

**Case Officer:** Bob Neville

**Applicant:** Mr David Apperly

**Proposal:** Alterations and extensions to Units 2-4 to create additional industrial office space.

**Ward:** Banbury Grimsbury And Hightown

**Councillors:** Cllr Andrew Beere  
Cllr Shaida Hussain  
Cllr Perran Moon

**Reason for Referral:** Major development (1,409 sq m additional floorspace)

**Expiry Date:** 16 March 2020

**Committee Date:** 12 March 2020

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

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

### **Proposal**

The application seeks planning permission for the extension of 3no units (2-4 Wildmere Park), to provide additional industrial storage and office floorspace. The proposed extension would be off the northern elevation of the existing row of buildings; proposed to be constructed in materials of a similar appearance (profiled metal cladding to walls and roof) to those on the existing buildings, providing an additional 390 sq m of B1a (office) and an additional 1,019 sq m of B8 (storage) floorspace. Proposals would utilise the existing access off Wildmere Road and would include revised parking arrangements and landscaping.

### **Consultations**

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

- Local Lead Flood Authority OCC

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

- Banbury Town Council, Building Control, Environment Agency, Environmental Protection, Local Highways Authority OCC, Minerals & Waste OCC, Network Rail and Thames Water

The following consultees have not responded to the consultation on the application:

- Economic Development, Planning Policy, Southern Gas Network and Thames Valley Police Design Advisor.

No letters of objection or support have been received during the application.

### **Planning Policy and Constraints**

- The site is an existing employment site (allocated within the Development Plan) in an established commercial area of Banbury.
- The site is within an area of higher flood-risk (Flood Zones 2 & 3), albeit an area identified as benefitting from defences within the Cherwell Level 1 Strategic Flood Risk Assessment.

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
- Highway Safety
- Flood-risk and Drainage
- Environmental protection

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 relates to three existing commercial units, in a wider group of five units known as Wildmere Park, situated in an existing industrial employment area in north east Banbury, with existing access road taken off Wildmere Road. Units 1-4 of Wildmere Park are currently occupied by 'DAR' lighting whilst Unit 5 is occupied by 'Scania' truck services. The Wildmere Park site is bounded by landscaping to the north, existing industrial warehousing to the south and the railway line to the west. The site for the proposed extension is currently an area of concrete and tarmac hardstanding and used as vehicle parking and manoeuvring and service yard area.

### **2. CONSTRAINTS**

- 2.1. The site is within an area of higher flood-risk (Zone 2 & 3, albeit an area identified as benefitting from defences within the Cherwell Level 1 Strategic Flood Risk Assessment). The site is within an area of potentially contaminated land. The site is within a 250m mineral infrastructure safeguarding zone (surrounding Banbury Rail Depot Hennef Way Banbury). The site is also within a consultation zone for Southern Gas Network medium pressure pipeline, which runs under Wildmere Road. A Public Right of Way (ref. Footpath 120/78/30) cross the existing access following the route of Wildmere Road.

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

- 3.1. The application seeks planning permission for the extension of 3no units (2-4 Wildmere Park), to provide additional industrial storage and office floorspace. The proposed extension would be off the northern elevation of the existing row of buildings on an area of existing concrete and tarmac hardstanding; proposed to be

constructed in materials of a similar appearance (profiled metal cladding to walls and roof) to those on the existing buildings, providing an additional 390 sqm of B1a (office) and an additional 1019 sqm of B8 (storage) floorspace. Proposals would utilise the existing access off Wildmere Road and would include revised parking and landscaping.

- 3.2. Amended parking layout details have been received during the application in response to comments by the Local Highways Authority and the proposals now indicate that extended units would be served by parking for 32no cars (including 3no disabled spaces) and 12no HGV vehicles.
- 3.3. Further amended and additional details have also been submitted during the course of the application and proposals now also include the addition of Solar Photo Voltaic Panels and Electrical Vehicle (EV) charging points.
- 3.4. Unfortunately, the application has gone beyond its original statutory target date as a result of additional/amended information being considered particularly in relation to flood-risk assessment; looking to address comments initially made by the Environment Agency. An extension of the determination period has therefore been agreed to allow for appropriate consultation and consideration of the revised details.

