

**Case Officer:** Linda Griffiths

**Applicant:** Countryside Properties (Bicester) Limited

**Proposal:** Outline permission for development of up to 57 residential dwellings (C3 use class), other related infrastructure and associated works

**Ward:** Bicester South And Ambrosden

**Councillors:** Cllr Nick Cotter; Cllr Dan Sames; Cllr Lucinda Wing

**Reason for Referral:** Major development

**Expiry Date:** 31 January 2020

**Committee Date:** 13<sup>th</sup> February 2020

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

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

#### **Proposal**

The site extends to 2.69 hectares. It is part of the Phase 1 South West Bicester development and seeks outline planning permission with all matters reserved for 57 dwellings with 2.5 acres reserved through a section 106 agreement for GP surgery/health hub. The site will be accessed via the new signalised junction onto the A41 by the Premier Inn and through the Kingsmere development along the secondary street which runs between the Linden Homes development and the Bicester Gateway retail development.

#### **Consultations**

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

- Bicester Town Council,

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

- CDC Arboriculture, CDC Landscape, CDC Strategic Housing and CDC Waste and Recycling, OCC highways, OCC drainage

OCCG and Bicester Delivery Team have raised some concerns about the ability to secure the health hub land appropriately

1 letter of objection have been received and 1 letter of support have been received.

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

The application site is situated to the south west of Bicester Town Centre. The site was identified for development under Policy H13 of the Non-Statutory Cherwell Local Plan 2011. Outline planning consent was granted in June 2008 and construction began on site in July 2010. The permission provided for up to 1585 dwellings, a health village, employment, local centre, primary and secondary schools, hotel, sports provision and strategic infrastructure including new perimeter road, landscaping, open space and sports village (06/00967/OUT refers). The application site relates to the land identified for 'health village, including GP surgery'. Outline planning consent for a further 100 units across the

Kingsmere site was granted in 2016, bringing the total number of dwellings to 1685.

Following the above, Policy Bicester 3 of the adopted Cherwell Local Plan 2011-2031 allocated Phase 2 SW Bicester for up to 726 new homes with associated services, facilities and infrastructure (13/00847/OUT refers). Commencement of development on site has begun and first occupation occurred in December 2019.

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

## **Conclusion**

The key issues arising from the application details are:

- Principle of Development
- Transport Assessment and Highways
- Flood Risk and Drainage
- Sustainability
- Design and Layout
- Residential Amenity and Noise Assessment
- Ecology
- Air Quality
- Mitigating Infrastructure Impacts

The report looks into the key planning issues in detail, and Officers conclude that the proposal is acceptable subject to conditions. The scheme meets the requirements of relevant CDC policies.

**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 extends to 2.69 hectares and is part of the development at South West Bicester which is situated between the Middleton Stoney and Oxford Roads. The whole site was granted outline planning permission subject to conditions and a Section 106 Agreement for the erection of up to 1585 dwellings, employment, education, health village, local centre and community facilities and supporting infrastructure in June 2008 (06/00967/OUT) refers. The site is now known locally as Kingsmere Phase 1. Construction began on site in July 2010 and there are now well in excess of 1000 occupations. A land use proposals plan approved as part of the original outline conditions identified this application site as the health village site which was to include land for GP surgery, Community Hospital and other related uses such as elderly care. A further consent for an additional 100 dwellings across the wider Kingsmere site was granted in 2016 (13/00433/OUT) refers. This is the last parcel of land on Phase 1 to come forward for development.
- 1.2. Adjoining the site to the north is Pingle Brook open space and the Esso petrol filling station together with Burger King and Little Chef food outlets which lie to the south. The A41 is situated directly to the east and new residential development which is currently under construction by Linden Homes sits as part of Kingsmere Phase 1 to the west. Access to the site will be via the existing signalised junction from the A41

adjacent to Premier Inn and the new secondary street which runs alongside the new Bicester Gateway development.

## 2. CONSTRAINTS

- 2.1. The application site is within 250m of a buffer for Protected and Notable Species, notably Swifts and a public right of way passes within close proximity through the Pingle Brook open space just to the north of the site. The site which was previously agricultural land (grades 3 and 4) rises up from Pingle Brook open space to a plateau and has no features of note.

## 3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The original planning application included the whole of the health village land within the red line area, seeking consent for up to 100 dwellings should the GP surgery not come forward. The amended application now seeks outline planning permission, with all matters reserved, for up to 57 dwellings on 1.68 ha within the red line area of the application site boundary, with the reservation of 1ha (remaining blue edged land) for a new doctor's surgery/health hub. The whole application relates to the land that has been set aside under the original outline consent as a health village. The application proposal does not seek to specifically obtain consent for a GP surgery (D1 use) on the reserved land, this would need to be the subject of a further application. Attenuation ponds are proposed on the site to deal with surface water from this development.
- 3.2. The site will be accessed via the new signalised junction onto the A41 serving the development and the new secondary street which runs between the Bicester Gateway retail scheme and the Linden Homes development. The site for the GP surgery fronts the Oxford Road. The application proposes dwellings of up to 2.5 storey (9.5m) across the western part of the site, but with some suggested 3 storey elements (up to 13m) in key locations.
- 3.3. *Timescales for Delivery:* The applicant/agent has advised that, in the event that planning permission is granted, they anticipate the site would be marketed soon after.

## 4. RELEVANT PLANNING HISTORY

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

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
<b>06/00967/OUT</b>	Outline for up to 1585 dwellings with associated infrastructure	Application permitted
<b>13/00433/OUT</b>	Outline consent for an additional 100 residential units across the development	Application permitted
<b>18/00079/SO</b>	Screening opinion to 18/01721/OUT – outline permission for up to 100 units and land reserved for doctor's surgery	Screening opinion not requesting EIA

## 5. PRE-APPLICATION DISCUSSIONS

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

**17/00118/PREAPP** – C2 Residential Institution Care-Community comprising 250 units of accommodation with communal facilities, landscaping, access and parking

**18/00167/PREAPP** – Outline planning permission with all matters reserved for up to 100 residential dwellings (C3 use class), land reserved for doctor's surgery (D1 use class), other related infrastructure and associated works

- 5.2. It was concluded that the reservation of part of the site as proposed for a GP surgery was welcomed but that any subsequent application must successfully demonstrate that the site had been marketed for health purposes in accordance with the requirements of the section 106 entered into as part of the original outline consent. If this can be demonstrated and that no interest had been expressed, residential as an alternative use was acceptable in principle. OCC advised that a full transport and travel plan together with a full surface water drainage strategy would be required to be submitted with any subsequent application.

## **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 public comments was **08.11.2018**, although comments received after this date and before finalising this report have also been taken into account.

