

Case Officer: Matthew Chadwick

Applicant: Novika Limited

Proposal: Alterations to building and Change of Use to form retail unit at the front at ground floor level and two office units at the rear at ground floor level and the provision of 12 No self-contained dwellings at first, second and third floor level

Ward: Banbury Cross and Neithrop

Councillors: Councillor Hannah Banfield
Councillor Surinder Dhesi
Councillor Cassi Perry

Reason for Referral: Major development

Expiry Date: 23 December 2019

Committee Date: 16 January 2020

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS

Proposal

Planning consent is sought to make alterations to the building and change its use to form one retail unit on ground floor facing Broad Street, two office units at ground floor facing Pepper Alley and twelve flats at first, second and third floor level.

Consultations

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

- OCC Drainage

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

- Banbury Town Council, CDC Environmental Health, OCC Highways, Thames Valley Police Design Advisor, Thames Water

No letters have been received from the public in support or objection.

Planning Policy and Constraints

The building is locally listed and is within the Banbury Conservation Area. The site lies within a potentially contaminated land buffer zone. Swifts, Whiskered Bats and Brown Long-eared bats have been located in proximity of the site, which are protected species. The site lies within an area of archaeological interest.

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

Conclusion

The key issues arising from the application details are:

- Principle of Development

- Design and impact on the character of the area
- Residential amenity
- Highway safety
- Affordable housing
- Drainage
- Protected species
- Archaeology

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

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

MAIN REPORT

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located in Banbury town centre and has a frontage onto Broad Street where the road is pedestrianised and backs onto Pepper Alley to the west. The existing building covers the entirety of the site and is a non-designated heritage asset, described in the Council's own listing document as a 'Former Cinema - c.1930s Art-deco / Egyptian cinema'. The application site also includes the 3 storey brick building to the north of the main part of the former cinema building. The building was last used as a night club but was vacant for a number of years before being redeveloped as part of planning consent 16/02529/F.

2. CONSTRAINTS

- 2.1. The application building is not statutorily listed but is located within the Banbury Conservation Area and is locally listed. The site lies within a potentially contaminated land buffer zone. Swifts, Whiskered Bats and Brown Long-eared bats have been located in proximity of the site, which are protected species. The site lies within an area of archaeological interest.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. Planning permission is sought for alterations and extensions to the building and its conversion to form one retail unit at ground floor level facing Broad Street, two office units at ground floor level facing Pepper Alley, with 12 flats above arranged over 3 floors.
- 3.2. The ground floor would be used for one retail unit, which would have a frontage onto Broad Street, and two office units which would have a frontage onto Pepper Alley. The cycle storage for both the flats and the retail units would be contained on the ground floor, as would the bin storage.
- 3.3. The residential accommodation would be arranged in two blocks of accommodation above the ground floor retail and office units. The frontage block that would face onto Broad Street would accommodate 6 flats (2 x 2 beds and 4 x 1 beds) across three floors. The rear block that would face onto Pepper Alley would accommodate 6 one-bedroom flats across two floors.

- 3.4. The proposed development would retain the existing art deco façade of the building that faces onto Broad Street, including the stepped parapet element. There would be some alterations to this frontage, which would relate to the repositioning of windows and decorative banding and the raising of the lintel of the balcony. There would also be some changes to the shop fronts, with new openings created for both the shops and access to the flats.
- 3.5. The frontage onto Pepper Alley would be three storeys in height and would be externally faced in red brick under a pitched roof faced in natural slate.