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

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

Relevant history relating to actual site:

- 4.2. CHN.88/276 - Extension to transport depot comprising 4no factory warehouse units. Application Granted.
- 4.3. 07/01002/F - Upgrading and extension to existing warehouse consisting of new roof, new cladding to north, east and part south elevation, 2no extensions to north elevation, car parking layout, resurfacing, landscaping, boundary fence and gates. Application Granted.
- 4.4. 10/00103/NMA - Non-material amendment to 07/01002/F to relocate vehicle doors in north elevation of unit 1 and changes to fenestration to east and new roof light to north elevation. Application Granted.

Relevant history relating to land opposite and north of Unit 1-5 Wildmere Park Wildmere Road Banbury

- 4.5. 15/00476/F - Erection of 3no industrial units with B1, B2 and B8 use with trade counters. Application Granted.
- 4.6. 17/00015/DISC - Discharge of conditions 10 (biodiversity enhancement), 13 (landscaping), 15 (trees) and 16 (arboricultural method statement) of 15/00476/F. Split decision issued, with details being approved in relation to conditions 10, 15 and 16 and the details for condition 13 being refused.
- 4.7. 18/00334/DISC - Discharge of Conditions 3 (parking areas), 4 (drainage), 5 (contamination), 6 (contamination 2), 7 (contamination 3), 8 (contamination 4), 10 (biodiversity enhancement), 11 (lighting strategy) and 13 (landscaping) of 15/00476/F. Application Granted.

#### **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 **9 October 2019**.

6.2. No comments have been raised by third parties.

## **7. RESPONSE TO CONSULTATION**

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

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

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

### CONSULTEES

7.3. BUILDING CONTROL: **No objections.** Proposals will require building regulations approval.

7.4. ECONOMIC DEVELOPMENT: **No comments received.**

7.5. ENVIRONMENTAL PROTECTION: **No objections**, following the submission of revised plans (including the provision of PV Panels and EV charging points) and additional information in respect of air quality impact assessment.

7.6. ENVIRONMENT AGENCY: **No objections**, subject to a condition, requiring the development to be in accordance with the mitigation strategy set out within the submitted Flood Risk Assessment; following the submission of a revised Flood Risk Assessment during the application.

7.7. LOCAL LEAD FLOOD AUTHORITY OCC (LLFA): **Objects**, to initial submission.

Commenting that proposals:

- Not aligned with Local or National Standards.
- In Flood Zone – EA evidence of approval to develop required.
- Insufficient evidence provided to enable a full technical assessment of the proposal.

No further comment received at the time of preparation of this report following the submission of a revised FRA, looking to address previous comments and revised comments of the Environment Agency.

7.8. LOCAL HIGHWAYS AUTHORITY OCC (LHA): **No objections**, following the submission of revised and additional information.

7.9. MINERALS AND WASTE OCC: **No objections.**

7.10. NETWORK RAIL: **No objections.**

7.11. PLANNING POLICY: **No comments received.**

7.12. SOUTHERN GAS NETWORK: **No comments received.**

7.13. THAMES VALLEY POLICE DESIGN ADVISOR: **No comments received.**

7.14. THAMES WATER: **No objections.**

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

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

8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

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

- SLE1: Employment
- SLE4: Improved Transport and Connections
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD5: Renewable Energy
- ESD6: Sustainable Flood Risk Assessment
- ESD7: Sustainable Drainage System (SuDs)
- ESD10: Protection and Enhancement of Biodiversity and the natural environment
- ESD13: Local Landscape Protection
- ESD15: Character of the Built and Historic Environment

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

- C28: Layout, design and external appearance of new development
- ENV1: Development likely to cause detrimental levels of pollution
- ENV12: Development on contaminated land

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Strategic Flood Risk Assessment (SFRA)

## **9. APPRAISAL**

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

- Principle of development
- Design, and impact on the character of the area
- Highway Safety
- Flood-risk and Drainage
- Environmental protection

### Principle of Development

### *Policy Context*

- 9.2. The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF defines this as having three dimensions: economic, social and environmental; and seeks to secure support for the sustainable growth and expansion of all types of business. Further that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (NPPF Para. 80).
- 9.3. Policy PSD1 contained within the CLP 2031 echoes the NPPF's requirements for 'sustainable development' and that planning applications that accord with the policies in the Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise.
- 9.4. Policy SLE1 of CLP 2031 relates to employment development and looks to protect existing employment land and buildings for employment (B class) uses, whilst offering support to new employment development that is focused on existing employment sites.