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

- 6.3. Stagecoach support this proposal because it seeks to deliver high quality housing in a sustainable location in close proximity to employment opportunities, existing new development, proximity to existing bus stops and bus services and Bicester Village station thereby reducing the demand for personal car use. The national presumption in favour of sustainable development and the need to maintain a supply of suitable land to meet the District's housing needs warrants that the Council approve the proposal without delay.

- 6.4. 1 letter of objection from a nearby resident whose concerns are summarised as:

- Inadequate medical facilities for current residents
- Overcrowding of the area leading to more cars will worsen the problems already seen across the estate. Block of flats is too large
- Perceived loss of open space
- Asks that the application is refused, and that Countryside Properties are encouraged to resubmit a plan that guarantees the building of additional healthcare facilities and reduces the number of dwellings more appropriate to the size of the site in question.

- 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: (first response) **object** on the issues of the effect on the road network and cumulative effect of the development in the same area on traffic and travel, access to the site and placement of the bus stop. Regret that the health village was not achieved and would request that the marketing be properly assessed.

**Update 11.03.2019:** “Bicester Town Council strongly object. Whilst welcoming the reduction in proposed housing unit numbers, it limits the opportunity for adequate and appropriate health provision to meet the known needs of the CCG. Concerns regarding impact of additional traffic from residential development and the cumulative effect on a small area from this and other approved development. This is the wrong use of the site and if residential is to be approved, it should be specialist requirements such as care home or other similar supported housing. Should CDC be minded to approve, sufficient land should be retained to allow for a future health provision including space for car parking and public transport with turning room”.

### CONSULTEES

- 7.3. OCC HIGHWAYS: (first response) **objection** - the transport statement supplied is insufficient to determine the impact on the highway network and the drainage information supplied is insufficient to demonstrate that there is sufficient capacity to mitigate the risk of flooding from the development.

#### Transport – key points

- The transport assessment does not provide a full analysis of the transport impact because it argues the trip generation of the current proposal is less than was forecast in the 2006 wider Kingsmere planning application for the consented use (health village) on the site – an argument which the highway authority does not accept
- The transport statement does not consider the full quantum of development that could arise from the site if planning permission is granted as per the description. It should assess 100 residential units PLUS the doctor's surgery/health hub
- Concerns over drainage strategy
- Further details required of pedestrian and vehicular access

**Update March 2019: Objection** maintained as above

**Update June 2019:** The latest amendment excludes the health facility from the application boundary and instead proposes a commitment to safeguard the land for future health provision. OCC's previous objections were due to the application not fully assessing the traffic impact of the proposal. A revised traffic assessment has been submitted and subject to conditions, OCC's technical transport objection has been removed.

However, OCC has serious concerns that the application directly conflicts with the original agreed use for the site, and that there is no guarantee the remaining land would be sufficient for health use, or that the highway impact of a health facility in

addition to the dwellings would be acceptable. It is noted that the CCG would expect a suitable site to allow for the potential to expand further.

In transport terms, the site is a good location for health provision because it is relatively central and provides good opportunities for sustainable travel. **Therefore, OCC would not support an application which could jeopardise the future provision of health services in this location.**

**Update 24<sup>th</sup> January 2020:** (following consideration of a Site Impact Technical Note (SITN) supplied by the applicant) **No objection** subject to S106 obligations as summarised, an obligation to enter into a S278 and a number of planning conditions to be attached to any permission.

- 7.4. OCC DRAINAGE: (first response) **Objection** insufficient drainage strategy information

**Update 16.01.2020:** An updated FRA reference TF/CS/P15-874/13/Revision D and updated drawing 874/02/703C Foul and Surface Water Drainage Strategy has been submitted and accepted. **No objection** subject to the imposition of a condition requiring details to be submitted and agreed.

- 7.5. OCC EDUCATION – **no objection** subject to Section 106 contributions towards nursery and primary education and secondary education (including sixth form)

- 7.6. CDC LOCAL MEMBER – **comments** as follows:

- Description of development suggests small scale but planning statement is more akin to a large scale 'hub' of surgeries
- Heights of proposed buildings could impact on protected views from St Edburg's Church in Bicester and St Mary's in Chesterton
- Location is inappropriate for a GP hub. Community hospital and medical centre are nearby. If the 'hub' model is appropriate they should not be located right next to each other as this will create a significant number of additional trips on the traffic network
- Have the impacts of the GP hub model been fully assessed
- There will be severe cumulative traffic impact given other growth in this area, none of which were planned or committed developments at the time of the original Kingsmere application. A new comprehensive traffic assessment must be undertaken to assess the cumulative impact
- Contrary to the local plan and Kingsmere master plan. There was insufficient marketing for health village
- Filter by the Premier Inn will not be able to cope with the additional traffic. A Road Safety Audit should be undertaken
- Insufficient access by public transport – a GP hub of this size will involve many trips across town. A bus stop will be required outside the GP hub
- Insufficient pedestrian/cycle access
- Car parking management for the GP hub will be required as there are already parking problems across Kingsmere

- A nursing/care home on the site would be more appropriate and in accordance with the approved masterplan than the additional 100 houses. The existing outline planning permission included an elderly persons nursing home on the site and there is an increasing demand for such facilities in Bicester

**Update 18.03 2019:** in addition to the above, Local Member comments further as follows:

- There have been recent accidents and near misses at Pioneer way/A41 access by Premier Inn
- Combined with the approved drive-thru coffee shop and redevelopment of the service station (18/01822/F), this development will impact on the Whitelands Way/Middleton Stoney Road roundabout access to the north west
- In 2006 when Kingsmere was consented, none of the additional local plan growth was envisaged. The cumulative transport impact of all existing and planned growth must be assessed
- Consideration should be given to locating a GP hub at NW Bicester rather than Kingsmere
- Nursing/care home would be more appropriate and in accordance with the approved masterplan than the 57 dwellings.

7.7. ENVIRONMENT AGENCY: **no comments** received

7.8. THAMES WATER: **no objection** – the application indicates that surface waters will not be discharged to the public network, however, approval should be sought from the Lead Flood Authority. In terms of foul water, there are some constraints in the vicinity of the proposed development, however, it is understood that required upgrades can be delivered in time to serve the development.

7.9. NHS OXFORDSHIRE CLINICAL COMMISSIONING GROUP (OCCG): (first response) while welcoming the principle for the continued health designated land, **object** to the original submission as follows

- Currently Bicester GP practices have limited capacity for absorbing new population growth and for expansion. The site would allow Alchester Medical Group and Montgomery House Surgery to provide services from the site
- Access for emergency vehicles and ambulances will require consideration and an alternative access solution rather than through the residential estate may be beneficial
- On-site parking is required and estimated at c300 spaces for patients and staff. External space requirements may need to facilitate large mobile screening vehicles. 1.5 acres is therefore insufficient. 1.4ha as previously allocated for doctors/community hospital should therefore be reserved. This land should be designated as D1 land and therefore at below commercial land values.
- Wish to see land reserved for 5 years rather than 3

- Request financial contribution for health facilities for the additional dwellings in line with the Council's SPD
- OCCG and GP's involved would like to be involved in the design code for the health centre

**Update 3<sup>rd</sup> July 2019:** if the site is split there may be planning issues such as transport and drainage that can only be assessed as a whole. These need to be looked at sooner rather than later to make a judgement about the suitability of the site. Interest needs careful definition to ensure that the site is available until all planning issues and other potential sites are resolved.