4. RELEVANT PLANNING HISTORY

- 4.1. The following planning history is considered relevant to the current proposal:
- 4.2. CHN.699/80: Alterations to internal area, and extension to existing bingo club with amendment to shopfront APPROVED 22 December 1980
- 4.3. 98/01724/F: Change of use from bingo hall (Class D2) to restaurant (Class A3) APPROVED 15 December 1998
- 4.4. 99/00927/F: Proposed alterations to front and rear elevations (as amended by plans received on 3.6.99 and as clarified by agent's letter dated 22.6.99) APPROVED 29 June 1999
- 4.5. 14/00859/F: Alterations and minor extensions to the front and rear facades and change of use to accommodate 2 retail units at ground floor level, 2 mews houses with integral parking to the rear and 6 self-contained flats APPROVED 30 September 2014
- 4.6. 16/00292/F: Proposed extension, alteration and change of use to form 3 no. retail units and 14 no. self-contained flats WITHDRAWN 31 May 2016
- 4.7. 16/02529/F: Alterations to building and change of use to form retail units at ground floor level and 12 No self-contained flats over – re-submission of 16/00292/F APPROVED 24 April 2017

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 **24 September 2019**, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. No comments have been raised by third parties.

7. RESPONSE TO CONSULTATION

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

TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. BANBURY TOWN COUNCIL: **No objections.**

CONSULTEES

- 7.3. CDC BUILDING CONTROL: The proposed layout does not appear to be in accordance with Approved Document B for means-of-escape. There appears to be a lack of smoke ventilation within the common areas. Some of the opening windows to some of the units overlook the common escape routes. There appears to be inadequate access to all parts of the building for fire rescue vehicles (45 m rule).
- 7.4. OCC DRAINAGE: **Objects**, due to insufficient information.
- 7.5. CDC ENVIRONMENTAL HEALTH: **No objections.**
- 7.6. OCC HIGHWAYS: **No objections**, subject to conditions requiring a CTMP, cycle parking provision and a travel information pack.
- 7.7. CDC LICENSING: No comments to make.
- 7.8. CDC RECREATION AND LEISURE: No comments received.
- 7.9. THAMES VALLEY POLICE DESIGN ADVISOR: **No objections**, subject to a condition stating prior to commencement of development, an application shall be made for Secured by Design accreditation on the development hereby approved. The development shall be carried out in accordance with the approved details, and shall not be occupied or used until confirmation of SBD accreditation has been received by the authority.
- 7.10. THAMES WATER: **No objections**, subject to a planning note stating that Thames Water will aim to provide customers with a minimum pressure of 10m head (approx.. 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes

8. RELEVANT PLANNING POLICY AND GUIDANCE

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

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

- PSD1 – Presumption in Favour of Sustainable Development
- SLE2 – Securing Dynamic Town Centres
- SLE4 – Improving Transport and Connections
- BSC2 – The Effective and Efficient Use of Land – Brownfield Land and Housing Density
- BSC3 – Affordable Housing

- BSC4 – Housing Mix
- BSC10 – Open Space, Outdoor Sport and Recreation Provision
- BSC11 – Local Standards of Provision – Outdoor Recreation
- ESD1 – Mitigating and Adapting to Climate Change
- ESD3 – Sustainable Construction
- ESD6 – Sustainable Flood Risk Management
- ESD7 – Sustainable Drainage Systems
- ESD10 – Protection and Enhancement of Biodiversity and Natural Environment
- ESD15 – The Character of the Built and Historic Environment
- Banbury 7 – Strengthening Banbury Town Centre
- INF1 - Infrastructure

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C23 – Features in conservation areas
- C28 – Layout, design and external appearance of new development
- C30 – Design control
- ENV1 – Development likely to cause detrimental levels of pollution

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- Cherwell Residential Design Guide (2018)

9. APPRAISAL

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

- Principle of development
- Design, impact on the character of the area and heritage assets
- Residential amenity
- Highway safety
- Drainage
- Financial contributions

Principle of Development

Policy Context

- 9.2. Paragraph 85 of the NPPF states that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should define a network and hierarchy of town centres and promote their long-term vitality and viability by allowing them to grow and diversify and allow a suitable mix of uses (including housing).
- 9.3. Policy Banbury 7 of the Cherwell Local Plan 2011 – 2031 Part 1 states that retail and other main town centre uses will be supported within the town centre boundary. It goes on to state that residential development will be supported in appropriate locations in the town centre except where it will lead to the loss of retail or other main town centre uses. It further states mixed use development will be encouraged.