### *Assessment*

- 9.5. The proposals seek to extend existing B1/B8 units within an existing and well-established industrial area within the built-up limits of Banbury. The proposals would allow for increased operational floorspace supporting business opportunities at the site, in line with the provisions and aims of the development plan policies identified above.
- 9.6. It is noted that the Council has previously supported the principle of the development of additional new units at the site with the approval of application 15/00476/F. The current proposal could not be developed in addition to the previously approved scheme given the context of the site and relationship of the two developments; in particular that the conditions of the 2015 permission could not be adhered to if the current proposal (should it be granted permission) was carried out. As such the proposals assessed under this application would allow for an alternative form development through the extension of the existing units as opposed new build units.

### *Conclusion*

- 9.7. The proposals would not result in any change of use of the site, merely an expansion of the authorised existing uses which would not likely result in significant detrimental environmental impacts. As such they are considered acceptable in terms of general sustainability and the location of the site, with overall acceptability subject to further considerations discussed below.

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

#### *Policy Context*

- 9.8. The Government attaches great importance to the design of the built environment within the NPPF. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

- 9.9. Policy ESD15 of the CLP 2031 further reinforces this view, in that new development will be expected to complement and enhance the character of its context through sensitive siting, layout and high-quality design.
- 9.10. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development.

#### *Assessment*

- 9.11. Given the context of the site and its relationship with surrounding commercial buildings views of the proposed extended units would be fairly localised and largely limited to those within the site and glimpsed views up the access road. The existing units are of utilitarian/functional design in keeping the character of the surrounding commercial area.
- 9.12. The main expansion of the storage use would appear as an extension to the existing building of similar form and utilising similar materials, with two storey flat-roofed office accommodation as further subservient additions. The proposals would be seen in the context of the existing commercial units and would not appear out of place or visually intrusive within the site's wider setting.
- 9.13. The application is also supported by a proposed landscaping scheme, which looks to provide additional planting along the northern boundary thereby enhancing this natural green boundary through additional woodland planting.

#### *Conclusion*

- 9.14. The proposed extension and alterations are considered to be sympathetic to the character and appearance of the site and would not adversely affect the visual amenities of the wider area. Overall and subject to conditions the proposals accord with the development plan policies identified above in terms of potential visual impacts and the application is therefore considered acceptable in this regard.

#### Highway Safety

#### *Policy Context*

- 9.15. The NPPF (Para. 108) states that the planning system should actively manage patterns of growth in support of the achievement of promoting sustainable transport and advises that in assessing specific applications for development, it should be ensured that:
- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
  - safe and suitable access to the site can be achieved for all users; and
  - any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 9.16. Both Policies ESD15 and SLE4 of the CLP 2031 reflect the provision and aims of the NPPF. Policy ESD15 of the CLP 2031 states that: *“New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions”*; whilst Policy SLE4

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

#### *Assessment*

- 9.17. The LHA has assessed the application and whilst initially raising an objection in respect of the proposed parking layout, lack of cycle parking and lack of detail within the submitted Transport Statement, these objections were subsequently removed following the submission of revised and additional information, which were considered to satisfactorily address the issues raised.
- 9.18. The existing access off Wildmere Road would not be directly affected by the proposed development and would be retained to serve existing and proposed extended units. Access through the site would also be retained to provide access to Unit 5 (Scania Trucks). The proposals whilst increasing operational floor space are unlikely to result in any significant increase in vehicular movements to or from the site.
- 9.19. Following the submission of revised plans the proposals would provide appropriate levels of vehicle parking (32no Cars and 12no HGV spaces) for the proposed development which the LHA advises is an acceptable level of provision.
- 9.20. Proposals include both Electrical Vehicle (EV) charging points and cycle parking, thereby promoting the use of more sustainable forms of transport in line with both local and national policy guidance.
- 9.21. An extant permission 15/00476/F (for three new additional units) exists on the site. If the Council were to resolve to grant permission to the current scheme 19/01774/F, officers consider that the two schemes could not be lawfully implemented together given the physical conflict between the two layouts. It would therefore be a case of either of the schemes being fully implementable, but not both.