- 7.10. THAMES VALLEY POLICE: **do not object** but consider some aspects of the design and layout to be problematic in crime prevention terms and therefore may not meet all the requirements of the NPPF or HMCLG's Planning Practice Guidance on design. In addition, the Design and Access statement does not adequately address crime and disorder as required by CABE's advice on how to write Design and Access Statements. A number of further general points are raised and can be read in full on the application file.
- 7.11. KINGSMERE RESIDENTS ASSOCIATION: No comments received.
- 7.12. CDC ARBORICULTURAL OFFICER: **comments** the tree report has been made by requirement as a preliminary site survey, as such it does not include an Arboricultural Impact Assessment, or method statement to the development. I agree with the categorisation of trees on the site, however, as these trees form essentially a buffer between Newton Close and the B4030, their retention I believe is of high priority. I echo CDC Landscape Services' comments that the submission of a detailed planting plan be required to ensure appropriate tree stock is planted throughout the development, as planting is suggested in the illustrative master plan. An arboricultural impact assessment and method statement to BS5837 to be submitted once a design plan has been confirmed.
- 7.13. BICESTER DELIVERY TEAM: **comments** that they are working with OCCG to ensure adequate health provision in Bicester to serve the population both now and in the future. This requires re-organisation of the health estate to meet the requirements and provision of health hubs that can offer a range of services. A current exercise is reviewing options, including this site. The following additional comments are made in summary:
- Is reservation of the site for 3 years sufficient
  - Is the amount of land reserved sufficient
  - Site should not be compromised by the attenuation basin
  - Section 106 contribution should be sought for this new population in addition to reserving the site for GP use
  - Active travel must be encouraged
  - Provision of open space must be compliant with CDC's adopted Cherwell Local Plan
  - Development must respond positively to the adjacent open space and also provide a high quality development in line with CDC's recently adopted Residential Design Guide 2018 and Bicester's Garden Town status.



**Update:** in respect of the amended submission;

- Welcomes the increase in the amount of land and the timescale for it to be safeguarded, although unclear at this stage what the term 'safeguarded' actually means. The sec 106 will need to define the Doctors Surgery/D1 use as ' the GP Surgery Site for the development of an NHS GP Health Centre (which may include complementary facilities and services) by the Oxfordshire Clinical Commissioning Group or other medical operator or medical company' for the avoidance of doubt.
- Connectivity is important and some firm commitment is necessary to ensure the provision of footpath/cycle links/wayfinding signage
- Travel plan must be complied with
- Proposal does not allow CDC (or OCC) to make a comprehensive assessment of the residential and health parts of the scheme. It is difficult to assess how the 2 uses will relate to each other physically and in design terms, as well as the nature of connectivity between the 2 parts of the site
- No additional open space is provided to support the new housing

7.14. CDC ECOLOGY OFFICER: no comments received

7.15. CDC ENVIRONMENTAL HEALTH: In terms of **air quality**, the submitted report has been reviewed, and if taking the worst case scenario, the air quality assessment should also consider the development with all residential and no health facility which is the approach taken with the noise assessment. The assessment has looked at the impact on air quality at receptor locations within the proposed development but has not considered the impact of additional traffic movements associated with the development on levels in the Air Quality Management Area. The damage cost calculation has been based on additional traffic movements as a result of the residential but does not consider the health facility. The money identified as a result of the damage cost calculation should not be used for offsetting measures that would normally be required through the planning process such as Travel Plans as suggested in the report. It is recommended the money be used for offsetting measures such as the provision of infrastructure to allow for the future installation of vehicle charging points to each dwelling, and charging points to the proposed health facility.

In terms of **noise**, the submitted Noise Assessment report has been reviewed which has been made on the basis that the site is all residential and no health facility. For external areas, any mitigation will need to be designed to achieve the desirable level not exceeding 50dB and not the upper level of 55dB. Further clarification is requested regarding how the readings and levels have been calculated based on the data at Appendix B. The method of assessing items of plant is queried and engine noise at the Esso services was identified as a noise source but has not been considered in the BS4142 assessment. The services are 24 hour, including HGVs.

In terms of **contaminated land**, no assessment has been made.

A Construction Environmental Management Plan will be required with regard to dust and noise control.

7.16. CDC FINANCE: it is estimated that the development has the potential to attract New Homes Bonus of £429,400 over 4 years under current arrangements for the council. This includes a sum payable per affordable home.

7.17. CDC LANDSCAPE SERVICES: advises that the illustrative masterplan shows narrow garden frontages which is insufficient space to allow for unifying landscape structure of ornamental hedges which will improve the amenity of the street and visually mitigate the hard edges of building frontages. General comments are also given in terms of landscaping proposals and can be read in full on the application file.

7.18. CDC PLANNING POLICY: no comments received

7.19. CDC STRATEGIC HOUSING: (first response) the application for 100 units will provide 30% affordable housing, this equates to 30 units. There is no indication of tenure split but the following is suggested – 6x1b2p flats; 10x2b4p houses; 4x3b5p houses and 1x4b6p house for social rent and 6x2b houses and 3x3b houses for shared ownership. Housing should be well distributed around the site in clusters of no more than 15 units with no more than 10 of any tenure in cluster. 50% of the affordable units should meet part M4 of the building regs. 1 bedroom properties should have a minimum of 1 parking space per unit and 2/3 bed properties a minimum of 2 parking spaces per unit. The Registered Provider will need to be agreed with the Council.

**Update:** the number of residential units has now been reduced from 100 to a maximum of 57, of which 30% are required to be affordable housing, this equates to 17 units. There is no indication of tenure split so the following is suggested: 2x1b2p flats, 6x2b4p houses, 3x3b5p houses and 1x4b6p house for social rent and 3x2b houses and 2x3b houses for shared ownership.

7.20. CDC WASTE AND RECYCLING: the developer will have to satisfy the LPA that they have adequate provision for waste and recycling storage. Guidance for households is 1.8sqm per dwelling and bin stores for flats need to be a minimum of 1.4sqm per flat. Commercial waste/recycling needs to be separate.