- 9.4. Policy SLE2 of the Cherwell Local Plan 2011 – 2031 Part 1 also looks to guide retail development towards town centre and Policy BSC2 of the Cherwell Local Plan 2011 – 2031 Part 1 seeks to make effective use of land and states the Council will encourage the re-use of previously developed land such in sustainable locations.

Assessment

- 9.5. The site is located within the town centre of Banbury as identified in Policy Banbury 7. The application site has a significant amount of history and was originally built in 1911 as a 500-seat, Grand Theatre. It was remodelled in the 1930s as an art deco Egyptian cinema. It was later used as a bingo hall until 1998 when planning permission was granted to change the use of the building from a bingo hall (use class D2) to a restaurant (use A3). It was in use as the Chicago Rock Café for a number of years and the most recent use was as a nightclub known as Wonderlounge (albeit that latter use did not benefit from planning permission).
- 9.6. The change of use to retail at ground floor with twelve flats above was approved under 16/02529/F in 2017 and this consent has been implemented. Given the town centre location where retail with flats above is considered to be acceptable in principle and this planning history, the principle of development for these elements of the scheme is considered to be acceptable.
- 9.7. The difference between the previously approved scheme and this proposal is that only one retail unit is now proposed onto Broad Street and two office units are proposed onto Pepper Alley. Offices are a main town centre use and therefore the principle of development for this element of the scheme is also considered to be acceptable. Offices have been approved on the ground floor of the new development to the north of the application site on Pepper Alley (16/00970/F) and the provision of office space in this area would increase activity and surveillance onto Pepper Alley relative to that of the previously approved scheme. The one retail unit now proposed would be smaller than the larger of the two approved retail units. However, given that there are a number of larger retail units vacant within the town centre it is considered that the provision of a retail unit of this size would be acceptable.

Conclusion

- 9.8. For the reasons set out, the principle of development is therefore considered to be acceptable and the development would comply with Policies SLE2, BSC2 and Banbury 7 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the NPPF.

Design, impact on the character of the area and heritage assets

Legislative and policy context

- 9.9. The site is within the Banbury Conservation Area. The building is locally listed and is therefore a non-designated heritage asset in its own right.
- 9.10. Policy ESD15 of the Cherwell Local Plan Part 1 states that new development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards.
- 9.11. Saved Policy C23 of the Cherwell Local Plan 1996 states that there will be a presumption in favour of retaining buildings and other features which make a positive contribution to the character and appearance of the Conservation Area.

- 9.12. Saved Policy C28 of the Cherwell Local Plan 1996 reflects Government guidance in relation to the design of new development by seeking to ensure that such development is in harmony with the general character of its surroundings and is sympathetic to the environmental context of the site and its surroundings.
- 9.13. Saved Policy C30 states that new housing development should be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.
- 9.14. 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.*
- 9.15. 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.
- 9.16. Paragraph 197 of the NPPF states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Assessment

- 9.17. The design of the scheme is very similar to the previously approved scheme, with the most significant changes being to the Pepper Alley elevation and the creation of the office units.
- 9.18. As with the previously approved application, the current application would retain the façade of the building onto Broad Street. This striking façade, with its art-deco appearance and stepped parapet roof, is considered to be the most significant element of the building and its architectural appearance is considered to be the key reason why the building is on the Councils local list. The fenestration of the building would be altered with the window positions and banding which runs across the front elevation of the building being altered which is similar to the earlier approval. There would also be alterations to the shop front details onto Broad Street. The frontage to the former Grand would broadly be retained with the exception of the most southern part which would have a new shop front. A new shop front and recessed gate to provide access to the residential floors on upper floors would also be provided to the 3 storey building to the north of the site. Further details of these elements can be secured by condition. It is worth noting that all of these elements have been previously approved.
- 9.19. It is considered that the alterations to the frontage of the building would retain the art-deco appearance and character of the building and it would still be possible to read the two buildings as separate, which they historically were. Furthermore, all of these changes to the Broad Street elevation have been previously approved under 16/02529/F and are therefore considered to be acceptable.
- 9.20. Apart from the main frontage of the building onto Broad Street, the remainder of the building would undergo substantial alteration and extension. These other parts of

the buildings are not considered to be of such significance to the character and appearance of the Conservation Area. Therefore, in reaching a balanced judgement, as requested by paragraph 196 of the NPPF, the loss and alteration of these other elements is considered acceptable subject to the new development being appropriate to the Conservation Area.

