that the Council could control that there was no pedestrian access from Banbury Road to the front of the site.
- 9.40. The fact that the LHA has now stated that they would not object to the scheme, even if on site parking was not available is a materially different position to the 2014 application. Whilst this might not be ideal, given the lack of objection from the LHA on highway safety grounds Officers do not consider that a reason for refusal on highway safety grounds could be sustained at appeal and therefore the earlier reason for refusal is considered to be overcome.
- 9.41. The LHA has requested conditions for a Construction Traffic Management Plan (CTMP) which could be controlled through condition and would be required prior to

any works commencing. If the applicant is not able to use The Pound as an access, they would need to provide alternative arrangements to ensure the construction period did not result in significant highway safety issues. The LHA has also requested a condition that the parking and turning areas be provided on site however given their conclusions regarding the lack of necessity for on-site parking, this is not considered to meet the relevant planning test for planning conditions of being necessary to make the development acceptable in planning terms.

- 9.42. Notwithstanding the above, were the applicant to demonstrate rights to use the access and proceeded to use this lawfully for a dwelling a number of works would be needed to The Pound such as providing a surface to the final length of the access closest to the site which is currently laid to grass. This could be controlled by condition to ensure it is appropriate to the character and appearance of the area and the public right of way. The land is within the red line of the application site and whilst the applicant may not own it, they would need to get separate legal advice over what other consents, extraneous to planning, they would need to undertake these works.

#### *Conclusion*

- 9.43. Whether the applicant has vehicular access rights over The Pound to serve a new dwelling is uncertain and contrary assertions have been put forward by the applicant and the objectors. However, notwithstanding this the LHA has stated that even without designated off-street parking to serve the dwelling, it is satisfied that the additional parking from a single dwelling could be accommodated on the existing streets without causing significant highway safety concerns. On balance, Officers agree with this assessment and therefore the development is considered to be acceptable in highway and parking terms and comply with Policy SLE4 of the CLP 2015 and Government advice in the NPPF.

#### Impact on Neighbour Amenity

##### *Policy Context*

- 9.44. Saved Policy C30 of the CLP 1996 requires that new developments provide standards of amenity and privacy acceptable to the local planning authority. Policy ESD15 of the CLP 2015 states that new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space.

##### *Assessment*

- 9.45. The application is identical to the earlier refused application on the site which was considered to be acceptable in this regard and there have not been any material changes in circumstances which would warrant a different conclusion being reached in officers assessment.
- 9.46. The proposal would impact on some views from the properties on the opposite side of Banbury Road and given its elevated position these impacts would be greater. Whilst there would undoubtedly be an impact on these properties' amenity, given the distance between these properties and the proposal, the fact the proposal would be separated by a public road and the existing relatively tight interrelationship between the existing properties to the east of Banbury Road; it is not considered that the increase in overlooking, loss of privacy or loss of outlook to these properties would be significant to justify refusal of the application.
- 9.47. Stonecroft is a bungalow located to the south of the application site. It has a blank side elevation facing towards the application site and is separated by a strip of third party land. Given the siting and scale of the proposed dwelling and its relationship

with this property it is not considered to result in any significant loss of outlook or light to this property. There are some rooflights proposed serving a first floor bedroom which would provide views over the rear garden of this property however these would be located approximately 16 metres from the boundary and face onto the side boundary of the site and are therefore considered to be a sufficient distance to ensure there is not significantly harmful levels of overlooking.

#### *Conclusion*

- 9.48. Officers consider that the development as proposed would be an acceptable distance from any properties in order to avoid a loss of amenity or privacy, in accordance with the above Policies.

#### Ecology & Biodiversity

##### *Policy Context*

- 9.49. 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 where they are justified on a site which may affect habitat or species of known ecological value.
- 9.50. The NPPF states that when determining planning applications, local planning authorities (LPAs) should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 9.51. 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.
- 9.52. There are also Legislative requirements set out in The Conservation of Habitats and Species Regulations 2017 which must be taken into account in considering development proposals where habitats or species might be encountered.

##### *Assessment*

- 9.53. The current application is not accompanied by an ecological survey. The site is currently overgrown however it is understood that the site was cleared in 2021 by the applicant.
- 9.54. The Council's Ecologist (CE) originally recommended that the applicant undertook a Preliminary Ecological Appraisal (PEA) for the site to include checks for badgers and reptiles as well as priority species. They also noted that the site was located in the amber zone for Great Crested Newts on the District Licencing impact maps. Following these initial comments, the applicants raised concerns that they had not been required to submit an appraisal in the 2014 which was considered to be acceptable on ecological grounds by the Council's Ecologist.

- 9.55. Having considered the matter further and having regard to the current nature of the site, whilst considering that a PEA would be best practice the CE considers that the timings of the work to ensure nesting birds are not harmed could be conditioned. The CE also considers that a full biodiversity enhancement scheme could be conditioned although it would need to assume the current value of the area is lost. The CE also notes that, given the land to the front of the site (blue line) would be retained undeveloped and is in the same ownership as the applicant reptile presence could be assumed and a mitigation strategy to ensure they are harmed during any works and are able to utilise other parts of the land could be conditioned.
- 9.56. The CE had raised some concerns over the impact on bats given the loss of buildings however having now considered the nature of the buildings, which would be lost as part of the development (corrugated clad, very shallow roof pitch) does not consider that they are suitable for roosting bats.
- 9.57. Overall, the CE now advises that in their assessment the lack of survey in this case falls into the category of 'not best practice' as opposed to a reason for refusal and planning conditions could be used to mitigate the impacts of the development. The proposal is therefore considered to comply with Policy ESD10 of the CLP 2015 and government advice in the NPPF.

#### Other matters

- 9.58. The Environment Agency's flood maps indicate that the site is not within a higher risk flood zone where residential development is acceptable in principle and given the limited scale of the proposal the drainage details would be considered under Building Regulations.
- 9.59. The scheme includes the provision of a new dwelling and therefore the reduced water usage requirement under Policy ESD3 of the CLP 2015 should be secured by condition.
- 9.60. The Council's Environmental Protection Officer has requested that ground investigation be undertaken to identify any contamination on the site and remedial measures that may be required to make it suitable for residential use. These can be secured through conditions. They have also requested that EV charging points be installed to serve the dwelling however given the doubt over whether access is attainable for a vehicle along The Pound and also the fact these matters are now being covered by Building Regulations this is not considered to be necessary.
- 9.61. A number of statements have been made regarding the past actions of the applicant including the unlawful use of the site and the welfare of animals kept on the site however these are not material to the consideration of the application which needs to be assessed on its planning merits.

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

- 10.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 10.2. The Council cannot demonstrate a 5 year land supply and therefore the most important policies for determining the application are considered to be out of date. Officers do not consider that heritage grounds form a clear reason for refusal and as such paragraph 11d(ii) of the NPPF is engaged which means granting permission

unless any adverse impact would significantly and demonstrably outweigh the benefits.

- 10.3. In this case there is considered to be minor conflict with Policy Villages 1; however, the scale of the development is considered to be appropriate to the settlement and is well related to the built form of the village. There would be some minor 'less than substantial harm' to the designated heritage assets; however, as outlined above this is considered to be outweighed by the benefits of the scheme. The proposal's impact on residential amenity and ecology is considered to be acceptable and can be controlled through condition. In regard to highway matters, whilst the applicant has not conclusively evidenced that they have a right of vehicle access over The Pound to serve a dwelling, the LHA has advised even without off-street parking the proposals it would not object on highway safety grounds. Therefore, the displaced parking is not considered to justify refusal of the application in this case.
- 10.4. The scheme would lead to some modest economic benefits and would provide a new house which would make a small contribution to the shortfall in the district.
- 10.5. Furthermore, the scheme is identical to an earlier refused application on the site in 2014, which was only refused given concerns over the rights of access and displaced parking. In light of the comments from the LHA these matters are considered to be overcome.
- 10.6. Taking these matters together the adverse impacts of the scheme are not considered to significantly and demonstrably outweigh the benefits of the scheme. It is therefore recommended that planning permission be granted.

## **11. RECOMMENDATION**

That permission is permitted, with the following conditions thn(s):

1. The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this consent.

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.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application form and drawings numbered 14 21 07 C, 14 21 S01, 14 21 05 D, 14 21 06 and 14 21 08 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.

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

Reason: To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and

to ensure the site is suitable for the proposed use to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

4. If a potential risk from contamination is identified as a result of the work carried out under condition 3, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

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

5. If contamination is found by undertaking the work carried out under condition 4, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

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

6. If remedial works have been identified in condition 5, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 5. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

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

7. No development shall commence unless and until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in strict accordance with the approved CTMP.

Reason: In the interests of highway safety and the residential amenities of

neighbouring occupiers and to comply with Government guidance contained within the National Planning Policy Framework.

8. No development shall commence unless and until an Ecological Appraisal with any mitigation and protection strategies required as a result of the findings along with a biodiversity enhancement scheme demonstrating a net gain in biodiversity on the site has been submitted and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in strict accordance with the approved details in a timetable to outlined within the approved document.

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

9. 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 the Government's aim to achieve sustainable development as set out in the National Planning Policy Framework.

10. No development shall commence above slab level unless and until a stone sample panel (minimum 1m<sup>2</sup> in size) has been constructed on site in natural stone, which shall be inspected and approved in writing by the Local Planning Authority. Thereafter, the external walls of the dwelling shall be laid, dressed, coursed and pointed in strict accordance with the approved stone sample panel.

Reason - To ensure that the development is constructed and finished in materials which are in harmony with the building materials used in the locality and to comply with Policy ESD15 of the Cherwell Local Plan Part 1 (2015), Saved Policy C28 of the Cherwell Local Plan (1996) and Government guidance contained within the National Planning Policy Framework.

11. No development shall commence above slab level unless and until samples of the proposed roof slate for the dwelling (not fewer than 3) have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details and shall be retained as such thereafter.

Reason - To ensure that the development is constructed and finished in materials which are in harmony with the building materials used in the locality and to comply with Policy ESD15 of the Cherwell Local Plan Part 1 (2015), Saved Policy C28 of the Cherwell Local Plan (1996) and Government guidance contained within the National Planning Policy Framework.

12. Notwithstanding the details shown on the approved plans, further details of the architectural detailing of the exterior of the dwelling, including the design, materials and colour/finish of the windows and doors and their lintels and cills (including details at a scale of 1:10), and the eaves and verge treatment, shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of the dwellings above slab level. The development shall not be carried out other than in accordance with the approved details and shall be retained as such thereafter.

Reason - To ensure that the development is constructed and finished in materials which are in harmony with the building materials used in the locality and to comply with Policy ESD15 of the Cherwell Local Plan Part 1 (2015), Saved Policy C28 of the Cherwell Local Plan (1996) and Government guidance contained within the National Planning Policy Framework.

13. All rooflights shall be conservation grade rooflights that fit flush with the plane of the roof.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan Part 1 2015.

14. 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(s) shall not be extended or altered without the grant of further specific planning permission from the Local Planning Authority.

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 neighbouring properties and heritage assets in accordance with Policy ESD15 of the Cherwell Local Plan Part 1 (2015), saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

15. Notwithstanding the provisions of Classes A to B (inc.) of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments, no gates, wall or fences shall be altered or erected and no new means of access shall be created without the grant of further specific planning permission from the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard highway safety and heritage assets in accordance with Policies SLE4 and ESD15 of the Cherwell Local Plan Part 1 (2015), saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

16. Notwithstanding the details on the approved plans and prior to the commencement of the development hereby approved, a plan showing full details of the finished floor levels and ridge height for the dwelling and finished levels of the site in relation to existing ground levels at the site and surrounding land and the eaves and ridge height of the surrounding properties shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in strict accordance with the approved levels plan.

Reason - To ensure that the development is constructed in harmony with the surrounding buildings and heritage assets and to comply with Policy ESD15 of the Cherwell Local Plan Part 1 (2015), Saved Policy C28 of the Cherwell Local Plan (1996) and Government guidance contained within the National Planning Policy Framework.

*Planning note: The levels shall be expressed as above ordnance datum.*



17. Notwithstanding the details on the approved plan, prior to the occupation of the dwelling hereby approved full details of the enclosures along all boundaries and within the site shall be submitted to and approved in writing by the Local Planning Authority. This shall demonstrate there will be no pedestrian access to Banbury Road from the frontage of the site. Thereafter, the approved means of enclosure shall be erected in accordance with the approved details, prior to the first occupation of the dwelling and thereafter retained and not altered from the approved specification.

Reason - To ensure the satisfactory appearance of the completed development and to discourage parking on the frontage of the site on Banbury Road and to comply with Policy ESD15 of the Cherwell Local Plan Part 1 (2015), Policies C28 and C30 of the adopted Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

18. A scheme for landscaping the site shall be provided to and approved in writing by the Local Planning Authority which shall include:-
- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch etc),
  - (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation and details of protective measures during construction.
  - (c) details of the hard landscaping including hard surface areas, pavements, pedestrian areas and steps.

Such details shall be provided prior to the development commencing or such alternative time frame as agreed in writing by the developer and the Local Planning Authority. The hard landscape details shall be carried out prior to the first occupation of development. 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,] [or in accordance with any other program of landscaping works previously approved in writing by the Local Planning Authority] 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 a satisfactory landscape scheme is provided in the interest of well planned development and visual amenity and to accord with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

19. Prior to the first occupation of the development hereby permitted written confirmation that the development achieves a water efficiency limit of 110 litres/person/day under Part G of the Building Regulations shall be submitted to and approved in writing by the Local Planning Authority.