7.21. *Officer comment:- Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.*

7.22. *In this particular instance, the above financial payments are not considered to be material to the decision as they would not make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority and hence the above response from the Council's Finance department is therefore provided on an information basis only.*

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

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

8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though

many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

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

- ESD1 – Mitigating and Adapting to Climate Change
- ESD3 – Sustainable Construction
- ESD5 – Renewable Energy
- ESD7 – SUDS
- ESD10 – Protection and enhancement of biodiversity and the natural environment
- ESD15 - The Character of the Built and Historic Environment
- ESD17 – Green Infrastructure
- BSC3 – Affordable housing
- BSC4 – Housing mix
- BSC8 – Securing health and well-being
- BSC10 – Open space, outdoor sport and recreation provision
- BSC11 – local standards of provision – outdoor recreation
- BSC12 – Indoor sport, recreation and community facilities
- SLE4 – Improved transport and connections
- INF1 - Infrastructure

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

- C28 – Layout, design and external appearance of new development
- C30 – Design control over new development
- ENV12 – Contaminated land
- TR1 – Transportation funding

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Non-Statutory Cherwell Local Plan 2011
- The Kingsmere Design Code Phase 1 2008
- CDC Residential Design Guide July 2018
- CDC Planning Obligations SPD 2018
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)

## **9. APPRAISAL**

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

- Principle of development
- Transport Assessment and Highways
- Flood Risk and Drainage
- Sustainability
- Design and impact on the character of the area
- Residential amenity and Noise Assessment

- Ecology Impact
- Air Quality
- Mitigation of Infrastructure Impacts

## Principle of Development

### *Policy Context*

- 9.2. The Development Plan for Cherwell District comprises the saved policies in the adopted Cherwell Local Plan 1996 and adopted Cherwell Local Plan 2011-2031. Section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with applications for planning permission, the local planning authority shall have regards to the provisions of the development plan, so far as is material to the application, and to any material considerations. Section 38 of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the development plan unless material considerations indicate otherwise. This is also reflected in the National Planning Policy Framework (NPPF) at paragraph 12 which makes it clear that the starting point for decision making is the development plan.
- 9.3. Policy PSD1 'Presumption in favour of sustainable development' of the adopted Cherwell Local Plan 2011-2031 states that the council will take a proactive approach in seeking to deliver sustainable development across the district without delay. New development across the district is focussed primarily upon the towns of Bicester and Banbury whilst limiting development elsewhere in order to provide for the most sustainable forms of sustainable growth over the plan period. The NPPF sets out the economic, social and environmental roles of planning in seeking to achieve sustainable development; contributing to building a strong, responsive and competitive economy; supporting strong, vibrant and healthy communities; and contributing to protecting and enhancing our natural built and historic environment.

### *Assessment – Impact on the Heath Village Land*

- 9.4. The application site is identified as 'health village' land as part of the overall mixed use development at South West Bicester which was allocated as a strategic urban extension under Policy H13 of the non-statutory Cherwell Local Plan 2011. One of the requirements of that policy was to 'provide the opportunity for appropriate medical facilities to be provided in accordance with NHS requirements on a commercial basis'. The explanatory text advised that the components listed in the policy were essential to the proper planning of the locality in that they will provide services, employment and facilities for residents living in the new neighbourhood, to ensure the new development is integrated into the town and enable the provision of facilities to serve the whole town in a planned manner. The section 106 agreement accompanying the original outline planning permission (06/00967/OUT) requires that for a period of five years from implementation of the development or until first occupation of 1000 dwellings, whichever is the later, that best endeavours are used to market the site identified as the 'healthcare site' for a community hospital, GP surgery and Medical facility uses, which may include extra care elderly nursing home within Use Class C2.
- 9.5. Whilst it is accepted that the timescale for submitting reserved matters under 06/00967/OUT has now lapsed, the permission has been implemented and therefore the obligations within the Section 106 are still relevant. It should be noted that an expression of interest in purchasing the health village site was made at the end of 2018 by a group of Bicester GPs, prior to the 1000 occupation. The need for another site has been driven by the unsuitability of the current practice premises to

cater for current and planned growth in service demand resulting from an ageing and increasing population. As a consequence of the expression of interest in the site by this group of GPs, there remains an obligation by Countryside and the consortium to use all reasonable endeavours to agree a sale of the land accordingly. It should be noted that there is no time limit in the Section 106 for seeking to achieve a sale before the land can be disposed of for alternative uses. Countryside are therefore, bound by the obligation to secure a sale to the interested party for as long as that interested party (in this case the GPs) continue to hold that interest.

- 9.6. It should also be noted that the whole of the health village site identified in the Phase 1 Kingsmere development extends to 2.69ha. The original submission relating to this development however offered only 0.6 ha of land to the GPs. The consultation response received from the GPs advised that this was not sufficient to accommodate their future needs and therefore as requested, the GPs submitted further information to justify the amount of land now considered necessary to deliver the new health hub (2.5 acres). Following the receipt of this additional information the application has been amended and the amount of land reserved for the future health hub has now been increased by Countryside to 1ha. This is now acceptable to the GPs and OCCG in terms of reserving sufficient land area to accommodate the new facility. The specific terms and timescales for reserving the land (and further potential marketing of the land should the current interest from the GPs fall away) will be included in the Section 106 agreement.
- 9.7. Policy BSC8 of the adopted Cherwell Local Plan 2011-2031 identifies that there is a need for more GP provision in Bicester and this site in question is one of the preferred options for meeting that need due to its highly sustainable location in terms of serving the new population at Kingsmere as well as the existing patients in Bicester itself. In terms of other potential sites within Bicester, the GPs have also expressed an interest in a site at Graven Hill, but to date no planning application has been received. Whilst North West Bicester includes a site for a GP surgery, this only extends to 0.2ha and this is also unlikely to come forward for development until after 2025. This site is capable of delivering the need of the GPs and OCCG in full, with potential for future expansion, in the shorter term. Paragraph 92b of the NPPF is also relevant in seeking to ensure the delivery of such infrastructure to improve health and social well-being.
- 9.8. It is therefore considered that it is necessary to ensure that a sufficient amount of land is reserved for GP surgery use and for a reasonable amount of time to allow the necessary negotiations to conclude in terms of the sale of the land and obtain the necessary planning permissions. It is also considered that, should the interest from the GPs fall away, the land should continue to be safeguarded and marketed for alternative health care use, recognising the highly sustainable and accessible location of the site, the planned growth around Bicester, and that the rationale for safeguarding the land as part of the original S106 has not changed. It should be noted that the proposed 57 dwellings are in addition to the 1740 already permitted on Phase 1 (155 in addition to the 1585 originally permitted) and up to 709 dwellings on Kingsmere Phase 2. Whilst this application seeks to reserve 1ha of land for the future GP surgery, it does not seek consent for it as part of this application and therefore a subsequent application will need to be submitted by the GPs or OCCG at a future time.
- 9.9. Concerns that the delivery of the GP hub may be prejudiced by considering the site piecemeal rather than comprehensively were raised with the applicant and agent in that initially Officers could not be clear that all the necessary infrastructure, including acceptable access and SUDS drainage (including attenuation) could be adequately accommodated. As a consequence, the applicants have submitted a more comprehensive transport assessment which in Officers' opinion has adequately

addressed this issue. This is discussed in more detail below. The amended submission is now therefore considered to be acceptable in this respect.