- 9.21. The main part of the frontage residential block facing onto Broad Street would be accommodated within a 4 storey gabled extension which would be situated behind the main stepped parapet roof of the façade of the building, whilst there would be another smaller 4 storey gabled extension which would accommodate the stairways giving access to the residential units. The top two floors of this would be rendered with brick quoins, whilst the second floor level would be constructed from brick to match that used on the rear of the buildings. This would be largely screened by the existing parapet roof and the surrounding building from street level and therefore it is not considered that this would not lead to any significant harm to the character and appearance of the Conservation Area.
- 9.22. The rear of the site faces onto Pepper Alley. Pepper Alley has a very different character and appearance to Broad Street and it is noted within the Conservation Area Appraisal as an interlinking historic lane stemming from the medieval origins of the town. The alley is characterised by a mix of warehouse buildings with a commercial character and appearance. There is a high sense of enclosure along Pepper Alley and it has a mix of 2 and 3 storey buildings which add to the rhythm of the street scene and helps to break up the massing of the buildings. Whilst some of the buildings are currently in a poor state of repair and have a rather dilapidated appearance, there are positive elements which add to the character and appearance of the Conservation Area and in recent years a number of redevelopment schemes have been approved with the area being regenerated. One of these schemes is directly to the north of the application site.
- 9.23. The part of the building that would face onto Pepper Alley would be three storeys in height and would accommodate 6 flats. The proposed development would use red brick and slate, materials which are considered appropriate in the context of the simple palette of materials seen on buildings on Pepper Alley. The development would be three storeys in height and would be of a similar scale to the buildings which it would sit adjacent to and is therefore considered appropriate in terms of scale.
- 9.24. The main change in this proposal is the creation of the office units at ground floor level, which would create windows and doors facing onto Pepper Alley. In the approved scheme there were larger doors for a fire escape and entrance to the loading bay of the retail unit. These changes would result in the building appearing slightly less commercial than the approved scheme however the doors and window are aligned with the other openings on the building which would result in a well-designed building. Given the overall design of this element of the building, it is still considered that it would appear commercial and not overly domestic in its design and that it is acceptable in this regard.

Conclusion

- 9.25. This proposal would alter the appearance of the building that currently faces onto Pepper Alley. However, it would retain the commercial style and appearance of the building which is characteristic of the development in Pepper Alley. The proposed design would also provide improved surveillance on Pepper Alley with the creation of windows servicing the office and residential units, which is considered a positive element of the proposals. It is therefore considered that the simple design of the building would positively contribute to the character and appearance of the

Conservation Area and thus that the proposal complies with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policies C23, C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

Residential amenity

- 9.26. Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 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.
- 9.27. The residential units would be constructed in two blocks that would be separated by a central courtyard at first floor level. This courtyard will have a communal amenity area which is considered to be a positive element of the proposals.
- 9.28. The two blocks housing the residential units would be separated by a distance of 12.5m. Cherwell Residential Design Guide (2018) specifies a minimum separation distance between residential units of 22m to prevent a loss of privacy.
- 9.29. In the town centre, given the higher density of development, residential units are often significantly closer proximity than 22m and residents do not expect the same level of amenity as they may in a suburban or rural area. Furthermore the 12.5m separation distance proposed under this scheme would significantly exceed that of the previously approved scheme from 2014 and is the same as that of the most recently approved scheme that has been implemented. Given the town centre location of the development, it is considered in this particular instance and for the reasons set out above that the relationship would not cause significant harm to the amenity of future occupiers with regards to loss of privacy or loss of outlook.
- 9.30. Given that neighbouring properties are predominantly commercial in character and the town centre location, the dwellings may be subject to noise from the day and night time economy. A condition was imposed on the extant permission which required a noise consultant's report to be submitted that demonstrated that the flats had acceptable levels of noise. The same condition would be included on any new permission given here.
- 9.31. It is therefore considered that the development would provide an acceptable standard of amenity for both existing occupiers nearby and future occupiers on the site with regards to overlooking, loss of privacy, over-domination and a loss of light and would comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C30 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