Reason: Cherwell District is in an area of water stress, to mitigate the impacts of

climate change and in the interests of sustainability, to comply with Policies ESD1 and ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

20. Prior to any works to the accessway known as The Pound, full details of any new surfacing or other changes shall be submitted and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Reason: To protect the character and appearance of the area and ensure the proposed are appropriate for the public right of way in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

**Planning Note:**

*The granting of planning permission does not authorise a right of way over the The Pound or grant rights to undertake works without the relevant authorisations. These matters lie outside of the planning system and the applicant is advised to seek separate legal advice on the rights of access and landowners permission to undertaken any such works.*

**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. 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.
3. Temporary obstructions. 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.
4. Route alterations. 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.

5. Gates / right of way: 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. No new gates should be placed across the Public Right of Way
6. Vehicle access (construction): 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 at the County Council. 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.
7. Vehicle access (Occupation): No vehicle access may be taken along or across a public right of way to residential or commercial sites without prior permission and appropriate safety and surfacing 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, their contractors, or the occupier to put right / make good to a standard required by the Countryside Access Team.

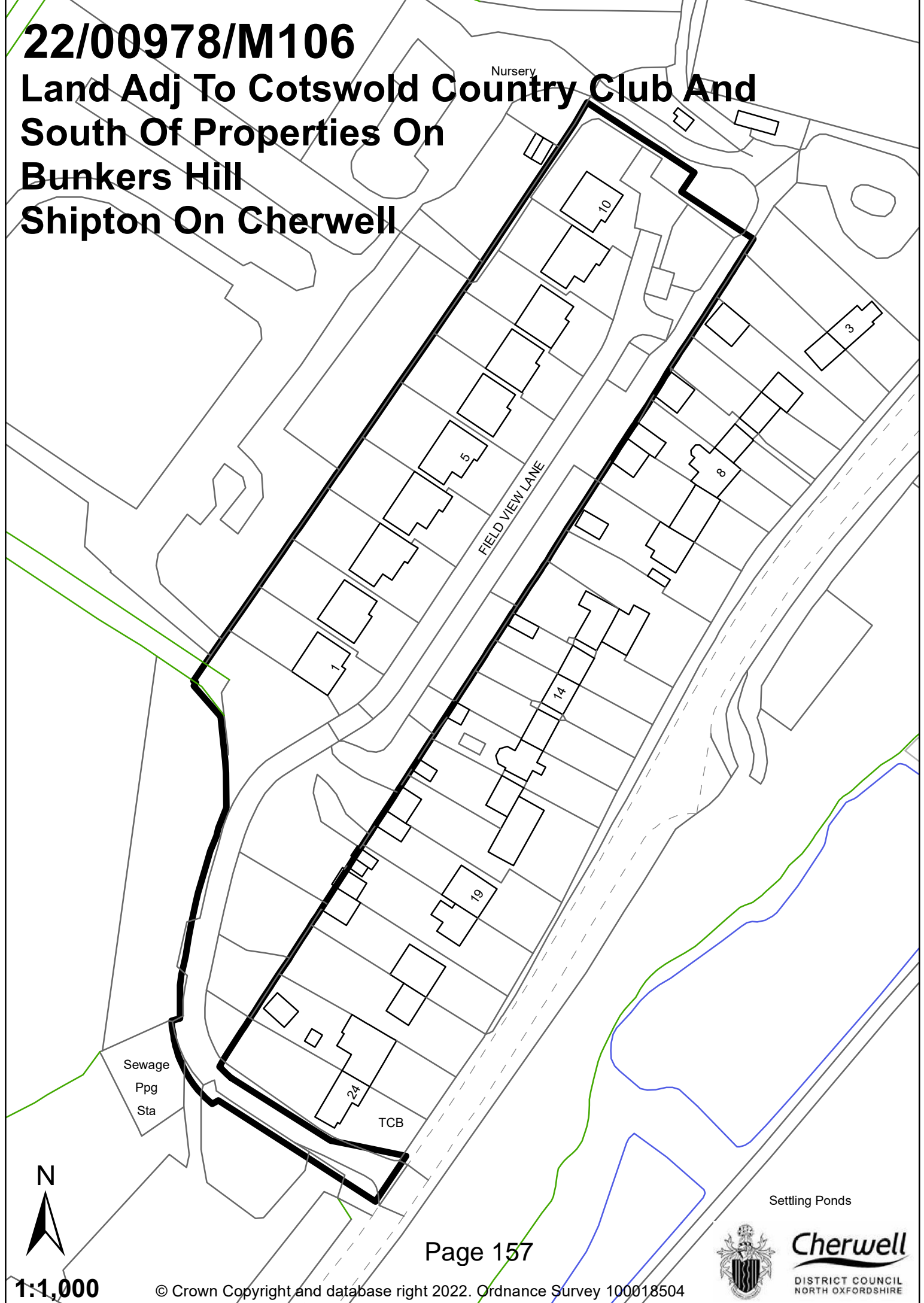
Agenda Item 13  
**22/00978/M106**

**Land Adj To Cotswold Country Club And  
South Of Properties On  
Bunkers Hill  
Shipton On Cherwell**



**22/00978/M106**

**Land Adj To Cotswold Country Club And  
South Of Properties On  
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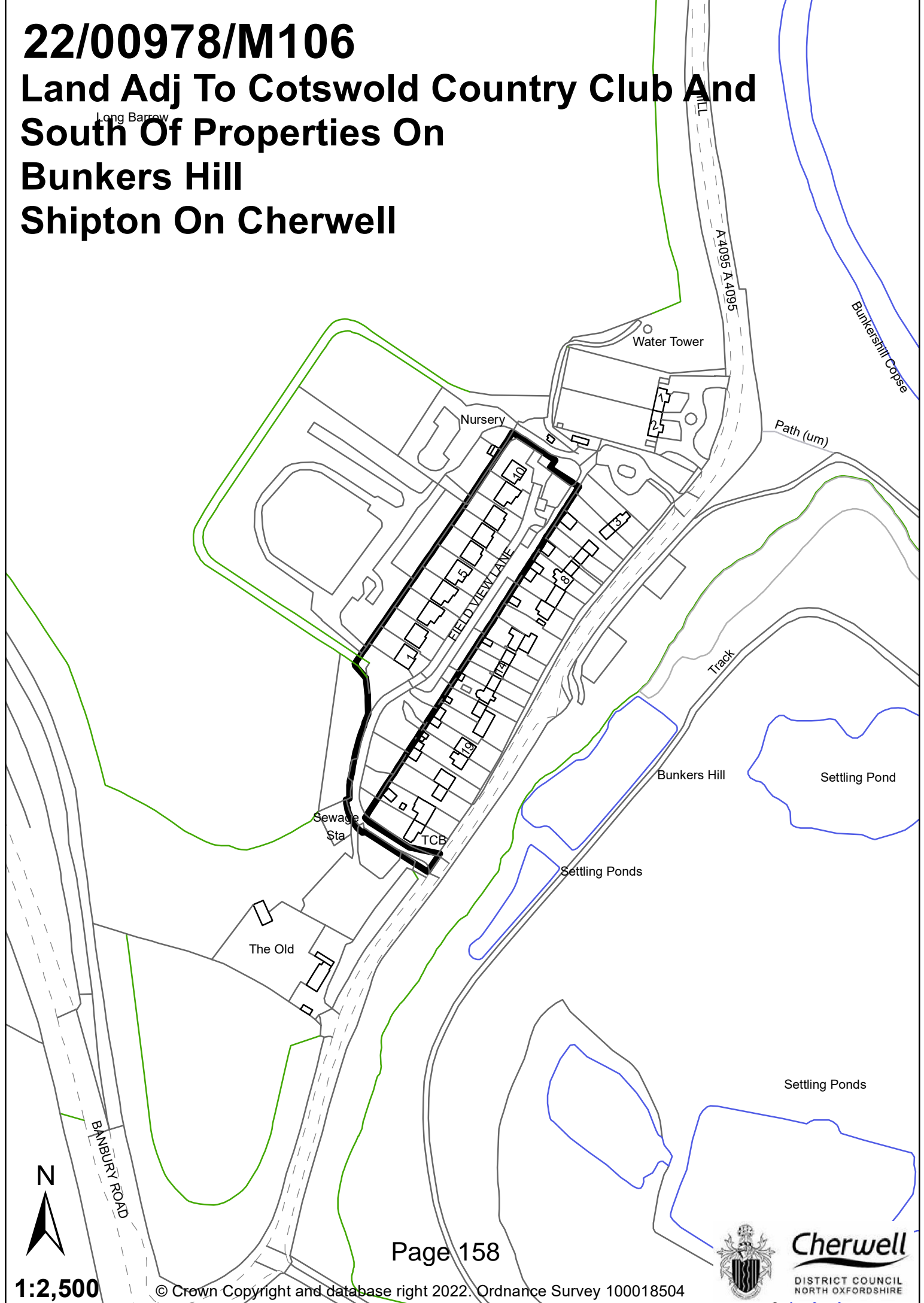
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# 22/00978/M106

## Land Adj To Cotswold Country Club And South Of Properties On Bunkers Hill Shipton On Cherwell

Long Barrow



**Case Officer:** Shona King

**Applicant:** Keble Homes

**Proposal:** Modification of S106 to 18/01491/OUT - Planning obligation, specifically sections 1.1, 2.1, 2.3 of Part 5 Schedule 2 of the s106, dated 19/06/2019 (all sections referring to the existing water tower) (resubmission of 21/02503/M106)

**Ward:** Launton and Otmoor

**Councillors:** Cllr Coton, Cllr Holland and Cllr Patrick

**Reason for Referral:** Referred by the Assistant Director, Planning and Development

**Expiry Date:** 04 August 2022

**Committee Date:** 14 July 2022

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## **SUMMARY OF RECOMMENDATION: APPROVE**

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

- 1.1 The site is located to the rear of a row of dwellings which front onto the A4095 and following redevelopment of the former Country Club building and disused bowling green it comprises 10 detached dwellings with a LAP. Access to the highway is via an access road onto the A4095 at the western end of the site. The site is bounded to the north and west by countryside and to the east by an established nursery/garden centre.

### **2. DESCRIPTION OF PROPOSAL**

- 2.1. An application has been made seeking a variation to the s106 Agreement to application 18/01491/OUT. The s106 required the demolition of a disused water tower adjacent to the site and the applicants now do not wish to carry out these works.

### **3. RELEVANT PLANNING HISTORY**

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

14/01565/OUT

Outline - Development of eight houses and access improvements  
Application Refused

14/02132/OUT

Outline - Development of eight houses and access improvements.  
Application Permitted

17/02148/OUT

OUTLINE - Demolition of existing club house, bowling club pavilion and ancillary store. Erection of 10no dwellings and access improvements  
Application Refused

18/01491/OUT

OUTLINE - Demolition of existing club house, bowling club pavilion and ancillary store. Erection of 10 no. dwellings and access improvements (further to outline planning permission 14/02132/OUT, dated 8th April 2016) and having a lesser proposed cumulative floor area than that permission.

Approved

19/01410/REM

Reserved matters to 18/01491/OUT - Seeking approval of layout, landscaping, appearance and scale. Access details approved as part of outline permission

Approved

20/01755/DISC

Discharge of Conditions 5 (finished floor levels); 6 (Arboricultural Method Statement); 7 (supervision measures); 8 (services and trenches); 9 (open space provision); 10 (means of access); 11 (visibility splays); 12 (internal access road details); 13 (refuse vehicle tracking); 14 (drainage details); 15 (Construction Traffic Management Plan); 16 (bat, bird, owl and invertebrate box details); 19 (facing materials) & 20 (Landscaping details) of 18/01491/OUT

Approved

20/01756/REM

Removal of Conditions 17 (Archaeological Written Scheme of Investigation), 18 (staged programme of archaeological evaluation and mitigation) and 27 (hardstanding) of 18/01491/OUT

Approved

20/01757/DISC

Discharge of Condition 2 (materials) of 19/01410/REM

Approved

20/01758/REM

Removal of conditions 3 (stone sample panel) & 4 (doors & windows) of 19/01410/REM

Approved

21/00904/DISC

Discharge of conditions 23 (Environmental Risk Assessment and Remedial Strategy), 24 (verification report) and 25 (remediation strategy) of 18/01491/OUT

Approved

21/00905/DISC

Discharge of Condition 14 (Drainage) of 18/01491/OUT

Approved

21/02503/M106

Request for variation to S106 for 18/01491/OUT

Withdrawn

#### **4. PRE-APPLICATION DISCUSSIONS**

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

#### **5. RESPONSE TO PUBLICITY**

- 5.1. This application has been publicised by way of a site notice displayed near the site, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 6 July 2022.

- 5.2. 1 submission of support has been received.