- 9.10. Whilst Countryside have stated in the application that they are willing to reserve 1ha of the health village land for GP use for a period of up to 5 years through a new section 106 agreement attached to this application, they are of the view that there is currently no policy requirement or commitment for a GP surgery on this site. Your Officers would respond that whilst the application site is not specifically allocated for health associated uses within the Development Plan, it is however specified in the allocation of SW Bicester (Kingsmere) in the Non-Statutory Cherwell Local Plan 2011 which specifically required that an opportunity be made for appropriate medical facilities on the site. Indeed, the outline planning permission granted, included health, employment and an elderly persons nursing home within the description of development. The Health Village land was identified on the subsequent land-use plan that was approved under condition 5 (06/00967/OUT refers). Along with the provisions contained in the existing S106, your Officers are therefore of the opinion that the health village use, which includes a GP surgery is a commitment of that permission.

#### *Assessment – Principle of Housing*

- 9.11. In terms of the proposal for 57 dwellings on the site, the NPPF supports the need to boost significantly the supply of housing to meet the full, objectively assessed need for housing and consequently requires LPAs to identify and update annually a supply of specific, deliverable sites sufficient to provide five years worth of housing against the housing requirements with a buffer of 5% to ensure choice and competition in the market for land. The Council's current position on housing land supply is published in the 2019 Annual Monitoring Report (AMR) which involved a comprehensive review of land supply within the District. This was approved by Members at the Council's executive meeting on 6<sup>th</sup> January 2020 and confirms that the council can demonstrate a 4.6 housing land supply (for the current period 2019-2024) with a 5% buffer and 4.4 year housing land supply for the next 5 year period (2020-2025).
- 9.12. In the circumstances that an LPA cannot demonstrate a five year supply of deliverable housing sites there is a presumption in favour of sustainable development and the circumstances at paragraph 11d of the NPPF are engaged. This sets out that the development plan's housing strategy policies must be considered to be out of date which means the development should be approved unless there are clear reasons for refusing the development or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
- 9.13. However, in respect of the Oxfordshire Authorities, a 'Written Ministerial Statement' made in September 2018 relating to the Housing and Growth deal which grants the Oxfordshire Authorities flexibility on maintaining a five year housing land supply is a significant material consideration. This 'Statement' sets out the requirement for a three year supply of deliverable housing sites from the date that it was made (12<sup>th</sup> September 2018) until the adoption of the Joint statutory Spatial Plan in each area, providing the timescales in the Housing and Growth Deal are adhered to.

#### *Conclusion*

- 9.14. Having regard to the above, it is clear that in this case, the three year housing land supply position should be adopted and so the Council's policies relevant to the supply of housing remain up-to-date. However, in any case it is considered that this site which seeks consent for up to 57 dwellings with the remainder of the land

reserved for GP surgery use accords with the requirements of the NPPF and the Development Plan being in a wholly sustainable location within the built up limits of Bicester. The principle of the development proposed is therefore accepted.

#### Transport Assessment and Traffic Impact

- 9.15. Strategic objective 13 of the adopted Cherwell Local Plan 2011-2031 aims to reduce the dependency on the private car as a mode of travel and to increase opportunities for travelling by other modes. Policy ESD1 also aims to mitigate the impact of development on climate change by delivering development that seeks to reduce the need to travel and which encourages sustainable travel options including walking, cycling and public transport to reduce the dependence on private cars. Policy SLE4 also has similar objectives. The transport impacts of the development must be considered against these policies and the requirements of Section 9 of the NPPF.
- 9.16. The original submission was accompanied by a Transport Statement and Travel Plan which were assessed by OCC as highway authority who objected on the grounds that it was insufficient to determine the impact of the whole development on the highway network. The Transport Statement did not provide a full analysis of the transport impact because it argued that the trip generation of the current proposal was less than was forecast in the 2006 wider Kingsmere planning application for the consented health village use on this part of the development. OCC considered that relying on a 12 year old transport assessment was inadequate to predict the transport impact of the site, given the changed conditions and increased level of growth in the area that was not forecast at that time; not due at least to the adoption of the Cherwell Local Plan in 2015.
- 9.17. The approach above, of accepting that the trips generated by an alternative land use were within the number of trips originally forecast for the land in the original transport assessment for the Kingsmere outline planning application, and that therefore, a further transport assessment was not required, was **not** accepted by the Inspector in the appeal against the Bicester Gateway retail proposal at Kingsmere.
- 9.18. In terms of the originally submitted Transport Statement and trip generation, the peak hour rates for residential per dwelling was accepted, however, the Transport Statement was not clear about the TRICS rates used for the GP surgery. In terms of actual forecast trip generation, the Transport Statement did not consider the full quantum of development that could arise if planning permission is granted, that is the residential PLUS the GP health hub proposal. OCC also advised that justification of the parking provision for the GP surgery needed to be demonstrated through a first-principles assessment as the risk of overspill parking on the adjacent residential streets also needs to be considered and appropriate road markings installed on the internal roads. A parking management plan for the surgery would be required but this could be dealt with by condition should planning permission be granted for the surgery.
- 9.19. It is proposed that vehicular access to the site will be taken via the new signalised junction on the A41 serving the Kingsmere development leading to Pioneer Way and then via the new secondary street permitted under application number 17/01461/F which extends into the application site. OCC have advised that the proposed secondary street must comply with the Section 38 plans, which allow for 2m footways on both sides and a turning head. The indicative masterplan for the application did not appear to show this layout. The final layout must incorporate exactly what has been agreed in respect of that application. It will also need to be offered up for adoption and therefore should be safeguarded within this application.

- 9.20. The objections and issues raised in respect of the original submission highlighted above were forwarded to the applicant's agent to address accordingly. The revised submission is now accompanied by a Site Impact Technical Note (SITN) which evaluates the impact of the proposals PLUS the impact of the GP hub, this has been assessed by OCC as highway authority and their objection has now been removed.
- 9.21. The amended scheme now offers to provide a footway south from the bus stop on Oxford Road to the petrol filling station access, although this should be built to 3.5m wide to facilitate cycling. These highway works will need to be secured via a planning obligation. OCC further requested that provision be made for the crossing of Middleton Stoney road at Villiers Close to ensure appropriate connectivity to the health hub from the surrounding area.
- 9.22. In terms of bus service provision, the bus service between Bicester and Kingsmere is a direct arrangement between Countryside Properties and Stagecoach with no involvement from the County Council. Therefore, there is no financial contribution to be made and a six month extension to the service is considered more appropriate on this basis. The County therefore seeks to secure a six month extension to the current contract arrangements between the developer and bus operator which is in lieu of a contribution. This extension is sought as a section 106 contribution.