#### *Conclusion*

- 9.22. Subject to suitably worded conditions, the proposals include both appropriate access and parking and manoeuvring within the site to ensure that the proposals would not have a significant impact on the safety and convenience of highway users and is therefore considered acceptable in terms of highway safety.

#### Flood-risk and Drainage

##### *Policy Context*

- 9.23. Policy ESD6 of the CLP 2031 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.
- 9.24. Policy ESD7 of the CLP 2031 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

#### *Assessment*



- 9.25. The site is an existing row of industrial units and area of concrete and tarmac hardstanding that benefit from existing drainage provision at the site. A site-specific Flood Risk Assessment (FRA) prepared Flow Drainage Design has been submitted in support of the application; this has further been updated during the course of the application in response to officer and consultee comments. As noted above the Environment Agency's flood maps indicate that the site lies within Flood Zones 2 & 3.
- 9.26. Guidance within the PPG advises that the industrial use proposed here as having a 'less vulnerable' flood vulnerability classification, and that such uses are acceptable within Flood Zone 3a areas; but that within such areas essential infrastructure should be designed and constructed to remain operational and safe in times of flood.
- 9.27. Whilst initially raising an objection in respect of the lack of detail within the supporting FRA the Environment Agency (EA) has subsequently withdrawn its objection in response to the submission of a revised FRA, and subject to the development being carried out in accordance with the detail of the FRA and in accordance with the mitigation measures, i.e. that the new extension will incorporate flood resilient construction methods up to the climate affected flood level of 94.00m AOD (Above Ordnance Datum).
- 9.28. The FRA demonstrates that the proposals would remain safe in the event of flooding. Whilst there would be an increase in the built form there would be no increase in impermeable area as a result of the works, and therefore no increase in run-off rates to the surface water network.
- 9.29. Also relevant to the EA's latest advice / lack of objection is that the current proposals and the extant permission could not both be carried out; and the net impact in terms of flood risk is not significantly different between the two schemes.
- 9.30. Whilst the objection of OCC's Drainage Team is noted, its position is somewhat in conflict with the EA's revised position. Further comment has been requested from OCC on this matter. However, at the time of the preparation of this report no updated comments had been received.
- 9.31. With respect to the proposed drainage strategy submitted with the application drainage would be connected through the existing systems serving the site. This is in line with the existing situation and similar to the previously approved extant scheme for the three new units (15/00476/F) at the site, with drainage being approved in 2018 under application 18/00334/DISC.

### *Conclusion*

- 9.32. It is considered that the proposals can be appropriately drained and are appropriate in the context of the potential flood-risk of the site; incorporating flood resilience techniques. Subject to the proposals complying with the detail of the submitted FRA the proposals are considered not likely to result in any increased flood-risk to the site or surrounding areas and as such could be considered acceptable in terms of flood-risk and drainage.

### Environmental protection

#### *Policy Context*

- 9.33. At the heart of the NPPF is a presumption in favour of sustainable development and this is entrenched in the core principles of the NPPF. In pursuing sustainable

development positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life should be sought. These aims are echoed within the CLP 2031, which contains a number of specific policies which seek to secure sustainable forms of development in new-build.

- 9.34. Policy ESD1 of the CLP 2031 states that measures will be taken to mitigate the impact of the development within the District on climate change.
- 9.35. Policy ESD3 of the CLP 2031 states that all development proposals will be encouraged to reflect high quality design and high environmental standards and to demonstrate sustainable construction methods.
- 9.36. Policy ESD5 of the CLP 2031 states that the Council will support renewable and low carbon energy provision wherever any adverse impacts can be addressed satisfactorily. Planning applications involving renewable energy development will be encouraged provided that there is no unacceptable adverse impact.
- 9.37. Saved Policy ENV1 of the CLP 1996 states that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke other types of environmental pollution will not normally be permitted.
- 9.38. Saved Policy ENV12 of the CLP 1996 states that development on land which is known or suspected to be contaminated will only be permitted if adequate measures can be taken to remove any threat of contamination to future occupiers of the site, the development is not likely to result in contamination of surface or underground water resources or the proposed use does not conflict with the other policies in the plan.