## **6. RESPONSE TO CONSULTATION**

- 6.1. 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

- 6.2. SHIPTON ON CHERWELL PARISH COUNCIL: No comment to date

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

Section 106A and Section 106B of the Town and Country Planning Act 1990 (as amended)

## **8. APPRAISAL**

### Background

- 8.1. Planning permission was originally granted on the site for 8 dwellings in April 2016 (ref. 14/02132/OUT).
- 8.2. Officers recommended refusal of the scheme as it was considered to represent development within the countryside and constituted unsustainable, new build residential development in a rural location divorced from established centres of population, not well served by public transport and reliant on the use of the private car. It was considered to be contrary to saved Policies H18 and C8, of the Cherwell Local Plan 1996, Policy Villages 1 of the Cherwell Local Plan 2011-2031 and Government guidance contained in the National Planning Policy Framework.
- 8.3. Members, however, considered that, cumulatively, the public benefits put forward as part of the application outweighed the adverse impacts of the development and the application was approved.
- 8.4. The benefits put forward in the legal agreement were as follows:
- Contribution towards off-site provision of affordable housing - £40,000
  - Provision of a LAP on the site and commuted sum towards maintenance
  - Sewage treatment facility and 20 year service contract
  - New mains-fed water supply
  - Provision of a community building and £10,000 towards maintenance
  - Demolition of the obsolete water tower
- 8.5. With the exception of the LAP and commuted sum towards maintenance, none of the contributions were considered by officers necessary to make the development acceptable, but the decision of the Planning Committee as LPA was that they were necessary to make the development acceptable and formed the basis upon which the LPA made its decision.
- 8.6. Planning permission was subsequently granted for 10 dwellings on the site under application 18/01491/OUT and it is this permission that has been implemented. In approving the application the Planning Committee considered that cumulatively the public benefits put forward as part of the application outweighed the adverse impacts of the development and the application was approved.

8.7. The s106 agreement required:

- Contribution towards off-site provision of affordable housing
- Provision of a LAP on the site with a commuted sum for maintenance
- Sewage treatment facility
- Improvements to the water supply
- Contribution towards Shipton-on-Cherwell Millennium Hall
- Demolition of the obsolete water tower
- Contribution to OCC towards increasing frequency of buses on A4260
- New bus stop flag and timetable signage on the A4260
- Contribution towards the cost of administering a Traffic Regulation Order to enable the relocation of the existing 40mph/de-restricted speed limit on the A4095 Bunkers Hill from its current location immediately south of the proposed access to a point 50m southwards.
- Contributions towards off-site indoor and outdoor sports facilities

8.8. At the time of determination of the planning application the water tower was considered to be in an unsafe condition and the removal of it, along with the other benefits put forward by the applicant, was considered necessary to outweigh the harm of allowing the two additional dwellings.

8.9. Additional contributions had been required for the second scheme given it was for 10 or more dwellings and met additional triggers, whereas the first scheme was for less than 10 dwellings.

#### Legislation

8.10. Under s106A of the Town and Country Planning Act 1990 (as amended) the application falls to be determined in one of three ways:

- a) The obligation continues to have effect without modification
- b) If the obligation no longer serves a useful purpose it should be discharged
- c) If it continues to serve a useful purpose but would serve that purpose equally well if the s106 had effect subject to the modification in the application, it should be modified

8.11. The legislation requires that the s106 must be over 5 years old for consideration to be given to a modification. However, the Council's Legal Team has advised that such a modification can be considered earlier with the agreement of the parties to the s106. Officers recommend that consideration be given to this proposed change.

8.12. If the Council concludes that the s106 should not be modified there is no right of appeal in this instance as the application has been submitted within 5 years of the date into which the obligation was entered.

#### Assessment

8.13. In determining the application, it is necessary to consider whether anything has changed in respect of the condition of the water tower and its appearance or impact in the wider landscape and whether there are any other consequences with regards to the completed s106 arising from the proposed modification.

8.14. The modification sought is to release the developer from the requirement to demolish the water tower and to replace this modification with:

*"To supply and install a filtration tank and system to the landowners current water supply and to commission the existing pump".*

- 8.15. Notably, the filtration tank and system has already been installed and the pump commissioned. It is currently housed below the water tower, where the previous system was located, and is under the control and ownership of the Bunkers Hill Management Company (BHMC). The deed of variation as proposed has been signed by BHMC prior to the submission of the application.
- 8.16. In effect, therefore, the proposal is simply to remove from the s106 agreement the obligation to remove the water tower.
- 8.17. The Council's Environmental Protection Team is satisfied that the water supply is acceptable.
- 8.18. The applicant advises that the reasons for the application to modify the s106 and to retain the water tower are:
- BHMC has requested that the water tower is retained.
  - It is on BHMC land and access to it is over 3<sup>rd</sup> party land
  - BHMC decided that they did not wish to be part of the same water supply as the new development
  - The applicant has provided a new upgraded independent water system to the same specification and this was agreed by BHMC and recommended by the installer
  - BHMC wishes to retain the water tower for personal reasons
  - Access to the tower has been prevented by a resident who purchased the land around it and blocked access to the water tower
  - BHMC has installed services around the tower which prevents its demolition.
- 8.19. No information has been provided to support the application in terms of the condition of the water tower.
- 8.20. Officers note (1) there has been a recent campaign by a resident seeking to retain the water tower, due to personal circumstances and the potential impact on wildlife/habitat, which involved the placing of a camper van on the top of the tower; and (2) the new water infrastructure has been placed immediately below the tower which may make the demolition of the water tower more difficult than it might otherwise have been.
- 8.21. It is also noted that the water tower has the potential to provide habitat for bats and as such further consents may be required under the Wildlife and Countryside Act 1981 if the tower is to be demolished, though this was the case at the time of the previous decisions which required the removal of the water tower.
- 8.22. As stated in the committee report for 14/02132/OUT, the water tower is not prominent in public views as it is surrounded by mature trees and vegetation which screens it, and it does not significantly detract from the visual amenities of the area. This remains the case. Its demolition would not be of particular benefit to the wider public community, though it was considered at the time of previous decisions that its demolition would provide public benefit to the local community.

## **9. CONCLUSION**

- 9.1 The site has a complex planning history and the Council approved its redevelopment subject to a package of public benefits to mitigate the harm of allowing development in an unsustainable location. The demolition of the water tower was put forward by the applicant (supported by BHMC) as one of these benefits. However, it is considered that circumstances have changed since the determination of 18/01491/OUT and the

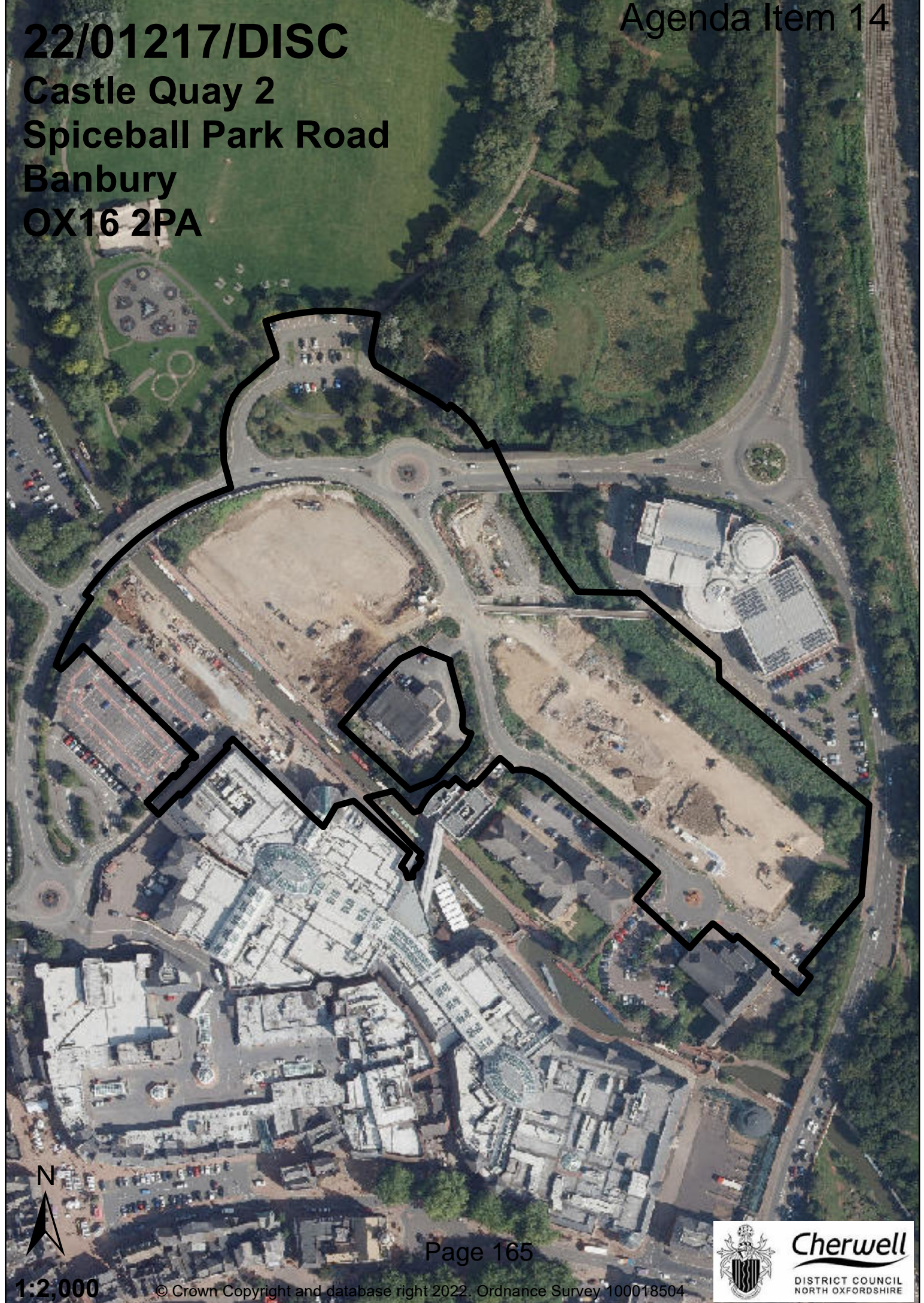
completion of the s106 agreement. BHMC no longer wishes the water tower to be demolished and has signed the Deed of Variation to this effect and access to enable the demolition of the water tower has been prevented by the sale of the land surrounding the water tower and the siting of water supply equipment below the water tower.

- 9.2. In accordance with s106A of the Town and Country Planning Act 1990 (as amended) it is considered that the s106, as modified, continues to serve a useful purpose, delivering the other benefits of the development regarded as necessary at the time of determination to make the development acceptable in planning terms. The modified s106 is considered to serve that purpose equally well as the demolition of the water tower is not considered to be of great benefit to the wider public. The water tower is not prominent in public views, is screened from view by mature trees and it does not significantly detract from the visual amenities of the area.
- 9.3. It is therefore recommended that the application, to modify the s106 agreement with the retention of the water tower and the provision of the new water infrastructure in accordance with the submitted Deed of Variation, is approved.

## **10. RECOMMENDATION**

- 10.1 That the obligation is modified in accordance with the Deed of Variation dated 1<sup>st</sup> July 2021, submitted with this application on the basis that circumstances have changed since the s106 to 18/01491/OUT was completed. The s106, as modified, continues to serve a useful purpose, delivering the other benefits of the development regarded as necessary at the time of determination to make the development acceptable in planning terms.

**22/01217/DISC**  
**Castle Quay 2**  
**Spiceball Park Road**  
**Banbury**  
**OX16 2PA**



**1:2,000**



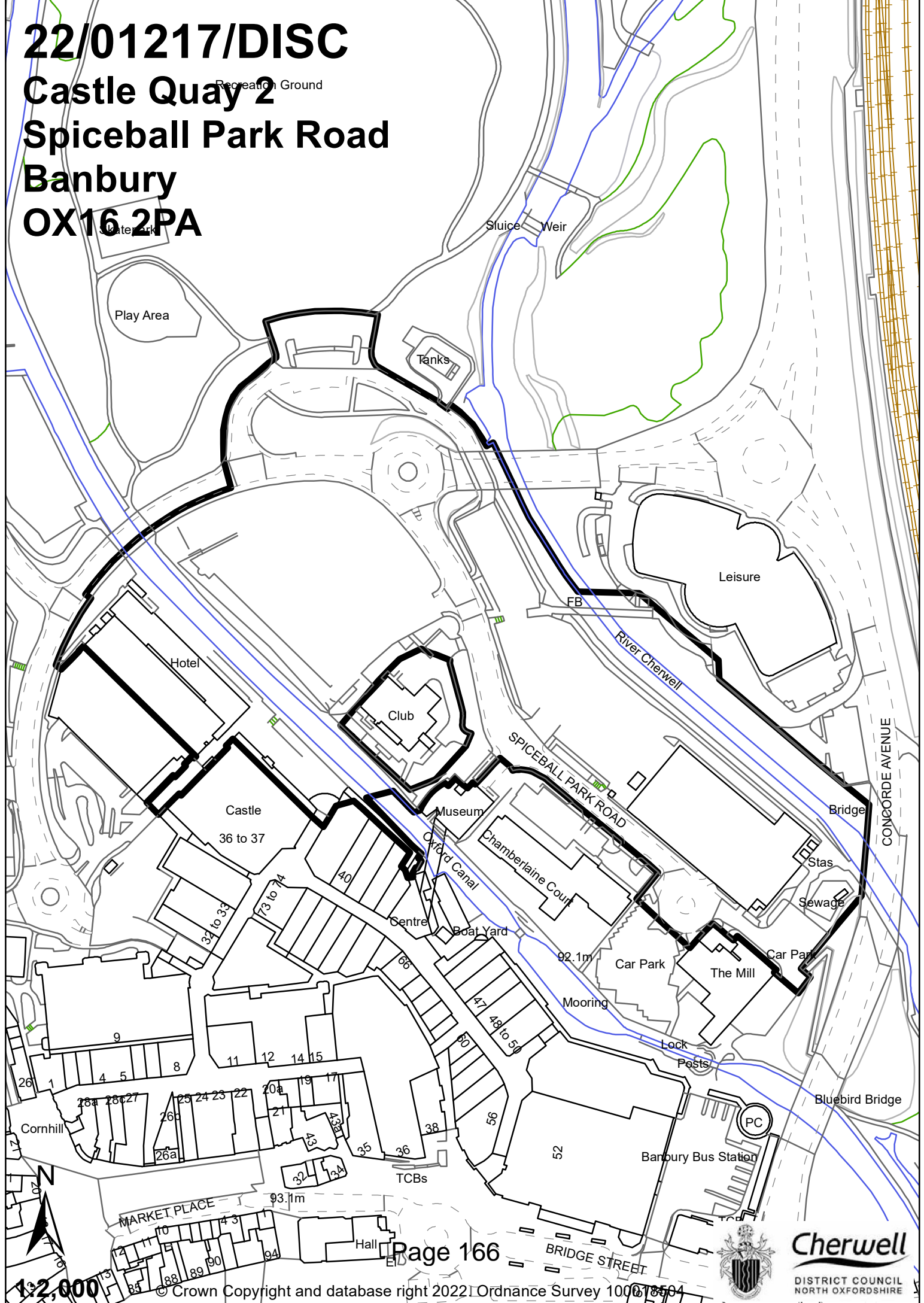
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## Castle Quay 2