#### Flood Risk and Drainage

- 9.23. The original outline consent advises that the surface water drainage system must be independent of the main network and provide surface water alluviation and storage within the plot, suitable for 100 year plus climate change events. The submission proposes an attenuation pond within the health hub site and which is located in an area currently highlighted to be at risk of surface water flooding.
- 9.24. A Flood Risk Assessment (FRA) was submitted with the application and has been assessed by OCC drainage engineers. It states that there is little potential for infiltration on the site. However, infiltration testing has been carried out on the site and these tests demonstrate some good rates in the Cornbrash formation at shallow depth above one metre. There may be potential to utilise unlined permeable paving in these areas, and the geotechnical report does not rule out the use of soakaways. OCC (drainage) therefore requested that the potential for infiltration be clarified further.
- 9.25. The proposed allowable discharge rates suggested for the site would provide adequate mitigation for the increase in surface water volume generated by the development and will ensure flood risk will not be increased by the development.
- 9.26. However, OCC (drainage) have raised a concern because the outfall for the site appears to be outside the red line application boundary of the site, with no clarification over access for maintenance to the outfall provided by the applicant. Additionally the outfall invert levels from the attenuation appears to be submerged below the channel surface water flood levels with channel flood occurring out of the bank. This raises a concern over the operation of the proposed attenuation pond during flood events and whether sufficient capacity has been provided for.
- 9.27. The submitted FRA has outlined some basic principles for management and maintenance of the SUDS, but a comprehensive SUDS Management Plan will be required at detailed design stage. Flood Flow routing in exceedance conditions can also be dealt with by future submissions.
- 9.28. Thames Water have also assessed the submission and advise that as surface water will not be discharged to the public network, no objections are raised. However,



should connection be subsequently sought to discharge surface water to the public network in the future, this would be a material change which would require an amended application. In terms of foul water, Thames Water are aware of some network constraints within the vicinity of the proposed development but are confident that any required upgrades can be delivered in time to serve the development.

- 9.29. The objection and concerns raised above in respect of the original submission were forwarded to the applicant's agent to address accordingly. A revised FRA and surface water drainage strategy drawing has been subsequently submitted and is now acceptable to OCC as Lead Flood Authority.

#### Sustainability

- 9.30. Sustainability is one of the key issues at the heart of the NPPF and is also sought by Policies ESD1 to ESD5 of the Cherwell Local Plan 2011-2031. The proposal must therefore demonstrate how it achieves sustainable objectives, including the need to show how it promotes sustainable modes of transport, including walking and cycling, along with utilising sustainable construction methods and measures to reduce energy consumption.
- 9.31. A Travel Plan was submitted with the application and has been assessed by OCC as highway authority who consider that the submitted Travel Plan requires further development to render it acceptable. This requirement however, can be dealt with by condition.
- 9.32. In terms of footpath and cycle links, the Design and Access Statement advises that the proposals will place an emphasis on cycle and pedestrian movement and that block structure together with appropriate links to the adjacent residential parcels and existing public right of way within Pingle Brook open space creates permeability and therefore will encourage walking and cycling.
- 9.33. It is accepted that the site offers good potential to make connections to the network of footpaths through the remainder of the Kingsmere development and leading to Middleton Stoney Road, but it is also considered that an additional access point should be provided at the apex of the site, on the desire line to Oxford Road. As a consequence it is important that any subsequent reserved matters submissions should include appropriate connections to the adjacent residential parcels and open space.
- 9.34. Good pedestrian access onto the frontage of the Oxford Road is also vitally important, to encourage sustainable travel, including walking and cycling trips. The Transport Statement offers to construct a path northwards from the north-eastern access point of the site to Middleton Stoney Road. However, a path has already been constructed here, linking the northbound bus stop at the junction of Oxford road and Pingle Drive, with Middleton Stoney Road. It is considered that a footpath should be provided from the bus stop southwards along Oxford Road, to the petrol filling station adjacent. Details of the new footpath connection will need to be provided as this verge is currently cluttered with street furniture, including signage and cabinets.
- 9.35. Additionally, walking trips to the site from the northwest on Middleton Stoney Road are likely to be made through choice, via the path through the open space towards Villiers Place. For this reason, OCC is requesting the provision of a formal crossing facility on Middleton Road at this point as off-site mitigation. It is agreed that, in terms of pedestrian/cycle safety that this should be required.

- 9.36. In terms of public transport, there is a good quality bus service which runs along the A41 and the bus stop is nearby. The site is also served by the Kingsmere bus service which is procured by the applicant in connection with Phase 1 under the terms of the Section 106 Agreement. A proportionate extension of this contract will be required as part of this development to ensure the future viability of the service for the increasing Kingsmere population.
- 9.37. Guided by the NPPF, the principles of sustainable development are in three dimensions. The economic role can be demonstrated by ensuring that the development is of the right type and in the right place, in this case the development will provide jobs during the construction and subsequently contribute to the local economy and the viability of the Kingsmere Local centre facilities through the new population. Socially, the development should be of high quality design and be accessible, reflecting the community's needs. This proposal provides new housing, including affordable housing and will help deliver the much needed additional health facility for Bicester's growing population. In terms of the environment, the development should contribute to protecting and enhancing the environment, through matters such as a net biodiversity gain, reducing energy and water consumption, and utilising sustainable construction methods.
- 9.38. An Energy Statement will be required by condition, to demonstrate compliance with the requirements of Policy ESD3 in terms of construction and environmental standards and sustainable construction methods. A further condition will be imposed to secure the higher level of water efficiency specified in Policy ESD3.

#### Design and Impact on the Character of the Area

- 9.39. Section 12 of the NPPF 'Achieving well designed places' attaches great importance to the design of the built environment and advises at paragraph 124 that 'good design is a key aspect of sustainable development, creates better places in which to live and work and help makes development acceptable to communities'.
- 9.40. Policy ESD15 of the adopted Cherwell Local Plan Part 1 2011-2031 advises that design standards for new development, whether housing or commercial development are equally important, and seeks to ensure that we achieve locally distinctive design which reflects and respects the urban or rural landscape and built context within which it sits. The adopted Cherwell Local Plan 1996 contains saved Policy C28 which states that control will be exercised over all new development, including conversions and extensions to ensure that the standards of layout, design and external appearance, including choice of materials are sympathetic to the character of the urban or rural context of the development.
- 9.41. The application is accompanied by a Design and Access Statement and Design Code. Policy ESD15 advises that the design of all new development will need to be informed by an analysis of the context, together with an explanation and justification of the principles that have informed the design rationale which should be demonstrated in the design and access statement that accompanies the application.
- 9.42. The appearance of new development and its relationship with its surroundings and built and natural environment has a significant effect on the character and appearance of the area. Securing new development that can positively contribute to the character of its local environment is therefore of key importance. The built residential development proposed within the submitted design and access statement is not dissimilar to the existing residential development on Kingsmere Phase 1 and is therefore acceptable in this respect, although it lacks detail in terms of the provision of any public open space/play space to serve the new development.