#### *Assessment*

- 9.39. During the application further information was received in respect of sustainable construction and potential for use of renewables within the scheme, in response to officer and consultee comments. The application is supported Renewable Energy Feasibility Study which looked at the design principles informing the development with a view to reducing energy consumption and carbon emissions and a further Air Quality Assessment assessing the potential impacts on the nearby Air Quality Management.
- 9.40. Amended plans have been received during the course detailing additional sustainability measures to be incorporated within the scheme including the provision of EV charging points and solar PV panels to the roof of the development. The Council's Environmental Protection Team has assessed details of the submitted reports, raises no objections and support the proposed sustainability measures.
- 9.41. The proposals are on an area of land identified as having the potential for contamination associated with the historic use of the site. The proposals are unlikely to be affected by potential contamination to any greater extent than is the current situation. However, an appropriate condition can be applied in respect of any further unsuspected contamination to ensure that any potential risks from land contamination to the future users of the land and neighbouring land are minimised.

#### *Conclusion*

- 9.42. The proposals are consistent with both local and national guidance and aims in the encouragement of the use of sustainable design and construction measures. The development would comply with Policies ESD 1, 2 and 3, Saved Policies ENV1 and

ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF and are considered acceptable in this regard.

### Ecology and Biodiversity

#### *Legislative context*

- 9.43. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.
- 9.44. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 9.45. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.46. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
- 1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
  - 2) That there is no satisfactory alternative.
  - 3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 9.47. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

#### *Policy Context*

- 9.48. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 9.49. Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 9.50. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 9.51. Policy ESD10 of the Cherwell Local Plan 2011-2031 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.52. 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.
- 9.53. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities (LPAs) should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

### *Assessment*

- 9.54. 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
- 9.55. It also states that LPAs can also ask for:
- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all

- an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')
- 9.56. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site whilst not considered to contain any significant features of ecological and biodiversity value there are a number of mature trees and hedgerows that bound the site, and therefore has the potential to be suitable habitat for bats, breeding birds and badgers.
- 9.57. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, LPAs must firstly assess whether an offence under the Regulations is likely to be committed. If so, the LPA should then consider whether Natural England would be likely to grant a licence for the development. In so doing the LPA has to consider itself whether the development meets the three derogation tests listed above.
- 9.58. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.
- 9.59. The application is supported by a detailed Ecological Assessment prepared by Tyler Grange which highlights that whilst the majority of the development will take place on the existing hard standing the proposals would result in the minor loss of some features of ecological potential including ornamental shrub planting, improved grassland and partial loss of species-poor hedgerows; but further that the woodland and associated vegetation, hedgerow and the majority of the improved grassland will be retained and will remain unaffected by the proposal.
- 9.60. Given the context of the site and the nature and scale of the proposed development and finding of the submitted ecological appraisal, officers consider that the potential for any significant detrimental impacts on any significant features of ecological or biodiversity value to be relatively low. The submitted report makes a number of recommendations, mitigation and enhancements which are considered are considered to be an appropriate response to the level of potential ecological impacts in this instance and that these could be secured by way of appropriate conditions; to ensure protection of any habitats of importance to biodiversity conservation from any loss or damage and would provide a nett gain in biodiversity at the site; in accordance with Policy ESD10 and national guidance.

### *Conclusion*

- 9.61. Officers are satisfied, on the basis of the evidence within the submitted ecological appraisal and in light of the proposed mitigation and enhancements, that subject to appropriate conditions, that the welfare of any European Protected Species found to be present at the site and their habitats would 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.