### Spiceball Park Road

### Banbury

### OX16 2PA



1:2,000



**22/01217/DISC**  
**Castle Quay 2**  
**Spiceball Park Road**  
**Banbury**  
**OX16 2PA**

Spiceball Country Park



**Case Officer:** Samantha Taylor

**Applicant:** Pizza Express Restaurants Ltd

**Proposal:** Partial Discharge of Condition 22 (operational plant and mitigation) in relation to Unit 6 of the Castle Quay 2 Development of 16/02366/OUT

**Ward:** Banbury Cross and Neithrop

**Councillors:** Cllr Banfield, Cllr Hodgson, and Cllr Dr Okeke

**Reason for Referral:** Application affects Council's own land

**Expiry Date:** 20 June 2022

**Committee Date:** 14 July 2022

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**SUMMARY OF RECOMMENDATION: GRANT PARTIAL DISCHARGE OF CONDITION 22 (OPERATIONAL PLANT AND MITIGATION) IN REGARDS TO UNIT 6 OF BLOCK B ONLY OF APPLICATION 16/02366/OUT.**

**1. APPLICATION SITE**

- 1.1. The application site is located within Block B of the Castle Quay 2 development. Block B includes the cinema and other leisure facilities, including restaurants. The site is situated on the ground floor of the Block B, adjacent to the canal.

**2. CONSTRAINTS**

- 2.1. The application site is within Banbury Town Centre and the Oxford Canal Conservation Area.

**3. CONDITIONS PROPOSED TO BE DISCHARGED**

- 3.1. The application seeks to discharge condition 22 (operational plant and mitigation) in relation to Unit 6, a restaurant unit, with Block B, the cinema block, of application 16/02366/OUT for the wider Castle Quay 2 development.

- 3.2. Condition 22 (Operational Plant and Mitigation) states:

*'Prior to the first occupation of the units within any phase, full details of operational plant and mitigation shall be provided to the Local Planning Authority for approval, and the scheme to be installed and maintained thereafter in accordance with the approved details.'*

- 3.3. The applicant has provided plans which show extract layouts, plant deck layout and air conditioning layout along with a Risk Assessment for Odour



### **3. RELEVANT PLANNING HISTORY**

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

22/01150/ADV

Advertisement consent for 1No LOGO SIGN, 2No FASCIA SIGN 2No ADDRESS TEXT.

Approved.

21/04089/F

CQ2 Block B Terrace Area - Erection of enclosure area including full height glazed windows and retractable fabric roof and two green wall features.

Approved.

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; erection of a retail foodstore (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafés (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. PRE-APPLICATION DISCUSSIONS**

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

### **5. RESPONSE TO PUBLICITY**

5.1 Public consultation was not carried out in regards to this application because there is not a requirement to consult on this application type. No comments have been raised by third parties.

### **6. RESPONSE TO CONSULTATION**

6.1 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.

6.2 CDC Environmental Health: **No objections**

## **7. APPRAISAL**

7.1 Condition 22 of application 16/02366/OUT requires the submission of acceptable details regarding any operational plant and mitigation to be provided prior to the occupation of a unit.

7.2 The application includes the submission of plans showing the layout and positioning of the plan, key access points and the location of relevant equipment. This includes extracts serving the kitchen, WC, and general area, fresh air supply and ventilation layouts, plantroom, plant deck, roof level and air-conditioning. In addition, a risk assessment for odour has also been provided in support of the application.

7.3 The Council's Environmental Health Officer has confirmed they have no objections in relation to the plant and any mitigation proposed. As such, officers are satisfied that an acceptable scheme for operational plant and mitigation in relation to Unit 6 of Block B has been provided.

## **8. CONCLUSION**

8.1 It is recommended that the submitted details be approved under Condition 22 of 16/02366/OUT for Unit 6 of Block B only.

## **9. RECOMMENDATION**

### **GRANT PARTIAL DISCHARGE OF CONDITION 22 (OPERATIONAL PLANT AND MITIGATION) IN REGARDS TO UNIT 6 OF BLOCK B OF APPLICATION 16/02366/OUT.**

The details to be approved are as set out below:

EMAQ Risk Assessment for Odour

Kitchen Extract Layout C137-M-11-01

WC Extract Layout C137-M-11-02

General Extract Layout C137-M-11-03

Fresh Air Supply Layout C137-M-11-04

All Ventilation Layout C137-M-11-05

First Floor Plant Room Layout C137-M-11-06

Second Floor Plant Deck Layout C137-M-11-07

Roof Level C137-M-11-08

Air Conditioning Layout C137-M-15-01

**22/01588/DISC**

**Land Adjacent To The Oxford Canal  
Spiceball Park Road  
Banbury**



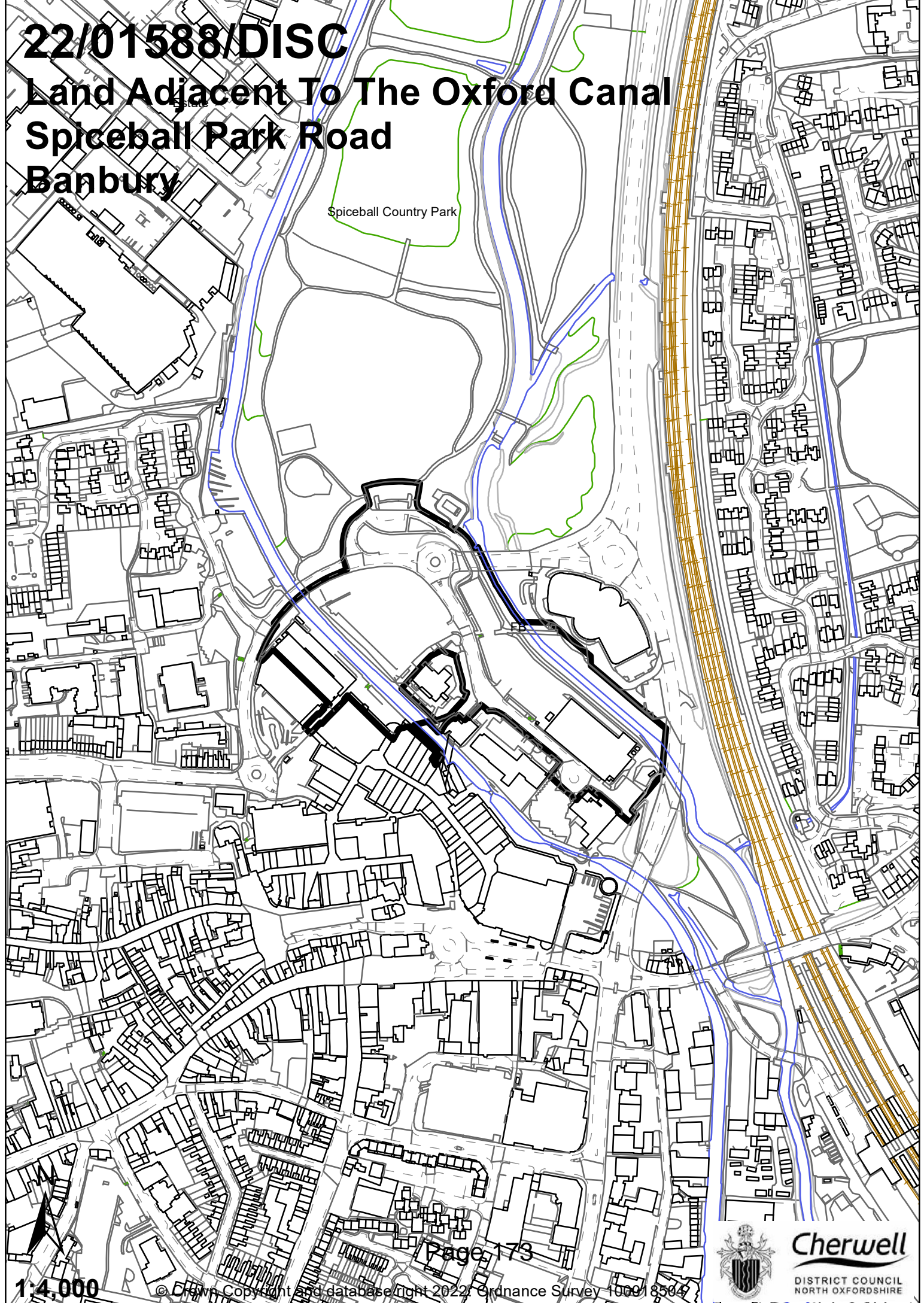
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# 22/01588/DISC

## Land Adjacent To The Oxford Canal Spiceball Park Road Banbury

Spiceball Country Park



1:4,000



**Case Officer:** Samantha Taylor

**Applicant:** Nando's Chickenland Ltd

**Proposal:** Partial Discharge of Condition 22 (operational plant and mitigation) in relation to Unit 4 of Block B of Castle Quay 2 Development of 16/02366/OUT

**Ward:** Banbury Cross and Neithrop

**Councillors:** Cllr Banfield, Cllr Hodgson, and Cllr Dr Okeke

**Reason for Referral:** Application affects Council's own land

**Expiry Date:** 22 July 2022

**Committee Date:** 14 July 2022

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**SUMMARY OF RECOMMENDATION: GRANT PARTIAL DISCHARGE OF CONDITION 22 (OPERATIONAL PLANT AND MITIGATION) IN REGARDS TO UNIT 4 OF BLOCK B ONLY OF APPLICATION 16/02366/OUT.**

**1. APPLICATION SITE**

- 1.1. The application site is located within Block B of the Castle Quay 2 development. Block B includes the cinema and other leisure facilities, including restaurants. The site is situated on the ground floor of the Block B, adjacent to the canal.

**2. CONSTRAINTS**

- 2.1. The application site is within Banbury Town Centre and the Oxford Canal Conservation Area.

**3. CONDITIONS PROPOSED TO BE DISCHARGED**

- 3.1 The application seeks to discharge condition 22 (operational plant and mitigation) in relation to Unit 4, a restaurant unit, with Block B, the cinema block, of application 16/02366/OUT for the wider Castle Quay 2 development.

- 3.2 Condition 22 (Operational Plant and Mitigation) states:

*'Prior to the first occupation of the units within any phase, full details of operational plant and mitigation shall be provided to the Local Planning Authority for approval, and the scheme to be installed and maintained thereafter in accordance with the approved details.'*

- 3.3 The applicant has provided plans which show extract layouts, plant deck layout and air conditioning layout along with a Risk Assessment for Odour.

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

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

22/01150/ADV

Advertisement consent for 1No LOGO SIGN, 2No FASCIA SIGN 2No ADDRESS TEXT.

Approved.

21/04089/F

CQ2 Block B Terrace Area - Erection of enclosure area including full height glazed windows and retractable fabric roof and two green wall features.

Approved.

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; erection of a retail foodstore (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafés (Use Class A3 and A4) and altered vehicular and pedestrian accesses, landscaping, construction of infrastructure, car parking and associated works, including glazed canopy over the Oxford Canal and the construction of pedestrian/cycle bridges over the Oxford Canal and River Cherwell. Details of new vehicular access off Cherwell Drive and alterations to Spiceball Park Road.

Approved

#### **5. RESPONSE TO PUBLICITY**

5.1 Public consultation was not carried out in regards to this application, because there is not a requirement to consult on this application type. No comments have been raised by third parties.

#### **6. RESPONSE TO CONSULTATION**

6.1 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.

6.2 CDC Environmental Health: **No objections**

## **7. APPRAISAL**

- 7.1 Condition 22 of application 16/02366/OUT requires the submission of acceptable details regarding any operational plant and mitigation to be provided prior to the occupation of a unit.
- 7.2 The application includes the submission of plans showing the ground floor, first floor and proposed roof layouts which show the type and location of plant to be provided in relation to unit 4. Further details of the plant to be provided as shown in the submitted Equipment Schedule and Nando's Shell Specification.
- 7.3 The Council's Environmental Health Officer has confirmed they have no objections in relation to the plant and any mitigation proposed. As such, officers are satisfied that an acceptable scheme for operational plant and mitigation in relation to Unit 4 of Block B has been provided.

## **8. CONCLUSION**

- 8.1 It is recommended that the submitted details be approved under Condition 22 of 16/02366/OUT for Unit 4 of Block B only.