- 9.43. A Design Code has been approved for the Kingsmere Phase 1 development, of which this site is part. The principles established through that code remain relevant to the consideration of this application. The approved Design Code considers the type and scale of development that would be appropriate for this application site having regard to its designation as a 'health village' and this is detailed on pages 144-147 of that document. In terms of heights of buildings, it envisages the tallest buildings on this site would be closest to the Oxford Road frontage and in the site core area, the maximum height being 14.4m.
- 9.44. A new design code has been submitted with this application to specifically deal with this new proposal. It only considers the residential development however, and, makes no reference to the GP/health hub part of the site.
- 9.45. In terms of the residential, the submitted design code concentrates on the adjacent Pingle Brook character area for the character and appearance of the new development. Whilst this is accepted in principle, the application site does more closely relate to the Urban character area in terms of its direct boundaries and the proposed densities which are higher than the Pingle Brook character area. However, the parameter plans indicate a density of 30-40dph, the lower density being adjacent to the Pingle Brook open space which is considered appropriate. The building height parameter plan also indicates a maximum height of 13m. Whilst this might be appropriate for a marker building close to the health hub site, this is not considered to be an appropriate height across the whole site having regard to the adjacent residential development. It is also considered that it might be more appropriate to define the Oxford Road frontage with a stronger built form and landmark or marker building. Furthermore, the code as submitted does not appear to address the noise issues and the requirement for noise attenuation fencing along the southern boundary and how the development proposals might respond to this appropriately.
- 9.46. These concerns were raised with the applicant's agent and a revised Code was submitted in April 2019, but only sought to make very minor changes overall. This is somewhat disappointing, and Officers consider further work is required to define appropriate parameters for the development to ensure a high quality development that integrates well in its context. It is therefore considered that a condition be included which seeks further amendments to the design code (and potentially parameters plans) accordingly.

#### Residential Amenity and Noise Assessment

- 9.47. The amenities of the proposed residents could be affected by noise from the adjacent petrol filling station site and the A41. Consequently, the application is accompanied by a Noise Impact Assessment produced by Create Consulting Engineers Ltd on behalf of the applicant. The report has been biased towards the eastern end of the site, approximately 60m from the closest façade of Bicester Village shopping area. Subjectively it considers that the most prominent noise sources around the site were noted to be vehicular traffic along Oxford Road and plant associated with the petrol station, services and food outlet to the south of the site and whilst engine noise at the Esso services, which are 24 hour, were identified as a noise source, it has not been considered in the BS4142 assessment. The road traffic appeared to be a mix of HGV and regular traffic.
- 9.48. The report advises that a section of close boarded fence of 2.5m height, with a return of 1.8m height should be erected to the south-east corner of the site to ensure suitable residential amenity is achieved with respect to noise. In terms of internal sound levels, standard double glazing would be suitable. It is considered that close boarded fencing is not the most attractive feature to exposed boundaries which are visible to the public domain and therefore, as part of the further negotiations to the

design code identified above, Officers will seek to ensure that the impact of this can be more appropriately mitigated, by either landscaping or alternative means of enclosure.

- 9.49. Having regard to the above, and careful positioning of dwellings at reserved matters stage, it is considered that with appropriate mitigation which will need to be designed, so far as practicable, to achieve the desirable level not exceeding 50dB and not the upper level of 55dB, noise affecting the development should not give rise to significant adverse impacts upon residential amenities and therefore health and well-being of future residents. The proposal is therefore in accordance with the NPPF, relevant legislation and the development plan in this respect.

### Ecology Impact

#### *Legislative context*

- 9.50. 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.
- 9.51. 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.
- 9.52. 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.
- 9.53. 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.

9.54. 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*

9.55. 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.

9.56. 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.

9.57. 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.

9.58. 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.

9.59. 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.

9.60. 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.

9.61. The Planning Practice Guidance dated 2014 post dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

## *Assessment*

9.62. 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')

9.63. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is close to a stream and there are a number of mature trees and hedgerows within and adjacent the site, and therefore the site has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates. In respect of this application site, the constraints have highlighted that swifts are within proximity of the site, and nesting Skylark (a declining farmland species) have been present on this site in the recent past.

9.64. In order for the local planning authority to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.

9.65. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.

9.66. The application is accompanied by an updated ecological survey. A site visit and Phase 1 habitat survey was undertaken in May 2018 along with the assessment potential for the habitats on site to support protected species. A search for evidence of badger activity was also undertaken at the same time as the Phase 1 habitat survey. The conclusions made in the subsequent report, following the survey and site visit are that the existing grassland has limited ecological interest and the limited hedgerows offer only limited breeding opportunities for common bird species. No badger activity was noted and the site does not contain any badger setts. There are no trees on the site suitable for roosting bats. The report therefore concludes that habitats affected by the application are of limited ecological value and the proposed works will not impact on any protected species.

9.67. Notwithstanding the above, both the NPPF and policies within the development plan require developments to provide ecological enhancements and where possible a net gain in biodiversity. The Council has also recently resolved to seek a 10% net gain

in biodiversity where possible. It is therefore considered that conditions should be included within any grant of planning permission which require ecological enhancement within the development, through landscaping proposals and habitat boxes etc which should be included within any reserved matters submissions.

- 9.68. Officers are satisfied, having regard to the above, 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.

#### Air Quality

- 9.69. Kings End which is in close proximity to the development site is an Air Quality Management Area which was designated in 2015. Consequently, the application is accompanied by an Air Quality Assessment Report produced by Create Consulting Engineers on behalf of the applicant. This report has been assessed by the Environmental Protection Manager who advises that the assessment has looked at the impact on air quality at receptor locations within the proposed development but has not considered the impact of additional movements associated with the development on levels in the Air Quality Management Area. It is also advised that the calculation should include the impact of the health facility. In respect of the health facility however, this application does not seek consent for that use, but merely proposes through the section 106 agreement to reserve that land for that use for a limited period. Should the GPs go ahead with this site, a new planning submission specifically relating to the health facility will be required. The air quality impact of the proposal and any necessary mitigation measures will need to be assessed at that time.
- 9.70. The submitted report concludes that all the traffic emissions generated by the proposed development will have an overall negligible impact on local air quality and a negligible impact at defined sensitive receptors will be below the UK AQO's NO<sub>2</sub>. It should be noted that the results may change as a result of the updated transport assessment as requested by OCC which has now been submitted, however, the air quality assessment has not been amended to date. Consequently it is recommended that appropriate mitigation measures are included within the section 106 agreement.
- 9.71. The comments of the Environmental Protection Officer are relevant to the submission, however, it is considered that in respect of the 57 dwellings only, that appropriate conditions can be imposed with regard to electric charging points to serve the dwellings and in terms of the health facility, this can be assessed accordingly at that time.