Highway safety

- 9.32. Policy SLE4 of the Cherwell Local Plan Part 1 states all development where reasonable to do so should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling. Policy ESD1 states the Council will support the delivery of development which seeks to reduce the need to travel and reduces dependence on private cars.
- 9.33. The Highways Officer has offered no objections to the application, subject to a number of conditions. These would relate to the submission of a travel information pack, a construction travel management plan and cycle parking details. These were all matters which were conditioned on the previously approved application.

- 9.34. The development would have no car parking spaces, which is the same as the previously approved scheme. Given the town centre location of the development and its proximity to transport services, including bus stops, the bus station and the railway station, it is acceptable for the development to not provide parking spaces on-site. As the streets in the locality all have some form of parking control, it is unlikely that there would be overspill car parking on nearby streets that would cause a safety and amenity problem.
- 9.35. Cycle parking is proposed to serve both the residential and retail units. Twenty cycle parking spaces would be provided to serve the residential units and this is considered to be an adequate level of provision for the residential units. A condition requiring full details of the cycle parking is also proposed.
- 9.36. A construction travel management plan and travel information pack would be required due to the town centre location of the development. A CTMP was approved under 18/00444/DISC and a travel information pack shall be included as a planning condition. Sustainable forms of travel should be encouraged and it should be ensured that the development has the least impact on the local highway network.
- 9.37. It is therefore considered that the development would not cause harm to the safety of the local highway network, subject to the inclusion of appropriately worded conditions and that the development would comply with Policies SLE4 and ESD1 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the NPPF.

Drainage

- 9.38. Policy ESD6 of the Cherwell Local Plan (2011-2031) Part 1 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 towards areas at lower risk of flooding. Banbury 1 states development should take account of the Councils Strategic Flood Risk Assessment.
- 9.39. Policy ESD7 of the Cherwell Local Plan (2011-2031) Part 1 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.
- 9.40. The County Drainage Engineer has objected to the scheme due a lack of information. A drainage strategy was required by condition of the extant permission and a drainage strategy was submitted and approved under a discharge of condition application (18/00444/DISC). Given the similarities of the two schemes, it is considered that this drainage strategy remains to be acceptable and that it would be unreasonable to conclude otherwise.
- 9.41. It is therefore considered that the approved drainage strategy remains to be acceptable and that the development would comply with Policies ESD6 and ESD7 of the Cherwell Local Plan 2011 – 2031 Part 1 and that the development would be acceptable in this regard.

Financial contributions

Policy context

- 9.42. Policy BSC3 of the Cherwell Local Plan Part 1 states that all developments within Banbury and Bicester that include 11 or more dwellings (gross) will be expected to provide at least 30% of new housing as affordable homes on the site. This

provision expects 70% of the affordable housing as affordable/social rented dwellings and 30% as other forms such as shared ownership.

- 9.43. Policy BSC11 of the Cherwell Local Plan Part 1 states that all development proposals will be required to contribute to the provision of open space, sport and recreation, together with secure arrangements for its management and maintenance.
- 9.44. Policies BSC3 and BSC11 state where an applicant considers that this would make a scheme unviable and open book financial viability assessment will be required to be undertaken. Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it.
- 9.45. Paragraph 57 of the NPPF states is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. It states that all viability assessments, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.
- 9.46. The PPG also provides guidance on defining the key inputs into viability assessments. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.