## **9. RECOMMENDATION**

### **GRANT PARTIAL DISCHARGE OF CONDITION 22 (OPERATIONAL PLANT AND MITIGATION) IN REGARDS TO UNIT 4 OF BLOCK B OF APPLICATION 16/02366/OUT.**

The details to be approved are as set out below:

Equipment Schedule

Nando's Shell Specification

Block Plan 1139542

Proposed Ground Floor HVAC Layout and Sections 8277-02 Rev A

Proposed First Floor M&E HVAC Layout and Sections 827703 Rev P2

Proposed Roof HVAC Layout 8277-07 Rev P2



**19/02538/F**  
**22 Castle Quay**  
**Banbury**  
**OX16 5UH**



**1:250**



**19/02538/F**  
**22 Castle Quay**  
**Banbury**  
**OX16 5UH**

11

12

14

Castle Quay Shopping Centre

20b

20a

22

24

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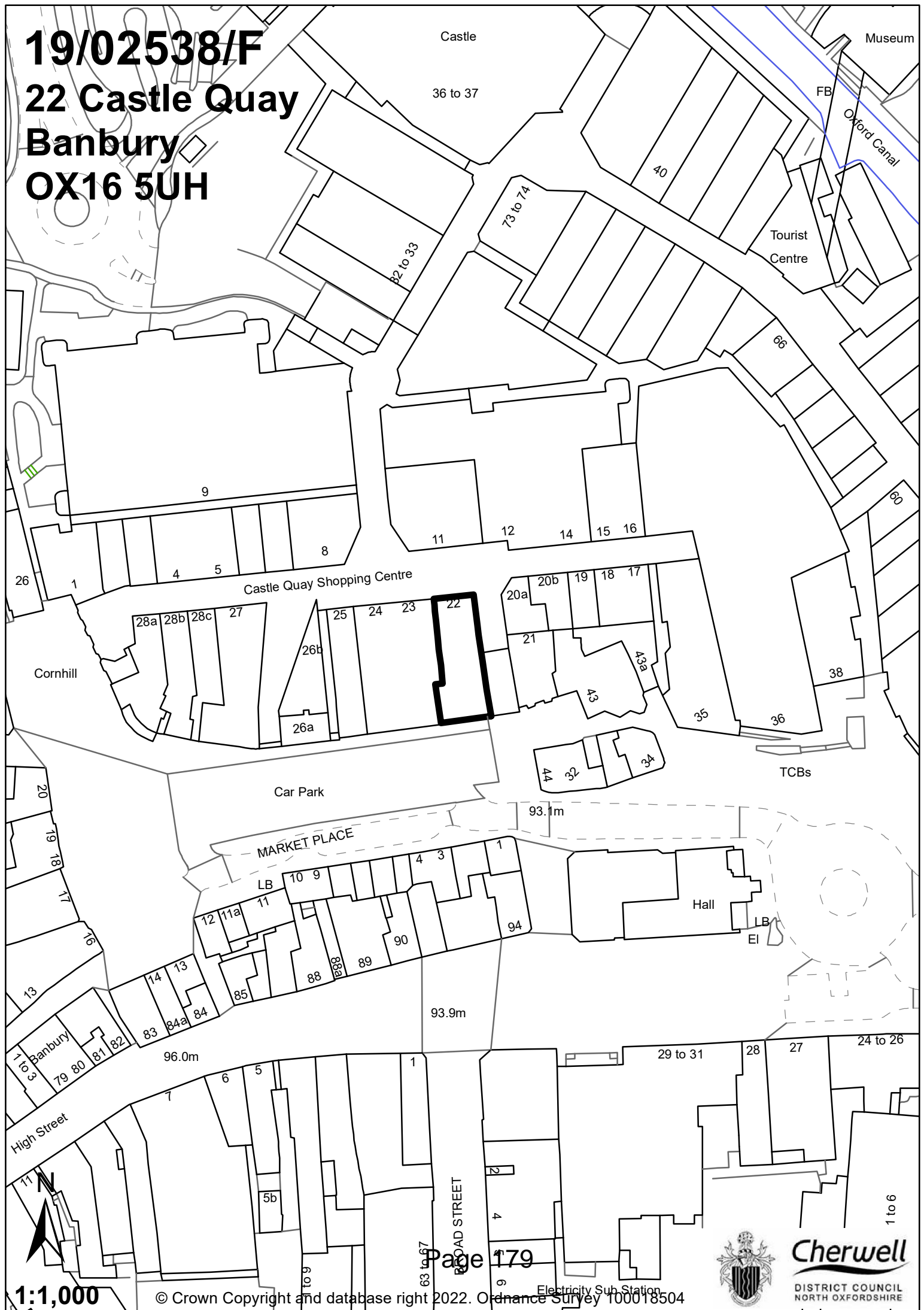
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**19/02538/F**  
**22 Castle Quay**  
**Banbury**  
**OX16 5UH**



**1:1,000**



Electricity Sub Station

**Case Officer:** Michael Sackey

**Applicant:** Coffee #1 Ltd

**Proposal:** Shopfront alterations and other external alterations including the installation of 3 No air conditioning units

**Ward:** Banbury Cross and Neithrop

**Councillors:** Cllr Banfield, Cllr Hodgson and Cllr Dr Okeke

**Reason for Referral:** Application affects Council's own land

**Expiry Date:** 6 January 2020

**Committee Date:**

14 July 2022

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**SUMMARY OF RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

**1. APPLICATION SITE AND LOCALITY**

1.1. The application site is the mixed-use Castle Quay 2 retail development site and the existing Castle Quay shopping centre, located adjacent to the Oxford Canal within Banbury Town Centre. The Castle Quay 2 development is currently under construction, falling within the 'Spiceball Development Area'. The Grade II listed building was formerly the Angel inn and more recently a shop.

**2. CONSTRAINTS**

2.1. The site is within the Banbury Conservation Area, the buildings adjoining on either side of the site building are both Grade II\* listed and there are numerous listed buildings within close proximity of the site.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. The current application is a retrospective application for the alterations to the shopfront and other alterations including the installation of 3no air conditioning units.

3.2. There is a concurrent listed building consent application for the same proposals.

**4. RELEVANT PLANNING HISTORY**

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

02/02569/ADV - 1 No. fascia sign on front elevation REFER TO 03/00734/ADV - application Withdrawn 2 December 2002

11/00703/F - Change of use - flexible use under GDO part 3 Class E for any use within Class A1 (Retail), Class A2 (Financial and Professional Services) and Class A3 (Restaurant & Cafe) of the 1987 use classes as amended - Permitted 22 June 2011

11/00704/F - Extension of time limit of 08/00179/F - Change of use from A1 (shop) use to A1/A3 (shop/cafe) use - Permitted 22 June 2011

13/00486/ADV - 1 no. fascia sign and 1 no. hanging sign - Permitted 1 July 2013

13/00624/LB - 1 no. fascia sign and 1 no. hanging sign - Permitted 1 July 2013

19/00535/CLUP - Certificate of Lawfulness of Proposed Development - Internal works for the relocation of public toilet provision to a new location within the existing shopping centre and external alterations to install 2 louvres to external north-eastern elevation facing service yard. Permitted 31 May 2019

19/02537/ADV - Installation of 1 no. illuminated fascia sign and 1 no. illuminated projecting sign - Permitted 11 May 2021

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

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

## **6. RESPONSE TO PUBLICITY**

6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **22 February 2021**.

6.2. No comments have been raised by third parties

## **7. RESPONSE TO CONSULTATION**

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

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. BANBURY TOWN COUNCIL: **No objections**

### OTHER CONSULTEES

7.3. OCC HIGHWAYS: **No objections**

7.4. CDC CONSERVATION: **No objection**, the removal of the internal illumination of the signage is welcomed and it is now considered that the proposals are no longer unacceptably harmful to the character of the building and the conservation area in this location. Therefore overall, there are now no objections to the proposals outlined in applications 19/02537/ADV, 19/02538/F & 19/02539/LB.

7.5. BANBURY CIVIC SOCIETY: Consulted on (21.11.2019); no comments received

7.6. BANBURY HISTORICAL ASSOCIATION: Consulted on (21.11.2019); no comments received

7.7. ECONOMIC DEVELOPMENT: Consulted on (21.11.2019); no comments received

7.8. HISTORIC ENGLAND: **No comments**

7.9. BUILDING CONTROL: A Full Building Regulations Application will be required.

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

8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2. The Cherwell Local Plan 2011-2031 - Part 1 ('CLP 2015') was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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)

- 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
- ENV1 – Environmental pollution

## **9. APPRAISAL**

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

- Design, and impact on the character of the area
- Heritage impact
- Residential amenity
- Highway safety

### Design and Impact on the Character of the Area

9.2. Paragraph 56 of the NPPF makes clear that: *the Government attaches great importance to the design of the built environment.* This is reflected in Policy ESD15 of the CLP 2031 Part 1, which states that new development proposals should: *be designed to improve the quality and appearance of an area and the way it functions...contribute positively to an area's character and identity by creating or reinforcing local distinctiveness...(and) respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale, and massing of buildings.*

9.3. Saved Policies C28 of the CLP 1996 reinforce this, with Policy C30(ii) stating: *that any proposal to extend an existing dwelling (should be) compatible with the scale of the existing dwelling, its curtilage and the character of the street scene.*

9.4. The alterations to the shopfront and installation of the three air conditioning units are partly visible from the highway and public realm and have a visual impact on their surroundings. However, having regard to their nature, design and the shopfront and two air conditioning units the proposal replaces, it is considered that the alterations do not have an adverse impact on the character and appearance of the locality.

9.5. It is therefore considered that the proposal accords with retained Policy C28 of the CLP 1996 and Policy ESD15 of the CLP 2015 and Government guidance in the NPPF.

### Heritage Impact

- 9.6. *Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard to the desirability of preserving a listed building or its setting should be taken.*
- 9.7. *Paragraph 132 of the NPPF states that: “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.”*
- 9.8. For the same reasons above, and having regard to its scale, form, and design, along with the comments of the Conservation Officer, it is considered in this instance that the changes to the building do not harm the character and appearance of the Banbury Conservation Area or the significance of the grade II listed buildings in the vicinity of the site through change to their settings.
- 9.9. It is thus considered that the proposed development complies with Policy ESD15 of the CLP 2015 and Government guidance in the NPPF.

### Residential amenity

- 9.10. The proposed development would be well set off the boundaries shared with its adjacent neighbours and, given its nature, scale and spatial relationship with the neighbouring properties, it is considered that the development does not have a material impact on the amenity of the neighbours.
- 9.11. The proposal therefore accords with Policy ESD15 of the CLP 2015 in this regard.

### Highway safety

- 9.12. The Local Highway Authority has raised no objections to the proposal, advising that the proposals are unlikely to have any adverse impact on the local highway network from a traffic and safety point of view. Officers agree with this assessment and proposal is therefore considered acceptable in relation to highway safety and parking provision. The proposal accords with Policy ESD15 of the CLP and Government guidance in the NPPF.

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

- 10.1. The proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

## **11. RECOMMENDATION**

### **GRANT PERMISSION, SUBJECT TO THE CONDITION SET OUT BELOW**

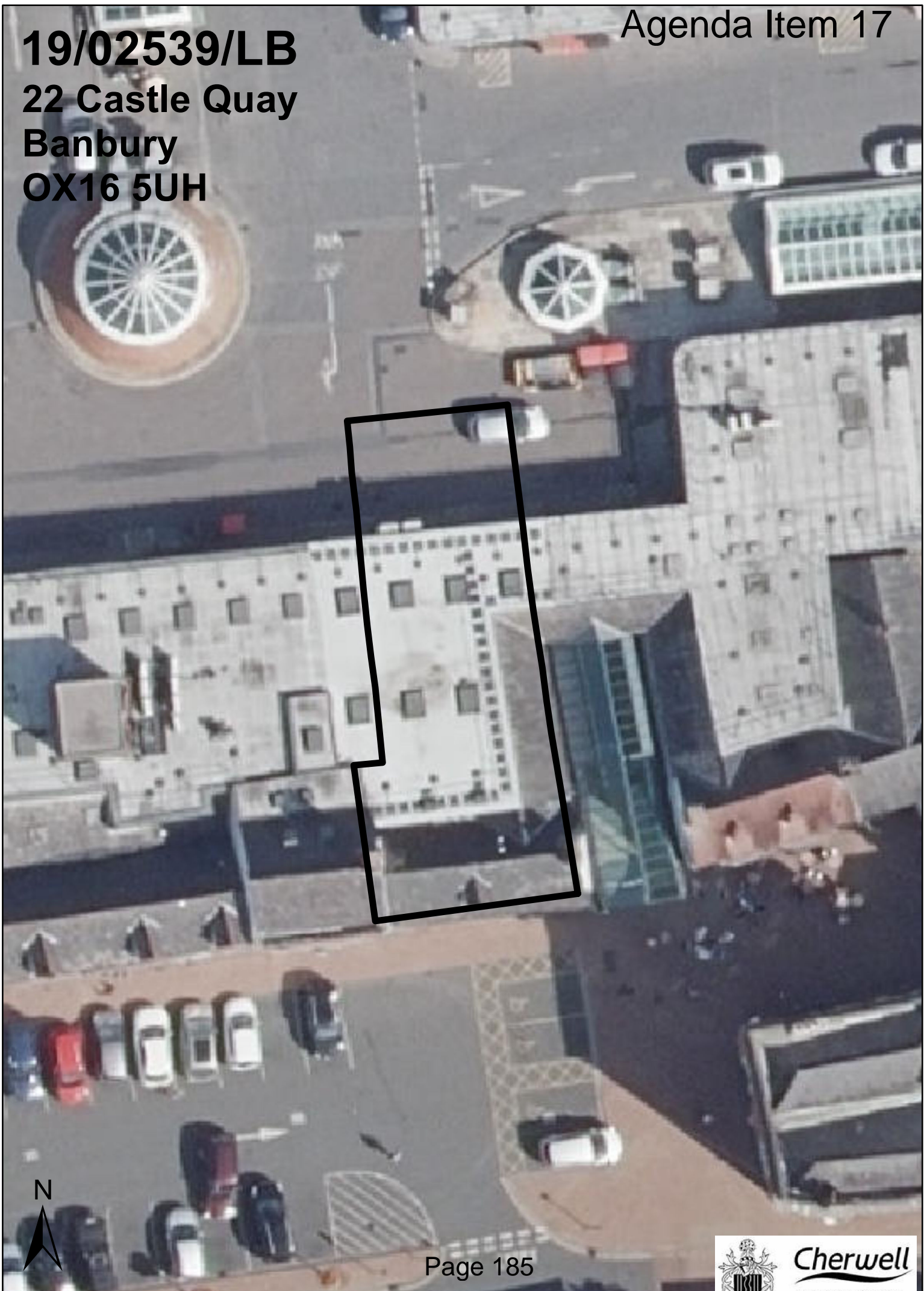
#### **Compliance with Plans**

1. 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: P2, P6, P7, T3 Rev A, T05 Rev A and email received on (18.11.2020) at 15:07hrs from the applicant's agent (John-Rhys Davies) confirming the omission of the proposed illumination within the shopfront.