#### Mitigation of Infrastructure Impacts

- 9.72. Due to the scale and residential nature of the proposed development, it is considered that the proposal is likely to place additional demand on existing facilities and services and local infrastructure, including schools, community halls, public transport, play provision and open space. Affordable housing will also need to be secured as part of the development. The proposal generates a need for infrastructure contributions to be secured through a planning obligation, to mitigate these impacts and enable the development to proceed. In respect of planning obligations, the NPPF advises at paragraph 56 that they should only be sought where they meet the following tests:

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

9.73. The Council's legal team have been instructed and an agreement relating to CDC contributions has been drafted. Policy INF1 of the adopted Cherwell Local Plan 2011-2031 states that 'development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, health, education, social and community facilities. Contributions can be secured via a section 106 Agreement provided they meet the tests of Regulation 122 of the Community Infrastructure Regulations 2010.

9.74. Officers are seeking the agreement of Planning Committee to secure the following Heads of Terms in the S106:

#### District Requirements

- 30% affordable housing provision on site
- Attenuation - £51.39 per square metre maintenance
- LAP provision on site plus £30, 702.02 future maintenance
- Public open space maintenance provision
- Safeguarding of 1ha of land as edged blue on the location plan for healthcare purposes for at least 10 years
- Sale/marketing value of healthcare land to be at a cost to reflect its safeguarded health use – not open market value
- Outdoor off-site sports facilities contribution of £2017.03 per dwelling towards improving the quality of outdoor hard courts at The Cooper School, Bicester
- Community safety and policing contribution (to be negotiated)
- Community hall contribution of £18,980
- Public art contribution (to be negotiated)
- Allotments contribution (to be negotiated)
- Burial ground contribution (to be negotiated)
- Indoor sports contribution of £335.32 per dwelling
- £111 per dwelling for bins and recycling
- Apprenticeships x 3 and EST Plan
- AQMA mitigation (to be negotiated)
- Secure access into reserved land along secondary street



- Monitoring cost - 5% of the total value of the S106 contributions (financial and in kind)

#### OCC Requirements

- Traffic Regulation Order - £3,120
- Off site highway works: provision of a crossing of Middleton Stoney Road and pedestrian/cycle facilities on Oxford road and Middleton Stoney road
- Extension of contract of existing Kingsmere bus service
- Monitoring fee (to be negotiated)
- Travel plan
- Education contribution of £482,434 primary education and £397,854 Secondary education

9.75. It is considered that the above requirements meet the relevant tests and are necessary to ensure that the development proposed would not have a detrimental effect on local amenity and the quality of the environment and the need to ensure that all new development is sustainable as required by the Development Plan and Government advice within the NPPF.

#### Human Rights and Equalities

9.76. The Human Rights Act 1998 ("HRA") sets out fundamental freedoms which have been laid out by the European Convention on Human Rights ("ECHR"). In making any decisions, Cherwell District Council ("the Council") should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.

9.77. The rights under the ECHR which the Council views as being the most likely to affect planning matters are: Article 6 (the right to a fair trial); Article 8 (right to respect for private and family life); Article 14 (prohibition of discrimination); and Article 1 of the First Protocol (protection of property).

#### *Article 6*

9.78. Officers have considered these matters and have resolved that, whilst there are potential rights in play, these will not be affected by the application due to the application being publicised by way of neighbour letter, site notice and in the local press giving affected third parties the opportunity to comment on the application and their views taken into account when considering the application. In this case any comments/concerns raised by third parties are listed above and have been taken into account in assessing the application. In addition, third parties were invited to the public meeting of the Planning Committee and had the opportunity to speak. Furthermore should a third party be concerned about the way the application was decided they could complain to the Local Government Ombudsman or if they question the lawfulness of a decision can appeal to the Courts for Judicial Review of the application.

*Article 8 and Article 1 of the First Protocol*

- 9.79. Officers have considered the duties under both Article 8 and Article 1 of the First Protocol and have resolved that the application does respect the private and family life of neighbours and does not fail to protect the neighbours' property.
- 9.80. Officers have considered that, in the event that the application is granted planning permission, there will not be any discrimination (or potential discrimination) on neighbours.

*Duty under The Equalities Act 2010*

- 9.81. S149 of the Equalities Act 2010 ("EA") sets out what is known as the Public Sector Equality Duty ("PSED"). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.
- 9.82. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application.

**10. PLANNING BALANCE AND CONCLUSION**

- 10.1. The overall purpose of the planning system is to seek to achieve sustainable development as set out in the Framework. The three dimensions of sustainable development must be considered in order to balance the benefits against any harm.
- 10.2. The proposed development is located within the built up limits of Bicester, close to existing services and is also part of a sustainable urban extension granted consent in 2008 under the Non-statutory Cherwell Local Plan. Whilst the District Council can currently demonstrate a 3 year housing land supply, the proposal will boost the delivery of housing within the district, including the delivery of affordable housing. In terms of securing the land for the GP health hub, it is considered that the revised transport assessment and submitted documentation appropriately indicates that the residential development together with the GP surgery can be successfully accommodated on the site, taking into account all the planning constraints and to meet the necessary standards. S106 obligations will be negotiated to secure the remaining land for healthcare purposes.
- 10.3. Accordingly, having regard to the above, it is considered that the proposal complies with the Development Plan and NPPF and is considered to be sustainable development.

## 11. RECOMMENDATION

DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) **AND THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106** OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND COMPENSATION ACT 1991, TO SECURE THE HEADS OF TERMS AS LISTED AT PARAGRAPH 9.74 OF THIS REPORT (AND ANY AMENDMENTS AS DEEMED NECESSARY).

### CONDITIONS

1. Time limits
2. Compliance with plans
3. Design code revised submission
4. Thames water and upgrade of existing foul water network
5. Access details for approval
6. Estate accesses, driveways and turning areas
7. Construction traffic management plan
8. Travel plan
9. Cycle parking
10. Surface water drainage strategy and details to be provided as part of reserved matters submission
11. Provision of refuse and recycling bins
12. Landscape management plan
13. Play provision location and details
14. Footpath/cycle links to adjacent land and developments
15. Contamination
16. SUDS maintenance plan
17. Biodiversity enhancement details to be included in reserved matters submission
18. Noise assessment and boundary details with adjacent petrol filling station to be included as part of reserved matters
19. Finished floor levels and ground levels to be included as part of reserved matters submissions
20. Energy Statement and sustainable construction in accordance with Policy ESD3
21. Broadband ducting
22. AMS to be submitted with reserved matters

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