Assessment

- 9.47. A legal agreement was signed for 16/02529/F which secured £224,000 towards affordable housing and £27,682.32 towards improvement of the existing play area at Old Parr Close.
- 9.48. In this case the applicant has argued that the site would not be financially viable with the provision of affordable housing on the site. The applicant has submitted a viability assessment to support its case which has been subject to consideration by an independent external consultant (Bidwells, in this instance) appointed by the Council to determine whether the key inputs and conclusions are reasonable and robust, having regard to the particular nature of the development and the site. A full copy of the applicant's viability assessment and Bidwells' review of viability on behalf of the Council is available to view on the Council's website.
- 9.49. It is important to note that for a development to be viable the value generated by a development must be more than the cost of its delivery. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return. Without a developer return and landowners' premium, development is unlikely to come forward.
- 9.50. The applicant's viability assessment concludes that it would not be viable to provide any financial contributions. The applicant's appraisal shows a negative residual land value of -£693,000 for the Proposed Scheme (this value is £1.618 million below AGA's proposed benchmark value of £925,000). The applicant therefore concludes that the Proposed Scheme is unviable and cannot sustain any level of financial contribution.
- 9.51. The external consultants' (Bidwells) review of this appraisal disagrees with some of the calculations in the applicants' viability appraisal. The most significant area of disagreement is that Bidwells' appraisal of the Proposed Scheme generates a positive residual land value of £40,861 on the assumption of no financial

contributions. Despite this, the residual land value would still be below the viability benchmark value of the site and the Bidwells review therefore agrees with the applicants' conclusion that the development could not viably sustain any level of financial contribution.

9.52. However, this conclusion is reached on the basis of a developer profit of 20% whereas the Government's planning practice guidance says that a profit of between 15% and 20% is reasonable in carrying out viability appraisals.

9.53. Whereas the profit margin would be c.10% if the affordable housing contribution was required, and 18% without any contributions, the profit margin would still be in the 15-20% bracket with the inclusion of the off-site contribution towards play space.

9.54. Overall it is therefore concluded on the basis of the information provided that the scheme cannot support an affordable housing contribution, whereas it has not been clearly demonstrated that the play area contribution is not viable given its smaller sum. However, the decision maker must consider whether the development meets the tests of Paragraph 56 of the NPPF.

9.55. Paragraph 56 of the NPPF states that planning obligations must only be sought where they meet all of the following tests:

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

9.56. The proposed flats comprise 10 one-bedroom units and 2 two-bedroom units. Given that the majority of the occupiers of these flats are likely to be adults with no children, it is considered that this financial contribution is not necessary to make the development acceptable in planning terms and therefore does not meet the tests set out in paragraph 56 of the NPPF. As a result the play area contribution will not be sought.

Conclusion

9.57. The Council's independent review of the viability appraisal agrees that the development would not be viable with the financial contribution towards affordable housing and that officers conclude the LAP contribution would not meet the tests.

Other matters

9.58. The site is located within an area of archaeological interest, however given the nature of the proposed works it is considered that the development would not impact on any archaeological remains in the area.

9.59. The Council's Ecology Officer did not raise any issues with the previously approved application. Given the advanced status of the construction of the approved scheme and that there were no objections on the approved scheme, it is considered that the development would not cause harm in this regard.

10. PLANNING BALANCE AND CONCLUSION

10.1. The principle of changing the use of the site to accommodate retail and residential development has been previously approved and the extant consent has been implemented. The changes to the Broad Street façade are considered to be

relatively minor and would retain the art-deco appearance of the building, considered to be its most important feature and the reason for its listing as a Locally Listed Building. The alterations to the Pepper Alley frontage would result in a simple design that would sit comfortably in the context in which it is located, with regards to its scale, appearance and materials palette and would retain the enclosure that currently exists. Overall, they would preserve the character and appearance of the Conservation Area. It is considered that the development would provide an acceptable level of amenity to future and existing occupiers and that, subject to conditions, the development would not have a detrimental impact on the safety of the local highway network. The proposal would bring an empty site back into use and there would be social and economic benefits which weigh in favour of the development, in particular the provision of additional housing in an environmentally sustainable location. The lack of an affordable housing contribution weighs against the proposal. However, the applicant's viability assessment has demonstrated that the development would not be viable with the inclusion of this contribution, and the Council's independent assessment agrees. In accordance with the NPPF the weight to be given to a viability assessment is a matter for the decision maker. In this case the proposed development would provide twelve flats within the town centre of Banbury and result in the regeneration and reuse of a brownfield site. On balance, given the conclusions of the viability assessment, these factors are considered to outweigh the fact the proposal would not provide affordable housing. Overall, on balance, the development is therefore considered to be 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)