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



**19/02539/LB**  
**22 Castle Quay**  
**Banbury**  
**OX16 5UH**



**19/02539/LB**  
**22 Castle Quay**  
**Banbury**  
**OX16 5UH**

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Castle Quay Shopping Centre

20b

20a

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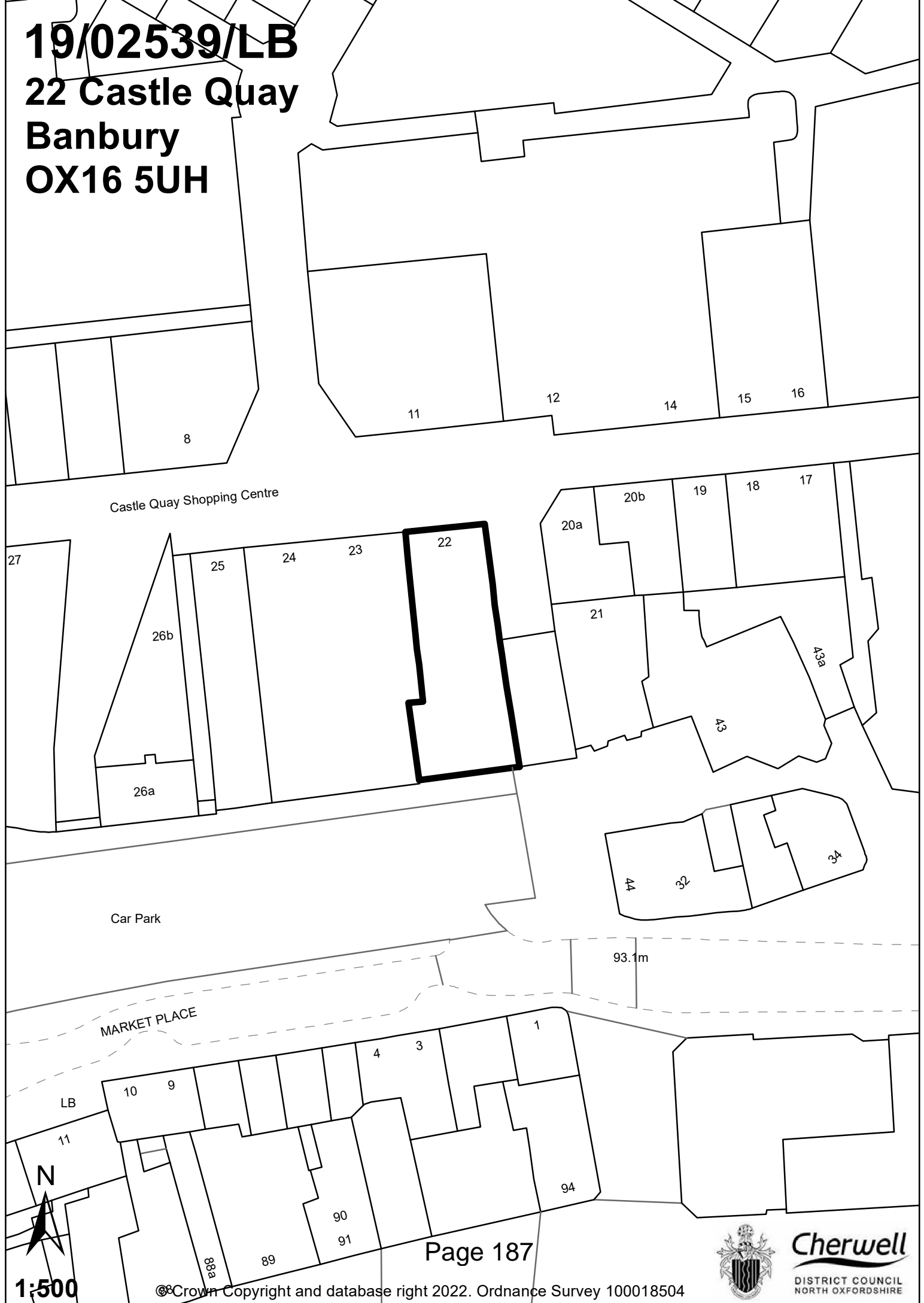
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**19/02539/LB**  
**22 Castle Quay**  
**Banbury**  
**OX16 5UH**



Castle Quay Shopping Centre

Car Park

MARKET PLACE

93.1m



**Case Officer:** Michael Sackey

**Applicant:** Coffee #1 Ltd

**Proposal:** Alteration to shopfront, installation of new advertisements, installation of 3 No air conditioning units and other external and internal alterations

**Ward:** Banbury Cross and Neithrop

**Councillors:** Cllr Banfield, Cllr Hodgson and Cllr Dr Okeke

**Reason for Referral:** Application affects Council's own land

**Expiry Date:** 6 January 2020

**Committee Date:** 14 July 2022

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## **SUMMARY OF RECOMMENDATION: GRANT LISTED BUILDING CONSENT SUBJECT TO CONDITIONS**

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

- 1.1. The application site is the mixed-use Castle Quay 2 retail development site and the existing Castle Quay shopping centre, located adjacent to the Oxford Canal within Banbury Town Centre. The Castle Quay 2 development is currently under construction, falling within the 'Spiceball Development Area'. The Grade II listed building was formerly the Angel inn and more recently a shop.

### **2. CONSTRAINTS**

- 2.1. The site is within the Banbury Conservation Area, the buildings adjoining on either side of the site building are both Grade II\* listed and there are numerous listed buildings within close proximity of the site.

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

- 3.1. The application proposes alterations to the shopfront, internal alterations and other external alterations including the installation of 3no air conditioning units.
- 3.2. There is a concurrent full planning application for the same proposals.

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

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

02/02569/ADV - 1 No. fascia sign on front elevation REFER TO 03/00734/ADV - application Withdrawn 2 December 2002

11/00703/F - Change of use - flexible use under GDO part 3 Class E for any use within Class A1 (Retail), Class A2 (Financial and Professional Services) and Class A3 (Restaurant & Cafe) of the 1987 use classes as amended - Permitted 22 June 2011

11/00704/F - Extension of time limit of 08/00179/F - Change of use from A1 (shop) use to A1/A3 (shop/cafe) use - Permitted 22 June 2011

13/00486/ADV - 1 no. fascia sign and 1 no. hanging sign - Permitted 1 July 2013

13/00624/LB - 1 no. fascia sign and 1 no. hanging sign - Permitted 1 July 2013

19/00535/CLUP - Certificate of Lawfulness of Proposed Development - Internal works for the relocation of public toilet provision to a new location within the existing shopping centre and external alterations to install 2 louvres to external north-eastern elevation facing service yard. Permitted 31 May 2019

19/02537/ADV - Installation of 1 no. illuminated fascia sign and 1 no. illuminated projecting sign - Permitted 11 May 2021

## 5. PRE-APPLICATION DISCUSSIONS

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

## 6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **22 February 2021**.

6.2. No comments have been raised by third parties

## 7. RESPONSE TO CONSULTATION

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

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. BANBURY TOWN COUNCIL: **No objections**

### OTHER CONSULTEES

7.3. CDC CONSERVATION: **No objection**, the removal of the internal illumination of the signage is welcomed and it is now considered that the proposals are no longer unacceptably harmful to the character of the building and the conservation area in this location. Therefore overall, there are now no objections to the proposals outlined in applications 19/02537/ADV, 19/02538/F & 19/02539/LB.

7.4. BANBURY CIVIC SOCIETY: Consulted on (21.11.2019); no comments received

7.5. BANBURY HISTORICAL ASSOCIATION: Consulted on (21.11.2019); no comments received

7.6. HISTORIC ENGLAND: **No comments**

7.7. BUILDING CONTROL: A Full Building Regulations Application will be required.

## 8. RELEVANT PLANNING POLICY AND GUIDANCE

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 ('CLP 2015') was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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)

- ESD15 - The Character of the Built and Historic Environment

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

- C18 – Development proposals affecting a listed building
- C21 – Proposals for re-use of a listed building

## 9. APPRAISAL

- 9.1. The key issue for consideration in this case is the impact on the historic significance and setting of the listed building(s).
- 9.2. Section 16(2) of The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that: *In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Further, under Section 72(1) of the same Act the Local Planning Authority has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
- 9.3. Listed Buildings and Conservation Areas are designated heritage assets, and Paragraph 190 of the NPPF states that: *Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise.*
- 9.4. Paragraph 193 of the NPPF directs that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2015 echoes this guidance.
- 9.5. The proposals subject of this application comprises both internal and external alterations and repairs, and the replacement of the air conditioning unit. The design and access statement submitted with the application provides the schedule of works proposed.
- 9.6. The internal works consist of new internal layout fits, installation of a serving counter, erection of new stud walls to form toilet, storeroom and office. The other internal works include decorative features and the installation of the new air conditioning units.

- 9.7. The external works including those to the shopfront relate to a new Sapele single door, a projecting sign, relocation of the recycling and wall mounted cigarette bin, a new fascia panel and softwood seeples shopfront with 650 stallriser to be inserted with fixed glazing panels, and the existing shopfront units to be replaced with shutters. The other external works relate to the ironmongery and joinery works painted, the rear ground floor rendered, and the air conditioning units and condensing pipework replaced at the rear of the property.
- 9.8. The internal works do not result in an unacceptable loss of, or alteration to historic fabric. The external works do not cause harm to the appearance of the building nor in any harm to the character of the building or Conservation Area.
- 9.9. Overall, having regards to the nature of the works, the details submitted, and the comments of the Conservation officer, it is considered that the proposals do not cause demonstrable harm to the significance of the Grade II listed building. The development thus accords with retained Policy C18 of the CLP 1996 and Policy ESD15 of the CLP 2015.

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

- 10.1. The proposal would not cause demonstrable harm to the significance of the Grade II listed building and therefore listed building consent should be granted.

## **11. RECOMMENDATION**

### **GRANT LISTED BUILDING CONSENT, SUBJECT TO THE CONDITION SET OUT BELOW**

#### **Compliance with Plans**

1. 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: P2, P6, P7, T3 Rev A, T05 Rev A and email received on (18.11.2020) at 15:07hrs from the applicant's agent (John-Rhys Davies) confirming the omission of the proposed illumination within the shopfront.