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

- 10.1. Government guidance within the NPPF supports the plan-led system and advises that applications that accord with an up-to-date plan should be approved without delay.
- 10.2. In reaching an informed decision on planning applications there is a need for the LPA to undertake a balancing exercise to examine whether the adverse impacts of a development would be outweighed by the benefits such that, notwithstanding the harm, it could be considered sustainable development within the meaning given in the NPPF. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the NPPF. It is also necessary to recognise that Section 38 of the 1990 Act continues to require decisions to be made in accordance with the development plan and the NPPF highlights the importance of the plan led system as a whole.
- 10.3. The proposed development is contained within the existing confines of the existing allocated employment site and would provide additional warehousing and office operational floor space consistent with the existing use of the site and surrounding area. The proposed development would not cause harm to the character and appearance of the area, given the sympathetic design approach of the proposed warehouse and office extension to the context and that the site is screened by existing buildings. Subject to conditions, the proposed development would not cause harm to the safety of the local highway network, any features of ecological value, sustainable drainage systems or potential flood-risk at the site.
- 10.4. Given the above assessment and in light of current guiding national and local policy set out in the report, your officers consider that the proposal amounts to sustainable development and is therefore recommended for approval.

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

CONDITIONS:

**Time Limit**

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

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

**Compliance with Plans**

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Flood Risk Assessment & Drainage Strategy Issue 2 prepared by Flow Drainage Design, ref. 1951 and dated 27 January 2020, Design Air Quality Assessment prepared by DustScanAQ dated January 2020, Renewable Energy Feasibility Study prepared by Fenton Energy dated 12<sup>th</sup> December 2019, Transport Statement Rev. A dated 3<sup>rd</sup> December 2019, Ecological Appraisal prepared by Tyler Grange dated 23<sup>rd</sup> September 2018 and drawings numbered: 218772-23A, 218772-24A, 218772-26A, 218772-27 and 0726.1.2.

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.

### **Ecology and Biodiversity**

3. Prior to the commencement of the development hereby approved, including any demolition, and any works of site clearance, a method statement for enhancing biodiversity at the shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved biodiversity enhancement measures prior to the first use of the development and shall be retained as such thereafter.

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

4. The development hereby approved shall be carried out in accordance with the recommendations set out in Section 4: Potential Impacts, Mitigation and Enhancements of the Ecological Appraisal carried out by Tyler Grange on 23<sup>rd</sup> September 2018.

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

5. All planting, seeding or turfing comprised in the approved details of landscaping, as detailed on approved drawing number 0726.1.2, shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

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

### **Parking and Manoeuvring**

6. Prior to the first occupation of the development hereby approved, the parking and manoeuvring areas shall be provided in accordance with the approved plan 218772-23 Rev. A. Thereafter, the parking and manoeuvring area shall be retained in accordance with this condition and shall be unobstructed except for the parking and manoeuvring of vehicles at all times.

Reason: In the interests of highway safety, to ensure a proper standard of development and to comply with Government guidance contained within the National Planning Policy Framework.

### **Sustainability measures**

7. Prior to the first use/occupation of the development hereby approved, the electrical vehicle charging points to serve the development shall be installed and brought into use prior to the first use of the development and shall be retained as such thereafter.

Reason: To maximise opportunities for sustainable transport in accordance with Policy SLE4 of the Cherwell Local Plan 2011-2031 Part 1 and Government

guidance contained within the National Planning Policy Framework.

8. Prior to the first use/occupation of the development hereby approved, the buildings shall be provided with solar PV panels in accordance with a scheme which shall firstly be submitted to and approved in writing by the Local Planning Authority. There after the Solar PV panels shall be installed in accordance with the approved scheme and brought into use prior to the first use/occupation of the approved development.

Reason: To support the delivery of renewable and low carbon energy in accordance with Policy ESD5 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

#### **Flood-risk and drainage**

9. The development shall be carried out in accordance with the submitted Flood Risk Assessment, prepared by Flow Drainage Design, reference 1951, Issue 2, dated 27 January 2020, and the following mitigation measures it details:
  - Flood resilience measures shall be incorporated into the structure to a minimum level of 94.00m AOD.

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

Reason: To protect the development and its occupants from the increased risk of flooding and in order to comply Policy ESD6 of the Cherwell Local Plan 2011-2031 Part 1 and with Government guidance contained within the National Planning Policy Framework.

#### **Contamination**

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

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