CONDITIONS

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: Location Plan (GAL 273 (PC) 100); Proposed Ground Floor Plan (GAL 273 (PC) 110); Proposed First Floor Plan (GAL 273 (PC) 111); Proposed Second Floor Plan (GAL 273 (PC) 112); Proposed Third Floor Plan (GAL 273 (PC) 113); Proposed East and West Elevations (GAL 273 (PC) 114); Typical Site Section 1 (GAL 273 (PC) 116); Typical Site Section 2 (GAL 273 (PC) 117) and Proposed Sectional Elevations West And East (GAL 273 (PC) 115).

The CTMP dated 16 October 2018 by Genesis Architects Ltd and the drawing titled Site Plan N.T.S. and the details titled 'Drawing Sketch', drawing number EX1800901/001 as approved under 18/00444/DISC.

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.

2. The external walls of the development to be constructed in brick shall be constructed in strict accordance with the brick sample panel approved under 18/00444/DISC.

Reason - To ensure the satisfactory appearance of the completed development

and to comply with Policy ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

3. The roof of the development shall be externally faced in strict accordance with the slates approved under 18/00444/DISC.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

4. The external walls of the development to be finished in render shall be carried out in strict accordance with the render sample approved under 18/00444/DISC.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

5. Within one month of the date of this consent, full design details of the shop fronts facing onto Broad Street, including details of materials and finished colour, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the shop fronts shall be finished in accordance with the approved details.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

6. Within one month of the date of this consent, full details of the rainwater goods servicing the development, including details of materials and finished colour, shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details and shall be retained as such thereafter.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

7. Prior to the first occupation of the development, a specialist acoustic consultant's report that demonstrates that internal noise levels do not exceed the levels specified (or gives details of mitigation measures required to achieve these levels) in the British Standard BS 8233:2014 'Guidance on Sound Insulation and Noise Reduction for Buildings', shall be submitted to and approved in writing by the Local Planning Authority. If required thereafter, and prior to the first occupation of the dwellings affected by this condition, the dwellings affected by this condition shall be insulated and maintained in accordance with the approved details.

Reason - To ensure the creation of a satisfactory environment free from intrusive levels of noise and to comply 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.

8. The development shall not be carried out other than in accordance with the CTMP approved under 18/00444/DISC.

Reason - In the interests of highway safety and the residential amenities of people living in the vicinity of the development and to comply 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.

9. Prior to the first use or occupation of the development hereby permitted, covered cycle parking facilities shall be provided on the site in accordance with details which shall be firstly submitted to and approved in writing by the Local Planning Authority. 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 sustainability, to ensure a satisfactory form of development and to comply with Policies SLE4 and ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, and Government guidance contained within the National Planning Policy Framework.

10. A Travel Information Pack, the details of which are to be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the development, shall be provided to every household upon their first occupation of the development.

Reason - In the interests of sustainability, to ensure a satisfactory form of development and to comply with Policies SLE4 and ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, and Government guidance contained within the National Planning Policy Framework.

11. The development shall not be carried out other than in accordance with the drainage scheme approved under 18/00444/DISC.

Reason - In the interests of highway safety and flood risk management, to comply with Policies ESD6, ESD7 and ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, and Government guidance contained within the National Planning Policy Framework.

12. Notwithstanding the provisions of Schedule 2, Part 16 of The Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments, no radio or TV aerials, satellite dishes or other antennae shall be affixed to the front façade of the building without the grant of further specific planning permission from the Local Planning Authority.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.