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to preserve the significance of heritage assets and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy C18 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

**22/01149/F**

**Castle Quay 2  
Spiceball Park Road  
Banbury  
OX16 2PA**

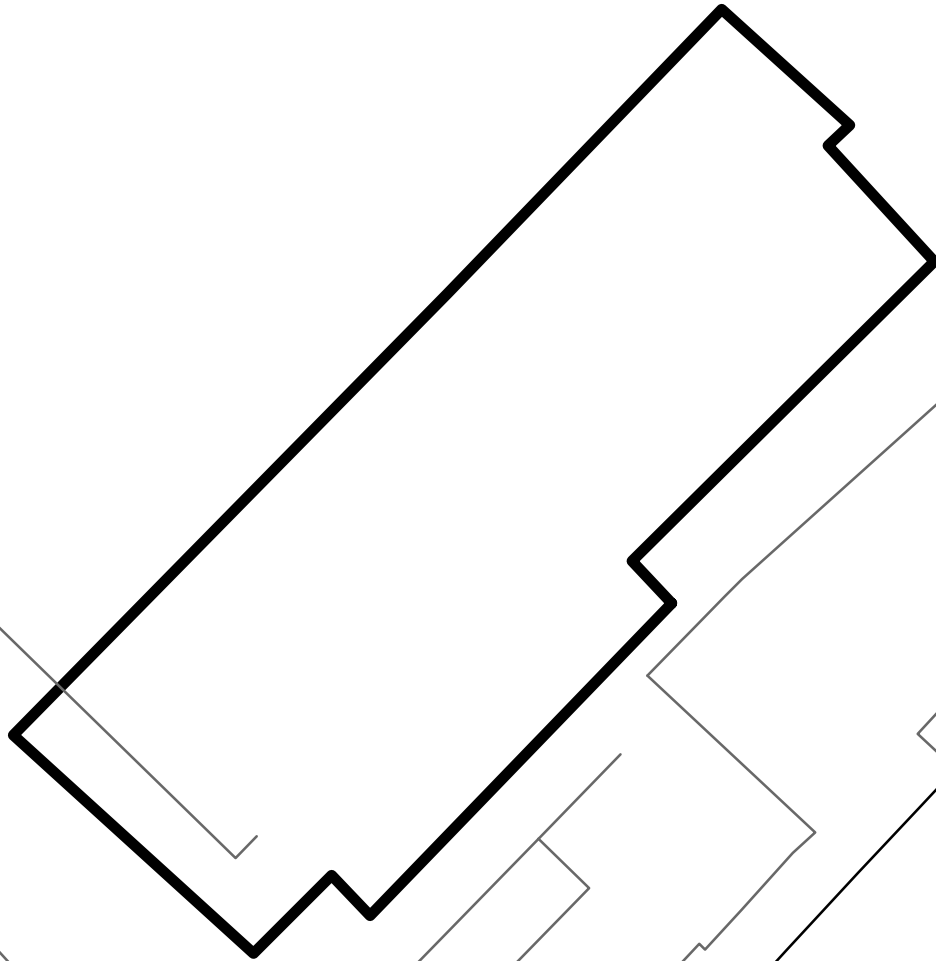


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**22/01149/F**  
**Castle Quay 2**  
**Spiceball Park Road**  
**Banbury**  
**OX16 2PA**



Club



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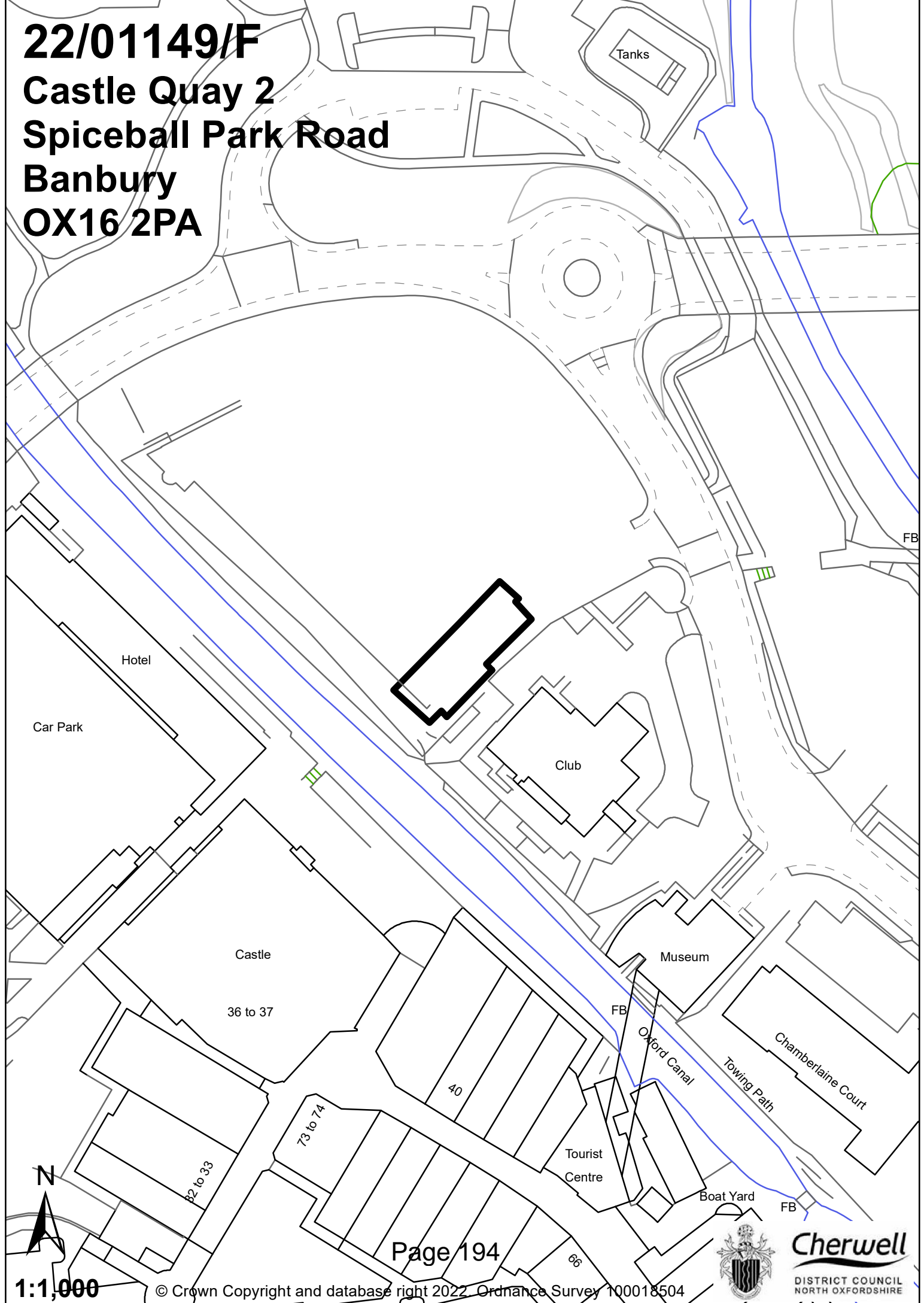
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**Cherwell**  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

**22/01149/F**  
**Castle Quay 2**  
**Spiceball Park Road**  
**Banbury**  
**OX16 2PA**



**Case Officer:** Samantha Taylor

**Applicant:** Pizza Express Restaurants Ltd

**Proposal:** Formation of new external seating area

**Ward:** Banbury Cross and Neithrop

**Councillors:** Cllr Banfield, Cllr Hodgson and Cllr Dr Okeke

**Reason for Referral:** Application affects Council's own land

**Expiry Date:** 27 July 2022

**Committee Date:** 14 July 2022

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**SUMMARY OF RECOMMENDATION: GRANT PERMISSION, SUBJECT TO CONDITIONS**

**1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is located within Block B of the Castle Quay 2 development. Block B includes the cinema and other leisure facilities, including restaurants. The site is situated on the ground floor of the Block B, adjacent to the canal

**2. CONSTRAINTS**

- 2.1. The application site is located within the centre of Banbury and within the Oxford Canal Conservation Area.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The application seeks full planning permission for the provision of an area of external seating to Unit 6, a restaurant unit within the cinema and leisure block of the Castle Quay 2 development. The proposed development has an enclosure with the proposal mid-height planters and metal framing above. The framing will be used to hang faux planting and lights.

**4. RELEVANT PLANNING HISTORY**

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

22/01150/ADV

Advertisement consent for 1No LOGO SIGN, 2No FASCIA SIGN 2No ADDRESS TEXT.

Approved.

21/04089/F

CQ2 Block B Terrace Area - Erection of enclosure area including full height glazed windows and retractable fabric roof and two green wall features.

Approved.

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; erection of a retail foodstore (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafés (Use Class A3 and A4) and altered vehicular and pedestrian accesses, landscaping, construction of infrastructure, car parking and associated works, including glazed canopy over the Oxford Canal and the construction of pedestrian/cycle bridges over the Oxford Canal and River Cherwell. Details of new vehicular access off Cherwell Drive and alterations to Spiceball Park Road.  
Approved

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

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

## **6. RESPONSE TO PUBLICITY**

6.1. This application has been publicised by way of a site notice displayed near the site, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **19 May 2022**.

6.2. No comments have been raised by third parties.

## **7. RESPONSE TO CONSULTATION**

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

7.2. BANBURY TOWN COUNCIL: **No objections**

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

8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies

are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- 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

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990

**9. APPRAISAL**

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

- Principle of development
- Design, and impact on the character of the area
- Heritage impact

Principle of Development

9.2. A similar proposal has been previously approved under application 21/04089/F for the provision of an enclosure with retractable roof and full height windows and two green walls on the first floor of Block B. As such, the principle of providing external seating within the Castle Quay 2 development area has been established.

Design and Impact on the Character of the Area

9.3. Policy ESD15 of the Cherwell Local Plan seeks to ensure that developments are of an appropriate design, which is compatible with the local context in which they are situated.

9.4. The development seeks to provide an area of enclosure outside of Unit 6, a ground floor of Block B. The seating area would be provided to the front and side of Unit 6. The unit is a restaurant unit, with the external seating area providing additional table covers for the business. The enclosure surrounds the external area, with mid-rise planters in black treated wood, with an inset steel frame above for hanging of faux plants and lights. The use of planters to provide enclosure is something that is seen within leisure developments.

9.5. Overall, Officers consider the design of the external seating area and enclosure is acceptable within the context of the Castle Quay 2 development and wider area. The proposal accords with policy ESD15 of the Cherwell Local Plan 2031 and saved policy C29 of the 1996 Local Plan.

## Heritage Impact

- 9.6. The application site lies within the Oxford Canal Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 9.7. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 193 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2031 Part 1 echoes this guidance
- 9.8. The application site forms part of the Block B Cinema outdoor terrace, which is currently under construction at the Castle Quay 2 development. The earlier grant of consents for a large-scale mixed-use development was considered to result in less than substantial harm to the significance of the Conservation Area that was outweighed by the public benefits of the scheme.
- 9.9. It is acknowledged that there has been substantial change within the Oxford Canal Conservation Area as a result of the Castle Quay 2 development. However, this has also increased the usage of this area, which is considered to be of public benefit, increasing the understanding of the history of the wider site.
- 9.10. The application proposed an area of enclosure to an external seating area outside of a ground floor restaurant, facing the canal. This would serve as an attraction to the public, with vantage points from pedestrian pathways along and over the canal. The materials to be used are black painted wooden planters and steel frames. These will be used to provide planting and faux planting. Overall the design of the seating areas is considered to be in-keeping with the Castle Quay 2 development and the Conservation Area.
- 9.11. Whilst there may be some less than substantial harm arising from the provision of the enclosure and seating area, this is considered to be limited given the context in which the development sites, as part of the wider Castle Quay development. The public benefits of providing an additional leisure attraction is considered to outweigh any less than substantial harm caused to the significance of the Conservation Area.
- 9.12. Overall, the proposal is considered to accord with both National and Local Planning Policies in respect of the impact the proposal would have on the significance of the Oxford Canal Conservation Area.

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

- 10.1. The proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

## **11. RECOMMENDATION**

### **RECOMMENDATION – GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW**

#### **Time Limit**

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

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

#### **Compliance with Plans**

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents:

Site Location Plan 2209/SL01

Proposed External Elevations 2209/P02

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.

# Agenda Item 19

## Cherwell District Council Planning Committee

14 July 2022

### 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 decisions received and the scheduling of public inquiries and hearings for new and current appeals.

#### 1.0 Recommendations

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

#### 2.0 Introduction

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

#### 3.0 Report Details

##### 3.1 New Appeals

###### a) 21/02804/F – 19 Hastings Road, Banbury, OX16 0SE

Erection of dwelling

Officer recommendation: Refused (Delegated)

Method of determination: Written Representations

Start Date: 14.06.2022

Statement due: 19.07.2022

Appeal reference: 22/00032/REF

###### b) 21/03726/F – 123 Oxford Road, Kidlington, OX5 2NP

Demolition of existing lean-to structure, erect new single storey extension. Convert existing 3-bed chalet-style house into 3 no separate apartments with off-road parking - re-submission of 21/01654/F

Officer recommendation: Refused (Delegated)

Method of determination: Written Representations

Start Date: 20.06.2022

Statement due: 25.07.2022

Appeal reference: 22/00033/REF



**c) 21/03190/F - Land North of Camp Road, East of Holly Trees and 1 Jalna Lodge, Camp Road, Upper Heyford**

Erection of dwelling, detached garage, widening of vehicular access and all associated works

Officer recommendation: Non-Determination  
Method of determination: Written Representations  
Start Date: 21.06.2022  
Statement due: 27.07.2022  
Appeal reference: 22/00034/NON

**3.2 New Enforcement Appeals**

None

**3.3 Appeals in Progress**

**a) 20/01122/F - OS Parcel 9635 North East of HMP Bullingdon Prison, Widnell Lane, Piddington**

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

Officer recommendation: Refused (Committee)  
Method of determination: Hearing  
Hearing Date: Tuesday 22<sup>nd</sup> November 2022  
Hearing Venue: River Cherwell Meeting Room, Bodicote House  
Start Date: 08.10.2021  
Statement Due: 26.11.2021  
Appeal reference: 21/00033/REF

**b) 20/02192/LB - Manor Farm, Station Road, Hook Norton, OX15 5LS**

Repairs, alterations and extension to dwellinghouse. Alterations to agricultural buildings to facilitate their conversion to ancillary residential use and erection of new buildings to be used ancillary to the dwellinghouse. Associated landscaping.

Officer Recommendation: Refused (Delegated)  
Method of determination: Hearing – 18<sup>th</sup>/19<sup>th</sup> May 2022  
Start Date: 30.11.2021  
Statement due: 19.02.2022  
Appeal reference: 21/00037/REF

**c) 20/02193/F – Manor Farm, Station Road, Hook Norton, OX15 5LS**

Repairs, alterations and extension to dwellinghouse. Alterations to agricultural buildings to facilitate their conversion to ancillary residential use and erection of new buildings to be used ancillary to the dwellinghouse. Associated landscaping.

Officer Recommendation: Refused (Delegated)  
Method of determination: Hearing – 18<sup>th</sup>/19<sup>th</sup> May 2022  
Start Date: 30.11.2021  
Statement due: 19.02.2022

Appeal reference: 21/00036/REF

**d) 21/00500/OUT – Land North of Railway House, Station Road, Hook Norton**

Erection of up to 43 new homes, access from Station Road and associated works including attenuation pond

Officer Recommendation: Approval (Committee)

Method of determination: Hearing: Tuesday 14<sup>th</sup> June 2022

Start Date: 09.12.2021

Statement due: 13.01.2022

Appeal reference: 21/00044/REF

**e) 21/01818/F – Pakefield House, St Johns Street, Bicester, OX26 6SL**

Redevelopment of the site to form 38 no. Retirement apartments including communal facilities, access, car parking and landscaping

The appeal is a non-determination appeal however the application was heard at Planning Committee on 13<sup>th</sup> January 2022.

Officer recommendation: Refusal (Committee)

Method of determination: Written Representations

Start Date: 21.04.2022

Statement Due: 26.05.2022

Appeal reference: 22/00021/REF

**f) 21/02007/F – 15 Heath Close, Milcombe, OX15 4RZ**

To complete driveway by replacing breeze block section with block paving to match. Also to complete the dropped kerb to fall in line with the full width of the house. To install either two or three lower trims and one angled trim. (resubmission of 21/01238/F)

Officer recommendation: Refused (Delegated)

Method of determination: Written Representations

Start Date: 15.03.2022

Statement Due: 19.04.2022

Appeal reference: 22/00016/REF

**g) 21/02346/F – 1 Cranesbill Drive, Bicester, OX26 3WG**

Loft conversion with rooflights to front roof slope and dormer extension to rear roof slope.

Officer Recommendation: Refused (Delegated)

Method of determination: Householder (Fast Track)

Start Date: 21.02.2022

Statement due: N/A

Appeal reference: 22/00014/REF

**h) 21/02884/F – Land To The Rear Of 16-18 Twyford Gardens And Adj To Claire House, Twyford Grove, Twyford, OX17 3LD**

Erection of one new dwelling.

Officer recommendation: Refused (Delegated)

Method of determination: Written Representations

Start Date: 23.05.2022

Statement Due: 27.06.2022

Appeal reference: 22/00029/REF

**i) 21/02909/F – 37A Hertford Close, Bicester, OX26 4UX**

Erection of 1 dwelling (resubmission of 21/02218/F)

Officer recommendation: Refused (Delegated)

Method of determination: Written Representations

Start Date: 25.03.2022

Statement Due: 29.04.2022

Appeal reference: 22/00017/REF

**j) 21/02986/F – 2 The Orchard, Horton Cum Studley, OX33 1BW**

Two storey rear/side extension and associated internal alterations

Officer recommendation: Refused (Delegated)

Method of determination: Householder (Fast Track)

Start Date: 20.04.2022

Statement Due: N/A

Appeal reference: 22/00020/REF

**k) 21/03057/F – 3 Denbigh Close, Banbury, OX16 0BQ**

Change of use from HMO (Class C4) to 7 Bedroom HMO (Sui-Generis)

Officer recommendation: Refused (Delegated)

Method of determination: Written Representations

Start Date: 17.05.2022

Statement Due: 21.06.2022

Appeal reference: 22/00025/REF

**l) 21/03452/TEL56 – Street Record, Station Road, Kirtlington**

Proposed 15.0m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works.

Officer recommendation: Refused (Delegated)

Method of determination: Written Representations

Start Date: 21.04.2022

Statement Due: 26.05.2022

Appeal reference: 22/00021/REF

**m) 21/04093/F – 5 St Peters Close, South Newington, OX15 4JL**

Rear extension, porch and dormer in converted roof space (resubmission of 21/02697/F)

Officer recommendation: Refused (Delegated)  
Method of determination: Householder (Fast Track)  
Start Date: 31.03.2022  
Statement Due: N/A  
Appeal reference: 22/00018/REF

**n) 21/04179/LB – Trelawn House, 34 North Bar Street, Banbury, OX16 0TH**

Remedial works to the external elevations of Trelawn House following the demolition of the Buzz Bingo building.

Officer recommendation: Non-determination  
Method of determination: Public Inquiry (Linked with 21/04202/F appeal)  
Inquiry start date: 9<sup>th</sup> August 2022  
Inquiry Location: Parkside Suite, Whatley Hall Hotel, 17 - 19 Horse Fair, Banbury OX16 0AN  
Start Date: 17.05.2022  
Statement Due: 21.06.2022  
Appeal reference: 22/00026/REF

**o) 21/04199/Q56 - Quarry Farm, Oxford Road, Adderbury, OX17 3HH**

Change of Use of agricultural building to dwellinghouse (Use Class C3)

Officer recommendation: Refused (Delegated)  
Method of determination: Written Representations  
Start Date: 19.05.2022  
Statement Due: 23.06.2022  
Appeal reference: 22/00028/REF

**p) 21/04202/F – Former Buzz Bingo, Bolton Road, Banbury, OX16 5UL**

Redevelopment for 80 retirement living apartments including communal facilities, access, car parking and landscaping.

Officer recommendation: Non-Determination  
Method of determination: Public Inquiry  
Inquiry start date: 9<sup>th</sup> August 2022  
Inquiry Location: Parkside Suite, Whatley Hall Hotel, 17 - 19 Horse Fair, Banbury OX16 0AN  
Start Date: 19.04.2022  
Statement Due: 24.05.2022  
Appeal reference: 22/00019/NON

**q) 21/04299/OUT – Reynards Lodge, North Lane, Weston On The Green, OX25 3RG**

Removal of Condition 11 (no dwelling above one storey height) of 21/02146/OUT - Outline application demolition of workshops, stables and tennis court and erection of three dwellings and conversion of existing building to form a dwelling

Officer recommendation: Refused (Delegated)  
Method of determination: Written Representations  
Start Date: 18.05.2022  
Statement Due: 22.06.2022  
Appeal reference: 22/00027/REF

**r) 22/00173/CLUP – 15 Arncott Road, Piddington, OX25 1PS**

Certificate of Lawfulness of Proposed Development for the erection of a wooden workshop to be use for dog grooming services.

Officer recommendation: Refused (Delegated)  
Method of determination: Written Representations  
Start Date: 05.05.2022  
Statement Due: 16.06.2022  
Appeal reference: 22/00023/REF

### **3.4 Enforcement Appeals in Progress**

**a) 21/00215/ENF – Land Adjacent To 1 Coleridge Close, Bicester, OX26 6XR**

Appeal against the enforcement notice served for 'Without planning permission, the erection of a timber fence above 1 metre in height and adjacent to a highway'

Method of determination: Written Representations  
Start Date: 26.01.2022  
Statement due: 09.03.2022  
Appeal reference: 22/00011/ENF

**b) 20/00115/HH - Thames Valley Police, Headquarters South, 169 Oxford Road, Kidlington, OX5 2NX**

Appeal against the decision by the Council not to issue a remedial notice on a high hedge complaint made by a local resident.

Start date: 31.01.2020  
Questionnaire due: 28.02.2022

**c) 17/00334/ENF – 107 Middleton Road, Banbury, OX16 3QS**

Without planning permission, the creation of 7No. Self-Contained units of residential accommodation (6No. Studio Flats and 1No. bedroom flat)

Officer recommendation: Refused (Delegated)  
Method of determination: Written Representations  
Start Date: 13.05.2022  
Statement Due: 24.06.2022  
Appeal reference: 22/00024/REF

### 3.5 Forthcoming Public Inquires and Hearings between 15 July 2022 and 11 August 2022

#### a) 21/04202/F - Former Buzz Bingo, Bolton Road, Banbury, OX16 5UL

Redevelopment for 80 retirement living apartments including communal facilities, access, car parking and landscaping.

Inquiry start date: Tuesday 9<sup>th</sup> August 2022. Start time 10:00

Inquiry venue: Parkside Suite, Whatley Hall Hotel, 17 - 19 Horse Fair, Banbury OX16 0AN.

Expected number of days for the Inquiry to last: 6 days

Joint Inquiry with appeal against non-determination of application reference 21/04179/LB

#### b) 21/04179/LB – Trelawn House, 34 North Bar Street, Banbury, OX16 0<sup>TH</sup>

Inquiry start date: Tuesday 9<sup>th</sup> August 2022. Start time 10:00

Inquiry venue: Parkside Suite, Whatley Hall Hotel, 17 - 19 Horse Fair, Banbury OX16 0AN.

Expected number of days for the Inquiry to last: 6 days

Joint Inquiry with appeal against non-determination of application reference 21/04202/F

### 3.6 Appeal Results

Inspectors appointed by the Secretary of State have issued the following decisions:

- a) **20/02446/F – Dismissed the appeal by W A Adams Partnership against the refusal of planning permission for Formation of inland waterways marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake - re-submission of 18/00904/F. Glebe Farm, Boddington Road, Claydon, Banbury, OX17 1TD.**

Officer Recommendation: Approval (Committee)

Method of determination: Written Representations

Appeal reference: 21/00046/REF

The Inspector identified four main issues for the appeal.

- Whether or not the proposal is a suitable form of development given its location in the open countryside.
- Whether or not the proposal would preserve or enhance the character or appearance of the Oxford Canal Conservation Area and its setting.
- Whether or not the proposal makes adequate provision for footpath and highway improvements; and
- The effect of the proposal on highway safety.

In respect of the first issue, the Inspector found that the proposal would not accord with the policy requirement for new facilities for canal users to be within or adjacent to an existing settlement. The Inspector did identify that opportunities to provide such a facility in locations that accord with the policy within the district is limited however concluded on the issue that this does not provide a sufficient reason to justify the proposal that would be contrary to the requirements of Policy ESD16 of Cherwell Local Plan 2011 – 2031 (Part 1).

In respect of the second issue the Inspector noted that the proposed development would require a new entrance and new towpath bridge to be constructed and would result in a loss of a stretch of the towpath hedge and there would be notable engineered structures in this otherwise rural agricultural landscape. The Inspector also noted that the proposal would introduce a distinctly more urban character into the rural landscape that would be an unsympathetic addition to the setting of the canal. The Inspector concluded on this issue that the proposal would fail to preserve and would unacceptably harm and detract the character and appearance of the Oxford Canal Conservation Area and its setting.

On the issue of the provision for footpath and highway improvements, the Inspector found that the Unilateral Undertaking submitted with the appeal makes satisfactory provision for the necessary highway improvements. However, in the absence of sufficient justification, does not make adequate provision for footpath improvements.

In respect of highway safety, The Inspector found that the proposal would not have a detrimental impact on highway safety. The Inspector advised that the Local Highways Authority raised no objection subject to conditions and the provision of the passing places and were satisfied that the local road network had the capacity to deal with this increase.

The Inspector concluded that whilst they had regard to all the benefits of the proposal, they considered that taken together these do not outweigh the harm that they have identified these would cause. The appeal was therefore dismissed.

**b) 21/01488/F – Allowed the appeal by D McLindon against the refusal of planning permission for Single storey extensions and conversion of garage to habitable accommodation. The Old Bakehouse, Bakers Lane, Swalcliffe, OX15 5EN.**

Officer Recommendation: Refused (Delegated)  
Method of determination: Written Representations  
Appeal reference: 22/00008/REF

The Inspector identified the main issue of the appeal to be whether the proposed single storey extension would preserve the special interest and significance of the Old Bakehouse, a grade II listed building.

In Inspector was satisfied that the timber cladding proposed on the west elevation would not harm the special interest or heritage significance of the listed building nor interfere with any appreciation of the listed building.

The Inspector found that the proposed extension would be subservient in both scale and form to the original building and the contemporary design approach, would set it apart from the original house as an obviously modern, yet sympathetic and respectful addition. Therefore, they concluded that the special interest and heritage significance of the listed building would be preserved.

The Inspector allowed the appeal.

- c) **21/01489/LB – Allowed the appeal by D McLindon against the refusal of listed building consent for Single storey extensions and garage conversion. The Old Bakehouse, Bakers Lane, Swalcliffe, OX15 5EN.**

Officer Recommendation: Refused (Delegated)  
Method of determination: Written Representations  
Appeal reference: 22/00009/REF

Please see appeal decision summary for 3.6.a.

- d) **Withdrawn Appeal by the Appellant – 21/03126/TEL56 – Telecommunications Cabinet CWL 18533, Oxhey Hill, Cropredy**

Proposed 18.0m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works.

Date of withdrawal: 17.06.2022

## **4.0 Conclusion and Reasons for Recommendations**

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

## **5.0 Consultation**

None.

## **6.0 Alternative Options and Reasons for Rejection**

None. The report is presented for information.

## **7.0 Implications**

### **7.1 Financial and Resource Implications**

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:  
Janet Du Preez, Service Accountant, 01295 221606  
[janet.du-preez@cherwell-dc.gov.uk](mailto:janet.du-preez@cherwell-dc.gov.uk)

### **7.2 Legal Implications**

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

Comments checked by:  
Donna Lee, Planning Solicitor, 01295 221586  
donna.lee@cherwell-dc.gov.uk

### **7.3 Risk Implications**

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:  
Celia Prado-Teeling, Interim Assistant Director – Customer Focus, 01295 221556  
celia.prado-teeling@cherwell-dc.gov.uk

## **7.4 Equality & Diversity Implications**

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

Comments checked by:  
Celia Prado-Teeling, Interim Assistant Director – Customer Focus, 01295 221556  
celia.prado-teeling@cherwell-dc.gov.uk

## **7.5 Decision Information**

### **Key Decision:**

Financial Threshold Met: No

Community Impact Threshold Met: No

### **Wards Affected**

All

### **Links to Corporate Plan and Policy Framework**

Business Plan Priorities 2022-2023:

- Housing that meets your needs
- Supporting 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

### **Report Author and contact details**

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